

Advice NI Response to the Work Capability Assessment – A Call for Evidence

Year 3 Independent Review

Deadline: 14th September 2012

Advice NI

Advice NI is a membership organisation that exists to provide leadership, representation and support for independent advice organisations to facilitate the delivery of high quality, sustainable advice services. Advice NI exists to provide its members with the capacity and tools to ensure effective advice services delivery. This includes: advice and information management systems, funding and planning, quality assurance support, NVQs in advice and guidance, social policy co-ordination and ICT development.

Membership of Advice NI is normally for organisations that provide significant advice and information services to the public. Advice NI has over 65 member organisations operating throughout Northern Ireland and providing information and advocacy services to over 125,000 people each year dealing with over 260,000 enquiries on an extensive range of matters including: social security, housing, debt, consumer and employment issues. For further information, please visit www.adviceni.net.

Background

Advice services have come under unprecedented pressures over the past number of years. Advice NI's latest annual statistics reflect the growing demand upon advice services, some keynote information includes:

- 260,968 enquiries dealt with by Advice NI members (59% of which were social security related);
- Advice NI's Debt Action Project, aimed at helping the most financially vulnerable in Northern Ireland, has provided free independent debt advice to 5,258 consumers and dealt with nearly £98 million pounds of debt for the period November 09-June 2012.

□ Advice NI delivered the SSA Benefit Uptake Programme 2011/12 (25,000 people targeted including older people and carers; holistic benefit assessment conducted by Advice NI with assistance provided to claim additional entitlements);

Advice NI advisers have represented at 1,467 appeal cases (57% increase in comparison to 2009 figures) resulting in increasing pressures facing advisers in terms of representing social security benefit appellants at appeal tribunals. Appeal representation offers another opportunity to increase the benefit income of social security agency claimants. The latest information from The Appeals Service indicates that Advice NI represented at a record high 1,467 hearings in 2011, with a success rate of 34%, bench-marked against 31% in terms of all cases where the appellant had representation; and less than 20% where the appellant was unrepresented. Feedback suggests that increasingly hearings are being adjourned to allow unrepresented appellants the opportunity to obtain representation. Advice NI believes that the pressures facing advisers in terms of appeal representation will undoubtedly continue to grow as welfare cuts and reform take effect (for example we are already seeing increased need for representation re ESA and this trend will undoubtedly continue with DLA reform). We would call for a strategic review of the issue of tribunal representation to ensure that Social Security Agency claimants have proper access to justice in terms of securing their proper social security benefit entitlement.

Overview

There has been much debate over recent months in relation to the stringent Work Capability Assessment (WCA) and the performance of ATOS. This has ranged from discussion about the high number of decisions overturned at appeal; to claimants being turned away from their medical examination in Royston House in Belfast; to protests at medical centres; to debates and Assembly Questions in the NI Assembly; to the British Medical Association motions calling on the WCA to end 'with immediate effect' and stating that the social security cuts were 'inhumane and unreasonable'; increasing GP workloads, destabilising patients and impacting on their physical and mental health. The Report 'GP's at the Deep End'¹ comprised the responses of general practitioners working in the 100 most deprived general practices in Scotland to the question "How have the current austerity measures affected your patients and your practice in the last week (beginning 20 February 2012)?".

¹ http://www.gla.ac.uk/media/media_232766_en.pdf

Please see Appendix A which highlights the tragic case of Cecilia Burns from Strabane in Northern Ireland who was found fit for work under the WCA.

The following TV programmes added to the debate and aired on the 30th July:

Dispatches. 8pm, Channel 4

“Using undercover filming, reporter Jackie Long investigates the shocking processes used to assess whether sickness and disability benefit claimants should be declared fit for work.”

<http://www.channel4.com/programmes/dispatches/4od#3388055>

Disabled or faking it? 8.30pm, BBC2

“Panorama investigates the government's plans to end the so-called 'sick note culture' and their attempts to get millions of people off disability benefits and into work. In Britain's modern welfare state, millions are being paid to private companies to assess sick and disabled claimants but is the system working? Or are new tests wrongly victimising those who deserve support the most?”

http://www.bbc.co.uk/iplayer/episode/b01lldrc/Panorama_Disabled_or_Faking_It/

Advice NI perspective

As a result of growing concern being expressed by advisers and their clients in relation to the medical examination process and associated impact on the payment (or not) of social security benefits, Advice NI facilitated a meeting of advisers and representatives in June 2012. The minutes are reproduced in Appendix B, but the specific ‘Recommendations / Next Steps’ are highlighted below, which we believe would impact on and improve the process.

