

Unfit for Purpose

Evidence on Employment and Support Allowance (ESA) from Scottish Citizens Advice Bureaux



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**citizens
advice
scotland**

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Summary

1. On 27th October 2008, Employment and Support Allowance (ESA) replaced Incapacity Benefit (IB), and Income Support (IS) paid on the grounds of incapacity for work due to ill health or a disability. New applicants must now apply for ESA or Jobseekers Allowance (JSA), while existing claimants will be rolled onto the new programme by 2015.
2. ESA has become a significant issue for Citizens Advice Bureaux in Scotland. Following its introduction in October 2008, ESA has quickly become the second most enquired about benefit in bureaux, and the fifth most enquired about issue overall.
3. Citizens Advice Scotland (CAS) is extremely concerned that many clients are being found fit for work in their assessment for ESA despite often having severe illnesses and/or disabilities. This report highlights the cases of many clients with serious health conditions who have been found fit for work, including Parkinsons Disease, Multiple Sclerosis, terminal cancer, Bi-polar disorder, heart failure, strokes, severe depression, and agorophobia.

The Work Capability Assessment (WCA)

4. Under the previous Incapacity Benefit system, 37% of claimants were found fit for work following their Personal Capability Assessment (PCA). ESA was specifically designed so that the Work Capability Assessment (WCA) – the ESA equivalent of the PCA - would find more claimants fit for work, with ministers stating the intention that approximately half of ESA claimants would be found fit for work. However, DWP statistics show that the actual number of claimants being found fit for work under the new WCA is 68% - 31% higher than under the old PCA and 18% higher than ministers intended.
5. Clients and bureau advisers have reported a range of issues with the WCA, including problems with the assessment descriptors, healthcare professionals not listening to the claimant or distorting their answers, and decision makers disregarding supporting medical evidence.
6. Bureau advisers had particular concerns in relation to clients with mental health problems, reporting significant levels of frustration and dissatisfaction with the way that they perceive these clients are being treated under the new system. There is a strong feeling that ESA is not designed to help people with mental health problems and, in some cases, can actually serve to make their situations worse, as this adviser explains:

“I feel most upset by the treatment of those with mental health problems... All are consigned to failure. This includes the mildly unhappy and the seriously psychotic.”

Appeals

7. The DWP expected an additional 21,000 appeals against ESA assessments in the first year. However, an extrapolation of the most recent statistics suggest that there would have been over 50,000 appeals in the first year of ESA. In addition to being indicative of significant problems with the design and delivery of ESA, this high number of appeals also has a significant impact on the workloads of advice and advocacy agencies. Scottish bureaux have reported a massive workload helping clients with ESA appeals, which places increased pressure on already very stretched CAB resources.
8. Statistics from the DWP show that over 1 in 4 WCA assessments are appealed, with 39% of these appeals being won by the claimant. However, evidence from Scottish bureaux suggests that clients' appeals are being upheld in 70% of tribunals where bureau advisers provide representation.

Destinations after ESA

9. The DWP expects that around half of the claimants found fit for work in the assessment and who are unsuccessful at appeal will move to JSA. They also expect a significant proportion of claimants who are found fit for work to leave the benefit system entirely, with only "some into work". Therefore, a large number of people are being moved out of the benefits system entirely and into the unknown.

Incapacity Benefit claimants

10. Currently, only new applicants for sickness benefits are required to apply for ESA. However, it is the Government's intention to migrate all 2.4 million current IB claimants onto ESA by 2015. Over 500 doctors will undertake 10,000 assessments of existing IB claimants each week over the coming five years. Unless the system is remedied to take into account the problems experienced by claimants in the first 18 months of ESA, then the same problems promise to afflict hundreds of thousands of claimants – many of them with significant health problems – in the coming years.

Conclusion

11. A successful sickness benefit is one that provides financial support to those with significant health problems, as well as support to find and sustain employment for those who are capable of work. However, the current system is finding many clients with significant health problems fit for work, while failing to provide enough clients with the support that they need to move into employment. These problems must be addressed before long-term claimants of sickness benefits are put through the process.

Recommendations

12. Based on the evidence from Scottish Citizens Advice Bureaux, we have made a number of recommendations that we believe will help to make ESA fit for purpose:

Work Capability Assessments (WCA)

- The DWP should review the exemption criteria in the WCA to ensure that claimants with serious illnesses or disabilities are not made to go through the assessment process
- The format of the WCA should be more flexible to allow claimants to fully describe their condition, with less reliance on yes/no answers
- Greater emphasis should be placed on medical evidence provided by GPs and other medical experts.

Assessment decisions

- The DWP needs to urgently review why the WCA is finding significantly more claimants fit for work than intended
- The recommendations made by ATOS Origin healthcare professionals should be regularly checked for accuracy
- More claimants should be placed in the Work Related Activity Group (WRAG) to provide the support to go back to work that was promised by ministers
- The accuracy of the WCA in assessing clients with mental health problems should be reviewed.

Claimants found fit for work

- The DWP urgently needs to examine what happens to clients who are found fit for work. Are clients finding employment, claiming JSA, or falling out of the benefits system altogether?

Incapacity Benefit claimants

- The DWP needs to ensure that the problems in the ESA system are addressed before existing IB claimants are moved on to the new benefit.

Introduction

13. Citizens Advice Scotland (CAS) is the umbrella organisation for Scotland's network of 83 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.
14. In 2008/09, Scottish Citizens Advice Bureaux dealt with nearly a million issues for clients. Over a quarter of a million of these issues related to benefits – nearly 700 for every day of the year. This represents an increase of 10% - or 23,514 more benefits enquiries - compared with the previous year. More than 50,000 issues related to the various sickness and disability benefits.
15. Incapacity Benefit (IB) and Severe Disability Allowance (SDA) were introduced in 1995 to replace Invalidity Benefit for those with an illness or disability that prevented them from working. Around 1 in 10 people in Scotland of working age claimed IB prior to the move to ESA compared to 1 in 13 people across the UK. This figure rises to 1 in 6 of the working age population in Glasgow.¹
16. On 27th October 2008, Employment and Support Allowance (ESA) was introduced and replaced Incapacity Benefit (IB), and Income Support (IS) paid on the grounds of incapacity for work, due to ill health or a disability. New claimants must now apply for ESA or Jobseekers Allowance (JSA), while existing claimants will be rolled onto the new programme by 2015.
17. The introduction of ESA for new claimants was accompanied by a new assessment, the Work Capability Assessment (WCA). The WCA is based on medical advice delivered by the Department for Work and Pension's (DWP) medical services contractor, ATOS Healthcare.
18. Based on the ATOS Healthcare assessment outcome, the DWP makes a final decision on the claimant's ESA status which places them in one of three groups:
 - **Fit for work group** - they are no longer entitled to claim ESA, but may ask for a reconsideration of the assessment or appeal if they disagree with the decision
 - **Work related activity group** – they receive higher rate of benefit than those on JSA and are mandated to engage in work related activities
 - **Support group** (for those with severe disabilities) – they receive a higher rate of benefit entitlement than the work related activity group and exemption from mandatory involvement with work related activities.

¹ *Scotland's Incapacity Benefit Claimants: A Briefing by Professor Steve Fothergill* (Scottish Enterprise, 2005)

Employment and Support Allowance

19. As of August 2009, the caseload for ESA was 374,400 across the whole of the UK (about 1% of the working age population). In Scotland, the caseload for ESA was 40,070 or 1.2% of the working age population. The caseload for ESA is shown in Table 1:

Table 1: ESA Caseload (August 2009)

	UK	Scotland
Total caseload	374,400	40,070
Under 18	1%	1%
18-24	15%	14%
25-34	18%	19%
35-44	24%	24%
45-49	13%	12%
50-54	12%	12%
55-59	12%	12%
60-65	5%	5%
Male	58%	57%
Female	42%	43%

Source: DWP Information Directorate – Work and Pensions Longitudinal Study

20. The caseload for ESA varies by local authority in Scotland, reflecting the differences already seen in IB figures. One in five ESA claimants was based in Glasgow, although high proportions of the population also applied for ESA in Dundee, North Lanarkshire, and Renfrewshire, among others. A selection of local authority caseload figures are shown in Table 2:

Table 2: ESA Caseload by Scottish local authority (August 2009)

Local authority	ESA Caseload	% of caseload in Scotland	% of population (working age)
Glasgow	7,210	18	1.8
North Lanarkshire	3,400	8	1.7
Edinburgh	2,710	7	0.8
South Lanarkshire	2,600	6	1.3
Fife	2,550	6	1.1
Renfrewshire	1,590	4	1.5
Dundee	1,480	4	1.7
Aberdeen	1,320	3	0.9
North Ayrshire	1,270	3	1.6
Scotland	40,070	100	1.2

