

## Limited capability

# CAB evidence on the first year of employment and support allowance administration

### Introduction

It is a year since the introduction of employment and support allowance (ESA). From 27 October 2008, the new benefit replaced incapacity benefit (IB) for new claimants who could not work because they were sick or disabled. It is a central plank of the Government's policy to help people move off incapacity benefits and into work.

The introduction of the new benefit has been a huge challenge for Jobcentre Plus who administer it, the independent advice sector and claimants. It represents a new approach to incapacity and sickness benefits, and makes new demands on all those involved. The benefit itself is more complicated than previous incapacity benefits – there are more routes through it and therefore more decisions to be made, a tougher, more 'work-focused' test of entitlement, known as the work capability assessment, an additional 'work-focused health related assessment' and a 13-week assessment period.

In addition to this, ESA was introduced only a fortnight before major changes were made to lone parent benefits, and at the same time as Jobcentre Plus faced unprecedented demand for their benefits and services, as huge numbers of newly-unemployed and redundant people needed their support for the first time, as the economic downturn turned into a full-blown recession. We are concerned that the substantial increase in resource made available to Jobcentre Plus in response to the recession has been concentrated on jobseekers allowance (JSA) and the social fund, resulting in a lack of support for ESA claimants.

#### Inside

<input type="checkbox"/> Purpose of report	Page 2
<input type="checkbox"/> Background	Page 3
<input type="checkbox"/> The telephone-based model	Page 3
<input type="checkbox"/> The customer journey for claiming ESA	Page 4
<input type="checkbox"/> Recommendations	Page 11

## Purpose of report

This is the first report in a series of working papers on ESA. The purpose of this paper is to provide a commentary on the experiences of CAB clients and advisers of the administrative problems they face in claiming ESA. It aims to provide timely feedback to Jobcentre Plus and the Department for Work and Pensions (DWP), with a view to improving both policy and practice.

Citizens Advice is pleased to be working with Macmillan Cancer Support on this first paper, and we welcome their associated report, *Failed by the system – Why the ESA doesn't work for people living with cancer*, which uses examples from the Macmillan helpline as well as cases from Citizens Advice Bureaux supported by Macmillan funding.

Our next paper will focus on the work capability assessment (WCA): we are already seeing strong evidence of people with substantial barriers to work being deemed fit for work as a result of their WCA. This is causing a great deal of concern and we will thoroughly evaluate this evidence for the next paper to be published in the new year.

Further papers in the series are likely to include our clients' experiences of decision-making and appeals, and the use of sanctions in ESA.

## Background

Citizens Advice Bureaux have dealt with a total of more than 85,000 enquiries about ESA since April 2008, gradually building up to the launch of the new benefit in October 2008. Between January and October 2009, bureaux dealt with 61,254 enquiries about the benefit.

Early indications suggest that the technical roll out of the new benefit went fairly smoothly (there was no repeat of the well-documented problems following the introduction of Jobcentre Plus's phone-based system for claiming benefits in 2005, for example). In the first six months of ESA, the percentage of bureaux enquiries which focussed on poor administration of ESA was 1.2 per cent – approximately the same as the equivalent percentage of IB enquiries (1.3 per cent). Considering this was a new benefit for Jobcentre Plus staff to administer, this was a very encouraging start.

We are concerned, however, that our statistics for the last six months show that the percentage of bureaux enquiries dealing with poor administration of ESA (now over two per cent) is 50 per cent higher than the equivalent for IB. This is also reflected in a sharp increase in CAB qualitative evidence on ESA problems.

## The telephone-based model

The benefit system is now firmly established as a telephone-based model. Our 2007 evidence report, *Not getting through*, highlighted the difficulties for many bureaux clients using the telephone to claim the benefits to which they are entitled.<sup>1</sup> Since telephone contact centres became the 'preferred method' of claiming in 2006, our clients and advisers have reported difficulties getting through, spending a long time on hold, racking up considerable costs (especially

from mobile phones) and then having to manage a long telephone conversation, often needing to navigate through many official documents to find specific pieces of information with which to make their claim.

