

Equity's Response to the Work Capability Assessment (WCA) consultation

30 October 2023

1. Introduction

1.1. Equity is the UK's performing arts and entertainment trade union with a membership of over 50,000. 2.9% of our members identify as disabled workers and we have a dedicated Deaf and Disabled Members Committee. The creative industries are a key contributor to the UK economy, accounting for 6.9% of all UK jobs in September 2021, up from 5.8% in 2015. The creative workforce makes a bigger economic contribution than the UK's automotive, aerospace, life sciences, and oil and gas sectors combined.

1.2 A recent survey by the University of Warwick¹ of our membership has found that they are a group of highly motivated workers, undertaking both industry and non-industry work, reporting earnings over the tax thresholds in each. The majority have professional training and spend a significant amount of time each week working to find work and working on the whole way past retirement age. Most are registered as self-employed for tax purposes.²

1.3 For several decades we have run an in-house advice service for our members, providing advice and representation in the areas of social security, tax and national insurance law. Members experiencing both short- and long-term ill health frequently contact us regarding the Work Capability Assessment (WCA). As such, we are in a unique position to provide real evidence about the lived experience of workers in relation to the WCA.

1.4 We summarise that the consultation is proposing to either remove or severely reduce the WCA qualifying criteria for the following groups: 1) those who cannot walk more than 50 meters (or reduce to 20), 2) those who suffer from weekly incontinence (or reduce to daily), 3) remove the activity that recognises those who have difficulty coping with social engagement (or reduce), 4) remove the activity that recognises those who have difficulty getting about due to mental or cognitive issues (or reduce), and 5) whether to amend the substantial risk regulation – which currently states that if there is a substantial risk to the physical or mental health of any person were the claimant found not be unable to work or undertake any work related activity, they should be found to have a limited capability for work and work related activity (LCWRA), i.e. not mandated to engage with work related activity.

1.5 This consultation states that eventually WCA regulations will be removed entirely and replaced with a discretionary assessment of work capability. In the interim it is proposed that regulations allowing five groups of severely disabled people to qualify for support are either removed or severely reduced. Those in these groups currently represent up to 40% of claims.

1.6 The effect of these proposed changes is that these claimants would not then be LCWRA, putting them into a mandated work-related activity regime, with sanctions attached for non-compliance. Their financial support will be reduced not only by £390 per month (UC) but the removal of the work allowance³ - a disregard of an initial amount of earnings - will remove the financial incentive to work.

¹ See [Universal Credit and our members | Equity](#)

² Ibid

³ Disregard of the following amounts from earnings before earnings taper (55% applied); £379 per month for those with a housing costs element added to their award, £631 if not.

1.7 It is our view that to understand this consultation requires substantial knowledge of the law in this area. This will undoubtedly hinder many people's understandings of the proposals, including those who are directly affected by the proposals if implemented.

1.8 We are very concerned at the proposals contained in this consultation, and they should not go ahead. The proposals cut money and introduce threat of sanctions to severely disabled people will increase the risk of claimants' health deterioration, and will not bring them closer to the job market. We find, just as the response provided by the National Association of Welfare Rights Advisers (NAWRA), that the government has provided no cogent reason for reducing financial support to vulnerable claimants through its proposed reforms to the WCA.⁴

1.9 We have serious concerns about the oversimplified presentation of the issues, and the veracity of claims being made, let alone how they logically justify the proposed cuts/changes. We will address these concerns in section two with reference to real life case studies, before examining the context in section three. In section four we will provide a response to the consultation questions, and provide concluding analysis in section five.

1.10 It is our considered and experienced assessment that it is not the law underpinning the WCA that needs to change, but the poor administration of it, including the inclusion of privatised medical assessments.⁵ The WCA has its issues, but removing or reducing the rights of the sick and disabled is not the answer and will only create more issues, as history has shown (see section 5).

2. WCA consultation claims

Claim one: 'Too many ...stuck on incapacity benefits'

2.1. At paragraph 2 of the consultation document, it is stated:

We know that being in suitable work is good for people's physical and mental health, wellbeing, and financial security. However, too many disabled people and people with health conditions are stuck on incapacity benefits, without the support they need to access work.'

2.2 Members come to our advice service to understand their rights to undertake work whilst contending with ill health and disability. The law allows for those who pass the WCA under Employment and Support Allowance to undertake 'permitted work'.⁶ Many find that their claims are initially incorrectly suspended, or they are misadvised by DWP, due the lack of understanding on regulations allowing for the averaging of hours and earnings when it comes to self-employment and fluctuating work.⁷ Much of our time is spent on putting this right. Unfortunately for the past couple of years, responses from this DWP decision making team have been slow, in many cases taking up a year for response only following MP intervention.

2.3 Many of our sick and disabled members undertake on a permitted work basis. If permitted work thresholds are exceeded, they have the security of knowing that the 12-week linking

⁴ [NAWRA's response to the DWP's consultation on proposed changes to the work capability assessment](#)

⁵ [The commodification of social security medical assessments—academic analysis and practitioner experience \(tandfonline.com\)](#)

⁶ Regulation 39, ESA Regulations 2013.

⁷ Regulation 39(2), 77, 83(9), ESA Regulations 2013; also, case7 CE/870/2018, CE/871/2018 and CE/874/2018

rule will allow them to return to their claim on the same basis should work not work out.⁸ If a reclaim is needed post 12 weeks, they may qualify again for ESA based on their national insurance record, however they will have to undergo another WCA.

