

INVESTIGATION

Response to  
recommendations  
by DWP - with  
MWC comments

## Responses to recommendations by the Mental Welfare Commission

### Recommendation 1:

DWP should routinely obtain medical reports for individuals with a mental illness, learning disability or related condition who are entering the assessment process.

### Response:

The Upper Tribunal has considered the question of whether the DWP should obtain further medical evidence for all ESA claimants with a mental health condition in an on-going judicial review case. In their interim judgment dated 22 May 2013, the Upper Tribunal found that, at this stage, it would not be reasonable to make such a change.

In his third independent review of the WCA, Professor Harrington specifically rejected a similar recommendation advocated by some stakeholders and instead recommended that “*Decision makers should actively consider the need to seek further documentary evidence in every claimant’s case. The final decision must be justified where this is not sought.*” Dr Litchfield also rejected this in the fourth independent review of the WCA, saying “*This argument has been extended to press for the Department to obtain further medical evidence in every mental health case but the premise is not accepted by the Reviewer.*”

DWP remains committed to keeping their processes for collecting further evidence under constant review – and will improve these processes where possible. It remains important to retain a balance between the added value of further evidence in any claim for ESA and the demands on the time of GPs and other healthcare professionals.

***MWC comment: we will continue to argue that the mental health information available in Ms DE’s case was insufficient for such an important decision. All reviews have cast doubt on the validity of the mental health component of the Work Capability Assessment.***

### Recommendation 2:

DWP and Atos should jointly ensure that when claimants are invited to a face to face assessment it is fully explained to them that the Atos practitioner will not have access to their medical notes. Claimants should also be given comprehensive information describing what will take place at the assessment and advice on possible sources of help to prepare for the assessment. DWP and Atos should ensure that when claimants meet the Atos practitioner they are told what information the Atos practitioner possesses about their case.

**Response:**

Atos Healthcare already provides information relating to the assessment which is sent to claimants beforehand. However, we will look at modifying this to include sources of help.

DWP will also work with its Health Assessment Provider to examine how further improvements can be made to the process including informing claimants what information they possess about their case and that they do not have access to their medical notes.

In addition, the claimant questionnaire is reviewed and updated every six months to take account of any concerns, and we work with stakeholder groups to improve both the design and the content of the form. We will explore further revisions to it as part of this process to explain that the Department will not know who the claimants' doctor/CPN/therapist/social worker are unless they tell us and making it clearer that providing these details does not mean we will contact them automatically.

In the most recent independent review of the WCA, Dr Litchfield made recommendations about improving all letters and forms used in the WCA process, and about the claimant questionnaire. The Government's response to Dr Litchfield's recommendations will be published before the end of March 2014.

***MWC comment: we note the response and welcome the commitment to revise the information for claimants.***

**Recommendation 3:**

The DWP decision maker should consider at least two distinct sources of information when coming to the decision.

**Response:**

DWP Decision Makers currently have to consider all available evidence when making their decision and this often includes additional evidence from treating clinicians, a fit note, the ESA50 (claimant questionnaire) and a report from an Atos healthcare professional. However, DWP will only know who the claimant's treating professional is if the claimant completes these details and returns the ESA50.

In addition and as stated above, the Department's policy on requesting further medical evidence is presently the subject to judicial review proceedings which are not concluded.

Dr Litchfield's independent review of the WCA recommended carrying out a full impact assessment of a radical redesign of the WCA process, including Decision Makers' triage of cases. The Government is currently considering

how to respond to this recommendation, but implementing it would likely lead to a significant change to the decision making process. The Government's response to Dr Litchfield's review will be published before the end of March.

***MWC comment: we again point out that no additional evidence was obtained in the case of Ms DE. We are not reassured by this response and hope for a stronger commitment here. At our meeting, DWP representatives described this as a helpful recommendation and we hoped for a response that reflected this.***

#### **Recommendation 4:**

DWP and Atos should review the Work Capability Assessment with expert input from specialists in occupational health and psychiatry to increase the ability of the assessment to identify functional level in individuals with a mental illness. DWP and Atos should also review the Work Capability Assessment mental state examination to remedy the significant defects we identified.

