

WCA Independent Review

The Work Capability Assessment

A Call for Evidence

July 2010

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Introduction

The Department for Work and Pensions has commissioned Professor Malcolm Harrington to undertake an independent review of the Work Capability Assessment, as required by section 10 of the Welfare Reform Act 2007. This call for evidence will be one of several methods used to gather information. Evidence submitted will be used to create a final independent report, which will be laid before Parliament.

About this call for evidence

Who this call for evidence is aimed at

This call for evidence is aimed at organisations and individuals who have information that is relevant to how the Work Capability Assessment (WCA) is operating. This includes evaluating how the WCA assesses limited capability for work and limited capability for work-related activity.

Purpose of the consultation

This call for evidence will be used to inform the view of the independent reviewer. The independent reviewer will then make recommendations to the Secretary of State, which will be laid before Parliament in the form of a report. As an independent review, the Secretary of State is not required to enact any or all of the recommendations, and any recommendations may be subject to further assessment by DWP.

Scope for the call for evidence

This consultation applies to England, Wales and Scotland.

Duration of the consultation

The call for evidence period begins on 28 July 2010 and runs until 10 September 2010.

How to respond to this consultation

Please send your responses or queries to:

Post: WCA Independent Review Team, Floor 6, Section B, Caxton House, Tothill Street, London, SW1H 9NA.

Email: wca.evidence@dwp.gsi.gov.uk

Please ensure your response reaches us by **10 September 2010**.

When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled. We will acknowledge your response.

Alternative Formats

This document can be provided in a range of formats, including large print, Braille, audio, BSL video/DVD, and Easy Read on request from:

Post: WCA Independent Review Team, Floor 6, Section B, Caxton House, Tothill Street, London, SW1H 9NA.

Email: wca.evidence@dwp.gsi.gov.uk

We have sent this call for evidence document to a large number of people and organisations who have already been involved in this work or who have expressed an interest. Please do share this document with, or tell us about, anyone you think will want to be involved in this consultation.

How we consult

Freedom of information

The information you send us may need to be passed to colleagues within the Department for Work and Pensions, published in a summary of responses received and referred to in the published consultation report.

All information contained in your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information provided or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response although we cannot guarantee to do this.

To find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact:

Central Freedom of Information Team
The Adelphi
1-11, John Adam Street
London WC2N 6HT

Freedom-of-information-request@dwp.gsi.gov.uk

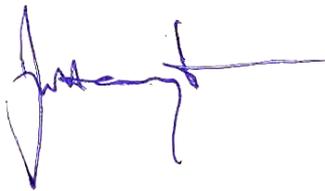
The Central FoI team cannot advise on specific consultation exercises, only on Freedom of Information issues. More information about the Freedom of Information Act can be found at <http://www.dwp.gov.uk/freedom-of-information>

Foreword

I am pleased to have been asked by the Secretary of State to undertake an independent review of the Work Capability Assessment. This is an important part of the Employment and Support Allowance claim process, designed to determine which claimants are capable of undertaking work, or work-related activity.

At the same time, the assessment is required to identify those who need support, either to go back to work, or long term support because of the nature of their condition. We must ensure that the claimants are assessed fairly and effectively, and are provided with support commensurate with their needs. Fairness and effectiveness of these assessments are central to the success of Employment and Support Allowance as a system, just as unconditional support to those who need it most should be central to a decent society.

My aim is to review the current workings of the assessment, and make recommendations on the future development and efficacy of the Work Capability Assessment.



Prof. Malcolm Harrington CBE

1. Context

Working Age Benefits

1. Employment and Support Allowance (ESA) was introduced in October 2008. It replaced three other incapacity benefits¹ - Incapacity Benefit, Income Support by virtue of a disability and Severe Disablement Allowance - for claimants making a new claim for financial support on the grounds of illness or incapacity. ESA is intended for people who have limited capability for work (who are placed in the work related activity group), and those who are unable to work (who are placed in the support group).
2. The Work Capability Assessment (WCA) determines whether the claimant falls into one of these groups, or is fit for work. Those who are found to be fit for work may be eligible for Jobseeker's Allowance, which is the benefit paid to those who are actively seeking work.
3. The WCA was introduced as part of the ESA claim process in October 2008 and replaced the Personal Capability Assessment that is used to assess people claiming incapacity benefits. It is intended as a functional health assessment rather than as a diagnostic medical assessment, which will already have taken place through the claimant's GP or specialist.
4. The Government intends to reassess everyone on incapacity benefits to see if they are ready and fit for work between October 2010 and March 2014.

