

# Quality Assurance Framework – ESA/IBR Decision Making & Mandatory Reconsiderations

## The importance of Quality Assessment

1. Virtually any administrative system needs some way of measuring and assuring that it is working as it should. Rigorous, robust quality assessment contributes to:

- **Public confidence** - The public has the right to expect Civil Servants to carry out their duties correctly. They have the right to expect that any decision made that affects the financial support they receive from public funds, is made in accordance with the law. Also that the process is subject to testing to ensure that this is the case.
- **Consistency of approach** - The public has a right to equal treatment. Where there is an element of discretion in decision making, there is some legitimate scope for different outcomes on the same facts. However, there is also potential for local practices to develop which are not consistent with the legislative intention. A national system of checking that applies the same universal standards helps guard against this.
- **Ensuring financial probity and safeguarding public funds** - Checks should ensure not only that there has been no impropriety involved in decisions that affect the amount of support given, but also that decisions affecting benefit payments should allow appropriate financial support.
- **Improving standards** - Overall standards of decision making can be improved by identifying trends and providing feedback about what is going well or not so well. Errors in individual cases can be identified and corrected where necessary.

2. More specifically within DWP Decision Making, a QAF will contribute towards:

- our ability to gauge whether there is a consistent approach to gathering, weighing and presenting evidence.
- meaningful discussions at 1-2-1s and to help identify Decision Makers(DMs) / Disputes Officers with any identified L&D needs
- providing a national assessment route for determining current knowledge and skills levels and for influencing the development of future L&D products (technical and “soft skills”)
- enhancing Departmental reputation. A level of assurance can be given that an appropriate standard is equitably applied to benefit decisions for all DWP claimants.

### **Why this approach should be adopted**

3. Following increased interest from parties such as the DWP Decision Making Standard Committee, the Work & Pensions Select Committee, Noel Shanahan (Director General of DWP), Carolyn Taylor (Benefit's Directorate Director) and Sandra Maughan (Head of Disputes), has highlighted decision making standards as an area for concern given current (2012/13) revision rate at the receipt of a valid appeal and the un-challenged overturn rate at Tribunal Services.
4. In 2013/14 DWP is striving to achieve an overall quality measure of 85% of decisions made, being correct. (This is an initial level and will be reviewed)
5. Given that Appeal Reform has brought new changes to how disputes will be managed for the claimant from the 30<sup>th</sup> October 2013, not only a new operation structure but a new customer journey – the department is taking this opportunity to further develop a more consistent and standard approach to decision making across all arm of the business.
6. In December 2011, within JCP, we introduced a Quality Assurance Framework (QAF) for ESA / IBR WCA decisions and ALL Primary Benefit Appeals submitted to HMCTS. DLA/PIP introduced their QAF in July 2013 and JCP Labour Market introduced their QAF for Decision Making on the 10<sup>th</sup> October 2013.
7. Building on what is already in place, it has been recommended that the QAF scope is widened to also incorporate ESA WCA Mandatory Reconsideration decisions and reconsiderations following new evidence after an appeal has been lodged but not heard at HMCTS.
8. The checking approach concentrates on the essence of the decision itself. Assessing the quality of the decision focuses on the processes by which the determination was reached and the soundness of its conclusions. It checks whether those processes and conclusions comply fully with the law. The aim is to identify whether the decision maker has dealt with the crucial issues appropriately in line with the fundamental principles of decision making.

### **Securing Improvements: Quality Central**

9. With the introduction of the "Quality Central2 Hub which will also include a feedback mechanism tool (QUEST) back to the original decision-maker, it is further proposed that this tool is issued to gather statistical information with regards to compliance.
10. Therefore the information from QAF can be supported with meaningful feedback. This in turn helps to identify training needs and promote good practice. So as to effect continuing improvements in overall standards of DWP decision-making.

### **The QAF Checking Requirements**

11. It is preferable that the QAF checker is fully conversant with all the legislation and guidance as they need to draw out national standards of consistency in the decision-making / disputes process, in particular, application of the law.

