

Work Capability Assessment (WCA): Activities and Descriptors Consultation

1. Macmillan Cancer Support is one of the UK's leading cancer charities which provides information and support to people living with cancer across the UK. Macmillan has local welfare benefits advice services embedded locally across the UK. In 2022, our national network of local Macmillan Benefits Advisors reached 72,129 people, supporting them to claim c.254m in benefits.¹ The Macmillan Support Line also offers confidential support on benefits and energy issues to people living with cancer over the telephone and in 2022 supported approximately 34,000 people living with or affected by cancer, identifying around £100m in benefit entitlements so that people can better meet their financial needs.²

2. Executive summary

2.1. Many people affected by cancer will want to return to work at some point after their cancer diagnosis. Four in five people who were working at the time of their cancer diagnosis said that it was important for them to continue with work after their diagnosis.³ However some people will have to cut down or give up work completely as a result of their diagnosis.

2.2. The Department should ensure that people with cancer who may be able to return to work at some point in the future are offered voluntary, tailored, and person-centred employment support that matches their needs and capabilities, rather than focusing on changing the Work Capability (WCA) assessment criteria which may lead to some people having their benefit award or work requirements change.

¹ The reach of Macmillan's services factsheet. 2023 edition (using 2022 figures)

² The reach of Macmillan's services factsheet. 2023 edition (using 2022 figures). A proportion of the people we support choose not to provide their names and assumptions have been made about their multiple use of services.

³ Macmillan Cancer Support. 2020. Working with Cancer. Figures from YouGov Plc. Total sample size was 1,507 respondents who were in work when diagnosed with cancer. Fieldwork was undertaken between 29th June — 22nd July 2018. The survey was carried out online

- 2.3. Macmillan is opposed to the changes being proposed in the consultation. The consultation document states that more people today can benefit from the advantages and opportunities of flexible and home working, but does not present any evidence that this is the case for people with a disability or long-term health condition who claim means-tested benefits.
- 2.4. Changes to the criteria could mean that some people with cancer have to carry out work-related activities in order to receive financial support. If those affected have limited access to flexible or home working opportunities, then they may have to consider face-to-face roles which may not be realistic or appropriate in their current circumstances. It's vital that people living with or beyond cancer are able to concentrate on getting better or coping with their condition, with access to voluntary, tailored, and person-centred employment support if appropriate, rather than face pressure to return to work or risk losing the often-limited financial support available to them.

3. Background

- 3.1. The Government's reasoning for the proposed changes is that people with a disability or long-term health condition, including those with mobility problems or incontinence, have better access to employment opportunities due to the rise in flexible and home working. While in principle these changes may present new opportunities for people with a disability or long-term health condition, it's not clear if this is actually the case for those on means-tested benefits who struggle to engage with work because of their health.
- 3.2. The consultation document presents insufficient evidence to show that transformations in the workplace have led to more opportunities for people with a disability or health condition on Universal Credit to find and stay in work. Therefore, it is difficult to assess if changes to ways of working have benefited this cohort of claimants to such an extent that would make it appropriate to implement changes to the WCA activities and descriptors.

3.3. The effects of cancer and treatment can impact on people's lives in many different ways, and can affect them for weeks, months or even years after treatment has ended. Physical and psychological factors can make it harder for some people with cancer to work. Around half of people with cancer who report a physical concern say that it is severe.⁴ Work-related considerations are also important. For example, a physically demanding job decreases the likelihood of returning to work, while an employer's willingness to be flexible about working terms and conditions during the recovery period enhances it.⁵

3.4. The benefits of flexible and remote working will depend on the nature of the employment. Many low paid, low skill jobs tend to be hands-on or customer facing roles. For instance, retail, production lines, care homes, hospitality, and delivery drivers. Jobs that offer work-from-home are those which are possible to complete online or over the phone. However, these options will be less accessible for those who are not digitally capable. Working from home also requires people to have electronic devices and access to the internet, which not everyone can afford. Furthermore, flexible working arrangements still sometimes require staff to occasionally go into their place of work, which wouldn't be suitable for many people with a long-term health condition.

3.5. While in theory employers may be more open to flexible and home working arrangements, in reality they are not always transparent, fair, or consistent in their approach. People with a disability or health condition are likely to be among the most vulnerable in such situations.

