Criminal justice agencies reject call to investigate Duncan Smith's WCA failings

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By John Pring 22/12/2016

Scottish criminal justice agencies have rejected pleas to investigate the failure of two ministers to improve the safety of the government's "fitness for work" test, despite evidence that their actions caused the deaths of at least three benefit claimants.

Police Scotland was asked in March to investigate allegations of "wilful neglect of duty" by former Department for Work and Pensions (DWP) ministers Iain Duncan Smith and Chris Grayling.

A dossier containing details of the deaths of three benefit claimants with experience of mental distress was passed to Police Scotland by the Scottish grassroots campaign network Black Triangle.

The three claimants – Paul Donnachie, David Barr, and a woman known only as Ms D E – took their own lives in 2015, 2013 and 2011 as a result of grave flaws in the work capability assessment (WCA).

These flaws mirrored those uncovered by a coroner in January 2010, following the suicide of Stephen Carré, and passed to DWP in a prevention of future deaths report just a few weeks before Duncan Smith (*pictured at this year's Tory conference*) and Grayling took up their new posts following the May 2010 general election.

Black Triangle approached Police Scotland with the dossier in March 2016 because it believed there was clear evidence that the two ministers neglected their duty as public servants in refusing to bring in the changes called for by the coroner, so causing other deaths, including those of Paul Donnachie, David Barr and Ms D E.

Black Triangle said its dossier concluded that, "were it not for the alleged criminal omissions by the two ministers, these and countless other deaths could have been and could yet be avoided".

But nine months after Black Triangle passed the dossier to Police Scotland, the force appears to have done little to investigate the allegations, other than consulting with the Crown Office and Procurator Fiscal (COPF), the Scottish equivalent of the Crown Prosecution Service.

This week, Edinburgh police confirmed that it would be taking no further action on the David Barr case, while COPF said that it had also decided that no further action should be taken on the Paul Donnachie case.

Police Scotland said that COPF had already decided that there was no link between DWP's decision to find David Barr fit for work – following a 35-minute assessment by a physiotherapist – and his decision to take his own life a month after being told by DWP he was not eligible for employment and support allowance (ESA).

Maureen Barr, David's mother, said this week that she was "disappointed" at the COPF decision, but "definitely" still wanted Duncan Smith and Grayling to face justice.

John McArdle, co-founder of Black Triangle, said: "We have been given no detailed information on what legal reasoning has been applied to any of the above matters and there seems to be complete silence on the compelling evidence set out in the case of Ms D E.

"In all the circumstances, this conduct is totally unacceptable and constitutes an insult not only to the families of the deceased but to every disabled and vulnerable Scot and their families who look to Police Scotland and the COPFS to keep them safe.

"This is not over. We are consulting with our legal advisers and will be taking this all the way.

"For disabled people in Scotland and equally throughout the UK these are literally matters of life and death and

Black Triangle campaign will not let them down, whether or not the state chooses to.

“We would like to appeal to all of them to continue to support our campaign for justice and to never give in to despair in spite of any and all setbacks.”

A COPF spokesman said: “The circumstances surrounding the deaths of Mr Donnachie and Mr Barr have been fully investigated.

“The Procurator Fiscal and Crown Counsel have respectively concluded that no further investigation is required and that no further action should be taken.

“The nearest relatives have been informed of this decision and have been offered an opportunity to discuss it further with the Procurator Fiscal.”

Police Scotland has previously said it would only look at the Ms D E case if Black Triangle or Disability News Service were able to pass on her personal details.

But those details have never been made public, as her death was the subject of a report by the Mental Welfare Commission for Scotland (MWCS), which treated her case anonymously and concluded that she killed herself after being told she was not eligible for ESA.

The report linked her death to DWP’s failure to obtain medical evidence about her mental health from the professionals who had treated her, just as the coroner had done in the case of Stephen Carré.

This week, MWCS declined to comment when asked if Police Scotland had requested Ms D E’s details, stating that it was “for Police Scotland to respond to your request related to any investigation”.

Police Scotland and COPF had both refused by 11am today (Thursday) to say whether they had attempted to contact MWCS since receiving the Black Triangle dossier in March.

McArdle said the Police Scotland and COPFS responses “beggar belief” and that an email to him from MWCS earlier this year “clearly shows that the ball was in Police Scotland’s court to contact the chief executive of MWCS”.

He said: “In an open and democratic society operating under the constitutional principle of the ‘rule of law’, we are entitled to require the full facts and complete transparency from our police service and we will not desist until the full facts are revealed.”

Chris Grayling COPF David Barr Iain Duncan Smith Paul Donnachie Police Scotland wca

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WCA death scandal: ‘DWP and Atos killed my son’

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BY JOHN PRING ON NOVEMBER 9, 2015

BENEFITS AND POVERTY

Listen

The father of a man who took his own life after being found “fit for work” believes his son would still be alive if he had not been failed by the benefits system, the government and its contractor, Atos.

Stephen Carre, 41, from Eaton Bray, Bedfordshire, died in January 2010, after the Department for Work and Pensions (DWP) confirmed its decision that he was ineligible for its new out-of-work benefit, employment and support allowance (ESA).

His father, Peter, said his son had suddenly stopped working in July 2007, and then lived off his savings for two years until his money ran out in 2009. His parents then paid his mortgage until he finally began claiming benefits in April 2009.

Stephen (*pictured*) had previously worked for the Civil Service and then various electronics and communications companies, including as a telecommunications consultant, with firms such as Cisco, Ericsson and Lucient, mainly on software installations which manage mobile phone charges.

After he quit his job, he rarely left his home, refused to talk to friends and relatives, or answer the door or telephone, and often spent days on end in the same room, surrounded by his possessions.

He finally began talking again to his father and step-mother, Frances, in early 2009, and in April 2009 they persuaded him to apply for ESA.

Peter said his son had struggled to cope with his anxiety and depression, although he had a girlfriend he saw occasionally.

He said: “He couldn’t go anywhere on his own for the first time. I had to go with him to his psychiatrist. He would only go to certain shops, and only on a certain day.”

Peter even had to accompany Stephen to the assessment centre two or three times before he was comfortable with the idea of attending his benefits eligibility test on his own.

ESA had been launched by the Labour government less than a year earlier, and concerns about the test, the work capability assessment (WCA), had not yet fully emerged.

At his assessment, a doctor employed by the government contractor Atos Healthcare decided that Stephen failed to match any of the criteria for eligibility and awarded him zero points, when he needed 15 to qualify for ESA.

The assessor concluded that there was “no evidence to suggest that the client’s health condition due to their depression, is uncontrolled, uncontrollable or life threatening”.

When that conclusion was rubber-stamped by a DWP decision-maker, Stephen asked DWP to reconsider the decision, as he believed it “disagrees wildly” with the opinion of his GP, his community psychiatric nurse and his psychiatrist.

On his appeal form, he wrote that the medical assessment “bears no relation to the medical I had”, and that the report was completed by the assessor eight days after the assessment took place.

He found out early in January 2010 that DWP had agreed with its earlier decision, so he was ineligible for ESA.

Although he began the next stage of the appeal process, he took his own life sometime in the next few days. His body was found on 18 January 2010.

Frances said she believes Stephen had made a sudden decision to kill himself, as he had recently been shopping and there was fresh food in his fridge.

Two months later, at his inquest, the coroner heard from Stephen’s GP and psychiatrist, who both said they had not been asked by the Atos assessor or DWP to provide details of his state of mental health.

The coroner, Tom Osborne, announced that he would write a Rule 43 report, a letter warning of a risk of future deaths if changes are not carried out by individuals or organisations.

In the letter, Tom Osborne said the evidence had shown that the “trigger” that led to Stephen’s decision to take his own life had been “the rejection of his appeal that he was not fit for work”.

He added: “I feel the decision not to seek medical advice from the claimant’s own GP or psychiatrist if they are suffering a mental illness should be reviewed.

“Both doctors who gave evidence before me confirmed that if they had been approached they would have been willing to provide a report of Mr Carre’s present condition and prognosis.”

DWP were told of Stephen’s death by his father, but they failed to inform the tribunal service, so when Peter Carre attended the appeal on his son’s behalf, he brought Stephen’s ashes with him.

Because of the inadequacy of the Atos assessment, the appeal had to be adjourned.

The following year, the tribunal ruled that Stephen should have been eligible for ESA and that the form completed by the Atos assessor was “not a sound basis” on which to turn down his ESA claim because of the eight-day delay between the assessment and the completion of the form, while there had been “no indication how much [of the form]was completed”.

The tribunal concluded that the Atos assessor’s report was “a suspect document”, because it did not appear to have dealt with the information provided by Stephen’s ESA50 claim form.

Later that month, the manager of Stephen’s local benefit delivery centre, in Luton, wrote to Peter Carre and said she agreed with the tribunal appeal that Stephen should have been eligible for ESA.

Peter wrote back, and told her there had been a “dismal failure” by both the benefits service and Atos and that he had attended Stephen’s tribunals on his behalf “to bring to notice the inept handling by the registered medical practitioner at Stephen’s medical review”.

Peter Carre told DNS that Atos, its assessor and DWP had all failed Stephen.

He said: “Anyone could have seen that Stephen was incapable of work. It is totally beyond me how they could have found him fit for work.

“If they had gone to his GP or his psychiatrist, I have no doubt the result of his assessment would have been different and he would probably still be with us today.”

In a written statement responding to questions from DNS, a DWP spokesman declined to comment when asked if ministers would apologise to the family of Stephen Carre.

He said: “Suicide is a tragic and complex issue and there are often many reasons why someone takes their life, so to link it to one event is misleading.

“Since this inquest took place under the previous government we have made significant improvements to the work capability assessment, including improving the process for people with mental health conditions.

“The percentage of people with mental health conditions who get the highest level of support has more than tripled since 2010, and we will continue to ensure that those who are able to work get all the help they need to move into a job when they are ready.”

He said improvements made since 2010 include “improving the opportunities people have to present medical evidence”.

The DWP spokesman said claimants were “encouraged to provide all evidence that will be relevant to their case at the outset of the claim, including medical evidence supplied by their GP or other medical professionals, while WCA assessors are “expected to seek further evidence in situations where it would help them to place someone in the support group without calling a claimant in for a face-to-face assessment”.

He said a DWP decision-maker will “assess all available evidence and seek more if required to reach their decision”.

But he admitted that DWP was still in discussions with Maximus – which took over the WCA contract from Atos earlier this year – to “pilot new evidence-seeking processes for claimants with mental health conditions”.

Atos refused to respond to requests for a comment.

0%

USER RATINGS (7 VOTES)

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ABOUT

Disability News Service (DNS) is run by John Pring, an experienced journalist who has been reporting on disability issues for nearly 20 years.

He launched DNS in April 2009 to address the absence of in-depth reporting in both the specialist and mainstream media on issues that affect the lives of disabled people. read more

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INVESTIGATION REPORT

Who benefits?

The benefits assessment and death of Ms DE

Contents

Our aim

We aim to ensure that care, treatment and support are lawful and respect the rights and promote the welfare of individuals with mental illness, learning disability and related conditions. We do this by empowering individuals and their carers and influencing and challenging service providers and policy makers.

Why we do this

Individuals may be vulnerable because they are less able at times to safeguard their own interests. They can have restrictions placed on them in order to receive care and treatment. When this happens, we make sure it is legal and ethical.

Who we are

We are an independent organisation set up by Parliament with a range of duties under mental health and incapacity law. We draw on our experience as health and social care staff, service users and carers.

Our values

We believe individuals with mental illness, learning disability and related conditions should be treated with the same respect for their equality and human rights as all other citizens. They have the right to:

- be treated with dignity and respect
- ethical and lawful treatment and to live free from abuse, neglect or discrimination
- care and treatment that best suit their needs
- recovery from mental illness
- lead as fulfilling a life as possible

What we do

Much of our work is at the complex interface between the individual's rights, the law and ethics and the care the person is receiving. We work across the continuum of health and social care.

- We find out whether individual care and treatment is in line with the law and good practice
- We challenge service providers to deliver best practice in mental health and learning disability care
- We follow up on individual cases where we have concerns and may investigate further
- We provide information, advice and guidance to individuals, carers and service providers
- We have a strong and influential voice in service policy and development
- We promote best practice in applying mental health and incapacity law to individuals' care and treatment

Introduction

This investigation was conducted under section 11 of the Mental Health (Care and Treatment) (Scotland) Act 2003. Section 11 gives the Mental Welfare Commission (the Commission) the authority to carry out investigations and make related recommendations as it considers appropriate in a number of circumstances.

The Associate Medical Director (Mental Health) of NHS Board A wrote to the Commission to inform us that Ms DE had unexpectedly taken her own life after an assessment for continuing eligibility for welfare benefits. She had been told that she would not receive Employment and Support Allowance. He had brought this to our attention because the psychiatrists in that area felt that changes in the benefits system were having a major adverse effect on their patients. He felt that it might be helpful to look more closely into the circumstances to see whether any lessons could be learned.

We discussed this at the Commission and agreed that this was a significant case, with issues relevant to many people. Similar concerns had been raised with us by service users, carers and professionals across Scotland. We decided to undertake an investigation into the circumstances of Ms DE's death.

The investigation team was chaired by Mr George Kappler, Deputy Chief Executive and Chief Social Work Officer of the Commission. The lead investigator was Dr Steven Morgan, Medical Officer. Administrative support was provided by Mrs Alison Smith, Casework Manager.

Terms of Reference and Method of Investigation

We set terms of reference for our investigations. In this case, the terms of reference were:

1) Review medical casenotes for an overview of Ms DE's care and treatment prior to and after the Atos Work Capability Assessment.

2) Examine the process by which the Atos Work Capability Assessment was organised and undertaken, including the nature of the clinical assessment.

3) Examine the process by which the result of the Atos assessment was communicated to Ms DE.

4) Explore the relationship, if any, between the Atos Work Capability Assessment and the impact on Ms DE's mental health.

We gathered information for our investigation using the following sources:

1) Review of Ms DE's GP casenotes

2) Review of psychiatry notes

3) Review of psychology notes

4) Review of psychotherapy notes

5) Review of Atos assessment and Department for Work and Pensions (DWP) correspondence

6) Interview with Dr A, the consultant psychiatrist

7) Interview with Dr B, the GP

8) Interview with the Local Authority Welfare Rights Officer, Mrs A

9) Interview with Mrs B, a close friend of Ms DE

10) Interview with Dr C (the Atos doctor who performed the Work Capability Assessment) and Dr D (an Atos clinical manager)

11) Interview with Mr A, DWP officer who carried out a review of the case on behalf of DWP

12) Written materials provided by DWP in response to our questions.

We were able to make contact with Ms DE's family but they did not accept our invitation for an interview.

We took independent advice from a consultant in occupational health. We also undertook a survey of psychiatrists in Scotland to obtain their views on the effect of benefits changes on their patients.

We are aware of numerous reviews, research and widespread public debate on this subject. One of the reasons we undertook this investigation is because the issues identified may affect many people in similar circumstances. However, the remit of the Mental Welfare Commission relates to individuals and this is a detailed investigation into how the nature and process of the Work Capability Assessment may have contributed to pressures that led to Ms DE taking her own life. We hope that our findings and recommendations can complement those of the reviews that have taken place, to the benefit of the health and welfare of other individuals with mental illness, learning disability or related conditions who undergo the Work Capability Assessment in future.

We sent a draft of our report to the DWP and to everyone we interviewed to ensure factual accuracy. We took on board comments as necessary. We also met representatives of the DWP to discuss our recommendations.

We are grateful for the cooperation of all parties who participated in this investigation.

We have included a glossary of relevant terms and abbreviations in Appendix 2.

Chronology

1985
Ms DE's first contact with psychiatry.

1992
Became an out-patient of Dr A, consultant psychiatrist. Diagnosis of recurrent depressive disorder with some features of anxiety.

21 May 2007
First day on Incapacity Benefit. Ms DE had three periods on Incapacity Benefit (21/5/07 – 4/5/08, 15/11/09 – 24/2/10 and 28/6/10 to her death).

28 June 2010
First day of final period on Incapacity Benefit.

18 July 2011
Selected for benefit reassessment by the DWP. Computer-generated letter sent.

27-29 July 2011
An unsuccessful attempt made on each of these three days by the DWP contact centre to telephone Ms DE to give further information and advice about reassessment process and identify if she needed help with the process.

26 October 2011
Assessment by Atos.

1 December 2011
Separate appointments with Dr A and Dr B, her GP.

9 December 2011
DWP decision made – not entitled to ESA, ESA to stop 12/1/12. Two unsuccessful attempts by the DWP decision maker to telephone Ms DE to explain the decision, obtain any additional information and advise options available to her. Notification of decision letter sent by the DWP to Ms DE.

15 December 2011
Telephone call from Ms DE to Dr A. Very distressed due to change in benefits. Dr A put her in contact with welfare rights officer.

19 December 2011
Telephone consultation with Dr A.

20 December 2011
Meeting with Welfare Rights Officer, Mrs A.

22 December 2011
Out-patient appointment with Dr A. No evidence of risk identified. Arrangements made for appointment on 5 January 2012. Also arranged that Ms DE could contact Dr A's team from 29 – 30 December 2011, and out-of-hours service if required. She also had a separate appointment with Dr B on this day.

29 December 2011
Ms DE spoke to Dr A's ST6 registrar, no evidence of risk identified.

31 December 2011
Ms DE found dead at her house after overdose.

23 March 2012
Letter sent to Mental Welfare Commission from the Associate Medical Director of the relevant NHS Board. A number of clinicians had expressed concern about the impact on patients of this process and reassessment.

About Ms DE

Ms DE was in her early fifties at the time of her death. She had worked in several different jobs during her career, including a position in the financial sector and some clerical posts, but was unemployed for the last 21 months of her life. She was divorced with one teenage son, who she saw regularly. She had been in a relationship for several years and was engaged. She lived in her own home, paying a mortgage on this property.

She had been seeing her consultant psychiatrist, Dr A, and her General Practitioner, Dr B, for some 20 years. Dr A usually saw Ms DE in a clinic based at Dr B's GP surgery, which allowed easy verbal communication between the doctors in addition to the usual clinic letters.

Her diagnosis was recurrent depressive disorder with some features of anxiety. She had been prescribed several different medications over the years but at the time of her death she was taking an antidepressant of the SSRI class (a commonly used class of antidepressant) augmented with lithium, indicating an illness that had proved difficult to treat. She also had some significant physical health issues, including cardiac and gynaecological problems. She was signed off work, with the reason stated on the relevant form as "depression". She was clear that she wanted to return to work when she was well enough.

As well as her fiancé and her son, she had regular contact with her parents. She had several friends who she saw regularly. She had met some of these friends through a local church. She also did some voluntary work.

Ms DE's Benefit Assessment

Ms DE had three periods on Incapacity Benefit; the third period started on 28 June 2010. On 18 July 2011 she was sent a letter from the Department for Work and Pensions (DWP) telling her that "the benefit you receive is changing". Ms DE was contacted as part of the Incapacity Benefit Reassessment project. This reassessment began in April 2011 and involved all of the 1.5 million people on Incapacity Benefit being assessed for eligibility for Employment and Support Allowance (ESA). This reassessment of all Incapacity Benefit claimants was planned to take place over a three year period. This was due to changes made in the benefit system as a result of decisions made by the UK government, which were being implemented by the DWP. Ms DE entered the reassessment process in July 2011.

The letter said that she would be assessed to see if she was eligible for Employment and Support Allowance, the benefit that was replacing Incapacity Benefit.

The process would normally involve a claimant completing a self-assessment questionnaire (called "Limited Capability for Work", also referred to as an ESA50). After this, if indicated, the claimant would attend for an assessment, known as a Work Capability Assessment (WCA), carried out by a company called Atos. Atos are contracted by the DWP to perform these assessments on their behalf. After the assessment, Atos send a report to the DWP.

Ms DE later told a Welfare Rights Officer that she had not received the self-assessment questionnaire. The DWP could confirm that Atos had sent Ms DE the questionnaire on 4 August 2011. We could not confirm that it had been delivered. The DWP told us that these questionnaires are not sent by recorded delivery and attempts to make contact with Ms DE by telephone had been unsuccessful. In any event, there was no questionnaire completed.

The usual practice was that when the ESA50 questionnaire was returned a decision was made on the next step in the process. In Ms DE's case, when the ESA50 was not returned it was decided by a healthcare professional at Atos that they would go ahead with a face to face assessment. We were informed that not returning the ESA50 questionnaire would stop the claim unless there was a good cause for not returning it or the claimant had a mental health condition. As the latter was the case, the Work Capability Assessment process continued.

We were told that based on Ms DE's original Incapacity Benefit claim it was felt that there was little to suggest that she would meet the criteria for ESA, so a decision was made not to request further medical evidence from either the GP or hospital consultant before the Work Capability Assessment.

The assessment by Atos went ahead on 26 October 2011. The report was subsequently sent to the DWP.

The DWP staff member who decides on eligibility for ESA is known as the "decision maker". Based on the Atos assessment report, the decision maker decided that Ms DE did not meet the criteria to receive ESA.

The record of the decision made by the DWP decision maker is quoted below:

> "The Limited Capability for Work Assessment test of incapacity assesses the ability to perform specific physical activities and, where there is a mental illness, to cope with day to day living. Points are awarded to reflect limitations and a score of 15 points is needed to satisfy the test. The assessment cannot take account of the requirements of a person's normal occupation.
>
> [Ms DE] did not complete a questionnaire.
>
> On 26/10/11 [Ms DE] was examined by a Healthcare Professional of the Medical Services in connection with the Work Capability Assessment and [Ms DE] described problems with Depression, Heart Failure, Abdominal Problem and Under active Thyroid.
>
> [Ms DE] lives alone and gets up independently most days at the same time, she takes her medication and is able to wash in a shower which is over the bath standing for 10-15 minutes most days. On days when she does not shower she is still able to wash herself. She sits down to dress as she feels tired but is able to complete this herself. She manages to do her housework and does it in stages and usually completes it if getting visitors. She is able to manage stairs by holding on to the rails. She is able to drive and goes out driving every few days and, once a week she drives to the local shop, church, bible study group and drives to her voluntary work. She occasionally drives to her parents' home but her Mum visits a couple of times a week and is able to drive to any appointments. She attended to the examination centre by public transport alone. Once a month she goes to the supermarket and can walk about for 60 minutes pushing a trolley. She watches television in the evening and is able to cook herself simple meals and do things safely in the kitchen. Her adult son (18 years) visits her once a fortnight. The HCP observed that she was able to sit on a chair with a back for 50 minutes; she rose once from this chair which had no arms without physical assistance from another person. She was able to stand independently for 2 minutes without difficulty and walked 15 metres normally into the examination room and had no problems getting on to the couch. She was not breathless on examination and her chest was clear, her lower limb examination was normal.
>
> [Ms DE] is able to self care, and interacts with her family, she does voluntary work with teenagers and speaks to the people at her church. The HCP states she was timid during the assessment but her everything else was normal in the mental state and despite her regular review by a psychiatrist there was no evidence of significant disability of mental health function.
>
> I am satisfied that the descriptors have been fully justified with clinical findings, observations and extracts taken from the typical day history provided by [Ms DE]. The medical report of 26/10/11 was appropriate, complete and covered all the area of incapacity described by [Ms DE] as well as including a comprehensive typical day history and full set of clinical findings.
>
> The Decision Maker has considered the Healthcare Professional's report and has decided that [Ms DE] has not achieved 15 points from the appropriate descriptors. As a consequence, the existing award(s) of [Ms DE] does not qualify for conversion into an award of Employment and Support Allowance. The existing award(s) and entitlement to be awarded credits will terminate from and including 12/01/12."

Instead of receiving ESA, Ms DE would have had to move onto Jobseeker's Allowance (JSA). This would have led to a significant drop in her income. The decision was communicated to Ms DE by two letters on 9 December 2011, after two unsuccessful attempts to telephone her. The first letter stated that she

would not be entitled to ESA from 12 January 2012 because she had been "found to be capable of work following your recent Work Capability Assessment." The second letter stated "We recognise that you have a disability or health condition. But to get Employment and Support Allowance you have to score at least 15 points from your assessment. You scored 0 points using the information from the report of the medical assessment you had on 26-Oct-2011." It then proceeded to state that all 17 "Functional Areas" of the assessment and the assessment result for each functional area, scored at zero points. The functional areas and corresponding assessment results are quoted in Appendix 1.

These letters also included information on how to appeal the decision.

Not being eligible for ESA would have caused a significant reduction in Ms DE's benefit payments. She was receiving £94.25 per week on Long Term Incapacity Benefit. Jobseeker's Allowance would have been paid at £67.50 per week (although The DWP subsequently informed us that she might have been entitled to additional funds). If she appealed against the decision she would have received £67.50 per week (on the ESA Appeal Rate) until the appeal was heard. Either way, her welfare benefits would have been reduced by £26.75 per week (a 28% reduction). It is notable that she would have experienced this drop in income even though she was appealing the decision. If she won her appeal she would have received ESA of either £94.25 or £99.85 per week (depending on whether she was placed in the "work-related activity group" or the "support group") backdated so that she did not suffer a financial loss.

