

Z2k response to the DWP consultation on the Work Capability Assessment: activities and descriptors



Summary

1. Z2K is an anti-poverty charity. We provide specialist advice, support, and casework to help people resolve their social security and housing problems, and access their legal entitlements.
2. Disability benefits, including the Work Capability Assessment (WCA) and Personal Independence Payment (PIP), have long been a large part of our casework. This gives us a deep insight into the system's workings and impacts in reality, not just on paper.
3. We are very concerned at the proposals contained in this consultation, and they should not go ahead. It is true that the WCA activities and descriptors have not been fundamentally reviewed since 2011, but a brief public consultation on measures that could see people lose vital income and/or be put at risk of serious harm is entirely inadequate and potentially dangerous. We are also concerned that the timeline for this consultation is seemingly designed to enable an announcement at the Autumn Statement rather than allow for careful consideration of responses.
4. We are also concerned that both the main consultation document and the accessible versions are unclear about some of the implications of the proposals. For example, the consultation requires either substantial policy knowledge, or the ongoing synthesis of information from much earlier in the document and the Annexes, to understand the implications of restricting access to LCWRA status (a loss of £390 a month, and mandatory activities that could also lead to a sanction). This lack of clarity will undoubtedly hinder many people's understanding of the proposals, including people who may be directly affected by these proposals if implemented.
5. Disabled people already experience higher rates of poverty than non-disabled people, with some surveys finding that half of people who are destitute are disabled.¹ These proposals would directly push low-income disabled people – who cannot on any reasonable measure work – further into poverty. If implemented, these proposals would cause additional costs elsewhere in the system (including social care, health, and justice spending). The proposals would both tackle the symptom rather than the cause of current rates of spending on health and disability benefits, and be a false economy.
6. The proposals in this consultation do not make sense in the context of the White Paper published earlier this year. It is entirely possible that someone could be currently receiving the LCWRA element today, after the WCA proposals be reassessed and denied it, then receive it again if the White Paper proposals are introduced. This would cause a large and entirely unnecessary fluctuation in someone's income.
7. Because we oppose these proposals in their entirety, and because the analysis underpinning them is extremely weak, we have not responded to the specific questions, which ask

¹ <https://www.jrf.org.uk/report/destitution-uk-2020>

respondents to choose between several options, each of which would inappropriately restrict access to LCWRA.

8. If DWP is to go ahead with these proposals – and to reiterate, it should not – then it must:
 - Retain the LCWRA payment for people currently in LCWRA and receiving PIP who are reassessed and, as a result of these proposals, are no longer placed in LCWRA
 - Provide Transitional Protection for people in LCWRA without PIP who are reassessed and, as a result of these proposals, are no longer placed in LCWRA
 - Ensure that any work-related requirements fully take into account someone’s health condition or disability and relevant wider factors and capabilities. For example, it should not require claimants to attend in-person training courses or work placements where their health condition or disability presents significant difficulties in doing so. It should also not require someone to undertake activity online if they do not have the connectivity, equipment, or ability to do so

Proposals to restrict or remove specific activities from LCWRA or LCW

9. The consultation proposes either entirely removing, reducing the points that can be awarded for several activities (which would mean the activity no longer qualifies someone for LCWRA, or could mean it no longer qualifies them for LCW), or in some cases limiting the application of the maximum points for that activity.
10. The justification is that someone who has scored the maximum points on one of these activities is unable to work from an external location but may be able to work from home, and therefore should be expected to undertake work-related or work search activity.
11. This is a highly flawed justification. There is no serious analysis in the consultation about:
 - The realistic **availability** of fully home-working jobs for people in the groups who would be affected by these proposals. Many categories of work, including relatively low-income and low-qualification roles such as security, construction, cleaning, hospitality and retail, fundamentally cannot be done from home, and levels of home or hybrid working are lower among lower-income households².
 - The realistic **capacity** of people in these groups to work from home, including having suitable space to work from (including both physical space and appropriate environment, away from children, for example), digital access, and digital skills. We note that existing DWP policies such as the removal of the so-called Spare Room Subsidy make it impossible for many people to, for example, have a spare room from which to work.
12. If the availability or capacity do not exist, then DWP will simply be forcing seriously ill and disabled people to live on inadequate basic rates of benefits for lengthy periods of time. This is entirely counter to the policy rationale behind LCWRA, which is to recognise that those rates are not suitable to live on for extended periods, and if your health means you cannot realistically enter work, you should receive additional financial support. This basic misunderstanding runs throughout this consultation.

