

BLACKBURN AND DISTRICT TRADES UNION COUNCIL

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Response to consultation on “Work Capability Assessment: activities and descriptors”

Blackburn and District Trades Union Council is a local body, registered with the Trades Union Congress, comprising delegates from Trade Unions with members working or living in the Boroughs of Blackburn with Darwen and the Ribble Valley.

Our response to the consultation on "Work Capability Assessment: activities and descriptors" is based upon:

- Experience in the administration of ESA and Universal Credit;
- Representing and advising Trade Union members affected by sickness and/or disability and/or Industrial Injury;
- Maintaining an interest in academic and campaign group literature on Welfare benefits and practices; and
- General encounters as citizens with the delivery of public Welfare.

We believe that the proposals being made are badly conceived and threaten to do more harm than good.

1)

The first motivation for the proposals appears to be concern at the number of people currently qualifying either for ESA or Universal Credit on the grounds of a disability or health condition.

The Consultation Document notes that: *"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" and it uses the term *"stuck on incapacity benefits"*, both of which raise a suspicion that the proposals made are fundamentally an instrumental device to reduce the number of claimants.

It seems clear that the proposals are in no way backed up by any research into why the numbers qualifying have increased. According to an article on the "Disability News Service" (DNS) website on September 23rd, that organisation submitted a Freedom of Information request aimed at discovering what research the DWP had carried out in the last three years into the reasons for the sharp rise in the number of people needing to rely on ESA and the disability element of the new Universal Credit. The DNS says *" in a response to that request, DWP has now admitted....that it "does not have specific research on this matter"*.

The implication of the proposals is that laxity in assessment lies behind the growth in numbers, or that there has been some sort of shift in public temperament making more people want to claim that they are poorly. In the absence of any evidence, these possibilities are merely speculation - a tap room level of speculation that reflects badly on the Government's opinion of its fellow citizens. This is particularly the case when there are at least three much more plausible causes - "Long Covid", growth in NHS waiting lists for treatment and trends in mental health linked to the cost of living and work-place stress.

According to the ONS Report "Prevalence of ongoing symptoms following coronavirus (COVID-19) infection in the UK: 30 March 2023" *"An estimated 1.9 million people living in private households in the UK (2.9% of the population) were experiencing self-reported long COVID (symptoms continuing for more than four weeks after the first confirmed or suspected coronavirus (COVID-19) infection that were not explained by something else) as of 5 March 2023"*. Of this 1.9 million, 1.3 million (69%) felt that their symptoms related to COVID contracted at least one year previously and 762,000 (41%) to COVID contracted at least two years previously. We appreciate that there are still debates ongoing about "Long Covid" and its severity, but *prime facie* it must be acknowledged that there has potentially been a major injection of morbidity into the British population.

The "People Management" website reported on 20th December 2022 that *"One in five (19 per cent) employees impacted by the NHS backlog say their work has been affected"....."Analysis of official data by Broadstone also found that with just under 2.5 million people reporting that long-term sickness prevented them from working, over one in ten (15 per cent) said the wait for NHS treatment meant that they had to go on long-term sick leave – which is equivalent to over 215,000 people"*.

In December 2022 the IPPR, in their Report "Getting better?: Health and the labour market", noted that *"Of those economically inactive primarily because of their health, more than 6 in 10 are living with a mental health problem. In other words, 1.5 million of the 2.5 million who are out of the labour market due to long-term illness are living with at least one mental health problem"*. This is not the same as saying that mental health is the primary reason for their ill-health, as many people on ill-health benefits have multiple ailments. The "Mail Online" on 30th July 2023 reported Darren Morgan, ONS director of economic statistics production and analysis as saying: *"The majority of these people reported it as a secondary health condition rather than their main one."* Nevertheless, an article on the "Statista" website on 12th September 2023 reports: *"As of 2022, some of the most common health conditions cited as the reason for long-term sickness were to do with mental health issues, with 313,00 suffering from mental illness, and a further 282,000 for depression-related illness"*. And other sources point to a growing awareness of the impact of mental health issues on sickness absence from work in general. The 2022 Chartered Institute of Personnel and Development Report "Health and Wellbeing at Work" found that Mental Health was the third most common cause of employee absences, whilst PWC research in May 2023 concluded that *"Poor mental health is the main cause of long term sickness for the workforce"*.

