Regulation 28: Prevention of Future Deaths report

Michael Brendan O'SULLIVAN (died 24.09.13)

	THIS REPORT IS BEING SENT TO: **The Department for Work and Pensions** **Caxton House** **Tothill Street** **London SW1H 9NA**
1	**CORONER** I am: Coroner ME Hassell Senior Coroner Inner North London St Pancras Coroner's Court Camley Street London N1C 4PP
2	**CORONER'S LEGAL POWERS** I make this report under the Coroners and Justice Act 2009, paragraph 7, Schedule 5, and The Coroners (Investigations) Regulations 2013, regulations 28 and 29.
3	**INVESTIGATION and INQUEST** On 2 October 2013, I commenced an investigation into the death of Michael O'Sullivan, aged 60 years. The investigation concluded at the end of the inquest on 7 January 2014. The conclusion of the inquest was that Mr O'Sullivan took his own life by hanging, whilst suffering anxiety and depression. I made a narrative determination, which I attach.
4	**CIRCUMSTANCES OF THE DEATH** I found that the trigger for Mr O'Sullivan's suicide was his recent assessment by a DWP doctor as being fit for work.
5	**CORONER'S CONCERNS** During the course of the inquest, the evidence revealed matters giving rise to concern. In my opinion, there is a risk that future deaths will occur

	unless action is taken. In the circumstances, it is my statutory duty to report to you. The **MATTERS OF CONCERN** are as follows. The DWP assessing doctor (who saw Mr O'Sullivan for a 90 minute consultation) did not take into account the views of any of Mr O'Sullivan's treating doctors, saying that the ultimate decision maker would do that. However, the ultimate decision maker (who is not, I understand, medically qualified) did not request and so did not see any reports or letters from Mr O'Sullivan's general practitioner (who had assessed him as being unfit for work), his psychiatrist or his clinical psychologist.
6	**ACTION SHOULD BE TAKEN** In my opinion, action should be taken to prevent future deaths and I believe that you and Jobcentre Plus have the power to take such action.
7	**YOUR RESPONSE** You are under a duty to respond to this report within 56 days of the date of this report, namely by 11 March 2014. I, the coroner, may extend the period. Your response must contain details of action taken or proposed to be taken, setting out the timetable for action. Otherwise you must explain why no action is proposed.
8	**COPIES and PUBLICATION** I have sent a copy of my report to the following. • HHJ Peter Thornton QC, the Chief Coroner of England & Wales • [redacted] • [redacted] Michael O'Sullivan's general practitioner I am also under a duty to send the Chief Coroner a copy of your response. The Chief Coroner may publish either or both in a complete or redacted or summary form. He may send a copy of this report to any person who he believes may find it useful or of interest. You may make representations to me, the Senior Coroner, at the time of your response, about the release or the publication of your response by the Chief Coroner.

9	**DATE** **SIGNED BY SENIOR CORONER** 13.01.14

Michael Brendan O'SULLIVAN - determination on 07.01.14

This has been an inquisition on behalf of Our Sovereign Lady The Queen by me, Mary Elizabeth Hassell, Senior Coroner for Inner North London, touching the death of Michael Brendan O'Sullivan who died on 24 September 2013 at Flat 1, 9 College Yard, London.

I make a narrative determination as follows.

"Michael O'Sullivan took his own life whilst suffering from anxiety and depression.

The anxiety and depression were long term problems, but the intense anxiety that triggered his suicide, was caused by his recent assessment by the Department for Work and Pensions (benefits agency) as being fit for work, and his view of the likely consequences of that.

His psychiatrist had diagnosed him as having recurrent depression and panic disorder with agoraphobia. His clinical psychologist had assessed him as being very anxious and showing signs of clinical depression. His general practitioner had certified him as unfit for work. None of these doctors had been asked to provide information to the Department for Work and Pensions.

Mr O'Sullivan was embarking on a course of treatment including:

- antidepressant medication;
- engagement with an employment support officer;
- cognitive behavioural therapy.

