

# The Work Capability Assessment

A Call for Evidence: Year 2 Independent Review

July 2011

# Contents

- Introduction..... 3
  - About this call for evidence ..... 3
  - How to respond to this call for evidence..... 4
  - How we consult..... 5
- Foreword ..... 6
- 1. Context ..... 7
  - Employment and Support Allowance and the Work Capability Assessment..... 7
  - The process ..... 7
  - First Independent Review ..... 8
  - Second Independent Review ..... 9
- 2. Call for evidence questions..... 10
  - Background..... 10
  - Implementation of Year 1 recommendations..... 10
  - Further work needed..... 11
  - The face-to-face assessment..... 12
  - Other comments ..... 14
- 3. Next steps..... 15

# Introduction

The Department for Work and Pensions has commissioned Professor Malcolm Harrington to undertake a second Independent Review of the Work Capability Assessment, as required by section 10 of the Welfare Reform Act 2007. This call for evidence will be one of several methods used to gather information during the review. Evidence submitted will be used to create a final independent report, which will be laid before Parliament before the end of 2011.

## About this call for evidence

### Who this call for evidence is aimed at

This call for evidence is aimed at organisations and individuals who have information that is relevant to how the Work Capability Assessment is operating and what further changes, if any, are needed to improve the process.

### Purpose of the call for evidence

This call for evidence will be used to assist Professor Harrington in forming views to help develop the Review. He will then make recommendations to the Secretary of State for Work and Pensions, which will be laid before Parliament in the form of a report before the end of 2011. As an Independent Review, the Secretary of State is not required to accept any or all of the recommendations, and any recommendations may be subject to further assessment by DWP.

### Scope of the call for evidence

This call for evidence applies to England, Wales and Scotland

### Duration of the call for evidence

The call for evidence period begins on 14 July 2011 and runs until 16 September 2011.

## How to respond to this call for evidence

Please send your responses or queries to:

Email: [wca.evidence@dwp.gsi.gov.uk](mailto:wca.evidence@dwp.gsi.gov.uk)

Post: WCA Independent Review Team, Floor 2, Section B, Caxton House, Tothill Street, London, SW1H 9NA.

Please ensure your response reaches us by **16 September 2011**.

When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled. We will acknowledge your response.

### Alternative Formats

This document can be provided in a range of formats, including large print, Braille, audio, BSL video/DVD, and Easy Read on request from:

Email: [wca.evidence@dwp.gsi.gov.uk](mailto:wca.evidence@dwp.gsi.gov.uk)

Post: WCA Independent Review Team, Floor 2, Section B, Caxton House, Tothill Street, London, SW1H 9NA.

Please be aware that these alternative formats may take some time to prepare, so please let us know as soon as possible if they are required.

We have sent this call for evidence document to a large number of people and organisations who have already been involved in this work or who have expressed an interest. Please do share this document with, or tell us about, anyone you think will want to be involved in this call for evidence.

### Queries about the content of this document

Please direct any queries about the subject matter of this call for evidence to:

Mark Wilson

WCA Independent Review Team, Floor 2, Section B, Caxton House, Tothill Street, London, SW1H 9NA

Phone: 0207 449 5612

Email: [wca.evidence@dwp.gsi.gov.uk](mailto:wca.evidence@dwp.gsi.gov.uk)

## How we consult

### Freedom of information

All information contained in your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information provided, or remove it completely. If you want the information in your response to the call for evidence to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this.

To find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact:

Central Freedom of Information Team  
The Adelphi  
1-11, John Adam Street  
London WC2N 6HT

[Freedom-of-information-request@dwp.gsi.gov.uk](mailto:Freedom-of-information-request@dwp.gsi.gov.uk)

The Central FoI team cannot advise on specific consultation/call for evidence exercises, only on Freedom of Information issues. More information about the Freedom of Information Act can be found at <http://www.dwp.gov.uk/freedom-of-information>

# Foreword

I am pleased to have been asked by the Secretary of State for Work and Pensions to undertake a second Independent Review of the Work Capability Assessment (WCA).

