

Making ESA Fit for Work In York



ESA
**FIT FOR
WORK?**

Summary

Last year the CAB service helped more people with Employment and Support Allowance (ESA) than any other issue. In York we helped people with 380 problems with ESA in the first six months of 2014.

When individuals become sick or disabled and are therefore unable to work, ESA is designed to support them. However, poorly designed rules currently make it difficult to determine who is fit for work and who isn't. That is why Citizens Advice is calling on the Government to make Employment and Support Allowance **fit for work**.

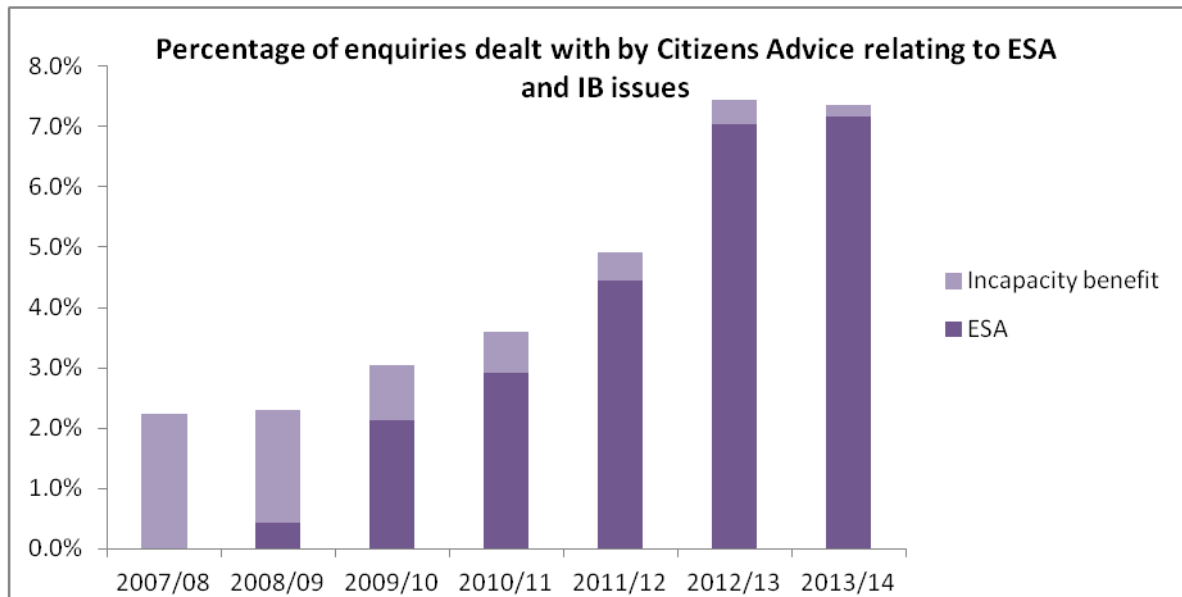
The problem

With 4260 ESA claimants in York, York & District Bureau is concerned that this system is causing significant detriment to local people and has joined the CAB service's national campaign to fix three key issues with the ESA claim process:

- The complex and contradictory way in which medical evidence is used to inform eligibility decisions.
- The lack of quality in reports and poor customer service during assessment.
- The withdrawal of benefit during mandatory reconsideration which leaves many claimants reliant on emergency support.

Why ESA is not fit for work

Since ESA has been rolled out, with the intention of it replacing Incapacity Benefit, helping people deal with ESA problems has become a bigger and bigger issue. It is now the biggest single issue that the CAB service faces.



In York, we have seen a number of enquiries about the lack of payments during the mandatory reconsideration period of entitlement decisions. Instead, clients are making claims for Jobseekers Allowance during this period which are not always successful or delayed. Another prominent issue which has been identified is the poor quality of work capability assessments. In a number of instances, clients suffering mental health issues such as depression or severe stress have not had their conditions adequately considered over the course of the assessment.

This report evidences how problems with ESA have affected people in York and sets out key proposals which we believe would make ESA fit for work.

