

## **Work Capability Assessment: activities and descriptors consultation – SAMH & See Me Response**

### **Introduction**

Around since 1923, SAMH is Scotland's national mental health charity. Today, we operate over 70 services in communities across Scotland, providing mental health social care support, addictions and employment services, among others. Together with national programme work in See Me, respectme, suicide prevention, and physical activity and sport, these services inform SAMH's policy and campaign work to influence positive social change.

See Me is Scotland's national programme to end mental health stigma and discrimination. Our vision is a fair and inclusive Scotland, free from mental health stigma and discrimination. We are working to change negative attitudes, behaviours, and cultures towards mental health in priority settings, including workplace, in education and health and social care, and for those communities and groups most at risk of experiencing mental health stigma and discrimination.

### **General reflections**

SAMH and See Me welcome the opportunity to respond to the Department of Work and Pensions' (DWP) consultation on reform of Work Capability Assessment activities and descriptors. Fair access to social security, including financial support when someone is unable to undertake employment due to their mental health, is essential to upholding human rights and ensuring financial security. Well-established links between poverty and mental health mean that adequate social security is an essential element of protecting the mental health of those who need that support.

Half of all people in receipt of Employment and Support Allowance (ESA) in Scotland (92,986 of 186,045 claimants as of February 2023) receive it due to a 'mental or behavioural disorder'<sup>1</sup> – the largest proportion by disability group.<sup>2</sup> As disaggregated data by medical condition or disability group is not available for Universal Credit (UC) claimants, including those placed in the Limited Capability for Work (LCW) and Limited Capability for Work-Related Activity (LCWRA) groups, we cannot be sure what proportion are living with a mental health condition, but we can infer from the ESA data that this is likely to be substantial. The changes proposed in this consultation therefore have potential to significantly impact people living with mental health problems who require support from the UK social security system.

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<sup>1</sup> This is the official language used in relation to the Employment and Support Allowance. We recognise that the word 'disorder' may be stigmatising.

<sup>2</sup> DWP Stat-Xplore Employment and Support Allowance Caseload [accessed October 2023]

We have long been concerned that UC and legacy benefits, such as ESA, are not effective for people living with mental health problems, and do little to support people into work.<sup>3</sup> In particular, assessment criteria and methods – through the work capability assessment – do not adequately gauge the impact of mental health and other fluctuating conditions, with assessors lacking a full understanding of mental health. This can result in stigmatising behaviour and increased distress for claimants, as well as a focus on physical impairments by assessors.<sup>4</sup> The Scottish Mental Illness Stigma Study (SMISS), the largest study in Scotland looking at the specific experiences of stigma for those with more ongoing and complex mental illness, found that just over half of respondents (53%) said they had been treated unfairly when trying to get the financial support they need to get by. This treatment included: applications being repeatedly rejected and experience of facing multiple tribunals before people got the support to which they were entitled; being treated unfairly by welfare staff; assessors who were poorly trained in how to speak about mental illness and had a poor understanding of the support needed; and the feeling of a general disregard for mental illness as a disability by the UK Government.

We are concerned these proposals will only add to these existing issues.

For people placed in the LCW group, conditionality and associated sanctioning, integral to UC, does not work for people with mental health problems.<sup>5</sup> Conditionality is often inappropriate, resulting in sanctions, which we know have a negative impact on mental health, increasing the risk of poverty and destitution, with little evidence that sanctions (or the threat of sanctions) support people into paid employment.<sup>6</sup> Our own research into UC and mental health found examples of inappropriate conditionality and a lack of understanding of mental health by some work coaches.<sup>7</sup> Examples included one person who took part in our research being refused the option of telephone appointments with their work coach despite disclosing that side effects from their psychiatric medication made traveling very challenging.<sup>8</sup> To support people living with mental health problems into suitable employment – an objective we share – access to voluntary (not compulsory), well-resourced and personalised employability support is required, such as Individual Placement and Support (IPS).

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<sup>3</sup> SAMH [ItWasAConfusionReport\\_ONLINE\\_VERSION.pdf \(samh.org.uk\)](https://www.samh.org.uk/documents/ItWasAConfusionReport_ONLINE_VERSION.pdf)

<sup>4</sup> Mind and SAMH. (2017) Mind and SAMH submission to the Work and Pensions Committee inquiry on PIP and ESA assessments. [www.samh.org.uk/documents/Mind\\_and\\_SAMH\\_submission\\_to\\_the\\_Work\\_and\\_Pensions\\_Committees\\_inquiry\\_into\\_PIP\\_and\\_ESA\\_assessments.pdf](https://www.samh.org.uk/documents/Mind_and_SAMH_submission_to_the_Work_and_Pensions_Committees_inquiry_into_PIP_and_ESA_assessments.pdf)

