nawra

national association of welfare rights advisers

Consultation Response

The Work Capability Assessment: Year 2

September 2011

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The National Association of Welfare Rights Advisers

The National Association of Welfare Rights Advisers (NAWRA) was established in 1992 and represents advisers from local authorities, the voluntary sector, trade unions, solicitors and other organisations who provide legal advice on social security and tax credits. NAWRA currently has more than 240 member organisations.

We strive to challenge, influence and improve welfare rights policy and legislation, as well as identifying and sharing good practice amongst our members.

NAWRA holds a number of conferences throughout the year across the UK, attended by members from all sectors of the industry. An integral part of these events are workshops that help to develop and lead good practice.

Our members have much experience in providing both front line legal advice on benefits and in providing training and information as well as policy support and development. As such NAWRA is able to bring much knowledge and insight to this consultation exercise.

This response is a collation of responses from the membership of NAWRA. We used the questions in the paper calling for evidence as a basis for a survey sent out to all members asking them to reply using the 'Survey Monkey' web-based application. We encouraged individual responses on each question to provide more specific evidence.

We received responses from 147 members. For each question we have given the percentage response for the specific question and then a summary of the further evidence provided. The collated responses were also discussed in a session at our conference in Edinburgh on 2nd September 2011 and further points added.

NAWRA is happy to be contacted to provide clarification on anything contained within this document. NAWRA is happy for details and contents of this response to be made public. Contact can be made via the Secretary at the address on the front cover.

Question 1: Have you noticed changes to the WCA process as a result of the Year 1 recommendations? If so, what are these changes?	
Response	*% of respondents*
Process has got worse	41.5
Process has broadly stayed the same	40.8
Not noticed/not sure	12.2
Process has improved	5.4

Among the membership who responded there was a strong feeling that the assessments carried out by the health care professional (HCP) were still very poor although there were comments that there was a large variation between HCPs. The same HCP names were cropping up time and time again on cases that were going to appeal suggesting that there may be a training issue for some HCPs. Although mental health champions are now in place there is not one in every centre and it is not clear how the HCPs are using them.

Many of the problems in the old ESA50 form have not been resolved. The questions on the ESA50 still do not match the descriptors so the claimant does not always include the relevant information e.g. descriptor 13 which assesses ability to initiate and complete two sequential personal actions yet the ESA50 only asks 'can you manage to plan, start and finish daily tasks'. No information about the descriptors or the point scoring system is made available to claimants.

There remains a lack of flexibility in rearranging medicals or accepting good cause for inability to attend causing claimants benefit to be suspended unnecessarily and causing severe hardship. This situation is exacerbated as no ESA is paid pending an appeal for failure to attend a medical. Crisis loans are severely limited – a maximum of three in any rolling year – and claimants are unlikely to be able to sign on for Job Seekers Allowance if they are having difficulty attending a medical.

On a positive note there was a feeling that more decisions were being overturned at revision without having to go to appeal but this was an area where there was still substantial room for improvement. It was also noted that initially the decision maker still tends to 'rubber stamp' the HCP's report even where there is substantial other evidence provided. It is only on revision that a fuller consideration is undertaken.

Question 2: Are there further areas of work that you think should be added to the programme of work for Year 3? If so what should these consider?	
Response	*% of respondents*
Major areas of work required	68%
Don't know	22.4%
Minor areas of work required	6.8%
No more areas or work required	2.7%

A number of areas where further work could be added were suggested by the membership. It was felt further training of HCPs was still necessary particularly in mental health and also in interpersonal skills. Often the HCP is looking at the computer and not the claimant which does not help put the claimant at ease. Questioning is often closed and leading. It was felt it would be helpful if there was a transcript of the medical showing exactly what was said – both for purposes of evidence and training. NAWRA is aware that there has been a pilot of recording the assessment and is interested to see what the outcome of this pilot is.

