

**UC AND ESA: LIMITED CAPABILITY FOR WORK-RELATED ACTIVITY AND SUBSTANTIAL RISK**

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## INTRODUCTION

- 1 This memo gives guidance on
  1. considering substantial risk in the context of whether a claimant should be treated as having LCWRA<sup>1</sup> **and**
  2. in particular, what evidence of WRA (in the form of a work preparation requirement) is required in order to determine this question

in the light of UT decisions<sup>2</sup>.

*1 ESA Regs 13, reg 31(2); UC Regs, reg 40(1)(b), (5) & (6) and Sch 9, para 4; 2 [AH v SSWP \(ESA\) \[2013\] UKUT 118 \(AAC\)](#); [2013] AACR 32; [ML v SSWP \(ESA\) \[2013\] UKUT 174 \(AAC\)](#); [2013] AACR 33; [IM v SSWP \(ESA\) \[2014\] UKUT 412 \(AAC\)](#); [2015] AACR 10*

- 2 The memo amends and **replaces** Memo ADM 7/16 which is **cancelled**. This is to take account of
  1. further UT decisions<sup>1</sup> (see paragraphs 19 - 20) **and**
  2. changes in the provision of WRA from 3.4.17 (see paragraph 48).

- 3 The guidance in this memo is for the attention of staff

1. dealing with requests for mandatory reconsideration **and**
2. preparing responses to the FtT

in cases where a claimant has requested mandatory reconsideration of, or lodged an appeal against, a decision made following application of the WCA. Examples of how the guidance should be applied are at the end of the memo.

**Note: It is important that staff read all the guidance contained in this memo.**

- 4 The memo should also be read with the guidance for HCPs on substantial risk at Appendix 6 of the WCA Handbook.

### **Meaning of work-related activity and work preparation**

- 5 WRA means activity which makes it more likely that the person will obtain or remain in work or be able to do so<sup>1</sup>.

*1 WR Act 07, s 24(1); WR Act 12, s 40*

6 Work preparation is particular action specified by the Secretary of State for the purpose of making it more likely that the claimant will obtain

1. paid work **or**
2. more paid work **or**
3. better-paid work<sup>1</sup>.

*1 WR Act 07, s 11C(1); WR Act 12, s 16(1)*

7 For old style ESA claimants, consideration of whether anyone's health would be at substantial risk if the claimant were required to undertake WRA corresponds directly to the specified conditionality requirement known as WRA<sup>1</sup> – see [DMG Chapter 53](#) for details. The specified conditionality requirements which may be imposed on new style ESA claimants and UC claimants are known as work-related requirements<sup>2</sup>.

*1 WR Act 07, s 13; 2 WR Act 07, s 11(2); WR Act 12, s 13(2)*

**Note 1:** See ADM [M3006](#) for the meaning of old style and new style ESA.

**Note 2:** For further guidance on work-related groups see ADM [Chapters U4](#) and [J2](#). See ADM [Chapters U5](#) and [J3](#) for guidance on work-related requirements.

8 New style ESA claimants and UC claimants who are found to have LCW but not LCWRA may fall into the work-focused interview and work preparation requirements group<sup>1</sup>, unless their individual circumstances other than their health condition mean that they fall into either the no-work related requirements group or the work-focused interview requirement only group<sup>2</sup>. Claimants who are found to have, or are treated as having, LCWRA are not subject to any work-related requirements<sup>3</sup>.

*1 WR Act 07, s 11(3)(c); WR Act 12, s 13(3)(c); 2 WR Act 07, s 11(3)(b); WR Act 12, s 13(3)(b);*

*3 WR Act 07, s 11(3)(c); WR Act 12, s 13(3)(c)*

9 Work preparation for new style ESA claimants and UC claimants is the equivalent of WRA for old style ESA. Where the memo refers to being required to undertake WRA, for new style ESA and UC this refers to particular action specified as part of a work preparation requirement<sup>1</sup>.

