

# **Fitness for Work Test? Not Fit for Purpose**

A Social Policy Report on  
Medical Assessments for Claimants of  
Disability or Sickness Benefits



**North  
Lancashire**

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## 1 Introduction

Medical assessments for disability and sickness benefits claimants are currently required for many claimants of Employment and Support Allowance (ESA) and Disability Living Allowance, once the claimants have submitted their applications for the benefit, or at the time of review or renewal of an existing benefit.

Employment and Support Allowance was introduced in 2008 to replace Incapacity Benefit and incapacity related Income Support. Sick people who would previously have claimed Incapacity Benefit would now apply for ESA and people already in receipt of Incapacity or Income Support on ill health grounds would gradually be transferred on to ESA.

The criteria for entitlement for ESA are more narrowly drawn than those for Incapacity Benefit or incapacity related Income Support. It was assumed therefore that the numbers of successful claimants would be reduced and that many existing claimants would, on review or renewal, lose their previous benefit entitlement.

Part of the process of claiming or reclaiming ESA is a medical assessment carried out to test the claimant's capacity to work. The medical assessments for the Department for Work and Pensions (DWP) are currently carried out by a French firm Atos. Atos is a French international IT services and consulting corporation whose Atos Healthcare division has been awarded the contract by the DWP to provide assessment services for a range of disability benefits.

The procedures of the Atos staff and the quality of their assessments have been called into question by a number of organisations, especially those working with people with mental health problems or variable conditions such as ME.

Citizens Advice nationally responded to 97,000 requests for support on this issue alone in the first three months of 2012. The charity said its "already overstretched service" had been put under severe pressure by the problems connected with ESA, and the controversial computer-led fitness test, the work capability assessment (WCA), which determines eligibility for the benefit. Problems connected with ESA were the fastest-growing area of need among people who consulted a Citizens Advice Bureau (CAB) in the

first quarter of this year, rising by 71% on the same quarter last year. There was an 82% rise in requests for help in mounting an appeal against a decision not to award the benefit. Around 38% of appeals against a refusal of the benefit are currently being overturned in the claimant's favour.

Recent case studies of clients seeking help at North Lancashire CAB on ESA related issues show three significant areas of concern –

- High failure rate for people with mental health problems
- Numbers of decisions that claimants were fit to work overturned on appeal
- Behaviour of Atos assessors

## 2 Evidence and case studies

### High failure rate for people with mental health problems, or other complex issues

The ESA medical assessment, based as it is on a series of standard questions, is more geared up to explore the condition of someone with a physical health problem. It is inadequate for people with mental health problems or variable conditions such as ME. People who have previously received Incapacity Benefit on mental health grounds form the majority of clients approaching the Bureau for assistance, and they are the ones least able to cope with the stresses connected with appealing adverse decisions.

*A client came to the Bureau for help because he had failed his ESA medical. He has learning difficulties, cannot read or write, has memory problems and suffers acute anxiety and panic attacks. Because of the adverse finding at the medical assessment stage his benefits have been stopped causing distress and financial hardship, and associated stress. He has been without benefit for several months because he did not understand about appealing (when he would have received reduced benefit), or that he should have put in a new claim for housing benefit and council tax benefit etc.*

The aim of the medical assessment is to ascertain whether a person is capable of work or not. Frequently the decision that a claimant is capable of work is entirely unrealistic, taking into account workplace needs and conditions. It may be possible for some claimants with mental health problems to work in a sheltered and supportive environment, but quite unreasonable to expect either that they will be able to cope in an ordinary workplace environment, or that an employer will have the means and resources to offer the support such employees would require. Even if such claimants succeeded in being offered a job, they would be unable to hold it without substantial support.