Employment and Support Allowance

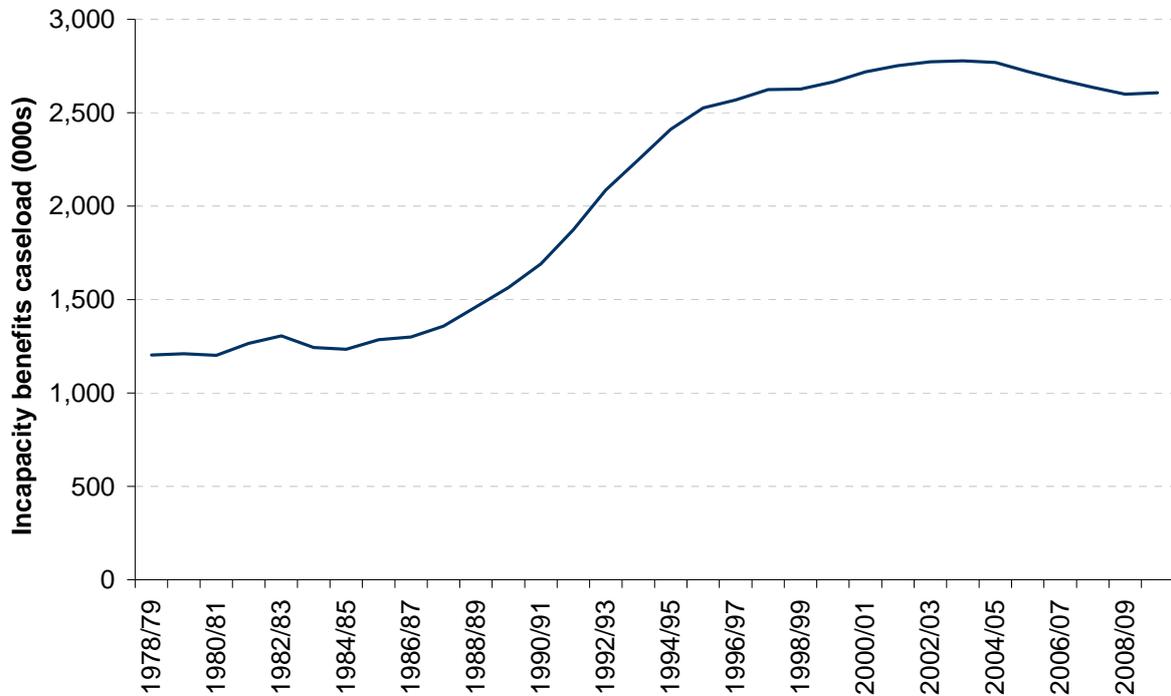
5. In November 2009, the last period for which statistics are available, there were some 2.6 million people of working age on incapacity benefits in Great Britain. This was made up of 2.2 million on Incapacity Benefit, Income Support by virtue of a disability or Severe Disablement Allowance and just over 425,000 on ESA.²
6. Figure 1 shows the trend in the numbers of recipients of incapacity benefits over time. The numbers began to rise in the early 1980s, and rose rapidly up until the late 1990s. There was a small decrease in the numbers of incapacity benefits

¹ In the text, the term "incapacity benefits" is used to refer to the four benefits: ESA, Incapacity Benefit, Income Support by virtue of a disability and Severe Disablement Allowance.

² Numbers do not sum due to rounding.

claimants from 2003 to 2008, but there has been a further small increase since the start of the recent recession.

