

# Chapter G1: Work capability assessment

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# Chapter G1: Work capability assessment

## Introduction

G1001 The WCA is an assessment of the extent to which a claimant with a specific disease or bodily or mental disablement is capable, or is incapable, of carrying out specified activities<sup>1</sup>.

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

**Important note:** The WCA for UC is **only** as described above. It does **not** include being treated as having LCW or LCWRA. It is **not** the same as the description of the WCA for ESA in DMG Chapter 42, and ADM Chapter U2, as the end to end medical process, including whether the claimant can be treated as having LCW or LCWRA. In practice the process of referral to Medical Services remains the same.

G1002 The question of whether a claimant has LCW or LCWRA is relevant in order to determine

1. if the LCWRA element can be included in the UC award<sup>1</sup> **and**
2. what work-related requirements group the claimant falls into<sup>2</sup> **and**
3. which income and work allowance deduction is applicable<sup>3</sup> **and**
4. where the claimant is also eligible for receipt of the carer element, which element is payable<sup>4</sup>.

**Note 1:** See ADM Chapter F5 for guidance on the LCWRA element, Chapter J2 for guidance on work-related requirements groups, Chapter E2 (Awards and maximum amount of UC) for guidance on income and work allowance deductions, and Chapter F6 for guidance on the carer element.

**Note 2:** From 3.4.17 where it is determined that a UC claimant has, or is treated as having, LCW, their award cannot include the LCW element<sup>1</sup>. But see the Appendix to ADM Chapter F5 (The LCWRA element) for exceptions where the removal of the LCW element does not apply. A determination that the claimant has LCW continues to be relevant for the purposes of work-related requirements and income and work allowance deductions – see G2004.

*1 UC Regs, reg 27; 2 WR Act 12, s 13(3) & 19–22; 3 UC Regs, reg 22; 4 reg 29(4)*

G1003 The WCA will normally be completed during the relevant period during which the LCWRA element is not included in the UC award. See ADM Chapter F5 (the LCWRA element) for guidance on the relevant period.

G1004 Claimants who are treated as having LCW or LCWRA do not have to undergo the WCA<sup>1</sup>. See ADM Chapters G2 (LCW) and G3 (LCWRA) for further guidance.

*1 UC Regs, reg 39(1)(b) & 40(1)(b)*

G1005 A UC claimant may already have been assessed for LCW and LCWRA for the purposes of ESA. Where

1. it has been determined that the claimant has LCW or LCWRA following an assessment under ESA legislation<sup>1</sup> **and**
2. a claim for UC is made while the determination in 1. is current

the claimant does not have to undergo a separate WCA for the purposes of UC<sup>2</sup>. See G1020 2. for when a further WCA may be required. See ADM Chapter U2 for guidance on assessing LCW and LCWRA for ESA.

**Note:** In this Chapter references to ESA are to new style ESA<sup>3</sup>. See ADM Chapter M3 (Gateway conditions – claims for UC from 16.6.14) for guidance on the meaning of new style ESA.

*1 ESA Regs 13, reg 15 & 30; 2 UC Regs, reg 39(1)(a) & 40(1)(a)(ii); 3 UC (TP) Regs, reg 2(1)*

G1006 The DM should note that where a claimant is treated as having LCW or LCWRA under ESA legislation<sup>1</sup>, they are not automatically treated as having LCW or LCWRA for the purposes of UC<sup>2</sup>. This is because the conditions are not identical. The DM should check why the claimant has been treated as having LCW or LCWRA for ESA. If the ESA condition which is satisfied is the same as a UC condition, the DM may determine that the claimant is treated as having LCW or LCWRA for the purposes of UC.

*1 ESA Regs 13, reg 16, 21, 22, 31 & 32; 2 UC Regs, Sch 8 & 9*

### **Example**

Kelly is entitled to ESA. She is treated as having LCW as she is pregnant, and is entitled to MA. Her pregnancy is progressing normally, and she has no health problems. She claims UC. Kelly cannot be treated as having LCW for the purposes of UC.

G1007 As part of the assessment, claimants may be required to complete a questionnaire<sup>1</sup> (see G1075 et seq) and if necessary attend a medical examination<sup>2</sup> (see G1105 et seq). If they fail without a good reason to do either, they can be treated as not having LCW and LCWRA<sup>3</sup>.

**Note:** This does not apply to claimants who are treated as having LCW or LCWRA<sup>4</sup> (see ADM Chapters G2 and G3).

