

# Citizens Advice Scotland

Scottish Association of Citizens Advice Bureaux  
www.cas.org.uk



## **Response to the Work and Pensions Select Committee: Employment and Support Allowance and Work Capability Assessment**

**Response from Citizens Advice Scotland**

March 2014

- Citizens Advice Scotland and its member bureaux form Scotland's largest independent advice network. CAB advice services are delivered using service points throughout Scotland, from the islands to city centres.
- Citizens advice bureaux in Scotland helped clients with over 500,000 new issues in 2012/13 – more than 1,400 new issues for every day of the year. Nearly 200,000 clients brought new issues to a bureau over the year.

## **Introduction**

Citizens Advice Scotland (CAS), our 61 member bureaux and the Citizen Advice Consumer helpline form Scotland's largest independent advice network. Advice provided by the Scottish CAB Service is free, independent, confidential, impartial and available to everyone. Our website, Adviceguide, also provides the public with up-to-date information on a range of topics.

Welfare and benefits issues remain the biggest area of work for the Scottish citizens advice bureaux (CAB) network. It is also an increasing area of work. Total Benefit and Tax Credit issues for CAB have increased 7% in the last three years and in 2012-13 it made up 38% of CAB work. CAB are working to support people across Scotland with current welfare changes and doing our utmost to mitigate the negative impact of changes and benefit cuts.

Employment and Support Allowance is by far the biggest issue dealt with in Scottish bureaux, making up over a quarter (27%) of all work. It has been increasing as a proportion of work carried out by bureaux: in 2011/12 bureaux dealt with 49,000 ESA issues, the following year this rose to 76,000, and, based on the first three quarters of 2013/14 we project an increase this year to around 82,000 ESA issues dealt with in bureaux. That is a 68% increase in two years.

A third of work on ESA consists of appeals against benefit decisions. 10% of the issues relate to the Work Capability Assessment. During 2012/13, issues relating to transfers from incapacity benefit also made up around 10% of this work, although this has been dropping throughout 2013/14.

## **Recommendations**

1. The DWP should set a maximum timescale for mandatory reviews and report on this. It should monitor what effect not paying ESA during mandatory reconsideration has in relation to JSA claims and referrals to foodbanks and review this policy following the first six months of implementation.
2. The ESA 113 form should be reviewed in discussion with the DWP and medical practitioners to make it more fit for purpose. Consideration should be given to the guidance and training needed to support a revised form.
3. The timescales given to doctors for returning the form should be clarified and lengthened.
4. The DWP should urgently review its processes and timescales for processing medical evidence to ensure evidence is processed in a timely manner.
5. A review should be undertaken of the use ATOS healthcare practitioners and DWP decision makers make of medical and non-medical evidence and the relative weight ascribed to each.
6. The gap between ESA and JSA must be investigated and addressed urgently, so that people are not excluded from accessing a source of income because they are too sick for one benefit and not sick enough for another.
7. In order for the DWP to comply with its duties under the Equality Act 2010, they should ensure that they proactively identify claimants who have a disability under that Act, particularly clients with conditions that may affect their capacity to understand and comply with the requirements placed on them. DWP must put in

reasonable support and adjustments to ensure that they do not get penalised by the sanctions regime for a reason relating to their disability.

8. The initial letter and explanations of the process to ESA claimants must be improved to make clear what activities they are required to undertake and the consequences of failing to take part in them.
9. Systems must be fully in place before major changes, such as a change in assessment contractor, are rolled out, and the problems of providing services in very rural communities and for clients who need home visits must be fully addressed.
10. For any future assessment contract there must be clear routes for claimants to get resolution of problems.

### **Administration problems**

Many of the benefits issues dealt with in bureaux involve problems with benefits administration, such as paperwork going missing, delays in processing information and incorrect information on the DWP systems. For example one bureau has been told that currently it takes seven working days from when the DWP receive post to it being sent to the correct department, another that after receipt in the correct department it can take a further 14 days to process it. These problems result in delays for benefit claimants who are left without income in the meantime, and take up considerable amounts of bureau time as they phone round different parts of the DWP trying to get information.

