

Work Capability Assessment Action Group – Newsletter: Issue One

The Work Capability Assessments Action Group is an alliance of organisations and individuals who uphold the rights and dignity of disabled adults and people with mental health problems and opposes their discrimination and harassment.

We believe that the Work Capacity Assessment process is badly flawed in both its design and implementation - its methodology lacks professional credibility, its reports lack rigour and accuracy with the inevitable result that its decision-making is rushed and poorly informed. There is little transparency in how WCA decisions are arrived at - locally or nationally. The Department of Work and Pensions contracted two private sector firms - a French company, Atos Healthcare, and the US insurance company, Unum - to design and deliver the WCA process at a cost of over £800 million with further input by Capita in Wales and Central England. None of these organisations show a willingness to accept any responsibility for the destructive impact of their decisions in the lives of the people they are assessing.

Many lives have been devastated as a result of these judgements. These errors have greatly worsened the physical and mental health of WCA claimants and their families. A complex point system is applied in a haphazard way so that claims for Employment Support Allowance are rejected even when a claimant is clearly incapable of working or able to work without adequate support. The true cost or scale of the consequences of these decisions is hard to quantify. Sadly many people have died or committed suicide, gone into debt, lost their home or ended back in hospital soon after an interview declared them fit to work. Appeals are lodged against approximately 40% of WCAs resulting in huge inconvenience and costs for the courts and claimants alike. There are few mechanisms to hold those who are managing the WCA process to account. This is in stark contrast to the experience of individuals at the sharp end who are repeatedly urged to attend interviews for which they are ill-prepared, inadequately briefed, typically unsupported and with no opportunity to honestly describe their health or daily circumstances.

That's why we have set up our WCA Action Group to stand by and in support of disabled people, mental health service-users, carers, their friends, family and representatives who are threatened by this WCA / ESA debacle. We share vital information, offer guidance to those preparing for interviews or appeals, listen to their stories and actively campaign for change in the WCA system. Enough is enough. We are based in Greater Manchester though anyone is invited to back our stance to challenge this social injustice. So if you share our values and outlook then you are very welcome to join us – as an organisation or an individual.

We aim to be collaborative in all our activities. So working as an alliance on a shared agenda in support of claimants as fellow-citizens is vital to our approach.

So who are we?

Six organisations working in the areas of advice, health and well-being and disability issues have joined our WCA Action Group so far. They include

1. **Europaia** - a newly established voluntary organisation which is encouraging positive relationships between European nationals and local communities
2. **Manchester Alliance for Community Care** - the voluntary and community sector support and infrastructure organisation for the city of Manchester
3. **Greater Manchester Coalition of Disabled People** – is totally controlled and led by disabled people in order to promote their integration and independence
4. **Breakthrough UK Ltd** – a social enterprise delivering services to promote the independence of disabled people and to uphold their rights and responsibilities.
5. **Greater Manchester Welfare Rights Advice Group** – which supports welfare rights advisers and promotes health, well-being and good practice in advice work
6. **Access to Advice** - a consortia of advice agencies in Greater Manchester which is campaigning for publicly funded legal advice on social welfare issues

Many other individuals and organisations attend and contribute to our meetings.

WCA Meetings

Our next WCA meeting is at **10.00am - 12.00** on **Tuesday September 24th** at **Europaia, Ada House, 77 Thompson St, Manchester, M4 5FY.**

We are also holding two public meetings at the **Conservative Party Conference** on **Tuesday 1st October** at London Scottish House, 24 Mount St, Manchester, M2 3NN. This venue is opposite the main Conference Centre at Manchester Central but access will be via Museum St since Mount St is in the Security Zone.

The first Fringe meeting is from **12.40 – 2.00pm** on the theme of **‘Work Capability Assessments: Are they working?’** **Lorraine Gradwell, MBE**, founding CE of **Breakthrough UK Ltd** will be on the panel. Other speakers yet to be confirmed.

The second Fringe meeting from **2.10 – 3.30pm** is on the theme **Impact of WCAs: Real Stories, Real Lives** with panel and floor contributions on WCA experiences.

All are welcome to our meetings but capacity is restricted so if you wish to attend contact **Tom Griffiths, WCA Co-Ordinator**, on tom.g@europaia.org.uk or **Kush Chottera, WCA Comms** on comms@wcaactiongroup.org.uk or **07763711888**.

Background information

Work Capability Assessments were introduced in October 2008 to decide whether an individual is entitled to a new benefit called Employment Support Allowance. ESA is designed to support people who are unable to work due to disability or ill-health. It initially replaced new claims for Incapacity Benefit, Income Support and Severe Disablement Allowance and from 2011 was extended to the existing claimants of these benefits as well. On January 28th 2013, stricter rules were introduced on how claimants were tested on their limited capability to work or perform work related activities - including a new imaginary test on how claimants may be able to use aids or adaptations. By 2014, approximately 1.5 million people on incapacity or disability-based benefits will have been re-assessed for ESA.