Source: DWP Information Directorate – Work and Pensions Longitudinal Study

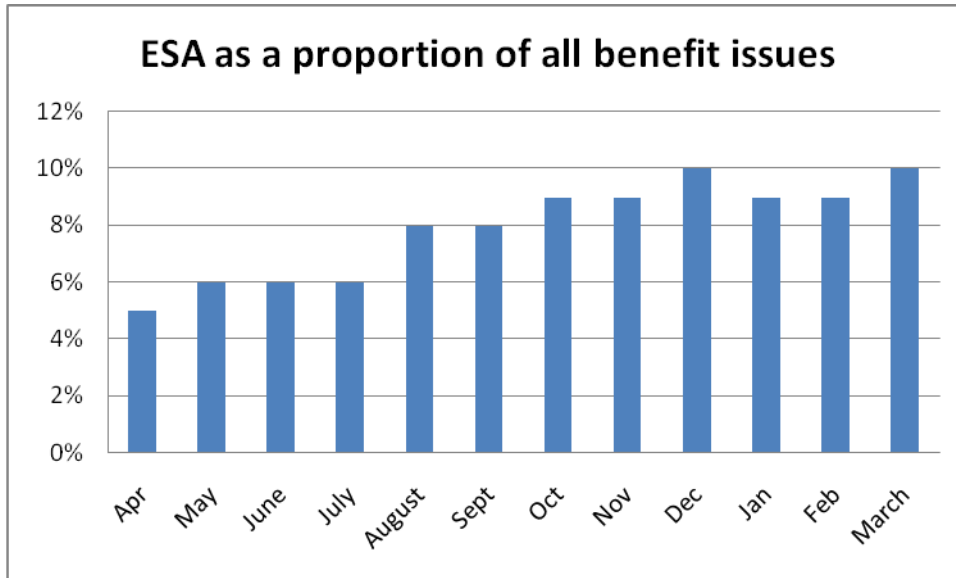
Citizens Advice Bureaux and ESA

21. Citizens Advice Bureaux provide advice to a significant number of clients who are unable to work because of ill health or disability. In 2009/10, around one in six Scottish CAB clients could not work due to ill health or a disability.
22. CAS carried out research on the costs of illness and disability for CAB clients in 2006², which showed the vulnerability of this client group:
 - Just over half reported a physical disability
 - Over a third reported a mental health condition
 - A quarter had multiple health conditions
 - Eighty per cent said that their condition was fluctuating or getting worse
 - Just under a third had a monthly household income of less than £400
 - Clients in this group were five times more likely than the general population to be in financial difficulty
23. Sickness and disability benefits are some of the most common issues that bureaux deal with on a day to day basis. In 2008/09, bureaux dealt with more than 42,000 new sickness or disability benefit issues – around one in 12 of all new issues brought to bureaux. However, using preliminary data for the third quarter of 2009/10, the proportion of all issues relating to Disability Living Allowance, Incapacity Benefit and ESA has risen quite significantly to one in eight of all issues.
24. ESA has quickly become a significant issue for bureaux across Scotland. Following its introduction in October 2008, ESA has become the second most enquired about benefit in bureaux, and the fifth most enquired about issue overall. In 2009/10, around 8% of benefit enquiries concerned ESA, accounting for approximately one in 33 of every issue brought to Scottish bureaux. In the first quarter of the financial year, ESA was only the fifth most enquired about benefit but, by the third quarter, had risen to the second most enquired about benefit.
25. As bureaux are making the progression to a new case recording system, we can only estimate at this point the total number of ESA cases brought to Scottish bureaux in 2009/10. However, taking the finding that 8% of benefit issues concern ESA, and applying it to the total number of benefit issues dealt with by Scottish bureaux in 2008/09 (149,039 new issues), suggests that there were around 12,000 new ESA issues brought to bureaux in the last year.

² *Paying the Price: The real costs of illness and disability for CAB clients* (July 2006)

26. Figure 1 shows the increasing proportion of benefit issues brought to bureaux that concerned ESA throughout 2009/10.

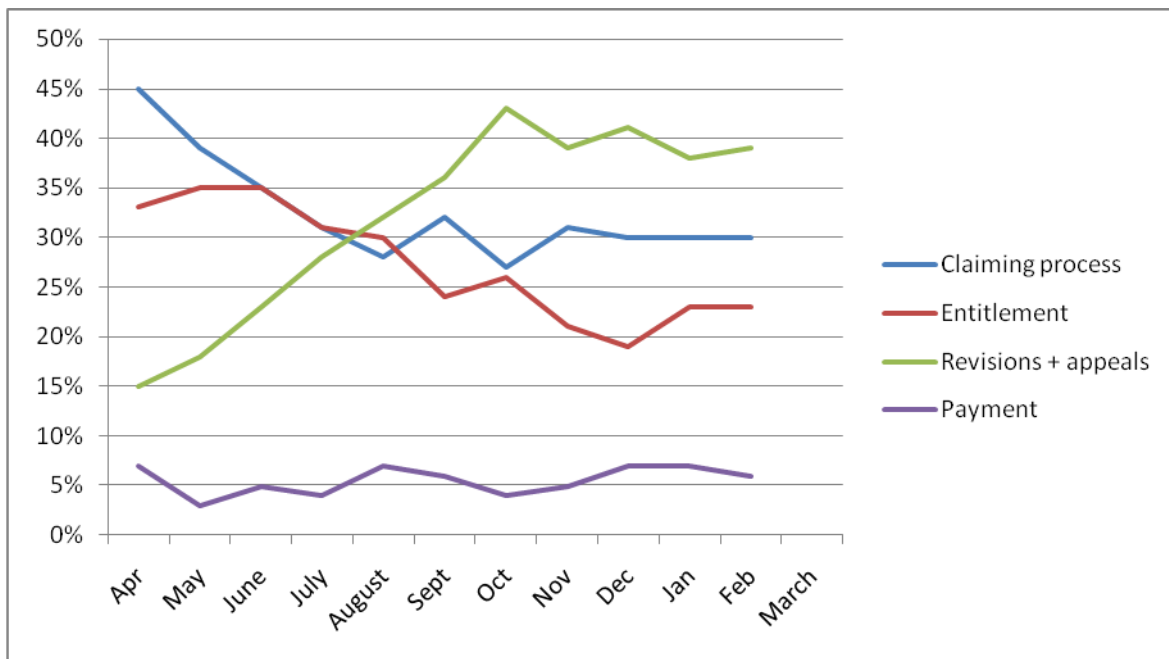
Figure 1



27. In addition to recording the type of benefit to which the client's issue relates (eg ESA, IB or JSA), bureaux also record the specific nature of the problem (eg entitlement, the claiming process, revisions/appeals or payment problems), thus providing an in-depth picture of precisely how clients are experiencing the benefits system.

28. In the first months of 2009/10, most ESA issues brought to bureaux concerned the claiming process or entitlement issues. However, as the year progressed, more and more issues concerned revisions or appeals, suggesting that a significant number of clients were seeking help in appealing their assessment decision. This is shown in Figure 2:

Figure 2: Type of ESA issue (2009/10)



29. In addition, there is evidence to show that clients with ESA issues need to make more 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. However, for every ten issues brought to bureaux on other issues, there were only two repeat visits. This shows that ESA issues involve more bureaux visits for clients and consequently more work for advisers than any other issue.

30. A number of bureaux (around a quarter) in Scotland recorded data on the extra workload that ESA has entailed for them. In a six month period, these bureaux provided representation at 212 ESA tribunals at which 70% of clients had their appeal upheld. Around four in 10 tribunals or court hearings at which bureaux provide representation are ESA appeals.

31. A welfare adviser estimated 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 total number of ESA appeals recorded by the sample of bureaux detailed above shows that the 212 recorded tribunals would have taken over 1,000 hours of adviser time.

32. Over the same six month period, the sample bureaux reported helping clients to complete 724 forms for ESA. Advisers reported anecdotally that these forms can take up to two hours to complete at the bureau. Even using a more conservative estimate of 1.5 hours for completion, these 724 forms would have taken up more than 1,000 hours of advising resources.

The report

33. ESA has quickly become a significant issue for both clients and bureaux across Scotland. ESA issues brought to bureaux now number more than redundancy, dismissal and employment tribunal cases put together, despite large increases in these issues during the recession.
34. Welfare advisers in bureaux are reporting that they are using the majority of their time helping clients with ESA issues. However, it is not just the number of ESA issues brought to bureaux that is worrying, but also the nature of these issues. Clients with serious physical and mental health conditions are being found fit for work despite facing severe barriers to re-entering the workforce, and these decisions can have a very detrimental effect on the health of these clients.
35. The evidence in this report is collected from social policy feedback provided by bureaux across Scotland and is supplemented by statistics on ESA workload provided by over a quarter of bureaux. The report also contains the views and experiences of welfare advisers, for whom ESA has become a significant part of their workload, with information gathered from a focus group of eight advisers and from over 25 written submissions received from advisers across Scotland.
36. This report will outline the problems that CAB clients are experiencing with ESA under the following headlines:
 - **Administration of ESA** – including problems with advice, application forms, delays in payment, and lost documentation
 - **Work Capability Assessment (WCA)** – including problems with the assessment process, and inappropriate decisions for clients who are unwell
 - **After the assessment** – experiences with appealing assessment decisions and problems receiving benefits after being found fit for work

Administration of ESA

37. Scottish bureaux have reported numerous clients who have been adversely affected by poor administration when applying for ESA. Claimants of ESA are often in a financially vulnerable position when they make their claim. They will not be in employment or receiving enough benefit payments to support themselves, and consequently any delays or mistakes in the application process can have a serious impact on the claimant. The problems that clients are experiencing with the administration of ESA are looked at under the following headings:

- Jobcentre Plus advice
- Applications
- Delays
- Lost documents
- Payment problems

Jobcentre Plus advice

38. Generally, bureau advisers reported that clients were receiving a decent service from local Jobcentre Plus Offices. Some bureaux have very good working relationships with local offices, where claimants for ESA found fit for work are referred to bureaux for advice. There was a general feeling from advisers that bureaux and local Jobcentre Plus offices were 'stuck in the middle' of problems that were created elsewhere.

39. However, a number of advisers noted that they had seen clients being told to apply for ESA inappropriately by Jobcentre Plus staff. For instance, bureaux reported cases of clients who had been made redundant, but because they reported a health problem to Jobcentre Plus staff, they were told to apply for ESA instead of JSA. However, many of these clients have minor health conditions and are therefore unlikely to pass the WCA. Bureau advisers provide some insight into this problem:

"I have had a few clients advised by JCP staff to claim ESA. They have without exception had marginal entitlement to ESA at best and immediately failed the medical."