Another useful training point for both HCPs and decision makers would be for them to see tribunal decisions which overturn the decision made and the reasons why. This would also help identify if there are issues with particular HCPs or decision makers and enable training to address any problems.

There is still a lot of concern that the claimant's ability to perform a task repeatedly or with reasonable regularity is not properly considered and that this should be made more explicit in the descriptors as it is in descriptor 1 – mobilising. Fluctuating conditions are also not properly taken into account. NAWRA supports the suggestions made in the report by the MS Society et al[1] as a way forward.

The whole WCA process should be much more transparent so that claimants know how they are going to be assessed including information provided about the point scoring system. This would enable them to provide the relevant information. Currently it is often only those who

[1] *Employment and Support Allowance Work Capability Assessment Review. Making it work for fluctuating conditions. April 2011. MS Society, National Aids Trust, Parkinson's UK, Forward ME, Arthritis Care, Crohn's and Colitis UK*

access advice who are aware of the assessment process. This could explain the very high success rate for those who are represented at appeal.

Many members reported a gap between ESA and JSA. Claimants were being found fit for work following the WCA but then were told by JSA staff that they were not fit enough to be actively seeking work and available for work. The two systems appear to be operating independently and claimants are falling down the gap in between. This needs to be addressed.

Finally it was felt that complaints about the WCA process and particular HCPs were not being followed up effectively. It was felt it may be more appropriate for complaints to be dealt with by the DWP rather than ATOS.

Question 3: At what stage should we stop making changes to the system and let the changes already being made bed in to ensure they are having the desired impact?	
Response	*% of respondents*
Don't stop making changes until the process is considered theoretically perfect	26.2
A few more changes are needed but then pause to see their impact	34
After Year 2 changes it will be time to assess what impact changes to date have had before making more	25.5
Don't know	14.2

There were quite mixed feelings among the membership on this question. There is recognition that changes need time to take effect and pause is required for reflection and evaluation.

However, there was widespread concern that there are still major problems with the system that have not been addressed and as a result there is widespread hardship. The reports by Mencap et al[2] and MS Society et al highlight in particular the problems around the mental, cognitive and intellectual descriptors, and fluctuating conditions. These suggest quite radical

[2] *Proposed Amendments to the "Mental, cognitive and intellectual function" component of the Work Capability Assessment, December 2010, Mencap, Mind, The National Autistic Society*

changes and NAWRA feels that they should be given serious consideration. Fundamental change is necessary.

Question 4: Does the Year 1 recommendation go far enough in placing the right emphasis on the face-to-face assessment?	
Response	*% of respondents*
Does not go far enough – still too much emphasis on the face-to-face assessment	75.9
Don't know	9.9
Goes too far – now too little emphasis on the face-to-face assessment	7.8
Balance between the face-to-face assessment and the rest of the process now about right	6.4

Members made comments that 'face-to-face assessment" was a misnomer as all too often the HCP does not maintain eye contact but is looking at the computer! There was very strong feeling that far too much weight is given to the ESA85 report. Even when substantial evidence is sent in the decision maker almost invariably gives the ESA85 far greater weight even though it is a 20 minute snapshot compared with evidence from someone who may have known the claimant for years and sees them on a regular basis.

It is extremely rare for the decision maker to actively seek evidence from other sources in the way that Disability Benefit Centre staff do with DLA. It was suggested by some that instead of subcontracting ATOS to carry out assessments it would be more appropriate to make payments to health professionals involved with the claimant to do a report instead.

Where evidence is submitted in an attempt to get the decision revised it is common for the decision maker to write a statement such as 'I have considered the evidence but find it does not change the decision'.

One adviser reported claimants being rung by the decision maker to advise that they should appeal the decision they have made as the HCP assessment is clearly wrong!

Question 5: Do you have any robust evidence about the face-to-face assessment processes and outcomes which will help us make recommendations for future improvements?

Members reported frequent inconsistencies within the ESA85 e.g. 'is able to go shopping alone' alongside 'always goes to shop with friend'. When statements are brought forward to justify the scoring members felt that they are cherry picked to back up a low/zero score. Statements that support a higher score are not brought forward.