*1 UC Regs, reg 43(1); 2 reg 44(1); 3 reg 43(3) & 44(2); 4 reg 39(1)(b) & 40(1)(b);*

G1008 – G1011

## Definitions

### Meaning of a health care professional

G1012 A HCP means<sup>1</sup>

1. a registered medical practitioner **or**
2. a registered nurse **or**
3. a registered occupational therapist or physiotherapist<sup>2</sup>.

*1 UC Regs, reg 2; 2 Health Act 99, s 60*

### Meaning of claimant

G1013 Claimant means a single claimant or each of joint claimants<sup>1</sup>.

*1 WR Act 12, s 40*

G1014 – G1019

## When is a work capability assessment carried out

### Initial and routine assessments

G1020 A WCA may be carried out when

1. the DM has to determine whether the claimant has LCW or LCWRA for the first time<sup>1</sup> (but see G1005 where the claimant has already been assessed for ESA) **or**
2. there has been a previous determination that the claimant has or is treated as having LCW or LCWRA, and the DM wishes to determine whether
  - 2.1 there has been a relevant change of circumstances in the claimant's physical or mental condition **or**
  - 2.2 the previous determination was made in ignorance of, or based on a mistake as to, some material fact<sup>2</sup>.

*1 UC Regs, reg 41(1)(a); 2 reg 41(1)(b)*

### Exceptions

G1021 A WCA is not normally carried out where<sup>1</sup>

1. the claimant has weekly earnings<sup>2</sup> – see G1030 et seq for further guidance **or**
2. it was previously determined that the claimant did not have LCW or LCWRA<sup>3</sup> – see G1040 et seq for further guidance.

*1 UC Regs, reg 41(1); 2 reg 41(2) & (3); 3 reg 41(4)*

G1022 – G1029

# When is a work capability assessment not carried out

## Claimant with weekly earnings: the in work gateway

G1030 Normally a claimant who is in work earning above the relevant threshold (see G1033) is

1. not entitled the LCWRA element<sup>1</sup> **and**
2. not subject to work-related requirements<sup>2</sup>.

Unless any of the exceptions in G1032 apply, the WCA is not carried out, so entitlement to the LCWRA element cannot be considered<sup>3</sup>.

*1 UC Regs, reg 27; 2 reg 90; 3 reg 41(2) & (3)*

G1031 The in work gateway allows claimants who are working, but are at risk of not being able to do so, where they

1. are disabled and entitled to AA, DLA, PIP or AFIP **or**
2. start work after being assessed as having LCW or LCWRA

to be assessed or reassessed under the WCA. If they have LCWRA, the LCWRA element will continue to be included in the UC amount until the next WCA is due, or there is a specific reason to carry out a fresh assessment.

**Note:** DMs should note that this does not apply to ESA. A UC claimant may have LCW for the purposes of UC, even though for ESA they may be treated as not having LCW because the work is not exempt work. See ADM Chapter V3 for guidance on exempt work.

G1032 Where the claimant has weekly earnings<sup>1</sup> that are equal to or above the relevant threshold (see G1033), a WCA cannot be carried out unless

1. they are entitled to<sup>2</sup>
  - 1.1 AA<sup>3</sup> **or**
  - 1.2 DLA<sup>4</sup> **or**
  - 1.3 PIP<sup>5</sup> **or**
  - 1.4 AFIP<sup>6</sup> **or**
2. the WCA is to review a previous LCW or LCWRA determination made for the purposes of ESA or UC<sup>7</sup> – see G1035 for further details.

**Note:** See ADM Chapter J2 (Work-related requirements groups) for guidance on calculation of weekly earnings.

*1 UC Regs, reg 2 & 90(6); 2 reg 2 & 41(2)(a); 3 SS CB Act 92, s 64, 104, 105, 111 & Sch 8, para 4 & 7(2); WR Act 12, s 64(3)(a); Personal Injuries (Civilians) Scheme 83, art 14, 15, 16, 43 or 44; 4 SS CB Act 92, s 71; 5 WR Act 12, Part 4; 6 AF & RF (Comp Scheme) Order; 7 UC Regs, reg 41(2)(b)*

G1033 The relevant threshold is the amount the claimant would be paid at the highest NMW hourly rate for 16 hours a week<sup>1</sup>. See ADM Chapter H3 (Earned income: employed earnings) for NMW rates.