*1 WR Act 07, s 11C(1); WR Act 12, s 16(1)*

## BACKGROUND

10 Where a claimant is found to have LCW<sup>1</sup>, or is treated as having LCW<sup>2</sup>, the DM is also required to determine whether or not the claimant has LCWRA<sup>3</sup>, or should be treated as having LCWRA<sup>4</sup>, in order to determine

1. for ESA

1.1 whether the WRAC (not payable for health related claims after 3.4.17) or support component should be included in the award<sup>5</sup> **and**

1.2 what work-related requirements group the claimant falls into<sup>6</sup> **and**

1.3 whether the award is limited to 365 days<sup>7</sup> **or**

2. for UC

2.1 whether the LCW (not payable for health related claims after 3.4.17) or LCWRA element should be included in the award<sup>8</sup> **and**

2.2 what work-related requirements group the claimant falls into<sup>9</sup> **and**

2.3 where the claimant is also eligible for receipt of the carer element, which element is payable<sup>10</sup>.

*1 ESA Regs 13, reg 15 & Sch 2; UC Regs, reg 39 & Sch 6; 2 ESA Regs 13, reg 16, 21, 22 & 25; UC Regs, reg 39(1)(b), (6), (7) & Sch 8, para 4; 3 ESA Regs 13, reg 30 & Sch 3; UC Regs, reg 40 & Sch 7; 4 ESA Regs 13, reg 31(1), (2); UC Regs, reg 40(1)(b), (4), (5) & Sch 9, para 4; 5 WR Act 07, s 2(1)(b); 6 s 11; 7 s 1A; 8 UC Regs, reg 27; 9 WR Act 12, s 13(3) & 19–22; 10 UC Regs, reg 29(4)*

11 Where the claimant is found not to have LCWRA because

3. none of the LCWRA descriptors apply<sup>1</sup> **and**

4. they cannot be treated as having LCWRA<sup>2</sup> as in ADM [U2030](#) and [ADM G3005](#)

the DM should consider whether, by reason of some specific disease or bodily or mental disablement, as a result of being found not to have LCWRA, there would be a substantial risk to the physical or mental health of the claimant or any other person<sup>3</sup>.

*1 ESA Regs 13, reg 30 & Sch 3; UC Regs, reg 40 & Sch 7; 2 ESA Regs 13, reg 31(1), (2); UC Regs, reg 40(1)(b), (4) & (5) & Sch 9, para 1-3 & 5; 3 ESA Regs 13, reg 31(2); UC Regs, reg 40(1)(b), (4) & (5) & Sch 9, para 4*

12 The substantial risk provision ensures that, in the case of a limited number of claimants who would otherwise be required to undertake work preparation requirements, a potential and substantial risk of harm to health, which could not be

ignored due to its nature and gravity, is taken into account when determining whether a particular claimant is treated as having LCWRA.

- 13 The substantial risk provision has been considered in a number of UT decisions as set out in paragraphs 14 – 20 below. In all the UT cases, the claimants had been found to have LCW, either by the DM or the FtT on appeal. The remaining issue before the FtT therefore was whether the claimants had, or could be treated as having, LCWRA. The FtT held that they did not.

## THE UT DECISIONS

### Reported decisions [2013] AACR 32 and 33

- 14 The UT Judge held that, applying principles in case law<sup>1</sup> on the LCW equivalent provision<sup>2</sup>, the DM should assess the range or type of WRA which a claimant was capable of performing and might be expected to undertake.

**Note:** See ADM [U2188](#) et seq and [G2052](#) et seq for guidance on substantial risk and LCW.

*1 Charlton v SSWP [2009] EWCA Civ 42; R(IB) 2/09; 2 SS (IW) (Gen) Regs, reg 27(b); ESA Regs 08, reg 29(2)(b)*

- 15 The substantial risk can arise from

5. the WRA itself **or**
6. the journey to and from the place where the WRA is undertaken (where relevant).

