

Newcastle Welfare Rights Service

# **Incapacity Benefit and Employment and Support Allowance**

A briefing document with case studies

August 2011

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# Contents

Incapacity Benefit and Employment and Support Allowance. A Newcastle Perspective .....	1
Strategic considerations .....	1
Case studies for Incapacity Benefit (IB) and Employment and Support Allowance (ESA) appeals .....	3
Problems with the incapacity medicals and DWP decisions. Decisions overturned on appeal.....	3
General cases.....	3
Client with continence issues and unable to go out unaccompanied.....	4
Clients from Neuropsychiatry problems .....	4
Cases from our HIV/AIDS Welfare Rights Officer (WRO).....	5
Clients with drug addiction .....	6
Clients with mental health problems .....	6
Clients with Learning Difficulties .....	7
Various conditions .....	8
Mental health .....	8
Chronic medical conditions.....	9
Working with the Tribunal .....	11
The medical assessment revolving door.....	12
Appendix: Incapacity benefits and Employment Support Allowance.....	14
What are incapacity benefits?.....	14
What is Employment and Support Allowance (ESA)?.....	14
Incapacity benefits reassessment.....	14
The ESA process.....	14

## **Incapacity Benefit and Employment and Support Allowance. A Newcastle Perspective**

This briefing paper aims to put in context the reassessment of Incapacity Benefit claimants under the new Employment and Support Allowance test. It also contains some case studies and as an appendix information on the benefits. Please do not use this information without permission.

In Newcastle 15,450 of the population are claiming Incapacity benefits or ESA. This equates to 7.7% of the working age client group – nationally the average is 6.6%.

According to the last figures available in November 2010 11,730 people of working age were receiving Incapacity Benefit or Severe Disablement Allowance and 3,720 were receiving Employment and Support Allowance.

It is intended to reassess all those on an incapacity benefit. The national roll out started from 28 February but was limited to 1000 cases nationally for the first month, which increased to 7000 a week from April and to 11,000 a week from May. In **Newcastle**, using Government figures, we believe that:

- 80 people per week will be reassessed
- Over 6,000 (50%) are expected to have to claim Jobseekers Allowance (JSA), with a resulting weekly drop of £40.55 from £108.05 Incapacity Benefit to £67.50 JSA
- 3,600 (30%) will “move off benefit”

Newcastle Welfare Rights Service is already experiencing the impact of those reassessments with extra enquiries and appeals.

In January to June 2010 we dealt with 565 queries relating to Incapacity Benefit and ESA – in the same 6 months in 2011 this had risen to 988 – an increase of 74%.

In a recent Freedom of Information response it was disclosed that of those referred for reassessment between October 2008 and August 2010 78% under the Newcastle Benefits Delivery Centre were found fit for work, compared to only 49% in Peterborough and 52% in Hastings.

### **Strategic considerations**

- There is a disproportionate impact on Newcastle due to the higher percentage of those claiming incapacity benefit –largely due to those who worked in heavy industry in the area. This is further aggravated by the

higher percentage of those being found fit for work – the highest in the country. It is estimated that 30% will move off benefit altogether because of no entitlement to any benefit – these people are not moving into employment.

- Alongside the impact of the Welfare reform changes – including the proposal to withdraw contribution based ESA after 12 months, leaving those with no entitlement to means tested benefit without income – there will be increased indebtedness particularly amongst couples and families with an income of £20,000 per year. Potentially a couple could lose between £2000 - £5000 per year. This will increase the risk of homelessness and have an impact on social landlords with increased rent arrears.
- As can be seen from the increase in referrals to the Welfare Rights Service there is going to be an increase in demand for both benefit and money advice provision.
- Those that manage to get onto ESA may suffer from the ‘revolving door’ problem where regular reassessments take them off ESA for them to claim Jobseekers Allowance (JSA) and/or appeal and possibly return to ESA to be tested again soon after. Those who claim JSA can find they can’t sustain the job seeking requirements and either get sanctioned (reduced or no benefit) or reclaim ESA. The affect on their life will be debilitating as moving off one benefit to another and its affects on other benefits is chaotic and will potentially lose benefit. See case studies below.