*1 UC Regs, reg 41(3); National Minimum Wage Regs 99, reg 11*

### **What if a work capability assessment cannot be carried out**

G1034 Where

1. a WCA cannot be carried out as in G1032<sup>1</sup> **and**
2. the claimant cannot be treated as having LCW or LCWRA<sup>2</sup>

the claimant is treated as not having LCW<sup>3</sup>. But see G1036 for where this does not apply.

**Note:** See ADM Chapter G2 for where a claimant is treated as having LCW, and ADM Chapter G3 for where a claimant is treated as having LCWRA.

*1 UC Regs, reg 41(2); 2 reg 39(4) or 40(4); 3 reg 41(2)*

### **Claimant already has LCW or LCWRA**

G1035 If a claimant in work has already been assessed as having LCW or LCWRA, whether for the purposes of UC or ESA<sup>1</sup>, a further WCA may be carried out in order to consider again whether the claimant has LCW or LCWRA<sup>2</sup>. If already included, the LCWRA element continues to be included in the UC amount unless and until it is determined that the claimant does not have LCWRA.

*1 ESA Regs, Parts 4 & 5; UC Regs, Part 5; 2 reg 41(2)(b)*

G1036 The DM may consider that a further WCA is not required, for example where the claimant's work does not give rise to a doubt as to whether they still have LCW. In this case the claimant is **not** treated as not having LCW and G1034 does not apply.

#### **Example**

Nigel is entitled to UC including the LCWRA element. He has LCWRA because he was born without hands and cannot pick up and move a carton of liquid, or press the buttons on a keypad, or turn the pages of a book. Nigel starts office work, earning 16 x the NMW every week. The DM establishes that the job is in the family business where Nigel uses voice-activated equipment. The DM decides that a further WCA is not required, and Nigel's UC award continues to include the LCWRA element.

G1037 – G1039

### **Claimant found not to have LCW or LCWRA**

G1040 Where it has been determined that the claimant does not have LCW following application of the WCA under UC or ESA legislation, a WCA may not be carried out unless there is evidence to suggest that

1. the determination was based on ignorance of, or mistake as to, some material fact **or**
2. there has been a relevant change of circumstances in the claimant's physical or mental condition, for example where there is a new or worse condition<sup>1</sup>.

*1 UC Regs, reg 41(4)*

G1041 – G1044

## **Application of the work capability assessment**

G1045 The WCA is an assessment of the extent of a claimant's ability to perform specified **activities** because of their physical or mental condition<sup>1</sup>. The performance of activities is measured by **descriptors**<sup>2</sup>. The test is the ability to perform any work or work-related activity, not a specific occupation.

*1 UC Regs, reg 39(3)(a) & 40(2); Sch 6 Column 1 & Sch 7 Column 1; 2 Sch 6 Column 2 & Sch 7 Column 2*

G1046 If a descriptor applies as a direct result of treatment provided by a registered medical practitioner for a specific disease, illness or disablement, it is treated as applying as a result of that disease, illness or disablement<sup>1</sup>.

*1 UC Regs, reg 42(3)*

G1047 See ADM Chapter G2 for guidance on the assessment of whether a claimant has LCW, and Chapter G3 for guidance on the assessment of whether a claimant has LCWRA.

G1048

## **Use of prostheses, aids and appliances**

G1049 A claimant is assessed

1. as if fitted with or wearing any prosthesis with which they are normally fitted (such as an artificial limb) or normally wear **and**
2. as if wearing or using any aid or appliance which is normally, or could reasonably be expected to be, worn or used (such as a hearing aid)<sup>1</sup>.

*1 UC Regs, reg 42(2)*

G1050 The DM should apply the following principles:

1. where a claimant normally uses an aid or appliance, they must be assessed as if they were using it



2. if an aid or appliance has been prescribed or recommended by a person with appropriate expertise, the claimant must be assessed as using it unless it would be unreasonable for them to use it
3. if a claimant does not use an aid or appliance, and it has not been prescribed or recommended, the claimant must be assessed as if using it if
  - 3.1 it is normally used by people in the same circumstances acting reasonably **and**
  - 3.2 it would be reasonable for the claimant to use it.

G1051 Where G1050 3. applies, the DM must explain how an aid or appliance would help the claimant.

### **General application**

G1052 The test of normal use of an aid or appliance applies to the assessment of all of the physical activities in the WCA<sup>1</sup>. It is not restricted to those activities that make specific reference to aids or appliances.

