



DWP ESA Cancer Descriptors Consultation

Purpose: To outline Macmillan's views on DWP's consultation on changes to WCA cancer descriptors and suggest possible action for Cancer Campaigning Group members

Contact: Tom Cottam, Policy Analyst, tcottam@macmillan.org.uk,
020 7091 2050

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Introduction

As part of their response to Professor Harrington's year two review of the Work Capability Assessment (WCA) (the eligibility assessment for Employment and Support Allowance (ESA)) DWP have decided to carry out an informal consultation on proposals to change the rules relating to cancer patients undergoing treatment.

The consultation was launched on 16 December and closes on **9 March**. It seeks the views of interested stakeholders, including individuals affected by cancer, their families and carers, employers, healthcare practitioners and cancer specialists

This briefing sets out Macmillan's views of the consultation and suggests possible action for Cancer Campaigning Group (CCG) members who might be interested in getting involved.

Background

Currently certain groups of people automatically qualify for ESA without having to undergo an assessment and are placed in the Support Group, where there are no conditions on them receiving their benefit. This group includes cancer patients receiving non-oral (intravenous, intraperitoneal or intrathecal) chemotherapy.

The purpose of this automatic entitlement is to ensure that those cancer patients who are likely to be unable to work due to their treatment are guaranteed support and are spared the stress of having to undergo an assessment during this crucial period in their cancer journey.

However, the current system distinguishes between cancer patients receiving non-oral chemotherapy and those receiving oral chemotherapy or radiotherapy. While the former group are automatically entitled to ESA, all other cancer patients have no guarantees that they will receive support despite undergoing treatment that can be equally debilitating.

Proposals for Change

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.

As a result of an expert consultation with senior cancer clinicians, Macmillan recommended that cancer patients should be **exempt** from going through the WCA and **automatically** placed in the Support Group if they are:

- Awaiting or receiving treatment by way of intravenous, intraperitoneal or intrathecal chemotherapy; or
- Awaiting or receiving treatment by way of oral chemotherapy, except when the therapy is continuous for a period of more than six months; or
- Awaiting or receiving combined chemo-irradiation; or
- Awaiting or receiving radiotherapy in the treatment of cancer in one or more of the following sites:
 - Head and neck
 - Brain
 - Lung
 - Gastro-intestinal
 - Pelvic

The experts consulted agreed that these groups would provide a reasonable proxy for automatic entitlement to the Support Group because the treatment would more likely than not result in debilitating side-effects.

DWP accepted that the existing rules are unfair and the above groups of cancer patients should not be treated differently. However, instead of extending automatic entitlement to ESA to the groups identified the Government are proposing to:

- remove automatic entitlement to the Support Group for cancer patient, awaiting or undergoing non-oral chemotherapy, and;
- replace automatic entitlement to the Support Group with a “presumption” that those groups identified by Macmillan would be placed in the Support Group following an assessment of the effects of their treatment and a decision by a DWP decision-maker

This proposal was justified by the DWP¹ on the grounds that:

- Automatic entitlement fails to recognise the variation in debilitation caused by the various types of treatment identified
- Automatic entitlement 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
- Automatic entitlement 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

¹ See <http://www.dwp.gov.uk/docs/wca-review-2011.pdf>

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 automatically while they are undergoing particularly debilitating treatment.

Macmillan's concerns

Macmillan welcomes the Government's acknowledgement that the existing rules are unfair and oral chemotherapy and radiotherapy patients need greater protection. However, we were unable to support the proposals for the following reasons:

- The Government proposals would **remove existing automatic entitlement** for non-oral chemotherapy patients and not extend it to oral chemotherapy and radiotherapy patients. This mean that **all** cancer patients will now have to undergo an assessment in order to receive ESA
- The proposals are not in line with the recommendations of senior cancer clinicians who agreed that due to the likely **debilitating side effects of certain cancer treatments** it was justified to give certain groups of cancer patients automatic access to ESA during their treatment
- Benefit assessments **can be stressful** especially for cancer patients who are in the middle of particularly debilitating cancer treatment and have to prove they are unable to work
- **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 - currently 40% of appeals are successful
- **Although DWP have estimated an** increase in the numbers of cancer patients that go into the Support Group as a result of their proposals, they have not provided an indication of what **additional evidence** cancer patients would have to provide or on what factors a decision would be based

Key message

- The Government should not be making it **more difficult for cancer patients** who are currently guaranteed support to claim crucial support when they are undergoing treatment. This goes against recent Ministerial commitments (below) not to make it more difficult for cancer patients to claim benefits
- **Cancer patients want to work** and some will be able to work through their treatment. But those who are unable to work due to particularly debilitating treatment should receive support automatically whilst undergoing treatment