Government / DWP and partner / Parliament web-links

1. The Department of Work and Pensions has issued a WCA / ESA guide at www.direct.gov.uk/prod_consum_dg/groups/dg_digitalassets/@dg/@en/@disabled/documents/digitalasset/dg_177366.pdf
2. Atos Healthcare – their ‘disability analysts’ (note: not medical assessors) carry out WCA interviews to analyse the ‘capability’ of claimants (not medical condition) - see www.atoshealthcare.com/faq and www.atoshealthcare.com/news
3. Due to Freedom of Information requests, you can read the Contracts between DWP / Atos (2005, 2009) at www.whywaitforever.com/dwpatoscontract.html
4. WCAs are administered using a Computer Software programme called Logical Integrated Medical Assessment. The use of LIMA is described in a Training and Development Handbook provided by the DWP (2008) – Author: Dr S Holt, Office of the Chief Medical Officer in DWP at afraser.com/welfare/ESA_handbook.pdf
5. The WCA process is based on the BioPsychosocial model developed by Unum, a US company, and the largest provider of group income protection insurance in the UK. Unum describes their approach as a non-medical, enabling model of rehabilitation at online.positiveimagesuk.com/unum/download/UP1581.pdf and www.publications.parliament.uk/pa/cm200506/cmselect/cmworpen/616/616we37.htm
6. There was a full debate in Parliament on Atos WCAs on 17th January 2013 – with strong cross-party criticism of the distress and humiliation caused to claimants, a lack of rigour and accountability by Atos and Unum, costly delays and appeals. www.publications.parliament.uk/pa/cm201213/cmhansard/cm130117/debindx/1013117-x.htm
7. The Public Accounts Committee on February 8th 2013 was strongly critical of poor decision-making by the DWP and failing to manage its contractors effectively www.publications.parliament.uk/pa/cm201213/cmhansard/cm130117/debtext/130117-0002.htm#1301176100001

So what are the Issues ... ?

Here is your Starter for Ten.

10 reasons why we believe that the WCA system isn't working.

1. WCAs are based on a suspect design and methodology – founded on a business model with little support from health professionals or disabled people.
2. WCA interviews are being administered and evaluated using an inflexible computerised tick-box system – that makes no allowances for nuanced responses.
3. The assessment process takes little account of fluctuations or deterioration in the mental health, physical health or disability-related problems of individuals.
4. Many interview questions are deliberately ambiguous or misleading - which results in misunderstanding by claimants so that they give inadequate answers.
5. The assessment process is threatening and raises the anxieties of claimants - so that they feel totally overwhelmed and become more ill or opt out altogether.
6. The reporting system lacks rigour, accuracy and transparency - no public guidelines have been published on how the WCA responses are to be interpreted.
7. Voluntary sector organisations are being overrun - from day centres to drop-ins and food banks. Staff are neglecting other duties to assist with WCA appeals.
8. Many GPs and health professionals are opposed to WCAs - as it results in higher patient distress, increased medication and growing demands on their time.
9. There is an underlying attitude of arrogance by the DWP and its private sector partners - refusing to be accountable to local courts or networks for their decisions.
10. Finally, WCAs are incredibly costly - both in terms of the negative impact on peoples' lives and in wasting taxpayers' money on appeals and administration.

Do you agree with us? Or do you believe that WCAs are necessary and are generating positive results? We would be delighted to hear what you think as well as your own personal experiences of WCA interviews and their impact in your life.

If you have **any evidence** of how WCAs are working or not working then please get in touch. We welcome any evidence ~ including real stories from personal experiences that may have been dismissed by the DWP as 'soft' or 'anecdotal'.

So what is our Evidence?

At the heart of the WCA debacle, are the claimants and their families or carers whose lives have been badly affected or taken a major turn for the worse. So behind the issues are the thousands of stories describing how those who have undergone WCAs are being failed or humiliated. We have heard many of these stories first-hand at our meetings. Indeed it is the sharing of these personal testimonies from claimants and advisors that brought us together in the first place.

The story of a man with severe mental health problems who was co-erced back into the work despite the Job Centre knowing that he was totally unfit to do so.

The story of young people with little insight into their own health being threatened with the loss of their home or falling into debt when their benefits were stopped.

The story of a patient who is now back in hospital when his life fell apart - losing all of his allowances and contemplating suicide as he had nothing left to live for.

The stories of people who are turning up in increasing numbers at the doors of local community centres - with no food, no money, no support and now destitute.

In each stories, WCAs are humiliating many of the poorest and severely disabled people in Greater Manchester - Making them more depressed and distressed. It's a far cry from the welcoming and listening approach that the DWP claims to offer.

I related my own experience of a man with terminal cancer who was repeatedly bombarded with demands to come for an interview - until his MP intervened. Which begs the question. If the repeated threats or demands only stop when an MP takes action, then why is such intervention necessary in the first place?

Last November, Parliament debated the issue - when MPs from all parties related the stories of their own constituents who were being badly let down. Michael Meacher, MP for Oldham East, described how a man with severe epilepsy was assessed as capable for work and died from a seizure soon after the ordeal of being interviewed. The DWP later admitted the assessment was incorrect but took no responsibility for the consequences. He said this case typified the 'feelings of distress, indignation, fear, helplessness and widespread anger' by WCA clients 'at the way they have been treated'. Other Greater Manchester MPs also took part in the debate. They spoke of their constituents' distress and condemned Atos for its flawed assessment and failure to use independent medical evidence. The Public Accounts Committee has also criticised the DWP for poor decision- making and inefficiencies at the heart of the process. But still the WCA bandwagon persists and the latest revisions are making WCAs even more intrusive and threatening.