The doctor who assessed him on behalf of the Department for Work and Pensions (a former orthopaedic surgeon) concluded that he was at no significant risk by working. The assessing doctor did not ask Mr O'Sullivan if he had suicidal thoughts."

I shall make a PFD report.
That concludes this inquest.

DEPARTMENT FOR WORK AND PENSIONS

RESPONSE TO REGULATION 28 PREVENTION OF FUTURE DEATHS REPORT ON MICHAEL BRENDAN O'SULLIVAN

Introduction

1. This report fulfils the Department for Work and Pensions' (DWP) duty to respond to a Prevention of Future Death report made under the Coroner's (Investigations) Regulations 2013. The request for the report has arisen following an inquest on 7 January 2014, into the death of Mr Michael Brendan O'Sullivan. Mr O'Sullivan was a former claimant of long-term sickness benefits, who took his own life on 24 September 2013.

2. The Department has a number of safeguards for Employment and Support Allowance claimants with mental health problems. This includes a clear policy that further medical evidence in cases where claimants report suicidal ideation in their claim forms which regrettably was not followed in this case. We will issue a reminder to staff about the relevant guidance.

3. The report is structured in three parts. The first describes the current system for assessing entitlement to Employment and Support Allowance including provisions for people with mental health problems. The second part explains what happened in Mr O'Sullivan's case. The final part describes what systems the Department has in place to continuously improve the assessment of people with mental health problems.

How the system works

4. Employment and Support Allowance (ESA) is a benefit paid to people of working age who have limited capability for work. It was introduced in 2008 in place of incapacity benefit and certain other benefits paid on the ground of incapacity and severe disablement. ESA is designed on the principle that whole groups of people with health conditions or disabilities should not be written off as being incapable of work on the basis of a diagnosis because of the costs of long-term inactivity to individuals and society. Research shows that worklessness is

associated with poorer physical and mental health and wellbeing,[1] while returning to work is associated with improvements in health.[2]

5. A key feature of ESA is the Work Capability Assessment, or WCA. The WCA emerged from a process of review of the previous assessment for Incapacity Benefit, the Personal Capability Assessment ("PCA"), and refinement of the emergent assessment.

6. In 2006, DWP published *'Transformation of the Personal Capability Assessment: Report of the Physical Function and Mental Health Technical Working Groups'* (September 2006), which reviewed the effectiveness of the PCA. The report recommended a revised set of physical and mental functional criteria that were "a fairer, more accurate, more robust assessment of entitlement to benefit", a revised self-assessment questionnaire and a review of the process of gathering medical evidence.

7. In particular, the report proposed "an extensively revised mental function assessment, to address a current gap in assessment of cognitive and intellectual function, in conditions such as learning disability, autistic spectrum disorder, and acquired brain injury". It also proposed "a new scoring system for mental function, which addresses a bias in the current PCA against people with mental health problem (sic), as opposed to limitation of physical function"[3]. This entailed adding elements to assess a person's ability to learn and apply understanding and their interpersonal skills. These elements were lacking in the PCA but are central to assessing the capability to work of people with a learning disability or autistic spectrum disorder.

8. The new assessment, the WCA, responded to the recommendations of technical working groups, made up of leading experts in occupational and mental health, amongst others. From the outset, the WCA was also developed with the input of a consultation group consisting of representatives from disability organisations including Mind, Mencap, Sane, the National Autistic Society and Rethink.

9. In contrast to the PCA, the WCA was designed to be an assessment of an individual's functional ability, focusing on what they could do, rather than what they could not. The assessment is not intended to be a measure of employability, but simply to measure how the claimant's ability to function is affected by their condition or disabilities.