## **Case studies for Incapacity Benefit (IB) and Employment and Support Allowance (ESA) appeals**

### **Problems with the incapacity medicals and DWP decisions. Decisions overturned on appeal**

Most of these cases involve claimants either coming to us for help or being referred to us by professional, where we help at various stages, from claim through to appeal representation, legal argument and obtaining evidence. These stories are increasing due to IB reassessments under the tougher ESA test.

### **General cases**

**KA** is a young woman with learning disability, epilepsy and a back condition. She was awarded 1 point on mental health grounds. At appeal she was spoken to for about 10 minutes when I believe the tribunal felt that her learning disability was fairly apparent. The tribunal awarded 10 points on mental health grounds.

The decision under appeal was made in February 2010 after a Dr carried out a medical. What was most striking was the errors made in recording on the medical. The client has a family and from this the Dr's selection of descriptors indicated the client was capable of independent living and caring. It was stated this client took her children to a mother & toddler group every day (she had never attended a mother & toddler group and would not go out alone due to anxiety), that she cooks well ( the client does not have the capacity to cook even though she has tried to learn).

**KB:** diagnosed agoraphobic and abuses alcohol.

He was found fit for work in October 2010 after an assessment lasting only thirteen minutes. Again this client was found unfit for work only ten months (Jan 2010) prior to the current decision under dispute. Again the incorrect finding made by the healthcare professional, that the client attended the examination centre alone, has influenced the decision maker. Ironically Disability Living Allowance was awarded at the highest care rate and low rate mobility in April 2010.

Common threads are the examining health professionals not listening/ incorrectly recording/ asking cursory questions and accepting answers only that fit in the drop down computer boxes in carrying out assessments. Too little time is spent to make a fair assessment of clients.

**RA** is a 36 yr old man who damaged ligaments and tendons in his foot in a fall. He was diagnosed with osteoarthritis in tarsometatarsal joint. He had had several operations on foot with a further one planned. He was off work and still under

contract at with employer. His statutory sick pay had ceased. He claimed ESA but was awarded 0 points.

Medical assessment did not include an examination of his feet. No clinical findings on his feet were made.

The Tribunal accepted that medical was inadequate and awarded 15 points.

### **Client with continence issues and unable to go out unaccompanied.**

**TJ:** pineal tumour, incontinence, visual problems, anxiety, frozen shoulder, headache and dizziness. As a consequence of the stress etc unable to go out without her husband, very forgetful, tearful and upset. Took a long time to get to tribunal. She was awarded 0 points. When we got to tribunal the Judge instantly awarded her 6 points for continence and 9 for going out unaccompanied with only very few questions.

### **Clients from Neuropsychiatry problems**

**JB** has severe depression and a mood disorder - she had a responsible job with a local authority before her illness - and has regular appointments with her Neuropsychiatrist. She was in receipt of ESA at the assessment phase until an ESA medical in May last year. The examining doctor reported that she had left work for 'physical reasons' and gave her zero points.

JB also has epilepsy with regular 'absences' - these were not considered by either the examining doctor at Arden House or the Decision Maker at the DWP.

She appealed against the decision and enclosed a letter from her psychiatrist specifically addressing the issue of work, as JB had raised this issue at her May appointment - the psychiatrist strongly advised her against looking for employment. The DWP paid no attention to the issues raised in this letter.

Further evidence was obtained from the Neuropsychiatrist and her Psychologist and used in the appeal.

The tribunal in December placed JB in the ESA Support Group<sup>1</sup>.

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<sup>1</sup> The Support Group is for those who have limited capability for work and are not expected to take part in work related activity. See appendix for more details.

**PD** has Huntington's disease. He has a social worker and a Neuropsychiatrist - his symptoms include severe obsessive compulsive disorder associated with hygiene routines.

The ESA medical was in March 2010 : the social worker attended with PD and was quite appalled at the way it was carried out. He was awarded six points as a result of the medical, and an appeal was made with the assistance of the social worker.