So like MPs, we believe that these stories are vital and deserve to be heard.

... And more Evidence. So what do GPs think?

In 2011, **John Butler** of **Manchester Alliance of Community Care** (one of our key partners) conducted a survey of 25 GPs in Manchester and their experiences of WCAs. 48% of GP practices stated that over 40% of their patients experienced a significant worsening in their mental health after undergoing a WCA. 87.5% said that there was 'a significant demand' on their practice from patients requesting support to appeal a decision by Job Centre Plus to make changes to their benefit status. This extra demand on GP workload included additional time to explain a decision or support an appeal (including secretarial time), completing Med3 forms, dealing with patient's fears and anxieties (especially eviction and money worries), dealing with worsening patient symptoms and putting the relationship between doctor and patient under strain. Many GPs cited a lack of confidence in the WCA process due to inconsistency in how it is explained and applied, especially in its assessment of patients with mental health needs or in dealing with their already highly vulnerable patients – illiterate patients, asylum seekers or victims of torture.

A majority of GP respondents stated they had major reservations over the process and delivery of WCAs – especially in the way it undermined trust in their evaluation and had a needless and negative impact on their most vulnerable patients. Two comments from Manchester GPs typify why they believed that the WCA system was unfit for purpose. 'This is a completely inefficient system which prevents any meaningful discussion about returning to work'. 'My overall impression from the effect on my patients and their reports of assessments is that the current process is definitely designed less to help or support patients to return to gainful employment and more to take as many as possible off benefits, regardless of their health.'

These conclusions are confirmed by similar findings nationwide. That is why the Annual Conferences for GPs and the British Medical Association in 2012 backed resolutions for the scrapping of WCAs and its replacement by a rigorous and safer system that does not cause harm to the weakest and most vulnerable in society.

In BMA debates and BMJ articles, doctors spoke of their dismay at an inflexible WCA assessment process that failed to identify which patients really needed help and those who did not. Many GPs complained that the LIMA checklists showed little regard for the nature and complexity of the needs of the long-term sick and disabled people. **Dr Louise Irvine**, a London GP, claimed the WCA process "was causing distress to thousands of people with long-term health conditions deemed fit to work, as well as subjecting the doctors (working for Atos) to 'McDonaldization' of their careers". **Dr Margaret McCartney**, a Glasgow MP, stated that "the tests – peak flow, limb movements, pushing a box around, pressing a button – are clearly unable to distinguish someone who can work from someone who can't. The box ticking to achieve enough points to be granted ESA is ludicrous. The assessment bears no resemblance to real life. Why are doctors involved in such a farce?"

And now for more Bad News ... It's getting worse.

Despite widespread criticism about WCAs from the medical profession, neither the DWP or its private sector partners has responded to these concerns. As a result, many doctors rather than challenging the DWP or Atos, are now charging patients high fees for medical evidence to appeal the decisions based on WCAs. Citizens Advice Bureaux report how most GP surgeries are requesting fees for WCA letters ranging from £10 to £155. They justify these fees on the grounds of high demands on their time and workload and for distracting them from other medical priorities.

Gillian Guy, the Chief Executive of **Citizens Advice**, has described this dilemma as 'a Catch 22 situation for sick and disabled people'. They now face the prospect of an incorrect assessment followed by an expensive appeals process – resulting in unfair denial of the ESA they are entitled to and “being left to fight bad decisions (by Atos) with one hand tied behind their back. Medical evidence is absolutely vital to proving when Atos has made a wrong assessment. Our clients need support in their efforts to get fair treatment and it is worrying that many doctors feel they don't have the time to provide it. No one doubts the pressure on the NHS at the moment but by charging for a medical assessment, some GPs are adding unnecessary extra anxiety. In some cases, sick and disabled people are facing the double blow of a wrong assessment followed by a demand for money to get the evidence they need to overturn that decision. WCAs are stressful experiences and going through the appeals process makes things even worse. Without the support of medical evidence, many people's legitimate appeals against wrong decisions are significantly weakened, leaving them unable to get a fair outcome.”

www.citizensadvice.org.uk/index/pressoffice/press_index/press_office-20130827.htm

... and worse

Some Local Medical Committees are encouraging GPs to '**just say no**' to any patient requests for letters about WCAs or other benefit requirements. LMCs in Lancashire and Cumbria have issued a draft letter for GPs to advise their patients not to ask their GP for help with their appeals claims but to contact Job Centre Plus or the Appeals Service if they need further medical evidence. The letter states,

“It is not necessary therefore for you to request any extra medical evidence from your GP. Indeed it may slow down or complicate the process. Your GP is very busy serving patients and unfortunately does not have the time available to complete such requests. Your GP is entitled to charge you for such a request and would not want to burden you with extra costs when they are not necessary.”

Other LMCs in the UK are likely to follow. One Scottish GP, **Dr Stephen Carty**, the Medical Adviser to **We are Spartacus**, has initiated a counter legal campaign to challenge any LMCs and individual GP practices who act upon this guidance.