The call for evidence for last year's review received over 400 responses from a wide range of individuals, representative groups, unions, employers, employment support providers and healthcare professionals. These were extremely helpful in shaping the final review, published last November, and I hope people will be as willing to share their views and experiences again this year.

My first review of the WCA found that it is the right process for assessing eligibility for Employment and Support Allowance, but that it is not working as well as it should. The review, therefore, made a number of recommendations to improve the fairness and effectiveness of the system as well as setting out a programme of work for the second review this year.

The call for evidence this year is deliberately more focussed than last year, asking questions about more specific issues. This will help me gather further evidence about the key issues on which I believe this and future reviews need to focus on.

My aim, shared by the Secretary of State and the Minister for Employment, is continually to improve the WCA, making it fairer and more effective and better able to assess capability for work.

I look forward to receiving your return to this call for evidence, and to working with you to achieve this aim.

A handwritten signature in black ink, appearing to read 'Malcolm Harrington', with a horizontal line underneath the name.

**Professor Malcolm Harrington CBE**

# 1. Context

## Employment and Support Allowance and the Work Capability Assessment

1. Employment and Support Allowance (ESA) was introduced in October 2008. It replaced three other incapacity benefits<sup>1</sup> - Incapacity Benefit, Income Support by virtue of a disability and Severe Disablement Allowance - for claimants making a new claim for financial support on the grounds of illness or incapacity. ESA is intended for people who have limited capability for work (who are placed in the Work Related Activity Group), and people who have limited capability for work related activity (who are placed in the Support Group).
2. The Work Capability Assessment (WCA) determines whether the claimant falls into one of these groups, or is fit for work. People who are found to be fit for work may be eligible for Jobseeker's Allowance, which is the benefit paid to people who are actively seeking work.
3. The WCA was introduced as part of the ESA claim process in October 2008 and replaced the Personal Capability Assessment that was used to assess people claiming incapacity benefits. It is intended as a functional health assessment rather than as a diagnostic medical assessment, which will already have taken place through the claimant's General Practitioner or specialist. The focus of the WCA is on what people can do rather than what they cannot, and is based on a growing body of evidence linking good health and well-being to work.
4. The Welfare Reform Act 2007 legislated for the introduction of the WCA. This law provides the basis for the Independent Review which this call for evidence forms a key part of. Section 10 states that:

*“The Secretary of State for Work and Pensions shall lay before Parliament an independent report on the operation of the assessment annually for the first five years after those sections come into force.”*

