



Work Capability Assessment: activities  
and descriptors  
DWP Open consultation

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NAWRA Response

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## **The National Association of Welfare Rights Advisers**

1. The National Association of Welfare Rights Advisers (NAWRA) was established in 1975 as the Welfare Rights Officers' Group, and then the National Welfare Rights Officers' Group before becoming NAWRA in 1992. It represents advisers from local authorities, the voluntary sector, trade unions, solicitors, and other organisations that provide legal advice on social security and tax credits. NAWRA currently has more than 250 member organisations.
2. We strive to challenge, influence and improve welfare rights policy and legislation, as well as identifying and sharing good practice amongst our members.
3. NAWRA holds four conferences throughout the year across the UK or online, attended by members from all sectors of the industry. An integral part of these events are workshops that help to develop and lead good practice.
4. Our members have much experience in providing both front line legal advice on benefits and in providing training and information as well as policy support and development. As such NAWRA is able to bring much knowledge and insight to this consultation exercise.
5. NAWRA is happy to be contacted to provide clarification on anything contained within this document. NAWRA is happy for details and contents of this response to be made public.

### **Executive summary**

6. NAWRA's response to this consultation was informed by an online survey which received more than 150 responses from organisations across the UK.
7. The membership overwhelmingly rejects every proposal to reduce entitlement to any of the four descriptors or to the substantial risk criteria (in 9 of the 12 proposals more than 90% of respondents disagreed). NAWRA strongly feels that the government have not provided any cogent reason for reducing entitlement to the financial support to disabled people and those with long-term health conditions and, in fact, removing that financial support is likely to leave them further from the job market.
8. NAWRA believes that, if the government genuinely wants to support disabled people and those with long-term health conditions into work, it should provide the support that is needed to those people, and work with employers to improve flexibility around work options. Taking away money that people rely on and bringing in the threat of sanctions will not help people take that step.

9. A recent report by the Equality and Human Rights Commission (EHRC)<sup>1</sup> identified that disabled people are facing worsening discrimination and a rising risk of poverty, as a result of policy failures including in relation to welfare benefits. In particular, it highlights that this has been exacerbated by a failure to carry out cumulative impact assessments of social security reforms. NAWRA strongly recommends that the government does not bring in any changes to the WCA without carrying out a full impact assessment, and that no changes should be made that would put disabled people in a worse position. Failure to properly assess the risks before implementing change is likely to result in challenges through the courts.

## Introduction

10. When introducing the consultation, the Prime Minister said<sup>2</sup> –

*'... we're doing everything we can to help more people thrive in work - by reflecting the complexity of people's health needs, helping them take advantage of modern working environments, and connecting them to the best support available.*

*The steps we're taking today will ensure no one is held back from reaching their full potential through work, which is key to ensuring our economy is growing and fit for the future.'*

In fact, having LCWRA status does not prevent a person from seeking employment support, or from taking up work. The LCWRA element and the work allowance enable people to do that by giving financial security. The impact of all the proposals is to remove that financial security and to put people who are already vulnerable in a more precarious situation. It will not achieve the objectives outlined above – it will set people further away from the job market.

11. This introduction highlights points that apply to all of the proposals – the sections below deal with points specific to the different activities and the substantial risk criteria.
12. One of the main impacts of the proposals is to reduce the number of claimants in the LCWRA/support group which in turn means a loss of income of £4,680 per year to universal credit claimants or £2324 per year to ESA claimants. This is at a time when a number of organisations are highlighting that benefits levels are not sufficient to cover the bare essentials.
13. The IPPR says<sup>3</sup> –

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<sup>1</sup> <https://www.equalityhumanrights.com/en/our-work/news/uk-government-failing-protect-disabled-people-warns-equality-watchdog-report>

<sup>2</sup> <https://www.gov.uk/government/news/government-announces-new-welfare-reforms-to-help-thousands-into-work>

<sup>3</sup> <https://www.ippr.org/news-and-media/press-releases/uk-on-track-for-lowest-ever-benefit-levels-by-2030-warns-ippr-as-it-urges-renewed-purpose-for-social-security>

*'Our safety net is failing to protect people from being pulled into poverty. Universal credit is simply inadequate to meet day-to-day living costs. This means despite temporary cost of living payments, many households face deep financial precarity, using loans to cover bills and, in some cases, going without heating or hot meals.'*

