



## **Disabled People Against Cuts**

### **Work Capability Assessment Factfile**

Prepared by the DPAC Research Team, June 2013

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#### **Disabled People Against Cuts:**

DPAC is a grass roots campaign body. It was formed by a group of disabled people after the first mass protest against the austerity cuts and their impact on disabled people held on the 3rd October in Birmingham 2010, England. It was led by disabled people under the name of The Disabled Peoples' Protest. DPAC has over 15,000 members and supporters and works with many anti-cuts groups, Universities, Disabled Peoples' Organizations, and Unions

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### **Abbreviations Used**

ESA – Employment and Support Allowance – UK Government Sickness Benefit

BMA – British Medical Association

DWP – Department for Work and Pensions - UK Government Department

GP – General Practitioner (Medical Doctor)

HMCTS – Her Majesty's Courts and Tribunal Service

JSA – Job Seekers Allowance

MP – Member of Parliament

WCA – Work Capability Assessment – test for claimants right to claim the ESA Benefit

WRAG – Work Related Activity Group

### **1 Summary Grid of WCA Changes: Chronology**

<b>Date</b>	<b>Event</b>	<b>Notes</b>
October 2008	Employment and Support Allowance and the Work Capability Assessment introduced	See section 3
May 2011	A “mass conversion” begins to convert all claimants on the previous Incapacity Benefit to ESA, requiring that each claimant undertakes a WCA test	See section 3
May 2012	The Welfare Reform Bill is passed	See section 4
June 2013	The British Medical Association passes a motion calling for the Work Capability Assessment to be halted immediately, due to the harm being caused to claimants	See section 13
September 2012	Draft Jobseeker’s Allowance (Sanctions) (Amendment) Regulations 2012 is passed by a parliamentary committee	See section 6.6
September 2012	The British Medical Association presents evidence critical	See section 13.2

Date	Event	Notes
	of the WCA to an independent review of the Work Capability Assessment	
November 2012	DWP Issues a memo setting out new Conditionality Sanctions for claimants in the Work Related Activity Group	See Section 4.1
April 2013	Restrictions on Access to Legal Aid for WCA Appeals	See section 6.4
April 2013	"Clause 99" comes into force requiring that a unlimited-time reconsideration of a benefit decision is made before a appeal can be launched	See section 6.5
April 2013	Time Limiting of ESA Benefit Claims comes into force	See section 7

## 2 What is the Work Capability Assessment?

Anyone who is claiming Employment and Support Allowance is required by the DWP to have an assessment - called a Work Capability Assessment (WCA) - that focuses on how their illness or condition affects them on a day-to-day basis.

When people meet certain criteria, such as when they are terminally ill and have less than 6 months to live, they are not required to have a face-to-face assessment, but most claimants undergo a WCA, which relies on a computer-based questionnaire, with tick-boxes and descriptors giving more weighting to claimants' capabilities than incapacity. Once the information is entered in the computer and the assessment is finished, the software produces a report showing the number of points scored by the claimant. This report is submitted to a DWP decision-maker who has not medical training, and who decides whether a claimant is entitled to disability benefit. This assessment has been the centre of many controversies, and parliamentary debates for its ability to find many claimants, either terminally ill, suffering from degenerative illnesses, hospitalised or sectioned in mental institutions Fit For Work.

## 3 Background to the Work Capability Assessment

Employment & Support Allowance was introduced in October 2008 and replaced a range of incapacity benefits last majorly revised in 1995. The key difference between the previous range of incapacity benefits and its replacement the Employment & Support Allowance is that claimants are now assessed through the WCA with 3 possible outcomes:

1) *'Fit for work' (not entitled to ESA)*

2) *Having 'limited capability for work' (placed in the Work Related Activity Group) - able to do some work with support.<sup>1</sup>*

3) *Having limited capability for work related activity (the Support Group). - no expectation upon claimant to work*

Whereas under the previous range of incapacity benefits claimants were assessed with only two possible outcomes - 'fit either for work 'or'incapable of work'.

A mass 'conversion' programme commenced in May 2011 moving 1,946,200 pre-existing incapacity benefit claimants over to Employment & Support Allowance (subject to qualifying for conversion) which is expected to end in 2014/2015. This is part of government plans to integrate all income based Employment & Support Allowance claims on to the new Universal Credit.

<sup>1</sup> On 1 May 2012 the Welfare Reform Act 2012 introduced a change to contribution-based Employment and Support Allowance (ESA), which limits the period for which people in the Work Related Activity Group (WRAG) can receive contribution-based ESA to 365 days (meaning based on the contribution they already paid rather than income), while before they were entitled to claim it indefinitely; which means that whether people have recovered or not, their entitlement ends after 365 days.

## 4 Conditionalities and sanctions in the Welfare system

The Welfare Reform Bill <sup>2</sup> sets out a series of proposals to increase the level of sanctions, the way that sanctions are applied and the range of things which an individual can be sanctioned for.

This approach of increased conditionality has grown incrementally over time and been broadened to include 'new' claimant groups. The move to conditionality has also extended purely work-related issues into a policy model that sees conditionality and sanctions as tools to change other behaviours.

The 4 key dimensions to sanctions:

- Type of sanctions: whether the sanction results from administrative failure or from a behavioural misdemeanour
- Type of effect: whether the sanction has an impact arising directly from lower levels of benefit entitlement or from the changed behaviour of claimants.
- Timing of the effect –before, during or after the claim.
- Type of outcome: In the short-term, they may encourage/force compliance or participation or encourage claimants to end their claim, possibly to enter employment. In the longer-term, they may affect earnings, material hardship and children's well-being.