<sup>5</sup> SAMH [SAMH Benefit Sanctions and Mental Health briefing paper.pdf](https://www.samh.org.uk/documents/SAMH_Benefit_Sanctions_and_Mental_Health_briefing_paper.pdf)

<sup>6</sup> [SAMH Benefit Sanctions and Mental Health briefing paper.pdf](https://www.samh.org.uk/documents/SAMH_Benefit_Sanctions_and_Mental_Health_briefing_paper.pdf)

<sup>7</sup> SAMH [ItWasAConfusionReport\\_ONLINE\\_VERSION.pdf \(samh.org.uk\)](https://www.samh.org.uk/documents/ItWasAConfusionReport_ONLINE_VERSION.pdf)

<sup>8</sup> SAMH [ItWasAConfusionReport\\_ONLINE\\_VERSION.pdf \(samh.org.uk\)](https://www.samh.org.uk/documents/ItWasAConfusionReport_ONLINE_VERSION.pdf)

We are extremely concerned by the UK Government's proposals, including amending or removing the 'Coping with Social Engagement' Activity and removing the Substantial Risk regulations. Collectively these changes are likely to result in people living with mental health problems, who would find it extremely challenging or unsafe to engage in work related activity safely, being inappropriately placed into the LWC group. In the context of the ongoing cost-of-living crisis, and given the clear correlation between poverty and mental health, these policies risk pushing people with mental health problems into financial distress, further negatively impacting their health. Loss of the LCWRA element of UC amounts to a loss of £390.06 a month on current payment rates, a significant and essential part of claimants' income.<sup>9</sup>

- **Rational for Reform**
  - Home Working

We do not believe the evidence supports the UK Government's rationale for the proposed changes to the WCA. The consultation paper suggests that the current WCA does not take into account changes in the workplace such as an increase in home working arising from the Covid-19 pandemic. The inference that home working – in and of itself – means employment (or work-related activities) is appropriate and safe for people living with mental health problems who would under existing rules be placed in the LCW group of UC is not supported by evidence. Social engagement is essential across the full scope of employment, including home-based jobs. Social engagement (including through virtual means) is also essential for engagement with work coaches and employability services.

Indeed, irrespective of the reasonableness of home working, the opportunity to work from home is not universal and highly sector-specific, so is unlikely to be the solution for many people living with mental health problems in receipt of UC or ESA. Recent figures from the Office for National Statistics (ONS) found that only 12% of working people in Great Britain between 17th and 29th May 2023 worked exclusively from home.<sup>10</sup> Home working clearly associated with degree-level, professional and higher income roles; only 4% of people earning under £20,000 work from home, either fully or hybrid.<sup>11</sup> DWP's own 2020 research found that the qualifications and experience of people in the ESA Support Group (SG) and UC LCWRA are unlikely to align with what is required for the type of roles most likely to offer home working.<sup>12</sup>

- Timing of these reforms

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<sup>9</sup> DWP [Universal Credit: What you'll get - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

<sup>10</sup> ONS [Public opinions and social trends, Great Britain: working arrangements - Office for National Statistics](#)

<sup>11</sup> Timewise 2022 [The Timewise Flexible Jobs Index© 2022](#)

<sup>12</sup> DWP 2020 [The Work Aspirations and Support Needs of Claimants in the ESA Support Group and Universal Credit equivalent \(publishing.service.gov.uk\)](#)

We are also concerned and unconvinced by the timing of these reforms. The UK Government has already set out ambitions in its 'Transforming Support: The Health and Disability White Paper' for more fundamental reform of the disability benefit system.<sup>13</sup> These include abolishing the WCA entirely, using the Personal Independence Payment (PIP) assessment as the only health and disability functional assessment.<sup>14</sup> While we have concerns about the proposals in the white paper (including interactions with the Scottish Social Security System where Adult Disability Payment (ADP) no longer includes the PIP functional assessment), we are not convinced that there is a need for interim reforms to the WCA prior to more fundamental reform of the system.

While we are opposed to the reforms proposed in this consultation, we do believe radical reform of the UK's social security system is needed to better support people living with mental health problems and other disabilities. However, reform should not be driven by a desire to reduce benefit caseloads or a shift to further conditionality for disabled people, as appears to be the case with these proposals. Fundamentally, we believe that reform should be led by people with lived experience, including people in need of income-related social security due to their mental health. The goal of reform should be to ensure provision of adequate resource and support to people to live dignified and independent lives, irrespective of employment status, without the threat of sanctioning. One respondent to SMISS highlighted the impact of the discrimination in the system, which stops people with mental health problems from living dignified lives: *"My benefits get reviewed every two years, I'm found fit for work and my benefits are stopped. I always win the appeal but that can take up to two years, which means as soon as I've won an appeal, the whole process starts again. It's a never-ending cycle."*

To change this, assessment and eligibility criteria should be co-produced by disabled people with a clear shift from the functional model of the WCA and PIP assessment, to one which takes a holistic view of barriers faced by disabled people. There is clear evidence that good quality employment can support and improve people's mental health.<sup>15</sup> Where appropriate, focus needs to be on ensuring access to high quality, voluntary, specialist employability support to people who are well enough to participate.

