

Citizens Advice Scotland

Scottish Association of Citizens Advice Bureaux



The Work Capability Assessment Response from Citizens Advice Scotland (CAS)

By Keith Dryburgh, Social Policy Officer

Citizens Advice Scotland and its CAB offices form Scotland's largest independent advice network. CAB advice services are delivered through service points throughout Scotland, from the islands to city centres.

The CAB service aims:

to ensure that individuals do not suffer through lack of knowledge of their rights and responsibilities, or of the services available to them, or through an inability to express their need effectively

and equally

to exercise a responsible influence on the development of social policies and services, both locally and nationally.

The CAB service is independent and provides free, confidential and impartial advice to everybody regardless of race, sex, disability or sexuality.

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Executive summary

In order to give an accurate response to the review, we asked frontline advisers and managers to offer their views and experiences on the questions posed in the call for evidence. Over 130 managers, advisers and volunteers responded and this makes up the basis of our response. The response is therefore grounded in the front-line experience of those who advise on ESA issues everyday.

Our key points in this response:

Pressure on citizens advice bureaux

ESA has become a significant issue for both clients and citizens advice bureaux. 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.

Impact of changes from Year 1 of the Review

Most advisers are of the opinion that it is too early to tell whether the changes from the first year review have had an impact. However, a quarter of advisers believed that the process had been worse in the last six months, mainly due to the new descriptors that were brought in at the same time as the recommendations from the independent review.

Changes to the system

The majority of citizens advice bureau advisers believe that significant change is required to the system. However, there is concern that constant change can make the role of helping clients through the process more difficult. Any change to the system must be communicated to advisers, JCP/DWP employees, and clients if it is to be successful.

Concerns about the assessment

Bureau advisers remain hugely concerned about the accuracy of the Work Capability Assessment, with 9 out of 10 advisers saying that their clients regularly experience problems in their assessment. Advisers raised concerns about the conduct of health care professionals, their knowledge of conditions, inaccuracies in their written reports, the use of IT systems in the assessment, and the lack of reference to supporting evidence in the whole assessment. Advisers are agreed that significant change is still required to the assessment itself.

Changes for the future

Advisers had a number of suggestions for change, including a link between tribunal results and Work Capability Assessments to ensure that mistakes are identified and addressed, better use of supporting medical evidence, and training for health care professionals on mental health conditions.

Introduction

1. 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.
2. In 2009/10, Scottish citizens advice bureaux dealt with over half a million new issues for clients. Almost 190,000 of these issues related to benefits – over 500 for every day of the year. Nearly 60,000 of these new problems were issues related to the various sickness and disability benefits.
3. 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 one of the most common issues brought to bureaux by clients.
4. The WCA, both in terms of its delivery and results, is the aspect of ESA that has caused the vast 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.
5. In order to give an accurate response to the review, we asked frontline advisers and managers to offer their views and experiences on the questions posed in the call for evidence. Over 130 managers, advisers and volunteers from more than 60 citizens advice bureaux responded and this makes up the basis of our response. The response is therefore grounded in the front-line experience of those who advise on ESA issues everyday.

Profile of those seeking advice on ESA

6. Based on data gathered on 1,328 clients who sought advice on ESA in the first quarter of this financial year (April – June 2011), we can see a snapshot of the profile of clients who experience problems with their ESA claim. From this snapshot, we can see that clients are likely to be aged between 45 and 59, that there is an even gender split, that more than half of clients live in the social rented sector, and that clients are more likely to live in a single adult household than the general population.
 - **Age:** almost three quarters of bureau ESA clients are between the ages of 35 and 59 while almost half are aged between 45 and 59. Compared to the overall profile of ESA claimants in Scotland, bureau ESA clients are more likely to be aged between 45 and 59. This may mean that claimants in this age group are more likely to seek advice on ESA and/or are more likely to experience problems in their claim. For this age group, sickness and disability benefits make up 1 in 5 of the issues they seek advice upon at citizens advice bureau (compared to 1 in 13 issues for 25-34 year olds).

- **Gender:** There are more male ESA claimants (55% of the total) than female claimants (45%) in Scotland. However, slightly more female clients sought advice on ESA (51% of total ESA clients) compared to male clients (49%). Despite this, as a proportion of all issues advised upon, men are more likely to seek advice on ESA than female clients.
- **Housing status:** Just over half of clients seeking advice on ESA live in the social rented sector (52%) compared to around a third of all CAB clients (35%) and less than a quarter of households in Scotland (22%).
- **Household type:** Clients seeking advice on ESA are significantly more likely to live in single adult households (53% of clients) than the general population of Scotland (23% of households).
- **Caring responsibilities:** Just over a quarter of ESA clients have dependent children, although they are less likely than other CAB clients and the general population to have care responsibilities.

Client issues

7. Employment and Support Allowance (ESA) has quickly become one of the most common issues brought by clients. Bureaux helped clients with 14,713 issues relating to ESA in 2009/10 – that's 30 issues for every 100 ESA claimants in Scotland. CAB welfare advisers report that they are spending up to 60-70% of their time helping clients with ESA problems.
8. Based on a snapshot of data from 2010/11, we can see the types of advice enquiries that clients bring to bureaux concerning ESA. In this period, ESA made up around 1 in every 29 new issues brought to bureaux across all topic areas, and was the fourth most common issue that clients sought advice upon. Only Disability Living Allowance (DLA), credit card debts, and personal loan debt, caused more issues for clients than ESA.
9. In addition, there is evidence to show that clients with ESA issues need to make more repeat visits to bureaux to get these issues resolved than clients with other types of issues. For every ten new ESA issues brought to bureaux, there were more than five repeat visits, compared with only two repeat issues on other issues. ESA issues involve more bureaux visits for clients and consequently more work for advisers than the average.

10. Based upon a sample of 14,188 new ESA issues in 2010/11, we can see more detail on the types of issues that clients are seeking advice upon:

Issue	Number of issues (% of ESA enquiries involving this issue)	
Appeals	5,360	(38%)
Claiming process	4,777	(34%)
Entitlement	3,503	(25%)
Payment	1108	(8%)
Work Capability Assessment	923	(7%)

11. From the table, we can see that appeals dominate as the main ESA advice enquiry for clients. Direct problems with the WCA only make up 7% of advice issues, but it is likely that problems with the WCA cause many of the appeals issues.