Ms DE was upset by the DWP decision and spoke to both Dr A, her consultant psychiatrist, and Dr B, her GP. Dr A introduced her to Mrs A, a Welfare Rights Officer then based at Dr A's hospital. Mrs A gave Ms DE some more information about appealing the decision. Ms DE decided that she did wish to appeal and Mrs A helped her to prepare her written appeal. As part of the appeal Mrs A asked Dr A and Dr B if they would submit supporting letters and both doctors were happy to do this. The appeal form was submitted to the DWP on 21 December 2011.

As Ms DE had been distressed by these developments, Dr A put extra measures in place to support her at that time, which coincided with the Christmas period. She was seen by Dr A on 22 December 2011 and given a phone consultation on 29 December 2011 with Dr A's experienced Specialty Registrar doctor. At both of these appointments she denied any thoughts of suicide or self-harm.

On 31 December 2011 she was found dead at her home. The post-mortem examination found that she had taken an overdose of medication. Toxicology results revealed that some of the medication that she had taken was prescribed, but she had also taken tablets that she had not been prescribed.

Clinical Care

We looked at the clinical care provided to Ms DE by Dr A and Dr B. When Ms DE sought help after learning she would not receive ESA she was seen promptly. Dr A introduced her to the Welfare Rights Officer without delay.

Extra appointments were put in place over the following days. A consultation was arranged for the period between Christmas and New Year. Ms DE was stating that she did not have any ideas of self-harm or suicide. A "safety-net" arrangement was put in place in case she did contact services in a crisis situation. We did not think that there was any fault with the clinical care. A joint Significant Event Review held locally did not identify any defects in the care provided.

Our Interviews

Interview with Consultant Psychiatrist, Dr A

Ms DE had first become a patient of Dr A in 1992. Dr A told us that Ms DE had a recurring depressive illness. The frequency of appointments varied according to her clinical condition.

Dr A told us that Ms DE had been working in the financial sector when he first met her. She had given up that job due to a depressive episode. Dr A described Ms DE as having a very difficult time from 2006 to 2010. He felt that a large part of this was due to stress at work. Ms DE had worked for the NHS locally. At times Dr A was seeing Ms DE on a weekly basis. She had also developed some physical health problems. Ms DE had told Dr A that her job was very stressful. The local Occupational Health Service was involved. She had become more anxious and had taken the decision to resign from work because she could not cope with the stress any longer. Dr A told us that after this Ms DE had tried to get back to work. She wanted to be well and working again.

We asked Dr A about Ms DE's clinical condition around June 2011. Dr A felt that she had been doing well. She had been looking at returning to work but had found some options ruled out due to her physical health.

Dr A heard about the outcome of the benefits reassessment on 15 December 2011 when Ms DE phoned him, very upset about the letter she had received saying that she had received "zero points". Dr A arranged for Ms DE to speak to Mrs A, the Local Authority Welfare Rights Officer, as this was very important for her in terms of considering an appeal against the decision. Dr A felt that the Welfare Rights Officer had a very good knowledge of the benefits system and knew who to contact. She had been located in the office next door to his, which meant that patients could be seen in a familiar setting at short notice. Dr A also arranged to speak to Ms DE again on 19 December 2011. He had spoken to Ms DE about the risk of self-harm or suicide. He had felt that she wasn't at risk and she had assured him that she would contact him if she had any such thoughts.

Dr A was aware of some financial pressure on Ms DE. The subject came up intermittently in clinic. He thought that Ms DE did not have a lot of money but had been managing her finances in a capable way. When Ms DE had received the decision letter from the DWP she had been very worried about her financial situation.

Dr A informed us that there had been no contact from the DWP or Atos requesting any information from him as part of the benefit reassessment process. He said that both he and the GP, Dr B, had felt that their medical opinions should have been sought. He told us that they both felt that they could have worked with the DWP and given an indication of Ms DE's progress towards being able to work again.

When Dr A saw Ms DE again on 22 December 2011 he felt that she was slightly less distressed. She had lodged her appeal against the decision by this point. Dr A hoped that she would get through this upset. He was unaware of any other possible precipitants which could have contributed to her decision to take her own life. He had not thought Ms DE was likely to take her own life.

We asked Dr A if Ms DE had ever expressed any suicidal thoughts or ideas of self-harm. Dr A told us that Ms DE had occasionally had some passive thoughts about self-harm but had never talked about any active plans or done anything about them. When he saw Ms DE on 22 December 2011 there had been no

thoughts of self-harm or suicide. Dr A arranged for Ms DE to speak by phone to his experienced registrar doctor on 29 December 2011. This call took place on the scheduled date. Dr A's registrar had recorded that there were no thoughts of suicide or self-harm, and advised her that she could contact the out of hours service over the holiday period if she needed any help.

We asked Dr A if he thought that anything could have been done differently in this case. Dr A said that he thought that it would have been helpful to have known that Ms DE was going to be assessed regarding her benefits. He felt that the DWP could have informed him as Ms DE had said that she had told the DWP that she was in contact with him. He would have liked the opportunity to discuss Ms DE's situation.

Dr A felt that Ms DE may have been able to go for the Work Capability Assessment and present herself well for an hour. She would have tried to do her best for the assessment. Dr A did not think she was fit for work yet at the point when she was assessed. In addition to her mental health problems she had significant physical health issues.

When Dr A found out about Ms DE's death he informed Healthcare Improvement Scotland and his local Clinical Governance Group. This group felt that the case should be referred to the Mental Welfare Commission. A joint Significant Event Review was held with the GP surgery. The review did not identify any faults in the care provided.

Dr A described concerns about other patients undergoing this assessment process. He described patients asking for advice after receiving a letter about an impending assessment. Dr A told us that he advises patients to attend the assessment, and also informs patients that he is happy to write a letter of support. Dr A said that it appeared there was no system by which he would routinely be asked for an opinion or informed that a patient was about to go through this assessment process.

Dr A told us that, in his opinion, patients are very stressed about the assessment but they do go as they see it as a meeting with an "authority". He felt that people "got dressed up" and tried to look their best. Dr A said that he had started writing letters to the DWP for patients who he thought would be greatly distressed by the assessment, asking that they be excused attendance. He told us that some of his patients had been very distressed by the process of reassessment, including a patient who had actually remained on the same level of benefits. Dr A had become increasingly aware of the process patients were going through.

Interview with General Practitioner, Dr B

Dr B had been Ms DE's GP since 1987. Ms DE consulted Dr B quite frequently for both physical and mental health issues. She also saw her consultant psychiatrist, Dr A, at Dr B's surgery.

Dr B recalled that in 2011, Ms DE had been experiencing multiple health problems. She had been undergoing investigations for an impairment of heart function and was to be reviewed by her consultant cardiologist in early 2012. She had other significant physical symptoms which were being investigated. Dr B felt that her physical problems had an effect on her depression and anxiety. Despite this, she made her best efforts to appear well.

Dr B said that he saw Ms DE on 1 December 2011. At this appointment they had discussed what it would be like to make a very gradual return to work on reduced hours at some point in the future. When he saw Ms DE on 22 December the situation had changed. She was very unhappy that her benefits would

be changing for the worse. At this appointment she had said that she would appeal and Dr B indicated that he would support this appeal by providing a letter to be submitted. Some extracts from this letter written by Dr B are quoted below for information:

> "I would say at the outset that I strongly support this appeal."
>
> "[Ms DE] has a very long history of significant mental illness starting with depression, anxiety and obsessive compulsive behaviour back in December 1985. She has continued to have significant depression and has been seen regularly by Psychiatrists since that time."
>
> "[...] unfortunately this assessment has dented her confidence and caused a worsening of depressive symptoms [...] and as such at present she is certainly unfit for work."
>
> "[...] she is unfit for work mostly due to depression but also her physical symptoms which are due for investigation in the first few months of 2012."

Dr B was shocked when he heard of Ms DE's death. He recalled that she had not been perceived to be at risk of self-harm or suicide on the day that he last saw her. She had never self-harmed in the past and had not been assessed as a high-risk patient. There were no special measures in place relating to the dispensing of her medication as this was not felt to be necessary. Dr B had not been able to identify any other possible precipitants for Ms DE's suicide. He said that she would have had some support from people at her church and the charity she volunteered with.

We asked Dr B if Ms DE had discussed the ESA50 self-assessment questionnaire with him. Dr B said that it was common for patients to discuss this questionnaire but Ms DE had not done this, which made him think that she may not have received the form. Dr B said that neither Atos nor the DWP had contacted him for information before the assessment. He said that, unfortunately in his view, it was standard practice that he was not contacted before assessments.

Dr B said that he had recently been sent some "ESA113 forms" to complete for other patients. Some patients suffering from certain specified severely disabling conditions may be treated as incapable of work without undergoing the Work Capability Assessment. An ESA113 report completed by a GP provides information that may be used to decide that the patient does not need to be examined. There had not been an ESA113 form sent regarding Ms DE.

We asked Dr B about the Significant Event Review held at the practice after Ms DE's death. We also looked at the report completed after the review. The review had been attended by Dr A, Dr B and another GP at Dr B's surgery.

The review noted that Ms DE was hoping to return to employment at some point. It was recorded that she had been seen by the psychiatric team on the same day that she saw Dr B for the last time and she had denied any intent of suicide or deliberate self-harm. The review noted that the benefit assessment may have been the trigger – there was no other known trigger. Ms DE was being dispensed medication on an eight weekly basis but this was not considered unusual for a stable patient. It was felt that the clinical management of Ms DE had been good, with proper engagement of mental health and GP services. The review emphasised the importance of explicitly recording the risk of suicide and deliberate self-harm at all contacts with patients who have a severe and enduring mental illness.

We asked Dr B if he had changed his clinical approach as a result of Ms DE's case. Dr B said that it had highlighted to him the importance of asking about suicidal ideation in a patient with a mental illness. He felt that he had covered this subject with Ms DE.

Interview with Welfare Rights Officer, Mrs A

Mrs A was the Welfare Rights Officer who assisted Ms DE to make an appeal against the DWP decision regarding eligibility for ESA. She was a qualified social worker, employed by the local authority but funded by the NHS.

Mrs A had received a telephone call from Dr A, the consultant psychiatrist, on 15 December 2011. He had explained that he had seen Ms DE at his clinic at the GP surgery and she was very distressed about her benefit situation. Mrs A had spoken to Ms DE on the phone that day and advised her on possible courses of action. On the 19 December, Ms DE phoned to say that she did wish to appeal so a meeting was arranged for 20 December.

At this meeting, Ms DE confirmed that she wanted to appeal. She signed an authorisation form which would allow Mrs A to obtain information from the Job Centre and to act on Ms DE's behalf.

Mrs A said that she hoped the appeal could be resolved in a few weeks, although sometimes it took months. Mrs A thought that it could possibly be resolved quickly as the Job Centre often changed their decision on receipt of medical evidence. Mrs A felt that the decision would be overturned when letters from Dr A and Dr B were submitted.

Mrs A had outlined the actual reduction that Ms DE would receive in her benefit payment. Her £94.25 per week Long Term Incapacity Benefit would be reducing to £67.50 per week (which was the rate for both Jobseeker's Allowance and the ESA appeal rate). Ms DE had become very upset at this point. She had been crying and saying that she didn't know how she was going to manage. She was extremely worried about how she would pay her mortgage. She had already re-mortgaged and was unable to do this again.

Mrs A and Ms DE filled in the appeal form and posted it to the Job Centre that day (20/12/11). Part of the text of the appeal read: "I have both physical and mental health problems which impact greatly on each other. I feel the medical just focussed on my physical health though. I have found going from being an independent working woman to being on benefits extremely hard and has made my depression worse. My heart problems are still being investigated and I see a consultant in February. My health problems affect all activities of daily living."

As part of the appeal they were lodging medical evidence so Mrs A wrote to Dr A and Dr B to request letters of support. Both doctors were happy to provide letters supporting the appeal. The standard practice of Mrs A was to forward this medical evidence once received.

Mrs A explained that the appeal would be logged on the Job Centre system, which would ensure that there was no break in the claim. Benefit would continue to be paid, but at a lower rate from the date that the Incapacity Benefit was due to stop. If Ms DE won her appeal she would receive the shortfall backdated. There would have been a hearing regarding the appeal, with the option of a paper hearing or an oral hearing. Mrs A would have attended the hearing and she thought that Ms DE would have won her appeal.

When Mrs A returned to work after the festive period on 4 January 2012 the letter supporting the appeal from Dr A was waiting for her. The letter from Dr A included the following passages:

> "[Ms DE] has been an outpatient under my care for many years and indeed has suffered from a significant and disabling depressive illness for a lengthy period which unfortunately continues to compromise her ability to work."
>
> "She has symptoms including low mood, anhedonia, lack of motivation and drive, poor concentration and poor sleep pattern and marked negative thinking..."
>
> "My opinion therefore is that at present [Ms DE] is totally incapable of work due to these ongoing symptoms ..."

Mrs A forwarded Dr A's letter to the Job Centre. Later that day she was informed of Ms DE's death by Dr A's secretary. Mrs A was shocked and upset by this news. Dr B's letter of support arrived later the same day. This letter was not forwarded to the Job Centre. Instead she wrote informing them of Ms DE's death and requesting a copy of the Work Capability Assessment report.

On 23 January 2012, Mrs A received a letter from the DWP (incorrectly dated 24 November 2011) saying they were sorry to hear of Ms DE's death. A copy of the WCA report was provided.

Mrs A felt that Ms DE wanted to get back to work and would have been well enough to do this at some point in the future. She thought that Ms DE needed some time to get well before going back to work.

Mrs A said that she had been involved in lots of appeals against ESA decisions. This work took up the majority of her working week. In her opinion the success rate for appeals was quite high. Appeals are heard by the First-tier Tribunal, an independent tribunal administered by HM Courts & Tribunals Service. Mrs A thought that this body reviewed all the information and also considered the impact of a claimant's mental health problem.

Importantly, Mrs A recalled that Ms DE had said that she had definitely not received the ESA50 self-assessment questionnaire.

Interview with Mrs B, a friend of Ms DE

Mrs B had first met Ms DE in 2007. Mrs B ran parenting courses for a charity and she met Ms DE through this course. Ms DE had then gone on to take other courses on offer and had become involved with the charity as a volunteer in 2009. Mrs B recalled that around that time Ms DE had been depressed. Ms DE started attending the same church as Mrs B. They were in the same bible study group and Mrs B got to know her well.

Mrs B recalled that in mid-2011 Ms DE was trying to get back to work. An earlier phased return to work had been unsuccessful and this had caused a dip in Ms DE's mood. Ms DE was also suffering from physical health problems.

Mrs B said that Ms DE was worried when she received the letter about the benefit assessment. Ms DE did want to get back to work but was worried about returning at that point, especially after the previous attempt. Ms DE also had financial worries.

Ms DE told Mrs B after the Atos assessment that she was confused about it. She felt that she hadn't been asked the right questions. She thought that she hadn't been allowed to express herself. After hearing that she had received zero points and wasn't eligible for Employment and Support Allowance, Ms DE had been very worried about how she was going to manage financially. She had been tearful and was wandering around her flat.

Mrs B saw Ms DE for the last time on Christmas Eve, 2011 when she delivered a Christmas present. Mrs B received a phone call from Ms DE's brother on New Year's Day, 2012, telling her that Ms DE was dead. Mrs B was shocked by the news, as were their mutual friends.

Mrs B was unaware of any stressful events in Ms DE's life, other than her benefit assessment. Her relationship with her son seemed to be going well – he usually visited twice per week. Ms DE had been sad when her son decided to live with her ex-husband but they had built a good relationship. Ms DE was close to the other members of her family.

Mrs B was also able to tell us about Ms DE's relationship with her fiancé. It seemed to be going well and they had set a wedding date for mid-2012. Preparations were proceeding for the wedding.

The DWP/Atos Processes

The Incapacity Benefit reassessment process was dictated by changes to the law and authorised by the UK Parliament in the Welfare Reform Act 2007 and the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010 (S.I. 2010/1907).

The process to determine eligibility for ESA is called a Work Capability Assessment. Atos are contracted to perform part of this process, including the sending of the ESA50 questionnaire and the face to face assessment. In the face to face assessment the Atos healthcare professional assesses the claimant using a structured framework, combining history-taking and examination. Ms DE was assessed by an experienced doctor with six months' training in psychiatry. The assessment is documented on a computerised system and a report is generated which is sent to the DWP. The Work Capability Assessment uses a points system to give an indication of capability for work. Points are allocated for an assessed lack of functional capability in multiple categories. The points allocated are then summed and compared against thresholds to indicate the assessed level of capability for work.

Ms DE's assessment lasted approximately one hour. The only information that the assessing doctor had before interviewing Ms DE was the one word "depression". This was the reason given for her incapacity benefit claim. As previously stated there was no ESA50 questionnaire and no medical reports. Based on the assessment, Ms DE was allocated zero points.

The Atos report (also known as an ESA85) is sent to the DWP and considered by a DWP staff member who is known as the "Decision Maker". The decision maker may have other information available to them, in addition to the ESA85 report. Before making a decision of disallowance the decision maker attempts to contact the claimant to discuss the likely decision, allowing the claimant to provide relevant additional information. The decision is then made. If the claimant is subsequently unhappy with the decision then there is a right of appeal and information on the appeal procedure is also supplied to the claimant.

The DWP decision maker in Ms DE's case only had the Atos report to consider in making the decision on eligibility for ESA. There were no other medical reports or self-assessment questionnaire. Based on the Atos report, the decision maker decided Ms DE was not eligible for ESA. We asked the DWP about the processes undertaken by the DWP decision maker once the Atos assessment had been received. We received the following answer:

> "The Decision Maker (DM) determines whether the claimant has Limited Capability for Work (LCW) by reviewing the ESA50 (where available), the Atos medical report and personalised summary and any other medical evidence obtained by Atos or provided by the claimant. The DM will consider the merit of each answer and decide what weight to give to the content of the medical report, especially where there are differences between the answers from the claimant and the Health Care Professional (HCP). The level of each activity is measured by points. Part 1 contains activities characterising physical function. Part 2 contains activities characterising mental, cognitive and intellectual function, both are broken down into descriptors. The extent to which a claimant can or cannot carry out an activity is determined by which descriptor applies to that claimant. The test is the ability to perform any work not a specific occupation. If a total of 15 points is reached then the claimant has LCW. The DM must record the final scores for each descriptor

and the reasons for the decision. If the claimant has LCW the DM will consider whether they also have Limited Capability for Work-Related Activity (LCWRA) and be entitled to the ESA Support Component. The ESA regulations allow the DM to treat a claimant as having LCW even if they do not reach 15 points if they are suffering from a life-threatening disease that is uncontrollable or suffering from a specific disease or bodily or mental disability and there would be a substantial risk to the claimant's mental or physical health if they were not treated as having LCW or LCWRA.

As a result of the Harrington Review of the WCA process all disallowance decisions are, where possible, communicated to the claimant over the phone via a Decision Assurance Call. These calls are designed to explain to the claimant what evidence has been considered, as well as offer the opportunity to submit any further evidence that the claimant feels may affect the decision prior to disallowance and to advise the options available at this stage. Two unsuccessful attempts were made on 9 December to phone [Ms DE], with a gap in between of at least three hours. No messages were left on her answering machine. A decision letter was sent in the post on the same day.

As mentioned [elsewhere] following the WCA when all the evidence had been considered and the DM was minded to disallow on no LCW before that decision was input they would try to contact the claimant by phone to explain what the decision was and to give them the opportunity to supply any further medical evidence they may wish to put forward for consideration. They would also, at this point, if no further evidence was to be presented, explain the claimant's options e.g. claim JSA or request a reconsideration of the decision or appeal. A reconsideration of the decision involves another DM looking at all the evidence again and deciding if it can be "changed".

If they are unable to contact a Mental Health claimant or the DM feels they have not fully understood the situation they could decide to request a departmental Visiting Officer to go and see the claimant and explain the same information and gather any further information from the claimant. The claimant is only disallowed from a "safe date". This would be the next pay day following the issue of the disallowance letter. Until the final decision to disallow is made and the decision letter is issued following this above process the claimant remains in receipt of benefit."

We used this information to guide our interviews with the DWP peer reviewer and Atos medical staff.

Further Interviews

Interview with Mr A, DWP Peer Reviewer

We spoke to Mr A, a DWP Senior Executive Officer, who conducted the DWP peer review of the handling of Ms DE's benefit reassessment. The peer review in this case is a solely paper-based internal process. It reviews all the relevant DWP documentation. Mr A had been asked to carry out the peer review by a senior executive within the DWP in September 2012. Mr A carried out the peer review on a single-handed basis, without any contribution from medical staff. As such, there was no effective peer review carried out.

We heard that the peer review process involves creating a timeline and examining the five stages of the benefit claim. We were told that the five stages are: the initial letter being sent; the ESA50 form; the Atos examination; the decision making; and appeal and closure.

Mr A told us that his review had found that staff had followed the agreed process. He added that he found nothing in the Atos report or in Ms DE's comments during the assessment to suggest that she was likely to take her own life. In his role as peer reviewer, Mr A told us that he had not identified any deficiencies in the DWP processes in this case. However, in his personal opinion (as opposed to his opinion as peer reviewer), he had identified some "missed opportunities". He said that it was difficult to know if these would have made any difference to the decision making. Mr A then talked us through the five stages of the claim listed above.

Stage 1 – initial letter being sent

We were told that Ms DE's case had been selected for review on 18 July 2011 and a computer-generated letter was sent. Ms DE had indicated a preference for telephone contact. DWP staff made three phone calls to Ms DE on separate dates but all were unanswered. The purpose of these calls was to offer advice about the assessment process and to find out if she needed any additional help with the process. Mr A told us that it had been noted that Ms DE had an answering machine. It was not part of the DWP guidance for staff to leave messages. In Mr A's personal opinion (as opposed to his opinion as peer reviewer), if DWP staff had left messages then Ms DE might have called back. We were subsequently informed by the DWP that guidance on leaving telephone messages was introduced in late 2011.

Stage 2 – the ESA50 form

Mr A told us that the ESA50 form had been issued on 4 August 2011 according to the DWP records. We had previously heard that Ms DE had said that she did not receive this form. There was no proof that the form had actually been delivered to Ms DE. We asked Mr A if it was common for claimants not to complete an ESA50 form. Mr A said that he was aware that some people do not complete the form. He told us that he thought that claimants should supply the information requested as it was in their best interests.

Stage 3 – the Work Capability Assessment (performed by Atos)

Mr A said that he had not found anything in the process of the Work Capability Assessment that had not been done properly. He noted that the Atos assessing practitioner did not have any additional information, such as the letters submitted with the appeal. However, he felt that everything contained in the letters was discussed at the interview and the Atos professional had come to a different conclusion about Ms DE's capability for work.

Mr A said that if the ESA50 had been available it might have provided more information, but that could never be known. We were told that the claimant would not be routinely asked as part of the assessment process if they had received an ESA50. There was also no process at the DWP to telephone a claimant to ask if they had received the ESA50.

Mr A was satisfied that the Atos report had been completed in line with the DWP guidance.

Stage 4 – the decision making process

The decision making process was based on the information available, namely the Work Capability Assessment report only. Mr A told us that the decision makers are Executive Officers with experience in the benefit system and specific training for the role they are performing. The decision taken was that Ms DE did not have limited capability for work and correspondence was sent advising her of this decision. The DWP decision maker was required to make two efforts to phone the claimant (with the calls at least three hours apart) to offer an opportunity to talk about the decision and to allow the claimant to provide additional relevant information. The calls were made but there was no answer and no messages were left on Ms DE's answering machine. Again, it was not part of the DWP guidance to leave messages on answering machines. There had been no indication to the decision maker that Ms DE was at risk of suicide or self-harm. Mr A felt that the steps taken by the decision maker and the decision reached showed "nothing untoward."

Stage 5 – the appeal and closure

The appeal form was received within the required timescale. Mr A said that he could not add much more information due to Ms DE's death shortly after the form was received.

Overall observations

Mr A felt that DWP staff had worked appropriately within the relevant guidance. He told us that he had recommended that the DWP guidance on vulnerable claimants should be re-publicised. This guidance defines vulnerable claimants as those people who have difficulty in coping with the demands of the service. It is there to help staff identify and make judgements about those claimants for whom it would be more appropriate to deliver services face to face. Ms DE had not been regarded as a vulnerable claimant. Had she been regarded as a vulnerable claimant she might have had a home visit to explain the decision and discuss her options. We were subsequently told by the DWP that new guidance on vulnerable claimants has since been issued.

As peer reviewer, Mr A had not mentioned the subject of leaving messages on a claimant's answering machine.

We were told that Ms DE's entitlement to Incapacity Benefit would have stopped on 12 January 2012 as a result of the decision made on 9 December 2011. Normally the period between the decision of non-eligibility and the stopping of the benefit would have been two weeks. In Ms DE's case the period was extended to allow for the festive period.