Norman Beverley, an experienced welfare adviser and independent member of our WCA Action Group suggests the claims process will soon get ... **even worse**. “At the moment, people looking to make a claim for ESA are usually asked to make the initial claim either on-line or to make a phone call that can last for around 40 minutes. It is often the case that claimants are then asked to undergo a medical. I am not going to comment here about an interview process that is badly flawed and its recommendations which fail to address essential evidence. It is common knowledge how disappointed WCA claimants feel once they discover they have been refused benefit on the basis of the medical – especially when they feel that the medical was not conducted fairly or is an inaccurate record of what took place.

At this point, the claimant has the choice to either accept the decision or consider lodging an appeal and challenging the decision. Under present rules, providing that the claimant has a med 3 note from their doctor, he or she can submit an appeal against the decision and they will continue to receive the assessment rate of ESA (£71.70) up until their appeal is heard. While waiting for the appeal they will therefore continue to be eligible for both Housing and Council Tax Benefit.

If the present system is bad enough then **the Imminent changes to claiming ESA** are likely to have even more serious and damaging consequences.

From October 28th 2013, anyone who is refused ESA after a medical will **NOT** be able to claim continued ESA **UNTIL** a mandatory reconsideration is carried out by the DWP. Only when they have this certificate will a claimant be allowed to submit an appeal and receive ESA at the assessment rate. Anyone who is unaware of the new system will find the paperwork returned with no benefit payable for this period. The frightening thing is that the reconsideration period may take one month or even longer – there are no time limits applied to the DWP on making a decision.

The result will be that a claimant's only option (if they want any income) would be to claim Job Seekers Allowance (JSA) – this despite the fact their GP has issued them with a Med 3 note which states that, in their opinion, the person is not well enough to work. If a claim is not made for JSA there is no automatic entitlement to claim Housing Benefit – such a decision would place people at a serious risk of losing their homes. As a consequence there is a high likelihood of WCA / ESA claimants and their families falling into even greater debt or becoming homeless.

In addition, anyone making a claim for JSA will be instructed to make their claim on-line. This will make submitting a claim especially difficult for people who are either not computer literate or do not have internet access. To claim JSA, you will have to be available and actively seeking work as well as meeting requirements for signing one. If claimants do not meet these new JSA requirements they could be sanctioned for up to 3 years. The Secretary of State is also planning to change the rules for initial JSA claims from 3 to 7 working days before claimants are eligible to receive any payment of JSA – increasing delays and non-payments even further.”

Latest news

The DWP has announced that it is inviting new organisations to deliver its regional WCA contracts from mid-2014. Atos Healthcare is presently the only organisation authorised to deliver these contracts and, in 2010, was awarded the Customer Delivery Supplier of the Year at the DWP Supplier Excellence Awards. The DWP's latest Quality Audit, published in July 2013 criticised Atos for the poor quality of its written reports - 41% were found to be of an unacceptable standard. We have long pointed out failings of Atos in its assessments but do not believe that the inherent problems of WCA will be resolved merely by inviting new contractors to manage it.

So what is our response?

We have come together as a WCA Action Group because of the growing evidence of poor decision-making and the destructive impact this has had on peoples' lives.

These stories do not come from one interest group or agency - but across a wide spectrum of British society. Each story relates how the lives of individuals and their families have deteriorated - resulting in major setbacks, lapses and deaths in some cases. Multiply these stories by the thousands of people who are being assessed and you have a shared narrative of frustration, anger, anguish and despair.

We believe that it is our responsibility to support our fellow citizens who are being threatened by the WCA system and its damaging consequences. We decided to take action after attending meetings in which both DWP and ATOS managers gave inadequate answers to service-user complaints. They claimed to be listening but our impression is that evidence of poor practice is simply being air-brushed away.

We also recognise there are many professional bodies, user groups or networks, and charities protesting against WCAs and we are keen to publicise their efforts.

These include Citizens Advice Bureaux, Mind, the British Medical Association, Royal College of Nursing, Rethink, National Autistic Society, Parkinson's Society, the Multiple Sclerosis Society, RNIB, We are Spartacus, Scope, Black Triangle, Ekklesia, Disabled People Against Cuts, Mental Health Resistance Network, Church Urban Fund, Child Poverty Action Group, Disability Benefits Consortium.

Our WCA Action Group believes that the WCA system is fundamentally flawed in both its principles and practice. As it stands, it is destructive, inaccurate, unfair and lacks accountability. Far from improving the health of claimants and getting them into work (as the DWP claims) it is worsening their health and work prospects.

We believe that a major overhaul of WCAs is required to provide a practical system that is effective, accountable and fair - and, above all, fit for purpose.

Members and community news

On the **Greater Manchester Coalition of Disabled People's Including Young Disabled People Project**, we often ask the members what their thoughts are on issues that they feel are important and relevant to their lives. The young people are pretty much at the start of their entry into the job market. Some members have already been for WCAs carried out by Atos on behalf of the DWP, and others think that they will eventually be assessed. We asked the group what their thoughts and feelings were about the assessments and the way they have been carried out.

The general feeling was quite negative, as the group thought the assessments were 'scary', 'irresponsible', 'judgemental' and 'crude'. Their biggest criticism of the whole process was that it seemed to almost be a 'one size fits all' approach and that the system 'needs to be improved'. One member even suggested that they felt that ATOS were the ones 'who needed to be assessed'. One of the members who had already had a WCA was critical of the 'lack of disability awareness and knowledge' shown by the professionals who were conducting the assessment. Recalling her experience, she said that 'when they conducted my assessment, a lot of it was very visual' and it was inappropriate for a visually impaired person.

