HOUSE OF COMMONS

Work and Pensions Committee

Oral evidence: Employment and Support Allowance and Work Capability Assessments, HC 302

Wednesday 11 June 2014

Ordered by the House of Commons to be published 11 June 2014

Written evidence from witnesses:

- Department for Work and Pensions

Watch the meeting

Members present: Dame Anne Begg (Chair); Debbie Abrahams; Graham Evans; Sheila Gilmore; Glenda Jackson; Kwasi Kwarteng; Nigel Mills; Anne Marie Morris; Teresa Pearce; Mr Michael Thornton; Dame Angela Watkinson

Questions 407- 544

Witnesses: **Rt Hon Mike Penning MP**, Minister of State for Disabled People; **Jason Feeney CBE**, Benefits Director; **James Bolton**, Deputy Director, Health and Wellbeing Directorate; and **Iain Walsh**, Deputy Director, Working Age Benefits Division, Department for Work and Pensions gave evidence.

Q407 Chair: Can I thank the Minister for coming in this very fine morning? The sun is splitting the pavement outside, but we are in here with some very serious work. This is the final evidence session of our inquiry into the operation of the Employment and Support Allowance and the Work Capability Assessment. Minister, could you introduce your team for the record?

Mike Penning: Thank you very much. It would be easier if I ask them to introduce themselves, and they will tell you their specific roles and why I have asked them to be with me today. Jason?

Jason Feeney: Hi, I am Jason Feeney. I am the Benefits Director at DWP.

Iain Walsh: I am Iain Walsh, and I cover working age benefits, including Employment and Support Allowance.

James Bolton: I am James Bolton, the Department's deputy chief medical adviser.

Q408 Chair: You are very welcome this morning. One of the criticisms we have heard of the Work Capability Assessment is that it is trying to do two things, or it is trying to do more than one thing, which makes it more confusing for claimants. The main reason for the Work Capability Assessment is to assess eligibility for Employment and Support Allowance, so it is basically an eligibility test for benefit, but at the same time it is meant to be identifying help that someone would need in order to move into work. Do you think we are asking too much of one assessment to try to fulfil both of those functions, which are not necessarily that easily compatible?

Mike Penning: I will do an opening comment, and I am sure the professional team will come in if they wish. I do think the training is correct for those that are doing the assessment—that it is right and proper it is done in the way it is done. There are obviously people who have their own views as to how it can be done, but the key to this—if we can—is not to add too many assessments but to have an assessment that actually does what it says on the tin. While it is not a perfect arrangement, the way we are trying to do it and the improvements we are trying to make as we go through mean that it is important that it is done together. James?

James Bolton: The Work Capability Assessment itself, when it was first envisioned, had two parts: there was the WCA part, and then there was the Work-focused Health-related Assessment. Things have changed and things have moved on as policy has progressed and the Work Programme has come in, and things like that. If you look at the Work Capability Assessment, its purpose is the first of the two things you said: it is to determine benefit eligibility. The primary legislation sets out that it is looking at what it is reasonable to expect someone to do, and it is looking to divide people into one of three groups: people it is reasonable to expect to work; people it is reasonable to expect to do work-related activity; and people for whom it is not reasonable to expect them to do any of those things.

It is really important not to see it in isolation, because it is a big part of the much wider social security system. Once the decision is made, there is different support that then begins to look at the kinds of things that individuals need to help them. If they are found fit for work and they go on to Jobseeker's Allowance, then Jobcentre Plus can make allowances for people with health conditions and disabilities. If they are in the Work-related Activity Group (WRAG), that is about finding appropriate conditionality and applying it to that individual and giving them the support they need to get into work, and obviously for those in the Support Group, it is ensuring they get the right level of benefit.

Q409 Chair: It is that second part that is not working, because the WFHRA—the Work-focused Health-related Assessment—as you pointed out in the original design, was a key element in making that judgment. Once the eligibility was assessed, that judgment as to what the barriers to work were and what help an individual needed was picked up, but at the moment that is not necessarily being picked up, particularly for people who are in the WRAG. They are quite a long way from work and not getting any help when they present at Jobcentre Plus.

James Bolton: There are a number of things in that area. First of all, the WFHRA itself was not working when we evaluated it and looked at it early on—it was not being effective.

Q410 Chair: But you looked at it only in 2010. The system came live online for some new claimants in 2008. It hardly got a long outing in order to find out whether it was working or not.

James Bolton: Indeed, but—I do not know the exact number—we had done tens of thousands of assessments by that point. The other thing is that things change quite a lot. The Work Programme came in and we started working with Work Programme providers.

Q411 Chair: But the Work Programme providers do not get any of the information from the WCA. My point is that the information that is gathered in the WCA is not passed on to the people that would make that difference, who would help the individual through the barriers to work.

James Bolton: Indeed, and that is one of the things that Professor Harrington picked up in his reviews, it is one of the things that Dr Litchfield has picked up in his review, and it is one of the things we are looking at now at the moment as part of the response to Dr Litchfield's review.

Mike Penning: If I could come in there, the Committee has been looking at this for a very short time; it did come in in 2008. One of the things I have asked for—Litchfield and Harrington said this, but I have asked for this as well—is for work to take place on how we best share the information, which I think, Chair, is what you are alluding to: how information is better shared across the pathway, for want of a better word; that is, how the information we have gathered during one assessment is shared with others. That is the work we are doing at the moment and the work I have asked to take place, as well as what came out of the reviews.

Q412 Chair: That is reassuring, inasmuch as one of the things that was certainly picked up throughout the whole inquiry was that sharing of information simply does not happen, and the help that Government promises in headlines does not actually materialise either, because that information is not shared. It occurred to me on Monday, when we had Atos in front of us, that the WRAG has almost become a default group; that is where everybody ends up if they are not found fit for work and are not so severely ill or disabled

that they end up in the Support Group. As a result, the WRAG is a mismatch of different people with different needs, abilities and expectations as to whether they get into work. You have in the WRAG somebody who is in the early stages of a progressive illness, who is never going to recover and get better, and at the same time you have got someone who might be recovering from cancer, who would have an expectation of getting better and getting back to work. The WRAG does not really cater for that range of individuals.

Mike Penning: I think you have touched on something that I have literally been working on and talking on this week, and I have asked my officials to look at, particularly on progressive illnesses. The Parkinson's Society in particular have been talking to me about whether or not people with advanced Parkinson's should be in the WRAG, and that is something I am looking at now. I am going to ask my officials to go away and come back to me and explain to me whether that is the right way for that to be done, or whether people with those sorts of illnesses and disabilities should not be in the WRAG. That is something that the team are working on now. We are looking at that now. I do not think it is right to say that it is the default position where everybody can go, but there are specific disabilities and illnesses that I think are inappropriate to be in the WRAG.

Q413 Chair: One of the issues that Atos raised was the lack of communication about what this benefit and what this assessment—for them, obviously, it is the assessment—is all about.

Mike Penning: I saw that evidence and the comments from Atos. I thought some of the other comments they made were quite interesting as well, but we will probably come on to those. I will let the medical officer say his bit, but Atos are not the decision-makers. The decision-makers sit with my team here.

Q414 Chair: But they do the assessment, and they are getting it in the neck from people who are unhappy with either the way they have been treated through the assessment process or, indeed, the outcome of the assessment. I think I have said before—even in the Chamber, to you—that they have become the lightning rod for everything those who have had bad experiences have gone through. Their concern is that people have got different expectations when they go through the WCA than was some of the policy intent when the WCA was either originally designed or changed and, as a result, the dissatisfaction comes because they feel that perhaps they have been found fully fit for work when they know they are not fully fit for work. They have still got major health problems in the way of getting into work.

Mike Penning: It is for Atos to explain their position, and why they feel they—to use your language—became the lightning rod. I think there were a lot of issues as to why Atos became so unpopular in doing this contract, which is not the least of the reasons why we have negotiated a position for Atos to leave this contract, which is what I said in the House when I first became the Minister. One of the things we have discussed is whether or not we should perhaps be sharing more information with the assessors, but because they are not the decision-makers, we, and certainly my officials, did not think that was right.

Q415 Chair: It is not quite that, though. It is the general public; it is the people who are going through the assessment who do not understand the legislative language that it is couched in: that they are "fully fit for work" or, indeed, they are "fit for work-related activity". People do not understand these phrases and how they apply to them.

Jason Feeney: I deal with all the working-age benefits, and ESA is probably the most challenging of those. There is an awful lot of difficulty in terms of communicating with such a broad range of people. We are continually—as the Committee will know—updating the letters, trying to review the letters, and engaging with challenges in the third sector, and it always a challenge.

Q416 Chair: They still do not make sense to anybody. Even for those of us who actually know quite a lot about it, they still do not make sense.

Mike Penning: I think that we would all agree that we can try to use more user-friendly language, but it is a very technical benefit, and that is part of the problem. It does not matter who the Ministers are: we have tried, sometimes successfully, sometimes unsuccessfully, to make it a much more user-friendly benefit, but it is a very technically difficult benefit.

Jason Feeney: There is just one point I want to make on the back of that. We understand and appreciate that but, of course, we often have to lay out in the communications the legal basis for the decision.

Q417 Chair: Could you not do that as footnotes, in English?

Jason Feeney: The point I wanted to make was that we are putting an awful lot of time and effort—particularly in the last few months, since I took this over—into getting the decision assurance call right. Those people who are found fit for work should understand what their options are and what this means and what happens next. This time last year, we were only getting through to about 35% of people. We are now getting through to 85% of people and using a range of means—texting people and others—to make sure we can have a voice-to-voice conversation. We are not just issuing a letter and an explanation about the decision but having a conversation with the individual on the receiving end of that decision to say, "This is why we have made the decision," and really importantly—and I guess we might come back to this—"Is there anything else we should have taken account of in making that decision?" We are really keen to get the decision right as early on in the process as possible, so that is all part of the communication. It is not just about the letters.

Chair: I am sure we have got questions on that later.

Q418 Sheila Gilmore: I am sure that organisations like Parkinson's will be very pleased to find that in June 2014, you are now discussing the question of whether these people are in the appropriate place, given that this is a matter that was raised, I think, with

you when you first came into office—which is now a matter of some eight or nine months ago—with your predecessor, and with her predecessor.

Mike Penning: And the predecessors before the last election, as well.

Sheila Gilmore: This has been specifically raised and not dealt with over the last few years. But in terms, Mr Bolton, of the purpose and structure of the benefit as you explained it a few minutes ago, is it right that someone should end up being in the Work-related Activity Group for four years or, indeed, almost five years, in the case of one of my constituents? Does that not suggest that either there is a problem in the testing process, or that there is a problem in what happens to people in the Work-related Activity Group? The person I know of who has been there the longest gets one Work-Focused Interview a year. Surely, if that is a group for people who are supposed to be ready to return to work, something is going wrong in this if we have got people in it for year after year after year. Have you analysed where the problem comes in?

James Bolton: There are two different elements to that. There is the question of whether the Work Capability Assessment itself is working and determining that someone should be in the Work-related Activity Group, and therefore it is appropriate to apply a degree of conditionality and to expect them to do some work-related activity. Separate to that, having done that, there are questions about the support that that individual gets: have you got that right? Is the Work Programme working for that individual? Are they getting the right support, if they are not in the Work Programme, through Jobcentre Plus and so on? For the question on the WCA itself and whether the tool is right, the Evidence-based Review has been incredibly helpful as part of that, in helping us understand that. Determining capability for work and getting people in those right groups is an incredibly hard thing to do. The Evidence-based Review, again, showed us some of that, and therefore the WCA is always evolving. We have talked already this morning about some long-term conditions that degenerate, and that is an area that we want to look at further. The WCA itself has kept changing and has continued to evolve. It is these things like the Evidence-based Review, and like the independent reviews from Professor Harrington and Dr Litchfield, that are helping us to do that.

Q419 Sheila Gilmore: Do you think there is something wrong now with the system, if people end up in that position? This is not somebody who is in the Work Programme, so it is not somebody who is getting very much help at all. She is just simply in that group, apparently indefinitely, and I am sure she is not alone.

James Bolton: Obviously, I cannot comment on individual cases, because I do not know the details of those cases.

Chair: There must be a lot of people who have been in the WRAG since the early days.

Mike Penning: I think the questions—and they are questions for discussion and debate for us as policy-makers, and for recommendations from the Committee, although I cannot comment on the individual case that you have alluded to—of whether or not there should be a time limit for people within the WRAG, whether there should be assessment

while they are in the WRAG, and whether or not someone having one interview during the course of a whole year actually is right within the WRAG are discussion points that should be had. Of course, you can apply while you are in the WRAG to say that your condition has changed and you should be assessed again. I think there is a genuine point to ask, "Are there people in the WRAG too long? Are they getting the support they need, and is there another way that we can address that situation?" I think that is a very genuine point, and one we should look at.

