

**nawra**

national association of  
welfare rights advisers

Independent Review of the  
Work Capability Assessment  
– Year 5 –

Consultation Response

15<sup>th</sup> August 2014

## THE NATIONAL ASSOCIATION OF WELFARE RIGHTS ADVISERS - NAWRA

1. 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.
2. We strive to challenge, influence and improve welfare rights policy and legislation, as well as identifying and sharing good practice amongst our members.
3. 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.
4. Our members are taken from across the welfare field have much experience in providing advice, advocacy and representation in welfare rights, in terms of front line legal advice, specialist training as well as social policy support, consultation and development. As such NAWRA is able to bring a good deal of first-hand knowledge and insight to this consultation exercise.

## PURPOSE OF THIS RESPONSE

The Department for Work and Pensions (DWP) has appointed Dr. Paul Litchfield to carry out the fifth Independent Review of the Work Capability Assessment (WCA), following his work on the fourth Independent Review; this builds on the work of Professor Malcolm Harrington in the first three reviews of 2010-2012. This is therefore the final statutory Independent Review of the WCA, as required by section 10 of the Welfare Reform Act 2007. This response is therefore in response to the Call for evidence with regards to the operation of the Work Capability Assessment (WCA) Year 5.

## METHODOLOGY

We sent out a survey to all NAWRA members via email. We used the terms of reference listed by Dr Litchfield as a basis for a survey under the following headings:

- Impact of previous Independent Reviews;
- Experience of the WCA process;
- Work-Related Activity Group (WRAG) or Support Group;
- Mental Health conditions and Learning Difficulties
- Other factors

We had 85 responses in all to our WCA survey (81% from members and 19% from welfare rights advisers and organisations associated to NAWRA members). The 81% figure equates to around 23% of NAWRA membership nationwide. There was wide consensus on most questions. The

conformity in the evidence from across the welfare advice sector helps demonstrate the level of common experience of the WCA.

NAWRA is happy to be contacted to provide clarification on anything contained within this document. NAWRA encourages the sharing of knowledge and is therefore more than happy for details and contents of this response to be shared within the public domain.

## KEY FINDINGS

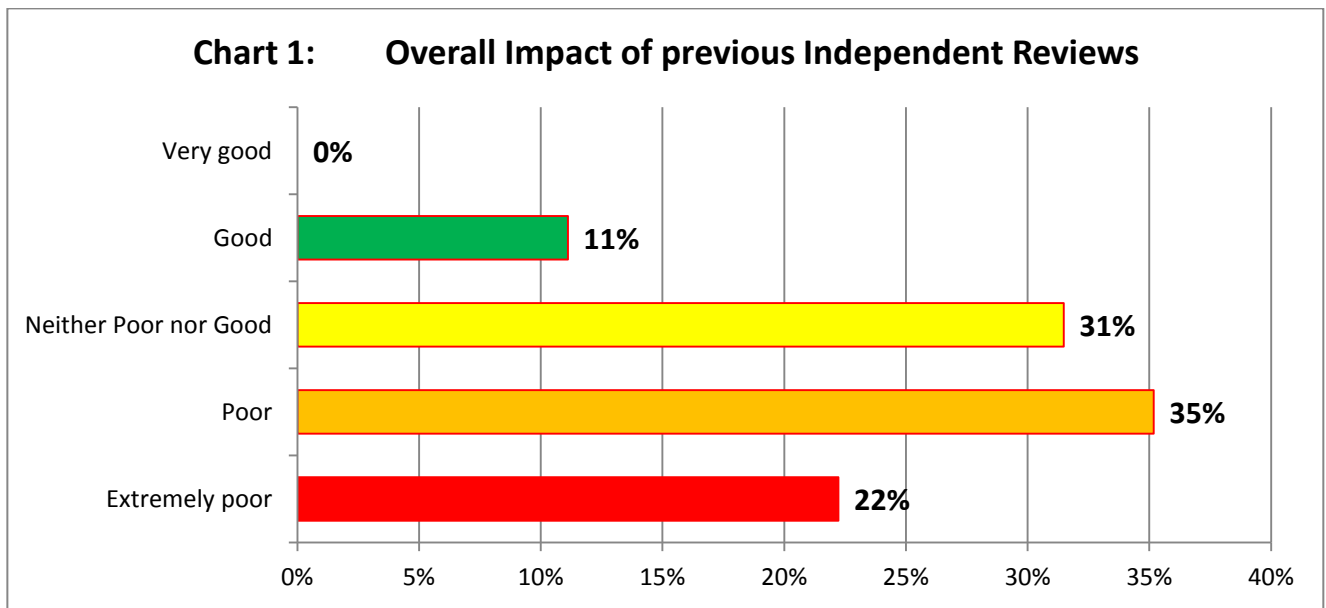
- ❖ **Poor communications:** widespread problems with paper and phone communications between DWP and claimants who suffer from some form of cognitive impairment or mental health condition. This often creates confusion, missed deadlines and other needless obstacles for vulnerable claimants.
- ❖ **Poor data sharing:** not enough communication between Atos and Department for Work and Pensions (DWP) during WCA process contributing to ill-informed decisions, ineffective JCP support and unnecessary administrative delays.
- ❖ **Evidence gathering issues:** evidence gathering challenges continue, particularly for vulnerable claimant groups. For example, Atos are continuing to make ineffectual use of the esa113 procedure. DWP decisions remain overwhelmingly influenced by Atos assessments whilst other evidence provided is too often either lost or discounted. Atos and DWP are also failing to capture relevant evidence or recommend exceptional circumstances under regulations 29 and 35 (ESA regulations 2008) despite this being a recurrent route for overturned DWP decisions and appeal successes.
- ❖ **Poor quality assessments:** Atos assessments continue to be too frequent, inefficient and inaccurate. Assessors (HCPs) are generally viewed as being ill-equipped to deal with complex claimant groups and assessments are rushed and formulaic, consistently generating poor quality esa85 reports.
- ❖ **Accessibility issues:** DWP are not doing enough to ensure that claimants groups that suffer from cognitive impairments, mental ill health and learning disabilities are informed and engaged with, specifically in terms of communications (as outlined above), inaccessible forms and obstructive and impersonal assessments. Too many Atos assessment centres remain inaccessible and too few home assessments are being conducted for claimants that suffer from severe social phobias.
- ❖ **Poor quality DWP decisions:** claimants are needlessly suffering hardship as a result of maladministration and widespread WCA processing delays. Some claimants are awaiting

Mandatory Reconsideration (MR) decisions for around 8 weeks, without any basic support. Atos assessments are taking up to 17 months and claimants are therefore going without the appropriate grouping rate for this period; shorter term claims are often losing out on thousands of pounds as a result. DWP are routinely failing to issue Mandatory Reconsideration notices (MRNs), even after claimant has requested reconsideration, creating further barriers for claimants. Despite the massive drop in official appeal hearings and success rates, for NAWRA members, unofficial success rates have continued to hover around the 90% plus mark. Similarly, inappropriately applied sanctions continue to hit too many of the most vulnerable, generating hardship and at times crisis and/or substance or alcohol relapse and the Third Sector is continuing to be over-stretched trying to cope with the pressure from WCA failings.

- ❖ **Impact of former Reviews have been minimal:** Improvements to the WCA since the first Independent Review have been marginal despite a big push for inclusive policy initiatives
- ❖ **Stigma:** widespread consensus that the DWP and Atos share a suspicious view of disabled welfare benefit claimants and that DWP and Atos are treating disabled claimants *en mass* with unmerited contempt and mistrust

### OVERALL IMPACT OF INDEPENDENT REVIEWS

We asked members to rate the 'rate the 'overall impact' of previous independent WCA reviews. A summary of the results are shown in Chart 1 below:



## REVIEW RATINGS SINCE 2010

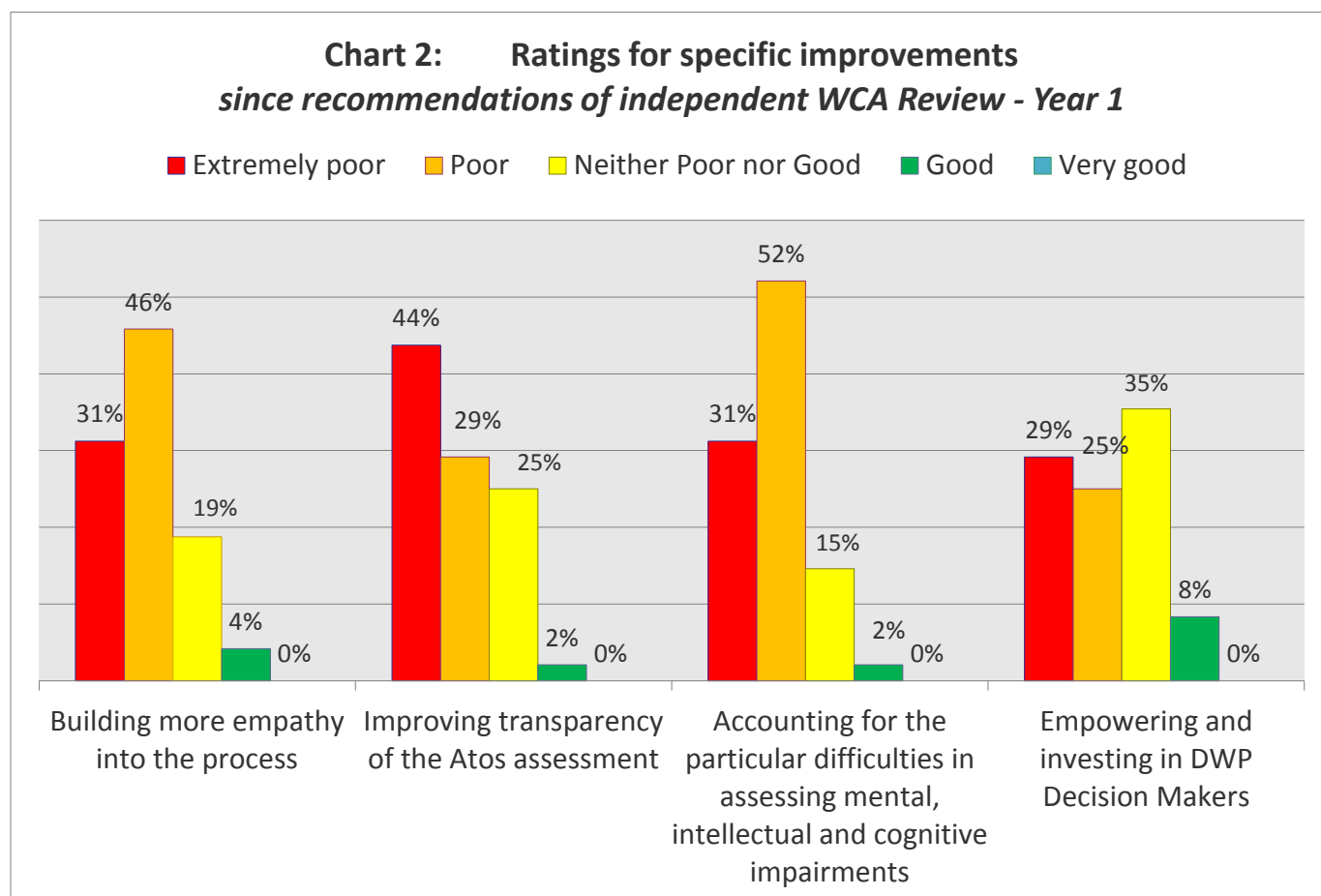
The following charts (8-11) outline the experience and impact of former Independent Reviews according to respondents. As a whole, the key recommendations of former Reviews were seen as worthwhile and valuable. However, the words "*no recognisable improvement*" or phrases of a similar nature came up time and time again. Indeed, the evidence has overwhelmingly confirmed that respondents feel that there has been very little actual improvement within the WCA process as a result of those recommendations.

### IMPACT OF INDEPENDENT REVIEW – YEAR ONE RECOMMENDATIONS

We asked NAWRA members to rate improvements of the WCA since the key recommendations of the independent WCA Review - **Year 1** - under the following categories:

- 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 DWP Decision Makers

A summary of the results are shown in Chart 2 below:



## IMPACT OF INDEPENDENT REVIEW – YEAR TWO RECOMMENDATIONS

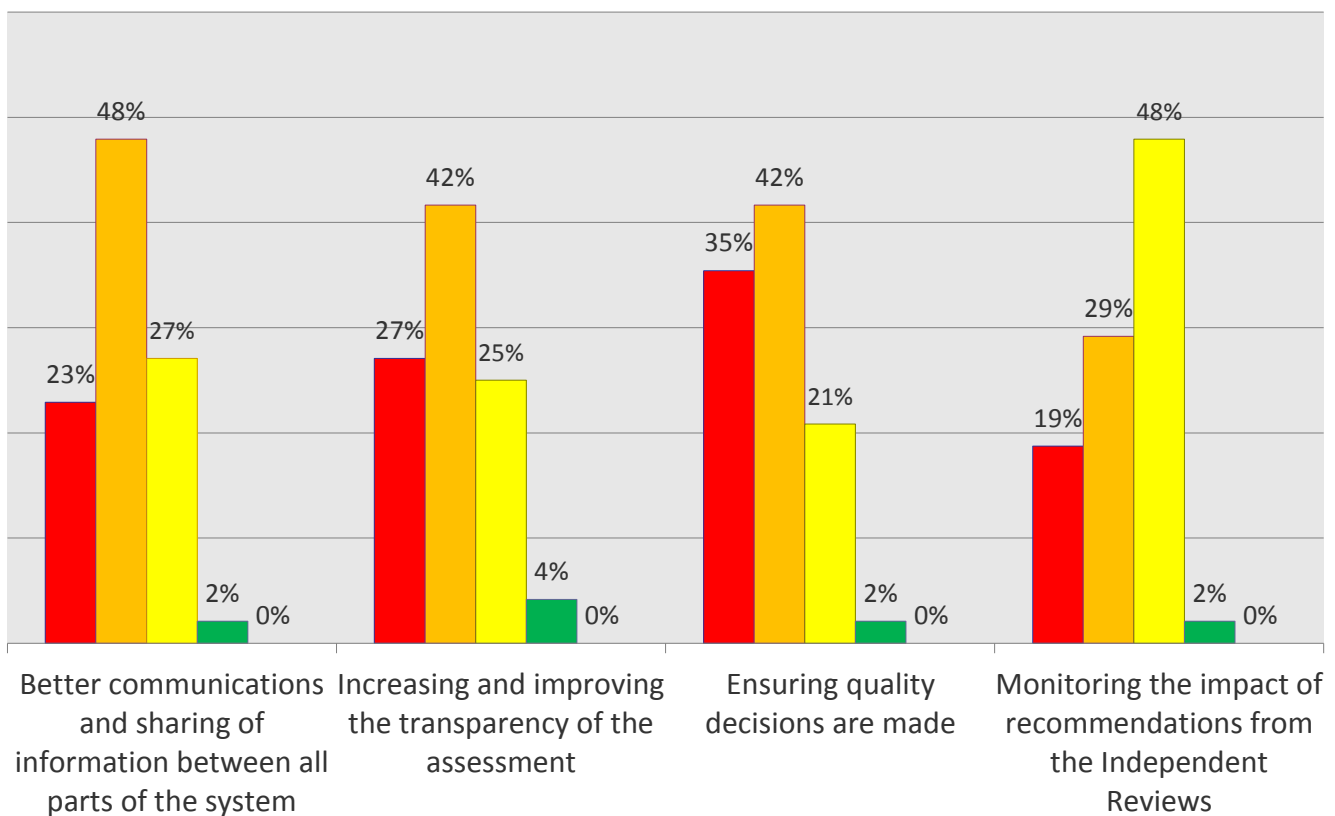
We asked members to rate improvements of the WCA since the key recommendations of the independent WCA Review - **Year 2** - under the following categories:

- Better communications and sharing of information between all parts of the system
- Increasing and improving the transparency of the assessment
- Ensuring quality decisions are made
- Monitoring the impact of recommendations from the Independent Reviews

A summary of the results are shown in Chart 3 below:

**Chart 3: Ratings for specific improvements since recommendations of independent WCA Review - Year 2**

■ Extremely poor ■ Poor ■ Neither Poor nor Good ■ Good ■ Very good



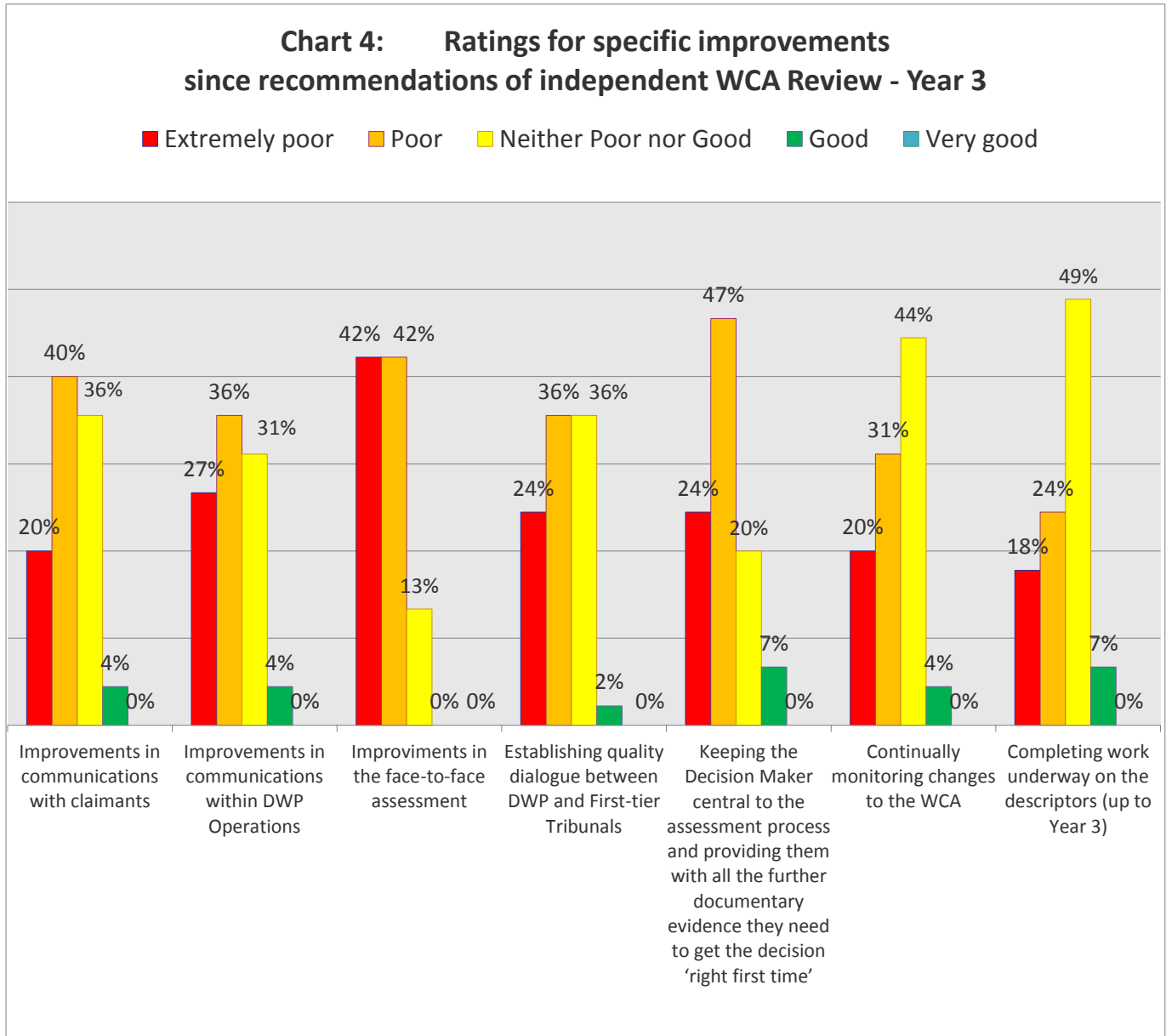
## IMPACT OF INDEPENDENT REVIEW – YEAR THREE RECOMMENDATIONS

We asked members to rate improvements of the WCA since the key recommendations of the independent WCA Review - **Year 3** - under the following categories:

- Improvements in communications with claimants
- Improvements in communications within DWP Operations
- Improvements in the face-to-face assessment
- Establishing quality dialogue between DWP and First-tier Tribunals

- Keeping the Decision Maker central to the assessment process and providing them with all the further documentary evidence they need to get the decision 'right first time'
- Continually monitoring changes to the WCA
- Completing work underway on the descriptors (up to Year 3)

A summary of the results are shown in Chart 4 below:



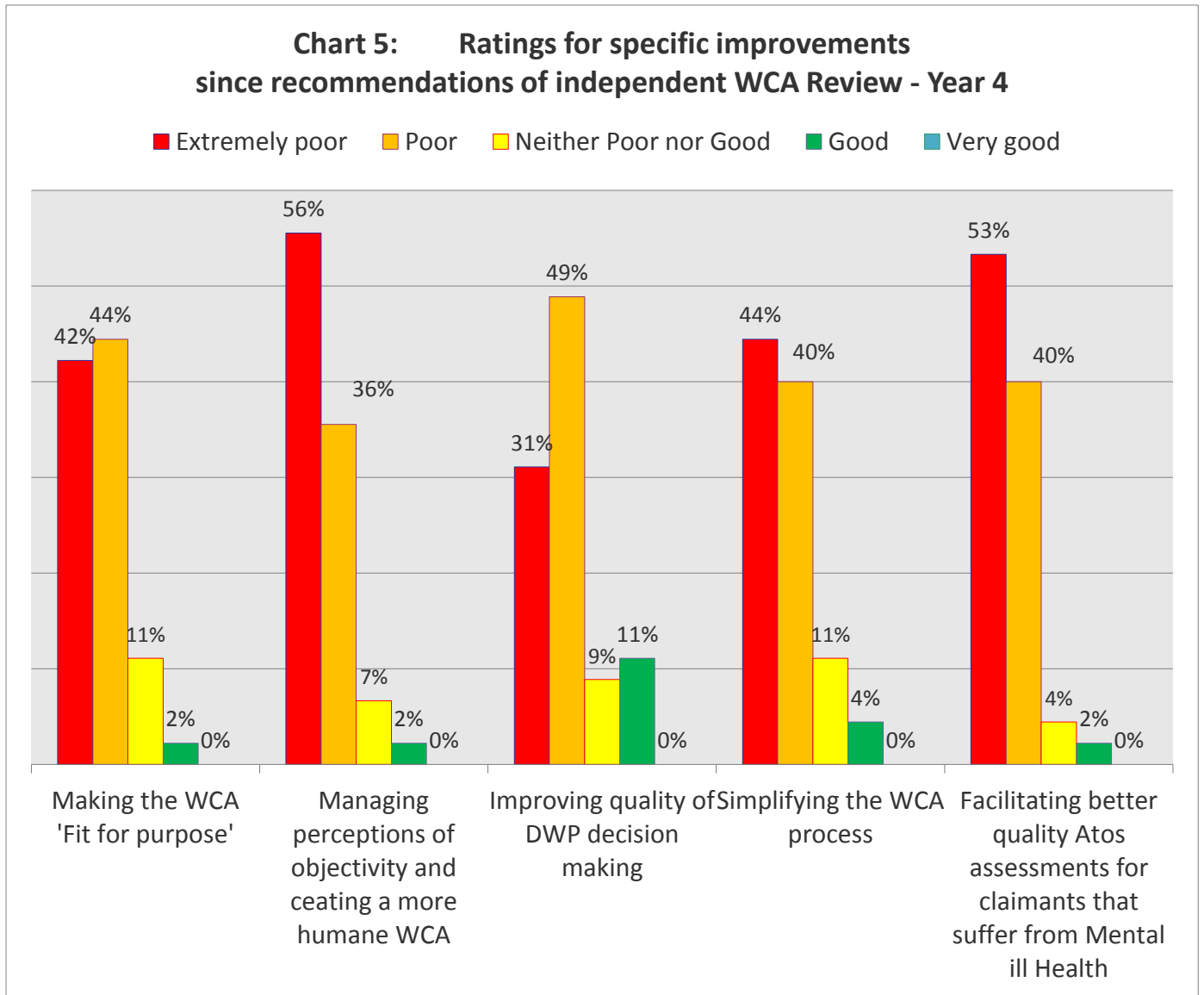
#### IMPACT OF INDEPENDENT REVIEW – YEAR FOUR RECOMMENDATIONS

We asked members to rate improvements of the WCA since the key recommendations of the independent WCA Review - Year 4 - under the following categories:

- Making the WCA 'Fit for purpose'
- Managing perceptions of objectivity and creating a more humane WCA
- Improving quality of DWP decision making
- Simplifying the WCA process

- Facilitating better quality Atos assessments for claimants that suffer from Mental ill Health

A summary of the results are shown in Chart 5 below:



### EXPERIENCE OF THE WCA PROCESS

We asked members to rate their 'overall' experience' of the WCA under the following categories:

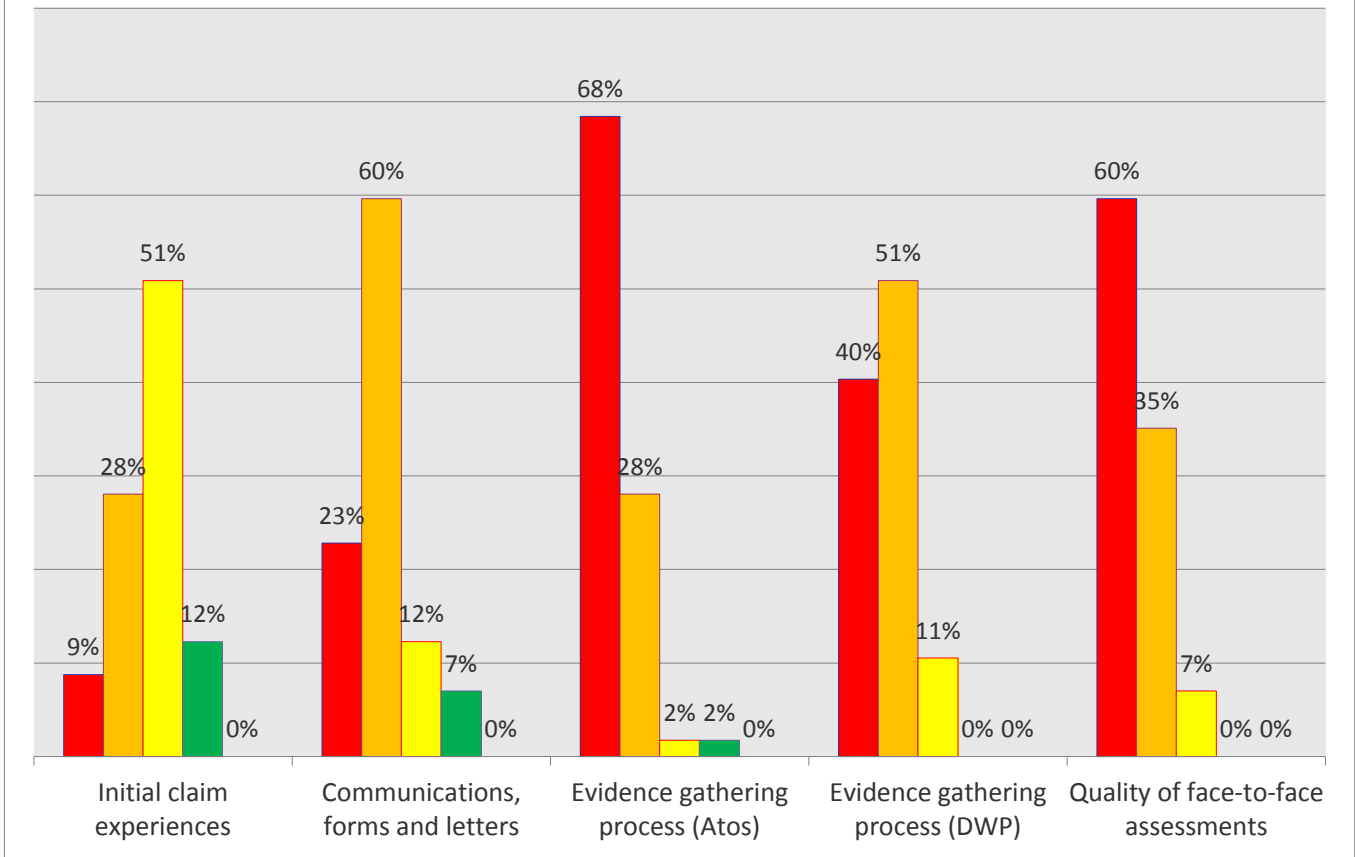
- Initial claim experiences
- Communication, forms and letters
- Evidence gathering process (Atos)
- Evidence gathering process (DWP)
- Evidence gathering process (Tribunal Service)

A summary of the results are shown in Chart 6 below:



**Chart 6: Overall Experience of the WCA**

■ Extremely poor   
 ■ Poor   
 ■ Neither Poor nor Good   
 ■ Good   
 ■ Very good



**COMMENTS**

As Chart 6 outlines, the overall picture of the WCA process is exceptionally negative. Below is a breakdown of the relevant data particular to each section.