14. Similarly, the Joseph Rowntree Foundation highlights<sup>4</sup> that 90% of low-income households on universal credit are currently going without essentials and it calls, in conjunction with the Trussell Trust, for an 'essentials guarantee' whereby the standard allowance is enough to cover the cost of essentials – food, utilities and vital household goods.
15. To reduce the income of disabled people – who may have significant additional costs - so that they are unable to afford the essentials will not increase their chances of finding work but, in fact, is likely to make it more difficult.
16. Proposals in respect of all 4 activities include reducing the points for the LCW descriptors. Reducing the points serves no purpose other than to take people out of the LCW group thereby increasing conditionality and the risk of sanctions on the claimant as well as removing the work allowance which acts as an incentive to work. The DWP's own research<sup>5</sup> found that sanctions have minimal effect for moving claimants into work and actually decrease the rate of movement into higher-paid work. Again, these proposals would fail to meet their objective.
17. Claimants who score points under the mental health activities or who meet the substantial risk criteria may very well have experienced trauma. Research<sup>6</sup> has highlighted the importance of the social security system taking into account trauma when dealing with its customers. Indeed, the government has set out guidance<sup>7</sup> in relation to the key principles of trauma-informed practice – safety, trustworthiness, choice, collaboration, empowerment and cultural consideration. NAWRA believes that these proposals fail to meet these standards and, as such, are likely to trigger claimants' trauma.
18. The government says that one of its aims is to support people into work. It highlights that people with LCW status have 'tailored employment support to prepare for work' and says it wants to provide this for people with LCWRA status too. However, the PCS points out<sup>8</sup> that the DWP is struggling to recruit staff and that it has had to put in place easements reducing the amount of support that claimants get from work coaches<sup>7</sup>. The DWP should be focusing on ensuring it can provide the support, not taking away claimants' financial lifeline.

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<sup>4</sup> <https://www.jrf.org.uk/report/guarantee-our-essentials>

<sup>5</sup> <https://www.gov.uk/government/publications/the-impact-of-benefit-sanctions-on-employment-outcomes-draft-report>

<sup>6</sup> <https://s31949.pcdn.co/wp-content/uploads/Scullion-et-al-2023-Towards-a-trauma-informed-social-security-system.pdf>

<sup>7</sup> <https://www.gov.uk/government/publications/working-definition-of-trauma-informed-practice/working-definition-of-trauma-informed-practice>

<sup>8</sup> <https://www.pcs.org.uk/news-events/news/staffing-chaos-dwp>

19. One of the premises for removing or reducing entitlement is that home-working is more prevalent in current times. However, as the work capability assessment generally affects people on means-tested benefits, it is important to look at the impact for low earners. Evidence from the Resolution Foundation<sup>9</sup> highlights that not all jobs can be done remotely - and that it is low-paid workers who are least likely to have the chance to work remotely, with only 8 per cent of low-paid workers mainly working remotely in the second quarter of 2023. In addition, even where home-working is a possibility, it requires having a suitable space in which to work and having the necessary equipment. Low-income households are less likely to have sufficient space in their homes to create an 'office', and not all employers are willing to provide equipment for home working.
20. Home-working also brings in additional costs such as heating – which may be more for a disabled person. It is therefore imperative that the additional financial support provided by the LCWRA element / support component is not removed.
21. The government has not addressed how the proposals will impact on claimants who are being reassessed. To drastically reduce a person's benefits when there has been no improvement in their condition could impact very negatively on a person's health.
22. No impact assessment appears to have been carried out for these proposals. A recent report by the Equality and Human Rights Commission (EHRC)<sup>10</sup> identified that disabled people are facing worsening discrimination and a rising risk of poverty as a result of policy failures by the UK Government including in relation to welfare benefits. In particular, it highlights that this has been exacerbated by a failure to carry out cumulative impact assessments of social security reforms. The EHRC comments –  
  
*'Across the UK, impacts on the mental and physical health of disabled people, and on standard of living and poverty, suggest that the welfare system does not align with the human rights model of disability outlined in the Committee on the Rights of Persons with Disabilities.'*
23. NAWRA believes it is essential that a full impact assessment is carried out before any decision is made in relation to implementing any of these proposals. A failure to do so is likely to result in a challenge via judicial review.
24. The proposed changes not only reduce financial support to disabled people, but also put them at increased risk of sanctions and therefore further destitution. To implement these changes would be a violation of the rights of disabled people.