"I have had so many clients who were signing on for JSA and have mentioned a condition/medical problem to the DWP adviser who has told them they must claim ESA. When the claim is complete and the medical undertaken it is clear that their condition does not come close to qualifying them for ESA due to the extremes of the descriptors. The clients feel confused because 'JCP told me I had to claim ESA'."

Applications

40. A number of clients had experienced problems making the initial application for ESA, finding the form confusing and difficult to complete without assistance. Bureaux have helped a number of clients to complete the application form.

An East of Scotland CAB reports of a client who experienced difficulties completing the application form for ESA. The client went to the Jobcentre Plus office for assistance with the application, but was told that they could not provide help with filling in forms. An adviser at the bureau helped the client to fill in the form, and commented that a number of clients had required the same support.

41. Where clients complete the application on their own, a failure to complete the form adequately or to understate the seriousness of their health conditions can result in an assessment that does not take full account of the client's condition. In a few cases, clients with severe health conditions have been found fit for work due to mistakes in their application forms.

A West of Scotland CAB reports of an 18 year old client with severe disabilities who was found fit for work partly because her application form for ESA was completed incorrectly. The family are not English speakers, so relied on a family friend for help with the application. The client suffers numerous problems, including Hartnups Disease, adrenal suppression, and IBS, among others.

An East of Scotland CAB reports of a client who has been found fit for work due to his application form failing to represent his condition properly. The client suffers from a number of disabilities as a result of severely injuring his back in an accident at work. The client has been unable to return to work since the accident and is in severe pain, while his ability to walk, sit and look after himself has been seriously impaired. A friend completed the application form on behalf of the client, but failed to adequately represent his condition. The client subsequently had the fit for work assessment overturned at a tribunal.

42. The majority of the problems experienced with the application form occurred when clients completed the form themselves. As a bureau adviser explained:

“The biggest problem is when clients fill in the form themselves, they are not filling it in correctly.”

43. Bureaux have helped a number of clients to complete the application form for ESA, but this is a time consuming and resource intensive activity for an adviser. One adviser explained that just completing the form for a client can take two hours.

44. Clients also have the option of making an application for ESA via a telephone claim line, but this can result in a different set of problems for clients. For instance, an ongoing issue is the difficulty faced by clients in accessing the phonenumber - whether at the application stage or at other stages in the process - while others clients have found that the details that they provide over the phone can be mis-represented or left out entirely.

A West of Scotland CAB reports of a client whose claim for ESA was stopped after being told that he had not disclosed his wife's part time earnings in his application. The client applied for ESA over the phone and is certain that he declared his wife's earnings, place of work and number of hours worked. The client's health is very poor and he is very anxious that the mistake will take weeks to sort out.

Delays

45. Bureaux have reported a number of clients who have experienced delays in their claims for ESA being processed, which can lead to clients having no source of income for weeks at a time and being forced to rely on the Social Fund or help from friends and family to afford essentials.
46. A number of clients have reported having reached the limit of three Crisis Loans while waiting on their ESA application to be processed.

A West of Scotland CAB reports of a 17 year old client who is yet to receive any payments after submitting a claim for ESA eight weeks ago. The client has had to claim three Crisis Loans in the last two months while waiting for payments. The client was told to expect a payment on the day that she visited the bureau, but is still waiting on the payment. The client has no funds left, but has reached the limit for applying for a Crisis Loan.

A North of Scotland CAB reports of a client who has waited five months for her ESA claim to be processed. The client was in employment, but has been signed off for over a year due to numerous health problems. The client has made several phone calls to chase up the claim, but is yet to receive a payment.

47. The delays in ESA payment and resulting Social Fund loans put a strain on both the claimant and the state. When the claimant starts to receive the benefit payments, they will have a proportion withheld to repay the loan, while the additional loans paid out by the state puts pressure on government department resources.

Lost documents

48. A number of clients have reported delays in payments, or have had payments stopped altogether, after medical certificates were mislaid or lost. Some clients report that their documents have been lost repeatedly causing significant delays in payments.

A North of Scotland CAB reports of a 19 year old client with mental health problems whose ESA payments have been stopped on three occasions due to medical certificates being lost by the DWP.

A West of Scotland CAB reports of a client who has been waiting for seven weeks for a payment after applying for ESA. The client has supplied numerous duplicate sick lines as the DWP keep losing the originals.

An East of Scotland CAB reports of a client with acute mental health problems who attempted to take her own life after a series of mistakes and delays in her claim for ESA. The Jobcentre Plus office lost both sets of documentation that she sent, and many promises of payment went unmet. The bureau helped the client to make a third claim, which was to be fast tracked by the JCP manager, but some days later the client called to ask for an update only to be told that they had no trace of her claim. The bureau complained and was told that another Jobcentre would process the claim as soon as possible. However, a week later the client's father contacted the bureau to say that his daughter had attempted suicide after being told that the new office dealing with her claim could not process it and instead it would be forwarded to yet another office. The client has now received payment eight months after the initial claim, but it has not been backdated as there is no record of the original claim. The bureau commented that this was worst piece of maladministration they had ever experienced.

49. A lost medical certificate can also mean that a client will unexpectedly have their ESA payments stopped.

A South of Scotland CAB reports of a client whose ESA payments were stopped for a month after the client's medical certificate from his doctor went missing. As a result of the missed payment, the client did not have sufficient funds to cover a direct debit and incurred £76 of bank charges. The client has now received his ESA payment after sending another copy of the certificate, but still needs to pay the bank charges.

Appointments

50. When clients are due to attend an appointment for work-related advice or their WCA, they are typically sent a letter asking them to phone a number within a specified time period to arrange or confirm the appointment. However, clients often experience prolonged difficulties in getting through to this number and worry that this will affect their benefit payments.

A North of Scotland CAB reports of a client who struggled to contact ATOS to arrange a date for his WCA. The client received a letter from the DWP requesting that he contact ATOS within the next two days to arrange an appointment. Despite the client and the bureau both calling the number all day, it was engaged every time they tried. The client is very concerned and distressed that his benefits payments will be stopped as a result of his inability to contact ATOS as directed.

51. An adviser explains the difficulties that clients can experience in making appointments:
- “The client gets a letter saying to call this number, but you only get a certain time limit to phone that number, and if you don’t phone you’ve kind of failed in your duty to contact them.”*
52. Clients can have their ESA payment sanctioned or stopped altogether if they fail to make appointments. Bureaux have reported of occasions in which a client has had their ESA payment stopped due to missed appointments that the client could not keep, often due to no fault of their own. Furthermore, there is a general feeling amongst advisers that some claims for ESA are dropped after a client misses an appointment and does not re-start the process.
53. A bureau adviser reported anecdotally that she had a client who received a letter informing him that his assessment would take place in two days time. The client lived 70 miles away from the assessment centre and had no funds or means to make travel arrangements in such a short period of time. Another client could not attend her assessment due to being snowed in. Both clients had their payments stopped for missing their appointments.
54. Another adviser anecdotally reported that a client suffering from agoraphobia was given an appointment date which, due to her condition, she was unable to attend. While arrangements were being made for a home visit for the assessment, the original appointment date passed and the client had her ESA payments stopped.

Payment problems

55. Bureau clients also reported problems receiving ESA payments, and subsequent problems with JCP's ability to resolve payment issues in an efficient and timely fashion. Local Jobcentre Plus offices will not phone on behalf of clients to chase the delayed payment, nor will they let clients use a phone at the office to make the call themselves. This means that a number of clients ask CAB advisers to enquire about the payment on their behalf and, as the phone lines can be so difficult to get through to, this can tie up bureau time and resources for extended periods of time.

An East of Scotland CAB reports of a client who struggled to find out why her ESA payment had not arrived. The client had no funds or landline, so visited the Jobcentre Plus office to enquire about the payment. She was told that she must phone to enquire, but that she was not allowed to use their phones for this purpose. Instead, they suggested that the client come to the bureau to use the phone. The client is particularly anxious to receive the payment as she owes some money to a third party.

56. Clients have also experienced problems receiving the full level of payments that they are due.

A North of Scotland CAB reports of a 21 year old client with Multiple Sclerosis who is receiving far lower payments on ESA than expected. The client claimed ESA after falling ill and has received three monthly payments. However, the client has only received £20 in payments to date, when the amount over seven weeks should have amounted to £335. JCP admitted that there had been a mistake with the claim in their system.

Work Capability Assessments

57. The introduction of ESA for new claimants was accompanied by a new assessment, the Work Capability Assessment (WCA). The WCA is based on medical advice delivered by health professionals employed by ATOS Healthcare, the DWP's medical services contractor.
58. Based on the ATOS Healthcare assessment outcome, the DWP will make a final decision on the claimant's ESA status. This will be one of the following:
- **Fit for work group** - they are no longer entitled to claim ESA, but may ask for a reconsideration of the assessment or appeal if they disagree with the decision
 - **Work related activity group** – they receive higher rate of benefit than those on JSA and are mandated to engage with work related activities
 - **Support group** (for those with severe disabilities) – they receive a higher rate of benefit entitlement than the work related activity group and exemption from mandatory involvement in work related activities.
59. The DWP has published statistics on the assessments made by ATOS Healthcare between October 2008 and August 2009, the first ten months of the new benefit. These statistics represent the recommendations made by ATOS Healthcare professionals in each assessment, though some of these decisions may be changed by DWP decision makers. These statistics are shown in Table 3:

Table 3: Outcomes of ESA applications (Claim start Oct 08 – August 09)

	Number of claims	Proportion of claims
Support Group	27,600	5%
Work related Activity Group	66,600	13%
Fit for Work	201,600	39%
Claim closed before assessment complete	194,000	37%
Assessment still in progress	28,100	5%
Total	517,900	

Source: *ESA Work Capability Assessment Statistical Release (DWP - April 2010)*

60. In this period, over 500,000 applications were made by claimants. Of these applications, 94,200 applicants (18%) were awarded some level of ESA payments. It is worth noting that 194,000 claims (37% of the total) were closed before the assessment was completed.
61. The DWP statistics do not comment directly on the reasons why 37% of ESA claims were closed before the assessment was completed. It is likely that many of these applications may have been made by people who subsequently realised or were advised correctly that they would not receive the benefit or that they should apply for a different benefit. Additionally, it may be the case that some applicants returned to work.
62. However, these figures also provide cause for concern. Anecdotal evidence from bureaux has suggested that clients can drop out of the process due to long delays in the application process, missed appointments, failure to complete applications, or worry caused by having to keep numerous appointments. Unfortunately, claimants who fail to keep appointments or complete their application can be treated as dropping out of the ESA process and therefore off JCP's radar, when in fact they may be the most vulnerable claimants of all for whom additional support should be provided.
63. In particular, clients with mental health problems report of the worry and anxiety that the process can create, and their inability to complete all the actions required of them.

