



# Advice NI response to: Work Capability Assessment: activities & descriptors consultation

**October 2023**

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## Advice NI response to:

### Work Capability Assessment: activities and descriptors consultation

October 2023

#### Background

##### Advice NI

Advice NI<sup>1</sup> is a membership organisation and service provider that exists to provide leadership, representation, support and services for the Independent Advice Network and people in Northern Ireland. We support over 65 members across NI, who provide advice on benefits, debt, housing, employment and consumer related issues.

Advice NI also delivers a range of advice services to the public via a Freephone helpline which includes Debt & Money, Benefits, Tax Credits & HMRC products/services, EU Settlement Scheme and Business Debt

Approximately 75% of the work of the Independent Advice Network in Northern Ireland is social security related and within this category, sickness and disability accounts for most requests for assistance.

##### WCA Consultation Paper: Key Points

Some key aspects of the consultation paper are reflected below:

“The proportion of Limited Capability for Work and Work-related Activity (LCWRA) outcomes at WCA has risen significantly since the activities and descriptors were last reviewed, from 21% in 2011 to 65% in 2022. Where people are assessed as LCWRA they are not expected to undertake any work preparation activity and receive an additional amount of benefit. An assessment as having LCWRA should be for severe functional limitation, but its application has gone beyond this. There are 2.4 million claimants in either the Universal Credit LCWRA or ESA Support Group, compared with 450,000 claimants within the Universal Credit Limited Capability for Work (LCW) or ESA Work-Related Activity Group.”

“People assessed as LCW have tailored employment support to prepare for work. They do not undertake intensive work search but have tailored work coach support to build confidence or wellbeing, learn skills, or gain help from local provision. People assessed as LCWRA do not have any requirements to engage with this tailored work coach support. It is not right that so many people are left without support, and we must not hold people back from opportunity.”

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<sup>1</sup> [Welcome to Advice NI | Advice NI](#)

“We have said we will remove the WCA and that the Personal Independence Payment (PIP) assessment will be the only health and disability functional assessment in the future.”

“LCWRA substantial risk was intended to apply to a small group of claimants but has grown as a proportion of WCA outcomes. 15% of new claims awarded LCWRA or ESA Support Group (SG) are now under substantial risk.”

“The Work Capability Assessment was designed to assess what people can do, not what they cannot, and to support more disabled people and people with health conditions to find work or to move closer to the labour market.”

“An increasing proportion of claimants are being found to have LCWRA.”

“Is work good for your health and well-being?”

“Data from the ONS (Office for National Statistics) says that 44% of working adults worked from home exclusively or at least some of the time each week between September 2022 and January 2023.”

“Mobilising

32. We are considering three options for change:

- remove the Mobilising activity entirely (both LCW and LCWRA)
- amend the LCWRA Mobilising descriptor to bring it in line with the equivalent descriptor in PIP - replacing 50 metres with 20 metres for both descriptors within the LCWRA activity
- reduce the points awarded for the LCW Mobilising descriptors.”

“Absence or loss of bowel/bladder control (Continence)

33. We are considering three options for change:

- remove the Absence or loss of bowel/bladder control (Continence) activity entirely (both LCW and LCWRA)
- amend the LCWRA Absence or loss of bowel/bladder control (Continence) descriptor so that claimants are required to experience symptoms ‘daily’ rather than ‘weekly’
- reduce the points awarded for the LCW Absence or loss of bowel/bladder control (Continence) descriptors”

“Coping with Social Engagement due to cognitive impairment or mental disorder

34. We are considering two options for change:

- remove the Coping with Social Engagement activity entirely (both LCW and LCWRA)

- reduce the points awarded for LCW descriptors for Coping with Social Engagement”

#### “Getting About (LCW only)

35. We are considering two options for change:

- remove the Getting About activity entirely
- reduce the points awarded for LCW descriptors for Getting About”

“The substantial risk criteria was intended to provide a safety net when there is evidence that there would be a substantial risk to mental or physical health if a claimant were found not to have LCW or LCWRA.”

#### **Advice NI response to WCA consultation**

A fundamental question which remains unanswered in this consultation is ‘Why?’

- why has the proportion of Limited Capability for Work and Work-Related Activity (LCWRA) outcomes at WCA risen significantly? What evidence is there to back up the assertion that “An assessment as having LCWRA should be for severe functional limitation, but its application has gone beyond this.”
- why are so many people, in the Government’s words, left without support? Surely this support can be provided without negatively impacting upon the financial entitlement of the claimant;
- why are 15% of new claims awarded LCWRA or ESA Support Group (SG) under substantial risk? Why are so many people qualifying for benefit under the ‘substantial risk’ criteria? Proper detailed analysis needs to be carried out into this particularly vulnerable client group;

When considering these questions, Government needs to reflect properly on the system used to monitor the correctness of decision making within the Department for Work and Pensions<sup>2</sup>. Sadly, the DWP Decision Making Standards Committee fell victim to the cull of non-executive bodies performed by the Coalition Government from 2010.

