

Centre for  
Mental Health



*dhú eallraí  
a aifeach  
modair díreáil*

**hafal**

*for recovery  
from serious  
mental illness*



**mental  
health  
foundation**



for better mental health

**Niamh**

*Mental Wellbeing*



**Fourth Independent Review of the Work Capability Assessment  
Call for Evidence - *Response from Centre for Mental Health, Hafal, Mental Health Foundation, Mind, the Northern Ireland Association for Mental Health, Rethink Mental Illness, the Royal College of Psychiatrists and the Scottish Association for Mental Health***  
**(23 August 2013)**

**Summary**

We recognise that there have been some improvements to the Work Capability Assessment (WCA) over recent years and this has resulted in more people accessing the benefit after their initial assessment.

However, we continue to hear from people with mental health problems on a daily basis that the process is distressing, that it does not seem to understand the impact of their conditions, and that ultimately they often receive an outcome that they believe to be inaccurate and inappropriate.

The evidence that we have access to suggests that there has not been enough progress in implementing the recommendations put forward by Professor Harrington in the first three Independent Reviews. We also believe that there are further changes (detailed in questions six and eight), acknowledged but not addressed by previous reviews, which need to take place if the assessment is to be fair and accurate for people with mental health problems.

**Key recommendations:**

- An evaluation of whether the WCA is allocating people into groups for which the related requirements and support are appropriate and beneficial in terms of their health and progression towards work
- More detailed monitoring of the impact of changes to the WCA process on different groups of claimants, such as those with mental health problems
- Additional evidence about people with mental health problems should be collected by the assessor wherever there is a possibility that the application form and/or face-to-face assessment have not provided a full and accurate picture of how the person's condition impacts on them
- An evaluation of assessor expertise in mental health problems and impact on quality of assessment and recommended decision about group allocation
- Greater transparency in the assessment process so that people know what information has been recorded about them
- The frequency of reassessments needs to take account of the impact the process has on people with mental health problems and their recovery
- Renewed efforts to require DWP Decision Makers to consider all available evidence before making a decision
- Greater clarity in the role of health services in providing information to support decision making, including clearer communication about what information is relevant
- More efforts to ensure that people have access to good advice and support as they go through the ESA application process

## Introduction

We welcome the opportunity to contribute to the fourth Independent Review of the Work Capability Assessment (WCA). The WCA process plays a key role in the lives of many people with mental health problems and we believe that the input of the collective experience of our organisations is vital to the ongoing improvement of the assessment.

Between our organisations, we advise, support, provide services to, and represent hundreds of thousands of people with mental health problems. We also have considerable expertise around mental health and how it impacts on people's lives, including their ability to work. In this context, while we recognise the Review's request for specific evidence around the performance of the WCA (and we have provided this where possible) we also believe that our organisations' collective experience of listening to and supporting people with mental health problems going through the WCA provides valuable insight into how the assessment is functioning for this group of people.

The key evidence we will be drawing on in our submission includes:

- Data from the Disability Benefits Consortium (DBC) 'Adviser Survey' and 'Big Benefits Survey' (both of which will be submitted in full to the Review by the DBC)
- Extracts from a recent judicial review judgment relating to the ESA process for people with mental health problems, in which Mind and Rethink intervened<sup>1</sup>
- Government data (from statistical releases and Parliamentary Questions)
- Research and individual reports collected by each of our organisations

Although we acknowledge the parameters of the Independent Review in terms of where recommendations can be made, we believe that it would be a mistake not to look at the assessment in the context of the wider system in which it sits. The WCA ultimately decides how much financial support will be available to someone, what employment support they will be offered, and what activities they will be required to do. All of these factors need to be taken into account when considering how effective the WCA is.

We recognise the significant work that Professor Harrington put into reviewing the WCA over the previous three years and we welcomed many of the recommendations he made for reforming the WCA. We believe that these recommendations have led to some improvements in the system and that ongoing work he put in train, such as the 'Evidence Based Review' of the descriptors will lead to further improvements.

However, we continue to have serious concerns about the WCA and the approach to reforming the assessment and surrounding process:

- We continue to hear from people on a daily basis who have had a bad experience of the face-to-face assessment itself and/or have received an outcome to their ESA application that they do not feel takes account of the barriers they face.
- Many people report to us that they are struggling to cope with what is expected of them if they are found "Fit for Work" or placed in the Work Related Activity Group (WRAG), particularly since the requirements placed on people in the WRAG have been increased significantly.
- We do not believe that the previous Independent Review recommendations have had the full impact that they were intended to in a number of key areas.
- Despite reforms, we do not believe that additional evidence from the healthcare or support professionals of applicants being appropriately collected or rigorously considered during the decision making process.

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<sup>1</sup> MM & DM v Secretary of State for Work & Pensions, 22/05/2013  
[http://www.osscc.gov.uk/judgmentfiles/j3792/JR\\_per\\_cent202639\\_per\\_cent202012-00\(INT\).doc](http://www.osscc.gov.uk/judgmentfiles/j3792/JR_per_cent202639_per_cent202012-00(INT).doc) – throughout this submission we will indicate the paragraph number for quotes from the judgment

- As yet, there has not been a proper examination of whether assessors with expertise in key areas, such as mental health, would make a fairer and more informed assessment of applicants with such conditions.
- People are being reassessed too frequently, which is having a detrimental impact on their health and their chances of ultimately returning to work.
- The vital role that welfare rights advisers play in the WCA process has been overlooked. Diminished access to these services means that many more people, particularly those with mental health problems, will struggle to navigate the WCA process and receive an accurate fair decision.

**1. The WCA seeks to identify and differentiate between claimants whose condition(s) means they are:**

**a) unable to undertake any form of work related activity (Support Group);  
b) currently unable to work due to illness or disability (Work Related Activity Group); and c) fit for work.**

**What evidence and examples can you provide as to the effectiveness of the WCA in doing this? In your opinion, what are the strengths and weaknesses of the WCA identification process?**

We welcome the inclusion of this question in the call-for-evidence as it is fundamental to the operation of the WCA. We believe the WCA identification process is flawed on a number of different levels:

- Applicants are allocated to groups based on a notional definition of different levels of capability, rather than whether the support and expectations linked to each group would be most appropriate for that person.
- The requirements placed on people in each of the groups has changed over time but the assessment of what group people should be placed into has not been reviewed in the context of these changing requirements.
- Many people with mental health problems are incorrectly assessed as being "Fit for Work" when they should be in the WRAG or Support Group, or placed in the WRAG when they should be in the Support Group.
- The process relies too heavily on the assumption that all claimants are able to provide accurate information about their own day to day functioning, and to arrange their own supporting evidence. The most vulnerable people are arguably those unable to do either of these things.

***Definitions of 'fitness for work' and 'work related activity'***

We don't believe there is an evidence-based definition at the heart of the WCA process of what being "Fit for Work" or, indeed, being capable of 'work related activity' means in practice. The descriptors were designed to identify people who meet notional thresholds of being functionally able to work or undertake preparatory activities. Until the Evidence Based Review (EBR) of the descriptors is completed, there will have been no evaluation of whether these thresholds are appropriate. However, even the EBR will only be asking relevant professionals to come up with a notional definition of what 'fitness for work' should mean, against which to compare the actual outcomes of assessments.

The current criteria for these groups (i.e. the descriptors and related scores) do not, from our perspective, provide a reliable indication of who should be placed in which group. Any objective and reliable definition of 'fitness to work' or ability to undertake 'work related activity' would require a much more detailed analysis that takes account of the many barriers (personal and social) that stand in the way of ill and disabled people fulfilling these ambitions.