- 16 There must be appropriate evidence before the FtT of

7. the nature of the WRA (which **must** be provided by the DM) **and**
8. the claimant's health.

### Reported UT decision [2015] AACR 10

- 17 The Chamber President of the UT directed that the claimant's appeal be heard by a three judge panel of the UT, as there had been differing views by UT Judges on identifying what WRA a claimant might be required to undertake.
- 18 The UT held

1. the DM is required to predict what WRA the individual claimant might be required to undertake, when considering whether there would be a risk to their health if they were so required
2. in some cases it will be obvious that there is no risk, because none of the types of WRA available in the claimant's area would cause such a risk to materialise
3. the FtT should be provided with evidence about the types of WRA available in the claimant's area, whether provided by the Secretary of State or Work Programme providers, including the least and most demanding types, together with information about what the claimant might be required to undertake from that list
4. this evidence is required in appeal responses about whether the claimant has LCW as well as those about whether they have LCWRA, so that the FtT can consider risk in cases where they find that the claimant has LCW, but does not satisfy any LCWRA descriptor
5. if the Secretary of State does not provide evidence as in **3.**, the FtT can
  - 5.1 use its own knowledge if that is up to date and complete **or**
  - 5.2 adjourn to obtain the necessary evidence **or**
  - 5.3 decide the case itself without evidence.
6. where **5.3** applies, the FtT could find that the claimant should be treated as having LCWRA.

***KC & MC v SSWP (ESA) [2017] UKUT 94 (AAC)***

19 For the purposes of paragraph 18 **3.** above, the UT Judge held that

1. the FtT should be supplied with properly evidenced examples of the range of the most and least demanding types of WRA, but this need not include all the types of WRA available
2. the response to the FtT should
  - 2.1 highlight what WRA the claimant might be required to undertake by reference to the examples, the claimant's health condition and limitations  
**and**

**2.2** explain which of the activities in **1.** the DM considers that it would be reasonable for the claimant to undertake

- 3.** where the evidence is of WRA provided by the Secretary of State under the Jobcentre Plus Offer, the response should include an explanation of the Jobcentre Plus Offer
- 4.** the FtT should be provided with evidence about what WCA information is provided to the work coach.

### **YA & SA v SSWP (ESA) [2017] UKUT 80 (AAC)**

20 The UT Judge held that in cases where the risk to the claimant on the journey to and from any work related activity that he may be required to attend has been raised<sup>1</sup>, evidence should be provided to the FtT as to

- 1.** whether the presence of a third party would be sufficient to reduce any substantial risk
- 2.** the frequency of WRA
- 3.** where WRA might be required to take place **and**.
- 4.** whether a third party presence would reasonably be available to accompany the claimant to and from WRA.

*1 UC Regs, Sch 6, Act 15; ESA Regs 13, Sch 2, Act 15*

### **WHEN SHOULD SUBSTANTIAL RISK BE CONSIDERED**

21 The following guidance explains how the UT's decisions as summarised in paragraphs 14 - 20 should be applied by DMs dealing with

- 1.** requests for mandatory reconsideration **or**
- 2.** appeals to the FtT

where the decision in question incorporates a determination that the claimant does not have, and cannot be treated as having, LCWRA.

**Note:** See also paragraph 24 for guidance on appeal responses where the appeal is about whether the claimant has, or can be treated as having, LCW.

## Determining LCWRA

- 22 The question of whether there is a substantial risk to the health of the claimant or any other person should be considered where the DM finds that
1. the claimant has, or is treated as having, LCW<sup>1</sup> **and**
  2. no LCWRA descriptors apply<sup>2</sup> **and**
  3. the claimant cannot otherwise be treated as having LCWRA<sup>3</sup>.