Mr A had reviewed the communication between the DWP and Atos in this case. He did not identify any defects in the communication process.

Interview with Dr C (the Atos Doctor who performed the Work Capability Assessment) and Dr D (an Atos Clinical Manager)

Dr C had been working for Atos as a Medical Adviser for around 14 months when she saw Ms DE for a Work Capability Assessment (WCA). Dr C's role was described to us as involving giving advice and providing impartial functional assessment reports following face to face assessments, mostly in ESA cases. Dr C was a GP with six months' experience of psychiatry as part of her General Practice training. She had also undertaken Atos training in "moderate to severe mental health conditions".

We heard that Dr C would normally have four clients scheduled for WCAs over a half-day session. This allowed an average time of between 50 and 60 minutes for an assessment. There was no set time for an assessment and no cut-off time by which it had to be completed.

We were told that the assessing practitioner would note the history (i.e. the claimant's description of events and symptoms) during the interview. The form completed by the practitioner would be finalised after the interview. In some assessments there would be information available to the practitioner before the client arrived – for example an ESA50 (limited capability for work questionnaire), an ESA113 (information requested from a healthcare professional regarding an ESA claim) or letters from doctors or social workers. In Ms DE's case there was no such information available. There had been no ESA50 received from Ms DE. As she was known to have a mental health problem the assessment process continued without an ESA50. The information that Dr C had was that "depression" was quoted on the MED3 form (statement of fitness for work, completed by a doctor) and the date of the claim was 28/6/10.

When no ESA50 was received by Atos a "scrutiny process" occurred. The scrutiny process is carried out by an Atos practitioner. There are three options available to this practitioner:

i) Atos cannot advise on level of disability so the client will need to be called for a face to face assessment.

ii) evidence available shows that the client meets the support group criteria – the case is returned to the DWP.

iii) evidence available shows that the client may meet the support group criteria but further medical evidence is required to support this. An ESA113 will be requested, usually from the client's GP.

In Ms DE's case, based on the period of incapacity and the one word "depression" on the MED3 form, the decision was taken that it was very unlikely that additional evidence from the GP would have led to the client being assessed as meeting the criteria for the support group. Dr D told us that due to the limited information and the fact that most people with depression do not meet the support group criteria, the decision taken by the scrutinising Atos practitioner would have been that a face to face assessment was appropriate.

Dr D explained that it is not a standard process to obtain further information about clients. Some clients would incorrectly assume that the Atos practitioner had access to medical notes.

After the scrutiny process an appointment to attend the Assessment Centre was arranged with Ms DE. Dr C described the face to face assessment she conducted with Ms DE. Dr C had begun by asking Ms DE what problems she had. Ms DE had listed her problems and Dr C had asked further about the various conditions. Dr C recorded the details on a computerised system which allowed the use of both "standard phrases" and free text in order to accurately reflect the history. Dr C said that Ms DE had said

that she had problems in almost every area other than upper limbs. Dr C told us that she was doing an assessment of a number of physical health issues as well as mental health. Ms DE had told Dr C that she felt unable to take up a new job because of depression and physical health problems.

We asked if it was possible to request a psychiatric report as part of the assessment. We were told that the Atos practitioner cannot delay during an assessment to request further information, such as a medical report.

Dr C told us that she would not have contact with a client's GP or hospital doctor unless she was specifically worried about something or an unexpected discovery came up, in which case they could ask for information in exceptional circumstances. We asked what would happen if an Atos practitioner found that a client had suicidal ideation. Dr D told us that there is a process called "unexpected findings" by which they can raise concerns with the person who has clinical care responsibility, often the GP, sometimes a hospital practitioner. Dr C said that if a client voiced suicidal thoughts she would arrange for the person to see their GP – she would want to ensure that the GP had taken over the clinical care.

Dr D explained that Atos were not looking at diagnosis or treatment but were focussing on function. The Atos remit was to provide a "stand back independent functional assessment of the person's ability". Advising on the client's condition or treatment was not part of their role. It was not part of the assessment process to adjourn the assessment to obtain further information, or to follow up after the assessment to find out the outcome. After the report was completed, with an opinion on the client's functional capability, the advice was sent to the DWP and a DWP decision maker would decide how to proceed.

We then looked at Ms DE's assessment report in detail. It was recorded that the examination took 59 minutes. There was additional work after the client had left, which included writing a "Personalised Summary Statement".

Near the beginning of the report there is a "description of functional abilities". Recorded under the heading of "depression", it states that in the last few weeks there has been a dip in mood, lack of motivation and problems with housework and form-filling. It is recorded that there were no current thoughts of self-harm or suicide, but "has had thoughts in the past many years ago". We were told that asking about thoughts of suicide or self-harm was always part of the assessment if the client has a mental health problem.

We asked about the section of the report that is titled "Mental State Examination". We had observed that there is very little in this section relating to mood. The two headings recorded under "mood" in this section of the WCA are "demeanour" and "self-harm". Under each of these headings the assessing practitioner would choose a phrase to be the best representation.

In Ms DE's case the "mood" section reads: "Mood – Ideas of Self Harm: No ideas of self harm. Demeanour: Timid". It is possible for the practitioner to add free text to this section if required, but there was no free text added to this part of Ms DE's report. The options available for selection under "ideas of self harm" are: not assessed; client declined; none; firm and detailed; frequent but non specific; occasional; infrequent. The options available under "demeanour" are: not assessed; normal; confident; over-familiar; timid; irritable; hostile; aggressive; labile; withdrawn. In a mental state examination performed in a clinical setting there would usually be a subjective and objective assessment of mood, respectively involving

recording the individual's description of their own mood and the assessing professional's description. Biological and cognitive features of depression could also be recorded in this section of the mental state examination.

Dr D told us that the discrepancy between the WCA "Mental State Examination" and the usual clinical examination was due to the fact that the Atos practitioner is performing a functional assessment, not a diagnostic assessment. Earlier versions of the assessment (for Incapacity Benefit, prior to ESA) had recorded an evaluation of mood. The assessment had subsequently been changed as it was felt that these descriptive terms were not helpful as part of an assessment of function. These changes were made in conjunction with DWP requirements and at their direction.

We asked about the lack of recording of cognitive symptoms of depression such as hopelessness, guilt and worthlessness. It was reiterated by Dr D that the Atos practitioner was not assessing Ms DE's depression, but how the depression affected her. We found it difficult to understand how an assessment of function could be made without considering these symptoms.

We asked about the assessment of Ms DE's motivation. Dr C said that Ms DE had come to the interview by herself and had coped well with it. Dr C had noted that Ms DE was engaged with appropriate services and was able to cook for herself. Dr C also added that Ms DE attended church and did some voluntary work. This had contributed to the assessment of Ms DE's functioning.

We asked about the "15 points system". We were told that there would be 0, 6, 9 or 15 points awarded for each "descriptor". The total for the assessment as a whole is taken and if it is 15 points or above then the person will qualify for ESA within the work-related activity group. If any of the support group criteria are met then the person moves into the support group. We were informed that conditions with mild or moderate functional effects will probably generate a score of less than 15 points, while if there are substantial functional effects the score will probably be 15 points or more.

If a client does not meet the 15 points threshold there is a further consideration, called "non-functional descriptors". The non-functional descriptors were described to us as a "safety net" for people who have scored less than 15 points, in cases where there could still be difficulties in a workplace setting despite not having been assessed as having significant functional restriction. There are two non-functional descriptors. One relates to life-threatening disease which is uncontrollable or uncontrolled, which was not applicable in this case. The other non-functional descriptor relates to risk to health. The relevant wording is: "the claimant is suffering from some specific disease or a bodily or mental disablement, and by reasons of such disease or disablement, there would be a substantial risk to the mental or physical health of any person if they were found not to have limited capability for work". We were told that the key word was "substantial" and an assessment of that would be made by the Atos practitioner. In Ms DE's case it had not been felt that there was a substantial risk.

We asked about the "Personalised Summary Statement". In Ms DE's case the last of the five paragraphs in the statement relates to her mental health. It reads:

> "She has depression, she regularly gets reviewed by psychiatry. She was started on mood stabilisers last year. She lives alone, self cares, and is able to do a variety of cooking and housework tasks. She is able to drive. She attends bible study classes and to do volunteer work speaking to teenagers. She does not get in to fights or arguments. She was timid at interview but otherwise

her mental state appeared normal and despite her regular review by psychiatrist there is no evidence that she has a significant disability of mental health function."

We were surprised about this paragraph for a person who had been seen by a consultant psychiatrist over the course of a 20 year period, was being frequently reviewed and was prescribed significant medication. Dr C said that the key word here was "function". Dr D told us that he did not feel that Dr C was saying that there was nothing wrong with the client, she was commenting on the claimant's functioning.

We asked if there had been any changes to the assessment process since Ms DE's assessment took place. We heard that there had been some changes to wording and support group criteria but no fundamental changes to the descriptors or the application of the descriptors.

Our Survey of Psychiatrists

As part of this investigation we conducted a survey of psychiatrists in Scotland. We wrote to Associate Medical Directors in Psychiatry at health boards across Scotland and asked them to distribute an invitation and a link to an online survey to Responsible Medical Officers (RMOs) in their area. RMOs have overall responsibility for the psychiatric care of their patients and are usually consultant psychiatrists, although there are some senior psychiatric trainees and specialty grade doctors who act in this capacity.

We received 70 responses to our survey. For comparison, the most recent NHS Scotland Information Services Division report on workforce statistics shows a headcount of 320 consultants working in general adult psychiatry in Scotland in June 2013. Of the 70 responses, 56 were completed by RMOs who had patients who had undergone a Work Capability Assessment (WCA). All percentages quoted relate to these 56 responses, unless otherwise stated.

We asked RMOs if their opinion had been sought by the DWP or Atos at any point in the WCA process. 75% said they had not been asked for their opinion at any point in the process. 25% had been asked for their opinion, some before the WCA and some after.

We then enquired if patients had asked our survey respondents to provide medical evidence. 95% had been asked to provide medical evidence at some point. 70% had been asked before their patients attended for the WCA. 29% had been asked after the WCA but before the decision was made. 73% had been asked as part of the appeal process against the DWP decision.

We asked RMOs if any of their patients had lost ESA or Incapacity Benefit after undergoing the WCA. 78% said that some of their patients had lost entitlement, 9% said that their patients had not, and 12% did not know. We also enquired if any of their patients had won an appeal against a decision made by the DWP to stop entitlement to these benefits. 80% of our respondents said that at least one of their patients had won an appeal.

We asked RMOs if any of their patients had been distressed by the process of undergoing the WCA and 96% replied that this had been the case. In addition, 93% of respondents said that at least one of their patients had been distressed by the outcome of the WCA.

We then asked RMOs about patient experiences following the WCA to which the assessment process or outcome contributed (in the RMO's opinion). 85% of the 52 respondents to this question told us about an increased frequency of appointments. 65% had at least one patient who required an increased dose of medication and 35% reported at least one patient who had changed medication. 40% had at least one patient who had self-harmed after the WCA. 13% of respondents reported that a patient had attempted suicide and 4% (two RMOs) stated that a patient had taken his/her own life. 35% said that at least one of their patients had been admitted to hospital as a consequence of the WCA and 4% told us about a patient being detained under the Mental Health (Care and Treatment) (Scotland) Act 2003.

RMOs told us of other patient experiences after the WCA. Commonly reported were increased stress, anxiety and thoughts of suicide. In some cases the stress had severely destabilised patients. Some patients had experienced a worsening of a low mood. We heard about one patient who had increased psychotic symptoms, requiring referral to the local Intensive Home Treatment Team.

We asked in our survey if respondents could give us examples of patient experiences of the assessment. Several RMOs told us that patients had described the Atos practitioner performing the assessment as lacking sensitivity and knowledge relating to mental illness. Several patients found the process distressing and demeaning. Many patients were surprised that their psychiatrists were not contacted as part of the assessment process. Worryingly, some patients described feeling stigmatised and victimised.

Some patients had told their psychiatrist that the assessment report did not match the questions and answers within the assessment appointment. There was also a feeling from some patients that the assessment had judged their physical health rather than their mental health. Another frequent theme was a worsening of symptoms before the assessment, particularly symptoms of depression and anxiety. Some patients had a worsening of psychotic symptoms, others had self-harmed or experienced thoughts of self-harm. One example given was of a patient with a psychotic illness who had incorporated the assessment process into his system of delusions, leading him to believe that he was being followed by the DWP.

We also asked RMOs if they had any other comments they would like to share with us. The level of distress caused to patients was raised again. We heard about the pressure the assessment process had put on psychiatrists' clinics, due to an increased frequency of appointments for some patients and requests for support relating to the assessment. Several respondents thought that they should have been contacted for information about their patients. Some RMOs expressed the opinion that it was unfair that the responsibility for gathering medical evidence was put on the patient.

There were examples given of patients who had stopped receiving ESA despite their doctors being adamant that the patients were completely unable to work. A point made by one of our respondents was that some patients are less able to appeal an ESA decision and will consequently be less likely to achieve the overturning of the original decision on appeal.

We heard of examples where community psychiatric nurses were attending assessments with their patients to offer support and to attempt to prevent a crisis situation occurring.

One of our respondents pointed out that the level of distress experienced by a patient about the assessment process did not always correspond to the severity of the patient's mental illness. Another RMO told us that some severely ill patients were relatively unperturbed by the process. We heard about a patient who had neurocognitive deficits and was actively psychotic. He had answered questions at the assessment by stating that he was "fine". His ESA had been stopped despite the fact that he was completely unable to self-care.

The overall theme of the responses was the distress caused to patients and consequent demands on mental health services. We are very grateful to the doctors who completed this survey.

Analysis and Findings

In Ms DE's case, Atos and the DWP were satisfied that there had not been any errors or omissions on their part. The DWP had decided that Ms DE was not eligible for ESA. This decision contrasted with the opinion of two doctors who knew Ms DE very well, who were certain that she was not ready to return to the workplace at the time of her assessment.

Our investigation raised numerous issues. These issues are discussed below in an order corresponding with the benefit reassessment process.

Telephone Calls to Claimants

When Ms DE was selected for benefit reassessment on 18/7/11 a computer generated letter was sent. Ms DE had expressed a preference for telephone contact and efforts were made to speak to her by telephone. However, these calls were not answered. It was noted that Ms DE had an answering machine. No messages were left on the answering machine. The DWP guidance did not state that messages should be left. It may have been the case that messages left may have led to Ms DE returning the call and being given more information about the benefit reassessment process.

Similarly, when telephone calls were made to Ms DE to inform her of the DWP decision there was no answer and no messages were left, again in line with the DWP guidance. Messages may have prompted her to phone back. At this point in the process an explanation of the decision and a discussion of the options available to Ms DE might have allayed some of her concerns and reduced the distress she described. The DWP requirement was that two calls were made with a minimum time of three hours between the calls. This contrasts with the requirement for three calls on separate dates when a claimant starts the process. Introducing a requirement for attempts on separate dates to discuss the disallowance decision would increase the likelihood of telephone contact with the claimant.

We were informed by the DWP that guidance on leaving telephone messages was introduced in late 2011.

We think that the DWP should review its guidance on this subject to ensure that its procedures are working well. We are of the opinion that attempts to telephone a claimant to discuss a disallowance decision should be made on separate dates.

Notifying Doctors of the Start of the Reassessment Process

We heard from our survey that psychiatrists are not routinely informed when their patients enter the assessment process. This is despite the fact that the process can have a significant impact on the mental health of their patients. In some cases the first time that psychiatrists and GPs heard that a patient was going though the process was when the person presented in crisis.

We think that when an individual with a mental illness, learning disability or related condition is about to undergo this assessment process a letter should be sent to the person's GP and, if applicable, the person's psychiatrist to inform the doctors of the potentially challenging situation being faced by the individual.

Medical Reports

We heard that psychiatrists and GPs are not routinely asked to provide medical reports for patients with a mental illness. This is despite the fact that it may be more difficult for some individuals to put in place the necessary arrangements to provide medical evidence supporting their claim.

Medical reports from the doctors with the best knowledge of the individual's condition would provide valuable information for the Atos practitioner and the DWP decision maker. In some cases the medical reports would contain details which had not been discussed in the ESA50 self-assessment questionnaire or the Work Capability Assessment.

We think that medical reports should be routinely obtained for individuals with a mental illness, learning disability or related condition entering the assessment process. A request for a report could be combined with a letter informing doctors that their patient will be undergoing the process of assessment.

Vulnerable Claimant Guidance

We heard during our investigation that Ms DE had not been considered to be a "vulnerable claimant" by the DWP. We looked at the DWP guidance on this topic. The guidance aims "to help staff identify and make judgements about those claimants for whom it would be more appropriate to deliver services face to face, particularly where it appears that the claimant is vulnerable".

We noted the following sentence regarding identification of vulnerable claimants: "When considering whether a claimant is vulnerable it is important to talk with them." This does not appear to have happened in Ms DE's case, casting doubt on the decision not to treat her as a vulnerable claimant. Attempts to contact Ms DE by telephone had been made but were unsuccessful. Later in the guidance it is stated: "The following may be relevant to identifying vulnerable claimants where they have/are (not an exhaustive list):". The first item on the list is "Mental health conditions". Ms DE was known to have depression as this was recorded on her MED3 form. Despite this information she was not considered to be a vulnerable claimant. If she had been designated as a vulnerable claimant then additional safeguards would have been put in place.

We think that the DWP should examine the decision that Ms DE was not a vulnerable claimant and identify any shortcomings that led to this decision.

We also think that the DWP should strengthen its vulnerable claimant guidance and audit adherence by its staff to the guidance.

The ESA50 Self-assessment Form

We heard in our investigation that Ms DE had said that she did not receive a self-assessment ESA50 form. The DWP confirmed that it had been posted. There was, however, no evidence of delivery.

The ESA50 form is an important source of information for the Atos assessing professional and the DWP decision maker. In some cases it can also act as a trigger for the claimant to start gathering supporting evidence for their claim. Not receiving the ESA50 would, therefore, be of significant detriment to the claimant. In Ms DE's case there were no efforts from the DWP or Atos to look into the non-return of the ESA50 form – the assessment process simply continued. We were subsequently informed by the DWP that Atos send an automated reminder to the claimant if the ESA50 is not returned within two weeks. The lack of an ESA50 form was not discussed at the Work Capability Assessment.

We are of the opinion that non-return of the ESA50 form should lead to further enquiries being made. If there is no ESA50 form at the Work Capability Assessment the reasons for this should be tactfully explored by the Atos assessing practitioner.

The Work Capability Assessment

We heard in our interview with the Atos clinical manager and doctor that some claimants would incorrectly assume that the Atos practitioner had access to medical notes. This could lead to some claimants not giving a complete account of their situation, due to the mistaken belief that the Atos practitioner was already in possession of relevant information from the medical notes.

We think that when claimants meet the Atos practitioner they should be told what information the Atos practitioner possesses about their case.

We are also of the opinion that when claimants are invited to a face to face assessment, it should be fully explained to them that the Atos practitioner will not have access to their medical notes. They should also be given comprehensive information describing what will take place at the assessment and advice on possible sources of help to prepare for the assessment.

The evidence we heard was that Atos and the DWP considered the Work Capability Assessment to be satisfactory, both in Ms DE's particular case and in general. We have major concerns that the WCA is not sensitive enough to capture the elements of mental illness that mean a person is unable to function in a workplace.

The seven mental, cognitive and intellectual functions assessed, as quoted in a letter to Ms DE from the DWP, are: learning how to do tasks; being aware of danger; starting a task and finishing it to the end; coping with changes; coping with getting about on your own; dealing with other people; behaviour with other people. The assessment of these functions will identify some people with a mental illness who do not have a sufficient level of functioning. However, we think that there are some people with mental health conditions (such as a depressive illness) and insufficient functional ability to cope in the workplace who are not being identified by the WCA.

Ms DE's WCA "Personalised Summary Statement" contained the text: "She was timid at interview but otherwise her mental state appeared normal and despite her regular review by psychiatrist there is no evidence that she has a significant disability of mental health function." We were surprised about this statement for a person who had been seen by a consultant psychiatrist over the course of a 20 year period, was being frequently reviewed and was prescribed significant medication.

We heard many examples in our survey where individuals lost their ESA despite their psychiatrists being adamant that their patients did not have a sufficient level of functioning. In Ms DE's case her psychiatrist and GP were certain that she was not well enough to return to a workplace at that time, although they hoped that she would be well enough in the future.

We think that the Work Capability Assessment should be reviewed with expert input from specialists in occupational health and psychiatry, to increase the ability of the assessment to identify functional level in individuals with a mental illness.

The Work Capability Assessment Mental State Examination

The "Mental State Examination" contained within the Work Capability Assessment is notable for significant omissions compared to a clinical mental state examination. In a mental state examination performed in a clinical setting, there would usually be a subjective and objective assessment of mood. Biological and cognitive features of depression are also often recorded in the mental state examination.

In Ms DE's particular case, despite the fact that she was presenting with a depressive illness, there was no assessment of her mood within the WCA mental state examination. We think that a more comprehensive assessment of Ms DE's mental state would have identified factors that were highly relevant to her level of functioning.

We think that the Work Capability Assessment mental state examination should be reviewed to remedy these significant defects.

Attending the WCA as "Evidence of Functioning"

We heard that the fact that a claimant managed to attend the WCA was considered as evidence of functioning. We think that this is unfair and incorrect. Some individuals with a mental illness may somehow manage to reach the assessment despite their illness, aware that this is an appointment with "authority" and perceiving that their benefits may be at risk if they do not attend. We do not think that this one-off attendance can be extrapolated to assess the ability of a claimant to attend and function in the workplace on an ongoing regular basis.

We think that attendance at the Work Capability Assessment should not be used as evidence of being able to function in the workplace.

Information Used in the DWP Decision-Making Process

In Ms DE's case the DWP decision was made based entirely on the WCA report written by the Atos practitioner. In turn, this report was based solely on a face to face assessment lasting around one hour. This appears to be scant information on which to make such a significant decision.

We think that the DWP decision maker should consider at least two distinct sources of information when coming to the decision.

The Appeal Process

We were told that the law requires that even though Ms DE had lodged an appeal against the DWP decision, her benefit payment would still have been significantly reduced once the disallowance date of 12 January 2012 was reached. This seems to be unfair to the claimant, in that there is a substantial financial loss to the claimant even though the assessment process is ongoing.

We heard about the significant rate of successful appeals against disallowance decisions. We were told about harmful episodes experienced by individuals after initial disallowance decisions which were subsequently overturned on appeal. We think that an improved initial assessment process would lead to a reduction in the number of appeals made.

DWP Peer Review Process

The DWP peer review appears to be incorrectly titled. We would expect a peer review to be carried out by staff of the same grade as those involved in the actual assessment process. In this case the review was carried out by a Senior Executive Officer of the DWP. Consequently, it appears that the document is actually a managerial review, rather than a peer review. When we interviewed the officer who wrote the review we were in the unusual position of hearing both the opinion of the "peer reviewer" and the distinct personal opinion of that individual.

We think that the DWP should look at its Peer Review Process and examine its title and suitability as a quality assurance tool.

DWP Correspondence after Notification of Ms DE's Death

The chronology attached to the DWP Peer Review has the following entry for 13 January 2012, nine days after the DWP received notification of Ms DE's death:

> "Employment & Support Allowance awarded at assessment phase rate from 12/1/12; this is payable until the appeal outcome is known. Automatic system issued notification of award sent to [Ms DE]. (Correct procedure/timescale)"

This suggests that a letter was sent to Ms DE despite the DWP having received notification of her death. This letter could possibly have been opened by relatives or friends of the late Ms DE and could have caused considerable upset.

We think that the DWP should investigate if this letter was sent. If the letter was sent then the DWP should consider how such events can be prevented.

Recommendations

We have made several recommendations to the DWP. If the DWP contracts with an agency other than Atos for Work Capability assessments, the same recommendations still apply.

We discussed these recommendations with the DWP. We have been encouraged by the DWP's willingness to engage with us. We will continue to work with them.

The Assessment Process

We recommend that:

- The DWP routinely obtain medical reports for individuals with a mental illness, learning disability or related condition who are entering the assessment process.
- The DWP and Atos jointly ensure that when claimants are invited to a face to face assessment it is fully explained to them that the Atos practitioner will not have access to their medical notes. Claimants should also be given comprehensive information describing what will take place at the assessment and advice on possible sources of help to prepare for the assessment. The DWP and Atos should ensure that when claimants meet the Atos practitioner they are told what information the Atos practitioner possesses about their case.
- The DWP decision maker consider at least two distinct sources of information when coming to the decision.
- The DWP and Atos review the Work Capability Assessment with expert input from specialists in occupational health and psychiatry to increase the ability of the assessment to identify functional level in individuals with a mental illness. The DWP and Atos should also review the Work Capability Assessment mental state examination to remedy the significant defects we identified.
- The DWP and Atos jointly ensure that attendance at the Work Capability Assessment is not used as evidence of being able to function in the workplace.