*A Bureau client was declared fit for work following his ESA medical. He scored 0 points at the medical assessment in spite of having a number of problems which would make it difficult for him to obtain and hold down a job. The client cannot read or write, suffers from anxiety and depression and has a history of drug and alcohol problems. He often does things in an impulsive and dangerous manner. He also gets upset and angry with*

*violent outbursts often becoming snappy and agitated for no reason, and finds it difficult to engage with people. He suffers from memory problems and cannot learn new things or follow instructions. He is not able to go out on his own.*

*A Bureau client is a single person with alcohol dependency issues. He had previously worked as in the building trade.*

*However he was found fit for work following the ATOS assessment in summer 2012. He explained to ATOS at the time of the assessment and to DWP in his appeal that if he comes off alcohol too quickly he experiences withdrawal fits and that this places him in greater danger of serious accidents and injury. This was also confirmed by his GP to the DWP. Despite this he was found fit for work and the information accompanying the decision notice told him to claim Job Seekers Allowance (JSA), which he did. However he had a major dilemma - If he did obtain employment and he gave up alcohol he would be at risk of further fits and serious accidents. If he continued drinking he would be in breach of health and safety regulations and his employment contract. If a person is dismissed for being drunk at work his JSA could be stopped/sanctioned for up to 6 months.*

*In looking for work he was concerned that no employer will be willing to employ him because of his alcohol addiction.*

*However, he did find found work again in the building trade and whilst working on a roof he had an alcohol withdrawal fit causing him to fall from the roof sustaining severe spinal injuries and puncturing his lung. He is left with quite severe physical disability as a result.*

*A long term Bureau client has mental health problems. She has depression and anxiety with panic attacks and agoraphobia. She has been under care of the Community Mental Health Team for many years. For her to be able to attend appointments she has to be accompanied by her ex-partner. She was invited to attend a medical and did so with her ex-partner and with her daughter. The ATOS assessor point blank refused to allow the client's ex-partner into the examination room with her. As direct result the client said that she was extremely anxious and did not perform well for this reason. The assessment lasted only about 15 minutes due to her inability to communicate properly. She has been found fit for work, partly on the basis that she was able to enter the examination room on her own.*

The problems facing people with complex health conditions was inherent in the changes from the beginning as reported on the BBC News website for 13 October 2009 describing difficulties experienced by people with autism.

*NAS (National Autistic Society) chief executive Mark Lever said people with autism experienced "anxiety, confusion, delays and discrimination" when using services. The charity says many people with autism are experiencing difficulties when applying for the new Employment and Support Allowance (ESA).*

*The ESA replaced incapacity benefit in October 2008. The change was designed to encourage more people into work if they are able. But the NAS says many people with autism are experiencing a "multitude of problems. Paula Wharmby said she found the process of applying for the ESA inflexible and intimidating. 'It was clear nobody knew anything about autism and a report from my psychiatrist on my difficulties was completely ignored. I was denied the benefit and had to go to a tribunal to have the decision overturned. The system just isn't working for people like me.' "*

*A Bureau client suffers from Asperger's Syndrome and depression with significant learning difficulties. The ATOS assessor felt that the client did not have learning difficulties, saying that no evidence had been adduced for such, despite these being on all the client's records. The assessor further felt the depression was not real, noting quick recovery from tearful outbursts (part of his child like behaviour and associated with Asperger's Syndrome) and ability to deal well in interview despite his usual behaviour of distraction from a subject and his obsession with certain other things. The client said that the ATOS assessor was rude and disinterested. At appeal the client moved from having been assessed with zero points to the support group of ESA with the suggestion that reassessment should not take place for at least 2 years.*

### **3 Decisions overturned on appeal**

When ESA claimants have received the decision that they are capable of work, and appeal that decision, frequently the independent tribunal which hears their appeal overturns the original decision. A response from the National Audit Office (NAO) to questions raised by Tom Greatrex MP in August 2012 indicates that almost 40% of decisions are overturned on

appeal. Such a high figure, nearly two fifths of the whole, indicates that there must be something seriously wrong with the decision making process which depends heavily, sometimes entirely, on the medical assessment, ignoring information provided by a GP or consultant. The inadequacy of the medical assessment is thus giving rise to an unacceptable level of human suffering as claimants, who already have acute health problems, are compelled to undergo further stress as well as financial hardship, with reduced benefit as their only income, while they go through the appeal process.