**Initial experiences:** The least bad aspects of the WCA journey are at the initial claim stages, where respondents outlined that although there were some difficulties, overall, the application process was seen as fairly simple. However, for some claimants that suffer from cognitive impairments, support was often needed (but not always available) in order to proceed with a claim.

**Communications, letters and forms:** On a similar note, there was significant evidence for communication problems between DWP and claimants. For example, there was evidence of DWP phone calls being made to claimants who lacked capacity to understand the gravity and nature of the call which often affects a decision on a benefit. There was also evidence of phone based decision-making taking place without any follow up decision-notices. Claimants were also noted as getting easily confused between multiple contacts (calls, correspondence, and appointments) regarding different disability-related benefits; or with regards to the same benefit but from different agencies. Moreover, decision notices were noted as being structurally unclear. This was

mainly related to confusing ESA award calculations and lack of clarity on the nature of the award (i.e. whether income-related or contributory) or when a contributory award might typically end (i.e. at the end of a 365 day period). Further, too many claimants remain unaware (until it is too late) that they can claim income-related ESA after the 365 day period or that they have a right to appeal or have a decision reconsidered.

There were also problems reported with communications to GPs which affect a claimant. For example, after a failed Atos assessment, the DWP are writing to claimants' GPs with a letter outlining that there is no longer a need to provide fit-notes so when a claimant asks their GP for a fit-note (i.e. after MR) some GP's are refusing it. DWP letters to GPs could therefore be clearer. Finally, numerous respondents outlined that the development of the new Wolverhampton central postal sites are causing considerable delay and loss of post.

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*“Claimants with MH and learning difficulties are immediately overwhelmed by conflicting correspondence and being contacted by more than one agency regarding one benefit”*

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In terms of forms, there were serious issues with the esa50 form. Some changes over recent years e.g. sections to gather information on some support group descriptors, were reported as positive. However, there remains no section within the esa50 which relates to specifically capturing evidence on exceptional circumstances under regulations 29 or 35 (ESA regs), relevant to vulnerable mental health claimant groups and others.

Finally, claimants were reported as having considerable technical challenges in understanding relevant information and thereby completing the esa50 effectively. This was a particular challenge for claimants where they did not have initial support to complete the form. This issue was often reported as leading to inaccurate and ill-informed decisions being made by the DWP, triggering service strain for agencies providing work and support on appeals which could have been avoided.

Overall, it was clear that there were major concerns over a significant lack of cohesion in communications to claimants; the WCA process was often described as opaque, disjointed and highly confusing, often generating unnecessary complications, delays and other barriers, especially for vulnerable claimant groups.

**Evidence gathering:** in terms of evidence issues, this was one of the most significant problem areas reported by respondents and these centered on a reported lack of support for claimants throughout. In short, Atos and DWP were reported as lacking a holistic, pro-active and inclusive approach to evidence gathering. Atos has been reported as making almost no use their own evidence gathering process (i.e. via the esa113 form). Although it was acknowledged that the quality of supporting evidence was variable, Atos assessors (health care professionals, HCPs) are reported as taking a dismissive attitude to evidence from General Practitioners (GPs) and other relevant healthcare professionals and consultant specialists.

Similarly, the DWP was reported as hardly making any use of paper evidence gathering and where it did, the template letters were seen as overly simplistic failing to capture relevant data for the appropriate descriptors. There was evidence of a stronger drive for DWP to gather evidence from the claimant direct via phone calls but in many cases these were reported as wholly disregarding the claimants' views of how their disability affects them. Further, in terms of decisions, DWP are also reported as continuing to give disproportionate weighting to Atos assessments, even though these are, more often than not, reported as being widely discredited.

**Assessments:** there is a serious sense of concern for the delays in getting an assessment, often causing prolonged hardship and anxiety. In some cases, claimants are waiting up to 17 months for an assessment, sometimes due to recent policy changes i.e. referrals to specialist doctors. Whilst the referral is welcome this could have been arranged at an earlier stage. As outlined earlier, some shorter term claimants are often dropping out of the WCA prior to assessments having taken place and through no fault of their own, are losing out on hundreds (in some cases, thousands) of pounds in terms of grouping payments because in most cases grouping cannot be paid until the face-to-face assessment has been carried out.

Respondents also noted that there are fundamental flaws with face-to-face assessments and functional assessment reports (esa85s) and respondents noted widespread evidence of poor practice. For example, some claimants have been told that they cannot take anyone with them to an assessment. Further, there is a great deal of evidence to suggest that further evidence sent in to Atos or DWP is not getting through to the HCP; even when it does this is not being taken into account at assessment.

HCPs have been noted as lacking empathy, and at times using intimidating and dismissive body language during assessments. HCPs have also been reported as using leading and closed questioning to interview claimants. This is a particular problem for many claimants that suffer from mental health or in particular, learning disabilities, who may be intimidated, wanting to please and susceptible to suggestion from others.

There was widespread consensus that HCPs are ill-equipped to deal with claimants with complex conditions; especially claimants groups who suffer from mental health and learning disabilities. Assessments are typically carried out by physiotherapists and registered general nurses who have no training in mental health or other complex conditions whatsoever.

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*“The WCA is far from fit for purpose and continues to be a waste of time, money and resources whilst making things harder for clients, in particular, those suffering from mental health problems”*

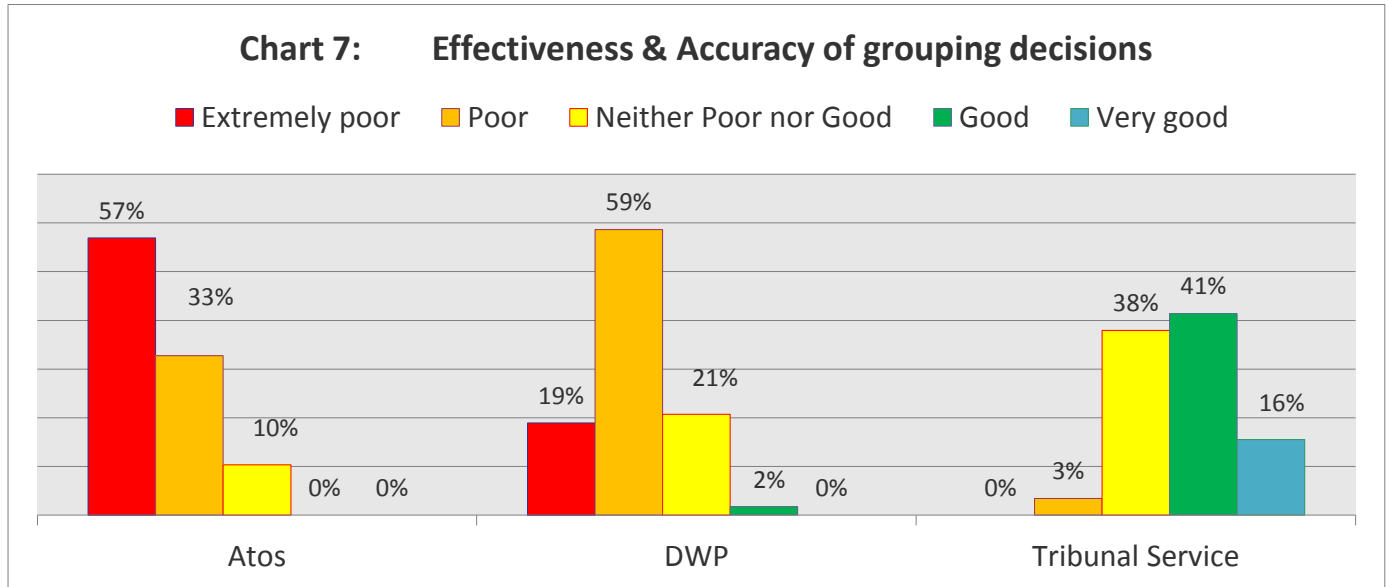
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There was also significant evidence of HCPs having misinterpreting or misusing verbal statements from claimants; for instance, one respondent noted that in the esa85, the claimant was reported as “walking 4 miles to a local shop” – when in fact the local shop was actually 4 doors away. There is evidence of rushed face-to-face assessments and overuse of automated pre-set drop-list answers within LiMA software. Indeed, claimants are not routinely asked questions on exceptional circumstances criteria and the esa85 report produced after assessment typically has a blanket statement recording that the conditions for these regulations are not met.