2.4 For those moving into more than permitted work (up to 16 hours), prior to the introduction of Universal Credit, many were able to move from ESA to Working Tax Credit (WTC).⁹ If working at least 16 hours a week, WTC could be paid to supplement low earnings, with in-built financial incentives designed to financially reward the claimant if their earnings increased from year to year.¹⁰ Additional elements would then be added to the award depending on additional hours worked and whether a disability benefit was also received. There was no work or disability assessment.

2.5 Many of the self-employed disabled workers we represent have benefitted from Working Tax Credits and are terrified of the increased conditionality they will face as a result of a move to Universal Credit. One severely autistic member who teaches circus skills in his local community said to us:

'I credit being here today with not having to deal with the job centre.'

2.6 Those on Universal Credit who pass the WCA assessment, have no earnings threshold to exceed that would then lead to an automatic determination of being capable of work. This means that they receive UC payments based on earnings actually reported or not, on a monthly basis, providing much needed financial support and access to the safety net when required. The benefit of this system is that, probably for the first time in UK social security history, claimants receive access to the safety net automatically when required – as long as they pass the WCA assessment.

2.7 Members in these situations are not 'stuck on incapacity benefits' – they are able to pursue work and access financial support when they are not receiving earnings or otherwise unable to work. As the case studies below demonstrate (summary at **appendix 2**), some point to this combination of work and social security support as having a positive effect on their wellbeing. For them, social security is in fact supporting them in work and providing a 'vital safety net' as per the government aim in paragraph 1 of the consultation:

'We are determined to have a welfare system that encourages and supports people into work, while providing a vital safety net for those who need it most.'

1. Case study: Mr A, Schizophrenia (London)

Mr A stopped working in an office many decades ago following several schizophrenic episodes triggered by work stress. Mr A receives Contributory Employment and Support Allowance (CESA) with the support group. He is now able to undertake some supporting artist work in recorded media (film/TV). This work is infrequent and requires minimal interactions with others. It is usually for a day at a time, and he can take or leave it depending on his health needs. The workday typically involves waiting around and then taking part in a scene/s in the background or with minimal lines. This work falls under permitted work thresholds. However, it took a significant amount of advice work to get a workable permitted work agreement in place with the DWP and Mr A continues to rely on our support. He refuses to claim any other social security to which he is entitled (for example, Personal Independence Payment – PIP) because he finds interactions with the DWP to be very stressful, complicated and confusing. He says that undertaking the work, while having the safety net of a

⁸ Regulation 86, ESA Regulations 2013

⁹ Regulation 9, WTC (Entitlement and Maximum Rate) Regulations 2002

¹⁰ Regulation 5(b), TC (Income Thresholds & Determination of Rates) Regulations 2002

weekly income from CESA, is vital in maintaining his mental health. While this arrangement has been in place, he has not had a relapse.

2.8 It is our informed view that it is not the system itself that is trapping people, but a lack of understanding of legal rights – both for the claimant and those that administer it. Currently £18.7 billion of social security and social tariffs go unclaimed.¹¹ The reasons for this are summarised as administrative complexity, lack of awareness, stigma and increasing fragmentation of support.¹²

2.9 In addition, our members come to us for support to navigate the Access to Work scheme that DWP administers. Difficulties obtaining the support they require through this scheme actually prevent our members from working. Currently more than 20,000 claimants are waiting for a decision on their Access to Work application.¹³

Claim two: The way people work has changed since the inception of the WCA

2.10 At paragraph 4 of the consultation document, it is stated:

‘While working practices that support disabled people have changed significantly, the Work Capability Assessment (WCA) has not. The WCA is how we assess people’s capability to work and the support they receive. The WCA activities and descriptors were last comprehensively reviewed in 2011. We regularly review whether we can make service improvements to the assessment with our supplier. However, the risk is that the descriptors and the activities that were relevant over 10 years ago no longer reflect the work that people can do. People with mobility problems, or who suffer anxiety within the workplace, have better access to employment opportunities due to the rise in flexible and home working.’

2.11 While WCA activities and descriptors have not been fundamentally reviewed since 2011, there have been multitude of detailed government and non-government reports on the work capability assessment, none of which are referenced in this consultation. There are also numerous reports relating to other issues that this consultation covers – for example, the efficacy of conditionality and sanctions, disability and money, and other pertinent socio-economic issues. We supply some examples for reference and urge the Government to review them – see **appendix 1**.

2.12 The issues are complex and 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 dangerous (see below, paragraph 3.5). The consultation states that the descriptors are no longer relevant but does not provide a robust analysis as to why. For example, the rise of homeworking is continually referenced. But this is not a justification to cut support to those with mobility issues (see below, paragraph 4.3). The issues are well summarised by the Resolution Foundation:

‘The Government has used the rise of remote working as a justification for [WCA].. changes, which is understandable since remote working has remained high since the pandemic – over a fifth of workers are estimated to work mainly from home in the

¹¹ [Missing-out-19-billion-of-support.pdf \(policyinpractice.co.uk\)](#)

¹² Ibid, p.2 ‘Why are benefits underclaimed?’

