Response to Work and Pensions Committee’s call for evidence on Employment and Support Allowance and Work Capability Assessment

March 2014
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About the Law Centre

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. The Law Centre provides a specialist legal advice service, 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 300 member organisations in Northern Ireland. We regularly advise on and provide representation on Employment Support Allowance and related matters.

2. We welcome this opportunity to feed into the Committee’s inquiry into Employment Support Allowance and Work Capability Assessment. This short paper highlights two issues: the first relating to the accessibility of the assessment centres; the second relating to audio recording.

Accessibility of ATOS assessment centres

3. The Committee considered the issue of accessibility to assessment centres in its 2011 report and concluded:

71. It is unacceptable that disabled people should be called to attend an assessment at a centre which is inappropriately located, inaccessible to them or where reasonable adjustments cannot be made to accommodate special requirements arising from their health condition. We note DWP’s assurance that ATOS Healthcare is “moving rapidly toward” a situation were this is no longer the case. We request that, in response to this Report, the Government sets out progress towards this aim. This should include options for the relocation of assessment centres where necessary, increasing disabled access, and improvements to the mechanisms for ensuring a claimant’s needs are known to ATOS Healthcare in advance of the WCA.¹

4. Unfortunately, disabled people in Northern Ireland continue to be called for assessment in centres that are inaccessible and/or inappropriately located as explained below.

¹ House of Commons Work and Pensions Committee, ‘The role of incapacity benefit reassessment in helping claimants into employment’ HC 1015
5. The ATOS assessment centre in Belfast is not accessible for many applicants who have mobility restrictions. Work Capability Assessments are conducted on the fourth floor of Royston House in Belfast City Centre. Lifts are available for use in normal circumstances. However, there are no evacuation procedures in place that would allow for claimants with mobility restrictions to be safely vacated in the event of a fire or emergency. Therefore, if an applicant indicates that they would need assistance in the event of an emergency, they are asked to attend a Work Capability Assessment in Portadown, which is approximately 30 miles from Belfast. We are mindful that medical assessments used to be carried out at Royston House prior to the ATOS contract as staff were trained to conduct evacuations.

6. The issue of accessibility to Employment Support Allowance medical examinations has been consistently highlighted by the Northern Ireland voluntary and community sector. For example, the Law Centre has raised it with the Department for Social Development in 2012 and Disability Action entered into correspondence with the Social Security Agency in August the same year. In its response to the charity, the Agency explained that the evacuation policy issue had only emerged earlier that year but that it was working closely with the service provider (ATOS) to address the issue and to achieve a solution. The Agency also explained that travel expenses were payable for claimants who were unable to access the Belfast centre to go to a different town, and that home visits were a possibility for claimants medically unfit to travel. In practice, our understanding is that claimants are only informed of the possibility of a home visit if the claimant specifically asks ATOS for an alternative, in which case they are told to seek evidence from their GP confirming inability to travel. However, in some circumstances, GPs have been unaware of the requirement to provide such confirmation. Consequently, claimants often face difficulties when trying to arrange home visits.

7. This issue has received media attention and has also been the subject of questions at the Northern Ireland Assembly. One question revealed that the cost of taxi travel is met by the Social Security Agency and that the total cost of taxi travel up to 31 October 2012 was £21,987. It is also apparent that the number of home visits is very small: 306 of 29,084 Employment Support Allowance claimants had their medical assessment in their home between June 2011 and November 2012, amounting to 1.05%.

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2 We highlighted this to Department for Social Development, ‘Work Capability Assessment: Year 3 Independent Review’ (September 2012) http://www.lawcentreni.org/Publications/Policy-Responses/DSD_WCA_Year_3_Review_Sept%2012.pdf
3 For example, BBC, ‘Kenny Edgar’s 98 km taxi trip for benefit assessment’ (19 June 2013); Belfast Telegraph, ‘Editorial: Disabled welfare tests on fourth floor: couldn’t make it up’ (5 June 2013)
4 AQW 16593/11 asked by Michael Copeland UUP
5 AQW 17264/11-15 asked by Peter Weir DUP
8. The Law Centre is currently representing a client in county court proceedings against ATOS Healthcare and the Department for Social Development for breach of Disability Discrimination Act 1995. Our client lives in Belfast and suffers from a number of medical conditions, which results in ongoing pain and limited mobility. When advised that he would have to travel to Portadown, our client raised his concern of not being able to sit so long in a taxi and thus requested a home visit. This turned out to be administratively difficult and so, for fear of missing his medical assessment, our client agreed to attend his Work Capability Assessment by taxi. He explains:

*I lay in the back seat of a taxi to and from Portadown. I felt angry and humiliated that there was no proper access for me to assessment facilities in Belfast. I found the entire process extremely stressful.*

Following assessment, it was decided that our client has limited capability for work related activity. Through the county court action, our client is seeking compensation for the breach of the disability legislation and is also seeking that the parties remedy the breach by providing adequate access to assessment services.

**Audio recording Work Capability Assessments**

9. We are aware of many cases of disputes over the interview record following the medical assessment. Claimants often voice concerns that their comments have not been accurately recorded. Clearly the medical assessment report is a crucial piece of evidence and it is essential that it is a true reflection of discussions – both in terms of the quality of the resultant decision and in terms of the claimant’s confidence in the decision and perception of the whole process. We believe that the most effective measure would be to introduce audio recordings as standard practice. All conversations should be recorded unless the claimant specifically opts out.

10. We are mindful that the DWP decided not to implement universal recording of face-to-face assessments in foot of a pilot audio recording scheme that was undertaken in Spring 2011. The DWP felt that universal recording would be too costly with no apparent substantial benefit or improvement in assessments. In contrast, the ATOS evaluation of the pilot concludes, ‘the overall position from both the HCP’s and client’s view is that the introduction

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6 DWP FAQ on the audio recording of Employment and Support Allowance (ESA) Work Capability Assessments (June 2013)
of a recording facility into the assessment has benefits. There does, then, appear to be merit in the measure.

11. Accordingly, we would urge the Committee to explore this further and to look at what factors the DWP took into account when concluding that universal recording was too costly to run. Specifically, we wonder whether the wider impact was considered: i.e. the cost of conducting reviews and appeals in cases where there was a dispute over the interview record. Arguably, such costs could be avoided through audio recording.

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