The appeal did not reach a tribunal however as the decision was changed by a decision maker in October and PD placed in the work related activity group. He did not feel this was appropriate and a further appeal was made on the grounds that PD should be in the support group, and enclosing a letter from his Neuropsychiatrist.

Again the decision was changed before the case could go before a tribunal, and PD is now in the Support Group from 3rd March. The process has taken almost a year.

In the time between the first decision and the second PD had to attend a further medical exam (this being while he was in the work related activity group

Both these individuals are highly qualified and intelligent people with complex conditions, requiring specialist assessment and treatment (not possible, alas, with Huntington's). The ESA medical assessments lasted 31 minutes in the case of JB, and 47 minutes in the case of PD.

### **Cases from our HIV/AIDS Welfare Rights Officer (WRO)**

**RP** As a result of his mental and physical state he regularly disengages with services, fails to attend and return forms, which lead to his benefits being stopped.

Despite a lot of medical and social evidence to this effect and his Social Worker attending his medical with him, he failed! He was asked nothing about his severe depression and non-adherence. Appeal pending.

**KB** has severe mobility problems, dependent on motorised scooter outdoors and has a care package with carers twice daily  
ESA medical thought he was fit for work.  
Decision overturned by appeal panel without questioning the appellant.

**CB** is a single parent. Severe memory problems following head injury. Is in danger in her kitchen, regularly setting fire to pans, towels etc. Had care package for meal preparation supervision.  
Failed ESA medical. Appeal upheld after 5 minutes of questioning

## **Clients with drug addiction**

**P** is a heroin addict. He has had several attempts to get free of his heroin addiction and takes methadone and has attended clinics to help him.

- Because of his addiction he has track marks all down his legs where the veins are severely damaged, restricting his ability to walk
- We have successfully represented him at two incapacity appeals.
- Both times he has been sent for a further medical within weeks of winning his tribunal and the revolving door has started again.

## **Clients with mental health problems**

**JT** has severe mental health problems and failed her ESA medical.

- The whole process of failing the test and having to appeal (which she will have to go through the whole thing time and time again) was extremely stressful for her and made her mental state worse.
- Mrs T was awarded 54 points at Tribunal (she only needed 10). She will be placed in the ESA Support Group.

**D** had physical problems as well as quite severe mental health problems. The medical awarded 0 points. Once again we got medical evidence and appealed with a submission.

- Initially, he was aggressive with the WRO but eventually calmed down as he realised he was on his side and trying to help.
- In the Tribunal, the doctor asked him "when you hear voices in your head what do they say" he replied "they say "he's staring at you go and knock him out"". The doctor then asked "and do you try to suppress these feelings" to which D replied pointedly "I used to, but not any more". The judge asked us to go outside shortly after and when we went back in D had been awarded 15 points.

**Mrs E** was sectioned under the Mental Health Act and has a long history of problems regularly requiring hospital admission and professional support when in the community.

- Shortly after discharge from hospital, the ESA medical following her claim, scored her 0 points.
- Appealed and obtained medical reports from her Consultant Psychiatrist, CPN and the tribunal overturned the decision and placed her in the ESA support group.

**Ms N** is a refugee from the Congo and has a severe and enduring mental illnesses of schizophrenia and paranoia and requires weekly visits from the Assertive Outreach Team.

- ESA claim refused following a medical where the Health Professional ignored the fact that English is not her first language and that she has no insight into her condition. The DWP gave 0 points relying on this medical examination and ignored a report from her Consultant Psychiatrist.
- The DWP did not reconsider, despite an award of Disability Living Allowance and further medical evidence.
- After an appeal and further evidence, the tribunal awarded ESA and put her in the support group without needing to see her.

**PT** was awarded 3 points for MH, she has learning disabilities. A lot of exceptional medical evidence was sent to the DWP decision maker following the decision. It was expected that the decision maker would revise the decision but they did not. However, the appeal went to Tribunal and was successful. Client is now in the support group.