Until December 2012, people put in the WRAG only had to meet certain conditions to be entitled to their benefits, namely to attend and take part in work-focused interviews if asked to do so, to qualify for their benefits and carry out "work related activities".

Statistics below reveal the extent and impact of sanctions on people put in the WRAG before December 2012:

*Statistics from the government revealed that there were 11,790 conditionality sanctions applied to ESA claimants in the WRAG between 1<sup>st</sup> December 2009 and 30<sup>th</sup> November 2010 and that there were 10,130 conditionality sanctions applied between 1<sup>st</sup> December 2010 and 30<sup>th</sup> November 2011.*

*These figures are for 8,510 ESA claims, as some ESA WRAG claims were being sanctioned more than once.*

*Of the 10,130 conditionality sanctions applied between 1<sup>st</sup> December and 30<sup>th</sup> November 2011 which have now ended, the average sanction duration was 6 weeks and 3,690 (36%) had a 50% reduction in their Work-Related Activity component applied.*

*45% of those sanctions were directed at people with mental health issues, despite on 30% of disabled participants having mental health conditions.*

Source: ESA sanctions. Official statistics, February 2012 <sup>3</sup>

### 4.1 ESA conditionalities from December 2012 for claimants in the WRAG

In November 2012, DWP issued a memo, taking effect in December 2012, setting out the new conditionalities and sanctions attached to WRAG. It should be noticed that the language had changed, as people put in WRAG met previously the ESA WRAG criteria of 'not currently fit for work', while in this memo they are referred as having 'limited capacity for work'.

People put in WRAG are still expected to attend and take part in work-focused interviews if they are asked to do so, to qualify for their benefit. They may also have to carry out work-related activities that their adviser thinks will help them to be able to return to work in the future, but with much harsher sanctions if they fail to do so. When previously they would have received an open ended sanction, amounting to 50 per cent of the work related activity component, and increasing to 100 per cent of the component after four weeks with the new system, they now receive an open ended sanction, followed by a fixed period sanction when they re-comply.

The fixed period sanction will be one week for a first failure, two weeks for a second failure and four weeks for a third and subsequent failures in a 52 week period, and the amount being sanctioned raised to 70% of their ESA payments<sup>4 5</sup>.

<sup>2</sup> <http://www.dwp.gov.uk/policy/welfare-reform/legislation-and-key-documents/welfare-reform-act-2012/index.shtml>

<sup>3</sup> [http://webarchive.nationalarchives.gov.uk/+http://research.dwp.gov.uk/asd/workingage/esa\\_sanc/esa\\_sanc\\_feb12.pdf](http://webarchive.nationalarchives.gov.uk/+http://research.dwp.gov.uk/asd/workingage/esa_sanc/esa_sanc_feb12.pdf)

<sup>4</sup> <http://www.dwp.gov.uk/docs/esa-changes-factsheet.pdf>

<sup>5</sup> <http://www.guardian.co.uk/society/2012/sep/03/disabled-benefits-claimants-fines-work>

In addition, for the first time, people in WRAG might be put on a Work Programme, which means they might have to work as a condition of entitlement to their benefits. DWP decided that Work Programme providers will be able to use mandatory work placements as another measure through which to help ESA WRAG participants move closer to the labour market.

The DWP has currently no plans to set a fixed minimum or maximum length for a work placement. Although there are not yet any statistics on the number of people being sanctioned for not complying with the requirements of the Work Programme, some Work Programme providers have already been complaining that they were referred by job centres terminally ill clients (the name given to claimants) with cancer whose life expectancy was shorter than the work-ready prognosis.<sup>6</sup>

## 5 WCA Assessment Phase

The assessment phase should according to the Employment & Support Allowance regulations (unless there is a delay in assessing the claimant by the DWP) be completed within 13 weeks. DWP figures in August 2012 shows that out of 488,440 claimants in the Assessment Phase only 170,530 had been in the assessment phase for up to 13 weeks. Of the 317,910 claimants who had not been assessed with 13 weeks:

*112,270 Have been waiting 3 to 6 months*

*117,030 Have been waiting 6 months to 1 year*

*55,180 Have been waiting 1 to 2 years*

*33,430 have been waiting between 2 years or longer*

Of the 488,440 in the Assessment Phase: 89,180 are all ib/ESA conversion appeal cases (against a Fit for Work decision)

*29,780 Have been waiting up to 3 months*

*25,370 Have been waiting 3 to 6 months*

*32,560 Have been waiting 6 months to 1 year*

*1,450 Have been waiting 1 to 2 years*

*10 have been waiting between 2 years or longer*

## 6 The Appeals Process

Although claimants can directly lodge a complaint with Atos, the firm contracted to carry out WCAs, or ask DWP for decision reconsideration, many claimants choose to appeal a WCA decision.

The only available figures regarding appeals' outcomes are the ones issued by DWP, and although the most recent have been published in August 2012, the adjusted figures do not go beyond November 2011 (because as shown below the lag time is on average 14 months).

### 6.1 Increase in the number of appeals

The number of appeals has increased significantly since the introduction of ESA.

In 2000, there were around 40,200 Incapacity Benefit appeals, in 2006 around 59,580, and between April 2009 and September 2013<sup>7</sup>, 639,000 ESA appeals would have been lodged. (The period between October 2008 and March 2009 has been omitted as the number of appeals lodged following the introduction of ESA would not have been significant.

