

# **The Work Capability Assessment**

## **Independent Review Call for Evidence**

**Disability Alliance response**

**September 2010**

**Disability  
alliance**

Breaking the link between poverty and disability

## **Disability Alliance (DA)**

DA is a UK charity seeking to break the link between poverty and disability. We provide benefits and other welfare guides and support to disabled people, their families and welfare rights advisers. We are best known as publishers of the comprehensive benefits guide: the *Disability Rights Handbook*.

Our Board of Trustees are mostly disabled people and we are a membership organisation representing 250 organisations across the country.

For further information on DA please visit: [www.disabilityalliance.org.uk](http://www.disabilityalliance.org.uk)

## **Forming our response**

DA involved our members in developing our response to Professor Harrington's independent review of the WCA. We thank members for their input and we are grateful to Professor Harrington for hosting a meeting with some of DA's member organisations.

DA also attended wider stakeholder group meetings with Professor Harrington and the DWP as well as using evidence received at DA to inform our response.

## **Summary**

Disability Alliance supports welfare reform which genuinely delivers opportunities for disabled people to contribute in work. However, we believe the Work Capability Assessment (WCA)

- is failing to ascertain disabled people's needs effectively;
- is generating costs to Government through high appeal rates (40% of which are successful);
- is generating avoidable hardship for some disabled people; and
- requires significant improvement in terms of:
  - o the information provided to people undergoing assessments;
  - o the descriptors;
  - o the requirement for independent medical information; and
  - o the timeframes being operated for the WCA and appeals.

We believe the WCA process, timeframe and individual descriptors require significant improvement to ensure it is more effective at identifying needs and allocating resources. We hope the outcome of the Harrington review will be a WCA which ensures disabled people:

- are not written off on inappropriate benefits;
- do not have to undergo avoidably stressful and costly appeals; and
- have access to support to seek, secure and retain appropriate employment opportunities.

## **The independent WCA review and call for evidence**

DA welcomes the opportunity to improve the WCA. Professor Harrington's independent review is the first of five statutory reviews and is essential in ensuring the WCA is made more effective for disabled people – and will also influence future reviews.

Disability organisations, like DA, supported some aspects of welfare reform which we believed would better focus resources on ensuring disabled people had support to access and retain employment and move away from or stay off benefits as far as possible.

We also believed the welfare reform agenda would help tackle disability poverty. Even before the current economic situation exacerbated conditions, disabled people in the UK were twice as likely to be living in poverty as other people – with roughly a third of disabled people living in poverty across the life course:

- 29% of disabled children live in poverty;
- A third of disabled working age adults live in poverty – and half disabled people of working age are not in work; and
- 29% of pensioners in households with one or more disabled adult not accessing disability benefits live in poverty.

For further information on disability poverty please see *Tackling Disability Poverty* – the manifesto we published in 2009 with sixteen other national organisations, available at: [www.disabilityalliance.org/damanifesto.htm](http://www.disabilityalliance.org/damanifesto.htm)

The WCA was intended to be part of the move away from traditional benefits towards a system which genuinely apportioned support according to needs and focused on what people can do – rather than writing people off based on outdated ideas of impairments preventing any possibility of work. The traditional benefits system ignored:

- disabled people's quest for equality;
- the advantages of the Disability Discrimination Act protection for disabled people seeking work and people developing impairments/health conditions in work; and
- the potential of support initiatives for disabled people and employers like Access to Work to help people get and keep jobs.

However, the WCA has proved hugely disappointing to disability organisations. With the assessment for ascertaining which benefit and other support people are to receive failing, the wider welfare reform programme is undermined – and made more expensive.

DA has been very concerned at DWP portrayals of disability organisation support for the WCA and for previous amendments to the assessment. Whilst DA has been involved in meetings and discussions regarding the WCA, we – and other disability organisations including those represented in the Disability Benefits Consortium – have continually expressed frustration with the lack of genuine engagement with our suggestions/recommendations for making the WCA effective.