PWC has noted that *"Two in five businesses (38%) have seen an increase in the number of employees taking long term sick leave due to mental health related illness since the pandemic"* and also that a number of employers thought that a major contributor was the cost of living crisis: *"Whilst half of businesses (52%) agree that in general the mental health of employees has worsened since the pandemic, a similar number (53%) also feel that mental health of employees has worsened as a result of the cost of living crisis"*.

We therefore factor into our understanding of the increase in the numbers of those qualifying for sickness benefits what the British Medical Association had

to say, in October 2022, about the situation of mental health and mental health services in Britain:

"We are also seeing a steady rise in demand on adult services since the start of the pandemic, with over 1m people in contact with these services each month, which is adding to the overall pressure on the system³. The serious shortages in psychiatry, with 1 in 7 planned Full Time Equivalent (FTE) roles currently vacant⁴, means that many children, young people, and adults are simply not getting the timely care they need.

The doctor's union is deeply worried that the situation is likely to worsen as the rising cost of living drives up the number of people needing treatment for their mental health. BMA analysis found that the areas of highest economic deprivation have over double the number of people in contact with mental health services compared to the most affluent areas⁵.

Doctor's leaders warn that this could spell disaster for mental health services if the Government continues to fail to tackle worsening poverty levels by refusing to increase benefits in line with rising prices; benefits that are already worryingly low to begin with".

The increase in the numbers of those qualifying for sickness benefits is a cause for concern, but one which one would expect government to address by identifying and addressing the proximate causes - not by trying to "alter the rules".

2)

The second motivation cited appears to be simply that more people are being found to either qualify for benefit either for benefit, or to have Limited Capability for Work-Related Activity (LCWRA) (or to be in the support group of ESA), than was previously the case. The Consultation Document says that:

"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" and that "In 2016-17, 55% of new claims for incapacity benefits were approved. In 2022-23, 82% of new claims were approved".

Here again the implication is that the government wants to change the rules simply because it is unhappy with the results.

Our concern is more that the history of the WCA suggests that people have been denied appropriate support by an unsympathetic system. What is worrying for us is that almost 20% of people who make a claim for welfare support on grounds of their health are still being turned away. Presumably, this will be a mix of people who "fail" their WCA and people who end up failing even to negotiate the process.

Barr B, Taylor-Robinson D, Stuckler D, et al: ('First, do no harm': are disability assessments associated with adverse trends in mental health? A longitudinal ecological study *Epidemiol Community Health* 2016;70:339-345) found that: *"The programme of reassessing people on disability benefits using the Work Capability Assessment was independently associated with an increase in suicides, self-reported mental health problems and antidepressant prescribing"*. Writing in "The Guardian" on 22nd March 2023, Frances Ryan commented: *"the WCA has morphed into one of the greatest social policy failures in modern times. Hundreds of millions of pounds of public money filled the coffers of private companies that ran the assessments, as disabled people incorrectly rejected for benefits were forced to turn to food banks. Like <Stephen Smith>, thousands of disabled and severely ill people have died after being found "fit for work". Others have taken their own lives"*.

We regard the fundamental problem with the WCA is that it is too mechanistic, that it fails to grasp the impact of the interrelationship of the elements of illness or disability, and that its application has been, on occasion, arbitrary, inconsistent, and influenced by external expectations as to the level of outcomes. It relies on a system of closed questions to allocate points for individual activities. This enables the health professional carrying out the assessment to avoid making an overall assessment of the claimant's capability for work and it can lead to a failure to allow claimants to explain freely the impact of their disabilities or illnesses on their daily life. The approach can result in health professionals allocating zero points when the evidence - supplied by claimants in their ESA50s or UC50s or by their own GPs - is often confirmed on appeal to a tribunal to indicate that they should have been placed in the Work-Related Activity or Support Group. We have always felt that it was a mistake to divorce claimants' own clinical advisers from the claim process.