<sup>6</sup> <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmworpen/uc835-iv/uc83501.htm>

<sup>7</sup> Estimates from the Ministry of Justice

For the period July to September 2012 the number of appeals was up by 69% on the same quarter on the previous year<sup>8</sup>. Benefit appeals are now accounting for 58% of all cases received for appeals across all Tribunals. In 2011/2012, 181,000 appeals were received by the Tribunals. In the first six months of 2012/2013 the figure has shot up to 133,700 indicating that these appeals alone are well on track to exceed a quarter of a million by year end.

## **6.2 Appeal outcomes**

The House of Commons Committee of Public Accounts stated that claimants have successfully challenged the decisions in 38% of appeals<sup>9</sup>.

These figures hide huge variations as the success rate is higher if the claimant is present at the tribunal, which is not always possible when the claimant is severely sick or disabled, or if he has legal representation. Some Citizen Advice Bureaux (a network of independent charities throughout the UK that give free, confidential information and advice to help people with their money, legal, consumer and other problems) have reported between 80 to 100% success rates with legal representation. What the numbers are not showing either is the scale of the overturn. Data for appeals heard up to February 2011 found that 60 per cent of decisions overturned at appeal involved cases in which claimants were initially awarded no points at all in their WCA. <sup>10</sup>

The reasons are various, from the presentation of additional medical evidence to simply a different interpretation of the initial evidence presented.

## **6.3 Time lag and clearance**

The time lag according to DWP is supposed to be 8 months, but figures reveal that it takes 14 months in average from a claimant decision to appeal to the appeal outcome, which is very much in keeping with many claimants' experience who have to wait over a year to have an appeal being heard, while having to live on reduced benefits or no income at all.

This time lag makes it very difficult to have up-to-date figures, and to identify trends over time as so many factors will have intervened in the interval such as fluctuations of the off or out flows of claimant claims, the impact of DWP reviews, the number of claimants in the assessment phase (over 425,000) and the numbers of people in an untracked IB to ESA 'conversion phase'.

What is certain, as stated by the Chair of the Work and Pensions Committee, Dame Anne Begg, is that there is "something fundamentally wrong" with the ESA assessment system and the contract Atos is delivering<sup>11</sup>.

## **6.4 Access to Legal Aid**

Also from April 2013, legal aid will no longer be available for First-tier Tribunal hearings (which include all benefit appeals), which will severely restrict the ability of claimants to appeal a decision. And when they do, they will also have to appeal directly to HM Courts and Tribunal Services, as DWP will no longer lodge the appeal on their behalf.

What it means practically is that claimants will be denied professional advice as to the validity of their claims, as to the time limit to appeal, etc. and as a result, the judicial system risks being inundated by claims whose validity has not been confirmed, while many other claimants will be denied access to justice.

## **6.5 Clause 99**

Because of the huge backlog in the judicial system, DWP introduced a number of programmes designed to improve the quality of its decision-making such as the "super-reconsideration" initiative.

But from April 2013, claimants who wish to challenge a benefits decision will no longer be allowed to lodge an appeal immediately under Clause 99 of the Welfare reform. Instead, there will be a mandatory revision or review stage, during which a different Department of Work and Pensions decision maker will reconsider the evidence and, if necessary, send for more information, before deciding whether to change the original decision.

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<sup>8</sup> <http://www.justice.gov.uk/statistics/tribunals/quarterly>

<sup>9</sup> <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpublic/744/744.pdf>

<sup>10</sup> <http://www.parliament.uk/briefing-papers/POST-PN-413.pdf>

<sup>11</sup> <http://www.theyworkforyou.com/whall/?gid=2012-09-04b,27.2>

There will be no time limit on how long this process can take and the employment and support allowance (ESA) claimants will lose their right to be paid the assessment rate when they first challenge a decision, whilst they await the review, and until appeal is lodged. Instead, they will have to try to sign on as available for work and claim Jobseeker's Allowance (JSA) or manage without either benefit until the reconsideration has been carried out. Only once an appeal has been lodged will they be able to reclaim ESA.

## 6.6 JSA

However, these people or people who have been refused ESA or whose 1 year entitlement to ESA had come to an end have also been refused JSA, on the grounds that they are unavailable for work, (and so do not meet the conditions that signing on entails) or they are unfit for work, because they are simply too ill to meet the conditions. Some people have had their application for JSA refused because they attend hospital for treatment once a week and so they are "not available for work" at this time.

Furthermore, there is some anecdotal evidence of people being told by DWP that in order to claim JSA, they must first close their original claim for ESA, since it isn't possible to have two claims for two different benefits open at the same time. DWP are also telling people that this means withdrawing their ESA appeal.

Changes to the sanction regime for Job Seekers Allowance (JSA) have been voted through in [a parliamentary select committee](#)<sup>12</sup>, which see the maximum sanction length for JSA claimants raised to three years. As seen before, JSA claimants can be either unemployed people but also ESA claimants who have been sanctioned and have no income, or who have exhausted their 1-year ESA entitlement and have applied for JSA as their only income, and who face a system shown by leaked documents to have in-built sanction targets<sup>13</sup> as to the number of claimants taken off benefits.

## 7 Time Limiting of ESA Benefit Claims

On 1 May 2012 the Welfare Reform Act 2012 introduced two changes to contribution-based Employment and Support Allowance (ESA). They are:

- to limit the period for which people in the Work Related Activity Group (WRAG) can receive contribution-based ESA to 365 days; and
- to prevent any new claims for ESA on the grounds of youth (ESA (Y)).

The legislation to support these changes applies retrospectively so that claimants in the work related activity group who have already received 365 days of contribution based ESA saw their entitlement end on 30 April 2012.

### 7.1 What are the changes?

The Welfare Reform Act limits the amount of time people who are not in the Support Group can claim contribution-based ESA to a period not exceeding 365 days without re-qualifying.

