

The Work Capability Assessment

A response from Citizens Advice Scotland (CAS)



**Based on the evidence of
Citizens Advice Bureaux
clients across Scotland**

by Keith Dryburgh and Matt Lancashire
Social Policy Officers

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Citizens Advice Scotland

Scottish Association of Citizens Advice Bureaux



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Citizens Advice Scotland and its 83 CAB offices form Scotland's largest independent advice network. CAB advice services are delivered through nearly 200 service points throughout Scotland, from the islands to city centres.

The CAB service aims:

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

and equally

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

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

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The Scottish Association of Citizens Advice Bureaux - Citizens Advice Scotland
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Introduction

1. 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.
2. In 2009/10, Scottish Citizens Advice Bureaux dealt with nearly half a million new issues for clients. Over 150,000 of these issues related to benefits – over 400 for every day of the year. More than 55,000 of these new problems were issues related to the various sickness and disability benefits.
3. CAS welcomes the opportunity to respond to the Independent Review of the Work Capability Assessment (WCA). Since its inception in the autumn of 2008, ESA has become one of the most common issues brought to bureaux by clients.
4. The WCA, both in terms of its delivery and results, is the aspect of ESA that has caused the vast majority of issues for our clients. We are concerned that the WCA is both failing our clients and creating a significant burden on bureau resources. In order to mitigate these effects, the WCA should itself be assessed and reformed to ensure that it is fit for purpose for the impending Incapacity Benefit migration. Without reform, the WCA and its problems threaten to adversely affect the thousands of Incapacity Benefit claimants who will take the WCA each week for the next four years.

Bureau clients

5. 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. CAS carried out research on the costs of illness and disability for CAB clients claiming Incapacity Benefit (IB) and/or Disability Living Allowance (DLA) in 2006¹, 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

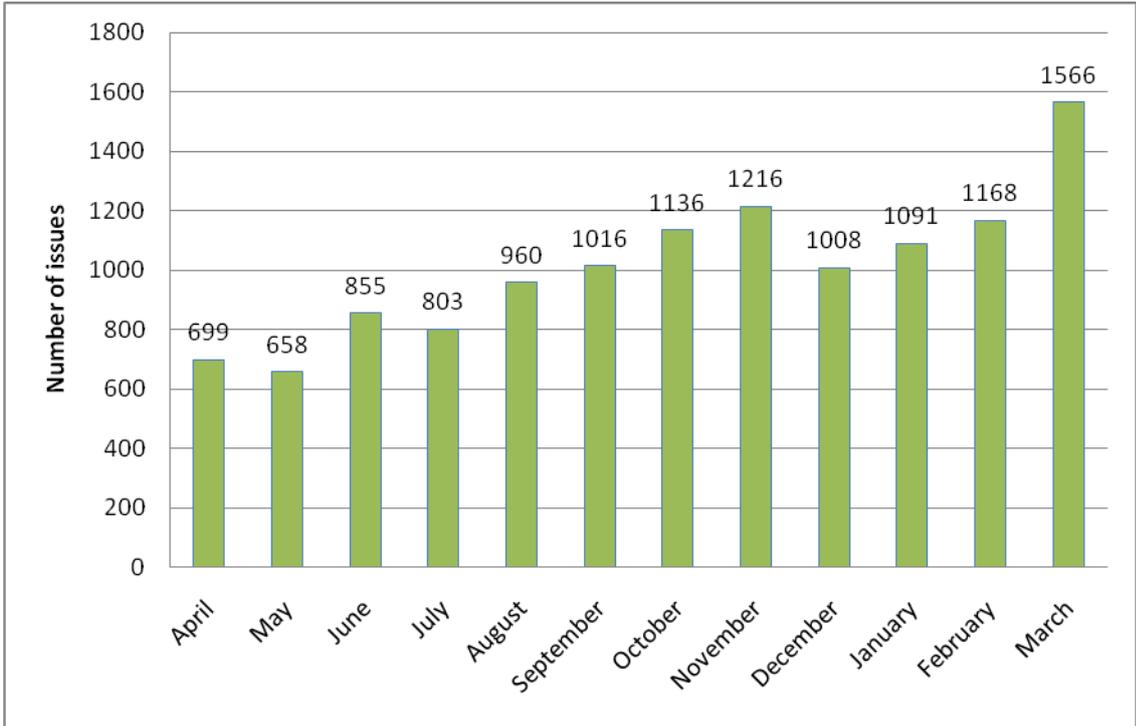
¹ *Paying the Price: The real costs of illness and disability for CAB clients* (July 2006)

6. Sickness and disability benefits are some of the most common issues that bureaux deal with on a day to day basis. In 2009/10, bureaux dealt with 55,757 new sickness or disability benefit issues – around 153 new issues for every day of the year.

