
Chair of the UK Statistics Authority, Sir Andrew Dilnot CBE

Sheila Gilmore MP
House of Commons
LONDON
SW1A 0AA

13 June 2014

Dear Ms Gilmore,

WORK CAPABILITY RECONSIDERATIONS AND POWERS OF MINISTERS

Thank you for your letters of 30 April and 15 May 2014, continuing our correspondence about Work Capability Assessment reconsideration statistics and raising questions about the powers of Ministers in relation to departmental statistical work.

I read with interest the Minister's remark set out in your letter that "It may not be in the perfect format that the hon. Lady is looking for. I have asked for this matter to be reviewed, and Sir Andrew Dilnot is doing the same thing, and I look forward to the response." I thought it would be useful to clarify here that the Authority's work to help the Department for Work and Pensions to comply with the Code of Practice for Official Statistics is carried out independently of any work which the Minister may have asked for within his Department.

On the subject of reconsideration statistics, my officials have been in contact with the statistical Head of Profession in DWP. The attached annexes set out the Head of Profession's responses to some specific questions put to him by the Statistics Authority.

You also raised the issue of Ministers' powers to ask their civil servants to publish certain statistics. Principles 1 and 3 of the *Code of Practice for Official Statistics* are particularly relevant. Principle 1 – "Meeting user needs" – includes a number of practices that require statistical producers to engage with users. Ministers are users of official statistics and so they (like any other user) can ask for particular sets of statistics to be produced. Principle 3 of the Code contains two further considerations. Practice 2 requires the producer body to "ensure that those producing statistical reports are protected from any political pressures that might influence the production or presentation of the statistics". And Practice 3 requires the producer body to "ensure that the relevant statistical Head of Profession has the sole responsibility for deciding on statistical methods, standards and procedures, and on the content and timing of statistical releases". My understanding of the position in respect of the production and publication of Mandatory Reconsideration statistics is that the Head of Profession has responded to explicit user interest – for example, from you – and has therefore decided that these should be published when he is satisfied with the quality assurance arrangements, and taking account of the other demands on his statisticians' time.

The present situation in ministerial government Departments is that decisions about the allocation of resources to the production and publication of statistics rest with the relevant

Minister. I continue to share the view of my predecessor, Sir Michael Scholar, that the independence of statistical work in government Departments needs to be strengthened further. In his letter to the Prime Minister of 12 May 2010¹, Sir Michael called for greater weight to be given to the role of Departmental Heads of Profession for Statistics reporting to the National Statistician as their manager on professional matters, and for the Statistics Authority to be given a role in decisions about spending on statistics in Departments. I believe that such steps would help ensure that statistical publications, decisions and actions are clearly seen by the public to be objective, impartial, and in the interests of the public good.

I am copying this reply to David Frazer, Head of Profession for Statistics at DWP.

Yours sincerely,

A handwritten signature in black ink that reads "Andrew Dilnot". The signature is written in a cursive style with a large initial 'A' and 'D'.

Sir Andrew Dilnot CBE

¹ <http://www.statisticsauthority.gov.uk/reports---correspondence/correspondence/letter-from-sir-michael-scholar-to-prime-minister-12052010.pdf>

Annex A Response from the DWP statistics Head of Profession to questions put to him by the Statistics Authority.

From: Neil McIvor
To: Joe Cuddeford
Subject: RE: Letter from Sheila Gilmore MP, Work Capability Assessments

Joe

Please see my response

Many thanks

Neil McIvor | Deputy Director, Statistical Services Division and Deputy Head of Profession for Statistics | Department for Work and Pensions

1. Is it the case that reconsideration has been allowed since the introduction of ESA in October 2008, and that it became mandatory (for anyone wishing to challenge the decision) in October 2013?

Response: Annex B provides key facts around Mandatory Reconsideration.

From October 2008 when ESA was introduced, claimants had the option of **either** a reconsideration or appeal against a decision they disagreed with which affected the amount of benefit payable.

Since October 2013, claimants who wish to dispute a decision – including a decision which is based on the outcome of a WCA – are required to ask DWP to reconsider and revise the decision. This is called a ‘mandatory reconsideration’. An appeal cannot be lodged with HMCTS until the mandatory reconsideration process has been undertaken and completed.

Data on appeals, pre-dating the appeal reforms and Mandatory Reconsideration (MR) are currently available in the ESA-WCA Statistical Bulletin.

However, the methodology and data currently used to produce the publication does not include a separate breakdown for Reconsideration (before it became a formal stage in the appeals process (MR)). Data on all ESA decisions that are *revised* following reconsideration, which would be required in order to update the tables in the publications in the way suggested, are not currently available to the Departmental statisticians at an individual level.