Removing or weakening descriptors cannot, however, be understood to offer any solution to these problems. The predictable outcome is not only that people will be denied access to the LCWRA group, but that they will not be

found to have any LCW at all and end up facing a conditionality regime with which they will be simply unable to cope. The Resolution Foundation has pointed out that: *"although only four of the 17 functional activities and descriptors are included in the consultation, the majority (87 per cent) of adults in receipt of means-tested health-related benefits have problems with their mobility or mental health, or have social or behavioural problems, meaning that they are at risk of being affected by changes to the four functional activities and descriptors included in the consultation"*.

The House of Commons Research Brief "Proposals to abolish the Work Capability Assessment" (23 September 2023) notes that: *"The WCA has been controversial since it was introduced. A Work and Pensions Committee report in 2018 said that failings in the assessment and decision-making processes for both ESA and PIP had resulted in the "pervasive lack of trust" that risked undermining the operation of both benefits. This report made a series of recommendations covering, amongst other things, recording assessments, the supply and use of evidence, clarity of communications, guidance in relation to home assessments, and the role of companions at assessments.*

In its subsequent report, Health assessments for benefits published in April 2023, the Work and Pensions Committee found that, despite some improvements, many of the problems highlighted in its 2018 report remained. It found that important changes to improve trust and transparency had not been made".

If there is any attention to be paid to the WCA prior to it being abolished, then surely the priority should be to address the issues raised by the Committee rather than go off on another track altogether.

Removing or weakening the "score" of the highlighted descriptors will not make anyone better or more able - it will just make them less likely to qualify. We cannot understand how anyone would think that someone with mobility problems, frequent incontinence and difficulties with social engagement should not qualify for welfare support. It just seems to indicate that the people who come up with these ideas have no understanding of, or empathy for, the lives of others.

3)

The Consultation Document works on a presumption that people with some health problems would find it easier to work from home and that this

somehow reduces the overall level of their incapacity: "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".

We think that there are three problems with this.

Firstly, it is too optimistic on the question of how much easier it might be for many individuals to work from home. Let's go back to the person with mobility problems, frequent incontinence, and difficulties with social engagement. Are we really being asked to imagine that they will be able to maintain a productive and consistent level of performance if only we could sit them at home with a telephone and PC? You surely know as well as we do that in most cases this will not be so. Their overall level of stamina, concentration and engagement will be adversely affected by their condition. Unless other descriptors, like "initiating and completing personal action" were to be strengthened, to take account of the impact of physical disabilities and not just "impaired mental function", the ability of the activities and descriptors as a package to capture a "whole" picture will be weakened.

Secondly, it raises the question of what sort of trajectory "home working" is likely to take. Yes, it has seen a rise - but much of this would seem to relate to already experienced and organisationally embedded staff moving to home work. Recruiting and training staff on an entirely home based premise is a different kettle of fish, and it is important, moreover, to appreciate the difference between entirely home based and hybrid arrangements. An ONS Report, "Is hybrid working here to stay?" 23 May 2022, found that once the COVID pandemic became less intense the trend was more of a move to **hybrid** working: *"Workers were asked about their future plans in February 2022, after government guidance to work from home when possible was lifted in England and Scotland. More than 8 in 10 workers who had to work from home during the coronavirus pandemic said they planned to hybrid work. Since then, the proportion of workers hybrid working has risen from 13% in early February 2022 to 24% in May 2022. The percentage working exclusively from home has fallen from 22% to 14% in the same period"*. In a later study, "Characteristics of homeworkers, Great Britain: September 2022 to January 2023", ONS also noted that home and hybrid working were much more likely to be options for higher-paid staff: *"Those with higher incomes were more likely to work from home. The highest levels of home only or hybrid working were seen in workers in the highest income band of £50,000 or more annual earnings – with 8 out of 10 workers in this category reporting home or hybrid working. This contrasts*

with workers in the lowest income band of up to £10,000 annual earnings where only 14% of workers reported home or hybrid working. Of those in the lowest income band, 3 out of 4 travelled to work and could not work from home (75%), the highest rate among all income bands". We need, therefore, to take stock before concluding that working entirely from home is equally more of an option across the whole of the working age population.