DA acknowledges Professor Harrington's recognition of this issue during the course of the independent review. We hope suggestions from disability stakeholders will be utilised in this review – or highlighted for attention from the next statutory review(s).

During the course of the review DA also responded to the Social Security Advisory Committee consultation on *The Employment and Support Allowance (Limited Capability for Work and Limited Capability for Work-Related Activity) Amendment Regulations 2011*. Our response is attached as appendix one.

### **Call for evidence questions**

DA does not attempt to fully answer all the questions posed by Professor Harrington's review, but offer brief answers below. We answer question 1, parts a, b and c together and questions 3 and 4 together.

**Question 1a: How effectively does the WCA correctly identify those claimants whose condition is such that they are unable to undertake any form of work related activity (the support group?)**

**Question 1b: How effectively does the WCA correctly identify those claimants whose condition is such that they are currently unable to work due to illness or disability (the limited capability for work group?)**

**Question 1c: What are the main characteristics that should identify claimants for each group, where these may differ from the current assessment?**

In planning for the new Employment and Support Allowance (ESA; accessed by the WCA), the Government estimated that 49% of people undergoing the WCA would be found 'fit for work' – i.e. re-signposted to Jobseekers' Allowance (JSA).

However, DWP figures show that, since the introduction of ESA:

- around 69% of people have been signposted to JSA after being found fully fit for work;
- only 9% have been placed in the ESA support group (not required to undertake any work-related activity); and
- 22% have been placed in the ESA work-related activity group.

DA does not believe that the Government deliberately intended to introduce an assessment which routinely failed to accurately identify disabled people's potential support needs. But the WCA statistics demonstrate:

- a disparity with the original Government estimates for how many people would access ESA;
- a difference between disabled people, their personal healthcare provider and the broader public's expectation of the WCA compared with the outcome from DWP decision-makers; and
- a routine failure requiring regular appeals.

The number of appeals against WCA decisions is incredibly high. It is estimated that one in three decisions are being appealed. The latest statistics from the Tribunals Service show that the number of ESA appeals has quadrupled between April 2009 and March 2010. By March 2010 there were 46,500 ESA appeals. This rate is more than double the amount of appeals received concerning Disability Living Allowance (DLA) – which had the previously highest appeal rate for any benefit.

It is estimated that there are now 8,000 WCA appeals a week – and that the backlog in the system is leading to DA members reporting 6-8 month timeframes being suggested to disabled people seeking to review decisions, as well as knock-on delays to other benefits (including DLA).

Around 40% of the appeals are having initial DWP decisions overturned (i.e. decisions are found in favour of the appellant). Cases have been brought to DA's attention of people assessed as fully fit for work not only having the decision overturned at tribunal, but also being placed in the ESA support group of claimants (indicating a high level of disability). One DA member reported someone allocated no points in the WCA who, on appeal, was allocated over 100 points.

The huge discrepancy between the initial assessment and the result of appeals is deeply worrying and means that:

- the WCA is failing in its primary purpose; and
- the Tribunals Service is footing the bill for WCA failures, experiencing an extraordinary number of appeals and a massive backlog in its work.

The inefficacy of the WCA in ensuring an accurate assessment is made for disabled people also:

- delays the provision of work-related support to people who have a limited capability for work and require additional help to get or keep a job; and

- places considerable and avoidable stress and anxiety on disabled people, their families, Jobcentre Plus and Tribunals staff. For disabled people, this can exacerbate mental or physical health problems and have further knock-on costs to individuals as well as public services (if people require GP/NHS treatment for example).

The current pre-WCA assessment level of ESA is £65.45; for people placed in the work-related activity group it is £91.40; and for people in the support group it is £96.85. Consequently, inaccurate DWP decisions resulting from a poorly performing WCA means that people who win their appeals may have to wait 6 to 8 months to receive an arrears payment of up to £31.40 per week – possibly leaving some disabled people in poverty due to the WCA's inadequacy.

