

An Independent Review of the Work Capability Assessment for Northern Ireland

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September 2011

Presented to the N.I. Assembly pursuant to Section 10
of the Welfare Reform (N.I.) Act 2007

Contents

Foreword	4
Key findings & recommendations.....	6
Section 1: The review outline.....	8
Section 2: The evidence assessed	13
Conclusion	21
Annex A: List of recommendations	22

Foreword

Having already completed a first review in Great Britain (GB), when it was first mooted that I should undertake an independent review of the Work Capability Assessment (WCA) in Northern Ireland (NI), it seemed obvious that a cost and time efficient method might be for the Department for Social Development to identify the unique factors in NI which would warrant a separate review.

For the rest of my first review, it would be more a question of how NI could implement the recommendations that had been accepted in GB.

Following phone calls, video conferences and a series letters with the Department for Social Development over the past few months, all my questions and queries have been addressed.

The unique features in NI are:

- A centralised Agency in Belfast handling all aspects of claims;
- Decision Makers (DM) who are part of an impressive quality assurance programme;
- In house physicians who complete the WCA in written format and who liaise with the DM (though from June 2011, this work has been contracted to Atos); and
- A particular problem in NI with mental health conditions among claimants which has been related, at least in part, to The Troubles

From the Department's detailed responses to each of my GB recommendations I am reassured that the fairness and effectiveness of the WCA in NI will improve, as it is in GB. Having pressed the Department over the figures suggesting that the DMs in NI seem to be better trained and more empowered than they seemed to be in GB at the start of my review I am convinced that they do, indeed, have an excellent system in place to monitor DM performance.

Some of the advantages for NI over GB are, obviously, related to the question of scale and the centralised nature of claims work. Yet NI does seem to have an enviable cadre of quality people undertaking this important aspect of the WCA. I trust that the move away from an in house and clerical system will in no way diminish nor weaken the excellent work that NI's DMs do in delivering careful and fair assessments.

For the future, I look forward to working with the Department on the Year 2 work streams and hope that NI will now feel part of the continuing programme designed to improve the WCA which the Review Team in GB are pursuing.

A handwritten signature in black ink, reading "Malcolm Harrington". The signature is written in a cursive style and is underlined with a single horizontal line.

Professor Malcolm Harrington CBE

Key findings & recommendations

The Northern Ireland review of the WCA has focused on the recommendations made in the Great Britain review to determine if and how they apply to Northern Ireland; and has considered evidence from a number of relevant organisations within Northern Ireland.

The information provided from these organisations did not differ radically from the views expressed during the call for evidence in Great Britain. Evidence has highlighted many of the same problems with each stage of the WCA process as identified in Great Britain.

The series of recommendations aimed at improving the fairness and effectiveness of the WCA that were set out in the Great Britain review, in the main were found to also apply in Northern Ireland. These recommendations aim to reposition the WCA as a positive first step towards work for most people and ensure people who cannot work are given support. To do this they aim to ensure that individuals going through the WCA are treated with respect, are listened to and are able to get their case across, and are able to understand and recognise the reasons behind the decision that is reached.

The review's key recommendations include:

- Building more empathy into the process and improving support for the claimant. This includes speaking to the claimant to explain the process; to discuss the outcome of their WCA; and to describe the support and options available to claimants after the WCA;
- Improving transparency of the medical assessment by ensuring each report contains a personalised summary of the examining healthcare professional's recommendations;
- Accounting for the particular difficulties in assessing mental, intellectual and cognitive impairments by ensuring the Department's medical services providers employ "mental, intellectual and cognitive champions" to spread best practice and build

understanding of these disabilities;

- Empowering and investing in Decision Makers so that they are able to take the right decision, can gather and use additional information appropriately, and speak to claimants to explain their decision; and
- Improving communication and feedback between the Northern Ireland Employment and Support Allowance Centre, the Department's medical services and the Appeals Tribunal Service to improve the quality of decision making on all sides.

While the series of recommendations **were** in the main, found to apply to Northern Ireland, in some cases they were found not to apply to the same extent as in Great Britain. For instance, on examining the evidence in relation to decision making in Northern Ireland, Professor Harrington accepted that there was a high standard of decision making in the Social Security Agency.