- **Financial Impact**

Our overarching concern with the UK Government's proposals is the increased risk of pushing people with mental health problems into poverty, through loss of eligibility for

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<sup>13</sup> DWP 2023 [Transforming Support: The Health and Disability White Paper - GOV.UK](https://www.gov.uk/government/consultations/transforming-support-the-health-and-disability-white-paper)  
([www.gov.uk](https://www.gov.uk))

<sup>14</sup> DWP 2023 [Transforming Support: The Health and Disability White Paper - GOV.UK](https://www.gov.uk/government/consultations/transforming-support-the-health-and-disability-white-paper)  
([www.gov.uk](https://www.gov.uk))

<sup>15</sup> Waddell and Burton 2006 [IS WORK GOOD FOR YOUR HEALTH AND WELL-BEING?](https://publishing.service.gov.uk/government/consultations/is-work-good-for-your-health-and-well-being)  
([publishing.service.gov.uk](https://publishing.service.gov.uk))

LCWRA. This is compounded by the risk of financial destitution through sanctioning, if people cannot comply with UC work-related conditionality due to their mental health.

The links between mental health and poverty are clear and mutually reinforcing, with people more likely to have poor mental health when experiencing poverty and more likely to experience poverty when living with a mental health problem.<sup>16</sup>

There is longstanding concern about the negative impact of UC (and legacy ESA) conditionality and sanctioning on both financial security and mental health. These impacts can be significant and life-threatening for people with mental health problems. Rethink published research in 2021 which examined deaths associated with the UK social security system and found that – irrespective of whether someone had received a sanction – the threat of receiving one and worry about conditionality resulted in 83% of respondents saying this had a negative or very negative impact on their mental health.<sup>17</sup>

In the context of the ongoing cost of living crisis, making changes to tighten eligibility to UC is unacceptable and potentially dangerous. Indeed, we are not convinced that these proposals will result in long-term cost savings. While the changes will restrict eligibility to the LCWRA group, and so reduce upfront social security costs, the negative impacts of the changes on people's mental health may increase costs to other parts of the state and public sector, through increased demand on health services, social care and policing. We urge the UK Government to undertake and publish full impact assessments of potential costs arising from these changes before proceeding with them.

### **Q3 What are your views on the two Coping with Social Engagement options?**

We are strongly opposed to the proposals to reduce points awarded for LCW and LCWRA descriptors for Coping with Social Engagement (CSE) or remove the activity entirely. While disaggregated data tracking where claimants by disability group (e.g. those with mental health problems) are awarded points is not publicly available, this activity is essential for capturing the challenges many people with mental health problems have in safely and reliably engaging in social activities – including employment-related activities. Indeed, CSE and the Getting About activity are the only two activities where functional impacts of mental health problems are substantially captured – with the bulk of the WCA focusing on physical functionality. Any reduction in points awarded against these activities' descriptors (or their removal) risks forcing substantial numbers of people living with mental health problems into the LCW group inappropriately, with its associated conditionality and threat of sanction.

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<sup>16</sup> Money and Mental Health Policy Institute [The-State-Were-In-Report-Nov21.pdf](https://www.moneyandmentalhealth.org/The-State-Were-In-Report-Nov21.pdf) ([moneyandmentalhealth.org](https://www.moneyandmentalhealth.org))

<sup>17</sup> Rethink 2021 [tip-of-the-iceberg.pdf](https://www.rethink.org/tip-of-the-iceberg.pdf) ([rethink.org](https://www.rethink.org))

As outlined above, we fundamentally disagree with the argument that home working or increased flexibility means the Coping with Social Engagement activity is no longer required.

#### **Q4 What are your views on the two *Getting About* options?**

We are strongly opposed to the proposals to reduce points awarded for the *Getting About* descriptors or remove the activity entirely. As discussed in previous answers, the premise for these proposals appears to be the assumption that greater availability of home working will reduce barriers to disabled people – including people living with mental health problems – engaging in the workplace. We do not believe clear evidence supporting this premise has been presented by the UK Government, and would welcome sight of any such evidence. As we set out in our general reflections, home working is not universally available, and may not be suitable for people living with mental health problems. Indeed, academic findings on the impact of home working on people's mental health is mixed.<sup>18</sup> Research undertaken with 615 working adults in Wales found that working from home resulted in a worsening in mental health and wellbeing for 45% of people taking part in the research.<sup>19</sup> More research is required exploring the impact of home and hybrid working for people living with mental health problems, and those likely to be within the LCW and LCWRA cohorts, before these changes to the WCA are considered.

