



Law Centre (NI)

**DSD: Work Capability Assessment – A Call
for Evidence: Year 2 Independent Review**

October 2011

1. About Law Centre (NI)

1.1 Law Centre (NI) is a public interest law non-governmental organisation. We work to promote social justice and provide specialist legal services to advice organisations and disadvantaged individuals through our advice line and our casework services from our two regional offices in Northern Ireland. It provides a specialist legal service (advice, representation, training, information and policy comment) in five areas of law: social security, mental health, immigration, community care and employment. Law Centre services are provided to over 400 member agencies in Northern Ireland.

1.2 We welcome the decision to undertake an independent review of the WCA in Northern Ireland. This provides a key opportunity for Northern Ireland specific concerns to be taken into account as part of wider welfare reform. It is disappointing that so little time was allocated for the gathering of information as part of the Review. In this response we outline the significant issues relating to the operation of the work capability assessment (WCA) in Northern Ireland and highlight key areas for consideration as part of the ongoing review.

2. The Northern Ireland Context

2.1 With a higher proportion of claimants on Incapacity Benefit (IB) than other regions in England or the devolved administrations, the impact of the migration of claimants to ESA will have a particularly greater impact in Northern Ireland. In Northern Ireland 8.6 per cent of the working age population are receiving IB compared to 5.2 per cent in Britain. In Northern Ireland around 76,000 claimants will be subject to migration (i.e. approximately 500 claimants every week for three years). The migration of IB claimants to ESA has set an ambitious and arguably unrealistic timetable. We are not convinced the Social Security Agency has the capacity to manage this effectively within this timescale.

2.2 The DWP has estimated around 23 per cent of claimants will fail the WCA test governing migration. In practice, the early results from the Aberdeen pilot suggest a failure rate of just over 30 per cent. In addition, with the tightening of the WCA test the expectation is that over 40 per cent of new claimants to ESA will also fail the test. This suggests that up to 17,500 claimants will join the unemployment register over the next three years simply through the migration though some claimants who have partners in work may drop out of the benefit system altogether. Northern Ireland's employment rate of 66 per cent is below the UK average of 70.7 per cent and is the lowest of the UK regions. The claimant count rose in Northern Ireland in the last quarter of 2010 to 6.5 per cent

of the workforce compared with 4.5 per cent in GB.¹ It is generally accepted by a number of economic forecasters that Northern Ireland will come out of recession at a slower pace than Great Britain. Moreover, the pilots in Aberdeen and Burnley appear to have concentrated on the process of migration with little focus on outcomes (i.e. the numbers of people moved in to work). The government's aim is to get people into work yet we understand that even in Aberdeen where the economy is relatively buoyant few people have found employment. We would ask the Department to ensure that processes are in place to track outcomes in terms of finding work alongside other outcomes.

2.3 Currently there are approximately 51,000 Incapacity Benefit recipients in Northern Ireland. In terms of comparisons with the rest of the UK, Northern Ireland has almost double the number of Incapacity Benefit recipients per head of working age population than the UK average (4.8% vs 2.8%)². It is envisaged that as many as 20,000 of these IB recipients may find themselves in the work related activity group of Employment and Support Allowance following IB reassessment.

2.4 In Northern Ireland, the Incapacity Benefit reassessment process began in February 2011 (and will complete by March 2014) which will impact upon all Incapacity Benefit claimants:

- Every claimant who goes through reassessment will be subject to the Work Capability Assessment (WCA) process. The WCA determines whether someone is entitled to Employment & Support Allowance. Only those who are due to reach State Pension Age during the reassessment timeframe and terminally ill claimants will not undergo reassessment.
- Decision Makers will determine based on medical advice on the claimant's eligibility for Employment & Support Allowance.
- Based on the outcome of the WCA Process, Incapacity Benefit claimants will:
 - Transfer to ESA in the work related activity group
 - Transfer to ESA in the support group

¹ Northern Bank, Quarterly Economic Outlook, November 2010

² http://www.dsdni.gov.uk/index/publications/incapacity_benefit.htm

- Be found fit for work and be invited to claim JSA, claim Income Support under other conditions of entitlement (i.e. Carers, Lone Parents) or move off benefit

We think there remains a compelling argument to keep additional incapacity benefit claimants close to state pension age from migration thereby concentrating resources on younger claimants with a longer working age before them.

3. The Harrington Review

3.1 The first Harrington Review in November 2010 made 25 recommendations with the UK Government accepting 21 of the recommendations (at least in part). The DWP has published the 'high-level timeline' for work to be carried out over 2011 but only a quarter of the recommendations seem to have been planned to be implemented before people on Incapacity Benefits undergo a WCA from Spring 2011 at the rate of 10,000 per week. This will leave a flawed test operational at substantial social and material cost through disabled people not receiving appropriate support, high rates of appeal and an increased role for support staff. We would welcome confirmation regarding the timetable for the completion and publication of the NI Harrington Review and recommended that the planned roll out in 2011 does not occur in NI until the results of the Review are known and consulted on.