¹³ [Written questions and answers - Written questions, answers and statements - UK Parliament](#)

second quarter of 2023, up from only one-in-twenty pre-pandemic. But the impact of remote working on the labour market opportunities for adults with disabilities shouldn't be overstated, given that the prevalence of remote working among disabled workers is no higher than among the overall population. And what really matters is the type of work on offer to individuals: not every job can be done remotely, and for those for whom low-paid work is the only option, the vast majority will be unable work from home.¹⁴

2.13 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 as is vital in the current context of DWP investigations on safeguarding and DWP related deaths for vulnerable claimants (see again, paragraph 3.5 and 3.6). Again, as analysed by the Resolution Foundation:

'... if the government's sole aim was to boost back-to-work support for people with disabilities, then it could have done so without announcing cuts to level of benefits paid to some claimants, so it is clear that yesterday's announcement is also part of the government's efforts to cut public spending, by reducing the amount paid in means-tested health-related benefits (universal credit and employment and support allowance) - and the timing of the consultation (which will close on 30 October) means that any resulting policy proposals can be costed and included in time for November's Autumn Statement.'¹⁵

Claim three: 'LCWRA should be for severe functional limitation, but its application has gone beyond this'

2.14 At paragraph 5 of the consultation it is stated:

'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.'

2.15 No detailed analysis of why there is an increase in claimants found LCWRA since the inception of the WCA to date is provided. We have represented claimants throughout this time, and it is only within the last year that we are seeing improvement in the quality of WCA decision making at the initial stage. Prior to this, it was standard that the claimant would only succeed at appeal hearing with the majority of mandatory reconsiderations prior to this being unsuccessful.

2.16 Our experience is echoed in DWP and HM Courts and tribunal statistics – for example, in 2018, 65 per cent of ESA 'fit for work' were overturned at appeal while 22% of decisions overturned at mandatory reconsideration stage in 2018.¹⁶ Now in 2023, 50% per cent of ESA 'fit for work' are overturned at appeal¹⁷ and 56% of decisions overturned at mandatory

¹⁴ [Reassessing the Work Capability Assessment • Resolution Foundation](#)

¹⁵ Ibid

¹⁶ [ESA: outcomes of Work Capability Assessments including mandatory reconsiderations and appeals: September 2018 - GOV.UK \(www.gov.uk\)](#)

¹⁷ [Tribunal Statistics Quarterly: January to March 2023 - GOV.UK \(www.gov.uk\)](#)

reconsideration stage.¹⁸ Following the roll out of UC WCA assessments, we note that 60% of universal credit claimants with a health condition or disability were assessed as having LCWRA as of June 2023.¹⁹

2. Case study: Ms B, Chronic Obstructive Pulmonary Disorder (Southeast England)

Ms B is a professionally trained actress, working when she can to fit around her chronic COPD. Her lung capacity has dropped recently to 31% and as a 'last resort' she claimed UC. With our assistance she has been found to have LCWRA on initial decision. This was awarded on the basis of a severely limited mobility. For example, her GP surgery is 9 minutes away at a normal walking pace. This takes her 30 minutes with frequent stopping and breathlessness. She is exhausted on return. She forces herself to keep moving despite her difficulties as muscle wastage is a consequence of COPD and exercise can counteract it. She says that working when she can helps her to escape her terror at her health deterioration and limited life span. She says:

'With great relief they have agreed to my limited access to work without calling me for interview... I have no doubt in my mind that I could not have gone through this process without independent advice and support.'

2.17 Therefore it is probable that an increase in claimants being assessed as having severe functional limitation is at least in part due to improved decision making, e.g., better understanding of the facts in each case. It is our experience that those who are found to have a severe functional limitation, do in fact have severe functional limitation. If they did not, we would advise them otherwise and not support their appeals.

Claim four: substantial risk was intended to apply to a small group of claimants

2.18 At paragraph 5 of the consultation it is stated:

'Substantial risk was intended to provide a safety net for claimants. It was designed to be used where it could cause harm to the mental or physical health of claimants or others if that claimant were found not to have either LCW or LCWRA. 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. This has the effect of reducing the support provided through jobcentres to those individuals. We know that periods of inactivity can be detrimental for people, particularly young people, affecting their overall mental health. We recognise that claimants who are assessed as LCWRA for substantial risk could be vulnerable or struggling with their mental health. We need to ensure that tailored support can be provided that recognises this.'

2.19 There is no reference given for the original intention. In any case, policy intention cannot be maintained when it does not cohere with reality, and WCA policy has been thoroughly criticised (see section 5. Context).

¹⁸ [ESA: Work Capability Assessments, Mandatory Reconsiderations and Appeals: September 2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/esa-work-capability-assessments-mandatory-reconsiderations-and-appeals-september-2023)

¹⁹ [Universal Credit Work Capability Assessment, April 2019 to June 2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/universal-credit-work-capability-assessment-april-2019-to-june-2023)

3. Case study: Ms C, long term mental health issues (undiagnosed) (London)

Ms C is an actress, who is working on a one woman show for summer festivals such as the Edinburgh Festival. She has secretly struggled all her life with poor mental health that causes her to experience depressive episodes and high anxiety. Her creative work is in her words 'the only thing that gets me through.' She has been claiming Universal Credit for several years, and subject to all work-related requirements. In the last year of claim, she became a carer for her severely disabled mother, and was longer required to look for work. When her mother died, her mental health deteriorated. She requested an easement on her work-related requirements to allow her to grieve. This was refused by her work coach. She was referred to the Restart work programme, which involved an intense amount of work-related activity. Struggling to cope, she became suicidal and was signed off work by her GP. Universal Credit referred her for a Work Capability Assessment which she is currently waiting on. As someone who is actively suicidal, she fulfils the substantial risk criteria. She continues to receive requests to attend work related requirements, which is causing her further distress:

'I had an actual nightmare in which I had described my situation to a UC representative who said they had 'listened carefully" however going straight on to telling me they had booked my next appointment for ... and I awoke in despair. I am not having restful sleep in general, waking up feeling already exhausted.'