A telephone-based model can often work well for some individuals. For people with mobility problems or limited access to transport, being able to make contact from home is a great advantage. When the claim progresses smoothly, it can be a quick and efficient method of managing the process, and can work out better for Jobcentre Plus and customers alike. When things go wrong, however, even those who prefer the telephone can face significant problems in resolving problems.

For many people with mental health problems, people with some physical disabilities – hearing and speaking disabilities in particular – the telephone is not appropriate. Some people have no access to landlines and have to rely on pay-as-you-go mobiles, which are expensive and may incur extra charges on otherwise free or low-cost calls such as benefit lines. One in five individuals in the DE socio-economic groups and nearly a quarter of people on incomes of less than £11,500 per year only have access to a mobile phone, with controlling cost being the main motivating factor.<sup>2</sup> When things go wrong it is especially difficult for these groups to cope and the effects can be particularly damaging.

By definition, people applying for ESA are likely to be in difficult circumstances, and may be coping with serious mental health problems or recent life-changing diagnoses. They often live in isolation and have few social or financial resources. We are very pleased that Jobcentre Plus have committed to offering face-to-face help for those who find it difficult to cope with the phone, but many people who need this extra help are not

1 Citizens Advice (2007) *Not getting through: CAB evidence on the new system for claiming benefits from Jobcentre Plus*  
2 Ofcom (2008) *The Consumer Experience 2008 Research Report*

identified early, and if the information they receive is not accurate, the problems can be multiplied.

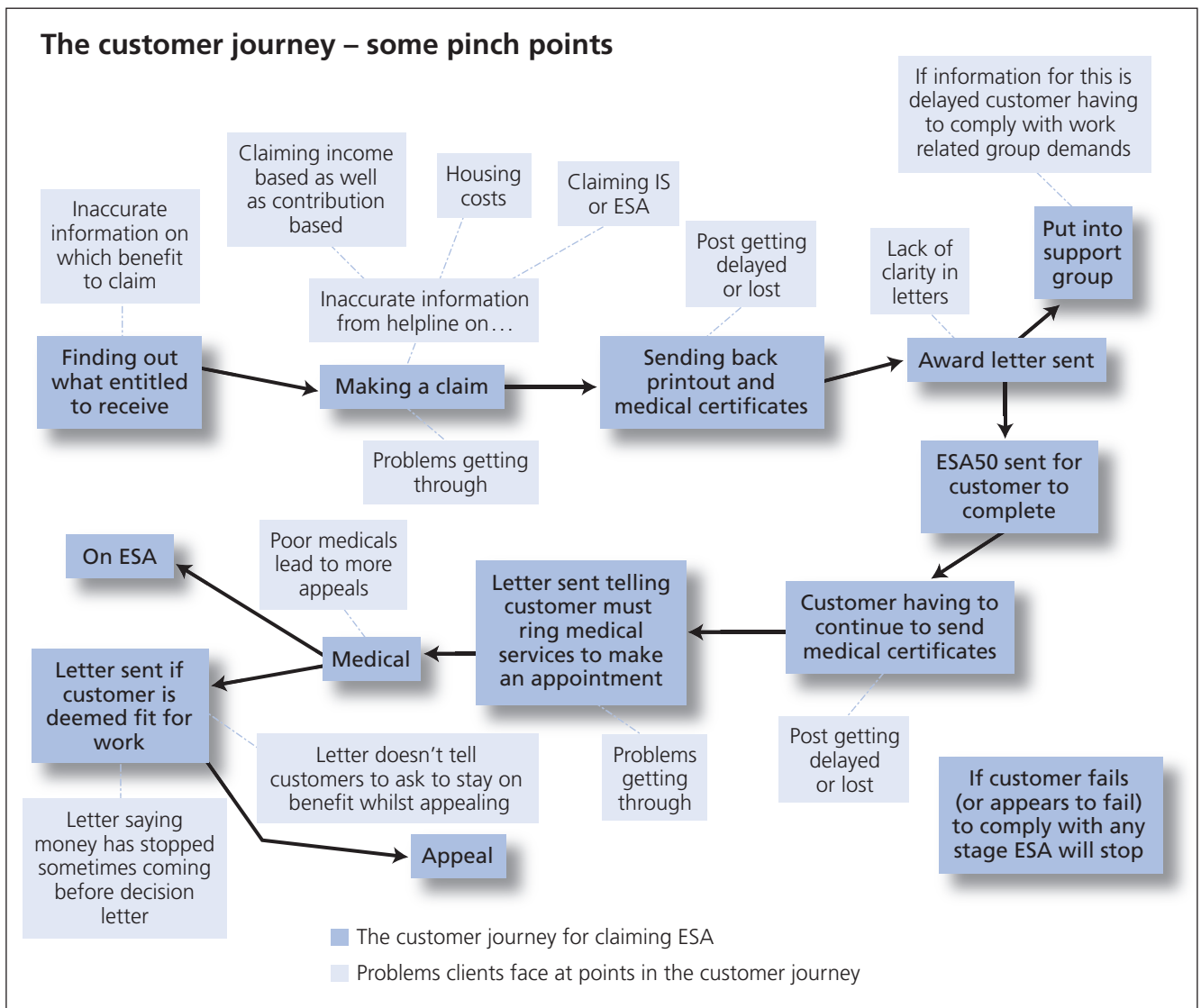
The telephone-based model is now commonly used by a range of organisations, and mechanisms have been developed to deal with the problems inherent in this sort of system. We welcome the commitment that Jobcentre Plus has made to making it easier for people using mobiles and are pleased that they have recently instructed their telephony agents to proactively call back customers who ring 0800/0845 numbers using a mobile phone.