***A North of Scotland CAB reports** of a client who is awaiting a decision on her ESA claim which she made three weeks ago. She had been on JSA from November until the end of January, and prior to that was on ESA. She has been borrowing money for friends and receiving meals from them. She often stayed overnight as she has run out of credit on her electricity meter. Her housing benefit has been affected due to not being on benefit. Her next DLA payment is due tomorrow. The bureau phoned the ESA enquiry line, who could find no record of the claim, even though the client had received a phone call from the DWP stating they need further evidence from her GP. The bureau called the new claims line who confirmed that a claim had been made and was with a decision maker. They could provide no further information and suggested phoning the enquiry line for more information.*

***An East of Scotland CAB reports** of a client who reported that his ESA claim form had been received by DWP but his doctor's certificate was missing. He had been told to fax a copy to the DWP, but had not been given the relevant number. The CAB adviser contacted the telephone number which had called the client, but it did not accept incoming calls. He then called the Benefit Delivery Centre, spoke to another adviser at a contact centre in Lancashire and then got put through to the ESA Existing Claims line. Everyone the adviser spoke to refused to provide a fax number. Finally the adviser agreed to make an appointment at the local Jobcentre Plus so that they could fax the certificate to the relevant department.*

**A North of Scotland CAB reports** of a client who applied for ESA at the beginning of November. He returned all forms he was sent and submitted medical certificates from his GP, but has been left without payment or any written communication despite repeated attempts to communicate with Jobcentre Plus. DWP have confirmed they received his application, and he has been phoning daily and been told conflicting information and promised an emergency payment which has not materialised. When the bureau spoke to the DWP they confirmed they had the correct information from the client and that he had been promised an emergency payment, but there was no record that anything had been done about this.

**A North of Scotland CAB reports** of a client who wanted to find out what was happening with his ESA claim. The client has been submitting medical certificates since September (5 months) but has received no payment. The bureau had previously called the DWP who said that the application was with Atos and DWP could not help. Atos told the bureau that the client would get an appointment when one became available. Today the bureau called the DWP and was told that the client's claim was closed at the beginning of September. This is the first the client or bureau knew of this despite repeatedly calling the DWP and Atos in the interim. The client has been relying on friends and family, but they are no longer willing to help, and he is without gas and electricity.

### **Accessing a medical assessment**

Bureaux continue to see cases where there are doubts over the quality of the medical assessments. The following case is from the end of February 2014:

**An East of Scotland CAB reports of** a client who has received a letter saying she had been awarded 0 points in their WCA. The client had a stroke two years ago, has agoraphobia, depression, irrational fears and other long standing mental health issues. The information on the outcome letter differs to the information they provided at the face-to-face assessment. They called the DWP to say they would be submitting a mandatory reconsideration. The client had an appointment at the Jobcentre today where she was told she cannot claim JSA as is not well enough for work.

We are seeing a number of cases where ESA claimants are waiting an indefinite period to access a Work Capability Assessment. This appears to be a new issue since the beginning of the year. The following cases are from February 2014:

**A North of Scotland CAB reports** of a client who has been waiting eight months for a Work Capability Assessment, and is still receiving the assessment phase payment of ESA. The bureau contacted Atos to establish what is happening with his claim. They were told that "Atos have no appointment to offer the client", and that the client "may or may not receive a new appointment date."

**An East of Scotland CAB reports** of a client who needed to find out about her ESA claim, which was submitted in October (four months ago). She has

*had no contact about an assessment. When contacted Jobcentre Plus said that Atos were currently being audited by government on their performance under the contract and there were delays in arranging assessments. There was no geographical pattern to the delays and DWP had no information on when the assessment might be done. The client is also awaiting a PIP assessment. She has recently been diagnosed with cancer, has epilepsy and mobility issues. She currently lives with her parents due to her illness.*

***A West of Scotland CAB reports*** of a client who has been waiting 20 weeks for a date for his ESA assessment, and cannot establish when this might happen despite his best efforts. He has been told there is a waiting list and backlog. He has no money and is unable to pay for his heating and lighting. He has been borrowing money from friends and family but is struggling to make ends meet.

### **Mandatory reconsiderations**

Until the most recent quarter (Oct-Dec 2013), appeals made up around a third of this work. Recently this has dropped to around a quarter of ESA work, probably as a result of the introduction of the new mandatory reconsideration process. We will be monitoring this figure and we expect to see a resurgence in the number of appeals as mandatory reconsiderations are processed.