Q420 Glenda Jackson: On the issue of the effectiveness of the Work Capability Assessment, have we seen the number of appeals go down or go up? On the issue of people being put in the WRAG, and you saying how complex it is, I presume not everybody in that group is a new claimant, so why is there not a distinction made for historic claimants so that they do not even have to go through the process in the first place?

Mike Penning: I can answer the first point, and then I think Jason will need to come in on the second point. I would love my statisticians within the Department today to have allowed me to say more definitively what I am going to say, but we are seeing a dramatic drop in appeals on WCA.

Chair: That is because of the introduction of the mandatory reconsideration.

Mike Penning: Yes, there are lots of different reasons as to why that could occur and is occurring. I cannot say that it is just because of the mandatory reconsideration: the statisticians will not allow us to say that, because we do not have the evidence to do so yet. There is the call process that Jason was alluding to. I hope, also, that the way we are reforming the way the assessments are done has played a part, and there will be figures out tomorrow from the statisticians' office showing that it has dropped by over 60%. There are lots of different reasons why, and we will have to analyse why that is, but it has dramatically fallen.

You have probably heard some of the judges complaining that they are not getting as many appeals as, perhaps, they would like. I must add that the judges get paid for the number of appeals that they sit on, so I think there might be a slight conflict of interest there, but I want appeals down because I want the decisions right, and we also need to listen very carefully to the new information we are getting back from the judges at the tribunals as to why they have made their decisions. The new form is definitely helping there. Certainly before I was the Minister, it used to say, for instance, that the claimant had a "compelling case". I think that was the terminology that was used. Now we have a form that actually has a box for the judges to give us their reasoning. Interestingly, one of the judges recently asked me if he could have a larger box to give us more reasoning, and feeding that into the system is going to help on the appeals side.

Q421 Chair: You have said there that anybody who gets paid for a service has a conflict of interest. That is what you seem to imply.

Mike Penning: I will need to clarify this. There is some press out there again today about the judges who sit on tribunals. One of them has just retired and is clearly complaining that there are not as many cases coming through. Now, unlike judges who sit in the High Court—and I have been to the tribunals and discussed this with them—they get paid on demand, so, in other words, they turn up to do a case review. Judges complain that there are fewer cases coming through on appeal but, actually, I think that is a good thing, because I do not want so many appeals; I want us to get the decisions right. That is the point I was trying to make.

Q422 Sheila Gilmore: Have you measured that against the number of decisions? I mean, you have got to look at things like the number of appeals against the number of decisions. Is that going to be published?

Mike Penning: That is why in the analysis, when it comes out, it will be done in that way, but if you have 10 appeals and that drops by 60% or 10,000 appeals and that drops by 60%, the percentage is still a drop. We need to analyse why that drop has taken place.

Q423 Glenda Jackson: Are you also checking the reduction in the free advisory services, which have been reduced dramatically and in the past have assisted people when they have made appeals?

Mike Penning: That will be looked at in the whole area. It will be a very important piece of analysis as to why. Interestingly enough, there is a drop in appeals across benefits at the moment, but in WCA it seems to be higher than others.

Glenda Jackson: I did ask another question.

Mike Penning: Yes, and I was waiting for Jason to answer that question.

Jason Feeney: One of the issues with the WRAG cases coming up for review—and James might want to come in and add the clinical point of view—is to make sure that we are tracking any changing conditions. It is not unknown for people who have been in the WRAG to come up for review at a fixed point in time, and the condition has deteriorated and then they get put in the Support Group. It is important for us to keep in touch with claimants to make sure that we are tracking their capability for work, and that can go either way. Some people can move into fit for work; some people can stay in the WRAG; some people can move into the Support Group. They do move in any of the three directions on review, and it is important that people in the WRAG are reviewed on a regular basis, rather than just leaving people open-ended, as we were just discussing.

Q424 Glenda Jackson: There must be historic cases where there is no possibility, ever, of any kind of improvement in the individual's condition, which everyone is aware of. Why are they still being asked to fill in the forms?

Jason Feeney: That links to the discussion we have just been having about certain conditions where the prognosis is that there is not going to be an improvement; in fact,

there is going to be a deterioration. As James was saying earlier, we are looking at those cases and whether or not they are appropriate to be in the WRAG.

Chair: We do have some questions on reassessments and the paper-based assessments later.

Q425 Debbie Abrahams: I have been heartened in terms of what you have said already, Minister, about taking a much more open-minded view of the development of the Work Capability Assessment, and that this is a dynamic process—I think that is what members of the panel have said so far—and also what you have said about the importance of evidence and statistics, and how you use that within the Department. Can I just now look at the Evidence-based Review that has been undertaken by your Department, and the comparison of the Alternative Assessment with the Work Capability Assessment? As a former academic, I have to say I was very concerned with the robustness of the methodology, and certainly when Professor Harrington came to give evidence, he agreed about the potential bias that was introduced in that. I just wondered if you could comment on that, and specific limitations that you have assessed around the process itself.

Mike Penning: Firstly, I was very surprised at Professor Harrington's comments. Professor Harrington has done three separate reviews for us, and he had not raised those concerns with me.

Debbie Abrahams: He was talking about the review of the Alternative Assessment.

Mike Penning: I appreciate that, but he had every opportunity to raise that, and had not done so. I do not think he had raised it with any of my team either. James, do you want to pick up on the specifics of the review? It is your area more than mine, because it is a very technical point.

James Bolton: Absolutely. The key thing about the Evidence-based Review was that we built an independent panel to oversee it, chaired by Professor Harrington, which included academics, to help us test the rigour of it. Something this big and this complex is always going to be an incredibly difficult thing to test. We are doing it in a live environment with claimants, and we have to be very sensitive to their needs. There is always going to be a degree of compromise, and that is why we used an independent panel and a range of experts in order to help us do that and to get the best possible assessment we could. The Evidence-based Review, while not perfect, does tell us some incredibly useful things. It tells us about the difficulty of creating any kind of gold standard for assessing capability for work, and it also allowed us to test an alternative way of undertaking these assessments. It is very interesting to take a government policy like this, which is live, and put it through that kind of rigorous external test with a commitment to publishing the results, which is what happened.

Q426 Debbie Abrahams: Getting back to the limitations, there have been statistics that have been quoted in terms of the greater reliability of the WCA compared with the alternative test and, again, that just does not hold. Surely you know that. I would take you

back to your point of how important it is to use evidence and statistics reliably. Can you comment on that?

James Bolton: I am not an academic. That is why—going back to the point I have already made—we have got this independent panel, and that is why it was chaired by Professor Harrington. They signed up to the findings; they signed up to the methodology; they worked with us throughout; and they signed up to the conclusions and findings at the end.

Q427 Debbie Abrahams: Can I take from that, then, that the Department will back-track from what they have currently said about the relative reliability of the WCA against the Alternative Assessment, because that is totally inappropriate and a misuse of statistics?

James Bolton: What the Evidence-based Review told us, and the conclusions of it—which were validated by this external panel—is that the WCA produced consistent results on the whole.

Debbie Abrahams: You cannot say that. I am sorry; you cannot say that. Based on the statistical information, you cannot say that. If we are really genuine about wanting to have a process that works—and we all want that—then we cannot make the statements that have been made around that. Can I move on?

Mike Penning: I do not think you can say that and then just move on. It is obviously an attack on the process. I am very easy-going, but whoa.

Debbie Abrahams: You have had five minutes to answer it, and you have failed to answer it. You have had five minutes to answer that question.

Mike Penning: You have made an accusation.

Debbie Abrahams: You have had five minutes to answer.

Mike Penning: If you genuinely have concerns, then I am more than happy to work with you directly as to how we do these sorts of reviews, but as James has alluded to, it was an independent group. They signed up to all of this and signed it off at the end, so they were happy as an independent reviewer. As an independent reviewer, that is where we are, but I am more than happy to say that nothing is perfect and that we need to work together on this, and if you want to help us along on that path, I am more than happy to do the same.

Q428 Debbie Abrahams: Let us move on then, if I may. Thank you for those closing remarks; I certainly will be following up on it. It is great to have the other members on the other side of the Committee also agreeing to that. Can I move on to the points around fluctuating conditions and, again, the current limitations within the WCA process? Can I ask you: in terms of the refinements that have been undertaken around the WCA, what, specifically, is happening on that?

Mike Penning: Do you want to take that, James? I have asked James to do this one.

James Bolton: Obviously, we have had three reviews by Professor Harrington. He made a total of 45 relevant recommendations. Dr Litchfield looked at those in his fourth independent review and gave a progress update in terms of how well he thought we had implemented those, and then of course he came up with 32 recommendations himself. We have accepted 19 of those, and there are 12 of those that we are doing further work on. The response to that was only two months ago, and there is a huge amount of work detailed throughout those recommendations, and also things that we have undertaken as a consequence of the Evidence-based Review, which we are now working through.

Q429 Debbie Abrahams: Professor Harrington, in his evidence to the Committee, said that fluctuating conditions had not been taken into account in changing the descriptors. Do you consider assessing fluctuating conditions important in how we are going to take the WCA process forward?

Mike Penning: I think that is exactly what I said to the Chair. I do think it is very important. It is the next real area that we need to look at very carefully, not least because people's conditions are, like it says on the tin, fluctuating. The area around hidden disabilities and other issues is also something we need to actually do. It is enormously difficult, and you also have to do it on an individual basis, but there are some conditions, like Parkinson's, where we can work much faster than before. I accept that we have to do that. Even though I think some of these comments from Professor Harrington would have been interesting if they had been fully in the reports, "yes" is the answer.

Debbie Abrahams: I think there is a distinction between fluctuating and progressive conditions.

Mike Penning: I understand that. I mean in both cases.

Debbie Abrahams: Thank you. I just wanted to clarify that.

Q430 Dame Angela Watkinson: On the same point, Lord Freud has said previously that it must be possible for all the descriptors to be completed reliably, repeatedly and safely, otherwise the individual is considered unable to complete the activity. Am I right in thinking that this commitment effectively ensures that fluctuating conditions are already being taken into consideration?

Mike Penning: Yes.

James Bolton: Yes, absolutely. It is an integral part of the assessment. It has been an integral part of the assessment since the start. It is in the handbook; it is in the health professional training. There is a specific Atos training model on fluctuations: accounting for fluctuating conditions, and the importance of doing that. It is something we revisit regularly as part of their ongoing medical education, and it forms a key part of the audit criteria and the standards to which we hold them as well. They have to make sure they have taken fluctuations into account as part of their report.

Q431 Chair: Is it not that they have not to be able to do it for six months of the 12-month period? Is there not some kind of timescale that you cannot have a downtime of a week every six months, for instance; it has to be more than that?

James Bolton: You talked about the majority of the time, and that is the consideration that health professionals are taught to apply as part of their training.

Q432 Mr Thornton: I find that a real problem. If I am an employer and someone comes to me for a job, and they say, "Most of the time I am alright"—say, 75% of the time, so we are out of your category—this is going to depend on what area of the country you are in. If you have got a very high employment rate with low unemployment and a shortage of labour, then as an employer, you might well consider people that you are going to find difficult to employ. If you are in another part of the country where there is no shortage of labour, are you going to choose the person who might be out of your office one day a week or two days a month, causing problems? Especially if you are a small employer, when you have only got four or five employees, and one of them might be causing problems for everybody else and someone else might have to pick up their work suddenly, are you going to employ that person?

If you are just going to apply a general rule that says, "If most of the time they are okay," you are not taking into account employability at all. You are assuming that because most of the time they can do it, an employer is going to put up with that; well, they are not. I am sorry, but they are not. I have been a small employer, and I am sorry, but probably in those days, if I had the choice between two people, and I knew one of them was going to be there all the time and the other was going to be out unexpectedly without warning now and then, unfortunately, I know which one I would choose. That does not seem to be taken into account when you do things with fluctuating illnesses. You seem to take no account of that at all.

Mike Penning: It is a very valid point that you make. It is one of the reasons why I have been going around the country doing the Disability Confident campaign, to encourage employers to give people opportunities and not take the option that you just alluded to. Actually, we all know that if you do take people on, even though they may on the face of it have issues that may affect your economic situation, the truth is that they are more reliable, more loyal, etc., so there is an educational process to be done there. But at the same time, we have to have a line. Where that line is is obviously an evolutionary thing, because we can move that, but there has to be some kind of general line, otherwise we would have to do it individually on every single individual case. For a benefit of this size, that would be very difficult.

Q433 Mr Thornton: Surely, it also depends on where the person is located. To be honest, where I live, the unemployment rate is incredibly low. It is probably less of a problem, although it still is a problem. It is going to be more of a problem in an area where there is 10% unemployment. I am not sure if you can just do this baseline; I think you have

to work out some kind of way of doing it much more effectively and much more fairly. I do admit it is incredibly difficult. You said earlier it is a very complex, technical benefit.

