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

RETHINKING THE WORK CAPABILITY ASSESSMENT

Ben Baumberg
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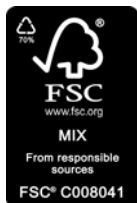
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The Rethinking Incapacity project

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.

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.

1 Introduction

The Work Capability Assessment (WCA) – which assesses eligibility for the main out-of-work disability benefit, ESA – is a crucial part of the British benefits system, yet it is widely seen to be failing. Indeed, it has now been failing for some time. As part of a wider (and continuing) process of reform, the WCA was introduced in 2008 and rolled out to all claimants from 2010, such that three-quarters of a million assessments took place in 2013.¹ But despite existing on such a scale, the Department for Work and Pensions' (DWP's) own annual independent reviewers have said that crucial changes are needed to the WCA – and they have said this every year for the past five years (see below). Indeed, academics have found that some disabled people live in outright fear of the DWP's 'brown envelope' calling them to an assessment, with many claimants saying that the process damages their health, and there are even anecdotal reports that the stress of the assessment process has contributed to suicides among claimants.² As a result, it appears that every few months the WCA is condemned by yet another body or group, whether this be major charities, doctors or disabled people themselves.³

Part of the problem has been the way the assessments have been delivered on the ground: considerable delays in being seen, inaccessible centres preventing people from being assessed, and – once the assessments actually take place – too many poor-quality assessments (a substantial minority of which are overturned on appeal; see below). The WCA was initially outsourced to the multinational company Atos, which had been providing previous incapacity tests since 1998. However, Atos was subject to an increasing barrage of criticism, and in March 2014 the DWP announced that Atos had agreed to terminate the contract early – and indeed, had paid the government to do so, given the bad publicity and death threats to its staff involved.⁴

Atos is in the process of being replaced by the US-based company Maximus, although some disability activists have raised concerns about fraud and poor performance in Maximus' provision of (different) outsourced public services in the US.⁵

But even if Maximus is an improvement on Atos, it is widely recognised that the root problems of the WCA will remain. As the Work and Pensions Select Committee recently put it,

*The flaws in the existing ESA system are so grave that simply 'rebranding' the WCA by taking on a new provider will not solve the problems: a fundamental redesign of the ESA end-to-end process is required.*⁶

Similarly, the Labour Party, the Scottish National Party, and many individual politicians have committed themselves to fundamentally overhauling the WCA,⁷ and the final of five DWP-supported independent reviews of the WCA – established by the Welfare Reform Act 2007 – has recently come to a similar conclusion. The reviewer, Dr Paul Litchfield, restricted himself to diplomatic language, but nevertheless was clearly calling for radical change:

*It appears to me that we have taken the WCA about as far as it can sensibly go in terms of modification and adjustment. Work and the workforce are going through a period of unprecedented change and it must be questionable whether an assessment designed in the early part of this century will best meet society's needs in its third decade. If any new assessment is designed, the fundamental question of whether health related capability for work is the criterion that society wishes to use to determine benefit levels should first be considered.*⁸

There is therefore much support for an overhaul of the WCA. What we do not have, though, is much idea of what to replace it with. The main alternative that has been suggested – a 'real-world test' – is an important idea but has not been fleshed out; the previous independent reviewer of the WCA dismissed it on the grounds of lack of evidence about how it could be carried out (see below). Otherwise there are no think tank reports

setting out an alternative vision for the WCA, nor reports by major disability charities, nor analyses by academics – nearly all of whom have either been focused on critiquing the WCA and suggesting only minor amendments, or in the case of the Organisation for Economic Co-operation and Development (OECD), making suggestions for wholesale reform of the incapacity benefit system, rather than setting out a blueprint for replacing the WCA specifically.

As all countries that provide support to those unable to work because of disability have to assess incapacity at some point, a good starting point is to look at what other countries actually do – something we know surprisingly little about.⁹ In this Demos pamphlet, we therefore set out to investigate systematically how seven key countries assess incapacity, and the lessons these countries provide for reforming the WCA in the UK. Before going into the international review, however, we first set out the state of the UK's existing assessment in more detail, and why the review focuses on the idea of a 'real-world assessment'.

2 The system as it stands

As one of us argued in a recent *Demos Quarterly*,¹⁰ despite its name, the WCA simply does not assess a person's work capability. To understand these failings of the WCA, we need to go into the detail of the test.

What the WCA assesses, and what it does not

While the ESA system as a whole is reasonably complex, the WCA is a simple test at heart. It consists of a checklist of different possible impairments in different categories, which all have a certain number of points attached to them. If those who are being assessed score 15 points in total across the whole test, they are awarded ESA. An example of the manual dexterity test is shown in table 1.¹¹

Table 1 **Example of the scoring for the WCA's manual dexterity test**

Descriptor	Points
Cannot either: (i) press a button, such as a telephone keypad; or (ii) turn the pages of a book with either hand.	15
Cannot pick up a £1 coin or equivalent with either hand.	15
Cannot use a pen or pencil to make a meaningful mark.	9
Cannot single-handedly use a suitable keyboard or mouse.	9

So persons who cannot pick up a £1 coin, cannot press a button, or cannot turn the pages of a book score 15 points and are awarded ESA. Those who cannot use a pen or pencil score only nine points – and unless they have another impairment, or

meet one of the ‘special’ or ‘exceptional’ conditions,¹² they are considered fit for work.

This test is clear and simple in principle – the trouble is that it does not assess work capacity. It is quite difficult to find a clear statement of what the WCA is designed to measure; but in the words of the DWP’s Technical Working Group who designed the test, the WCA ‘focuses solely on people’s level of function’,¹³ which is not the same as incapacity. To explain why it is different, it is worth clarifying at this point exactly what ‘work capacity’ means.

Policy makers worldwide have long dreamed about a definitive medical assessment of incapacity, where the most trusted of professionals – doctors – scientifically determine people’s capacity for work.¹⁴ Yet this is a chimera, which disabled people and disability experts dismissively refer to as the old-fashioned ‘medical model’. Instead, the insight of the ‘social model’ is that disability depends on how the world is organised, and whether society itself ‘disables’ people with functional impairments. When it comes to the workplace, few medical diagnoses or functional impairments are so severe that you cannot do any jobs whatsoever; in the LSE-founder Sidney Webb’s words in 1912, ‘incapable of any work whatsoever’ can only mean ‘literally unconscious or asleep’.¹⁵ For everyone else, incapacity depends on whether your limitations interfere with the requirements of the particular job in question. And this goes beyond the bounds of medical science.

According to best practice in occupational health,¹⁶ the starting point of any credible assessment should therefore be to compare people’s impairments with the requirements of work. Yet while vaguely being related to work,¹⁷ at no stage does the WCA assess the work that a claimant may or may not be able to do. The WCA is a standardised, seemingly objective, assessment, but this comes at the cost of failing to measure what it purports to; it could be better thought of as a measure of ‘whether a person should be required to seek work’, rather than actually measuring incapacity.¹⁸

Real-world incapacity

There is also a second sense in which the WCA does not assess work incapacity: it ignores people's differing abilities to find or keep a job they can do. One of us has previously called this the 'Stephen Hawking effect': just because Stephen Hawking is working does not mean that other people with the same impairments should be considered fit for work. Likewise, an impairment that is unproblematic for a 25-year-old graduate in the more buoyant labour market in the south-east of England may be an insurmountable barrier to work for a 63-year-old man with no qualifications in the more depressed local economy of Easington, County Durham. Incapacity assessments that take this into account have recently been termed 'real-world assessments',¹⁹ on the grounds that they look at whether a person with impairments would realistically be able to find a job they can do, given who they are.

However, 'real-world assessments' should be seen as a family of assessments rather than a single model. Most versions of real-world assessment would look at personal factors such as age, education and qualifications, and work experience. In principle, though, it would be possible to have real-world assessments that also consider the local labour market, the national economic situation, or other barriers to work such as caring responsibilities, all of which influence whether a person with an impairment is able to get or keep a suitable job. There are good reasons why some of these factors are more desirable in an incapacity assessment than others, and we explore them below. Another approach is to look at what we might call 'demonstrated incapacity', where a person's inability to find work is shown in the real world over a sustained period of time.

To reiterate: real-world assessment looks at whether someone's functional impairments interfere with their ability to get or keep a job, given who they are. It therefore intrinsically takes into account functional impairments alongside the non-medical factors (such as employability) that make it easier or harder for different people to work.

Challenges for real-world assessment

To the extent that people have advocated a firm alternative to the WCA, they have been advocating for a real-world type of test. This includes the Spartacus Network of disabled people and a number of charities led by Citizens' Advice,²⁰ and it has even been discussed by the DWP's independent reviewers of the WCA. The first reviewer, Prof Malcolm Harrington, gave it serious consideration in his annual review in 2010, while his successor, Dr Paul Litchfield, strongly hinted he favoured a version of real-world assessment in the final independent review:

The current assessment model, though founded on capability rather than diagnosis, retains a strong medical flavour. Modern thinking favours a biopsychosocial²¹ model of disability, which considers not just capability but also other factors such as skills and readiness for the labour market.²²

But it is not that simple. As one of us has described in a recent *Demos Quarterly*,²³ there are a number of challenges in introducing real-world assessments in the real world. First, as Chris Grayling MP (then Minister of State for Employment) said in 2011:

The one thing I am absolutely unreservedly and implacably opposed to in all of this is a real world test. Either somebody is fit for work or they are not, and what I am not prepared to do is to countenance a situation where we are saying: 'You are fit for work, but you should not be on JSA because there is high unemployment in your area.'... What I do not think we could possibly countenance is the situation where we are saying, 'Because of circumstances in the labour market in your area, we will treat you differently. I think that would be a huge mistake.'²⁴

Grayling seemed to be arguing that it does not seem fair and right that the same people in different areas of the country are treated differently – a view we have heard across the political spectrum. However, this only applies to spatially specific tests (where local labour markets are taken into account); part of the problem with these debates has been that the various different meanings of the 'real-world' element have been blurred. We return to this explicitly in our concluding chapter.