Since mandatory reconsideration was introduced in October last year, CAS has been monitoring their impact through our case evidence. There are no time limits for the processing of a mandatory reconsideration by DWP, although we are told that DWP aim to process them within around two weeks. We have seen a number of cases where mandatory reconsiderations are taking much longer than this, partly because it takes up to two weeks for the DWP to receive a request after it is sent in, before they process it.

CAS understands from DWP that mandatory reconsiderations for ESA may be slower to process than some other benefits, because of the greater use of paper forms. This is highly problematic for ESA claimants who will not receive any ESA payments during the reconsideration process, and will have to make a JSA claim in order to receive any money. It will also postpone their opportunity to go to appeal, at which point they will be able to receive ESA payments again.

***A West of Scotland CAB reports*** of a client who came to bureau regarding a mandatory reconsideration following the decision that she was not eligible for ESA. The client sent in her mandatory reconsideration request on 7 January 2014. She was contacted by DWP on 7 February to see that she would hear back from them within two weeks. On 27 February, the bureau contacted the DWP on her behalf, who advised that there had been no decision yet, there are no time limits, and the client would just have to wait. The bureau adviser explained that she had been waiting but the response was that she could claim JSA. The adviser stated that due to her health conditions she was unable to do this. The client has not had a benefit payment for seven weeks and is relying on her DLA.

**An East of Scotland CAB reports** of a client who wanted an update on his ESA reconsideration from 15 weeks ago. The bureau called the DWP who had no update on record over his reconsideration. He tried to claim JSA but wasn't allowed to as he wasn't well enough to fulfil his jobseekers agreement.

**A West of Scotland CAB reports** of a client who attended an ESA assessment at the beginning of November and was awarded 6 points. A letter requesting a reconsideration was posted at the end of November, and the decision upholding the DWP's decision was finally received at the end of January. The client is taking forward an appeal.

We have seen cases where the DWP do not seem to be clear about the processes of a mandatory reconsideration and subsequent appeal.

**A West of Scotland CAB reports** of a client who was appealing an ESA decision following mandatory reconsideration. She received notice of application for appeal from the Tribunals Service and was enquiring as to when her benefit would be reinstated. The client currently has no money and requested a foodbank voucher. The CAB adviser phoned the DWP benefits centre and was advised that the client's ESA would not be reinstated until the decision was overturned by the tribunal. The CAB adviser stated that this was not his understanding but was told that the client should submit a JSA application. The CAB adviser then phoned a second Benefits Centre and this time the DWP adviser agreed that ESA should be reinstated at assessment rate pending appeal, acknowledged receipt of the appeal notice and stated that benefit would be automatically reinstated within the next few days and backdated.

**An East of Scotland CAB reports** of a client who returned to the bureau as he has now received correspondence stating that his appeal had been received by HM Courts and Tribunals Service. The client had been advised to return to bureau when he received this paperwork and we would call DWP to ask for payment of his ESA to commence and be backdated, as the client has not claimed any other benefit since his ESA stopped. The CAB adviser called DWP and asked the adviser to reinstate the client's ESA. The DWP adviser stated that she did not know much about this and would have to e-mail payment department and they will contact the bureau back about this client.

**The DWP should set a maximum timescale for mandatory reviews and report on this. It should monitor what effect not paying ESA during mandatory reconsideration has in relation to JSA claims and referrals to foodbanks and review this policy following the first six months of implementation.**

### **Sanctions**

For the first time in 2013/14 the Scottish Citizens Advice Service has started to record ESA sanctions statistics. By the end of this period we expect bureaux will have dealt with around 800 ESA sanctions (based on data from the first three quarters of the year).

The migration of many claimants off Incapacity Benefit has meant many people with disabilities and long-term health conditions either coming under the conditionality regime of Employment Support Allowance, or even more worryingly, onto the much

harsher conditionality regime of Jobseekers Allowance (JSA) if they are deemed fit for work.

***An East of Scotland CAB reports*** of a client who has had his ESA sanctioned. He attended his appointment but was left sitting which caused him a lot of pain. When this became too much for him he went to the reception desk and explained what was wrong and that he couldn't wait. As he had already signed in he says the girl said she would let the person he was seeing know. He then requested another appointment and received a letter with this information. The client attended this appoint and then a few days later his benefit was sanctioned.