We recognise that such an analysis would be a difficult task. However, as stated in our introduction, we believe the WCA can only be properly understood in the context of the wider system of support in which it sits. The assessment is a gateway to different types of support and different levels of expectations and requirements. In this context, we believe the only meaningful and practical analysis of whether people are being allocated to the right groups by the WCA is whether they can manage the relevant requirements placed on them and whether the support they are provided helps them to recover from their condition and move closer to work.

To achieve this analysis would require a review of whether people are finding the groups they are allocated to appropriate and beneficial in terms of their health and progression towards work. However, some initial evidence suggests the WCA is performing poorly against this measure:

- Early Work Programme statistics show very poor results for people in the WRAG<sup>2</sup>
- A number of Work Programme providers have told us that the ESA claimants being referred to them simply cannot cope with what is required of them
- People with mental health problems tell us that their Jobcentre Plus adviser believes they have been wrongly assessed but is not in a position to recommend allocation to a different group, only to advise the claimant to appeal
- Respondents to the DBC 'Big Benefits Survey' reported that the requirements placed on them were inappropriate (of 268 respondents, almost half of whom had mental health problems, 73.5 per cent felt the activities that had been required of them after their ESA decision were not appropriate or manageable)

### ***Changing requirements of each group***

Many of our organisations welcomed the key principle of ESA when it was introduced: that there are many people with disabilities and illnesses that are not able to work at this time but could benefit from additional support to help them move closer to work.

This group of people (the WRAG) were originally required to attend regular 'Work Focused Interviews' as a condition of receiving the benefit. These interviews were intended to help people identify and access support that might help them move closer to work. While we were not necessarily supportive of the idea of using the threat of sanctioning ESA as a way of encouraging people to engage with these interviews, we believed that people, if correctly identified could benefit from the additional support available.

However, the mandatory requirements placed on people in the WRAG have since been extended to include any activities recommended as part of these Work Focused Interviews. This means that requirements on people in the WRAG are very close to those placed on people on Jobseekers Allowance, with the exception of having to actively seek a job. These requirements were changed without any corresponding review of the criteria against which people are placed in the WRAG – demonstrating the current separation between the WCA and the practical implications of the allocations it produces.

This is particularly concerning as we are hearing from people who have been placed directly in the WRAG without a face-to-face assessment. While we recognise the benefits of avoiding a face-to-face assessment if it is clear someone should be in the Support Group, we are concerned that, where people are being placed in the WRAG, vital information could be being missed. If people have not represented the full extent of their condition in their ESA50 and evidence, they could end up having conditions placed on them that are detrimental to their health.

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<sup>2</sup> DWP statistics on Work Programme performance <https://www.gov.uk/government/organisations/department-for-work-pensions/series/work-programme-statistics--2>

### ***Accuracy of the assessment***

Setting aside the issues discussed above, the WCA is still a seriously flawed tool for allocating people with mental health problems to these groups for a number of reasons:

- It largely relies on the individual to self-report how their condition impacts on them – many people with mental health problems will find this difficult to communicate or may even lack insight into the impact of their condition.
- The majority of Atos HCPs undertaking the face-to-face assessments do not have significant experience or expertise in mental health and so are poorly placed to gather all the relevant information from applicants with mental health problems, and to understand the implications of this information.
- Many people with mental health problems go through the WCA process without submitting additional evidence (or having this collected by the DWP) and without support from an adviser, meaning they often struggle to engage with the process and ensure that they are assessed fairly and accurately.

### ***Summary:***

- We believe that the WCA is poor at allocating people to the correct groups, particularly for people with mental health problems, and that this can have a significant impact on progression towards work and their health.
- The allocation is based on a notional definition of which category people should fall into rather than a clear understanding of which group would be most appropriate.
- Decisions about claimants with mental health are often based on incomplete information about their day to day functioning.

**Recommendation:** an evaluation of whether the WCA is allocating people into groups for which the related requirements and support are appropriate and beneficial in terms of their health and progression towards work.

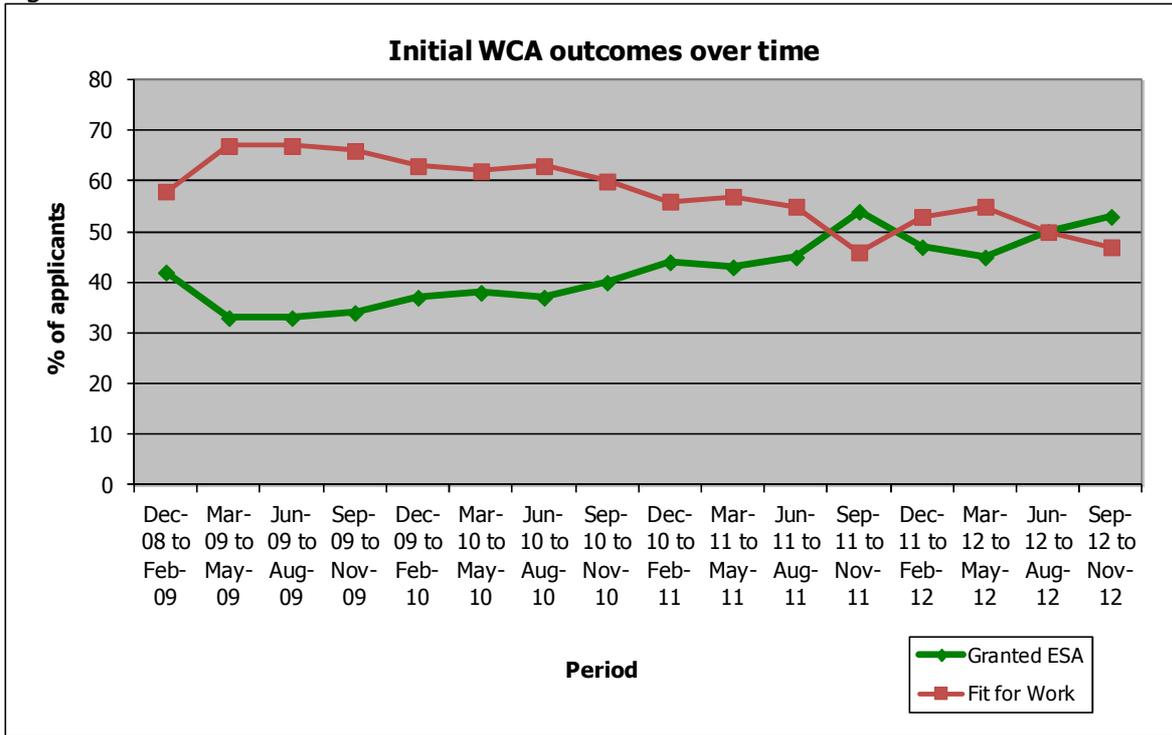
**2. A number of changes have been made to the WCA since its introduction in 2008. Do you think these changes have made a difference to the effectiveness of the identification process and, if so, how?**

It is very difficult to disaggregate the impact of DWP led changes to the WCA since 2008 and the impact of the recommendations put in place through Professor Harrington's reviews. From the data we have access to, it is clear that there have been shifts in key indicators of the WCA's performance, but it is not always possible to reliably attribute these changes to a specific change in policy or practice.

From the time the WCA was introduced, one of our key concerns was that there were simply too many people with mental health problems being declared "Fit for Work" who would, in reality, have huge difficulties returning to work and many would not be able to do so without considerable support.