## The process

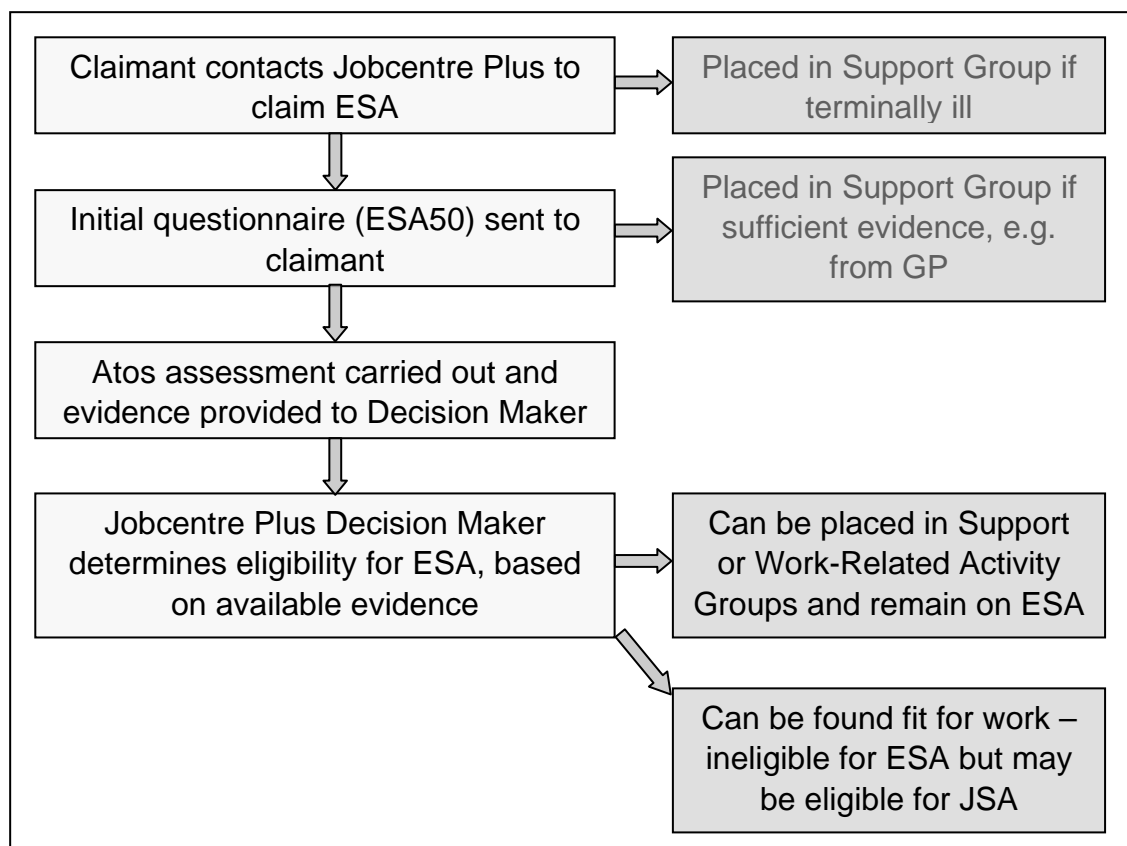
5. The high level process for claiming ESA is set out in Figure 1. Broadly speaking, after initial contact with Jobcentre Plus to make a claim for ESA claimants will be asked to fill in an initial questionnaire (the ESA50) which asks for further information about their condition or disability. Around 13 weeks after their initial claim most claimants will attend a face-to-face assessment with Atos Healthcare. The information gathered at the face-to-face assessment, along with any other additional evidence provided by the claimant, is then passed to the Jobcentre Plus

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<sup>1</sup> In the text, the term “incapacity benefits” is used to refer to the four benefits: ESA, Incapacity Benefit, Income Support by virtue of a disability and Severe Disablement Allowance.

Decision Maker who will score the claimant against the descriptors and decide which group they should be placed in.

Figure 1 - High Level ESA Claim Process



6. The first Independent Review set out a number of recommendations for improving this process to ensure it works as fairly and effectively as possible.

## First Independent Review

7. The first Independent Review of the WCA was carried out by Professor Malcolm Harrington and was published on 23 November 2010 – [www.dwp.gov.uk/wca-review](http://www.dwp.gov.uk/wca-review). This found that, whilst the system is not broken or beyond repair, it is not working as well as it should.
8. The review made a number of recommendations to improve the fairness and effectiveness of the system, including:
  - o Improving the capability and confidence of Decision Makers in Jobcentre Plus who decide benefit entitlements.



## **The Work Capability Assessment – A Call for Evidence: Year 2 Independent Review**

- Making the WCA a more compassionate process, by telephoning claimants to ensure they understand what is happening.
  - Improving the face-to-face assessment conducted by contractors Atos Healthcare by putting in place ‘champions’ with additional expertise in mental, cognitive and intellectual conditions and by ensuring every Atos assessment contains a personalised summary in plain English.
9. The Government accepted all of these recommendations in their response to the review, also published on 23 November 2010.
10. Professor Harrington presented an interim report commenting on the implementation of the Year 1 recommendations to the Minister for Employment on 31 May 2011, this can be found at Annex A.