The evidence suggests that disabled people with fluctuating conditions are being poorest served by the WCA. We hope that the independent review will be reviewing the data collected on WCA outcomes by impairment type.

**Question 2: What evidence is there to suggest that any issues with the operation of the WCA are as a result of the policy design, and what evidence is there to suggest that they are as a result of the delivery?**

The policy design has led to the delivery process being a target driven arrangement with Atos Healthcare. The design was faulty and the delivery is unacceptably poor for disabled people – especially at a time of limited public resources.

DA supports an additional requirement being built into the Atos Healthcare contract to deliver the WCA: that where an individual examiner is found, at appeal, to have inaccurately allocated points using the descriptors by a margin of 10, that they are required to undergo further training to ensure they are better able to identify people's needs. We also believe DWP should look to impose the costs arising from appeals with such varying points allocation on the provider of the original assessment. DWP should certainly consider more closely potential penalties for decisions which, on appeal, result in disabled people leaping from a 'fully fit for work' assessment to joining the ESA support component.

DA believes that limited public resources should not be drawn into hearing appeals where a private company has provided the initial assessment. We believe that Atos should work more co-operatively with DWP and other stakeholders to help ensure assessments are effective and that appeals are minimal.

DA believes that the contract with Atos should also include provisions to ensure medical assessors are able to suggest improvements to the WCA descriptors to best capture the real needs of individual disabled people. DA visited an Atos assessment centre in September 2009 and no reporting system was in place to allow staff to suggest improvements to the assessment process.

DA members have also suggested regional variations in WCA outcomes which should not be the case. Scottish members have suggested a particularly stringent approach to the WCA in Scotland. Although there may be areas with particularly high incidences of some impairment groups, this should result in greater, not less, use of ESA. DA recommends regional breakdowns of outcome by impairment groups (and by overturned initial DWP decisions in appeals) should be used to identify areas where better training is required for WCA assessors.

DA is also aware of anecdotal evidence surrounding misinterpretation of comments during the WCA leading to inaccurate outcomes for some disabled people. For example, one grandmother mentioned occasionally collecting a young grandchild from school which was distorted into 'provides regular childcare' with the suggestion that this might be a fruitful career choice.

The general perception of the time allotted to the WCA is that it is too short, which contributes to the misinterpretation of comments and suggested nonchalant attitude towards disabled people's actual lives – which prevents access to support for work even where it is appropriate. DA recommends further time is allotted to each WCA to ensure a fuller assessment is possible. Assessors should also be advised to avoid making sweeping judgements and to delve more deeply into comments about daily needs/potential.

DA also believes that communications with individuals should more strongly urge the collection and input of independent medical evidence from people's GPs and/or consultants. We discuss the need for this information further in response to question five below but, as a procedural issue, it would help if people realised upfront how important this information could be to the outcome of their assessment.

DA is also concerned that not enough people currently receive reports from their assessments. This is poor communication and should be tackled as a procedural issue. We believe an obligation to provide this information to every person undergoing an assessment should be implemented. This could help tackle:

- concerns disabled people have reported surrounding statements made in their report which did not match their expectations from the assessment;

- misunderstandings arising from the brief time allocated for a WCA; and
- misinterpretations of answers provided to assessors.

**Question 3: What is the best way to ensure that the effect of fluctuating conditions is reflected in the recommendation of the WCA? And Question 4: What is the best way to ensure that the effect of multiple conditions is reflected in the recommendation of the WCA? Are there specific conditions that should be regarded as contributing to or adding additional weight to others, where both are present?**

DA members have highlighted that people with fluctuating conditions are finding the WCA hardest to navigate with a successful allocation of 'points' by descriptors. People with multiple impairments can also find the descriptors difficult to identify needs accordingly. Some people's needs are 'dismissed' using the descriptors as they would not be regular or 'severe' enough under one descriptor or for a long enough period to secure points which – were the impairment more systematic or the needs in any one descriptor higher – would result in a higher probability of an ESA decision.