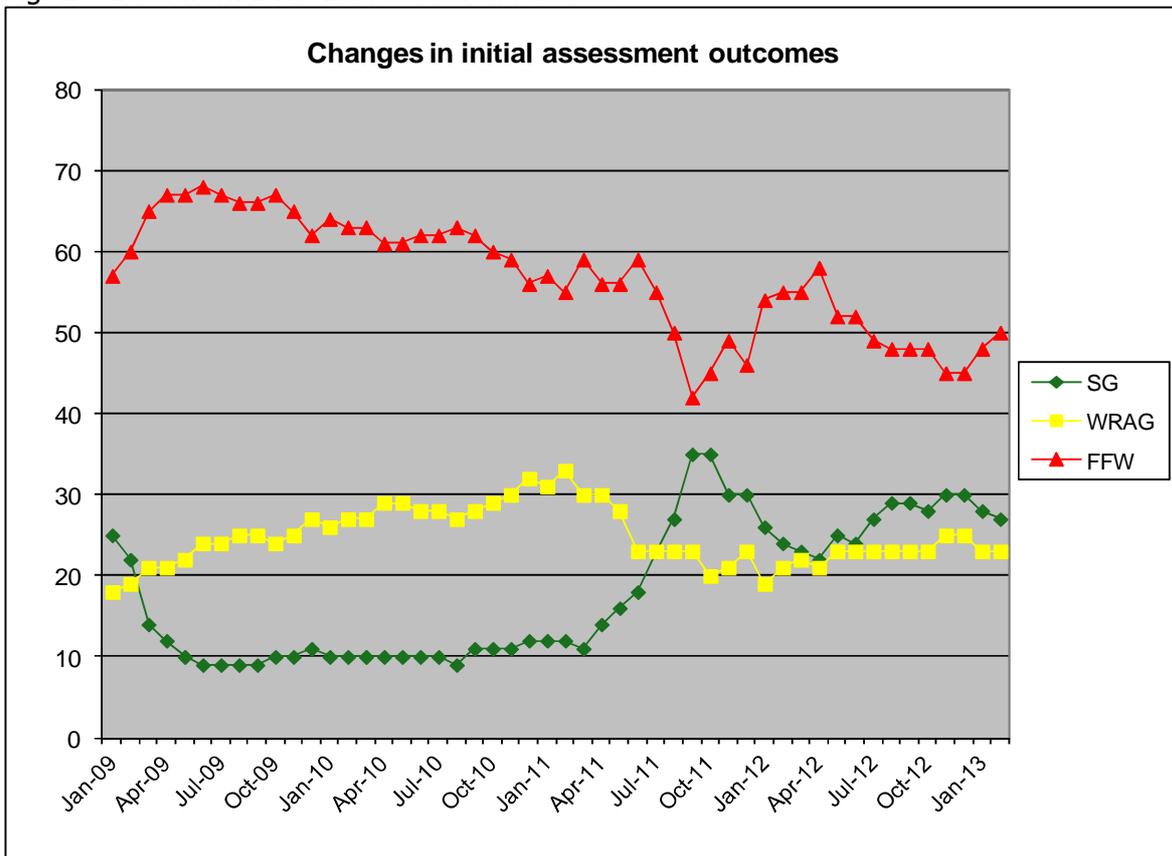
By this basic indicator, it appears that there has been an improvement in that around 20 per cent more applicants are accessing the benefit than in the initial period after it was introduced (see Fig. 1 below). Although there was a gradual increase in the proportion of applicants being granted the benefit in the period before the first Independent Review in 2010, this rate of increase accelerates following the review, suggesting that a combination of the changes to the process recommended by Professor Harrington did lead to fewer people being denied the benefit.

Fig. 1 – Data from DWP ESA statistical releases



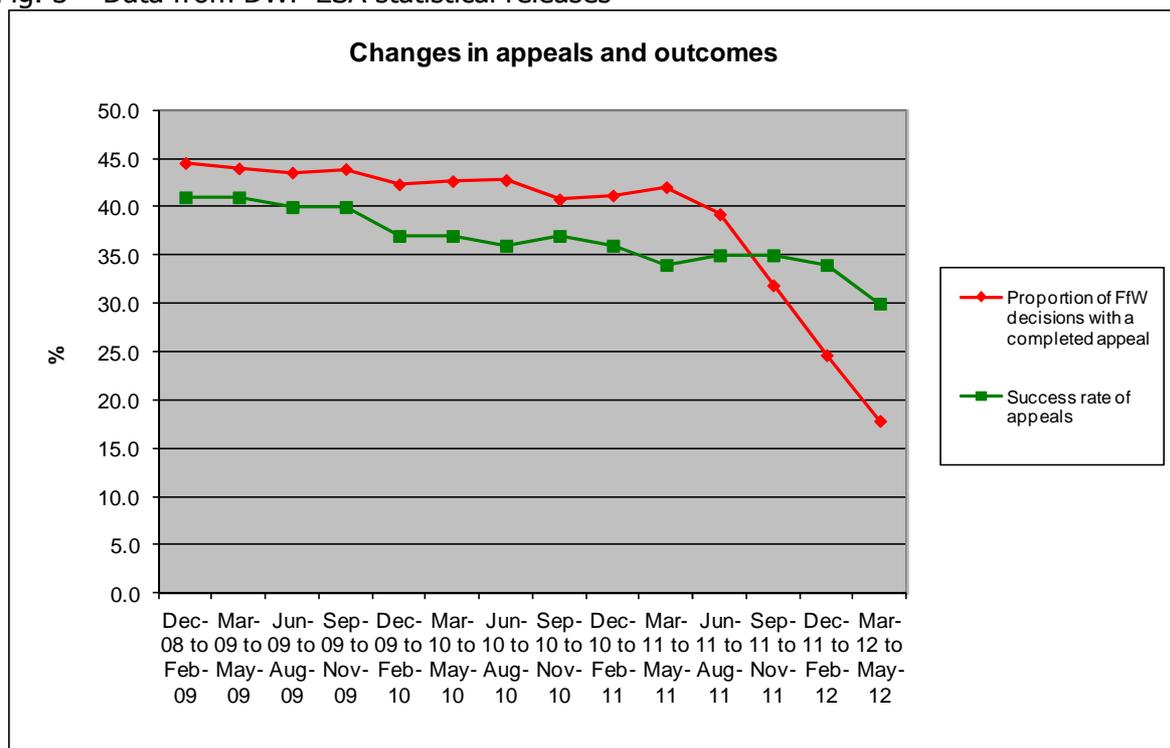
If we break the figures down further (as in Fig. 2) we can see that there are many more people being placed in the Support Group. The spike in allocations to the Support Group follows the introduction of the DWP Internal Review changes to the WCA descriptors in March 2011 but could also be related to improvements to the assessment process introduced by Professor Harrington.