## **Second Independent Review**

11. Professor Harrington agreed to lead the second Independent Review, undertaking a programme of work identified in his first review, including:
- Looking in detail at the descriptors for mental, cognitive and intellectual conditions and other fluctuating conditions.
  - Looking at whether the assessment could or should incorporate more ‘real world’ or work-focused elements.
  - Examining what happens to people placed in the three groups (Support, Work Related Activity and Fit for Work), and to people who do not complete their face-to-face assessment having made a claim for ESA.
12. Work has already begun on these recommendations, and responses to this call for evidence will help develop views for the second review and its recommendations for future work.

## 2. Call for evidence questions

### Background

13. The call for evidence for the Year 1 review asked a number of wide-ranging questions about the WCA and its operation. This enabled Professor Harrington to get a feel for some of the main issues with the fairness and effectiveness of the WCA whilst also helping to identify the strength and nature of criticism with the process itself as well as the operation of that process.
14. This call for evidence asks more specific questions than last year. It focuses on a small number of key issues which will be important to help determine the impact of the first review as well as the success of this and future reviews. Whilst general evidence about the WCA is not excluded we would ask that, where possible, you focus your evidence on addressing the specific questions posed below.

### Implementation of Year 1 recommendations

15. The first Independent Review made a number of recommendations for changes to the WCA process to improve both the fairness and effectiveness. The Government accepted all of these recommendations and work has been progressing implementation them.
16. An interim report from Professor Harrington to the Minister for Employment about the implementation of the Year 1 recommendations was published on 31 May 2011 and is at Annex A. This summarises that Professor Harrington is “pleased and gratified to see the progress that has been made to implement [his] recommendations” whilst recognising that more work is still needed to ensure real and lasting policy changes.
17. In making this interim assessment of progress to date Professor Harrington spoke to staff in Jobcentre Plus, gathered evidence from DWP and Jobcentre Plus and also visited sites in Aberdeen and Plymouth and spoke to a number of representative groups about their experiences to date.

**Question 1: Have you noticed changes to the WCA process as a result of the Year 1 recommendations? If so, what are these changes?**

- A. Process has improved
- B. Process has broadly stayed the same
- C. Process has got worse
- D. Not noticed / not sure

**Answer**

A B C D (delete as appropriate) and provide any written comments ...

## Further work needed

18. The Year 2 review is engaged in a programme of work identified during the Year 1 review, but which that review did not have time to consider in detail.
19. If recommendations from Year 2 are accepted and implemented they, in combination with the Year 1 recommendations, should help further improve the WCA process. However, this is a continual process of improvement and there are three further opportunities after this year to make further positive changes.

**Question 2: Are there further areas of work that you think should be added to the programme of work for Year 3? If so, what should these consider?**

- A. Major areas of work required
- B. Minor areas of work required
- C. No more areas of work required
- D. Don't know

**Answer**

A B C D (delete as appropriate) and provide any written comments ...

20. Constantly changing the WCA may make it confusing for claimants, representative groups, those delivering the system (both Jobcentre Plus and Atos Healthcare) and policy makers. Whilst there is a need to make things better if they are not working as well as they could, there is also a need to be able to assess the impact of the changes being made and ensure that their impact is positive and as envisaged.

**Question 3: At what stage should we stop making changes to the system and let the changes already being made bed in to ensure they are having the desired impact?**

- A. Don't stop making changes until the process is considered theoretically perfect
- B. A few more changes are needed, but then pause to see their impact
- C. After Year 2 changes it will be time to assess what impact changes to date have had before making more
- D. Don't know

**Answer**

A B C D (delete as appropriate) and provide any written comments ...