### **Clients with Learning Difficulties**

**AB** is 20 yrs old, has learning difficulties and poorly-controlled diabetes. Living with mum who gave him intensive support. She was his appointee. He had previously attended special school and was on a skills for life programme at Newcastle College, which he was struggling with. ESA claim refused following medical. His appeal successful and he was put in support group

**Sarah** is in her twenties and suffers from a severe learning disability and psoriasis which badly affects many parts of her body. Sarah has been helped with at least three repeat appeals for Incapacity Benefit over the last five years or so.

Things became so bad for Sarah with all the stress that she suffers when her benefit is stopped, that the WRO accompanied her to her last medical at Arden House. The medical examiner asked Sarah the basic questions without any eye contact. He had no empathy towards her or her situation at all. He asked her about her learning disabilities in a vague sort of way for about five minutes and was about to conclude the interview when the WRO pointed out that he had not asked anything about her psoriasis. We attended tribunal where the WRO pointed out what had happened at the medical and Sarah was only in the tribunal for about 10 minutes before they found her unfit for work yet again.

**Miss B** is a 47 year old woman who has a learning disability assessed as substantial by Newcastle City Council's Learning Disability team and receives a

care package. Miss B attended a medical with ATOS healthcare to assess her incapacity for work which awarded her 0 points and the medical only lasted 12 minutes. An appeal against this decision was made and representation was given at the tribunal. The tribunal asked Miss B 3 questions then informed us that they had heard enough, the judge at the tribunal was a regional judge and the appeal was allowed. On the decision notice the judge states;

*“The level of learning disability has been fundamentally underestimated. If the EMP examination had not been so shallow and superficial this would have been realised at the medical examination and the decision the Secretary of State made would have been the one the tribunal made.”*

**Mrs F** has a global learning disability with IQ of 69. She recently went to Arden house and scored 2 points for Incapacity Benefit. Mrs F receives support from various agencies including Learning Disabilities Team, Azure in Cramlington. She receives middle rate care and lower rate mobility of Disability Living Allowance. The Judge at the Tribunal expressed his gratitude to Newcastle Welfare Rights Service for supporting Mrs F throughout the process, providing Mrs F with representation, and obtaining all of the appropriate documentation. It was recognised by the Tribunal that Mrs F should not have gone before a Tribunal in light of her disabilities.

### **Various conditions**

**JR is a** 19 year old man with Downs Syndrome, ADHD, Post Traumatic Stress Disorder, severe depression and anxiety. He is very difficult to engage with and has great difficulties travelling anywhere and his mum has to support him. She has to book any travel well in advance and build him up to it and accompany him. An ESA claim made, clearly explaining his conditions and travel problems. The ATOS healthcare letter requested he attend a medical in two weeks time and a route planner was provided for him involving 4 bus changes. JR and his mum were understandably upset given the information that had been supplied. Eventually, after several letters, JR did not have to attend medical and was placed in ESA support group.

### **Mental health**

**RD** is a 35 yr old woman with bi-polar disorder. Accepted as having limited capacity for work in May 2009.

New ESA 50 completed with help of family member in Dec 2009 stating had problems with chaotic thought processes, anxiety, psychotic episodes – auditory hallucinations, daily mood fluctuations, poor motivation, distractability and problems dealing with other people due to mood fluctuations. ESA stopped on basis of medical in June 2010

DWP agreed to withdraw appeal to refer back for new medical.

### **Chronic medical conditions**

**AM** Claimed ESA in December 2009. Claimed due to depression and longstanding problem with left leg/foot. At the medical AM was found to have capability for work- scored 0 points on physical and 0 points on mental health. The WRO helped with an appeal

Quotes from GP supporting letter which the WRO obtained –

“AM has had trouble with both physical and mental health problems for many years since joining our practice in 2001”

"In my opinion, throughout the year of 2010 to the present date, Mr M has been unfit for work due to both physical and mental health problem".

"has suffered enduring mental health problems"

"either his mental health or his physical health problems would have precluded him from being fit for work and the two in combination would certainly have done so"

"can confirm that he would not have been fit for work up to and including 13/4/2010"

**SK** receives Income Support on basis of disability, IB credits

She suffers from Type 2 Diabetes, retinopathy, Carpal Tunnel syndrome, plantar fasciitis, chronic cough, memory problems. She attended a medical in October 2010 but scored 0 points on Physical and 0 points on mental health. The WRO submitted an appeal – however the Tribunal still not listed.