Even where home working is an option, it is unlikely that this will entirely preclude the need for employees to travel, even if infrequently. Trend data from the ONS has highlighted that for the minority of people who work from home or have hybrid arrangements, there has been a shift away from exclusively working at home towards a hybrid model.<sup>20</sup> The data found that as we moved out of the acute stage of the Covid-19 pandemic the proportion of workers in hybrid working rose 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.<sup>21</sup> Removing the *Getting About* activity risks the many challenges people living with mental health problems face when making journeys, including safely using public transport, not being reflected in the WCA at all. This risks this group being inappropriately placed in the LCW group (or being found entirely ineligible for the disability component of UC), and therefore subject to inappropriate conditionality.

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<sup>18</sup> 2023 [The relationship between homeworking during COVID-19 and both, mental health, and productivity: a systematic review | BMC Psychology | Full Text \(biomedcentral.com\)](#)

<sup>19</sup> *Journal of Occupational and Environmental Medicine* 64(10):p 815-821, October 2022. | DOI: 10.1097/JOM.0000000000002596

<sup>20</sup> ONS 2022 [Is hybrid working here to stay? - Office for National Statistics \(ons.gov.uk\)](#)

<sup>21</sup> ONS 2022 [Is hybrid working here to stay? - Office for National Statistics \(ons.gov.uk\)](#)

Removing this from the measurement criteria conflicts with taking a holistic and person-centred approach to assessment. Any system measuring the effects of mental health on the performance of daily living and mobility tasks must explicitly acknowledge emotional or cognitive aversion to certain tasks – including those that may feel pressurising or traumatic – as inhibiting factors that are just as significant as physical disability. Removal of the “getting about” criteria may cause those with mental health problems to feel that inability to perform a task is purely a reflection of their physical capabilities, rather than one potentially related to mood or mental state. They may therefore self-stigmatise and feel that their problems do not meet the requirements of the measurement system. In other words, removal of this within the measurement system would discriminate against those struggling with their mental health.

**Q6 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?**

Our response here covers Questions 6-9 on potential changes to the LCWRA Substantial Risk regulations.

We believe the LCWRA Substantial Risk regulations provide a vital safety net for people living with mental health problems who through the WCA criteria do not meet eligibility for the LCWRA group, but are nevertheless at risk of harm. These regulations allow people to be placed in the LCWRA group – and are thus not subject to conditionality despite not meeting the WCA points threshold – in cases where if placed in the LCW group they would be at substantial risk to the persons physical or mental health. It is crucial that these regulations are retained unamended.

While we recognise the original policy intent of these regulations was for them to apply in exceptional circumstances only, the fact that 14.6% of new claims awarded LCWRA are on grounds of substantial risk is not evidence, in and of itself, that the regulations are being misapplied. As we have argued in previous research on welfare reform<sup>22</sup> and Universal Credit,<sup>23</sup> the WCA is not working for people living with mental health problems. High levels of people being awarded LCWRA on grounds of substantial risk is indicative of structural problems with the WCA and its inability to adequately capture the experience and associated risks experienced by people living with mental health problems.

Removing or amending the regulations would be a dangerous and retrograde step. It would risk people who under current regulations are identified of being at risk of substantial harm if compelled to undertake work related activities, being subject to conditionality.

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<sup>22</sup> SAMH [fit for purpose final 2 .pdf \(samh.org.uk\)](https://www.samh.org.uk/fit-for-purpose-final-2.pdf)

<sup>23</sup> SAMH [ItWasAConfusionReport ONLINE VERSION.pdf \(samh.org.uk\)](https://www.samh.org.uk/ItWasAConfusionReport_ONLINE_VERSION.pdf)

While the UK Government state in paragraph 40 that one option is to amend (rather than remove) the regulations and provide tailored support to individuals, and not subject them to sanctioning, it is not clear how this would work in practice. Indeed, it is unclear why any amendment to the regulations to achieve this policy aim is necessary as people in the LCWRA can already undertake work-related activity on a voluntary basis.

As stated above we believe – and evidence shows – that good quality work can be beneficial to mental health and recovery. But access to high quality specialist employability support is lacking. The focus of reform should be on ensuring equal access to support such as IPS for people who want and would benefit from it. IPS is the most effective employability programme at supporting people with severe and enduring mental health problems into sustained employment.<sup>24</sup>

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<sup>24</sup> [What is IPS? | Centre for Mental Health](#). With regard to the Scottish context, where employability is devolved, IPS is not routinely available as found by the recent 'Fair Start Scotland - individual placement and support' review. We have urgently called on the Scottish Government to ensure high fidelity IPS is available across Scotland.