Citizens Advice Bureaux and ESA

7. Employment and Support Allowance (ESA) has quickly become one of the most common issues brought by clients. Bureaux helped clients with 12,613 issues relating to ESA in 2009/10 – that’s 26 issues for every 100 ESA claimants in Scotland. CAB welfare advisers report that they are spending up to 60-70% of their time helping clients with ESA problems. Figure 1 shows how ESA has exploded as an issue over the last year:

Figure 1: ESA issues brought to bureaux by month 2009/10



8. 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. ESA issues involve more bureaux visits for clients and consequently more work for advisers than the average.

9. Around four in 10 tribunals or court hearings at which bureaux provide representation are ESA appeals. Applying this finding to the total number of tribunals where bureaux provide representation in Scotland would suggest that bureaux provided representation at around 850 ESA appeals in 2009/10.
10. Welfare advisers 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 estimated total number of ESA appeals detailed above shows that the 850 recorded tribunals would have taken over 600 working days of adviser time across the service. Employment and Support Allowance is therefore a huge issue for both clients and advisers.

Our response

11. While clients report problems with the administration of ESA, the vast majority of complaints and advice queries stem from the Work Capability Assessment. This includes both the result of the assessment as well as the manner in which it was carried out.
12. Citizens Advice Scotland (CAS) is extremely concerned that many clients are being found fit for work in their Work Capability Assessment despite often having severe illnesses and/or disabilities. Our evidence has highlighted the cases of many clients with serious health conditions who have been found fit for work, including those with Parkinsons Disease, Multiple Sclerosis, terminal cancer, Bi-polar disorder, heart failure, strokes, severe depression, and agorophobia.
13. This response outlines the problems that our clients have experienced with the WCA, including assessments that do not reflect the client's condition, as well as problems with the design and delivery of the WCA itself. The response outlines our recommendations for reform of the WCA to ensure that the early problems experienced by new claimants are not experienced by more vulnerable Incapacity Benefit claimants in the coming years.

Categorisation

Question 1a: How effectively does the WCA correctly identify those claimants whose condition is such that they are unable to undertake any form of work related activity (the support group?)

Question 1b: How effectively does the WCA correctly identify those claimants whose condition is such that they are currently unable to work due to illness or disability (the limited capability for work group?)

Question 1c: What are the main characteristics that should identify claimants for each group, where these may differ from the current assessment?

14. Bureaux across Scotland have advised a significant number of clients with serious health conditions who have been found fit for work in their WCA. Bureaux report that the majority of the clients they see are faced with significant and possibly insurmountable barriers to employment – such as significant health problems, a significant time out of the workforce, and employer reluctance to hire the client due to their health problems - 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.
15. DWP statistics show that 68% of assessments are finding the claimant fit for work. However, four in ten fit for work assessments that are challenged by claimants are being successfully appealed at tribunal. 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.”

16. Based on DWP data, two-thirds (66%) 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.²

² Financial Times, July 13th 2009

<http://www.ft.com/cms/s/0/c3ae0762-6f43-11de-9109-00144feabdc0.html>

Clients with mental health problems

17. 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.
18. Clients with a mental health condition reported frustration that the health care professionals in the WCA 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.
19. Figures released by the DWP in August showed that claimants with mental health conditions were significantly less likely to be placed in the Support Group than claimants with other conditions. These figures suggest that reform may be required to ensure that the WCA properly assesses the conditions of these claimants.

	Mental health claimants	All other claimants
Support Group	7%	12%
Work Related Activity Group	24%	24%
Fit for Work	69%	65%

Source: DWP release August 2010

20. 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 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 worried about her future.

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 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.

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.

