

Citizens Advice Scotland

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



Work Capability Assessment independent review – year three

Response from Citizens Advice Scotland

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- 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 560,000 new issues in 2010/11 – more than 1,500 new issues for every day of the year. Over 230,000 clients brought new issues to a bureau over the year.
- In 2010/11, Scottish bureaux achieved a financial gain of almost £126million for clients based on funding of £16.3million (including £7.6million in core funding). This means that CAB clients were better off by £8 for each £1 of funding given to bureaux.

Introduction

Citizens Advice Scotland (CAS) is the umbrella organisation for Scotland's network of 80 Citizens Advice Bureau (CAB) offices. These bureaux deliver frontline advice services throughout nearly 200 service points across the country, from the city centres of Glasgow and Edinburgh to the Highlands, Islands and rural Borders communities.

In 2011/12, Scottish citizens advice bureaux dealt with half a million new issues for clients. Around 190,000 of these issues related to benefits – over 500 for every day of the year. Over 60,000 of these new problems were issues related to the various sickness and disability benefits.

CAS welcomes the opportunity to respond to the second Independent Review of the Work Capability Assessment (WCA). Since its inception in the autumn of 2008, ESA has become the most common issue brought to bureaux by clients.

The WCA, both in terms of its delivery and results, is the aspect of ESA that has caused the majority of issues for our clients. We are concerned that the WCA is both failing our clients and creating a significant burden on bureau resources. While improvements have been made to the whole process as a result of the first two Reviews, we are concerned that flaws in the process continue to adversely affect claimants.

Our main points in the response include:

- **Pressure on advice services:** Issues relating to ESA are creating a significant advice need at citizens advice bureaux in Scotland. In 2011/12, bureaux advised on over 23,000 new ESA issues and represented clients at over 2,100 ESA tribunals. The pressure on resources that this is causing means that clients with other issues may not receive the support they need.
- **Communications:** A failure to communicate the purpose and outcomes of the assessment can leave clients upset, confused and more likely to appeal against their assessment.
- **Face-to-face assessment:** Bureaux continue to see clients who are found fit for work despite significant health problems; clients who feel that the healthcare professional rushed the assessment and was not listening to the client; and clients who believe that their assessment was based on a medical report that contain errors, inaccuracies and/or assumptions.
- **Decision making:** Despite recommendations that aimed to empower decision makers, we remain concerned that the majority of work capability assessments are still being 'rubber stamped' by decision makers. We are also concerned that decision makers are too quick to reassess claimants who have won their appeals against a fit for work decision.

Pressure on advice services

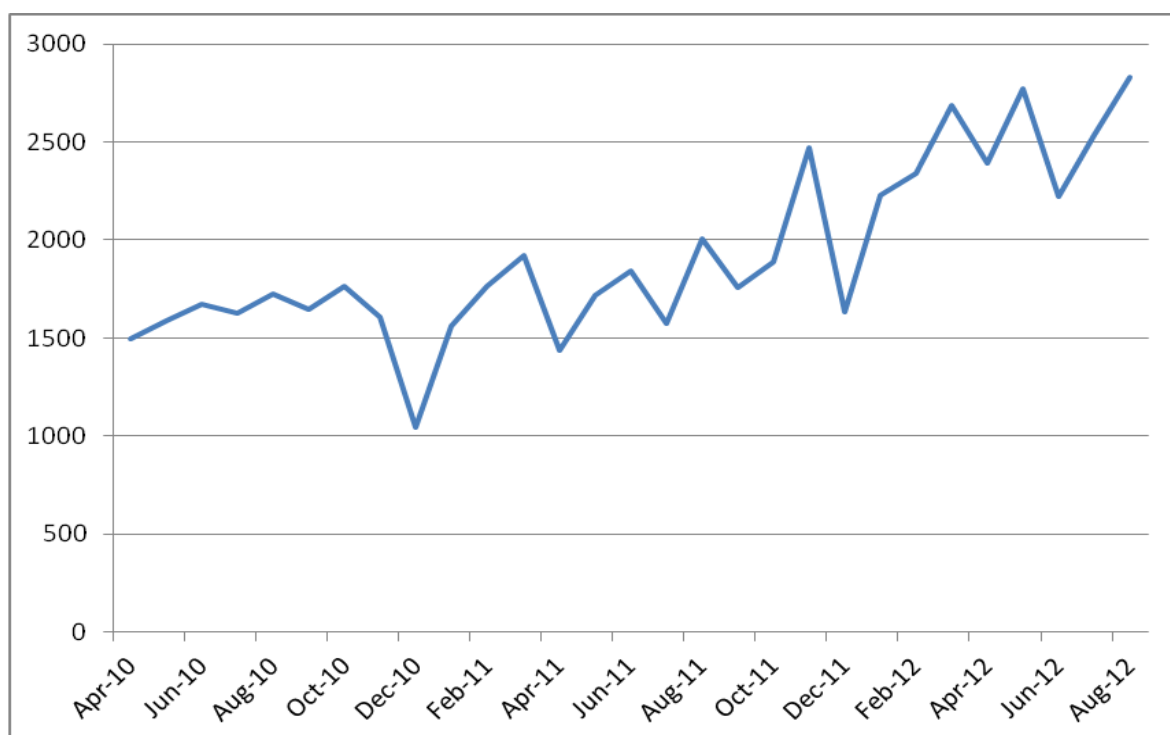
Employment and Support Allowance (ESA) is the most common issue that clients seek advice on at a citizens advice bureau. Welfare advisers report that the majority of their time is now spent supporting clients in ESA tribunals and that volunteer advisers are spending significant time helping clients with entitlement and completing ESA 50s. The pressure on resources that this is causing means that clients with other issues may not receive the support they need.

