

MIDDLESBROUGH COUNCIL

AGENDA ITEM 3

OVERVIEW & SCRUTINY BOARD

8 APRIL 2014

THE IMPACT OF WELFARE REFORM IN MIDDLESBROUGH
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PURPOSE OF THE REPORT

1. To introduce the format for today's meeting and present information received from the Department for Work and Pensions (DWP)

RECOMMENDATIONS

2. That the Overview & Scrutiny Board notes the findings and considers how it would like to progress consideration of this topic.

CONSIDERATION

Previous Evidence Received

3. Work Capability Assessments - The Board will recall that at the last meeting Members wanted to gain an understanding of how the assessment process worked, the qualifications of the staff undertaking the assessments and how the appeals system operated. Representatives from the Department of Work and Pensions and Atos Healthcare then attended that meeting to present that information.
4. An invitation to attend the next Special OSB meeting was sent to the DWP along with a detailed briefing of points where Members required further information.
5. The DWP chose to answer the questions in a written briefing which is attached to this report at appendix 1. The report makes reference to further information contained within web links. Brief details of this information are contained within appendix 2.

Atos – Update

6. Since the meeting, it was announced on 27 March that the Atos contract to administer the Work Capability Assessments was to come to an end following government criticism of 'significant quality failures'.¹ A new company will be appointed in early 2015. Atos has agreed to work hard to support the transition to

¹ BBC News 27 March 2014

a new provider and there will be no change for those applying for Employment and Support Allowance.

An Update on the Position in Middlesbrough

7. In order to provide an update to the panel on work being undertaken locally the following representatives have been invited
 - Nigel Sayer – Chief Executive’s Office Manger
 - John Daniels – Manager, Middlesbrough Citizens Advice Bureau
 - Cllr Tracy Harvey

BACKGROUND PAPERS

- a) No background papers were used in the report.

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APPENDIX 1

The following questions were given to the Department for Work and Pensions

- 1) Why was it decided that when GPs are being trusted to take over the administration and budgeting of the NHS from PCTs are they now not trusted to say whether or not their patient is capable of work?

The WCA is a functional assessment, assessing what people can do rather than what they cannot. It assesses people based on their individual needs rather than simply labelling them because of their condition.

The Department does not ask claimants' GPs or consultants to make a decision about a patient's capability for work. The role of Atos HCPs is different to the role of GPs – they are specialists in disability assessment, whereas the role of GPs is to diagnose and treat their patients.

GPs are clear that their role as patient advocates means they should not be making benefit entitlement decisions as this good affect the doctor-patient relationship. For example, the British Medical Association has said:

“It is not, however, the GP's role to provide any opinion on the patient's capability to work as part of this process. It is vital that these two roles are kept separate and that GPs are not asked to provide opinion on their patient for the purpose of receiving the Employment and Support Allowance (ESA); doing so could damage the doctor-patient relationship.”

- 2) The WCA was conceived before the recession, when jobs were readily available, what happens when someone is declared fit for work, how successful has the DWP been in getting people in to 'work related activity'?

The WCA is designed to test functional capability, not employability. In practise, this means the assessments looks at if and how the claimant's health condition or disability limits their ability to perform a range of tasks in the modern workplace, not whether they have the skills and experience to work or whether they could still do their previous job (where applicable).

As part of his second independent review, Professor Harrington asked CAB to provide evidence and recommendations about whether the WCA should contain a 'real world test'. Professor Harrington concluded that CAB's recommendations failed to “offer clear, evidence based advice on what a real world test might look like”. Therefore he was unable to progress the work further and/or make recommendations to DWP. However, he did recommend improving the 'baton pass' between DWP and Work Programme providers by sharing WCA outcomes.

Anyone placed in the Work Related Activity Group will have a Work Focused Interview, and may be required to undertake Work Related Activity.

As well as the JCP offer, the Work Programme has been introduced to support claimants at risk of long-term unemployment. Providers have the freedom and

flexibility to deliver tailored support to individuals after their WCA outcome is known.

The Work Programme is better designed than our previous employment programmes, and is supporting more people than any previous programme.