The group echo the arguments against the WCA from the disabled people's movement and are also picking up on the anxieties that are coming from the press. They feel that the WCA is definitely not helpful in the lives of disabled people. For more information, please contact **Linda Marsh** at lmash@gmcdp.org.uk

Breakthrough UK Ltd is a Manchester based disabled people's organisation. We aim to promote the independence and integration of disabled people into society. We work to influence change at both a local and national level by the involvement of disabled people. A great deal of our work is involved with supporting local deaf and disabled people into employment.

We were unable to find people who were prepared to put their names to their experiences. So this is a summary of what people have said:

- Many people are unclear about benefit changes that are happening, or how they might be affected. There is a lot of misunderstanding and fear.
- The claim form is very long and confusing. It is hard to find support to fill it in.
- The assessment process is causing great anxiety.
- People have been through the assessment only to score 0 points, but then almost all have then been awarded Employment and Support Allowance on appeal, often at great expense - both financially and emotionally.

People speak of being afraid to seek medical advice from their GP as a consequence of the process.

- The assessment process is inaccessible to some claimants. Deaf people are finding it hard to get adequate information. One Deaf person is still waiting for an assessment 6 months after applying. The only contact option they were provided with was a telephone number.
- The above suggests there will be many people who have had a bad experience of claiming ESA, but would not know how to complain, or indeed be able to complain because of inaccessible processes. For more information about this survey and Breakthrough activities, contact Elaine Astley at e.astley@breakthrough-uk.co.uk

Rethink Mental Illness – Is your MP Fit-for-Work

Dick Acworth, Campaigner and Carer, has sent details of his petition demanding that the Government stop using the unfair fit-for-work test until it is fixed. Over 12,000 people have signed it so far. It is available at www.iagreewithdick.org.

‘We are gaining momentum, but we have to make sure that government understands just how unfair the Work Capability Assessment is for people with mental health problems. So I’ve designed an MP Capability Assessment (MPCA). This face to face interview mimics the WCA. **I think it is fair that MPs should go through the same process that so many of us are going through. Don’t you?**

We need to ask each and every MP to attend their MPCA. **Write to your MP now** and ask them to confirm their appointment with Rethink Mental Illness – **let’s get MPs to understand what it’s really like.** Many MPs recently failed their MPCA when asked to undergo it in Parliament. Now they will hear directly from me about why the fit-for-work test simply isn’t working. I will then ask them to pledge to ask the Government to stop using the WCA to reassess people with mental health problems, until it is fixed. Let’s use our collective power to help people across the country who are currently disadvantaged by the unfair WCA. It is only by working together that we can put pressure on the Government to make change.’

Tom Griffiths, Co-Ordinator of the WCA Action Group, will be speaking at the next meeting of the **Rethink Manchester Carers in Action** group at 6.00pm on 9th October at Manchester Carers Centre, Vulcan Mill, 12-18 Pollard St, Manchester M4 7AN. RMCIA is a 100% volunteer run campaigning, information and support group for anyone in Manchester who is affected by severe mental illness, whether as a carer or a service-user. It is a self-organising group run with support from the national mental health charity Rethink and Manchester Carers Centre. For more information about RMCIA or if you are a carer in need of support or wish to attend, please contact Lindsey Cree, Chair of RMCIA at lindsey.cree@hotmail.com

WCA Judicial Reviews

An important judicial review case was won recently by two claimants with mental health problems, represented by the **Public Law Project** and other organisations. The claimants argued that the process that is used to decide who should receive Employment and Support Allowance (ESA) discriminates against people with mental health problems, learning disabilities and autism and that the DWP has failed to make reasonable adjustments to the process to ensure that it is fair for people who may lack the capacity to navigate the system themselves.

In particular the judicial review referred to how supporting evidence is collected – the way in where the DWP requires vulnerable claimants to gather their own additional evidence from professionals such as their GP, Community Psychiatric Nurse or psychiatrist. The claimants believe that if this evidence was collected by the DWP it might help individuals with a broad range of mental health issues, learning disabilities and autism to avoid unnecessary assessments or appeals.

On Wednesday 22 May 2013, the three judges who heard the case ruled that the WCA procedures over gathering evidence are unfair for people with mental health problems. **Rethink Mental Health** said that the judgment is extremely significant, as it provides legal proof, for the first time, that the WCA system puts people with mental health problems and learning disabilities at a substantial disadvantage.

The case isn't over yet. At the same hearing, the judges said they required more evidence to decide whether there is an affordable and practical solution that the DWP could implement to address adverse experiences faced by claimants with mental health needs. Two more hearings are planned in July and September to decide exactly what, if any, changes the DWP must make to the system. The DWP has been given permission to appeal the decision further, to the Court of Appeal.