## The customer journey for claiming ESA

Our evidence demonstrates systemic problems at a number of points in the customer journey. The following diagram shows a simplified journey through the system (leaving out areas such as work-focused interviews and the WCA which we will cover in future reports), and highlights problems at each stage. The report then examines these stages in more detail, illustrates the impact on our clients and offers some solutions.

### Finding out what to claim

The first point of contact for many of our clients is frequently a Jobcentre Plus local office, but the system is only set up to deal



with a small minority of claimants in this way. While they are keen to help, Jobcentre Plus staff may not always have the expertise to offer accurate information. Poor information confuses claimants and delays claims, increasing the risk of financial hardship. It also reduces the confidence of both claimants and advisers in the ability of Jobcentre Plus staff to provide accurate advice about benefits.

A Dorset CAB client was left totally confused about whether she should claim JSA or ESA, following poor advice from her local Jobcentre Plus office, and was left with only £12 to live on for four days after becoming unwell and having to leave her job. She had an urgent need for a crisis loan and spent two hours on the phone making an application for both the crisis loan and ESA. She was very distressed at having to explain her circumstances many times when Jobcentre Plus first told her to apply for JSA, and then ESA. She reported that she felt she had been treated with rudeness and lack of care.

A CAB client from South-East Wales was advised by staff at the Jobcentre to make a claim for income support on the grounds of ill health. She phoned the benefits claim line and they helped her to complete the income support claim form. This was refused and she was told she had to make a new claim for ESA. The ESA section would not process her claim however, until her original sick note was with them, but it had been sent to the income support section because of the original advice.

When the wrong benefit is claimed or the wrong process followed it can cause the customer considerable stress, and frequently results in financial hardship. It also generates unnecessary extra administrative work for Jobcentre Plus staff.

A CAB client from South-East Wales was advised by her employer that she should claim ESA. The employer had sought advice from Jobcentre Plus as to what she should claim as she was over 60. When the client phoned to claim ESA, they said that because she was over 60 she should be claiming pension credit. When she phoned the pension credit helpline she was told that because in effect she still has a job she should be claiming ESA.