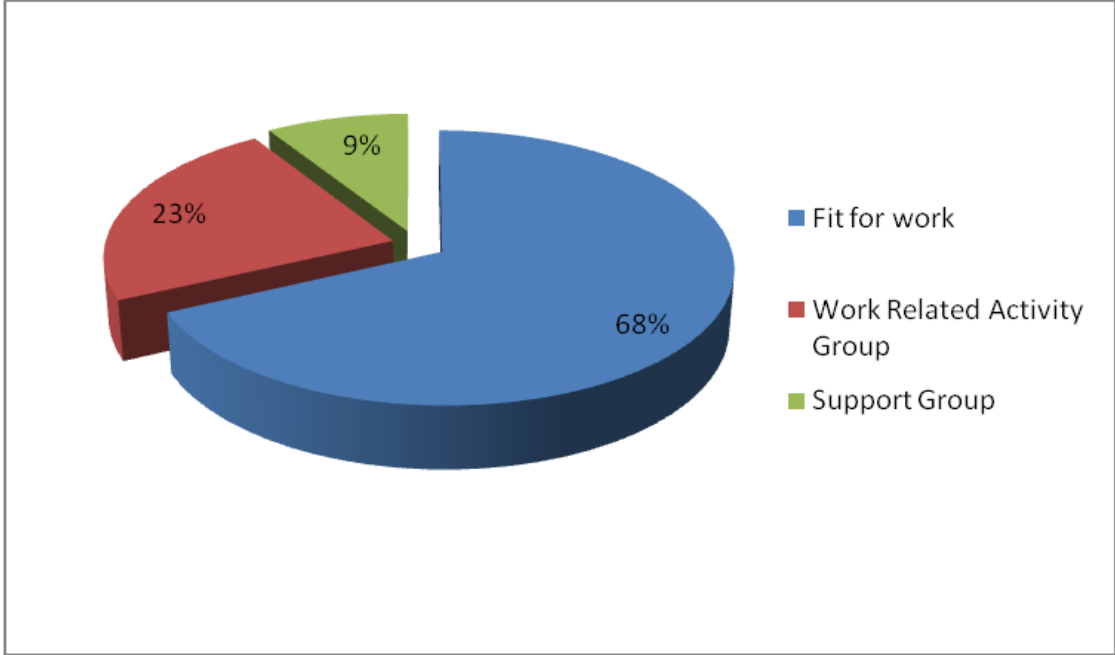
A North of Scotland CAB reports of a client whose health problems mean that she would be unable to attend interviews and the WCA as required under ESA. The client suffers from chronic depression, severe panic attacks, agoraphobia, diabetes, and has a serious history of abuse. The client's condition means that it is unlikely that she would be able to meet the requirements of ESA.

64. A bureau adviser provided further insight into the reason why clients' claims are closed before the assessment is completed:

"The assessment process is for some too much. They are treated as capable of work where they fail to attend or fail to complete forms."

65. Concentrating on **only the claims for ESA that have received an assessment in this period** (without those who had their claim closed and those whose assessment is still in progress) shows that a high proportion of claimants are found fit for work, as is shown in Figure 4:

Figure 4: Work Capability Assessments (Claim start Oct 08 – February 10)



Source: *ESA Work Capability Assessment Statistical Release (DWP - April 2010)*

66. Based on these data, more than two-thirds (68%) of WCAs found the claimant fit for work. Under the previous IB system, an estimated 37% of claimants were found fit for work. The difference between these two figures is stark. On one level, this finding looks undoubtedly positive – many more people are healthy enough to be found fit for work. However, it appears doubtful that the health of the nation has improved so quickly as to mean that all of these claimants are ready to move into the labour market. The Financial Times reported in 2009 that up to 90% of claimants in some areas are being found fit for work.³

³ Financial Times, July 13th 2009
<http://www.ft.com/cms/s/0/c3ae0762-6f43-11de-9109-00144feabdc0.html>

67. When announcing the new WCA in November 2007, the then Work and Pensions Secretary Peter Hain said that 50% of claimants would not pass it⁴. This figure has been exceeded by a significant margin, as is shown in Table 4:

Table 4:

	IB ⁵	ESA target ⁶	ESA actual ⁷
Fit for work	37%	49%	68%
Work related activity group	N/A	46%	23%
Support Group	N/A	5%	9%
<i>Receiving IB or ESA payments</i>	63%	51%	32%

68. In the period October 2008 – August 2009, 66,600 ESA claimants were assigned to the Work Related Activity Group (WRAG) – 23% of all claimants who receive an assessment. However, Government targets for ESA stated that almost half (46%) of claimants would be assigned to this group. Using this figure, over 130,000 claimants should have been assigned to the WRAG group. This is significant, as the intention of ESA is to get more people back to work through the tailored Pathways to Work support it offers. However, these figures suggest that only half the intended number of claimants are being placed in the WRAG group to receive this support.

69. It is also significant that almost 20% more claimants are being found fit for work than originally intended. Many of these claimants would have benefited from the support that is provided in the WRAG group. Less than a third of claimants (32%) are receiving some level of ESA payments, compared to the original target of just over half (51%).

70. In its 2006 Green Paper, *A new deal for welfare: Empowering people to work*, the DWP acknowledged that the existing Personal Capability Assessment (PCA) process was already recognised by the OECD as being one of the toughest in the world.⁸ We are therefore concerned that an already tough test has been made much tougher.

⁴ <http://www.dwp.gov.uk/newsroom/press-releases/2007/november-2007/drc055-191107.shtml>

⁵ Under the old IB system, applicants were either found fit for work or received IB. The WRAG and Support Groups were brought in under ESA.

⁶ Impact Assessment of the Employment and Support Allowance Regulations 2008 – Public Sector Impact only (DWP March 2008)

⁷ ESA Work Capability Assessment Statistical Release (Jan 2010)

⁸ Transforming disability into ability: Policies to promote work and income security for disabled people, Organisation for Economic Co-operation and Development, 2003 – cited in *New deal for welfare*, para 62

The assessment process

71. To determine whether limited capability for work exists, the WCA looks at the effects of the claimant's health condition or disability on their ability to carry out a number of everyday activities. This involves the assessor using a range of activities and descriptors to assess the claimant's physical and mental capability to work. Claimants receive a score for each activity based on their ability or inability to complete the task. If a claimant is awarded a score of 15 or more, they will be entitled to ESA and considered as having limited capability to work. Those with a score of fewer than 15 points are considered fit for work.
72. Clients and bureau advisers have reported a range of issues with the WCA, including problems with the assessment descriptors, healthcare professionals who do not appear to be listening to the claimant or distort their answers, and decision makers disregarding supporting medical evidence.

Clients unsuitable for the assessment

73. Bureaux report of some clients who are made to attend WCAs despite rules stipulating that they should be part of an exempt group that is put straight through to the Support Group and not be subject to an assessment. In one case, a client who was so severely ill that he should have been exempt from the WCA entirely was not only made to undergo the assessment, but was actually found fit for work by it.

An East of Scotland CAB reports of a single father who was initially found fit for work despite having inoperable terminal lung and heart cancer, as well as depression as a result of his diagnosis. The client feels that the work capability assessment was inadequate and did not take proper recognition of his full condition. The client's claim was upheld at tribunal, but this was an experience that the client could have done without and should have been exempt from.

74. Furthermore, bureaux saw a number of clients who were not exempt from the WCA under current rules, but whom advisers felt should have been. This included young adults with complex needs leaving school.

A West of Scotland CAB reports of a number of young clients with special needs who are being asked to attend WCAs after leaving school. Under the IB system, young adults were not asked to go for interviews. In one case, the client's mother reported that her daughter had been confused and bewildered by the questions being asked of her, which the mother thought was an unnecessarily stressful experience for her to go through.

75. Under IB rules, a number of conditions and illnesses were exempt from the medical assessment if the claimant's GP could confirm the diagnosis. There are fewer such exemptions under ESA, meaning that claimants with serious illnesses or disabilities are being subjected to the WCA - and in some cases are found fit for work - whereas prior to 2008 they would have been considered too unwell to even attend an assessment.

Delays in the undertaking the assessment

76. 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:

“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.”

Format of the assessment

77. A number of clients and bureau advisers complained about the questions that are asked of claimants during the assessment, stating that they were too narrow and limited to recognise many conditions. This was a particular problem for clients with mental health conditions.