12. This does not prohibit non technical DMs / Disputes Officers undertaking the checks and clarifying points of law with a suitably trained colleague.
13. The QAF requirements are limited to a check against a series of questions that support the overall standard and whether the checker feels the DM has met these or not.
14. It is assumed that any DM / Disputes Officer subject to a QAF check would have previously completed all relevant training and reached an acceptable level of understanding and knowledge of:
- What the law requires to be decided; and
  - How to establish the relevant facts to which the law should be applied.
15. The role of the checker is defined as confirming that the available evidence has been correctly applied to the law and to identify where a standard might appear to have not been met because evidence of a relevant fact had not been sought.
16. A QAF check result would, generally, only be recorded as not meeting the standards where national guidance or legislation has clearly not been followed.
17. The main purpose of the check is to ensure a **consistent quality standard** of decision making and determine whether the facts established support the decision and conclusions drawn.
18. The checker should refer to specific guidance if clarification is needed. It is important to note that the role of the checker is to establish that the relevant facts of the case have been considered and applied correctly to justify the decision outcome.
19. It may be necessary for some QAF checkers to undertake some DMA-specific training, available via RM, and Line Managers need to ensure that this is regularly reviewed and updated.
20. The checker is expected to record whether the required standards have or have not been met by completing relevant checks to the questions associated with each standard and write a brief concise summary against each standard (focused bullet points).
21. In practice the checker uses the Decision Making and Appeals Case Recorder (DMACR) to randomly sample cases for check, or if necessary specific cases can be selected.
22. The number of checks to be undertaken has been set at a minimum 6 decisions per DM per month.
23. Checks take up to approximately 30-40 minutes per case and outcomes are recorded on DMACR with a printed output going to the decision maker that is the subject of the QAF.

### **Monitoring Consistency – Calibration**

24. Consistent application of the standards will be ensured by regular calibration exercises with checking staff. Group / Cluster level calibration should take place on a quarterly basis, with a National calibration held annually to ensure consistent standards are applied. These events should be organised by Dispute

Resolution's Quality Matter Group, in co-ordination with BD Ops Leads, with the need for events being driven by identified inconsistencies in decision making via their QUEST feedback process.

25. Essentially calibration will work by cascading the checking standard through National, Group, BC and Team levels.

26. In practice this will mean that a national meeting will take place with Group representatives as well as representatives from Policy, Legal/Guidance and for ESA/PIP, Medical strands of the business. This national group will work through set cases to determine and agree the standard to be applied to them. This is similar to arrangements in place in CCD for quality assessing telephone calls.

27. The next stage is for those Groups to replicate the exercise with their BC/DRT/LM reps, using the same cases to drive through the standard at site level. The same is then done at site level with members of the checking team and QAF Coaches. This is also an opportunity to cascade key messages to Decision Makers / Dispute Officers on site using the examples to illustrate the point.

## Resource

28. QAF checkers will come from existing DMs/Dispute Officers teams and sites have been told to ensure that a minimum of 2 staff are selected to undertake checks on each site. There should also be 1DRT Coach per Group/Cluster.

## QAF Standard Questions

29. The aim is to identify any **fundamental** errors rather than minor mistakes that have no potential impact on the decision making process or the outcome.

30. A fundamental error is where the outcome is wrong, the claimant has not been treated fairly or an important stage of the decision making process has been handled incorrectly so that, even if the outcome is acceptable, there was potential for a wrong outcome.

31. The standard set for Quality Checking requires that each of the following elements be met. A decision that fails on one or more of these points will not reach the required standard:

- **Crucial issues are correctly identified and the decision is focused on these and explains contradictions in evidence and why some evidence is preferred** – Crucial issues are those on which the case turns and any which are disputed or potentially difficult. Often there are likely to be several issues that are crucial to different stages of the decision making process and each should be correctly identified and dealt with.
- **The necessary evidence gathered and decision mentions whether the Decision Assurance Call (DAC) was successful or not. Re-gathered/re-examined evidence has been used appropriately to establish any relevant facts that were missing and clarify any points of doubt** – The evidence must be evaluated using accepted standards based on the rules of evidence in civil matters. The DM/Dispute Officer should say clearly in the decision what facts from the evidence have led to the decision and where this evidence is from. Whether it was obtained from the DAC or from paper evidence held on the case. Where the

DM/Disputes officer has noticed that further information is needed in order to decide a particular question, they should have made reasonable efforts to obtain that information. They should not have sought corroboration where the required standard of proof is already met.