Many people with fluctuating conditions, like M.E. or MS, experience symptoms at different times and to varying degrees. Walking/mobility may be difficult at times, whilst dexterity, sight or speech may also be affected. None of these factors on their own may occur enough to achieve the required points during the WCA.

The current WCA fails to effectively look at the combined effect of 'low level' needs or at multiple needs but where each need presents only for a minority of the time. People with more than one condition may experience a combined effect which is substantially greater than a simple sum of the factors, but the WCA does not effectively account for this either. Someone who has mild learning difficulties and a 'minor' physical impairment that limits them to walking 200 metres is not likely to score enough points to be found eligible for ESA, but is likely to have difficulty finding appropriate work. The combined effect of lower level or multiple needs can make it essential that someone has additional support to get/keep work however.

DA believes the system must fit the people rather than the other way round. If more people gain access to a slightly higher benefit and tailored support as a result then DWP should welcome the greater likelihood of more disabled people entering work. We support the maximisation of disabled people receiving additional support to get and find work and believe the WCA should facilitate a process which more genuinely allocates resources based on needs.



DA also recommends that, if the WCA is to genuinely reflect ability to undertake regular work, employers' views are also sought on developing the descriptors further to ensure they reflect people's support needs in work. The Disability Discrimination Act provides in work protection for disabled people but where needs exist employers and disabled people may need additional support from Jobcentre Plus to ensure appropriate support is provided for interviews and once in work. This slightly more tailored support may only be available to disabled people in the ESA work-related activity group.

Two further examples are provided here which – whilst not necessarily relating specifically to the DWP assigned role of the WCA – are extremely important in developing a system which ensures disabled people can access support to participate in the workforce.

A claimant with a lifetime of manual work may find that developing a physical impairment will cause a much greater barrier to work than for someone perhaps born with a greater physical impairment, but who has also adapted to the condition and has higher literacy levels and could work in different vocations.

Adapting the workplace may also be seen differently by employers depending on the level of skills the employee offers. Employers may see it as a 'Reasonable Adjustment' (under the DDA) or use the Access to Work scheme to pay for extra support – such as a BSL interpreter – for a Deaf person who is highly qualified, but are unlikely to see the same measure as 'reasonable' for an unskilled Deaf person applying for a position on the national minimum wage.

Whilst the WCA may not be the entirely appropriate place to ascertain genuine work possibilities, its role is undeniable in pathways to benefits and support to find appropriate work. DA hopes the review will consider employment issues in drawing up recommendations.

**Question 5: What is the best way to give adequate weighting to additional (or initial) evidence outside of that gathered through the WCA? How can any changes be achieved without placing a burden on GPs and health care professionals, and without compromising their relationship with their patients?**

DA believes that anyone with an impairment or health condition should be more actively encouraged to bring independent medical evidence of the impact of the impairment/condition to the WCA. This could reduce appeals.

DA also believes that – where the appeals demonstrate specific groups experiencing ineffective WCAs this should be explored in better training for

assessors (to generate more effective WCA outcomes for individuals and more cost-effective assessments). Groups experiencing routine disadvantage in WCAs (as evidenced in appeal rates) should also receive extended periods of time to collect and bring independent medical data to WCAs.

DA has recommended that Professor Harrington review the contract with Atos Healthcare to explore whether the timeframe required for WCAs to occur may be preventing a barrier to people collecting independent medical evidence. We hope the review will examine this issue in detail. It may be useful to recommend a more appropriate timeframe for all WCAs or for specific impairment groups/types – potentially including people with fluctuating conditions – to ensure the WCA is made more effective.

DA has also recommended Professor Harrington examine closely the template contract Atos Healthcare uses to employ individual assessors. There has been significant speculation that the contracts include targets for minimising access to ESA. DA would like speculation settled and believes that targets in individual contracts would undermine the principle of the WCA.