#### **Response:**

The WCA was developed in consultation with medical and other experts, including representative groups. Similarly, our approach to implementing and refining the assessment has made use of best evidence and the expertise of occupational health specialists and psychiatrists. There are also continuing on-going independent reviews of the WCA – four of which have now been completed.

In addition, an Evidence Based Review, which tested the existing descriptors and an alternative set of descriptors devised by stakeholder groups, has also recently been published. This was a significant study which involved a large number of independent experts including specialists in occupational health and psychiatry.

The findings suggest that overall the WCA works as intended and is a valid assessment relative to independent experts' opinion about individuals' fitness for work that can support decisions about who should be paid ESA. The report can be accessed through the following link - <https://www.gov.uk/government/publications/work-capability-assessment-evidence-based-review>

While the Evidence Based Review provides many valuable insights into how the WCA descriptors work, the method used also had some limitations which are noted in the study report. There is no definitive standard of work-related function that can be used to validate the results of disability assessments, for example. The continued contributions of medical experts, including specialists in occupational health and psychiatry will therefore continue to be vital for further refinement of the assessment.

***MWC comment: the evidence based review is, by its own admission, limited as it is based on expert opinion rather than validated scientific***

***research. We would value a commitment from the DWP to a more scientific validation of the WCA. Again, we point out that Dr Litchfield's fourth review cast doubt on the validity of the WCA for individuals with mental health problems.***

**Recommendation 5:**

DWP and Atos should jointly ensure that attendance at the Work Capability Assessment is not used as evidence of being able to function in the workplace.

**Response:**

The Department agree that the fact that someone attends a face-to-face assessment should not be used as the only evidence that someone is able to function in the workplace. However, the interaction between the claimant and the healthcare professional can provide evidence about how a claimant may function in the workplace and as such these observed behaviours form an important part of the assessment.

Dr Litchfield has recently completed the fourth independent review of the WCA and has recommended that assessors should avoid reporting inferences from indirect questioning as factual statements of capability. We are considering our response to his recommendations and will be responding formally before the end of March.

***MWC response: we do not consider that this response goes far enough. The mere fact that the individual attends should be taken as no evidence whatever that he/she is able to function in the workplace.***

**Recommendation 6:**

DWP should review its guidance on leaving telephone messages to ensure that its procedures are working well. Attempts to telephone a claimant to discuss a disallowance decision should be made on separate dates.

**Response:**

The Department is looking at a number of areas in relation to the Decision Assurance Call for ESA claimants. This includes running a trial on a new process, which will include considering who the call is made to, the methods used to contact the claimant and at what point(s) in time.

***MWC comment: we welcome the DWP's commitment here and look forward to receiving further information.***

**Recommendation 7:**

DWP should arrange that when an individual with a mental illness, learning disability or related condition is about to undergo the assessment process a

letter should be sent to the person's GP and, if applicable, the person's psychiatrist to inform the doctors of the potentially challenging situation being faced by the individual.

**Response:**

DWP will only know who the treating professionals are if the claimant returns the ESA50, completed with these details. In addition, with around 100,000 claims per month, any potential advantages to this must be balanced against the very real possibility of inundating GPs and specialists with too much information, which is again likely to place undue burdens on them.

However, as mentioned above, we review and update the ESA50 every six months, working with various stakeholders to improve the claimant questionnaire.

Dr Litchfield also recommended a comprehensive review of all letters and forms used in the WCA process, which we are currently considering as part of the Government's response to Dr Litchfield's review (due to be published before the end of March).

***MWC response: we note the response. In the case of Ms DE, there was no ESA 50 available. Again, this emphasises the danger of major decisions based on limited information especially given the high volume of claimants. There may be something that can be included on the initial information sent to the claimant at the outset of the process.***

**Recommendation 8:**

Non-return of the ESA50 form should lead to suitable further enquiries being made by Atos or DWP. If there is no ESA50 form at the Work Capability Assessment the reasons for this should be tactfully explored by the Atos assessing practitioner.

**Response:**

Healthcare Professionals are currently required to explore what a claimant's typical day might be like and this may include a tactful exploration of the reasons why the claimant questionnaire (ESA50) has not been returned. Healthcare professionals may also enquire whether claimants routinely open their mail, respond to requests for information and complete forms as required to gain a better insight into their daily lives.