Mike Penning: I think you have hit it absolutely on the head. Wherever you put that line—and there are lots of different parts of that discussion we can have today—somebody has to put a line in somewhere. As the Committee know, on this and on the other parts, I am very open-minded about how we can improve it and how we can actually do it. I strongly believe that. If there is a way that we could do this without massively complicating what is already a very complicated benefit, given that with complication comes cost—particularly in my DEL costs—we have to do that, which is why I genuinely do welcome comments from the Committee and from others.

Q434 Debbie Abrahams: We will certainly look forward to your response to our report when we produce it. I wanted to move on now, if I could, to the difference that the expert panel made in terms of some of their assessments around people that were found fit for work—when the expert panel found them eligible for ESA, but WCA found them fit for work. I wonder, again, if you can explain this, also in light of the appalling tragedy that under the current system, so many people are being found fit for work and then are dying. What are we going to do about that? What is being done to address this?

Mike Penning: I will ask James to explain the technical side. It is absolutely right and proper, as the Minister responsible for this area, to formally say that my sympathies are with anybody that has suffered from this. If they have lost a loved one in any shape or form, whether this was a contributory factor or not, it is still a huge loss, but we are very conscious of that. I know James and the team have been doing a lot of work to make sure that we make much better contact with people. As Jason was alluding to, we must make sure that everything is explained, and then if we are aware that they are in a vulnerable group, we need to address that. James, do you want to do that, and then perhaps Jason can comment as well?

James Bolton: What the expert panel has helped us to show is just how difficult determining work capability is. They found that, of the cases they looked at, 26% of them were borderline, so they felt a quarter of the cases were very difficult. They were asked to rate their overall confidence in a case, which was up to five—five being extremely confident—and their average was four, so they were clearly having difficulty in doing this. This is groups of three panels of experts, all independent, who sit there trying to do this. We also brought in specialists, too, to have a look, and they agreed with only 62% of these panels' views. Actually saying exactly what the gold standard is, whether someone is fit for work or not, is incredibly difficult, and there is not an answer in every single case. But, then, what the Evidence-based Review did do is say, "We have a reasonable level of confidence; this is what we think," and when we looked at that compared with the WCA, there was agreement in 77% of cases. Given all those variables, that is not bad.

Jason Feeney: This goes to the answers that we were giving earlier, about the importance of making sure that, at the point at which somebody is found fit for work, there are two things that we need to get across. One is, "This is why we have reached the

decision we have reached, and this is the evidence we have taken into account, and is there any other evidence we should take into account?" because often there is a lot of frustration and confusion as to why we would have reached the decision that somebody is fit for work. We are putting a huge amount of effort into making sure we get the necessary supporting medical evidence as early as we can in the process, and the decision assurance call is a further measure where we can say, "Is there anything else you think we should be taking into account in making this decision, because we've reached this decision?"

The second thing is—and this is really important, particularly for those cases that you were talking about—the question of "What happens next? What do I do next; where does this leave me?" We have changed the script just recently on the decision assurance call. We are offering a warm handover through into claiming Jobseeker's Allowance, because there is this transition from "I thought I was not fit enough for work, and you have found me fit for work. Where does that leave me? Where is my money coming from, and what do I do next?" We are trying to make that bit of the process as smooth as possible and, again, we are always looking at trying to refine the call, trying to refine the script, and trying to make sure that people understand why we have reached the decision we have reached, where that leaves them, and what they do next. There has been a huge amount of effort on that in the last six months.

Mike Penning: For instance, on the decision letter, when I came in one of the things I asked for was to see the decision letter. The decision letter basically put it "yes" or "no", and then, "By the way, you can appeal." What was not there was, "You may be entitled to go to the Jobcentre and get benefit there, and if you have a sick note, then you can consult about that." There was this fear—a genuine, understandable fear—because not everybody realised that they were entitled to another benefit because they had been declined on this, and actually, if they were poorly and could not go to work and their doctor said so, they could put the sick note in as well. That is now all in the letter, so that you have not got that part but you go to the Jobcentre for the other part, and it is in the phone call. Financial concerns are the biggest concern that most people talk to you about.

Q435 Debbie Abrahams: Again, I recognise the change in tone, and I think that is a positive development around that. You have to acknowledge the mistakes that there have been, but how are we monitoring this? You talked about a warm handover, Mr Feeney. How is this being monitored? There are some very vulnerable people out there, and to say that we are writing to them and so on, and this is the way that we are making the communication, just does not cut it.

Jason Feeney: At risk of repeating myself, the letter is a better letter than it was before. It has got the full explanation of why we have reached the decision, but I am really focusing in on the decision assurance call, because there is a massive difference between getting a letter through the post and you and I having a conversation in which I explain to you why I have reached the decision I have reached as the decision-maker; what evidence I have taken into account; where this leaves you; and what you should do next.

At the moment, around 60% of people that we are offering the warm handover into JSA are taking up that offer.

Debbie Abrahams: 60%?

Jason Feeney: 60% at the moment.

Q436 Debbie Abrahams: Do you think that is good?

Jason Feeney: It is too early to know whether it is good or bad in that sense. More than that will move on to JSA. What we are trying to do is look at ways in which we can improve the offer. We have got it on the internet; we have got it on the telephone; we have got it on the letter, and we really want to make sure that claimants understand where they are, why we have done what we have done, and what their choices are. Some people want to reflect; they do not want to go straight on to the phone call and think, "Right, that is me into JSA." They want to sit back and think about it, and we give them all the information: the telephone numbers, the internet address, and the contact details, so that when they have had a chance to reflect on the decision, they can decide what they want to do next. The main thing is for me to provide them with the information so they understand where it leads them and what their choices are.

Q437 Debbie Abrahams: We will park that one there. Can I go back to the assessment again? I recognise what you are saying about the difficulty that there was. Minister, you are the Minister responsible for this, and I know that for the technical details you have your advisers here to support you, but there were differences between the WCA and the Alternative Assessment. How were you monitoring that to see how similar the WCA was to the Alternative Assessment, in terms of whether they were fit for work? It is a longitudinal track. It could be linked in with the warm handover and seeing whether you got it right or you really did not.

James Bolton: The Evidence-based Review was published, and we have not done further work on that data at the moment. That is finished, but it is really important to just pick up again what the Minister and Jason were saying. The Evidence-based Review itself was a technical study that was looking at the WCA as a tool to try to determine whether that tool was accurate and reliable, and I think that is what it did. That is what the Government committed to do in their response to Professor Harrington.

Chair: Order. Can I remind anybody who is in the public gallery that it is inappropriate to shout out? Thank you. Sorry.

James Bolton: That is what the publication helped us to do. As I was saying, the Minister and Jason have pointed out a whole number of other things that go on, and there is a huge amount of additional work after the bit of work that Atos do to gather the information: getting the decisions to make sure they are making the right decision; the decision assurance calls; the reasoning; mandatory reconsideration; and ultimately appeals if people do need to go down that road.

Chair: Have you finished your line of questioning?
Debbie Abrahams: I have got one more section. Does it relate to this?

Q438 Glenda Jackson: It relates directly to this. I want to go back, Mr Bolton, to what you said in one of your replies earlier. You commented on the great difficulties of the borderline decision as far as the assessors were concerned. What is the desired outcome, then? If it is that difficult, they must have a desired outcome that they wish to reach. What is it?

James Bolton: This was the expert panels, and the question put to the expert panel was whether or not they felt that person was fit for work, or whether they were not at that stage and whether they should be doing work-related activity. We invested a significant amount of time training those experts, but at the end of the day they were bringing their expertise. The point I was trying to make was that they highlighted themselves that this is a very difficult thing to do. There is no exactly clear-cut way of being able to look at a person, get the information, and know exactly what the right answer is in every single case. Sometimes, it can be very difficult.

Q439 Glenda Jackson: But with respect, that is not what I am asking you. What is the right answer? You keep on and on about the difficulties and how the experts could not come up with the solution that gave an absolutely non-arguable result. What is the desired result? Is the desired result for everybody to be able to say, "Yes, this person is fit for work"? Do you ask them if they feel they are fit for work? Sometimes you do; sometimes you do not. It may be that the individual would be fit for work, but would need a great deal of support. My colleague just pointed out the difficulties for small employers. What is the desired result from the Department's point of view?

James Bolton: The desired result is to be able to determine whether someone is fit for work, and therefore should be actively seeking work, or whether they are not fit for work at that time and therefore should not be made to actively seek work, but need appropriate support in order to help them do that. Your point on adjustments is a really important one. One of the things the expert panel found was that for around 83% of the cases, they felt that in order for that individual to work, they probably would need some kind of workplace adjustment to help them do it.

Q440 Glenda Jackson: Is that opinion reflected in the decision—
James Bolton: Yes, absolutely.

Glenda Jackson: —as far as where that individual then goes to claim benefit, if they are allowed to claim benefit?

James Bolton: From the expert panel perspective, they had completely free rein as to what they said the outcome should be for that individual case.

Chair: The expert panel also found that 24% would need a support worker. How can anyone who needs a support worker be classed as fully fit for work? I cannot understand

how that can happen. If they think you need a support worker, then surely you have to be at least in the WRAG, if not, indeed, in the Support Group?

Q441 Debbie Abrahams: That was my next question. Can we move on to that, if that is alright, Minister? It builds on what the Chair has said and what other colleagues have said. 83% were found by the expert panel to need at least one adjustment, aid or adaptation in the workplace; 50% needed flexible or alternative hours, and, as Anne has just said, 24% would need a support worker. In my constituency, people really struggle under those conditions. It does not reflect the reality of the labour market currently.

Mike Penning: I would agree on that point and in that way, but the term "support worker", in many ways, is an interesting one. What does "support worker" mean? Does that mean that that person helps them to get up and to get to work? Does it mean they have to spend all day with them? It was a very open-ended comment. If you look at it in a generality, it is the most un-costed thing I have ever heard of in my life, because it would just physically be impossible for anything like that to happen, but at the same time, what does it mean? Does it mean that they need a little bit of help, or do they need help all day? Bear with me a second. If we look at a situation like where someone needs a sign interpreter there all day, that is all day, and that is support, but in a different sort of way as well.

Debbie Abrahams: It just highlights that this is an inappropriate definition of fitness for work.

Mike Penning: We may just beg to differ on that.

Debbie Abrahams: Well, just make sure that your comment is recorded.

Q442 Graham Evans: Can I just give an example to the Minister of a constituent who is paraplegic? The changes that this Government introduced have enabled her to get a job in my constituency, working for the police authority, so there are examples other than those the ones my colleagues on this Committee have given, which always seem to give the negative rather than the positive. Some of the changes that have been put forward do help people into work.

Mike Penning: Could I answer the question?

Chair: I am just going to clarify. If you need a support worker and you cannot work without the support worker, that is not to say that the person cannot work. I can work, but I need a support worker. I need a lot of extra help in order to allow me to work. From a personal point of view, of course people can work; that does not mean to say that I am fully fit for work, because without the support workers, I could not do the job. I suspect that is the case for Graham's constituent—that there will be people helping that person get back to work.

Mike Penning: The point I was trying to make is that, as you have said in your personal case, you need a lot of help, and there will be others who will not need as much help from a support worker. I fully accept that.

Q443 Chair: So what is the definition of "fully fit for work?" Is it that if all of that help was in there—the adjustments to the hours and the other adjustments—then they could work, or is it that they could enter the labour market with help in getting ready for work but once they are in the labour market and in a job, they do not need any support? Anyone who needs ongoing support in order to hold down their job, by the definition used for benefit purposes, should probably be in the Support Group or, if not that, the WRAG. That is not to say they are not going to work. There are people in the Support Group who will work, because they have got all the help: and people on the Independent Living Fund. Those who are severely disabled but have got all the help can work, but not when you are doing a benefit eligibility test.

James Bolton: There are probably a couple of bits I need to pick up from that, then. We did not provide the panels with any definition of "support worker", so as has already been highlighted, there will be a wide range of interpretations as to what that would mean. In terms of fitness for work, then, 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, and that is what we are trying to get the expert panels to help us with, to say, "Where do we draw that line? What do you think the right answer is? Please tell us; we will compare that with the WCA." We have done that, and the Evidence-based Review gave us the level of agreement, which, as I have already highlighted, was quite high.

Chair: I am not sure that answers the question.

Q444 Debbie Abrahams: The final question from me was in terms of the communication of the WCA's score. Certainly, Dr Litchfield said that he recommended that less emphasis should be placed on the score, and more on whether a claimant was deemed to reach the threshold for benefit. Do you also need to address the issue of how decision-makers use the points system?

Jason Feeney: Again, we do quote in the decision letter and the explanation the points and where the points have been allocated. It is a fundamental part of the policy and the design. However, at the risk of repeating myself, in that new decision letter that we have got, there is more text than numbers. There is a lot more description about what evidence we have taken into account, why we have reached the decision we have reached, and that is the basis for the decision assurance call. We do not do the decision assurance call starting with, "You scored X number of points"; we say, "We are making this decision for these reasons, using this evidence."

Q445 Debbie Abrahams: So you are training your decision-makers in this way?