In 2011/12, citizens advice bureaux in Scotland advised on 23,583 new issues relating to ESA. That equates to around 90 each working day. This represents a 21% increase in new ESA issues since 2010/11.

Early figures on the current financial year suggest that the number of new ESA issues that clients seek advice on has increased to almost 120 each working day.

Figure 1 shows the increase in the number of new ESA issues that have been brought to bureaux since April 2010. The number of new ESA issues each month almost doubled in number between April 2010 and August 2012 at a time when funding at citizens advice bureaux is typically either standing still or reducing.

Figure 1: Number of new ESA issues per month



Bureaux in Scotland provided representation to clients at around 2,157 ESA tribunals in 2011/12. This represented a 39% increase on the previous year. The claimant was successful in around 69% of the appeals where bureaux provided representation. We estimate that the tribunals would have taken over 1,500 working days of adviser time. In terms of salary costs, this would have cost around £131,000 at the average hourly wage.

Citizens advice bureaux are an integral part of the welfare and benefits landscape. They pick up the pieces where a claimant has slipped through the net and flag up the policies and practices that are failing claimants. In 2011/12, bureaux in Scotland ensured that 1,500 claimants who were perhaps inaccurately assessed originally won their appeal and received the support to which they were entitled.

However, the role of advice agencies has so far been absent from the Review. We believe that the work of frontline advice agencies for ESA claimants should be recognised and recommendations put in place that either ease the pressure or provide front line advice services with resources to cope with the demand.

Communications

The communications involved in the ESA process are significant in a number of ways. Most importantly, they clarify the purpose of the assessments, establish the expectations of clients, and explain the support the client is entitled to based on their assessment.

A failure to communicate the purpose and outcomes of the assessment can leave clients upset, confused and more likely to appeal against their assessment. There is evidence to suggest that the communications in the ESA process could be improved. In a survey of 130 bureau welfare advisers in 2011, just under 4 out of 5 bureau advisers believed that there is a need to explain the face-to-face assessment in a different way, while half of advisers believed that there is an urgent need to do so.

The following cases show examples of where communications from the DWP can leave claimants confused about the purposes of the assessment and unsure of what the result of the assessment means for them.