Second, the idea of a real-world test has been advocated, but no one has provided any detail about what a real-world test might actually look like. At the request of Citizens Advice, Professor Richard Berthoud produced an excellent analysis of the issues,²⁵ but with little guidance as to the practicalities of real-world assessments. The independent reviewer of the WCA at the time, Malcolm Harrington, thus concluded that the UK's collected experts were 'unable to offer clear, evidence based advice on what a real world test might look like'.²⁶

One worry here is that a real-world test could blur into unemployment insurance. For spatially specific tests in particular, unemployed people in areas with few jobs will have a low bar to claiming incapacity benefits, even if their impairment is not the reason that they are out of work. It is widely believed that GPs were willing to sign people off sick with only minor health limitations in deindustrialising areas in Britain in the 1980s (though there is no direct available evidence to confirm it), as well as in other countries such as the Netherlands, where levels of incapacity claims rose to unprecedented levels. While this challenge arises primarily because of the nature of incapacity – an impairment is genuinely more incapacitating for people who have lower employability – real-world tests still need to demonstrate that they can meaningfully differentiate incapacity from unemployment.

A real-world test is therefore an attractive idea, but we need to know more about *if* and *how* it can work before it can be seen as a real alternative to the WCA. These are the questions that this report tries to answer.

The functions of the WCA

The WCA is currently failing in its task of assessing incapacity, but this is not its only function. Potentially, an incapacity assessment could also influence both the conditionality and the employment support that claimants receive – yet the WCA fails on both of these counts too.

Conditionality and the WCA

Aside from determining eligibility for ESA, the WCA splits claimants into two groups based on their ‘capability for work-related activity’. Those who are assessed as having this capability are placed in the Work-Related Activity Group (WRAG), and are forced to attend regular work-focused interviews and perform other work-related activity (voluntary work, work trials, or training) – otherwise they are sanctioned. Alternatively, those assessed as not having a ‘capability for work-related activity’ are placed in the Support Group, whose members not only have no conditionality, but are also awarded a higher level of benefit, which (unlike for the WRAG group) is not means-tested after 12 months. This second-stage assessment therefore has high stakes, and it has been subject to considerable controversy and revision.

The actual ‘work-related activity’ capability test is based on the ‘work’ capability test – it uses the same descriptors – but has two main differences.²⁷ First, multiple less severe impairments do not ‘add up’ to a more severe impairment; the ‘work-related activity’ capability test only assesses the most severe impairment that a person has. Second, there are several impairments that are considered reason alone for limited work capability, but are still not sufficient to count as limited capability for ‘work-related activity’ at the second stage. For example, people are eligible for ESA if they ‘cannot pick up a £1 coin or equivalent with either hand’, but if this was their only impairment, they would be placed in the WRAG rather than the support group. (We briefly return to the issue of conditionality in JSA and Universal Credit in chapter 4.)

There has been much confusion about why people are placed in the WRAG rather than the support group. Partly this is because the Coalition Government introduced a one-year time limit for WRAG claimants that took effect in 2012, arguing that the WRAG was ‘an interim measure for those who are expected to move into work’,²⁸ and partly it is because WRAG claimants receive a ‘prognosis’ of when they are expected to be fit for work, which governs entry into the Work Programme. As a result, it is often assumed that people are meant to be put in the WRAG if they are expected to be ready to return to work in the near future, and it is on these grounds that five charities complained

that those with progressive conditions are sometimes wrongly allocated to the WRAG.²⁹ Yet we believe the confusion is also because the ‘work-related activity’ test is not very closely related to people’s ability to undertake work-related activity, mirroring the problems of the work capability test in assessing incapacity.

Employment support and the WCA

Beyond such ‘eligibility assessments’, the WCA also misses an opportunity to conduct a ‘diagnostic assessment’³⁰ of the support that claimants need to get back to work. These assessments are necessary to determine how much money Work Programme providers are given (which currently is crudely based on which benefits people have received) and for providing claimants with personalised support to help them return to work, which should happen as early as possible in a person’s claim. Yet the WCA does not attempt to provide any information on the work that people could do, or the help they would need to return to work. Jobcentre Plus conducts separate needs assessments with new claimants, but these are not consistent and do not provide the detailed information required. In practice, Work Programme providers therefore make their own assessments after clients are referred to them – a situation that seems unlikely to change even with the Government’s proposed introduction of a new ‘Gateway’ assessment for disability employment support.³¹

There are good reasons to split diagnostic and eligibility assessments – diagnostic assessments need to focus on what people can do and what support they need rather than their eligibility for benefit,³² and there are certain factors (such as motivation) that are critical in assessing employment support needs but which we would not want to take into account in determining benefit eligibility. An international review has found that many countries therefore separate these two processes out.³³ However, incapacity assessment could certainly contribute much more to this process, both in influencing contractual payment levels for employment support, and in providing the information required to personalise support. There have been several calls by think tanks, disability charities and politicians, and the

independent reviewer of the WCA to capture more of this information at the time of the WCA.³⁴ But as it stands, Work Programme providers cannot even see the information on functional impairments that the WCA does provide (much as the DWP is promising to change this in 2015).

This was foreseen when ESA was being designed, and a further Work Focusing Health-Related Assessment (WFHRA) was proposed from the outset. The WFHRA was a second assessment carried out by Atos in the early years of ESA, originally by the same assessor as the WCA on the same day, and focused on the claimant's views of the support that would help them move back to work. However, the WFHRA was suspended in July 2010, after a review found that neither claimants nor Jobcentre staff were clear about its purpose. We are left with a situation in which many experts are calling for an early assessment to look at claimants' employment support needs, eight years after the original WCA design team thought they had addressed this issue.

Could we do without an incapacity assessment?

There is no realistic way of avoiding all disability-related assessments in the welfare state – disabled people have higher costs to reach the same standard of living, and we therefore need extra cost benefits (DLA or PIP) to avoid high levels of disability-related poverty.³⁵ But beyond this, and given the unpopularity of the WCA, some people have proposed a world without any further incapacity assessments. One version would be to have a single flat-rate, out-of-work benefit, with disabled people compensated through a more generous extra costs benefit (as Demos argues in the 2013 report *Something for Something*³⁶), in which conditionality and employment support could be personalised. Alternatively, some disability advocates argue in favour of a basic income, in which the issue of conditionality would not arise.

We think that these ideas are problematic – even if some countries have started to move in this direction. It is possible to offer personalised support rather than support via a separate

category of ‘disability’, but in practice this would lead to lower levels of support and worse outcomes for disabled people,³⁷ and there is still a need to assess how much money a welfare-to-work provider will be given to support each claimant. It is more plausible to imagine a world with a single flat-rate, out-of-work benefit in which conditionality and employment support needs are assessed through a lower-stakes incapacity test. However, there are 600,000 longer-term ESA claimants not receiving an extra cost benefit in the UK, who would suffer considerable losses in such a reform (or if they were compensated by extending eligibility to a universal disability extra costs benefit, then the total cost would be much greater). And in the long term, disabled people are also often thought of as more ‘deserving’ than unemployment benefit claimants, and their benefits are more generous.³⁸ Abandoning the category of ‘incapacity’ will eventually result in a reduction in the popularity and generosity of support for disabled people.

Incapacity assessment developed in many countries during the twentieth century to meet a societal need, and if anything we believe this need has grown. In our view, the challenge is how to make it work better than the WCA does at present.

The accuracy of the WCA

The WCA is widely perceived to be an inaccurate measure of incapacity, and we have good reasons for thinking that it is assessing the wrong thing – but actually estimating the accuracy of the WCA is difficult.³⁹ As it was being developed, the WCA was tested in 212 cases, but as an article in the *British Medical Journal* noted at the time, ‘the new test claims to be fair and accurate, but the report does not define what this means’.⁴⁰ In fact, it was being assessed against ‘expert opinion’, without telling us what the experts were actually assessing, and without considering that expert opinion can be wrong. A similar problem besets the more recent DWP’s ‘evidence-based review’, which compared 600 WCAs against the opinion of a group of experts. This time we were told that the expert panel ‘identified that 83 per cent of claimants deemed fit for work would need “on

average, two or three” adjustments; 50 per cent would need flexible working hours; and 24 per cent would need a support worker’.⁴¹ While we still do not exactly know what the expert panel was assessing, it is clear that it was looking at people’s ability to perform a generic job with a considerable level of adjustments, which is perhaps stricter than many people’s idea of ‘incapacity’.

In the absence of an easy measure of accuracy, commentators have tended to focus on successful WCA appeals as a measure of inaccuracy.⁴² In the early days of the WCA, nearly half of those found fit for work appealed – over one-quarter of the total caseload – and over 40 per cent of these decisions were being overturned by the tribunals. Freedom of information requests revealed that the majority of decisions that were overturned at this time had initially received zero points rather than being marginal decisions.⁴³ However, the numbers of appeals have since collapsed, from between 40,000 and 110,000 per quarter in 2009–2013, to around 10,000 per quarter over the last year. While there are several possible reasons for this, the main one is probably the introduction of ‘mandatory reconsideration’,⁴⁴ which acts as a strong disincentive for people to appeal, and may mean that many wrong decisions are no longer being challenged.