Fig. 2 – Data from DWP ESA statistical releases



As fewer people are declared "Fit for Work", it becomes harder to identify people who are being incorrectly placed in this group (as there is a smaller pool of these people and fewer extreme examples of inappropriate allocation). However, we continue to frequently hear from people who feel they have been inappropriately declared "Fit for Work" and many people continue to successfully overturn "Fit for Work" decisions at appeal. Most worryingly, these are often people who are initially allocated very few or no points at their assessment, but are successful at appeal – of 110,500 successful appeals between October 2008 and August 2011 80 per cent were originally scored six points or fewer, and almost 60 per cent were originally scored zero points..<sup>3</sup>

Fig. 3 – Data from DWP ESA statistical releases



As Fig. 3 shows, rates of appeal, and the success of these appeals, seems to have declined in recent months. Although this decline is important to note, it is likely that it is less dramatic than it appears at first from the data: Many people for more recent periods will simply not have had their appeal heard yet, so the rate of appeal is likely to be at least 35 per cent. Similarly, the success rates for appeals is likely to be around 35 per cent since, as the statement below from a previous DWP statistical release acknowledges, these rates tend to show up as artificially low for more recent data:

*"the more recent cohort show a higher DWP Decision upheld rate. Data from previous quarters shows that the rate tends to be higher when a relatively low number of appeals have been heard and we expect the rate will fall as more appeals from the most recent cohorts are heard"*

We also know the success of appeals is often dependent on support from welfare rights advisers. The data below, obtained from the Tribunals Service under the Freedom of Information Act in 2012, shows how instrumental this support can be with 67 per cent of those claimants who had representation at oral appeals having their decision overturned

<sup>3</sup> Data from DWP statistical release "Employment and Support Allowance: work capability assessment, July 2013" and the Government response to Parliamentary Question 133104 on 18 December 2012

while those without this support only overturned 41 per cent of decisions. However, only 21 per cent of oral appeals at this time had this sort of representation.

<b>Oral Appeals Apr-Oct 2011</b>	<b>Cleared</b>	<b>per cent of all Cases</b>	<b>Decision Upheld</b>	<b>per cent Upheld</b>	<b>Decision in Favour</b>	<b>per cent in Favour</b>
All oral appeals	70,500	100 per cent	37,100	53 per cent	32,800	46 per cent
Unrepresented	55,800	79 per cent	32,500	58 per cent	22,880	41 per cent
Represented	14,700	21 per cent	4,600	31 per cent	9,920	67 per cent

As such, it may well be the case that the apparent fall in appeal rates and appeal success rates is in part due to people increasingly struggling to access support from advice services, due to cuts in central and local government funding for advice services and overwhelming demand for these services.

In the DBC Adviser Survey, 86 per cent of respondents agreed that "People are increasingly struggling to access support and advice to help them claim benefits".

**3. There have been three Independent Reviews of the WCA since 2010. Do you have evidence that the WCA as a whole has changed as a result of the reviews? If so, please detail.**

We very much welcomed the recommendations that emerged from the previous Independent Reviews of the WCA. From our perspective, the intent behind the key recommendations has been:

1. To improve the 'customer experience' of the WCA, making it more personal and less mechanistic
2. To improve the quality of Atos assessments and the accountability of their role in the WCA process
3. To improve the collection and use of additional evidence from claimant's healthcare and support professionals in the process
4. To put DWP Decision Makers at the heart of the WCA process and ensure that the Atos assessment was just one component of the evidence which led to their decision
5. To introduce greater levels of expertise around mental health and spread good practice among assessors in this area

We also welcomed the DWP's decision to accept these proposals. However, we did not believe that they had grasped the degree of cultural change that was being called for and instead focused simply on making the specific reforms that had been recommended.

All the evidence that we have access to suggests that, in each of these five areas, there has been limited progress. However, this evidence is not always comprehensive and we do not feel there has been a sufficient effort by the DWP to accurately monitor and evaluate progress in the key areas identified by previous Independent Reviews.

***'Customer experience' of the WCA***

Evidence from the two DBC surveys and from the supporters and our organisations' service users suggests that many people continue to have poor experiences of the assessment process and that this causes them stress and has a negative impact on their health.

In terms of the customer support offered to applicants from Jobcentre Plus, respondents to the DBC Adviser survey felt that there had been little improvement since 2010.

To what extent do you agree that, as a result of changes to Jobcentre Plus support since 2010:							
Answer Options	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know	Response Count
Support offered to customers during the course of their ESA application has generally improved?	1	16	34	128	105	6	290
Customers feel better informed about what to expect and what their responsibilities are?	2	13	33	114	125	3	290
Customers are more aware of the need to collect evidence from their favoured healthcare professional?	2	41	39	114	91	3	290
Customers know more about the financial and back-to-work support available to them, dependent on the result of their application for ESA?	1	12	31	110	122	13	289
<i>answered question</i>							<b>292</b>

We are particularly disappointed that Professor Harrington’s recommendations did not go so far as to address some of the concerns he raised about difficulties with the WCA particular to people affected by mental health problems:

*"Worryingly there continues to be a percentage of ESA claimants who do not engage with the process initially; and a significant percentage of those failing to comply with the requirements are claimants with a mental, intellectual or cognitive condition. Further work to ensure early engagement in the process with these claimants may be required."*

Professor Harrington, 3<sup>rd</sup> Independent Review of the WCA.

**Case study (Rethink Mental Illness supporter):** Stacey is 27, lives in Bristol and has a diagnosis of cyclothymia (a mood disorder). She had been unwell since she was a teenager following a history of sexual abuse from the age of four. Stacey is a lone parent for her two children and is being migrated from Incapacity Benefit to through the WCA. Due to feelings of anxiety surrounding her sexual abuse as a child, she does not feel able to travel to a medical assessment with ATOS. Therefore she asked for a home visit. Stacey asked her doctor for medical evidence to help her to show that she cannot attend the medical but the surgery has a policy of not providing any supporting evidence for benefits claims. Her request for a home visit was subsequently turned down and the DWP decided that she did not have good reason for not attending the assessment.

As a result, she was treated as not having limited capability for work and her ESA was stopped. This led to her Housing Benefit and Council Tax Support being stopped as the claims were passported. Stacey asked for a reconsideration and the DWP upheld the original decision. Stacey is aware that she can appeal but that she will not be paid an appeal rate of ESA. The DWP have informed her that in order to be paid ESA she will need to attend a medical assessment, but she tells me that she is simply unable to do this. Stacey believes that her mental health is deteriorating rapidly and that it is not fair that this has happened because she was steadily recovering up until this point. She is worried about

### **Quality of Atos assessments**

This clearly continues to be a problematic area, as demonstrated by the recent DWP

announcement about their audit of Atos reports.<sup>4</sup> We continue to hear from advisers and individuals that, when they receive the Atos report from their assessment, it is often inaccurate. This sometimes appears to be due to the assessor not listening but it often seems to be a structural problem with how data is recorded. The face-to-face assessment (presumably as a result of training and 'rules of thumb') seems to seek to find sufficient reason to disqualify someone from scoring on a descriptor rather than properly exploring whether they experience difficulty in this area.

*"I feel that the HCP's are acting more sensitively and seeming to listen more. Yet what comes back is the same broad brush statements e.g.; Claimant- I have to go shopping despite severe pain as i have no family. Report - claimant can go shopping most days. Claimant - I have the television on but I am not really watching it. Report - claimant watches television every day. Claimant - I take phone calls from people I know on my good days but don't call out to anyone. Report - claimant can use mobile phone without difficulty." Quote from DBC Adviser Survey*

However, the overall response from advisers to the DBC survey suggests that little has improved in the performance of Atos assessors – a view which is supported by the feedback we continue to receive from our supporters:

To what extent do you agree that, since 2010, Atos assessors have:							
Answer Options	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know	Response Count
Been more likely to collect additional evidence at the start of the assessment process?	2	5	19	87	171	6	290
Paid more attention to any additional evidence available to them?	0	12	14	81	178	4	289
Given more weight to the free text box on the ESA50 where applicants can describe how their disability affects them?	0	7	31	68	165	19	290
Improved the accuracy of their reports on applicants?	2	5	14	77	187	5	290
Acted more sensitively towards applicants during assessments?	1	14	29	71	163	12	290
Improved the assessments of applicants with mental health problems, learning disabilities and autistic spectrum disorders?	0	8	10	62	196	15	291
<b>answered question</b>							<b>292</b>

### **Collection and use of additional evidence**

Professor Harrington recognised that additional evidence from relevant professionals should play a key role in helping to establish what group applicants should be allocated to. In his first year he recommended that Decision Makers should be "able to seek appropriate chosen healthcare professional advice to provide a view on the accuracy of the report", and in his third year he recommended that they "should actively consider the need to seek further documentary evidence in every claimant's case". We have not seen any evidence that there has been a significant increase in the collection of evidence by either Atos HCPs or DWP Decision Makers.