Proposals to amend or remove 'substantial risk'

13. The proposals to amend or remove the substantial risk category are extremely alarming and potentially highly dangerous. This section of the consultation seems to be based on the incorrect assumption that an increase in decisions based on substantial risk demonstrates a departure from the policy intent. **'Substantial risk' is not inherently restricted to a given percentage of claimants. It is for whatever percentage of claimants would otherwise be placed at such risk.**
14. DWP has published no evidence at all that people are being inappropriately placed in the LCWRA group as a result of the substantial risk criteria. We understand DWP has conducted some form of small-scale internal desk-based audit of cases by its own clinicians, from which it has concluded a high proportion of such cases were wrongly assigned LCWRA status on the basis of substantial risk.
15. DWP has not published this research, which impedes our or anyone else's ability to fully consider it, but we have deep concerns about whether the research was adequate to support the conclusion DWP has drawn from it. It should in particular be noted that in our experience the independent First-Tier Tribunal regularly reaches a different conclusion than DWP Decision Makers at Initial Decision or Mandatory Reconsideration stage, including on substantial risk grounds. It is unclear why DWP thinks the views of its own clinicians in this small-scale, unrepresentative research exercise would be any more reliable than those of its Decision Makers or the assessors it contracts. We are also concerned that these clinicians may be specialists in neither disability, occupational health, nor risk, and that the use in this exercise of clinician opinion to make a judgement runs counter to DWP's general position on evidence or opinions provided by a claimant's own clinician.
16. The consultation document states that "15% of new claims awarded LCWRA or ESA Support Group (SG) are now under substantial risk. This has the effect of reducing the support provided through jobcentres to those individuals." Receipt of LCWRA does not necessitate being offered less support and it is not necessary to make any change to the Regulations to offer the same support (by which we mean support, not the cuts, mandatory activity, threats, and potential sanctions that DWP often disingenuously includes in its own use of 'support') as to anyone else.
17. It is unfortunately unclear from the consultation document whether the proposal to change the substantial risk criteria would come with mandatory activities for people now excluded from LCWRA. By virtue of being mandatory, such activities carry the threat of a sanction. The document states that it is "not the intention" for this to lead to mandatory activity or risk of sanctions. If DWP wanted to prevent that consequence, it could make any work preparation activity voluntary rather than mandatory, but as the consultation states, such support can already be provided, with no change needed.
18. The proposal to remove substantial risk from LCWRA would certainly lead to mandatory activities and the risk of sanction, and is the single most dangerous of this entirely inappropriate set of proposals. It raises the risk of someone being required to undertake inappropriate activity that puts them or those around them at risk, including risk of self-harm, suicide, or in some cases risk of harm to people around them. Someone no longer

being classed as at ‘substantial risk of harm’ does not mean that risk is somehow removed. In recent years, the number of Internal Process Reviews (IPRs) undertaken by the Department in response to cases of deaths or serious incidents has increased considerably; it is difficult to believe that these proposals will not lead to more such cases³.

19. With growing evidence that the current system of conditionality and sanctions causes destitution that can worsen people’s health and push them further from the labour market as they focus on finding a way to access food and other essentials, it is reckless and counter-productive for the Department to be considering bringing more people into its scope.
20. If either of these proposals goes ahead, then, again, it will be a devastating cut in income for people unable to work, and push them further into poverty.
21. Any requirements placed on people who, currently, are in LCWRA on the basis of substantial risk, must be extremely light-touch, and most likely effectively indistinguishable from LCWRA requirements. Anything else would be unsafe. Our client Steve’s story, below, demonstrates the risks and hardship that DWP will be subjecting people to if it goes ahead with either of these proposals.

Steve’s story

Steve has ongoing physical, neurological, and mental health problems following a car crash several years ago. He previously had Limited Capability for Work-Related Activity, but after a new Work Capability Assessment in late 2022 he was found fit for work.

This meant an overnight cut to his Universal Credit of over £300, which he had been using to fill the gap between his rent and his Local Housing Allowance, and meant that once his rent had been paid there was nothing left in his bank account. It also meant he was subject to conditionality and the threat of sanctions, and had to regularly attend Jobcentre appointments. All of this had a significant impact on his mental health and led to him becoming extremely angry and anxious, and struggling to sleep or eat. Among other things, his health conditions mean he can be very quick to anger, which can pose a risk to himself and those around him.

Z2K supported Steve to request a Mandatory Reconsideration, and when that led to no change, to lodge an appeal. After seeing written arguments the Tribunal re-awarded the LCWRA element on the basis of substantial risk, without a hearing being needed.

Conclusion

22. If taken forward, any of these proposals would subject seriously ill and disabled claimants to even greater poverty, and in some cases put them and others at genuine risk of harm – in an attempt clearly designed solely to make short-term cost savings. If anything, this will also move people further from the labour market. **Z2K is clear that DWP should not implement any of the proposals in this consultation.**

³ <https://questions-statements.parliament.uk/written-questions/detail/2022-06-29/27621>