- Many cancer patients have **jobs to return to** when they are well enough, but need financial support when they are undergoing treatment
- **Discretion has not worked** for many cancer patients - too many cancer patients who cannot work are denied ESA or made to undergo a stressful assessment process despite being in the middle of debilitating treatment
- There is **no evidence** to suggest that automatic entitlement to benefits results in cancer patients not working when they are able or want to or employers not providing support to help cancer patients stay in work. Since October 2008 (when ESA was introduced) over **16,000** non-oral chemotherapy patients have benefited from automatic entitlement. There is no suggestion that this has resulted in the unintended consequences outline by the Government
- The impact of treatment can vary from patient to patient but the groups identified in Macmillan's research represent those cancer patients who are **more likely than not** to experience significant debilitation as a result of their treatments. It is not a blanket exemptions for all cancer patients

Ministerial Quotes

Westminster Hall Debate, Chris Grayling, 10 May 2011:

<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110510/halltext/110510h0002.htm#11051060000003>

“The second thing we did was to address the fact that people in between periods of chemotherapy could, theoretically, be found fit for work. We did not think that that was right and therefore we have excluded people who are in between courses of chemotherapy from any kind of return-to-work process, as well as those involved in chemotherapy at a particular moment in time. Again, that seemed the right thing to do.”

Written Answers , Chris Grayling, 19 Jul 2011 <http://www.theyworkforyou.com/wrans/?id=2011-07-19a.67504.h&s=joan+walley+cancer#g67504.q0>

“We are determined that the benefits system should support people who are diagnosed with cancer, including breast cancer, in the most sensitive, fair and appropriate way. Following an internal review we have recently made changes to the [WCA](#) so that more individuals undergoing certain chemotherapy treatments will automatically be placed in the Support Group without the need for an assessment.”

Welfare Reform Debate, Iain Duncan Smith, 15 June 2011:

<http://www.theyworkforyou.com/debates/?id=2011-06-15b.877.0&s=Iain+Duncan+Smith+cancer#g879.1>

“I was not going to pick up on that, but given that my hon. Friend has asked me, I will say that the reality, which is clear, is that the Government inherited the employment and support allowance reform from the previous Government. It was this Government who exempted cancer

patients on chemotherapy in hospitals; they were not exempted by the previous Government. Our record on this is therefore quite good."

The Consultation

In order to gather wider views on their proposals DWP has decided to carry out an informal consultation with interested stakeholders. Unfortunately, Macmillan do not feel that the consultation does not adequately address the issue of why automatic entitlement to benefits to cancer patients undergoing treatment is so important.

DWP consultation document can be found here: <http://www.dwp.gov.uk/docs/work-capability-assessment-cancer-treatment-consultation.pdf>

What can cancer charities do?

We would encourage all organisations to respond to the consultation to highlight your particular concerns with the Government's proposed approach and the impact it will have on the cancer patients you represent, where possible illustrated with **case studies**.

Case studies are crucial if we are to:

- a) underline the emotional and psychological cost to cancer patients of removing the automatic entitlement to ESA.
- b) underline the fact that the WCA has resulted in inconsistent and incorrect decisions for cancer patients

Case studies of people in the following groups are important:

- a) Cancer patients receiving or recovering from oral chemotherapy and radiotherapy who have had to undergo an assessment in order to be placed in the ESA Support Group.

Accounts focusing on the emotional cost of the assessment process will be particularly useful

- b) Cancer patients receiving or recovering from non-oral chemotherapy who have been automatically placed in the ESA Support Group.

Accounts that underlining the benefits of automatic entitlement to ESA will be especially valuable

- c) Cancer patients receiving or recovering from treatment who underwent an assessment and were incorrectly deemed fit for work
- d) The experiences of families, friends and carers of patients in the above groups

In addition to the questions set out in the consultation document it would be helpful if respondents could address the following questions:

- Is automatic entitlement (i.e. not having to undergo an eligibility assessment) to benefits important for cancer patients who have to leave work because they are undergoing treatment? If so why is it important?
- What problems are faced by cancer patients who have to prove they are too unwell to work during treatment? i.e. going through a stressful assessment, gathering evidence, predicting the impact of their treatment, appealing incorrect decisions etc
- Do you agree or disagree that cancer patients who are able to work during their treatment would be more inclined to leave work and rely on benefits if they could receive benefits automatically (without having to undergo an assessment)?

Key documents

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

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

Contact

If you have any queries regarding this briefing or the consultation please contact:

Tom Cottam
tcottam@macmillan.org.uk
0207 091 2050

FAQs

What is Employment and Support Allowance (ESA)?