- ▶ An East of Scotland CAB reports of a client who was poorly advised by the DWP. The client was called by the DWP to explain the migration process and was told she would be sent a form to complete. The caller explained that the purpose of the migration was benefit fraud – to catch people claiming who were not entitled – and that if she was ill she had no need to worry.
- ▶ A North of Scotland CAB reports of a client who was confused by a call she received from the DWP in which she was told that she had been found ‘capable of light duties’ in her work capability assessment. The client was upset by the call and found it difficult to understand what was being said to her.
- ▶ An East of Scotland CAB reports of a client who was upset by a call she received from the appeals section of the DWP. The caller has asked her to provide a letter with more information about her illness, but was also asked questions which confused and worried the client. She said she was asked why she cut herself and when she had last done it. She remembers telling the caller that the reason she did this was because she no longer wanted to be in this world. She said she had barely slept since the phone call as she had found it so upsetting.

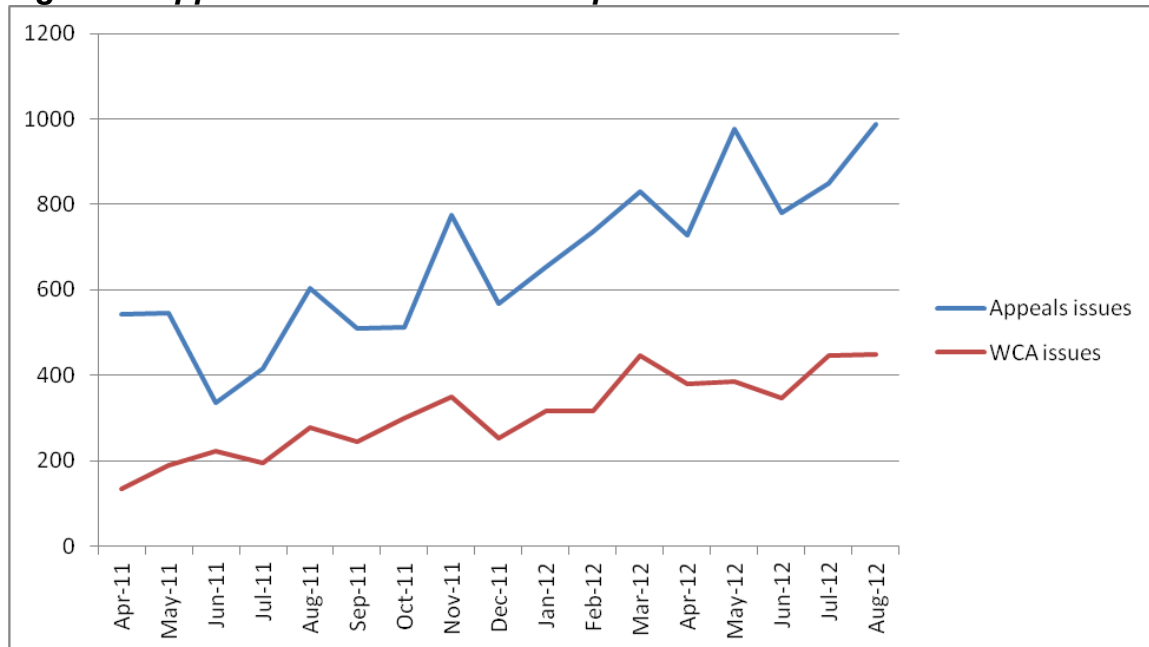
- ▶ An East of Scotland CAB reports of a client who was given poor advice by a Decision Maker. The client was told that she did not meet the criteria to be in the support group as she did not use a wheelchair. The client explained to the Decision Maker that she could only walk very short distances before needing to stop and could only walk if she was holding on to someone. Even with support, the client is in constant pain. The bureau advised the client that she did not have to be a wheelchair user to meet the descriptors for the support group.

Face-to-face assessment

During the last 16 months, around 5,250 new issues brought to citizens advice bureaux related directly to the Work Capability Assessment and another 11,354 related to the appeals process.

Figure 3 shows that issues concerning ESA appeals and the WCA have been increasing since 2011. The number of all ESA issues brought to bureaux per month almost doubled between April 2011 and August 2012, but the number of issues concerning the WCA more than trebled in the same period. As a proportion of all ESA issues, WCA issues increased from 9% to 17% of the total in this time period. It is unclear if this increase in issues is due to an increase in problems or an increase in the number of claimants. However, it is still an increase in advice need for bureaux to deal with.