Our key proposals

- The Department of Work and Pensions (DWP) should listen to evidence from the health and social care professionals who know claimants best and this evidence should be provided free of charge.
- The companies running the work capability assessments (WCA) should be held accountable for poor quality assessments or bad customer service.
- The DWP should continue to pay people ESA while a second opinion is given on their application.

Paying for medical evidence

From helping people through the application and appeal process, our advisers know that the more medical evidence bought to bear on a claim, the more likely the DWP is to make the correct decision on whether someone is fit for work. However, this evidence is not always requested as standard by the DWP or Atos for each new claim. Where they do, it is often only a basic copy of a client's medical records which may fail to highlight mental health and learning difficulties and may underestimate the impact on their ability to work.

Throughout the application process, claimants are also encouraged to send in additional evidence from the health and social care professional that knows them best. There is, however, no duty on GPs or other professionals to provide this information when it is requested by a patient. Some refuse to provide evidence while others charge people up to £125 for the medical evidence they request.

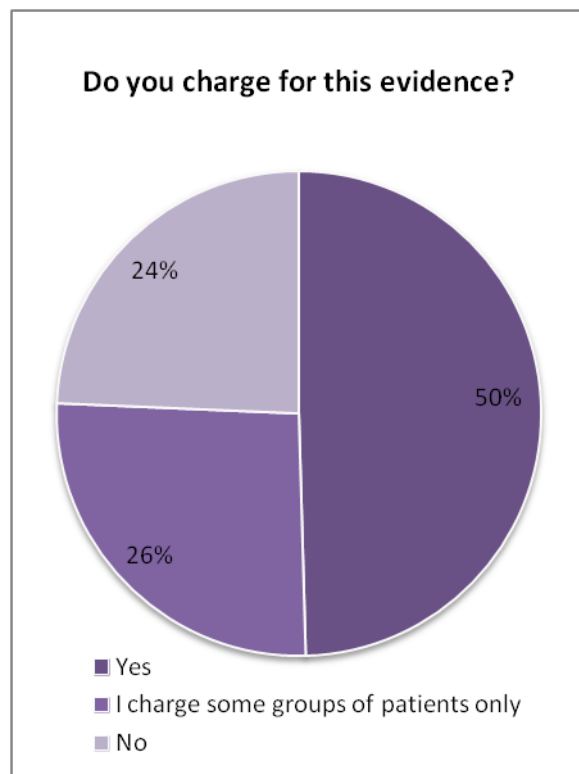
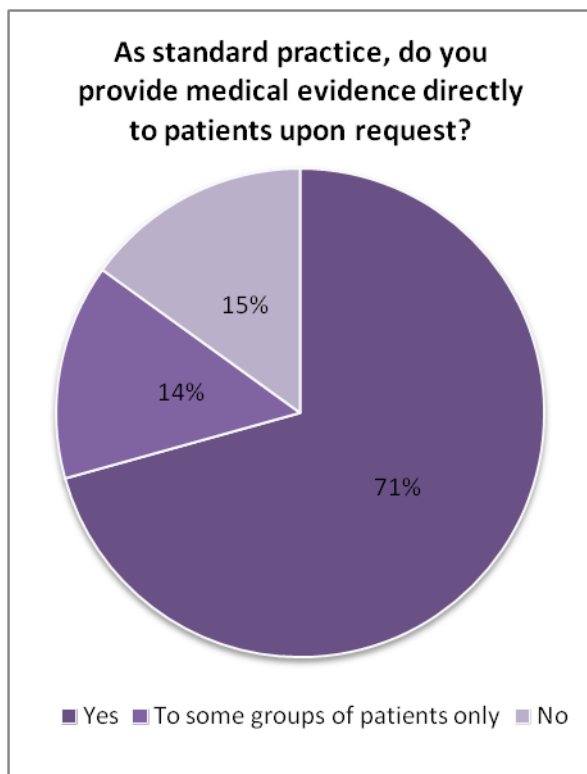
This situation is worsened by the fact that there is no standard approach adopted by GPs or other health professionals to providing this evidence. This means that patients at one practice may receive the evidence they need to support their claim for free while patients at another practice may be denied evidence or confronted with huge fees.