- **ATOS 1:** That the ‘client facing’ obligations contained within the contract with the Department for Social Development are publicised including length of time to process medical examinations (from referral by SSA to receipt of report by SSA); number of cancellations; round trip maximum distances for medical examinations; mystery shopping performance; complaints processes;
- **ATOS 2:** That ATOS conduct awareness-raising sessions (delivered by a team of specialist practitioners) with all staff on the issues of mental health, learning disability, PTSD, behavioural and personality disorders and addiction;

- **ATOS 3:** That ATOS conduct awareness-raising sessions (delivered by an expert in the field) with all staff on the issue of fibromyalgia;
- **ATOS 4:** That sufficient time is allocated for medical examinations, in particular to fully explore the issues presented by the client;
- **ATOS 5:** That ATOS provide the client with the opportunity to verify the information provided by the client in the 'client history' section of the medical examination;
- **ATOS 6:** That appointments times are adhered to, with no client being asked to wait more than 30 minutes beyond their allotted time;
- **ATOS 7:** That ATOS take proper cognisance of medication during the examination;
- **ATOS 8:** That ATOS introduce audio recording of medical examinations as soon as possible;
- **ATOS 9:** That ATOS ensures that examination centres with ground floor space are available locally across Northern Ireland;
- **ATOS 10:** That the facility to conduct the medical examination by home visit is effectively publicised by ATOS;
- **ATOS 11:** That Advice NI compile case studies in relation to ATOS performance issues in order that issues can be highlighted and addressed;
- **ATOS 12:** That the complaints process be reviewed and tailored for Northern Ireland with action taken to maximise the potential to learn from complaints;
- **Medical Evidence 1:** That ATOS have a clear process in place for obtaining additional medical evidence from the claimant's GP or other medical professional when the existence of such evidence is identified by the claimant;
- **Medical Evidence 2:** That clarity is provided by DHSSPSNI as regards the provision of additional medical evidence: (i) within the GP contract of employment; (ii) within any contract between the Social Security Agency and GPs; (iii) any guidance in relation to fees chargeable (and who is liable to pay these fees); (iv) any guidance in relation to the minimum standard and quality of any additional medical evidence provided;

- **Medical Evidence 3:** That Advice NI advisers make every effort to identify where additional medical evidence addressed the criteria under consideration and assisted the decision maker in making their decision;
- **SSA 1:** That Advice NI advisers ensure that forms are completed realistically and accurately reflect the issues presented by the client;
- **SSA 2:** That SSA conduct awareness-raising sessions (delivered by a team of specialist practitioners) with decision makers on the issues of mental health, learning disability, PTSD, behavioural and personality disorders and addiction;
- **SSA 3:** That decision makers are encouraged to make holistic decisions based on all the medical evidence, and not simply 'rubber stamp' the ATOS medical report;
- **SSA 4:** That decision makers consistently apply Schedule 29 in all appropriate cases;
- **SSA 5:** That decision makers be willing to revise decisions at any stage between original decision and appeal hearing;
- **SSA 6:** That SSA produce and share guidance in relation to how decision makers assess conflicting medical evidence;
- **SSA 7:** That Advice NI advisers highlight instances where additional medical evidence is provided but not acted upon by decision makers;
- **Appeal Tribunals 1:** That the Appeals Service clarify the rationale as to why GP records requested for DLA appeals and not for ESA appeals;
- **Appeal Tribunals 2:** That the Appeals Service conduct awareness-raising sessions (delivered by a team of specialist practitioners) with all staff including LQM's on the issues of mental health, learning disability, PTSD, behavioural and personality disorders and addiction;
- **Appeal Tribunals 3:** That the Appeals Service conduct awareness-raising sessions (delivered by expert in the field) with all staff on the issue of fibromyalgia;
- **Appeal Tribunals 4:** That a process is put in place to cascade learning back through the system in order to maximise learning from tribunal hearings;
- **Appeal Tribunals 5:** That Advice NI compile case studies in relation to the Appeals Service performance issues in order that issues can be highlighted and addressed;

- **Appeal Tribunals 6:** That Advice NI continues to highlight the demand from clients for tribunal representation services;
- **Appeal Tribunals 7:** That Advice NI continue to ensure that the best possible representation service is provided for clients, by facilitating refresher training to develop the skills of advisers in order to increase the incidence and quality of effective tribunal representation in Northern Ireland;

Advice NI believes that the fundamental underlying issue is the policy context, namely the over-harsh WCA itself. Surely the consistent feedback from a wide variety of sources needs to be acknowledged and action taken to produce a system which is “more rigorous and safe that takes into account the needs of the long-term sick and disabled”. We would also like to see steps taken to make the medical assessment provider more accountable, in particular from their perspective to reinforce the message that service delivery is about process **and** outcome.

Contact information on this consultation response:

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Appendix A

<http://www.bbc.co.uk/news/uk-northern-ireland-19433535>

31 August 2012 Last updated at 09:33

Atos appeal woman Cecilia Burns from Strabane has died



Cecilia Burns fought a decision to cut her benefits.

[Continue reading the main story](#)

Related Stories

- [Cancer victim fury at benefit cut](#)
- ['We need to get changes right' Watch](#)
- [Benefit letters to be reviewed](#)

A cancer sufferer, who had her benefits cut by government officials who said she was fit to work, has died.

Cecilia Burns, 51, from Strabane, County Tyrone, had started a campaign in February to have the decision overturned.

Ms Burns had her benefits cut after she was assessed by government contractor [Atos Healthcare](#).

She had her benefits reinstated just a few weeks ago but died on Monday.

'Disgusted'

During her campaign the County Tyrone woman said she was "disgusted" after the government cut her sickness benefit and told her she was fit to work.

Cecilia Burns had her Employment Support Allowance reduced by £30 a week even though she was still undergoing treatment for breast cancer.

Ms Burns had described the medical test as a "joke".

The government is seeking to reassess all 2.6 million people on incapacity benefit - and its successor employment support allowance (ESA) - by 2014 in an effort to encourage more people back to work and to cut the welfare bill.

