

## **'People awaiting a Work Capability Assessment'**

### **House of Lords Oral Question Wednesday 5 November 2014**

**The British Medical Association (BMA) is an apolitical professional association and independent trade union, representing doctors and medical students from all branches of medicine across the UK and supporting them to deliver the highest standards of patient care. We have a membership of over 153,000, which continues to grow every year.**

#### **Introduction**

The BMA believes in principle that work is good for health and well-being. We recommend to doctors to work closely with all interested parties in facilitating their patients' safe and timely return to the most suitable and meaningful employment.

The Work Capability Assessment (WCA) was introduced by the previous Government in 2008 to prevent a rise in new incapacity benefit claims. The current Government expanded the scheme in 2010 to reassess all 1.5 million people on sickness benefits. Since its inception in 2008, the BMA has repeatedly raised concerns expressed by its membership over how the WCA and ESA (Employment Support Allowance) process impacts on them and their patients. We believe that the inadequate computer-based assessments that are used have little regard to the nature or complexity of the needs of long term sick and disabled persons.

**Our position remains that the WCA process should be scrapped with immediate effect and replaced with a rigorous and safe system that does not cause avoidable harm to the weakest and most vulnerable in society.**

#### **Background**

WCAs are carried out by healthcare professionals, many of whom are not doctors, working directly for Atos Healthcare. General Practitioners (GPs) have a defined role in the process, providing a factual report (ESA113) based on the information contained within the claimant's patient medical report.

GPs are also increasingly being asked to provide further information by the claimant for their appeals. However, it is not part of the GP's role to provide any opinion or recommendation on the patient's capability to work as part of this process; doing so could damage the doctor-patient relationship. It is also important to note that the majority of GPs are not specialists in occupational medicine and are not able to make such judgements; this is why specific medical practitioners are trained by Atos Healthcare<sup>1</sup> to undertake these assessments. On 27 March 2014, it was announced that the Government's contract with Atos to administer assessments would end a year early. The Government announced on 30 October 2014 that MAXIMUS Health and Human Services Ltd has been awarded the contract to deliver health related assessments including the Work Capability Assessments for DWP. The contract is to provide a national service for three years, with the option to extend twice by a further year. Operational service will commence on 1 March 2015.<sup>2</sup>

## **The decision-making process**

The BMA is concerned that the current process does not adequately assess claimants in a fair and proper manner, and as a result causes unnecessary distress. We believe that the computer-based systems used make it very difficult for the healthcare professionals carrying out the assessments to exercise professional judgement. We are concerned that these factors lead to some of the most vulnerable and weakest in our society not receiving the support that they need through the ESA.

In our most recent submission of evidence to Dr Paul Litchfield's 4th review into the WCA, we reiterated our longstanding belief that improvements are needed at the assessment stage, to enable those conducting the WCA to have a much more accurate and comprehensive view of the claimant's situation. We believe that in doing this the number of appeals registered to claimants will reduce significantly. This in turn will limit the number of additional requests to GPs for further information about claimants appealing. We met with Dr Litchfield and submitted written evidence towards the 5th and final review of the WCA. We highlighted the pressure on GPs and what more the DWP could do to assist them.

Following the review Dr Litchfield has now recommended that the DWP and BMA work together on designing a new electronic ESA 113.<sup>3</sup> The BMA is currently working with the DWP to improve this process. We also welcome Dr Litchfield's further recommendations to improve the claimant's experience during assessment as well as general communications.

## **Scoring of assessments**

As a result of previous reviews, we understand that the WCA has increased the threshold for scoring points. We do not feel that this had made the system more effective or fair. The current WCA process is based on 17 activities with associated 'descriptors' used to award points to claimants based on ability to perform certain workplace related tasks. In order to be deemed fit to work the claimant has to score less than 15 points on this test with the score determined as the total from all of these activities. Descriptors include activities such as picking up and moving a one litre container with either hand. Where a claimant is unable to perform this task, they are awarded 9 points.<sup>4</sup>

In his review, Dr Litchfield suggests that emphasising the points scale gave a false impression of scientific validity and appeared to drive unhelpful behaviours. He also stated that: 'Various stakeholders expend considerable effort on deciding whether a points score should be altered even when it will make no difference to the outcome. The Department should review its use of WCA scores, place less emphasis on the number attained and simply use the calculation to determine whether the threshold for benefit has been reached.'

## **Appeals**

To date, 41 per cent of all 'fit for work' decisions have been appealed against and in 31 per cent of cases, the DWP's initial decision was overturned.<sup>5</sup> These figures relate to decisions up to June 2013, and figures for more recent dates are likely to change as more appeal cases are heard by the Tribunal Service.<sup>6</sup> Appeals are decided by a judge and independent doctor at tribunal but due to the number of cases which go through the appeal process, there are still backlogs of up to 18.9 weeks<sup>7</sup> which is understandably concerning for doctors and their patients. The backlog of cases means that a large number of claimants are denied the full level of benefit that they are entitled to until their appeal is heard and a fresh decision is made. Despite the fall in the number of overturned decisions, the BMA remains concerned that a high number of appeals creates extra and unnecessary work for GPs. It appears that claimants whose initial claims are unsuccessful are told that additional evidence obtained directly from their GP is likely to help with any appeal.

The BMA is aware of anecdotal evidence suggesting that claimants are being encouraged by the DWP or Atos to approach their GP directly for more information to help with appeals. Although GPs are not under a contractual obligation to provide such evidence directly to their patients, these requests place GPs in a difficult position that can potentially compromise the doctor-patient relationship. In addition, these requests are inappropriately taking up limited GP appointment time which should be used for therapeutic interventions, not administrative burdens, as outlined in the 2001 Cabinet Office Review of bureaucracy in General Practice.

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## Notes and references

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<sup>1</sup> Atos were appointed as the sole provider for carrying out work capability assessments in 2008. On March 27 2014 it was announced that the contract with Atos to administer assessments would end a year early. The Government is currently seeking a new provider to replace Atos. Atos will continue undertaking tests until a new company is in a position to take over. Commons Hansard 27 Mar 2014: Column 57WS <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140327/wmstext/140327m0002.htm#14032769000011>

<sup>2</sup> Written ministerial statement, 30 October 2014: <http://www.publications.parliament.uk/pa/ld201415/ldhansrd/text/141030-wms0001.htm#14103048000095>

<sup>3</sup> An Independent Review of the WCA – year four: Dr Paul Litchfield, December 2013, London : TSO p9

<sup>4</sup> A Guide to ESA (ESA214, June 2011) Department for Work and Pensions

<sup>5</sup> DWP, *Employment and Support Allowance: Outcomes of Work Capability Assessments, Great Britain – new claims*, 11 September 2014. Para 1.1.4, Tables 3 and 4

<sup>6</sup> DWP, *Employment and Support Allowance: Outcomes of Work Capability Assessments, Great Britain – new claims*, 11 September 2014. Para 1.1.4

<sup>7</sup> <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140206/text/140206w0001.htm#14020676002605>