With the 224,375 appeals for ESA costing the Government around £56 million a year, we believe that **providing medical evidence for everyone who needs it would actually save taxpayers money in the long run.**

Citizens Advice ran a national survey of GPs to find out how many provide medical evidence to their patients and how much they charge¹. Our findings showed that while only 15 per cent of GPs refused to provide evidence, over 70 per cent of those who would provide evidence charged for it in some or all cases. We also found that 47 per cent of respondents indicated that the practice played a key role in determining access to medical evidence demonstrating a lack of consistency and the creation of a possible 'postcode lottery' in access to evidence.

Where GPs did tell us that they have received guidance, it came from a variety of sources including the Royal College of GPs, Clinical Commissioning Groups (CCGs) and Local Medical Committees (LMCs).

¹ Survey carried out March-April 2014. We received responses from 173 GP practices.



We also asked GPs how the system can be improved to ensure that decisions are made with all the needed evidence while not putting an unnecessary strain on already hardworking medical professionals.

Some of the typical responses included:

“Would like to see the onus on the DWP to pay. Would prefer not to charge patients, but as the practice is located in a deprived area they are inundated with requests for medical evidence to support benefit claims and appeals.”

“A specific form detailing exact requirements, rather than patients asking for all of their records each time.”

“No. Who else works for free? Will Tesco or British Gas give them a discount? Does your CEO not get paid? I think it's wholly inappropriate to apply pressure on GPs to work for free.”

Case Study: A client suffering from Attention Deficit Hyperactivity Disorder was unable to gain an assessment of her condition from a local NHS specialist as the client’s GP refused to refer her. This refusal was on the basis that the client must demonstrate that she is able to pay the GP’s fee for the referral. The lack of such evidence will affect the chance of success of her appeal for Employment and Support Allowance entitlement following a mandatory reconsideration.

Our solution

While we understand the difficult position that GPs find themselves in, it can't be acceptable that so many people are either refused medical evidence or can't afford to pay their GP for the evidence which will prove that they are not fit for work.

So we want to see the DWP:

- taking responsibility for ensuring medical evidence is provided in all cases where it is needed
- committing to pay for medical evidence either directly or through the new contracts for the WCA providers
- consulting with medical professionals and Citizens Advice to design an improved, simplified system to provide medical evidence for all who need it.

Many of the doctors in our survey found it difficult to provide the right evidence because the client didn't know what they needed and the guidance from the DWP is very unclear. We believe that a system could be set up which is much simpler and less of a drain on NHS resources so that more evidence is provided while taking up less time of GPs.

Quality and customer satisfaction

The tendering of new contracts to provide work capability assessments (WCA), replacing Atos, gives the Government a great opportunity to reform the existing system to make ESA fit for work. We know how vital this is because we have seen the impact poor quality assessments can have on our clients. If significant improvements are not made to the new contracts now, we may not be able to make ESA fit for work until 2018 at the very earliest.

Case Study: A client suffered from prolapsed spinal discs which prevented her from standing for long periods of time. The condition and medication caused the client forgetfulness, nausea and dizziness. The client was due for a Work Capability Assessment which, due to her mother-in-law's death, had to be rearranged. However, before this date the client's fiancé suddenly passed away, with the funeral scheduled for the same date as the assessment. Despite evidence being presented to DWP, the client was refused another rearrangement so she could attend her fiancé's funeral.

Currently, there are three key areas in which low quality services are causing problems:

- Poor service by the DWP and low quality communication channels between the DWP and Atos have led to repeated instances of missing paperwork and delays to the claim process.
- Poor customer service at face-to-face assessments has caused physical and psychological distress to a number of claimants.
- A lack of quality in the assessments themselves, and specifically around the reports used to determine eligibility for ESA, have left assessors subject to regular appeal.

In 2012, Citizens Advice examined the accuracy of a sample of WCA reports produced by ATOS on behalf of the DWP². Of 37 reports examined in depth, 26 had either a medium or high level of reported inaccuracy with ten cases reported as serious. There were omissions or incorrect observations, incorrect factual recording of medical histories, unjustified assumptions about the claimant's condition and a lack of empathy shown. Current evidence indicates that many of these issues remain and our clients feel that inaccuracies in the WCA report have resulted in an incorrect decision.