2.20 It is our experience in practise that the substantial risk criteria is providing a much needed catch-all provision for those who do not fit the strictly prescribed functional criteria of the WCA, but who nonetheless have severe health issues that prevent them from being able to work or undertake work related activity. Health issues, and how they affect the individual, are complex, so this flexibility is key. We assess that it would be negligent to remove the safety net for this group and open them up to mandatory work activity, which would likely be further detrimental to their health as illustrated in case studies 1 above and 3, 4 and 5 below.

Claim five: claimants missing out on 'valuable' DWP support

2.21 At paragraph 17, it is stated:

'Claimants found to have LCWRA have no requirements to undertake any work-related activity to progress into or towards work. As a result, they miss out on the valuable support available through work coaches in jobcentres and employment provision. The Government is committed to ensuring that everyone has the best possible support to start, stay, and succeed in work.'

2.22 The consultation is not clear that in fact in work support is available to those in the support group/LCWRA, but on a voluntary basis. No statistics are provided for support group/LCWRA claimants voluntarily seeking this support. We assume it is low. Looking into the reasons for low take up is what the government should be looking at. As stated by the Disability Rights Consortium (a network of over 100 organisations with an interest in disability and social security):

'We very much agree that claimants with a realistic prospect of employment can and should be offered high-quality, tailored employment support. Such support should be voluntary and sold on its merits, not imposed by benefit cuts and sanctions.'

2.23 Our members report that whereas previous social security regimes had helped them to remain working, Universal Credit has overwhelmingly **not** helped them and in fact been a

barrier to helping them work.²⁰ At the same time, it should be noted that data from the Office for National Statistics shows a fall in working class people in the creative industries: from 16.4% of those born between 1953 and 1962 to just 7.9% for those born four decades later.²¹

2.24 The following case studies illustrate difficulties experienced by members with health issues who are or have been subject to work related requirements, who have become more unwell as a result:

4. Case study: Ms D – depression and anxiety following sexual assault (Midlands)

Ms D is an actress and comedian, who creates and performs her own show regularly in private and local authority venues (pub, clubs, schools, care homes), and also runs performance related workshops to train others. However, since Covid, the availability of work has reduced. She suffers from long term depression and anxiety following a sexual assault. She works on a self-employment basis and was found Gainfully Self-Employed. She was finding meetings with work coaches as part of her start up period intensely stressful as she found them to be actively unsupportive of her work, and it was negatively impacting on her mental health. She went to her GP who provided her with a sick note. She came to us for advice with the WCA assessment and was awarded LCW. On this she says:

'Given that I'm doing some work and trying to overcome the after effects of the lockdown and resulting ill health, accepting the decision seems a good option.

'Though what can I do about the nature of these stress inducing UC interviews? They are far from supportive and prevent progress instead of supporting it? They are manipulative and pressure inducing.'

5. Case study: Ms E, stress (Wales)

Ms E is a professionally trained actress who and has worked in the industry for over 40 years working across, film, television, radio and theatre. When Covid struck she had just finished work on a popular TV series. However, because her previous two years of work had been less lucrative, she received 'virtually nothing' from the Self-Employed Income Support Scheme (SEISS) and was forced to claim Universal Credit. It was the first time in her life that she had to claim social security.

Although the MIF was suspended during Covid, the continual threat of its return, combined with the impact of Covid on her industry caused her to experience considerable stress. Towards the end of Covid, she was found Gainfully Self-Employed with a start-up period applied, meaning no MIF applied for 12 months.

As part of the start-up period, she had to attend interviews at the job centre to discuss what she was doing to increase her self-employment work. Over this time, she had several different work coaches and none of them showed any real understanding of her industry. She was getting small bits of performance work however the industry was still recovering. She suggested to her work coach that she do some retraining to become a celebrant. This would make good use of her performance skills. She found a course and asked the DWP for financial help or to suggest where she could find some. They offered her no help. She was told – "we are not here to help; we are just here to administer."

At the end of her start up period, she had become so unwell with stress that her doctor signed her off work. Equity made representations for the MIF to be reduced in line with regulations that allow for the expected hours on which the MIF is based to be reduced if there is a health condition that affects ability to work. This was applied however UC insisted on a work capability assessment in addition to this which Ms E again found very stressful and demeaning. Ms E was found to have LCWRA.

²⁰ [Not here to help – Equity member's experiences of UC and the Minimum Income Floor'](#)

²¹ [Huge decline of working class people in the arts reflects fall in wider society | Culture | The Guardian](#)

2.25 Members rarely report interactions Disability Employment Advisers (DEAs), who we understand are in short supply in practise.²² Currently, we understand that the DWP has had to agree to easements to DWP staff workloads due to a recruitment crisis.²³

6. Case study: Mr F, severe autism (London)

Mr F has severe autism, depression and anxiety. He is unable to reliably getting around outdoors or engage with people independently. He works in the creative and technical side of theatre production but requires in work and personal support. He is in receipt of PIP. He claimed Universal Credit and had a session with the DEA at his job centre. He explained that he was struggling to work due to his condition and his work coach was treating him as being able to work 35 hours a week or more, which was compounding his stress. The DEA gave no advice other than to use Access to Work, which he was already using. He came to us. We advised us that he has a right to request reduced expected hours of work in accordance with UC regulations. We also advised him that due to the severity of his condition, he may have LCWRA, which he was duly awarded following WCA.

Claim five: 'We need to take steps now'

2.26 At paragraph 7 and 8 of the consultation it is stated that the Health and Disability White Paper will 'remove the WCA' and that the 'PIP assessment will be the only health and disability functional assessment in the future.' It then said that ahead of these reforms:

'We need to take steps now so that the WCA delivers the right outcomes while it still exists.'