Stormont Assembly MLA, Michaela Boyle, had helped Ms Burns in her campaign.

"I have known Cecilia since she went for her medical assessment. She received nil points and appealed that assessment."

Ms Boyle is critical of the assessment process.

"Our office has been dealing with the fall-out of this on a daily basis and that is mainly with the flaws. A lot of MLAs will be facing the wrath of this.

"We have been deeply critical of all aspects of the decision-making process with many claimants being disallowed who have severe disabilities, chronic conditions and life limiting illnesses.



Chancellor George Osborne wants to cut benefits by 2016.

"We have questioned the objectivity of these decisions given that a large number of these decisions are being overturned at appeal stage.

"At 60% of these appeals, the claimant had been awarded nil points in assessment."

Last week Atos said they would be reviewing their correspondence with claimants after they incorrectly told one woman that assessors were not required to be specifically trained in mental health.

Paralympic protest

Later on Friday, Disabled People Against Cuts and UK Uncut will protest outside Atos headquarters in London to coincide with the Paralympics.

Before her death, Cecilia Burns told the BBC that dealing with the side effects of the treatment were bad enough, but she had been angered by the cut in benefit after she went for a medical.

"I know there's other people out there and they're all scared to come forward," she said.

"I was treated badly. I've been working since I was 17, I've paid all my stamps, all my National Insurance. The only time I was ever sick was when I was pregnant with my two sons.

"It has had a financial effect on me but it's more (that) they're getting away with it. They are just treating you like a second class citizen. That's how I feel - that I don't count, I don't matter," she said.

In a statement Atos said; "We do not make decisions on people's benefit entitlement or on welfare policy but we will continue to make sure that the service that we provide is as highly professional and compassionate as it can be.

"We do this through a constant programme of training and education for our staff, a rigorous recruitment process for healthcare professionals and through continual work with the Government, disability rights groups, healthcare professionals and those going through the process on the ground."

Meanwhile, in Northern Ireland, Social Development Minister Nelson McCausland has organised a public consultation on the changes.

He said said during previous stages of the review, the public response was limited [and it was important that people got across their views.](#)

Appendix B

Advisers Meeting Friday 22nd June 2012

Attendees:

Margaret Annesley, Age NI; Annette Carter, Southcity Resource and Development Centre; Davy Colvin, EPIC; Marie Corrigan, NIACRO; Ryan Fitzsimmons, Advice NI; Seonagh George, Advice NI; Adrian Glackin, Stepping Stone Project; Kevin Higgins, Advice NI; Deborah Mackey, Southcity Resource and Development Centre; Fiona Magee, Advice NI; Stuart Marriott, Magherafelt District Advice Services; James McCann, Magherafelt District Advice Services; Sharon McCreight, MENCAP; Sinéad McKinley, North Belfast Advice Partnership; Teresa Rice, Falls Women's Centre; Michael Roddy, Omagh Independent Advice Services; Jo Smit, Windsor Women's Centre

Apologies:

Barrie McLatchie, Belfast Unemployed Resource Centre; Mary McManus, East Belfast Independent Advice Centre; Barry McMullan, NIACRO; Annette Creelman, WAVE

Welcome and Introductions

ATOS

Discussion around issues relating to ATOS including:

- (i) Location of medical centres
- (ii) Access to medical centres;
- (iii) Problems with the medical examination;
- (iv) 'Who filled in the form', 'tick box' format of the LIMA 'Logic Integrated Medical Assessment' system;
- (v) Performance of the ATOS Health-Care Professionals;

(vi) Complaints (access to and effectiveness of);

Sharon concerned that people with mental health problems and people with learning difficulties being disadvantaged within the system, with a lack of understanding of the issues being displayed throughout the system from ATOS to appeals. Sharon gave the example of clients refused ESA, no physical health problems, very often concealed the true extent of their health problems because of stigma or because they wanted to appear 'normal', with the result that they were left with absolutely no income. Marie added that behavioural and personality disorders were also a concern. Advisers highlighted that people were sometimes being called for medical examination without an ESA 50 having been completed, therefore the ATOS Health Care Practitioner did not have knowledge of the health problems of the client prior to the medical.

Deborah equally concerned about this, and very often the language and attitude of staff. She was also concerned that clients often profoundly disagreed with what they were alleged to have said at the examination, and that some of what they said was not recorded. Sinéad highlighted the situation where the report might indicate that 'the client declined to ...'. However the report would not put this in context, for example the client might decline simply because they physically could not do it; or because they knew their condition would deteriorate if they tried to do it.

Davy concerned that Post Traumatic Stress Disorder also potentially a 'hidden' disability that is not properly acknowledged within the system, but a particular issue within the NI context in respect of victims and survivors. There was also a concern about a lack of understanding in relation to addiction.

Sinéad agreed and concerned that ATOS not cross-matching what clients are saying with regard to the medication they are taking, which would reinforce and corroborate the extent of the health problems.