Figure 2: Appeals/WCA issues since April 2011



The issues that clients report concerning the WCA can be grouped into two categories: firstly, that the assessment was wrong because the client was found fit for work (and often the decision is overturned on appeal); and secondly, complaints about the assessment itself, including the nature of the assessment and the conduct of the healthcare professional.

Many of the ESA cases that bureau advise on concern a client who disagrees with their fit for work assessment. Bureaux in Scotland provided representation to clients at around 2,157 ESA tribunals in 2011/12 with the claimant successful in 69% of the appeals. The following cases show the types of claimants (and their conditions) that seek advice at a bureau after a fit for work assessment with many being successful in appealing the assessment.

- ▶ A West of Scotland CAB reports of a client whose GP is 'astonished' that she has been declared fit for work in her work capability assessment. The client had spinal surgery which has led to chronic back pain and irritable bowel syndrome. The client is also asthmatic and has borderline personality disorder involving mood swings and considerable medication. The client is seriously distressed by being subjected to continual assessments.
- ▶ An East of Scotland CAB reports of a client who has been found fit for work after claiming Incapacity Benefit for 14 years. The client has long-term substance abuse issues and mental health problems. The client scored 9 points in her work capability assessment. The client's GP states that the client is definitely not fit for work as she has been assessed as 'psychotic' and a danger to others.
- ▶ A North of Scotland CAB reports of a lone parent with an 18 month old child who was awarded zero points in her work capability assessment. The client suffers from bi-polar disorder, post natal depression, psychosis and general mental health problems.
- ▶ A North of Scotland CAB reports of a client who has been found fit for work after being awarded 12 points in her work capability assessment. The client is under the age of 25 and lives in a care home for adults with special needs. She suffers from mental health problems as a result of 'serious and significant abuse' as a child and teenager. The care home manager, who accompanied the client to the appointment, states that the client has an inability to relate to other people, has limited concentration and needs support and input in every aspect of her life.

Clients can have a number of complaints regarding the Work Capability Assessment and the conduct of the healthcare professional. It appears to be common for claimants to leave their assessment feeling that they have not been listened to, that assessments are rushed, and that the assessor does not look at them. Perceived mistakes and errors in the assessment make claimants more likely to appeal. These comments from citizens advice bureau advisers (in 2011) show the experiences of their clients in assessments.

"I can tell them [clients] word for word exactly what they are going to say to me, "I was only in for 20 to 25 minutes, they just asked me questions, they never looked at me or examined me..." I myself have attended two of these medicals so I know what people tell me is the truth."

"I have had many comments from clients about the Health Care Professionals who carry out medicals. They do not appear to listen to their answers, they do not look up from the computer screen, everything is rushed with clients given no opportunity to try and explain their situation."

“Many clients are complaining about the medical assessment: many feel that they are not being listened to; that the medicals are rushed; that their words are being taken out of context; and that the questions asked do not relate to their particular disability. This seems to affect people with mental health problems especially.”

A number of advisers have reported that medical reports can contain comments that the client claims not to have made, make inaccurate assumptions about what the client can and can't do, and fail to contain comments that the client did make. Whether these reports are accurate or not, these problems lead to claimants feeling that they have been inaccurately assessed and are therefore more likely to appeal the result.

“Have seen completely false statements in the ATOS reports and inaccurate assumptions – i.e. if a client has been to a friend's house once in 2 years they state this is a typical day activity.”

“Not listening to clients and writing down different answers than what the client has given.”

“The clients generally report that the answers that they give to the questions set by the health care professional bear little resemblance to what is recorded.”

These cases show the experiences of clients who feel that there were mistakes and inaccuracies in their assessment.

- ▶ A West of Scotland CAB reports of a client whose wife was furious about his Work Capability Assessment. The client's wife is a physiotherapist and was present during the assessment. She is angry about the HCP report which she says was full of inaccuracies, omissions and presumptions.
- ▶ A West of Scotland CAB reports of an army veteran who is unhappy with the report from his work capability assessment. He does not feel that it is a true reflection of the interview that took place. There are no notes of the struggle that the client experiences standing up unaided or any comment about his mental health, anxiety or the fact that he never goes out. The report has caused him upset and stress.
- ▶ A West of Scotland CAB reports of a client who wished to complain about factual inaccuracies in his work capability assessment report. The report suggested that the client was wearing trousers and trainers, but the client maintains that he can only wear slippers and tracksuit bottoms due to the effects of his condition. The report also describes him undertaking various tasks including rolling up his trousers and tying shoe laces, which he is adamant that he was not asked to do.