Communication

We recommend that:

- The DWP review its guidance on leaving telephone messages to ensure that its procedures are working well. Attempts to telephone a claimant to discuss a disallowance decision should be made on separate dates.
- The DWP arrange that when an individual with a mental illness, learning disability or related condition is about to undergo the assessment process a letter should be sent to the person's GP and, if applicable, the person's psychiatrist to inform the doctors of the potentially challenging situation being faced by the individual.
- Non-return of the ESA50 form should lead to suitable further enquiries being made by Atos or the DWP. If there is no ESA50 form at the Work Capability Assessment the reasons for this should be tactfully explored by the Atos assessing practitioner.
- The DWP and Atos ensure that their communication with claimants is compliant with the requirements of the Equality Act 2010.
- The DWP investigate if it sent a letter to Ms DE despite being aware of her death. If this letter was sent then the DWP should consider how such events can be prevented.

Support

We recommend that:

- The DWP examine the decision that Ms DE was not a vulnerable claimant and identify any shortcomings that led to this decision. The DWP should strengthen its vulnerable claimant guidance and audit adherence by its staff to the guidance.

DWP Processes

We recommend that:

- The DWP look at its peer review process and examine its suitability as a quality assurance tool. The peer review process should include a review by a suitably qualified medical practitioner of an assessment made by an Atos healthcare professional.

Recommendation for Scottish Government

We recommend that:

- The Scottish Government, in conjunction with user, carer and professional groups, commission a study examining the impact of the Work Capability Assessment process on people with a mental illness, learning disability or related condition, and put in place the support necessary to address this impact.

Appendix 1

The 17 "Functional Areas" of the assessment of Ms DE and the assessment result for each functional area, all scored at zero points, are quoted below:

Functional Area	Assessment result
Physical Functions	
Moving around	You can move more than 200 metres on flat ground (Moving could include walking, using crutches or using a wheelchair).
Standing or sitting	You can usually stay in one place (either standing or sitting) for more than an hour without having to move away.
Reaching	You can raise at least one of your arms above head height.
Picking things up and moving them	You can pick up and move objects such as an empty cardboard box or a carton of liquid.
Using your hands	You can use a computer keyboard or mouse and a pen or pencil with at least one hand.
Speaking, writing and typing	You can convey a simple message to strangers.
Hearing, or understanding messages	You can understand simple messages from a stranger.
Getting around safely	Your vision doesn't prevent you from finding your way around familiar and unfamiliar places.
Control of bladder, bowels or stoma	You do not need to change your clothes because of difficulty controlling your bladder or bowels or using a stoma.
Staying conscious when awake	Any fits, blackouts or loss of consciousness happen less than once a month.
Mental, cognitive and intellectual functions	
Learning how to do tasks	You can learn how to do new tasks.
Being aware of danger	You are aware of everyday dangers and can keep yourself safe.
Starting a task and finishing it to the end	You can usually manage to begin and finish daily tasks.
Coping with changes	You can cope with small unexpected changes to your daily routine.
Coping with getting about on your own	You can get to somewhere that you don't know without someone going with you.
Dealing with other people	You can deal with people you don't know.
Behaviour with other people	You behave in a way that would be acceptable at work.

Appendix 2
Glossary

Atos	Company contracted to perform WCA
DWP	Department for Work and Pensions
ESA	Employment and Support Allowance
ESA50	Self-assessment questionnaire to be completed by claimant
ESA85	ESA medical report completed by Atos Healthcare professional
ESA113	Information requested from a healthcare professional about an ESA claim
GP	General Practitioner
HCP	Atos Healthcare professional
IB	Incapacity Benefit
JSA	Jobseeker's Allowance
MED3	Statement of fitness for work, completed by a doctor
RMO	Responsible Medical Officer, a psychiatrist who has overall responsibility for the psychiatric care of their patients
ST6	In psychiatry, a doctor in the final year of training before being eligible to apply for consultant posts
WCA	Work Capability Assessment


npm
national
preventive
mechanism

mentalwelfare
commission for scotland

Thistle House
91 Haymarket Terrace
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Service user and carer freephone:
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APS Group 311992 (3/14)

Ministers hid secret death reports from their ‘fitness for work’ test reviewer

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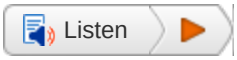
BY JOHN PRING ON DECEMBER 22, 2016

BENEFITS AND POVERTY



Government ministers failed to show secret reports into the deaths of benefit claimants to the independent expert they commissioned to review their much-criticised “fitness for work” assessment, new evidence suggests.

A Department for Work and Pensions (DWP) response to a Disability News Service (DNS) freedom of information request shows that seven of its secret “peer reviews” should have been shown to Professor Malcolm Harrington as he was preparing his final report into the work capability assessment (WCA).

Peer reviews have to be carried out whenever “suicide is associated with DWP activity”, as well as in some other cases involving deaths of disabled or “vulnerable” claimants.

DWP only started collating the peer reviews centrally from February 2012 and Professor Harrington published his final report on the WCA in late November of the same year.

DWP admits in its freedom of information response that “there were seven peer reviews, from February 2012 until Professor Harrington’s report of that year, in which the terms ‘WCA’ or ‘Work Capability Assessment’ were mentioned”.

The DWP response adds: “The Department does not hold any information to confirm or deny whether these Peer Reviews were shared with Professor Harrington.”

Redacted versions of 49 peer reviews were finally released in May this year – dating from 2012 to 2014 – following another DNS freedom of information request and a ruling from the information rights tribunal.

But these peer reviews were not dated, and so it is impossible to work out which of them are the seven from 2012.

When shown the latest DWP freedom of information response, Professor Harrington, who carried out the first three reviews of the WCA – in 2010, 2011 and 2012 – told DNS that he was convinced that he would remember being shown “such damning indictments of the system”.

He said: “I have NO recollection of seeing any of the reviews you mention.

“Maybe my brain is failing, but such damning indictments of the system – if seen – should have triggered a response from me. It didn’t.”

Professor Harrington has already told DNS – last year – that he believes he was not shown a letter by DWP that was written by a coroner to ministers following the suicide of Stephen Carré in January 2010.

When they were appointed in May 2010, Iain Duncan Smith and Chris Grayling assumed responsibility for responding to the letter, written by coroner Tom Osborne, who carried out the inquest into Carré’s death and raised serious concerns about the

safety of the WCA.

Osborne had asked the Labour work and pensions secretary Yvette Cooper – who never saw the letter, as the general election was called just days after it arrived – to review the policy not to seek medical evidence from a GP or psychiatrist if someone applying for out-of-work disability benefits had a mental health condition.

But Duncan Smith, Cooper's successor, and Grayling, his employment minister, appear to have dismissed the letter, and failed to show it to Professor Harrington, while deciding to roll out the test to hundreds of thousands of long-term claimants of incapacity benefit, many of whom had mental health conditions.

Professor Harrington told DNS last year: "I cannot recall the report. Nobody brought it to my attention that I can remember.

"If I had known about that coroner's report, I would have said that this was something else we need to look at.

"I am a doctor, I know about coroner's reports. Coroner's reports are something that you don't ignore."

Taken together, the evidence suggests strongly that DWP deliberately withheld vital evidence from Professor Harrington about serious flaws with the WCA that were causing the deaths of people with mental health conditions.

This information would almost certainly have persuaded him to take action that would have made it harder for DWP to fulfil its aim of finding more people with mental health conditions "fit for work" and allowing it to cut its spending on out-of-work disability benefits.

The new evidence is likely to strengthen calls for Duncan Smith and Grayling to face a criminal investigation for misconduct in public office.

It came just as Scottish criminal justice agencies were rejecting a request to investigate the failure of the two ministers to improve the safety of the WCA, despite evidence that their neglect caused the deaths of at least three Scottish benefit claimants with mental health conditions*.

Linda Burnip, co-founder of Disabled People Against Cuts, said: "Sadly, little shocks me nowadays about the callous and inhuman behaviour of the previous Condem and current Tory government, but a failure to pass on vital information to the expert they employed to review their failing policy is more than just total incompetence and is nothing short of criminal."

A DWP spokeswoman said the current work and pensions secretary, Damian Green, did not believe there should be an independent inquiry into the apparent failure of Duncan Smith and Grayling, and senior civil servants, to pass on vital information to Professor Harrington about the safety of the WCA.

She said he also did not believe that a criminal investigation was now necessary into the actions of Duncan Smith and Grayling.

Asked why DWP did not have a record of which documents were shared with Professor Harrington, she said: “As the FoI stated, the department does not hold information on this matter.

“We are constantly reviewing our processes and procedures and have made significant improvements to the work capability assessment, such as introducing mental health champions, and ensuring that claimants who are likely to be found fit for work receive a telephone call to explain the decision and check whether all the evidence has been considered.

“It is important we make sure that people are receiving the right support, and they are not simply written off to a life on benefits.

“The work capability assessment has been improved dramatically since 2008 following a number of reviews, including five independent ones.”

**See separate story*

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ABOUT

Disability News Service (DNS) is run by John Pring, an experienced journalist who has been reporting on disability issues for nearly 20 years.

He launched DNS in April 2009 to address the absence of in-depth reporting in both the specialist and mainstream media on issues that affect the lives of disabled people. read more

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Independent report

Work Capability Assessment independent review – year 3

From: Department for Work and Pensions and Mark Hoban
First published: 20 November 2012
Part of: Welfare reform

Professor Harrington's third independent review of the Work Capability Assessment

Documents

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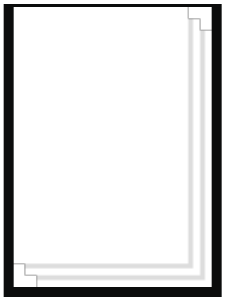

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Detail

Professor Harrington was reappointed to lead the third independent review of the Work Capability Assessment in 2012. His third review sets out a series of recommendations to the government based on the evidence he collected as part of the review and which complement the recommendations from his first and second reviews. The main recommendations focus on:

- actively considering the need for further documentary evidence in every claimant's case, and justifying it if this is not sought
- continuing to strive for an appropriate balance between quality decisions and achieving benchmarks

- working with the Tribunal Service to gather more quality feedback on decisions that have been overturned on appeal

Government response to the third independent review of the Work Capability Assessment

Other reviews

Fourth independent review of the Work Capability Assessment

Second independent review of the Work Capability Assessment

First independent review of the Work Capability Assessment

Published:

20 November 2012

From:

Department for Work and Pensions

Mark Hoban

Part of:

Welfare reform

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Childcare and parenting
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An Independent Review of the Work Capability Assessment – year three

Professor Malcolm Harrington

November 2012

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Professor Malcolm Harrington

November 2012

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Contents

Foreword

This is my third and final Independent Review of the Work Capability Assessment (WCA). I was pleased to be asked to continue the work I had started in my first and second Reviews.

It is an adage of politics that Government Departments like to employ independent advisors: it gives credence to the work of the Department so long as the experts do not propose any changes to the system.

This sentiment is not new. Nicolo Machiavelli (1469–1527) said much the same. His writings are often maligned and frequently misquoted but he was, nonetheless, a very able administrator and a skilled diplomat. In one of his works he said:

'There is nothing more difficult to carry out, nor more doubtful of success, nor more dangerous to handle, than to initiate a new order of things. For the reformers have enemies in all who benefit by the old order and only lukewarm support from those who profit by the new order, because of the incredulity of mankind, who do not truly believe in anything new, until they have actual experience of it'.

My experience with the Department for Work and Pensions (DWP) is much less negative and much more encouraging. Throughout my three Reviews I have experienced nothing but support for what I was trying to achieve: that is, making the WCA a more humane and caring assessment which gives due consideration to those claimants who are least able to help themselves.

There are two main strands to the recommendations I have made throughout my Reviews: to revise the process of the WCA from the first claimant contact right through to appeal (where necessary); and to review whether the current descriptors accurately capture the true nature of the claimants' case.

For the process part, it is clear to me that DWP Operations have made strenuous efforts to improve the so called 'claimant journey'. The Harrington Review Implementation Team has produced regular reports for me on how they are progressing with the proposed changes. They are a small dedicated team of people who have shown great tenacity in changing the system and – where appropriate – piloting the changes before deciding on a national implementation strategy. I am most grateful to them for their hard work.

This job is not yet complete. The improvements that have been started must be carried through to the end. It is important that the momentum is not lost and, indeed, that the changes are reviewed periodically to ensure that the alterations are working. It is vital for there to be continual review, modification and monitoring of the WCA.

A number of the major charities in this year's call for evidence say that although they have seen some change for the better, it is disappointingly incomplete in coverage and depth. I agree with them. Changing such a large and complex process and such a controversial assessment takes time – it is happening.

So far as the descriptors are concerned, progress has been positive but slow. We are close to a new and much improved set of provisions for cancer treatment. For the mental, intellectual and cognitive conditions descriptors and for the fluctuating condition descriptors, work is underway for a formal review of new proposals from a number of charities to compare them with the existing descriptors. This work will continue into 2013 and I have been asked to chair the expert independent steering group overseeing the quality and validity of the evidence-based review. It is important to wait for the results of this before rushing to conclusions about how to change the descriptors.

Recommendations on the training of professionals in DWP Operations, Atos Healthcare and the Tribunals have produced some limited progress. In particular, it is regrettable that the First-tier Tribunal has effectively distanced itself from the rest of the WCA. Feedback from the Judges to the Decision Makers has, at last, started in a rudimentary way. However, much, much more is needed if we are to see a real dialogue between the Judges and the Decision Makers. This must happen on cases where there is a difference of opinion on what category is appropriate for that case *based on the same set of evidence.* For the First-tier Tribunal to suggest that the WCA Independent Review has no remit to consider the appeal stage of the process is illogical and untenable in my view.

I believe that my recommendations are effecting change for the better in the WCA. There is some way to go but I am confident that significant and lasting improvements are coming and that DWP and my successor will see the job completed.

I have been grateful during my time as Independent Reviewer for all the support and encouragement that I have received from within DWP, from the wider world of the charities and patient support groups, from individuals who have shared their experiences with me, as well as from politicians in the three major political parties. I thank them all for making my work more effective and for being so willing to share their ideas with me.

In the final analysis, all this effort should be to ensure that the claimant gets the fairest and most effective way of assessing their needs. It should encourage and help those who can to return to work, while ensuring that for those who cannot work the State support they deserve is received.

Professor Malcolm Harrington

November 2012

Executive Summary

1. The Work Capability Assessment (WCA) was introduced to determine eligibility for Employment and Support Allowance (ESA), providing a functional assessment of whether someone could work; whether someone could work at some point with the right support; or whether someone cannot work and therefore needs unconditional State support. These principles remain core to the Review's thinking and working.
2. The first two Independent Reviews[1] concluded that although the WCA is the right concept much needed to be done to improve the working of the system. Despite many people calling for the WCA to be scrapped, the Review has seen no evidence to change this stance.
3. Recommendations in previous Reviews have broadly been divided into two main areas:
    - Improving the process to make the assessment fairer and more effective through: better communications with claimants; improving transparency; empowering Decision Makers; and ensuring quality decisions are made; and
    - Investigating whether the current descriptors are fit for purpose, and if not making suggestions for improvements.
4. This year three Review has examined the scale of change that has occurred, driven forward outstanding areas of work from previous Reviews and has proposed additional recommendations to further the scope of change.

Implementation of the year one and year two recommendations

5. All the recommendations made so far have been accepted by the Government. Not all have been fully acted upon yet.
6. Real progress has been made but the pace and scope of the improvements has been slower than the Review would have hoped. The direction is the right one although the goals have not yet been reached.
7. It is imperative that the momentum for change is maintained. The Department for Work and Pensions (DWP) has worked hard to effect change and continual improvement must become the watchword for the future.

[1] http://www.dwp.gov.uk/docs/wca-review-2010.pdf and http://www.dwp.gov.uk/docs/wca-review-2011.pdf

8. I hope the years four and year five Reviewer(s) will ensure that DWP keeps on course and that the good progress made so far does not slow, let alone stall. This is not easy in a large Department, but if a fairer and more effective process is to become a reality these potential operational difficulties must be overcome.
9. The WCA continues to be portrayed in an extremely negative light, often fuelled by adverse media coverage, representative groups and political points scoring. Whilst the Review continues to hear examples of individuals who have been poorly treated by the WCA process, DWP can be reasonably pleased with what they have achieved. Some recognition of the considerable work to date would give a more balanced picture and DWP needs to be more proactive in communicating this.

Key findings and themes from this Review

10. The main theme and feature of this Review is the need to complete the tasks that have been started.
11. As noted above, whilst progress has been made there remains more to do. The main areas here are:

    - Continuing to **improve communications with claimants**: changes so far are having a positive impact on the claimant experience, although increased contact with claimants can prove difficult for both individuals and Decision Makers.
    - Continuing to **improve communications within DWP Operations**: DWP is a large Department but effective communications between Decision Makers and Personal Advisers are vital if the whole organisation is to understand both the overarching purpose of the WCA and why decisions have been reached at an individual level. The extension of a pilot aimed at smoothing the transition between the WCA and work is welcomed. Rapid implementation is needed if this proves successful.
    - Continuing to **improve the face-to-face assessment**: DWP should monitor Atos performance more closely. Indeed the quality and depth of the relationship between DWP and Atos remains variable at a local level. The opportunity for Decision Makers and Atos healthcare professionals to discuss individual cases will help ensure quality decisions, but these relationships take time to build.
    - Establishing **quality dialogue between DWP and First-tier Tribunals**: while progress has, finally, been made here there remains much more to do if the whole assessment process is to become transparent and accountable.

- Keeping the **Decision Maker central to the assessment process** and **providing them with all the further documentary evidence they need to get the decision 'right first time'**: shifting the emphasis from the independent face-to-face assessment to a more holistic approach will help improve both the accuracy and the integrity of the whole process. Decision Makers are being empowered, but they need to have access to as much information as possible on which to make their decisions and to be given latitude to make these decisions 'right first time'.
- Continually **monitoring changes to the WCA**: the Review has seen, first hand, the changes that are beginning to take root. Considerable disquiet remains, and this cannot be ignored. Continuing to monitor the implementation of the Review's recommendations, and their impact, is key to communicating improvements as they happen.
- **Completing work underway on the descriptors**: momentum must be maintained to make changes to the cancer treatment provisions and to complete, evaluate and act on the findings of the evidence-based review. This is a far from straightforward process – the work to date is encouraging and must be followed through.

12. In light of the positive progress made and the need to do more to embed progress made this Review has deliberately made fewer recommendations than in previous years. Consolidation and monitoring are the vital next stages: at this stage there is no evidence for a further period of radical reform.

Chapter 1: The Review outline

The Work Capability Assessment

1. The Work Capability Assessment (WCA) was introduced in October 2008. It assesses an individual's entitlement to Employment and Support Allowance (ESA), a benefit that provides support to people who are out of work and have a disability or health condition.
2. The end-to-end WCA process intends to evaluate objectively a person's capability for work so that appropriate support can be provided to help them back to work or, if they cannot work, unconditional support is provided. As such, the overall decision focuses on the claimant's functional capability rather than their diagnosis.
3. The three Groups into which a claimant can be placed and a broad outline of the WCA process were all described in more detail in the first Independent Review[2].

Independently reviewing the WCA

4. The Welfare Reform Act 2007 legislated for the introduction of the WCA. This law provides the basis for the Independent Reviews. Section 10 states that:

   "The Secretary of State for Work and Pensions shall lay before Parliament an independent report on the operation of the assessment annually for the first five years after those sections come into force."

5. This is the third of the Independent Reviews. Professor Malcolm Harrington, an occupational physician, also led and published the first two Reviews. Both of his previous Reviews have concluded that the WCA is the right concept, but that improvements are needed at each stage of the process.
6. The previous Reviews both made a number of recommendations for improvements. The Government have accepted these and, where appropriate, moved to implement them. More details on these recommendations and their implementation are in Chapter 2.

[2] Chapter 3, http://www.dwp.gov.uk/docs/wca-review-2010.pdf

This review

7. In November 2011, the Secretary of State for Work and Pensions reappointed Professor Harrington to carry out the third Independent Review of the WCA.

8. The Review aims to provide:

    - A further examination of the system based on a series of recommendations made in the previous Reviews;
    - Updates on progress implementing the year one and two recommendations and, where possible, analysis of their impact; and
    - Suggestions and recommendations for areas which the year four and five Reviews may wish to consider or focus on.

The terms of reference for the Review:

- To provide the Secretary of State for Work and Pensions with an annual independent report evaluating the operation of the assessments of limited capability for work and limited capability for work-related activity;
- To evaluate the effectiveness of the limited capability for work assessment in correctly identifying those claimants who are currently unfit for work as a result of disease or disability;
- To evaluate the effectiveness of the limited capability for work-related activity assessment in correctly identifying those claimants whose disability is such that they are currently unfit to undertake any form of work-related activity;
- To take forward the programme of work identified in the year one report during years two and three;
- To monitor and report on the implementation of the recommendations in the year one report that are adopted by Ministers; and
- To provide independent advice to Ministers and the Department on any specific issues or concerns with the WCA that arise during the term of appointment, which the Government may seek your independent view.

9. The Secretary of State also re-appointed an Independent Scrutiny Group to oversee Professor Harrington's work and to provide him with advice and challenge during the course of his work. The group met three times during the Review and was chaired by Professor David Haslam, a GP, National Professional Adviser to the Care Quality Commission and past President of the British Medical Association and the Royal College of General Practitioners.

10. The three other members of the group were:

    - Simon Gillespie, Chief Executive of the MS Society (who replaced Paul Farmer, Chief Executive of Mind);
    - Dr Olivia Carlton, President of the Faculty of Occupational Medicine and Head of Occupational Health, Transport for London; and
    - Neil Lennox, representing the CBI and Head of Group Safety at Sainsbury's.

The terms of reference for the Independent Scrutiny Group:

- To ensure that the process for conducting the review is robust, comprehensive and fair and reflects the terms of reference for the review;
- To ensure the process for gathering evidence and relevant data is in accordance with accepted standards and best practice;
- To monitor progress of the review to ensure it remains on plan and discuss and challenge emerging issues and findings;
- To be available to the Reviewer to provide advice and support as the review progresses;
- To provide challenge as the final report is formulated to ensure the findings are robust and are presented in a clear and appropriate format; and
- To ensure the reviewer maintains his independence, acting as a point of contact and sounding board where necessary.

The scope

11. The recommendations from the first and second Reviews provided a programme of work which formed the basis of work for the third year Review. The recommendations included:

    - Improving the way DWP Operations communicates with claimants;
    - Improving the transparency of the face-to-face assessment;
    - Empowering and improving training for DWP Decision Makers to place them at the heart of the process;
    - Exploring in detail the descriptors used in the assessment, particularly through a 'gold standard' or evidence-based review of the mental, intellectual and cognitive and fluctuating conditions descriptors following work with relevant charities on these; and

- Monitoring the implementation of previous Review's recommendations from the first year review, including unannounced visits to Benefit Delivery Centres and Atos Assessment Centres.

The process

12. The Review took an open and collaborative approach to gathering information for this report. Many sources of evidence were interrogated to ensure that information, data and opinions expressed could be cross-checked and challenged.

The call for evidence

13. A considerable amount of information was gathered through a call for evidence. This exercise enabled anyone with an interest to submit their views and any evidence that related to the WCA.

14. The call for evidence was launched on 9 July 2012 and closed on 7 September 2012. The call for evidence received over 750 responses. Responses were received from a wide range of individuals and organisations including unions, employers, employment support providers, welfare rights, General Practitioners and other healthcare specialists and professionals. Further details and analysis of these responses are contained in Chapter 6.

Stakeholder meetings and seminars

15. The Review met with relevant stakeholder groups through a series of one-to-one meetings, group meetings and seminars. Throughout these meetings and seminars, stakeholders and interested groups were given the opportunity to provide evidence and opinion on the operation of the WCA.

16. These meetings have included MPs from all political parties who have expressed views on the process from both a constituency level and a policy perspective.

Examination of the WCA process

17. The Review examined many parts of the WCA process during the course of the year.

The Department for Work and Pensions (DWP)

18. The Review visited seven Benefit Delivery Centres/Jobcentres (Barking, Burnley, Handsworth, Leeds, Oldham, Plymouth and Stratford) and facilitated a national teleconference (DWP's Every Decision Counts) for DWP Decision Makers.

19. The visits and teleconference proved invaluable for assessing the implementation of the Reviews' recommendations and was useful for gathering feedback on what is and is not working as intended. Further details are in Chapter 2.

20. Throughout the Review, a continual dialogue was maintained with DWP Ministers and senior officials from DWP Policy and Operations.

Atos Healthcare

21. The Review visited an Atos Assessment Centre and spent time with a Mental Function Champion who explained their role and their interactions with healthcare professionals inside and outside of Atos, DWP Decision Makers and other external agencies.

22. It also had access to Atos management information (even where this information was not in the public domain) and training materials.