A single client of a CAB in the West Midlands had her original claim for ESA turned down because she was still receiving income support (IS). She then phoned Jobcentre Plus to stop her claim for IS, but her ESA didn't start. The client was then sent a new claim form for ESA. The adviser was told that Jobcentre Plus couldn't use the original claim form because they are sent for storage as soon as the claim is rejected and cannot be retrieved. The client had to manage on very little money while waiting for the claim to be processed.

### **Making a claim**

Some of our clients face significant problems when attempting to make a claim through the helpline. The difficulties getting through to helplines and the problems ringing from mobile phones recur repeatedly in bureau evidence, and at all stages of the journey.

A CAB in Northumberland reports that a client was told by the Jobcentre to make a claim for ESA. They gave him a telephone number to use which did not work. After two days he eventually got through to the helpline who take claims for ESA, to be told they could not take his claim over the telephone as the computer system was down.

Even when customers do get through to the helpline, the information they receive is not always accurate. We have seen particular

problems caused by the transition between statutory sick pay (SSP) and ESA. ESA can be claimed up to three months in advance if the claimant knows when s/he will qualify. Customers who have been diagnosed with a serious illness and stop work, often have to absorb a sudden drop in income. While claiming SSP for six months, they often use up their savings and struggle to cope financially. It is then impossible for them to cope with no benefit at all for the few weeks while ESA is put into payment, if the claim is not accepted in advance.

One Worcestershire CAB client had tried twice to claim ESA before her SSP stopped, but had been refused both times and then had to face a gap in her benefits.

We understand that DWP have now altered their computer system so that claims can be taken in advance, as allowed in the legislation. We welcome this development and stress the importance of ensuring that this information is widely disseminated.

Claims where people are still eligible under the old rules for incapacity benefit or income support seem to cause particular problems when people ring the helpline.

An adviser from a Hampshire CAB helped a client on incapacity benefit to ring the helpline to claim a top-up of income support as his IB entitlement was less than his IS applicable amount. The client was incorrectly told that he couldn't claim IS. Instead he would have to claim ESA and close his claim for IB. Had he not been being helped by the CAB adviser he would have permanently lost his right to claim IB.

A CAB client in South-East Wales would also have permanently lost their right to claim IB if the adviser hadn't insisted that the linking rules meant he could make a claim for IB not ESA.

Like jobseekers allowance, entitlement to ESA can be based on the claimant's National Insurance contribution record or on their means. In some cases, they can be entitled to both types of ESA. Our evidence shows that Jobcentre Plus staff can often be confused between contribution based ESA (ESA(C)) and income based ESA, (ESA(I)). We have seen a worrying number of cases where the helpline only appears to have taken a claim for ESA(C) even though the customer would also be entitled to a top-up of ESA(I), because, for example, they have a partner or they have a mortgage and will qualify for housing costs, or even because they have no entitlement to ESA(C).

A man sought advice from a CAB in Greater Manchester about his ESA claim. The CAB discovered that he had been turned down for ESA(C) because he didn't have sufficient contributions but he would have been eligible for ESA(I) if the claim had been taken when he phoned the helpline to put in his original claim. By the time he came to the bureau, they calculated he had lost about £1,000 of benefit.

A client of a Lincolnshire CAB was discovered to be on ESA(C) but was not getting the top-up from ESA(I) allowance for his wife that he was entitled to receive. Her sole income was disability living allowance.

### Delays in processing claims

Bureau evidence includes a lot of complaints about delays in claims being processed, sometimes leading to very serious consequences, as illustrated in the following cases:

A client of a CAB in the West Midlands demonstrates how serious delays can be in some cases. The client, his wife and his two young children, had to manage on £129.52 a week (child benefit and



child tax credit) for eight weeks, while waiting for a decision on his claim for ESA. As a result of this delay, their housing and council tax benefits could not be processed and the client accumulated significant rent arrears and was facing eviction.

A Dorset CAB spent four months trying to get their client's ESA claim in payment. The client had recently been released from prison and suffered from severe mental health problems, which were made much worse by the delays in payment of his benefits, to the extent that he began to self harm.