- 3) Enquiries to our local CAB by people contacting them about the ESA have risen, year after year. The media have also reported that the experience is still 'traumatic' for many people. What is being done to review the advice and support to clients and to make the overall process less traumatic and simpler to understand.

We are committed to continually improving the WCA to make it as fair and accurate as possible, and to ensure that claimants understand the process and the reasons why decisions have been reached.

The independent review process is a key part of this. As a result of Professor Harrington's recommendations we have:

- Improved the letters to claimants to ensure they are clearer, less threatening, contain less jargon and fully explain the process;
- Updated the ESA50 to include a more personalised justification so that claimants can express how their condition affects them in a short paragraph; and
- Introduced a Decision Assurance Call to discuss the proposed decision with a claimant before the final decision is taken.

Dr Litchfield published the fourth independent review of the WCA in December 2013 and made further recommendations about communications with claimants, including comprehensively reviewing all letters and forms to ensure they meet plain English standards, information is presented at the right point in the process, the claimant is clear about their rights and responsibilities, and decision letters set out clearly the outcome and what that means in practical terms for the claimant.

We are currently considering these recommendations – along with Dr Litchfield's other recommendation – and will respond in the first quarter of 2014.

In addition to these changes, the Department keeps its processes under constant review, including six monthly reviews of the ESA50.

- 4) Welfare rights groups and disabled organisation have voiced their concerns about some aspects of the test, and in particular, how the tests don't take into account people's fluctuating conditions and mental health issues. Are there any improvements being planned to address this?

As part of Professor Harrington's second independent review of the WCA, he recognised concerns raised about how the WCA works for people with mental health and fluctuating conditions. He invited external stakeholders to review the mental descriptors and the fluctuating conditions descriptors were asked to make recommendations for changes.

The charities presented recommendations for changes and further work was undertaken to refine the proposals. The 'alternative' assessment was approved at the end of August 2012. This alternative assessment was then compared to the current assessment through the Evidence Based Review.

The Evidence Based Review provided a unique opportunity to understand how we can make the WCA fairer and / or more accurate by systematically reviewing the existing descriptors against a different version developed in consultation with charity groups.

The findings of the Evidence Based Review were published on 12 December 2013 and can be accessed through the following link - <https://www.gov.uk/government/publications/work-capability-assessment-evidence-based-review>

The findings indicate that overall, the WCA is a valid assessment relative to experts' opinions about people's fitness for work. This study is an important step in developing understanding of this complex area. The Department is currently considering the findings of the Evidence Based Review and will respond later in the year.

- 5) There is a concern that there are flaws in the assessment process due to the number of appeals which are submitted and the number of decisions which are overturned. The Board would like to see statistics on the numbers of assessments that are overturned and would like to know why the current process does not result in more accurate assessments.

Appeals statistics are available in Table 3 of the Excel spreadsheet available here: <https://www.gov.uk/government/publications/esa-outcomes-of-work-capability-assessments-january-2014>.

The reasons why Tribunals overturn DWP decisions are many and varied. When a Tribunal overturns a DWP decision, it is not necessarily because that decision was wrong. One reason for Tribunals overturning DWP decisions is the oral evidence given at the Tribunal hearing by the claimant. Usually, it is not new but the claimant's explanation of their condition and this can be persuasive. Tribunals overturned only around 15% of fit for work decisions made.

We have been working with HMCTS (HM Courts and Tribunal Service) to try to understand the reasons behind the decisions they take. Since July 2012 we have piloted the use of drop down menus for tribunal judges to state what the reasons were for overturning decisions. Early analysis, published in November 2012, is available here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/223139/sscs_appeals.pdf.

From June 2013 HMCTS implemented a more comprehensive summary of reasons pilot and the Department is currently assessing this data. HMCTS is working with the tribunal's judiciary to implement the provision of summary reasons across other Tribunal venues, and for appeals brought against other

types of benefit claims. By gathering data in these forms the Department hopes it can inform any changes or improvements made to the WCA process to prevent cases going to Tribunal and ensuring the correct decisions are taken in the first instance.

The summary reasons take the form of written text which is incorporated into the Decision Notice issued by the Tribunal, which is sent to the appellant and DWP. The written summary reasons should enable the judiciary to say what the nub of the argument and evidence was on which they relied, with the legal basis for their decision.

