



## Briefing: The future of the work capability assessment

Carri Swann considers the implications of the proposals in the DWP's new Health and Disability White Paper to end the work capability assessment and replace current rules on limited capability for work and work related activity.

Welfare rights advisers spend a lot of time helping people through work capability assessments (WCAs). We complete UC50 and ESA50 forms, help people to gather supporting evidence and to prepare for assessment appointments, then help them to challenge decisions through mandatory reconsideration and appeal. For many of us, this is a large part of our working day.

The new Health and Disability White Paper from the DWP does not introduce new rules on the WCA. It proposes them – and proposes that they happen no earlier than 2026/27. But what it proposed is major.

Paragraph 17 of the White Paper spells out the basics. The UK government plan to:

- Legislate to remove the WCA.
- As a result, remove the concept and status of having limited capability for work and/or work-related activity (LCW/LCWRA) for benefit purposes.
- Remove the additional element in UC for people with LCWRA status and replace it with a new UC 'health element', available only to UC claimants who also get personal independence payment (PIP). <sup>1</sup>
- 'Introduce more personalised levels of conditionality' – in other words, with the end of LCW/LCWRA statuses, open up all UC claimants to work-related requirements

and let work coaches decide what these should be.

Commentators have quickly identified two main areas of concern for claimants: the immediate financial consequences that this change would have for many people who can't get PIP, and the hardship that could be caused by new levels of work-related activity.

## PIP and the 'health element'

One clear issue is that many people who can currently qualify for a LCWRA element of UC cannot get PIP. As the DWP has said often<sup>2</sup>, the WCA and the PIP assessment measure different things. The WCA looks for difficulties that would affect somebody's ability to participate in the workforce. The PIP assessment looks at the day-to-day tasks they do at home, their mobility and their ability to go out. There is limited overlap.

Alongside the long list of descriptors and activities in the WCA, consider the rules on 'substantial risk'<sup>3</sup>. These can mean that someone has LCWRA status if work and work-related activity pose a substantial risk to their health. Substantial risk has typically been used as a safety valve for people with mental health conditions, including anxiety, and others who cannot show that they fit the main WCA activities and descriptors. These rules don't have an equivalent in the PIP assessment, which does look at what daily living tasks and mobilising someone can do 'safely' but does not look any further into how their condition affects their ability to earn. Someone able to get LCWRA status because of a substantial risk to health might have limited chances of getting PIP.

There is also the 'required period condition' for PIP (which means that, to qualify, you must have had your needs for three months and be expected to have them for a further nine). This would rule out people from the 'health element' of UC who get the LCWRA element under current rules because of an acute but not long-term illness.

There is then the issue of what happens if thousands of UC claimants decide they need to claim PIP. It is possible that this trend could start well before any actual changes in the law, as people hear about the proposals in the White Paper. If this happens, then at the very least, existing delays in the system are likely to be exacerbated. At worst, a further boom in the numbers of PIP claims could be used to justify restricting the PIP eligibility criteria.

## The changes to conditionality

The White Paper clearly indicates that with the scrapping of LCW/LCWRA status would come much more work coach discretion over someone's work-related requirements.

Paragraph 161 of the white paper clarifies that 'our new approach will mean both voluntary and mandatory work-related requirements may be set for health and disability benefit claimants, where this is appropriate.'

This means the end of automatic assignment to the 'no work-related requirements group' or 'work preparation (only)' group. There would no longer be a medically-qualified assessor involved in the decision about what work-related requirements would be 'appropriate' <sup>4</sup>.

And another huge change would be the end of appeals against WCA decisions. Discretionary decisions about work-related requirements made by work coaches under the proposed system would not carry the same right of appeal, meaning a loss of judicial oversight and fewer chances for rights and rules to be clarified through case law.

Paragraph 162 says that the DWP 'will work with [...] work coaches to develop these proposals and ensure they have the right training and support needed to fulfil this change in their role.'

Yet it is likely that work coaches under the new system would have the same high case loads that they do now, and the same targets and financial incentives for getting people into work. Even a conscientious and well-trained work coach can easily set an inappropriate work-related requirement if faced with a health condition or disability they do not understand. CPAG's Early Warning System <sup>5</sup> receives regular reports of inappropriate conditionality for people with a health condition or disability who do not have the protection of LCW/LCWRA status—for example, because they are still waiting for their WCA decision.

One of the inevitable consequences of inappropriate work-related requirements is that people are sanctioned for failing to comply with them. It is not possible to talk about sanctions in any detail here, but they are a major topic of concern for CPAG, partly due to other changes announced in the Spring Budget relating to the Administrative Earnings Threshold, conditionality for parents and sanction automation.

## The justification

Paragraph 144 of the White Paper says that the changes to the WCA are being proposed because 'we want to give people confidence to try work, so that those who

are able to can progress in or towards work, without the worry of being reassessed or losing their benefits.'

A big problem with this is that people currently worried about losing their LCW/LCWRA status if they try work are equally worried about losing their PIP, on which their new UC 'health element' would depend. You can in theory/law get PIP while in work, but your ability to hold down a job, travel to work and do the tasks involved in your work are all taken into account in a PIP assessment and regularly used as reasons for refusing or withdrawing PIP. The Social Security Advisory Committee recognised this in August 2022 and suggested mitigations which have not been taken up in the White Paper <sup>6</sup>.

## Notes

- What will happen to ESA under these proposals is not clear. The White Paper only says (at para 150) that the DWP 'remain committed to retaining a health and sickness contributory benefit in the future system.'
- Likewise it is not clear what will happen to the UC work allowance (see para 149). Eligibility for a work allowance is currently tied to the outcome of the WCA.

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1 With some limited exceptions – see paragraph 153 of the White Paper.

2 Including in its 2020 Health and Disability Green Paper.

3 'Substantial risk' and the WCA

4 You might have had a separate assessment for PIP, but getting PIP will not passport you for special protection from work-related requirements in the way that it will passport you to the health element. The White Paper also includes references to an 'Employment and Health Discussion' carried out by a 'healthcare professional' for UC, but makes it clear that this 'is not an assessment and does not impact conditionality' (para 104).

5 <https://cpag.org.uk/policy-campaigns/early-warning-system>

6 <https://www.gov.uk/government/publications/out-of-work-disability-benefit-reform/out-of-work-disability-benefit-reform>

