

## Macmillan Response to DWP Consultation - *Accounting for the effects of cancer treatments*



**Purpose:** To update CCG members on Macmillan's views on DWP's consultation on changes to WCA cancer descriptors

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### Introduction

This briefing provides an update on the Government's consultation on proposals to change the Work Capability Assessment (WCA) for people with cancer. The consultation closes on **9 March** and seeks the views of interested stakeholders, including individuals affected by cancer, their families and carers, employers, healthcare practitioners and cancer specialists.

This document also provides background on Macmillan's discussions with DWP and commitments given by Ministers in Parliament, and provides suggestions for possible actions other who might be interested in getting involved.

### Summary of Macmillan's position

Macmillan had significant concerns about the proposed changes to the WCA for people with cancer set out in the Government's consultation document. We were concerned that:

- Cancer patients undergoing treatment would be asked to go through an unnecessary and stressful assessment in order to qualify for the ESA Support Group.
- DWP decision makers could have too much control over which patients were able to enter the Support Group.

Since then, we have had some useful discussions with the DWP and we are now optimistic that they are listening to our concerns and will amend their proposals accordingly. An approach has been suggested that will introduce a 'presumption' that the vast majority of cancer patients will be placed in the Support Group during their treatment after a healthcare professional has confirmed that their treatment would have work limiting side effects. This would reduce the need for unnecessary assessments and the decision-maker discretion.

Ministers have also indicated their intention to introduce a similar approach for the assessment of cancer patients recovering from treatment. This welcome move could protect many cancer patients from the full impact of the proposal to limit contributory ESA for people in Work Related Activity Group to 12 months.

In our consultation response we will be setting out the core principles that we think should underpin the ESA assessment process for patients who are undergoing or recovering from treatment. We hope that CCG members will be able to support these principles.

## Background

### Macmillan recommendations to the Harrington review

As a part of Professor Harrington's second independent review of the WCA, Ministers asked that the review *consider "eligibility for the Support Group based on different cancer treatments (especially oral as well as non-oral chemotherapy)"*. Subsequently, Macmillan was asked by Professor Harrington to provide recommendations for how the existing rules could be improved.

Following a consultation with senior clinicians, we recommended that in addition to non-oral chemotherapy patients, oral chemotherapy and certain groups of particularly debilitating radiotherapy patients should likewise be exempted from the WCA and placed in the Support Group automatically.

Macmillan's recommendations to the Harrington Review can be found here:

<http://www.macmillan.org.uk/Documents/GetInvolved/Campaigns/MPs/MacmillanRecommendationstoProfessorHarringtonFINAL.pdf>

### DWP response to the Harrington review

In response to Macmillan's recommendations, which were endorsed by Professor Harrington, DWP accepted that the existing rules are unfair and that the groups of cancer patients identified by Macmillan's research should not be treated differently by the benefits system.

However, instead of extending entitlement to Support Group to all cancer patients within these groups, the Government proposed to introduce a "presumption" that such cancer patients should be placed into the Support Group but only following an assessment and ultimately at the discretion of DWP decision-makers.

The reasons given by DWP for moving away from entitlement based on treatment regime were as follows:

- it fails to recognise the variation in debilitation caused by the various types of treatment identified
- it removes the ability or chance for someone to work during their treatment (with suitable support from an employer) if they felt able to do so
- it encourages the wrong behaviours from employers and stigmatising cancer as something that can automatically lead to unemployment or worklessness, rather than encouraging employers to provide support to help individuals to stay in work where possible

Macmillan did not agree with this analysis and did not believe it was supported by evidence from the existing exemption for non-oral chemotherapy patients. Macmillan believes that those cancer patients who are able to work through their treatment should receive the right support to allow them do so. However, cancer patients who have to leave work and rely on benefits should be able to receive support while they are undergoing particularly debilitating treatment.

While we welcomed commitments to expand the eligibility for the Support Group and reduce the number of face to face assessments we had a number of concerns with the approach outlined in the consultation document:

1. the replacement of a clear exemption with a “presumption” would lead to a reduction in the protection offered to cancer patients.
2. the proposed process would be overly reliant on the discretion of DWP decision-makers, which we know has failed cancer patients in the past.
3. the proposals were not clear on the level of evidence that cancer patients would be required to submit in order to demonstrate eligibility for the Support Group.