78. A major issue has been that the ‘closed’ nature of many of the questions on the medical assessment form does not allow people to describe their illnesses, but simply require yes or no responses about whether they are able to stand, or sit, or walk a certain distance. An adviser explained how this approach fails to give claimants the chance to explain their condition in the assessment:

“These clients are going there with the belief that they are going to get a proper professional examination... one client said that he never gave me any chance to explain. ‘Yes or no’ - that’s all he wanted.”

79. Advisers are also 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:

“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’.”

80. Clients reported that they had little understanding of the WCA prior to its taking place, and some subsequently had difficulty in understanding the questions that were being asked of them.

A West of Scotland CAB reports of a client who wanted to appeal the decision of her work capability assessment after reporting that she had difficulty understanding the questions at the assessment. The client felt that she may have answered the questions differently had she understood them at the time.

Healthcare Professionals

81. Clients reported that they felt hurried in their assessment and that the healthcare professional was ignoring the answers they were providing to the questions in the assessment. There was a general feeling that the assessor made little eye contact with the claimant and spent most of the assessment entering information into their laptop.

A West of Scotland CAB reports of a client who felt that the atmosphere in his WCA was intimidating and that his answers and the evidence from his GP and consultant were ignored. The client has a long standing arthritic problem which affects walking, standing, sitting, gripping and carrying. He wears hand and wrist supports and needs assistance to walk. The client felt that his complaints about the degree of pain he experienced while attempting and failing the tests in the assessment were ignored.

An East of Scotland CAB reports of a client who felt that her WCA did not take into account details of her condition and that the assessor did not listen to the client and mis-reported what she said about her condition. For instance, the client has double incontinence, but this was not mentioned in the medical report.

An East of Scotland CAB reports of a client who felt that the doctor did not listen to him during his WCA. The client has had a number of health problems since suffering a high voltage electrocution, which has left him with difficulty walking, sitting, bending, and with mental health issues. The client states that the doctor only saw him walk five metres from the waiting room to the examination room, and yet stated that the client had no problems walking, despite the evidence presented to the doctor by both the client and his GP.

82. A number of advisers detailed the problems that clients had reported to them regarding the conduct of health care professionals in the WCA:

“I’ve lost count of the number of clients who have said the doctor barely looked at them, he/she simply asked the set questions and didn’t explore the answers in any way.”

“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.”

“I’ve got a client who is absolutely adamant that she was not asked to go on the examination couch... she’s adamant that she was not asked to walk twenty metres... she only stood up once and that was when she went to go home.”

83. Clients also reported that the healthcare professionals, whether nurses or doctors, could also make mistakes in their assessments. These included improper scoring of the client in relation to the descriptors or failing to take into account letters from GPs or consultants in their assessments.

A West of Scotland CAB reports of a client who was assessed as being fit for work based on an apparent misunderstanding of the points system in the WCA. The healthcare professional noted that the client could barely walk two steps even with a stick, yet ticked the box saying that the client had no problems with walking. The client was eventually awarded 36 points at tribunal.

A North of Scotland CAB reports of a pregnant client who was found fit for work despite suffering from a condition that puts her child at risk. The evidence provided by the client’s GP clearly states the severity of her condition, but the medical report comments that there is no evidence that the client is pregnant.

84. Bureau advisers report that assessors can ‘cut and paste’ phrases from other parts of the medical report, which in turn can lead to mistakes, as one adviser pointed out:

“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.”

85. A number of clients have also complained that the assessors distorted their answers in the medical report, taking a comment made by the client and extending it to cover much more than the client had intended. Bureau advisers reported that:

“Most clients felt rushed and when they receive the appeal papers and read the medical report, many have said that much of what was said has not been included, or worse, has been distorted.”

“A client uses his bicycle to go to the shop, which is a two minute walk away, because he cannot cope with being outside any more than necessary due to his mental state... the report stated ‘claimant has no problem taking part in sports activities, such as cycling’.”

86. Claimants often attend assessments with supplementary evidence provided by their GP or consultant. However, bureaux have reported numerous occasions in which clients feel that this evidence has been ignored completely or read and disregarded. This is particularly significant for claimants with complex and/or fluctuating mental health conditions where a one-off assessment is unlikely to uncover a claimant’s true capabilities, and where evidence from a mental health specialist would provide a much clearer insight into a claimant’s condition. However, this evidence is not always used and the claimant is found fit to work. It is imperative that the DWP decision maker examines the medical evidence provided by the claimant as well as the assessor’s medical report.
87. GPs and consultants often provide supplementary evidence stating that the claimant is not fit for work for a specific time period – such as five months after a serious operation. These circumstances do not appear to be taken into account in the assessment. It would seem reasonable for the client to be given ESA for this specific period, and then supported to go back into employment following the end of this period.

An East of Scotland CAB reports of a client who was given no points in his WCA despite having had open heart surgery less than two months previously. The client has a doctor’s certificate stating that he should not work for at least the next five months.

Impact on the health of claimants

88. Finally, the assessment itself was found to be stressful and upsetting for clients, with some reporting that the WCA process had 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.

A North of Scotland CAB reports of a client who was rushed to hospital with chest pains after his WCA. The client was kept in hospital for five days, but was found fit for work.

89. A bureau adviser stated what the assessment process entailed for bureau clients:

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

Assessment decisions

90. Bureaux across Scotland have advised a significant number of clients with serious health conditions who have been found fit for work by their WCA. Bureaux report that the majority of the clients they see are faced with significant and sometimes insurmountable barriers to employment and that a significant proportion of adviser time and resources is now used in helping clients to appeal against assessment decisions that appear harsh and inappropriate, with a majority of the appeals being found in favour of the client.
91. The report *Employment and Support Allowance: Early implementation experiences of customers and staff*, carried out by the Institute for Employment Studies in 2009⁹, found that many JCP staff felt that the WCA was too harsh:

'Some (BDC staff) felt that many of these decisions were unduly harsh, and that the majority of customers assigned to the WRAG or fit to work groups faced severe barriers to employment.'

92. DWP statistics show that 69% of assessments are finding the claimant fit for work. However, as the next chapter shows, one in eight of the fit for work assessments are being successfully appealed by claimants. This suggests that a significant number of assessments are either incorrect or unduly harsh on the claimant. In particular, CAB advisers are concerned and frustrated that many clients are receiving zero points in their assessment despite obvious disabilities or mental health conditions, as one adviser explained:

"It is incredulous that so many clients have been awarded zero points, I would estimate that, but I do not understand why, 95% of my ESA clients are in this position."

93. This section looks in more detail at clients with mental and physical health problems who were found fit for work despite significant health concerns.

Clients with mental health problems

94. A major worry for CAB advisers and clients is the ability of the WCA to take into account the symptoms and concerns of claimants with mental health conditions. Bureaux have seen a number of clients with severe mental health conditions who received no points in their assessments.

⁹ *Employment and Support Allowance: Early implementation experiences of customers and staff* – Institute for Employment Studies (2009) <http://research.dwp.gov.uk/asd/asd5/rports2009-2010/rrep631.pdf>

95. The Institute for Employment Studies report on ESA¹⁰ found that many JCP staff felt that the WCA did not work well for claimants with mental health conditions:

‘Some JCP advisers thought the WCA was especially poor at identifying mental health conditions which were severe enough to prevent someone from being work-ready.’

96. Clients with a mental health condition reported frustration that the health care professionals did not understand their condition, while many found the process of applying for ESA, and the subsequent ‘fit for work’ assessment, both stressful and upsetting.

97. Advisers report that it is very difficult for many clients with mental health problems to communicate their condition to a stranger, or even to understand the extent of their own illness. Advisers reported of clients who will say ‘yes’ to any question just to get out of the office when they feel stressed, while others are so anxious about what people think of them that they ‘manage’ to act ‘normal’ for a short time to hide their condition. Other clients have problems listening to and understanding questions, and are unlikely to answer accurately. The one-off assessment, which may not take into account evidence from GPs and consultants, is therefore a very blunt and inaccurate tool for assessing clients with complex and fluctuating problems, and results in a number of unwell clients being assessed as fit for work.

A West of Scotland CAB reports of a client who was assessed as being fit for work in the WCA, despite suffering from mental health issues and receiving psychiatric care from the community mental health team. The client is currently homeless and is sleeping on his father’s sofa.

A West of Scotland CAB reports of a client who was found fit for work despite suffering from bi-polar disorder and manic depression. The client, who was a medical professional prior to suffering mental health problems, stated that the nurse undertaking the assessment did not understand her health condition, and in addition did not refer to a letter from the client’s GP. The client manages her symptoms well, but is upset and at a loss about what to do next.

A West of Scotland CAB reports of a client who was found fit for work despite suffering from severe mental health problems after being sexually assaulted by her former partner. The client is still suffering from flashbacks, depression, and is scared to leave the house on her own. The client is living in temporary accommodation provided by a charity. The adviser believes that the client has only a very limited capability for work presently.

¹⁰ *Employment and Support Allowance: Early implementation experiences of customers and staff* – Institute for Employment Studies (2009) <http://research.dwp.gov.uk/asd/asd5/rports2009-2010/rrep631.pdf>

A North of Scotland CAB reports of a client who suffers from severe depression who was found fit for work after scoring zero points in her assessment. The bureau's welfare rights adviser went through the assessment descriptors for the client and felt that they should have scored well in excess of the 15 point threshold needed to claim ESA. The bureau reported that they had seen a number of clients with mental health problems who had received zero points in their assessments, and that this was causing their clients a great deal of stress and worry.