When claimants move from one benefit to another, it is important that claims are coordinated so that one benefit starts as soon as another has stopped. Claimants who have been on a benefit for some time frequently have no savings, and can quickly fall into hardship if there is a time-lapse between payments.

A Sussex CAB client had no money to buy nappies for her baby and was angry and frantic at the difficulty she had getting through to Jobcentre Plus on the phone. She was moved from income support to ESA but her IS stopped and her ESA failed to start. She had tried ringing ESA but found the phone line constantly engaged. The bureau also failed to get through and had to help the client make a claim for a crisis loan.

Delays are often caused by medical certificates being mislaid somewhere in the system. Where documents are moved frequently from one office to another, often separated by large distances, it is inevitable that some will end up in the wrong place especially when customers send separate documentation such as a medical certificate and may not realise the need for it to be clearly identified with a NINO and address. Currently, however, there is no effective tracking system for mail, so that

once it has gone astray it is very difficult for customers to establish that they did send it or to find out where it is.

A Dorset CAB client was assisted by his adviser and his community psychiatric nurse (CPN) to make a claim for ESA. The DWP at Chippenham requested medical certificates to support the application for ESA and these were sent by the CPN. The medical certificates appear to have got lost in the system. The client ran out of money and was caused much hardship by the delay in receiving ESA. His phone was cut off, making it difficult for the bureau and the DWP to make contact with him, and he got into arrears with his rent. His illness was exacerbated, he became very stressed and he was taken back into the mental health care unit for in-patient treatment. After the CAB arranged for further certificates to be sent, the client was eventually awarded ESA from March 2009.

A reliable tracking system would help resolve this problem, as would allowing claimants to deliver important documents to a local Jobcentre Plus office and receive a receipt.

Increasing delays cause an increase in the number of calls required to chase progress. Bureau evidence shows that clients are finding it very difficult to get through by phone, and also that there are increasing problems for advisers trying to get through on the escalation numbers provided through our agreed liaison procedures.

A Hampshire CAB reported that a woman who had switched from jobseekers allowance to ESA experienced severe problems when delays occurred in the processing of her ESA claim, including threats of court action for rent arrears from her landlord for rent arrears. The CAB made several calls to two local Jobcentres to sort out her claim without

success. Consequently the CAB tried the escalation number several times during the time the client was at the bureau, without success. The CAB had to make two more calls before they spoke to someone who could sort out the client's claim.

### Delays in allocating claimants to the support group

Many customers who should be automatically exempt from the WCA are facing inappropriate administrative procedures because the right information is not being sought or dealt with in time. Exempted clients should not have to complete the complex ESA50 form.

Jobcentre Plus appears to be having particular difficulty in applying 'special rules' criteria to ESA for terminally ill people. The ESA claim form states that if the claimant has already sent a DS1500 certificate (which terminally ill people can use to claim automatic entitlement to disability living allowance (DLA)) to DWP as part of a DLA claim, they do not need to send a second one with the ESA claim, as DWP will "tie both applications up". Bureaux have seen a worrying number of clients for whom this process is not working. By nature of their condition, cancer patients can be particularly affected by this problem, and it is highlighted in the associated report published by Macmillan Cancer Support (*Failed by the system – Why the ESA doesn't work for people living with cancer*).

A Wiltshire CAB client was stranded on the lower rate of ESA, and faced considerable confusion, when he made a claim for ESA following a diagnosis of terminal prostate cancer, with secondary bone cancer. He also suffered from depression. The DWP failed to transfer his DS1500 from his DLA claim to his claim for ESA, resulting in his not automatically receiving the higher rate of benefit. The client should have been

exempt from the medical assessment, but was sent an ESA50 (claim form) and told to complete it by a certain date or risk losing his benefit. His ESA claim was, on this occasion, dealt with more quickly than his DLA claim. The CAB adviser was told by the DLA helpline that there was no automatic process in place to inform ESA of a DLA claim, with a DS1500.