Modifying the Med 3 Statement of Fitness for Work certificate to require more information, or requiring DWP decision-makers to seek additional medical information following the return of someone's ESA50 prior to their attending a WCA may be a necessary condition to ensure:

- that Atos assessors have a fuller account of the nature of the impairment or health conditions' impact on a disabled person's daily life;
- that disabled people receive a more effective assessment; and
- that costs of appeals are reduced accordingly.

This would allow for the additional, independent information to be collected and provided prior to the WCA and may require greater flexibility in the timeframe for the WCA than DA understands currently exists.

DWP decision-makers currently use the medical report from the WCA assessor in deciding ESA claims. DA has been contacted many times concerning the ability of the assessment process (and sometimes the assessor) to adequately understand the nature of an impairment or health condition. Frequent issues brought to our attention include:

- being asked apparently confusing and/or seemingly irrelevant questions (from which assessors draw unfair conclusions);
- inadequate interest being paid by assessors to the answers being provided during the WCA. This includes assessors 'staring at the computer screen' rather than focusing on people and the inaccurate or misleading recording of information provided;
- examinations lasting just 20 minutes; and
- poor recognition and evaluation of mental health problems.

We believe that the independent review must focus strongly on the training and guidance available to assessors surrounding impairments and health conditions in particular. It can be concerning for disabled people to learn that a more narrowly qualified nurse being used as an assessor for the WCA could have more weight attached to their short assessment than years of treatment and awareness of a person's needs and abilities under a more specialist professional.

We believe that DWP decision-makers should be encouraged to give greater weight to evidence from a person's own GP and/or consultant rather than solely the brief WCA.

Prior to the introduction of ESA, if medical certificates could indicate people should be exempt from the Incapacity Benefit Personal Capability Assessment examination then further information was requested from their doctor (on a form IB 113). This has not been replicated within the ESA system which instead includes an ESA50 limited capability for work questionnaire form being sent to a claimant automatically (unless they are terminally ill). We believe the pre-October 2008 practice for information gathering had greater credibility and allowed more appropriate weight to be given to the evidence of people's own GP where necessary.

DA would also like to see exemptions from undergoing a WCA for people about to experience an operation – we are aware that some people have been forced to undergo the WCA a matter of days before experiencing significant operations (in one case an amputation), making the WCA outcome irrelevant. People experiencing two WCAs in these circumstances represents a considerable waste of time and resources.

DA supports the power for DWP decision-makers being enhanced to make decisions awarding ESA for a short temporary period if there are exceptional circumstances that indicate that someone is unlikely to be able to immediately return to work.

**Question 6: Is there any evidence to show that there have been particular problems with the WCA for any specific groups? These groups may include, but are not limited to, men and women, people from black and minority ethnic backgrounds, or people from differing age groups.**

DA believes that the review should recommend that disabled people's pathways post-WCA should be monitored closely and reviewed to ensure that groups of people experiencing greater difficulty in accessing work be

reclassified into the ESA work-related activity group to help overcome barriers to employment.

If, for example, people with significant learning difficulties are routinely being found fully fit for work but monitoring reveals (as is likely) that they remain out of work after a year (or again after two years) it would seem prudent to better support this group into work to tackle benefit dependency and ensure everyone is able to contribute – including through National Insurance and income tax.

DA is concerned that the independent review may not have the time to influence the WCA before full IB migration in 2011. There is evidence that some groups (including people with fluctuating conditions, mental health problems and learning difficulties) could be significantly less likely to receive an appropriate points allocation using the current descriptors. We hope that the review will make appropriate recommendations to ensure these groups are not further disadvantaged by the WCA – and that the pathways for people in these groups will be monitored even more closely as IB migration and further WCAs are undertaken.

[See also answer to questions 3 and 4 above].