## Proposals for change

### Cancer patients awaiting/undergoing treatment

Macmillan’s favoured option remains that cancer patients awaiting or undergoing the most debilitating forms of treatment should be automatically placed in the Support Group, as is currently the case for non-oral chemotherapy patients. However, we understand that DWP are opposed to an approach that does not allow claimants to be looked at on a case by case basis.

As part of the ongoing consultation process Macmillan has been working with DWP officials to identify a workable way forward that will ensure that cancer patients are not made to go through stressful and unnecessary assessments.

To strike a balance between addressing the concerns regarding the use of decision-maker discretion and ensuring that cancer patients can be assessed on a case by case basis, we understand DWP would agree in principle, notwithstanding the outcomes of the consultation, to the following approach:

- There would be a ‘presumption’ that cancer patients awaiting and undergoing the treatments identified by Macmillan’s research would be placed in the Support Group.
- This presumption would be confirmed by the receipt of evidence from a healthcare professional (HCP) i.e. oncologist, GP or CNS. This evidence would include the diagnosis, treatment regime and the HCP’s opinion on the likelihood that the treatment would have work-limiting side effects
- Subject to receipt of such evidence, the individual would be placed in the Support Group without further assessment.
- Where such evidence was not available or did not confirm the likelihood of work-limiting side effects, then it would be for the Decision Maker to determine entitlement, requesting a face to face assessment if appropriate.

If the Government are determined to move away from entitlement based on treatment regimes, Macmillan believes the approach outlined above will limit the need for stressful assessments and the inappropriate use of decision-maker discretion whilst giving significant weight to medical evidence. Crucially, where the prescribed evidence is provided cancer patients would be placed automatically into the Support Group.

There remain outstanding issues to be resolved such as the exact nature and format of the evidence provided and we will continue to work with DWP to ensure the evidence gathering

exercise is as 'light-touch' as possible and does not impose undue burdens on claimants or healthcare professionals.

## Cancer patients recovering from treatment

In addition, Ministers have also indicated their intention to introduce a similar approach to the one outlined above for cancer patients recovering from treatment. This is particularly important given the Government's decision to press ahead with the time-limiting of contributory ESA for those in the Work Related Activity Group to 12 months.

Macmillan believes that the 'presumption' that cancer patients recovering from their treatment are placed in the Support Group could last for a fixed period following treatment, such as six months. This could be reviewed again after a further fixed period e.g. six months. Likewise to the approach outlined for cancer patient awaiting or receiving treatment this presumption could be confirmed on receipt of prescribed evidence from a healthcare professional.

## What can cancer charities do?

We are aware that many organisations will have already made their submission to the consultation. However, if you have yet to respond but are planning to we would welcome submissions that:

- Highlight the problems with the existing system:
  - Too many cancer patients are made to undergo stressful assessments when they are awaiting, undergoing or recovering from debilitating treatment
  - The WCA is not fit for purpose. Decision-maker discretion does not always deliver the right result for many cancer patients. Decision makers do not always understand the impact of cancer and its treatment. This can lead to inconsistent and incorrect decisions, unnecessary medical assessments and appeals
  
- Emphasis that changes should be in line with Government commitments and:
  - Ensure that cancer patients awaiting, receiving or recovering from particularly debilitating treatments are placed in the Support Group without having to undergo an assessment or medical interview unless absolutely necessary
  - Ensure that the process for determining eligibility is 'light-touch' and does not place undue burdens on claimants or healthcare professionals
  - Ensure that decision-maker discretion is limited and greater weight is given to medical evidence

We are also asking all members of the CCG to sign up to a joint letter to the Minister for Employment.

## Key documents

Professor Harrington's 2<sup>nd</sup> Independent Review of the Work Capability Assessment (P34):  
<http://www.dwp.gov.uk/docs/wca-review-2011.pdf>

Government response to Professor Harrington's 2<sup>nd</sup> Independent Review (P11):  
<http://www.dwp.gov.uk/docs/wca-review-2011-response.pdf>