Thirdly, we need to remember that we are considering Limited Capability for Work **and Work-Related Activity**. The Consultation Document appears to be entirely silent on the question of how **Work-Related Activity**, and presumably work coach appointments, might become more flexible and home based.

4)

The Consultation Document says that: *"the application of LCWRA risk has gone beyond the original intent"* and that the Government is *"considering whether we remove the LCWRA risk criteria entirely"*. The footnote source cited to back up this observation, however, **does not do so**. It links to a document from 2015 and the Government's response to a recommendation that the provision be *"subject to close scrutiny with a particular focus on decisions made on a papers only basis"*. The Government's response was that *"The Department will continue to work closely with the assessment provider and decision makers to ensure that this regulation is used appropriately"*. So the source should, actually, give us confidence that the Department has done what it said it would do and has been applying the regulation appropriately. If that has not been the case, then we need to know why and to what extent before endorsing any changes.

According to "Disability News Service" (7th September 2023) the Government did also in 2015 *"weaken the protection.....telling the private contractors who carry out the assessments, in its WCA handbook, that the three indicators of mental distress "might" only give rise to a substantial risk in "exceptional circumstances" and that they should weigh "the benefits of employment" against any risk"*.

Where, indeed, questions of the application of "risk safety-net" provisions have come into the public domain the issues raised have more often been around their effectiveness. Cases highlighted do perhaps more often relate to people facing complete disqualification when they are patently unwell, but if that is the way things have gone with that side of things it is hard to believe that the substantial risk criteria has been applied with increasing laxity.

Jodey Whiting took her own life aged 42 on 21 February 2017. She had multiple physical and mental illnesses which left her housebound and entirely reliant on welfare benefits. She died a fortnight after her benefits were terminated because she did not attend a Work Capability Assessment. At the time of the assessment, Jodey was housebound with pneumonia, had been in hospital, and had found out that she had a cyst on the brain. At the application of her mother, Joy Dove, the Court of Appeal found in March this year that Court found that it was 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.

"MIND"'s briefing "Safeguarding in the benefits system" says: *"Research published by the DWP in 2016 found that every year 114,000 people with mental health problems see their ESA claim closed before reaching assessment. This amounts to a third (32%) of claims made by with mental health problems who make a claim. There are several reasons why someone might find themselves in this category. It is likely to include people who are not eligible for ESA because of their savings or income. However the same research found that two years after their ESA claim, 62,000 people with mental health problems were neither working, nor receiving benefits. We are not aware of any further work by the DWP to understand the circumstances of this group of people"*.

The House of Commons Work and Pensions Committee is currently undertaking an enquiry into "Supporting Vulnerable Claimants". It says: *"Over the three years from July 2019 to July 2022 the number of Internal Process Reviews (IPRs)—DWP's internal investigations into allegations of DWP case handling which have fallen short of expected standards, with a severe negative impact on a claimant—has more than doubled. 140 IPRs were conducted into claimant deaths over this period compared with 64 reviews carried out between 2016 and 2019. This inquiry will look to evaluate DWP's approach to safeguarding vulnerable claimants and to question what its responsibilities should be to support those who find it difficult to interact successfully with the benefit system"*.

With questions like this under scrutiny we submit that it would be reckless and irresponsible to tamper with any mitigating risk criteria.

That, indeed, is our view of the package presented as a whole. There is, in our view, merit in considering the replacement of the WCA with a different means

of assessment - though not the procedure the Government has announced. But at a time when that latter announcement has been made it does seem particularly ill-advised to make changes unless they could be shown to have a possibility of making a positive impact. We dispute that the Consultation Document makes any such case and urge the Government to shelve these proposals entirely.

13.10.2023