**Question 7: Do you have any suggestions for how the WCA process could be improved to better assign people with health conditions to the most appropriate part of the benefits system?**

DA welcomes the recent proposal by the Secretary of State to include those who “are likely to receive chemotherapy within the next 6 months” in addition to those who are currently receiving certain types of chemotherapy to the ESA support group.

However, the number of similar exemptions to the WCA are much less numerous than the equivalent exempt groups in relation to the incapacity benefit Personal Capability Assessment (PCA) medical test.

Exemptions from the PCA which are not automatically treated as generating limited capability for work under ESA rules include people experiencing:

- a severe and progressive neurological or muscle wasting [sic] disease;
- a severe and progressive form of inflammatory polyarthritis;
- progressive impairment of cardio respiratory function which severely and persistently limits effort tolerance;
- a severe and progressive immune deficiency state characterised by the occurrence of severe constitutional disease, opportunistic infections or tumour formation; and

- a severe mental illness [sic] which severely and adversely affects mood or behaviour and which severely restricts social functioning or awareness of the immediate environment.

Whilst disability and advice organisations support all disabled people having access to work opportunities and not being 'written-off' by the system, it has been reported to DA that people with such recognised serious illnesses are being found fully fit for work and not even reaching ESA work-related activity group categorisation. This was unexpected at the outset of the ESA and, from our anecdotal evidence, is resulting in higher appeal rates to gain ESA entitlement and access to support to help find/keep work.

We believe that the above PCA exemptions could usefully be included within the group of people automatically treated as having a limited capability for work-related activity and requiring ESA support. We believe that it should be unnecessary for people experiencing the above scenarios to undergo a WCA which is not only proving ineffective at ascertaining their needs, but is also generating additional unnecessary costs (of the WCA and through the appeals system).

DA is very concerned that information shared through an ESA claim procedure (and especially the outcome of some WCAs) within DWP has led to some disabled people being required to undergo a DLA review. It is unclear to DA how DWP is sharing this information but it is apparent that the DWP perception in requiring the review is that people are receiving DLA at a rate not commensurate with their WCA points allocation. DA is not aware of any disabled person who has been asked to undergo a review to try and ensure they receive a higher DLA payment based on significant points allocated during a WCA.

We are very concerned that DWP appears to be attempting to adopt a faulty WCA process to attempt to reduce DLA payments. DA believes that, given the high appeal rate for ESA decisions, DWP should only require a DLA review after an appeal has been heard to ensure the initial decision is not overturned.

DA also believes that, irrespective of the ESA decision, all letters to claimants should include information about other benefits disabled people could receive. This could be: 'You may also be interested in knowing about Disability Living Allowance which was designed to support disabled people meeting additional costs of living' and could include a link to a relevant website. We believe this is important (whether ESA is accessed or not) to ensure the evidence on DLA experiencing low take-up is tackled effectively through greater awareness of this essential disability benefit.

**Further information/contact**

If you have any questions about DA, this response or our members' views on the issue please contact: Neil Coyle, DA Director of Policy at [ncoyle@disabilityalliance.org](mailto:ncoyle@disabilityalliance.org) or Ken Butler, DA Tax Credits and Membership Advisor at [kbutler@disabilityalliance.org](mailto:kbutler@disabilityalliance.org) or on 020 7247 8776.

**Appendix One: DA response to the SSAC consultation: *The Employment and Support Allowance (Limited Capability for Work and Limited Capability for Work-Related Activity) Amendment Regulations 2011***

10<sup>th</sup> September 2010

(A) General comment

We believe that the current Work Capability Assessment (WCA) does not adequately reflect the impact of impairments on disabled people's day to day living resulting in:

- disabled people receiving inadequate benefits;
- disabled people being unable to access appropriate support to find work;
- considerable costs to Government through a high rate of (successful) appeals demonstrating the ineffectiveness of the WCA.

The changes wrought by the proposed amendment regulations are unlikely to resolve these issues, and could well result in the problems increasing.

DA is specifically concerned with the substantial changes made in Part 1 of the WCA to the activities with respect to lower limb function and sensory impairments:

Walking ...