4. The Decision-making Process

4.1 We support the enhanced training of frontline staff conducting the assessments. We are concerned about the capacity of Health Care Professionals (HCP) carrying out the WCA. The Citizen's Advice Report '*Not working*' has provided research whereby claimants have reported 'hurried medicals in which the HCP does not look at them but at the computer screen'.³ Similarly, Citizens Advice (NI) has highlighted delays in processing claims which cause financial hardship for clients. Delays are often caused by the loss of documentation supporting a claim or a lack of communication or follow up from the Social Security Agency.⁴ In addition, it is vital that Personal Advisers working with people with disabilities and mental health issues have a good understanding of the particular difficulties they may face and the impact this may have on their health in returning to work.

³ Citizen Advice Bureau Briefing, '*Not working*', March 2010 pg 18

⁴ *Problems with ESA administration continue in Northern Ireland*, Citizens Advice comment on Rightsnet, www.rightsnet.org.uk 27th August 2010

4.2 We welcome the intention to develop personalised support delivered through JSA. However, given the numbers likely to be transferred to Jobseeker's Allowance we are doubtful whether this policy intention can be carried through in practice. Moreover, it is critical that decision-makers employ an active role in making decisions rather than rubber-stamping recommendations made by Atos Healthcare.

5. Outcome of migration

5.1 Claimants who do not satisfy the terms of entitlement to ESA at the point of transfer will not receive ESA and their award of incapacity will also cease. Many of these people will have been receiving incapacity benefits for a number of years and will need to adjust to new criteria and assessment.

5.2 Those found capable of work may be eligible for jobseeker's allowance if they meet the criteria for entitlement. We are concerned that there are not enough safeguards for these people who have been found fit for work. We note that those who become ill while on jobseekers allowance will have access to additional support and flexibilities to help them return to work and through agreement with a personal adviser those with more limited availability to work and ability can restrict their search.

5.3 Our concern centres on those who are found fit for work, but unable to find work, and who are ineligible or unable to cope with JSA. A study carried out by the National Autistic Society surveyed 500 people on the autism spectrum identified that a third were neither in employment nor on benefits.⁵ We believe that more protection measures should be introduced to ensure that ill and disabled people do not lose benefit and therefore fall into poverty. In addition, those claimants who come off incapacity benefit with, for example, a partner working will fall out of the benefit system altogether. There is a need to devise a strategy to ensure such claimants also have access to support to find work and that what happens to such claimants is monitored. Without such arrangements a considerable number of claimants may be inadvertently written off, precisely the opposite outcome intended by the reforms.

5.4 It also remains unclear whether the equivalent of the Work Programme will be rolled out in Northern Ireland. In practice, we understand from the Department of Employment and Learning that it will be at least April 2012 before

⁵ National Autistic Society (October 2009), *Don't write me off: make the system fair for people with Autism*

any new arrangements are put in place. In effect, we doubt that the challenge that significant additional numbers moving to JSA who need considerable support to get ready for work will be met in reality. The Work Programme is seen as a crucial underpinning of the strategy of welfare to work in Britain yet it will clearly not happen in Northern Ireland for at least another 12 months at the earliest. We would ask the Committee to highlight this situation in their report.

6. Mental Health & Disability

6.1 Law Centre (NI) has also been concerned about the limited understanding of mental health problems in the assessment process and the limited weight given to supplementary evidence such as GP and carer's testimonies. Over 46 per cent of individuals in receipt of Incapacity Benefit have mental or behavioural disorders in Northern Ireland.⁶ In addition, a report published by the Centre for Social Justice noted 'the majority of people claiming illness-related out of work benefits do so on account of mental and behavioural disorders...this demonstrates a significant and widespread problem in Northern Ireland given its comparatively small population'.⁷ As a result mental health issues need to be more specifically focused on and addressed in the assessment process.

6.2 We are concerned by the shift from the social to the medical model of assessment. The introduction of person-centered, focused assessments, sensitive to the needs of individuals, and the inclusion of evidence from health professionals familiar with the claimant would be more suitable for those with disabilities. The current test as recently amended leaves some claimants who have no realistic prospect of employment arguably failing the WCA (for example, having a psychotic episode leading to behavior which is unreasonable in any workplace twice a year is not an automatic passport to satisfying the WCA).

6.3 Fluctuating conditions reveal difficulties caused by exertion, exhaustion and repetition of tasks and reflect the broader spectrum of disability. We believe that 'information from healthcare and other professionals who work with and support the individual such as their GP or social worker' should be considered as a matter of course as these are the people most in contact with claimants, familiar with the individuals situation and have a holistic understanding of the condition. Therefore, it is vital that Health Care Professionals have a good understanding of the particular difficulties they may face and the impact this may have on their health and mobility. We recommend that the Department closely

⁶ Incapacity Benefit and Severe Living Allowance: Statistics DSDNI November 2009

⁷ Centre for Social Justice, *Breakthrough Northern Ireland*, September 2010 pg15

consults with organisations representing those with fluctuating conditions, for example, Northern Ireland ME Association and Action MS. In particular, we recommend that the Department ensures that decision makers continue to retain a clear sense of their role as decision-makers and are not more rubber stamps for the view of Atos contracted staff. This approach is in keeping with the recommendations made by Professor Harrington in his GB review.

7. Conclusion

7.1 Law Centre welcomes the opportunity to provide information to the Department as part of the independent review of the WCA. We trust you will find our comments helpful. If there is any further way in which we could contribute to this process we would welcome the opportunity to do so.

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