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<sup>9</sup> <https://www.resolutionfoundation.org/publications/reassessing-the-work-capability-assessment/>

<sup>10</sup> <https://www.equalityhumanrights.com/en/our-work/news/uk-government-failing-protect-disabled-people-warns-equality-watchdog-report>

## Mobilising

25. The first proposal is to remove the mobilising activity completely for assessing both LCW and LCWRA. More than 96% of survey respondents disagreed with this proposal with the remainder being mostly unsure.
26. The second proposal is to amend the LCWRA mobilising descriptor to bring it in line with PIP by replacing 50 metres with 20 metres. More than two-thirds of respondents disagreed
27. The third proposal is to reduce the points for the LCW mobilising descriptor – 91% disagreed with this.
28. Reasons for the above responses include –
- As already evidenced, not all jobs can be done remotely, particularly those that are lower paid. However, not only are low-paid jobs more likely to require the person to attend in person, they are also more likely to require a fair degree of mobility eg shop working, manual jobs.
  - To meet the LCWRA mobilising criteria, it means you cannot mobilise more than 50 metres without significant discomfort or exhaustion. In many work places, it would require a walk of more than 50 metres just to go to the toilet. It is not reasonable to expect a person to have to go through exhaustion or significant discomfort repeatedly throughout the day. Even where someone is working from home, mobilising is an essential part of any day and it is not reasonable or realistic for someone to be able to work when they are in pain or exhausted.
  - Many people with mobility problems may wish to work but are restricted not only by their condition, which may cause pain or affect their ability to manage in a workplace, but also by the attitude of employers who may be unwilling or unable to make adjustments to accommodate the person's needs. NAWRA recommends that focusing on working with employers to address their concerns and increasing the Access to Work budget would be a more effective method to open up work opportunities for disabled people.
  - For many with mobility issues, it is not just the difficulty mobilising, but also the pain and fatigue that results which may impact on an ability to work and this needs to be taken into account.
  - Removing financial support from disabled people will not increase their ability to get into work – on the contrary it is likely to have the opposite effect.
  - PIP is a different benefit which is there to help meet disability-related costs, whereas the WCA is assessing someone's ability to work. They are two completely different things and NAWRA believes there is no reason or justification for them to be brought in line with each other.
  - In addition, the definition of mobilising is completely different across the two assessments so there is no precedent for bringing them in line - for the WCA, it is *'mobilising unaided by another person with or without a walking stick, manual*

*wheelchair or other aid if such aid is normally or could reasonably be worn or used*<sup>11</sup>, whereas for PIP it is to *'stand and then move'*<sup>12</sup> where to stand means *'stand upright with at least one biological foot on the ground'*<sup>13</sup>.

### Case study 1

A client in her 50s with arthritis was working 16 hours a week at a supermarket but had to give up her job due to the pain and fatigue she experienced travelling to work. After working she was in so much pain that she wasn't able to cook for herself or have any kind of social interaction. We completed a WCA and she was found to have LCWRA on the basis of her difficulty mobilising. Without this descriptor she wouldn't have been awarded LCWRA. She would not be able to work from home as she is not computer literate and her only work experience is in customer service. Furthermore the impact of her arthritis is such that simply meeting her basic needs is exhausting for her - the problem is not just that she cannot walk far, but that her lack of mobility is tied to a condition that is disabling across all areas of her life.

## Absence of loss of bowel/bladder control

29. The first proposal is to remove the absence or loss of bowel/bladder control (continence) activity entirely (both LCW and LCWRA). More than 98% of respondents disagreed with this.
30. The second proposal is to amend the LCWRA absence or loss of bowel/bladder control (continence) descriptor so that claimants are required to experience symptoms 'daily' rather than 'weekly' – 83% disagreed with this.
31. The third proposal is to reduce the points awarded for the LCW absence or loss of bowel/bladder control (continence) descriptors – 90% disagreed with this.
32. Reasons for the above responses include –
  - Difficulty with controlling either the bladder or bowel will impact on working, whether it is at home or work place - when at home, it may be necessary to take phone calls or be in virtual meetings that may last some time. Often incontinence is unpredictable – and even it happens on a weekly, rather than daily basis, it is the fact that it could happen at any time that causes anxiety and emotional distress.
  - Many people avoid leaving home, even for short periods, because of incontinence issues. This is partly practical - due to the availability of toilets - and also psychological – the fear of incontinence episodes in a public place. All these considerations would impact on a person's ability to travel to, and be at, work

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<sup>11</sup> <https://www.legislation.gov.uk/uksi/2013/376/schedule/6>

<sup>12</sup> <https://www.legislation.gov.uk/uksi/2013/377/schedule/1/part/1>

<sup>13</sup> <https://www.legislation.gov.uk/uksi/2013/377/schedule/1/part/3>

- The descriptor is already very tightly worded as it requires ‘extensive evacuation of the bowel / bladder requiring the person to wash and change clothes’ – this is a very high bar. To expect a person to travel to work, and cope with being in a workplace when their incontinence is severe enough to warrant a change of clothes is not reasonable - this means it cannot be managed using aids or adaptations and will be obvious to anyone in the vicinity.
- Stress can exacerbate the risk of incontinence – any requirement to even hybrid work may cause extreme anxiety and worsen the condition.
- The inability to control either bladder or bowel can make people feel embarrassed and/or humiliated – to put them in a situation where this may happen in a work place fails to treat them with dignity and with their basic human rights. It may also be a very difficult thing to raise with a prospective employer.