3.6. Macmillan work support advisers say they have seen an increase in people they support reporting that their employer insists they return to the office after initially being allowed to work from home. In some cases, the employer has

⁴ Macmillan Cancer Support and Populus. Paper and online survey of 6,905 people across the UK who were recently treated for cancer or were diagnosed with cancer in the last 5 years. Fieldwork July-September 2019. Survey data has been weighted to be representative of the population invited to take part in the 2018 Cancer Patient Experience Survey in England (Cancer Registration data) in terms of age, gender and cancer type.

⁵ Macmillan Cancer Support, The Department of Health, and University College London. *Thinking positively about work Delivering work support and vocational rehabilitation for people with cancer*. 2012. <https://www.macmillan.org.uk/documents/getinvolved/campaigns/workingthroughcancer/ncsivrevaluationfinalreport-fullfinalversionjuly2012.pdf>

agreed to them working from home only to change their decision at short notice. Some employers have been relocating and insisting staff return to the office, resulting in people having to leave work or accept redundancy. We also see cases of employers insisting an employee's request for a Reasonable Adjustment is a Flexible Working Request and refusing it because of business needs, therefore attempting to bypass their legal obligations.

- 3.7. We are concerned that the proposed changes may mean some people – who may not be fit for work in the first place – face work-related requirements but struggle to find flexible or remote work for the reasons outlined.
- 3.8. Macmillan supports the ambition to help disabled people and those with health conditions start, stay, and succeed in work where they are able to do so. Many people affected by cancer want to work again when they are ready and able to do so. Those with a realistic prospect of returning to work are likely to be better off financially in the long-term than they would if they continued to claim benefits. We disagree that the proposed changes to the WCA criteria is the right approach to encourage and support people into work, especially as the changes will only be in place for a short period of time if the Government goes ahead with proposals to get rid of the WCA.
- 3.9. The Government should instead ensure employment support in the benefits system is voluntary, holistic, and tailored to the individual, their needs and background.⁶ People living with or beyond cancer may need wraparound support to help them manage their health condition or disability in a work setting. The Department should explore ways to ensure that people in the Limited Capability for Work Related Activity (LCWRA) group who would like to work at some point in the future if the right job and support were available are able to do so, on a strictly voluntary basis and at the request of the claimant.

4. Views on the proposed changes to the activities and descriptors

⁶ <https://www.macmillan.org.uk/dfsmedia/1a6f23537f7f4519bb0cf14c45b2a629/3918-10061/welfareand-work-report>

- 4.1. Many people with cancer in receipt of Universal Credit who undergo a WCA are likely to have problems with their mobility, continence, and/or mental health, and therefore could be at risk from the changes being proposed. Macmillan estimates that around 47 per cent per cent of people with cancer experience bowel problem and 36 per cent experience bladder problems.⁷ It's not clear how many people living with or beyond cancer who struggle to engage with work because of their health could be affected by proposed changes. The consultation does not include any estimates of how many claimants might be affected in each scenario being put forward.
- 4.2. One of the reasons given in the consultation for the proposed changes is that the LCWRA group is for claimants with severe functional limitation, but its application has gone beyond this. This suggests that over time substantially more claimants have been found to have LCWRA than was originally anticipated or intended. However, it could also be the case that there are more claimants who are entitled to the LCWRA element, based on the Departments own assessment of their needs. The Department's own data also shows that there is a larger proportion of people on Employment and Support Allowance and Universal Credit having serious long term health conditions, and being in receipt of the highest rate.⁸ We believe the Government should focus on providing tailored and appropriate support for this group rather than trying to limit demand.
- 4.3. We are opposed to the removal of the Mobilising activity entirely for both LCW and LCWRA. As set out, many of these claimants may not be able to work remotely or flexibly because there may not be those opportunities available to them. We do not see the benefit for the claimant of amending the LCWRA Mobilising descriptor and replacing 50 metres with 20 metres for both

⁷ Macmillan Cancer Support and Populus. Paper and online survey of 6,905 people across the UK who were recently treated for cancer or were diagnosed with cancer in the last 5 years. Fieldwork July-September 2019. Survey data has been weighted to be representative of the population invited to take part in the 2018 Cancer Patient Experience Survey in England (Cancer Registration data) in terms of age, gender and cancer type.