For more details about the Judicial Review and the specific issues, please see <http://www.rethink.org/get-involved/campaigns/unfair-wca/wca-judicial-review-faq>, which includes a link to a full copy of the decision. The case was supported by MIND, the National Autistic Society, Rethink Mental Health and the Equality and Human Rights Commission. The **Equality and Human Rights Commission** also clarified equality implications for WCA Group members before the hearing, that:

“The claim is that the Secretary of State has failed in its duty to make reasonable adjustments under the Equality Act both in service provision and public functions. The claim is particularly interesting because, although there are two individual claimants, the claimants asked for a declaration from the court that the Secretary of State has failed in its duty to make reasonable adjustments for all persons with a mental health impairment. What the claimants set out to do is to resolve a strategic policy issue with this case, rather than obtaining a reasonable adjustment for one individual. This means that the Secretary of State would have to change the process for all people with a mental health problem”

Recent conferences in Manchester organised by the **Public Law Project** and **Garden North Chamber** outlined some of the key factors in deciding whether to seek a Judicial Review or use other challenges in the face of legal aid cuts.

The Public Law Project set out the context for judicial reviews:

“There are a number of ways that individuals or groups can challenge the exercise of power by public bodies. These include complaints procedures and ombudsman services, appeals to tribunals and judicial review cases taken to the High Court. Of these, judicial review will often be the most powerful in changing public bodies decision-making practices. However there are many hurdles to overcome before a case can be brought, with high costs and risk, so early advice from a specialist lawyer is always needed.”

Pupil barrister, **Tom Royston**, noted some problems that may be covered by Judicial Review, such as crisis loan replacement claims, delays in decision-making and policy issues. He noted that there were issues of discrimination over delays, sanctions, and lack of access to services and highlighted exceptional cases that could include difficulties with gathering evidence or for dealing with vulnerable claimants. He highlighted that frontline advisers in Citizens Advice Bureaux, local authority advice agencies, Social Workers and housing support workers come across these issues and should encourage early referrals to a specialist lawyer.

In an interview for the WCA Action Group, Tom Royston gave important pointers on taking challenges against disability discrimination. He noted, firstly, that people need to have a disability – this sounds straightforward, but he said that some public bodies have challenged applicants, even in one case disputing that someone with schizophrenia was disabled. Next, there has to be a ‘detriment’, which may be a financial loss or injury to feelings caused by the actions of a public body or an organisation acting on its behalf. A key question is whether a ‘reasonable adjustment’ has been made. Reasonable adjustments may be for physical access – it is important to note that some centres used by Atos for medical examinations do not have disabled access – but there are many other possible examples.

In one case a woman who was partially sighted had requested that all letters from DWP should be in large print. They sent small print letters only and she wasn’t able to reply. With a legal challenge, she won back her Incapacity Benefit and £4,500! Tom said that the ‘conditionality rules’ – the Work Programme, etc - for those placed in the ‘Work Related Activity Group’ of ESA may be challengeable, as may an insistence on online claiming alone, without adequate alternative help.

These discrimination challenges need to go through the **Legal Aid Gateway** and have to be referred early, as time limits are very tight. A local firm, Stephenson’s, is one of the contracted agencies. How to contact the **Civil Legal Advice service**: Telephone: 0845 345 4345 Minicom: 0845 609 6677 Monday to Friday, 9am to 8pm, Saturday, 9am to 12:30pm, or at <https://www.gov.uk/civil-legal-advice>.

Press Watch

Atos benefit claimants face biased medical assessments, doctor alleges

Medical assessments of benefit applicants at Atos Healthcare were designed to incorrectly assess claimants as being fit for work, one of the company's former senior doctors has claimed. Dr Greg Wood, a GP who worked at the company as a senior adviser on mental health issues, said that claimants were not assessed in an "even-handed way", that evidence for claims was never put forward by the company for doctors to use, and that medical staff were told to change reports if they were too favourable to claimants. He suggested that they were trained in a coercive way that encouraged them to award points to claimants 'begrudgingly' in order that they would receive too few points to enable them to qualify for ESA.

He cited examples of how assessors are told that if a claimant can walk from the kitchen to the sitting room, it proves that they can walk 200 metres (650 feet) or if a person can dress themselves once during the day then that is proof that they have enough concentration and motivation to hold down a job. He insists these rules are not published in any guides but were simply spoken about in training sessions.

In May interviews with the Guardian and BBC, Dr Wood suggested that WCA was 'a bias against the disabled'. He claimed he resigned in disgust at what was going on, saying that many doctors he had spoken to shared his concerns. He described the assessment process as an 'embarrassing shambles' but does not think that Atos is necessarily to blame. He states that a system whereby private companies are contracted in to perform sensitive tasks for the state is inherently risky. "I think the Department for Work and Pensions is the real culprit here. It's the government training that makes Atos assessors do this." "It's very unfair on the people making claims, they deserve a fair assessment and as a taxpayer I'm pretty cheesed off about the £100m plus that's being sprayed away on this dog's breakfast."

In a July interview with the Guardian, he described the training guidance on WCAs to be 'plain wrong' in the five areas of mobility, manual dexterity, continence, personal action and risk. He pointed out to the trainer that some of the guidance was 'unmedical'. He said, "I sensed by questioning some of what I called bogus rules of thumb, I triggered a degree of irritation, if not hostility in the trainer. I don't want to blame the trainers because they were just obeying orders. The upshot is that there will be fewer points awarded. This is one of the reasons why there are so many successful appeals, because the tribunal judges read the manuals."