The issue of 'who filled in the form' was discussed, with Kevin sharing the following response from ATOS: *'One of the LiMA drop down statements is "Completed ESA 50 themselves". This is a relevant query because it offers a number of insights which related to physical and MH descriptors, in the same way that asking how they manage to do their shopping or make their meals. For example, if they are able to do so then it suggests that they are able to use a pen or pencil effectively. It also would allow the practitioner to consider effective completion of tasks, concentration etc.'*

The issue of complaints about ATOS was raised and an anonymised response was shared. The ATOS Complaints leaflet was also shared. Annette highlighted that there were a number of unsatisfactory elements to the complaints process including: (i) systems not in place to robustly collect and monitor the totality of complaints generated (verbal / written; complaints directed towards ATOS but lodged with other stakeholders for example advice centres; SSA and the Appeals Service; (ii) the fact that complaints had to be forwarded to Leeds; & (iii) the typical ATOS response to complaints that *'not having been present, unable to fully reconcile the differing accounts'*.

Sinéad shared a template, editable complaints letter that she would use in order to facilitate making complaints, with the goal of ensuring that ATOS learn from mistakes and ensuring that the number of complaints reflected the situation on the ground. Kevin suggested that audio recording might be potential solution to resolving issues that arose during the examination in terms of staff attitudes and what was said. All agreed that audio recording would be beneficial. Adrian suggested that there was a precedent set in terms of the recording of police interviews and Ryan felt that there has been some audio recording of appeal hearings. Kevin highlighted DWP Research Report where there was a pilot regarding the audio recording of medical assessments: <http://www.dwp.gov.uk/docs/wca-recording-pilot-report.pdf> .

The issue of venues in terms of access and ground floor space generated discussion. The situation where clients were being sent home unseen from Royston House was felt to be not good enough. The medical examination rooms at Royston House are on the fourth floor and clients are asked on arrival at the building whether they could evacuate the premises without assistance. Those who indicate that they would not be able to do so are sent home unseen and offered an examination at an alternative ground floor medical examination centre. Examples were cited where Belfast clients were examined in Ballymena and Armagh, with taxi fares paid out of the public purse and where the clients had to endure up to 60 mile round trip. Stuart highlighted the example of Magherafelt where there was no medical examination centre. It was felt that there should be greater transparency around the contractual obligations in terms of the accessibility of venues and extent to which they are local to people requiring an examination.

Advisers also noted the following Parliamentary Question and response:

Caroline Lucas: *To ask the Secretary of State for Work and Pensions what information his Department holds on the average length of time for Atos to process applications for employment and support allowance; what targets his Department has set for processing applications; whether sanctions and penalties apply when timescales are not met; what*

timescale his Department sets for Atos to complete an application when his Department instructs Atos to expedite an application; and if he will make a statement. [114344]

Chris Grayling: *Atos Healthcare are not contracted to process applications for ESA. DWP will send a referral to Atos Healthcare as part of a customer's claim for ESA and they complete the work capability assessment process.*

The contracted service level is to clear medical assessments within an actual average clearance target (AACT) of 35 working days. There is no formal fast-track process to expedite individual referrals.

Atos Healthcare report on performance against that target on a month-by-month basis.

The Atos Healthcare average clearance (November 2011 to May 2012) against a target of 35 days is 62.8 days.

The DWP contractual agreement with Atos Healthcare contains performance service levels (including customer service targets) which also contain financial remedies where there is service level failure, based on pre estimate of loss to the Department. The contractual performance of Atos Healthcare is monitored closely by DWP.

Caroline Lucas: *To ask the Secretary of State for Work and Pensions what assessment he has made of the Atos complaints process; what the name and remit is of the body to which complaints are directed when they cannot or have not been resolved by Atos; to whom the body is accountable; and if he will make a statement. [114345]*

Chris Grayling: *10% of Atos Healthcare complaint responses are routinely validated by DWP Medical Services Division through monthly audits. Atos Healthcare have a two tier complaints process, their 2nd tier addresses customer dissatisfaction with their response to the complaint. In such cases customers can request that their complaint is investigated by the independent tier. The independent tier is made up of two bodies, an independent assessor and a doctor. The independent assessor is a person from a private company and offers the DWP benefit claimant an independent review of the way their complaint has been handled by Atos Healthcare Medical services. An independent doctor will conduct medical quality reviews when there are issues within the complaint that relate to the quality of the medical report in question.*

DWP complaint resolution managers may also escalate complaints for a chief operating officer investigation or for review by the independent case examiner (ICE).

Tom Greatrex: *To ask the Secretary of State for Work and Pensions who is responsible for carrying out the mystery shopper visits to Atos medical assessment centres. [114026]*

Chris Grayling: *The Atos Healthcare area service delivery manager is responsible for carrying out the mystery shopper visits to Atos medical assessment centres.*

Recommendations / Next Steps:

- **ATOS 1:** That the 'client facing' obligations contained within the contract with the Department for Social Development are publicised including length of time to process medical examinations (from referral by SSA to receipt of report by SSA); number of cancellations; round trip maximum distances for medical examinations; mystery shopping performance; complaints processes;
- **ATOS 2:** That ATOS conduct awareness-raising sessions (delivered by a team of specialist practitioners) with all staff on the issues of mental health, learning disability, PTSD, behavioural and personality disorders and addiction;
- **ATOS 3:** That ATOS conduct awareness-raising sessions (delivered by an expert in the field) with all staff on the issue of fibromyalgia;
- **ATOS 4:** That sufficient time is allocated for medical examinations, in particular to fully explore the issues presented by the client;
- **ATOS 5:** That ATOS provide the client with the opportunity to verify the information provided by the client in the 'client history' section of the medical examination;
- **ATOS 6:** That appointments times are adhered to, with no client being asked to wait more than 30 minutes beyond their allotted time;
- **ATOS 7:** That ATOS take proper cognisance of medication during the examination;
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- **ATOS 9:** That ATOS ensures that examination centres with ground floor space are available locally across Northern Ireland;