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[1] Waddel G and Burton K (2006) Is work good for your health and well-being? London:TSO.
[2] McManus S at al (2012) National study of work-search and wellbeing. DWP Research Report 810.
[3] *Transformation of the Personal Capability Assessment*, a report of the Physical Function and Mental Health Technical Working Groups, commissioned by the DWP (2006) at p. 3

10. As well as basing the new WCA on the findings of the technical working group that assessed the PCA, the DWP continued to keep the assessment under expert review to ensure that it was fulfilling its purpose, namely accurately and consistently assessing people to the appropriate level of benefit. A DWP-led review of the assessment, which engaged with both independent experts and specialist disability groups, led to a report and addendum in March 2010[4]. The review found that generally the WCA was accurately identifying individuals for benefit, but it also made recommendations for improvements, including simplifying the language, making greater provision for those awaiting chemotherapy, widening the criteria for support in relation to people's mental function, and taking greater account of people's adaptation to their disability or health condition. These recommendations were taken forward in the Employment and Support Allowance (Amendment) Regulations 2011 which were laid before Parliament on 10 February 2011 and came into force in March 2011.

Legal framework for ESA

11. Section 1 of the Welfare Reform Act 2007 sets out the conditions a claimant must meet in order to be entitled to ESA. There are a number of conditions which must be met, including financial conditions. However, the primary condition is that the claimant must have "limited capability for work". Section 1(4) sets out that a person has "limited capability for work" if their capability for work is limited by their physical or mental condition, and the limitation is such that it is not reasonable to require them to work.

12. Sections 8 and 9 of the Welfare Reform Act set out the legislative framework for the assessment to determine whether a claimant has limited capability for work (section 8) or limited capability for work related activity (section 9) The ESA Regulations 2008 (S.I 2008/794) set out the scheme of assessment in more detail in regulations 19 to 39. The Regulations are made by statutory instrument and any changes must be approved by Parliament.

Claimant groups

13. The WCA allows three groups of people to be distinguished:

- those who would be capable of work in spite of any health problems. This group is commonly called 'fit for work'
- those who with additional support could eventually return to work (the Work-Related Activity Group)

[4] http://www.dwp.gov.uk/docs/work-capability-assessment-review.pdf; http://www.dwp.gov.uk/docs/work-capability-assessment-review-addendum.pdf

- those with the greatest impairments or disablements who would not be able to work (the Support Group)

14. The Support Group comprises claimants whose conditions mean that they have limited capability for both work and work-related activity (LCWRA) as measured against descriptors[5] set out in Schedule 3 to the ESA Regulations. These are claimants who are most seriously affected by their disabilities or conditions and they are not expected to do anything to receive their benefit (regulation 34). However they can engage in work-related activity on a voluntary basis if they wish.

15. The Work Related Activity Group (WRAG) comprises those claimants whose conditions mean that they have limited capability for work (LCW), as measured against descriptors contained in Schedule 2 to the ESA Regulations, and it is considered that they should be able to return to the work place in due course.

16. The descriptors are functional descriptors and each carries a score. A claimant must score at least 15 points – either against a single descriptor or by scoring against multiple descriptors where points are added together – to meet the criteria for limited capability for work and be placed in the WRAG (regulation 19). These claimants are generally expected to engage in work-related activity in order to receive their benefit. The claimant is also given a prognosis which reflects the length of time the DWP believes it will take the claimant to be ready for a return to the labour market.

17. Claimants in both groups are periodically reassessed to determine whether their functional capability has changed for the better or worse since the previous assessment. In addition, from October 2010, all claimants entitled to Incapacity Benefit, Severe Disablement Allowance or Income Support on the ground of incapacity for work are being reassessed to see whether the award qualifies for conversion for ESA.

18. The key point is that the WCA is more sophisticated than previous systems of assessment, more tailored to identifying the particular needs of the individual, in particular the impact of mental health conditions, learning disabilities and autistic spectrum disorder.

The process for applying for ESA

19. For those making a new claim for ESA, an application is made using form ESA1. This collects information of the claimant's personal details, details of the claimant's illness or disability, including the name and contact details for their

[5] http://www.legislation.gov.uk/ukdsi/2013/9780111531877/contents

doctor, and claimants are asked to provide a copy of their medical statement if it is required in their circumstances. This information can be provided over the phone.

20. When a claim is accepted, the claimant enters what is known as the "assessment phase" which is intended to end no later than thirteen weeks after the claim begins or the date on which a determination as to LCW or LCWRA is made. It is during this assessment phase that the WCA process takes place.