Jason Feeney: Yes. I put all my 700 decision-makers through a three-day training programme in January/February of this year, particularly focussed on how to conduct the outbound call, how to do a better decision assurance call, and how to better write up the

decisions, which links into what the Chair was saying earlier about making this more plain English and getting it more understandable for people. I have put all 700 of my decision-makers through a three-day course in January/February to try to improve those aspects that Litchfield was focusing in on, which are how we get people to understand what has happened. It is not a simple points system.

Q446 Glenda Jackson: Could we have copies of the new letters and the old letters?

Mike Penning: By all means.

Chair: That would certainly be very helpful. It has been an ongoing complaint of ours in all the time I have been on this Committee, and that is since 2001.

Jason Feeney: Just on that, I have been in this business 33 years, covering all the benefits. I joined in 1981. We have, for 33 years, been trying to improve our letters. There is no finish line in improving the letters.

Mike Penning: But we will give you the latest one. And if we can, Madam Chair, what we will try to do is—without in any way revealing an individual claimant—give you a commentary within the letter. If we just give you a plain "This is what we decided" letter, then you will not get a feel as to what we are trying to do. We will try to give you that, and by all means, if members of the Committee want to go out and talk to the decision-makers and have an opportunity to see the training and things like that, I am more than happy to help that happen.

Chair: That is very useful. Thank you very much. Now, we are on to your favourite subject: the contract.

Mike Penning: It is not my favourite, I assure you.

Chair: You thought it was hard up until now.

Q447 Nigel Mills: Perhaps you can just run us through what prompted you to let Atos terminate their contract early—to sack them, depending on what language you use?

Mike Penning: Obviously, when I arrived in the Department eight months ago, on my desk were an awful lot of letters from my colleagues—let us be perfectly honest about it—from across the House who had real concerns about how the assessments were being done and how Atos was performing. I asked my civil servants what we had done to try to improve that going forward, and what agreements we had had with Atos as to how they would improve their regime. The team will talk to you more about how that was done, and I really wanted it to work. To do a break in contract of this size and complexity was the last thing that I wanted to do.

However, it did become pretty obvious that Atos's confidence as to whether they could perform what we were asking them to do; our confidence; and the public's confidence was not sufficient, and so I did ask the team to negotiate with Atos as to whether or not Atos could leave the contract. Atos have come to an agreement with us. As I promised to the House, I think in Questions, I was quite determined that this would

not cost the taxpayer money, in that I would not have to pay compensation for letting them out of the contract. We have negotiated for Atos to leave, and they are going to pay a substantial amount of compensation to the Department. What we are out to tender on at the moment is not a brand new contract—and I will come back to that in a moment—but it will be a new contractor coming in, initially running alongside Atos, because if it stops overnight, it will be a catastrophe. We think they will run alongside initially for six months, using Atos's IT, which is quite important as well, and then the new contract will take over. It was simply a question of whether I had confidence that the benefit for which I was responsible could be continually delivered with Atos in place, and I came to the conclusion that it was best to negotiate Atos an exit.

Q448 Nigel Mills: Have you put any kinds of structural changes into the new contract you are tendering on? Will it look a lot different from the Atos one?

Mike Penning: Yes, in many different ways. As I have said before, I am not allowed to see the negotiations and the submissions that were put to Ministers prior to the Coalition coming into power. That is a very frustrating thing, because I cannot actually see why Atos won that contract: whether it was just based on cost, or whether it was based on cost and promises, etc. One of the things I am quite determined about regarding the new contract, even though I am very minded of the DEL cost it will be for me, is that it will not be based on cost alone. It will be based on whether or not the company that wins this contract can do the job that we are asking them to do, get a recovery plan in place that is feasible, and whether that is going to cost me more money. The obvious answer to that question is that it is, but I am much more conscious about actually making sure that we deliver the benefit correctly with the new supplier. We have had substantial interest from companies to do this.

Q449 Nigel Mills: Companies—more than one company?

Mike Penning: I cannot reveal that. I probably should say at this stage that we are in contract negotiations. There are certain things that I can publicly talk about, and certain things that I cannot. I cannot reveal, for instance, the exit negotiation contract for Atos, which I am sure you are probably aware of, but we will reveal as soon as we can who the contract bidders are, and at the same time what we are looking for from them. This will be six months running alongside Atos, and then a three-year contract. The reason that it is a three-year contract is that that is the only way I could get the capital input from a company. It is a big expenditure that is going to have to be up front for the new company that comes in, so for them to be able to make sure that they can actually make a profit on the contract, based on what I am asking them to do, three years is what we decided to do. The three years will then inform what we wanted to do in the first place in 2015, which is to have a multiple provider as we go forward. Then, there will be a much bigger renegotiation of the contract itself, because at the moment I just do not have time to negotiate a brand spanking new all-singing all-dancing contract. I just do not have time to do it.

Q450 Nigel Mills: Have we learned the lessons from the PIP assessment problems as well, in trying to make sure that we do not repeat those mistakes that led to the build-up of backlog?

Mike Penning: Yes. Well, we are going to start with a backlog; that is the first thing, so part of the contract is having a feasible, sustainable recovery plan to make sure that works. Then, of course, this backlog is not the fault of the new contractor coming in, and I have also said before that the problems with the contract at the moment are not just Atos' or their staff's problem: it is us as well within the Department, so we have to make sure we get our side absolutely right and proper. One of the reasons I am phasing it through alongside Atos and having our own people inside as well—who will run permanently inside—is so we are much more joined up, rather than separated. We will have our own senior management in as well throughout the contract, and they know that as the bidding process takes place.

Q451 Nigel Mills: How many people are in the backlog at the moment?

Mike Penning: Just over 700,000. I cannot give the exact figure to the Committee.

Q452 Nigel Mills: Can you perhaps talk us through how a new provider would be able to ensure that they can actually cope with the volume of these assessments? Is something changing?

Mike Penning: If you look at the evidence that was given by Atos to the Committee on Monday, I believe, one of the issues they clearly indicated was whether they were getting enough money out of the contract to actually physically put enough capability into the contract to do the job. I might be using my words rather than theirs, but I think that is where I was coming from.

I think at this stage, Madam Chair, I also need to apologise to the honourable lady: at a previous Committee, I alluded to the fact I had read evidence from the Committee—using my words again—that Atos had loss-led to get the contract. I have to say that I clearly did not read it there. It must have been anecdotal, and I must have misled the Committee inappropriately. I apologise; I will write to the honourable lady and to the Chair to do that.[1] It has become public that they were loss-leading, but that is a separate issue to indicating the Committee had seen that. I wanted to put the record straight on that.

There are a lot of lessons that need to be learned to give confidence for the new provider that comes in, and for me and my officials to have the confidence to make sure that what we are asking them to do, they can do, at the costs they are asking for, and that we have a recovery plan that is feasible and gets us down to the timescales that everybody would expect of us. At the same time—touching on some of the points that were made

[1] Supplementary evidence: Letter from the Minister for Disabled People to the Chair of the Committee, 18 June 2014

earlier—we also need to make sure that we protect the really vulnerable, particularly on the terminal illness side: as well as PIP, they may be on WCA as well. Progressive illnesses, as well as long-term illnesses, terminal illnesses, and hidden disabilities in particular, are areas where I am committed to making sure the provider has the right skills in place. We will, of course, be having a lot of staff transferring across from Atos, and one of the things I know that Atos have been very worried about is the amount of staff they have lost—good staff—and they have lost a lot of their staff because of the abuse and threats, which is abhorrent. I think we would all agree that it is absolutely wrong that that took place there, and I have got to give those staff the confidence, and the new company has to give them the confidence, for them to come over as well.

Q453 Nigel Mills: Do you think it is possible for a private-sector, profit-making company to ever have the public confidence to do one of these kinds of assessments, and that the new one is not just risking becoming the new public enemy number one and being in the same mess that Atos got in?

Mike Penning: I have already met with one of the people who have indicated that they are going to bid. I will meet with the others to give them, I hope, that confidence. Yes, I do think it can be done. I do not think they can do it if they think they can bid very cheap, just to get the work, and then offer us a service that is not up to scratch. The key, for me, will be the quality of the service. What we will be looking for is that, yes, they can make a profit—not an exorbitant profit—but they are delivering the service that they need to. I do think that can be done.

Q454 Teresa Pearce: Minister, you mentioned 700,000 in the backlog. What do you believe is the reason for the backlog? Atos told us on Monday what they believed.

Mike Penning: There are a myriad of different reasons, and I can ask Jason to highlight those, because some of them are physical issues to do with information coming back in and people sitting on the lists and then dropping off the lists, etc. I would say this, wouldn't I, but I think—Jason will tell you this accurately—we have very much tightened up the two ends of the journey that we are in, and that is much shorter where they are. I just do not think Atos had the capacity to do the numbers that they were asking to do.

Jason Feeney: I can talk about the entire journey. Last autumn, we were taking, on average, 60 days to get the referrals through to Atos. Now, we are doing 93% in 28 days, so we have taken a month off the beginning of the process. We were taking 42 days to make a decision at the end of the process, and now we are averaging 12 to 14 days, so we have taken a month off the end of the process. For the bits that I directly manage, we have taken a month off the beginning and a month off the end since autumn last year.

I think the Minister is right: the issue at the centre of the Atos bit of the process and the backlogs is a question of being able to have the necessary capacity to deliver the assessment at the level of quality that we would like the assessment to be done at. James and his medical colleagues undertake a number of audits and reviews around the quality of

the assessment, and that is a big focus, going back to what the Committee member was saying earlier. The new contract needs to balance out volume and quality, and the issue that Atos have had—which partly links to turnover of staff and other reasons—is not being able to deliver the quality we want at the capacity we want.

There is a similar issue on PIP, in terms of learning the lessons from PIP and the contractual arrangements under PIP going through into the new contract. Clearly one of the lessons is looking at the supply chain arrangements that any new provider will have. Both providers on PIP have moved to a position where they have gone from a heavily-supply chain laden model to one where they are more directly employing the healthcare professionals themselves, rather than doing it through other organisations. I think one of the things that we will be taking into the new contract is testing that supply chain a lot more robustly, and making sure that there is balance in any subcontracting in that sense that goes on in the contract, as opposed to directly employed healthcare professionals. The backlog is a question of capacity and quality.

Mike Penning: There are other issues. It is a really huge subject; we could probably have a whole morning just on the contracts, but there are other issues to do with the quality of the buildings: whether the buildings are fit for purpose. I have got four buildings, I think, at the moment that I want to make a decision on today that I think are not fit for the purpose we are using them for, in terms of access. There are also the questions of distance travelled and home visits. All of those sorts of things will be addressed within the new contracts as well.

Q455 Sheila Gilmore: In 2011, I think it was, this Select Committee expressed some concern about going ahead with the roll-out of the IB migration and the speed of it in terms of capacity. At that time, all the reassurances were that the capacity was in place, and that the ability to do this was in place. It is now clear, three years on, that that appears not to be the case.

Mike Penning: Particularly on IB?

Sheila Gilmore: We have got a 700,000 backlog. I do not how much of that is part of the migration, but things are considerably worse than they were two or three years ago from that perspective.

Mike Penning: I do think you mentioned IB, so can I answer the point on IB? There are a million people that were on IB that have been assessed. 700,000 of those now are either seeking work or being helped into assisted work. The backlog on IB is just over 100,000 now, is it not?

Jason Feeney: It is less than that now. I think it is 80,000-odd.

Mike Penning: IB is not the greatest example to use, because it has been quite a success.

Q456 Sheila Gilmore: With the greatest respect, Minister, we have here a situation where we have developed a backlog, which you say is not the IB migration, but perhaps the IB migration has created a backlog in new applications. At the same time, a company that was clearly struggling—it would appear now, although that was not necessarily clear at the time—was awarded a contract to deliver PIP, one of the same companies. The backlog there developed very quickly. Did you know at the time that you were contracting with that company for PIP that there was this problem developing? I do not really care whether the backlog is new applicants or migration applicants, but there clearly is something happening here.

Mike Penning: I can only go by what you said in your initial opening comments, and you were referring to IB, so I have answered the IB question.

Sheila Gilmore: It is part of the same process.

Mike Penning: Did Atos make, to previous Ministers, a set of commitments to address the concerns and the problems that were happening? Yes, they did, and one of the reasons we made the decision that we made to negotiate an exit for Atos was because we did not have the confidence that they could do what we were asking them to do. I do not know whether or not previous Ministers had the information that I had; all I know is that I came in, I looked at it, I made a decision, and we are moving on. I think that is exactly what the claimants and the public who pay for all this, of course, as taxpayers would want a Minister to do.

Q457 Sheila Gilmore: The same teams are going to be assessing the IB migrants as the new applicants, presumably. It is part of the same process. If you are saying that you have managed to keep up with the IB migration, the other bit seems to have slipped.

Mike Penning: That is an understandable capacity issue—well, not understandable, and I will address that. The reason why I think previous ministers and I would have probably made the same decision on IB is that people were stuck on IB for years and years and years, and they were in a welfare trap. We wanted to give those people the opportunity to get off that and to get into work if it was possible for them to do so, and I think that is exactly what everybody would want to happen.