- **ATOS 10:** That the facility to conduct the medical examination by home visit is effectively publicised by ATOS;
- **ATOS 11:** That Advice NI compile case studies in relation to ATOS performance issues in order that issues can be highlighted and addressed;
- **ATOS 12:** That the complaints process be reviewed and tailored for Northern Ireland with action taken to maximise the potential to learn from complaints;

Lead Advisers: Davy Colvin, Seonagh George, Sharon McCreight

MEDICAL EVIDENCE

Discussion around issues relating to benefits and medical evidence including:

- (i) Additional Medical Evidence;
- (ii) GP's charging for additional medical evidence;
- (iii) Availability;
- (iv) Cost;
- (v) Quality;

There was much discussion around the issue of additional medical evidence and the fact that this was quoted as the single most important reason as to why many decisions were successfully overturned at appeal stage. However instances quoted where additional medical evidence produced early in the process but did not seem to be properly considered. There was discussion around the merits and demerits of (i) GP records and/or (ii) obtaining a supporting statement. Kevin shared a background paper on the issue of GP/Hospital charging for providing medical evidence to support a claim to benefit.

There was a lack of clarity around:

- (i) who should be seeking the additional medical evidence (client, ATOS SSA decision maker or ultimately the appeal tribunal);

- (ii) the responsibilities of GPs, hospitals and others to provide additional medical evidence;

Some advisers highlighted that tribunals request the GP medical records for Disability Living Allowance tribunals but this system is not in place for Employment & Support Allowance tribunals. However it was also highlighted that some GP surgeries refuse to release medical records to tribunals.

Kevin highlighted that clarity is needed as regards (i) what processes are in place to obtain additional medical evidence from the claimants GP or other medical professional when the existence of such evidence is identified to them by the claimant; (ii) does the to seek this information lie with ATOS or the SSA Decision maker; (iii) what guidance is given as to when further evidence should be sought; and (iv) what assessment has been made as to how many appeal cases could be avoided if further evidence was sought at an earlier stage.

Michael, Sinéad, Stuart and Adrian indicated that tribunals often weigh up the source of the medical evidence, with often greater weight placed upon for example the evidence of a consultant or a GP as opposed to the ATOS medical examination conducted by a nurse over a relatively short time frame.

Advisers discussed the situation where alternative relevant evidence may be available for example from within the Condition Management Programme. Some advisers had examples of difficulty in obtaining additional medical evidence for clients from such sources.

All agreed that additional medical evidence, as of itself, was not the important factor: the importance of additional medical evidence was the extent to which it addressed the benefit criteria and assisted the decision maker in making a decision in relation to the benefit.

Recommendations / Next Steps:

- **Medical Evidence 1:** That ATOS have a clear process in place for obtaining additional medical evidence from the claimant's GP or other medical professional when the existence of such evidence is identified by the claimant;
- **Medical Evidence 2:** That clarity is provided by DHSSPSNI as regards the provision of additional medical evidence: (i) within the GP contract of employment; (ii) within any contract between the Social Security Agency and GPs; (iii) any guidance in

relation to fees chargeable (and who is liable to pay these fees); (iv) any guidance in relation to the minimum standard and quality of any additional medical evidence provided;

- **Medical Evidence 3:** That Advice NI advisers make every effort to identify where additional medical evidence addressed the criteria under consideration and assisted the decision maker in making their decision;

Lead Advisers: Michael Roddy, Mary McManus, Marie Corrigan

SSA DECISION MAKING

Discussion around issues relating to SSA decision making including:

- (i) Ensuring that decisions take account of all available medical evidence;
- (ii) Approach to 'weighting' medical evidence;
- (iii) Willingness to reconsider decisions where additional evidence provided;
- (iv) Willingness to reconsider decisions even on the day of an appeal;

Advisers agreed that decision makers are often in a very difficult position in terms of having to make a decision solely on the basis of what evidence is in front of them.

Starting with the application form, Michael highlighted the important role advisers can play in assisting claimants with their forms, particularly when one considers that claimants can be penalised if they do not complete all relevant descriptors, as they could become 'undisputed descriptors', in particular the mental health descriptors. Sinead agreed and reiterated that advisers need to complete forms realistically and accurately based on the issues presented by the client. Advisers agreed that simply ticking descriptors which relate to 15 points, where this is not an accurate and realistic reflection of the issues presented by the client, only serves to undermine the credibility of the client and in turn the adviser who assists in this practice.

Advisers then discussed their experiences of engaging with decision makers in particular between that 'window' between original decision and appeal hearing. There were mixed views as regards the receptiveness of decision makers to take on board additional medical evidence and reconsider the original decision. Advisers were also unclear as to how decision makers 'weighed' various pieces of evidence for example where the ATOS examination was completed by a nurse and additional conflicting evidence was (i) provided by a GP or a consultant; (ii) who were engaged in treating the client over a lengthy period of time.