It is impossible to talk about the WCA, though, without looking at how the WCA outcomes have changed over time. At the start of ESA in late 2008, over half of those undergoing a WCA were eventually found fit for work after taking into account appeals, with 35 per cent being placed in the WRAG, and 11 per cent in the support group. By early 2013 these figures had changed dramatically, with only 33 per cent being found fit for work, 23 per cent being placed in the WRAG, and 44 per cent in the support group.⁴⁵ Partly this reflects changes to the WCA in January 2013 and particularly March 2011, which were designed to increase the numbers going into the support group. However, it also reflects changes that were not predicted, in particular around the use of the discretionary special circumstances regulation where people are considered to be at a substantial risk of harm if found fit for work.⁴⁶ The Treasury’s

budget-by-budget estimates of spending on ESA have therefore continually been revised upwards, and there is a possibility that new changes to ESA will be unveiled to reduce spending back to its originally projected levels.

There are two implications of this. First, the WCA that was introduced in 2008 is a very different beast from the WCA that is now being implemented, and some of the concerns that have been raised may fade away as people become aware of the changes. Yet while it is possible to make the test more or less generous, the charge that we are making – that the test simply does not assess people’s capacity for work – cannot be addressed without a fundamental overhaul of the WCA. Second, these changes demonstrate how a system set out in legislation can be affected by changing street-level practices (much as some of the changes over time have been underpinned by statutory instruments). This review concentrates on systems and principles, but we must always remember that the way that these are implemented in practice is no less important, much as this is harder to look at across different countries.

Rethinking the WCA using international evidence

While this review is focused on learning from international evidence, before looking at that evidence it was first necessary to understand the WCA as it currently stands. This chapter has therefore set out why the WCA fails to assess incapacity, how it links poorly to conditionality and employment support, and what we know about the accuracy of the WCA (and how this has changed over time). We now turn to the main focus of our review: the next chapter describes how other countries have designed their incapacity assessment, while the concluding chapter brings our findings together into lessons for rethinking the WCA.

3 International case studies

In our review we chose to look at two sets of countries. We look at four Anglo-Saxon countries (Australia, Canada, New Zealand and the US), which in many ways have welfare systems that are most similar to the UK. To complement this, we also look at three social democratic countries (Denmark, the Netherlands and Sweden). These are countries that we knew consider real-world incapacity in some way, and invest substantially in issues around work and disability and might therefore contain some examples of best practice. These are also the countries that seem to be influential in UK debate; they include the four countries mentioned in Dr Litchfield's review, and most of the countries that underpin the call for real-world assessment in the recent Spartacus report.⁴⁷

The rest of this chapter presents short summaries of incapacity assessment in each of these countries. We should however stress that it is always challenging in UK-based international reviews to obtain the level of detail we would like on the latest reforms, particularly for the social democratic countries where most policy documents are not available in English. We have attempted to triangulate our understanding across a range of sources within each country, but there are some areas where uncertainty remains – we make clear below where this is the case.

New Zealand⁴⁸

When Dr Paul Litchfield was drawing on international evidence for his recent independent review of the WCA, he was particularly interested in the lessons from New Zealand. Ironically, policy makers in New Zealand in recent years have been inspired by the UK's approach, and this cautions us against

celebrating international examples before it is clear if they were successful – the latest New Zealand reforms date from 2013, and it will be a few years before we get a clear picture how they work (as Litchfield himself notes). Still, the broad outlines of the system are clear.

Incapacity benefits

New Zealand operates two benefits:

- *Supported Living Payment (SLP)*: A dedicated incapacity benefit for those with severe disabilities, with no conditionality applied. However, people cannot receive this until they have had a condition affecting their work capacity for two years (unless they are terminally ill or blind). Even after two years, SLP is only available for those who are incapable of part-time work.
- *Jobseeker's Support*: All other claimants for incapacity benefit are placed on the main out-of-work benefit, Jobseeker's Support, which is paid at a flat rate (with variations by age and family size); SLP pays 25 per cent more than Jobseeker's Support. Sick or disabled claimants of Jobseeker's Support are placed in one of two groups: the mild work capacity limitation group (able to do part-time work of 15–29 hrs/wk), and the severe work capacity limitation group (not fit for part-time work). Obligations are placed on all sick and disabled claimants (other than blind or terminally ill people) in the first two years, and these are more stringent than in the UK: those with mild work capacity limitations have a seemingly onerous set of part-time work obligations, while even those with severe limitations who are often described as having a 'temporary exemption' from work requirements nevertheless have 'work preparation obligations'.

Assessment of eligibility

What is particularly striking is that the incapacity assessment is based on a remarkably simple Work Capacity Medical Certificate filled out by the claimant's medical practitioner (like the UK in the past), paid for by the claimant where necessary.

The form asks about the level and duration of incapacity directly (eg whether the claimant's medical conditions 'limit the person's capacity to work for 30 hours or more per week' and, if so, how long this will last), with little further guidance provided, other than stating that work is good for health. Benefit eligibility is then decided by benefits agency staff, based on the form alongside their interactions with the client and the clients' self-assessment.

However, benefits agency staff can refer a claimant for a second opinion, on the grounds that the information from the form is unclear or ambiguous, the initial doctor feels inadequately qualified, the claimant wants a second opinion, or because the benefits agency staff think that 'the person is engaged in activities that appear to be at odds with recorded incapacities or with work capacity information'. Technically, the independent doctor can be selected by the claimant, but in practice it seems that the agency suggests people from its 'designated doctors' list. People can go to the Medical Appeals Board if they are unhappy with the decision; this is made up of medical and rehabilitation professionals chosen by the Ministry, and there is no further right of appeal.

Lessons for the UK

It is very difficult to assess how well the new system is working – partly because it is so new, and partly because the level of transparency is poor; for example, New Zealanders themselves complain that no statistics are routinely published on appeals or sanctions. And even knowing how the system looks on paper, the high degree of discretion that seems to be given to the benefits agency makes it difficult to know how strict the eligibility testing is, or how often sanctions are applied. However, official data that try to compare the pre- and post-reform systems show that Jobseeker's Support claims have fallen since the July 2013 reforms (from 129,000 to 123,000), but Supported Living Payment claims have increased (from 84,000 to 85,000). Nearly half of all claimants of Jobseeker's Support are currently classified as having a health condition or disability.

As a final word, it is worth considering the WCA independent reviewer Paul Litchfield's comments on New Zealand. Litchfield was interested in 'the approach of uncoupling levels of benefit eligibility from work capability' and their focus 'on overcoming barriers to employment', which he says 'has appeal and merits further exploration'. However, the benefit eligibility assessment above is not a helpful measure of employment support needs. (This instead needs to be assessed in an entirely separate 'WCA' with an independent medical specialist, which Jobseeker's Support claimants can be forced to undergo.) Far from being an innovative new example, this in fact takes us back to the original ESA system of the WFHRA (see chapter 2), and it is not clear that the New Zealand system offers any 'real-world' lessons that the UK has not already learnt.

Australia⁴⁹

Incapacity benefits

New Zealand's system seems to have been partly inspired by Australia's, which since 2006 has likewise had a distinction between a low-level general out-of-work benefit (the Newstart Allowance) and a dedicated incapacity benefit that pays 50 per cent more (the Disability Support Pension, DSP). Many sick and disabled people are not eligible for DSP for three reasons. First, DSP is only for people who cannot work part-time (15+ hrs/wk). Second, DSP is only for people with a 'continuing inability for work' lasting two or more years into the future. Third, since 2011, nearly everyone applying for DSP has to show that they have already 'actively participated' in a programme of support for 18 months, with exceptions only for 'severely disabled' people.⁵⁰ This means that people who are temporarily disabled, or whose disability makes them unable to work full time, or indeed most disabled people in the first 18 months of their claim, are only eligible for Newstart Allowance. Partly as a consequence, around half of Newstart Allowance claimants are exempt from jobsearch requirements at any one time.

Assessment of eligibility

The assessment for DSP is known as the Job Capacity Assessment (JCA), and is made by job capacity assessors employed by the Department of Human Services, based on a medical or functioning report by the claimant's doctor. The JCA includes both an impairment table and an assessment of 'continuing inability to work'. The impairment table is a functional capacity test that is not dissimilar to the WCA, with claimants needing to score 20 points to be eligible for DSP. The 'continuing inability to work' test assesses whether someone is unable to work 15+ hrs/wk, and whether this will last two years – 'work' meaning any job paying the minimum wage in Australia. The assessment explicitly states that the availability of work is not considered, nor are people's other employability barriers (eg literacy difficulties) unrelated to their medical condition, or how employers would react to them. However, there are some small elements of a real-world test. The 'physical and intellectual characteristics which would be required to perform any work' are explicitly considered, as is a person's ability to re-skill into a different occupation within two years.

Lessons for the UK

Dr Litchfield's view was that Australia could offer lessons to the UK as the JCA is 'used to identify barriers to work an individual may face and refer for appropriate support'. Indeed, the JCA formally commits itself to establishing a claimant's 'barriers to finding and maintaining employment and any interventions or assistance that may be required to help improve their current work capacity', with the reports sent on to their employment services provider. This information comes from the second part of the test (the impairment tables in the first part are similar to the WCA), and the main lesson is therefore that a WCA-style test can be accompanied by a further simultaneous assessment of what work an individual can actually do – a lesson that we will see repeated for several further countries.⁵¹

Denmark⁵²

Incapacity benefits

Denmark has a relatively long-lasting and generous sickness benefit, followed by a disability pension ('Fortidspension'). The most distinctive feature of the system though is the much-cited flex-job ('Fleksjob') scheme, which provides substantial wage subsidies – often over half of the wage – to sick and disabled people. After being introduced in 2003, the numbers of people in flex-jobs has increased considerably; the overall number of sickness and disability claimants has not reduced, but the employment rate of people with health problems has increased. One problem is that fewer flex-jobs are available than the numbers who are eligible for them, with people being paid a waiting benefit (at the same level as sickness benefit and unemployment benefit) while waiting; there have also been recent attempts to restrict eligibility to the scheme.