*A client came to the Bureau for help because he had failed ESA medical and his benefits have been stopped causing distress and financial hardship. The client had long history of mental health problems, with suicide attempts in the past. He lives with his mother and family and is not capable of living independently. The adverse decision was overturned on reconsideration.*

*A Bureau client failed his ESA medical and was awarded only 6 points for mental health problems. He should have scored more highly than this because of his depression and feelings of wanting to self harm caused by severe back pain and AIDS diagnosis. Due to the medication he is already on, he cannot take stronger opiate based drugs hence his back pain cannot be controlled adequately. On appeal he won and got increased payments as well as back dated payments. But before he won his appeal, the situation added to the client's depression and what he described as a sense of life not being worth living. In addition, it caused severe financial hardship.*

*A Bureau client was found fit for work despite, in his GP's words, having so many co-morbidities he is unlikely to be able to be in active employment now or in the future. This client is in heart failure, has COPD which is at stage 5 (severe), requires oxygen but is refused it as he is still trying to stop a low level of cigarette smoking. The client has constant bouts of pneumonia and requires on average 6 hospital admissions per year. He is underweight, has bad colouring and is often unable to speak due to the level of breathlessness. Despite information provided about poor Peak Flow Rate he was found fit for work. The Tribunal who heard the appeal actually felt he should be exempt under regulation 29 in any event and made that decision.*

As reported in the Daily Telegraph 27 July 2011, Paul Farmer, chief executive of the mental health charity Mind, said: "People found 'fit for work' have not been cheating the system; rather, in most cases, they have engaged with the system with genuine intentions and been turned down for benefits - often wrongly as appeals figures show."

The public purse also suffers as a result of inappropriate decision making. The latest figures, published by the Department of Work and Pensions, in January 2012, show the estimated cost of ESA appeals where the work capability assessment was a factor (which had taken place between April 2011 and October 2011) was £26.844 million over six months. The NAO, again in its response to Tom Greatrex MP, confirms that the cost of the appeals process to the taxpayer has trebled since 2009 to £60m last year alone – more than half the cost of the original contract again, with the taxpayer effectively paying twice, once for the assessments, then again to correct the mistakes. Apart from the consequent anxiety and distress for many sick and disabled people, this raises serious questions over value for money.

Even when a client decides not to appeal he or she may experience difficulties. The assessment's finding that a claimant is capable of work is often not supported by the conclusions of the Jobcentre (another section of the DWP). Rather than go through the stress of appealing, a failed claimant will attend the Jobcentre to sign on for Jobseekers Allowance (JSA) and try to find work. Staff at the Jobcentre will not accept the application because they say such a claimant would not be able to do a job.

*A Bureau client received Incapacity Benefit for about 4 years following heart attack with breathlessness, pulmonary congestion and asthma. When he was transferred onto ESA he was awarded 0 points at the ESA Work Capability Assessment. He felt that no account was taken of how his condition affected his capability for work and he was not given any opportunity to explain during the medical assessment process. When the client went to the Jobcentre the adviser there said that there were no jobs available for someone with his health issues and advised him to appeal the ESA decision.*

## 4 Behaviour of Atos Medical Assessors

As well as evidence indicating that the Atos medical assessors do not seem to be adequately trained in carrying out the medical assessment, or of appreciating that it is not always appropriate to a particular claimant's condition and feeding that back to the DWP, there have been complaints that their general behaviour to claimants is unprofessional, exacerbating a claimant's situation.

*A Bureau client who had already been entitled to and receiving ESA was required to attend a work capability assessment. She did not feel she was treated professionally by the assessor and said she was made to feel "like a criminal". At the assessment the client received no points and was turned down for ESA although she had previously qualified for the benefit. She now has to undergo the stress of putting in an appeal and is on reduced benefit while that goes through.*

*A Bureau client has significant health problems including COPD and heart problems and has in fact just been given a very substantial disabled facilities grant for a stair lift and shower etc. When she attended an ESA medical assessment she was found fit for work with zero points despite the fact that when she was called from the waiting room she was coughing and gasping due to the ramp that has to be climbed to the assessment centre. The receptionist was concerned at her condition. When the client entered the examination she was greeted with "I am late for my lunch" by the assessor. When asked to do a particular activity the client noted that the examiner was not even looking at her but looking at the computer. The client challenged the assessor asking whether the examiner did not actually need to watch her do it – the examiner said "Sorry do it again" but then did not meet the client's eyes and seemingly was not interested at all.*

Claimants with mental health problems in particular are seriously affected by unprofessional and insensitive behaviour on the part of the Atos assessors.