- 6) There are also anomalies in assessments, for example evidence suggests people with serious health conditions are still being declared fit for work. The Board would like to discuss why this happens and what is being done to prevent this.

As noted above, decisions about entitlement to ESA are based on functional capability and not the claimant's health condition or disability.

However, the Department are committed to right first time decisions. As such, we have developed an appeals strategy, which aims to build on the right first time approach to decision making by:

- Resolving benefit disputes, where possible, through the internal dispute resolution procedures within DWP; and
- Ensuring that, when appeals are escalated outside of DWP, the process for dealing with them is proportionate and appropriate.

Key strategy outcomes by which future activity can be assessed include:

- Preventing disputes through improved quality of the initial decisions;
- Through mandatory reconsideration reducing the number of appeals;
- Through mandatory reconsideration resolving disputes within the Department;
- Learning from mandatory reconsideration; and
- Learning from summary reasons whereby the Social Security and Child Support (SSCS) Tribunals provided written summary reasons for their decisions on benefit appeals.

More generally, the Department recognises that mistakes can be and are made in decisions. We are committed to reducing these mistakes, and learning from them. We are happy to discuss this in more detail if helpful.

- 7) It is not clear how the contractor performance has contributed to the high level of successful ESA appeals however
 - a. How can DWP decision makes ensure quality decisions are being made?
 - b. Are there any plans to consider current contractual targets to ensure that they are sufficiently challenging?

a). Professor Harrington's independent reviews focused heavily on the role of the Decision Maker, and how we could best empower them to make sure they

are making robust, evidence-based decisions rather than “rubber stamping” Atos recommendations. We have implemented these recommendations. Dr Litchfield also made recommendations about the decision maker’s role and how to simplify the WCA process. We are carefully considering these recommendations as part of our response, which will be published in the first quarter of this year.

More generally:

- We have put decision makers at the heart of the process and introduced the Quality Assessment Framework (QAF) to improve the quality of decisions made.
- DWP conducts a regular audit of DM performance; where checks are made on a sample of ESA and IB Reassessment decisions.
- DWP conducts twice yearly calibration exercises at a National level to ensure that there is a consistent application of the QAF.
- Over 90% of decisions have met the required standard each month between February and September 2012.
- The QAF focuses on ESA WCA disallowance decisions. The aim of the Decision Making QAF is to identify any fundamental errors, rather than minor mistakes.
- The standard set for Quality Checking requires that a number of criteria be met. A decision that fails on one or more of these points will not reach the required standard.

b). As is standard in service contracts, the current contractual agreement between DWP and Atos Healthcare contains key performance indicators covering a range of features including throughput, customer service and medical quality.

In addition, detailed monitoring of Atos performance is undertaken weekly by DWP and weekly discussions about performance issues are held with Atos.

We take a robust approach to managing the contract with Atos Healthcare, including the application of service credits where service levels have not been met.

- 8) The main recommendations from the Harrington review involved, improving communications with claimants, improving communications within DWP operations, improving the face-to-face assessment, establishing quality dialogue between DWP and first-tier tribunals, keeping the decision maker central to the assessment, monitoring changes to the WCA and completing work underway on the descriptors. Have the recommendations from the Harrington review been fully implemented, and what improvements have been seen as a result?

Over the course of his three reviews, Professor Harrington made a total of 49 recommendations covering a number of different aspects of the WCA. 35 of his recommendations were accepted in full by the Department and 10 were accepted in principle or provisionally. Of the remaining four recommendations, three were not within DWP’s remit (these were from the year one review and

concerned the First-tier Tribunal Service); and one concerned areas for future independent reviews.

During the course the most recent independent review Dr Litchfield looked in detail at how the Department had implemented Professor Harrington's recommendations. He concluded that:

- Of those accepted in full, 29 had been fully implemented, three had been partially implemented and three more are still in progress; and
- Of those accepted in principle five had been fully implemented, two partially implemented, and three are still in progress.

We welcome Dr Litchfield's assessment of the implementation of Professor Harrington's recommendations and we are working to implement the six recommendations that are still in progress.