Appeals

23. The Review has sought information about the appeals process to build on that gathered in previous Reviews.

Chapter 2: Implementation of the year one and year two recommendations

Background

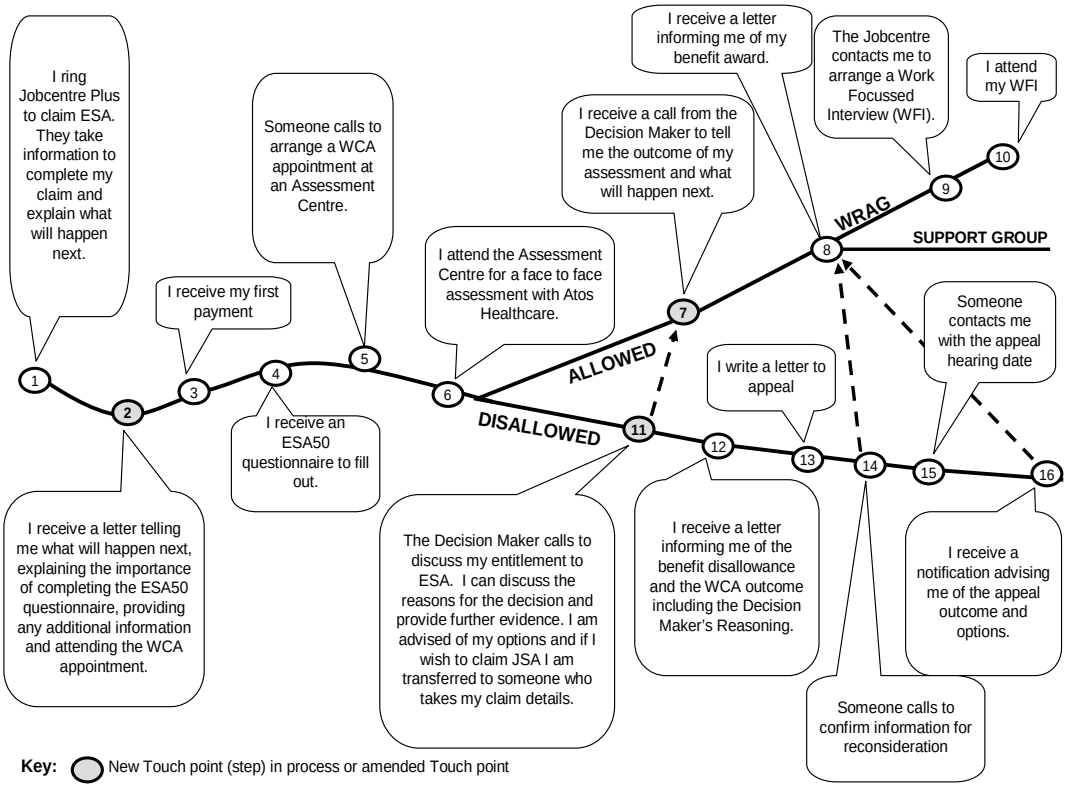
1. The year two Review (published in November 2011) set out a further series of recommendations in addition to those contained in the year one Review (published in November 2010).
2. In essence, the recommendations can be divided into two main groups:
    - The process of the Work Capability Assessment (WCA); and
    - The descriptors against which claimants are assessed.
3. An update on work to improve the descriptors, and progress in implementing this, is contained in Chapter 4. This Chapter will, therefore, concentrate on the process of the WCA and is divided into four key areas:
    - The claimant experience;
    - The face-to-face assessment;
    - The decision making process; and
    - The appeals process.
4. Also contained in this Chapter are:
    - Details of the metrics which the year two Review recommended should be collected;
    - Information about communications supporting the WCA process, how these have changed and where further work is required; and
    - The findings of unannounced visits to Benefit Delivery Centres and an Atos Assessment Centre to discover first hand how the work to improve the WCA process was proceeding.

The claimant experience

5. National implementation of improvements to the early sections of the 'claimant journey' was completed in late October 2011. The ESA35/35A letter was introduced for new and existing claimants, Decision Makers now contact the claimant by telephone following the outcome of the WCA and a Decision Makers Reasoning is issued to claimants found fit for work with the aim of providing a clearer explanation of the decision and all the evidence considered by the Decision Maker. All of these initiatives are designed to explain better the process and provide greater empathy and understanding.
6. The ESA35/35A provides claimants with clearer information about the WCA process and the next steps. Department for Work and Pensions (DWP) Operations have sought views from claimants in the last eleven months which appear to confirm this assumption.
7. However, there continues to be a percentage of ESA claimants who do not engage with the process initially, failing to return the ESA50 and failing to attend the face-to-face assessment.
8. A trial in Wales between April 2012 and August 2012 aimed to reduce the failure to return the ESA50 rate by sending a text message to claimants to remind them. Whilst initial results were positive, overall, the three months of data showed little if any increase in the return rate of the ESA50.
9. A new version of the ESA35 for new claimants and the ESA35A for existing claimants has been produced following stakeholder involvement. These letters are being trialled to assess whether the new format is easy to understand and whether as a result of receiving the ESA35/35A claimants are more likely to return the ESA50 and attend, if required, a face-to-face assessment. The results of the trial will be available at the end of November 2012.
10. It is likely that the failure to attend rates have also been influenced by the longer time Atos are taking to provide the claimant with a date for their face-to-face assessment. When these appointment times are speeded up, it is anticipated that the effect of the early improvements to the claimant journey through the WCA process will become more apparent.
11. Worryingly there continues to be a percentage of ESA claimants who do not engage with the process initially; and a significant percentage of those failing to comply with the requirements are claimants with a mental, intellectual or cognitive condition. Further work to ensure early engagement in the process with these claimants may be required.

12. After the face-to-face assessment takes place and before a final decision is taken, a Decision Maker telephones the claimant to explain what will happen next. Claimant insight undertaken over the last eleven months confirms that most claimants welcome a telephone call to explain the outcome of the WCA, especially the Decision Assurance calls which provides the opportunity to discuss the proposed decision with the Decision Maker and provide further documentary evidence if appropriate.
13. Disappointingly many claimants reported that they had not received a call from the Department but would welcome such support. Nationally, approximately one in three calls get through to the claimant. This remains a concern and further efforts are needed to ensure as many claimants as possible receive the necessary help and support they need through the process.
14. The Decision Assurance call is an important opportunity to examine with the claimant the importance of further documentary evidence to help ensure that the correct decision is made from the outset. This, in turn, should help to reduce the number of reconsiderations and appeals received, and ultimately the number of decisions which are overturned at appeal.
15. In monitoring the success rate of the calls a trial to attempt to increase the success rate of the Allowance and Decision Assurance calls (by sending a text message prior to the call) was introduced. This trial has improved the success rate of the calls and these trials will be extended. Any move to increase the success rate of these calls is welcomed – they are a central part of improving the claimant experience of the WCA.
16. Lastly, the year one Review recommended that Atos healthcare should provide claimants with a short free text summary of their assessment. This took time to embed, but every face-to-face assessment report now includes such a summary from the healthcare professional. DWP Operations have, however, gone much further. They have implemented a Decision Maker Reasoning: an extended piece of prose outlining the claimant's case and the reasoning behind the DWP decision to allocate an individual to a particular Group. DWP Operations are to be commended for this excellent initiative.
17. It is important that staff appreciate the rationale for producing high quality Decision Makers Reasonings. Succinct summaries will contribute to easing the pressures on Decision Makers and should better support a reduction in appeals if the reasons for the decision are more clearly explained to the claimant. This is discussed in more detail in paragraphs 71–76 below.
18. The latest claimant journey is at Figure 1.

Figure 1: WCA claimant journey



Monitoring the impact of the recommendations

19. As recommended in the year two Review, DWP have been monitoring the implementation of the recommendations over the last year.

20. Between November 2011 and September 2012 the percentage of claimants failing to return their ESA50 varied between 26 per cent and 44 per cent. In the same period, the percentage of claimants failing to attend the face-to-face assessment varied between 26 per cent and 30 per cent[3].

21. Work to reduce both of these figures is discussed in more detail in paragraphs 6–11 above. However, both suggest that changes to the claimant journey have had only limited impact on both figures over an 11 month period. As noted above, further work to ensure engagement with the WCA process is required.

[3] This data derived from unpublished management information and has not been quality assured to National Statistics or Official Statistics publication standard. It should therefore be treated with caution. The data gather is reliant on Decision Makers manually recording the information on an internal database, and may not be reliable as human error cannot be avoided.

22. Over 90 per cent of decisions have met the criteria in the Quality Assurance Framework each month between February 2012 and September 2012. However, as noted in paragraphs 65–67 below it is important that the QAF focuses on quality and accuracy of decisions, as well as how many decisions meet the established criteria.

23. Recent data shows that around 11 per cent of all decisions are upheld following reconsideration[4], with little variation in this between months. Mandatory reconsideration of decisions where the claimant is inclined to appeal is being introduced next year, and continuing to monitor the percentage of decisions changed at reconsideration will be of interest in light of this move.

24. Although the data has not been published as National Statistics there appears to have been a decrease in the percentage of new claim decisions appealed against[5] between June 2012 and September 2012, with the percentage of decisions upheld at appeal remaining broadly consistent[6]. It is difficult to read too much into this data until it is properly verified, although the initial signs are encouraging and may reflect improvements made to the WCA process.

25. Overall, the data to monitor the impact of previous Review's recommendations aligns with the overall message of this Review: that progress is being made, but there is more to achieve if universal improvements to the WCA are to be seen. DWP need to keep collecting this data to ensure that, if and where appropriate, future Reviews can continue to comment on the success – or otherwise – of changes.

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[4] This data derived from unpublished management information and has not been quality assured to National Statistics or Official Statistics publication standard. It should therefore be treated with caution. The data gather is reliant on Decision Makers manually recording the information on an internal database, and may not be reliable as human error cannot be avoided.

[5] There is a known discrepancy between DWP data submitted to the First-tierTribunal Service and their data stating numbers received from DWP. This is because DWP data is captured from DMACR and input onto MISP. Some of the work submitted will not have arrived at the First-tier Tribunal Service before they provide their data. This time lag usually accounts for a small discrepancy of traditionally under a thousand cases.

[6] Please note this data is management information only and may not be reflected in the published stats.

Further documentary evidence[7]

Current process

26. Most claimants have already provided at least basic evidence about their health condition or disability by means of a doctor's 'fit note' requested at the time they make their initial claim.

27. There are also currently several opportunities in the WCA process for further medical or documentary evidence to be collected in support of an individual's claim.

28. The current ESA50 states that: 'if we are able to get enough information about you from this questionnaire, your doctor or the person treating you, we may not need to ask you to attend a face-to-face assessment', adding that: 'if you have any medical reports from your doctor, consultant or healthcare professional, or any other information you wish us to see, please send them with this questionnaire'.

29. When the ESA50 is returned to Atos, the Atos healthcare professional requests information from a claimant's chosen healthcare adviser if they believe it would help the process or avoid an unnecessary face-to-face assessment. Guidelines make clear they must request evidence in certain circumstances, including where a claimant has an appointee, or if there is reference to suicidal ideation or self-harm in the claimant's ESA50.

30. Thirdly, when a Decision Maker makes a Decision Assurance call they are in effect asking the claimant whether there is any further evidence which they would like to submit in support of their claim before a final decision is made.

31. If a Decision Maker reaches a decision that the claimant is not eligible for the benefit, claimants are notified of the decision in writing. The letter sets out the options available to the claimant, which includes asking DWP to reconsider 'if there may be some facts that you think we have overlooked or you may have more information which affects the decision'.

Background

32. During the year one Review a number of groups and individuals suggested that claimants were often disadvantaged in their claims by their failure to provide further documentary evidence to support their claim.

[7] 'Further documentary evidence' is used as a shorthand, generic term for any additional information supplied in support of a claim, whether it comes from a medical practitioner, professional allied to medicine, or someone else who knows the claimant and how their condition affects them.

33. This meant that decisions about their claim were reached only on the basis of the completed ESA50 and the report from the face-to-face assessment.

34. That Review also noted the President of the First-tier Tribunal's view that the provision of further documentary evidence at the Appeals stage was responsible for the majority of upheld appeals.

35. As a result, the year one Review contained a recommendation that: 'Decision Makers are able to seek appropriate chosen healthcare professional advice to provide a view on the accuracy of the report if required' arguing that: 'they [the Decision Makers] should ask the claimant to name a chosen healthcare professional and seek a report from them (for some claimants, the Decision Maker may have to undertake this task)'.

Discussion

36. The year one Review said that: 'the onus is and must be on the claimant to provide information to support their claim… it is difficult to see any justification or method of operating such a system without requiring the majority of claimants to be their own advocates'.

37. During the year two Review it became clear that the Decision Makers were seeking to gather increased amounts of further documentary evidence as recommended in year one. This was seen as positive progress whilst also recognising that, in an ideal world, further documentary evidence would be provided at an earlier point in the claim process. Concerns remained that further documentary evidence was often only being provided as part of the reconsideration process.

38. However, some charities have suggested that the collection of further documentary evidence should be a mandatory duty on either Atos or on the Decision Maker. They have argued that claimants cannot, for a number of reasons, collect this information themselves and therefore the Department should take responsibility for doing so.

39. This view has been widely canvassed over the course of this year and put to charities, representative and disability groups, politicians, senior officials in DWP and, most importantly, to the Decision Makers during this year's unannounced visits to Benefit Delivery Centres.

40. A consensus has clearly emerged. There should be a requirement in *every* claim to consider seeking further documentary evidence and, if that evidence is not sought, then the decision not to should be justified.

Recommendation

Based on this, I recommend that:

Decision Makers should actively consider the need to seek further documentary evidence in every claimant's case. The final decision must be justified where this is not sought.

41. Given the unique circumstances of their condition, particular care should be taken when the claimant has a mental, intellectual or cognitive condition as these individuals may lack insight into the effects of their condition on their day-to-day functioning.

42. It cannot be over emphasised how important it is to collect further documentary evidence **early** in the WCA process. If collected at the start, this information would be available to Atos healthcare professionals for their comments and consideration during the face-to-face assessment and before the Decision Maker collates **all** information in advance of a decision being made.

43. As part of their independent role in the WCA, Atos are already directed to collect further documentary evidence where, in scrutiny of a claim, they believe it would provide useful supporting information to avoid a face-to-face assessment. However, respondents through the call for evidence claim that this direction is not always pursued and that if evidence is collected it is not always reviewed.

44. However, if Atos have not sought this information, and the claimant has not provided it themselves, then this recommendation provides a third opportunity to gather it, adding a need to explain why where it has not been sought in order to make this clear to both the claimant and, where necessary, a Tribunal.

45. One further solution to ensure further documentary evidence is received from claimants early in the process may be to revise further the ESA50 form to include a page to send to the claimant's chosen healthcare adviser.

46. It is clear that gaining such evidence – and particularly any revisions to the ESA50 to include specific information to send to healthcare advisers – would also place additional burdens on medical practitioners and on professionals allied to medicine who would be required to provide helpful and functional evidence to support their patient's claim.

47. When further documentary evidence is currently requested it is often either not returned or it is not returned within the necessary timescales. If this recommendation is accepted there may be a need to work with the professional bodies to improve this.

48. The British Medical Association, for example, have made it very clear that they do not want to become 'guardians of the benefit system'.

"Work Capability Assessments are carried out by health care professionals working directly for Atos Healthcare who are trained specifically to undertake this type of work. The claimant's GP also has a specific role in the process, to provide a factual report based on information contained within the patient's medical record. It is not, however, the GP's role to provide any opinion on the patient's capability to work as part of this process. It is vital that these two roles are kept separate and that GPs are not asked to provide opinion on their patient for the purpose of receiving Employment and Support Allowance (ESA); doing so could damage the doctor-patient relationship", British Medical Association

49. However, what remains clear to the Review is that there must be efficient routes for further documentary evidence to be provided if the WCA is going to be as fair and effective as it should be.

The face-to-face assessment

50. The year one recommendations for Atos – including the introduction of a personalised summary statement in the report of every assessment, the introduction of Mental Function Champions, a pilot of audio recording, and the introduction of a clear customer charter – have all been implemented.

51. As reported in the year two Review, Mental Function Champions have been introduced at a regional level, rather than in each Assessment Centre as was originally recommended. Given scarce resources the Review supported this approach.

52. Some representative groups claim that awareness of the Champions is low, and that those who are aware of them believe they have little or no impact on the quality of mental function assessments. The Review asked Atos to report on the effectiveness of their Mental Health Champions. They said that their healthcare professionals found the Champions to be 'a great resource' and that they were of 'great use to put any uncertainties into perspective'.

53. The pilot of audio recording of assessments has also been subject to much debate; particularly through the call for evidence responses (see Chapter 6). The Review has seen little evidence from the DWP evaluation of the audio recording pilot of 2011 that the universal audio recording of assessments would improve their quality (see the original recommendation): further monitoring and evaluation work needs to be completed before a decision can be made.

54. The year two Review also made a number of recommendations relevant to Atos which have been implemented to varying degrees over the last year.

55. Changes to the Logic Integrated Medical Assessment (LiMA) system – the IT system used by Atos healthcare professionals during the face-to-face assessment – have been made.

56. Use of free text is now monitored each month for healthcare professionals who have completed more than 20 assessments, with healthcare professionals in the highest and lowest deciles being identified each month. There are considerable differences between the lowest and highest deciles, but the Review retains the belief that use of free text is key to an accurate report of the face-to-face assessment.

57. In terms of IT training for healthcare professionals to allow them to feel confident in using appropriate amounts of free text, e-learning has been made available to healthcare professionals for them to complete as they see appropriate. The Review hopes that uptake of this training is monitored, both to track demand and identify any changes in amounts of free text used in reports.

58. Least progress appears to have been made in tightening the target for C-grade reports for healthcare professionals under audit and in publishing data on Atos performance and quality. Whilst the Review understands that these are both being actively considered, the lack of tangible progress to date is disappointing. The Atos face-to-face assessment is often heavily criticised and so improving the transparency of this and striving to raise standards of the healthcare professionals involved would be of considerable benefit.

59. Indeed, in the National Audit Office October 2012 report on contract management of medical service in DWP[8] they state that: “the Department should consider tightening performance requirements linked to quality of medical [sic] assessments. The current target of no more than 5 per cent of reports being graded as ‘unsatisfactory’ is not sufficiently challenging’.

The decision making process

60. Perhaps the most important development in improving the WCA process has been the move to put the Decision Maker back at the heart of the whole scheme. Empowering Decision Makers has been a major aspect of the work of the Harrington Review Implementation Team and they have done an excellent job so far. However, there is still more to do to ensure a consistent, nationwide approach.

61. The Decision Assurance call is a good example of ensuring Decision Makers are driving the process. This is the stage where further documentary evidence is often uncovered, but the call itself has proved to be stressful for the Decision Makers as claimants can be upset, aggressive or totally shocked by the proposed decision. Those who have been making these calls for the longest – such as in Oldham Benefit Delivery Centre – have come through to the other side, so to speak. They now find it valuable and it has enhanced their sense of being in charge

[8] http://www.nao.org.uk/publications/1213/dwp_medical_services_contract.aspx

and enriched their job role. In other locations Decision Makers are still struggling with the emotional issues of dealing with claimants. Perseverance is the order of the day, but experience does show this works for both Decision Makers and claimants.

62. The rate of successful calls greatly varies across the country. Evidence gathered from unannounced visits and from other anecdotal sources suggests that much of this variation is down to the attitude of local managers towards the increased workload on Decision Makers and the inevitable slowing in the number of claimants handled in a week.

63. Whilst local benchmarks or targets such as the number of decisions per day or the time taken per decision are an essential component of a well managed customer focused service, that has to be balanced by the need for Decision Makers to have the time to ensure that decisions are 'right first time' as this too is very important for both individual claimants and DWP.

64. Decision Makers **must** be granted latitude in this area or the whole scheme will fail. This must be recognised and acknowledged at the highest levels in DWP and at Decision Maker level as well. A DWP Operations review of benchmarks is now underway.

    Based on this I recommend that:

    In order to build on the progress already made DWP Operations need to find an appropriate balance between better quality decisions that are carefully considered and 'right first time' and the achievement of appropriate benchmarks at a local level, otherwise there is a real risk of derailing the positive progress made to date.

65. The Quality Assurance Framework (QAF) is now in operation and Decision Maker audit is a reality.

66. Results show that a very high proportion of decisions meet the current criteria as set out in the QAF (approximate average 90 per cent per month); however the new measure to check the **quality** of the Decision Makers Reasoning has not been incorporated into the checking regime.

67. While much has been done to ensure that DWP Operations staff are fully conversant with the standards, interpretation in individual cases may vary and therefore may affect the consistency of the outcome. It is imperative that QAF calibration exercises take place to regulate the approach and improve the **accuracy** of the related data gathered.

68. Part of this quality assurance concerns the development of the Decision Maker Reasoning. The Review has seen a number of these documents and they vary in both quality and quantity. Further training will undoubtedly improve performance and Decision Makers in Oldham Benefit Delivery Centre are again the most advanced in this area as they were the first to

pilot the new approach. In a very small sample of cases where the claimants were asked if they could recognise themselves in the Decision Maker Reasoning, 75 per cent stated they could. This is in marked contrast to claimants' views from the call for evidence on the reports from the face-to-face assessment.

69. To retain transparency it is important that the Decision Maker Reasoning is a work of their own making. Simply cutting and pasting the free text from the Atos personalised summary statement is to be discouraged as this will not give a true reflection of the decision making process, and could suggest a slip back towards 'rubber stamping' of the recommendations from Atos. When the Decision Maker Reasoning has been fully established, it should become an important part of the appeals process, if an appeal is necessary: this is dealt with in paragraphs 71–76 below.

70. It is still too early to assess fully the impact of the Quality Assurance Framework, Decision Maker Audit and the Decision Maker Reasoning on the ultimate goal for the claimant (and DWP) of getting decisions 'right first time'. Positive progress has been made, the Review hopes that the year four and year five Reviews will assess ultimately how successful these initiatives have been.

The appeals process

71. The appeals process remains an area of considerable concern for the Review. The First-tier Tribunal President opines that this is outside the remit of the Review. The Review disagrees. Appeals are a fundamental part of the overall WCA process.

72. The Review believes that two aspects need to be addressed with some urgency. Firstly, it is imperative that we get to the stage where Tribunal members are making their decisions based on the same evidence as the Decision Maker.

73. Secondly, the Decision Maker Reasoning comes into play. The Review wrote to the Minister for Employment about this in May 2012 (Annex 2) indicating that not only should the Decision Maker Reasoning become the backbone of DWP's case, but that if that detailed explanation is to be overturned by the Tribunal then they in turn must provide detailed justification for their decision. This would make the whole process more transparent and more accountable.

74. To date, the only feedback secured from First-tier Tribunals (across all health and benefits appeals) has been, at long last, Judges indicating which one reason from a drop-down menu of one-liners is the basis for the Tribunal overturning the decision.

75. This rudimentary form of feedback has taken much time and effort to achieve and it followed a recommendation to Ministers in February 2012 (Annex 2).The list of reasons available to Judges are:

- Cogent oral evidence;
- Cogent oral evidence in relation to physical factors;
- Cogent oral evidence in relation to mental factors;
- Cogent oral evidence in relation to both physical and mental factors;
- Reached a different conclusion on substantially the same facts;
- Reached different conclusion, having a regard to physical factors, on substantially the same facts;
- Reached different conclusion, having a regard to mental factors, on substantially the same facts;
- Reached different conclusion, having a regard to physical and mental factors, on substantially the same facts;
- Cogent documentary evidence supplied at the appeal;
- Cogent documentary evidence supplied at the appeal from a Consultant;
- Cogent documentary evidence supplied at the appeal from a GP;
- Cogent documentary evidence supplied at the appeal from a Healthcare Practitioner;
- Decision Maker misapplied the law;
- Medical/ Functional assessment report, relied on by Decision Maker, contained significant error; and
- Tribunal did not provide a reason.

76. This feedback has been in place since July 2012. Whilst more detailed feedback is needed, analysis of this may at least be able to reveal trends and patterns which need addressing at both a national and individual Decision Maker level. To date the Review has not seen any analysis of the feedback, but this is something which DWP should closely monitor. Future Reviews may also wish to use this analysis, when available, to consider whether and where further reforms are needed.

    However, in line with the information at Annex 2, I also recommend that:

    DWP should continue to work with the First-tier Tribunal Service, encouraging them to, where appropriate, ensure robust and helpful feedback about reasons for decisions overturned by the First-tier Tribunal.

Communications

77. Following a year two recommendation, work has begun to improve communications within DWP, and particularly between the Decision Makers and the Personal Advisors. Several different approaches are being piloted, which again reflects DWP's willingness to try different approaches to see which works best.

78. A pilot project to improve communications in this area has started in Handsworth Benefit Delivery Centre, and three linked Jobcentres in Handsworth, Perry Barr and Washwood Heath, and the Review Team visited them to discuss progress.

79. The early signs look encouraging and both Decision Makers and Personal Advisors now value a more joined-up approach to handling claimants. More work remains, especially to evaluate the results and to improve information sharing between Decision Makers and Work Programme providers, but the pilot has been extended and will continue into 2013.