Employment and Support Allowance provides financial help to people who are unable to work because of illness or disability. It also provides personalised support to those who are able to work.

Once eligible for ESA claimants will be placed into one of two groups:

Work-Related Activity Group (£94.25 per week)

If you are placed in the Work-Related Activity Group, you will be expected to take part in work-focused interviews with your personal adviser. You will get support to help you prepare for suitable work.

Support Group (£99.85 per week)

If your illness or disability has a severe effect on your ability to work, you won't be expected to work. But, you can work on a voluntary basis if you want to.

What is the Work Capability Assessment (WCA)?

Work Capability Assessment is the main assessment for Employment and Support Allowance claims.

It may include a medical assessment if more information is needed about your illness or disability before a decision can be made on your capability for work.

An approved healthcare professional, who has been trained in handling Employment and Support Allowance claims, will assess how your illness or disability affects your capability for work or work related activity, and provide advice to the Department for Work and Pensions (DWP), which is responsible for administering benefit claims.

The approved healthcare professional may recommend that you attend a medical assessment if they feel they need more information about your condition.

What is the Purpose of the Independent Review?

The Welfare Reform Act 2007 legislated for the introduction of the WCA. This law provides the basis for the Independent Reviews.

Section 10 states that: *“The Secretary of State for Work and Pensions shall lay before Parliament an independent report on the operation of the assessment annually for the first five years after those sections come into force.”* In 2010, Professor Malcolm Harrington, an occupational health specialist, was asked to head the 1st review and published his first Review in November 2010.

In November 2011, the Secretary of State for Work and Pensions re-appointed Professor Harrington to carry out the second Independent Review of the WCA.

What are existing rules for cancer patients claiming ESA? Why do they need to be changed?

Currently certain groups of people automatically qualify for ESA without having to undergo an assessment and are placed in the Support Group, where there are no conditions on them receiving their benefit. This group includes cancer patients receiving non-oral (intravenous, intraperitoneal or intrathecal) chemotherapy.

The purpose of this automatic entitlement is to ensure that those cancer patients who likely to be unable to work due to their treatment are guaranteed support and are spared the stress of having to undergo an assessment during this crucial period in their cancer journey.

However, the current system distinguishes between cancer patients receiving non-oral chemotherapy and those receiving oral chemotherapy or radiotherapy. While the former group are automatically entitled to ESA, all other cancer patients still have no guarantees that they will receive support despite undergoing treatment that can be equally debilitating.

What changes is the Government proposing to make?

The Government want to treat all chemotherapy patients and particularly debilitating radiotherapy in the same way when they claim ESA. However, rather than extending automatic entitlement - that is currently given to all non-oral chemotherapy - to patients undergoing other forms of equally debilitating treatment, the proposals seek to remove this protection altogether. Instead it is proposed that there will be a "presumptions" that these groups would be placed in the Support Group but only following an assessment.

Although the DWP have stated that this would be a largely paper-based assessment with less cancer patients going for a medical assessment, they have not provided details of what additional evidence cancer patients would need to provide in order to qualify or on how decisions will be reached.

Why does Macmillan not support the Government proposals?

Macmillan welcomes the Government's acknowledgement that the existing rules are inadequate, but we are unable to support proposals that weaken the protection for cancer patients claiming ESA.

What changes does Macmillan want to see?

As a result of an expert consultation with senior cancer clinicians, Macmillan recommended to the Government that cancer patients should be **exempt** from going through the WCA and **automatically** placed in the Support Group if they are:

- Awaiting or receiving treatment by way of intravenous, intraperitoneal or intrathecal chemotherapy; or
- Awaiting or receiving treatment by way of oral chemotherapy, except when the therapy is continuous for a period of more than six months; or
- Awaiting or receiving combined chemo-irradiation; or
- Awaiting or receiving radiotherapy in the treatment of cancer in one or more of the following sites:

- Head and neck
- Brain
- Lung
- Gastro-intestinal
- Pelvic

The experts consulted agreed that these groups would provide a reasonable proxy for automatic entitlement to the Support Group because the treatment would more likely than not result in debilitating side-effects.

Why is the Government consulting on changes?

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.

Macmillan made recommendations to Professor Harrington in July 2010 who subsequently passed these recommendations onto Ministers.

In November 2010 the Department for Work and Pensions came forward with proposals to implement Macmillan's recommendations. Unfortunately, as the proposals would include removing vital protection for cancer patients, Macmillan was unable to support the proposals.

Consequently, in order to gather wider views on their proposals, DWP decided to carry out an informal consultation with interested stakeholders.