Further, the distance of assessment centers was also reported as an issue both in terms of physical barriers for disabled claimants but also in terms of psychological distress factors for some mental health claimants who were put off from attending or adversely affected due to having to travel far from ‘safe’ areas closer to home. Finally, claimants are also reported as routinely being adversely affected by worry, anxiety, insomnia and over-medication prior to assessments and also being traumatized by assessments afterwards, in some cases leading to a mental health crisis and/or substance/alcohol relapse.

**Summary:** The overall WCA process was seen as taking far too long and respondents noted that claimants are left without sufficient income for prolonged periods until a final decision is reached on eligibility and grouping. The entire process was seen as being embedded with inaccuracy, inefficiency and unfairness. Importantly, respondents noted that many of their clients had reported a serious deterioration in the health as a direct result of the stress and trauma of being put through the WCA experience.

We asked members to rate the overall 'Effectiveness and Accuracy' of Grouping decisions under the WCA. A summary of the results are shown in Chart 7 below:



#### COMMENTS

As is seen in Chart 7, respondents clearly outlined significantly poor ratings for Atos by comparison with the other key agencies involved in the WCA. Much of the evidence centered on a widespread perception that the DWP and Atos staff had a very poor level understanding of complex and significantly disabling conditions relevant to the support group criteria. DWP were seen as extensively 'rubberstamping' Atos assessments and respondents noted that poor evidence capture inevitably leads to poor quality in decision-making. Respondents also reported that the vast majority of DWP grouping decisions that were challenged were later overturned at appeal. There was a significant number of responses which reported the Tribunal Service moving claimants from a nil points assessment (under Atos) and then into the support group.

*“Our service regularly challenges decisions relating to 'grouping' and have a very good rate of success. It's clear that Atos and DWP do not understand disability and how this relates to the group”*

Other problems reported were that for claimants in the wrong grouping faced considerable challenges with regards to unrealistic and inappropriate work-related activity (WRA) conditions. Respondents also reported an inflexible and slow approach to dealing with changes in circumstances (i.e. due to deterioration in health) which might affect grouping placements and thereby conditionality.

NAWRA has had reports that this is recognised on an unofficial level at some JCP offices where claimants are 'parked' pending appeal and given additional support because they are accepted as being totally unable to cope with WRA. Whilst this is evidence of a degree of flexibility and support (albeit informal), it is also a firm indication that the assessment process is not working for claimants who are too often placed in the wrong group.

In terms of the Tribunal service, although there were a number of reports outlining a degree of variability within the quality of decisions, the feedback on judges overall was almost *reversed* when compared to Atos and DWP, in terms of knowledge of the application of descriptors, ability to obtain accurate evidence from a claimant, effective interviewing style and overall quality of decision-making.

**Other decision-making issues - Sanctions:** Reported problems with sanctions included multiple cases where claimants were not aware that they were sanctioned until they lost their payments. There were also widely reported issues with cognitively impaired claimants (mental health and learning disability) having an inability to understand their responsibilities with regards to work focused interviews (WFIs) or Work related activity (WRA). Such claimants were then being sanctioned for failing to engage with WCA process and ending up in severe hardship. As a result of the combined financial and emotional pressures, many claimants are relapsing to mental health crises and in some cases are close to suicide.

The sanctions problem is congruent with the higher number of sanctions applied to ESA claimants which has rose over 334 per cent over the course of a year since the new sanctions regime was introduced in December 2012<sup>1</sup>. Whilst the pressure of sanctions has been stepped up it has been clear that it is the most vulnerable groups that are being disproportionately affected. Revised figures recently released after freedom of information request outline that of the 19,039 claimants

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<sup>1</sup> <https://www.gov.uk/government/publications/jobseekers-allowance-and-employment-and-support-allowance-sanctions-decisions-made-to-december-2013>

who received an adverse sanction decision over the six month period between July and December 2013, 11,624 (61 %) were in relation to claimants with "*mental and behavioural disorders*"<sup>2</sup>.

Further, volunteering for WRA can be a great benefit to some claimants; but no one in the support group (SG) has to undertake WRA. However, NAWRA has seen evidence that some claimants in the SG with learning difficulties who are trying to help themselves in good faith by volunteering for WRA, are being penalized with sanctions when they cannot keep up with their commitments. This seems to be a wholly unfair practice.

**Other decision-making issues - Disabled students:** The Welfare Reform Act 2007 makes it clear that under normal circumstances students counted as 'receiving education' are ineligible for ESA. However, regulation 18 of ESA regs also makes it clear that this does not apply to a claimant who is in education but is also in receipt of 'disability living allowance'. This is reinforced under the provisions of regulation 33(2) (ESA regs) which clarifies that income-related ESA (irESA) claimants are to be automatically 'treated as having limited capability for work'. However, it would appear that some students are wrongly being refused irESA after having scored insufficient points under an Atos assessment which should actually be assessing appropriate grouping under WCA not eligibility.

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*"The DWP must learn to listen actively to the people"*

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**Other decision-making issues - Mandatory Reconsiderations (MRs):** DWP has stated that MR was introduced to:

- resolve disputes as early as possible;
- reduce unnecessary demand on HMCTS by resolving more disputes internally;
- consider revising a decision where appropriate;
- provide a full explanation of the decision; and
- encourage claimants to identify and provide any additional evidence that may affect the decision, so that they receive a correct decision at the earliest opportunity<sup>3</sup>

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<sup>2</sup> <https://www.gov.uk/government/publications/statistics-on-esa-claimants-with-an-adverse-sanction-decision-by-icd-code-between-jul-2012-and-dec-2013-gb>

Although NAWRA has seen welcome evidence that MR decisions are in some cases offering better quality decisions, the bulk of the evidence collated as part of this report, indicated that, on the whole, the MR process has not yet fulfilled its potential but rather has been a further obstruction for vulnerable claimants that suffer from mental health and/or learning disabilities. For example, waiting times for decisions are often taking 8 weeks or longer. It was seen to be unfair that claimants only had one month within which to request MR but the DWP had no deadline to reply.

We had mixed evidence with regards to claimants being contacted by phone after requesting MR. In some cases this was ineffective because some claimants did not understand what the DWP staff were saying to them. On a related point, call-backs were also not being made effectively to allow for interpretation by a suitable advocate (i.e. adviser, support worker or family member). However, when advocates were involved, the evidence is that this did inform the MR decision.

Further, we have had evidence that claimants claiming Job Seekers Allowance (JSA) during MR are often being refused JSA because they are sick and have a 'fit note' for the claim period. In most cases, information about the particular disability or limitation of a claimant is not being fed through to JCP staff for the initial Jobseeker Interview. Claimants are being left feeling totally overwhelmed with unrealistic expectations and conditions of benefit; as a result, many claimants feel unable to cope with the job seeking process because the first interview was so negative. There is a similar problem with claimants placed on ESA but in the wrong grouping (discussed earlier).

Finally, there is a widespread problem with DWP adding an unnecessary barrier to the MR and appeal process. In response to requests for reconsideration, claimants are widely being issued with a 'no change' statement of reasons letter instead. Obviously, without an official Mandatory Reconsideration Notice (MRN) there is no automatic right to appeal and as these letters are not in the strict format of a MRN they are being used to refuse rights to appeal. As many vulnerable claimants will often be unaware of the intricacies of the law NAWRA has evidence that many claimants are dropping out of the appeal process as a result. The Tribunal Rules (in particular rules 2 and 7) do however allow HMCTS to waive the requirement to provide the MRN and accept the 'no change' revision letter where it is in the interests of justice to do so. However, where the Tribunal service are using this discretion, NAWRA has had evidence that DWP challenging the Tribunal service as being out of jurisdiction; this is happening even where the MRN is supplied at a later date. This seems to be an unjustifiable attempt at limiting claimants' access to appeals.