## The face-to-face assessment

21. Much of the criticism about the WCA seems to relate to the face-to-face assessment carried out by Atos Healthcare on behalf of DWP.
22. Critics of the face-to-face assessment argue that it is impersonal and mechanistic and that claimants do not recognise themselves in the reports generated at the assessment. The Year 1 review also highlighted how the face-to-face assessment often drives the process and influences Decision Maker's thinking, rather than being seen as a composite part of the evidence supplied by the claimant.
23. The Year 1 review therefore quite rightly recommended putting the face-to-face assessment in its proper place in the WCA process by placing Jobcentre Plus Decision Makers back at the heart of the process and ensuring that they have a range of information with which to make independent and considered decisions.

### **Question 4: Does the Year 1 recommendation go far enough in placing the right emphasis on the face-to-face assessment?**

- A. Does not go far enough – still too much emphasis on the face-to-face assessment
- B. Balance between the face-to-face assessment and the rest of the process now about right
- C. Goes too far – now too little emphasis on the face-to-face assessment
- D. Don't know

#### **Answer**

A B C D (delete as appropriate) and provide any written comments ...

24. The Atos Healthcare face-to-face assessment still has a role to play in the process and so we need to ensure that this is operating as fairly and effectively as possible. To do this it would be helpful for the review to move beyond anecdotal evidence about individual bad experiences of the assessment to having more robust evidence about where any problems lie.

### **Question 5: Do you have any robust evidence about the face-to-face assessment processes and outcomes which will help us make recommendations for future improvements?**

#### **Answer**

Please provide any written comments ...

25. As well as claimants making a new claim, as of mid-June over 90,000 claimants had started their reassessment journey with an additional 11,000 starting this

journey each week<sup>2</sup>. This highlights the need for a replicable and consistent approach to the assessments to ensure results are as fair as possible and supports the need for a computer-assisted assessment. However, as well as being consistent it is clearly important that the assessments are also accurate, and that people recognise themselves in the report which is created during the face-to-face assessment.

26. The Year 1 review deliberately recommended placing the face-to-face assessment in context as a composite part of a much wider assessment process. This is an important step in ensuring that any criticism of the whole process does not sit unfairly with one part of it. However, the review needs to understand more about whether the criticisms of the face-to-face assessment relate more to: the way in which Healthcare Professionals (HCPs) carry out the assessment; HCPs understanding of specific conditions; the way in which the reports created during the assessment reflects their health condition or disability; or whether it is all three of these.

**Question 6: Are you aware of any concerns about the face-to-face assessment, and if so where have these been focused?**

- A. HCPs approach and the way they carry out assessments
- B. HCPs understanding of conditions
- C. The report created during the assessment and the IT supporting the assessment
- D. All three of these
- E. Don't know

**Answer**

A B C D E (delete as appropriate) and provide any written comments ...

**Question 7: If you have heard specific concerns about the IT supporting the assessment (i.e the Logic Integrated Medical Assessment or LiMA system), do you have any robust evidence about how this adversely affects the assessment or its outcome?**

**Answer**

Please provide any written comments ...

27. Many people still believe the Atos Healthcare face-to-face assessment will be a medical examination rather than an assessment of their functional capacity. In reality a physical examination (as carried out by a General Practitioner or similar)

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<sup>2</sup> From April 2011 all claimants claiming Incapacity Benefit will be reassessed using the WCA to assess eligibility for ESA

is not always carried out and criticisms have been raised about conclusions being reached despite this.

**Question 8: Is there a need to present and explain the face-to-face assessment in a different way, making it very clear to claimants what it will involve and how a functional assessment relates to work capability?**

- A. Urgent need to present and explain the face-to-face assessment in a different way
- B. A need to present and explain the face-to-face assessment in a different way
- C. Not sure whether there's a need to present and explain the face-to-face assessment in a different way
- D. No need to present and explain the face-to-face assessment in a different way
- E. Definitely no need to present and explain the face-to-face assessment in a different way

**Answer**

A B C D E (delete as appropriate) and provide any written comments ...

## Other comments

28. As stated in paragraph 14 this call for evidence deliberately asks more specific questions than the call for evidence last year. However, people may still wish to submit more general evidence and suggest specific changes that would make a positive difference.