- **The law, including the legislation, has been interpreted and applied correctly to the facts of the case** – All the tests of the relevant piece of law must be correctly identified and applied correctly to the facts of the case. The DM/Dispute Officer should not have introduced tests that are not apparent in the wording of the law. It should be clear that the decision has focused on the right issues and that the facts have been found in accordance with the rules about evidence and support the conclusions about each of the tests.
- **The DM/Dispute Officer remain neutral and the claimant has been treated fairly** – The decision shows that there has been bias in that the DM has started from a neutral point and has not prejudged the case or made assumptions. The treatment of evidence complies with the rules of natural justice, any areas of doubt have been thoroughly investigated and the claimant has had sufficient opportunity to resolve them.
- **The key conclusions and the reasons for them are recorded and the decision is soundly based in fact and law** – The conclusion should flow naturally from the facts of the case and the correct application of the law to those facts. The conclusions should not be at odds with the relevant facts of the case. To demonstrate this standard, the DM/Dispute Officer must record their conclusions, the key reasons for those conclusions and preferred use of evidence clearly explained. Also the reason why other evidence has been excluded should be recorded and the effective date of the decision must be correct and clearly identifiable.
- **The outcome of the decision is one that is right in the circumstances and easily understood.** – Overall, the decision should be one that is rational and reasonable. The decision reasons should be personalised, clear and focussed, using plain English, avoiding unnecessary departmental and avoiding unnecessary departmental jargon. Where there is a medical element, unnecessary medical terminology should also be avoided. The outcome of the decision should also be clearly documented with rational points that lead to a specific conclusion and formatted in a way that is easy to read.
- **Correct notification of decision prepared and notified to the claimant.**
  - Ensure that the notification is sent to the correct recipient(s) and address(es) and that it includes an explanation of the claimant's dispute rights. Ensure that the decision is clearly formatted and concise, with the decision outcome in bold at the beginning. The notification should be written in the first person ie. "You said..." and should be a true reflection of the conversation held with the claimant either during the DAC or in the ORC. If applicable, a notification/referral must be sent to the correct Government Department(s). Ensure that there is evidence that feedback has been recorded on QUEST.

## **Crucial Issues are Correctly Identified**

### **Finding the facts of the case**

32. The law must be applied to the facts of the case. Accurate findings of facts to which the law must be applied is therefore as important as knowing the law. In a sense, it is the more difficult part of the equation, since the facts of each case will be different, whereas the law is constant.

33. There is a limited amount of law for DMs to learn and understand but a wide and diverse range of facts may be relevant. The difficult part of decision making is establishing the facts and applying the law correctly to them

34. Extracting the relevant facts from the evidence is therefore a key skill for DMs. If it is not done correctly, it is impossible to apply the law correctly, regardless of how well versed in the law, the DM is.

### **Main options when making a decision are as follows**

- Make a decision on the balance of probability on the basis of the evidence that is already available on file, using the framework for critical evaluation.
- Request further documentary evidence from the claimant. In doing so, particular attention should be paid to identifying the best source of evidence and ensuring that the questions that are asked are relevant and focused.

## **Gathering and Interpreting Evidence**

### **Handling evidence – the basic rules**

35. A commonly used definition of evidence is 'that which tends to prove a fact – something that may satisfy the enquirer of the fact's existence'

36. The definition in the Oxford Dictionary of Law is 'that which tends to prove the existence or non-existence of some fact'

37. Evidence is the raw material from which facts are found.

38. Almost anything that provides some information about the claimant's circumstances or account of events can be relevant to the decision.

39. Evidence may be documentary, verbal or physical. Below is a list of examples of evidence that can be accepted:

- a claim form
- HRT questionnaire
- claimant statement
- current and previous MSRS medical reports
- telephone calls
- correspondence and other supporting documents
- face to face interviews
- computer systems
- computer print-outs or what was shown on screen

40. For medical related decisions, it must be considered whether harmful and confidential has been correctly identified and labelled.

### **The standard of proof**

41. For DMs, the civil standard of proof applies, that being the balance of probability. A fact is therefore something that the evidence shows to be more probable than improbable. In percentage terms if something is more than 50 per cent likely then it is a fact.

42. Clearly, this allows for a significant element of doubt. A fact in civil law is not something that is incontrovertible or beyond reasonable doubt as is the case for the criminal standard. However, a probability is not merely a possibility. The evidence must be compelling enough to have tipped the scales on the side of probability for a premise to be accepted as fact.

43. A claimant may state that they did not attend an appointment because they had a cold but could not provide any evidence to support this. Also evidence available from the computer systems indicated that the claimant had provided the same justification on four previous occasions without providing medical evidence, for failing to attend in the last two months. In this case, the verbal evidence would not be deemed compelling enough to tip the balance of probability in the claimant's favour.

