

Migration from Incapacity Benefit to Employment and Support Allowance (ESA)



Response from Citizens Advice Scotland (CAS) to the Work and Pensions Committee

April 2011

Summary

- 207,000 people in Scotland claim Incapacity Benefit. The majority of these claimants will be reassessed in the next three years, involving over a thousand re-assessments each week in Scotland.
- ESA has arguably been the most concerning issue for bureau advisers in the last two years. Advisers regularly report of clients with significant health problems who they feel are inappropriately found fit for work.
- The Tribunals Service and citizens advice bureaux have been overloaded by a massive caseload of ESA appeals. Figures in January 2011 showed that 31,800 ESA appeals in the UK were cleared at hearing in Quarter 3 of 2010/11 – around 2,600 a week.
- The underlying principle of ESA is that sickness benefits claimants that have a capability for work are supported into employment. However, the reality appears to be that claimants are being moved from one benefit to a less expensive one, or dropping out of the welfare system altogether.
- Independent research has found that only 13% of those found fit for work are being supported into sustained employment. ESA is being hastily rolled out to a vulnerable section of society before it has been shown to meet its aim of supporting people into work.

Introduction

1. ESA has quickly become a significant issue for citizens advice bureaux in Scotland, both in terms of the severity of its impact on clients and the pressure this places on bureau resources. In particular, welfare advisers report of many clients with serious health conditions who have been found fit for work, including clients with Parkinsons Disease, Multiple Sclerosis, terminal cancer, Bi-polar disorder, heart failure, strokes, severe depression, and agoraphobia.
2. It is important to note that CAS – and many groups that support people who live with disabilities across Scotland – support the principle that those who have a capability for work should be helped into suitable and sustainable employment. Our concern, and that of welfare advisers, is that ESA is failing to meet this principle: that it is failing to adequately assess many clients, failing to help former claimants to find employment, and may simply be moving claimants from one benefit to another or out of the system altogether.

The Work Capability Assessment (WCA)

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

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

"I have had many comments from clients about the Health Care Professionals who carry out medicals. They do not appear to listen to their answers, they do not look up from the computer screen, everything is rushed with clients given no opportunity to try and explain their situation. Also there are many comments about the medical report stating things that had never been said."

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

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

The decision-making process

6. Clients have little faith in the assessment and decision making process. The problems experienced at the assessment – including rushed appointments and healthcare professionals who do not appear to be listening to the claimant – mean that clients are likely to feel that they have not been properly assessed and that therefore the decision that they have received is incorrect.
7. This problem is compounded by the decision letters that clients receive, which are often full of technical jargon and fail to explain to the client why the decision has been reached. Without a clear understanding of why ESA has been refused, and a feeling that their assessment was inadequate, many clients feel that the process has failed them and that their only recourse is to appeal. Advisers explain the problems with decision letters:

“The decisions, in some cases, consist of one or two comments made on the medical report and do not give claimants a clear understanding of why they have been refused.”

“...to the ordinary man in the street they are just a lot of legal jargon and illegible medical reports from Atos that they cannot really make head or tail of.”

8. A number of clients have complained that their supporting medical evidence has been ignored by DWP decision makers who have effectively ‘rubber stamped’ the recommendation from the WCA. This medical evidence is then often used to successfully appeal the decision. The Harrington Review found that decision makers follow the advice of the medical assessors in 98% of cases. We strongly support Professor Harrington’s recommendation that the DWP decision maker take a far more active role in making decisions based on both the assessment and the supporting medical evidence.

The appeals process

9. The Tribunals Service and citizens advice bureaux have been overloaded by a massive caseload of ESA appeals. Figures in January 2011 showed that 31,800 ESA appeals were cleared at hearing in the UK in Quarter 3 of 2010/11 – around 2,600 a week.¹ The DWP had originally estimated that 21,000 appeals a year would reach an appeal hearing.²
10. DWP figures show that around 40% of ESA appeals are found in favour of the claimant. More than 11,000 assessments were overturned at appeal in Quarter 3 of 2010/11.

¹ <http://www.justice.gov.uk/publications/statistics-and-data/tribunals/quarterly.htm>

² Impact Assessment of the ESA Regulations 2008 (DWP March 2008)

11. The high number of ESA appeals has had a huge impact on the time and resources of citizens advice bureaux. Welfare advisers estimate that up to 70% of their time is taken by ESA claims, mostly appeals, with preparation for each appeal taking an average of five hours of adviser time. Welfare advisers are representing clients at hundreds of ESA tribunals each year:

“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 had had 520 appeals come through by books since April. I’m overloaded and the Tribunal Service is overloaded.”