98. Due to the nature of their conditions, clients with mental health conditions may struggle to cope with the assessment process, and are likely to be adversely affected if found fit for work. The Institute for Employment Studies report on ESA made a similar point, noting that JCP staff were concerned about the implications of a fit for work assessment for these clients:

'Staff acknowledged that there were a few customers who they thought were genuinely fit for work, but they believed that large numbers of customers who were not well enough to go onto JSA were being found fit for work at the WCA. While this was viewed as distressing for most customers, advisers believed that it could be particularly damaging for customers with mental health conditions, and carried a high risk of worsening their symptoms.'¹¹

A North of Scotland CAB reports of a 60 year old client with mental health problems who has been found fit for work against the judgement of the client's GP. The client suffers from panic attacks when in the company of strangers, gets very anxious and easily irritated, and can become angry with those around him. The client feels mentally exhausted by his problems and his GP is worried he may be suicidal.

An East of Scotland CAB reports of a client who was awarded zero points at his WCA after being released from prison. The client suffers from alcohol dependency, anxiety, agoraphobia, and is unable to leave his home unaccompanied. The client lacks concentration, has a poor memory, and has recently received medical treatment for a series of seizures. A letter from the client's GP expresses surprise at the result of the assessment as she considers the client to be unfit for work and states, '...I would certainly support an appeal at the current time.' The bureau agreed to represent the client in a tribunal, but the process came to a halt when the client was jailed for 28 days for a breach of bail conditions. Upon release, the client's condition deteriorated and he refused to leave the house at all.

¹¹ *Employment and Support Allowance: Early implementation experiences of customers and staff* – Institute for Employment Studies (2009) <http://research.dwp.gov.uk/asd/asd5/rports2009-2010/rrep631.pdf>

99. The evidence from clients with mental health conditions shows that in many cases the WCA fails to take account of severe and debilitating psychiatric illnesses. Clients and advisers felt that this was due to both deficiencies in the design of the assessment and the knowledge of the health professional conducting the assessment. Advisers reported that clients told them that, in some instances, the assessors had a poor knowledge and understanding of even common mental health conditions and consequently failed to ask appropriate questions.

100. Bureau advisers strongly report of their frustration and dissatisfaction with the way that they perceive that clients with mental health problems are treated throughout the ESA process. There is a strong feeling that ESA is not designed to help such people and can actually serve to make their situations worse, as an adviser explained:

“I feel most upset by the treatment of those with mental health problems... All are consigned to failure. This includes the mildly unhappy and the seriously psychotic.”

Clients with physical health problems

101. Bureaux report that clients with severe physical conditions - such as heart disease, strokes, and neurological diseases – are being assessed as fit for work. Many of these clients are in their 50s and 60s and face numerous barriers to entering the workforce again.

102. Clients with neurological diseases in which symptoms can vary from day to day, such as Parkinson’s Disease and Multiple Sclerosis, are reporting that the assessment does not always take the fluctuating nature of their condition into account. The WCA is based on the client’s capability on the day of the WCA and assessed by a health professional who may not have any additional knowledge of the client’s condition. The variable nature of these conditions means that the assessment may be made based on a client’s ‘good day’ rather than on the basis that they may have many more ‘bad days’. An adviser anecdotally reported of a client with progressive MS who was told by the tribunal not to attend because she was clearly unfit to go to the appeal let alone find employment – all after the assessment had found her fit to work.

A North of Scotland CAB reports of a 64 year old client who was awarded no points in his WCA despite having Parkinson’s Disease, diabetes, a heart condition, and having recently undergone a triple bypass operation.

A North of Scotland CAB reports of a 57 year old client who was found fit for work despite suffering from Parkinson’s Disease and an eye condition. The client has appealed the decision and will be represented at the tribunal by the bureau.

103. Bureaux also report that the WCA conclusions are often at odds with the opinion of the client's GP or other healthcare professionals who know them well, such as community psychiatric nurses and consultants. This can leave the client in a difficult situation, where they are signed off work for a long period by their GP, but are told that they are not entitled to ESA. These clients often have serious health conditions, such as recent strokes and heart attacks, which will make finding and maintaining employment extremely difficult.

An East of Scotland CAB reports of a client whose GP was "shocked" at the WCA finding the client fit for work. The 63 year old client has recently had a knee replacement, and suffers from muscular skeletal disorders, hearing difficulties, and depression.

A West of Scotland CAB reports of a client who was assessed as being fit for work despite suffering from extensive health problems. The client was diagnosed with Guillian Barre Syndrome the previous summer after falling into a coma and being supported on a life support machine. The client is still very weak and walks with a stick. As a result of the client's assessment, her ESA payments have been stopped. The client's GP has recently signed a sick line for six months in the opinion that the client is unable to work.

A North of Scotland CAB reports of a 55 year old client who received zero points on his WCA despite suffering from heart failure and being signed off work for six months by his GP. The client suffers from tiredness and breathlessness, as well as side effects from his medication.

104. The resultant fit for work assessments can have a significant impact on a client who has been told by one doctor that he is unwell and by another that he/she is fit for work. This situation can leave a client confused and upset, especially where an assessment awards zero points to a client, as an adviser explained:

"The resultant decision notices which often routinely award zero points leave many customers devastated by what they perceive is a view that they are not sick or disabled in any way. The inference being that they are either exaggerating their symptoms or that they are being dishonest."

After the Assessment

105. The majority of clients who seek advice on ESA at bureaux are found fit for work, with very few being placed into the Work Related Activity Group. This section will therefore concentrate on the experience of clients who are found fit for work and who choose to appeal the decision.
106. After being found fit for work in their work capability assessment, claimants are able to ask for an explanation of the decision, ask for the decision to be reviewed, and finally can appeal against the decision to an independent tribunal. DWP figures, and evidence from Scottish bureaux, suggest that there have been a great number of appeals of fit to work assessments.
107. Upon being found fit for work, claimants are supposed to move onto Jobseekers Allowance (JSA). However, many of these individuals are finding themselves ineligible for JSA due to their employment history or health condition.
108. This section looks at the experiences of claimants following their WCA, focusing on:
- Appeals
 - Claiming JSA
 - Entering the workforce
 - Incapacity Benefits claimants

Appeals

109. Bureaux across Scotland report a great number of clients who are seeking help or representation in appealing a WCA decision that has found them fit for work. Approximately four in 10 clients bringing an ESA issue to a bureau are seeking help regarding an appeal against a fit for work assessment.
110. Although only a small sample of national data is available it does suggest that a high number of appeals are being heard in relation to WCA fit for work decisions. The most recent DWP figures on appeals are shown in Table 5:

Table 5: WCA Appeals heard on 'Fit for Work' Decision

ESA Claim start month	Fit for work	Appeals	Decision in favour of appellant	DWP decision upheld	% of Fit for work with an appeal heard	% decision in favour of appellant
Oct 08	3,500	1,200	500	700	35%	40%
Nov 08	17,000	5,800	2,300	3,500	34%	40%
Dec 08	14,700	4,900	1,900	2,900	33%	40%
Jan 09	20,500	6,300	2,400	3,800	31%	39%
Feb 09	19,300	4,900	2,000	3,000	25%	40%
Mar 09	22,800	5,000	1,900	3,000	22%	39%
Total	97,800	28,000	11,000	17,000	29%	39%

Source: ESA: Work Capability Assessment Statistical Release (April 2010)

111. These data indicate that more than one in four claimants who are found fit for work appeal the decision, and that four in 10 appellants win their appeal.

112. The DWP estimates that around a third of those who are found fit for work will appeal, of which around 70% will reach an appeal hearing. They further estimate that 21,000 appeals a year will reach an appeal hearing.¹² However, data from Table 3 suggests that 21,000 tribunals is a significant underestimate – the DWP data in Table 5 show that there were 28,000 appeals for the first six months of ESA claims suggesting that there would be over 50,000 appeals in a year if these patterns continued.

113. DWP statistics published in April 2010 showed that between October 2008 and February 2010, 264,800 initial ATOS recommendations found the claimant fit for work.¹³ Applying the figure in Table 5 that 29% of fit for work decisions are appealed gives us an estimated figure of around 77,700 appeals in the first 17 months of ESA.

114. These figures suggest that:

- around 1 in 5 of *all* assessments for ESA end up before the Tribunal Service,
- that more than 1 in 4 of all *fit for work* assessments are appealed, and
- that 4 in 10 appeals are won by clients challenging the assessment.

¹² Impact Assessment of the Employment and Support Allowance Regulations 2008 – Public Sector Impact only (DWP March 2008)

¹³ This may not be the final fit for work figure, as DWP decision makers may change the final assessment

Scottish bureaux and appeals

115. A selection of bureaux (around 25) in Scotland recorded data on all ESA appeals in which they provided representation to clients between October 2009 and March 2010. In this period, they provided representation at 212 tribunals at which **70% of clients had their appeal upheld**.

116. A number of bureau advisers supported this finding, commenting that the majority of those found fit for work are having their appeals upheld:

“For ESA (appeals), we are turning over at least 75%”

“I’ve had about 110 in, and I think I’ve won about 85 or 86.”

“I would estimate that at present we are winning about 60-70% of ESA Appeals”.

117. One of the consequences of the increase in the number of claimants being found fit for work and subsequently appealing the decision is a significant increase in the workload of bureaux. Indeed, welfare advisers are reporting that up to 60 or 70% of their time is currently being taken up with work on ESA appeals.

118. While the DWP may have planned for the increased resources that would be required by the Tribunal Service for the extra appeals it predicted would accompany the introduction of ESA, parallel consideration was not given regarding the additional resources that bureaux and other advice agencies are being required to commit to helping clients navigate the ESA process. Approximately 40% of all tribunals or court hearings in which bureaux are providing representation relate to ESA appeals. Bureaux are clearly feeling the strain of an increased workload resulting from poor DWP decision making.