Figure 1 - Incapacity benefits caseload over time



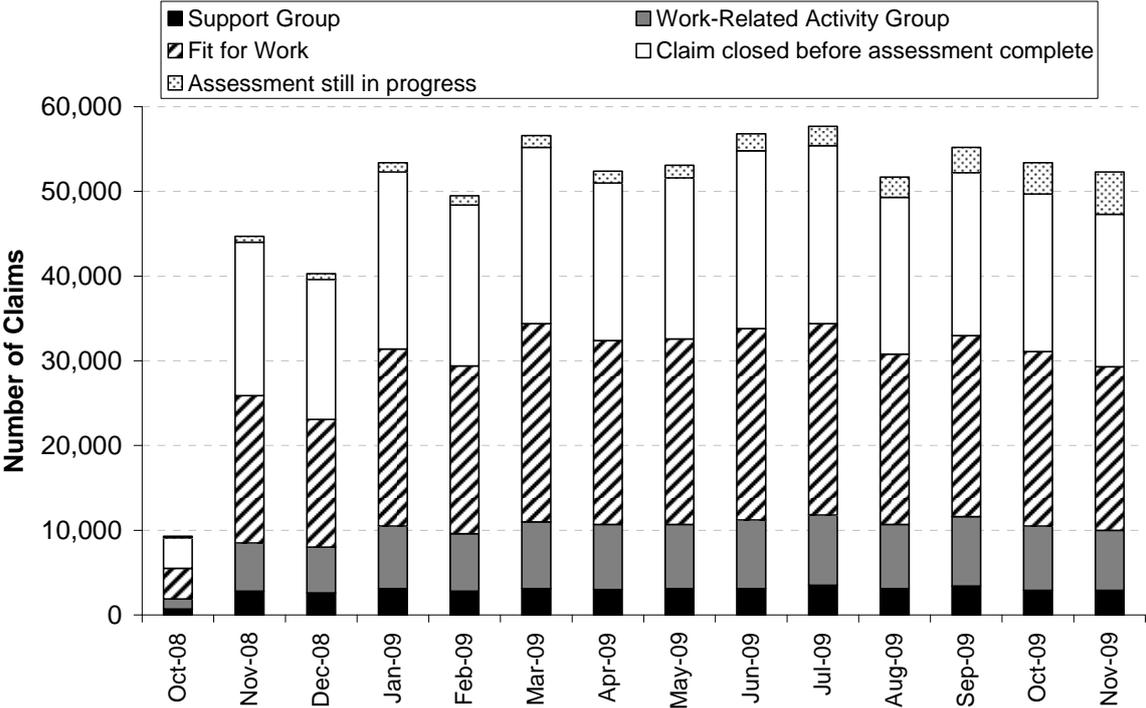
7. In 2009/10, DWP spent a total of £13.4bn on incapacity benefits, comprising of £6.1bn on Incapacity Benefit, £6bn in Income Support by virtue of a disability and Severe Disablement Allowance combined and £1.3bn on ESA.

2. Work Capability Assessment in Operation

Categorisation

8. Prior to the launch of ESA, the expectation was that around 50% of claimants undertaking the WCA would be found fit for work. Since the launch, around 66% of people have been found fit for work. While this is higher, it may still be in keeping with changed attitudes towards health, disability, and capability for work; focusing on what people can do, rather than what they cannot. However, DWP have had representations from some stakeholders indicating that this figure may be too high, with people being allocated to a group that does not best match their needs, or being found fit to work where this may not be appropriate.

Figure 2 - Progress of ESA Claim by Month Claim is Started



NB: Figures show initial assessments only

9. The graph above shows the breakdown of the result of the WCA for all new ESA claims and includes those whose claim closed before their assessment was complete. The average breakdown is: Support Group - 6%, Work Related Activity Group -14%; Fit for Work - 39%; Claim closed before assessment complete - 37%; and Assessment still in progress - 4%. For all completed assessments (not including assessments still in progress or people who left ESA before completing

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assessment), the breakdown is: Work Related Activity Group - 24%; Fit for Work - 66%; and Support Group - 10%.

Question 1a: How effectively does the WCA correctly identify those claimants whose condition is such that they are unable to undertake any form of work related activity (the support group?)

Question 1b: How effectively does the WCA correctly identify those claimants whose condition is such that they are currently unable to work due to illness or disability (the limited capability for work group?)

Question 1c: What are the main characteristics that should identify claimants for each group, where these may differ from the current assessment?

10. Under any new benefit system, particularly one where there is to be an objective assessment for capability, there may be problems with perceptions of fairness as people make the transition. This is particularly true of changes like the introduction of ESA, which may represent a significant culture shift for both healthcare professionals and claimants. However, it is important to separate issues of perception from cases where the new regime or assessment is not accurately performing, either through problems with the design or delivery.
11. Where a claimant is unhappy with the outcome of the WCA, the claim can be the subject of a re-consideration by the decision maker. This means that the decision maker re-examines the evidence to determine whether the original decision was appropriate. If the original decision is upheld and the claimant is still unhappy, then an appeal can be made to The Tribunals Service, which is an executive agency of the Ministry of Justice, and independent from DWP.