Assessment of eligibility

Health limitations are initially assessed by the claimant's GP, before being reviewed by a municipality medical adviser who can ask a specialist for a second opinion. However, the actual assessment process is carried out by a social worker employed by the municipality, who uses something called the 'resource profile' when making a decision. This looks at 12 diverse dimensions of the claimant's situation: education and skills, labour market experience, interests, social competence, re-adjustment ability, learning ability, job preferences, performance expectations, work identity, dwelling and finances, social network and health. In the UK, Dr Litchfield approvingly stressed how only one part of the profile concerns health, and – much as health is reported to be a critical factor in 95 per cent of cases – this again highlights the non-medical, 'real-world' elements in assessment.

Having completed the resource profile, the social worker then decides whether the claimant can perform a normal job or a flex-job, giving the social worker some discretion – although less than existed in the past. If claimants can carry out a normal job they are ineligible for the benefit; if they can take on a flex-job they wait for a suitable flex-job to become available; and if they

cannot perform a flex-job they receive the disability pension. Few claimants are rejected from incapacity-related benefits outright, but few seem to be eligible for the disability pension at the outset (and indeed most under-40s have recently been barred from claiming it). The relevant legislation requires that early retirement pensions are only granted when other options are exhausted, hence social workers will try a number of different activation activities before someone is considered completely incapable for even subsidised work.

This was the picture for much of the past decade – but in 2013 the process of assessment was overhauled into an assessment tool called the Resource Cycle ('Ressourceforløb'), following several years of pilots. Rather than starting with the claimant's GP, this starts with an interview with a 'return-to-work coordinator' (basically a sickness benefit officer), who maps the claimant's employment situation and completes a screening of their support needs. Where an in-depth work capacity assessment is required, the coordinator sets up a multidisciplinary conference between an occupational therapist, a psychologist and a psychiatrist, which focuses on what the person can do (how many hours someone can work, from what date, and with what accommodations), and what barriers need to be addressed (which can lead to appointments with a psychologist to address work motivation, or with the employer to address workplace barriers). Little English-language information is available on either the workings or the successes of the new system, other than early reports that local authorities were struggling to deliver the initiative as intended.

Lessons for the UK

Both the Spartacus review and the Litchfield review discuss the Danish system, partly because 'Denmark has long been considered to be a European exemplar for how best to handle sickness and disability-related issues in employment'.⁵³ However, this appears to be changing. Having flagged use of the Resource Profile as potential best practice, the OECD recently concluded that the Resource Profile 'is now considered a failure' in practice,

because of its complexity, lack of guidance, lack of integration with employment support and its failings in assessing mental health limitations.⁵⁴ The latest reforms thus introduce yet another assessment process that is simpler and focused more on linking to employment support, as well as cutting the totemic flex-jobs scheme. Still, the Danish system is the first here to demonstrate that systems *can* substantially take real-world factors into account.

Sweden⁵⁵

Incapacity benefits

In Sweden, people who are not working because of ill-health or disability claim a relatively generous sickness benefit ('Sjukpenning'), which since 2008 takes them into a clearly defined process aiming to get them back to work. Those employed at the time of sickness or disability often have a meeting with an assessor (and often their employer, doctor and/or rehabilitation specialist) within 90 days to see if or how they can return to work; this both checks their eligibility for benefit and investigates options for workplace adjustments. If they are still on sickness benefit after 180 days, then they have to start looking at other jobs they might do with help from the public employment service. It is only if incapacity is considered permanent (often after long periods claiming sickness benefit) that some claimants move on to the permanent disability benefit ('Sjukersättning'); or if they are under 30, to the less permanent activity compensation, ('Aktivitetsersättning'), which either the individual or their caseworker applies for.

Assessment of eligibility

Within this process, functional ability is assessed by the caseworker based on reports from the claimant's doctor, but the state insurance agency can undertake its own in-house assessments using its team of work life psychologists, occupational therapists and social welfare supervisors. Formally, the state insurance agency caseworkers are assessing whether the

claimant has any ‘functional impairments that entail reduced work capacity’, which it can determine as being 25 per cent, 50 per cent, 75 per cent, or total incapacity. This is not defined in law, but internal documents state that ‘work capacity is determined by the interplay of a job seeker’s individual characteristics, a specific work task, and the work environment’ – and this also involves looking at the jobs that a person might actually be able to get. As Garsten and Jacobsson put it, ‘it is not enough to test work capacity in relation to a fictional labour market. The public employment service has to try to find an actual existing job for the person in question.’⁵⁶

Lessons for the UK

The lessons from Sweden are therefore similar to those from Denmark: incapacity assessment can be tightly linked to employment support, and it can also consider real-world factors in terms of both personal characteristics and demonstrated incapacity (where real-world failures to find work while on sickness benefits are used by claimants and caseworkers to argue they have a permanently reduced ability to work). Where Sweden differs, though, is that it is seen as a success story by the OECD after the ‘remarkable fall’ in sickness and disability claims over the past ten years. The price to be paid for this is a high benefit rejection rate, which has led even the OECD to note that there are ‘concerns that the disability system may have become too strict’.

One further feature is worth noting, as it is so unusual: the existence of a category of ‘socio-medical disability’. This is *not* caused by a medically diagnosed condition, but instead reflects non-medical workplace disadvantages, such as a criminal background or Swedish language difficulties among immigrants. To understand why this make sense, we need to look at the context: insurance agency staff choose to classify someone as ‘disabled’ in order to access more generous support that they need to get someone back into work. Classifying someone as socio-medically disabled has been seen as a way of levelling out an unequal labour market, even if they have no health conditions

in a medical sense. This deliberate blurring of unemployment and incapacity offers a revealing contrast with other countries' focus on their separation.

Canada⁵⁷

Incapacity benefits

The Canadian system is fiendishly complex: disabled people have to navigate between six and eight income support programmes split between private insurers, federal government, and the provincial governments. We focus on the federal system (outside Quebec), which is split between a very short-term sickness benefit of up to 15 weeks, and the main Canada Pension Plan disability benefit (CPP-D). Both of these are restricted to people who have strong work attachments in the past few years, so around half of disabled claimants instead receive the disability component of provincial non-contributory Social Assistance.

Assessment of eligibility

Incapacity within CPP-D is assessed by a medical adjudicator employed by the government department, Social Development Canada, with decisions made by a separate insurance officer. They assess whether the claimants have a 'severe and prolonged disability', each part of which is assessed separately:⁵⁸

- The simplest part, 'disability', just means that a person has a medical condition. The medical adjudicator will use all of the evidence that they can get, including contacts with the client, reports by employers or schools and so on, only requesting an independent specialist's assessment in particularly difficult cases.
- The 'prolonged' criterion further restricts CPP-D to those whose disabilities are likely to result in death, or are likely to be long continued (with no possibility of working within a year) and of indefinite duration (they have no fixed date when they could return to work).

- The ‘severe’ criterion means that the disability prevents the claimant ‘from regularly pursuing any substantially gainful occupation’. This means the claimant’s disability stops them from performing all of the tasks required in a job, or from doing enough work in a given period of time to meet a typical job description. It does this ‘regularly’ if the limitations are continuous, though episodic, cyclical and recurring medical conditions can all be considered continuous if they seem to prevent people from working over an extended period of time.

Most crucially of all, ‘any occupation’ does not mean literally any occupation nationally, unlike in, say Australia. Instead, it means ‘an occupation in which a person might reasonably be expected to be employed’, and explicitly takes into account three personal characteristics that ‘directly affect a person’s ability to work’:

- *Age*: ‘With increasing age there is a gradual reduction in the reserve capacity of most body organs. This can affect a person’s ability to recover from injury or illness and his or her ability to sustain work.’
- *Education*: ‘Generally speaking, the more education an individual has the more likely it is that the person will be able to do some form of work.’
- *Work experience*: ‘Skills acquired in a previous job or jobs may enable a person to find other work that is suitable to the person’s limitations and restrictions.’⁵⁹

Yet these personal characteristics are sharply distinguished from ‘socio-economic conditions’ (such as local labour demand) that are explicitly ignored, as confirmed in case law. The federal agency further stresses that people’s lack of work must be partly *because* of their disability, with the adjudicator having to look at a wide range of evidence to see if this is more likely than not (eg looking at their work history before and after the development of the disability).

Lessons for the UK

This is the clearest statement we have seen so far about how some real-world factors in incapacity can be included while others are excluded. This comes despite the considerable flaws of the Canada system, which even the OECD sees as especially strict, and which leave many people to try and self-insure privately against the risk of disability. The example of Canada further shows that real-world assessments are not necessarily generous, and more generally that the *type* of assessment is different from its *generosity*, as we also see when comparing the superficially similar systems in Sweden and Denmark.