*1 UC Regs, reg 39, Sch 6 & Sch 8; 2 reg 40 & Sch 7; 3 reg 40(5) & Sch 9*

## Mandatory reconsideration and appeals

- 23 The information in paragraphs 24 - 26 should be included in
1. a decision made following mandatory reconsideration whether or not the decision is revised **and**
  2. responses to an appeal to the FtT

depending on whether the decision or appeal is about whether the claimant has LCW, or has LCWRA. This includes where a decision is revised after an appeal is received, and the claimant is found to have LCW, but not LCWRA.

### Claimant does not have LCW

- 24 Where a claimant is found not to have LCW, the appeal response should refer to the LCWRA provisions, but need not explain why it is considered that those provisions do not apply. This is because it will be implicit that they do not from the decision or response on why it is considered that the claimant does not have LCW.

**Note:** See paragraphs 37 - 41 for which list to include in appeal responses.

### Claimant has LCW but does not have LCWRA

- 25 Where the issue is whether the claimant has, or should be treated as having, LCWRA, the DM should explain
1. why it is considered that no LCWRA descriptors (limited to those put at issue by the claimant if identified) apply **and**
  2. by reference to the list of types of least and most demanding WRA available in the claimant's area

**2.1** which is the most and least demanding WRA on the list for the particular claimant **and**

**2.2** which types of WRA it is considered that the claimant might be expected to undertake without substantial risk.

**Note:** See paragraphs 37 - 41 for which list to consider, and include in appeal responses.

26 The DM should also consider, where available, evidence of

1. any Wfls attended, or WRA undertaken, **and**
2. if any, the effect of the Wfl or WRA on the claimant's health

since the claimant was placed in the WRAG. This could be by production of the JCP action plan in appeal responses. Information about how the claimant has coped with Wfls and WRA may be relevant when assessing whether any risk to the claimant's or anyone else's health is likely, and if so, whether it is substantial.

27 The DM should remember that a Wfl is **not** WRA, and serves a different purpose. The Wfl acts as a gateway to WRA. However, as part of a WRA requirement, the claimant may be asked to attend an interview other than a Wfl, for example to discuss the effectiveness of a previous WRA requirement.

## **WHAT IS SUBSTANTIAL RISK**

28 Although any of the factors in paragraphs 35 - 36 may give rise to a risk to the claimant's or anyone else's health, the question is whether

1. that risk is likely **and**
2. if so, it arises as a result of the claimant's health condition **and**
3. if so, it is substantial.

29 A risk is substantial where the harm or damage to the person's health would be serious, and could not be prevented or mitigated. It is not minor or trivial. It may be immediate or in the longer term. The risk of harm has to be caused by the individual claimant's physical or mental health condition and be triggered by being found not to have LCWRA. The DM should bear in mind that claimants may be required to take part in a WFI, take action as part of a work preparation requirement, and potentially have their ESA or UC award reduced if they fail to do so without good reason.

**Note:** A person who is unable to undertake a work preparation requirement, or whose award of ESA or UC is reduced, is not automatically at risk. The nature and severity of the risk must be identified.

- 30 The DM should always consider whether a substantial risk could be prevented or mitigated, particularly where a risk is identified by the individual claimant. For example, in paragraph 32 1. and 2., although there could be a substantial risk of harm to health if the claimant was exposed to a cold environment, the risk could be prevented or reduced if the claimant were not required to attend in person on cold days.
- 31 Where there is evidence that there is a risk to health, the DM should also consider whether any reasonable adjustments could be made to accommodate any problems the claimant may have in order to avoid the risk. For example, where the claimant has problems getting about due to panic attacks, it may be possible to undertake work preparation action from home, reading, doing things in writing, on-line or by telephone. A claimant who has difficulties with face-to-face social contact could be capable of meeting a requirement by telephone or on-line.