2.27 The White Paper proposals are not yet legislated for and should not be presented as finalised. There are significant concerns that the White paper does not reflect the needs and asks of the disability groups that contributed to the green paper. Additionally, we strongly oppose the abolition of WCA regulations that give these vulnerable people rights, to be replaced by a discretionary approach to the assessment of work capability which offers no legal protection. As Disability Rights UK said in response to the white paper proposal:

*'Those Disabled people who can work need support to do so, backed up by the provision of reasonable adjustments by employers. However, those Disabled people who can't work or can only work limited hours need protection from sanctions. The new employment programmes targeted at Disabled people are welcomed but these need to be co-produced by Disabled people with Disabled Peoples Organisations involved in their implementation. What is not needed is the removal of no work conditionality with its replacement by a sanction's regime.'*²⁴

2.28 In relation to changes needing to be made 'now' - in June 2023 the select committee made recommendations for short term improvements to the health assessment process including the WCA. These detailed and carefully considered reforms could be implemented now. Notably they did not recommend any cuts to payments or the removal of legal rights. They have been rejected by DWP.²⁵

²² Latest available figures in 2021: 800 DEAs, with plans to increase these to 1,115 DEAs to 'cover' every Jobcentre.

²³ [Staffing Chaos in the DWP | Public and Commercial Services Union \(pcs.org.uk\)](https://www.pcs.org.uk/news/staffing-chaos-in-the-dwp)

²⁴ [Health and Disability White Paper: support not sanctions needed, says DR UK | Disability Rights UK](https://www.dr-uk.org/news/health-and-disability-white-paper-support-not-sanctions-needed-says-dr-uk)

²⁵ [Health assessments for benefits: Work and Pensions Committee publishes Government Response to Report - Committees - UK Parliament](https://www.parliament.uk/newsroom/news/2023/06/23/health-assessments-for-benefits-work-and-pensions-committee-publishes-government-response-to-report-committees-uk-parliament)

2.29 It is our considered view that it is irresponsible to make any changes before the white paper proposals have been consulted on further. If the proposed reforms are made before this, damaging inconsistencies will emerge, as explained by Z2K:

*'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.'*²⁶

Claim six: high rates of economic inactivity and labour market vacancies

2.30 At paragraph 19, it is stated:

'The number of people who are out of work and not looking for a job, or who are 'economically inactive,' due to illness and long-term health conditions is 2.6 million in 2023. This has risen since the pandemic. There are currently over 1 million employer vacancies in the labour market, which is holding back economic growth.'

2.31 To place these statistics side by side, implies that there is a connection between economic inactivity and shortages in the labour market. The socio-economic reality is far more complicated, as analysed by the Resolution Foundation:

*'The rising incidence of ill-health and disability among our working-age population - and the coinciding rise in health- and disability-related benefit claims - is a real problem, but tweaking benefit entitlement alone is unlikely to be an adequate or effective solution: the government must also focus on improving healthcare provision to prevent people getting ill in the first place and provide better support to help those claimants who are able to work, to help them find good-quality, sustained employment.'*²⁷

3. Context

3.1 We note the recent BBC radio documentary series [Fit for Work: An investigation by Jolyon Jenkins](#), which the department will be aware of due to the inclusion of DWP ministers interviewed, including the incumbent Tom Pursglove.

3.2 This extensively researched and comprehensive 3-part series goes through the history of the WCA from inception to date with great accuracy, and very much mirrors our experience of the WCA as advisers.

3.3 The documentary reminds us that the WCA was designed to reduce the amount of incapacity related benefit claims and get people into work. It failed. The current consultation of the WCA has the exact same purpose – to reduce entitlement to support for those who are sick. It is crucial therefore that history is not repeated, as stated by Jonathan Portes, chief economist at DWP from 2002-2008, who was responsible for the WCA policy:

'In terms of social policy/welfare policy, the Employment and Support Allowance/work capability debacle is absolutely one of the biggest social policy failures of the last 20 or 30 years. We caused an enormous amount of human

²⁶ [Z2K response to WCA consultation October 2023.pdf](#)

²⁷ [Reassessing the Work Capability Assessment • Resolution Foundation](#)

*suffering, we achieved very little, and we didn't save any money, and it probably cost more than it would have if we hadn't done it and that I think is pretty damning.'*²⁸

3.4 In the consultation, the government continually refer to research on the benefits of working. But this consultation is not in fact about the benefits of working, but on measures to be taken to reduce financial support and make work related activity mandatory, entailing financial sanctions for non-compliance, and also removing the work allowance which acts as an incentive to work. No research on the efficacy of this coercive measure is presented. The DWP's own research²⁹ has found that sanctions have minimal effect for moving claimants into work and actually decreases the rate of movement into higher-paid work.

3.5 Issues around safeguarding are not mentioned in the consultation and are crucial to context. The WCA has been associated with claimant suicide. In 2020 The Department was investigated by the National Audit Office³⁰ who found that the 69 suicide cases investigated by DWP in the last six years is 'highly unlikely' to represent number it could have investigated. Research in 2015 concluded that the WCA was linked to about 600 suicides in just three years.³¹ In March 2023 the Court of Appeal has granted permission for a second inquest into the death of ESA claimant Jodey Whiting:

*The Court found that it was not only desirable for Joy and her family to have an inquest into Jodey's death at which they could invite a Coroner to make findings about the role of the DWP's failings in Jodey's death, but also that the public at large has a 'legitimate interest' in this investigation being carried out.*³²

3.6 Currently, the Work and Pensions Select Committee is undertaking an inquiry to examine how the DWP supports vulnerable claimants and whether their approach to safeguarding needs to change.³³

3.7 We say given the historical and current context, we assess that it is completely inappropriate for the Government to be considering any changes to social security for sick and disabled claimants until there are outcomes on these safeguarding investigations. This is required if the Government seeks to rebuild trust. As stated by Disability Rights UK:

*There was no hint in the White Paper published earlier this year that the DWP would be proposing changes to the WCA. Another example of it trumpeting its acceptance of the need for trust and transparency and then doing the opposite.*³⁴

4. Consultation questions

Question 1: What are your views on the three Mobilising options?