We are also hearing through our advice and information lines that many people are being refused evidence by their GP. In other cases GPs are charging for evidence, requiring the claimant to attend the surgery in person to arrange it, or only responding to such requests

<sup>4</sup> <https://www.gov.uk/government/news/hoban-taking-action-to-improve-the-work-capability-assessment>

directly from Atos, which were not always forthcoming. We would like to see constructive discussions with relevant professional bodies to address this. It is also important there is not an over-reliance on GP evidence as in many cases social workers, community psychiatric nurses (CPNs) and occupational therapists (OT) will have better knowledge of the impact of a health condition on a person.

Welfare advisers responding to the DBC survey clearly see supporting evidence from a health or social care professional as a key part of the process – they ranked it the equally most important factor to ensure a fair assessment, along with the quality of the individual Atos assessor. To ensure a fair and accurate outcome at appeal, it was seen as the most important factor and the chart below shows how significant additional evidence has been in the appeals the advisers have been involved in:

<b>In what percentage of ESA appeals that you have been involved in over the last six months would you say that additional evidence from a health or social care professional has been a key factor?</b>		
<b>Answer Options</b>	<b>Response Percent</b>	<b>Response Count</b>
0-25 per cent	7.4 per cent	20
26-50 per cent	16.2 per cent	44
51-75 per cent	41.5 per cent	113
76-100 per cent	34.9 per cent	95
<b>answered question</b>		<b>272</b>

However, results from the DBC Adviser Survey suggest that little has improved in terms of how Atos and the DWP collect and consider additional evidence:

- 89 per cent of respondents disagreed or strongly disagreed that Atos assessors have been more likely to collect additional evidence since 2010
- 90 per cent disagreed or strongly disagreed that Atos assessors have been more likely to pay attention to additional evidence
- 75 per cent disagreed or strongly disagreed that Decision Makers have been more likely to collect additional evidence
- 67 per cent disagreed or strongly disagreed that Decision Makers have been more likely to pay attention to additional evidence

We feel that the DWP has made insufficient efforts to implement the intent behind the Harrington recommendations. This perspective was supported by the judicial review judgment referred to earlier in this submission:

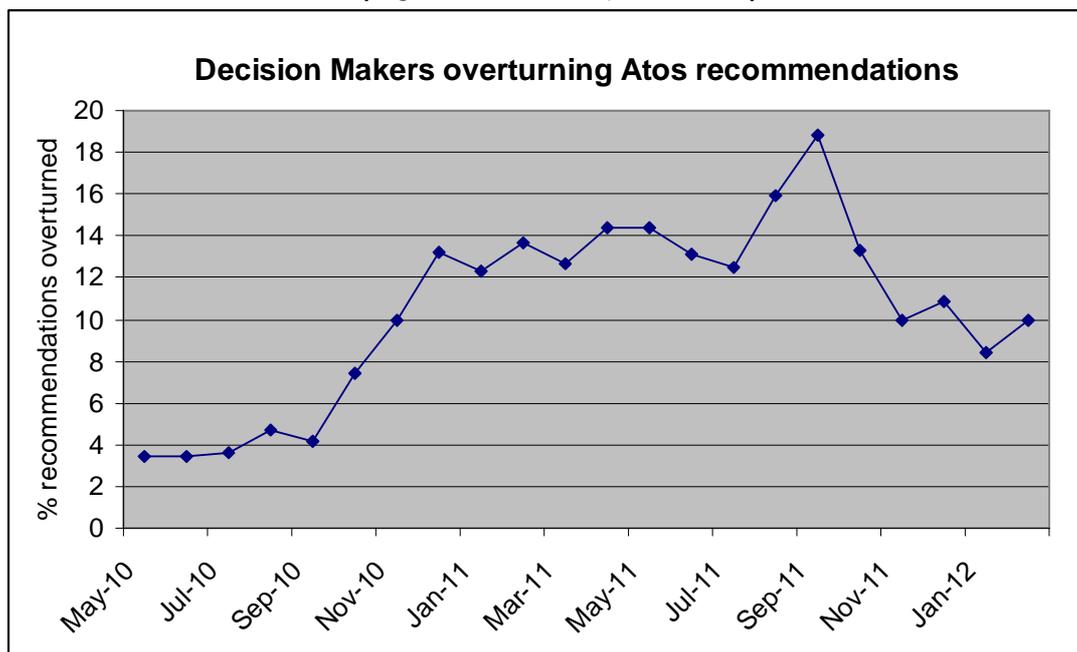
165. *In our view, this approach of the DWP flies in the face of:*
- the significant change by Professor Harrington from the earlier approach that the onus should be on the claimant to provide all necessary and appropriate information, that underlies the Evidence Seeking Recommendation,*
  - the point recognised by the DWP, that the further evidence (including FME) should be provided at the earliest opportunity, and*
  - the point that, given the unique circumstances of their condition, particular care should be taken with claimants with MHPs,*
- and so seeks to cling to the existing practice rather than adopting and addressing Professor Harrington’s Evidence Seeking Recommendation, whether it is interpreted literally or purposefully.*

**Putting DWP Decision Makers at the heart of the assessment process**

There does appear to have been an improvement in this area following the first Independent Review, but this then began to tail off around a year later (see Fig. 4). This

suggests that Professor Harrington was able to bring about a temporary shift in culture, which has since been diminishing.

Fig. 4 – Data from Parliamentary Question 138693, 1 February 2013



**Greater levels of mental health expertise**

Professor Harrington recognised that there were a particular issues for people with mental health problems (as well as learning disabilities and autism) going through the WCA and so recommended the introduction of ‘Mental Function Champions’ to spread expertise and best practice. Although we tentatively welcomed this recommendation, we have seen no evidence of any detailed evaluation of the impact that Mental Function Champions have had. The only review of their performance in the 3<sup>rd</sup> Independent Review was as follows:

“The Review asked Atos to report on the effectiveness of their Mental Health Champions. They said that their healthcare professionals found the Champions to be ‘a great resource’ and that they were of ‘great use to put any uncertainties into perspective’.”<sup>5</sup>

Of 291 advisers who responded to the DBC survey, 89 per cent disagreed or strongly disagreed that ‘since 2010 Atos assessors have improved the assessments of applicants with mental health problems, learning disabilities and autistic spectrum disorders’.

Anecdotal evidence we have heard about the Mental Function Champion role suggests that the scope of the role has substantially reduced from looking to proactively spread best practice to fielding calls from HCPs with specific enquiries. The problem with this approach is that it is reliant on HCPs realising that they may need to seek advice on a case involving someone with a mental health problem.

Therefore, we do not believe that the introduction of Mental Function Champions has had a significant impact on the quality of assessments for people with mental health problems.