The United States⁶⁰

Incapacity benefits

For those who stereotype the US system as providing stigmatised, residualised welfare payments, the detail of the US incapacity system will come as something of a shock. In fact, incapacity benefits fall on the other side of the ‘welfare’ vs ‘social security’ divide that dominates US income transfers, and social security payments are relatively generous, with a broad political constituency of support to defend them. The two main federal Social Security Administration incapacity benefits are the more generous contributions-based Disability Insurance (DI), and for those who do not qualify, the means-tested Supplemental Security Income (SSI). DI has a five-month waiting period that is intended to allow people to recover from short-term illnesses (as well as act as a disincentive for those who can work), but SSI is theoretically payable for the month following the application, much as there are delays in practice.

Assessment of eligibility

There is a single disability determination process for both DI and SSI, which is managed by the Social Security Administration and decided by Disability Determination Services (DDS) in a claimant’s home state. It uses a definition of disability that (barring some amendments) dates back to 1974. Incapacity is:

*the inability to engage in any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment, which can be expected to result in death, or which has lasted, or can be expected to last, for a continuous period of at least 12 months.*⁶¹

As this makes clear, impairments must in the first instance be medically determinable – occupational therapists and other non-medical clinicians are only consulted after this criterion has been met. While DDS can recommend a further ‘consultative examination’ or speak to the claimant by phone, it *must* give priority to evidence from the claimant’s treating physician, although it can ask them for more detail. This is one of several reasons why the system is beset with long delays.⁶² A public outcry of an attempted tightening of eligibility in the 1980s also means that DDS has to prove that there has been a medical improvement prior to saying that someone is no longer entitled to benefits.

Once impairment has been established, there are then two ways of being found eligible for DI or SSI. First, the client’s impairments are compared to a ‘listing of impairments’, which details several hundred diagnoses and impairments considered severe enough that the DDS simply assumes they limit work activity. Other impairments or combinations of impairments can also be considered equivalent to a listing if they produce the same symptoms as a listed impairment. In the early years of the programme the listings accounted for more than 90 per cent of claims, but by the mid-2000s it had dropped to about half.

Alternatively, a claimant’s actual work capacity is directly assessed. This is done through a ‘Residual Functional Capacity Assessment’ (RFC), which establishes functional capacity (in a way akin to the WCA), and then compares this to the claimant’s relevant past work, and then against any work in the national economy. Mirroring the Canadian test, it assesses whether claimants ‘cannot, considering their age, education, and work experience, engage in any other kind of substantial gainful work that exists in the national economy’ – age, education and work experience being the same three factors singled out in Canada. It also similarly separates these three characteristics from wider

labour market factors, noting that their assessment ignores ‘whether such work exists in the immediate area in which they live, or whether a specific job vacancy exists for them, or whether they would be hired if they applied for work’.⁶³

Lessons for the UK

The American innovation is to use a structured tool to help assess real-world incapacity. This was needed because the Social Security Administration had to prove that the claimant can engage in work available somewhere in the national economy, and they needed something that was defensible in court. For many years they have used a large database of work requirements in different occupations – called the Dictionary of Occupational Titles (DOT), and created for entirely different purposes – to justify which occupations are available to people with which limitations; indeed, they even designed the SI/SSI criteria around it. Yet the technical challenges in creating a valid database should not be underestimated. DOT is now outdated, and its replacement is not suitable for disability assessment. A dedicated panel spent five years (2008–2012) looking into this, and decided that a dedicated new Occupational Information Service database was needed, but Congress reportedly balked at the price, and a less expensive version is currently being developed.

The US case confirms what we learnt from Canada, and further shows that occupational databases can be used in real-world assessments, even if this is a technically complex and charged issue.

The Netherlands⁶⁴

Incapacity benefits

Among benefit experts, there are two things that the Netherlands is known for. The first is the ‘Dutch disease’, the high rate of incapacity claims that developed in the 1980s followed by a continuing series of reforms, anticipating the later rises and responses seen in most other high-income countries. The second

is the heavy incentivising of employers to rehabilitate their employees – to the point that Dutch employers are responsible for the first two years of their employees’ sickness claims, unless they have a strong rehabilitation plan. The benefits system that we describe therefore comes after this initial period of sickness, much later in people’s sickness or disability trajectories than the UK or most of the countries reviewed here. But beyond this, our argument is that the Dutch system perhaps offers the most important lessons for a real-world rethinking of the WCA.

From 2006, the Dutch system consists of three main benefits:⁶⁵

- *WGA* (Werkhervatting Gedeeltelijk Arbeidsgeschikten), a benefit for either partially disabled or temporarily disabled people, for a maximum of 38 months
- *follow-up benefit*, a much less generous benefit after people’s eligibility for WGA has expired
- *IVA* (Inkomensvoorziening Volledig Arbeidsongeschikten), a relatively generous benefit with no time limits for people considered to be permanently fully disabled, often for people who have already claimed WGA for some time

Assessment of eligibility

One assessment seems to be carried out for all of these benefits, which is undertaken in two stages. First, a doctor employed by the social insurance agency completes a functional assessment of the claimant, covering 28 different types of task required in different occupations. Some tasks here are similar to the WCA, but others cover more specialised functional capacities such as tolerance of vibration or reactions to heat. The agency’s doctors can (with the claimant’s consent) ask for information from the treating doctor or claimant’s employer, and can hire a specialist; there has been an increasing emphasis on establishing that the limitations are caused by medical conditions rather than non-medical factors. Over a third of claimants are said to have such great impairments that they have ‘no lasting capacities left’, and are awarded the benefit at this point.

For others, the impact of these limitations on potential earnings is then assessed by a different person who is an expert in occupational health. This expert has to find three types of job that the claimant could do, given their limitations, education, skills and work experience; if they cannot find three jobs then the claimant is considered fully disabled. A further complexity within the Dutch system – not one that would necessarily work in the UK – is that it takes into account previous earnings, with a disabled person's current earning capacity determined by earnings in the middle of the three best-paying occupations that they can do. A person must have at least a 35 per cent reduction in earnings capacity to be eligible for partial benefits, and nearly half of applicants now are found ineligible for disability benefits because their disability-related earnings reduction is below this threshold.

Lessons for the UK

Like the Americans, the Dutch have a large, dedicated database that helps the labour market expert match people's functioning, education, skills and work experience with the requirements of different jobs. This system is called Claimbeoordelings- en Borgingsysteem (CBBS), and contains up-to-date information gained from on-site observations by labour experts. As of 2012 it contained 7,000 observations across 250 major occupations in the Netherlands; for each it lists 28 functional capacity demands as well as the skills required to do the job, hours and working patterns and so on. To reduce the costs of this exercise, the system does not collect data on the other 1,000 occupations that technically exist in the country, omitting rare occupations and focusing more on lower-skilled occupations that a greater proportion of people are qualified to do.

As in nearly every country, the Netherlands' incapacity assessment explicitly says that local labour demand – the person's actual ability to get these jobs – should not be taken into account; this is a deliberate change in practice in response to the so-called 'Dutch disease' of the 1980s and 1990s. But it is still a real-world assessment as it considers what jobs a person with

particular skills, qualifications and impairments can actually do. It has not been beyond criticism – in its early days it was found in court to be defensible but insufficiently transparent, verifiable and testable – but since then it seems to have faded into the background, a mark of success for an incapacity assessment. While the Netherlands and the US share this idea of using a database for real-world assessments, CBBS seems to offer the more successful version at present.

4 Rethinking the WCA in Britain

In the real world, incapacity is about whether someone's functional impairments interfere with their ability to get or keep a job, given who they are. This definition of incapacity forces us to think about what jobs normally involve; indeed, one of us has elsewhere found that declining workplace autonomy – which makes it harder to cope with impairments at work – partly explains rising incapacity in Britain.⁶⁶ It also forces us to think about employers' willingness to make exceptional changes for disabled people, particularly as the WCA currently finds people fit for work on the assumption that employers will make significant adjustments (see chapter 2).

Our focus here, however, has been on how we *assess* real-world incapacity, based on our review of incapacity assessment in seven countries in the previous chapter. In this concluding chapter, we draw together five lessons for a real-world rethinking of the WCA in Britain, and then suggest a series of steps towards delivering it in practice. We should stress that the nature of the assessment is separate from how many people are considered eligible for incapacity benefits, or how generous these benefits are – a generous or stringent system can exist within each principle of assessment, as the case studies have shown.

Lessons from other countries

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

In different ways, all of the countries in this review have a form of 'real-world assessment'. Often this begins with the same sort of functional assessment as the WCA – but then goes beyond this to look at whether people are actually incapacitated. This is no surprise for the social democratic countries – we chose them

for the review for this reason – but it is striking that even the other Anglo-Saxon welfare states have a greater consideration of real-world factors than the UK. For example, Canada’s strict system explicitly says that age, education and work experience ‘directly affect a person’s ability to work’, and are therefore considered in their incapacity assessment.

This is not to say that all follow an identical method; countries consider real-world factors in very different ways. For example, the definitions of work capacity vary: some countries ask whether people are able to work part time (New Zealand, Australia); other countries look at the percentage reduction in people’s earning capacity (Sweden, Netherlands); while Denmark considers whether a person would be able to get a subsidised ‘flex-job’. Some of the assessments also explicitly take into account individual factors such as education or age (eg Canada, Netherlands, Sweden) which affect people’s real-world work capacity, while others do not. But it is simply not the case that real-world assessments are utopian and unworkable; instead, it is the WCA that appears strange 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, as suggested for the UK by Professor Richard Berthoud,⁶⁷ and a little like the system used by some countries. For example, people’s own doctors in New Zealand are asked to decide whether the claimant is able to work 15 hours per week, without a structured process to help them determine this (most of the countries we studied make more use of people’s treating doctor than the UK). Even in the UK, the WCA has increasingly made use of discretionary ‘special’ or ‘exceptional’ circumstances (see chapter 2), and there is a move towards personalised employment support and conditionality that inevitably involves some element of discretion. This does not necessarily mean that assessments are entirely outside the control of policy makers; there are many ways of controlling discretion in bureaucracies, as we see in New Zealand, Sweden and

Denmark. But many people seem to think that it is indefensible to have unstructured tests for benefit eligibility that work differently in different regions (see chapter 2), and it is difficult to ensure consistency in any such discretionary system.