Client representation

12. Since the advent of ESA in October 2008, the number of benefit tribunal documents prepared by bureaux has risen by 91% while the number of benefit tribunals in which advisers have provided representation has increased by 64%.
13. Using a three month snapshot of tribunal work, we can see that around 47% of benefit tribunals at which CAB provide representation concern an ESA appeal. Applying this to the total figure for welfare tribunals suggests that CAB provided representation at around 1,550 ESA tribunals in 2010/11 – around 30 each week. In 2009/10, we estimated that bureaux had undertaken around 850 ESA tribunals, indicating that representation by bureaux at ESA tribunals increased by 82% in 2010/11.
14. Welfare advisers estimate that one appeal takes about 5 hours of adviser time. This includes two or three interviews with the client, collecting medical evidence on behalf of the client, and drafting submissions for appeal. Applying this figure to the estimated total number of ESA appeals detailed above shows that the estimated 1,550 recorded tribunals would have taken over 1,100 working days of adviser time across the service. Employment and Support Allowance is therefore a huge issue for both clients and advisers.
15. Based on a sample of 269 ESA tribunals where a CAB provided representation in the first quarter of 2011/12, 69% of tribunals found in favour of the claimant. Using this figure, we can estimate that claimants won around 1,070 of 1,550 tribunals at which bureaux provided representation.

The impact of ESA on bureau resources

16. We asked advisers how important an issue ESA is for their bureau. 84% of respondents stated that ESA was a very important issue, while 5% of respondents said it was the most important issue for the bureau. Only 12% said that ESA was quite an important issue.
17. We estimate that citizens advice bureaux in Scotland represented clients at around 1,550 ESA tribunals in 2010/11. Advisers estimate that each tribunal takes around 5 hours of work. This would suggest that last year ESA tribunals took up around 1,100 working days of adviser time across the service. This doesn't include the work that advisers undertook in advising thousands of clients on their entitlement and helping claimants to complete thousands of application forms.
18. Advisers told us about the impact of this work on bureau resources and time:

“The impact of ESA on the CAB is huge. From helping the client with the initial claim, then 13 weeks on assisting with the completion of the ESA50 and then supporting them through the appeal process which can take up to 9 months. The actual appeal takes a full day out of the office for the specialist workers as it involves a round trip of a minimum of 110 and up to 300 miles as well as the time spent at the tribunal. There are no expenses for the CAB to do this work and the travel costs come from a very limited core budget.”

“We are a small bureau and the time it takes to deal with each claim is enormous, the bureau covers 20,000 scattered over 16 different islands and the practicalities of giving a first class service is very difficult and therefore the enormous increase in appeals affects us badly.”

19. One welfare adviser described the pressure that appeals are creating on advice agencies who are struggling to help everyone that needs support. For this adviser, ESA is creating:

“an intolerable pressure & soon I will have to turn people away. In Edinburgh I know other agencies are already doing this for I am getting their referrals... Some of these cases have severe problems & very traumatic backgrounds. They are stressful to cope with & very time consuming. How of course they were found fit to work is unfathomable.”

20. The pressure on bureau resources can ultimately lead to clients with other issues not being helped as quickly as they should be or being referred to other sources of help:

“Impact has placed greater demand on time and resources, therefore other clients are not being reached and assisted as potentially as they should be, have to refer clients to other sources for help due to staffing restraints due to appeals for ESA.”

“IT (ESA) IS THE VAST MAJORITY OF OUR CASEWORK AT THE MOMENT, LEAVING LITTLE TIME FOR ANYTHING ELSE.”

“...we are putting in on average 6/8 ESA appeals per week. This leads to a very busy waiting room, long waiting times, and on most days we can't see everyone who tries to use our drop in service.”

21. The problems caused by the ESA process have an impact on other areas of advice as claimants experience drops in income and debt problems. This puts pressure on the debt advice provided by citizens advice bureaux:

“It can involve a substantial demand on resources as determinations on capacity for work often lead to withdrawal of income and other benefits often producing unmanageable debts.”

22. The major pressure put on bureaux by the ESA process is the significant and increasing number of clients who require representation at appeals. We estimate that bureaux represented clients at around 1,550 ESA tribunals last year, 69% of which were won by claimants. Many of these tribunals, particularly those won by claimants, were caused by mistakes and inaccuracies in the Work Capability Assessment.

“There is a lot of time taken up with ESA appeals. It takes several hours and days to go through the appeals paperwork which can be at least 60 pages long, have appointments with the client in question and draft a written submission. Most clients are not happy with the medical assessment. Some clients also need more help than others (particularly mental health clients) and bring in every letter they receive from the DWP as they don't understand it. I sometimes represent clients on the day of their appeal and sometimes these run later than scheduled. Often clients get very agitated and we have to explain the situation and often 'counsel' the client.

“ESA issues are impacting heavily on bureau resources as clients require to be seen several times through the appeals process. We are finding that almost all clients are being refused benefit after their Work Capability Assessment. Preparing a case for appeal is extremely time consuming as an adviser has to read through all the papers which can be in excess of 100 pages.”

23. A wider problem for advisers involves Jobcentre Plus offices sending claimants to bureaux for advice, help with applications, and access to telephone helplines, all of which should be provided through the jobcentre. Bureaux do not receive funding to deal with the demand that is being passed to them. This problem applies to ESA where clients are often sent by jobcentres to bureaux when they need advice or have a problem with their claim.

“Too many people going through. Jobcentre staff can’t cope and won’t help claimants with forms and send them all to CAB.”

24. While there is already huge pressure on bureaux to help ESA claimants, welfare advisers expect the migration of claimants from IB to ESA to have an even greater impact on bureau resources and ability to help clients. Hundreds of thousands of current Incapacity Benefit claimants will be reassessed in Scotland in the next four years, and many of them will seek advice from a citizens advice bureau:

“...this bureau is just now seeing the changeover from IB to ESA but predict this Autumn the workload will increase greatly putting pressure on appointments and take up advisors’ time form filling/advising.”

“We are awaiting this process with trepidation as we expect our workload to increase substantially.”

