

Citizens Advice



Myddelton House  
115-123 Pentonville Road  
London N1 9LZ

Tel: 020 7833 2181  
Fax: 020 7833 4371  
[www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

# Consultation By SSAC On The Draft Social Security (Incapacity Benefit Work-Focused Interviews) Regulations 2003

**Response by Citizens Advice**

**July 2003**

**Patron** HRH The Princess Royal  
**Chair** Sir Graham Hart KCB  
**Chief Executive** David Harker OBE

Citizens Advice is an operating name of  
The National Association of Citizens Advice Bureaux  
Charity registration number 279057  
VAT number 726 0202 76  
Company limited by guarantee  
Registered number 1436945 England  
Registered office as above

## Introduction

- 1 Each year Citizens Advice Bureaux deal with 450,000 enquiries on disability and sickness benefits, and on the provision of advice and information to people wanting to work. We very much welcome the opportunity to comment to the Social Security Advisory Committee on these draft regulations and the accompanying Explanatory Memorandum prepared by the Department for Work and Pensions.
- 2 Nationally Bureaux report large numbers of problems experienced by people applying for or receiving Incapacity Benefit. In 2002 Citizens Advice received over 2000 case reports on all disability benefits, and a substantial proportion of these related to Incapacity Benefit. Our evidence shows that many people suffer severe hardship and stress because they are unjustifiably denied IB when they make an application, or have their benefit stopped inappropriately following the Personal Capability Assessment. In most cases this arises because of incorrect advice from a Medical Services doctor on the person's capability for work. It is a matter of extreme concern that so many people have to go to appeal to receive their entitlement.
- 3 In 2002, 45% of appeals against IB decisions were successful. This suggests that there is something fundamentally wrong with the basis of the original decisions. In our view, these problems arise partly because the criteria for assessment set out by DWP are inadequate, and partly because some Medical Services doctors display a poor understanding of the impact of a person's health problems on their ability to work, and give scores that are unjustifiably low. It is our experience that people with mental health problems suffer particular problems in relation to IB decisions.
- 4 Against this background we have substantial reservations about the proposals on which DWP is consulting SSAC. We strongly support the government's objective to assist people who are receiving IB to get back into employment in the many cases where that will be of benefit to the individual. We welcome the extra adviser support and financial help that will be provided by the pilot schemes. And we welcome the proposal to thoroughly evaluate the effectiveness of the pilots. But, as we pointed out in our response to DWP's Consultation Paper "Pathways to Work: Helping people into employment", we consider that the proposals place undue reliance on the unproven effectiveness of Work Focussed Interviews, and on the quality of decision making in relation to IB.
- 5 We are also concerned that the draft regulations so strongly emphasise the obligations that will be placed upon IB recipients - to attend interviews and to participate in discussions – and the draconian sanctions that can be applied if somebody fails to attend a series of WFIs. By contrast, the obligations of Jobcentre Plus staff to treat the client with sensitivity and to pay due regard to the effect that the client's health problems may have on his or her ability to participate constructively in the process, seem to depend only on good practice guidance from management. We question if this is the right

emphasis. It needs to be remembered that the individuals who will be asked to participate in this programme have major health problems that will, in most cases, already have kept them away from work for several months. We would have expected DWP's detailed proposals to rely rather more on help and persuasion and rather less on compulsion and financial sanctions.

### **Scope of the IB Reforms Pilots**

- 6 We welcome the substantial resources that DWP will be putting into the pilot schemes. We hope that this is a recognition of the substantial ongoing support that some IB recipients will require in order to get into employment on a long-term basis. We note that the pilot schemes will initially deal with new IB clients, but are unclear how this will apply to people who are applying for IB at the start of their period of incapacity (for example because they are self-employed). Will they only come onto the scheme when they move to short-term higher rate IB?

### **The WFI Process**

- 7 We are concerned about the procedures for deciding whether an individual will be asked to participate in the five additional mandatory WFIs. The exclusion of those exempt from the PCA looks straightforward, but it appears from paragraphs 13 and 14 of the Explanatory Memorandum that the procedures to identify "clients likely to be on benefit for a short period" are still being developed. It appears that the process will require the PA to make a decision about the client's prognosis. We question whether that is appropriate, and are unclear about the statutory basis for this process. As far as we are aware, DWP has not published any information about how it has developed the criteria to be used: we believe that it should do so and should consult on the details of its proposals before introducing such arrangements.
- 8 Paragraph 15 sets out the requirements for clients to both attend and participate in mandatory WFIs. These requirements flow from draft regulations 3 and 9. In its response to SSAC, the Disability Alliance has expressed grave reservations about the way in which these regulations will seek to apply compulsion in these respects. We strongly endorse the comments made by the Disability Alliance. We are particularly concerned that the very nature of their condition places people with learning difficulties or mental health problems at risk of non-compliance and financial sanction. We also share the Alliance's concern at the subjective nature of any decision to punish somebody for not participating in the discussion at an interview. We consider that regulation 9 gives PAs inappropriate power over the income of IB recipients. It is particularly perplexing that these excessive powers are provided in order to produce an Action Plan that sets out activities in which clients' participation will be voluntary.
- 9 We are pleased to see from paragraph 17 that an in-work adviser will provide some support to participants in the scheme after they have taken up a job.

