

“Incapacity needs to
be assessed in the
real world...”

RETHINKING THE WORK CAPABILITY ASSESSMENT

Ben Baumberg
Jon Warren
Kayleigh Garthwaite
Clare Bamba

Executive summary

The Work Capability Assessment (WCA) – which assesses eligibility for the main out-of-work disability benefit, Employment and Support Allowance (ESA) – is a crucial part of the British benefits system, yet it is widely seen to be failing. Part of the problem is how the outsourced assessments have been delivered on the ground, but even after Atos is replaced by Maximus this year, the root problems of the WCA will remain. Despite its name, the WCA simply does not assess claimants' capability for work. It assigns points to functional impairments, but never considers whether there are any actual jobs that a claimant could do. Nor does it directly consider whether a person can undertake work-related activity, or the employment support that a person might need. It is a standardised test, but one that consistently measures the wrong thing.

Incapacity, we argue, means that someone's functional impairments interfere with their ability to get or keep a job, given who they are. In the real world, different people are more or less able to find or keep work despite their impairments; just because Stephen Hawking is working does not mean that other people with the same impairments should be considered fit for work. In practice, qualifications affect the types of jobs you can do, as do skills, work experience and age, and even the sorts of jobs that are available in the local labour market. Charities and disabled people have been calling for these factors to be taken into account when disabled people are assessed so they have a 'real-world assessment'. However, the Minister for Employment raised concerns about the fairness of real-world tests, while the official reviewer of the WCA felt that there was little evidence of what such a test might look like in practice.

Lessons for the UK

This report meets this challenge by looking at how other countries assess incapacity, based on a review of the English-language literature. It examines three countries that we know use some form of real-world assessment (Sweden, Denmark and the Netherlands), and four Anglo-Saxon countries that are most similar to the UK (US, Canada, Australia and New Zealand). We find five lessons for the UK, which are based on our analysis of the way these seven countries assess incapacity.

Lesson 1 Real-world assessment is possible – and even commonplace

In different ways, all of the countries studied in this review – even the Anglo-Saxon countries – have a form of ‘real-world assessment’. As the Canadian system states, age, education and work experience ‘directly affect a person’s ability to work’, and therefore need to be considered when assessing eligibility for benefit. It is simply not the case that real-world assessments are utopian and unworkable; instead, it is the WCA that appears strange when viewed in an international perspective.

Lesson 2 A standardised real-world assessment is possible

One approach to real-world assessment is to introduce a discretionary system, but it is difficult to ensure consistency in any such system. However, the review shows that it is possible to marry standardisation with an accurate, real-world assessment. The Netherlands and the US both use databases of information on the various requirements of different occupations (functional and educational), which are matched against the specific capacities and skills of the claimant to produce a list of occupations that the claimant can realistically undertake. Potentially, claimants could therefore get a clear message about why they are being found fit for work, and this could also provide information needed to design effective return-to-work strategies.

Lesson 3 We can separate real-world incapacity from unemployment

One of the challenges of real-world incapacity assessment is separating incapacity from unemployment, because in the real world incapacity is *intrinsically* linked to employability. In the face of this problem, there are two ways in which most other countries have nevertheless maintained a dividing line between unemployment and incapacity. First, many countries have emphasised that functional impairments still need to be caused by medical conditions. Second, it is common to explicitly specify that local labour demand is *not* taken into account. These systems consider real-world factors in the sense that they look at which jobs a person could realistically carry out, given their personal characteristics – but *not* whether there are vacancies for these jobs at the present time. This addresses one of the key concerns about the fairness of a real-world assessment.

Lesson 4 Unemployment benefits must also be a ‘safe place’ for disabled people

Put simply, some genuinely disabled people will not be claiming incapacity benefits in almost any system. As many as 11.5 million working-age people have a long-term condition, and many of these people face genuine disadvantages in the labour market, even if their disabilities are not sufficient for them to be classified as entitled to incapacity benefits. Beyond ESA, the rest of the benefits system must still be a ‘safe place’ for other disabled people in the support that is given and (if this exists) in the conditionality that is applied. Jobseeker’s Allowance (JSA) is not yet a safe place for disabled people, and this makes the WCA a higher-stakes and more traumatic assessment than it needs to be.

Lesson 5 It is hard to evaluate the success of incapacity assessments from other countries

We have written about ‘the lessons from other countries’ – but we should stress that they are based on what other countries show to be possible, and we have not proved empirically that their assessments are successful. This is not because ‘success’ can

be ignored, but because it is almost impossible to know how successful other countries' incapacity assessments are. It is also clear that no country feels it has cracked the problem of high incapacity rates in the twenty-first century. Even if no other countries are currently subject to the outcry over the WCA, people in most countries have a restless discontentment with many aspects of their incapacity system.

Our recommendations

These five lessons offer us a starting point for rethinking the WCA – yet further work is needed to turn them into a blueprint for implementation. We therefore recommend that the new government in May 2015 takes the following steps towards a new incapacity assessment. It should:

- commit to replacing the WCA with a real-world incapacity assessment
- create a wide-ranging expert panel to develop the new incapacity test
- undertake study visits to key countries, particularly the US and the Netherlands
- look at how the public and other key groups respond to any proposals
- estimate the costs of a new assessment system – but also the savings that it could generate
- involve disabled people from the outset

The next three years of the Rethinking Incapacity project will contribute to some of these steps, but academic research can only do so much in the absence of a wider appetite for change. There is wide agreement that we have pushed the WCA as far as we can in making minor tweaks and changing provider, and a major reform is now needed to restore the system to effectiveness and legitimacy. Our view is that this reform should be based on a real-world idea of incapacity – not for political reasons, but simply because this is what incapacity is, what most people understand it to be, and what disabled people need to deal with

in the real world. This pamphlet shows that real-world incapacity is a realistic path, and we hope that the sorely needed review to overhaul the WCA will similarly begin in the real world of incapacity, rather than in the false dream of the WCA.

The Rethinking Incapacity project

This report is part of a wider three-year research project looking at how non-medical factors are tangled up in the real world of incapacity. The project has four strands of work:

- *international comparisons* of how incapacity assessment works in other countries
- *perceived legitimacy*: a new survey and series of deliberative workshops to look at what people think a fair test looks like
- *better data* so that we get figures we can trust about the employment rate of disabled people across time and place
- *unequal incapacity*: new research into how non-medical factors in incapacity actually work in practice

The project is led by Ben Baumberg and funded by the Economic and Social Research Council (ESRC), with some strands also involving collaborations with Demos and a team at the University of Durham led by Professor Clare Bambra – all of whom have been involved in this report. For more information, please see www.rethinkingincapacity.org.