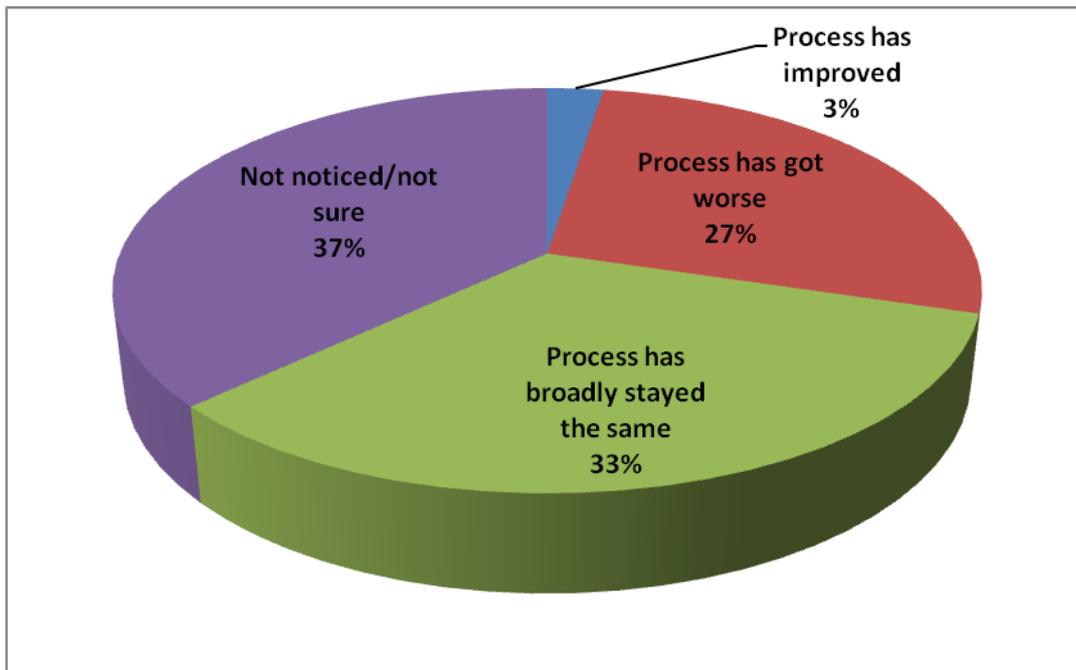
25. Given the huge pressure that citizens advice bureaux have been placed under by the problems inherent in the ESA process, we believe that any changes to the system require to have due regard to the role of advice services. Bureaux have so far helped thousands of clients through the process without any extra funding or support from Government. If this pattern continues alongside the extra demand that the reassessment will bring, bureaux will be forced to turn away clients who require their support – both those with ESA issues and those with other problems.

Question 1: Year one changes

Have you noticed changes to the WCA process as a result of the Year 1 recommendations? If so, what are these changes?

26. We asked bureau advisers who deal with ESA cases to tell us whether they had seen any changes to the WCA process since the year 1 recommendations were in place. More than 100 advisers gave their views, which are summarised in Figure 1:

Figure 1: Have you noticed changes to the WCA process?



Base: 106 citizens advice bureau advisers

27. The majority of advisers (70%) felt that the process had broadly stayed the same or had not noticed any changes. There was a sense that it was too early to tell whether the recommendations were having a positive impact.

28. However, over a quarter of advisers felt that the process had worsened since the recommendations came into place. For most of these advisers, the new descriptors that came into force at the same time as the Year 1 recommendations had had a negative impact on the process, particularly for claimants with mental health conditions. Other advisers stated that rising numbers of clients needing support is making the process worse. Only 3% of advisers felt that the process had improved.

29. A number of advisers commented on how the new descriptors affected the process, particularly for those with mental health conditions:

“There have been changes to the ESA descriptors; some of which relax, whilst others tighten, the criteria for both physical and mental health. On balance I think the aim is to make it harder to qualify, and I think that is also likely to be the practical outcome.”

“The latest changes give less opportunity for people with mental ill health to score adequate points.”

“WCA is now stricter, descriptors have been deleted, are more difficult to meet & points awarded have been reduced.”

“WCA "points" more restrictive, people with genuine and complex illnesses are being told they are fit for work.”

30. For bureau advisers, there is a sense that the combined changes – both the Year 1 recommendations and the new descriptors - have given with one hand and taken away with the other. Whilst the changes from the first review were broadly welcomed, the changes in the descriptors have largely negated many of the positive effects the review changes should have entailed. The fact that many advisers in the survey thought that the process had got worse since the changes shows that they believe that the Work Capability Assessment has taken one step forward and two steps backwards.
31. While these are subjective views of the new descriptors, it must be said that these views are supported by the Government’s expectations of their amendment regulations. Using predictions from the Explanatory Memorandum, we estimate that the proportion of claimants found fit for work in their assessment was predicted to increase from 66% to 74%, excluding closed claims.¹ If the Government didn’t intend for the new descriptors to be stricter in the assessment, they certainly predicted that they would be.
32. There was a small minority of advisers who reported that they had seen improvements to the WCA process:

“Better assessments and more friendly”

“A VERY slight improvement”

33. Anecdotally, some advisers have reported an improvement in the role of DWP decision makers. One adviser explained how a decision maker took responsibility for helping a client get a reconsideration when the adviser showed that the initial assessment had been flawed. We hope that DWP decision makers continue to take an assertive role in the process.

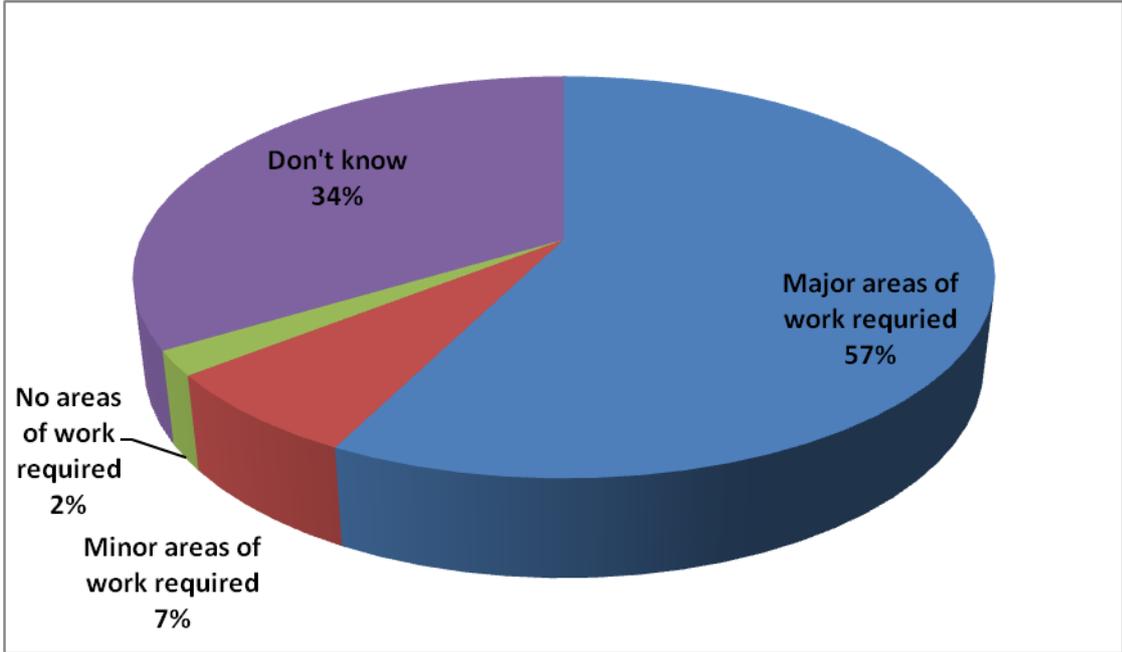
¹ For these calculations, please see page 9 of the CAS response to the amendment regulations.