21. Once it is determined that the claimant meets all the basic criteria for ESA, such as right to reside in the United Kingdom and any financial conditions, then the award of ESA is made and payment begins.

22. In a case where a claimant entitled to IB, severe disablement allowance or income support on disability grounds is reassessed on to ESA[6], no new claim is required but the claimant goes through a WCA in the same way as a new claimant, as detailed below but no medical statement is required.

Assessment process

23. The DWP makes a referral to its medical services provider, which is currently Atos Healthcare. The referral includes, in the case of a new claim, the diagnosis from the medical statement and other relevant information. In a case where ESA or IB has been paid previously, the referral includes such relevant information in respect of the previous decisions as is still held on file. The case is transferred to Atos by means of an IT platform, the 'Medical Services Referral System' (MSRS), which holds the relevant case details and information about the claimant's medical condition. Where the claimant has a MHP, a 'flag' is added to signpost that fact.

24. At its heart, a very simple process is used to assess the claimant which usually follows the following steps:

i) A questionnaire, the ESA50, is issued by Atos Healthcare to claimants, requesting them to provide further information about their disabilities and health conditions, with particular reference to how these affect their ability to function. Claimants have 28 days in which to return this form.

ii) When the ESA50 is returned, a healthcare professional employed by Atos Healthcare will review the file and all documents held, to decide whether further medical evidence should be obtained. They will also determine whether the claimant should be called for a face-to-face assessment or whether LCW or LCWRA can be decided on the basis of the information

[6] Some 1.5 million people who have previously qualified for these benefits began to be reassessed for ESA from April 2011.

already provided. The majority of claimants will be called for a face-to-face assessment and this is conducted by an Atos healthcare professional.

iii) The Atos healthcare professional will make a report of their finding, either following the review or after the face-to-face assessment, and the file will be returned to DWP.

iv) A DWP Decision Maker will review the file and make the final determination on whether the claimant has LCW or LCWRA or is considered "fit for work".

v) The claimant can request that the decision be reconsidered (by a different Decision Maker) or can appeal the decision if applicable.

Further medical evidence

25. In every case, healthcare professionals have to consider the information and evidence available to them on the system, determine whether further evidence is required (including the need for further medical evidence (FME) and/or a face-to-face assessment) and then provide reasoned advice to a DWP decision maker on the functional limitations imposed by a claimant's illness or disability. In doing so, they follow the guidelines set out in the *'Training & Development ESA Filework Guidelines'* (Version 9, 24 May 2013).

26. These guidelines are prepared by Atos, and are then quality assured and signed off by the DWP medical team. They are subject to annual review and refreshed with updates agreed with the DWP during the course of the year. Updated versions are published on the Atos intranet for HCPs to access.

27. The Guidelines state that :

> "Where, in the scrutinising practitioner's judgement, there is a clear possibility that an examination may be avoided they should make reasonable attempts to seek further evidence." (p14)

28. In other words, it is already the case that FME should be obtained where it is likely to make a face-to-face assessment unnecessary. The Guidelines also make clear that:

> "FME should always be requested before calling for assessment a claimant who is noted to have an appointee.
>
> Where there is evidence of a previous suicide attempt, suicidal ideation or self-harm expressed in the ESA50/ESA50A, the HCP must request FME. (p15)"

Making a decision a decision on entitlement

29. The Welfare Reform Act 2007, which introduced ESA provides that the decision on entitlement to benefit must be made by the Secretary of State. This is a power that cannot be delegated to anyone else and under the Carltona[7] principle such decisions are made by DWP Decision Makers.

30. Decision Makers review the papers in the case file, including the healthcare professional's report and any other medical evidence that may have been obtained or provided and will then apply the legal tests as set out in primary and secondary legislation and interpreted by the case law in order to come to a decision. Decision Makers are civil servants, employed by the DWP and trained to made decisions on benefits in accordance with the law. The independent reviewer of the WCA has suggested that "it is inappropriate for Decision Makers to have detailed medical training but it is prudent to provide a foundation level of knowledge on the impact that most common conditions (such as mental health) are likely to have".[8]

31. A decision that a claimant does not have LCW or LCWRA is colloquially referred to as a decision that the claimant is 'fit for work'. However, what this actually means is that the claimant does not meet the functional descriptors set out in the ESA Regulations for LCW or LCWRA. It does not represent a finding on whether or not the claimant is employable or whether the claimant will be able to find work.