**Summary:**

- Although we have welcomed the recommendations from previous Independent Reviews, we do not believe that they have had the desired impact, in part due to poor implementation by the DWP and Atos.

<sup>5</sup> 3<sup>rd</sup> Independent Review, p24

- We believe that our recommendations in response to questions six and eight need to be implemented to address the ongoing problems with the WCA.

**Recommendation:** more detailed monitoring of the impact of changes to the WCA process on different groups of claimants, such as those with mental health problems in order to ensure that lessons are learnt and further changes can be made if necessary.

**4. A significant proportion of people applying for ESA have mental health conditions. What evidence do you have that mental health conditions are or are not given appropriate consideration during the WCA process?**

People with mental health problems face particular issues when going through the WCA both in terms of their experience of the process and the accuracy of the assessment they receive. This is due to a variety of factors that can result from experiencing a mental health problem, listed below in an extract from the judicial review judgment:

*125. On that generic approach, in our judgment, the Charity Interveners' evidence establishes and we find that, as they and the Applicants assert:*

- iv) *in terms of filling out a form, seeking additional evidence and answering questions, claimants with MHPs as a class have the following problems and difficulties because of their MHPs, some of which overlap:*
  - a) *insufficient appreciation of their condition to answer questions on the ESA50 correctly without help,*
  - b) *failure to self-report because of lack of insight into their condition,*
  - c) *inability to self-report because of difficulties with social interaction and expression,*
  - d) *inability to self-report because they are confused by their symptoms,*
  - e) *inability because of their condition to describe its effects properly,*
  - f) *difficulty in concentrating and in understanding the questions asked,*
  - g) *unwillingness to self-report because of shame or fear of discrimination,*
  - h) *failure to understand the need for additional evidence because of cognitive difficulties,*
  - i) *problems with self-motivation because of anxiety and depression which may prevent them approaching professionals for help and assistance,*
  - j) *false expectation that conditions will be understood without them needing additional help, and*
  - k) *lack of understanding that professionals named in the form will not automatically be contacted in the assessment process.*
- v) *in terms of further aspects of the process for the determination of their entitlement to ESA, claimants with MHPs as a class have or have to face the following problems and difficulties because of their MHPs:*
  - a) *particular conditions (e.g. agoraphobia and panic attacks and autism spectrum disorder) make attending and/or travelling to a face-to-face assessment difficult,*
  - b) *finding the process itself intimidating and stressful, and, in some cases, that having a long-lasting negative effect on their condition,*
  - c) *a desire to understate conditions,*
  - d) *the masking of health problems as physical problems,*
  - e) *dealing with assessors who have little or no experience of mental health problems,*
  - f) *the difficulties of identifying many symptoms of a condition and its impact on what a person needs without proper training and knowledge,*

- g) *the lack of time during a short assessment to identify a person's needs,*
- h) *fluctuation in condition, and*
- i) *scepticism about the condition*

We believe that these are key issues that are not currently adequately addressed by the DWP. It is also important to note that two of the three Upper Tribunal judges who produced this judgment have considerable experience of ESA tribunals.

These difficulties mean that people with mental health problems can be disadvantaged at various points in the WCA process. They may have difficulty accurately reporting or communicating the impact of their condition on the ESA50 form and in the face-to-face assessment and may be less likely to submit additional evidence to support their claim. The assessor and Decision Maker may face difficulty understanding the impact of their condition due to the particular complexity of mental health problems. People with mental health problems may also be less likely to appeal without additional assistance, as demonstrated by the account below from a welfare rights adviser at a local Mind:

*I recently had an all-too-classic instance. The client, who plainly had a great deal of difficulty doing anything other than very routine domestic tasks, had scored no points on his WCA. We appealed and submitted a comprehensive document.*

*In the event, however, the client decided that he could not attend the hearing on his own and so opted for Tribunal hearing in absentia: he didn't tell me or his support workers that he'd done so. He lost the appeal. We were able to argue the Tribunal should have recognised that, as the appeal turned on his mental illness, the illness itself may have precluded his attendance and the ability to seek representation. The decision was set aside and a new hearing was arranged.*

*At the hearing itself he said that had I not been there he wouldn't have gone. What is so appalling is the catch-22: he, like many, wasn't able to ask for assistance or make the case himself of his inability to work precisely because of his mental illness. It is compounded by the willingness of both the DWP and judicial bodies to grind out decisions which seem not to take the ability of the client to deal with these issues into account.*

**Case study (Rethink Mental Illness supporter):** Mr B's 45 year old son has severe paranoid schizophrenia. He was reassessed for ESA and has recently received a letter saying he needs to attend a Work Focused Interview next week as part of WRAG. Mr B's son was not aware that he was put in WRAG and when Mr B challenged DWP about this they said they had sent a letter in June but his son had not received it. Mr B stated that if he had known they would have appealed. Mr B has found dealing with advisers at DWP extremely upsetting – one adviser stated that they 'always see people who come in and then suddenly have depression', despite Mr B trying to explain the circumstances of his son's severe paranoid schizophrenia.

Mr B's son is now outside of time limit for appealing and is aware that if he does not attend Work Focused Interviews then benefits may be stopped. However Mr B doesn't think he can get him there as it is so difficult for him and explained how difficult it was for the ATOS assessment.

Another key factor to consider is the impact that the WCA process has on people with mental health problems. We hear frequently from people that the prospect of going through the assessment, the experience of the assessment process, receiving an inappropriate outcome, and going through the appeals process all cause significant levels of distress that can have a negative impact on people's mental health. This is all happening in the context of reduced access to welfare advice services following changes to legal aid funding.

This detrimental impact is also demonstrated by polling of over 1,000 GPs about their views on the WCA, commissioned by Rethink Mental Illness.<sup>6</sup> It was clear from the results that GPs believe the experience of going through the WCA process is having a substantial negative impact on some of their patients with mental health problems:

- 84 per cent of GPs say they have patients who have presented with mental health problems such as stress, anxiety or depression as a result of undergoing, or fear of undergoing, the Work Capability Assessment
- 21 per cent of GPs say they have patients who have had suicidal thoughts as a result of undergoing, or fear of undergoing, the Work Capability Assessment
- 14 per cent of GPs have patients who self-harmed as a result of undergoing, or fear of undergoing, the Work Capability Assessment
- 6 per cent of GPs have patients who have attempted or committed suicide as a result of undergoing, or fear of undergoing, the Work Capability Assessment
- 75 per cent of GPs said that patients who are negatively affected by undergoing, or fear of undergoing, the Work Capability Assessment for Employment and Support Allowance, need increased support from their GP

The current shortcomings of the assessment and the impact the process has on people has led, from our experience, to a situation where most people with mental health problems have little faith in the WCA and this lack of trust undermines the effectiveness of the support available. We are also concerned it might deter people from claiming in the first place, meaning those who need support most won't get it. If ESA is to help significant numbers of people progress towards work, applicants will need to feel that the process is supportive, fair and accurate.

**Summary:**

- People with mental health problems face particular challenges when going through the WCA process which we do not feel have been adequately addressed.
- The process can also have a particularly negative impact on people with mental health problems, pushing them further from work rather than closer to it.
- The recommendations we put forward in this response would help to improve this situation, but it is likely to take a significant amount of work and time to improve the reputation of the WCA process for people with mental health problems.