Quotes from GP letter

"Mrs K has a complicated medical history"

"finds problems with health very difficult indeed to cope with and her longstanding diabetes makes all aspects of daily activities very very difficult"

"stress of problems with benefits will further complicate her fragile glucose control"

"I do not think she is capable of any form of work"

"I don't know who did the assessment on 27/10/2010 but I do think the assessment needs to be looked at and on what basis they found her able to work"

**Mr J** had a back injury 2-3 years ago doing removal work. He was carrying wardrobes up 15 flights of stairs and felt his back go. The nerve endings at the bottom of his spine were damaged. He has constant severe pain in his back and also in his legs. His legs also give way.

He has become very depressed because of the constant pain and because he cannot care for his young family or join in activities with them. He has also started

drinking to dull the pain. He is asking to be referred for treatment. He has blackouts because of his drinking. His partner has to prompt him to do things such as getting out of bed and getting dressed and washed and shaved.

A neurosurgeon operated on Mr J to shave the nerve endings in his back but the procedure has only brought temporary relief.

His ESA was stopped based on 0 points from the medical.

The appeal tribunal awarded him 15 points on physical problems alone.

**Mr G** gave up work to care for his parents but when they died he became very depressed. He had lost his role as a carer, which he had done for nearly 20 years, and is very much alone. In addition he had asthma and COAD.

He had a heart attack, suffers from angina and chest pains and has dizzy spells. In 2009 Mr G had a stroke, which affected the whole of the left side of his body. He has not fully recovered.

Mr G is now very isolated by both his physical and mental health problems. He does not go out to socialise and very rarely goes out at all. He does not have any hobbies and few if any friends. He finds it difficult to communicate with other people.

ESA stopped due to medical scoring him nil points. Successful appeal agreed there would be a substantial risk to his health if found to be fit for work and that he should be in the support group.

**Mr E:** a medical scored him only 1 point for mental health problems and 0 points for physical so his Incapacity Benefit was stopped.

Mr E's psychologist has told him and his GP that he is not physically robust enough for a psychological assessment. He is losing weight. She has referred him back to his GP for help with his diet and pain management.

He has pain in his back and stomach. He has a wedge fracture in his lumbar spine. He has severe panic attacks as well as suffering from anxiety and depression. He has no appetite.

Mr E told his GP that he did not want to take painkillers as they make him constipated. His GP did prescribe some anti depressants.

Mr E believes his panic attacks started when he was prescribed anti spasm medication for his stomach. He has to kneel on the floor. They occur at frequent intervals during the day and night, lasting about a minute each time.

During the night Mr E has sleep paralysis. It is a like a nightmare that people have broken in to his flat. He is frightened and cannot move.

He sleeps on the floor using a quilt with no cover on it. There are no carpets. He has no TV. He does not want to be part of life connected with all of the problems in the world.

He does not go out or socialise at all. He had made no friends at his old address despite living there for 8 years.

His parents come to visit him once a month and bring him all his food supplies. This is the only social contact he has.

The tribunal awarded Mr E 15 Points so he won his appeal.

### **Working with the Tribunal**

**YH** had been awarded insufficient points in order to pass PCA; she had a mix of physical & mental health points. In order to reach 15 points she could be awarded 1 point from the mental health (MH) descriptors. At the beginning of the appeal hearing the representative is allowed to 'guide' the Tribunal to the relevant MH descriptor. The point was awarded and client was put back onto Incapacity benefit. This is an example of working with the Tribunal, saving valuable time and acting as a representative as opposed to McKenzie friend.

**SO** had failed PCA scoring 3 points for MH only. Very supportive medical evidence from client's GP was obtained & submitted to Tribunal who added the extra MH points. Client won his appeal.

**UR** suffers from mental health problems. She did not complete & submit ESA50; she attended WCA and scored 0 points. She did not appeal within the time limits. A late appeal was submitted & accepted. Medical evidence was sought & submitted to Tribunal. Client attended hearing & won appeal scoring 15 points and was placed in the Work related activity group.