Also answers given by claimants are summarised to such an extent that they are misrepresentative e.g. will say 'walked here today' but not explain how long it took, whether there was someone with them, or how far away it is.

Other issues reported were the cancellation policy operated by ATOS. Appointments are double booked and can be cancelled at the last minute even when claimants may have travelled a very long distance to get there and at considerable expense which can only be refunded afterwards. Also that some assessment centres were not fully accessible yet there was an unwillingness to do home visits.

Many members reported that anecdotal evidence is the main evidence they have. The commented on the fact that the same problems are repeatedly reported by different clients thus giving a lot more weight to the evidence.

Question 6: Are you aware of any concerns about the face to face assessment and the if so where have these been focused?	
Response	*% of respondents*
HCPs approach and the way they carry out assessments	15.3
HCPs understanding of conditions	6.6
The report created during the assessment and the IT supporting the assessment	6.4
All three of options	69.3
Don't know	4.4

A lot of these problems have already been highlighted in this report but are summarised here.

HCPs approach can be impersonal with a lack of eye contact. Questions are often closed and leading and the claimant is not given an opportunity to fully express themselves or comments are taken at face value without being explored.

Understanding of conditions can be minimal particularly around mental health and addiction. If a claimant in recovery from drug or alcohol addiction reports being clean/dry for a few weeks there appears to be an assumption that they are 'cured'. There is no exploration of the issues that led to the problem. There may be deep-rooted issues which have come to the surface without the mask of alcohol/drugs and these will need addressing if recovery is to be successful.

Members report ESA85s all being very similar even for clients with quite different conditions. The drop-down boxes appear to give very little flexibility for individual responses. Inappropriate support is given for the points awarded e.g. will report 'stood independently for 3 minutes without obvious difficulty' as a reason to reject points for ability to stand for more than10 but less than 30 minutes.

Question 7: If you have heard specific concerns about the IT supporting the assessment (i.e. the Logic Integrated Medical Assessment or LiMA system), do you have any robust evidence about how this adversely affects the assessment or its outcome?

Members reported that there is an over-reliance on drop-down boxes which prevents individual differences being noted.

Many respondents reported ESA85s all looking much the same with the same statements being repeated.

One adviser reported claimants being told 'I haven't got that as an answer to choose so is it…..?'

The over-riding feeling that comes across is that answers are made to try and fit a box and therefore the true answer is lost.

Question 8: Is there a need to present and explain the face-to-face assessment in a different way, making it very clear to claimants what it will involve and how a functional assessment relates to work capability?	
Response	*% of respondents*
Urgent need to present and explain the face-to-face assessment in a different way	61.9
A need to present and explain the face-to-face assessment in a different way	26.2
Not sure whether there's a need to present and explain the face-to-face assessment in a different way	9.5
No need to present and explain the face-to-face assessment in a different way	1.6
Definitely no need to present and explain the face-to-face assessment in a different way	0.8

Our members report that claimants do not understand the importance of the assessment. They think it is going to be a medical and are then confused by what seems to be a 'chat'. They do not realise the importance of expanding upon answers e.g. the HCP will ask 'do you use a mobile phone?' and they will answer yes without explaining that often they don't answer it or they screen calls. They are not aware of the importance of explaining how their condition affects them day to day – and they are not encouraged to expand or to explain variability. They are not made aware of the point scoring system.

Because claimants don't realise what information is important they do not realise the need to provide all the information – there is an assumption that the HCP will understand because they know their diagnosis.

Claimants should be encouraged to bring someone with them to the assessment and also to bring any further evidence which should be discussed.

There were many responses to this question but the three that came up time and time again were:

- Consideration of other evidence outside the ESA85

Question 9: What one thing would you change about the WCA to make it operate fairly and effectively?

- Better training of HCPs and a more individualised and less computerised report
- More consideration of fluctuating conditions and repeatability