### **Case study 2**

Incontinence affects every part of sufferers' lives. I have represented clients who have to use the toilet without warning at least twice an hour throughout the day. I have also represented clients who need to sit on the toilet for an hour at a time, without warning, while their bowels empty, and then return to the toilet very frequently afterwards. These clients typically cannot go out unless absolutely essential, and cannot complete any sustained activity at home without risk of interruption. Incontinence plays a huge role in ability to work or do work-related activity. Sufferers of severe bowel incontinence often have periods of constipation bringing pain, then periods of extreme diarrhoea which takes over their whole day with time on the toilet. Their bowel incontinence is not daily but is several days per week and unpredictable. In between periods of bowel incontinence they are in considerable pain. I think the proposal to change to daily incontinence would exclude a lot of claimants whose lives are taken over by their bladder or bowel condition.

### **Social engagement**

33. The first proposal is to remove the coping with social engagement activity entirely (both LCW and LCWRA). More than 95% disagreed.
34. The second proposal is to reduce the points awarded for LCW descriptors for coping with social engagement – 93% disagreed.
35. Reasons for the above responses include –
  - For all but a small number of jobs, the ability to socially engage is a key aspect of being able to function in the workplace. This applies not only with attending a workplace but also with home working too. Few jobs can be done by people who cannot engage socially and for those who cannot cope with social engagement, being required to work will cause huge distress.



- Even when much of a job can be done with minimal social engagement, there will always be aspects such as liaising with colleagues, attending meetings, training etc. Most lower paid jobs are likely to need a level of social interaction on a daily basis.
- Employers will be unwilling to take on people who cannot engage socially where it is part of the job, as it is likely to result in a high level of days off sick.
- Attending an appointment in a jobcentre can be extremely stressful, if not impossible, meaning that even the concept of work-related activity would cause extreme anxiety.
- People who struggle with social engagement may be more at risk if they are pressured to undertake activities that require interaction with other people – it could precipitate a significant deterioration in health and possibly self-harm.
- While money may be saved in not paying the LCWRA element, the detrimental impact on people’s health would lead to an increase in costs within the health service. The focus should be on supporting the claimant with their mental health problem.

## Getting about

36. The first proposal is to remove the LCW getting about activity entirely - 97% disagreed with this.
37. The second proposal is to reduce the points awarded for the LCW descriptors for getting about – 92% disagreed.
38. Reasons for the above responses include –
- Very few jobs do not require attendance at the workplace some of the time. As previously referenced, the ability to work from home is much less prevalent in lower paid jobs and so a difficulty getting about is likely to impact on a person’s ability to work.
  - Points are only awarded in this activity if a person is unable to get out and about by themselves – this is a very high bar and someone with this level of disability will find it very difficult to find work and will only be able to access work if they have a support worker. Rather than restricting entitlement to LCW status, it would be better to focus on improving Access to Work provision and the time taken to deal with applications so that people can get the support they need (such as someone to help them get to work) if they are able to find a job.

### Case study 3

Jobcentre easements to allow work-seeking and work-related activity to take place from home are not reliable. I have a client who is unable to go out who is invited to the jobcentre every month. Every single time she has to request an easement to conduct the appointment by phone. Sometimes this is granted, sometimes it is not, she is sanctioned and she has to appeal the sanction. Her anxiety is very high and this makes it much worse.

## Substantial risk criteria

39. The first proposal is to amend the LCWRA substantial risk definition to reflect that this would not apply where a person could take part in tailored or a minimal level of work preparation activity and/or where reasonable adjustments could be put in place to enable that person to engage with work preparation – 84% disagreed with this.
40. Comments on the impact of this proposal include –
- The proposal is not clear about what a ‘tailored or minimum level of work preparation activity’ would look like or what reasonable adjustments could be put in place. Claimants struggle to have reasonable adjustments put in place now eg telephone only interviews, a private room for face-to-face interviews, appointments avoided at certain times – if that is the case now, it is difficult to believe that this will be put in place effectively in the future.
  - It would be perfectly possible to offer a minimum level of work preparation without taking away the LCWRA element and without bringing in the risk of sanctions. Providing this support unconditionally is far more likely to engender a relationship of trust and reap positive results.
  - The current level of work preparation for claimants in the LCW category (set out in the Appendix of DMG Memo 1/18<sup>14</sup>) does not actually provide any significant or tailored support in getting people into work. The current proposals do not suggest that anything more supportive or substantive will be offered.
  - The substantial risk provisions are a vital safeguard for claimants with serious mental health problems who do not fit neatly into the descriptors. While it is possible to invent activities which would do these individuals no harm, the activities are almost certainly such that they will have no impact on the individual’s ability to take and hold down a job.
  - This is a special provision which was put in place to support the most vulnerable claimants. To reduce or remove it puts those people at risk.
  - Claimants who meet the current substantial risk criteria generally have severe mental health issues where their condition is unpredictable – putting undue pressure on a person in this state could have a detrimental effect and lead to situations where the claimants disengages or self-harms.