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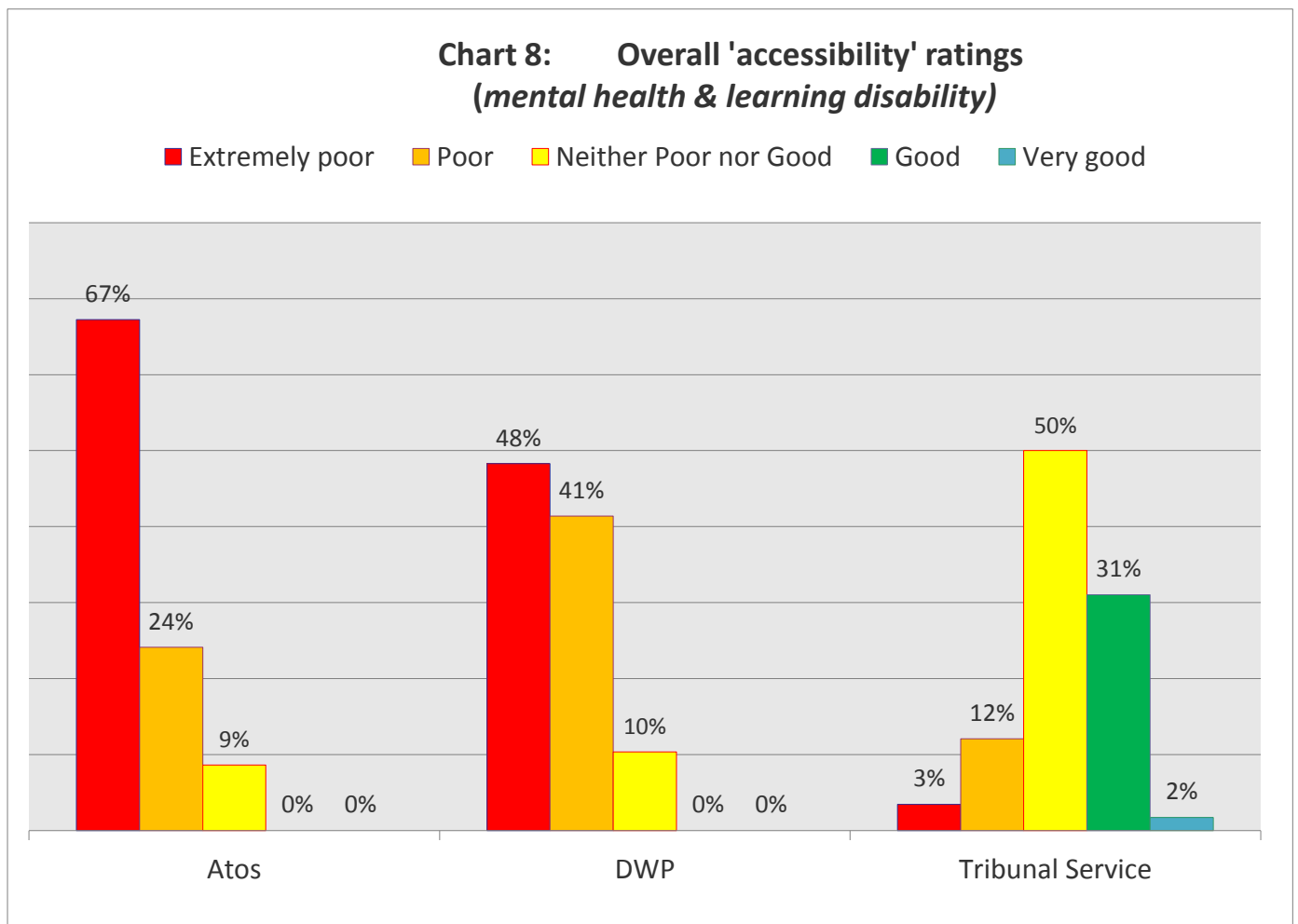
<sup>3</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/236733/appeals-reform-introduction.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236733/appeals-reform-introduction.pdf)



*“Clients with mental health problems have more difficulties accessing information and being able to process, organise or prepare for meetings where they will be the focus of the meeting. Some of them have such great anxiety that they overmedicate before such an appointment and are not then able to take part in a meaningful way in the meeting. Some clients with learning difficulties have very limited awareness of their limitations and will have a “can do” attitude to the detriment of any award.”*

ACCESSIBILITY - MENTAL HEALTH CONDITIONS & LEARNING DIFFICULTIES.

We asked members to rate the ‘overall’ abilities of key agencies to facilitate an ‘Accessible service’ for claimants that suffer from Mental health and/or Learning difficulties under the WCA. A summary of the results are shown in Chart 8 below:



## COMMENTS

Under the Equality Act 2010, the Government (as a service-provider) is under a general duty to “not discriminate” against claimants that suffer from mental health, learning or other disabilities<sup>4</sup>. The Government also has additional Public Sector duties within section 149 of the same Act which compels Government to take “due regard” to the need to—

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it<sup>5</sup>.

However, the evidence is clear that the Government has not always been very effective at exercising these duties. The Government has been made aware of the particular challenges that are faced by claimants with mental health and learning disabilities year on year. This culminated in a Judicial Review against the WCA by the Public Law Project. The case argued that people with mental health conditions are placed at a substantial disadvantage in navigating the WCA system and that this amounted to discrimination according to the Equality Act 2010. This case succeeded in the High Courts in May 2013 and the Public Law Project (PLP) issued their statement on the ruling:

*“The judges recognised that claimants with mental health problems have a number of specific difficulties in self-reporting, for example they may lack insight into their condition, their condition may fluctuate day by day, or they may be unable to accurately explain how it affects them. Not all Atos assessors are medically qualified (many are nurses or physiotherapists), and almost invariably they have very limited knowledge or experience of working with people with mental health problems. The interviews are often hurried, and rely on applicants to explain the limitations on their ability to work.”<sup>6</sup>*

There is an absolute consistency in the evidence from across the spectrum of welfare rights agencies and the evidence gathered as part of this consultation report almost completely mirrors issues outlined above.

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<sup>4</sup> <http://www.legislation.gov.uk/ukpga/2010/15/part/3>

<sup>5</sup> <http://www.legislation.gov.uk/ukpga/2010/15/section/149>

<sup>6</sup> <http://www.publiclawproject.org.uk/news/7/press-release-work-capability-assessment-discriminates-against-claimants-with-a-mental-health-disabi>

As we can see from Chart 8 (on page 17), it is very clear that comparatively, the *least accessible* service within the WCA process is Atos. Responses reiterated a perception that there was very little understanding of mental health and learning disabilities amongst Atos and DWP staff. Many respondents considered that Atos and DWP have a "*one size fits all*" blanket approach and that in many cases the DWP and Atos failed to make reasonable adjustments for claimants needing additional support. There were reports that claimants did not always have an appropriately trained mental health professional at assessments.

There was also significant consensus that poor or intimidating communication techniques during assessments, and lack of understanding and empathy, combined to negatively affect the overall accessibility to the WCA process for vulnerable claimants groups. Some respondents also reported that input from mental health champions often simply rubber-stamped Atos medicals and provided no real value to the final decision.

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***"A common thread amongst all my clients is their feeling that they are being persecuted by the DWP for being sick"***

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There were also a number of reports that Atos assessments centres were often inaccessible for claimants with physical disabilities. Telephone and mail contacts were also seen as an artificial barrier for many clients who suffer with mental health problems as some will not engage with the process and were at risk of being sanctioned and in a spiral of crisis, debt and destitution as a result. On the positive side, there was some evidence that the DWP were recently being a little more patient with late submission of esa50s for client groups who declare mental health difficulties. Further, there were some reports that requests for postponements were being routinely denied (i.e. where an appellant requires a representative and they are unavailable on a given day). This was viewed as a barrier to effective decision-making in some cases. However, the Tribunal service was praised by significant numbers of respondents for generally enabling a more accessible service through better communication and questioning techniques which enabled a more holistic and accurate reading of claimants' relevant limitations.

Finally, it is widely accepted that the office for Secretary of State for Work and Pensions has been misusing data on disabled claimants of welfare benefits. According to the UK statistics authority, the department had issued damaging and misleading public media statements twice over the past

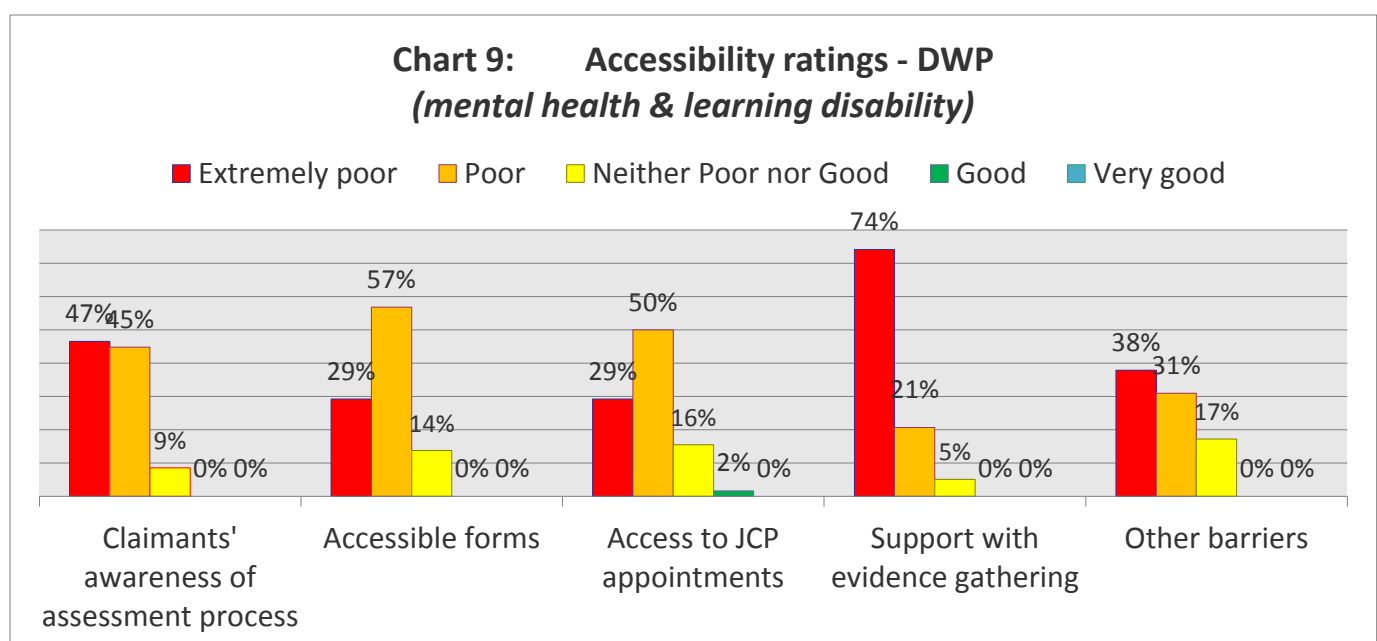
year alone<sup>7</sup> - statements which were then used and re-told over and over again across tabloids and online media. NAWRA believes that these kind of false statements clearly feed the daily hate in the tabloids against disabled communities across the UK and encourage poor relations between able bodied and disabled people. As outlined, NAWRA believes that this is on breach of the Government's Public Sector duties under section 149 of the Equality Act<sup>8</sup>; namely, to "foster good relations" between persons who share a relevant protected characteristic and persons who do not share it.