32. It is a common misconception that the role of the healthcare professional is to make the decision on benefit entitlement. It has always been the case, in relation to every benefit where an assessment was required, that the final decision on benefit entitlement is taken by a DWP Decision Maker, acting on behalf of the Secretary of State for Work and Pensions. The role of the healthcare professional is to provide specialist medical advice on how the diagnosis (if there is one) affects the claimant's ability to perform certain functions.

33. If a claimant is found fit for work, then the payment of the ESA basic rate is terminated. Before this occurs however, the DWP Decision Maker will make up to two attempts to make telephone contact with the claimant to explain the decision and ask if the claimant has additional information that ought to be taken into account.

34. If the claimant is placed in either the WRAG or the Support Group they will receive a back payment of the component to which they are entitled, payable

[7] A principle that permits civil servants to act as the Secretary of State. The principle was recognised by the courts in *Carltona v Commissioner of Works [1943] 2 All ER 560*

[8] https://www.gov.uk/government/publications/work-capability-assessment-independent-review-year-4, p70.

from the fourteenth week of their claim and going forward they will receive the basic rate plus the additional component.

Appealing a decision

35. Any claimant who is either unsuccessful in their application for ESA, or who believes that they should have been placed in the Support Group rather than the WRAG is entitled to make an appeal against that decision to an independent Tribunal Service. The Tribunal Service is a part of HMCTS and appeals against a Decision Maker's determination are made to the First-tier Tribunal (Social Entitlement Chamber). The First-tier Tribunal consists of a judge and a medical representative. It is a free to access service, funded from the public purse..

36. The right to appeal such decisions is a fundamental part of the social security administration process in the United Kingdom and is enshrined in primary legislation[9].

Safeguards for claimants with mental health problems

37. A number of safeguards were built into the Work Capability Assessment (WCA) from the outset, and we have introduced further improvements to ensure the process deals with potentially vulnerable people fairly and accurately. However, it must be acknowledged that assessing risk in a disability assessment setting is likely to be inaccurate, given evidence from clinical risk assessments. For example, according to the Royal College of Psychiatrists clinical risk assessments are relatively poor predictors of suicide because it is a multi-factorial issue.

38. Only one health condition related to the claim is recorded in the administrative system used for ESA claims. Figures for the caseload of ESA claimants to August 2013 show that mental and behavioural disorders were the most common health problem among ESA claimants (46%) followed by musculoskeletal problems (13%).[10]

Adjustments to process

39. If someone with a mental health problem does not return their ESA50 within the four week period their case is still considered by Atos Healthcare, instead of being returned to DWP for a Decision Maker to consider whether the benefit should be terminated, as is usually the case.

[9] Social Security Act 1998, sections 12 to 15

[10] Employment and Support Allowance Caseload (Thousands): IB ICD (disease) summary code by Gender of claimant, August 2013. DWP, Information Governance and Security, Work and Pensions Longitudinal Study, http://tabulation-tool.dwp.gov.uk/100pc/esa/icdgpsumm/ccsex/a_carate_r_icdgpsumm_c_ccsex_aug13.html

40. Claimants who cannot manage their own affairs are entitled and encouraged to allow someone they trust – an appointee – to manage their affairs and contact the DWP on their behalf.

41. Where Atos informs a DWP Decision Maker that a claimant has failed to attend a face-to-face assessment the Decision Maker will normally proceed to take a decision on entitlement, after giving the claimant an opportunity to explain why they failed to attend (known as establishing good cause). However, where the claimant is known to have a mental health problem he or she may be considered "vulnerable" and, if so, attempts will be made to contact the claimant by telephone and, if appropriate, to arrange a "safeguarding home visit" before a decision on entitlement is made.