Figure 3 - Appeals and results by month of claim

ESA claim start month	Fit for Work	Appeals heard (to date)	% fit for Work with an appeal heard (to date)	Decision in favour of appellant	DWP decision upheld	% Decision in favour of appellant	% DWP decision upheld
Oct-08	3,600	1,400	38%	500	800	40%	60%
Nov-08	17,400	6,700	39%	2,600	4,100	39%	61%
Dec-08	15,100	5,900	39%	2,400	3,500	41%	59%
Jan-09	20,900	8,000	38%	3,200	4,800	40%	60%
Feb-09	19,800	6,900	35%	2,800	4,100	41%	59%
Mar-09	23,400	7,700	33%	3,100	4,600	41%	59%
Apr-09	21,700	6,300	29%	2,600	3,700	41%	59%
May-09	21,900	5,500	25%	2,200	3,300	40%	60%
Jun-09	22,600	4,500	20%	1,700	2,700	39%	61%
Total	166,300	52,800	32%	21,200	31,600	40%	60%

Source: ESA Statistics, July2010

Question 2: What evidence is there to suggest that any issues with the operation of the WCA are as a result of the policy design, and what evidence is there to suggest that they are as a result of the delivery?

Fluctuating Conditions

12. The WCA is one assessment at a particular point in time. The assessment is intended, regardless of when it is carried out, to take into account how a person's capability may vary over time. Its intention is to assess whether a person can complete a task reliably, repeatedly and safely.

Question 3: What is the best way to ensure that the effect of fluctuating conditions is reflected in the recommendation of the WCA?

Multiple Conditions

13. The assessment is set out in such a way as to offer equity between the different categories of descriptors, and to ensure that the descriptors do not overlap. So, for example, someone with difficulty walking more than a specified distance, but who may also have difficulty concentrating will be allocated points on the basis of these two categories, as separately assessed.

Question 4: What is the best way to ensure that the effect of multiple conditions is reflected in the recommendation of the WCA? Are there specific conditions that should be regarded as contributing to or adding additional weight to others, where both are present?

Additional (or initial) Evidence

14. In most cases, the WCA is the main source of evidence for the decision maker. However, other evidence can be gathered to help the decision maker, for example from a claimant's GP, Community Psychiatric Nurse or consultant.

Question 5: What is the best way to give adequate weighting to additional (or initial) evidence outside of that gathered through the WCA? How can any changes be achieved without placing a burden on GPs and health care professionals, and without compromising their relationship with their patients?

Equality Considerations

15. The Government is keen to ensure that no group has disproportionately different outcomes on anything but objective grounds. Although it is reasonable to expect that different health conditions will affect the eventual recommendation of the WCA, we would still expect to see equity of treatment of people within those

groups. Similarly, it is reasonable to expect that, where health considerations are the same, the recommendations from a WCA would not vary across other characteristics, such as gender, ethnicity or age.

Question 6: Is there any evidence to show that there have been particular problems with the WCA for any specific groups? These groups may include, but are not limited to, men and women, people from black and minority ethnic backgrounds, or people from differing age groups.

Looking Ahead

16. This review is the first of five annual reviews. The final report has the opportunity to make recommendations to the Department for Work and Pensions on the operation and formulation of the WCA. It also has the opportunity to make recommendations on areas for further enquiry to the independent reviewer in subsequent years. This is partly to ensure continuity of enquiry, and also to ensure that there is no unnecessary repetition across years.

17. We are keen to ensure that we capture the total sum of issues relating to the WCA at this point in time, even if this year's annual review is unable to directly address them.

Question 7: Do you have any suggestions for how the WCA process could be improved to better assign people with health conditions to the most appropriate part of the benefits system?

3. Next steps

18. We now invite individuals and organisations to submit evidence to help us assess how the Work Capability Assessment (WCA) is operating. This includes evaluating how the WCA assesses limited capability for work and limited capability for work-related activity.

19. The closing date for the call for evidence is **10 September 2010**. A final report will be laid before Parliament and published in late 2010.