Decision making

While we welcome the recommendations of the Review which attempted to empower DWP decision makers, we remain concerned that the majority of work capability assessments are still being 'rubber stamped' by decision makers. Recent research carried out for the DWP found that just 1 in 40 assessments were queried or changed by decision makers and that they felt under pressure not to question the original assessment. Given that more than 65,000 assessments were overturned at appeal in 2011/12 (nearly 180 each day), this suggests that decision makers should have been changing or questioning many more assessments.

We share the Review's belief that the DWP decision makers should be empowered to take the final decision on a claimant's entitlement based on all the information available. We recommend that the 3rd year of the Review re-affirm this principle to ensure that the original desired outcome is achieved.

We are also concerned about the practice of quickly re-assessing clients after a successful appeal. While it is in the decision maker's power to do so, this practice can lead to an expensive and stressful cycle of assessments and appeals for claimants. The following cases show clients for whom this cycle can be very distressing and damaging to their health. We recommend that the tribunals service recommends a minimum length of time before the claimant can be reassessed, based on the outcome of the appeal, and that this is clearly communicated to the claimant.

- ▶ A North of Scotland CAB reports of an army veteran who suffers from Post Traumatic Stress Disorder. The client was awarded zero points in his assessment for ESA which was overturned prior to appeal. The client was reassessed this year and again found fit for work. The bureau represented the client at appeal where he was awarded 21 points. The adviser pointed out that the client's anxiety at having to attend the tribunal has had an extremely detrimental effect on his mental health. The client was reluctant to attend as he finds all formal situations can bring on bouts of aggression which he cannot control. Each time the client has to go through the assessment process his condition deteriorates and he is unable to cope.
- ▶ A West of Scotland CAB reports of a client who has been required to complete four ESA50 forms in less than three years. The client was initially diagnosed as suffering from depression and anxiety over 20 years ago and has had recurring episodes since then. The client stopped working in 2009 and claimed ESA. The client was awarded ESA in her assessment in 2009, but was required to go to another assessment in 2010 which awarded her zero points. The decision was overturned in November 2010 without going to tribunal. The client was again assessed as being fit for work in 2011 and again this decision was reversed prior to the tribunal. The client has now received her fourth form requiring her to go to an assessment. The client states that this practice is causing her great distress and exacerbating her depression and anxiety. Her income drops while decisions are being reviewed and going through appeal. This then affects her ability to pay bills and she has difficulty managing her finances.

- ▶ A West of Scotland CAB reports of a client who is being asked to attend his third work capability assessment in under 12 months. His previous assessments found the client fit for work, but they were overturned on appeal and the client's GP keeps issuing 13 week sicklines. The client suffers from panic attacks and is agitated at having to attend another assessment. The client pointed out that he is only entitled to lower payments during the appeal period, and there is no backdating to compensate for this following a successful appeal.
- ▶ A West of Scotland CAB reports of a client who received 18 points in her ESA appeal. The client has recently had cancer while her son and a close friend have also recently died. This has had an effect on her mental health and she is suffering from severe depression. This was exacerbated when she was sent another capability for work questionnaire just over a month after her successful appeal. The client has attended another assessment and her depression and anxiety have become much worse because of this. The bureau comment that the whole process of re-assessing vulnerable clients less than six months after there has been a successful appeal is putting their clients' mental health at further risk.

Another recent issue related to decision making concerns long-term IB claimants being migrated over to ESA and placed in the Work Related Activity Group without a work capability assessment. This leaves claimants confused and uncertain about their benefit entitlement and the expectations placed on them. When they challenge the decision, some have been told that they cannot appeal.