*A client approached the Bureau for help with his benefits. He has been on Income Support (IS) for ten years, with mental health problems, Post-Traumatic Stress Disorder, as well as other mental health problems. He was transferred from IS to ESA and recently was called to the medical assessment. He described the assessing nurse as very*

*unhelpful. The client was concerned about the security of his details, and asked how confidential his information would be kept. The nurse responded by telling him that 'SHE was asking the questions'. She also said, he was taking too long over the interview and threatening to terminate it which would result in loss of benefit. The client was left distressed and concerned about the information he had had to give, and furthermore, was finally assessed with zero points, with no account taken of his mental conditions.*

A report in the Guardian of 29 June 2012 indicates that this problem is widespread and causing concern at the highest levels.

*A high court judge is considering whether to grant permission for two people with mental health conditions to apply for a judicial review of the controversial Work Capability Assessment (WCA) – the computer-led test which determines who is eligible for sickness and disability benefits – on the grounds that the current system discriminates against people with mental health problems.*

*Lawyers for the two claimants, who requested anonymity within the court system, told Mr Justice Edwards-Stuart that claimants with mental health problems generally were not well-served by the "very stressful process" of undergoing the 20-minute assessments with strangers. Nathalie Lieven QC highlighted that there were very high levels of appeals against all decisions not to award the Employment and Support Allowance (the new Incapacity Benefit), currently running at about 40% of unsuccessful claims, and very high levels of decisions being overturned on appeal (also around 40%), describing this as a "highly inefficient and undesirable situation". She told the judge that many of the medical staff employed by Atos, the company contracted by the Department for Work and Pensions (DWP) to carry out the assessments, had no specialist knowledge of mental health issues.*

*The claim is based on the argument that the DWP has erred in law by failing to make reasonable adjustments to the assessment system, for the benefit of people with mental health problems, in breach of the 2010 Equality Act. Questioning whether the system was flawed only in terms of handling claims from people with mental health problems, the judge described the assessment system as "pretty crude" across the board.*

## Conclusions

The evidence, both nationally and from within the Lancaster District, shows conclusively that ESA and the assessment process is failing some of its most vulnerable claimants, especially those who suffer from mental health problems and other not easily identifiable conditions such as ME/CFS. The main reason for this appears to rest with the determination of government to reduce the disability benefit bill, resulting in –

- greater barriers for claimants to overcome in order to show themselves eligible for the benefit – barriers of criteria and process
- starvation of resources generally for the Department for Work & Pensions leading to delays and errors in the process
- the tendering out of the medical assessment process to a business which does not seem to have employed suitably qualified personnel to carry out the assessment role

If a benefit, which is supposed to support people vulnerable because of their disability or long term ill health, is failing in that purpose the government should radically rethink whether this process is fit for purpose.

## Recommendations

The Work Capability Assessment (WCA) should be reviewed with a view to assessing its suitability in identifying those with limited capability for work. Many clients received zero points when they clearly have issues that impact on their ability to work.

The descriptors used to award points for mental health should be reviewed.

Where mental health conditions are present a specialist in mental health should carry out the WCA.

There should be clear feedback from the Tribunal Service to the DWP to provide guidance to their decision making, so that there is a reduction in the high proportion of decisions which are subsequently overturned at appeal.

Improve DWP staff training, to ensure the decisions that are made use all of the medical reports available and not just rely on the ATOS report.

Improve DWP staff training, to ensure claimants understand their right of appeal and raise their awareness of other benefits they may be entitled to. This is of critical importance to prevent financial hardship.

ATOS staff need urgent training, to address their behaviour towards claimants when we have a situation where so many clients describe them as rude, insensitive and uncaring.

Better procurement arrangements are needed to ensure value for taxpayer money over future medical services contracts. The current contract is clearly not fit for purpose.