80. Another good example of work to improve communications is the pilot currently being run in East London where Disability Employment Advisers have set up visits between Benefit Delivery Centres and local offices to share best practice and encourage better communication about cases. Another initiative in the South East of England is also detailed below:

> Jobcentres in the London and Home Counties Group have been exploring ways in which they can work closely with their local Benefit Delivery Centres and other stakeholders, including Atos. They have identified that in London some claimants are experiencing significant delays in receiving their decisions and that at times there is a lack of communication between parties, stifling feedback and process improvement.
>
> To address this challenge, in the summer of 2012 London and Home Counties set up a working group of senior managers from across all Jobcentre Districts and Benefit Delivery Centres to help share best practice and put in place better processes to improve communication between Jobcentres and Benefit Delivery Centres. Work is on going, but so far they have developed an innovative way of sharing details of claimants who may be experiencing delays and are piloting this approach between Essex Jobcentres and Basildon Benefit Centre. The group will also be launching a suite of training products across London sites in November.

81. This type of initiative should be centrally monitored by DWP Operations and, if successful, may provide the blueprint for future activities.

82. Communications between DWP Decision Makers and Atos healthcare professionals appear to remain variable. A common theme during unannounced visits to Benefit Delivery Centres was an apparent difficulty in persuading Atos healthcare professionals to rework assessment reports. A telephone helpline between Decision Makers and healthcare professionals exists, and was recently relaunched, in DWP. The usefulness and effectiveness of this needs to be monitored over time.

83. Progress on work between representative groups and their clinical advisers and DWP to update and improve the training and guidance notes used by healthcare professionals in the WCA has started. There appears to have been only limited success to date in getting the representative groups and their clinical advisers to engage fully in the process.

84. A rolling programme of review of the training and guidance has been put in place. However, some representative groups have specifically highlighted in their response to the call for evidence that this is not working and problems remain. On the other hand, DWP have reported problems with either the representative groups not responding to requests or failing to provide suitably clinically based comments and information. This is an important area of cooperation between the interested parties which is not working as well as it should. Further efforts should be made to ensure greater mutual cooperation.

85. Another area of concern around communication is the failure of DWP to put across the improvements in the WCA process that have occurred and are continuing to be developed over recent years.

86. Statistics published in October 2012 by DWP show that:

- For claimants making a new claim to ESA between the quarter ending November 2010 and the quarter ending August 2011 the proportion of people being placed in the Support Group doubled, from 13 per cent to 26 per cent. The proportion remained at 26 per cent through to the quarter ending February 2012.; and
- For claimants making an appeal against a fit for work decision and who started their ESA claim in the quarter ending August 2011 the current[9] appeal overturn-rate was 31 per cent, compared to a total overturn-rate of 36 per cent for the same quarter in 2010.

87. These changes are likely to be the result of several factors, including the implementation of the Independent Review's recommendations. Nonetheless, they do suggest (subject to any changes to the appeals figures) that changes to the process are beginning to have an impact.

[9] Note that due to the time taken for ESA appeals to be submitted, processed and heard, there will still be appeals awaiting a hearing, particularly for the most recent quarters. As a result these figures may change as more data becomes available in the future.

88. The Review has seen changes to the WCA process at first hand. Unfortunately the public perception of the WCA continues to be driven by adverse media coverage, which can be fuelled by campaigners who see no change or even wish to see no change. All they call for is a scrapping of the WCA but with no suggestion of what might replace it. Setting politics to one side to recognise that things are beginning to change positively in the best interests of the individual claimant would be helpful.

    Taking all of this into account, I recommend that:

    DWP must take the initiative and highlight the improvements that have been made where they exist, as well as being open about where problems remain and their plans to address these.

89. As an organisation they seem to be on the back foot, even where good news could be promulgated. This does nothing to change negative perceptions about and understandings of the assessment. However, greater recognition that areas which need addressing remain may help balance this picture and provide assurances to the critics.

Unannounced visits to Benefit Delivery Centres and an Atos Assessment Centre

90. The year two Review recommended that unannounced visits to both Benefit Delivery Centres and Atos Assessment Centres should be carried out during year three.

91. Building on a number of visits in year two, this recognised the importance of both monitoring the implementation of the Review's recommendations and getting an insight into how things are changing for the people at the forefront of delivery.

92. As outlined in Chapter 1, seven visits were carried out to Benefit Delivery Centres and one to an Atos Assessment Centre.

Benefit Delivery Centres

93. Clear and consistent messages emerged from the visits to Benefit Delivery Centres. On the whole Decision Makers supported the overarching message of this Review: that implementation is having a positive impact but that more work is needed, particularly at a local level, to ensure success.

94. It was clear that whilst adding more personal touches into the process (through phone calls to claimants) is generally seen as positive, this can prove demanding for the Decision Makers involved, especially if they are giving difficult messages to vulnerable claimants.

95. Decision Makers believe that their confidence is key to these calls, and the visit to Oldham Benefit Delivery Centre was helpful to meet Decision Makers who had been using the new process for a while and were much more comfortable with it than some Benefit Delivery Centres who had only been working with the new system for a month or so.

96. Other messages from Decision Makers included:

- The lack of further documentary evidence they receive, particularly in Incapacity Benefit reassessment claims, and whether more could be done to ensure they have access to this;
- There remains variability in the quality and depth of the relationship between DWP and Atos at a local level. Decision Makers appreciated the chance to discuss individual cases with Atos healthcare professionals when this facility was available, but building relationships through the phone adviceline was more difficult;
- Decisions on mental function claims remain complex, with training and support seen as the key elements rather than the specific wording of the legislative descriptors; and
- There remain concerns about both the rate of appeals and the rate of upheld appeals, despite improvements in the process. Decision Makers universally welcomed moves to get feedback from Tribunals as to why their decisions were 'wrong'.

97. It was apparent that managers at different sites have a different approach to the implementation of the Review's recommendations: some were still concerned about meeting the Department's benchmarks whilst others have placed a stronger emphasis on the concept of 'right first time' decisions even if this takes more time. It is important that claims are administered in a timely fashion, but the Review strongly supports the concept of 'right first time' decision making which takes into account all available information to support it.

Atos Assessment Centre

98. Some charities have reported difficulties gaining access to Mental Function Champions, consequently questioning their role in the process.

99. The Review met one of the Champions during its visit to an Atos Assessment Centre. He described being able to help healthcare professionals both locally and nationally. He had also built a series of contacts with Community Mental Health Trusts to ensure greater provision of further documentary evidence.

100. However, there was also a feeling from some charities and individuals that there can still be variability around healthcare professional performance, and that mental function cases remain the most problematic. A consistent theme from both charities and individuals remains that only healthcare professionals with relevant expertise should undertake mental function face-to-face assessments.

"We believe that, without expertise in the causal conditions, healthcare professionals are not sufficiently equipped to understand why and how function may be impaired or to elicit the relevant information from an applicant who may have… difficulties in reporting their condition", joint response from the Centre for Mental Health, HAFAL, the Mental Health Foundation, Mind, Rethink Mental Illness, the Royal College of Psychiatrists and SAMH

101. There is limited evidence to support this claim, although the Department may wish to explore the outcomes of assessments undertaken by Mental Function Champions in their supportive 'non-Champion' role to see if there are significant differences from non-specialists undertaking mental function assessments.

Overall impressions

102. Unannounced visits have confirmed one of the recurring and overarching themes of this Review: that positive progress is being made in improving the WCA, but that there remains more work to do.

103. Decision Makers in particular have seen a series of changes to their job as a result of recommendations made by previous Reviews. The vast majority of them welcome the changes. However, there are some practical and cultural difficulties associated with them which are taking time and are difficult but are being overcome as the Decision Maker's new role becomes more familiar.

104. The visits have proved a most useful resource for gaining a 'dipstick measurement' of progress made and remaining items of concern; it would be helpful if these continued in the next two years.

Conclusions

105. Improvements to the WCA to make it more humane, sensitive, accurate and efficient have started to be seen.

106. Nonetheless, as some of the major charities stated in the call for evidence (see Chapter 6), progress has been slower that hoped for and the scope and depth of these changes is less than desirable.

107. These changes should continue to happen and individual claimants should start to see the benefits of their implementation. The Review is fully aware that more work remains and it is vital that the achievements to date are maintained and momentum built on into years four and five. A change of Independent Reviewer should not be seen as an excuse to rest on laurels.

108. Whilst there is firm evidence of change for the better in the way DWP has enthusiastically accepted the challenge presented by the Review's recommendations, less concrete evidence exists to show that Atos have done all they could to play their part in improving their section of the WCA.

109. Implementation of the recommendations around the face-to-face assessment appears, from anecdotal evidence, to be patchy. The variability in the quality of Atos performance was a frequent complaint received from Decision Makers during the Review's unannounced visits. In line with the National Audit Office report[10], DWP needs to monitor Atos more closely to ensure performance is as strong as possible because the face-to-face part of the assessment is, disappointingly, still often seen by claimants as the only important part of the WCA.

110. The appeals part of the WCA continues to give cause for concern. The drop-down menu for feedback to the Decision Makers is a start but nowhere near enough to provide a real exchange of information and views with the Decision Makers about why they are apparently 'wrong' according to the Judges. Future Reviews may wish to focus on this area of the WCA.

[10] http://www.nao.org.uk/publications/1213/dwp_medical_services_contract.aspx

Chapter 3: What happens to people placed in different Employment and Support Allowance (ESA) groups, and what influences these outcomes[11]

Year two recommendation

1. 'In year three, research is undertaken to examine in more detail what happens to people found Fit for Work and people placed in the Work Related Activity (including Work Programme outcomes) and Support Groups, and the factors influencing these outcomes.'

Results

2. Analysis of employment outcomes based on the different ESA groups, and the factors influencing these outcomes, is at Annex 3.
3. This shows that 25 per cent of all ESA claimants are in employment 12–18 months after their initial claim, with differences between groups.
4. The analysis highlights a range of factors linked to employment outcomes, including:

    - The outcome of the Work Capability Assessment (WCA) – claimants found Fit for Work, or who close or withdraw their claim, are more likely to be in work 12–18 months after their claim;
    - Being in work prior to being found eligible for ESA increases the likelihood of returning to employment;
    - Recovery from the health condition(s) which led to the initial claim or self efficacy and a belief that work can improve health were linked to increased likelihood of return to work; and
    - Having qualifications is linked to job entry.

[11] Adapted from Barnes *et al.* (2011), *Routes on to ESA*. DWP Research Report Series No 774.

5. Only 9 per cent of people in the Work Related Activity Group were in employment 12–18 months after their claim. It is not possible, through this analysis, to judge distance travelled towards the labour market, or likelihood that these claimants would or would not eventually gain employment.
6. At this stage it is still too early to draw conclusions about Work Programme outcomes as the necessary data is not available.
7. Employment outcomes for ESA claimants remain considerably poorer than for those for new Jobseeker's Allowance claimants with one quarter of ESA claimants entering jobs within 12–18 months, against around three quarters leaving the jobseeker's register within six months.

Discussion

8. The differences between the employment outcomes of ESA claimants and Jobseeker's Allowance claimants are substantial but not hugely surprising given the difficulties people with a disability or long-term health condition still face in the labour market[12] and the differing expectation for ESA claimants, particularly those in the Support Group.
9. There are likely to be a number of wider issues prevalent in the labour market affecting employment outcomes, particularly around the attitudes of the general public, employers and disabled people themselves. That work history, recovery from illness and belief that work can improve health are significant factors in return to work highlights this point.
10. The Black/Frost independent review of sickness absence made a compelling case for early intervention when an individual goes sick from work or loses their job due to ill health. This analysis supports the view that recent employment, and subsequent distance from the labour market, can have a significant impact on whether and how quickly someone will return to employment. This Review looks forward to the Government's response to the Black/Frost report.

Conclusions

11. The analysis undertaken for this Review suggests that a wide range of factors influence the employment outcomes of people who have made an ESA claim.
12. That job entry rates for ESA claimants – and within ESA outcome groups – are considerably lower that those for new Jobseeker's Allowance claimants does not in itself show that the WCA is fundamentally flawed. Instead it points to a number of complex and interrelated factors beyond the direct control of the WCA process.

[12] http://odi.dwp.gov.uk/docs/fulfilling-potential/fulfilling-potential-discussion.pdf

Chapter 4: Descriptors

Overview of year 3 activity

1. Further progress has been made this year on reviewing a number of sets of descriptors used in the Work Capability Assessment (WCA).
2. As recommended in the year two Review, a 'gold standard', or evidence-based, review of the mental, intellectual and cognitive descriptors is now underway.
3. The Department for Work and Pensions (DWP) expressed similar concerns about recommendations from representative groups and an independent Scrutiny Group in late 2011 about the fluctuating conditions[13] descriptors as they had about recommendations on the mental, intellectual and cognitive descriptors. This group will also be incorporated into the evidence-based review.
4. In addition, the fluctuating conditions group have produced what the Review considers to be an excellent set of proposals to improve the initial ESA50 form which the Reviewer commended to DWP. Work to update the ESA50 is progressing and should be completed early in 2013.
5. Work considering the treatment of cancer patients is nearing completion. Changes to the legislation are being drafted and should come into force in early 2013.
6. Following a year two recommendation the Review has considered whether the specific wording of the sensory descriptors should be addressed and whether an additional descriptor on pain and/or fatigue is needed.

Mental, intellectual and cognitive descriptors and fluctuating conditions descriptors

7. Following detailed work by a number of representative groups and experts during year two a series of recommendations were presented to DWP to improve the mental, intellectual and cognitive descriptors and the approach to fluctuating conditions.
8. The Department expressed a number of reservations about the proposals, particularly around the evidence base supporting them. The year two Review, therefore, recommended a 'gold standard' or evidence-based review be carried out. This would provide evidence on the operation of the current descriptors and whether the proposals would lead to any

[13] For ease referred to as the 'fluctuating conditions descriptors' although this is more an approach than having specific descriptors.

improvements, with any changes to the descriptors being based on the results.

Progress to date

9. The Terms of Reference of the project are that:
    - The evidence-based review will assess the fairness and accuracy of the existing WCA and the alternative version proposed by disability representative groups in identifying claimants as having Limited Capability for Work.
    - The alternative version of the assessment will be a single assessment that combines recommendations from both the mental, intellectual and cognitive and the fluctuating conditions reports.
    - The Department will manage the design, testing and analysis of the review with input from disability representative groups.
    - Changes to the current WCA will be considered by the Department where there is good evidence that they would significantly improve the accuracy and fairness of identifying claimants as having Limited Capability for Work.
10. Since June DWP and the representative groups have undertaken extensive work to agree a set of both mental, intellectual and cognitive and fluctuating conditions descriptors which are testable.
11. In parallel to this they have been working to agree a way of testing the two sets of descriptors, as well as an evaluation strategy for the project.
12. The methodology for the project is split into three distinct phases:
    - Phase 1 – Development of alternative descriptors for testing
    - Phase 2 – Data collection
    - Phase 3 – Analysis and evaluation
13. The aim is to complete the data collection and analytical phases by spring 2013, with the final report being published in the summer of 2013.
14. Whilst this is his final Independent Review, Professor Harrington has agreed to chair an independent steering group which will:
    - Provide independent, expert oversight of the evidence-based review project and to ensure it progresses in accordance with the agreed plan;
    - Ensure that the development process is open and transparent and considers the views of the stakeholders involved in the working group;
    - Confirm the testability of the alternative assessment and set of descriptors;

- Review the proposed testing approach and ensure a focus on practical outputs;
- Ensure the assessment is carried out appropriately and in accordance with relevant ethical guidelines;
- Scrutinise the results of the assessment phase and the conclusions drawn from them; and
- Comment upon the draft project report before publication.

Conclusions

15. The evidence-based review has unfortunately taken longer to develop than is ideal. This reflects the realities of the dedicated resources available to both DWP and the representative groups.
16. The work has also highlighted some of the innate difficulties in designing a functional, operational assessment of work capability. The Review welcomes the joint working between DWP and the representative groups and believes that, where appropriate, joint ownership of the project and its outcomes is vital to its success, whatever its outcomes.
17. The delays in the process should not detract from the positive progress that has been made over the second half of 2012. The Review continues to hear criticisms of the descriptors used in the assessment, but it remains important that if changes are made they are justified and based on the best available evidence. Accuracy, rather than speed, is the correct approach to this complex issue.
18. The evidence-based review will extend beyond the tenure of this Independent Reviewer. However, given the importance of both maintaining the momentum that has been built and ensuring a robust evaluation of the project the opportunity for this Independent Reviewer to continue to be involved via the independent steering group is welcomed.
19. It is important not to over-simplify the WCA process and place too much emphasis on the descriptors alone. The technical legislation against which claimants score points needs to be is as good as it can, but this should be seen in the wider context of how the assessment is being administered and processed. Improving the guidance available to Atos healthcare professionals and DWP Decision Makers can play an equally important role here.

Cancer treatment

20. In June 2011 Macmillan Cancer Support made a series of recommendations for improving the cancer treatment provisions. These concerned:

    - Broadening the chemotherapy categories to include oral treatment of less than six months;
    - Including cancer patients receiving radiotherapy for specific sites; and
    - Including cancer patients undergoing radiotherapy in combination with chemotherapy.

21. Further recommendations concerned the modification of the ESA50 form so that being a cancer patient with medical evidence from, say, an oncologist would ensure a 'light touch' approach for these claimants, and an avoidance of a face-to-face assessment.

22. The Review commended the Macmillan proposals to DWP in July 2011, and at the time of the publication of the year two Review they were working through the details of these proposals.

23. DWP subsequently developed proposals to expand existing provisions, but decided to conduct an informal consultation in early 2012 to seek wider views on these.

24. In September 2012 DWP published the results of this consultation and came forward with modified proposals for changing the cancer treatment provisions.

25. The revised proposals consider the debilitating effects of cancer treatment and invoke a presumption that an individual either: awaiting, receiving or recovering from treatment by way of chemotherapy, irrespective of route; or awaiting, receiving or recovering from radiotherapy should be in the Support Group subject to confirmatory evidence. Each individual would be assessed on a paper basis and the vast majority would be placed straight into the Support Group.

26. The new DWP proposals are more generous than those originally proposed by Macmillan and commended by the Review in July 2011. The Review is pleased to endorse them, and looks forward to seeing them implemented soon.

Sensory descriptors

27. Since the Independent Reviewer was appointed representative groups for people with sensory impairments have expressed reservations about the changes to the descriptors implemented by the Department-led review in March 2011[14]. In 2011 the fluctuating conditions group also made reference to a number of areas where specialist input from experts in sensory impairments may be valuable.

28. In February 2012 the Review invited a group led by RNIB, and also containing Action for Hearing Loss and Sense, to:

    - Review the ESA50 and the guidance used by Atos healthcare professionals and DWP Decision Makers to see if and where improvements could be made; and
    - Produce analysis on the WCA outcomes for claimants since the implementation of the Department-led review in March 2011 to determine whether there was an evidence base to support further changes to the descriptors themselves.

29. A report was submitted in July 2012 based on evidence from three sources:

    - A secondary analysis of the Life Opportunities Survey;
    - Reports from RNIB's delivery teams who provide welfare advice for blind and partially sighted people; and
    - An action-based research project (ENABLER).

30. Unfortunately this failed to provide any evidence on changes in outcomes for people with sensory impairments since the implementation of the Department-led review, instead focusing on anecdotal evidence, the high rate of appeals and the lack of a work focus in the assessment.

31. The Review was unable to commend the report to DWP for a number of fundamental reasons:

    - The report failed to include evidence on hearing loss or dual sensory impairments;
    - There was no analysis of the impact of the descriptor changes from the Department-led review;
    - It would be wrong to assume that successful appeals are a proxy for inadequate descriptors: the application of the guidance, for example, could also have an effect; and

[14] http://www.dwp.gov.uk/docs/work-capability-assessment-review.pdf and http://www.dwp.gov.uk/docs/work-capability-assessment-review-addendum.pdf

- The purpose of the WCA is to assess capability for work and not employability – the report failed to distinguish between the two concepts.

Is further work needed?

32. It remains unclear whether a fundamental review of the sensory descriptors used in the WCA is required.

33. The representative groups' report does highlight potential problems with the application of the guidance used in the process, but no conclusive evidence that the descriptors themselves are not working.

34. Alterations to the guidance can be implemented more easily than changing the legislative descriptors, as has been shown by the evidence-based review process.

35. The Review therefore considers it more appropriate that, at this stage, DWP and the representative groups and their clinical advisers work together to make changes to the guidance in line with a recommendation in the year two Review.

Pain and/or fatigue

36. The year two work on the fluctuating conditions descriptors highlighted that there may be a need for separate descriptor on pain and/or fatigue within the WCA.

37. Adapting slightly the general process used by the Review, advice was sought first from clinical experts in rheumatology and pain management and relief. They then sought wider views, where appropriate.

38. The clinical experts were unable to make a compelling case for the inclusion of a stand alone descriptor. Instead they pointed towards the importance of the guidance supporting the assessment process.

39. Several representative groups were then approached for their views. One agreed that the recommendations from the fluctuating conditions representative groups made during year two were comprehensive but did suggest more focus on narrative answers rather than 'tick boxes' might be helpful. Another argued that claimants should be able to score enough points based on the pain and/or fatigue they suffer by considering both the causes and the consequences.

40. This argument is valid but should be covered in the general descriptors through the use of reliably, repeatedly and safely – which is one of the key concerns for the representative groups involved in the evidence-based review – and through an emphasis on the potential negative consequences of pain and/or fatigue (and the corresponding need to explore these in both the face-to-face assessment in the decision making process) in guidance and training.

Is further work needed?

41. Whilst the consideration of pain and/or fatigue is important within the WCA neither appear to warrant their own, separate descriptor.
42. Representative groups and their clinical advisers are already involved in the routine updating of the guidance and training materials used by Atos healthcare professionals and DWP Decision Makers.
43. Separate consideration should therefore be given to working with pain and fatigue experts to update the relevant sections of these materials.

Overall conclusions

44. The year one and year two Reviews noted a considerable groundswell of discontent with a number of the descriptors used in the WCA. These included those used to assess mental, intellectual and cognitive conditions, fluctuating conditions, the treatment of cancer patients, sensory impairments and pain and/or fatigue.
45. All of these sets of descriptors have now been evaluated and, where considered necessary, progress made to address issues.
46. Identifying what changes might be needed to modify the existing descriptors has proved challenging: the issues are complex and gathering compelling evidence for change is both time consuming and difficult.
47. Nonetheless, this has been completed for the treatment of cancer patients; and a formal evidence-based review is underway for both the mental, intellectual and cognitive descriptors and the fluctuating conditions descriptors.
48. A review of pain and/or fatigue has show that inclusion within the fluctuating conditions group will address the matter.
49. For sensory impairments, the Review remains unconvinced that the case has been made adequately for a formal review of the descriptors. Further evidence is needed to change this stance.
50. The work on descriptors, thus, remains incomplete. It is hoped that the year four and five Reviews will pursue, with vigour, the completion of this important work.

Chapter 5: Training

Background

1. The year two Review made a number of recommendations related to the training and competence of the professionals involved in the various stages of the Work Capability Assessment (WCA) process: Decision Makers in Department for Work and Pensions (DWP) Operations, healthcare professionals in Atos Healthcare, and Judges or Medical Members in First-tier Tribunals.
2. The Review recommended:
    - Regular audit of DWP Decision Maker performance;
    - Monitoring of the quality and appropriateness of DWP Operations and Atos training; and
    - Where appropriate, the sharing of knowledge and training between the various groups involved in the WCA.
3. One of the conclusions drawn by the year two Review was that: ‘the practical application of training is as important as the training itself. The quality of outcomes will help determine whether or not the training is being used to ensure the WCA works as well as it should’. Without doubt this remains the case.

Findings

4. Contact was made with DWP Operations, Atos Healthcare and the First-tier Tribunal asking for information in two main areas:
    - What training materials have been developed or updated in 2012; and
    - What provisions are in place to ensure that DWP Operations staff, Atos healthcare professionals and Judges and Medical Members in First-tier Tribunals are in appropriate Professional Development schemes.

DWP Operations

5. Since the acceptance of the recommendations in the year one Review extensive training and development, and associated materials, have been developed for DWP Decision Makers. These have all been aimed at improving the skills and knowledge of Decision Makers to allow them to effectively sit at the heart of the WCA.
6. Most importantly, the Quality Assurance Framework has been introduced as an audit tool to drive both quality and consistency of Decision Maker performance, although (as noted in Chapter 2) focus on both quality and accuracy is needed here.

7. Decision Makers are not formally part of a Professional Development scheme. This is understandable given that they are not required to be medically or legally qualified to undertake their role.
8. The Review's expectation, however, is that the introduction of the Quality Assurance Framework will act as a proxy to maintain professional standards.

Atos Healthcare

9. Between March and July Atos compiled the information requested.
10. They were able to provide an impressive list of around 100 training documents that had either been updated or created anew. These included a group of 'train the trainer' events which, in the Review's opinion, are a good initiative.
11. In terms of Revalidation of healthcare professionals, Atos have now developed a scheme directly with the General Medical Council (GMC) to ensure revalidation every five years. The Chief Medical Officer at Atos is the Responsible Officer for this process.
12. Twenty per cent of Atos healthcare professionals will go through the Revalidation process in 2013, and the remainder over the following two years.