In contrast, social security being a devolved matter for Northern Ireland, a similar approach was not adopted and the Joint Standards Committee remains in place to: firstly, provide assurance that robust procedures are in place to monitor the quality of decision making with regard to specified benefits and child support. Secondly, to report on the standard of decision making, identifying any weaknesses and making recommendations to secure improvement. Thirdly, to provide assurance that the results of monitoring are fed back to decision makers to promote continuous improvement.

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<sup>2</sup> [Decision Making and Mandatory Reconsideration - SSAC Occasional Paper No. 18 \(publishing.service.gov.uk\)](#)

The latest NI Joint Standards Committee Report<sup>3</sup> highlights decision making accuracy for Employment & Support Allowance coming in at 96%, with financial accuracy figures coming in at 99%. What can we take from this? We can take it that decisions (rigorously monitored with external scrutiny from the NI Audit Office) are generally made correctly and that people with disabilities are receiving the support they need based on the legislation.

If we turn to the latest figures for Fraud and Error in the social security system in GB<sup>4</sup>, we see for Employment & Support Allowance an overpayment rate of 3.4% and an underpayment rate of 2.4%, with 'Official Error' (Departmental mistakes) accounting for a significant percentage in each category. Again hardly a sound evidential basis for embarking on radical change: unless of course the motivation is simply to make cuts and savings.

A fundamental flaw of the Work Capability Assessment is around adequately assessing mental health problems. Perhaps if the Government, policy makers and the Department for Work and Pensions were really in consulting mode and really interested in making the WCA better for people with disabilities and health problems, then they would be keen to find out the answers to the 'Why' questions flagged above, before embarking on another wave of changes and cuts which will inflict untold misery and anxiety on already vulnerable and excluded people.

Of course the Government wants to focus on what people can do, in order to disallow benefit entitlement and achieve savings. However, each individual person who needs to claim disability benefits needs to focus on what they cannot do.

Just take a look at the WCA descriptors. In order to score points and secure vital benefit entitlement, claimants need to satisfy criteria which state:

- Cannot, unaided, mobilise more than 50 metres;
- Cannot move without physical assistance from another person;
- Cannot raise either arm;
- Cannot pick up a 0.5 litre carton of liquid;
- Cannot press a button;
- Cannot convey a simple message;
- Cannot understand a simple message;
- Unable to navigate around familiar surroundings;
- Cannot learn how to complete a simple task;

The list goes on; the point is that Government may insist on focussing on what a person can do, but every claimant knows that in order to secure entitlement to benefit, based on the legislation, THEY must focus on what they CANNOT do.

And let us look at the specific changes being proposed by Government, are they really about providing additional support for people with disabilities and health problems: Answer: NO.

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<sup>3</sup> [Department for Communities Annual Report on Decision Making and Financial Accuracy 1 January - 31 December 2022 | Department for Communities \(communities-ni.gov.uk\)](#)

<sup>4</sup> [Fraud and error in the benefit system Financial Year Ending \(FYE\) 2023 - GOV.UK \(www.gov.uk\)](#)

Mobilising options: Remove, amend reduce ... not really about additional support, clearly about reducing entitlement.

Absence or loss of bowel/bladder control (Continence) options: Remove, amend, reduce ... not really about additional support, clearly about reducing entitlement.

Coping with Social Engagement due to cognitive impairment or mental disorder options: Remove, reduce ... not really about additional support, clearly about reducing entitlement.

Getting About (LCW only) options: Remove, reduce ... not really about additional support, clearly about reducing entitlement.

Again and again we come back to the inescapable conclusion that this consultation is simply a stepping stone towards embarking on another round of cuts and savings.

Working from home developments seem to be being used as evidence for reform – but of course this is not necessarily the case. Many employers are implementing ‘return to office’ policies to ensure employees have better peer support available and to ensure quality service provision is maintained and to ensure a more effective working environment for example around training, management and supervision arrangements. Indeed, prominent Government Ministers have been strongly advocating this approach<sup>5</sup>.

Introducing a criteria involving ability to work at home as a means of disallowing entitlement to benefit will be seen for what it is: a blatant attempt to deny people with disabilities their rightful financial support, pushing them on to lower benefit entitlement, more conditionality regimes and at greater risk of sanctions and destitution.

In terms of ‘substantial risk’, again we must ask why are 14.6% of new claims awarded LCWRA under substantial risk. Self-evidently, given the evidence of decision making accuracy and the fraud and error figures, the answer is because there would be a substantial risk to mental or physical health if a claimant were found not to have LCW or LCWRA. It is vitally important that Government and policy makers adhere to safeguarding requirements and continue to ensure that proper provision is in place to protect these vulnerable people.

Government should NOT make changes to the ‘substantial risk’ criteria.

## **Contact Details:**

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<sup>5</sup> [Jacob Rees-Mogg says civil servants must return to the office | Working from home | The Guardian](#)



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