Section 1: The review outline

Background

The Work Capability Assessment (WCA) was introduced in October 2008 to assess entitlement to Employment and Support Allowance, which replaced Incapacity Benefit and Income Support on incapacity/disability grounds for new claimants from 27 October 2008. The assessment is used to determine limited capability for work and limited capability for work-related activity.

The WCA is used to objectively evaluate a person's capability for work so that appropriate support can be provided to help them back to work or, if they cannot work, unconditional support is provided.

The Welfare Reform Act (Northern Ireland) 2007 legislated for the introduction of the WCA. This law provides the basis for the Independent Review. Section 10 states that:

“The Department shall lay before the Assembly an independent report on the operation of the assessment annually for the first five years after those sections come into effect.”

This is the first Independent Review of the WCA. It aims to build on the work undertaken for the review in Great Britain and to consider what extent the recommendations made by that review apply to Northern Ireland, particularly highlighting any specific differences with Great Britain.

The review

Professor Malcolm Harrington, an occupational health specialist, was appointed by the Secretary of State for Work and Pensions to carry out an independent review of the WCA in Great Britain.

The review aimed to provide a thorough examination of the system and provide recommendations for changes to the current process. Professor Harrington's report on the independent review of the work capability assessment was placed in the Assembly Library and issued to relevant organisations in Northern Ireland for comment. An electronic version is available at <http://www.dwp.gov.uk/docs/wca-review-2010.pdf>.

The report concluded that the principles underpinning the WCA remained valid but that more could be done to make it fairer and more effective.

The key findings of the report for the Department for Work and Pensions were –

- Claimants' interactions with both Jobcentre Plus and Atos are often impersonal, mechanistic and lack clarity;
- Decision Makers do not in practice make decisions;
- Some conditions are more difficult to assess than others; and
- Communication and feedback between the different agencies and organisations involved is often fragmented.

The report's key recommendations to the Department for Work and Pensions include–

- Building more empathy into the process;
- Improving transparency of the Atos assessment;
- Accounting for the particular difficulties in assessing mental, intellectual and cognitive impairments;

- Empowering and investing in decision makers; and
- Better communication and feedback.

Subsequently, the Minister for Social Development asked Professor Malcolm Harrington to carry out the first Independent Review of the WCA in Northern Ireland.

In setting the terms of reference for the initial review for Northern Ireland the following factors were taken into consideration:

- the internal review of the WCA undertaken by the Department for Work and Pensions resulted in regulations substituting, from 28 March 2011, the descriptors and criteria applied to determine capability for work, and for work-related activity, and amended provisions which allow a person to be treated as having limited capability for work, or for work-related activity, without an assessment in certain circumstances;
- since 20 June 2011, an external contractor, Atos, now provides medical services for the Social Security Agency;
- the responses received from relevant organisations on the Independent Review for Great Britain endorsed the findings of that report and confirmed that people with disabilities in Northern Ireland faced similar barriers and difficulties to those in the rest of the United Kingdom.

As a result, the terms of reference for the review were set out as follows:

- To build on the work undertaken for the review in Great Britain and consider to what extent the recommendations made by that review apply to Northern Ireland, and provide an independent report evaluating the operation of the assessments of limited capability for work and limited capability for work-related activity;

- To evaluate the effectiveness of the limited capability for work assessment in correctly identifying those claimants who are currently unfit for work as a result of ill-health or disability; and
- To evaluate the effectiveness of the limited capability for work-related activity assessment in correctly identifying those claimants whose disability is such that they are currently unfit to undertake any form of work-related activity.

The scope

The focus of the review was to examine thoroughly the 25 recommendations made in the Great Britain review, and the corresponding responses and actions agreed by the Department for Work and Pensions; and to consider if and how those recommendations apply to Northern Ireland, with in-depth analysis as to how the recommendations could be taken forward by the Department for Social Development and the Social Security Agency. It was agreed that similar to GB recommendations 18-25 would form part of the year 2 review.

The process

Call for evidence

Information was gathered in Northern Ireland on two separate occasions.

Firstly, views were requested on the report for Great Britain; *An Independent Review of the Work Capability Assessment*. Letters were issued to relevant organisations on the 6 January 2011 inviting them to consider the findings of the report and to comment. Two responses were received from Autism (NI) and Disability Action by the closing date of 7 February 2011.