Time spent in the Assessment phase will count towards the 365 day time limit unless it is immediately followed by entitlement to the support component.

People not in the Support Group who have already received contribution-based ESA for 365 days or more will have their entitlement stopped as soon as the change takes effect. This means that the last day benefit will be paid for is 30 April 2012.

The Act has also removed the special contribution conditions that allow people aged between 16 and 20 (or under 25 if in education or training at least three months immediately before turning 20) to receive contribution-based ESA without paying National Insurance contributions, this was called ESA 'Youth'.

This means that all new claims to contribution-based ESA will need to meet the standard contribution conditions. People not in the Support Group who are currently claiming contribution-based ESA and qualified under 'Youth' provisions will have their contribution-based ESA time limited to 365 days.

People in the Support Group will continue to receive contribution-based ESA providing they continue to meet the qualifying criteria.

<sup>12</sup> <http://www.parliament.uk/business/publications/hansard/commons/this-weeks-public-bill-general-committee-debates/read?date=2012-09-11&itemId=132>

<sup>13</sup> <http://www.guardian.co.uk/society/interactive/2013/mar/28/jobcentre-sanctions-scorecard-full-table>

## 8 Disabled Access to Assessment Centres

### 8.1 Numerical Analysis of Disabled Access to WCA Assessment Centres

These results have been extracted from information submitted by the DWP in response to a Freedom of Information request <sup>14</sup>

Total number of WCA Assessment Centres surveyed: **141**

- 1) No **car parking** at site or adjacent to assessment centre: **81 (57%)** - 12 (9%) did not provide information
- 2) No **ground floor assessment rooms** available: **33 (23%)** - 18 (13%) did not provide information
- 3) Assessment centre not **close to a bus or train stop**: **48 (34%)** - 25 (18%) did not provide information
- 4) No **wheelchair access** to the assessment centre: **29 (21%)** - 13 (9%) did not provide information
- 5) No **refreshments** (i.e. drinking water) available: **29 (21%)** - 19 (13%) did not provide information
- 6) No **chairs with arms** available or only 1 chair: **19 (13%)** - 19 (13%) did not provide information
- 7) Assessment Centres **not on ground floor and without a lift**: **2**

### 8.2 Extract from Norfolk Coalition of Disabled People Press release:

#### **Press Release**

**12 March 2013**

#### **For Immediate Use**

### **Disabled People Are Still 'Fire Hazards'**

*This is the first anniversary of demonstrations as the Department of Work and Pensions (DWP) and Atos have refused to move to accessible offices for over a year. This is despite accessible offices being available to rent on the ground floor of the building they occupy on Duke Street.*

*According to Atos disabled people are fire hazards. Wheelchair users and disabled people with mobility impairments are barred from entering their offices on Duke Street, Norwich.*

*Disabled people and supporters will be demonstrating outside the Atos offices this Friday 15 March between 1 – 2pm.*

*"Our Government has awarded a multi million pound contract to a company which can't even rent a building which their customers can get in. I think this is a real statement of the Coalition Government attitude towards disabled people" said **George Saunders, Chair of Norwich Access Group***

*"They have had over a year to sort this out since we started our campaign. How can an agency that gets this so wrong be trusted to do proper assessments of disabled people when they have no understanding of the realities of being disabled?" Saunders added.*

*The other issue being protested about is the Work Capability Assessments (WCA). Nearly 40 per cent of appeals against decisions are successful, with a third of those successful appeals involving no new evidence. This figure rises to over 70% if representation is present in the appeals process.*

**Mark Harrison, CEO of Norfolk Coalition of Disabled People** said

*"If the judicial system had the sorts of failure rates that Atos has there would be a public outcry. Why hasn't the Government sacked them for incompetence? Why are our elected representatives not standing up for Norfolk's disabled population? There is complete silence from all our MPs on this matter"*

<sup>14</sup> [https://www.whatdotheyknow.com/request/atos\\_assessment\\_centres\\_location#incoming-209526](https://www.whatdotheyknow.com/request/atos_assessment_centres_location#incoming-209526)

## 9 Independent Assessment of the WCA and a Disabled People's response

Included below is an extract from a response to the second "Harrington Report"<sup>15</sup> - independent review of the WCA from Inclusion London<sup>16</sup>.

*Inclusion London believes disabled people gain much by being employed and welcomes initiatives to increase the employment of disabled people. However, the reform of IB and introduction of ESA and WCA assessment was driven by a government agenda to cut the numbers on benefits, rather than to provide appropriate support for disabled people to find employment.*

*This would mean support in the form of positive promotion and enforcement of equality legislation, encouragement to employers to make reasonable adjustments and high quality, non-time limited, person-centred employment support. Instead government policy is in the opposite direction: weakening enforcement mechanisms via cutting the powers and budget of the EHRC, restricting the highly effective Access to Work support and intensifying payment by results in employment support programmes. As we have stated, this is all in the context where there is rising unemployment and disabled people continue to be amongst the most disadvantaged in our society.*

*Inclusion London disagrees with the imposition of ESA and believes that the experience of WCA by disabled people has shown it to be a crude and rigid system, which does not accurately capture the impact of impairments and disabling barriers on the capacity to work, and which therefore produces grossly unfair judgments.*