²⁸ [Fit for Work - 02/06/2023 - BBC Sounds](#), 08:46

²⁹ [The Impact of Benefit Sanctions on Employment Outcomes: draft report - GOV.UK \(www.gov.uk\)](#)

³⁰ [Information held by the Department for Work & Pensions on deaths by suicide of benefit claimants - National Audit Office \(NAO\) report](#)

³¹ ['First, do no harm': are disability assessments associated with adverse trends in mental health? A longitudinal ecological study | Journal of Epidemiology & Community Health \(bmj.com\)](#)

³² [Court of Appeal grants second inquest into death of Jodey Whiting | Leigh Day](#)

³³ [Safeguarding vulnerable claimants - Committees - UK Parliament](#)

³⁴ [DWP launches WCA changes consultation aimed at reducing the number of claimants in 'limited capability for work-related activity' group | Disability Rights UK](#)

4.1 We are not convinced that the case for change has been made and consider that none of the proposed changes are justified. We consider that those who cannot walk more than 50 meters are severely disabled and entitled to social security to support them if they chose to claim. See **case study 2** above.

4.2 The rise of home working is not a silver bullet. See 2.12 above. Not all work can be done from home and low paid work is typically not offered on a home working basis. And finally, even if work can be done from home, this does not change the fact that those being targeted by this consultation have been assessed as severely disabled – not able to work more than 50 meters, suffering weekly incontinence, etc.

4.3 We note that the proposal to amend the LCWRA mobilising descriptor to 'bring it in line with the equivalent descriptor in PIP' is not appropriate whatsoever. The Health and Disability White Paper states that those consulted had asked for a widening of the PIP mobility component and that the previous 50-metre 'rule of thumb' distance criteria used for the PIP mobility component was more appropriate than the current criteria. These are the amendments that should be made.

Question 2: What are your views on the three Absence or loss of bowel/bladder control (Continence) options?

4.4 We are not convinced that the case for change has been made and consider that none of the proposed changes are justified. We consider those who are experiencing incontinence once a week are severely disabled and entitled to social security to support them if they chose to claim. We urge the Government to do more research into how weekly incontinence affects physical and mental health.

Question 3: What are your views on the two Coping with Social Engagement options?

4.5 We are not convinced that the case for change has been made and consider that none of the proposed changes are justified. We consider those who are experiencing issues coping with social engagement are severely disabled and entitled to social security to support them if they chose to claim. See **case study 5**.

4.6 People in this category are likely to need support from others in a work context. Taking away the LCWRA element that could go towards paying for this support will increase in costs elsewhere – for example, Access to Work.

Question 4: What are your views on the two Getting About options?

4.7 We are not convinced that the case for change has been made and consider that none of the proposed changes are justified. We consider those who are experiencing issues coping with social engagement are severely disabled and entitled to social security to support them if they chose to claim. See again **case study 5**.

4.8 People in this category are likely to need support from others in order to get to and from work. Taking away the LCWRA element that could go towards paying for this support will increase in costs elsewhere – for example, Access to Work.

Question 5: In addition to the above options for change, are there any other WCA activities or descriptors that you think we should be considering changes to and why?

4.9 No.

Question 6: What are your views on how the LCWRA Substantial Risk regulations could be amended with the emphasis on what work preparation activity an individual is able to safely undertake?

4.10 We are not convinced that the case for change has been made and consider that none of the proposed changes are justified. See case studies 1, 3, 4 and 5. These illustrate the harmful and counterproductive effects that mandatory work and work-related activity can have on claimants in this category.

4.11 Given the multitude of current issues around DWP safeguarding and DWP related deaths we are incredulous that any change to the substantial risk category is being proposed. It is completely inappropriate.

4.12 In addition, the fact that the DWP continues to deny safeguarding responsibility for benefit claimants damages any chance of the relationship of trust required for claimants and their advisers to effectively engage with DWP in support programmes such as those suggested by this consultation.

Question 7: What do you think would be the impact of these changes?

4.13 As with all the other changes proposed, increased poverty for the individual and would additional costs elsewhere including social care, health, and justice spending. Claimant deaths.

Question 8: What could constitute tailored or a minimum level of work preparation activity?

4.14 Any mandatory requirement on a claimant who is at substantial risk is wholly inappropriate. See case again studies 1, 3, 4 and 5.

Question 9: What are your views on whether we should remove the LCWRA risk group and place the people in this group in LCW risk instead?

4.15 Inappropriate. See case again studies 1, 3, 4 and 5.

Question 10: How can this group be safely supported within the LCW risk group?

4.16 Currently we assess they cannot be due to the reduction of financial support and introduction of sanctions that it entails. See case studies 1, 3, 4 and 5.

5. Conclusion

5.1 We have provided evidence on how the law allows for those with health issues and disabilities to undertake work while claiming benefits, and the measures that are in place to ensure that social security does not automatically stop.