42. There are also several means available to claimants via DWP to help them complete the paperwork needed for an ESA claim, particularly the ESA50, including: transcription services, either on the telephone or face-to-face; audio versions of the forms; and online versions of the forms which are compatible with accessibility computer software.

Collection of further evidence

43. As described at paragraph 28, the policy is that further medical evidence should be requested in every case where a claimant reports suicidal thoughts. Data for October 2012 show that, where a paper-based assessment was made of the claim, without meeting the claimant face to face, further medical evidence was requested for around 27 per cent of all new ESA claims and 42 per cent of IB reassessment claims. Data for October to December 2011, show that further, where medical evidence was requested, it was eventually provided only in around 71 per cent of cases overall. Moreover, even when FME was provided upon request, it was provided within the requested two-week period only in some 37 per cent of cases[11].

Substantial risk provisions

44. There is provision in the ESA regulations for claimants to be placed in the WRAG or Support Group where there is evidence that there would be substantial risk to the physical or mental health of any person if they were found fit for work.

45. These provisions, in Regulations 29(2)(b) and 35(2)(b) of the ESA Regulations, broadly reflect measures in the previous Personal Capability Assessment for IB and act as a safety net for certain vulnerable claimants. The provisions are

[11] Please note that these data are taken from Atos Healthcare Management Information and have not been quality assured to Official Statistics publication standard. They should be approached with that in mind.

intended to cater, on a discretionary basis, for a limited number of claimants whose conditions or incapacity cannot be measured by a functional assessment. They are expected apply in exceptional circumstances where, for example, among those claimant who might be placed in the WRAG no workplace adjustments or other interventions, such as medication, could be put in place to significantly reduce the risk of harm.

Training for healthcare professionals

46. As the risk of suicide is never easy to predict, we are committed to ensuring that all HCPs undertaking assessments are suitably trained and we have been working to continually enhance the training that HCPs receive in this area. We have worked with expert Psychiatrists to develop guidance for HCPs on assessing suicidal risk. An initial trial of the guidance proved positive and we are now looking to roll it out nationally.

Monitoring issues

47. Data on cause of death are not routinely collected in the benefit system as only information on the fact of death is required for benefit administration. This means that it is not possible to measure whether the rate of suicide among those who have applied for ESA is higher than might be expected in a similar population where mental health problems are prevalent.

48. Nonetheless, the Department takes its responsibilities to ensure the protection of claimants at increased risk of harm very seriously. In the unfortunate event that we are notified that claimant has committed suicide following a WCA, we will carry out a full investigation to see what lessons can be learned. This will allow us to make appropriate changes where required.

Action if an individual has suicidal or self harm plans

49. For Decision Makers and other DWP staff who work with claimants, the Department has a six-point plan for managing suicide and self harm declarations from customers where the ideas are expressed face-to-face or over the phone. In the event, the staff member should:

1 Take the statement seriously – remain calm and listen carefully

2 Summon a colleague - to act as a support partner

3 Gather information - to gauge level of risk

4 Provide referral advice – if situation is non-urgent, e.g. general distress but no immediate plans or means to attempt suicide or self harm

5 Summon Emergency help – if customer is distressed, at serious risk or in immediate danger

6 Review – discuss incident with line manager and record

Mr O'Sullivan's case

50. Mr O'Sullivan had anxiety and depression. He had been a recipient of income support (IS) on grounds of disability since July 2000. On 30 March 2012, he was notified that the conversion phase had begun for him to see whether he would qualify for ESA.

Decision on conversion

51. He attended a face-to-face assessment on 17 August 2012. The opinion of the healthcare professional in their report was that Mr O'Sullivan did not meet any descriptors dealing with Limited Capability for Work. On 13 September, the decision maker decided that Mr O'Sullivan's IS award did not qualify for conversion to ESA and the award was stopped from 18 October 2012.

52. Mr O'Sullivan than appealed to DWP on the approved form on the ground that he felt the questionnaire did not deal with his problems so he could not express himself. The decision of 13 September was reconsidered by a DWP Decision Maker on 28 November 2012 but not revised.