An East of Scotland CAB reports of a client who suffers from bipolar disorder who received 0 points at his work capability assessment. The client was 'paid off' at work due to the extreme highs and lows that he is experiencing. The client stated that he was not questioned about his mental health at all and the assessment concentrated on his physical health.

21. 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.

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.

22. 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. In our report, *Unfit for Purpose*³, 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.
23. 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

24. 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 re-entering the workforce.
25. 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.

³ *Unfit for Purpose* (2010) – Citizens Advice Scotland (CAS)

26. Bureaux 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.

27. Bureaux have seen a number of clients who have been found fit for work despite being told by their employer that they consider the client unfit to return to work. This can be a stressful and upsetting situation for a client to experience.

A North of Scotland CAB reports of a client who has been found fit for work in her Work Capability Assessment. The client is on sick leave from her employment, but has been told by her employer that they will not let her return to work as they consider her to be unfit for work. The client is therefore in a position where she has no access to employment or state benefits. The client has various health issues, including fibromyalgia, anxiety, depression, and a work related injury that severely affects her upper body movement.

28. The resultant fit for work assessments can have a significant impact on a client who has been told by one doctor that he/she 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."

Work Related Activity Group

29. Bureaux report that only a small minority of their clients have been placed in the WRAG group after their assessment. This is supported by DWP figures which show that significantly fewer applicants were being placed in the WRAG group than was originally intended. However, they have reported numerous clients found fit for work who face significant barriers to sustaining employment and who would benefit greatly from being placed in the WRAG group. These are clients who may be capable of returning to work with significant support, which they may struggle to receive through Job Seekers Allowance (JSA) return to work programmes which aren't tailored to the individuals needs. Without dedicated WRAG support, these clients may become long-term JSA claimants or fall out of the system altogether.
30. We therefore call for the WRAG group to be utilised considerably more than is currently the case. The group was intended to be used for more applicants than has transpired, so we are asking for claimants to be placed in the group as was the original policy intention. The criteria for placing a claimant in the WRAG group and its application should be reviewed to ensure that it is fairly assessing claimants.
31. For many clients with health conditions, the JSA route would not be suitable. Clients who are living with mobility problems or live a distance from Jobcentre offices may struggle with the demands that are placed on them by JSA. In Scotland in particular, a significant proportion of the population live in rural and remote areas and may find the simple process of signing on to be a significant hardship. The risk is that clients will either find this an inappropriate route back into the job market and end up failing in the task; or that they will find the process far too onerous and stop claiming. It is therefore imperative that those assessed as having some capability for work, but who would still face significant barriers to re-entering the workforce, are considered for the WRAG group rather than being put into the JSA route.

Operation of the WCA

Question 2: What evidence is there to suggest that any issues with the operation of the WCA are as a result of the policy design, and what evidence is there to suggest that they are as a result of the delivery?

32. CAS believes that our client evidence shows that there are problems with both the design and the delivery of Work Capability Assessment. 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 apparently disregarding supporting medical evidence.

Problems with policy design

33. CAS supports the principle of helping people with health problems to get back into the workforce. A successful sickness benefit should provide help to get back to work for those who are capable whilst providing support to those who are genuinely unable to work. However, our client evidence and the figures from the DWP suggest that the dividing line between those able to work and those who are not has been raised too high and that a significant number of clients with significant health problems are finding themselves being told they are fit for work.

34. Despite popular opinion to the contrary, the assessment for Incapacity Benefit was already a tough test. 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.⁴ We are therefore concerned that an already tough test has been made much tougher.

35. It was estimated by ministers and the DWP that around 50% of applicants would be found fit for work.⁵ However, DWP figures show that 66% of claimants are being found fit for work.⁶ This suggests either the initial estimates were very poor or, more likely, that the policy design of the WCA is harsher than was initially intended. However, the DWP's response to these harsher figures is to claim that the WCA is working even better than intended and have revised their estimates upwards. We would argue that the intention of the WCA should be to accurately assess claimants; not find as many fit for work as possible. The DWP needs to urgently look at why their estimates were so inaccurate and make their own assessment on whether this is due to the test being harsher than intended – rather than simply revising their estimates to meet the results.