Furthermore, where someone with a mental health condition does not return their ESA50 within the 4 week period their claim progresses, rather than being returned to DWP for a decision on whether to refuse benefit. Where appropriate, a DWP Visiting Officer can visit claimants with a mental health condition, who may need help completing an ESA50, and will write down exactly what the claimant replies to the questions asked.

Under normal circumstances, claimants have 28 days in which to return their ESA50, after which time their claim is closed if they do not return the form. However, in the case of Ms DE a reminder was issued to prompt her to return the ESA50. When she did not return it (Ms DE told a friend she never received the form), her claim was progressed in line with safeguards in place to protect claimants with mental health conditions.

***MWC comment: this did not happen in Ms DE's case. Can the DWP offer assurances that procedures have changed in order that this would now happen in a similar situation?***

**Recommendation 9:**

DWP and Atos should ensure that their communication with claimants is compliant with the requirements of the Equality Act 2010.

**Response:**

DWP takes its duties under the Equality Act very seriously. As such, where a disabled person requests the DWP to provide communications in an alternative format and this would be a "reasonable adjustment", the Department will comply with the request. Similarly, the Department's contractors are required to comply with the duties under the Equality Act.

The Department engages with a wide range of stakeholders, including many representatives from the disabled community and would hope and expect that where concerns are experienced this would be raised immediately with the Department.

***MWC comment: we know from the media of other situations where communication appears not to have complied with the Equality Act. We note the commitment but would have hoped to have seen more in terms of audit that the DWP can do in order to ensure that staff are acting in accordance with this commitment.***

**Recommendation 10:**

DWP should investigate if it sent a letter to Ms DE despite being aware of her death. If this letter was sent then DWP should consider how such events can be prevented.

**Response:**

Due to the volume of letters that are automatically generated, it is not possible to establish whether the letter to Ms DE was indeed issued. However in the event it was, DWP would like to apologise for this error and recognise the distress that this may have caused Ms DE's family.

Letters should not be issued once a date of death has been entered into the system. All communications should be sent to the nominated representative and should be clerical.

On 3 March 2014, an alert was issued for publication to remind staff of the correct procedures to follow when notified of a claimant's death to prevent further incidents.

***MWC comment: we are grateful to the DWP for this action.***

**Recommendation 11:**

DWP should examine the decision that Ms DE was not a vulnerable claimant and identify any shortcomings that led to this decision. DWP should strengthen its vulnerable claimant guidance and audit adherence by its staff to the guidance.

**Response:**

The vulnerable claimants' guidance was officially revised in December 2013. Existing information and guidance has been brought together within a dedicated area on the Departments' intranet for easy access and is reviewed regularly as part of an on-going process.

***MWC comment: we note that the guidance has been revised and welcome the commitment to ongoing review.***

**Recommendation 12:**

DWP should look at its peer review process and examine its suitability as a quality assurance tool. The peer review process should include a review by a suitably qualified medical practitioner of an assessment made by an Atos healthcare professional.

**Response:**

It is important to note that the purpose of a Peer Review in DWP is to identify where officials have not followed DWP policy or guidance. It is a process for identifying quality improvement, both local and national. It is not to question the substantive merits of the decisions taken by staff: that would be done through the internal complaints and/or reconsideration process or the statutory appeal process.

However, where the peer review author identifies that it might be useful for the Atos Healthcare report to be reviewed by a qualified medical practitioner then a referral is made for them to either review internally or ask Atos Healthcare to formally review.

***MWC comment: as we understand this response, the Peer Review does not involve a medical practitioner unless the reviewer (not medically***



***qualified) makes a referral. We continue to recommend medical peer review as a more robust assurance of the quality of medical assessments.***



Thistle House  
91 Haymarket Terrace  
Edinburgh  
EH12 5HE  
Tel: 0131 313 8777  
Fax: 0131 313 8778  
Service user and carer  
freephone: 0800 389 6809  
[enquiries@mwscot.org.uk](mailto:enquiries@mwscot.org.uk)  
[www.mwscot.org.uk](http://www.mwscot.org.uk)