However, it is also 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 (both 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 perform. Such a system has two key advantages. First, the claimant gets a clear message about why they are being found fit for work: it is because they are assessed as capable of doing particular occupations, and does not deny that they have genuine limitations that may limit their ability to undertake other occupations. Second, this test has a much stronger link to employment support than the WCA. By showing which jobs the claimant would be capable of, and in what circumstances, it provides the building blocks on which successful return-to-work strategies can be devised (indeed, some sort of vocational profiling and job matching is needed within many of the most successful strategies for helping disabled people return to work⁶⁸).

Lesson 3 We can separate real-world incapacity from unemployment

One of the challenges of real-world incapacity assessment is separating incapacity from unemployment. As we said above, there is no getting around this problem: in the real world incapacity is *intrinsically* linked to employability, and attempts to avoid real-world factors such as the WCA are destined to fail to measure incapacity accurately. 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, even if non-medical factors are taken into account in the assessment, many countries have emphasised that functional

impairments still need to be caused by medical conditions – known in the Netherlands as ‘the causality principle’. Canada even goes as far as reviewing a variety of evidence to check that non-employment is caused by medically linked impairments rather than other factors. A striking exception to this exists in Sweden, where people can be classified as having a ‘socio-medical disability’ for having a non-medical disadvantage in the labour market, such as being a migrant with poor Swedish language skills. While we are definitely not recommending this for the UK, it makes some sense in the context of the Swedish system, where such groups can only be given suitable support if classified as disabled.

Second, it is common to explicitly specify that local labour demand is *not* taken into account in the assessment. This is crucial; as we saw above, a previous UK minister has opposed a real-world assessment on the mistaken assumption that this inevitably means an inconsistent, ‘spatially-specific’ assessment in different parts of the country. This is not the case; the Canadian framework explicitly says that ‘we would not find one [claimant] disabled because unemployment is high while the other was not’, and the Australian, Dutch and American systems are similarly unambiguous. These systems all consider real-world factors in the sense that they look at which jobs a person could realistically undertake, given their personal characteristics (including non-medical factors like age and qualifications) – but not whether there are vacancies for these jobs at the present time. This is often a deliberate change from what are perceived to be the flaws in past practice.

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, with 6.5 million counted as disabled under the Equality Act 2010,⁶⁹ and many of these people – together with others with shorter-lasting impairments – face genuine disadvantages in the labour market, even if

their disabilities are not sufficient for them to be classified as entitled to incapacity benefits. There is a compelling logic (discussed in chapter 2) for the existence of incapacity benefits, and clearly those who are not realistically able to work should receive these benefits. But despite this, 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.

This is most critical in Australia and New Zealand, where nearly all disabled people are expected to claim the general unemployment benefit for the first two years of their impairment. While our review did not focus on how conditionality was being applied in different countries, we do know that nearly half of Newstart Allowance claimants in Australia are exempt from conditionality at any one time, many of whom are sick or disabled. In these systems, long periods of failing to find work are part of the eligibility criteria for the more generous (and less conditional or unconditional) disability benefit, as they are when moving from sickness to long-term disability benefits in Denmark, Sweden and the Netherlands – something Deborah Mabbett terms a 'procedural approach' to incapacity assessment, and which does not appear to cause sickness claimants to turn down jobs in these systems. It would seem reasonable to treat long periods of worklessness on unemployment benefits as evidence of incapacity among those with impairments, rather than continually and forlornly seeking to 'activate' them.

In contrast, the British system deals badly with health problems among those claiming Jobseeker's Allowance (JSA). Jobcentre Plus advisers 'have the flexibility to tailor conditionality', according to the current minister, but a senior DWP civil servant recently admitted that 'not all Jobcentre advisers had been aware of this'.⁷⁰ It is therefore unsurprising that charities and disability activists report examples of disabled people being (wrongly) told by job centres that they could not claim JSA if they could not meet the conditionality requirements. This assumption that people found fit for work by the WCA have no health barriers is particularly extreme when we consider

that a DWP-sponsored expert panel found that 83 per cent of those found fit for work would need ‘on average, two or three’ workplace adjustments (see chapter 2). While there are promises that this will be improved under Universal Credit, 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 (whether we take success to mean accurate assessments, perceived legitimacy, or something else). 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 extremely difficult to know even if a country’s system as a whole achieves good outcomes for disabled people; there are no trustworthy data telling us which countries are successful in getting disabled people into work and securing them against poverty (although the wider Rethinking Incapacity project is trying to estimate this). But even if these data did exist, then teasing out the role of the assessment itself would be almost impossible. The OECD does present some statistics on the accuracy of incapacity assessments, but this is because of the pressures to produce some numbers, rather than because these numbers are credible.⁷¹

To make matters even more difficult, to the extent that an incapacity assessment is working well, then it will not attract any attention, which makes it even harder to find any information about it. We therefore are left to assume that the Dutch system of structured incapacity assessment is more successful than the American system, on the grounds that there are fierce debates in the latter but little comment in the former – but it is impossible to say whether this is due to the systems themselves, or because of the delays, almost non-existent unemployment benefits and

litigious culture surrounding the US system. It is also clear that the high levels of incapacity claims in nearly all of the countries here are a political issue, which reflects the wider structural issues that lead so many people to be excluded from the labour market in the early twenty-first century. No country feels it has cracked the problem, and even if no other countries are currently subject to the outcry over the WCA, there is nonetheless a restless discontentment with many aspects of their incapacity system in most countries.

Towards a new incapacity assessment

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 setting up a new incapacity assessment:

- *Commit to replacing the WCA with a real-world incapacity assessment.* Further research will be useful to understand the nature of real-world incapacity, and how disabled people's wider circumstances make it easier or harder for them to work. But even without this, we know that there is no meaningful definition of incapacity that is not based in the real world.
- *Create a wide-ranging expert panel to develop the new incapacity test.* The US created an expert panel with expertise ranging from psychometrics to law, just to develop the database underpinning their system. And while we have not dwelt on this here, 'disability' is a general term for a wide variety of different conditions and limitations, all of which need to be considered in detail for a new system. The time and resources necessary to replace the WCA should not be underestimated.
- *Undertake study visits to key countries, particularly the US and the Netherlands,* to provide essential detail on how these systems work in practice. This would also guard against false idols – New Zealand introduced reforms based on a misunderstanding of the UK's successes, and it does not seem sensible to mirror their misunderstandings in reverse.

- *Look at how the public and other key groups respond to any proposals.* As Dr Paul Litchfield has said, a guiding principle of reform must be that ‘any assessment should not only be fair but be perceived as such’. Yet there is surprisingly little work on what the public take to be a ‘fair’ incapacity system.
- *Estimate the costs of a new assessment system – but also the savings that it could generate.* Introducing additional or longer assessments would have a cost, but we already collect much information on real-world incapacity in order to provide decent employment support (as Scope has noted⁷²), and the costs of a fuller initial assessment would therefore be counterbalanced by savings elsewhere. We are also likely to achieve better employment outcomes from an improved assessment, not least because the widespread distrust of the WCA encourages people to ‘hunker down’ on benefits rather than risk experimenting with work.⁷³
- *Involve disabled people from the outset.* Any new system needs to be developed in collaboration with the many different groups that represent disabled people, ranging from established disability charities to grassroots movements – learning from the way that NDIS was developed in Australia (see footnote 51).

The next three years of the Rethinking Incapacity project (described on page 11) will contribute to some of these steps. The project will investigate the role of non-medical factors in incapacity in Britain and across Europe. It will explore public opinion on incapacity, using a new survey and deliberative workshops with key groups. And it will try and show which countries do better and worse in getting disabled people into work, overcoming the limitations that make existing data unreliable. 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 has shown 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.

Notes

- 1 DWP, 'ESA: outcomes of Work Capability Assessments: claims made to Mar 2014 and appeals to Sept 2014', Dept for Work and Pensions, Dec 2014, <https://www.gov.uk/government/statistics/esa-outcomes-of-work-capability-assessments-claims-made-to-mar-2014-and-appeals-to-sept-2014> (accessed 20 Dec 2014).
- 2 On the fear of the brown envelope, see K Garthwaite, 'Fear of the brown envelope: exploring welfare reform with long-term sickness benefits recipients', *Social Policy & Administration* 48, no 7, pp 782–98, 2014, and her blog post, K Garthwaite, "'On benefits and proud"? Not for these long-term sickness benefits recipients', blog, 18 Nov 2013, <http://blogs.lse.ac.uk/politicsandpolicy/archives/37634> (accessed 20 Dec 2014); similar findings have been reported by the researchers Donna Reeve and Ruth Patrick. On the reported health consequences of the WCA, see the non-representative poll of 884 sick or disabled people in which 95 per cent said that the WCA had damaged their health, which is discussed in R Burgess et al, *Assessing the Assessors: The Work Capability Assessment's culture of contempt*, Sheffield: Centre for Welfare Reform, 2014. On anecdotal reports of the WCA contributing to suicides, see E Bradford, 'Benefits assessment led to woman's suicide says watchdog', BBC News Scotland, 26 Mar 2014, www.bbc.co.uk/news/uk-scotland-26740651 (accessed 27 Jan 2015).
- 3 This includes Citizens Advice, *Not Working: CAB evidence on the ESA work capability assessment*, London: Citizens Advice, 2010; BMA, 'Scrap work capability assessment, doctors demand', news from the BMA annual representative meeting, British Medical Association, 28 Jun 2012, <http://bma.org.uk/news-views-analysis/news/2012/june/scrap-work-capability-assessment->

doctors-demand (accessed 20 Dec 2014), and the movement of disabled people known as Spartacus: Centre for Welfare Reform, *The People's Review of the work capability assessment*, We are Spartacus, 2012, www.centreforwelfarereform.org/library/type/pdfs/the-peoples-review-of-the-wca.html (accessed 20 Dec 2014) among many others.