**AO** Client awarded 0 points despite good evidence. Decision maker refused to revise. At the appeal hearing the Judge said that the case should not have come this far and awarded ESA with the support component.

## **The medical assessment revolving door**

**AT** Retired from work on medical grounds: chronic knee and elbow pain.

- August 2005 failed the Incapacity Benefit medical test with 9 points. Medical evidence supplied. 7 months later, appeal won with 17 points
- September 2006 failed another test. Nil points. Medical evidence supplied. 6 months later, appeal won with 15 points.
- December 2008 failed another test. 10 points. Medical evidence obtained. Won appeal with 17 points.
- July 2010. Passed the test without a medical.

**BU** Chronic back pain.

- May 2008 failed the medical test, with 3 points. Medical evidence obtained. 6 months later, appeal won, awarding 19 points.
- May 2009 failed the test again with 9 points. Medical evidence obtained. 10 months later, appeal won, awarding 16 points.
- July 2010. Passed test following a medical.

**CV** Grand mal epilepsy sufferer.

- April 2009, passed ESA medical, scoring 15 points.
- September 2009 failed test, scoring only 9 points. Medical evidence obtained. 6 months later, appeal won with 15 points
- July 2010, successfully passed another medical.
- In the meantime, the WRO assisted him with a claim for Disability Living Allowance (DLA). The claim was refused using the medical report from his latest ESA test.
- Successfully appealed using evidence from above ESA test!

**DW** Getting Income Support based on mental health problems.

- August 2008 failed medical test. Medical evidence obtained. 6 months later, appeal won.
- July 2009 failed the test again. 9 months alter, appeal allowed.

**EY** Aged 60, on Incapacity Benefit suffering from arthritis in his knees. Was a joiner.

- September 2008 failed the medical test, with 11 points. Medical evidence obtained. 7 months later, appeal won with 16 points.
- September 2009 failed test again scoring 12 points. More medical evidence obtained. 9 months later, successful appeal with 15 points.

**FG** Aged 60, on ESA. He suffered a severe ankle injury at work in January 2009. Was a welder.

- December 2009 medical test scored nil points. Medical evidence obtained. 6 months later appeal allowed with 15 points.
- October 2010 failed test again scoring nil points. The WRO assisted him with another appeal which is currently waiting to be heard.
- In the meantime, DLA claim refused using the medical report from his initial medical test.
- Successfully appealed using evidence from above ESA test!

**GH Aged 60** on ESA with chronic back pain. Had been working as a driver.

June 2010, the medical gave him nil points. Medical evidence obtained, appeal gave him 18 points.

His condition improved and he has since returned to work.

**HJ** 30 year old with learning disability and mental health problems.

Medical scored 0 points. Evidence obtained and appeal tribunal increased points to 33.

He has recently been sent a further ESA50.

**IK** (47) was getting ESA. He was suffering from multiple musculo skeletal problems. He had been working previously.

He failed WCA in May 2010 following a medical, scoring 0 points. I assisted him with an appeal. Further medical evidence was obtained. The appeal was allowed by a tribunal in December 2010, with points increased to 18.

## **Appendix: Incapacity benefits and Employment Support Allowance**

### **What are incapacity benefits?**

There are three benefits that people could claim before October 2008 if they were unfit for work. They are Incapacity Benefit, Severe Disablement Allowance and Income Support.

These benefits will be phased out by 2014. No new claims can now be made. Most claimants will be reassessed under the Employment and Support Allowance (ESA) test between 2011 and 2014, see below.

There are about 19,000 people in Newcastle getting incapacity benefits.

### **What is Employment and Support Allowance (ESA)?**

ESA was introduced in October 2008 for people making new claims as unfit for work from that date. It has a contribution based part and an income related part. The ESA test is called the Work Capability Assessment (WCA). Claimants are paid a basic rate equivalent to Jobseekers Allowance (£67.50 from April 2011) while waiting to be assessed. Under 25s get a lower rate (£53.45 from April 2011).