Standing and sitting

Bending or kneeling

Speech

Hearing ...

Vision ...

In each case the changes have been wrought to take account of adaptation:

*'By accounting for any aids and adaptations which an individual may successfully and reasonably use to mitigate the disabling impact of their condition, their actual capability can be identified.'*<sup>1</sup>

Consequently (to simplify): 'walking' has been replaced by 'mobilising'; 'standing' and 'sitting in a chair' have been conflated to 'remain(ing) at a work station, either standing unassisted... or sitting...', the activity of bending and kneeling has been removed; 'speech' has been replaced by 'making self understood...'; 'hearing' by 'understanding communication by both verbal means... and non-verbal means ...' and 'vision' by 'navigation and maintaining safety...'.<sup>1</sup>

As a consequence of these changes, if implemented, even greater numbers of disabled people will be likely to fail to accrue enough points in a WCA to

retain entitlement to ESA. More disabled people will be unable to find appropriate work and consequently be unable to avoid living in poverty. People potentially likely to fail to accrue enough WCA points will include claimants with paraplegia, severe sight impairments and/or deafness.

DA does not believe that this was the policy intention behind ESA when it was introduced. The Green Paper at the time stated:

*'For example, blind people are currently consigned to the exempt group, although most blind people are capable of, and indeed wish to, undertake appropriate work, with appropriate support where necessary. Our proposals will correct this anomaly.'*<sup>2</sup>

The concern expressed in the above paragraph is that blind people had been placed in the exempt group (with respect to the 'Personal Capability Assessment'), which can be roughly correlated to the ESA support group (in that there is no further conditionality attached to the receipt of the benefit). Thus the WCA 'limited capability for work-related activity' assessment did not contain descriptors on visual impairment from the onset. Consequently blind people claiming ESA would normally find themselves placed in the work-related activity group, a place where they could seek 'appropriate work, with appropriate support'. DA does not believe that the policy intention was to exclude blind people from ESA, nor to ensure that their use of the benefit was temporary, otherwise provision for this would surely have been included in the original regulations.

ESA was intended to be a system flexible enough to allow people to move towards work in a manner appropriate to their needs. The key difference between ESA and the benefits that it replaced is the concept of 'limited capability for work'. This was intended to be more flexible than simply dividing people up into two groups: those capable of work and those incapable of work. The proposed changes to Part 1 of the WCA damage the integrity of the concept of 'limited capability for work' even further than its current limited use. The result of the proposals that people with such significant impairments as blindness, deafness or paraplegia are deemed fully able to work without additional system support is both highly unrealistic and contrary to DA's understanding of the original WCA intentions.

The regulations are also being proposed at a time of considerable economic uncertainty and fears over job losses and limited employment opportunities for all citizens; for disabled people these risks are far higher. Disabled people are less likely to be in work and more likely to require benefits or greater support to attain/retain employment.

The new Government's commitment to ensuring the impact of its broader proposals is fully assessed has also been shown to be limited. The coalition



agreement includes an intention to review all employment law. If the review weakens the Disability Discrimination Act responsibilities of employers to make 'Reasonable Adjustments' to enable disabled employees to take-up or maintain a position, the benefits system will need to be even better performing to ensure disabled people can access appropriate support and finances than it is currently occurring under the existing WCA. DA fears that the current proposals would weight the WCA even further against support being accessible to disabled people at times of need.

<sup>1</sup>Internal Review of the Work Capability Assessment (October 2009); Para 3(2)

<sup>2</sup>A new deal for welfare; Empowering people to work (January 2006); Para 22

(B) Specific comments on descriptors

## SCHEDULE 1 PART 1

Activity (1): Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid can reasonably be used  
We recognise that assessing an individual's ability to walk does not necessarily provide the most appropriate measure of their capability for work but feel that the wording 'if such aid can reasonably be used' could cause problems in assessment in relation to manual wheelchair use.