- 4 J Warren, K Garthwaite and C Bambra, 'After ATOS: is ESA fit for work and does the WCA have a future?', *Disability and Society* 29, no 8, pp 1319–23, 2014.
- 5 J Pring, 'Incompetence, discrimination and "fraud": the US company that could take over from Atos', Disability News Service, 16 Oct 2014, <http://disabilitynewsservice.com/2014/10/incompetence-discrimination-and-fraud-the-us-company-that-could-take-over-from-atos/> (accessed 27 Jan 2015).
- 6 Work and Pensions Committee, *Employment and Support Allowance and Work Capability Assessments*, London: House of Commons Work and Pensions Committee, 2014.
- 7 See for example, R Reeves and K Green, 'How Labour would reform the Work Capability Assessment', *Independent*, 16 Apr 2014, www.independent.co.uk/voices/comment/how-labour-would-reform-the-work-capability-assessment-9265479.html (accessed 27 Jan 2015) (Labour); L Brooks, 'What would welfare look like in an independent Scotland?', *Guardian*, 4 Jun 2014, www.theguardian.com/politics/scottish-independence-blog/2014/jun/04/welfare-independent-scotland-referendum-scottish-government-report (accessed 27 Jan 2015) (SNP); and the discussion on Atos in Parliament: *Hansard*, 28 Jun 2012, www.parliament.uk/edm/2012-13/295 (accessed 27 Jan 2015) (individual MPs).
- 8 P Litchfield, *An Independent Review of the Work Capability Assessment: Year five*, presented to Parliament pursuant to Section 10 of the Welfare Reform Act 2007, 2014.

- 9 There is a previous review that looks at incapacity assessment in the EU15 countries, but it spends relatively little time on the issues that the UK most needs to deal with, and is now over ten years old. See D Mabbett, *Definitions of Disability in Europe: A comparative analysis*, Brussels: Directorate for Employment and Social Affairs, European Commission, 2003. A few people or bodies have started to look beyond Britain's borders, including Dr Paul Litchfield in his final independent review of the WCA (Litchfield, *An Independent Review of the Work Capability Assessment*), and an influential report from the Spartacus network of disabled people (Spartacus Network, *Beyond the Barriers: A Spartacus Network report into Employment Support Allowance, the Work Programme and recommendations for a new system of support*, 2014), but in both cases the international reviews were brief.
- 10 B Baumberg, 'What is incapacity?', *Demos Quarterly* 3, Summer 2014.
- 11 DWP, *A Guide to Employment and Support Allowance: The Work Capability Assessment (ESA214)*, updated Jan 2013, Dept for Work and Pensions, 2013.
- 12 People can fail to score 15 points but still qualify for ESA if...
- being found fit-for-work would lead to 'a substantial risk to the mental or physical health of any person', as long as this would not be significantly reduced by 'reasonable adjustments' or 'taking medication'
 - they are 'terminally ill' (death expected within six months), or suffering from 'a severe life-threatening disease' that is 'uncontrolled' by any 'recognised therapeutic procedure'
 - they have (or are recovering from) cancer, subject to a series of other conditions
 - they are undergoing in-patient treatment, including residential addictions treatment, or sometimes during whole weeks during which they have certain types of treatment (eg haemodialysis)
 - they are in full-time education or training and receive DLA
 - they are pregnant and meet a series of other conditions

- 13 DWP Technical Working Group, *Transformation of the Personal Capability Assessment: Technical Working Group's phase 2 evaluation report*, Dept for Work and Pensions, 2007, www.scie-socialcareonline.org.uk/transformation-of-the-personal-capability-assessment-technical-working-groups-phase-2-evaluation-report/r/a11G00000017wp7IAA (accessed 27 Jan 2015).
- 14 DA Stone, *The Disabled State*, Philadelphia: Temple University Press, 1984.
- 15 Cited in J Gulland, "Excessive sickness claims": controlling sickness and incapacity benefits in the early 20th century', paper presented to the Social Policy Association annual conference, Lincoln, 2011.
- 16 K Palmer and R Cox, 'A general framework for assessing fitness for work' in K Palmer, I Brown and J Hobson (eds), *Fitness for Work: The medical aspects*, 5th edn, Oxford: OUP, 2013.
- 17 The WCA descriptors of functioning are vaguely related to work – a clear statement is difficult to find, but the DWP Technical Working Group suggests that the WCA compares people to the 'functional capability that a reasonable employer would expect of his workforce'. See DWP Technical Working Group, *Transformation of the Personal Capability Assessment*. Yet this makes no sense when looking at combinations of impairments; impairments have been assigned an arbitrary severity score, which is then added to another severity score, irrespective of whether there are any jobs that someone with that particular combination of impairments might be able to do. Moreover, the Technical Working Group seems not to have actually looked at any actual jobs that someone with lower levels of impairments might be able to do.
- 18 Mabbett, *Definitions of Disability in Europe*. This is similar to the most recent statement by the DWP when pressed at the Work and Pensions Select Committee 2014 (q443 in the Oral Evidence

session of 11 June 2014), where James Bolton of DWP said that ‘the WCA is not looking for someone who is fully fit for work. It completely recognises that people with health conditions and disabilities can work, and it tries to recognise that it is not unreasonable to expect people with health conditions and disabilities to work, but there are some for whom it probably is not reasonable. That is what it is attempting to do.’

- 19 Citizens Advice, *Not Working*.
- 20 Spartacus Network, *Beyond the Barriers*; Citizens Advice, *Not Working*.
- 21 Litchfield’s use of the term ‘biopsychosocial’ here differs slightly from conventional uses of the term, which focus on psychological and cultural reactions to disability and the idea that people’s main problem is the way they think about their disability. However, it is a contested term – for an insight into its politics, see J McArdle, ‘UNUM/DWP/Atos scandal: transcript – Prof Sir Mansel Aylward defends his record, makes pledge when confronted by Black Triangle and DPAC at IFDM2012’, Black Triangle Campaign, 15 Sep 2012, <http://blacktrianglecampaign.org/2012/09/15/unumdwpatos-scandal-transcript-prof-sir-mansel-aylward-defends-his-record-makes-pledge-when-confronted-by-black-triangle-and-dpac-at-ifdm2012/> (accessed 20 Dec 2014).
- 22 Litchfield, *An Independent Review of the Work Capability Assessment*.
- 23 Baumberg, ‘What is incapacity?’
- 24 C Grayling, *Hansard*, 8 Jun 2011, Q340, www.publications.parliament.uk/pa/cm/201012/cmselect/cmworkpen/1015/11060802.htm (accessed 28 Jan 2015).
- 25 R Berthoud, *The Work Capability Assessment and a ‘Real World’ Test of Incapacity*, Colchester: Institute for Social & Economic Research, University of Essex, 2011.

- 26 M Harrington, *An Independent Review of the Work Capability Assessment: Year two*, London: Stationery Office, 2011.
- 27 Similarly, there are ‘special’ or ‘exceptional’ circumstances for the ‘work-related activity’ capability test, but these are slightly different from those in the ‘work’ capability test (see footnote 12). People will be placed in the Support Group when:
- being placed in the WRAG would lead to ‘a substantial risk to the mental or physical health of any person’
 - they are ‘terminally ill’ (death expected within six months)
 - they have (or are recovering from) cancer, subject to a series of other conditions
 - they are pregnant and meet a series of other conditions
- 28 S Kennedy, *Time Limiting of Contributory Employment and Support Allowance from 30 April 2012*, London: House of Commons Library, 2012.
- 29 Cystic Fibrosis Trust et al, *Progressive Conditions and the Work Capability Assessment: Submission for the year 5 independent review*, Cystic Fibrosis Trust, MND Association, MS Society, Parkinson’s UK and National Rheumatoid Arthritis Society, 2014.
- 30 N Coleman and F Parry, *Opening Up Work For All: The role of assessment in the Work Programme*, London: Centre for Economic and Social Inclusion, 2011.
- 31 DWP, *The Disability and Health Employment Strategy: The discussion so far*, London: Dept for Work and Pensions, 2013.
- 32 Coleman and Parry, *Opening Up Work For All*.
- 33 Mabbett, *Definitions of Disability in Europe*.