119. A CAB welfare adviser estimated that one appeal takes about three and a half hours to prepare and a further one and a half hours at the tribunal, resulting in a total of around five hours work per appeal. This includes two or three interviews with the client, collecting medical evidence on their behalf, and drafting submissions for the appeal. Applying this figure to the 212 appeals undertaken by the sample bureaux, noted above in paragraph 115, gives a total of over 1,000 hours of adviser time. This data is taken from around a quarter of all bureaux, which does not include the bureaux in Glasgow where the ESA caseload is the highest in Scotland.

120. A welfare adviser explained the extra workload that ESA has entailed:

“In a normal year, I deal with up to 250 appeals on average... but I’m now at the stage where at this precise moment, I have had 520 appeals come through my books since April. I’m overloaded and the Tribunal Service is overloaded.”

121. Although bureaux are struggling to meet the additional workload within already strained resources, in some cases advisers reported that they are simply not able to meet the increased client need for support at tribunals. For instance, one bureau reported that they had a workload of nearly 150 clients who are waiting for their appeal for ESA, whilst other bureaux have reported that they are going to have to say to some clients that they do not have the resources to represent them in the immediate future.

Results of appeals

122. As already detailed in this report, around 70% of appeals in which bureaux have provided representation are found in favour of the appellant. A number of these successful appeals have involved a client who was initially awarded zero points in their WCA. This is worrying as it suggests that the WCA was unduly harsh on clients who are awarded significantly higher points on appeal.

A West of Scotland CAB reports of a client who was awarded zero points in his WCA despite experiencing speech and memory problems as a result of a recent stroke. The client is suffering financial difficulties, firstly as a result of a delay in receiving ESA payments and then as a result of the WCA decision which found him fit for work. The client was supported by the bureau in the tribunal appeal which found in favour of the client.

An East of Scotland CAB reports of a client who won his appeal against his fit for work assessment. The client has musculoskeletal problems which severely affects his ability to walk. Additionally he suffers from alcoholism, and has longstanding depression and mental health problems. The client was previously dismissed from his employment due to long-term sickness absence. The bureau successfully represented the client at appeal. This resulted in a significant financial gain for the client, which is needed to cope with the severe financial problems that have emerged since he lost his employment.

An East of Scotland CAB reports of client who won her appeal against her WCA fit for work decision. The client has a hip problem which causes her severe pain and inhibits her mobility, for which she was awarded six points at the assessment. However, the client also suffers from irritable bowel syndrome, which the client felt was not addressed at the assessment. The tribunal judge awarded her 21 points at appeal.

123. Bureau advisers described occasions in which claimants who had received zero points in their assessments were given well above 15 points at their tribunals:

“I had a client a couple of months ago who was turned down for ESA... and I could see from him coming into the bureau that he had severe mental health problems... We went to appeal and the chairman of the tribunal service said he could have gone on and on and on, but he stopped at the 15 points. He said ‘I could give you more, but we’d be here all day.’”

“I had one chairman (of a tribunal) who gave me something like 90 points for a client.”

124. Bureaux report of a number of factors that are leading to successful appeals for clients initially found fit for work. These include medical evidence being overlooked in the assessment, an underestimation of the severity of the claimant’s ill health or disability, and the inability of the system to deal adequately with mental health issues. In particular, advisers reported that both ATOS medical practitioners and DWP decision makers place too little emphasis on the medical evidence provided by the claimant, which is subsequently accepted by the tribunal as evidence that the claimant has a limited capability for work.

Claiming JSA

125. The DWP expects that around half of the claimants found fit for work, and who are unsuccessful at appeal, will move to JSA. It also expects a significant proportion of claimants to leave the benefit system entirely, with only 'some into work'.¹⁴

126. Bureaux have reported a significant number of clients who have been found fit for work in their assessment for ESA by DWP appointed healthcare professionals, but who have then been told by DWP staff that they are unable to sign on for JSA because their poor health prevents them from fulfilling the 'actively searching for work' criterion. This can leave clients with very little or no income and is likely to have a significant impact on their health.

A North of Scotland CAB reports of a client who was found fit for work in her assessment for ESA, but who has been told that she is unable to sign on for JSA as she is still signed off work by her GP. The client has no income and is living on a redundancy payment.

A North of Scotland CAB reports of a client who is currently unable to receive ESA or JSA. The client was assessed as fit for work in his WCA, but is still signed off work by his GP preventing the client from receiving JSA. The client is recovering from a stroke and suffers from angina.

An East of Scotland CAB reports of a client who was told that he cannot get JSA as he is not fit for work, despite having been found fit for work in the assessment for ESA. The client is currently signed-off work by his GP with a mental health condition. The client and his partner currently have no income other than Child Benefit with which to look after their two children. The bureau is helping the client to apply for a Crisis Loan.

127. Clients who are found fit for work may not be well enough to cope with all the requirements of the JSA regime, such as signing on and work focused interviews. Some clients have significant health conditions that will ensure that they will find themselves physically unable to get to the JCP office. This is especially the case for clients living in rural areas who often need to travel long distances to their nearest Jobcentre Plus office, a consideration that is not recognised in the fit for work assessment.

¹⁴ Impact Assessment of the Employment and Support Allowance Regulations 2008 – Public Sector Impact only (DWP March 2008)

128. A number of clients who qualified for ESA may not qualify for contributions based JSA, and those that do will only receive it for a maximum of 26 weeks. Many clients will also fail to qualify for income-based JSA if they have a partner who has an income, with advisers reporting anecdotally that many clients are 'giving up' on benefits and living on their partners' income. Therefore, a large number of people may be moved from ESA out of the benefits system entirely. The Government expected that this will include half of claimants found fit for work, but are far less specific about what happens to this group and the numbers that find employment. Government figures on destinations after ESA will be published in the summer, but as of the time of writing, it is unknown how many clients are in this group and if and how they are coping.

Entering the workforce

129. While DWP figures show the number of claimants that are being found fit for work in the WCA, there is little data in the public domain to show whether these claimants are returning to work. Evidence in this report suggests that bureaux are seeing a number of clients who are being found fit for work who clearly have health problems that will make finding and sustaining employment very difficult.
130. Part of the problem is that the WCA takes no consideration of the discrimination that claimants may face in looking for employment. Research by the Disability Rights Commission has shown that 38% of employers would not employ anyone with a history of mental health problems. We also note research from the Chartered Institute of Personnel and Development which found that a third of employers would deliberately exclude people with a history of long-term sickness or incapacity when recruiting staff. Additionally, just under half of the employers surveyed thought that long-term incapacity benefit claimants would be less reliable and less productive and almost one fifth thought they would produce a lower standard of work than other workers¹⁵. There is therefore a gap between the ability of a claimant to work and the likelihood that they will find and sustain employment. Dedicated support needs to be provided to help claimants to bridge this gap.
131. It is important to note that many clients are being told to re-enter the workforce by their fit to work assessment outcome – but are being denied the support to do so. The Work-Related Activity Group (WRAG) was set up to help those with health problems who are on the fringes of employment to get the support they need to re-enter the workforce. Many of the clients who are being found fit for work would benefit greatly from this service. However, by being found fit for work, these clients are being cut off from support and expected to make their own way into employment. Government targets showed that nearly half of claimants (46%) would be put into the WRAG group, but the most recent data shows that only 21% are being placed into this group. This means that far less claimants are receiving the support they expected under ESA.
132. Many claimants who are found fit for work are being taken off benefits, told to look for employment with little support to do so, are still likely to suffer from significant ill health and/or disabilities, and may be discriminated against because of their ill health. Many will be in their 50's and may have a poor recent employment record. To make matters worse, these fit to work claimants will have to compete for employment against 100,000's of newly unemployed workers in an economy coming out of recession with a severely limited number of vacancies.

¹⁵ *Incapacity benefit reform: Why it is needed and how to engage employers*, Chartered Institute of Personnel and Development, 2006

133. It may simply be the case that labour demand is too low to get former IB or ESA claimants back to work. Research undertaken for Scottish Enterprise found that a proportion of IB claimants were 'hidden unemployed' and were capable of some work – however, to absorb the hidden unemployed back into the workplace would require 40,000 new jobs in Glasgow alone, and a further 30,000 new jobs in North and South Lanarkshire. The report concludes that 'in the circumstances, it should therefore not be surprising that the incapacity numbers will not be brought back down again without an equally great and sustained boost to labour demand'.¹⁶ Therefore, it is not enough to take claimants off sickness benefits; jobs must be in place for former claimants to go into.

134. It is unlikely that these jobs are available for former claimants. ESA is a supply side intervention – it increases the number of potential members of the workforce. However, it does little to increase the demand for labour. The inherent assumption behind ESA is that increasing the supply of labour will increase the demand for it. However, ESA has been rolled out at the start of the one of the most sustained recessions in modern times. Labour market statistics show that the number of employee jobs in Scotland dropped by 49,000 between December 2008 and December 2009¹⁷. Demand for labour is decreasing as ESA increases the supply of labour. As the economy grows again, it is likely that it will be the recently unemployed that will be taken back into the workforce. Only a sustained growth in the economy will be able to absorb the increased supply of labour that ESA is creating.

