



Law Centre (NI)

Work and Pensions Select Committee Inquiry

**Migration from incapacity benefits to
employment and support allowance**

April 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 450 member agencies in Northern Ireland.

1.2 In this evidence we outline the significant issues likely to be presented by the migration from incapacity benefit (IB) to employment and support allowance (ESA), drawing attention to the Northern Ireland specific issues.

2. The Northern Ireland Context

2.1 With a higher proportion of claimants on 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 Incapacity Benefit (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 Work Capability Assessment (WCA) test governing migration. In practice, the early results from the Aberdeen pilot suggest a failure rate of 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

¹ Northern Bank, Quarterly Economic Outlook, November 2010

generally accepted by a number of economic forecasters that Northern Ireland will come out of recession at a slower pace than Great Britain.

3. Work Capabilities Assessment

3.1 Where someone is found to have a limited capability for work in this assessment, they will be moved (migrated) onto ESA but of those found fit for work the Government expects that:

- 50% will move onto jobseeker's allowance.
- 20% will move on to another benefit (e.g. income support, carers allowance or re-claim ESA)
- 30% will move off benefits altogether

3.2 The first review of the work capability assessment (WCA) carried out by Professor Malcolm Harrington was published in November 2010. The review made 25 recommendations with the 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.

3.3 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. Almost 46.6 per cent of individuals in receipt of Incapacity Benefit have mental or behavioural disorders in Northern Ireland.² We think that mental health issues need to be more specifically focused on and addressed in the migration process.

4. 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 quantitative 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

² Incapacity Benefit and Severe Living Allowance: Statistics DSDNI November 2009

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

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. 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, we are particularly keen to ensure 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. We remain unconvinced that ESA and jobseeker's allowance alone will be able to offer the flexibility required of claimants in more complex situations, for example when a claimant qualifies for support under more than one category, such as a lone parent with caring responsibilities.

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 fall into benefit deprivation and therefore poverty. In

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

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

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 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. Roll out of the scheme

6.1 We are not convinced that the timescale is realistic to manage the roll out effectively within the timescale.

7. Aberdeen and Burnley Trials

7.1 The IB migration trials in Aberdeen and Burnley used a sample of 1,700 claimants. DWP has published statistics which reveal that, in the Burnley and Aberdeen pilots, where people are moved off incapacity benefits using the Work Capability Assessment:

- 30% of former IB claimants entered the new Employment and Support Allowance (ESA) benefit's support component (i.e. not required to undertake any work);
- 40% were found partially fit for work (ie have some significant underlying health condition/impairment) and enter the ESA work-related activity group; and
- 30% were 'fully fit for work' and go on Jobseeker's Allowance (higher than the previous Government's 23% fully fit estimate).

7.2 However in examining the actual figures released by the DWP in February 2011, the statistics relate to only 1347 decisions when 1,700 claimants were assessed in the course of the pilot. This means decisions have not been made (or released) in over 350 cases. Also it is of note that 123 claimants from the trials have already appealed the decision. Based on current appeal success

rates around 50 of these appeals will be upheld – but this number may prove to be higher as these are all claimants who were previously accepted as incapacitated.

7.3 It is of note that, in our understanding, these claims were handled clerically, which means that DWP computer software was not used for the trial and therefore will not be tested until full migration starts. This is a further concern. In Northern Ireland there are already significant delays in getting cases to appeal tribunal hearings. This is likely to be exacerbated.

8. Conclusion

8.1 Welfare reform needs to take account of specific Northern Ireland circumstances. The Law Centre encourages the Committee to consider what is different about the circumstances in Northern Ireland and the objective ramifications of the migration from incapacity benefits to employment and support allowance for claimants here.

8.2 Law Centre welcomes the opportunity to provide evidence to the Committee. 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.

For further information about this response contact:

Policy Unit
Law Centre (NI)
124 Donegall Street
BELFAST
BT1 2GY
Tel: 028 90 24 44 01
Fax: 028 90 23 63 40
Textphone: 028 90 23 99 38