5.2 We have examined how the increase of those receiving higher rates of support is likely due to better application of the law as a result of learning over the decade since it was introduced. The fact that there are a significant number of DWP related deaths tied to the WCA, especially in its early years, must not be ignored.

5.3 We have pointed out that there are a multitude of recent reports about the treatment of the sick and disabled that have not been referenced in this consultation (see appendix 1). There is a repeated reference to a single DWP commissioned report from 2006 that looks at the benefits of work. This consultation does not meaningfully engage with what decent work looks like. It is a proposal to introduce measures that not only take away essential financial support for the severely disabled, but also take away incentives and are mandatory. DWP's own research has shown that coercion does not work.

5.4 We have clarified that those who are LCWRA are not prevented from accessing DWP run employment support schemes. The fact that they are not doing so voluntarily suggests that they are not desirable, and DWP resource would be better spent looking into how to improve these schemes to make them so.

5.5 We have considered what the justification is for needing to make reforms now and find that there is none. It is concerning that the Government have rejected interim measures that were opposed by a Work and Pensions Committee in favour of cutting rights, which will not only make life more difficult for vulnerable claimants but create costly inconsistencies (see 2.29). The political timing of this consultation undermines its credibility (see 2.13).

5.6 We have brought attention to the fact that the WCA in itself was designed to reduce the amount of people out of work, just as this consultation proposes. History has shown that this did not work, with deadly consequences that are to this day being investigated. We urge the government to learn from this and not repeat the mistakes of policy making based on cuts and coercion.

5.7 We bring to the table extensive experience of social security for sick and disabled workers in practise. We urge the government to acknowledge and address the administrative issues we have highlighted in order to help the severely disabled to work **now** in practise – delays in permitted work decision making (see 2.2) and delays in access to work assessments/payments (see 2.9).

5.8 Clearly investment in employment support in order to make it desirable is required (see 2.22-2.24). Participation in which must remain voluntary as coercion and pressure simply does not work, as illustrated by our real-life case studies (collated in appendix 2). The government needs to trust people to work out the work they can do if they are able to, and to provide support if asked for accordingly.³⁵

5.9 Before any changes are made following this consultation and the white paper, there must be increased consultation with groups representing the sick and disabled, including those representing workers like Equity, to ensure that any changes made are both justified and made with the support of those affected in order to rebuild trust. The Government should

³⁵ See again case study 5; Ms B asked for financial support to help re-train and was denied. Lack of support has contributed to her health deterioration. £3k spent here may have helped her to become self-sufficient.

learn from the measures taken by the Scottish Government in this respect.³⁶ The scapegoating must stop.

*Equity Trade Union
October 2023*

For more information please contact Emma Cotton, Social Security and Tax Officer at Equity: ecotton@equity.org.uk

³⁶ [The commodification of social security medical assessments—academic analysis and practitioner experience \(tandfonline.com\)](https://www.tandfonline.com)

Appendix one: a selection of recent reports relevant to the WCA consultation

[The effects of reforms to the Work Capability Assessment for incapacity benefits | Institute for Fiscal Studies \(ifs.org.uk\)](#)

[Fit for Work; An investigation by Jolyon Jenkins_BBC 020623](#)

[The commodification of social security medical assessments—academic analysis and practitioner experience \(tandfonline.com\)](#)

[Missing-out-19-billion-of-support.pdf \(policyinpractice.co.uk\)](#)

[From compliance to engagement | New Economics Foundation](#)

[Working together: Towards a new public employment service | IPPR](#)

[Playing Catch-Up: The impact of delayed health assessments for Personal Independence Payment - Citizens Advice](#)

[The sanctions spiral: The unequal impact and hardship caused by sanctions in Universal Credit - Citizens Advice](#)

[Treating-causes-not-symptoms-Jul-23.pdf \(autonomy.work\)](#)

[Ask CPAG | Briefing: Health assessments for benefits: analysis of the government's...](#)

[The Disability Gap: Insecure work in the UK - Lancaster University](#)

[The impact of the transition to Personal Independence Payment on claimants with mental health problems \(tandfonline.com\)](#)

[Legal Protection Against Destitution in the UK: the Case for a Right to a Subsistence Minimum - Simpson - 2023 - The Modern Law Review - Wiley Online Library](#)

[The real level of unemployment 2022: the myth of full employment across Britain - Sheffield Hallam University Research Archive \(shu.ac.uk\)](#)

[Where's the Credit? \(changingrealities.org\)](#)

[Disability Price Tag 2023: the extra cost of disability | Disability charity Scope UK](#)

[The sanctions surge: Shining a light on the universal credit sanctions regime | IPPR](#)

[Creating a healthy labour market | TUC](#)

[Reassessing assessments report - Mind](#)

[Do work search requirements work? Evidence from a UK reform targeting single parents | Institute for Fiscal Studies \(ifs.org.uk\)](#)

[were_just_numbers_to_them.pdf \(rethink.org\)](#)

[tip-of-the-iceberg.pdf \(rethink.org\)](#)

[PeopleBeforeProcess.pdf \(z2k.org\)](#)

Appendix 2: Case studies

1. Case study: Mr A, Schizophrenia (London)

Mr A stopped working in an office many decades ago following several schizophrenic episodes triggered by work stress. Mr A receives Contributory Employment and Support Allowance (CESA) with the support group. He is now able to undertake some supporting artist work in recorded media (film/TV). This work is infrequent and requires minimal interactions with others. It is usually for a day at a time, which he can take or leave depending on his health needs. The workday typically involves waiting around and then taking part in a scene/s in the background or with minimal lines. This work falls under permitted work thresholds. However, it took a significant amount of advice work to get a workable permitted work agreement in place with the DWP and Mr A continues to rely on our support. He refuses to claim any other social security to which he is entitled (for example, Personal Independence Payment – PIP) because he finds interactions with the DWP to be very stressful, complicated and confusing. He says that undertaking the work, while having the safety net of a weekly income from CESA, is vital in maintaining his mental health. While this arrangement has been in place, he has not had a relapse.