Q458 Chair: Can I just clarify the figures? There is a backlog of 700,000, and just under 100,000 of those are people who are going to be left on IB, because they should have been migrated. Migration was meant to have stopped by April this year.

Mike Penning: I missed that target.

Jason Feeney: We have done two things to address the point around capacity: one is that we have slowed down IB migration. I did hear Atos on Monday night saying they are not getting any new IB cases; they are getting about 5,000 a month, so it was just a confusion on their part. We slowed down IB migration. We are committed to continue and complete IB migration, but we are doing it at a slower pace, because it makes no sense to keep throwing them through to Atos at the rate that we were if they are not clearing

them. We have slowed down the pace at which we are pushing these cases through to Atos.

Equally, we have slowed down the reassessments that we are doing as well for ESA customers, so we are not blindly shoving the work through to Atos and crossing our fingers. We are taking decisions, sometimes difficult decisions, to make sure that the demand matches the supply, and for the last few weeks, in the last couple of months, Atos are exceeding—they are clearing more than they get in, so the backlog is reducing. We have taken some positive steps in order to manage that capacity problem.

Mike Penning: Could I just explain the rationale as to why I turned the tap down on IB and stopped it? It was simply the situation that new claimants, I felt, needed to be addressed as fast as possible, because they were the ones whose assessment needs had not been assessed.

Q459 Chair: They were not getting any money until—
Mike Penning: They get the equivalent of JSA.

Chair: The do not if they end up in mandatory reconsideration, but I take your point.
Mike Penning: I genuinely thought if there was a capacity issue, which there generally was, I needed to address new entry rather than reassessments, because obviously the people who have got it already are getting it, unless someone applied to be reassessed, of course, because their condition had deteriorated or changed. I am really pleased I made that decision, because there are people that needed to get assessed that have been assessed that probably would have still been in the queue.

Q460 Chair: Just one thing on that: Atos told us on Monday that they had an expectation that whoever the new contractor was that they would just take over their staff. I do not know if you can do a TUPE transfer.
Mike Penning: No, it is TUPE transfer. Yes.

Q461 Chair: If Atos does not have the capacity to deal with the volumes, what guarantee have you got that any new contractor will?
Mike Penning: The obvious thing is: do we want to keep people that are trained and certified to do the work we are asking them to do and keep them within this arena? Yes, we do. Do we need more people to come in? Yes. I think Atos in their comments to you assumed that the new provider would run the show exactly the same as they did, and people would not want to come and work for them in the way that some people have been trying to leave, and their figures have 25% of them leaving.

I also think we must not underestimate the reasons that a lot of people left Atos, and that was the abuse and threats they were getting. I really do hope that with the new provider and new people coming in, we can TUPE across as many people who have

mortgages and careers as possible. We will use as many of the premises that are suitable—I stress suitable—but where they are not suitable, I will address that. I am going to probably make some announcements on some of those buildings imminently.

Q462 Glenda Jackson: Earlier, Minister, you referred to learning lessons, so if I could just take you back to the new contract, and refer again to our Report in 2011 on the IB reassessment. We recommended then that you should review the performance indicators when the contract is re-let, and build in significant financial penalties to be applied if standards are not met. Do you plan to do this?

Mike Penning: Yes, but also there were significant financial penalties on the present contractor—significant penalties—that been implemented. I can assure you that with the new contract we will also make sure that not only are there significant penalties should they not meet it but there will be incentives for them to do beyond what we are asking them to do in an initial part of that contract, so there is an incentive for them to do more.

Q463 Glenda Jackson: The contract will clearly set out the expected service standards?

Mike Penning: Yes.

Q464 Glenda Jackson: What will constitute those service standards? Will it be services to the Department, or to the client? Can you give us some outline of what they will be?

Mike Penning: It will be both. As I said earlier on, I would like to start completely from scratch, which is what we would have done next year when we went to our multiple provider. I am not in that position, and I am being very open and honest about that. That will be three further years down the line before we get to our multiple provider, and a brand spanking new contract.

What we will be able to do is certainly learn from not only the recommendations and the mistakes in the past where contracts have been let to make sure that, if the service is not up to scratch, that contractor will be penalised, and they will know that right at the start. The point I think you are making is to the clamant; not every claimant, and I fully understand it, is going to be happy with the decision, or happy at the time it takes. One of the things that we have been looking at, as to how we can shorten the gap, is the current two weeks' notice of an appointment, and that is quite a long time. We lose basically four weeks. We are going to try to see if there are ways that we can communicate better and see if we can get people in quicker.

It is not only a service to the Department; it is a service obviously to the taxpayer, because this is taxpayers' money, but the claimant part of this is very important. If we get it right, not everybody will be happy, but more people will be happy than there are now.

Q465 Glenda Jackson: You did say that there had been large financial penalties in the existing contract, but I do not ever remember them being applied. Are you going to bring in greater expertise to the Department, so that the new contract can be more rigorously monitored than it was in the past?

Mike Penning: I just want to clarify: for a start, there have been penalties imposed on Atos. I do not think I can say how much they are; is that right?

James Bolton: No, but there are significant service credit penalties in the contract.

Mike Penning: The lawyers have been all over me.

Q466 Glenda Jackson: They appeared quite late on the scene.

Mike Penning: There have been penalties on Atos for some considerable time, which is part of their financial problems.

Q467 Glenda Jackson: The issue is, is the new contract going to be rather more rigorously monitored in the area of service standards? You yourself were very unhappy with Atos' reports, and you issued an order to them in July. Why were the reports bad? You were not satisfied with the quality of the reports that were coming out of Atos.

Mike Penning: There were three things; it was not just reports. It was, if you wish, the claimant experience.

Glenda Jackson: Fine, the whole deal.

Mike Penning: Exactly, the whole thing. I do emphasise that I would like to have started from absolute scratch with a brand new piece of paper, which we will do in three and a half years' time on the new contract. The new contract that is issued will be much more rigorous from the start, in that we will set out exactly what it is. It will cost more money. There is no argument that it is going to cost more money than what it was before, but we will have the confidence—I hope, otherwise we will not issue the contract—that they will deliver the service to everybody.

Q468 Glenda Jackson: Will there be an additional layer of examination of performance from within the Department based on how well or badly the contract is being delivered?

Mike Penning: One of the things I have introduced is actually putting our staff into their organisation. I did that with Atos initially; I have certainly done it across both of the PIP providers, and I intend to do that with that, so that I have got day-to-day understanding of what is happening inside those companies. That is exactly what we will continue to do. That is new; that was not there before. It has not been done on PIP or Atos, but it is something that I introduced, and it has become very useful to both sides.

Q469 Glenda Jackson: When the existing Atos contract was delivered, one of the concerns that certainly this Committee expressed, and all the relevant organisations expressed, was the need for specialist examiners for people with mental health conditions. We were assured, and, indeed, Atos assured us at that time, that there would be these experts in this particular field. That has markedly failed to happen. How are you going to ensure—I presume this is going to be a requirement of the new contract—that these promises will, in fact, be met and monitored?

Mike Penning: Yes, it will be.

Q470 Glenda Jackson: How?

Mike Penning: If I can just explain—

Glenda Jackson: Good.

Mike Penning: I do not speak quite as fast as some of you.

Q471 Glenda Jackson: It is not a question of speed of word; it is a question of speed of thought, but please do go on.

Mike Penning: It may be, but if you are not willing to listen to the answer, it is a bit difficult.

Glenda Jackson: Well let us hear it.

Chair: Minister, the floor is yours.

Mike Penning: If we are doing what we have done, which is new, and we have got our people in and we have a commitment to the amount of the experts that are there from the contract start—a brand new contract, a brand new scheme, brand new in every sort of way, in that way—then we will have that confidence, because we know it is happening. Before, and remember this contract goes back a long way, we did not have people on the inside; we were always relying on them reporting to us as to what was actually happening on day-to-day basis. That will still happen, but we will have our own people inside as well.

Q472 Glenda Jackson: When you say your own people, are these specialist healthcare professionals specialists in the area of mental health, and how many have you got?

Mike Penning: To answer the question, which I had thought I had answered already: yes, we will monitor it and, yes, we will make sure that it works. James will explain the technical bits.

James Bolton: Just on the specialist question, one of Professor Harrington's recommendations was to bring in mental function champions. Atos did that; they have been introduced, there are over 40 of them currently, and Atos are working on a training

programme to bring more into the organisation as it is currently. The intention is to carry on with mental function champions; we see it as really important, and Paul Litchfield was very helpful in that area. He has also made some specific recommendations about mental health and the training and experience the health professions have, which, again, we have responded to as part of the Government response, and it is an area we are looking at very seriously.

As Atos pointed out in their evidence session on Monday, of course, the assessments themselves are functional assessments; they are not diagnostic assessments. Many of the claimants who come have multiple health conditions—they do not just have one health condition—and therefore it is important that the health professionals who are assessing these people have a range of skills and appropriate skills in order to be able to do that. We would not bring in a specialist per se for an individual case based on their condition, but we do make sure that there is appropriate knowledge available within the organisation.

Q473 Glenda Jackson: No; I am sorry, but we are talking about specialists here, and they markedly failed to deliver them on the existing contract. The Minister has referred to the Department's people; how many are you going to have on the ground, so that we do not have the example of an individual being assessed under the present system where the doctor had to Google on his computer what "bipolar" meant?

James Bolton: All the health professionals are trained and they have to pass an assessment and they have to show an ongoing level of quality. I think clearly the example you cite is completely unacceptable; we would not want that to happen at all, and health professionals are supposed to work within the boundaries of their capability and their skill. If they see a claimant who they do not feel confident with, who they do not have the knowledge with, they have to go and find either where they can get that information, from an appropriate source, or to ensure that case is passed on to someone who is suitably experienced and does have the confidence and sufficient skill in order to do that case.

Q474 Glenda Jackson: That would mean the individual client would probably have to go back for another interview.

James Bolton: It may do; a lot of the assessment centres that Atos have are quite large assessment centres and therefore there are lots of other health professionals within there as well, so if they do need to hand a case over—it does happen from time to time—then hopefully there will be someone around who will be able to take that case.

Q475 Glenda Jackson: Are you going to define within the contract the number of specialist mental health professionals who will have to be provided with client—

Mike Penning: We are still looking as to what the definition of the contract will say. As I said a moment ago, I have had to adapt the existing contract rather than having a

brand new contract, which is what we will have in three years' time, and I will adapt it in every way I can to make sure it does exactly what the lady has indicated.

Q476 Chair: A great deal has been said about people with mental health problems, but the people who need specialist interview techniques will be people with autism or with learning disabilities. It is in that context our question is being asked, although mental health is obviously one of the issues. If you know that there are a number of people in a locality with learning disabilities or with autism, does one of the assessors in that centre do all of those cases? If the questioning of somebody with a learning disability is not right, then very often they will say they can do everything.

Mike Penning: Absolutely, and I have several illnesses, as the Chair has alluded to, within my own family.

Chair: Can you speak up a bit, please?

Mike Penning: They would answer yes, every time, and I am very conscious of that. The point that you made is absolutely valid. The other thing that is vital, which we have not been good at so far, is sharing information. I know that is another area of questioning, but perhaps I could touch on it now. It does seem to me an unnecessary extra burden if we have examined someone on PIP, so someone has come to see us on PIP and been assessed on PIP, but that information is not shared, for instance, across on the WCA. That is something we have got to do and we will work on it. There are two separate benefits, and they are very different sorts of benefits, but some of the knowledge and the information, if that were shared across, would alleviate some of the duplicate meetings and assessments that need to take place; that is something that we are working on now as well.

Q477 Mr Thornton: One of the things when I have been looking at mental health issues, on a separate note, is the fact that trained health professionals in hospitals get it wrong frequently—in A&E, on wards—despite understanding the problems that the person with mental health issues is going through. Fully trained, fully qualified health professionals, doctors and nurses, get it wrong frequently. This is a problem they admit to; this is not anything they pretend does not happen. We are also seeing the situation that, when they have had a trained health provider in a police station, it has reduced considerably the problems that have happened.

The trouble with having someone who is doing a job where they are seeing all sorts of people—I would say this is for you, Mr Bolton—with different morbidities is that I just do not think they are going to necessarily pick up the fact that the person they are talking to has these mental health difficulties. They are going to think that they are obstructive or not willing to work with them, or trying to get away with something, or they are shifty. Their body language, the way they use things with their particular difficulty, is going to make it very difficult for someone who is only partially trained to understand that this person is not lying or trying to get away with something.

If this is happening in a hospital, with doctors and nurses who are fully trained getting it wrong, what hope has an HCP got in this situation, where they are rushed and trying to do six or seven of these a day? How are they going not to discriminate, without meaning to, effectively? It is going to end up with discrimination against people with mental health difficulties unless we change that system. It is not going to work the way we have been doing it, in my opinion.

