

“Legitimacy is
a balancing act,
but we can achieve
a much better balance
than the WCA”

A BETTER WCA IS POSSIBLE

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Executive summary

This is *not* a report about the failings of the Work Capability Assessment (WCA) – not because the WCA can escape the accusation of failure, but because this is already widely known. Instead, the report aims to set out how a better WCA is possible. The over-riding aim is *legitimacy*: as the independent reviewer of the WCA has said, ‘to be a credible test, the WCA needs not only to be fair but to be perceived as such’. In this report, I therefore present extensive evidence on public attitudes. However, some caution is necessary: members of the public sometimes do not understand disability well, let alone the complexities of how the benefits system works. Nevertheless, alongside wider evidence, understanding the attitudes of the public and other key actors can help us develop a better, more legitimate WCA.

This report is based on evidence from a 4-year research project, partly carried out in collaboration with Demos and a team led by Professor Clare Bambra. It has four parts:

- a comparative study examining how other countries conduct social security disability assessment, based on 150 documents and 40 expert interviews across nine countries
- a new survey of the public, asking 2,000 people detailed questions about both disabled people in general and using vignettes of specific types of disabled people
- six focus groups with the public
- six focus groups with key actors: Maximus WCA assessors, welfare-to-work providers, disability charity workers and disability activists

The report focuses on three issues in turn:

- how the WCA decides if a claimant’s impairments are ‘genuine’ in deciding if they should be eligible for incapacity benefits
- how the WCA decides if someone is capable of work
- the WCA’s role in establishing if disabled claimants should be subject to conditionality and sanctions

Establishing ‘genuineness’

Many members of the public are concerned about ‘undeserving’ people claiming incapacity benefits – but many are also concerned that ‘genuinely’ disabled people are being unfairly denied them (as we found in both the survey and the focus groups). If anything, the public are more concerned about the unfair treatment of genuine claimants than the unfair claims of undeserving ones. More people said they knew a deserving claimant who has struggled to get benefits than a claimant who is not genuinely disabled (28 per cent vs 19 per cent). And more people thought it was more important to support genuine claimants than to root out fraud (45 per cent vs 22 per cent). While the public do not necessarily want a more lenient assessment, they do want a better one: only 10 per cent of people thought that the WCA accurately assesses who should get benefits.

Public attitudes therefore tend to fall either side of a knife-edge: people are either generous towards ‘genuine’ claimants, or hostile towards fraudulent ones – so it is crucial to know how the public decide who is ‘genuine’. The most common view was to rely on doctors. However, people also inferred ‘genuineness’ from clues such as a person’s apparent work ethic and their own informal observations. Most were aware that these are problematic: doctors do not have perfect knowledge, and hidden impairments are not outwardly observable. Trust is therefore pivotal. If someone is trusted, then their description of their symptoms is likely to be believed, even without a doctor’s diagnosis. Where people

were not trusted, weak evidence could be unfairly used as evidence that someone is not ‘genuine’.

WCA assessors themselves try to assess the ‘genuineness’ of claimants, but there are substantial concerns about each of the strategies they use to do this. Not only is medical evidence often unavailable, but claimants’ treatment history only provides indirect evidence about their impairments. Assessors therefore combine this evidence with their wider medical knowledge to decide if the reported impairments are ‘likely’, potentially leading them to make unfair decisions where people’s impairments are unusual, or where there are other reasons for a lack of treatment. Similarly, informal observations at the assessment (such as how people walked) provide highly unreliable clues on fluctuating conditions. Many key actors felt that appeal tribunal judges made better decisions about ‘genuineness’, not because they had more written medical evidence, but because they asked the claimant better questions and weighed the evidence they had more fairly.

Recommendations

- 1 *The government should ensure that assessors’ reports of what claimants said can unquestionably be trusted.* A number of claimants have reported that assessors of Personal Independence Payment (PIP) have fabricated some or all their reports, sometimes supported by strong evidence such as secret recordings. While these claims are anecdotal, and may or may not apply equally to the WCA, it is clearly very damaging to the legitimacy of Department of Work and Pensions (DWP) disability assessments in general. The government should therefore audio record all assessments, and annually review a sample of these recordings to ensure that they are accurate. Claimants should also be able to see – and comment on – the first part of their assessment report during the assessment.