There are about 3,500 people in Newcastle getting ESA.

### **Incapacity benefits reassessment**

1.5 million people currently getting incapacity benefits will be reassessed using the ESA test between now and 2014. In Newcastle this affects about 80 people a week. If they pass they will transfer to ESA. If they are found fit for work they can claim Jobseekers Allowance or appeal. They stay on their current benefits until reassessment is complete.

### **The ESA process**

#### **New claims only:**

- Claim made usually over phone via Jobcentre Plus call centre. Claimants must send necessary supporting documents plus a 'fit note' (used to be 'sick note') within a month.
- ESA is then paid at the basic rate for 13 weeks. During this time claimants go through the Work Capability Assessment (WCA) and attend a work focused interview.

#### **New claims and reassessment claimants:**

- Claimant is sent a 20 page self assessment questionnaire, the ESA50. They must complete and return it within 6 weeks. If not benefit stops unless they can show good cause.
- 90% of claimants completing an ESA50 are then called in for a medical at Arden House by a medical professional who may not be a doctor. If they fail to attend the medical without good cause benefit stops.
- To pass the ESA test the claimant has to show they have sufficient difficulty carrying out specified physical and mental activities.
- Jobcentre Plus decides on the basis of the ESA50, the medical and any other evidence, for example letters from GPs, whether claimant qualifies for ESA.
- Some people are exempt from the assessment process, for example they are terminally ill, or receiving certain treatments. Far more people were exempt from the incapacity benefits assessment, for example registered blind, severely mentally ill, those with a severe learning disability. These people will have to go through the reassessment for ESA.
- Claimants who qualify for ESA get a higher amount paid from the 14th week, which is paid at one of two rates:
  - One rate is for the 'work related activity group'. They form the majority who must attend work focused interviews and may be required to undertake work related activity. Benefit can be reduced if these conditions are not met.
  - The other – higher - rate is for those who are classed as more severely disabled and go into the 'support group'. They do not have to attend work focussed interviews or take part in work related activity.
- About 65% of claimants are found fit for work under the WCA. They can:
  - Claim Jobseekers Allowance
  - Claim another benefit if entitled, for example Income Support as a carer or lone parent
  - Appeal and get the basic rate of ESA paid pending the appeal.
- Changes to the WCA are due to come into force at the end of March 2011. An additional 14% of people are likely to be found fit for work as a result.

### **Reassessment claimants only**

- Do not need to make a claim. They will get a letter from Jobcentre Plus followed by a phone call telling them about the reassessment. They then get an ESA50 as above and most will be called in for a medical.
- If they qualify for ESA their old benefit stops 2 to 4 weeks after the decision and they transfer to ESA. If ESA is less than their old benefit they get an addition to make it up to the same amount. Their ESA is then frozen at that rate until "normal" ESA rate catch up.
- If they are found fit for work they have the same options as new claimants. Their old benefit stops 2 to 4 weeks after the decision. If they appeal they will get basic rate ESA pending the appeal. The appeal deadline is one

month from the date of the decision; however to avoid a gap in payments they will have to appeal before their old benefit stops.

## **Revisions and appeals**

A person who disagrees with a decision, whether on a new claim or from a reassessment, can either:

- Ask for the decision to be looked at again by Jobcentre Plus. This is an internal review. If they have been found fit for work their benefit stops. They cannot get basic rate ESA while the decision is looked again.
- Appeal to an independent tribunal:
  - The appeal must be made in writing, within one month of the decision, and state the grounds for the appeal.
  - Claimants usually need supporting evidence, for example a letter from a GP or consultant, copy of a care plan
  - Appeals can be heard on the papers with no need for the claimant to attend, however the success rates are much higher for oral hearings
  - Appeals are heard by an independent tribunal made up of a judge and a doctor.
- Once an appeal has been submitted basic rate ESA is paid at the basic rate equivalent to Jobseekers Allowance, pending the hearing.

There was a 128% increase in ESA appeals between April and June 2010. Between July and September ESA and incapacity benefit appeals increased by 56%. About 40% of appeals are successful.