⁸ <https://www.gov.uk/government/statistics/shaping-future-support-the-health-and-disability-green-paper-evidence-pack-july-2021/chapter-4-re-thinking-future-assessments-to-support-better-outcomes#the-support-group-and-lcwra-are-making-up-an-increasing-share-of-the-people-on-esa-and-uc>

descriptors within the LCWRA activity. Even in an office setting, the walk to a toilet could be more than 20 meters, which may then cause significant discomfort or exhaustion. We also disagree with the proposal to reduce the points awarded for the LCW Mobilising descriptors, based on the above points.

- 4.4. We are opposed to the removal of the Absence or loss of bowel/bladder control (Continence) activity entirely for both LCW and LCWRA. Incontinence can stop people going back to work and can be completely immobilising.⁹ The psychological and emotional impact of being incontinent in public, or the fear of being incontinent, can be enormous.¹⁰ Some claimants may be able to manage bowel and bladder incontinence issues easier in their own home, as well as giving them more privacy. But for others the severity of their condition may prevent them from fully participating in work, even if flexible and home working options are open to them. We disagree with amending the descriptors so that claimants are required to experience symptoms 'daily' rather than 'weekly', as incontinence can be unpredictable and worsened by stress. We also oppose any reduction in the points awarded for the LCW Absence or loss of bowel/bladder control (Continence) descriptors for the reasons explained.
- 4.5. We are opposed to removal of the Coping with Social Engagement activity entirely (both LCW and LCWRA) and any reduction in the points awarded for LCW descriptors for Coping with Social Engagement. Again, the consultation does not present evidence that these claimants have better access to remote and flexible working, so there is still a need to retain this activity as it applies to an individual's ability to interact with people in face-to-face social situations. Not doing so could potentially subject individuals with a mental disorder or cognitive impairment to significant distress. Macmillan estimates that around 17

⁹ <https://www.macmillan.org.uk/documents/cancerinfo/livingwithandaftercancer/consequences/cured-but-at-what-cost-report.pdf>

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<https://www.macmillan.org.uk/documents/aboutus/research/researchandevaluationreports/throwinglightontheconsequencesofcanceranditstreatment.pdf>

per cent of people with cancer are likely to meet the clinical threshold for anxiety and/or depression.¹¹

4.6. We are opposed to the removal of the Getting About activity entirely and the reduction in the points awarded for LCW descriptors for Getting About. As set out throughout our response, there is not sufficient evidence to show that this cohort of claimants have more opportunities to find employment with flexible and remote working.

4.7. We do not think any other WCA activities or descriptors should be changed at this moment in time.

5. **Views on the proposed changes to non-functional (substantial risk)**

5.1. We are opposed to the removal of the LCWRA risk criteria entirely and don't believe any changes should be made to the LCWRA substantial risk definition. The consultation document states that the original policy intent for substantial risk was for it to be advised only in exceptional circumstances, but that application of LCWRA risk has now gone beyond its original intent (citing 14.6% of new claims awarded LCWRA on this basis). However, the Department has not presented any analysis in the consultation document to support the idea that the substantial risk criteria is being applied incorrectly by Decision Makers.

5.2. Guidance on the LCWRA and Substantial Risk states that the Decision Maker should always consider whether a substantial risk could be prevented or mitigated.¹² Where there is evidence that there is a risk to health, the Decision Maker should also consider whether any reasonable adjustments could be made to accommodate any problems the claimant may have in order to avoid the risk.¹³ The Decision Maker, using health assessor reports and/or medical evidence presented by the claimant, can make an informed judgement to determine if there is substantial risk or not. As stated above, the consultation

¹¹ Macmillan Cancer Support and Populus. Paper and online survey of 6,905 people across the UK who were recently treated for cancer or were diagnosed with cancer in the last 5 years. Fieldwork July-September 2019. Survey data has been weighted to be representative of the population invited to take part in the 2018 Cancer Patient Experience Survey in England (Cancer Registration data) in terms of age, gender and cancer type.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1173109/adm2-18.pdf

¹³ Ibid.

does not provide evidence that the criteria are being applied incorrectly by Decision Makers. The removal of the option to recognise a substantial risk to individuals could dangerously impact the mental and/or physical health of those affected.

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