### **Immediate substantial risk**

- 32 Examples of immediate substantial risk:
1. Angina which is normally controlled could be exacerbated in the short term by cold environments.
  2. Asthma which is normally controlled could be exacerbated in the short term by cold or dusty environments, where this causes chest pain and difficulty breathing which is not relieved with inhalers.
  3. A claimant with hypertension which is uncontrolled despite medication may be at substantial risk of a stroke or heart attack, even if they do not satisfy any of the LCWRA descriptors.
  4. Panic attacks could be triggered by anxiety in some situations, such as going to unfamiliar or crowded places, or meeting strangers.

### **Longer term substantial risk**

- 33 There **may** be substantial risk if it is likely that the claimant's physical or mental health condition would deteriorate in the longer term as a result of a work preparation requirement being imposed. A deterioration in a medical condition might be evidenced by, for example:

1. an increase in symptoms
2. a change in medication
3. an increase in medical input
4. hospital admission
5. an increase in attendance at hospital.

34 The examples are not conclusive that there is substantial risk. The DM should consider each case on its facts. In cases of doubt, the DM should consult Medical Services.

### **Health factors**

35 In assessing the likelihood of substantial risk to health, the DM should consider

1. the nature and severity of the claimant's health condition
2. the duration of the claimant's health condition
3. whether or not the claimant's health condition has been stable
4. any previous deterioration or improvement in their health condition
5. what caused any deteriorations in the past and whether a work preparation requirement is likely to engage any of these triggers
6. whether there are several conditions which may interact with each other
7. the nature and strength of any medication
8. whether any risk can be mitigated.

**Note:** This list is **not** exhaustive.

### **Other factors**

36 Other factors which should be taken into account when considering whether a substantial risk is likely include

1. was the claimant previously in work without incident despite their health condition?

2. did the claimant give up work because of their health condition? If so, what was the nature of the employment? Could suitable work preparation be found to ensure there is no harm to health?
3. if a risk is identified, is it present throughout the day? Are there times of the day when work preparation could be carried out without risk?
4. does the claimant's description of their typical day indicate that they are capable of some types of work preparation without risk?
5. has the DM accepted that the claimant satisfies a descriptor, and therefore cannot undertake an activity which might be required as part of any work preparation they would be required to undertake, and which might cause harm to health?

## EVIDENCE OF WORK PREPARATION

37 The DM should consider whether the claimant should be treated as having LCWRA using the appropriate list of work preparation by area. In cases where it is determined that the claimant does not have, and cannot be treated as having, LCW, this will be

1. where the decision under appeal was made before 3.4.17, the types of work preparation provided
  - 1.1 through the Work Programme in the claimant's area **and**
  - 1.2 under the Jobcentre Plus Offer **or**
2. where the decision under appeal was made on or after 3.4.17, the types of work preparation provided under the Jobcentre Plus Offer.

In either case, the list should identify which are the least and most demanding types of work preparation.

**Note:** See the Appendix to this Memo for the Jobcentre Plus Offer list.

38 Where the claimant is found to have, or is treated as having, LCW, the list to use depends on

1. whether the claimant would in practice be subject to a work preparation requirement (see paragraphs 51 – 52) and
2. when it is considered that the claimant should be referred for a subsequent WCA (see ADM [U2292](#) – U2296 for details).

- 39 Where the circumstances in paragraphs 51 – 52 apply, that is, where the claimant would **not** be subject to a work preparation requirement, the list of work preparation provided through the Jobcentre Plus Offer should be used, irrespective of when the claimant would be referred for a subsequent WCA.
- 40 In cases where the claimant would be subject to work preparation requirement, and the period before referral for a further WCA is
1. 12 months or less, the list of work preparation provided through the Work Programme (see paragraph 48 below for claims after 3.4.17) **or**
  2. more than 12 months, the list for Jobcentre Plus Offer
- should normally be used.
- 41 If the claimant has already been subject to a work preparation requirement under a different programme from normal, the list for that programme should be considered, and included in the appeal response. For example, a claimant may have volunteered for the Work Programme even though they would normally have been referred for the Jobcentre Plus Offer.
- 42 Although the lists do not include information as to when a particular type of work preparation became available, the types of work preparation on either list have not changed significantly since the requirement for old style ESA claimants to undertake WRA was introduced on 1.6.11<sup>1</sup>.
- 1 ESA (WRA) Regs*
- 43 It should be noted that the Jobcentre Plus Offer list includes work preparation
1. where a referral to a provider is required **and**
  2. at the discretion of the Work Coach.
- 44 The DM should provide the FtT with examples of the most and least demanding work preparation which it is considered the claimant could undertake (see paragraph 45), rather than the whole list. The response to the FtT should explain that it is not practical to produce the whole list due to size constraints.
- 45 The DM should then consider what types of work preparation that the claimant could undertake without risk, and which may be appropriate to help them become work-ready, given any information the DM has about the claimant's work history and skills. This could be obtained from the ESA or UC claim information, the questionnaire (form