### **The burden of proof**

44. The legal position is that 'he who asserts must prove'. The person who seeks to establish a fact must show by evidence that it is more likely than not

45. Using the example above for any good cause doubts, the burden of proof generally lies with the claimant. However, the burden of proof lies with a DM/Dispute Officer if they are making the assertion.

### **Inference**

46. Inference means drawing conclusions by evaluating data. Facts must always be found by drawing inferences from the evidence, with no significant breaks in the chain of reasoning. Findings of fact should never be based on guesswork or assumption which means adopting something as fact without evidence that supports the conclusion.

### **Evaluating evidence**

47. Not all evidence has the same tendency to prove a fact. Different pieces of evidence may have different probative values, meaning a greater or lesser tendency to prove the question at issue. Weak evidence may fall short of the standard of proof unless it is supported additional evidence. In general the DM/Dispute Officer must have a holistic view of the case before coming to a decision.

### **Inquisitorial Role**

48. All DMs/Dispute Officers have an inquisitorial role which means they have a duty to gather sufficient evidence on which to base a properly reasoned decision. Identifying gaps in evidence and taking action to fill them **when appropriate**, is a core skill.

49. The DM's inquisitorial role does not affect the burden of proof. A claimant still has to prove his case on the balance of probability. However, they must have

the right opportunity to provide the evidence that the DM needs to base the determination. See Neutrality of Decision Makers:Natural Justice.

50. What facts the DM needs depends on the issues on which the case turns. The first step is to decide what facts are relevant to the matters that must be decided. The following questions must be decided:

- What are the issues the law requires to be decided?
- What facts need to be established to determine the relevant issues?
- What evidence is available which goes towards deciding those facts
- Is other evidence necessary to decide the material facts?

51. Much of the evidence to make a decision should be provided with the referral but depending on the detail required, there is always the possibility that the DM/Dispute Officer will have to gather additional evidence before proceeding to a determination

52. This does not mean that the DM/Dispute Officer should fish for evidence when it is not needed and/or there is no indication of more relevant evidence. However, if they have been told that more evidence does exist, or it is apparent that the claimant does not understand what is important to their case, then the DM/Dispute Officer should seek additional evidence to fill the gaps.

53. Where the available evidence is insufficient to find a relevant fact and the DM/Dispute Officer is aware that evidence may be available to fill the gap, the inquisitorial role requires them to seek that additional evidence.

54. If additional evidence is not forthcoming, the DM/Dispute Officer must make a determination in its absence but can only reach those conclusions that they can infer from the available evidence. The difference is that if the claimant's evidence fails to achieve a balance of probability in their favour, they have had sufficient opportunity to make their case. Obviously, if the evidence establishes a probability in the claimant's favour, the enquiries were unnecessary in the first place.

## **Interpreting and Applying the Law**

### **Applying the law**

55. Decisions are made by applying the law to the facts. Once the relevant facts have been established. Once the relevant facts have been established, the law must be applied to them correctly so as to achieve the right outcome. This means achieving an outcome that complies with what the law requires and when the DM/Dispute Officer has discretion, arriving at an outcome that is logical, rational and consistent with the overall aims of the benefit.

### **Interpretation**

56. The law cannot be applied correctly to the facts unless it is interpreted correctly.

57. The law should be interpreted in a common sense manner, so as to give effect to its obvious intent. This safeguards against inappropriate technical or complex interpretations. It does not mean DMs are entitled to import into the wording of the law their own views of what the legislation intended. It is important that DMs do not add tests that are not included in the legislation.



58. The general rule for interpretation is the literal rule. Words and expressions are given their common everyday meaning within the context of the construction of the phrase. Sometimes using the literal rule will give a perverse outcome and in these instances it will be appropriate to seek help with interpretation from other legislation

## **Neutrality of Decision Makers**

### **Natural Justice**

59. The laws of natural justice are concerned with fair treatment. Natural justice is closely connected with gathering and evaluating evidence.

60. Natural justice requires that DMs are unbiased and that the person affected by a determination must know the case they have to make and must know any case against him.

61. This means that to have sufficient opportunity to put his case, the claimant must be given enough information about the conditions he must meet in order to receive benefit. They must be given a reasonable chance of providing relevant evidence. If any relevant evidence comes to light which is adverse to the claimant, that evidence must be taken into account until he has been made aware of it and has had the opportunity to comment.

62. It follows that a claimant who has not had adequate information about the conditions of entitlement has not had sufficient opportunity to put their case. The DM's duty is to ensure the decision complies with the laws of natural justice, including that the claimant properly understands the issues that are important to their case.