“The appeals process: - this is now taking a ridiculous amount of time and resources which this country cannot afford and will only get worse.”

12. The pressure on the Tribunals Service has resulted in a significant wait for clients before they have their appeals heard. The experience of advisers is that appeals are taking around 6 to 9 months to come to a hearing causing considerable financial worry and stress to claimants:

“It’s unreasonable to expect claimants to wait 6 months before their tribunal hearing and for a decision – stressful for claimants.”

“...the 6-month wait for an appeal to be heard does not do the claimant's health any good at all.”

13. Despite changes made by the Department to reduce the number of appeals made, it is likely that the re-assessment will cause another surge in ESA appeals, placing significant additional pressure on the Tribunals Service and the advice services supporting these claimants.

The outcome of the migration process

14. The performance of ESA thus far, and the significant press attention devoted to it, means that many Incapacity Benefit claimants are aware of the upcoming reassessment process. For some, the impending migration is a source of significant worry and may be making health conditions worse. A welfare adviser explained how one client viewed her upcoming reassessment:

“A client phoned in a very distressed state. A friend of hers had told her to telephone the CAB. She is on Incapacity Benefit and is very fearful about the changes she is hearing about that could affect her benefit entitlement. She said she wanted to be dead and last weekend thought of overdosing... She cried a lot and there were pauses. Tried to reassure her and not to worry about what may or may not happen.”

15. The effects of the reassessment process on the health of claimants – even before an assessment has taken place - must therefore not be underestimated. There is a risk that long-term IB claimants may not understand the significance of the reassessment or be unable to cope with the process. In these circumstances, claimants may fail to respond to communications or fail to attend medicals. One possible outcome of the migration process is therefore that thousands of claimants will drop out of the system altogether and be denied the support that they should be entitled to. It is imperative that these people are supported in the process and not written off.

Fit for work

16. The Department estimated that around 23% of IB claimants would be found fit for work in their reassessment.³ Initial estimates from the pilots in Aberdeen and Burnley found that 30% of IB claimants had been found fit for work. This would suggest that up to 50,000 IB claimants in Scotland will be found fit for work by 2014 – around 45 for every day of the next three years.
17. The stated aim of ESA is to support those on sickness benefits with some capability for work back into the workplace. However, it appears that the majority of former claimants are not being supported into sustained employment. An independent review of ESA customers published in December 2010⁴ found that only 13% of those found fit for work in their Work Capability Assessment have been helped into sustained employment. The majority of those found fit for work either live on reduced benefits or rely on the income of a partner instead. 61% of those found fit for work are neither in employment or receiving JSA. These findings suggest that the ESA process is not achieving its stated aim.
18. It is likely that long-term IB claimants – who have already been deemed unfit for work and who are likely to have a poor employment history – will face even more barriers to work and will need significant support to overcome them. It is imperative that substantial targeted support is provided for former IB claimants in the new Work Programme. The alternative is a risk that these former claimants will be ‘creamed and parked’ by back to work providers.
19. Many former IB claimants will be ineligible for JSA if their partner has an income or if they have savings. Anecdotally, many claimants who are found fit for work are dropping out of the benefits system altogether and relying on the income of their partner to get by.
20. The result of these issues could be a group of people with health problems who are not in employment or supported in the benefit system. Far from supporting people into work, the outcome of the migration process could be to move sickness benefit claimants on to a less expensive benefit or out of the system altogether.

³ House of Lords, Merits of Statutory Instruments Committee: First Report, <http://www.publications.parliament.uk/pa/ld201011/ldselect/ldmerit/7/703.htm>

⁴ <http://research.dwp.gov.uk/asd/asd5/rports2009-2010/rrep707.pdf>

The Work Related Activity Group (WRAG)