ESA50/UC50), the HCP report where there was a face-to-face assessment, and any other information which may be available.

**Note:** See the Appendix to this Memo for the Jobcentre Plus Offer list.

- 46 The DM is **not** required to consider whether the types of work preparation on the list of what is available in the claimant's area, and that would be appropriate for that claimant, could be provided on the date of the decision, for example due to operational delivery issues. Nor is this necessarily the same as the work preparation action which the claimant might eventually be required to undertake.

### **Jobcentre Plus Offer**

- 47 Where the Jobcentre Plus Offer WRA list is included, the appeal response should explain that the types of WRA included are available throughout GB. Where reference in the most demanding WRA list is made to attending courses, it is not possible to provide evidence of what courses are available in the claimant's area, due to the way in which information about courses is recorded.

- 48 From 3.4.17, new claimants are no longer referred to the Work Programme, and instead are referred for WRA under the Jobcentre Plus Offer. Claimants already on the Work Programme will continue to be supported under that programme.

**Note:** Referrals to the Work Programme ceased on 31.3.17 and the final participants will complete the programme on 29.3.19.

- 49 Where the decision under appeal was made before 3.4.17, the appeal response should explain that, although at the date of the decision, had the claimant been found to have LCW but not LCWRA, they would have been referred to the Work Programme, in practice only the Jobcentre Plus Offer is now available if the FtT determines that the claimant has LCW.

- 50 In all cases, paragraphs 48 and 116 of the UT decision *KC & MC v SSWP (ESA)* [2017] UKUT 94 (AAC), which set out the Secretary of State's description of the Jobcentre Plus Offer, should be brought to the attention of the FtT.

### **Claimant not subject to work-related requirements**

- 51 Not all claimants who have LCW are subject to work-related requirements<sup>1</sup> – see ADM [Chapters U5](#) and [J3](#) for further details. For example, a claimant who has regular and substantial caring responsibilities for a severely disabled person is not subject to work-related requirements<sup>2</sup>.

- 52 The DM should disregard the fact that the individual claimant may fall into the no work-related requirements group, when considering whether there is a substantial risk if the claimant were found not to have LCWRA. The test is a hypothetical test and should still be considered accordingly by reference to the lists of what work preparation is available.

## **EXAMPLES**

### **Example 1**

Alison suffers from chronic fatigue syndrome and anxiety, and is found to have LCW as she is unable to repeatedly mobilise 200 metres due to exhaustion, and needs to be accompanied to unfamiliar places due to anxiety and panic attacks. The HCP recommends a further WCA referral in 18 months, as Alison's condition is improving slowly. Alison spends four or more hours a day using her PC, including communicating with friends and family. She works for an hour or so a week editing a magazine on-line. She works one day a week as a volunteer at the Citizen's Advice Bureau, her family taking her there and back. Alison states that she needs the next day to recover from the extreme exhaustion this causes.