- ▶ A West of Scotland CAB reports of a client who sought advice on behalf of her 59 year old sister. The client's sister is single, lives alone, had had lifelong learning difficulties, and has difficulty walking as a result of childhood meningitis. She received a letter last month stating that her IB claim is to be transferred to ESA and that she is to be placed in the Work Related Activity Group. She was allocated a Jobcentre Plus adviser who advised her to appeal against the work related placement and request a support group placement instead.
- ▶ A West of Scotland CAB reports of a client who received a letter from Jobcentre Plus asking him to attend a Work Related Interview. The client claims Incapacity Benefit and has had no other correspondence with regard to this. The client has been migrated from IB to ESA and placed in the Work Related Activity Group, but maintains that this is the first time he has heard anything about this.
- ▶ A West of Scotland CAB reports of a client who has been placed in the Work Related Activity Group after being migrated from IB to ESA. The client suffers from MS, is unable to walk 50 metres, and suffers from incontinence, anxiety, and panic attacks. The client was shocked to be told she would have to attend work-focused interviews when she is clearly unable to work. This is causing the client stress and anxiety.

After being placed in the WRAG by decision makers, claimants are required to attend work focussed interviews. However, a number of claimants have attended interviews at the jobcentre only to be told by the adviser that they are not fit for work. Many have then been referred to a citizens advice bureau in order to make an appeal to be placed in the support group. This leaves the claimant in a difficult situation – to be told by one arm of government that you are fit for work, but told by another that they are not.

- ▶ A West of Scotland CAB reports of a client who was told by the Jobcentre adviser that she should not be in the Work Related Activity Group. The adviser told the client to seek help with the bureau to appeal the decision. The client suffers from anxiety and depression. The bureau stated that the problem they have is that the Jobcentre staff are making judgements on clients' ability to work which do not necessarily correspond with the criteria for ESA. This leaves the client stuck between two benefits.
- ▶ A West of Scotland CAB reports of a client who has been migrated from IB to ESA and placed in the Work Related Activity Group. The client recently attended a work-focussed interview at the Jobcentre and was told by the adviser that she could not help him get a job because of his disabilities and that he should not be in that group. The adviser told him to appeal and gave him the form to complete. The bureau stated that they had seen several cases recently where Jobcentre advisers were sending clients to the bureau to appeal their assessments.
- ▶ A West of Scotland CAB reports of a client who was told by the local jobcentre manager that he was in the wrong ESA group and that he should go to the bureau to appeal the decision. The client was placed in the WRAG after his assessment, but was unaware that his entitlement would end after 12 months. The client is very confused by the situation and would like help with an appeal. The client has severe arthritis in various parts of his body which results in weakness and balance issues that cause up to 15 falls on a bad day. The client has also suffered a serious heart attack and numerous angina attacks.

What one thing (if any) would you change about the WCA to make the system better for people claiming ESA?

The decision maker remains a critical part of the ESA process. However, despite recommendations that aimed to empower this role, the DWPs own evidence shows that improvements still need to be made. The huge number of successful appeals reflects poorly not just on the WCA but also on the decisions made by the decision maker. An empowered decision maker, with all the supporting evidence to hand, should be able to correct assessments where it is clear that there is evidence to suggest that it is inaccurate.

There are three factors which are key to the empowerment of the decision maker. The first is having the flexibility to challenge assessments. If decision makers feel pressured to support assessments, they are less likely to challenge or query an assessment. This assessment may then be successfully appealed at tribunal with additional cost to the public purse. Decision makers must be given the space and flexibility to make the right decision.

The second factor is access to supporting evidence. A significant proportion of successful appeals are based on supporting evidence being available at the tribunal which had not been available for the initial assessment. It would therefore improve the accuracy of the assessments, and save public money, if decision makers always had access to supporting evidence. We therefore think that, while the onus is on the claimant to provide the evidence, there should be an onus placed on decision makers to make reasonable efforts to ensure that they have all the relevant information before making a decision.

The third factor is a feedback loop. There appears to be a lack of feedback between the three agents involved in making assessments of entitlement: the contractor, the decision maker and the tribunal service. In some instances, the three agents could all make a different assessment. For example, a claimant could be assessed as fit for work, the decision maker could change this to the WRAG, and the tribunal service could put the client in the Support Group. The reasons for the changes to the assessment may not be relayed back to the original assessor, even if the assessment was found to be flawed, meaning that lessons cannot be learned when mistakes are made. For the process to work efficiently, there must be a feedback loop between all those involved.