21. In the recent pilot phase of the national reassessment, 39% of IB claimants were placed in the WRAG group. While we have previously argued that far too few claimants were being placed in this group – about half of the Government’s initial estimate – proposed changes to the WRAG group will have a substantial impact on the claimants placed in this group.
22. Those placed in the Work Related Activity Group (WRAG) will have a time limit of 12 months for claiming contributory ESA. If they have not found employment by this point, they will be moved to income based ESA or moved off the benefit altogether. Around 700,000 people in the UK will be affected by the change by 2015-16 – around 280,000 would lose entitlement to ESA after 12 months. The average loss (for those those losing out) would be £51.85/week (£2,700/year) if they do not find employment.⁵ Research undertaken for the DWP⁶ found that 31% of claimants in the WRAG group did not expect to ever return to work.
23. Assuming that the figures from the pilot in Aberdeen and Burnley apply to the rest of the country – 30% fit for work; 39% placed in the WRAG group – then the above figures would suggest that 30% of claimants would be moved off sickness benefit after their assessment and a further 12% moved off ESA after 12 months. All told, the Government is estimating that more than 4 in 10 current IB claimants (around 75,000 claimants in Scotland) will be moved off sickness benefits within 12 months of their assessment. Whilst it would be a significant boost to the economy and to these people’s lives if they found rewarding and sustainable employment, only a small minority would find sustained work if current trends continue. The remainder would claim JSA or drop out of the benefits system altogether.

The time-scale for the national roll out

24. 207,000 people in Scotland claim Incapacity Benefit. The majority of these claimants will be reassessed in the next three years, which will involve over a thousand re-assessments each week in Scotland. This is a major exercise for the DWP and Jobcentre Plus, both of whom are concurrently being asked to cut their spending.
25. There is a major worry that the national reassessment is being rushed and pushed through in an ad-hoc fashion. Any learning from the pilots that have taken place in Aberdeen and Burnley has a very short time to be fed into the national reassessment – there was one working day between the end of the pilot and the start of the national reassessment.
26. On top of this, the Government are attempting to combine changes recommended by the Harrington Review with its new ESA regulations. The multiple changes, and the haste at which they are required to be introduced, do not suggest a settled system with which to launch such an ambitious national roll-out.

⁵ <http://www.dwp.gov.uk/docs/esa-time-limit-wr2011-ia.pdf>

⁶ <http://research.dwp.gov.uk/asd/asd5/rports2009-2010/rrep707.pdf>

27. We are also concerned that the haste at which the national reassessment is being pushed through will potentially leave Jobcentre and ATOS staff unable to cope with the rapid changes. Jobcentre staff will soon be expected to help thousands of customers with health problems and poor employment histories prior to the Government's proposed Work Programme coming into place in the summer. We are worried that the rapid changes that are being pushed through will negatively impact on claimants in the national reassessment.

28. Welfare advisers expressed their concern about the speed and scale of the national reassessment:

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

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

29. The speed of the national reassessment is likely to place huge demand on the services of welfare advisers in citizens advice bureaux. Bureaux currently deal with around 1 new issue each year for every 3 ESA claimants in Scotland – if this trend is repeated for IB claimants in the reassessment, bureaux could expect to deal with almost 70,000 new issues on their behalf. This welfare adviser explains her expectations:

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

30. It is also worrying that the Work Programme will be introduced some months after the national transition from IB to ESA has started. It is expected that 10,000 Work Capability Assessments of IB claimants will be undertaken each week from April 2011 with an expected 23% of claimants found fit for work.⁷ This is on top of the 20,000 new ESA claimants that are currently being found fit for work each month. Therefore, it is highly likely that tens of thousands of claimants – many of whom will face significant barriers to work and pose serious difficulties for JCP staff – will be found fit for work and encouraged to apply for JSA *before* the Work Programme is in place. These claimants may not receive the support to enter the job market that they deserve and were promised.

⁷ House of Lords, Merits of Statutory Instruments Committee: First Report, <http://www.publications.parliament.uk/pa/ld201011/ldselect/ldmerit/7/703.htm>

Conclusion

31. ESA is a benefit without a good record of assessing capability for work correctly or for improving outcomes for claimants. Rushing it out one working day after the end of the pilot, and at the same time as implementing new regulations and recommendations from a major review, is a huge risk and has the potential to impact negatively on some of the most vulnerable groups in society. Many former claimants will receive support and return to employment – and this is to be welcomed – but there is a significant risk that the majority of former IB claimants will find themselves in a worse position, both in financial and health terms, than their current situation. This is contrary to the aims of the exercise.

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For further detail on the impact of ESA on citizens advice bureau clients in Scotland, please read the ***Unfit for Purpose*** research report on the impact of ESA on citizens advice bureau clients (May 2010)

<http://www.cas.org.uk/Resources/CAS/Migrated%20Resources/Documents/ER%20Unfit%20for%20Purpose>