63. This may include clarifying something the claimant does not seem to understand, in spite of relevant information they have been given. The duty of making a claimant compliant with the laws of natural justice lies with the DM, regardless of who gathers the initial evidence

64. Similarly the claimant must be made aware of any evidence that is harmful to his case and must be given the opportunity to comment. A determination based on or influenced by adverse evidence of which the claimant is unaware, does not comply with the rules of natural justice.

## **Conclusions To Be Soundly Based in Fact and Law**

### **Recording decisions – Justification**

65. As well as recording decisions on the Department's computer system, in most complex cases and certainly where the decision is revised or superseded, there is a requirement to record it clerically on form LT54. In all cases, the decision must:

- identify the person to whom it refers
- identify the decision it is changing
- specify whether it is revising or superseding an earlier decision
- specify the grounds or authority for doing so

66. There has been much conjecture concerning the amount of justification that is required but operationally, there must be a balance between the level of justification and productivity.

67. The operational steer is that we focus our justification on the areas that contradict in the evidence provided. It should be clear why we have preferred the evidence we have relied upon in order for us to reach an overall decision and equally why evidence has been discounted. The conclusion should be that those that are not at odds with the claimant's evidence are accepted by all parties, including the DM.

68. The decision/Mandatory Reconsideration should be in plain English, succinct and easily understood by another DM and easily understood by the claimant.

### **The Outcome is Correct and Easily Understood**

69. It is self-evident that a sound decision is one which is properly reasoned, based on an impartial evaluation of the relevant evidence, a proper application of the law and in which the outcome is reasonable in the circumstances. The decision reasons should be personalised, clear, focussed and in plain English. Unnecessary departmental jargon and medical terminology (where appropriate) should be avoided.

### **Roles and Responsibilities**

#### **The responsibilities of the DMA Manager (HEO)**

70.

1	Ensure that the overall staffing allocation for DMA team is effectively deployed to ensure that the responsibilities of the DMA team *as described in the DM QAF are discharged
2	Ensure that guidance within the DMG and CAP code is followed and that the description of responsibilities is adhered to
3	Ensure that the KWOs of the DMA staff incorporate the responsibilities outlined in the DM QAF
4	Ensure the DMA team has the right skills and knowledge to discharge their responsibilities under the DM QAF, providing support to them as necessary
5	Monitor EO DM decisions to ensure compliance with DMA Standards as per DM QF where applicable. Record findings for remedial action and L & D reviews
6	Ensure that any significant or persistent non-compliance with the DM QAF is discussed with relevant Band D Managers. If an issue is not resolved at this level, it should be escalated to the Benefit Delivery Operational Manager (Band E/F
7	Produce a weekly/monthly MI return by relevant discipline for the BC Manager, showing number of cases checked and accuracy levels for discussion with EO DMs.
8	Ensure the accuracy of information held on DMACR and that deletions only occur for cases that should not originally have been entered on the system.

	Take action to reduce avoidable instances that led to deletion
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### **The responsibilities of the EO Decision Maker**

71.

1	Understanding the Accuracy/MVFE targets and Benefit Delivery Clearance targets and how we are performing against them. Accepting personal responsibility for the quality of the work produced as an individual as well as the need to progress cases quickly and efficiently. Ensuring compliance with DMA/
2	Ensure complex decisions are actioned and returned to sections with regard to the effect on the associated benefit KMI, or immediately if the case is deemed a priority but without allowing the quality of the decision to be impacted
3	Provide regular feedback to DMA/WCA manager on issues arising from referral processes
4	Provide detailed (written or verbal) explanations to claimants regarding decisions made as requested, in a manner which is readily understood
5	Critically analyse DM statistics to identify trends in Revised Decision Rates and use information obtained, to inform identification of DM quality/ accuracy issues

### **The responsibilities of the EO Checking Officer**

72.

1	Ensure that guidance within the DMG and CAP code is followed and that the description of responsibilities adhered to
2	Feedback to colleagues to discuss quality levels. Seek agreement on how to progress issues addressed, with each DM and DMA Manager. Review actions as appropriate
3	Monitor EO DM decisions to ensure compliance with DMA Standards and Quality as per QAF where applicable. Record findings for HEO Managers to perform remedial action and L&D reviews
4	Ensure that any significant or persistent non-compliance with the QAF is discussed with relevant Band D Managers. If an issue is not resolved at this level, it should be escalated to the Benefit Delivery Operational Manager (Band E/F)