**5. There is a perception that the WCA is too heavily weighted towards a medical model. Do you believe this is the case? Do you think that the WCA takes suitable and sufficient account of the psycho-social factors that influence capability for work (this is not about the likelihood of finding work) – if not how do you think this should change?**

We believe that the WCA fails to take account of key social and medical factors in assessing people with mental health problems. The assessment focuses primarily on the functional barriers the applicant faces in terms of whether they are able to work. As such, it does not adequately consider social barriers that people with mental problems face such as lack of effective support and poor understanding of mental health in many workplaces, discrimination from many employers, and stigma from colleagues. It is not unusual for people to say that the stigma they face, and the pressure they feel not to disclose their mental health condition, is more damaging than the mental health condition itself. People

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<sup>6</sup> Polling carried out by Vitaris Research Consultancy (part of the ICM Research Group). The results of the polling were published on September 4<sup>th</sup> 2012

also describe the pressure of being contractually required to work as a step beyond what they are currently capable of (in comparison with voluntary work, for example).

However, in trying to establish an understanding of the functional impact of a person's condition, the assessment fails to draw on evidence from relevant health and social care professionals. For many people with mental health problems, the support they receive will focus on how their condition impacts on their ability to live a full and independent life. As such their health and social care professionals will often have a detailed understanding of how their condition impacts on their life and, vitally, how this changes over time. The DWP is somewhat ambivalent about what input they need from health and social care practitioners, including it in the process, yet failing to take it into account or dismissing it when too 'medical'.

The recent judicial review judgment found that the DWP was unconvincing in its justification for establishing a division between functional and medical evidence for people with mental health problems:

*146. We do not accept the argument advanced by the SSWP that this is not so because the main tests for ESA are functional. Of course they are but, particularly where the claimant has MHPs, a full and proper understanding of the condition and the difficulties it gives rise to plainly informs how the claimant functions. Accordingly, appropriately directed FME will often be important to inform (and in some cases to confirm) views of the HCP and the DWP decision-maker on relevant (and sometimes critical) factors in assessing the claimant's functional capability. So, we accept the Applicants' submissions that the dichotomy that the DWP seeks to draw in its evidence between diagnosis and treatment and assessment for ESA and its reliance on it to support the view that FME is appropriately sought under the present practice is unconvincing.*

**6. Changes have already been made to the WCA face-to-face assessment since its introduction. Do you believe that further changes would improve the face-to-face part of the WCA? If so, please detail what changes you would suggest and provide supporting evidence that they would be effective.**

We believe that some key changes are still required to the face-to-face assessment in order to ensure that it is fair and effective for people with mental health problems:

#### ***Greater use of additional evidence***

Unless people with mental health problems submit evidence themselves (which they may not realise they need to do or may have additional difficulties collecting evidence), then there are very few circumstances in which the DWP or Atos will proactively collect evidence on behalf of the applicant.

Because of the particular difficulties people with mental health problems face in accurately reporting on and communicating the impact their condition has on them, the difficulties HCPs have in gathering this information, and the fluctuating nature of mental health problems, this approach means they are put at a disadvantage in the process. These difficulties were also highlighted in the recent judicial review judgment:

*166. In our judgment, the present practice relating to FME, has the result that in a significant number of claims by claimants with MHPs the existence and impact of the Difficulties result in those claimants, and thus that class of claimants, being placed at a disadvantage that is more than minor or trivial and/or suffering an unreasonably adverse experience:*

- vi) *by being required to complete an ESA50 when this is not needed,*
- vii) *in the completion of the ESA50,*
- viii) *by being required to attend a face-to-face examination / assessment when this is not needed,*
- ix) *during a face-to-face examination / assessment, and*
- x) *during the final decision-making process and the communication of that decision by the DWP decision-maker.*

167. *In our judgment, if appropriately directed FME was made available earlier in the decision-making process in respect of claims by claimants with MHPs, it is likely that, in a significant number of such claims:*

- xi) *the HCP would be better informed before requiring an ESA50 and at the face-to-face to examination / assessment, with the result that the decision-making process in respect of the class, and the way in which it is perceived by claimants with MHPs as a class, would be improved because the Difficulties would be better addressed and so avoided or reduced, and*
- xii) *the DWP decision-maker would also be better informed in his or her assessment of the claim, the recommendations of the Atos HCP and his or her approach to the acknowledged vulnerabilities and difficulties of claimants with MHPs as a class and so individuals within it.*

As discussed previously, we believe that the evidence potentially available from relevant health and social care professionals would provide valuable and robust insight into the impact of the applicant's mental health problem on their ability to work. Although we acknowledge that the judgment referred to above is currently being appealed we believe that this should not prevent the Independent Review from commenting on this area.

**Recommendation:** additional evidence about people with mental health problems should be collected by the assessor wherever there is a possibility that the application form and/or face-to-face assessment have not provided a full and accurate picture of how the person's condition impacts on them

### ***Assessor expertise***

There are a number of reasons why it might be difficult for HCPs to accurately establish the impact that someone's mental health problem has on their ability to function:

- Mental health problems are complex– they can be hard to understand and it can be difficult to establish the nature or impact of the problems simply from the way the person appears (e.g. whether they are articulate, or have dressed appropriately that day) or how they describe their condition and its impact
- The person may struggle to communicate how their condition impacts on them, or they may not fully recognise the impact their condition has
- It takes an experienced healthcare professional to establish a rapport with someone with mental health problems and to ask appropriate questions in order to gather reliable evidence about their condition and how it impacts on them
- It is widely recognised that many healthcare professionals, including GPs, do not have a particularly strong understanding of mental health problems

For all these reasons, we believe that HCPs with particular experience and expertise relating to mental health would be in a better position to assess the impact that someone's mental health problem has on their ability to work.

We have not seen any evidence from the DWP that disproves this hypothesis, despite requesting on a number of occasions some simple testing that would provide such evidence. In the third Independent Review, Professor Harrington acknowledged that such testing could be a useful exercise:

“the Department may wish to explore the outcomes of assessments undertaken by Mental Function Champions in their supportive ‘non-Champion’ role to see if there are significant differences from non-specialists undertaking mental function assessments.”<sup>7</sup>

We believe it is vital that such an exercise takes place and hope that the Independent Review will support this in order to firmly establish whether or not it would improve the assessment process to assign assessors with relevant expertise to applicants with corresponding types of conditions.

**Recommendation:** an evaluation of assessor expertise in mental health problems and impact on quality of assessment and recommended decision about group allocation.

### ***Greater transparency***

Many people we hear from are very surprised by the outcome of their assessment and, if they request a copy, by the content of their Atos report. This is often because the quality of the Atos assessments is poor, but also because people have not been told what is being recorded about them, and so have not been able to challenge or correct this.

**Recommendation:** greater transparency in the assessment process so that people know what information has been recorded about them.

This could involve:

- Telling people what is being recorded about them during the assessment, as is being tried with the new Personal Independence Payment assessments, so that they understand what the assessor has heard and can correct inaccuracies
- Making greater efforts to inform people of their right to request a copy of their report from the assessment so that they can flag up inaccuracies with the DWP Decision Maker

**7. Assessment processes can be criterion-based, points-based or (as in the case of the WCA) a combination of these. What evidence do you have of the effectiveness of these different approaches in identifying the capability of claimants consistently?**

Mind, along with the National Autistic Society and Mencap, were asked after the first Independent Review to propose amendments to the current descriptors. This was not presented as an opportunity to redesign the assessment and the main suggestion we made was to make the current descriptors more ‘multi-dimensional’ so that they could take account of the severity, frequency and duration of impaired functionality.

Our proposed descriptors are currently being tested through the EBR and we look forward to seeing the results of this process.