**Question 9: What one thing would you change about the WCA to make it operate more fairly and effectively?**

**Answer**

Please provide any written comments ...

### 3. Next steps

29. We now invite organisations and individuals to submit evidence to help us assess how the Work Capability Assessment (WCA) is operating by answering the questions posed above.
30. The closing date for the call for evidence is **16 September 2011**. A final Independent Review will be laid before Parliament and published before the end of 2011.

**Annex A – Professor Harrington’s interim report on the implementation of his year 1 recommendations**

**DWP** Department for  
Work and Pensions

Prof. Malcolm Harrington  
WCA Independent Review  
2<sup>nd</sup> floor Caxton House  
Tothill St  
London, SW1H 9NA

Rt. Hon. Chris Grayling MP  
Minister of State for Employment  
Department for Work and Pensions  
4<sup>th</sup> floor Caxton House  
Tothill St  
London, SW1H 9NA

31 May 2011

Dear Chris,

**RE: INDEPENDENT REVIEW OF THE WCA – INTERIM REPORT ON IMPLEMENTATION OF YEAR 1 RECOMMENDATIONS**

Thank you for your letter of 10<sup>th</sup> May 2011 asking me to provide you with an Interim Report on the progress so far in implementing the recommendations I made in my Report of November 2010.

In carrying out this interim report I have visited the Incapacity Benefit reassessment trial site in Aberdeen and also the Jobcentre Plus (JCP) and Benefit Delivery Centre (BDC) in Plymouth (one of the first places I visited during my first review). I recognise that these are only two sites of a national organisation, but I have also spoken to policy officials in both the Department for Work and Pensions (DWP) and JCP about how the recommendations are being implemented at a national level; and I met with a group of some of the large national charities.

These are my personal observations and I have not shared this note with DWP or JCP prior to sending it to you. However, my Scrutiny Group has had advance notice of it.

My Review listed 25 recommendations, 17 of which related to the Year 1 review and 8 concerned new work to be undertaken in 2011. In January 2011, I added a further piece of work about the wording of the descriptors used for claimants on chemotherapy. (Macmillan are due to report back on this and make initial recommendations by the end of June).



Year 1 recommendations 1-4 and 10-14 addressed how JCP/BDC staff should handle the claimants in a more empathetic and less mechanistic way and how the Decision Makers (DM) should be put back at the heart of the decision making process. Recommendations 5-9 were aimed at improving the Atos assessment, whilst 15-17 looked at the ways in which the Tribunal Service (TS) could add value to the overall Work Capability Assessment (WCA).

I am pleased to say that the DWP/JCP have gone a long way towards implementing all the recommendations related to their areas of activity. New learning and development packages have been produced to retrain the DM's and additional training is to be provided for the line managers. New scripts and letters have been designed to improve the telephonic and written communications with the claimants. These new initiatives to assist the claimants in their 'journey' are in place or planned.

Has this worked in practice? From what I've seen and heard, yes it has. In Aberdeen, I saw the new system in place and working. In other areas of the country – such as Plymouth – the staff are aware of what is planned, and the DMs are already beginning to feel empowered to make decisions that do not simply 'rubber stamp' Atos recommendations. The managers are providing greater scope for the staff to be innovative and self motivated, with fewer 'boxes to tick' and more opportunity to take control of smoothing the claimant's progress through the WCA by information, advice and support. The emphasis, at present, is on Incapacity Benefit reassessment but this is already being extended to new Employment and Support Allowance claimants.

One area of potential concern in the JCP is the 'silo' mentality in some quarters where some staff do not have an understanding of the whole WCA process, but only their section. I have discussed this with senior managers and they assure me that work will start soon to improve inter-sectional communication. On a more positive note, Aberdeen had been training DMs to be Appeals Officers and vice-versa and this appears to have led to a real enrichment of job experience. Similarly, DMs in Aberdeen reported that enhanced communications with Atos had improved their understanding of the reports provided by the face-to-face assessment.