- 34 Coleman and Parry, *Opening Up Work For All*; Work and Pensions Committee, *Employment and Support Allowance and Work Capability Assessments*; Litchfield, *An Independent Review of the Work Capability Assessment*.
- 35 T MacInnes et al, *Disability, Long-Term Conditions and Poverty*, London: New Policy Institute, for the Joseph Rowntree Foundation, 2014. It is worth noting that the DLA and PIP assessments have their own challenges – claimants expect them to be more medicalised than they are (P Gray, *An Independent Review of the Personal Independence Payment Assessment*, 2014), and the test does not attempt to assess the actual costs that people face, instead relying on functional impairments as a proxy.
- 36 See D O’Leary, *Something for Something: Restoring a contributory principle to the welfare state*, London: Demos, 2013.
- 37 D Heap, ‘The rights and responsibilities of working-age sick and disabled benefit claimants in austerity Europe’, *Journal of Contemporary European Studies* 22, no 2, pp 143–56, 2014.
- 38 The greater public support for disabled vs unemployed people is shown each year in British Social Attitudes Survey reports, and can be seen across time and place; see W van Oorschot, ‘Who should get what, and why? On deservingness criteria and the conditionality of solidarity among the public’, *Policy & Politics* 28, no 1, pp 33–48, 2000. See also C Bambra and K Smith, ‘No longer deserving? Sickness benefit reform and the politics of (ill) health’, *Critical Public Health* 20, pp 71–84, 2010.
- 39 This section focuses on the accuracy of the WCA in assessing incapacity, rather than the accuracy of Atos in assessing the WCA, which itself has been criticised – Citizens Advice found that 16 of the 37 reports studied had serious inaccuracies; see Citizens Advice, *Right First Time? An indicative study of the accuracy of ESA work capability assessment reports*, London: Citizens Advice, 2012. This was one of the reasons the DWP gave for terminating the Atos contract, described above.

- 40 J Verbeek and F van Dijk, 'Assessing the ability to work', *BMJ* 336, no 7643, pp 519–20, 2008
- 41 Work and Pensions Committee, *Employment and Support Allowance and Work Capability Assessments*.
- 42 Figures taken from the Ministry of Justice, 'Statistics at MOJ', www.justice.gov.uk/statistics/tribunals (accessed 20 Dec 2014), and DWP, 'Employment and Support Allowance: outcomes of Work Capability Assessment', Dept for Work and Pensions, 25 Jul 2013, <https://www.gov.uk/government/collections/employment-and-support-allowance-outcomes-of-work-capability-assessment> (accessed 20 Dec 2014). Note that these refer to initial assessments rather than repeat assessments or reassessments, as these are likely to be more comparable over time.
- 43 See They Work For You, 'Work Capability Assessments: Appeals', taken from Hansard, House of Commons debate, 28 Jun 2011, www.theyworkforyou.com/wrans/?id=2011-06-28b.61405.h (accessed 27 Jan 2015).
- 44 'Mandatory reconsideration' requires people to request the DWP to reconsider its decision before launching an appeal – and to claim JSA in the meantime. The Government has itself claimed that the fall in appeals is due to this; see DWP and M Penning, 'Minister welcomes sharp fall in appeals against benefit decisions', press release, Dept for Work and Pensions, 13 Jun 2014, <https://www.gov.uk/government/news/minister-welcomes-sharp-fall-in-appeals-against-benefit-decisions> (accessed 20 Dec 2014).
- 45 The results look even more striking for claims made in recent months, but this may partly be because there are increasing numbers of claims in progress (particularly given the backlogs in ESA assessments that have made the headlines) – for example, as of the statistical release on 11 Dec 2014, over one-quarter of the

claims from Jan 2014 are still in progress. As the DWP notes in its statistical releases, the cases resolved first are those where people are least likely to be found fit for work, and this is likely to skew the trend.

- 46 The use of this regulation has increased from 2–3 per cent of all completed assessments in 2009 to over 20 per cent of completed assessments in mid–2013; see also Litchfield, *An Independent Review of the Work Capability Assessment*, pp 36–8, which presents further evidence that most of these cases concern mental health.
- 47 Litchfield, *An Independent Review of the Work Capability Assessment*; Spartacus Network, *Beyond the Barriers*.
- 48 This summary is based on N Lunt and D Horsfall, ‘New Zealand’s reform of sickness benefit and invalid’s benefit’ in C Lindsay and D Houston (eds), *Disability Benefits, Welfare Reform and Employment Policy*, Basingstoke: Palgrave Macmillan, 2013; G Fleming and S Page, ‘Invalid’s and sickness benefits: the United Kingdom’s recent reforms’, Maxim Institute, 2010, <http://igps.victoria.ac.nz/WelfareWorkingGroup/Downloads/Submissions/141-Maxim-Invalids-and-Sickness-Benefits-UK-NZ.pdf> (accessed 27 Jan 2015); Work and Income New Zealand, ‘Work capacity medical certificate: guide for health practitioners’, nd; as well as the websites of The Social Security (Benefit Categories and Work Focus) Amendment Act 2013 (www.legislation.govt.nz/act/public/2013/0013/latest/DLM4542304.html (accessed 20 Dec 2014), Work and Income New Zealand (www.workandincome.govt.nz/individuals/), the New Zealand Citizen’s Advice Bureau (www.cab.org.nz/vat/money/ben/Pages/DisabilityAllowances.aspx (accessed 20 Dec 2014), and the New Zealand Social Justice Blog, <http://nzsocialjusticeblog2013.wordpress.com> (accessed 20 Dec 2014).

- 49 This summary is based on Australian Bureau of Statistics, *Labour Market and Related Payments: a monthly profile*, Aug 2014; OECD, *Sickness, Disability and Work: Breaking the barriers*, vol 2: Australia, Luxembourg, Spain and the United Kingdom, Paris: Organisation for Economic Co-operation and Development, 2008; J Brown, *Working Towards Self-reliance: Three lessons for disability pension reform*, St Leonards NSW: Centre for Independent Studies, 2011; J Brown, *Defeating Dependency: Moving disability support pensioners into jobs*, St Leonards NSW: Centre for Independent Studies, 2010; D McVicar and R Wilkins, 'Explaining the growth in the number of recipients of the disability support pension in Australia', *Australian Economic Review* 46, no 3, pp 345–56, 2013; R Galvin, 'Can welfare reform make disability disappear?', *Australian Journal of Social Issues* 39, no 3, pp 343–55, 2004; J Mays, 'Australia's disabling income support system: tracing the history of the Australian disability income support system 1908 to 2007', unpublished PhD thesis, Queensland University of Technology, 2012; Dept of Social Services, *Guide to Social Security Law*, Australian Government Dept of Social Services, 2015.
- 50 'Severe disability' is similar to the assessment for the Support Group in the UK – it is about whether the most disabling single impairment that a claimant has would be enough to qualify them for DSP, ignoring the combined impact of multiple impairments. Note that some people are also considered to have 'actively participated' in a programme before 18 months has elapsed, if their impairment stops them from improving their ability to find work through the programme.
- 51 It is also worth noting that the disability assessment that the (British) Labour Party has been talking about in Australia is a separate system, the National Disability Insurance Scheme (NDIS), which provides self-directed support for disabled people. NDIS is unrelated to the system of income replacement benefits, and given headlines like 'Blitz on welfare to fund national disability insurance scheme' (*Australian*, 24 Dec 2014),

we may even see declining income protection for some disabled people to fund greater generosity in NDIS to others.

- 52 This summary is based on Heap, ‘The rights and responsibilities of working-age sick and disabled benefit claimants in austerity Europe’; D Caswell, L Eskelinen and SP Olesen, ‘Identity work and client resistance underneath the canopy of active employment policy’, *Qualitative Social Work* 12, no 8, 2013; D Caswell and HB Kleif, ‘Disability pensions and active labor market policy’, *Journal of Social Service Research* 39, no 4, pp 572–84, 2013; MO Moller and D Stone, ‘Disciplining disability under Danish active labour market policy’, *Social Policy & Society* 47, no 5, pp 586–604, 2013; D Etherington and J Ingold, ‘Welfare to work and the inclusive labour market: a comparative study of activation policies for disability and long-term sickness benefit claimants in the UK and Denmark’, *Journal of European Social Policy* 22, no 1, pp 30–44, 2012; OECD, *Sickness, Disability and Work: Breaking the barriers: Denmark – will the recent reforms make it?*, Paris: OECD, 2009; OECD, *Mental Health and Work: Denmark*, Paris: OECD, 2013; D Mabbett, ‘Some are more equal than others: definitions of disability in social policy and discrimination law in Europe’, *Journal of Social Policy* 34, no 2, pp 215–33, 2005; Mabbett, *Definitions of Disability in Europe*; D Etherington and J Ingold, ‘Social dialogue, partnership and the Danish model of activation of disabled people: challenges and possibilities in the face of austerity’ in C Grover and L Piggott (eds), *Work, Welfare and Disabled People: Is employment really the answer?*, Bristol: Policy Press, forthcoming).
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The Work Capability Assessment (WCA) – which assesses eligibility for the main out-of-work disability benefit, Employment and Support Allowance – is widely seen to be failing. Part of the problem is how the assessments have been delivered, but even after Atos is replaced by Maximus, the root problems of the WCA will remain: the WCA simply does not assess claimants' capability for work.

The main alternative that has been suggested is a 'real-world assessment'. This looks at whether a person could actually get or keep work, given their impairments and given who they are. However, the Minister for Employment raised concerns about their fairness, while the official reviewer of the WCA felt that there was little evidence of what such a test might look like in practice.

This report – the first from the ESRC-funded Rethinking Incapacity project – meets this challenge by looking at how seven other countries assess incapacity. It finds several lessons for the UK:

- Real-world assessment is possible – even commonplace
- A standardised real-world test is possible
- We can separate real-world incapacity from unemployment
- Unemployment benefits must also be a 'safe place' for disabled people

It concludes with a series of recommendations for how the new government in May 2015 can take the steps towards a new incapacity assessment. Our view is that this should be based on a real-world idea of incapacity – not for political reasons, but because it better reflects everyday realities.

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