*Other concerns which are raised in the response to the questions include:*

- 1) Professor Harrington's recommendations from the first review should be integrated into the practice of all Jobcentre plus staff and the practice of Atos HPC assessors before the national roll out of the WCA assessment continues.*
- 2) There are inherent problems in the HPC assessment provided by Atos, which will not be solved by giving more emphasis to the Jobcentre Plus Decision Maker input.*
- 3) The majority of decisions turned over on appeal are due to inaccurate HPC assessments rather than inconsistent decisions by the First tier tribunals.*
- 4) Atos should bear the cost of inaccurate assessments rather than the public purse paying via the tribunal costs.*
- 5) Atos HCP assessor's lack expertise in mental health conditions, cognitive impairments and other impairments will not be adequately compensated for by the champions in the health assessment centres.*
- 6) Reports by health care professionals such as hospital consultants, with an expert knowledge of particular impairments and how the impairment impacts on the claimant should be central to the decision making process.*
- 7) More credence should be given to the information provided by the claimants about the impact of their impairment on their ability to work.*

## 10 Spartacus Report on the Work Capability Assessment

The Spartacus "People's Review of the Work Capability Assessment"<sup>17</sup> contains a thoroughly researched and compiled report compiled by disability activists on the effects of the Work Capability Assessment

## 11 UK Media coverage of the Work Capability Assessment

There have been several hundred articles in the UK media<sup>18</sup> highlighting issues with the Work Capability Assessment, some of the most recent articles are included below:

- Jan 2013 - Guardian - 'This brutal new system': a GP's take on Atos and work capability assessments<sup>19</sup>
- Jan 2013 - Ekklesia - Latest Work Capability Assessment proposals will worsen plight of sick and disabled people<sup>20</sup>

<sup>15</sup> <http://www.dwp.gov.uk/policy/welfare-reform/employment-and-support/wca-independent-review/>

<sup>16</sup> [http://inclusionlondon.co.uk/domains/inclusionlondon.co.uk/local/media/downloads/Inclusion\\_London\\_s\\_response\\_Harrington\\_WCA\\_Review\\_Year\\_2\\_Sept\\_2011\\_Final\\_1.doc](http://inclusionlondon.co.uk/domains/inclusionlondon.co.uk/local/media/downloads/Inclusion_London_s_response_Harrington_WCA_Review_Year_2_Sept_2011_Final_1.doc)

<sup>17</sup> <http://wearespartacus.org.uk/wca-report/>

<sup>18</sup> <http://lxs.blogspot.co.uk/p/collected-atos-news-articles.html>

<sup>19</sup> <http://www.guardian.co.uk/commentisfree/2013/jan/04/gp-atos-work-capability-assessment>

<sup>20</sup> <http://www.ekklesia.co.uk/node/17811>

- Jan 2013 - Guardian - Atos comes under attack in emotional Commons debate <sup>21</sup>
- Jan 2013 - Independent - Atos told incontinent woman to 'wear nappy' <sup>22</sup>
- Jan 2013 - Express - Deaths warning as MPs blast Atos <sup>23</sup>
- Jan 2013 - London Evening Standard - Deaths warning as MPs blast Atos <sup>24</sup>
- Jan 2013 - The Fed Online - New 'fitness for work' test changes 'could breach Human Rights Act' <sup>25</sup>
- Feb 2013 - BBC News - MPs criticise disability benefits tests <sup>26</sup>
- Feb 2013 - The Fed Online - Atos nurses were told: 'You're too nice to work here' <sup>27</sup>
- Feb 2013 - Manchester Evening News - Blind Chadderton woman is ordered back to work wins benefits battle <sup>28</sup>
- Mar 2013 - New Statesman - The tragedy of Alice - How the Work Capability Assessment costs lives <sup>29</sup>
- Mar 2013 - Herald Scotland - Busy GPs refuse to help disabled patients fight benefit tribunals <sup>30</sup>
- Mar 2013 - Independent - Capable of 'work-related activity': Partially blind Thalidomide victim with brain tumour fights Atos decision to force her to attend interviews and put together CV <sup>31</sup>
- Mar 2013 - Mail - Blind in one eye, partially deaf and facing major spinal surgery but Thalidomide mother is STILL found fit to work <sup>32</sup>
- Mar 2013 - Independent - Brain-damaged amputee fit for work, says Atos <sup>33</sup>

## 12 Opposition to the Work Capability Assessment in the UK Parliament

### 12.1 Parliamentary Debates with motions opposing the WCA

#### 12.1.1 House of commons debate on "ATOS Healthcare" 4<sup>th</sup> September 2012. Moved by Tom Greatrex MP

An extract from the opening remarks made by Tom Greatrex in opening the debate <sup>34</sup>:

*Six months ago, I was fortunate enough to secure a debate on this issue in this Chamber. At that time, the Minister confidently predicted that the performance and situation would massively improve and some changes that had been made had not yet fed through. Six months later, I suggest to the Minister that the number of people present today indicates that very real concerns and problems remain, many of which are sure to be reflected during the debate.*

*In our previous debate, I focused on the experiences of constituents who had undergone the assessment. I told the story of a constituent trapped in the system who went through an assessment, a successful appeal, a reassessment, followed by another successful appeal and then another reassessment. For too many people, that remains the experience across the country. The Minister and whoever his successor will be need to look carefully at that issue and address it. I have spoken with many constituents who would love to go out to work, but it is not possible to do so because they suffer from a disability or a chronic condition, and I am sure that many Members in the Chamber will want to speak up for such people.*

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<sup>21</sup> <http://www.guardian.co.uk/society/2013/jan/17/atos-attack-emotional-commons-debate>

<sup>22</sup> <http://www.independent.co.uk/news/uk/home-news/atos-told-incontinent-woman-to-wear-nappy-8456447.html>

<sup>23</sup> <http://www.express.co.uk/posts/view/371465/Deaths-warning-as-MPs-blast-Atos>

<sup>24</sup> <http://www.standard.co.uk/panewsfeeds/deaths-warning-as-mps-blast-atos-8455906.html>