A Nottinghamshire CAB client who also should have been exempt from the WCA and assigned to the support group because of the radio/chemotherapy treatment he was receiving was also kept on the lower rate and also faced the requirement to complete an ESA50. The adviser was told that ESA could not process the claim until a medical report was received from ATOS Healthcare.

### Award letters

Much of our evidence refers to the lack of clarity in official letters. Many of them appear to contain phrases from a drop-down menu which seem to contradict each other, and leave claimants totally confused. For example one letter contained the following phrases:

"You are not getting any more Employment Support Allowance."

" We may still credit you with National Insurance contributions while claiming Employment Support Allowance."

"HOW THE MONEY WILL BE PAID"

Often it is not clear to clients whether they have been awarded ESA contribution based or income based, even though this is a vital piece of information. Income based benefits passport claimants to many other benefits such as free prescriptions. Nor does it advise customers who are on the contribution based benefit that if they have no other income or savings they would be entitled to free prescriptions if they claimed through the low income scheme. Some letters are so unclear



that even advisers who have an understanding of the structure of the benefit cannot understand them.

An adviser from a Lincolnshire CAB had to telephone Jobcentre Plus to clarify whether their client had been awarded benefit. The letter the client had received did not mention the payment of contribution based ESA. She was told that the client had been awarded contribution based ESA and that the letter had merely confirmed that he could not have income based ESA.

### **Sudden loss of benefit payments**

A number of clients come into bureaux because their benefit has stopped suddenly. This is often because their previous medical certificate has expired and the new one has not been received.

A client went to a North Yorkshire CAB in a very distressed state. His benefit had stopped but he had no idea why. He had tried repeatedly to ring ESA to find out what the problem was but he had been unable to get through and his credit on his mobile phone had run out. The adviser rang the helpline but after 20 minutes holding on could not get through. He rang the escalation number who were very reluctant to deal with the problem. Once he persuaded them to deal with the problem they told him that they had not had the client's new medical certificate. The adviser confirmed with the client's GP that they could issue a copy of the medical certificate which they had issued one month earlier, and arranged with ESA that the client could hand in the copy of his medical certificate at the local Jobcentre Plus office and collect his benefit. This involved the client in a 25 mile round trip. The bureau had to lend him the money to do this.

A Somerset CAB reported similar problems. Their client faced six weeks without ESA when it was stopped without warning. She was young, a single parent and severely disabled. She had recently separated from her partner following domestic violence and had notified Jobcentre Plus of the change in her circumstances. She was unable to get through to Jobcentre Plus on the phone to query the stoppage and received no written explanation. The CAB was also unable to get through when the adviser tried on her behalf. The adviser commented, "when you phone, you are told that you are on hold, and then immediately that all lines are busy. On the fourth attempt, we finally got through to speak to someone after 28 minutes. The cost of this from the client's mobile phone would have been prohibitive. Unfortunately the person who answered the phone seemed to have an inadequate grasp of the benefit – and we had to write to Jobcentre Plus to get answers!"

Bureau advisers have reported seeing clients who had allowed their claim to lapse because they felt too ill to cope with the stress of dealing with the problems. For a benefit which exists precisely to help people who are ill, this is clearly unacceptable.

A Buckinghamshire CAB reported they had seen a client who had let his claim lapse because he had felt too ill to cope with the problems he had faced in making a claim.

A Hampshire CAB had seen a client in October 2009 who had put in a claim in December 2008 but had given up trying to get it into payment because he could never get through on the helpline.

### **Making an appointment for a medical assessment**

From the customer's point of view, an ideal system is one in which procedures are triggered automatically. The more steps the claimant has to take, the more stressful the system becomes – especially if the process does not happen smoothly. In this case, the claimant must ring the medical services helpline in order to make an appointment for a medical assessment. If they don't get through and make the appointment, they know that their benefit is likely to stop. This can be very stressful, particularly for customers who may have to make repeated calls, often from mobile phones.

A Yorkshire CAB reported that a man, living in a caravan, had received notification that he has to ring medical services to arrange a medical for his ESA. He has made numerous attempts to phone the number but has yet to speak to anyone. As he has only a mobile phone, the calls to the 0800 number are not free. The CAB noted that the client is making phone calls that he cannot really afford, and is concerned that he is at risk of having his ESA withdrawn if he fails to arrange a medical.