Sinead also highlighted Schedule 29, where:

"A claimant who does not have limited activity for work related activity as determined in accordance with regulation 34 (1)" (Support Group Descriptors) "is to be treated as having limited capability for work related activity if -

(a) The claimant "suffers from some specific disease or bodily or mental disablement and;

(b) by reasons of such disease or disablement, there would be a substantial risk to the mental or physical health of any person if he were found not to have limited capability for work-related activity";

In other words 'substantial risk' could arise from the sort of work they may be expected to do, the journey to and from work or from apprehension caused by the need to look for work.

Sharon reiterated that greater understanding was required in relation to 'hidden' disabilities and health problems: where the inclination of the claimant may be to appear 'normal', and the inclination of the decision maker may be to accept this at face value.

Recommendations / Next Steps:

- **SSA 1:** That Advice NI advisers ensure that forms are completed realistically and accurately reflect the issues presented by the client;
- **SSA 2:** That SSA conduct awareness-raising sessions (delivered by a team of specialist practitioners) with decision makers on the issues of mental health, learning disability, PTSD, behavioural and personality disorders and addiction;

- **SSA 3:** That decision makers are encouraged to make holistic decisions based on all the medical evidence, and not simply 'rubber stamp' the ATOS medical examination report;
- **SSA 4:** That decision makers consistently apply Schedule 29 in all appropriate cases;
- **SSA 5:** That decision makers be willing to revise decisions at any stage between original decision and appeal hearing;
- **SSA 6:** That SSA produce and share guidance in relation to how decision makers assess conflicting medical evidence;
- **SSA 7:** That Advice NI advisers highlight instances where additional medical evidence is provided but not acted upon by decision makers;

Lead Advisers: Stuart Marriott, James McCann, Annette Carter

APPEAL TRIBUNALS

Discussion around issues relating to appeal tribunals including:

- (i) Cost of appeals to the NI economy;
- (ii) The delay and stress caused to clients;
- (iii) The scale of demand for tribunal representation;
- (iv) The number of tribunal decisions in favour of clients;
- (v) The issue of no tribunal venue in Magherafelt;
- (vi) How learning can best be cascaded back through the system, in order to minimise the number of cases that need to proceed to appeal tribunal;

Advisers discussed a range of issues relating to appeals including: the increasing demand for appeal representation; that clients are advised that representation may not be possible given the demand and the limited resources available in terms of representatives; that clients would be advised about the merits of appealing in their particular case; that ultimately the client would decide whether or not they wished to proceed to appeal.

Sharon reiterated point that greater understanding was required in relation to 'hidden' disabilities and health problems: where the inclination of the claimant may be to appear 'normal', and the inclination of the decision maker may be to accept this at face value.

Recommendations / Next Steps:

- **Appeal Tribunals 1:** That the Appeals Service clarify the rationale as to why GP records requested for DLA appeals and not for ESA appeals;
- **Appeal Tribunals 2:** That the Appeals Service conduct awareness-raising sessions (delivered by a team of specialist practitioners) with all staff including LQM's on the issues of mental health, learning disability, PTSD, behavioural and personality disorders and addiction;
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- **Appeal Tribunals 7:** That Advice NI continue to ensure that the best possible representation service is provided for clients, by facilitating refresher training to develop the skills of advisers in order to increase the incidence and quality of effective tribunal representation in Northern Ireland;

Lead Advisers: Sinead McKinley, Jo Smit, Adrian Glackin

Appendix 1: List of conditions which can only be examined by Doctors

Suitable for Neuro trained nurses and physiotherapists

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- Prolapsed intervertebral disc¶
- Lumbar nerve root compression¶
- Sciatica¶
- Slipped disc¶
- Lumbar spondylosis¶
- Lumbar spondylolisthesis¶
- Lumbar spondylolysis¶
- Cauda equina syndrome¶
- Spinal stenosis¶
- Peripheral neuropathy¶
- Neuropathy¶
- Drop foot¶
- Meralgia paraesthetica¶
- Cervical spondylosis¶
- Cervical nerve root compression¶
- Cervicalgia¶
- Nerve entrapment syndrome¶
- Carpal tunnel syndrome¶
- Trapped nerve¶
- Paraesthesia¶
- Tingling¶
- Numbness¶
- Brachial plexus injury¶
- Polyneuropathy¶
- Shingles (peripheral nerves)¶
- Vibration White Finger¶
- Reflex Sympathetic Dystrophy¶
- Essential Tremor¶

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Suitable only for doctors¶

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- Stroke¶
- Head injury with neuro sequelae¶
- Brain haemorrhage¶
- Sub-Arachnoid-Haemorrhage¶
- Brain tumour/-Abscess¶
- Acoustic Neuroma¶
- Multiple Sclerosis (and other disorders of myelin in the CNS such as Schilder's disease, acute disseminated demyelination, Biswanger's disease, subacute sclerosing panencephalitis etc.)¶
- Motor Neurone Disease¶
- Parkinson's disease¶
- TIAs¶
- Bulbar Palsy¶
- Myasthenia Gravis¶
- Muscular Dystrophy¶
- Guillain-Barre Syndrome¶
- Amyotrophic lateral sclerosis¶
- Syringomyelia¶
- Neurofibromatosis¶
- Spina bifida¶
- Cerebral palsy¶
- Polio¶
- Learning difficulties (with neurological problems)¶
- Nystagmus¶
- Myelitis¶
- Bells Palsy¶
- Trigeminal Neuralgia¶
- Paraplegia¶
- Quadriplegia¶
- Huntington's Chorea¶
- Huntington's Disease¶

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Suitable for Neuro trained nurses and physiotherapists

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Suitable only for doctors ¶

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- Shingles (cranial nerves) ¶
- Cerebellar disorders ¶
- Basilar migraine ¶
- Charcot-Marie-Tooth ¶
- Tourettes syndrome ¶
- Dyspraxia ¶
- Dystonia α

Why do I need a medical assessment?