In the area where Alison lives, the least demanding work preparation for her would be courses expanding her IT skills at home via her PC, and the most demanding would be a requirement to attend infrequent short sessions at her local Jobcentre, scheduled around the availability designed to explore job opportunities which would enable her to work from home at her own pace. The DM determines that Alison's health would not be at substantial risk as the availability of her family to take her to any such sessions would reduce her anxiety levels and the infrequency of the sessions would allow her time in between to recover from any exhaustion.

### **Example 2**

Robin gave up work as a call centre operator due to stress and anxiety, and became depressed with social phobia and agoraphobia. He spent several months in hospital as a voluntary patient after attempting suicide. He had been unable to contemplate attending cognitive behavioural therapy so far, and never answered the door or phone. Medication had to be controlled by his mother in order to prevent further suicide attempts. He attended the medical examination centre with his mother, and the HCP recorded that he was visibly distressed throughout the examination; most questions had to be answered by his mother.

The DM determines that Robin has LCW as he is unable to get to familiar places unaccompanied, and is too distressed to engage in social contact with unfamiliar people, either face-to-face or by telephone. The DM also determines that any work preparation would be likely to exacerbate Robin's mental health state, and determines that he is treated as having LCWRA.

### **Example 3**

Gavin has been suffering from frequent unexplained blackouts without warning. His GP states that he should avoid dangerous activity such as driving, using machinery or working at heights, due to the risk of injury. He is treated as having LCW, with a recommendation of re-referral within 12 months. The DM determines that, for the purposes of work preparation, although there is a risk of injury from the blackouts, the risk can be mitigated by ensuring that a third party is present to deal with any potential incidents. Work preparation which does not involve any potentially hazardous activity as identified by Gavin's GP could be undertaken.

Gavin left school with no academic qualifications, and was previously employed as a fork-lift truck operator. In the area where Gavin lives, the most and least demanding types of work preparation in the list include courses designed to explore the potential for changing careers including self-employment, as well as sessions on preparing for job search, and interviewing skills. Also available are sessions on IT skills and safety in the workplace. The DM determines that Gavin could be required to undertake all of these without any risk to his or anyone else's health.

### **Example 4**

Tahla has diabetic neuropathy and also suffers from anxiety. His consultant neurologist provides a report stating that he has been advised to avoid walking long distances and spending more than a few minutes outside when it is cold because of the risk of damage to the feet. Damage can take the form of ulceration of the skin, arthritis and deformity of the joints. The damage is painless because of the nerve damage to the feet so tends to be noticed at a late stage when it is severe. Poor healing is also a feature of this condition. The risk is severe damage to the foot resulting in amputation and loss of mobility. Tahla is very anxious about going out and using public transport because of the risk of damage, and is always taken everywhere by his wife. He is found to have LCW scoring 6 points for mobilising and 9 points for getting about.

The DM determines that, although there is a potential for substantial risk to Tahla's health, it can be prevented by not requiring him to undertake work preparation outside the home on cold days, and ensuring anywhere he has to attend has disabled parking

near the entrance. The least demanding types of work preparation in Tahla's area includes getting up and dressed by a certain time each day and keeping a log to chart progress. The most demanding types of work preparation in Tahla's area includes weekly health and well-being workshops designed to help people learn how to manage their health condition in the workplace, as well as sessions about building confidence and motivation, and the DM considers that Tahla could undertake these without risk to his health as his wife would be able to take him.

### **Example 5**

Michael suffers from mental health problems including depression, anxiety and agoraphobia. He has panic attacks if he has to go anywhere on his own, or meet people he doesn't know. Michael has fortnightly counselling sessions with a voluntary organisation at a nearby drop-in centre, but progress after 6 months has been slow. Following application of the WCA, the DM determines that Michael has LCW due to difficulties with getting about (Activity 15(b), 9 points) and coping with social engagement (Activity 16(c), 6 points). The DM determines that no LCWRA descriptors apply. The HCP recommends a further referral in 18 months.