- 9) The Board appreciates that changes have been made to the WCA following internal reviews, is the current approach which is to 'make continuous improvements to the process' the right approach or is a more fundamental review of the WCA needed?

Successive independent reviews, by highly respected experts, have confirmed that the WCA is the right concept, but that changes are needed to improve the assessment. We therefore remain committed to continuous improvement.

As noted by Professor Harrington, although there have been criticisms of the current system no-one has proposed a workable, consistent and equitable alternative. The Government supports this view.

Appendix 2 - Details of the information contained within the web links given by the DWP in their document at appendix 1

Findings of the Evidence Based Review

The Evidence Based Review of the Work Capability Assessment (WCA) is a study to examine the performance of the instrument used to assess entitlement to the Employment and Support Allowance and an alternative vision of the assessment that was developed by specialist disability representative groups which arose from a recommendation in Professor Harrington's second review.

Several disability representative organisations were asked to propose ways in which to improve the assessment of fluctuation in physical and mental health conditions.

The research considered

- How did the two assessments work when applied to claimants? What were the assessment outcomes?
- Which assessment performed better overall in terms of validity and consistency.

When a sample of claimants were assessed with the WCA model and the Alternative Assessment Model (AA) the AA, in general claimants were more likely to score points in the AA than the WCA. Claimants had a slight preference for the AA model.

Claimants' files were also reviewed by an expert panel. The WCA models was found to correspond more closely with the expert panel opinion over a wide range of indicators that it the AA model. The WCA and expert panel assessments were more likely to agree when panels felt someone was fit for work. However, where someone was considered to have limited capability for work by expert panels, the panels were more likely to agree with the AA.

Conclusion

The AA model, developed by disability representative organisations, showed that semi-structured interview style of assessment could be used and was well-received. However, some aspects of the AA proved more challenging. For example *Mobilising* was an area in the AA where claimants were more likely to receive points, but where Health Care Professionals most commonly reported difficulty in assessing the activity. The AA was better at detecting limitations with specific areas of functioning, including those which would not be significant enough to have an effect of work capability, as it focused more on indicating fluctuations in health within the assessment criteria. The overall findings suggest that the WCA performed better than the AA – the WCA produced consistent results on the whole, and is an accurate indicator of work capability as compared with expert opinion.

ESA: Outcomes of WCA assessments – Quarterly official statistics bulletin

Headline Figures

New Claims to ESA

The following numbers give the most consistent measure of the outcomes of completed assessments, by excluding outcomes after appeals for new claims for Employment and Support Allowance (ESA). However, by excluding the effect of

appeals this is likely to underestimate the proportion of claimants who will eventually be awarded the benefit.

Outcomes of completed initial assessments for claims started from January 2013 to March 2013.

- 38% of claimants have an outcome i.e. decisions have been made on their claims
- 35% of claimants had their claim closed before having a face to face assessment
- 27% of claimants were still undergoing assessment

Claimants with an outcome for their claim can be broken down as follows

- 61% of claimants were entitled to the benefit
- 39% of claimants were assessed as fit for Work and are no longer eligible for Employment and Support Allowance.

146,100 incapacity benefits claimants have been referred for reassessment in the period from January 2013 to March 2013. Since the start of the reassessment process up to March 2013 a total of 1,078,200 incapacity benefits claimants had been referred for reassessment.

Overtured Appeals Statistics

Headline figures

35.7% of appeals allowed by the tribunal did not have reasons ascribed for why the DWP decisions were overturned. A possible explanation for appeals without reasons attributed to them might be due to the time needed to raise awareness of the drop-down list amongst the judiciary.

Therefore 64.3% of appeals allowed by the tribunal do have reasons attached which is broken down as follows

- 40.5% were due to more forceful, clear and persuasive oral evidence provided by the appellant. This could suggest the differences between DWP and the Tribunal approaches to decision making.
- 15.1% were caused by a different conclusion being reached on substantively the same facts
- 8.1% were based on new documentary evidence provided by the appellant. This means that there were factors that led to a delay in producing documents ahead of the Tribunal.
- 0.3% were put down to the DWP decision maker misapplying the law.
- 0.3% were because medical or functional assessment reports relied on by DWP decision makers contained errors.