<sup>25</sup> <http://www.thefedonline.org.uk/disability-in-the-news/new-fitness-for-work-test-changes-could-breach-human-rights-act>

<sup>26</sup> <http://www.bbc.co.uk/news/uk-politics-21376915>

<sup>27</sup> <http://www.thefedonline.org.uk/disability-in-the-news/atos-nurses-were-told-you-re-too-nice-to-work-here>

<sup>28</sup> <http://www.manchestereveningnews.co.uk/news/greater-manchester-news/blind-chadderton-woman-ordered-back-1346646>

<sup>29</sup> <http://www.newstatesman.com/politics/2013/03/tragedy-alice>

<sup>30</sup> <http://www.heraldsotland.com/news/health/busy-gps-refuse-to-help-disabled-patients-fight-benefit-tribunals.20456755>

<sup>31</sup> <http://www.independent.co.uk/life-style/health-and-families/health-news/capable-of-workrelated-activity-partially-blind-thalidomide-victim-with-brain-tumour-fights-atos-decision-to-force-her-to-attend-interviews-and-put-together-cv-8536873.html>

<sup>32</sup> <http://www.dailymail.co.uk/news/article-2293974/Blind-eye-partially-deaf-facing-major-spinal-surgery-Thalidomide-mother-STILL-fit-work.html>

<sup>33</sup> <http://www.independent.co.uk/news/uk/politics/braindamaged-amputee-fit-for-work-says-atos-8547539.html>

<sup>34</sup> <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120904/halltext/120904h0001.htm#12090423000002>

*The level of appeals and successful appeals indicates that, although no process is 100% accurate all the time, many decisions are wrong and need to be corrected through the tribunals service. No one should forget, however, that that process can take six to nine months because of the backlog of appeals. During that time, people suffer from severe anxiety and concern about their fate, so my hon. Friend makes an important point.*

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*I am not unaware of what Atos says to people who seek to video their assessment, because cases have been highlighted to me in which people have asked for their assessments to be recorded. In the previous debate, the Minister said that if anyone wanted to have their assessment recorded, they could have it recorded, but that has not been the case in many instances and people are refused permission to record the assessment themselves.*

#### 12.1.2 House of Commons debate on “ATOS Work Capability Assessments”, 17<sup>th</sup> Jan 2013, Moved by Micheal Meacher MP

An extract from the opening remarks made by Michael Meacher in opening the debate <sup>35</sup>:

*As knowledge of the debate has spread, I have been sent nearly 300 case histories, many of which make heart-rending reading. I cannot begin to do justice to their feelings of distress, indignation, fear, helplessness and, indeed, widespread anger at the way they have been treated. Nor can I easily contain my own feelings at the slowness, rigidity and insensitivity with which Atos and the Department for Work and Pensions have responded—or very often not responded—to the cries of pain that they have heard repeatedly. I have time to cite briefly only three examples which show how extreme is the dysfunction and malfunctioning of the Atos assessments.*

*The first example concerns a constituent of mine who was epileptic almost from birth and was subject to grand mal seizures. At the age of 24, he was called in by Atos, classified as fit for work and had his benefit cut by £70 a week. He appealed, but became agitated and depressed and lost weight, fearing that he could not pay his rent or buy food. Three months later, he had a major seizure that killed him. A month after he died, the DWP rang his parents to say that it had made a mistake and his benefit was being restored.*

The second example, also from the Oldham area, concerns a middle-aged woman who was registered blind and in an advanced stage of retinitis pigmentosa. She was assessed at 9 points—well short of the 15 that are needed—and her incapacity benefit was withdrawn. On review by a tribunal, the Atos rating of 9 points was increased to 24.

The third case—I could have chosen from hundreds of others—also comes from the north-west and concerns an insulin-dependent diabetic with squamous cell cancer, Hughes syndrome, which involves a failed immune system, peripheral neuropathy, which meant that he had no feeling in his feet or legs, heart disease, depression and anxiety. Despite his life-threatening condition, he was placed in the work-related activity group.

Those and myriad other examples illustrate incontrovertibly that Atos’s current work capability assessment system is drastically flawed, and for several reasons. First, Atos is an IT firm and it uses the so-called Logic Integrated Medical Assessment, which is often described as “rigid” and “tick-box” because computer-based systems make it difficult for health professionals to exercise their professional judgment. Because such a mechanistic system has little or no regard for the complexity of the needs of severely disabled or sick persons, the British Medical Association and others have condemned the current WCA as “not fit for purpose”

#### 12.1.3 House of Commons debate on “ATOS Healthcare”, 21<sup>st</sup> March 2013, Moved by Micheal Meacher MP

An extract from the opening remarks made by Michael Meacher in opening the debate <sup>36</sup>:

*I am grateful for the opportunity to raise this matter in an Adjournment debate, although I very much regret that it has been necessary to do so at all. It is unprecedented in all my 40 years’ parliamentary experience for a Minister to refuse point blank to receive a delegation, on a matter of acute public interest and importance, of representatives of a major section of the population who have, in their view, been targeted extremely unjustly by Government policy.*

*On 31 January, I wrote to the Secretary of State asking whether a delegation could meet him in his office to discuss the reforms that urgently need to be made to the work capability assessments for disabled people. I reminded him in my letter of the debate in the House on Atos, which I initiated on 17 January. In my view, it was one of the best debates I have experienced in the House for a long time. It was free from rancour and partisanship, but it was*

<sup>35</sup> <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm130117/debtext/130117-0002.htm#13011761001546>

<sup>36</sup> [http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm130321/debtext/130321-0004.htm#130321-0004.htm\\_spnew6](http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm130321/debtext/130321-0004.htm#130321-0004.htm_spnew6)