- 2 *The government should improve the supply of useful medical evidence into the WCA.* Almost every report on the WCA since it was introduced has argued that the supply of medical evidence must be improved, but achieving this in practice has been slow and difficult. To address this, the government should reverse the current burden on assessors to justify only where they *do* request further medical evidence, instead requiring them to justify where they do *not*. These requests for information should be light-touch, using a secure electronic system.
- 3 *The government should improve the accuracy and transparency of any decisions that contradict claimants’ descriptions of their lives.* A legitimate system cannot be based simply on whatever claimants claim, yet nor can a legitimate system use unreliable evidence to simply ignore claimants’ own descriptions. The public are broadly sympathetic to claimants. Legitimacy is a balancing act, but we can get a much better balance than the current WCA provides. The government should *inter alia*:
 - require assessors to ask claimants if they have an explanation for any evidence that seemingly contradicts their description of their impairments, rather than jumping to a conclusion that the claimant is wrong
 - set a high evidence threshold for over-ruling claimants’ descriptions of their lives, and ensure that assessors consistently apply it
 - allow claimants to go through a process of treatment to obtain medical evidence on their condition, and then go through another WCA without delay

Work capability

There is wide agreement that the WCA should not simply aim to establish if people’s impairments are ‘genuine’; it should assess whether people are capable of work. However, there is no coherent ‘public opinion’ about whether particular disabled people are capable of work: different people have wildly varying perceptions, and most people’s views are not well informed. Rather than matching the WCA to public

perceptions, it therefore makes more sense to ground legitimacy in a trusted *process*, where there is transparent evidence underpinning the assessment.

Yet there is no evidence that the WCA captures the demands of work in Britain today accurately. There is some criticism from disability charity workers and disability activists that the individual functional descriptors are wrong, but we do not know if this criticism is fair because no transparent evidence on the descriptors has ever been published. The deeper problem is that the WCA is inaccurate if claimants have two or more types of impairment, which is probably the case for at least half of all disabled people. The WCA has always dealt poorly with multiple types of impairment, but since the changes in April 2017 to restrict extra payments to the Support Group only, it now does not deal with multiple impairments at all.

We can take inspiration for a better WCA from other countries, whose assessments take one of three forms:

- *Expert assessments* are common. They have some degree of legitimacy, but there are concerns about the validity and reliability of their judgements.
- *Demonstrated assessments* look at people's actual experiences in the labour market. However, these are only successful if there is substantial investment in rehabilitation to maximise people's work capability, and it is open to question whether the UK is presently in a position to do this.
- *Structured assessments* match people's capacities to the functional demands that have been found to be required in actually existing jobs. Despite some costs, they seem to produce decisions that are widely accepted as fair, and by providing a basis for 'objective', standardised assessments, they also seem to fit the requirements of the UK system best.

Recommendations

- 4 *The government should overhaul the WCA descriptors, so that they transparently reflect the British labour market.* It would be relatively straightforward to do this: the government could

collect data on the functional requirements of British jobs – the specific capabilities that people need to be able to do each job. There are various ways the government can implement a structured assessment – there are choices of who collects the data, how many jobs data should be collected for, and whether this should be a real-world test – any of which would be a major step forward on the WCA.

- 5 *The government should overhaul the structure of the WCA, so that it looks at the combined impact of multiple impairments on work capability.* Again, it is straightforward to do this, if we follow the previous recommendation and collect data on the functional requirements of work in Britain. Instead of just matching each type of impairment to British jobs in isolation, the government should measure the functional profiles required in different jobs – all the capacities in combination that someone needs to be able to do that job. That way, the functional profile of the claimant can be matched to the functional profile that jobs require.
- 6 *The government should make sure that the assumptions that the system makes about employers match the legal requirements placed on employers.* It would be possible for assessors to consider whether reasonable adjustments would make a particular type of job possible for a particular claimant, but there is a risk that the resulting decisions over-estimate what most employers will do, and are therefore unfair. I therefore recommend that the government links any considerations of workplace adjustments to what is currently legally required and enforced in practice. Indeed, as the government has been classifying more people as 'fit for work', they should also impose more significant burdens on employers to make the changes necessary for this group of people to have a real opportunity to work.

Conditionality

As well as deciding on the amount of money that people get, the WCA also decides the conditionality that people are subject to. While Employment and Support Allowance (ESA)

Support Group claimants cannot be sanctioned, ESA Work-Related Activity Group (WRAG) claimants can lose all their benefit for 1–4 weeks *after* they start complying, while those found fit for work who then claim Job Seeker's Allowance (JSA) have more demanding requirements and can lose all their benefit for between 4 weeks and 3 years. *In total, over a million benefit sanctions have been applied to disabled people since 2010*, mainly those claiming JSA. Now the government is considering increasing the conditionality for WRAG claimants, and adding some limited conditionality to Support Group claimants. There are two possible justifications for this: that it will have a positive impact on disabled people, and that it is fair.

While there were occasional key actors interviewed for this report who thought conditionality would be effective in getting disabled people into work (and focus group members of the public were split, where they gave this any thought), the overwhelming majority of key actors thought that conditionality would be counterproductive. The research evidence suggests that it is the latter who are right. Six studies look specifically at the impact of conditionality on disabled people, most of which have been ignored in UK debates. Taken together, the reports suggest that conditionality and sanctioning may have zero or even negative impacts on work-related outcomes. Less quantitative evidence is available about the wider impacts of conditionality on disabled people, but there is widespread anecdotal evidence that conditionality and sanctions can lead to anxiety and broader ill health.