Evidence from the voluntary organisation is that Michael has problems coping financially, and is in arrears with rent and utilities. His fears about leaving his home began when he was assaulted by someone from whom he had borrowed money. He lives alone and has no support from family or friends. Although Michael could not undertake the most demanding of the work preparation offered by the local Jobcentre, as this would require attendance at the Jobcentre, the least demanding work preparation on the list includes debt counselling and advice on benefits, which could be carried out by telephone to avoid any risk to his mental health. The DM determines that Michael cannot be treated as having LCWRA.

### **Example 6**

Harriet is injured while on holiday, and following surgery continues to have problems with mobilising as well as sitting and standing. Her condition is expected to improve within 3 months. She had previously had a number of temporary jobs as an office clerical assistant. The DM determines that Harriet has LCW, scoring 9 points for Sch 2 Activity 1(c) and 6 points for Activity 2(c), and that no LCWRA descriptors apply. The DM considers that Harriet should, without risk to her health, be capable of attending a wide range of work preparation offered by the Work Programme provider for her area. The most demanding would be attendance at a series of short workshops designed to help her with CV preparation, interview skills and confidence building, and the least demanding would be attending an awareness session to discuss future participation and options.

## **ANNOTATIONS**

Please annotate the number of this memo (Memo ADM 02/18) against the following ADM paragraphs:

ADM U2396, G3020 heading.

## **CONTACTS**

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, 1S25, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in [Memo DMG 03/13](#) - Obtaining legal advice and guidance on the Law.

**DMA Leeds: February 2018**

**The content of the examples in this document (including use of imagery) is for illustrative purposes only**



## APPENDIX

### JOBCENTRE PLUS OFFER TYPES OF WORK-RELATED ACTIVITY

Less demanding	More demanding
Type of support	
Getting up and dressed by a certain time each day, and keeping a log to chart progress  <b>Easy</b>	Referral to English for Speakers of Other Languages (ESOL) training  <b>Easy</b>
Finding out possible transport routes and trying them out, and keeping a log to chart progress.  <b>Medium</b>	Attend an occupational training course to get new skills needed for moving into a different type of work to that previously undertaken.  <b>Medium</b>
Look at the Expert Patient Programme online and list reasons why it could benefit you.  <b>Hard</b>	Attend a classroom-based IT course  <b>Easy</b>
Registering with and/ or visiting the local library.  <b>Medium</b>	Attend a CV drafting course  <b>Easy</b>
Researching bus times, local public transport routes etc, and keeping a log to chart progress.  <b>Easy</b>	Attend a work placement at a community hub/café/other placement of community benefit  <b>Hard</b>
Make a list of your hobbies, things you enjoy doing, or things you used to enjoy doing.  <b>Easy</b>	Attend basic skills course in English and Maths  <b>Medium</b>
Updating CV / Making a list of previous employment, education and other experience.  <b>Medium</b>	To research a potential career path, skills requirements and find out about opportunities available through local employers to discuss with work coach

	<b>Medium</b>
<p>Making a list of transferrable skills, and any skills they would like to build up.</p> <p><b>Medium</b></p>	<p>Referral to the National Careers Service (England only), to see a careers adviser about career options.</p> <p><b>Easy</b></p>
<p>Improving digital skills: setting up an e-mail account; browsing the internet; and keeping a log to chart progress.</p> <p><b>Hard</b></p>	<p>Referral to a skills provider for a skills assessment (England and Wales only)</p> <p><b>Easy</b></p>
<p>Leaving the house every day, keeping a log to chart progress (e.g. walking around the block; going to the corner shop; going into town).</p> <p><b>Easy</b></p>	
<p>Considering referral to professional service (e.g. counselling, physiotherapy etc.) through GP or self-referral. Keep a log of any research you do, or contact that you make.</p> <p><b>Medium</b></p>	
<p>Researching local self-help centres / support groups appropriate to claimant's health condition (through library, internet, Yellow pages etc.). Keep a log of any research you do, or contact that you make.</p> <p><b>Medium</b></p>	