Question 2: Further work required

Are there further areas of work that you think should be added to the programme of work for Year 3? If so, what should these consider?

34. We asked bureau advisers who deal with ESA cases to tell us their view on this question, and more than 90 advisers responded. Their views are summarised in Figure 2:

Figure 2: Are there further areas of work that you think should be added to the programme of work for Year 3?



- 35. There was a clear majority of advisers who felt that major areas of work are still required to improve the process. We are hopeful that some of these areas are being addressed as part of the second Independent Review, including work on the descriptors for mental, cognitive and intellectual conditions and other fluctuating conditions. Our survey of advisers found that claimants with mental health and/or fluctuating conditions were the clients that they found experienced the most problems in the ESA process.
- 36. Advisers gave strong opinions about the conduct and knowledge of health care professionals who conduct Work Capability Assessments, which we outline in questions 4 – 6 of this response. We expect the conduct of health care professionals to be a constant focus of each review.
- 37. In terms of additional areas of work that we think should be added to the programme of work for next year, we feel that the experience of claimants involved in the migration from IB to ESA should be a key focus of the Year 3 Review, while we would also like to see a focus on reporting of WCA outcomes by Government and the media.

IB-ESA migration

38. Over 200,000 Incapacity Benefit claimants in Scotland will undergo a reassessment for Employment and Support Allowance over the next four years at a rate of nearly 1,000 per week. Using government estimates on those found fit for work, and assuming the 12 month time limit on contributory ESA claims in the WRAG group comes into place, almost half of these claimants will not be in receipt of sickness benefits by 2015.
39. This is an unprecedented process that will involve some of the most disabled, sick and vulnerable members of society. Whilst the pilots in Aberdeen and Burnley where quickly labelled a success, we believe it is too early to assess the effects of the process on long term sickness benefit claimants. We are concerned that the problems that we have seen in the ESA process will have a more serious impact on those who have been out of work for an extended period.
40. Welfare advisers expressed their concern about the speed and scale of the national reassessment and the impact that it will have on their bureau:

“If I am right in thinking it is expected to be completed by 2014, I think this is ambitious and I am concerned the right decision for claimants may be compromised because of the rush for the migration to be completed. [I] expect disaster for our clients.”

“It appears that the DWP are unable to cope with the number of cases. I’ve had clients who have been waiting more than 12 months for an initial medical – and with 1 million plus IB claimants to reassess this will only get worse.”

“I don't even want to think about how much work this will generate.”

41. The speed of the national reassessment is likely to place huge demand on the services of welfare advisers in citizens advice bureaux. Bureaux currently deal with around 1 new issue each year for every 3 ESA claimants in Scotland – if this trend is repeated for IB claimants in the reassessment, bureaux could expect to deal with almost 70,000 new issues on their behalf. There is a sense of trepidation amongst advisers and claimants with some advisers stating that the process has not been explained properly to them:

“I have not dealt with enough of these claimants yet to comment but I know there is great anxiety among claimants about this and I do not think that we have had the changes adequately explained to us.”

“They came initially as a trickle & are building to a flood. DWP have tweaked their process to cope but have not advised us of this. Finding where to access the department appropriately has proved difficult & time consuming & worryingly BDC staff locally are unsure who is dealing with what.”

42. Advisers report that IB claimants are finding the ESA process confusing and may fail to complete forms properly or attend appointments as a result. It is a significant worry that claimants may lose entitlement to sickness benefits on the basis of not being able to conform to the process rather than on the basis of their condition:

“Clients moving from IB to ESA have found the process confusing and time consuming. They do not understand why they are being moved onto ESA or what the differences may be.”

“Clients who are migrating don't understand why or what it is.”

“One problem we have found is that existing IB claimants think that they are completing an IB renewal and don't actually realise that this is a different benefit with different criteria - the letter which accompanies the ESA50 is very ambiguous.”

43. Advisers stressed that long-term IB claimants are likely to find the ESA process more difficult and will be harder hit by problems in their application or if they are found fit for work. This is particularly the case for claimants with long-term mental health problems:

“Most clients are confused and upset by the whole review process, often GPs advise they are unfit for work, then DWP decides differently. New claimants are more understanding of the assessment period and find the claiming process more straightforward. Long term sick [people] do not understand how they can - at a stroke of a pen - be found fit to work.”

“From past experience, older clients who have been on IB for a long time especially clients' in their late 50's who are suddenly told that they have a work capability and are expected to return to the workplace after a long absence find it very difficult to comprehend, especially with little or no support.”

“They are affected worse in the sense they may have been assessed as incapable of work under incapacity for years and now been told they are fit for work. It is bewildering to them. Basically the state has moved the goalposts.”

“I think the experience for them is worse than for new claimants. Anecdotally they have talked about being hounded and feel they are even less valued. That's not a good perception from people dealing with mental health issues.”

“The approach is very aggressive in that clients who have long term mental health issues are expected to cope with a telephone call when some can't communicate with any one but their carer. The letters are very upsetting and the staff handling enquiries are very defensive in their attitude when dealing with CAB enquiries.”

“My clients are very stressed by the changes and feel very vulnerable.”

44. There is a significant risk that the ESA process will prove unsuitable for many thousands of long-term IB claimants across Scotland and the UK. Regardless of the outcomes, this process will create huge amounts of demand for advice services. The Independent Review must have a serious focus on the experience of IB claimants in the WCA and advise whether they require additional support in the process.