James Bolton: There are a number of difficulties in the setting here, for example. First of all, the health professionals in Atos are supposed to take as long as it requires in all assessments. The average assessment duration at the moment is around 70 minutes: obviously some cases will take longer than that; some cases I accept will be quicker than that. There is a substantial amount of training that goes in, in terms of mental health, and regular update training that goes in as well. We have to remember here that the health professionals are not performing diagnostic assessment, as we were just discussing. They are not performing a diagnostic assessment. What they are trying to do is look at the functional impact.

Q478 Mr Thornton: I am sorry; I think you are missing the point. The point is that they are trying to do a functional thing and they cannot get it right if they do not understand that the person in front of them finds it very difficult to interact with somebody. I am not necessarily talking about autism; this is someone who has difficulties dealing with other people, dealing with the world as it is today, for whatever reason, and they are not going to come across in the same way as someone else. These functional difficulties are not going to show up necessarily, because the person is not going to be able to get it across and communicate properly. I think this takes more than just someone with a bit of training to look out for this and that; this is something that fully trained health professionals working in that sector find incredibly difficult. I do not think you are going to get that in a 70-minute interview; I am sorry.

James Bolton: Okay, well, on the training itself, the nurse training is a 14-day training, with at least five days in a live support environment. Again, as I have talked about, there are mental function champions in there. The sorts of things you highlight are an integral part of the training. A huge amount of work goes into spotting those kinds of signs—making sure that people do it. There is the point I made earlier about people ensuring that they feel they have the confidence to assess people in whatever case they may see, and, as I have alluded to, Dr Litchfield has asked us to look at this again: he has asked us to look at the training again, and he has asked us to look at the experience that the health professionals have. There are two separate recommendations on that, both of which we have accepted, and both of which we are looking at at the moment.

Mike Penning: Michael, can I also just clarify something? It is really important that, one, further evidence is asked for as well, and we get the right sort of evidence as early as possible. One of the big issues we have is evidence produced, for instance, in tribunal on the day. I know we are going to come to mandatory reconsideration in a moment, but it is one of the really important areas. Certainly champions are really

important here as well—that you have got someone with you—and I think it is really important that happens as much as possible, especially with the types of client that you were alluding to in your comments. If they cannot get across how poorly they are and what they can do or what they cannot do, they need someone there with them who they trust—I think this is the other thing—because this is a stranger they are talking to and very often they have seen the same clinician at the hospital for many years.

Just to touch for a second on the point you have made about, for instance, A&E not having the right expertise, certainly police stations is something we have picked up at the IMG group—the brand new inter-ministerial group on disabilities. That is something we are working on now, and working with the Home Office and the Health Department on that specific area.

Mr Thornton: That is very interesting, thank you.

James Bolton: There probably are lots of other things if we start looking at the setting; we encourage individuals to bring somebody with them if they want to, so if they are not able to tell us themselves then they get someone else with them there who can help us do that. There is further medical evidence, as we have talked about. There is a questionnaire that people fill in before we see an assessment as well. At the start of every claim there is a fit note, so the GP has the opportunity to tell us a bit about the claimant as well. There are all these other things as well, in addition to the training and support that we try to do, because we are very aware of the things that you highlight.

Mike Penning: I am also quite conscious that their coming to us for certain claimants is inappropriate as well. In my own constituency there are several clubs and centres where they feel comfortable as well, and not just in their home, and whether or not we can get to a situation where they can be assessed in an environment where they are much more comfortable is something we are certainly looking at and will look at in the new contract.

Q479 Graham Evans: In the evidence from Atos on Monday, they were saying that Dr Litchfield's recommendation regarding the introduction of the mental function champions was introduced in January and it had a positive effect. Whoever takes up the contracts in future, will those lessons be learned—that mental function champions can make a positive difference?

James Bolton: Yes, absolutely. Mental function champions have been in place since July 2011; as you highlight, Dr Litchfield pointed to the very positive contribution they make, and that will form an integral part of the contract.

Graham Evans: Thank you.

Q480 Teresa Pearce: Mental function champions have been in place since July 2011, yet in January of this year the High Court Judicial Review said that the Work Capability Assessment discriminated against people with mental health issues.

Mike Penning: Is this in court at the moment?

James Bolton: Yes, this is in court at the moment.

Mike Penning: This is the judicial review, and in the court—

Q481 Teresa Pearce: You are appealing it?

Mike Penning: Yes, so we are in the courts at the moment. It is somewhat difficult; the lawyers will jump all over me again.

Chair: I do not think it is sub judice.

Teresa Pearce: I was not aware you were appealing it, so that is interesting.

Mike Penning: I am right on that, am I?

James Bolton: We have already appealed. They have not made a final decision yet, so we are now back waiting.

Q482 Chair: If it is a judicial review, it is not sub judice, I have been told by the clerk. Anyway, very quickly: Minister, you expressed your intention to bring in multiple providers to the WCA. When do you expect that to happen?

Mike Penning: Under the original plan—but, to be fair, I also inherited a contract with Atos that is due to expire in summer 2015—we had already expressed an interest to go to multiple providers for the new contract to replace them. Because of the actions that we have taken now, that is not going to be possible. As I need to make sure that the new contractor has an economic business plan that is viable, we are offering a three-year contract to them, so the multiple providers would come in after that contract: six months run-in, three and a half years from the new contract starting.

Chair: We have got through a lot, but we have got a lot more to get through, so I am going to ask my colleagues, and perhaps yourselves, to be a bit briefer, and I might just come in and start cutting people off if we go on too long, which I tend not to do. Dame Angela, I am sure, will manage admirably.

Q483 Dame Angela Watkinson: My questions are about paper-based assessments. A number of organisations suggested that more use could be made of them in putting people in the Support Group. Do you think that would be a good idea? Would you support that and think of introducing it?

Mike Penning: My view is where the evidence is there in the documentation on where we can make more paper-based decisions on this and on PIP—that is obviously something that is really important to me on PIP—yes, I do. There are some legalities around decisions; for instance, if we are declining someone we cannot do it without having a face-to-face. I think that is right, is it not? I think on the WRAG, which is what you are referring to—sorry, Iain, it is you, is it not? Sorry, I knew you were there for a reason.

Iain Walsh: The position at the moment on paper-based is that for Support Group, a healthcare provider can recommend a Support Group situation based on an assessment on the papers, and also when it comes to reassessment we can also put people ultimately into both a Support Group and the Work-related Activity Group. A fairly high proportion of the Support Group cases going through are done on the papers: I have not got the precise figures, but a very high proportion are going into that.

Mike Penning: We will drop you a line on that.

Iain Walsh: We would fully support that position. The general view is if you are confident you can take an accurate decision based on the written information available, then you want to be able to do that as quickly as possible, and paper-based is quicker. If you can get the accuracy through paper-based, you get the advantage of speed, so we are fully signed up to that.

Mike Penning: The other important thing is the intervals, as and when we are calling people back; for instance, on reassessment it is really important that not only do we look at how many assessments we can do paper-based, but how often that is done. That is something else we are looking at at the moment.

Q484 Sheila Gilmore: No-one should have been migrated from IB or given a first assessment on paper and put into the WRAG, is that correct, because I have cases where that has happened?

Chair: There are lots of cases where that has happened.

Iain Walsh: For IB reassessment, you can put into the Support Group or the Work-related Activity Group based on a paper-based assessment where that is considered to be appropriate. The main reason we make a distinction between IB reassessment and pure new claims is that there will be more written evidence available and relevant to that individual claimant, so it is possible for a decision to be based on paper in those cases, but, again, only when it is proper to do so. If a healthcare professional considers there is not enough information to take the accurate decision, then they would be called in for interview.

Mike Penning: I think this is the area where I want to share the information from other benefits across; that comes into light as well, because we may have information, say, for instance, where PIP has been granted. We could share that information and that could be done more quickly on paper-based.

Q485 Dame Angela Watkinson: That was going to be my next question about the reassessment of invalidity benefit claimants, so I will move on. Currently you refer all ESA claims to Atos, who issue an ESA50 and decide whether a face-to-face assessment is necessary. Dr Litchfield recommended that you could carry out an impact assessment into

the feasibility of DWP issuing the ESA50 and considering on the basis of information received whether a face-to-face assessment should take place. How do you view that?

Mike Penning: This is something I have asked James to look at already, based obviously on the review.

James Bolton: Yes, absolutely. I am afraid there is little I can add to that. It was a Dr Litchfield recommendation, we have accepted it, and we will be doing that assessment.

Q486 Nigel Mills: If you are tendering a new contract, would it not be a good time to make a decision?

Mike Penning: A lot of this will be in the contract. The bit I want to emphasise is it is a new contract to a new provider but it is, frankly, not as expansively new as what I would like to do if I had time to do it properly.

Q487 Kwasi Kwarteng: Can I just follow up on that: what would you do, how would you change it, if you were going to do it properly?

Mike Penning: The first thing is I would have a multiple provider. Everybody understands that that probably is the way to do it. If you were looking at a brand new contract, there are ways that you could look at the percentages of—like we were just discussing—how many people come to us and how many times we go to them. Different providers have different models under PIP, for instance, and we can learn an awful lot from the other benefits as to how that can be done. The problem is that to do that sort of consultation I am going to need the time, but this new three-year contract is going to be in place for at least half of that, until we actually get where we are.

Q488 Dame Angela Watkinson: Have you considered co-locating the healthcare professionals and the DWP decision-makers? Do you think that would help to streamline the system at all?

Mike Penning: That would be interesting.

Jason Feeney: It is a logistical challenge more than a principle challenge. My experience working across all the benefits, whether it is JSA, ESA, IS or whatever, is that the more that people understand the end-to-end process, as well as their part in the process, the more interaction they have got with people that do some activity before their bit and people that do some activity after their bit; then you get a better end-to-end experience, better handling of the claim, and better quality. What we are trying to do is make sure that we get those information exchanges and get that relationship building through exchange visits, so my decision-makers are spending time in the assessment centres. We have visits into my benefits centres from healthcare professionals explaining their role and what they do, and we have got an advice line that we phone up for those cases where we want further clarification. There is not a principled objection to getting a closer relationship between the decision-maker and the healthcare professional; I think that is the right thing to do.

There is a logistical challenge of buildings, space and people, and it is not a perfect match between where the assessment centres are and where the healthcare professionals are, and where my decision-makers are.

A bit like the contract, if you were doing this on a blank piece of paper, starting from scratch, then my preference would be to have people co-located. The reality is I have got decision-makers across 60-plus sites across the whole of the UK, and we have a different number of medical examination centres, and being able to actually deliver it is problematic. What we are trying to do is the next best thing, which is build the relationships.

Mike Penning: They are major employers in those 60 constituency areas; you can imagine the letters I will get if I decided to relocate them. That is not the reason not to do it, but the other area where I am very keen is to get away from the paper as much as possible, and use secure data transfer and secure PDFs. We are moving that way in getting away from paper that we are sending out; we hope to get the secure PDFs in place, just like your GP does—we are doing it now on PIP. We are starting to roll that out even more with the two providers on PIP across the board, and we need to do it on WCA as well.

Q489 Dame Angela Watkinson: A number of witnesses suggested that more medical evidence should be available, or should be sought, to enable an accurate assessment to be made. What would be your view of that?

Mike Penning: My view is that we get the medical professionals in; the more information we have, the better, because obviously that will help you make the decision. One of the biggest problems that I have seen, certainly when I went to the tribunal, is how quickly you can get that evidence in, and how long you wait for that evidence to arrive. That just lengthens the whole process, and, of course, technically you are supposed to have submitted evidence a month before the tribunal. I have been at a tribunal and it has been submitted on the day, and the judges have the right to look at that—of course they do—but have not seen that. I know we are going to come on to reconsideration, but the key to this is asking people, "Have you given us everything that you have got that you think may help us make that decision?"

Q490 Dame Angela Watkinson: You need the full medical evidence at the beginning of the process to save delays?

Mike Penning: Yes.

Jason Feeney: Our preference, as those making the decision at the end, and no doubt James would say the same thing for the healthcare professionals, is that, as you say, we get as much of that evidence as we possibly can at the beginning of the process. One of the things we are learning through PIP and the delivery of PIP is we are changing again—changing the letters—illustrating "this is what we mean by medical evidence",

because people were sending in receipts from taxis from going to the hospital. There is a risk of getting flooded with humungous amounts of paperwork.

What we are trying to do is help claimants understand: "When we say 'further medical evidence', these are the types of things that we mean." It is absolutely important that we get it in, but we get the right information in.

Mike Penning: If I can get the GPs and the consultants, and their medical professionals, to send confidently electronically, just think about the amount of time that would save while we are waiting for documents to come in.

Q491 Dame Angela Watkinson: The GPs should know what sort of evidence would be relevant to a benefit claimant.