Atos has denied these accusations and stated that it submits 'clinically justified reports' and provides 'a professional and compassionate service'. It refutes the claims as 'false and damaging'. In a statement Atos claimed, 'We do not deviate from government guidelines in our training. We do not have targets for getting people on or off benefits'. Wayne Gibson, Atos Senior vice-president, replied that the rules detailed by Dr Wood were incorrect and that several questions were always asked to build up a complete picture, alongside the medical evidence.

The DWP response was that these claims had been 'well-aired before' and replied by stating that, "A decision on whether someone is well enough to work is taken after a thorough assessment and consideration of all the supporting medical evidence provided by the claimant. There are absolutely no targets regarding how many people should be found fit to work and since 2010 we have considerably improved the WCA process. The percentage of people entitled to ESA is now at its highest level with over half of people completing a WCA eligible for benefit".

Tom Greatex, Labour MP for Rutherglen and Hamilton West, called these 'serious and shocking allegations'. In an interview with the Daily Record, he stated that "When sick and disabled people are suffering because of the chaos and confusion of the fitness to work test, it is wrong for Atos to be raking in millions at taxpayer's expense. The public are paying twice for this process – first through the £112 million a year contract and then again with millions in appeals to clean up the mess left behind by Atos and the DWP. Ministers must urgently get a grip of this system.'

Here is the Prime Minister's response to his request for an urgent investigation.
From: MP Correspondence [<mailto:MPCorrespondence@no10.x.gsi.gov.uk>]
Sent: 22 May 2013 09:58 **To:** GREATREX, Tom **Subject:** [UNCLASSIFIED]

10 DOWNING STREET, LONDON SW1A 2AA

Dear Mr Greatex,

I am writing on behalf of the Prime Minister to thank you for your recent letter.

The Prime Minister has asked me to arrange for a Minister in the Department for Work and Pensions to reply to you directly.

I have, therefore, passed your correspondence to the Department so that they can look into this matter in further detail. I hope this is helpful. Yours sincerely,
Mrs T Sampson, *Head of the Direct Communications Unit* www.gov.uk/Number10

For further details, please refer to www.bbc.uk/news/uk-22546036
www.theguardian.com/society/2013/may/16/atos-doctor-claimants-biased-medical-assessments
and www.theguardian.com/society/2013/atos-fitness-test-greg-wood
www.dailyrecord.co.uk/news/politics/bungling-atos-rake-500million-botched-1879598

DWP Speaks – 2013 Latest

Here are some recent responses from the DWP to questions about the Work Capability Assessment raised by independent groups:

Q: What work is being undertaken over ‘Evidence Based Reviews’?

DWP: “We continue to seek ways to improve the WCA process for people with mental health conditions. One way in which we do so is by working closely with a number of representative organisations to refine the descriptors for a) mental, cognitive and intellectual functioning and b) fluctuating conditions. This work forms part of the improvements being piloted through the Evidence Based Review (EBR). Through the EBR we are able to test an alternative version of WCA descriptors, which were developed by the representative groups involved, against the current ones to see if there are improvements we need to make.

“The testing of the alternative descriptors began in spring 2013 and the final report will be published later in the year. We will carry on working with charities to continually improve the WCA for people with mental health problems”.

Q: How is DWP responding to complaints about poor standards of reporting by health care practitioners at Atos?

DWP: “A decision on whether someone is well enough to work is taken after a thorough assessment and consideration of all the supporting medical evidence provided by the claimant. A DWP Decision Maker will make the final decision taking into account the recommendation from Atos Healthcare.

“There are absolutely no targets regarding how many people should be found fit for work. The Department takes the quality of assessments carried out by providers very seriously. We set rigorous targets for the service expected and monitor performance against these, working closely with providers to ensure that the required standards are met, any under-performance remedied and that delivery represents value for money.

“A recent DWP audit identified a reduction in the quality of written reports which are produced by Atos following assessments and are then used by the Department to form part of the decision making process on benefit entitlement. This is contractually unacceptable. The Department is considering all its options under the contract and will apply all appropriate contractual remedies to ensure quality and value.

“Atos has been instructed by the Department to immediately enact a quality improvement plan. Measures include retraining and re-evaluating all Atos healthcare professionals, with those not meeting the required standard of written reporting either remaining subject to 100% audit until compliant or having their approval to carry out assessments revoked by the Department.

“We are also procuring additional providers to deliver WCAs on a regional basis. In the longer-term, increased provider capacity will ensure that a greater focus on quality can be achieved alongside enabling the number of assessments the Department requires to be delivered.

Q: A worrying number of claimants are facing destitution and are being denied the opportunity to even have a Work Capability Assessment because their benefit claim is terminated (preventing a new claim from being paid) because of a failure to complete the ESA50 questionnaire or they are unable to attend an Atos appointment which may be many miles away.

DWP: “Claimants have 28 days to return the ESA50 form (compared to 6 weeks under IB where GP contribution was needed), in order to speed up the claim process and assess claimants more quickly.

“We are aware that some claimants with certain conditions may have trouble completing the ESA50 form or in attending an Atos Healthcare appointment. A number of safeguards are in place to support these claimants. An example of safeguards built into the process with regards to claimant being unable to attend an appointment is the attempt to contact claimants when this occurs. If a claimant with a mental health condition fails to attend an assessment, attempts will be made to contact them by telephone and, if appropriate, a “safeguarding home visit” is arranged before a decision on entitlement is made.