Media portrayal

45. We are extremely concerned about the way in which the results of the Work Capability Assessment are portrayed in the media. The following headlines appeared in newspapers following the Government's latest release of statistics from the WCA:

Daily Mail (27th July 2011)

The shirking classes: Just 1 in 14 incapacity claimants is unfit to work

Daily Express (27th of July 2011)

SICK BENEFITS: 75% ARE FAKING

Daily Star (26th of July 2011)

Handout Cheats Fail Medical Tests

46. The use of the statistics are misleading while the language in the articles – including terms such as ‘shirking’, ‘faking’ and ‘cheats’ – is divisive and derogatory. The Minister told the Work and Pensions Committee that this use of statistics and language was not encouraged by the Government and that they would speak to newspapers about this. However, these headlines appeared following this promise from the Minister and were based on statistics released from his department. Whilst the Minister cannot and should not tell newspapers how to report, it is a significant worry that it is the Government’s interpretation of the Work Capability Assessment statistics that is leading to these headlines. This is a concern shared by Anne Begg MP, the Chair of the Work and Pensions Committee, in an open letter to the Minister:

“I trust that you will be contacting newspaper editors again to urge them to ensure that the reports they carry about ESA claims are factually correct and that they avoid pejorative terms such as "shirkers" and "scroungers" which are irresponsible and inaccurate. As we said, "portraying the reassessment of incapacity benefit claimants as some sort of scheme to 'weed out benefit cheats' shows a fundamental misunderstanding of the Government's objectives." It is clearly important that the Government takes every possible step to counter this ongoing negative portrayal.”

47. We believe that the Review should recommend a standard and objective method of reporting the statistics from Work Capability Assessments. The current method of reporting is giving rise to headlines in newspapers that significantly worry claimants before their own WCA – which in turn creates an atmosphere in which claimants feel they are being accused of cheating the system and a confrontational relationship between the DWP/ATOS/Jobcentre Plus and the claimant develops. Negative and misleading headlines in newspapers lead to negative outcomes in the Work Capability Assessment. Advisers explain this problem for clients:

“Most people dont want to be sick but are made to feel they are "scrounging" - press statements from politicians do little to alleviate this.”

“Govenment are continually issuing misleading press releases which infer wide spread fraud. This simply leads to presenteeism and repeat claims.”

Monitoring outcomes for claimants

48. The Government is too focused on the *outputs* of the WCA process – it needs to focus on the *outcomes* for claimants. Finding a large proportion of claimants fit for work is not a success in itself; supporting these claimants in employment would be a success.

49. CAS is seriously concerned that the DWP and the Government have failed to adequately monitor the outcomes of claimants and former claimants in order to assess the success of ESA. Simply declaring ESA a success because it has moved claimants from one benefit to another is not enough. The only

performance measure of ESA can be whether it has helped people towards sustained work. We believe that the Government should be actively monitoring the outcomes of the ESA process for clients to ensure that it really is helping claimants back to work.

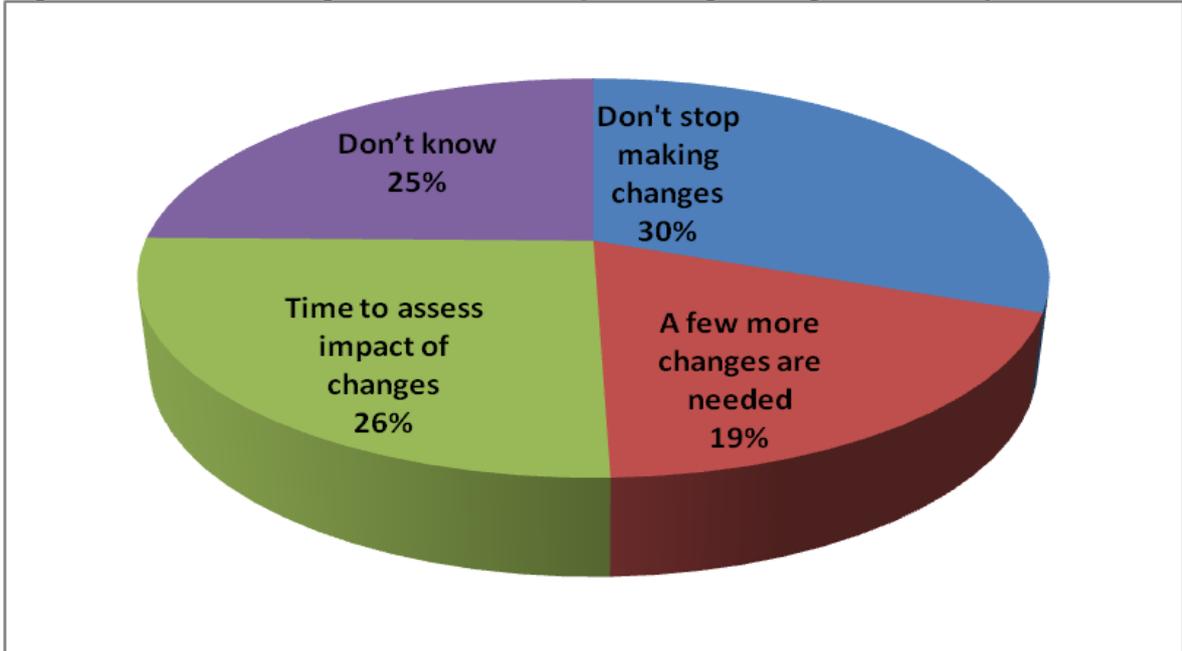
50. The measure of success for ESA has to be whether former claimants are returning to suitable and sustained employment. While much of this depends on the supply side – former claimants being capable and willing to work – at least as much emphasis should be placed on the demand for labour.
51. The DWP and the Government should therefore also be monitoring whether employers are able and willing to take on former sickness benefit claimants. If this monitoring suggests that employers are proving unwilling to take on former claimants in large numbers, the Government needs to consider whether support is required for employers to take on more employees from this group.

Question 3: Changes to the system

At what stage should we stop making changes to the system and let the changes already being made bed in to ensure they are having the desired impact?

52. We asked bureau advisers who deal with ESA cases to tell us their view on what stage the Government should stop making changes to the system. More than 90 advisers gave their views, which are summarised in Figure 3:

Figure 3: At what stage should we stop making changes to the system?



Base: 91 citizens advice bureau advisers

53. Advisers are divided about when to stop making changes to the system to let changes bed in. There was a definite sense that the system isn't perfect and needs significant changes, however, there was also a feeling that too many changes make the process even more difficult to follow for clients and advisers. This suggests that advisers want changes to the system, but that any changes must be communicated to them and explained to claimants.

54. A number of advisers felt that significant changes were still required:

“ESA should be thoroughly changed to make it fit for purpose.”