Mike Penning: Yes. In a lot of cases the GPs are there as their GP, but there is another healthcare professional; I am going to tread on your toes here James. For instance, I am under the consultant at the moment; my GP gets a letter, but that is about it. It is the consultant who is looking after me, or not, as the case may be. That is not necessarily the case. I think, James, that is something we have discussed before, where I assumed the GPs would have everything and actually they do not.

James Bolton: I do not want to say too much more on medical evidence, because, again, it is the same judicial review that we mentioned earlier that is in relation to further medical evidence. Clearly it is very important; Atos do go out and get it, we encourage, as Jason said, individuals to send that information in, and it does form a very important part of the process. The BMA have been very positive in terms of some of their comments about working with us, for getting that information, and one of the things that Dr Litchfield talked about, and the Minister alluded to, is making the 113 form electronic and easier for them to fill in. That is work we are looking at at the moment, and doing with the BMA, and they have welcomed.

Q492 Chair: Who makes the paper-based decision on someone who has been on Incapacity Benefit and has been migrated on to ESA? Is it the assessor or is it the decision-maker? Is it just the decision-maker that sees the information?

Mike Penning: All the decision-makers are DWP.

Q493 Chair: Does the assessor sift through the paper first and make a recommendation to the decision-maker, who then decides?

Iain Walsh: Yes, it is the same with a new claim. A case gets on to a healthcare professional; they come to a view about if it is possible to make a paper-based recommendation. Whether it is paper-based or face-to-face, they are coming to an expert view about the assessment, and based on that they put a recommendation back to the DWP.

Q494 Chair: The assessor will not know what kind of benefit the person is on; they do not know if it is contributory IB or income-related IB. Does the decision-maker know? Obviously there are huge implications for somebody who is ex-IB and put into the WRAG if they are on contributory-based. As MPs, we get people coming into our office who unbeknown have been put into the WRAG. They know they have got their ESA. 10 months go by and they get a letter saying, "By the way, your money is stopping in two months' time," and it comes as a complete surprise to them. It is back to you and your letters as well, because they do not understand the letter.

Jason Feeney: To answer your first question, the decision-maker is aware of which benefit the person is in receipt of when they are making the decision about which ESA group they will go into.

Q495 Chair: Is there not a danger in that what is happening is a whole group of people are just falling out of the system completely, and they are ex-IB, contributory-based ESA WRAG after a year? Certainly if they have got the 35 years of National Insurance contributions, so their pension is safe, there is absolutely no reason for them to engage with the system at all, because they are getting no money out of the system.

Jason Feeney: They can go on to ESA on a means-tested basis obviously at the end of that.

Q496 Chair: I have to say, in my constituency, where the household income is above the means test, there are huge numbers. We are talking large numbers. I do not know if anybody has quantified that.

Mike Penning: Correct me if I am wrong, Jason. While they know what benefit that person is on, that should not have any relevance to the decision they make on that person.

Q497 Sheila Gilmore: The problem is, and I have had cases like this, people have had a PIP-based assessment, they have been put into the WRAG and, in one case when they did successfully appeal, it turns out that the further medical evidence had not been asked for in the original decision. If that person had not appealed, that would not have become obvious, and the problem is that, because they had a partner working part-time, they would have ceased to be on benefits.

Chair: In fact, quite a number of people who get that letter do not understand it. They think, "Well, I have got ESA; that is all I need to worry about," not understanding the two groups.

Mike Penning: The letters is one of the biggest things that I have picked up, probably because I am also dyslexic, so I tend to read things quite a lot, over and over again, until I can get my head around it. I think the language that we are using in our letters has improved. It is not perfect, and we need to make sure that we improve it more.

The point you have made is if they were in on the 12-month rule, then they should be told right at the start that it is 12 months.

Q498 Chair: It is not just the language of the letter; they have to understand how the system works to know that you can only keep your contributory ESA, if you are in a household above income support levels, if you are in the Support Group. They do not know that information; the general public do not know that information.

Mike Penning: All I can say is let me look at the letters and see if I can explain it better.

Q499 Chair: As a result, they do not think they need to appeal, and it is not until they get the letter saying the money is about to stop that they realise, "I should have appealed and I could have been in the Support Group."

Mike Penning: Let me look at the content of the letter and see if I can improve it.

Q500 Chair: Minister, it is more than the letters; it is the understanding of how the system works, which is phenomenally complex, because most people do not understand the difference between the contributory and income-based. There is a danger of a whole group of people falling out of the system.

Mike Penning: I think if you say to them, "You have got this benefit, but it will cease in 12 months if you do not fit these"—if it is as plain as that—then I do not think we can do much more.

Chair: That should be a bit plainer, yes. Anne-Marie?

Q501 Ms Morris: Prognosis statements on the WRAG: sometimes the prognosis statement says it is unlikely that an individual in the longer term will return to work. Now, the DWP definition or guidance is that that means there is a substantial degree of functional impairment resulting from a serious medical problem that is chronic and is expected—I think the word is "inevitable"—to deteriorate further. That sounds, frankly, like it is extremely unlikely this individual is ever going to return to work. Is that not rather contradictory to the purpose of putting somebody in the WRAG in the first place, particularly when their ESA may well be stopped after a year?

Mike Penning: I think earlier on I said this is exactly the area we are looking at at the moment, and I tend to agree with you. We have to carefully look at the different groups and individuals that are sitting in the WRAG now, and, using the example that you have used there and some of the examples I have used earlier on, this is something we are looking at now, and it is something that needs to be worked on. We are working with the relevant charity and lobby groups on this particular point, but it also needs to be done, as best we can with such a huge benefit and such a huge amount of people, as individually as we possibly can.

Q502 Ms Morris: Do you have any idea as to how many people are categorised in this way?

Mike Penning: Would we have those figures?

James Bolton: I have not brought them with me.

Mike Penning: Can I write to you, Anne Marie?

Ms Morris: Sure. Thank you.

Q503 Chair: I have just read this question and realised we have already answered it.

Mike Penning: I was just being really nice to Anne, as I always am.

Chair: We were going to ask about sharing information with Work Programme providers, but you have already answered that. Sheila?

Q504 Sheila Gilmore: Mandatory reconsideration was introduced in October 2013. Judge Martin indicated to us that there had always been reconsideration in the system, in effect; from my experience years ago in social security appeals, I would say that has always been the case. Is there any change in the nature of the reconsideration process, other than it being mandatory since the change was made in October 2013?

Mike Penning: This is exactly what he does.

Jason Feeney: Yes. The main thing would be that this is a process that is more rigorous; it is more focussed on getting further medical evidence where it is needed; it is done by an independent within my area. These are independent teams sitting separately from the decision-makers; they are geographically separate from the decision-makers. It has always been the case, Judge Martin is right, in the sense that you could say, "Could somebody else have a look at this decision?" but that might be the person who is sitting opposite the original decision-maker.

This is a much more rigorous, independent process. It was not every case; now, as you know, you have got to go through mandatory recon before you get to the appeal process. I do think the way in which we are conducting mandatory reconsiderations is significantly different from some of the reconsiderations we had before, both in design and content.

Q505 Sheila Gilmore: Has a backlog built up since mandatory reconsideration was entered into?

Jason Feeney: We are getting more mandatory recons the further we are getting into the process, so volumes have increased since October. It varies depending on which type of decision is being asked to be reconsidered; for example, on labour market decisions, which we get a number of reconsiderations on—so sanctions—we get quite a

high volume of reconsideration requests around that. Those are being cleared in the time that we would want. We are getting more ESA reconsiderations coming through, and our performance on that is not where I want it to be, so I have got weekly calls—in fact, I am on one again tomorrow—around mandatory reconsiderations, particularly with a focus on ESA, to make sure we get to a level of performance that I am happy with. We will be publishing data on it later this year.

Mike Penning: The answer is yes, but we are working on it.

Q506 Sheila Gilmore: When this matter was raised, before we even had mandatory reconsideration, one of the issues that was put up by this Committee among others was should there be a time limit on dealing with reconsiderations, given that there has also been this change in benefit eligibility during the period? Would you reconsider this given this experience?

Mike Penning: We will wait for the real analytical evidence. My gut feeling is that mandatory reconsideration has dramatically improved the decisions that we are doing. Would we like to do them quicker? Yes, but am I going to set a time target for that? The answer is no, simply because, as Jason has alluded to in his comments, very often we have to ask for further evidence, further information. If we get the decision right, then it is worth the time. However, it is not where Jason wants it. Jason knows that I am on his team to make sure that we get it quicker, but I think mandatory reconsideration is a very important part of the process.

Q507 Sheila Gilmore: One correspondent told me that he had received a fit-for-work decision on 2 April; he asked for a reconsideration, phoned for an update beginning of June, and was then told that he was now—with the operative stress being on "now"—in the mandatory reconsideration phase and that should take about six to eight weeks. What was he in between April and June?

Mike Penning: No idea.

Sheila Gilmore: Do we operate some kind of two-tier process here?

Jason Feeney: Once somebody lodges a mandatory reconsideration, the benefits centre get the necessary paperwork in evidence that they have used in making that original decision, and that is then sent to my units, my dispute resolution teams, that undertake the mandatory reconsideration. You are in the mandatory reconsideration process from the point at which you say, "I would like this decision to be looked at again."

Q508 Sheila Gilmore: It is of some concern that somebody is being told they might have another six to eight weeks having already waited eight weeks?

Jason Feeney: Yes. I have got an aspiration around how quickly I would like my decision-makers to be able to do this on the reconsideration process, once they have got all the evidence in—and I think that is the difficulty. Once we have got all the evidence in

front of us, then I think there is no reason why we should not be looking to do that within a couple of weeks, as we do for our normal decisions. We are doing the original decisions in 12 to 14 days; once we have got all the evidence in front of us, I would expect a similar level of performance on mandatory reconsiderations.

Q509 Sheila Gilmore: Leaving that aside, because I think Theresa is going to ask questions about the position that individuals find themselves in because of the related change that has been made in benefit eligibility during this period, I think we all probably would agree that it is better if you can deal with matters through a reconsideration process, rather than having to go through the entire and expensive appeals process. It is important, to be able to judge the performance of both the current contractor and the future contractor, if we know what the levels of overturn are at reconsideration. How close do you think you are to being able to publish figures that would tell us about this?

Mike Penning: Let me ask about this: do we know when we have an update coming through?

James Bolton: I am not sure.

Jason Feeney: I do not have a date for when we are going to publish the data.

Mike Penning: I will write to you as soon as I can with an update. If I cannot tell you, I will honestly tell you.

Q510 Sheila Gilmore: Do you appreciate the importance of doing that in terms of—

Mike Penning: I will try to find out for Monday for you.

Q511 Teresa Pearce: Just on that, are you collecting the data of mandatory reconsiderations: how many there are, how many—

Jason Feeney: Yes, absolutely. When I have my weekly call, I know what the intake and the clearance is. The time band is a bit more tricky, in terms of how long they are taking, because, again—

Q512 Teresa Pearce: It is just a case of when you publish it.

Jason Feeney: As always, with any departmental statistics, they have to go through an approval process; they have to go through the regulatory process, because it is the difference between line management performance information and departmentally published data. There is quite a rigorous process to go through to make sure that these are official Government figures.

Q513 Teresa Pearce: The data is being collected and it will be published at some stage.

Mike Penning: I say this on the record: there is a bureaucratic process that we have to go through, and I am categorically not allowed to give the information, which is probably what I am going to say on Monday in Westminster Hall, until it has gone through that process of rigour, and then we will publish it.

Jason Feeney: Just to be clear, by Wednesday, I know what happened the previous week in terms of intake, clearance, by labour market. My statisticians would have me hung, drawn and quartered if I said it.

Teresa Pearce: There is no-one listening; just tell us.

Q514 Nigel Mills: When you ask for further evidence for the mandatory reconsideration, is there not a loop back that says, "Why on earth did you not ask for this in the first place?"

Jason Feeney: There are two things. The first is that because we are asking for it in the mandatory reconsideration process does not mean to say that we have not asked for it already. I think that is a false assumption that you are making there in terms of that proposition. It could well be the third time we have asked for it, and we will have definitely asked for it in the decision assurance call, because that is part of the purpose of the call, as well as explaining the decision. It says, "Is there anything else, including medical evidence, that you think we should be taking into consideration when we make this decision?"

It is not unheard of, once people get a negative decision and have reflected on it, that they then find, or produce, or get additional medical evidence that becomes available. Rather than that appearing, as Minister said, at the tribunal stage, some six or nine months down the process, we are trying to make sure we have those conversations earlier, so we get all the medical evidence in that is relevant early on in the process, and get the right decision as early as we can.

Q515 Chair: Would it not be better if it were the Department asking for that evidence? They can ask the appropriate person for the appropriate evidence, rather than the claimant having to either rake around to get evidence, some of which might be bus tickets or taxi tickets to the hospital, which is irrelevant, or indeed having to pay for it? That is a real barrier.