2. Case study: Ms B, Chronic Obstructive Pulmonary Disorder (Southeast England)

Ms B is a professionally trained actress, working when she can to fit around her chronic COPD. Her lung capacity has dropped recently to 31% and as a 'last resort' she claimed UC. With our assistance she has been found to have LCWRA on initial decision. This was awarded on the basis of a severely limited mobility. For example, her GP surgery is 9 minutes away at a normal walking pace. This takes her 30 minutes with frequent stopping and breathlessness. She is exhausted on return. She forces herself to keep moving despite her difficulties as muscle wastage is a consequence of COPD and exercise can counteract it. She says that working when she can helps her to escape her terror at her health deterioration and limited life span. She says:

'With great relief they have agreed to my limited access to work without calling me for interview... I have no doubt in my mind that I could not have gone through this process without independent advice and support.'

3. Case study: Ms C, long term mental health issues (undiagnosed) (London)

Ms C is an actress, who is working on a one woman show for summer festivals such as the Edinburgh Festival. She has secretly struggled all her life with poor mental health that causes her to experience depressive episodes and high anxiety. Her creative work is in her words 'the only thing that gets me through.' She has been claiming Universal Credit for several years, and subject to all work-related requirements. In the last year of claim, she became a carer for her severely disabled mother, and was longer required to look for work. When her mother died, her mental health deteriorated. She requested an easement on her work-related requirements to allow her to grieve. This was refused by her work coach. She was referred to the Restart work programme, which involved an intense amount of work-related activity. Struggling to cope, she became suicidal and was signed off work by her GP. Universal Credit referred her for a Work Capability Assessment which she is currently waiting on. As someone who is actively suicidal, she fulfils the substantial risk criteria. She continues to receive requests to attend work related requirements, which is causing her further distress:

'I had an actual nightmare in which I had described my situation to a UC representative who said they had 'listened carefully' however going straight on to telling me they had booked my next appointment for ... and I awoke in despair. I am not having restful sleep in general, waking up feeling already exhausted.'

4. Case study: Ms D – depression and anxiety following sexual assault (Midlands)

Ms D is an actress and comedian, who creates and performs her own show regularly in private and local authority venues (pub, clubs, schools, care homes), and also runs performance related workshops to train others. However, since Covid, the availability of work has reduced. She suffers from long term depression and anxiety following a sexual assault. She works on a self-employment basis and was found Gainfully Self-Employed. She was finding meetings with work coaches as part of her start up period intensely stressful as she found them to be actively unsupportive of her work, and it was negatively impacting on her mental health. She went to her GP who provided her with a sick note. She came to us for advice with the WCA assessment and was awarded LCW. On this she says:

'Given that I'm doing some work and trying to overcome the after effects of the lockdown and resulting ill health, accepting the decision seems a good option.

'Though what can I do about the nature of these stress inducing UC interviews? They are far from supportive and prevent progress instead of supporting it? They are manipulative and pressure inducing.'

5. Case study: Ms E, stress (Wales)

Ms E is a professionally trained actress who and has worked in the industry for over 40 years working across, film, television, radio and theatre. When Covid struck she had just finished work on a popular TV series. However, because her previous two years of work had been less lucrative, she received 'virtually nothing' from the Self-Employed Income Support Scheme (SEISS) and was forced to claim Universal Credit. It was the first time in her life that she had to claim social security.

Although the MIF was suspended during Covid, the continual threat of its return, combined with the impact of Covid on her industry caused her to experience considerable stress. Towards the end of Covid, she was found Gainfully Self-Employed with a start-up period applied, meaning no MIF applied for 12 months.

As part of the start-up period, she had to attend interviews at the job centre to discuss what she was doing to increase her self-employment work. Over this time, she had several different work coaches and none of them showed any real understanding of her industry. She was getting small bits of performance work however the industry was still recovering. She suggested to her work coach that she do some retraining to become a celebrant. This would make good use of her performance skills. She found a course and asked the DWP for financial help or to suggest where she could find some. They offered her no help. She was told – "we are not here to help; we are just here to administer."

At the end of her start up period, she had become so unwell with stress that her doctor signed her off work. Equity made representations for the MIF to be reduced in line with regulations that allow for the expected hours on which the MIF is based to be reduced if there is a health condition that affects ability to work. This was applied however UC insisted on a work capability assessment in addition to this which Ms E again found very stressful and demeaning. Ms E was found to have LCWRA.

6. Case study: Mr F, severe autism (London)

Mr F has severe autism, depression and anxiety. He is unable to reliably getting around outdoors or engage with people independently. He works in the creative and technical side of theatre production but requires in work and personal support. He is in receipt of PIP. He claimed Universal Credit and had a session with the DEA at his job centre. He explained that he was struggling to work due to his condition and his work coach was treating him as being able to work 35 hours a week or more, which was compounding his stress. The DEA gave no advice other than to use Access to Work, which he was already using. He came to us. We advised us that he has a right to request reduced expected hours of work in accordance with UC regulations. We also advised him that due to the severity of his condition, he may have LCWRA, which he was duly awarded following WCA.