### Case study 4

I have recently had a client be awarded LCWRA at appeal due to substantial risk (suicide and self harm). He explained that after a period in hospital, he went to the jobcentre and was put on a course for CV building. During his time on JSA/UC he has done multiple courses for CV building and similar. My understanding is that work-related activity is very similar. They are not tailored to the person or their interests/work background. They are a

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/680482/m-01-18.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/680482/m-01-18.pdf)

tick box exercise so the DWP can say that people are engaging with work-related activity when in reality, they are duplicating the same work they have done multiple times before. My client wanted some time so he can focus on his mental health - he is keen to work in the future or volunteer - without the fear of being sanctioned. The likelihood of him killing himself without this award was high.

41. The second proposal is to remove the LCWRA risk criteria entirely – 96% disagreed with this.

42. Comments on the impact of this proposal include –

- The LCWRA risk criteria acts as a final safety net for some of the most vulnerable claimants – to remove it puts those claimants at risk of deterioration in their health and self-harm or suicide.
- Removing the LCWRA criteria will not help disabled people find work – it will just reduce their finances by almost £5,000 per year which will in turn make it much more difficult to take work as they will have difficulty paying for essentials which are substantially higher for disabled people. Genuine support is what will help people into work along with the financial incentive of the work allowance.
- The substantial risk criteria is applied much more often where the claimant has mental health issues. To remove it would be discriminatory against this group.
- This is a special provision which was put in place to support the most vulnerable claimants. To reduce or remove it puts those people at risk and they would not be safely supported by the LCW criteria.

### Case study 5

My clients' experience with DWP often has been so negative that they get triggered into anxiety and panic attacks even by getting a message telling them to check their UC journal. Also many of people will not benefit from any kind of activity, even if it's very personalised because often they are too ill to be involved in any such activities. They don't have energy or motivation. They would much more benefit from some kind of community support.

## Conclusion

43. While NAWRA recognises that work can, without doubt, be beneficial it rejects completely the suggestion that around 100,000 people are leaving the labour market every year 'for a life on benefits' as presented at the Conservative Party Conference<sup>15</sup>

<sup>15</sup> <https://www.conservatives.com/news/2023/cpc23-address-from-jeremy-hunt>

this year. Life on benefits is extremely hard – as is well documented<sup>16</sup>, means-tested benefits do not meet the cost of the basic essentials – it is not a ‘choice’ to live a life on benefits.

44. NAWRA welcomes any support that can be given to enable disabled people and those with long-term health conditions to access work more easily. However, the government have not provided any cogent reason why more support cannot be given without taking away financial support that is desperately needed, or why it is deemed necessary to place more stress on people by putting them under risk of sanctions.
45. The government has not carried out any impact assessment of the effect these proposals will have on disabled people, whether some groups will be more severely impacted than others, or the knock-on financial effects of those impacts, such as increased demands on health services. NAWRA believes that such an assessment is essential and that, to implement the proposals without carrying out that assessment, and taking it into consideration, is likely to lead to discriminatory practice and court action.
46. The government has already set out plans to abolish the work capability assessment in its White Paper<sup>17</sup> and has provided no justification for rushing through these proposals, the full impact of which has not been considered, in advance of that.
47. In summary, NAWRA completely opposes all these proposals. The government should focus on genuine support which will take time, resources, and skill. If it goes ahead with any of these proposals that cut financial support to, and increase conditionality on, vulnerable claimants, then there is an extremely high risk of claimants’ health deteriorating with the associated risks of self-harm and, in some cases, death. Those deaths may be held directly attributable to the Department.

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<sup>16</sup> <https://www.trusselltrust.org/get-involved/campaigns/guarantee-our-essentials/>

<sup>17</sup> <https://www.gov.uk/government/publications/transforming-support-the-health-and-disability-white-paper>