## ACCESSIBILITY – DEPARTMENT FOR WORK AND PENSIONS (DWP)

Specifically, we asked members to rate the **DWP's abilities to facilitate an 'Accessible' service** for claimants that suffer from Mental health and/or Learning difficulties, under the following categories:

- Claimants' awareness of assessment process
- Accessible forms
- Access to Job Centre Plus (JCP) appointments
- Support with evidence gathering
- Other barriers

A summary of the results are shown in Chart 9 below:



<sup>7</sup> <http://www.politics.co.uk/news/2014/05/16/iain-duncan-smith-used-false-statistics-to-justify-disabilit>

<sup>8</sup> <http://www.legislation.gov.uk/ukpga/2010/15/section/149>

## COMMENTS

**Claimant awareness:** Respondents reported that claimants had some considerable barriers to accessibility and required extensive support throughout the WCA process. Respondents outlined issues with frontline JCP staff lacking empathy and at times judgmental in their approach to claimants. Poor interpersonal skills were therefore seen as a crucial element which impeded claimants' awareness of the WCA process.

**Lack of support for claimants:** There were also numerous reports that there was a serious lack of 'holistic' support provided by JCP staff. For example, there is evidence that not having a main contact at the Job Centre Plus office can also create some barriers due to different staff offering different and at times conflicting advice. Further, issues with DWP failing to claim responsibility for delays in processing claims and claimants being passed from pillar to post, also generates confusion. NAWRA had evidence that there was a serious lack of trained disability experts at JCP offices able to support certain claimants better. NAWRA also had mixed evidence with regards to signposting to 3<sup>rd</sup> sector agencies, where at times there was a complete lack of effective signposting and at other times this was excessive. This was often viewed as ineffective because claimants remained unsupported either way.

Further, a number of respondents outlined that they felt that the third sector were under considerable service strain as a result of the combination of poor decision-making and lack of 'holistic' or practical evidence gathering support given by DWP staff.

Respondents outlined that staff operating at DWP call-centres seemed not to be trained to deal with claimants from learning disability and mental health claimant groups. It was also noted that call-centre staff failed to make appropriate call backs, i.e. at a time when a support worker or family member else could assist the claimant.

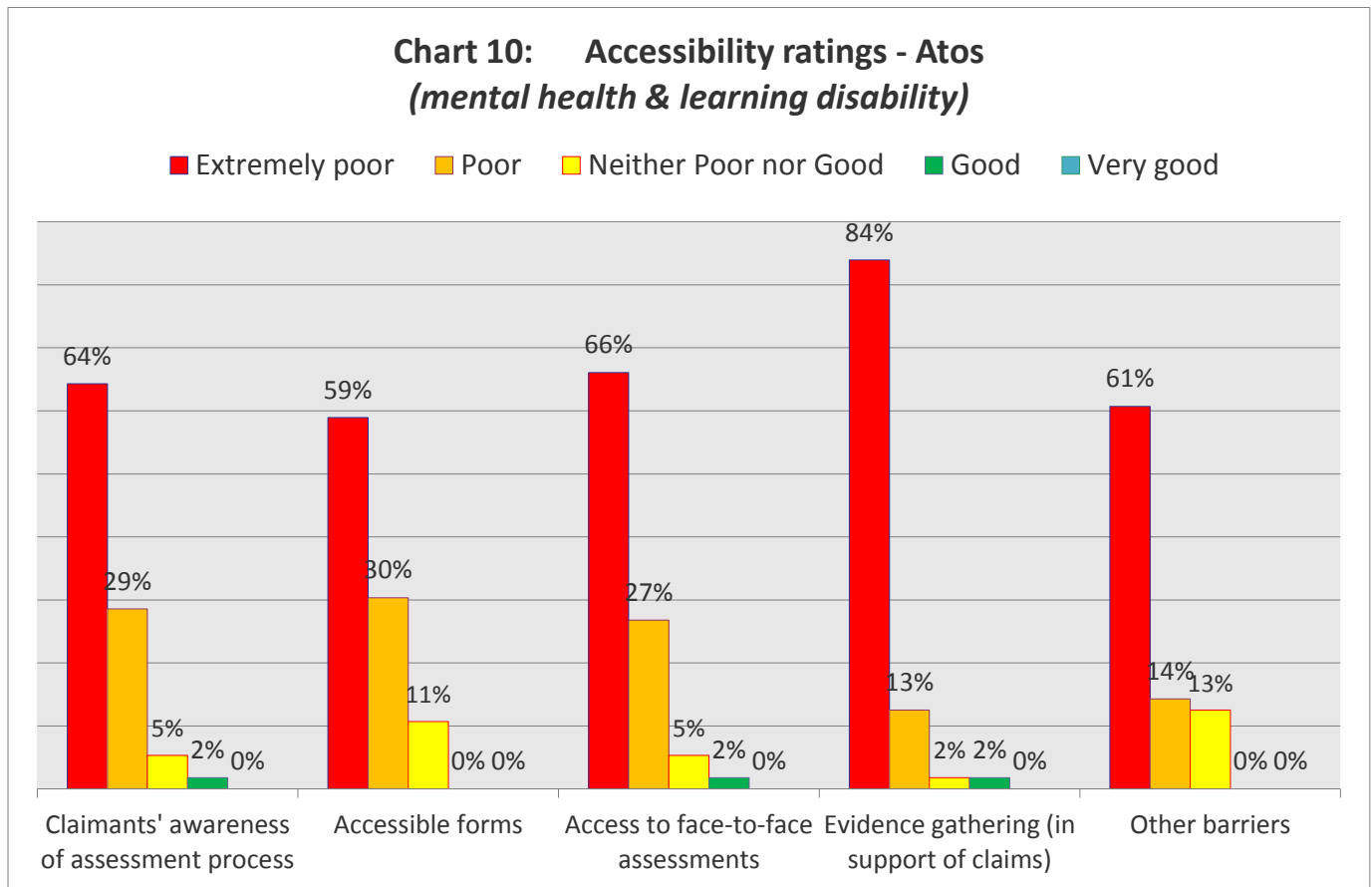
There were some reports that provision of translation for claimants who do not have English as first language was very poor and there was one case where a British Sign Language interpreter was refused outright. On the positive side, there was some evidence that some JCP staff were willing to undertake interviews over the phone for claimants that suffer from mental ill health.

## ACCESSIBILITY - ATOS

Specifically, we asked members to rate the Atos' abilities to facilitate an '**Accessible**' service for claimants that suffer from **Mental health and/or Learning difficulties**, under the following categories:

- Claimants' awareness of assessment process
- Accessible forms
- Access to face-to-face assessments
- Support with evidence gathering
- Other barriers

A summary of the results are shown in Chart 10 below:



## COMMENTS

**Communication of process:** According to respondents vulnerable claimants were poorly communicated with on all levels. This almost always left such claimants open to further challenges along later on in the WCA process.

**Forms:** On a related point, numerous respondents outlined that forms were unclear, missed capturing key evidence, and on the whole were not readily comprehensible by claimants with mental ill health or a learning disability. Respondents reported that poorly written claimant evidence on completed esa50s would be later used against a claimant even though it was clear that the claimant did not understand the question or engage with the process. Exceptional circumstances criteria routinely not captured by the esa50 form (nor at assessment).

**Assessments:** Respondents outlined the lack of understanding at Atos assessments of the communication challenges that such claimant groups face. Respondents also reported that advocates were often not available (due to demand) or when they were they were in some cases not permitted to speak or intervene on behalf of a claimant with communication problems. On a similar note, some respondents with large numbers of refugee client groups, outlined problems with interpreters not relaying adequately the relevant information to the HCP at assessments and vice-versa, with the result of the claimant scoring insufficient points and having to then challenge the decision.

Other reported accessibility issues with assessments included a perception that there were too many assessments without appropriate justification; inaccessible assessments centres; long waiting times; arduous process for requesting home-assessments. For example, where a GP letter in support of this often triggered a fee which the claimant could not afford and so had to choose between serious trauma of attending or losing out on benefit (often the latter) and then appeal without recourse to basic assessment phase rate ESA for some time.

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*“Atos have a one size fits all approach and don’t seem to make any adaptations for mental health or appreciate the realities of living with mental health, home visits regularly refused”*

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**Evidence:** As outlined earlier, there were widespread reports amongst respondents that there was a serious lack of interest in supporting vulnerable claimants with evidence gathering (i.e. via the esa113 process) and a lack of effort to make reasonable adjustments. Rather, there was a common perception that Atos were applying a ‘one size fits all’ approach.