The Social Security Agency ask Atos Healthcare to arrange and carry out medical assessments if they need more medical information about people claiming benefits. The purpose of the assessment is to provide a medical opinion about how your illness or disability affects you in everyday life. A fully registered, specially trained and approved healthcare professional will talk to you and, if necessary, complete a short physical assessment.

What happens following the assessment?

The health care professional completes a medical report for the office dealing with your claim and the Social Security Agency will use this as one source of information when looking at your claim.

Are you unhappy about your benefit decision?

If you are unhappy about the decision made by the Social Security Agency, you may ask them to reconsider their decision. If you want to do this, you should contact the office dealing with your claim, contact details will be shown on your decision letter.

Do you have any comments, complaints or suggestions about our service?

We will treat all people who undergo a medical assessment fairly and equally. Your views on the service we provide are very useful in planning improvements, so if you have any comments, please do not hesitate to let us know. (Please use the form attached to this leaflet).

We are always very pleased to have appreciative comments, which of course we pass on to the staff concerned. Any suggestions you may have for improving services will be studied with care.

Are you unhappy about your medical assessment?

Our responsibility is to arrange your appointment, ask a healthcare professional to conduct a medical assessment and provide a report to the office dealing with your claim.

If you are unhappy with any part of our service, or simply feel we could do things better, please let us know.

We want to improve the service we provide and your comments will help us achieve this.



How do you complain?

- > Please use the form attached to this leaflet or you can write or email us quoting your name, National Insurance number and the date of your medical assessment.
- > If you would like to discuss your complaint over the telephone, please contact an Atos Healthcare Customer Relations Manager who will be happy to call you back.

Customer Relations Manager
Tel: 0113 230 9175
customer-relations@atoshealthcare.com



Who can help you make a complaint?

Anyone working for Atos Healthcare can advise you about making a complaint, including the healthcare professional conducting the medical assessment.

In addition, other people who can help include:

- > Welfare Rights Workers
- > A friend or family member.

If someone is to contact us on your behalf, please remember to give your signed consent to that person, either on the attached form or by separate letter.

What will happen to my complaint?

Our aim is to deal with your complaint fairly, consistently and in a timely manner. We will acknowledge your complaint within 2 working days and keep you updated throughout our investigation.

We hope to respond to your complaint within 10 working days. However, our investigation may take longer. This is because to conduct a thorough investigation we may need to:

- > Obtain a copy of the medical report or questionnaire from the office dealing with your claim
- > Obtain information from the healthcare professional or other employees involved.

On completion of our investigation into your complaint where it is found that the medical report may contain some inaccuracies, we will notify the office dealing with your claim. Please note that Atos Healthcare cannot change the decision on your benefit or request a further medical assessment. This is for the decision maker in the Social Security Agency.

What if I am not satisfied with your response to my complaint?

Please contact the Customer Relations Manager, explaining which parts of your complaint you feel have not been dealt with to your satisfaction. The Customer Relations Manager will arrange for a senior manager to personally review the investigation into your complaint and undertake a further investigation, if appropriate.



Can I take my complaint further?

Atos Healthcare provides medical services on behalf of the Social Security Agency. If you continue to be dissatisfied with the service provided by Atos Healthcare, you can write to the Chief Executive of the Social Security Agency. The office dealing with your benefit claim can provide contact details for the Chief Executive. They will explain how your dissatisfaction can be handled, which can include a review by an Independent Case Examiner.

About you

(If you are a representative, please provide details of the person you are representing, their authorisation and contact details for yourself.)

Title	<input type="text"/>
Surname	<input type="text"/>
Other Names	<input type="text"/>
Date of Birth	<input type="text"/>
National Insurance Number	<input type="text"/>
Contact Address	<input type="text"/>
Daytime Phone Number	<input type="text"/>
Representatives Name (if applicable)	<input type="text"/>
Authorising Signature	<input type="text"/>
Your Signature	<input type="text"/>
Date	<input type="text"/>

Please tell us your comments, complaints or suggestions overleaf.

Atos Healthcare

atoshealthcare.com

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Appendix 3: Additional medical evidence background information

The picture that emerges is one of confusion and one that does not provide a clear black and white conclusion, I will state from the outset that it has not been possible to actually get hold of or sight of a GP's contract of employment.

I have studied 3 different reports – “Statement of Fitness for Work: A Guide for GP's”, “DWP Medical (Factual) Reports” and “A Guide for Registered Medical Practitioners”. I have also consulted with NI Medical Support Services and Business Services Organisation (formerly Central Services Agency).

The current GP contract states that medical evidence in the form of fit-notes or reports that are required for Social Security purposes will be provided free of charge to the patient

provided the request for such comes from the SSA or someone acting on their behalf i.e. MSS/Atos. This principle will apply to ESA and IB Reassessment customers. In other words, the GP has a contract with the SSA and charges are paid under that. Any request from MSS iro ESA/IB(IS) Reassessment is part of this contract and the GP has a legal duty to provide in this instance.