Re-application

53. Mr O'Sullivan then made a new claim for ESA in November 2012. He completed an ESA50 (claimant questionnaire) which said he was being investigated by his Community Mental Health Team, and within which he expressed suicidal thoughts. However, further medical evidence was not requested in line with the stated policy (outlined at paragraph 28) where the claimant has referred to suicidal ideation.

54. He attended a second face-to-face assessment on 13 March 2013. On 26 March 2013 Decision Maker decided he did not have limited capability for work.

55. Mr O'Sullivan subsequently claimed Jobseeker's Allowance from March 2013, for around six months without sanction before he, unfortunately, took his own life in September 2013.

56. The fact that he did not incur any sanctions during this period means that he was maintaining his obligations under the Jobseeker's Agreement to be both available for and actively seeking employment on a weekly basis.

Refining the system

57. Formulating, developing and reforming any benefit system will always be an extremely challenging process. The welfare system for those who are long-term sick in the UK is of considerable scale; we spend around 13.3bn annually on sickness benefit payments.[12] There are currently around 1.8m claimants of ESA and some 100,000 assessments are conducted each month. While the Department is committed to continuously improving processes for this group wherever possible, with such a large numbers of people involved in this system there will inevitably be instances where processes are not conducted in line with the stated policy.

58. To ensure that the process itself is as efficient and accessible as possible, the DWP engages with external stakeholders when revising aspects of the WCA, such as some of the forms used by applicants. An example of this is the ESA50; the claimant questionnaire completed by individuals making an application for ESA (referred to in paragraph 52 above). This was designed with input from technical working groups including Mencap, Forward ME, Arthritis Care and the National Autistic Society. Every effort was made to ensure the form has a properly structured series of questions which guide a claimant to provide a full explanation of how their illness or disability affects them.

Independent Reviews of the WCA

59. The UK Government's determination to implement a non-discriminatory system which facilitates as full and effective participation in society as possible led to it statutorily committing to independently review the WCA annually for the first five years of its operation. Section 10 of the Welfare Reform Act 2007 states the "[t]he Secretary of State shall lay before Parliament an independent report on the operation of the assessments under section 8 and 9 [limited capability for work and limited capability for work-related activity] annually for the first 5 years after those sections come into force".

60. The annual independent review engages with stakeholder groups of all kinds as well as individuals who wish to participate. For each review there is a 'call for evidence' where anybody is able to submit evidence to the Independent Reviewer to be considered as part of their latest report. All review materials are issued in accessible formats such as Braille, British Sign Language and audio.

61. The review process, and in particular the evidence gathering process, is a robust practice. It involves a call for evidence, stakeholder meetings and seminars, visits

[12] Health at Work – an independent review of sickness absence, 2011. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/181060/health-at-work.pdf

to Benefit Delivery Centres where claims are processed and Decision Makers consider cases (including unannounced visits), interviews with managers and Decision Makers about changes already underway, dialogue with DWP ministers and senior officials, visits to Atos assessment centres and a training centre, access to Atos management information and ongoing dialogue with Tribunal judges and private providers charged with delivering the Government's Work Programme.

62. The first such review of this kind found that generally the WCA was accurately identifying individuals for their entitlement to benefit but it also made recommendations where improvements to the assessment could be made. Recommendations from the reviews to date have included simplifying much of the language used throughout the assessment process, making greater provision for individuals awaiting chemotherapy treatment and widening the criteria for support in relation to people's mental function. The Government has implemented, or is in the process of implementing, over 50 recommendations from the first three reviews. The fourth independent review was published in December 2013, and the Department has accepted or accepted with certain caveats all but one of the 32 that fall within it scope.