² http://data.parliament.uk/writtenevidence/WrittenEvidence.svc/EvidenceHtml/7824#_ftn2

We regularly hear about long delays for both new and existing clients awaiting a face-to-face appointment for their WCA. This causes increased and unnecessary uncertainty and distress and means people have to manage for much longer than 13

Case Study: A client had to wait over eight weeks to receive her final ESA decision. The client had also been in receipt of Housing Benefit and Council Tax Support during this time but these ceased. As the client was then no longer receiving any means-tested benefit she could not access local authority financial support.

weeks on the assessment phase rate of £71.70. It is not unusual to see clients on the assessment rate of ESA for up to twelve months. For those who require additional support, delays are even longer.

In York, we have seen the use of undignified and demeaning language in mandatory reconsideration decisions, disrespectful behaviour by ATOS staff towards claimants and DWP changing the status of entitlement on a number of different occasions without any change in circumstance.

Our solution

- Providers should be subject to fines for inaccurate assessments.
- Customer satisfaction monitoring should be carried out by an independent assessor and, where benchmarks are not met, providers should be held accountable.
- The DWP needs to make more use of medical evidence from the professional who knows each claimant best rather than rely on a tick box exercise by the company running the work capability assessments.
- The new contracts for running work capability assessments need to ensure there are enough trained staff to clear the backlog and be able to hold the provider to account for poor quality work.

Mandatory reconsideration

Before anyone is allowed to make an official appeal of their ESA decision, they must first ask the DWP to reconsider their application. This is called the mandatory reconsideration phase.

It makes sense to reconsider an application before it goes to appeal. However in our opinion, there is a fatal flaw in the design of mandatory reconsideration.

When someone applies for ESA they are paid at an assessment rate of £71.70 a week. When someone appeals an ESA decision, they are also entitled to the assessment rate. However during their mandatory reconsideration, their benefit is cut off and they are told to apply for Jobseeker's Allowance (JSA) also at a rate of £71.70 a week.

This causes the following problems:

- **Stress and hardship for claimants**

Being told that you have to apply for Jobseeker's allowance when you don't feel fit for work can be a very stressful process. Many feel that they can't sign a claimant commitment to look for work when they know they will not be able to fulfil it. Even if they do claim Jobseeker's Allowance (JSA) they will have to wait at least a week while it is processed.

- **Claimants being turned away by their Jobcentre Plus advisers**

We have seen many cases of people being told that they didn't qualify for ESA but then turned down for JSA because they don't consider them fit for work. This leaves them unable to get either benefit for weeks.

- **Waste of public money**

Stopping an ESA claim, starting a new JSA claim, having a JSA interview, closing the JSA claim and re-opening an ESA claim while you appeal all have significant administration costs. Government statistics show simply opening a JSA claim and interviewing a new claimant costs taxpayers around £160 per person. Not paying a claimant during the mandatory reconsideration phase will therefore waste significant resources.

The CAB service has launched a petition calling on the Government to change this policy which has now gained over 7,000 signatures. Please show your support and [sign the petition](#).

In York, many clients have not received ESA at the assessment rate during the mandatory reconsideration period and are having to claim Jobseekers Allowance. In some cases the client's claims for Jobseekers have also been unsuccessful.

Case Study: A client suffering from ME had been receiving ESA but failed a work capability assessment. During the mandatory reconsideration period, the client did not receive ESA at the assessment rate and instead claimed Jobseekers Allowance. These payments also stopped and the client fell into arrears on his TV License, Sewerage and Council Tax payments. The client became overdrawn and was charged over £1000 in bank charges. The client became reliant on charitable support for food and repaying the debts.

Our solution

Continuing to pay people the assessment rate of £71.70 a week during mandatory reconsideration, rather than forcing them to claim JSA at £71.70, is a simple solution which will be better for claimants and other tax payers.

If you want to find out more about the campaign:

- please visit www.citizensadvice.org.uk/fitforwork
- follow via Twitter using #FitforWork.

Or you can find your local CAB: <http://www.citizensadvice.org.uk/>