*critical, detailed, passionate and well focused on the need for reform. Nearly 30 Members spoke and, although Members on both sides of the House acknowledged that there had been some improvements, they were without exception deeply critical of the fact that the fundamental structures remained deeply flawed. That, they said, was causing profound upset, distress, indignation, anger and a real sense of helplessness, and was, in many cases, making sick people even sicker as a result of anxiety and fear.*

*Although many Members targeted Atos Healthcare, the French company to which the assessments have been outsourced, it was notable that not a single Member from any part of the House defended the position of the Department for Work and Pensions on the descriptors, the regulations and the guidance that had been handed down by the Government to that firm. It was for those reasons that I sought the meeting with the delegation, and it never occurred to me that it would not be readily and promptly granted by the Minister of State, Department for Work and Pensions, the hon. Member for Fareham. Not having had a reply to my letter throughout the whole of February, however, I tabled a parliamentary question asking when the Minister was going to reply.*

*Within 24 hours, after waiting more than five weeks, I did receive a reply from the Minister of State. It emerged when I spoke to the Secretary of State earlier this week that he had never seen my letter. The Minister of State's letter, which I have with me, bluntly stated that his diary did not permit him the opportunity to see this delegation, which I take to be "civil service-ese" for a flat no.*

*Frankly, I was taken aback, so I sought out the Minister in the Lobby and, as soon as he saw me, he said: "I'm not seeing you". When I protested, he repeated "I'm not seeing you" three times. When I insisted that this was unprecedented and totally unacceptable, he finally said, "I'm not seeing Spartacus"—and repeated that three times.*

## **12.2 Early Day Motions in opposition to the WCA**

Early Day Motions (EDMs) are formal motions submitted for debate in the House of Commons. However, very few are actually debated. EDMs allow MPs to draw attention to an event or cause. MPs register their support by signing individual motions.

### **12.2.1 Early Day Motion 295, "ATOS"**

Primary Sponsor, John McDonnell MP, 28.06,2012, signed by 121 MPs <sup>37</sup>

*That this House deplores that thousands of sick and disabled constituents are experiencing immense hardship after being deprived of benefits following a work capability assessment carried out by Atos Healthcare under a £100 million a year contract; notes that 40 per cent of appeals are successful but people wait up to six months for them to be heard; deplores that last year 1,100 claimants died while under compulsory work-related activity for benefit and that a number of those found fit for work and left without income have committed or attempted suicide;*

### **12.2.2 Early Day Motion 435, "ATOS, The Work Capability Assessment and Mental Health"**

Primary Sponsor, George Galloway MP, 03.09,2012, signed by 37 MPs <sup>38</sup>

*That this House notes that many ATOS contractors who carry out the work capability assessment (WCA) have extremely limited knowledge of mental health problems and rely on applicants with mental health conditions to explain in face to face interviews their inability to work; believes that this places people suffering from mental health conditions at a very substantial disadvantage; further notes that a recent court ruling has held that it is at least arguable that the Equality Act 2010 requires the reasonable adjustment of the process whereby there should be the early obtaining of independent medical evidence to avoid the distress and disadvantage currently experienced by those with mental health conditions in WCA interviews; .....*

### **12.2.3 Early Day Motion 687, "Work Capability Assessment and Day of Remembrance"**

Primary Sponsor, John McDonnell MP, 05.11,2012, signed by 34 MPs <sup>39</sup>

*That this House wishes to record the case of Mr Brian McArdle who, having suffered a blood clot on his brain, was left paralysed on one side, unable to speak properly and blind in one eye and yet was summoned to an Atos work capacity assessment, before which he suffered a further stroke and was eventually informed he was to lose his*

<sup>37</sup> <http://www.parliament.uk/business/publications/business-papers/commons/early-day-motions/edm-detail1/?session=2012-13&ednumber=295&or>

<sup>38</sup> <http://www.parliament.uk/edm/2012-13/435>

<sup>39</sup> <http://www.parliament.uk/edm/2012-13/687>

*disability benefits; notes with sadness that Mr McArdle died from a heart attack the day after his benefits were stopped and that his 13 year old son Kieran wrote to Atos to tell the company that their assessments 'are killing genuine people like my dad'; and appreciates why disability campaigners like Susan Archibald are calling for the suspension of Atos assessments, and why Jim Moore and other campaigners are calling for 3 December to be a day of remembrance for all Atos victims.*

#### 12.2.4 Early Day Motion 711, "Spartacus Report on Work Capability Assessment"

Primary Sponsor, John McDonnell MP, 12.11,2012, signed by 22 MPs <sup>40</sup>

*That this House applauds the We are Spartacus network for publishing its report entitled The People's Review of the Work Capability Assessment which is a comprehensive analysis not only of people's experience of the assessment system but also of the policies and activities behind the scenes revealing the objective reality of an assessment process that has caused such suffering and distress; and calls on the Government to take action in response to this report by scrapping the Atos Healthcare work capability assessment system.*

The full Spartacus Report on the Work Capability Assessment can be read here: <http://wearespartacus.org.uk/wca-report/>

#### 12.2.5 Early Day Motion 714, "Work Capability Assessment and Death of Mr Brian McArdle"

Primary Sponsor, Roger Godsiff MP, 12.11,2012, signed by 16 MPs <sup>41</sup>

*That this House calls for an immediate cessation and reassessment of Atos work capability assessments following the death of Brian McArdle who died from a heart attack the day after his benefits were stopped; believes that Mr McArdle was badly served by a deeply flawed work capability assessment which wrongly declared him and many others fit for work;.....*