⁴ 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

⁵ <http://www.dwp.gov.uk/newsroom/press-releases/2007/november-2007/drc055-191107.shtml>

⁶ ESA Work Capability Assessment Statistical Release (July 2010)

Problems with design - clients who drop out of the assessment process

36. DWP figures show that out of 686,000 applications for ESA up to November 2009, over a quarter of a million claims were closed before the assessment was completed.
37. 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.
38. 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.
39. 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.

40. 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."

Problems with design - clients unsuitable for the assessment

41. 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.

42. 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.

43. 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.

Problems with design - format of the assessment

44. 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.
45. 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."

46. 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’.”

47. The yes/no format of the assessment appears to be an inflexible tool for assessing someone’s capabilities and leaves many clients upset that they did not get the chance to fully explain their condition. It is can then be the case that their condition is fully explored in a tribunal which can lead to the client winning their appeal.

48. Clients reported that they had little understanding of the WCA prior to it 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.

49. The evidence from both bureaux across Scotland supports the view of many CAB welfare advisers that the WCA is ill-designed for assessing the capability of many claimants, in particular those with serious mental health conditions.

Problems with the delivery of the WCA

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.

Delays in undertaking the assessment

55. 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.”

Healthcare Professionals

56. 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.

A North of Scotland CAB reports of a client who found the health care professional's questions intrusive and as a result did not tell her the full extent of her condition. In addition, the client notes that many of her answers were not included in her medical report.

57. 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."

58. 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.

59. 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."

60. A number of clients have 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’.”

61. 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.

62. 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.

<p>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.</p>

Impact on the health of claimants

63. 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.

64. 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.”

Fluctuating conditions

Question 3: What is the best way to ensure that the effect of fluctuating conditions is reflected in the recommendation of the WCA?

65. Citizens Advice Bureaux reported a number of clients with fluctuating conditions who were found fit for work after their Work Capability Assessment. Many of these clients voiced their frustration that their capability on the day of the WCA did not reflect their capability on an average day. While these clients may have voiced this concern to the medical professional, we believe that the WCA is not sufficiently flexible to take these variations into account.
66. There is always the danger that claimants with a weak claim for ESA will try to exaggerate their condition by saying that they are normally worse than they seem at the assessment. However, it is important that this principle is not applied so stringently to claimants who are medically diagnosed with a fluctuating condition. Bureaux have seen a number of clients with varying conditions, such as Multiple Sclerosis and Parkinsons Disease, who have been found fit for work after attending the WCA on a 'good day' for their condition. It is essential that the WCA is able to take into account both the 'good day' and the many other 'bad days' that a claimant may experience. Capability to work is based on the ability to sustain employment, not just on showing an ability to work for a 40 minute interview.
67. The format of the ESA – with its emphasis on the findings of a one-off 40 minute assessment – may well be inappropriate for clients who have a medically diagnosed fluctuating condition. For these claimants, it is fundamentally important that emphasis is placed on the supporting medical evidence from GPs and consultants, who are likely to have a much better impression of the capabilities of their patients over an extended period of time.
68. The experiences of these claimants show a case for making the WCA more flexible. The yes/no format of the assessment, with limited opportunity for the claimant to explain their condition, may be poorly designed to assess the true capability of a claimant with a fluctuating condition. We would argue that the WCA needs to be more flexible to allow for greater claimant input into the assessment, especially where a fluctuating condition has been diagnosed. This would help reduce the number of claimants being inappropriately found fit for work where a serious fluctuating condition is present, and will also ensure that claimants feel that their condition was accurately assessed. A number of appeals ensue based on the feeling of the claimant that the WCA was so inflexible that they felt that their condition was not listened to nor understood.

Multiple conditions

Question 4: What is the best way to ensure that the effect of multiple conditions is reflected in the recommendation of the WCA? Are there specific conditions that should be regarded as contributing to or adding additional weight to others, where both are present?

69. Evidence from bureaux shows that few clients experience one condition in isolation. Many more clients present with both physical as well as mental health conditions, which in combination add up to significant health problems, but if treated in isolation from each other can be assessed as being relatively minor conditions. For example, many clients report a physical condition, such as osteoporosis, with the effects of the condition causing mental health problems. In themselves, each condition may be assessed as not being a barrier to work, but taken together the combined effects represent significant barriers to capability. Bureaux have seen a considerable number of clients who have received zero points in the WCA after presenting with a combination of conditions.
70. It is therefore important that the effects of all the claimant's conditions are considered holistically. When assessing any physical condition, the WCA needs to assess the mental health impacts of the condition as well as its physical impact.