More generally our concerns with the scoring system for the assessment process are:

- It is not sufficiently flexible to take account of the variety of experiences of people with mental health problems
- Not enough account is taken of the cumulative impact of a number of less severe functional impairments
- The ‘non functional’ descriptors about the impact that working or undertaking work related activity could have on someone’s health are rarely referred to by Atos HCPs or DWP Decision Makers, but often feature in appeals tribunals

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<sup>7</sup> 3<sup>rd</sup> Independent Review, p33

**8. Thinking about the overall WCA process, do you think the system needs further improvement, and if so what changes do you think are required? Please provide supporting evidence that the changes would be effective.**

Along with our recommended changes to the face-to-face assessment, we believe that the overall WCA process could also be improved for people with mental health problems.

***Rate of reassessment***

We hear from many people who are being reassessed frequently and report that this is having a negative impact on their mental health and making it harder for them to engage with the back-to-work support on offer. Responses to the DBC Adviser survey suggest this is a serious problem:

With regard to reassessments of ESA claimants since 2010 (NB - not those claimants being migrated to ESA from Incapacity Benefits) to what extent do you agree that:							
Answer Options	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know	Response Count
Claimants are being reassessed more frequently?	86	133	32	12	1	14	278
Claimants are being reassessed too frequently?	138	85	36	8	5	6	278
The frequency of reassessments is having a negative impact on claimant's health?	170	79	19	4	2	3	277
<i>Answered question</i>							<b>279</b>

People tend to find the WCA a difficult experience and welfare advisers and providers of back-to-work support often report to us that it takes a significant period of time for people to recover from this experience and begin to engage with support. The reassessment period is, in effect, set by Atos HCPs when they decide the 'functional prognosis' for the applicant. We have heard anecdotal evidence that HCPs are encouraged to apply the shortest prognosis that they can justify.

We also question how ethical the current practice of carrying out reassessment of a claimant immediately after an appeal has overturned a 'Fit for Work' decision, even where the claimant has been given 15 points at appeal. Anyone with mental health problems will clearly be anxious and exhausted having undergone this process and will need a chance to recover. Although the DWP claims to have improved this situation, we are still hearing from people who have been called back in for reassessment soon after winning an appeal.

It may well be that someone's mental health problems could have changed after six months, but if the ultimate goal is to help people back towards work and we know that the WCA can unsettle someone's recovery, it makes no sense to reassess people that frequently. This can feel like harassment for people struggling with poor mental health.

**Recommendation:** frequency of reassessments needs to take account of the impact the process has on people with mental health problems and their recovery.

***Ensuring all evidence is considered***

As discussed previously, we believe that it is vital that additional evidence about applicants with mental health problems is collected and considered in order to come to a fair and accurate decision about fitness to work.

Along with encouraging Atos assessors to collect and consider additional evidence, it is also important that DWP Decision Makers are performing this role, particularly in the context of a declining rate of Decision Makers going against an Atos recommendation.

**Recommendation:** renewed efforts to require DWP Decision Makers to consider all available evidence before making a decision

It is also important that relevant professionals, particular those in the health sector, understand what sort of evidence is required and are facilitated to provide this.

**Recommendation:** greater clarity in the role of health services in providing information to support decision making, including clearer communication about what information is relevant.

### ***Importance of advice services***

As we have demonstrated earlier in this submission, advice and support from welfare rights or health services can be vital in ensuring that people with mental health problems are able to navigate the ESA application process and receive a fair and accurate outcome.

However, we believe that there has been little evaluation of the impact of cuts to services and increased demand on the ability of individuals to access support they may need

**Recommendation:** more efforts to ensure that people have access to good advice and support as they go through the ESA application process

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## **Our organisations**

### ***Centre for Mental Health***

Centre for Mental Health is an independent, national charity that aims to help to create a society in which people with mental health problems enjoy equal chances in life to those without. We aim to find practical and effective ways of overcoming barriers to a fulfilling life so that people with mental health problems can make their own lives better with good quality support from the services they need to achieve their aspirations. Through focused research, development and analysis, we identify the barriers to equality for people with mental health problems, we explore ways to overcome those and we advocate for change across the UK.

### ***Hafal***

Hafal (meaning 'equal') is the principal organisation in Wales working with individuals recovering from serious mental illness and their families. We are managed by the people we support - individuals with serious mental illness and their families. Our 191 staff members and 150 volunteers provide help and support to over 1500 people with serious mental illness and 1600 carers. The charity is founded on the belief that people who have direct experience of mental illness know best how services can be delivered. In practice this means that at every project our clients meet to make decisions about how the service will move forward and the charity itself is led by a board of elected Trustees, most of whom either have serious mental illness themselves or are carers of a person with a mental illness. Our mission is to empower people with serious mental illness and their families to enjoy equal access to health and social care, housing, income, education, and employment, and to achieve a better quality of life, fulfil their ambitions for recovery, and fight discrimination.

### ***Mental Health Foundation***

The Mental Health Foundation is the UK's leading mental health research, policy and service improvement charity. We are committed to reducing the suffering caused by mental ill health and to help us all lead mentally healthier lives. We help people to survive, recover from and prevent mental health problems. We do this by carrying out research, developing practical solutions for better mental health services, campaigning to reduce stigma and discrimination and promoting better mental health for us all.

### ***Mind***

Mind is the leading mental health charity in England and Wales. We work to create a better life for everyone with experience of mental distress by:

- Campaigning for people's rights
- Challenging poor practice in mental health
- Informing and supporting thousands of people on a daily basis

A fundamental part of Mind's work is provided through our network of over 180 local Mind associations who last year worked with over 220,000 people running around 1,600 services locally. Services on offer include supported housing, crisis help lines, drop-in centres, counselling, befriending, advocacy, and employment and training schemes. Over 30,000 people are supported by our national telephone help lines. Welfare reform is a key issue for many of the people Mind has contact with.

### ***The Northern Ireland Association for Mental Health***

Niamh is the largest and longest established mental health charity in Northern Ireland. Since 1959, we have been providing locally based community mental health services for people with experience of significant mental ill-health / diagnosis of mental illness. This includes people with complex needs who have physical and learning disabilities as a secondary diagnosis. The Niamh group consists of Beacon, Carecall and Compass. Through Beacon we provide supported housing (350 places), day support and floating support (1200 clients), advocacy (6000 sessions) and a range of tailored programmes and Support Groups. Carecall covers over 435 000 lives in Northern Ireland and Ireland through contracts primarily with employers. It provides counselling and psychological therapies (23,000 sessions of counselling to around 5,000 employees), as well as mental health and wellbeing programmes. Compass undertakes research focussing on mental health promotion, models of mental health care, suicide, stigma, recovery and social inclusion.

### ***Rethink Mental Illness***

Rethink Mental Illness, the leading national mental health membership charity, works to help everyone affected by severe mental illness recover a better quality of life. We help over 52,000 people each year through our services and Support Groups and by providing information on mental health problems. Our website receives over 600,000 visitors every year. Rethink's Advice and Information Service helps almost 8,000 people each year and advises people daily with benefit claims.

### ***Royal College of Psychiatrists***

The Royal College of Psychiatrists is the leading medical authority on mental health in the United Kingdom and is the professional and educational organisation for doctors specialising in psychiatry.

### ***The Scottish Association for Mental Health***

SAMH is a Scottish mental health charity which provides an independent voice on all matters of relevance to people with mental health and related problems and delivers direct support to around 3000 people through over 80 services across Scotland. SAMH provides direct line-management to respect.me (Scotland's anti-bullying service) and 'see me' (Scotland's anti-stigma campaign).