Mike Penning: We will help the claimant as much as possible, and often we will then ask for that, but at the end of the day the claimant is doing what it says on the tin; they are claiming a benefit. While we must make sure we do everything we can, there are responsibilities on the claimant as well. One of the things we are trying to do with the mandatory reconsideration is to prevent what is happening on a regular basis, where people were turning up, as their right was, at a tribunal and producing evidence that we had never seen before.

There is a joint responsibility, with the claimant and sometimes the people are advising the claimants as well, for all the right reasons, to make sure that we get it together as early as possible, so that frankly the reconsideration can be done really quickly, because everything is there.

Q516 Chair: The problem is if the claimant asks for the evidence, the claimant has to pay for it; if the Department asks for the evidence, the claimant does not. The claimant in some cases, and in lots of welfare rights, by the time the party can get to there, has spent potentially over £100 on getting evidence that is no use, because it is not the right kind of evidence, because they have just collected everything. That is why there is a clearer role for the Department of making sure: a) that the evidence they supply is the relevant evidence— it is quality rather than quantity—and b) you are not impoverishing people who have got very little money.

Mike Penning: Where they are paying for evidence, which often is from their GP and from others, there is a lot of work we can do with their relevant bodies to make sure they understand the sort of thing we would be looking for, rather than them producing something, which, actually, as you say, is completely irrelevant to the claim as we go further down the line. There is some work to be done there.

Chair: I am going to go back to Theresa. We have got five minutes; I hope we can stay quorate in that time.

Q517 Teresa Pearce: Mr Feeney, you are probably the best person to answer this question: when somebody asks for a mandatory reconsideration, they are unable to claim ESA at that point. Could you talk me through what should happen then?

Jason Feeney: The choices are then that the claimant can either find work, obviously, but, from a benefit perspective, if they are found fit for work, they become a jobseeker, so they can claim Jobseeker's Allowance, as I said.

Q518 Teresa Pearce: What if they are asking for a mandatory reconsideration because they do not believe they are fit?

Jason Feeney: Yes. In the meantime, they can claim Jobseeker's Allowance and have tailored conditionality.

Q519 Teresa Pearce: They have to be fit to work.

Mike Penning: No.

Jason Feeney: What we are saying is we have made a decision. The Department has come to a view that the individual is fit for work; the individual disagrees with that decision. The policy as it stands is I am not allowed to continue to pay them ESA until they go through the mandatory reconsideration process, and should they choose to appeal, they would go back on to ESA. In the meantime, while the mandatory reconsideration process is being gone through, because we think they are fit for work, we are treating them

as a jobseeker, and therefore they are entitled to claim Jobseeker's Allowance, and then the adviser at the Jobcentre would take account of that, and can tailor the conditionality that is applied to that individual relevant to their condition. That is the issue: your benefit while you are going through the recon process now if you are found fit for work is JSA.

Q520 Teresa Pearce: How is that person informed? What we have heard previously, and I understand what you are saying, is that somebody can then go and claim Jobseeker's Allowance, talk to their adviser, and get some sort of conditionality on what they can and cannot do for their condition. However, what we were told is that it is up to the individual to ask for that at the Jobcentre Plus. No advice seems to be given to people that they can actually vary their conditionality. When somebody is in the situation they are in, they disagree with you; they do not think they are fit; they are obviously quite distressed and confused; they could have been on ESA for a very long time. Should it really be up to that person to know the ins and outs of the benefits system to be able to advise the adviser?

Jason Feeney: Two or three things on that; one is, again, in the notification we send out, there is an awful lot of that explanation, and what to do next, where to go next, includes how to claim JSA, for example.

Q521 Teresa Pearce: It is not tailored.

Jason Feeney: I will come to that. In the decision assurance call, we offer a warm hand-off through into JSA, so that is the claiming bit. On the tailored conditionality bit, this is an area where we have had some challenges in the Jobcentres, where not all of the advisers have been as aware of the flexibility they have got to provide tailored conditionality. We have refreshed the guidance on that; we sent out a further bulletin and new guidance at the end of April to make sure that the advisers, when somebody turns up in the circumstances you have described, can have a meaningful discussion and conversation about what level of conditionality needs to be applied to that individual while they are a jobseeker. It is an area where I would agree with you.

Q522 Teresa Pearce: You are saying that now happens, but it did not happen before?

Jason Feeney: I am saying there were instances before where it did not, because, as colleagues will be aware, the Jobcentre Plus network is a large network. We spotted the fact that we were having cases where people were not getting a meaningful exchange about tailored conditionality, so we have refreshed the guidance, reissued the guidance, and issued a bulletin at the end of April to say to our advisers, "When somebody turns up in these circumstances, you as an adviser have that flexibility to reduce the conditionality and tailor the conditionality specific to that individual."

Q523 Sheila Gilmore: We are still encountering people who effectively get turned back by Jobcentres on the basis that they are not fit.

Jason Feeney: Yes. Well, that should not happen.

Q524 Teresa Pearce: I have also got cases of people who have been through this system and are waiting for mandatory reconsideration; they have gone to Jobcentre Plus; they have got mental health issues; they are told to come back on a certain day, at a certain time, and they do not know if it is a Tuesday. If you ask them what day it is, they would not know. They have got serious mental health issues, and then they are sanctioned. Then what happens?

Jason Feeney: Well, it is wrong.

Q525 Teresa Pearce: There needs to be a lot more work—

Jason Feeney: We accept that.

Q526 Teresa Pearce: When all of this was decided, there was a lot of talk about the changing role of the Jobcentre Plus adviser, and this Committee put to the Minister—not this Minister, another Minister—that there needed to be softer skills, different ways of working, and different ways of approaching people. It is no longer just processing people; it is dealing with the whole person. We were told—I was told—that I obviously did not have a very high opinion of the people in Jobcentre Plus. That is not true; I do, but it is a different skillset they need. How much investment has there been in Jobcentre Plus staff to make sure they can deal with this really difficult cohort of people coming through?

Jason Feeney: Similar to the mental health champions that we have within Atos, within the Jobcentre Plus network there are disability employment advisers, so they specialise in this, so they are there to support their colleague advisers.

Q527 Teresa Pearce: Physical disability and mental disability are very different.

Jason Feeney: Indeed. They are not restricted to physical disability; I did not say they were.

Q528 Teresa Pearce: No, but if it is an adviser—

Jason Feeney: Yes. There is somebody in each Jobcentre who has a specialist role, who is there every week within the Jobcentre. There is a specialist role of disability employment adviser; they are there not only to deal directly with claimants but also to support their colleague advisers to make sure that they are providing this level of service. We recognise there have been shortfalls in this area and we have addressed that in these last couple of months.

Q529 Teresa Pearce: We should see an improvement.

Jason Feeney: We absolutely should see an improvement.

Q530 Teresa Pearce: If I get somebody coming to me and saying—

Mike Penning: There will be mistakes; people make mistakes, but hopefully there will be fewer mistakes, because of the work we are trying to do now.

Q531 Teresa Pearce: It should not be a common occurrence.

Mike Penning: It should not be a common occurrence. I have got a very working class constituency as well; they do not suddenly stop coming to see me just because I am the Minister. I hear some of the things, but I hear also a huge amount of good things that are going on, particularly in getting people with disabilities and long-term illnesses into work.

Q532 Teresa Pearce: Your constituents come to see you to tell you good things?

Mike Penning: To tell me good things? Yes, they do. Perhaps I am a bit more cuddly; perhaps I am cuddlier and friendlier MP.

Q533 Teresa Pearce: Perhaps you are more friendly than me. Could I just go back to a final thing? You said that the judicial review had been appealed. When was that appeal?

Mike Penning: It is due before—the decision—

Q534 Teresa Pearce: Is it an appeal, or is it you are waiting to go back to court?

James Bolton: There was a judicial review; we appealed; we have had the result of that appeal. That appeal effectively halted the hearing part way through, so now there is going to be a further hearing on the original judicial review.

Mike Penning: Which I think is in early July. We will write to the Committee and let you know the details.

Teresa Pearce: That would be good to know.

Q535 Sheila Gilmore: If the decision has been taken on mandatory reconsideration that people should no longer get benefit, of course they can if they are pending an appeal, so we have them on, off, potentially on again. The amount you would receive if you claimed Jobseeker's Allowance is the same. I think Citizens Advice have argued, in some of their submissions, that because of the cost involved in processing people through that, to receive a benefit that would be at the same level anyway as they would have got before, what is the point of this change? What is it intended to do?

Mike Penning: A decision has been made by the decision-maker that person is fit for some type of work—that is the decision.

Q536 Sheila Gilmore: That is the decision while they are pending appeal as well.

Mike Penning: That is where the regulation is at the moment. While I am always very open-minded as to how we could improve the services and what we do, as it is at the moment, and we must improve, and that is what Jason—

Q537 Sheila Gilmore: Many people said it was a bad regulation in the first place. Now, you can change a regulation if you want to.

Mike Penning: Some said it was a bad regulation.

Q538 Sheila Gilmore: What is the purpose of it? There were reconsiderations going on before, and there is no financial saving apparently unless people do not claim or get JSA. There is no financial saving, and there may indeed be a financial cost, so would it not be time to look at it again?

Mike Penning: I will look at it again, but I think one of the things that this benefit needs, while we keep making sure that it improves and does what we need it to do for the claimant, as well as for the taxpayer, is to have some degree of stability in it. I will look at it; I am always open to looking at recommendations and ideas, but the decision-maker has made a decision. I know the point the Honourable Lady is making; the decision-maker has made a decision that that person is fit for work, and JSA is I think where they should be, but I will look at any evidence to the contrary of that.

Q539 Chair: I am very conscious of the time; we had some questions about appeals and feedback, and a very technical question about conditionality requirements under Universal Credit. Is it alright if we write to you, Minister?

Mike Penning: Why do you not write to me? I am due somewhere else as well, Madam Chair.

Q540 Chair: We will do that. Can I just ask the final question? The word "toxic" came up rather a lot when we had Atos in front of us on Monday; we were just wondering whether your view is that toxicity will follow whoever the new contractor is? If you just rebrand the contractor, will not all the underlying problems that have caused the problem with Atos—

Mike Penning: If you were just rebranding in that way, yes. We and the new contractor will learn from the shortfalls of the previous way it was being operated, and I am very confident we will do that with the new process.

Q541 Dame Angela Watkinson: There is one question that has not been asked on here, but I would like to raise it, it is about the successful ESA appeals, which were at 43% in the last quarter. In fact, that 43% is 43% of 38% of the number of people who appealed, of the 33% of people whose original claims were unsuccessful. That calculates to 5.5%, so the 43% is misleading.

Mike Penning: I am really pleased we have a few seconds to just answer this point, because I think it is a very good point. If we just, frankly, listened sometimes to the questions and some of the lobbying, you would think it was the other way around on the figures, and it is not. I think that figure will continue to drop, and the reason I think that is because we are working much closer with the judges and we know better as to why they have made those decisions. Those decisions are coming down through the system, through Jason's team early on, certainly through the provider, so we can learn exactly what is going on in that way.

I really would like lots of judges in the tribunal areas to have very little work, because not only would that save the taxpayer a huge amount of money, which is obviously what the Honourable Lady was alluding to as well, but it means that we have got the decisions right. Not everybody is always going to agree with the decisions, but within the rules and within the laws, we have got them right. The less that go to tribunal, the more we can communicate better the decisions that we are making; that would be better for everybody, and in particular the claimants.

Jason Feeney: One point, if you would, Chair. Those two last points are linked, so part of the toxicity is the misrepresentation that 40% of the decisions are lost at appeal. They are not: it is 5% of the decisions. It might be 40% of those that get all the way through to a tribunal, and that might be the right answer, if those cases that get through to tribunal are those that are in the grey area of the difficult cases one way or another. Part of the toxicity is driven by misrepresentation of some of the performance figures, particularly around appeals.

Chair: I was going to stop it there, but Theresa now wants to come in.

Q542 Teresa Pearce: Can I just say, in relation to that, one of the criticisms this Committee has had of the DWP is its own spinning of statistics. It does not always work in your favour, does it?

Mike Penning: Those are not our figures.

Q543 Teresa Pearce: I am just saying, sometimes when statistics are put out by the DWP, which are then picked up by the media in a certain way, the DWP knows they are going to do that, but when you dig into them, they do not really mean what they mean; sometimes it works both ways.

Mike Penning: If we listen to some of the questioning we have had today, and you listen to some of the commentary, you would think those figures were exactly the other way around.

Sheila Gilmore: We know that; we have been told that from the outset. Of course we know that.

Q544 Chair: Anyway, on that, can I thank you very much and your team for coming along this morning? It has been a long session, but it has been really useful, and it is always good to get the Minister as the last witness, because you get the chance to rebut some of the things that may have been said by other witnesses.

Mike Penning: Just so you know, the reason I was slightly watch-watching is it is my wedding anniversary and my wife is waiting downstairs.

Chair: Congratulations to you.

Mike Penning: I have been happily married for 25 years—26 years

Oral evidence: Employment and Support Allowance and Work Capability Assessments, HC 302