Employment and Support Allowance (ESA) claimants who are placed in the Work Related Activity Group have to engage with work related support such as attending Work Focused Interviews. These people may have health conditions or disabilities that make it more difficult for them to meet requirements, and the consequences of receiving a sanction may be even more severe than for those who have better health. At present communications to ESA claimants are not clear enough that failure to attend these meetings could result in a sanction and/or loss of benefit. **The initial letter and explanations of the process to ESA claimants must be improved to make this clear.**

***A West of Scotland CAB reports*** of a client who has been awarded the work-related activity component of ESA. He has ME, for which he has a letter from his doctor, saying he is unable to hold down a job. He was unwell last week and could not attend a meeting with the Work Programme provider, and informed them of this. Today he was at the Work Programme provider but was again feeling unwell. He spoke to them and explained, and they said if he went home the Jobcentre would sanction him. He called the CAB, who explained to him that as part of being in the work-related activity group he had to attend these meetings. The client did not know this and thought they were voluntary. The CAB explained that if he was sanctioned he would have to request a mandatory reconsideration and that he would get no money in this period. The client felt this was very unfair.

***A West of Scotland CAB reports*** of a client who has autism and epilepsy receiving ESA. He has received a three month sanction for failing to attend the work activity group on several occasions. The client says he never received any letters telling him he had to do so.

### **Medical evidence**

A key issue in relation to the Work Capability Assessment is the provision of supporting evidence from medical and other professionals.

In parts of Scotland, some GP practices are charging clients significant sums of up to £100 for the provision of supplementary evidence. In other places, GPs now refuse to provide medical evidence to patients, particularly since the introduction of the "bedroom tax" in April 2013, and the additional demands for medical evidence that generated.

**A North of Scotland CAB reports** of a client who telephoned the welfare benefits officer to advise that her local Medical Group had informed her that it would cost £75 to provide her with a medical report to substantiate her Employment Support Allowance Appeal (ESA).

**A West of Scotland CAB reports** of a client appealing his ESA decision. The client had contacted the DWP after his ESA was stopped, they advised him to appeal and get a letter from his doctor to support his appeal. He went to his doctor who said his hands were tied and he could not write him a letter. Instead he gave him a copy of guidance he had received explaining why doctors should not involve themselves in benefit appeals evidence. The client was very confused as the DWP had directed him to ask his doctor for supporting evidence, and his doctor had supplied a sick line to say he was not fit to work, yet is unable or unwilling to evidence this further.

However, as part of their contract, GPs are required to provide evidence to ATOS and the DWP through the ESA113, and there is financial provision for this work within the contractual agreement.

The Scottish Parliament Welfare Reform Committee took evidence on the issues around medical evidence in the benefits system last year. Georgina Brown, representing BMA Scotland, suggested there were a number of issues that needed to be addressed in regard to the forms and requests for medical evidence from ATOS from their perspective. These included unclear or unrealistic timescales for returning forms, and sometimes unrealistically short timescales for them to respond, as well as difficulties with pulling information from their systems into the format required on the form. She noted that she regularly receives requests for information about people who are not her patients.<sup>1</sup>

**CAS believes that if better evidence were gained through more effective and timely use of the ESA113 form, this could reduce the need for supplementary evidence at later stages of the process, including at appeal.**

We regularly see cases where medical forms and sick notes from doctors are lost by the DWP. If claimants have to request further copies of evidence from doctors, this puts pressure on both claimants and medical services.

**An East of Scotland CAB reports** of a client who has applied for ESA but have still not received any money as the DWP will not make a payment without a medical certificate. The client phoned the DWP and was told there was no trace of her medical certificate. The bureau phoned the DWP who explained that it took seven working days for a medical certificate to reach the right section, so if it was posted on 10 February the earliest the DWP could confirm receipt by would be Wednesday 19 February. The client is currently living with a friend who is giving her food, but who is on benefit herself and is struggling to feed her children as she had expected the client would be able to contribute by now.

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<sup>1</sup> Scottish Parliament official report Welfare Reform Committee 22 January 2013 Col497-498 <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=7978&mode=pdf>

### **When claimants are found fit for work**

When a claimant is deemed ineligible for ESA and fit for work, their primary option is to claim Jobseekers Allowance. However, CAS regularly sees cases where a claimant goes to the Jobcentre to claim JSA and is told by the Jobcentre they are too ill to claim JSA, even though they have been found fit for work.