#### 12.2.6 Early Day Motion 882, "EMPLOYMENT AND SUPPORT ALLOWANCE (SANCTIONS) (AMENDMENT) REGULATIONS 2012 (SI 2012/2756)"

Primary Sponsor, Edward Miliband MP, 07.01,2013, signed by 22 MPs <sup>42</sup>

*That this House notes the Employment and Support Allowance (Sanctions) (Amendment) Regulations 2012 (SI 2012/2756) laid in the House, which introduces a new sanctions regime for Employment and Support Allowance claimants, as an interim step towards the Universal Credit sanctions regime; and calls on the Government to ensure that the work related activity which ESA recipients will be required to undertake will be appropriate, given their health condition, and that benefit sanctions will only be applied where recipients have failed to comply with a request that was reasonable given their circumstances.*

## 13 The British Medical Association opposition to the WCA

### 13.1 **Scrap work capability Assessment, Doctors Demand - 28<sup>th</sup> June 2012:**

The British Medical Association has made the following statements on the WCA <sup>43</sup>

*The computer-based system being used to determine whether people receiving incapacity benefit are fit to work should be scrapped, the meeting agreed.*

*London GP Louise Irvine said the WCA ([work capability assessment](#)) system was causing 'distress' to thousands of people with long-term health conditions deemed fit for work, as well as subjecting the doctors involved to 'McDonaldisation' of their careers.*

*She said 40 per cent of those who appealed WCA decisions were successful and this success rate rose to 70 per cent for those who took up legal representation.*

*Dr Irvine said: 'There is no empathy in the system, it is all accusatory.'*

<sup>40</sup> <http://www.parliament.uk/edm/2012-13/711>

<sup>41</sup> <http://www.parliament.uk/edm/2012-13/714>

<sup>42</sup> <http://www.parliament.uk/edm/2012-13/882>

<sup>43</sup> <http://bma.org.uk/news-views-analysis/news/2012june/scrapped-work-capability-assessment-doctors-demand>

However, London consultant in occupational medicine David Snashall urged the meeting not to call for the WCA to be replaced, arguing that there was a scrutiny process in place to improve the system.

Professor Snashall said there was a fundamental misunderstanding surrounding the computer-based system, which was 'merely a guide' and did not mandate the questions.

However, the meeting supported a call on the BMA to demand that the WCA should be ended 'with immediate effect and be replaced with a rigorous and safe system that does not cause unavoidable harm to some of the weakest and vulnerable in society'.

### **13.2 Doctors highlight unfair benefits assessments - 13<sup>th</sup> September 2012 <sup>44</sup>**

Vulnerable benefits claimants are missing out on crucial support because they are not assessed in a holistic way, doctors leaders say.

The BMA tells a review of the WCA (work capability assessment) that process-driven computer-based systems make it difficult for healthcare professionals to exercise their professional judgement.

The WCA is used to assess the capability of people claiming the ESA ([employment and support allowance](#)), which provides financial help to those unable to work because of illness or disability.

It was introduced in October 2008, along with a commitment to produce an independent report into the way it is working for each of its first five years.

WCA review chair Malcolm Harrington is gathering evidence for the [third annual report](#).

In its submission, the BMA says: 'We are concerned that ... some of the most vulnerable and weakest in our society are not receiving the support that they need through the ESA. The fact that a high proportion of initial decisions are overturned on appeal to tribunals reinforces these concerns.'

#### **Extra GP workloads**

The BMA says GPs also face extra workload as rejected claimants seek additional evidence to support their appeals.

'Anecdotally, we are aware of a large recent increase in such requests to GPs,' the BMA says.

'Although GPs are not under contractual obligation to provide such evidence directly to their patients, these requests place GPs in a difficult position that can potentially compromise the doctor-patient relationship, as well as taking up limited GP appointment time.'

The parliamentary briefing [The Work Capability Assessment for ESA](#), published last month, says 60 per cent of claimants applying for the ESA for the first time were declared fit for work but 41 per cent of those decisions were appealed. Of those, 38 per cent of appeals were upheld.

This year's BMA [annual representative meeting](#) agreed that the WCA, administered by French firm [Atos Origin](#), was inadequate and should be replaced.

Professor Harrington is expected to deliver his report by the end of 2012.

Last year's report says there is no evidence that the assessment software influences healthcare professionals' decisions or results in impersonal assessments.

However, it does recommend increased use of 'free text' to describe individual claimants accurately.

### **13.3 News Article - "Busy GPs refuse to help disabled patients fight benefit tribunals"**

The following text is an extract taken from the article in the Herald Scotland <sup>45</sup>

PATIENTS caught in the controversial disability benefits tribunal system are being refused help by GPs who claim they are being deluged with requests for medical reports which doctors say they are not paid for by the Government.

<sup>44</sup> <http://bma.org.uk/news-views-analysis/news/2012/september/doctors-highlight-unfair-benefits-assessments>

<sup>45</sup> <http://www.heraldscotland.com/news/health/busy-gps-refuse-to-help-disabled-patients-fight-benefit-tribunals.20456755>

*The tribunals – part of the appeal process when benefits are cut – see disabled people fighting to prove their medical conditions exist to keep their benefits. The system has been plagued with claims that the sick and disabled are being forced back to work and denied welfare.*

*Medical reports are key to many disabled people retaining their benefits, and many ask their GP for help.*

*Doctors now say, however, that the number asking for help has reached such a level that some GPs are refusing to provide extra information to back benefits claims, while others are charging patients for reports. GPs – who earn around £100,000 – say the Government is not paying for this extra work.*

*Doctors also claim the time taken to produce the reports is creating a huge additional workload.*