### **When the client is found fit for work**

Our evidence shows that many of our clients have serious health problems and do not believe they are ready to work, often supported by evidence from their doctors. They are very shaken when they receive a letter telling them their ESA will stop, and their first instinct is often to ring the helpline to find out why. In this fraught and difficult position, it is vital that they are able to access the right information to decide what to do next – particularly whether or not to appeal. If there were an easy way of requesting the medical report on which the decision has been based, this would enable some clients to decide whether they should appeal.

A client of a CAB in Somerset faced great difficulty and increased stress trying getting through to the ESA helpline after he had been turned down for ESA. The client was forced to give up his job on the advice of his GP because he was suffering from severe back pain, caused by the nature of his work. The client tried to call DWP to find out why he had been turned down, but he was cut off each time he called. The CAB adviser also tried to call on the client's behalf, but was also cut off on four separate occasions.

A client of a Cornwall CAB spent two and a half hours on the telephone trying to get through to the right part of Jobcentre Plus to request written reasons for his being turned down for ESA, following a medical assessment. The bureau also tried to call on his behalf, so that he could appeal the decision, but stopped trying after 20 minutes waiting for a reply.

The letters sent to tell clients that they have been found capable of work inform clients of their appeal rights. However the letters which we have seen so far have not informed customers that if they wish to stay on ESA while appealing, they must specifically say so on the appeal form. This was causing considerable stress and financial difficulty to customers, as well as additional calls to the benefit helpline and increased delay in resolving the problems. We understand that Jobcentre Plus may have now resolved this issue by a change in the letter sent to inform customers they have been found capable of work. We welcome this change.

Some bureaux have reported clients who have not received a letter telling them they have been deemed fit for work, nor the points they have been awarded. The first indication of a problem with their claim is when they discover that their money has stopped.

A Norfolk CAB client who had recently undergone a medical received a letter from Jobcentre Plus, saying that her mortgage interest payments had stopped because she was no longer receiving ESA. She had not had a letter notifying her of this decision and had to ring Jobcentre Plus to find out why it had stopped. The adviser commented that "Our client believes she should have been informed that the ESA had stopped and advised that she had not been awarded 15 points. She is worried that, depending on the length of time her ESA has been stopped, money may have been going out of her bank account without any going in."

## Recommendations

**Citizens Advice recommends that Jobcentre Plus must improve access to ESA by:**

- providing additional short term staff resource in areas where there are particular problems getting through on the phone
- ensuring that staff pro-actively operate the call-back system, and allowing customers to text contact centres to request a call-back
- ensuring there is accurate knowledge amongst staff advising claimants on ESA
- checking call-centre scripts to ensure that accurate information is given
- ensuring that those who need extra support are identified early
- ensuring that ESA (and other Jobcentre Plus benefits) can easily be claimed via a paper claim form or face to face at Jobcentre Plus offices, by those who need it.

**Citizens Advice recommends that Jobcentre Plus must improve delivery of ESA by:**

- ensuring that both contact staff and advisers are fully trained and aware of the ESA rules, so they can deal with the range of issues highlighted in this report
- ensuring that those exempt from the WCA are properly identified
- improving communication with the Pension, Disability and Carers Service so that claims under 'special rules' criteria are fast-tracked and handled efficiently
- improving the quality of letters
- tackling the issue of mail getting lost in the system
- making the transition from ESA to JSA (and vice versa) easier for claimants.

**Citizens Advice recommends that the DWP must urgently address assessment for ESA by:**

- conducting an independent review of the work capability assessment to determine if it is effectively analysing the problems and disabilities faced by people applying for ESA
- ensuring that Jobcentre Plus staff and ATOS medical assessors are equipped to ask claimants the right questions, and are fully trained to gather accurate and substantial evidence about their capacity to work, so that they are correctly assessed for ESA.



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