“The system has to change as the current system is not viable, valuable time and resources are being used, wasting money and time challenging poor decisions.”

“No process should be stopped being improved, there is a lot of scope for improvement in this one.”

55. A number of advisers felt that the system should be built with the ability to change according to the needs of claimants and through best practice:

“The system should always have ability to change according to needs of claimants and the job environment.”

“ESA process should be reviewed as an iterative project with continual refinement and gathering evidence of best practice.”

56. Other advisers thought that constant change made it difficult for advisers to help clients through the process:

“Hard to gauge, as most people are unhappy with the present system BUT constant changing makes it harder to follow.”

“Impossible to answer - every change seems to bring additional problems, but WCA is not satisfactory as it stands, which means that clients are not being adequately assessed.”

“It seems like the Government keep changing the goalposts whenever someone challenges them and so the caselaw is irrelevant. You need to see if things are working before you change them.”

“The constant changes in the descriptors make them difficult to explain to clients with mental health conditions.”

57. There are a range of opinions on this question. It is clear from advisers that the assessment requires change, but there is concern that constant change can make the role of helping clients through the process more difficult. Any change to the system must be communicated to advisers, JCP/DWP employees, and clients if they are to be successful.

Questions 4 - 6: Concerns about the assessment

58. We asked advisers to name the aspects of the ESA process that their clients experienced problems with. Just over nine out of ten advisers said their clients experienced problems with the Work Capability Assessment (92%), followed by the appeals process (62% of advisers), the application process (41%), and then communication with DWP/ATOS (30%). The WCA is the most challenging part of a problematic benefit.
59. We asked advisers to name the clients that they thought were most affected by the problems they saw in the Work Capability Assessment. Around three-quarters stated that clients with fluctuating/variable conditions were significantly affected, while 73% stated that clients with depression experience problems. Advisers were less likely to state that clients with physical health conditions were adversely affected (34% of advisers).

Are you aware of any concerns about the face-to-face assessment, and if so where have these been focussed?

60. Clients and advisers have reported a range of issues with the WCA, including problems with the assessment descriptors and healthcare professionals who do not appear to be listening to the claimant or who distort their answers. Following the introduction of the assessment in October 2008, it has quickly become one of the biggest sources of complaints from bureau clients. Based upon the experiences of their clients, welfare adviser concerns about the WCA include:
- **The WCA is often rushed**, and can last just 20 minutes, leaving claimants with the impression that they have not been properly assessed
 - **The yes/no format of the assessment is too narrow**, leaving little opportunity for the client to explain their condition
 - **The health care professionals often fail to listen or interact with the client**, which can lead to mistakes and a failure to properly assess conditions
 - **The descriptors often do not cover a client's condition**, especially mental health conditions, and are not based on 'real world' capabilities.

Conduct of healthcare professionals

61. A number of welfare advisers detailed the problems that clients had reported to them regarding the inadequacies of the assessment and the conduct of the health care professionals. It appears to be very 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:

“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.”

“We are still hearing from claimants that they did not feel that the HCP was listening to what they told them about their condition and how it impacted on their life.”

“Claimants state HCPs are rude and have no interest in the claimants answers, or condition, the interviews are often short and abrupt, carers have been told they cannot speak on the claimants’ behalf.”

62. A number of advisers reported that medical reports often contain comments that the client claims not to have made, make inaccurate assumptions about what they client can and can't do, and fail to contain comments that the client did make. There is a suggestion that the IT system that underpins the assessment is the source of these complaints. 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.

“There are many comments about the medical report stating things that had never been said.”

“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 HCP bear little resemblance to what is recorded.”

63. Despite being addressed in the first year review's recommendations, advisers still consider some health care professionals' attitudes towards claimants with mental health conditions to be poor. The recommendation to have mental health champions may yet improve practice, but advisers continue to report that clients with mental health problems experience the most problems in the process:

"We still in [city name] have a nurse who "doesn't do depression". Clients report this without prompting & cannot all be wrong. They are angry, for in saying this she denigrates their condition & suffering."

"From my experience the HCP's don't understand mental health conditions and often make light of this in the assessment."

64. Advisers report that their clients are experiencing long waits when attending their assessments, and in some cases are not being seen on the day at all. This can have a significant effect on a client who has severe mental health issues or a client who experiences problems when sitting for long periods of time. For many clients with significant health issues, just getting to the assessment can be a difficult experience. To ask them to do so twice can cause them serious difficulties, as bureau advisers explain:

"There are other problems. Cancellation on the day - allowed apparently under ATOS contractual terms. They are grossly inefficient & often do this far too late when claimants have embarked on a journey which they have to pay for upfront & wait for reimbursement. Some have very long journeys to assessment centres. And of course clients are stressed & want to get the process over with. This adds to illness & NHS costs."

"They always overload the medicals, and you get folk sitting about for two hours and then told 'sorry, we can't see you today' and sent home."

"We're in a rural area... you're talking 30 miles to call them in and then at the last moment they are sent home. Great if you've got somebody with a severe mental health issue."

65. The assessment itself is often very stressful and upsetting for clients, with some reporting that the WCA has had an adverse impact on their health. A bureau reported anecdotally that one client who was initially found fit for work was eventually put into the Support Group after her condition significantly worsened as a result of the stresses of the assessment process. Bureau advisers stated what the assessment process entailed for their clients:

"The approach is still far too mechanistic and the distress caused to clients under the assessment (particularly those with mental health problems) should not be underestimated."

“It is fair to say that claimants always feel the process is making every condition worse.”

Descriptors

66. In our answer to Question 1 of this response, we outlined how changes to the descriptors have had a negative impact on the assessment for many clients, particularly those with mental health conditions. Advisers report that the changes have ‘tightened’ the descriptors which have made it more difficult for claimants to score points.
67. Advisers are concerned that the descriptors that are used in the assessment are too narrow and that a number of clients who are clearly not fit for work are failing the assessment because the descriptors are not designed to recognise their condition. In some cases, the narrowness of the descriptors were recognised by the health care professional:

“Clients are repeatedly told by examining doctors/nurses ‘I believe you are not capable of work but I can’t make you fit the criteria’.”

“...even where they are, as in one case, sympathetic to the claimant's belief she was unfit for work, they are tied to descriptors which cannot produce a decent result.”