63. Already this practice of review and refinement has yielded quantifiable changes for those going through the WCA process to assess entitlement to ESA. For instance, the proportion of claimants with mental health conditions who are awarded ESA has been increasing. Shortly after ESA was introduced 33% of people claiming with a mental health condition were successful in their application where as latest statistics published in July 2013 show this figure has risen to 44%.[13]

64. More information on the Independent Reviews can be found here:

Year 1 – https://www.gov.uk/government/publications/work-capability-assessment-independent-review-year-1

Year 2 – https://www.gov.uk/government/publications/work-capability-assessment-independent-review-year-2

Year 3 – https://www.gov.uk/government/publications/work-capability-assessment-independent-review-year-3

Year 4 – https://www.gov.uk/government/publications/work-capability-assessment-independent-review-year-4

[13] Source: https://www.gov.uk/government/publications/employment-and-support-allowance-work-capability-assessment-outcomes-by-physical-and-mental-health-condition and https://www.gov.uk/government/publications/employment-and-support-allowance-statistics-on-reassessments-of-incapacity-benefits-july-2013

Evidence Based Review (EBR)

65. The Independent Review process is not the only mechanism for assessing and evaluating the impact and effectiveness of the WCA. In line with DWP's emphasis on evidence-based policy making, commitment to monitoring and adjustments to the implementation programmes where necessary, ESA is routinely the subject of analysis and research.

66. The Department has recently undertaken a systematic study – Evidence Based Review of the WCA – to examine in detail how the WCA descriptors compared with alternative assessment proposals that were developed by a group of disability representative organisations, including leading mental health charities.[14]

67. The study emerged from a recommendation in the second independent review of the WCA. It found that, overall, the WCA is a valid assessment relative to expert opinion about an individual's fitness for work. As a result of the findings, the Department is considering how to make practical improvements to assessment, particularly the style of face-to-face discussions and exploration of fluctuation in health conditions.[15] The Government has also committed to seeing whether improvements could be made the assessment process in light of the study findings.

Collection of Further Medical Evidence

68. It has been routinely suggested that DWP should obtain medical reports for individuals with a mental illness, learning disability or related condition who are beginning the WCA process.

69. This is currently the subject of litigation and we are therefore limited in what we can say on the issue. The Upper Tribunal has considered the question of whether the DWP should obtain further medical evidence for all ESA claimants with a mental health condition in an on-going judicial review case. In their interim judgment dated 22 May 2013, the Upper Tribunal found that, at this stage, it would not be reasonable to make such a change.

70. This issue of further medical evidence has also been considered as part of the independent review process. The distinction drawn between the respective functions of HCPs and GPs is a key element of the policy intent behind the WCA, and is supported by the British Medical Association. In its response to Professor Harrington's call for evidence for his third independent review, the BMA said:

[14] https://www.gov.uk/government/publications/work-capability-assessment-evidence-based-review
[15] https://www.gov.uk/government/publications/government-response-to-the-work-capability-assessment-independent-review-year-4. See chapter 3.

> "Work Capability Assessments are carried out by health care professionals working directly for Atos Healthcare who are trained specifically to undertake this type of work. The claimant's GP also has a specific role in the process, to provide a factual report based on information contained within the patient's medical record. It is not, however, the GP's role to provide any opinion on the patient's capability to work as part of this process. It is vital that these two roles are kept separate and that GPs are not asked to provide opinion on their patient for the purpose of receiving the Employment and Support Allowance (ESA); doing so could damage the doctor-patient relationship. It is also important to note that the majority of General Practitioners do not possess the correct training or knowledge in disability assessment medicine or in occupational medicine to be able to make such judgments; this is why specific health care professionals are trained by Atos to undertake these assessments."[16]

71. We, of course, remain committed to keeping our processes for collecting further evidence under constant review and to improving these processes where possible. It remains important to retain a balance between the added value of further evidence in any claim for ESA and time demands on GPs and other healthcare professionals.

Conclusion

72. As the information we have set out shows, the WCA process is under continual review and development. The mechanisms for refining the assessment approach include an Independent Review process and specific pieces of research to study how the assessment is working. This demonstrates the Government's recognition that the process should evolve as we learn lessons.

73. We have noted the issues in this case and will continue to monitor our policies around assessment of people with mental health problems while we await the outcome of related litigation (discussed at paragraph 68). We will also issue a reminder to staff about the guidance related to suicidal ideation that has been described in this report.

[16] BMA letter to Professor Harrington, 7 September 2012