First-tier Tribunal Judges and Medical Members

13. The Review wrote to the Chief Medical Member in March seeking the information outlined above. The Chief Medical Member referred the Review to the First-tier Tribunal President.
14. No response has been received from the President. During the year two Review, however, he made it clear that he believes that any consideration of judicial training is outside the remit of the Review.

Conclusions

15. Both DWP Operations and Atos Healthcare are actively engaged in training and developing their staff involved in the WCA process to improve performance.
16. Auditing of performance is now an integral part of the Decision Maker's work programme.
17. Whilst Atos have developed an impressive list of training materials for their healthcare professionals and their trainers, the Review has seen little evidence to show the effectiveness of these courses in either driving up the quality of assessments or improving the skills and knowledge base of the attendees.

18. Although there has always been a contractual obligation for Atos to have registered and licensed healthcare professionals, and a programme of Continual Professional Development in place, the Review is pleased to learn that they are now signed up to a regular Revalidation process with the GMC.

19. No parallel conclusions can be drawn concerning the skills or knowledge of the First-tier Tribunals Judges or Medical Members in their important work in the appeals process. This is disturbing, particularly given concerns raised elsewhere in this Review about the transparency of the appeals process.

Recommendation

After reviewing the information received on training this year I recommend that:

The year four and five Reviews should further explore the quality of the outcomes rather than simply on the quantity of the training offered.

20. It is essential that professionals involved in every stage of the WCA process can be shown to be of the highest quality in terms of the relevant skills and knowledge, and the impact this has on their performance.

21. The last two Reviews have considered the training offered as part of the WCA process. However, neither Review has been able to demonstrate satisfactorily the link between the training offered and the added value this offers to the individuals involved.

22. Only then can the Review be assured that the WCA is being undertaken to a standard commensurate with the importance the benefit system demands.

Chapter 6: The call for evidence

1. Over 750 individuals and organisations responded to the call for evidence.
2. This is a significant number of responses and is the largest number of responses received during the course of the three Reviews. The Review would like to thank the individuals and organisations who took the time to share their evidence and experiences.
3. The call for evidence this year focused on three separate areas to reflect the various parts of the Work Capability Assessment (WCA) process:
    - Communications;
    - The face-to-face assessment; and
    - Decision making.

Individual responses

4. The majority of responses to the call for evidence were from individuals who had been through the WCA. These were overwhelmingly negative about both the process and the outcomes, the two often appearing closely linked. As the respondents to the call for evidence cannot be considered a truly representative claimant sample the Review considered these responses separately to those from organisations.

Communications

5. Most responses indicated that there had been no change in the Department for Work and Pension's (DWP's) communications supporting the WCA; few respondents stated that they had improved.
6. A consistent response was that the ESA50 is too complicated and does not have enough space for the claimant to explain fully how their condition affects them on a daily basis. This was particularly the case for those claimants that had complex or multiple conditions.

    "The form appeared to be just as long and as complicated to complete and was quite a daunting task having to repeat everything all over again", Ms V

    "The ESA50 form was still a long form to fill in and my GPs/NHS Consultants didn't want to fill in the part of the form that they had to", Mr D

7. There was a mixed range of responses about the way in which DWP communicates with claimants. Some people, particularly those with mental health conditions, stated that there was too much contact and they found this stressful and could exacerbate their existing condition. Other respondents stated that there had been none or little contact from DWP – despite the recommendations from the year one Review – and were often unaware what stage their claim was at.

   "I have recently had a decision on my second WCA. This time I had a telephone call to ask if there was anything I would like to add to my WCA before the decision was issued", Ms D

   "It states that there are additional telephone calls to advise of the claims process, I received no such calls", Mr R

The face-to-face assessment

8. The face-to-face assessment received a high level of criticism from most respondents. Many of the concerns identified remain consistent with call for evidence responses from previous years.

9. Respondents with mobility problems often find it difficult to access the assessment centre. Some claimants also reported difficulties in arranging a home visit.

   "Was given no access to being assessed in my own home. Told I had to attend the assessment centre or lose my benefit. Told the parking was right outside there door. It was 150–200 yards and I was in terrific pain by the time I got to the door. Then I had to stand and continuously push the buzzer before I was given access. I was in tears with pain and nearly on the floor", Ms B

10. Respondents' reported experiences with healthcare professionals remain worrying, particularly given the introduction of the Atos customer charter. Claims of rude and unwelcoming healthcare professionals, often more focussed on the computer screen than the individual, remain frequent. This can mean that claimants feel unable to explain fully how their condition affects them.

    "Each time I tried to explain fully my conditions and how they affected my every day life he would interrupt and go on to the next question", Ms T

11. There appears to be an increase in individuals who having submitted further documentary evidence from their GP or chosen healthcare adviser feel this is ignored or overlooked at the face-to-face assessment, and in the WCA process more generally.

"Very difficult process when you have letters from GP, Psychologist, Neurologist etc. informing DWP that they consider you unfit to work, but as these professionals have a limited knowledge of [the] system these letters were not considered useful as the terminology they used did not cover the descriptors used", Ms B

"This latest time I was denied in spite of medical evidence that was sent, and in the dismissing letter the Decision Maker even stated that they were not sure what evidence my GP (of over a decade) had for the claims in their letter explaining my condition, and instead defaulted to the 43-minute assessment by a nurse!", Mr N

12. This is a complex area: it is difficult to say what type of evidence is being submitted and if and how this relates to condition or function; there is still a strong misconception about the assessment being based on clinical diagnosis and the independent role of Atos continues to be impugned; and GP bodies have told the Review that it is not for them to play a central role in their patient's benefit claims as this could affect their advocacy role. The provision of further documentary evidence is discussed in detail in Chapter 2.

13. Finally, when claimants receive a copy of the final report produced by the Atos healthcare professional they continue to report that this does not reflect their experience of the face-to-face assessment. Incorrect details are input or important points omitted, and assumptions are made about a claimant's condition. People with complex health conditions often feel that the healthcare professional does not have the necessary skills or training to complete the assessment. Claimants believe that universal audio recording of assessments would help rectify this.

"He had omitted facts and trivialized my health conditions so much so that I lodged a complaint to Atos about said doctor as his report could not give the DWP Decision Maker a true picture of my health and capability to perform everyday tasks", Mr M

"Recording equipment needs to be available for every face to face assessment, in order to prevent errors from occurring, especially as Decision Makers use the resultant medical reports as statements of fact and will often make a decision using just the medical report and the ESA50 questionnaire", Ms R

The decision making process

14. Improvements in the process at an individual level appear most evident in decision making. There does, however, remain further work to do here.

15. Individuals continue to report that decisions are not explained fully and are often not aware of what options were available to them if they are placed in the Work Related Activity Group or found fit for work.

    "[Need] to have the groups such as Work Related [Activity] or Support Groups explained to the people i.e. how much money this will give, what support is given, are sick notes needed, will I need to attend appointments and is so how often. I feel if this was explained completely it would reduce a lot of stress for the people claiming", Ms H

16. There does, however, seem to have been an improvement in the receptiveness of Decision Makers to reconsider an initial decision, either following the phone call to claimants or following the submission of supporting evidence.

17. Some respondents would like decisions to be made on the advice of a GP or chosen healthcare adviser but both the face-to-face assessment and the decision making process add a valuable level of independence to the assessment.

18. A large number of respondents also referred to the frequency at which people are being called for repeat assessments after a decision has been made or an appeal has been heard. This is seen to have a negative impact on people's health, particularly mental health.

    "It increases stress having to continuously attend the assessments, and beyond understanding how one can be awarded zero points at assessment, but win on appeal, have to attend assessment again within twelve weeks, health unchanged in this time, but be again awarded zero points, having to go through the whole appeals procedure again...it is exhausting, unendurable and leaves me feeling hopeless", Ms P

19. The Review understands that DWP is aware of these concerns, and is pleased to see that positive action is being taken. Future Independent Reviews may wish to explore what impact this is having.

Responses from organisations

20. Responses from organisations, whilst still being concerned about aspects of the WCA, did recognise some positive improvements as the previous Review's recommendations had been implemented.

21. However, concerns were raised in terms of both the speed and the depth of the changes. As noted elsewhere, the Review shares these concerns and is expectant that the positive progress already seen will be consolidated and built upon in the coming year.

"Although we recognise that there have been improvements in the WCA process, we do not believe that reforms have gone far enough", Centre for Mental Health, Hafal, Mental Health Foundation, Mind, Rethink Mental Illness, the Royal College of Psychiatrists and the Scottish Association for Mental Health

"While we welcome some of the changes that have been implemented as a result of the first two independent reviews, we believe that the WCA remains flawed and requires significant further reform", Disability Benefits Consortium

22. An excellent submission from the Disability Benefits Consortium included analysis of the WCA from two surveys of:

    - 350 welfare rights advisers, asking them about their perception of change to the WCA; and
    - 4,300 disabled people, asking about their experiences of the WCA.

23. These surveys served to emphasise the general conclusions of some positive progress having been made, but that there remains more to do. For example, the welfare rights advisers survey showed that:

    - Over 75 per cent of respondents disagreed (or strongly disagreed) that support from Jobcentre Plus had improved over the last 18 months.
    - Over 80 per cent disagreed that "customers feel better informed about what to expect and what their responsibilities are".
    - Almost 80 per cent disagreed that "customers are more aware of the need to collect evidence from their favoured healthcare professional".
    - Over 85 per cent disagreed that assessors had "been more likely to collect additional evidence at the start of the assessment process".
    - Over 85 per cent disagreed that assessors had "improved the accuracy of their reports on applicants".
    - Over 80 per cent disagreed that assessors had "acted more sensitively towards applicants during assessments".
    - Around 14 per cent of respondents agreeing that Decision Makers were taking a more central role in the process and giving greater weight to medical evidence.
    - Over 55 per cent disagreed that Decision Makers had "taken a more central role in the assessment process".
    - Over 75 per cent disagreed that they had "been more likely to overrule the Atos recommendation".
    - Over 85 per cent of respondents disagreed that "more applicants are getting the right decision (in your view) about their ESA eligibility".

24. And the responses from claimants showed that:

- 60 per cent (compared to 55 per cent in 2010) disagreed that the assessor had asked about all the symptoms/aspects of their impairment or health condition that affect their ability to work.
- 68 per cent (the same percentage as in 2010) stated that the assessor did not take into account how their symptoms/aspects of their impairment or health condition change/fluctuate.
- 31 per cent of respondents (compared with 29 per cent) agreed with the statement 'They took the right amount of time to communicate effectively with me', and the number disagreeing with this statement reduced from 57 per cent in 2010 to 52 per cent in 2012.
- Less than half (48 per cent) of people had seen a copy of the report from their assessment, and of these just 7 per cent felt that the report was the report was an accurate reflection of the answers they gave in their assessment.
- Less than a quarter (24 per cent) of people stated that someone had explained to them why/ how the decision had been reached, and just a third of claimants (33 per cent) stated that someone had explained what the decision meant for them.
- Claimants who went through the WCA after April 2011 were slightly more likely to state that the reasons for the decision (increasing from 22–25 per cent of respondents) and what it meant for them (increasing from 29 per cent to 35 per cent or respondents) had been explained than those who went through an assessment before April 2011.

25. Although the results of both surveys are not as positive as the Review would like to see, it is important to bear in mind the inherent biases in both the question set and the people who responded. This is the second year the survey has been run and it remains a most useful source of evidence for the Review as it provides quantitative data from a large number of respondents. It would be helpful if the Disability Benefits Consortium continued to carry out this work on an annual basis.

Conclusions

26. Having a call for evidence to support the Independent Review is a most useful process, and allows for both individuals and organisations to give their views on the operation of the WCA. Whilst much of the evidence submitted is anecdotal it still gives an important indication of if and how things are changing.

27. Responses to the call for evidence from organisations have recognised that some aspects of the WCA have changed. But they have also highlighted that there remains more to do. The Disability Benefits Consortium survey makes this point strongly and, whilst there are small shifts in attitudes in some areas, the Review agrees that DWP needs to maintain focus and attention to the changes if real progress is to be made.
28. Individual responses are much less positive. Whilst the facts of each response are impossible to verify both the level and ferocity of ongoing criticisms remain worrying.
29. People who have had a neutral or positive experience in their assessment are unlikely to respond to an exercise like this. However, there remain some concerning accounts of individual experiences. There are always likely to be some claims where the processes in place are not administered as they should be, but the frequency and consistency of these reports is worrying.
30. In many (but certainly not all) cases the satisfaction with the process – and reflections on fairness and effectiveness – seem directly linked to the outcome received.
31. There appears to be a communications gap here, particularly around the aims of the assessment. Issues of administrative and procedural justice are still not having an effect: the Review hopes these become more apparent as previous recommendations become fully embedded.

Chapter 7: Complex problems and chaotic lifestyles

Background

1. A section of the year two Review highlighted the potential for people who have particular problems to face difficulties in the Work Capability Assessment (WCA) process.
2. Whilst the WCA rightly focuses on functional capability rather than diagnosis, life circumstance or employability, the Review believes that there are some groups whose circumstances mean they may require extra help in the WCA.
3. Problem drug users were considered in the year two Review. This year the Review's attention has also been drawn to homeless people and to victims of miscarriages of justice.

Problem drug users

4. In 2011 the UK Drug Policy Commission put the case to the Review that some problem drug users have problems over and above claimants with other mental health conditions. They argued that problem drugs users could need additional help and support as their condition could lead to stigmatisation and often require more intensive rehabilitation.
5. The year two Review recommended that the UK Drug Policy Commission work with Department for Work and Pensions (DWP) Operations and Atos Healthcare to improve and enhance the guidance and training available to Decision Makers and healthcare professionals. The Government accepted this recommendation in principle.
6. Whilst the UK Drug Policy Commission have been consulted over the Atos guidance for problem drug users, their response to the call for evidence suggested they continue to 'have serious concerns about the quality of training given to assessors' and that 'as a sector [they] would welcome more input into [DWP] processes'.
7. This response suggests that, whilst some action has been taken, the year two recommendation has not been followed through to effective action and positive change.

   Based on the evidence presented, I recommend that:

   DWP Operations and Atos Healthcare should take further steps to engage effectively and meaningfully with the UK Drug Policy Commission and other related groups concerned with the needs

and difficulties of problem drug users to improve the WCA processes for them.

Homelessness

8. A number of groups representing homeless people approached the Review outlining their concerns about the operation of the WCA for this group of people. These included:
    - That homeless people often have significant and complex physical and mental health issues, which can be caused by and/or exacerbated by being homeless;
    - That the 'summing' nature of the points in the WCA does not adequately reflect the multiplier effect of different health conditions;
    - That homelessness should be specifically included as part of the assessment criteria; and
    - That multiple issues, including low confidence and self esteem, low levels of skills and education, lack of work experience and chaotic lifestyles, can affect the employability of homeless people in the labour market.
9. Whilst the Review recognises the difficulties faced by homeless people, as noted above the fundamental principle of the WCA remains right: that it is based on functional capability, rather than diagnosis, lifestyle circumstances or employability.
10. There is therefore no justification for treating homelessness as a 'special case' within the WCA. This appears instead to be an issue of the guidance available to Atos healthcare professionals and DWP Decision Makers to enable them to consider all relevant factors as they carry out their part of the process.
11. The Review approached Atos about developing specific guidance on homelessness, and to do this in conjunction with the representative groups. They agreed to this: the module will be developed in the first quarter of 2013 and be delivered in the second quarter.

Victims of miscarriages of justice

12. In March 2012 Dame Ruth Runciman approached the Review over a group of individuals who she believed required special consideration within the WCA.

13. Each year 15–20 people are released from prison having had their conviction overturned by the Court of Appeal. Unsurprisingly given their experiences, they can display a staggering range of psychiatric disorders: not only may they display enduring personality changes, but they also often have post traumatic stress disorder, or depression or misuse of drugs, or a combination of these. Released from prison they are often estranged from family, friends and society in general. The Review was in no doubt that these people did indeed deserve specific treatment given their previous mistreatment by the State.
14. In May 2012 the Independent Reviewer wrote to the Minister for Employment outlining his views on this specific group of individuals. This letter, which contains further information on these cases and a potential way for handling them, can be found at Annex 2.
15. In short, the proposal was that details of each case, as they arose, should be sent to a designated individual in DWP who would then assign an experienced Decision Maker in the relevant District to manage their claim.
16. The Minister accepted the recommendation, and specific plans to handle these cases are at an advanced stage. Indeed, DWP Operations are now ready to trial the scheme with the next individual subject to a miscarriage of justice.

Chapter 8: Northern Ireland Independent Review

1. Based on the parity principle, Great Britain and Northern Ireland administer the same range of benefits, paid at the same rate and subject to the same conditions. Social security benefits in Northern Ireland are administered by the Social Security Agency (SSA), an executive agency of the Department for Social Development (DSD).
2. Northern Ireland legislation places a duty to Independently Review the WCA in Northern Ireland. As in previous years, Professor Harrington agreed to lead the Independent Review process in Northern Ireland.

Implementation of the year one and year two recommendations

3. The year one and two Reviews were endorsed by the Northern Ireland Assembly in September 2011 and November 2011 respectively. Since then the Social Security Agency has been actively engaged with DWP colleagues to implement the recommendations.
4. Significant progress has been made, with all year one recommendations relevant to the Social Security Agency implemented and 20 of the 23 year two recommendations also now implemented. The changes made include:
    - The introduction of the Pre-Disallowance Decision telephone calls, to improve transparency of the decision making process;
    - Improvements to forms, including amending the ESA50 to include a personalised justification statement;
    - The introduction of Mental Function Champions to provide advice to healthcare professionals when dealing with claimants with mental, intellectual and cognitive illnesses
    - Plain-English personalised summary statements in every healthcare professional report to improve claimant's understanding of the face-to-face assessment; and
    - Improving training and guidance for Atos healthcare professionals and SSA Decision Makers.

5. The previous two Reviews placed an emphasis on putting Decision Makers at the heart of the whole process and empowering them to make independent decisions. The year two Review acknowledged the high quality of decision making in Northern Ireland, and a recent survey confirms that the majority of Decision Makers in Northern Ireland believe that they are at the heart of the process and feel empowered to make independent decisions based on all the evidence before them.
6. Similar to findings in Great Britain, some Decision Makers are uncomfortable making the new pre-disallowance calls, especially when the claimant disagrees with or does not understand the decision that has been reached. This was more prevalent amongst less experienced staff. However, evidence to date suggests that the calls are helpful for both Decision Makers and claimants and this will be further evaluated as part of the ongoing Northern Ireland ESA Research survey.
7. Northern Ireland has consistently performed strongly in achieving a low fail to return rate for medical questionnaires (the ESA50 form), with an average of 13% of claimants not returning the form. This can, in the main, be attributed to staff's commitment and the SSA's continued engagement to raise awareness amongst claimants and the Advice, Voluntary and Community Sector of the importance of engaging in the process and returning the questionnaire.
8. A Health Assessment Adviser was appointed by the Department for Social Development in August 2011 with responsibility for ensuring the quality of services provided by Atos. This includes their audit processes, the standard of training and training materials provided to healthcare professionals, quality assurance of medical guidance and the approval of all appointed healthcare professionals.
9. Over the past year a Quality Assurance Framework, incorporating a formal quarterly audit process, has been developed. A number of audits have now been completed, including an external audit validation process, and to date no major issues have been identified with the Atos processes, training or procedures in Northern Ireland.
10. The appeals process remains an area of concern for the Review. It is the aim of the benefit assessment process to get the decision 'right first time'. Throughout the WCA process there are a number of opportunities for the claimant to provide all relevant evidence to assist the Decision Maker in making their decision. Despite this, 35 per cent of appeals in Northern Ireland were upheld in the claimant's favour. However, this was mainly due to additional evidence being presented at the appeal hearing which may have been oral and/or ocular evidence considered by the appeal panel or further written medical evidence provided by the appellant or witness.

11. Whilst judges in Great Britain have started to provide limited feedback on the reasons why they upheld an appeal, these arrangements are not yet in place in Northern Ireland.

Research into what happens to people placed in different Employment and Support Allowance groups, and what influences these outcomes

12. The year two Review recommended that research be undertaken to examine in more detail what happens to people found Fit for Work and those placed in the Work Related Activity Group and Support Groups.

13. This research has commenced in Northern Ireland with the outputs anticipated early 2013. Research already conducted by DWP will provide a useful benchmark for the Northern Ireland research findings.

Descriptors

14. Respondents to the call for evidence in Northern Ireland were critical of the suitability of the descriptors used in the assessment, particularly for claimants suffering from mental health conditions and from cancer.

15. In early 2013 DSD, in conjunction with DWP, will conduct an evidence-based review to assess whether proposals to improve the mental, intellectual and cognitive descriptors and the fluctuating conditions descriptors would lead to any improvements in the assessment process.

16. Following a consultation into the effects of cancer treatment conducted in February 2012, work is now underway to improve and simplify access to ESA for cancer sufferers with changes to cancer treatment provisions currently planned in early 2013.

Training

17. In line with developments in DWP, training has been updated for Atos healthcare professionals and regular audits of medical assessments, training and the quality of the personalised summary statements are conducted by the SSA's qualified Health Assessment Adviser.

18. In a recent survey of Northern Ireland Decision Makers 81.5 per cent of respondents were confident or very confident in their decision making. The survey also emphasised the improvements made following the implementation of the year one Review's recommendations with 62 per cent of respondents considering that the information contained in the personalised justification statement (ESA50) as useful when making their decision. A majority (80 per cent) of Decision Makers also confirmed that they now found it easier to complete the Decision Makers Justification.

19. These figures are encouraging and support the Review's view that improvements are being made.

Call for evidence

20. Over 250 responses were received to Northern Ireland's call for evidence. The key themes in these responses were that:

    - The face to face assessment can still be impersonal and mechanistic;
    - Mental health conditions and people with cancer are often not adequately catered for in the assessment, and as a result the descriptors need improving;
    - If supplied, medical evidence is 'ignored'; and
    - Claimants felt pre-judged and that the system was set up to remove them from the benefit.

21. All Northern Ireland responses were shared with the Great Britain Review for its consideration.

Miscarriages of justice

22. Work continues in DWP to put arrangements in place for a designated Departmental contact to help manage the claims of persons released from prison due to a miscarriage of justice. Although these cases are a relatively rare occurrence in Northern Ireland discussions have commenced with the Department of Justice and prison support groups to put similar arrangements in place in Northern Ireland.

Conclusions

23. While unable to visit Northern Ireland during this Review, there was a frequent dialogue with Departmental officials throughout the process to gather relevant information and co-ordinate implementation of the recommendations in Northern Ireland.

24. It is evident that DSD has embraced the previous Review's findings and been proactive in implementing the recommendations to improve the so called 'claimant journey' for the people of Northern Ireland.

Conclusion

1. The third and final Review by this Independent Reviewer confirms that the Work Capability Assessment (WCA) remains a valid concept for assessing benefit claimants' eligibility for Employment and Support Allowance (ESA).
2. Whilst the WCA continues to garner considerable – and sometimes, but not always, justifiable – criticism the Independent Reviewer has not seen or heard any compelling arguments or evidence that the whole system should be scrapped. Instead it needs to be made fairer and more effective by improving both the process and the technical descriptors used to assess eligibility.
3. This Review concentrates on the need to complete the reforms already started but which are incomplete in their scope and depth. No major new reforms are proposed.
4. The process whereby claimants are assessed in a fairer, more transparent and effective way has started although more needs to be done to ensure that all claimants receive this new, improved process. Implementation is happening, but the impact is not yet being felt nationwide.
5. DWP Operations have made significant progress in changing the system for the better even if the whole process of change has been slower than was originally envisaged in the year one and year two Reviews.
6. Work on the new descriptors for cancer treatment claimants is nearly complete; and a formal review of mental, intellectual and cognitive descriptors and the fluctuating conditions descriptors will be finished in 2013.
7. It is essential that all relevant medical and allied evidence about the claimant is available to the DWP Decision Maker at the earliest possible stage in the assessment process. If this can be achieved then Tribunals will be based on Judges and Medical Members considering the same body of evidence as the Decision Maker did.
8. Significant further work also remains to increase the transparency of the assessment. Changes already implemented to ensure conclusions reached at the face-to-face assessment and in the decision making process are justified are helpful. However, most importantly, ensuring quality feedback from First-tier Tribunal Judges so both claimant and Decision Maker understand why the initial decision has been changed needs to be urgently addressed.

9. This can all be achieved in the final two years of the Independent Review process so long as all parties involved in the assessment persevere with the proposed reforms. Whilst the job is not yet finished its importance remains undiminished.