68. We are very hopeful that the DWP will accept the recommendations of the independent review on descriptors for mental cognitive and intellectual conditions and other fluctuating conditions. Evidence from citizens advice bureau advisers strongly suggests that clients with these conditions are the worst affected by the problems in the WCA. Getting these descriptors rights could go a long way towards resolving many of the problems experienced by clients in their assessment.

Cycle of assessments and appeals

69. As a result of the huge numbers of ESA appeals that the Tribunals Service is being required to deal with, many clients are having to wait a number of months for their appeal. Many of these clients will win their appeal, are quickly told to attend another WCA, are found fit for work, and then make another appeal. This cycle of assessments and appeals places great pressure on advice services, is stressful for clients, and wastes significant public money.

“Under the current system where clients are constantly being assessed and reassessed again and again in a very short period of time we are having to spend much longer on these cases, stretching bureau staff time to the limit. Clients have no sooner won their case at appeal than they are pulled up again for a further medical and the whole process begins again.”

“More than half of our resources are spent on ESA applications, reviews and appeals. The frequency of medicals and the time taken for appeals means that someone who has won at appeal at tribunal can undergo a further assessment within weeks of winning at the tribunal, fail the WCA and have to go through a new appeal. A new submission then has to be prepared to go to a new tribunal - a waste of everyone’s time.”

“Clients are on a merry go round from which there is no escape. They fail the medical, are signed off, win at tribunal, ESA 50 is issued, client fails medical ,appeals decision and again goes to tribunal and wins. Apart from the waste of time, energy and resources, it places additional strain on clients who already have extremely stressful lives.”

70. It is clear from the views of bureau advisers that the WCA still requires change. Many of the problems that existed in the first two years of the WCA still exist, such as poor treatment of clients with mental health conditions, health care professionals that do not appear to listen to the claimant and produce inaccurate medical reports, and descriptors that are becoming increasingly difficult to use. We are still hopeful that the recommendations from last year’s review will help to address these issues, but it must be noted that clients and advisers still experience many problems in the WCA.

Question 7: The LiMA system

If you have heard specific concerns about the IT supporting the assessment (i.e the Logic Integrated Medical Assessment or LiMA system), do you have any robust evidence about how this adversely affects the assessment or its outcome?

71. Advisers have reported numerous instances where the use of IT supporting the assessment has resulted in serious errors in the medical report and the final assessment. Advisers said that in their experiences, the reports produced by the IT system are often discarded by tribunals due to misreporting.

“On one appeal a medical report read ‘customer moved toes on right foot up and down without problem’. This was clearly cut and pasted from the details on the left foot. However, the particular customer had no toes on his right foot.”

“I am fed up having their reports set aside by tribunals because they are so easily found wanting - usually by misreporting & this often caused by hurried selection from drop down menus. The result is cut & pasted rubbish.”

72. Advisers report that the manner in which health care professionals use IT in the assessment contributes to the problems that claimants experience. Many claimants leave their assessment feeling that they haven’t been listened to, that the health care professional did not make eye contact, and that they were ignored in favour of the computer. This contributes to a feeling for many claimants that they not been properly assessed.

“HCP should not be entering data into computer while ‘examining’ client.”

“Many clients state they felt ignored in favour of the computer. One stated the computer was ‘misbehaving’ and took ten minutes out of the examination time to resolve and the examiner never looked at her throughout the examination.”

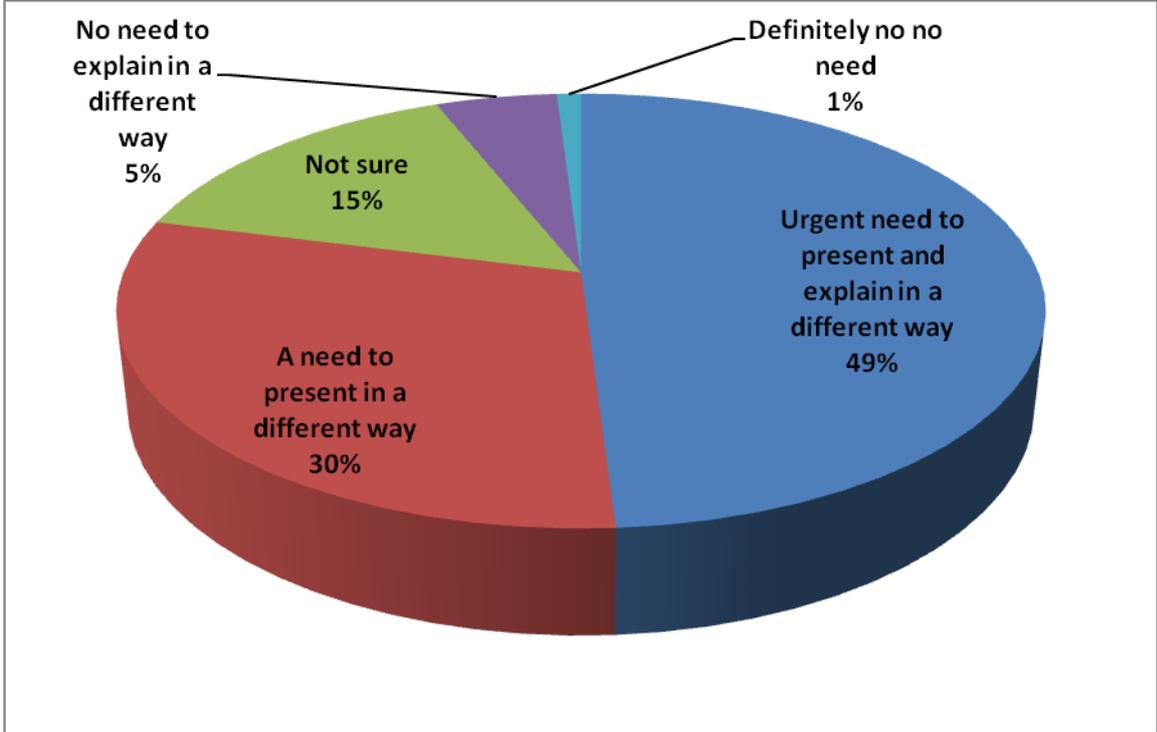
“I’ve sat in on numerous assessments and just found them a joke. Seriously, no eye contact, face buried in the laptop, and... the one that got me was, he (the assessor) said that the claimant had good eye contact, but the doctor never looked at him once. Not once. His face was buried in the laptop.”

Question 8: Explaining the assessment

Is there a need to present and explain the face-to-face assessment in a different way, making it very clear to claimants what it will involve and how a functional assessment relates to work capability?