Whilst real progress is being made at the Centres, there is a danger that middle and upper ranking managers will see targets for 'throughput' slipping or impose new targets. I hope this attitude can be countered by emphasising that a little time spent at this stage should save much more time later by reducing appeals and subsequent angst and worry for claimants. The overall cost of a claim should consequently fall as well. In addition, a greater use of the reconsideration procedure is already underway and this should ensure that DM's have *all* the additional information about their client's condition before recourse to the TS in cases of dispute.

Atos Healthcare have nearly completed work on all the recommendations related to them. The free text paragraph is not yet provided to claimants but the issues related to the timing of JCP sharing this, and the claimants who should receive it, are matters I am actively discussing with the DWP. The Mental Function Champions are either in place or will be soon – but at a *regional* level. Logistically this probably makes more sense than my original proposal for a Mental Function champion in every Assessment Centre given the small size and geographical spread of some of the

## The Work Capability Assessment – A Call for Evidence: Year 2 Independent Review

Centres. I hope to be kept updated with evidence that the proposed approach is having the desired impact.

The Atos Customer Charter is now in place and being displayed at all Assessment Centres. A pilot of the audio recording of face-to-face assessments has also been completed in Newcastle, and I look forward to hearing more about the evaluation of this in due course.

I have had some useful discussions with the First Tier and the Upper Tier Tribunal judges. I know that they want my recommendations to work and they are actively engaged in improving communications between the judges and the DMs. Training programmes for both the medical members and the judges will be discussed with me in the coming months but my initial impressions are that these training programmes look good.

Unfortunately the charities did not report back the types of positive changes I had seen in Aberdeen and Plymouth. Whilst they were broadly supportive of the customer journeys used for IB reassessment in Aberdeen and Burnley I hope they will begin to report more positive changes as the year progresses and the changes become nationwide, and I will ask about this in my call for evidence later this year.

Year 2 recommendations relate to new work. Mind, Mencap and the National Autistic Society have worked on the mental, intellectual and cognitive descriptors and their proposals have been scrutinised by an expert group of my choosing. They have developed – in an iterative way – agreed descriptors that have been put before the DWP. Similar work (carried out in a similar way) has started on the Fluctuating Conditions descriptors. Initial proposals from a group of charities, led by the Multiple Sclerosis Society, are now with another expert group for further iteration. I expect an agreed set of recommendations by mid July.

The Citizens Advice Bureau are working on the validity of a ‘real world’ test and a seminar in the autumn will bring together interested parties – including the TUC and the CBI – to see if such a test is a viable proposition.

Research protocols to look at the fate of people who apply for ESA but drop out of the WCA process before their face-to-face assessment and those who are deemed borderline between the three categories (Fit for Work, Work Related Activity, and Support group) have been drafted and agreed by me. Work will start soon on the actual research.

Finally, a review of the LiMA system (does it drive the assessors behaviour or can the assessor drive the IT?) is underway. Seminars to demonstrate the software to interested groups are planned for June and views on the LiMA system will be sought as part of this year’s Call for Evidence.

I will, of course, provide further details on all of these in my final review at the end of the year.


In short, I am pleased and gratified to see the progress that has been made to implement my recommendations. I detect a real enthusiasm for change at the

**The Work Capability Assessment – A Call for Evidence: Year 2 Independent Review**

JCP/BDC local level and real commitment from senior officials in Caxton House to convert these recommendations into real and lasting policy changes. Some cultural inertia exists in middle management but I am speaking to DWP/JCP about this and understand they are working to change the ethos and attitudes here as well. This change will be critical in supporting my recommendations and their success.

As a result of all this, I believe that the WCA can become less mechanistic, more empathetic and more evidence-based. The result would be a fairer system.

Best wishes,

A handwritten signature in black ink, reading "Malcolm Harrington". The signature is written in a cursive style. Below the signature is a horizontal line.

**Professor Malcolm Harrington CBE**