10. Future Independent Reviewers may have different views, but the main issues on which this Independent Reviewer believes the forthcoming year four and five Reviews need to focus attention are:

    - Continuing to improve communications, both between claimants and DWP and within DWP, following national implementation of recommendations or the evaluation of pilot activities;
    - Driving forward implementation of the previous Review's recommendations, ensuring that momentum is not lost and that robust data on the results and impact of the implementation are captured;
    - Overseeing the continued work to consider changes to the descriptors, and assessing the impact of any changes which are made;
    - Focusing on the quality of the training offered to professionals throughout the WCA process;
    - Ensuring robust processes are in place for DWP, Atos and representative groups and their clinical advisers to work together to improve existing and develop new guidance and training materials used in the WCA; and
    - Improving feedback mechanisms throughout the whole WCA process, but most importantly those between First-tier Tribunal Judges and DWP Decision Makers.

Annex 1: List of recommendations

Implementation of the year one and year two recommendations	
1	Decision Makers should actively consider the need to seek further documentary evidence in every claimant's case. The final decision must be justified where this is not sought
2	In order to build on the progress already made DWP Operations need to find an appropriate balance between better quality decisions that are carefully considered and 'right first time' and the achievement of appropriate benchmarks at a local level, otherwise there is a real risk of derailing the positive progress made to date
3	DWP should continue to work with the First-tier Tribunal Service, encouraging them to, where appropriate, ensure robust and helpful feedback about reasons for decisions overturned by the First-tier Tribunal
4	DWP must take the initiative and highlight the improvements that have been made where they exist, as well as being open about where problems remain and their plans to address these
Training	
5	The year four and five Reviews should further explore the quality of the outcomes rather than simply on the quantity of the training offered
Complex problems and chaotic lifestyles	
6	DWP Operations and Atos Healthcare should take further steps to engage effectively and meaningfully with the UK Drug Policy Commission and other related groups concerned with the needs and difficulties of problem drug users to improve the WCA processes for them
Annex 2 – recommendations made during the course of the year	
1	Timely feedback on reasons for upheld appeals
2	Decision Maker's Reasoning and appeals
3	Miscarriages of justice

Annex 2: Recommendations to Minister for Employment during the course of the year

Recommendation 1 – timely feedback on reasons for upheld appeals

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Rt. Hon. Chris Grayling MP
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22 February 2012

Dear Chris,

INDEPENDENT REVIEW OF THE WCA – ADDITIONAL RECOMMENDATION

As you are aware, better communication between Tribunals and Decision Makers – particularly feedback from Tribunals about reasons for upheld appeals – was the one area in which I failed to make progress in my second independent review of the Work Capability Assessment.

Shortly before Christmas I spoke at a meeting of the Upper-tier Tribunal Judges and I believe that the discussion which followed my presentation has provided a solution to this problem. The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 allow the Secretary of State the power to seek a written statement of reasons for overturn of a

decision. This may provide the necessary route to achieve the feedback Decision Makers tell me they require.

Whilst this facility already exists in legislation, I would like to make a first recommendation for year three that:

In order to improve the quality of decision making the Secretary of State for Work and Pensions asks the Tribunal Service for timely feedback on reasons for upheld appeals.

The 'right first time' principle of decision making will be key to improving the efficiency of the WCA. This recommendation is not intended to make Judges justify their decisions, but is rather to help improve the quality of decision making and reduce re-work in DWP Operations.

I appreciate there are several ways in which this could be achieved:

- Decision Makers (acting for the Secretary of State) could ask for the reasons why their decision has been overturned in all cases, or could limit their requests to occasions where they believe the original decision was sound. The first option would enable DWP to gather statistical evidence on the reasons for upheld appeals (and subsequently improve their own performance, for example through the reconsideration process) but may prove burdensome in an administrative sense for both DWP and the Tribunals Service. The second option, whilst limiting the potential for organisation level improvements, would greatly benefit individual Decision Maker performance and development.
- Information could be supplied by the Tribunal Service in several different ways. I believe the simplest solution would be to use a tick-box such as the one outlined in my second review. This would have the advantage of ensuring consistency in feedback. However, some Judges have told me they would be willing to provide a short (say 100 words) justification for their decision to uphold an appeal. This would be significantly more helpful on an individual level to Decision Makers.

Piloting or trialling this approach may be helpful in the first instance. This would enable both DWP and the Tribunal Service to explore further any practical and operational problems with the proposal.

I am acutely aware of the resource restrictions the Department is facing at present, but an ideal option may be for several pilots to test some the various options outlined above. These trials could focus on and determine the most time and cost efficient approach to gaining this essential information.

The addition of 'timely' in the recommendation is an important point. It is vital that if things are to improve Decision Makers should be provided with advice from the Tribunals Service soon after the appeal has been heard. This may strengthen the argument for using the summary one-liners outlined in my second review as this approach will take far less time for Judges to complete.

I realise that making recommendations so soon after the publication of a review is unusual. However, given the importance of this issue I hope you will give this recommendation due consideration.

If the Department accepts this recommendation I will also discuss it the First-tier Tribunals President. Whilst there may be some short-term difficulties for them with this approach, I believe that in the medium-term improving Decision Maker performance will increase the number of right first time decisions and reduce the overall number of appeals: this will in turn ease the burdens currently placed on the Tribunals Service.

Best wishes,

Professor Malcolm Harrington CBE

Recommendation 2 – Decision Maker's Reasoning and Appeals

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10 May 2012

Dear Chris,

INDEPENDENT REVIEW OF THE WCA – IB REASSESSMENT APPEALS

At our meeting on 18 April we discussed your commission for me to look in detail at IB reassessment appeals, and the reasons for the apparent lack of a decrease in the proportion of upheld decisions despite the considerable work done by DWP to implement my recommendations. As I said at that meeting, I would not feel confident drawing firm conclusions, and making recommendations based on those, from the evidence I have been able to gather so far. My team is continuing to gather that information for me and I will update you on progress with this work in due course.

We did, however, also discuss more immediate ways in which I believe the appeals process could be streamlined and improved.

DWP Decision Makers are now producing a Decision Maker's reasoning for every decision taken. This is then being modified as necessary following reconsideration. If the Department is confident in both the quality of decisions made and the quality of the reasonings, it makes sense to me to use these as the basis of any submission to the Tribunals Service against a claimant's appeal. The DM reasoning will explain and justify the decision made, making it clear that all necessary points of law have been taken into consideration.

Therefore, rather than an Appeals Officer re-writing the Reasoning valuable time and resources could be saved by adding necessary information to it and then submitting it. The DMs reasoning is then the backbone of the Department's case for that claim, any reconsideration, and any appeal.

As you know, feedback from Tribunal decisions about reasons for upheld appeals is still the vital piece of missing information for me, and I have already made a recommendation about this to you. By using the DM reasoning as the basis of the Department's submission to a Tribunal, it would then be entirely reasonable to expect feedback from the Tribunal Judge on why they considered the decision the DM had reached as set out in the DM reasoning was incorrect. The DM could then learn from this essential feedback which in turn would have a positive impact on improving the quality of decisions made and reducing the proportion of appeals being upheld. It might also have an effect on the Judges by making them more circumspect about overturning the DMs stance.

Best wishes,

Professor Malcolm Harrington CBE

Recommendation 3 – miscarriages of justice

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31 May 2012

Dear Chris,

INDEPENDENT REVIEW OF THE WCA – MISCARRIAGES OF JUSTICE

During my time as Independent Review Lead for the WCA, I have been approached by a number of organisations and support groups proposing that the individuals they represent deserve special treatment by the DWP. Until now, in line with the policy intent of the WCA, I have been of the opinion that all could be accommodated within the (now improved) system.

However, Dame Ruth Runciman, on behalf of the Advisory Board of the Miscarriages of Justice Support Service (MJSS) has brought a group to my attention who, I believe, do deserve special attention: these are the 20 or so people who, each year, are victims of a miscarriage of justice when the Court of Appeal overturn their convictions, usually after referral from the Criminal Cases Review Commission. As you will be aware, the MJSS is a specialist service with a national remit that operates from the Royal Courts of Justice Citizens Advice Bureau (RCJ CAB) with funding from the Ministry of Justice.

I do not believe that this very small group should be exempt from the WCA process or have automatic entitlement to placement in one of the groups. But I do believe that they need careful and sympathetic handling as they go through the system.

Case studies reveal that, on their release these prisoners often have serious psychiatric health problems and – not surprisingly – a deep sense of injustice. After long periods of imprisonment, a number also exhibit Post Traumatic Stress Disorder. They need careful management as they go through the WCA, particularly as these conditions have been brought on or exacerbated by errors the State has made.

I propose that the MJSS of the RCJ CAB identify these cases as they arise and that a designated DWP official is in place to receive notification of each case. The DWP official then oversees the WCA process by ensuring that in the area of the country where the ex-prisoner resides, an experienced Decision Maker takes the case and identifies an Atos healthcare professional (who is an expert in mental health) to undertake the face-to-face assessment.

I realise that this next section is, perhaps, beyond my remit, but I already have identified an individual in the MJSS RCJ CAB who would start the process and act as the point of liaison with DWP. Senior DWP officials tell me that they could identify someone in Caxton House who would take on the cases.

I believe we, society, owe this small number of ex-prisoners a fair and smooth passage through the WCA process. Following their traumatic experience of the judicial process the WCA process needs to do everything it can to ensure the types of distributive and procedural justice which my first review talked about are in evidence. If adopted, this approach will ensure that these people will go through the WCA as everyone else will, but with that extra element of care that, in my view, they deserve.

Best wishes,

Professor Malcolm Harrington CBE

Annex 3: What happens to people placed in different Employment and Support Allowance (ESA) groups, and what influences these outcomes[15],[16]

Key points

1. The employment outcomes by ESA group are in the table below:

ESA outcome category	Percentage in work 12–18 months after claim
All ESA claims	25%
Fit for Work	25%
Work Related Activity Group	9%
Support Group	10%
Claim closed or withdrawn	39%
Claim in progress	22%

Adapted from Barnes *et al.* (2011), Routes on to ESA. DWP Research Report Series No 774.

2. Around half of new claimants for Jobseeker's Allowance leave the jobseeker's register within three months, and three quarters within six months. The majority of these return to work[17].
3. The key factors associated with work entry/return for ESA claimants were:
    - Being in employment prior to the ESA claim; and
    - Being found Fit for Work or either closing or withdrawing the ESA claim.

[15] Adapted from Barnes *et al.* (2011), *Routes on to ESA*. DWP Research Report Series No 774.
[16] The employment outcomes referred to in this briefing relate to employment status reported 12–18 months after claiming ESA, unless otherwise stated.
[17] www.nomisweb.co.uk, quoted in Black and Frost (2011), 'Health at work – independent review of sickness absence'.

4. Being in work prior to making an ESA claim appears to make little difference to the claim outcome, with 22 per cent of people making a claim from work and 21 per cent not in employment prior to making a claim being awarded the benefit.
5. However, of those claimants who were found eligible for ESA, 26 per cent who were in work before claiming had entered jobs 12–18 months after the start of their claim; compared to 9 per cent of people who were not in work prior to claiming.
6. Job entry rates were generally higher for people in the Fit for Work or claim closed or withdrawn groups, but there were differences between claimants who had been in employment before claiming (48 per cent returned to work) and those who had not (21 per cent returned to work).
7. Among claimants who had been in work immediately before claiming ESA increased likelihood of retuning to work was associated with:
    - Early recovery from health condition(s);
    - Believing that work improves health; and
    - Having qualifications.

Employment outcomes by claim trajectory and pre-claim employment status

Figure 1: Employment outcomes of ESA claimants allocated to WRAG or Support Group

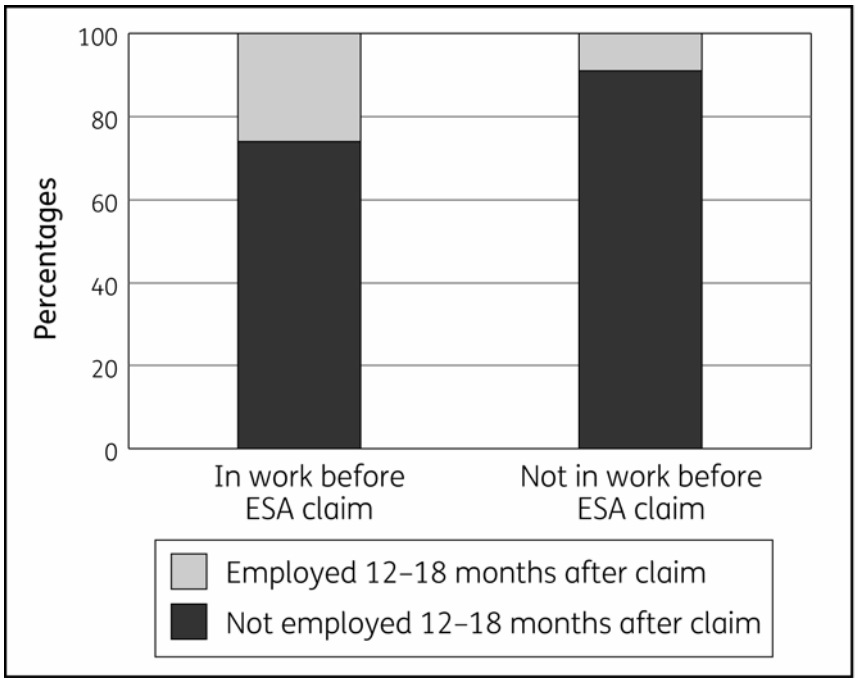
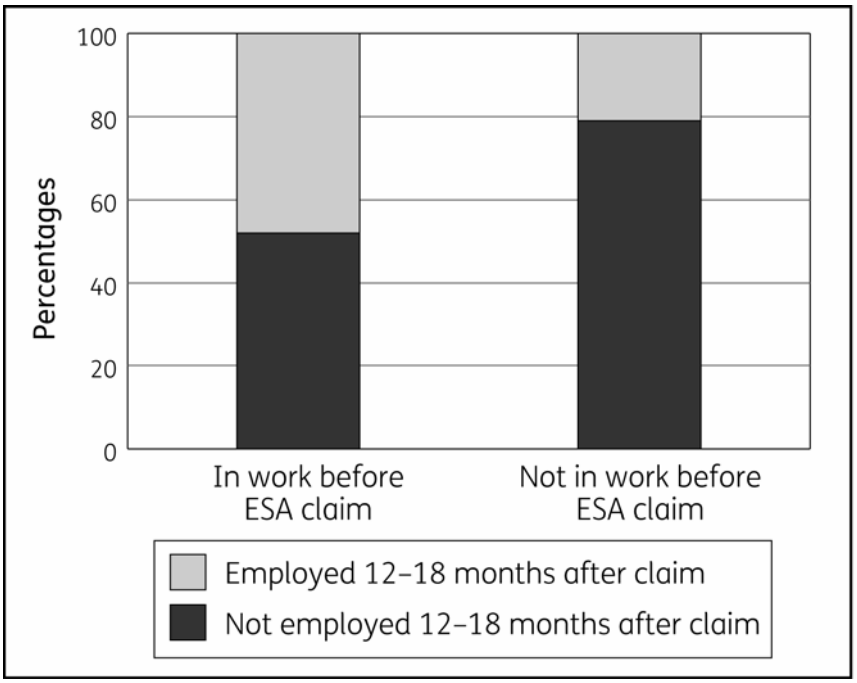


Figure 2: Employment outcomes of ESA claimants not awarded ESA (Found Fit for Work, or claim closed/withdrawn)



8. Forty per cent of people who were in work prior to their ESA claim had worked at some point in the 12–18 months since their initial claim, with just over half of these (51 per cent) returning to the same job[18].

9. Only 18 per cent of people who were not in work prior to their claim had worked at some point in the same period[19].

[18] Includes people who had returned to the same job either at the baseline or follow-up survey or in-between, whether or not they were still in that post.
[19] Counts those who were in work and working at the baseline survey (about 6–8 months after ESA claim) or the follow-up (about 12–18 months after ESA claim) survey as well as those who had done some work in-between.

Annex 4: Acknowledgements

1. Throughout my time as Independent Reviewer the Department for Work and Pensions (DWP) have been open to my recommendations to improve the Work Capability Assessment (WCA). This third year has proved no different.
2. Staff at all levels of DWP have embraced the recommendations to ensure positive change, even if this job is not yet complete. I would like to thank the organisation as a whole for this. I have not previously named DWP officials, but I would like to thank Karen Foulds and Sharon Hepworth for proving to be so enthusiastic in effecting change. Also, Cath Hamp and Mark Royston who have made the feedback from the First-tier Tribunals a reality.
3. My Scrutiny Group of Dr Olivia Carlton, Simon Gillespie and Neil Lennox were again superbly led by Professor David Haslam. They have remained a source of immense help and support throughout this years work. I am indebted to them and the resolve they have provided.
4. Many of the major charities have, once again, been actively engaged in the Review's work this year. The largely constructive way in which they have done this is to be commended given the sensitivities of balancing the concerns of the people they represent against the desire to see a fairer and more effective assessment. In particular, I am most grateful to Jane Alltimes, Hayley Jordan, Tom Pollard, Beth Reid, and Charles Shepherd.
5. I also would like to thank the organisations and individuals (over 1,000 in total including Northern Ireland) who responded to the call for evidence, or with whom I have had chance to discuss the WCA . The views and experiences of individuals have been particularly enlightening about some of the problems they have faced.
6. For their individual contributions, I would particularly like to thank:

   Jerry Ashworth; Professor Stephen Bevan; Professor Dame Carol Black; Dr Laura Crawford; Cathy Duff (Northern Ireland Social Security Agency); Lord Michael German; Shelia Gilmore MP; the Rt Hon Chris Grayling MP; Tom Greatrex MP; Lord Archy Kirkwood; The Countess of Mar; Professor Rob Moots; Dame Ruth Runciman; Professor Tom Sensky; Nicola Singleton; Professor Stephen Stansfeld; Baroness Celia Thomas of Winchester ; and the Rt Hon Stephen Timms MP.

7. Lastly, and most importantly, I could not have undertaken this task without the enormous support, guidance and indeed friendship I have received for my Team. Mark Wilson has been a rock of good sense, good humour and excellent drafting skills. Philip Cooper has developed into an exceptionally able member of my team. I owe much to them both and I wish them all the success that they clearly deserve in the future.

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COMMENT: Long-awaited peer reviews suggest ministers failed to act after deaths of ‘vulnerable’ claimants

BY JOHN PRING ON MAY 14, 2016 BENEFITS AND POVERTY

Listen

After 21 months of smokescreens, excuses, obstruction and secrecy, work and pensions ministers have finally been forced to publish some of the conclusions reached by their own civil servants about the mistakes that led to 49 benefit claimants losing their lives.

Predictably, when the department finally posted 49 heavily-redacted documents online – and also emailed them to Disability News Service (DNS) – much of the most damning information was missing.

But ignore the acres of white space and the irritating redactions, and there is much within the previously secret reports that throws light on a very dark period in the inglorious history of the Department for Work and Pensions (DWP).

The documents are “peer reviews”, internal reports written by civil servants after investigations into suicides and other deaths that have been linked to benefit claims.

DNS has been trying to persuade DWP to publish the reviews since submitting a freedom of information request in August 2014. The department initially denied holding any such information but eventually admitted that “where it is appropriate we undertake reviews into individual cases”.

So followed appeals to the department itself, to the information commissioner, and, finally, to the information rights tribunal.

Last month, the tribunal ordered DWP to hand over all of the information from the 49 peer reviews that was not directly related to the people who died, thanks to the efforts of barrister Elizabeth Kelsey, from Monckton Chambers, who acted pro bono for DNS and pretty much destroyed DWP’s legal arguments at a tribunal hearing in March.

And what do those documents tell us?

As expected, most of the un-redacted information relates to the recommendations for improvements – both at local and national level – made by the reviews’ authors, while information about the individual claimants, summaries, conclusions and background information and dates has almost all been redacted.

I believe the most important conclusion from all these recommendations is this: that it is clear that ministers were repeatedly warned by their own civil servants that their policies to assess people for out-of-work disability benefits were putting the lives of “vulnerable” claimants at risk.

This is because many of the peer reviews – in fact, nearly all of those where it is possible to tell which benefits were involved – were commissioned following deaths linked to the work capability assessment (WCA), which tests eligibility for employment and support allowance (ESA).

And many of those related to the WCA process were also linked to the huge reassessment programme of hundreds of thousands of long-term claimants of incapacity benefit (IB).

This, remember, was a reassessment programme launched ahead of schedule by work and pensions secretary Iain Duncan Smith and employment minister Chris Grayling in 2011, even though they had been warned by their own independent advisor the previous year that it was too soon to roll it out because of flaws within the WCA system.

So what do the peer reviews say?

On at least four occasions, the author calls for DWP to review the way vulnerability is dealt with by the department.

In one of these reports, the author concludes that the IB reassessment process is too far along for the government to review its "ongoing responsibility" to identify and support those IB claimants who are being reassessed and who "may be vulnerable".

In another, the author says: "The risk associated with disregarding the possibility that some of these claimants need more support or a different form of engagement is that we fail to recognise more cases like [REDACTED], with consequent potential impact on the claimant.

"There is clearly a resource implication in treating more claimants with [REDACTED] as potentially vulnerable.

"However, that should be balanced against the resource implications of repeated appeals."

In all, I counted at least 13 peer reviews in which the author explicitly raises concerns in her recommendations about the way that vulnerable claimants – this is likely to be mostly people with mental health conditions or learning difficulties – are treated.

"Consideration is given to a re-launch to staff of the importance of identifying vulnerable claimants and taking their needs into account…" says one.

"Processes in both have been revised to ensure it does not happen again, to make sure we provide adequate support for vulnerable customers," says another.

A third author recommends: "In such cases DMs [decision-makers] are encouraged to retrieve all historical case files before making a decision so that the medical history and all supporting evidence can be perused to minimise the risk of withdrawing the benefit inappropriately and placing a vulnerable claimant at risk."

Another says: "Vulnerable customer guidance to clearly highlight the actions required to mark a claim as vulnerable."

And another warns: "Vulnerable customers, in particular customers experiencing mental ill health, may not understand the need to contact different parts of DWP for different benefits."

And here’s another: “… special care should be taken when handling claimants who have received IB/IS [income support]due to incapacity for a long time and have been identified as vulnerable.”

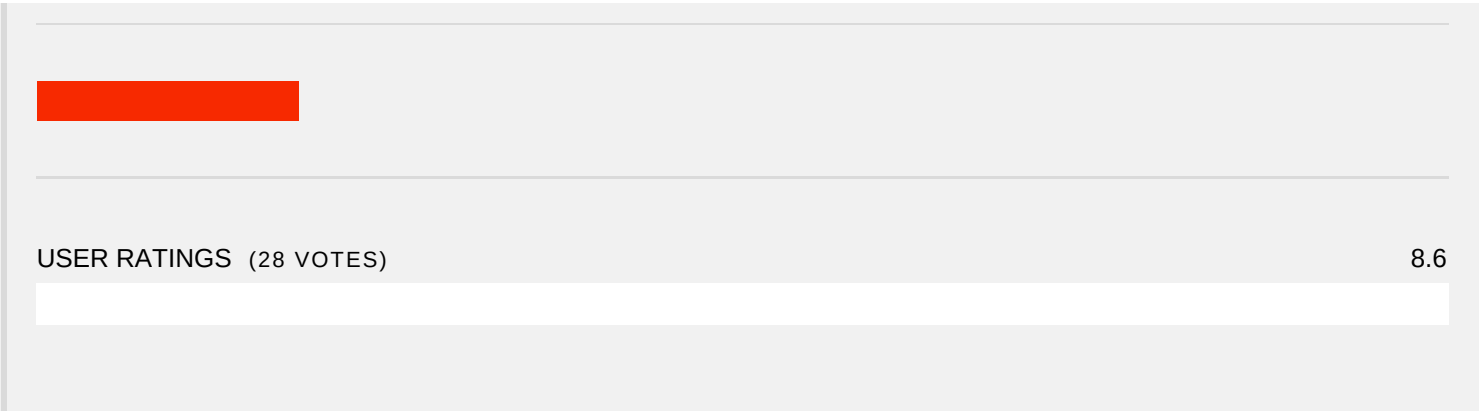
And another: “That the guidance for handling vulnerable customers is reviewed and that staff are reminded of the correct process.”

It cannot be a coincidence that so many of these peer reviews call for improvements in how vulnerable claimants are treated.

These peer reviews show that ministers, through their senior civil servants, were warned repeatedly that these processes were risking the lives of benefit claimants, and that action needed to be taken. That review after review makes similar recommendations suggests one thing: that ministers failed to act because it would cost too much money to make the system safe.

Remember, these are not just reports on missing benefits payments, or delays in being assessed; every one of these reports is about a benefit claimant who has lost their life.

The next stage of DNS’s investigation is to find out if ministers made the changes recommended by the peer reviews, or if they simply ignored the lessons from these 49 tragic deaths because of the “resource implication”.



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ABOUT

Disability News Service (DNS) is run by John Pring, an experienced journalist who has been reporting on disability issues for nearly 20 years.

He launched DNS in April 2009 to address the absence of in-depth reporting in both the specialist and mainstream media on issues that affect the lives of disabled people. read more

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