Additional (or initial evidence)

Question 5: What is the best way to give adequate weighting to additional (or initial) evidence outside of that gathered through the WCA? How can any changes be achieved without placing a burden on GPs and health care professionals, and without compromising their relationship with their patients?

71. We believe that additional evidence should play a key role in providing an accurate assessment of a client's capability to work. Therefore, DWP decision makers should place a significant weighting on evidence from outside the WCA, especially in the cases where the claimant has fluctuating or multiple conditions. The decision maker should be able to make an assessment based on an impartial overview of both the WCA recommendation and the medical opinion of professionals, as well as the supporting evidence of other professionals such as social workers, who have known the claimant's condition for a longer period.
72. Bureaux have helped a number of clients who have little understanding of their full condition. This is the case for a number of clients with significant mental health problems or learning difficulties, who may not give an accurate description of their own condition. For example, bureaux report of clients with mental health problems 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. For these clients, it is absolutely imperative that supporting medical evidence is used to gain a full understanding of a client's capability for work.
73. Unfortunately, bureaux have seen a number of cases in which medical evidence appears to have been ignored or contradicted. In one case, a claimant was described as being able to move his toes without any problems – however, both the WCA and the decision maker missed the fact that the client visibly had no toes on this particular foot and that this had been described in the supporting medical evidence. Another client had a pregnancy related condition that risked the health of both mother and baby and was supported by a letter of diagnosis – however, the client was turned down for ESA as there was no evidence that she was pregnant. These examples are likely to be individual mistakes, but it is fundamentally important that supporting medical evidence is used properly to ensure that the correct assessment is reached.
74. 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.

75. It is the experience of bureaux that additional evidence from GPs and healthcare professionals often play a key factor in overturning WCA assessments in tribunals. In some cases, this evidence was already available to the DWP decision maker but was either not seen or assessed differently, while in other cases the key evidence is obtained for the tribunal. If this medical evidence had been either obtained or used differently in the client's assessment, then the need for an appeal (with the resulting resources required and stress induced for the client) would have been reduced.

Equality considerations

Question 6: Is there any evidence to show that there have been particular problems with the WCA for any specific groups? These groups may include, but are not limited to, men and women, people from black and minority ethnic backgrounds, or people from differing age groups.

76. Bureaux have helped clients with ESA problems from many different walks of life. However, it is apparent that clients with certain health conditions may be more adversely affected by the reported problems with the WCA than other clients.
77. The response has already outlined the evidence taken from bureaux and from DWP statistics showing that claimants with mental health conditions are more likely to be found fit for work than other claimants. 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. We urge the DWP to look again at the WCA to ensure that it adequately assesses claimants with mental health conditions.
78. Evidence from bureaux has suggested that groups who suffer from an illness which can affect their communication have been rushed through assessments and don't understand what the medical professional is asking. Bureau case evidence suggests that medical professionals are not taking the time to listen to their condition and how it affects their work capability. This has had an impact on the quality of assessment and has led to a significant number of appeals representation from bureaux across Scotland.
79. Although bureaux have not reported significant evidence on any particular age groups, we believe that it is unfair for claimants under the age of 25 to be paid a significantly lower rate of payment than other claimants in the assessment phase. We believe that a claimant who develops a significant health problem or disability when they are 21 has no less need for support than a claimant aged 31. Given that the assessment phase can take a number of months and may include an appeals process, this disparity in payments can amount to a significant sum of money based purely on date of birth.

Looking ahead

Question 7: Do you have any suggestions for how the WCA process could be improved to better assign people with health conditions to the most appropriate part of the benefits system?

80. 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 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 66% 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.

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.

81. We believe that these recommendations, if implemented, would help turn a benefit that works far better in principle than it has in practice, into something that it is fit for purpose. Given the timing of this Review, it is imperative that changes to the WCA are made as soon as possible. Hundreds of thousands of vulnerable Incapacity Benefit claimants will shortly begin the transfer from IB to ESA. Unless the system is remedied to take into account the problems experienced by claimants in the first two years 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.

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