NB – the principle will not apply to DLA as this benefit area was not deemed to be within the GP contract. Therefore, there is a charge for every medical report provided to the scrutiny doctor for a DLA customer, e.g. a factual report costs £33.50, and DS1500's attribute two different rates of £33.50 and £20 for a Special Rules case. MSS are responsible for paying GP's for their reports and annual costs exceed £1m.

If a patient requests a medical report – other than an original Fit Note (subsequent Fit Notes to replace lost or non receipt may occur a charge) – outside this arrangement, whether of their own accord or being advised to do so by someone else in the Department, this is referred to as 'providing supporting evidence'. This payment is treated differently and because it is not defined in the GP's contract, the GP does have discretion to charge or not. I have been advised that this is a very grey area and that every GP surgery across NI will have a different way of working this – some charging, some not and with differing amounts charged.

The bottom line for us is to ensure that we either do not ask the customer/patient to get additional information to support their claim, or if we feel we must, then we would have to tell the customer it is likely they will be charged for this. I have been advised that the cost could be up to £50 per time. In other words the 'contract' for this is between the GP and the customer, and there is no provision for the Department to meet any such charge.

There is another issue, other than the cost, that we would also need to be upfront with, with regards to the customer/patient. Business Services Organisation inform me that, in their experience, a lot of the information the GP's provide is meaningless and a waste of time etc. and some GP's don't have adequate training to enable them to give patients the sort of information they would need. GP's don't always provide good quality information in the first

place and some are not able to provide it from an objective point of view. This is very unsatisfactory and complicated. So, we need to ensure that our customers are not indirectly or directly advised to approach their GP for information that will not advance their case.

Should the Department become aware that the customer is likely to be able to get a piece of supporting evidence that may assist their case – and granted, this would probably not be the norm – then we would have to consider approaching the GP from within, i.e. through MSS/Atos. This of course would not incur a fee for the customer. We however would need to consider the likely strength of the evidence as it would to all intents and purposes need to be something substantial and different to that already provided.

In conclusion, it would appear that it is best that we push for substantial information from the start of the claim so as no one feels the need to re-approach their GP further along the customer journey. But, if that becomes unavoidable, then the detail above will apply.

Appendix 4: ATOS response to a complaint (anonymised)

MEDICAL SERVICES

PROVIDED ON BEHALF OF THE DEPARTMENT FOR WORK AND PENSIONS

18/06/2012

Tel: 0113 2303381
Fax: 0113 2671832

Dear

Further to my most recent letter, I have completed my investigations and I am now in a position to provide you with a response to your concerns following Ms Kane's assessment of you on 29th May 2012 in respect of your claim for Employment and Support Allowance.

I can advise that I have brought your concerns to the attention of Ms Kane's Clinical Team Manager who has firstly advised that although it is not a requirement to record a customer's statement verbatim, she has discussed the matter with Ms Kane and emphasised the importance of balancing the customer's actual words with the standard phrasing that is selected from the computer system that is used.

I would add at this point that the first section of the report, Client History, is a record of what you tell the Health Care Professional at the assessment. It does not have to be a word for word account but should be sufficiently detailed to reflect what you have told them. It includes information about what conditions have been diagnosed, medication and side effects, how you say your conditions affect you and details about what you do on a typical day.

The remainder of the report, Medical Opinion (page 6 onwards) contains the Health Care Professional's own opinion which is formed by evaluating the documentary evidence, the interview and observation of the customer, and on an appropriate clinical examination, in the light of their medical knowledge and experience, and of their knowledge of the regulations and guidelines that surround the benefit. At times, this will lead to the opinion expressed by the Health Care Professional being different to that recorded by the customer.

The above explanation may also prove helpful in addressing your concern that Ms Kane has recorded things differently to way you told them to her during the assessment.

With regard to the physical examination, I note that you dispute many of Ms Kane's recorded findings.

Ms Kane's Clinical Team Manager has advised that it is routine to assess customers on the examination couch for back/lower limb conditions to assess the range of movement. She adds that not having been present during your assessment, she is unable to comment on what activities were performed. She has also discussed this particular issue with Ms Kane who has assured her that she would not record findings if the activity in question was not assessed.

In response to your concerns that your mother was not advised or told that she could be with you for the duration of your assessment, the Notes sheet that accompanies our appointment letters explain that customers can bring a relative, carer or friend to the assessment with them. I am, however, sorry for any upset caused by this matter.

I have asked our Customer Relations Medical Adviser to review the quality of the report that Ms Kane completed in conjunction with your letter. He has advised that as recorded, there is an appropriate amount of diagnosis history and functionally focussed and relevant typical day information. He adds that the physical and mental state examinations are sufficiently detailed and Ms Kane's descriptor choices are medically reasonable and appropriately justified.

He adds that not having been present, he is unable to fully reconcile the differing accounts given regarding what was said/done during your assessment.

In addition to making Ms Kane's Clinical Team Manager aware of your concerns, a record of your complaint will be retained on file.

I am sorry for the upset that has been caused to you as a result of Ms Kane's assessment. I also hope that this response has proved helpful in addressing your concerns and clarifying the role of our Health Care Professionals within the overall benefit process.

Should you have any further queries however, please do not hesitate to contact me.

Yours sincerely,



Sarah Cookman (Mrs)
Team Manager
Customer Relations