1. This test could apply to those who do not ever use a wheelchair and who have not considered using one. It would be decided by a decision maker, based on potentially basic or inaccurate (as current WCA experiences and appeals demonstrate) information from a very short medical assessment.

There may be practical problems in deciding the criteria for considering that 'such aid can reasonably be used' which would result in even greater numbers of appeals on this issue. DA is very concerned at the current backlog of appeals – which is having an impact in some areas on other benefit appeals (for example, one DA member organisation has suggested that the wait for a DLA appeal in Essex is now 6-8 months due to WCA appeals taking priority). Appeals are also extremely expensive and, at a time of national budget cuts, DA believes operating a more effective WCA would demonstrate greater commitment to both efficacy and resources.

2. The wording does not consider whether wheelchairs would in fact be available to those not normally using them. If they were not available this would not be a reasonable test.

We would suggest that the wording of the activity be 'Mobilising unaided by another person with or without a walking stick, or other aid if such aid can reasonably be used or manual wheelchair if used.'

DA is also concerned that even for people used to using a wheelchair, many workplaces remain inaccessible – and it may not be reasonable to adapt the premises for some smaller and even medium-sized employers/businesses.

DA is disappointed that DWP has not worked more closely with employers to develop proposals for the WCA that not only reflect people's potential ability to work, but also the availability of appropriate employment for disabled people.

Activity (5): Manual dexterity  
(re: turning a star-headed tap)

The Explanatory Memo to the SSAC at point 2.10 states that '*Descriptors which do not represent a significant limitation of functional capability in relation to the workplace – such as turning a star-headed tap – have been removed.*' The descriptors about a star-headed tap are in Activity 6 of the existing regulations: para (a), which referred to both hands, and para (g) which referred to either hand.

As many workplaces still have washrooms and toilets that are equipped with star-headed taps, it is inaccurate to suggest that these descriptors do not represent a significant limitation of functional capability in relation to the workplace. Removing the descriptor would make it far tougher for the WCA to accurately register some disabled people's manual dexterity capabilities. We would suggest that the descriptors about a star-headed tap in Activity 6, Manual Dexterity, para (a) and (g) are preserved.

Activity (10): Consciousness during waking moments

The existing descriptor 11(c) has been removed:  
'At least twice in the six months immediately preceding the assessment, has had an involuntary episode of lost or altered consciousness, resulting in significantly disrupted awareness or concentration.'

The previous descriptor has also been reduced from 9 to 6 points.

The Explanatory Memo to the SSAC at point 2.14 states that '*The changes recognize the fact that loss of consciousness is either significantly regular to warrant entitlement to benefit on the basis of this single activity, or are relatively managed and controlled, and therefore do not play a significant role in limiting capability for work*'

In the Internal Review of the WCA it was also stated that:

*'... if this is an individual's only disability, then such an event four times a year would not present a significant limitation to their functional capability'* (Para 4.3.5, page 36).

However, the extent to which someone's functional capability is limited by lost or altered consciousness is not simply determined by the frequency of the events. Other factors that need to be taken into account are:

- (1) The severity and nature of the loss or change of consciousness;
- (2) The period of recovery;
- (3) The possibility for events to have potentially dire consequences for the disabled person or potential colleagues;
- (4) If injuries have been sustained during previous episodes; *and*
- (5) If a pattern to events exists (especially if episodes could be linked to stressful issues like entering work).

Two people who each have four events per year could have radically different limitations to their functional capability, dependent on the above factors. DA believes that the existing descriptors take this into account more closely and should be preserved.

The words 'without warning' have also been included in the new descriptors. If these words are retained, the reference should be to 'without adequate warning', which can be duly acted upon (either by the claimant, one of their colleagues or through other appropriate and available assistance).

## SCHEDULE 1 PART 2

DA also supports the detailed responses of MENCAP and the National Autistic Society, both of which focus on Part 2 of the Schedule.