The other major argument for conditionality centres on fairness, which was debated by the public. Some questioned the principle of conditionality for disabled people given the barriers they face, while others thought it was only fair that disabled people should be sanctioned if they did not take steps towards seeking work, just like other benefit claimants. Yet concerns about the *principle* of conditionality for disabled people quickly blurred into debates about the *practice* of conditionality – how do we know what people are capable of doing, in order to ensure that conditionality is fair? Many key actors in this study had concerns about how this was assessed,

echoing the views found in a government-commissioned review of sanctions, parliamentary select committees, a major qualitative academic study, and among staff of innumerable disability charities and campaigners. In new research, I show that disabled people on JSA were 26–53 per cent more likely to be sanctioned than non-disabled JSA claimants between 2010 and 2014, which provides some statistical support to the widespread view that this process was unfair.

From my international review of conditionality for disabled benefit claimants in other countries, I found two key lessons for the UK. First, it is very difficult to know what a disabled benefit claimant is capable of doing. The countries that seem to manage to implement conditionality are those that invest in providing claimants with expert assessment to direct them to rehabilitation that is tailored to their condition, which they are then expected to take up. Second, most countries that manage to implement conditionality use sanctioning as a last resort. This makes disability assessment much easier. The pressure on the assessment is greatest when sanctions are applied, and this is not only rare, but also only happens when the government has seen claimants multiple times.

Overall, the public often supported the imposition of sanctions for disabled people – but not in the form that the government applies them at present. A majority thought that disabled people's benefits should be cut if they do not take a job they can do, or if they refuse suitable training or rehabilitation. However, they were less supportive of sanctioning for minor non-compliance, such as sometimes turning up late for meetings. What is more, even those who do support sanctions prefer much weaker sanctions than those the government presently uses. Only 6–11 per cent of people thought that a disabled person should lose most or all of their benefits if they sometimes turned up late for meetings.

Recommendations

- 7 *The government should reduce the extent of benefit conditionality disabled people face.* It is not only expensive to make conditionality for disabled people fair, but the current system also goes beyond the public's conception of fairness, and is likely to actively *reduce* the chances of people moving into work. The government should therefore reduce the numbers of disabled people subject to conditionality (ensuring that there is no conditionality for the Support Group), the scope of the conditions imposed on claimants (instead encouraging people to make ambitious aspirations that do not attract a sanction), the likelihood that claimants will be sanctioned for minor non-compliance, and the value of sanctions.
- 8 *The government should continue to rely on the WCA and fit notes to set maximum conditionality groups for disabled people.* The green paper on work, health and disability stresses the advantages of setting conditionality completely separately from deciding the amount of benefits that people receive at the WCA, but in practice this is unlikely to be possible. Either conditionality for non-disabled people must be changed similarly, or there needs to be a gateway into the system of conditionality for disabled people – and there is no appetite to introduce an all-new assessment for this purpose. I therefore recommend that current practice is maintained: the disability-specific conditionality group should be set by both the WCA and by fit notes (medical statements from a doctor), albeit with some small changes to make the system fairer and less burdensome.
- 9 *The government should tailor any conditionality within these groups to claimants' own description of their capabilities; this should only be challenged in exceptional circumstances, and on the basis of expert assessment.* There are already major concerns about the fairness of conditionality for disabled people, and the proposals in the green paper seem likely to make this worse. If claimants' description of their own capacities is challenged, then relevant experts – particularly those with occupational health expertise – need to be involved.

However this is implemented, it will be both expensive, and will damage the relationship between the work coach and the claimant. It should therefore be a rare exception, rather than the rule.

- 10 *The government should strengthen safeguards to ensure disabled people are not unfairly sanctioned for failing to meet impossible conditions.* Thinking about claimants who might struggle with the system is not just inherently important, or a case of avoiding bad headlines, but is a legal requirement.

Three safeguards are particularly important:

- New claimants at crisis points cannot be expected to attend interviews or communicate by letter or phone with the DWP, and should be placed in the 'no requirements' group. The system must also cope with existing claimants who suffer a crisis mid-claim.
- Claimants who cannot be expected negotiate with a work coach should not be sanctioned until they have been assessed by a health professional.
- Where there is a risk to claimants' health if they are sanctioned, additional safeguards need to be put in place.

General principles

Finally, there are several broader principles that are necessary to help ensure that these reforms are successful. The government should:

- co-produce the revised WCA with disabled people
- ensure the system as a whole makes sense for all claimants, whatever the result of their WCA
- ensure there is adequate time and enough resources to design and pilot the new assessments
- ensure that the transitions to new systems are implemented as fairly as possible