A second Call for Evidence was issued to relevant organisations on 6 April 2011, requesting any views or issues on the WCA process as it operates in Northern Ireland, with a closing date of 6 May 2011, although considerable leeway was afforded to organisations who could not meet the deadlines involved. Responses were received from The Law Centre (NI) and The Equality Commission for Northern Ireland (NI)

Investigations with the Social Security Agency on the GB recommendations

Professor Harrington requested a detailed breakdown of the comparison between the operation of the WCA in Northern Ireland and Great Britain, including differences in legislation, organisational structures, medical services and appeals.

Subsequently, Professor Harrington requested a response to each of the recommendations made in the Great Britain review.

Section 2: The evidence presented

Background:

The Social Security Agency, as part of the Department for Social Development, was asked to explain its position and provide a response, with regard to each of Professor Harrington's recommendations for GB.

Recommendation 1

The review recommends that Jobcentre Plus manages and supports the claimant during the course of their benefit claim and identifies their chosen healthcare adviser.

The Social Security Agency accepts this recommendation and is fully committed to ensuring that all customers have support during the course of their benefit claim. The Agency has recently introduced an enhanced process for Incapacity Benefit (Income Support) customers undergoing reassessment for work capability. The Incapacity Benefit Reassessment customer journey has extensive pro-active measures built in to support customers, and features additional measures to help those who are disallowed benefit.

The Agency is currently taking into account learning from both the local Incapacity Benefit Reassessment exercise, and also the ongoing work in DWP in this area and will introduce further enhancements to the ESA customer journey in the Autumn.

Recommendation 2

The review recommends that the initial questionnaire (the ESA50) includes a more personalised justification so the claimant can express the issues that they face in a short paragraph.

The Agency accepted this recommendation and a revised version of the ESA50, taking account of this recommendation, was introduced by the Social Security Agency for use in Northern Ireland with effect from 28 March 2011.

Recommendation 3

In the longer term, the review recommends that the Government reviews the ESA50 to ensure it is the most effective tool for capturing relevant information about the claimant.

The Social Security Agency uses the same IT systems as the Department for Work and Pensions to administer Employment and Support Allowance. It is therefore necessary that the forms used by customers and staff are also broadly aligned. The Department for Work and Pensions has agreed to keep the ESA50 under review and the Agency will consider any changes for implementation in Northern Ireland that emerges from subsequent reviews.

Recommendation 4

The review recommends that written communications to the claimant are comprehensively reviewed so that they are clearer, less threatening, contain less jargon and fully explain the process.

The Social Security Agency agrees the importance of clear communications. A number of revised forms have been introduced in Northern Ireland to process customer information for Employment and Support Allowance.

- *EESA initial entitlement letter*
- *EESA initial disallowance letter*
- *Change of Circumstances letter*
- *EESA50 - Limited Capability to Work Questionnaire*
- *EESA51 - covering letter for ESA50*
- *EESA53 - reminder letter for ESA50*
- *EESA65 - additional form to initial disallowance*

Forms and correspondence used by the Social Security Agency mirror those used by Department for Work and Pensions because of the alignment of the IT systems used to administer the benefit, and consequently any further revisions to forms or correspondence will also be considered for implementation in Northern Ireland.

Recommendation 5

The review recommends that every Atos assessment contains a personalised summary of the assessment in plain English.

The Social Security Agency agrees the importance of ensuring that Work Capability Assessment reports clearly convey the basis of the healthcare practitioner's opinion on capability for work and all medical reports provided by Atos include a personalised summary statement.

Recommendation 6

The review recommends that every claimant is sent a copy of the Atos personalised summary and is able to discuss any inaccuracies with a Decision Maker.

There have been a number of different tests in GB to assess when it is most beneficial to issue the Personalised Summary Statement to the customer or even whether it is more appropriate that elements of the Personalised Summary Statement should be included with the Decision Maker's decision when issued. The Agency has been working closely with colleagues in DWP on these and once the optimum approach has been agreed, the Agency will implement this recommendation.

Recommendation 7

The review recommends that Atos provide mental, intellectual and cognitive champions in each medical assessment centre. These champions should spread best practice amongst healthcare practitioners in mental, intellectual and cognitive disabilities.