Table 6 of the publication provides information on new claims – Work Related Activity Group (WRAG) at functional assessment initially or after appeal split into reasons for assignment by month of claim start (Great Britain). The table does include a subset 'At reconsideration'. However the supporting notes detail that the data includes cases that will have been revised following reconsideration and where the DWP decision differs from the Atos recommendation i.e. those placed in the Work Related Activity Group following a Fit for Work or Support Group Healthcare Professional recommendation. Information to separate "Reconsideration" and "where the DWP decision differs from the Atos recommendation" is not currently available.

In the Statistical Bulletin released in March 2014 (Section 12) and in correspondence with Iain Russell (UKSA) we have confirmed that DWP statisticians plan to carry out a full and

detailed check of the whole production process of this series, to ensure consistency with other related products and consider new user requirements and/or additional breakdowns, including Mandatory Reconsideration and Reconsideration (before it became formal stage in the appeals process). This work will be prioritised alongside a large quantity of high public interest data around welfare reform - such as Universal Credit, Personal Independence Payment, Work Programme and Sanction statistics.

For information you may be interested to view background information published alongside the March publication that depicts the process for new claims of Employment and Support Allowance – starting with the original claim, taking in the functional assessment, and ending with an initial decision, a decision after mandatory reconsideration or appeal, or a repeat decision after a prognosis period.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/297940/esa-wca-outcomes-background-note-mar-14.pdf

2. Why does Table 3 in the ESA Outcomes of WCAs statistical release appear to show that no claimants who applied for ESA in December 2012 and were found Fit for Work subsequently appealed this decision?

Response: Following release of the March publication DWP statisticians have identified a processing error with appeals data for the period June to December 2013 in both the January 2014 and March 2014 publication.

We estimate that there will be no change to the percentage of outcomes of appeals heard to date on fit for work decisions that are upheld and overturned. However, Appeals heard at a monthly, quarterly and annual level that include Appeal outcomes in the period June to December 2013 will be impacted.

A revision will be made to correct these figures in conjunction with the next release in June 2014. This revision will be carried out in line with UKSA guidelines and users have been advised, in the interim, to treat data with caution.

Table 3 of the publication currently notes that “the volume of appeals heard and inferred to be Fit for Work in each cohort are likely to alter over time and change is likely to be most marked in more recent cohorts. This is because of the lengths of time it takes to submit an appeal and have it heard by the Tribunal Service”.

There is a reporting lag of approximately 16-months at the issuing date of the ESA WCA statistical output owing to the time needed to process data and time allowed to enable the bulk of appeals to be heard by Her Majesty’s Courts and Tribunals Service e.g. Table 3 of the March 2014 publication reports outcomes of Appeals heard on ESA claims that started in the period to December 2012. The underlying data supporting the publication should have included Appeal outcome data to December 2013.

The next publication in June 2014 will include appeals data received from HMCTS up to March 2014 and new claims to September 2013.

3. What are your current plans for the publication of WCA reconsideration statistics - timing and format?

Response: The Department is currently collecting information on all Mandatory Reconsiderations. Mandatory Reconsideration became a formal stage in the process, prior to Appeal, for decisions notified from 28 October 2013. At present the Mandatory

Reconsideration data collected is not sufficiently robust or reliable for it to be made available. At this stage we cannot confirm the exact timing and format of the statistics.

Mandatory Reconsideration information is collected on a new web based system. DWP statisticians have a priority work request in place to get access to the underlying architecture of this system, which is necessary to enable statisticians to undertake their robust quality assurance. DWP statisticians have a long history of triangulating information across different administrative systems to ensure quality. For example, in theory, it may be that some outstanding cases on the system are in fact closed, but haven't been formally closed off on the Mandatory Reconsideration database. Statisticians would look to link the underlying data, with data from other sources, such as payment systems and Labour Market Systems, to ascertain the true status of each case.

DWP statisticians aim to publish statistics on Mandatory Reconsiderations towards the end of 2014 subject to data verification and testing being completed. Alongside this work, statisticians will also endeavour to include pre -Mandatory reconsideration statistics (i.e. before reconsideration became formal stage in the appeals process) in the ESA-WCA publication. These data are stored in a separate system.

Further updates detailing new user requirements and/or additional breakdowns will be included in Section 12 of the Statistical Bulletin published in June 2014.

Annex B Key Facts: Mandatory Reconsideration

- Mandatory Reconsideration (MR) was first introduced in April 2013 for Universal Credit and Personal Independence Payment. For all other benefits, including ESA-WCA, and child maintenance MR applies to decisions made from 28 October 2013
- following receipt of a decision which someone disputes, they must ask DWP to conduct a 'mandatory reconsideration' before they can lodge an appeal
- people wishing to appeal following a mandatory reconsideration must submit their appeal directly to HMCTS.
- The main reasons for **mandatory reconsideration** are to:
 - resolve disputes as early as possible;
 - reduce unnecessary demand on HMCTS by resolving more disputes internally;
 - consider revising the decision where appropriate;
 - provide a full explanation of the decision; and
 - encourage and support people to identify and provide any additional evidence that may affect the decision, so that DWP can ensure that people receive the benefits or child maintenance to which they are entitled at the earliest opportunity.