“In terms of access to assessment centres, Atos Healthcare makes efforts to identify those claimants who may have problems in accessing these sites. This is done when an Atos Healthcare call centre agent rings the claimant to book the appointment. No-one is expected to travel more than 90 minutes to any assessment by public transport. Documentation sent with the appointment letter makes it clear if the centre is not on a ground floor together with an indication of the number of stairs to descend.

“Claimants that believe they would have problems accessing an assessment centre will be offered alternatives in the form of either an appointment at the nearest ground floor centre or a home visit. Atos Healthcare will request a letter from the customer’s doctor specifying that a home visit is necessary. In addition, where appropriate a taxi may be provided”.

Q: The DWP procedural safeguards which they have agreed should be put into place before a mental health customer has their benefit terminated are being widely ignored or overlooked. A commitment from DWP is sought to proactively seek advice from a person’s community health professional and to ask the Pension Service acting in their capacity of the welfare arm of Jobcentre Plus to undertake a home visit to ascertain what help could be put in place to assist a mental health customer to be able to comply with DWP conditionality before a decision to terminate benefit without the customer having attended a WCA can be made.

DWP: “We recognise the challenges in accurately assessing people with mental health conditions, and the potential vulnerability of such claimants. As such a number of safeguards were built into the WCA from the outset, and we have introduced further improvements to ensure the process deals with people with mental health conditions fairly and accurately.

“Guidance on this is available to Decision Makers at all times through internal communications routes. This guidance also offers advice and guidance to Jobcentre staff, enabling them to work better with individuals with hidden impairments like mental health problems.

“Additionally, in cases of potentially vulnerable claimants, the Decision Maker can arrange for a DWP visiting officer to visit claimants to provide a face to face explanation of the decision before a claim is terminated. The visiting officer will further support the claimant by explaining their possible next steps. Please note we do not undertake a safeguard visit in every disallowance case - the safeguard visits are only in place for fail to attend cases where the Decision Maker is of a mind not to accept ‘good cause’”.

Q: Is there monitoring of Health Care Professionals to provide feedback to individuals who have a high percentage of their assessments subject to successful appeal action.

DWP: “Atos Healthcare Professionals (HCPs) receive training in accurately assessing fluctuating conditions and mental, intellectual and cognitive function. They must have at least three years post-registration experience in a relevant field and be approved by the Chief Medical Advisor to the Department. Strict audit and quality control measures are in place to ensure that Atos delivers high-quality assessments. HCPs will, for a variable period, complete assessments under the continual supervision of an experienced trainer. Only when they are deemed to have achieved competency will they progress to unsupervised assessments. There is also a process in place for tribunals to feedback when HCPs provide reports that are considered to be seriously substandard”.

Finally, there is Hope. So don't give up.

It's a rare for a political cause to be supported by such a broad cross section of British society. It's not just about disabled people or mental health users, advice workers or health professionals, Parliamentary voices from the Left or the Right, friends or family. It's about all of us. It is about standing up for what is right and just in our society and standing against the humiliation of those who are least able to defend themselves. It is about saying that there are basic human standards of decency, respect and honesty and that the WCA process is operating contrary to such standards. It's about saying '**Stop this outrage**'. '**Stop it now**'. '**No more**'.

The only public voices who appear to support the WCA 'debacle', or 'shambles', or 'farce', or 'injustice', or whatever you want to call it, is the Department of Work and Pensions and its private sector partners. They say that they are 'listening'. They say that WCAs are delivering 'positive results' for all our benefit. They say that the personal outcomes for claimants are 'life-enhancing' and 'inspiring'. With a total budget that is likely to exceed one billion pounds and counting (if the overheads for the DWP are included), they have a lot of economic clout to back their arguments.

In opposition, our WCA Action Group and a colourful choir of dissenting voices are surviving on pennies. Of course, some large charities or research bodies have their own campaign budgets although even they are ill-equipped to respond to the relentless evasions and buck-passing by and between DWP, Atos and their not to be forgotten ally, Unum. Let us not be deceived that the costly mess this triad has gifted to us can be tidied up merely by inviting in new contractors to deliver WCAs.

You are warmly invited to join us at our Fringe meetings in Manchester on **October 1st** during the Conservative Party Conference. Please come along to listen and learn and to find out whether Work Capability Assessments are really working or not. As for what happens after that, we cannot be sure. For now, I can do no better than to repeat the statement of values that we agreed upon when we were set up.

"All this information and complex details may seem very daunting to many of you. We have little or no money and are up against some very powerful and wealthy vested interests. **So what hope have we got?**, you might well be asking.

Well, we have got Truth and Justice on our side – and the assurance that we are doing the Right Thing. Plus we have a wealth of experience and compassion to draw upon and inspire us. So be assured that Together we will make progress.

Support our efforts to stand up with some of the poorest, sick, disabled and most vulnerable people in Manchester. And please ask others to join us too. That's how you can change the world and overcome injustice. **One step at a time.**"

For more information about our **WCA Action Group** or to attend our meetings, contact myself, **Tom Griffiths** Co-Ordinator of WCAAG, or **Kush Chottera**, WCAAG Comms, on comms@wcaactiongroup.org.uk or **07763711888**.