The Agency's medical services provider Atos delivers an enhanced training module on mental health as part of the Continuing Professional Development programme for its healthcare professionals.

It also provides access for both ESA Decision Makers, and healthcare professionals in the 11 Medical Examination Centres, to an Enquiry Service which includes further expert advice on complex mental health issues where required .

The Social Security Agency has requested Atos to provide a mental function champion to spread best practice amongst healthcare practitioners in mental, intellectual and cognitive disabilities to meet this recommendation.

Recommendation 8

The review recommends that Atos pilot the audio recording of assessments to determine whether such an approach is helpful for claimants and improves the quality of assessments.

The Department is closely engaged with colleagues in the Department for Work and Pensions who are testing this recommendation in a pilot exercise, and will consider the outcome of that exercise in due course.

Recommendation 9

The review recommends that Atos should develop and publish a clear charter of claimant rights and responsibilities, and should consider publishing the HCP guidance online for claimants and advisers.

This is expected to be in place by end of September 2011.

Recommendation 10

The review recommends that Jobcentre Plus Decision Makers are put back at the heart of the system and empowered to make an independent and considered decision.

The Social Security Agency accepts this recommendation and remains fully committed to high standards of decision making and to supporting its Decision Makers in reaching the best possible considered decisions.

The Agency has in place specific training packages for decision makers and a Decision Making Forum where staff can share best practice. Regular scrutiny and independent monitoring of decisions also takes place.

The Social Security Agency sets benchmarks for decision-making standards across all social security benefits. In 2010/11 the Agency set a benchmark of 92% accuracy for Employment and Support Allowance (ESA) decision making. The out-turn was 94.72%.

While the SSA considers that there is high standard of decision making it recognises the need to continuously improve performance in decision making standards and will continue to monitor standards and develop initiatives with a view to driving out further quality improvements.

Recommendation 11

The review recommends a better use of the reconsideration process.
The Social Security Agency recognises the importance of effective use of the reconsiderations stage within the decision making process and encourages the Decision Maker to thoroughly review cases at this juncture. In most instances a different, appropriately qualified, Decision Maker will reconsider the initial decision. At this juncture the Decision Maker contacts the customer to establish if any more or further evidence is available for their chosen Healthcare Professional.

While the Agency is satisfied that it has a robust reconsideration process in place, it will keep this area under close review mindful that work is ongoing in GB to improve the process and is tracking closely these developments.

Recommendation 12

The review recommends Decision Makers are able to seek appropriate chosen healthcare professional advice to provide a view on the accuracy of report.

Decision Makers in the SSA are empowered to (and do) seek additional evidence in the form of reports from the relevant healthcare professionals who know the customer best, when they feel it is necessary to assist in the decision-making process.

Processes are also in place to ensure that every effort is made to gather all relevant evidence prior to the Decision Maker determining an ESA claim. This includes advising and encouraging the customers at the data-gather stage of the claim to provide any supporting evidence and also again at the reconsideration stage of the process if appropriate. This approach is intended to ensure that as far as possible the Decision Maker has before them information from both the Work Capability Assessment and any

relevant information from the customer's healthcare professional, when reaching a decision on benefit entitlement, particularly when the decision is potentially adverse to the customer.

Recommendation 13

The review recommends better communication between Decision Makers and Atos healthcare professionals to deal with borderline cases

The Social Security Agency has had these arrangements in place since the introduction of Employment and Support Allowance in October 2008 and has since contracted with its new medical services provider to provide similar facilities.

Recommendation 14

The review recommends that Decision Makers receive training so that they can give appropriate weight to additional evidence

The Social Security Agency has an extensive 10 week training programme in place for new Employment and Support Allowance Decision Makers. This training is delivered by the Department's Decision Making Services.

On completion of training new Decision Makers are monitored until they achieve a satisfactory standard of decision making deemed to be 90%. After that time, Decision Makers are still monitored by a Senior Decision Maker on an ongoing basis who also provides expert guidance and support to Decision Making when dealing with complex cases.

The Agency has been monitoring ongoing initiatives on decision-making accuracy within the Department for Work and Pensions and will consider whether any added value could be achieved by introducing any new initiatives for Decision Makers.