¹⁶ *Scotland's Incapacity Benefit Claimants: A Briefing by Professor Steve Fothergill* (Scottish Enterprise, 2005)

¹⁷ Office of National Statistics (ONS) figures (April 2010)

The future

135. Currently, only new applicants for sickness benefits are required to apply for ESA. However, it is the Government's intention to migrate all 2.4 million current IB claimants onto ESA by 2015. Over 500 doctors will undertake 10,000 assessments of existing IB claimants each week over the coming five years.¹⁸
136. The Government's intention is to cut the number of claimants by one million over the next five years. This would imply that the Government intends to find new and existing claimants of sickness benefits fit for work at a rate of over 500 a day over a five year period. This includes claimants that have already been found *unfit* for work and who will face significant barriers to employment after years out of the workforce.
137. However, there is significant doubt about whether the blanket approach to moving claimants between IB and ESA is an appropriate mechanism for making a distinction between those fit for some work and those who are not. Research for Scottish Enterprise found that approaches taken across the board for IB claimants will likely be unsuccessful: 'At the level of the individual, distinguishing just who might be brought back into work and who might not is a high-on impossible task. Hard-line policies, applied across the board to all IB claimants, are therefore inappropriate'.¹⁹
138. We believe that it is extremely difficult to make the distinction at any point in time between those people for whom some sort of work is possible and those for whom it is not. We note research commissioned by the DWP which arrived at the same conclusion, highlighting the difficulty of finding a fair and effective way of dividing benefit claimants into these two streams. The report states, "There is no bulge in the distribution [of those on IB], which could be used to argue that 'most' disabled people are at the less-severe end of the spectrum; nor a bulge at the opposite end, which would suggest that 'most' of them are 'incapable of work'. Still less is there a pair of bulges, which could be used to distinguish easily between 'those who can work' and 'those who cannot', and goes on to conclude, "It is by no means clear from these data where a dividing line could be drawn between those with realistic and unrealistic expectations".²⁰

¹⁸ http://www.timesonline.co.uk/tol/life_and_style/health/article7066236.ece

¹⁹ *Scotland's Incapacity Benefit Claimants: A Briefing by Professor Steve Fothergill* (Scottish Enterprise, 2005)

²⁰ *Taking the long view*, Institute for Social and Economic Research, ISER Report 2005/06

139. It is undoubtedly true that there are some recipients of IB who are fit for some level of work and would benefit from engaging with the labour market. However, finding such a significant proportion of existing IB claimants fit for work must also include many claimants who have not been in employment for years and who face multiple barriers to re-entering the jobs market. These are likely to include claimants who have a level of ill health or disability that is serious enough that the claimant may feel completely unable to find and sustain employment. It is also a worry that employers will discriminate against a job applicant who has been out of employment for a long stretch of time. Therefore, it would seem likely that without substantial support a large proportion of IB claimants found fit for work in the assessment for ESA will feel unable to work.
140. Many of these claimants who feel unable to work will seek to move on to JSA, but some will find that they are ineligible. No one who is migrated from IB is likely to be eligible for JSA (contribution based) if they are found fit for work, because of the need to have been in paid work in the recent past. Therefore, a large proportion of those found ineligible for ESA but who are unable to work, will have no benefit to replace the income they have lost as a result of their illness or disability. It is unknown what the future holds for this group of vulnerable people.

Conclusion and Recommendations

141. Employment and Support Allowance (ESA) was introduced to support the government's stated principle that those who are able to work should be given the opportunity to do so – a principle which is supported by CAS. However, our clients' experience of ESA thus far suggests that people with significant mental and physical health problems are being found fit for work, but not receiving support to seek and sustain employment.
142. This report has highlighted the cases of many clients with serious health conditions, such as Parkinson's Disease, Multiple Sclerosis, terminal cancer, bi-polar disorder, heart failure, strokes, severe depression, and agoraphobia who have been found fit for work. It is worth noting that the JCP's guide to applying for ESA states that those who "would have no difficulty working" will not be paid ESA.²¹ While some of the clients in the examples above *may* be capable of limited work, it is very unlikely that they would experience no difficulty in doing so.
143. In particular, bureaux report that clients with serious mental health conditions appear to be the most severely affected by problems with ESA. Bureau advisers report of their frustration and dissatisfaction with the way that clients with mental health problems are treated in the ESA process. There is a strong feeling that ESA is not designed to help such people and can actually serve to make their situations worse.
144. The DWP's most recent statistics on ESA show not only that a high proportion of claimants are appealing their fit for work decisions, but also that about 40% are winning their appeals. While these were findings from the early stages of ESA, it is nonetheless worrying that so many decisions are being challenged and overturned on appeal. This raises the possibility that many WCA decisions are either incorrect or unduly harsh. Scottish bureaux report that 70% of the clients they represent have their appeals upheld.
145. The DWP will shortly begin the process of re-assessing IB claimants over the next five years, expecting to cut the number of disability claimants by a million. If the problems currently inherent in the ESA system continue, then hundreds of thousands of claimants – many of who will have suffered from ill health for years and who have already been found unfit for work – will experience significant stress and anxiety that could make their health conditions worse.

²¹ Employment and Support Allowance – Help if you are ill or disabled (Jobcentre Plus)

146. The evidence from Scottish bureaux suggests that the Government has been successful in taking claimants off sickness benefits, and in some cases out of the benefits system altogether. However, there is very little evidence to suggest that claimants and former claimants have been helped back into meaningful employment. A successful sickness benefit will provide financial support to those with significant health problems, and support to find and sustain employment for those who are capable of work. However, the current system is finding many people with significant health problems fit for work, while failing to provide enough claimants with the support that they need to start moving closer to the labour market and into employment. These problems must be addressed before long-term claimants of sickness benefits are put through the process.

Recommendations

147. Based on the evidence from Scottish Citizens Advice Bureaux, we have made a number of recommendations that we believe will help to make ESA fit for purpose:

Administration

- **The advice given by Jobcentre Plus advisers should be reviewed to ensure accuracy** – It is important that claimants are advised to apply for the correct benefit. Evidence from bureaux suggests that some clients are being incorrectly advised to apply for ESA when their health condition is only minor. Clients can also be refused ESA as a result of being assessed only under the contributions-based component. Unless the client explicitly states that they wish to be considered both for income and contributions based benefit – and many clients are unaware of this requirement – their assessment is made on a contributions based-component only. This has left clients financially distressed as they have had to wait until the process has restarted before receiving any payments. Training or additional guidelines may be required to ensure that claimants are provided with the correct advice.

Work Capability Assessments (WCA)

- **The DWP should review the exemption criteria from the WCA**– under Incapacity Benefit rules, claimants with certain conditions would be exempt from the assessment providing their doctor confirmed the diagnosis. There are fewer such exemptions under ESA, meaning that claimants with serious illnesses or disabilities are being subjected to the WCA – and in some cases are found fit for work – whereas prior to 2008 they would have been considered too unwell to even attend an assessment. The DWP should review the list of illnesses that are exempt from the WCA, looking at the impact of the WCA process for claimants with serious illnesses.

- **The format of the WCA should be more flexible** – the format of the assessment, in which clients are required to answer ‘yes’ or ‘no’ to set questions, is too rigid to accurately assess many conditions. Many clients come out of their assessments feeling that they were unable to communicate the full extent of their health problems, while others reported that the healthcare professionals themselves were concerned that clients could not fit the descriptors. The format of the WCA should be amended to be more flexible to allow claimants’ health conditions to be accurately assessed.
- **Greater emphasis should be placed on medical evidence provided by the client** – a common complaint from clients was that medical evidence from GPs and consultants was ignored by assessors and DWP decision makers. This medical evidence is then often successfully used by the client in their appeal. A greater emphasis on medical evidence could reduce the number of incorrect assessments and the high number of appeals.

Assessment decisions

- **The DWP needs to urgently review why the WCA is finding significantly more claimants fit for work than intended** – the most recent DWP data found that 68% of claimants are being found fit for work compared to the original stated target of 50%. The DWP should account for this disparity and take action if it is found that the WCA is unduly harsh on clients.
- **The recommendations made by ATOS Origin healthcare professionals should be regularly checked for accuracy** – Bureaux have advised a number of clients who have complained that the medical report from their WCA is inaccurate and misrepresents the answers that they provided. These inaccuracies lead to appeals, putting further strain on the tribunal system and advice agencies.
- **More claimants should be placed in the Work Related Activity Group (WRAG)** – data from the DWP show that far fewer claimants are being placed in the WRAG group than expected, while bureaux report that they are seeing very few such claimants. The WRAG group is absolutely crucial if the Government is to achieve its aim of getting people back to work. However, the performance of ESA so far shows that the group is being significantly underused. Bureaux are reporting of large numbers of clients who are being found fit for work who would benefit greatly from being placed in the WRAG group.

- **The accuracy of the WCA in assessing clients with mental health problems should be reviewed** – advisers strongly felt that the WCA was especially poor in assessing clients with mental health problems. The descriptors in the WCA often fail to take account of a client's mental condition, while clients complained that healthcare professionals had little experience of their condition. The one off assessment is a blunt instrument in assessing a claimant's often complex mental health problems.

Appeals

- **The DWP should consider whether support should be provided to citizens advice bureaux to cope with the extra workload that ESA has entailed** – The DWP has set aside extra resources to provide for the impact of ESA appeals. However, no extra resources are being provided to bureaux in Scotland to help clients with thousands of ESA problems, and potentially thousands of appeals.

Claimants found fit for work

- **The DWP urgently needs to examine what happens to clients who are found fit for work** – there is a worry that many clients will struggle to find and maintain employment after being taken off ESA, while some will find themselves ineligible for JSA. It is important to find out what is happening to this client group - whether former claimants are finding employment, claiming JSA, or falling out of the benefits system altogether.

Incapacity Benefit claimants

- **The DWP needs to ensure that the problems in the ESA system are addressed before existing IB claimants are moved to the new benefit** – Many IB claimants will have been out of the workforce for years and will therefore face many barriers to finding employment again. The DWP must ensure that if an existing IB claimant is found capable of some work, they receive strong support to help them back in to the workforce. Simply finding these claimants fit for work could leave a large group of former claimants claiming JSA, or worse, falling out of the benefits system altogether. It is therefore imperative that the problems in the ESA system are addressed before IB claimants, many of whom are likely to be particularly vulnerable, experience them.

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