***A North of Scotland CAB reports** of a client whose ESA claim was disallowed due to making a claim within 26 weeks of her last claim finishing. She had been told that she would need to send in evidence of a significant change in her condition, but her last medical certificate was from a locum who did not listen to her and put down depression as the reason, which was the same as her first medical certificate. She is going to speak to her CPN to see if she can get a letter from her psychiatrist. She had claimed ESA again because her Jobcentre adviser told her she was not fit to be on JSA. She has nothing to live on except some DLA.*

***A South of Scotland CAB reports** of a client who was awarded zero points at her medical assessment and her ESA has stopped. The client was referred to CAB by the Jobcentre to ask for a mandatory reconsideration and has applied for JSA. The client is distressed by what is happening as she is still grieving the death of her partner last year. She has considered taking her own life on two occasions recently.*

If claimants have a current sick note lasting more than two weeks from their doctor they are not able to apply for JSA until that runs out.

***An East of Scotland CAB reports** of a client who had been receiving ESA but was reassessed in January as being fit for work, albeit with limitations. He is awaiting a mandatory reconsideration of this decision, and has had no money for five weeks. He had tried to claim JSA but was advised that because he had a medical certificate saying he was unfit for work he was unlikely to get a payment. The client needs a food parcel. He is diabetic and has insulin injections three times a day which have to be taken with food.*

These people fall through the gap and can end up without any income. **These gaps must be investigated and addressed urgently, so that people are not excluded from accessing a source of income because they are too sick for one benefit and not sick enough for another.**

Other claimants struggle to cope with the harsher conditionality of the JSA regime, which is often not appropriate for the needs of clients with disabilities and health conditions. In some cases adjustments may be made to a claimant's Jobseekers Agreement or Claimant Commitment, but bureau evidence suggests this is not happening consistently.

***A South of Scotland CAB reports** of a client who has learning difficulties who is now applying for ESA. She has been on JSA but has found it very difficult to comply with the requirements, such as contacting employers and operating*

*computers. This has resulted in a lengthy sanction. She has limited mental capacity, affecting her understanding and communication. The client has been told by JSA staff that she is lazy and not trying.*

In order for the DWP to comply with its duties under the Equality Act 2010, they should ensure that they **proactively identify claimants who have a disability under that Act, particularly clients with conditions that may affect their capacity to understand and comply with the requirements placed on them. DWP must put in reasonable support and adjustments to ensure that these claimants do not get penalised by the sanctions regime for a reason relating to their disability.**

## **Procuring new contractors for the WCA**

### ***Learning the lessons from PIP***

As well as being the contractor for the WCA, Atos are also the contractor for Personal Independence Payment assessments across Scotland. The Committee highlighted the very serious delays that have come about following the introduction of PIP in June 2013 in its recent report on the performance of the Department. Bureaux continue to see very significant delays for PIP claimants who are waiting for their assessment, meaning that some clients who already face significant disabilities or health conditions are without much needed money and other benefits linked to PIP. Anecdotally we are hearing particular problems with home visits and more rural locations. Despite these ongoing problems, as of January 2014 PIP has been rolled out to new and former DLA claimants with changes of circumstances across a very large swathe of Scotland, which we understand from the DWP represents nearly half the caseload in Scotland.

There are lessons to be learnt from this experience for potential contractors for the WCA. **Systems must be fully in place before major changes are rolled out, and the problems of providing services in very rural communities and for clients who need home visits must be fully addressed.**

CAS would be extremely worried if there were further problems with the administration of disability benefits of the level seen with ESA and PIP. These claimants are, by definition, very vulnerable. Gaps and delays in payments can leave people destitute and can have a disproportionate impact on their health and wellbeing.

**For any future contract there must be clear routes for claimants to get resolution of problems.** Bureaux see cases where clients fall through the gaps between agencies, with each blaming the other, and the client left in difficulties in the meantime.

***An East of Scotland CAB reports of a client who claimed PIP in August 2013 and attended her medical in October 2013. She has still not received a decision in February 2014. The DWP say that Atos have emailed a copy of her assessment to them but it should have been in hard copy. She had been***

*told that this would be received in 14 days. After 14 days it had still not been received. The client is struggling financially.*

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