Other Recommendations

Recommendations 15, 16 and 17 refer specifically to the appeals process, an area which is of common interest to the Social Security Agency, the Northern Ireland Courts and Tribunal Services and the President of Appeals Tribunals for Northern Ireland. As such, these recommendations have been carried forward to year two for detailed consideration.

Recommendations 18 to 25 are Professor Harrington's initial recommendations for the second year programme of work which will also include Northern Ireland.

Conclusion

The Work Capability Assessment (WCA) was designed to be an evidence based process to review an individual's capacity for work and it built on previous assessments of this kind. It is a new procedure and the relevant legislation specified the need for an Independent Review of its fairness and effectiveness in the first five years of its operation.

This first review has examined the WCA process from the claimant's initial contact through to the final assessment, with or without requirement for an appeal and made a number of recommendations to the Department and the Social Security Agency which are being addressed.

The year 2 review and programme of work currently underway in Great Britain will also include Northern Ireland.

Annex A: List of recommendations for GB

Customer experience	
1	The review recommends that Jobcentre Plus manages and supports the claimant during the course of their benefit claim and identifies their chosen healthcare adviser.
2	The review recommends that the initial questionnaire (the ESA50) includes a more personalised justification so the claimant can express the issues that they face in a short paragraph.
3	In the longer term, the review recommends that the Government reviews the ESA50 to ensure it is the most effective tool for capturing relevant information about the claimant.
4	The review recommends that written communications to the claimant are comprehensively reviewed so that they are clearer, less threatening, contain less jargon and fully explain the process.
Atos assessment	
5	The review recommends that every Atos assessment contains a personalised summary of the assessment in plain English.
6	The review recommends that every claimant is sent a copy of the Atos personalised summary and is able to discuss any inaccuracies with a Decision Maker.
7	The review recommends that Atos provide mental, intellectual and cognitive champions in each medical assessment centre. These champions should spread best practice amongst healthcare practitioners in mental, intellectual and cognitive disabilities.
8	The review recommends that Atos pilot the audio recording of assessments to determine whether such an approach is helpful for claimants and improves the quality of assessments.
9	The review recommends that Atos should develop and publish a clear charter of claimant rights and responsibilities, and should consider publishing the HCP guidance online for claimants and advisers.
The decision making process	
10	The review recommends that Jobcentre Plus Decision Makers are put back at the heart of the system and empowered to make an independent and considered decision.
11	The review recommends a better use of the reconsiderations stage.
12	The review recommends Decision Makers are able to seek appropriate chosen healthcare professional advice to provide a view on the accuracy of report.

13	The review recommends better communication between Decision Makers and Atos healthcare professionals to deal with borderline cases
14	Decision Makers receive training so that they can give appropriate weight to additional evidence
The appeals process	
15	The review recommends that the First-tier Tribunal should routinely provide feedback to Jobcentre Plus staff and Atos healthcare professionals. As part of their professional development Jobcentre Plus Decision Markers should be encouraged to attend tribunals.
16	The review recommends that tribunal decisions are better monitored, including monitoring of the relative or comparative performance of tribunals.
17	The review recommends that training offered by the Chamber President to Tribunal judges and medical members should include modules on the evidence of the beneficial effects of work to an individual's well being.
Descriptors and programme of work for year two	
18	The review has asked Mind, Mencap and the National Autistic Society to provide recommendations on refining the mental, intellectual and cognitive descriptors. The review looks forward to receiving these recommendations in late November and will make any recommendations it sees fit to Ministers.
19	In year two the review should examine the descriptors, in particular how they account for other fluctuating conditions and generalised pain and provide any recommendations necessary.
20	In year two the review should examine what happens to people who are found Fit for Work, people who are placed in the Work Related Activity Group, in the Support Group and people who do not complete their WCA.
21	In year two the review should examine what happens to individuals who are found fit for work but are unable to claim Jobseekers Allowance.
22	In year two the review recommends that research is undertaken to understand whether the assessment could and should incorporate more 'real world' or work-focused elements.
23	In year two the review should examine the Atos computer system (LiMA) and how it can drive the right behaviours
24	In year two the review should explore the use of other healthcare professionals in the Atos assessments and to check consistency of assessments by different professions.
25	In year two the review should also monitor the implementation of those recommendations in the year one report which have been adopted by Ministers.

This publication can be accessed online at:
<http://www.dsdni.gov.uk/wca-review.pdf>

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