73. We asked bureau advisers who deal with ESA cases to tell us whether they believed that there is a need to present and explain the face-to-face assessment in a different way. More than 90 advisers gave their views, which are summarised in Figure 4:

Figure 4: Is there a need to explain the assessment in a different way?



Base: 94 citizens advice bureau advisers

74. 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. Only 6% of advisers thought that there was no need to explain the assessment in a different way.

75. Advisers stated that the main problem in the explanation of the assessment was that claimants are unsure about how much information they are required to give at the assessment and how much they should say about how they feel about their condition. This means that many claimants come out of the assessment with the feeling that they have not been able to offer important information on their condition.

“Clients have advised that they are not aware how much they should say about how they feel. When clients have advised about how they feel, they say there is nothing about it in the report.”

“Clients do not understand how important it is to fully divulge the problems they have with their condition, generally they feel they manage and have the kind of attitude that they are not ill, the assessment should be unbiased and clients should be probed fully to obtain accurate information, not merely asked the questions or their answers given accepted as accurate.”

76. While advisers agreed that explaining the assessment was important, they were also strongly of the opinion that it was much more important that the assessment itself was undertaken properly:

“I think people just want the medical assessments to be done properly at the outset; after all, explaining the assessment more fully, before executing it badly, will not prevent the claimant from lodging a successful appeal.”

Question 9: Changes to the WCA

What one thing would you change about the WCA to make it operate more fairly and effectively?

77. We put this question to welfare advisers and received 80 responses to this question. Unsurprisingly, advisers recommended a number of different actions that could improve the WCA, although there was consensus around a small number of changes which are outlined below:

Health care professionals

78. Serious concerns remain about the conduct and attitude of health care professionals in assessments. This is particularly the case for claimants with mental health conditions. The first independent review recommended that Atos Healthcare put in place 'champions' with additional expertise in mental, cognitive and intellectual conditions. While this recommendation may yet improve practice, many advisers called for all health care professionals to receive training on mental health conditions to ensure that they have knowledge of the often serious conditions that they are assessing.

“Need to make sure that the HCPs carrying out the medical examinations are fully trained especially in areas of mental health. Problems appear to arise when the HCPs are nurses with what appears to be little understanding of mental health problems.”

“The HCP should be trained in the condition they are assessing on. Not enough HCPs understand Mental Health issues, and related conditions i.e Autism.”

Descriptors

79. We have raised concerns about the narrowness of descriptors throughout this response. We understand that the independent review is working with charities to look in detail at the descriptors for mental, cognitive and intellectual conditions and other fluctuating conditions. We fully support this work and call upon the DWP to implement the recommendations relating to descriptors.

“The questions should be more flexible as they do not take into consideration the extent of a person's illness e.g. the mental health descriptors.”

Supporting evidence

80. A number of advisers suggested that supporting evidence should play a greater role in the final assessment of a claim. In many successful appeals, it is supporting evidence - often available in the initial assessment - that plays a key role in the decision. It therefore follows that greater use of supporting evidence would lead to more accurate initial assessments and fewer tribunals, thereby reducing stress for claimants and saving public money.

81. A number of advisers suggested that more consideration should be given to doctors and consultants who have an understanding over time of a claimant's condition. It was also suggested that GPs should be asked to assess the claimant against the descriptors used in the WCA.

"I would have more emphasis placed on client's specialist reports from Doctors and Consultants who are experts in their field."

"Request and take into consideration the reports from the clients GP's who know them better than the HCP carrying out the assessment."

"List the supporting documents which the client should take with them to the WCA."

82. Citizens advice bureaux play a key role in ensuring that clients are able to provide supporting evidence with their claim. However, advisers have told us of significant barriers for clients who are trying to send in medical evidence to support their claim. These barriers must be reduced for claimants to ensure that they have the opportunity to provide supporting evidence and the assessment is made on the best evidence available. These are the barriers that claimants can face:

- Depending on the policy of the medical practice, GPs can charge up to £90 for a supporting letter for the claimant. This letter often contains a minimum of information on the claimant. The practice of an individual GP can therefore have an impact on the outcome of a benefit application.
- Bureaux have reported instances of faxed medical evidence being accepted by one benefits office and then rejected by another. It is important that the process of submitting evidence is clear to advisers and clients.
- Advisers have reported confusion about where medical evidence should be sent. Bureaux have sent evidence to one office only to be told that the office was no longer accepting evidence. In the mean time, the client may have had their assessment.

Linking tribunal results with the WCA

83. The Tribunals Service dealt with 127,100 ESA appeals in 2010/11, of which almost 50,000 found in favour of the claimant. This means that 130 assessments were overturned at appeal every day of last year. It is fundamentally important that the reasons for the assessments being overturned are fed back to the DWP and to Atos Healthcare to ensure that they have an understanding of where mistakes have been made.
84. However, we are concerned that there is no feedback loop between the Tribunals Service, DWP and Atos Healthcare. Without understanding why tens of thousands of assessments are being overturned, the process cannot be improved by taking into account the mistakes and inaccuracies that are found at tribunal. Without such a feedback loop, the system will be stuck in a cycle of inaccurate assessments and successful appeals.

“More monitoring of the HCPs - if most of their cases are being won on appeal then are they doing their job correctly at all?”

“Sanction ATOS for every appeal upheld at a tribunal. Sanction should reflect return of fee paid to ATOS coupled with full cost of tribunal service and DWP costs incurred.”

“HCP should be assessed on the level of appeals that are upheld where they have deemed that client is fit to work.”

“I think that the assessments need to have strict quality control backed up by the possibility of fines for the assessor, where the DWP loses appeals based on a flawed assessment.”

A real world test

85. The second independent review promised to look at whether the assessment could or should incorporate more ‘real world’ or work-focussed elements. Advisers strongly supported this approach and believe that it would lead to better outcomes for their clients:

“WCA should relate to actual work rather than abstract theories which do not take into account clients’ real ability to do a job on an ongoing basis.”

“There is a flawed premise here; the functional assessment doesn't relate to work capability in any meaningful way. The consideration of actual work is absent from all the decision making. Whenever there's a dispute, it's about the descriptors, and this simplifies to tick boxes what could otherwise escalate into a quite complex field of argument encompassing availability of actual jobs and employers' attitudes to sick people among other things.”

“The WCA should assess the type of employment which the claimant could reasonably do given their illness/disability. It should also indicate the support which the claimant might need (and can be provided) to enable the employment to be gained.”

86. CAS therefore supports a recommendation that a ‘real world’ test be brought into the WCA based on the social model of disability.