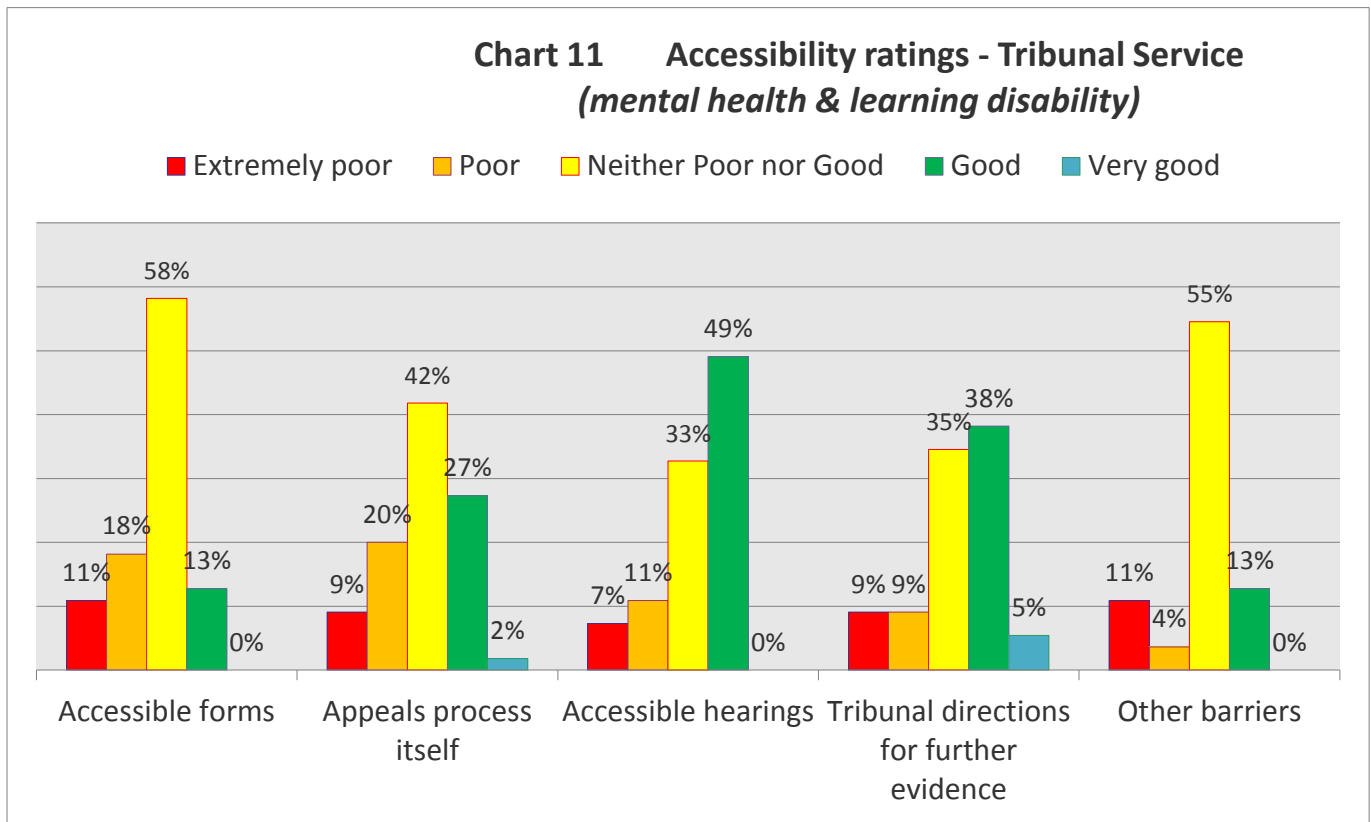
#### ACCESSIBILITY – TRIBUNAL SERVICE (HMCTS)

Specifically, we asked members to rate the **Tribunal Service’s** (HMCTS) abilities to facilitate an **'Accessible' service** for claimants that suffer from Mental health and/or Learning difficulties, under the following categories:

- Accessible forms
- Appeals process itself
- Accessible hearings
- Tribunal directions for further evidence

- Other barriers

A summary of the results are shown in Chart 6 below:



## COMMENTS

Under this section, NAWRA received generally very positive reports. Although in general the Tribunal service was reported as having high regard creating an inclusive environment for all appellants, there were a number of concerns with regards to variability and impeded access for claimants that suffer from mental health challenges, particularly, social or other phobias.

**Forms:** Many respondents noted that the appeal forms were totally inaccessible for claimants with mental ill health or learning disabilities. However, with representative support claimants managed well on the whole.

**Awareness:** Again, a number of respondents reported that the claimants they supported were totally unaware that they needed to appeal direct to the Tribunal service under the revised rules; as a result many appellants were dropping out of the appeal process altogether.

**Hearings & Evidence gathering:** There is a sense in the evidence that Tribunals were reluctant to postpone for appellants even where these requests were in time and there was good



reason (i.e. the representative was unavailable on a given day and an appellant required an advocate); this was seen to unnecessarily impede access to justice. Reports also suggest that there is a general reluctance to use the Tribunal directions process. However, there is evidence to suggest that where a hearing goes ahead without a representative *and* there is no evidence, Tribunals seem to be making an increased effort to adjourn and make directions for evidence. Finally, there were reports that there was a serious lack of appropriate weight given to non-medical evidence, such as verbal evidence from carers. This was seen as a wasted opportunity because such witnesses might typically have in-depth and relevant knowledge of a given appellant's limitations on a daily basis. Other barriers included that some Tribunal buildings were reported as being poorly lit (creating a sense of foreboding terror for some appellants) and some buildings in various parts of the UK were held within criminal court buildings - which was seen to seriously intimidate and deter some appellants. In terms of language, there were also some reports that language during hearings can be overly formal, or rude and intimidating at times.

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*“There is no specific support in place for this client group. Once again, I do not know how people would cope if not for the help of Welfare Rights, CAB and other voluntary organisations”*

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## SUMMARY

NAWRA welcomes the need for claimants to be supported through into work where possible. However, in terms of experiential and qualitative data on the WCA, what is clear is that the WCA has considerable inefficiency, unfairness and discrimination built in to the whole process. As this assessment is the process by which disabled claimants are supported into work (or otherwise), the human cost of getting this wrong, as is happening on a daily basis, is for NAWRA members far too great to ignore or dismiss as trivial. There also remains an all-pervasive belief that the WCA has been guided by ill-informed perceptions that most claimants are malingerers. At the same time, the third sector is picking up the pieces from WCA failings whilst also being squeezed with massive cuts to services from local and national funding.

The Government clearly has a gargantuan challenge if it is truly to make the WCA fit for purpose. For this to happen, it will need considerable overhauling and such change cannot happen unless claimants are seen as valued members of society. There have been widespread and consistent concerns about the WCA since its inception and this has now culminated in the DWP pulling Atos

out of the WCA contract. This offers us a new opportunity to make things right. Government must therefore ensure that competence, fairness and sensitivity are re-introduced into the WCA process.

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*“The problems with the WCA will not disappear so long as claimants are treated with suspicion. An attitude seems to have developed, at least with Atos staff that claimants are malingerers and that the role of the HCP is to sniff these malingerers out.”*

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## KEY RECOMMENDATIONS

NAWRA recommends that if Government were to focus on the following **key recommendations**, this would go some considerable way to finally making the WCA ‘fit for purpose’:

- better and more effective communications with claimants (and their advocates) overall, including clearer details about what benefit a claimant has, the relevant components, amounts and rights to request MR or appeal. More efforts to reach out to claimants (and their advocates) effectively by phone and text as well as on paper. DWP should take ownership and responsibility for the entire WCA process, end to end, in order to encourage a seamless service for claimants.
- better sharing of info between DWP decision makers and JCP/contractor staff so that the JCP adviser that sees a claimant is aware of the health/disability issues before they meet them and can therefore give more constructive support; and more disability specialists in JCP Offices and more support given to claimants who need it in order to facilitate better engagement with WFIs or WRA and more flexibility and discretion prior to applying sanctions
- avoid assessments where possible and make effective use of evidence gathering via the esa113 process in order to inform better quality decision-making and reduce unnecessary burdens on claimants who are unable to cope with administrative demands of supplying copious amounts of evidence in support of claims
- NAWRA understands that there is still further work to be undertaken on the descriptors. Bearing in mind that in terms of disabling conditions, there are real limits to what

descriptors are currently able to effectively cover, NAWRA recommends that DWP follows good practice conducted by the Tribunal service by making more effective use of the exceptional circumstances regulations. As the Upper Tribunal have noted<sup>9</sup> exceptional circumstances regulations do allow the claimant to be looked at as a "*whole person*" or system of interrelated functions and abilities in contrast to the descriptors which are very specific.

- In line with the recommendations released on 23<sup>rd</sup> July 2014, from the Work and Pensions Committee inquiry, NAWRA recommends a return of the assessment phase rate ESA to be paid during the MR period to provide continuity and withdraw the "*current illogical arrangement whereby claimants seeking MR are required to claim Jobseeker's Allowance (JSA) instead of ESA*"<sup>10</sup>. This will help avoid undue stress, hardship and artificial barriers for vulnerable claimants due to this unworkable policy.
- In line with the Governments general duties "*not to discriminate*" and to "*foster good relations between people who share a protected characteristic and those who do not*"<sup>11</sup>, NAWRA wants to see a radical change in culture and approach at DWP and its contractors where claimants are not treated with suspicion but rather, are treated with the sensitivity, value, dignity and respect that they rightly deserve.

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<sup>9</sup> [2013] UKUT 359 (AAC) para 15

<sup>10</sup> <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmworpen/302/30203.htm>

<sup>11</sup> <http://www.legislation.gov.uk/ukpga/2010/15/section/149>