We hope that the effectiveness of this support will form part of the evaluation programme.

- 10 The safeguards for clients set out in paragraph 18 provide a measure of protection for clients from the punitive aspects of the scheme. Such safeguards are extremely important and their effectiveness will need to be carefully monitored. However, we are concerned that these safeguards, unlike the sanctions on clients, do not appear to be enshrined in the regulations. What comeback will clients have if the safeguards are not honoured, or are not operated properly?
- 11 Clients who fail to attend a WFI will be advised by letter that they have 5 working days to “show good cause” for non-attendance. Our clients have extensive experience of letters from Jobcentre Plus that either take a long time to arrive or do not arrive at all. This problem can occur either with the letter setting up the WFI or the letter about non-attendance. We consider that Jobcentre Plus should be obliged by regulation to satisfy itself that a client has received both these letters before it can apply any benefit reductions. The commentary on regulation 10 says that the client must show within 5 days of the date of the WFI that they had good cause to attend. This is an entirely unreasonable requirement given the postal problems outlined above. At the very least an additional 5 days should be allowed for the client to receive the letter about non-attendance.

### **The PCA and new Capability Reports**

- 12 Paragraph 20 says that PAs will help clients to understand the nature of the PCA process “in particular that satisfying the PCA does not mean that a person is necessarily incapable of all work”. It seems to us that this has the potential to be very confusing and to give mixed messages to clients.
- 13 We see from paragraph 21 that it is planned to use a new form of CR in the pilots. We hope that DWP will be publishing details of this. Paragraph 22 states that the CR will not be used to decide benefit entitlement, but the same paragraph starts by saying that the PCA and CR will be prepared by Medical Services at the same time. There seems to be a conflict here. The PCA tests can be satisfied even if a client can do something but only with pain. Will the effects of pain also be considered when deciding the CR?

### **Specialist Teams of personal advisers**

- 14 We welcome the acknowledgement in paragraph 27 that clients with mental health problems will often have the greatest difficulty returning to and seeking work. They are also likely to have substantial difficulties in participating in these WFI based pilots, which gives cause for concern about the heavy emphasis on compulsion and financial sanctions within the scheme.

## **New and Clearer Financial Incentives to Try Work**

- 15 We welcome the Return to Work Credit and the fact that it is disregarded for other benefits. However, does this mean the permitted work rules will not apply? If they do, we are unsure as to how they will interact with RTWC, as there is no information on this in the memorandum

## **Evaluation**

- 16 We very much welcome the government's intention to carry out a "robust and rigorous evaluation" of the pilots. We believe that it will be important for stakeholder interests, including Citizens Advice, to be consulted about the plans for the evaluation while they are being drawn up, and for there to be a process for stakeholder consultation during the pilots.
- 17 We are concerned that the plans for evaluation appear to have reached an advanced stage (contractors to be appointed by 1 August) without stakeholder consultation. The scope of the evaluation set out in paragraph 44 is notable for its lack of attention to any negative impact on clients. Whilst the evaluation should show how effective the pilots have been in getting people into employment, it will also be necessary to look at the effects of the pressures that the scheme will place people under, in terms of stress and other negative health consequences, and the impact of taking money away from sick people, who will frequently be in poverty before any benefit reductions are applied.

## **Conclusion**

- 18 Citizens Advice welcomes the government's intention to invest significant resources in helping people on Incapacity Benefit back into employment. Many aspects of the planned pilot schemes are positive, but we are most concerned about the elements of compulsion and financial punishment that are provided for in the draft regulations. We fear that these elements may cause great suffering to very vulnerable people, and negate the positive aspects.
- 19 In our response to "Pathways to Work", we pointed out that our case reports on the experiences of CAB clients in claiming IB might be useful to the DWP team developing the pilot schemes. Our offer to the department to examine these case reports remains open.

Social Policy Department  
Citizens Advice  
July 2003