*1 UC Regs, reg 42(2)*

G1053 Four of the LCW physical activities<sup>1</sup> refer specifically to the use of aids. Activity 1 (mobilising), Activity 7 (understanding communication), Activity 8 (navigation), and Activity 9 (continence), all refer to aids that are normally or could reasonably be used. The DM should apply the test in a way that displays consistency between the WCA as a whole and the assessment of each descriptor in particular.

*1 UC Regs, Sch 6, Part 1*

### **Aid or appliance prescribed or advised**

G1054 The DM should establish whether the claimant normally uses an aid or appliance, and if not, whether the use of it has been prescribed or advised.

G1055 If the claimant does not have an aid or appliance which they have been prescribed or advised to use, the DM should establish

1. whether it would help the claimant
2. why they are not using one
3. whether the explanation is reasonable.

### **Example**

Billy has been advised by his GP to use a walking stick to help with balance problems when walking and standing. He states that he doesn't like the idea of a walking stick because it makes him look old. The DM considers that it would be reasonable to expect Billy to use a walking stick, and assesses LCW and LCWRA as if he is using it.

## **Aid or appliance not prescribed or advised**

G1056 The WCA should be applied in the context of a notional employer in a modern workplace who is prepared to make reasonable adjustments<sup>1</sup> to enable the claimant to work.

*1 Equality Act 2010*

G1057 **All** the circumstances of the individual claimant should be taken into account when considering whether it would be reasonable to assess them as using an aid or appliance that has not been prescribed or that they have not been advised to use. An example would be whether it would be reasonable to expect a claimant to mobilise using a manual wheelchair<sup>1</sup>.

*1 [2015] AACR 5*

G1058 Factors include whether

1. the claimant possesses the aid or appliance
2. the claimant was given specific medical advice about managing their condition, and it is reasonable for them to continue following that advice (see G1062)
3. the claimant would be advised to use an aid or appliance if they raised it with the appropriate authority such as a GP or occupational therapist (advice may only be given on request)
4. it is medically reasonable for them to use an aid or appliance
5. the health condition or disability is likely to be of short duration
6. an aid or appliance is widely available (see G1065)
7. an aid or appliance is affordable in the claimant's circumstances (people are not routinely required to buy equipment where it can be prescribed.)
8. the claimant is able to use and store the aid or appliance (see G1064)
9. the claimant is unable to use an aid or appliance due to their physical or mental health condition, for example they are unable to use a walking stick or manual wheelchair due to a cardiac, respiratory, upper body or mental health condition.

### **Example 1**

Miranda has significantly reduced mobility due to arthritis of the right hip and is on the waiting list for a hip replacement. She uses a walking stick to help with balance,

but this does not enable her to walk any further than 200 metres before she experiences pain. She has not been advised to use a wheelchair. The HCP advises that she has no other health problems, and in their opinion based on clinical experience, would be provided with a manual wheelchair if she asked her consultant about this. If she had a wheelchair, she would be able to mobilise over longer distances. The DM decides that it would be reasonable, having considered all relevant factors, for Miranda to use a manual wheelchair, and that none of the Activity 1 descriptors apply.

### **Example 2**

Gary has problems standing due to a condition which affects his balance. He would normally be helped by the use of a walking stick. However, the HCP advises that due to arthritis of the hands, Gary would have difficulty using a stick because he has reduced grip. The DM determines that it would not be reasonable to assess Gary taking a walking stick into account.

- G1059 Where it is considered that the claimant should be assessed using an aid or appliance they do not have, the DM must give a clear explanation of how it could help the claimant. In the majority of cases the HCP will give advice on their use in the medical report. If not, or if the advice is not clear, the DM should seek further advice as to how reasonable it is to expect the claimant to use or benefit from the aid or appliance.
- G1060 The aid or appliance must be relevant to the activity being assessed. For example, when assessing activity 5, manual dexterity, it is not appropriate to consider the use of devices, such as a grabber, which substitute for the hands, other than prosthetic hands.
- G1061 DMs are additionally reminded that some activities and descriptors specify that the person must be assessed without the help of another person.

## **Use of manual wheelchair**

### **Medical factors**

- G1062 All medical considerations affecting an ability to use a manual wheelchair need to be taken into account, including any potential consequences such as muscle wasting. However, it should be noted that use of a wheelchair need only be for short distances and for limited periods.

**Note:** See G1058 **2.** - **5.** and **9.** for examples of medical factors which should be considered.

- G1063 These considerations apply to all aspects of using a manual wheelchair, including getting in and out, propelling, and being able to control it. It may be that some of the reasons for not being able to use a wheelchair are relevant to other functional

descriptors, for example inability to move from one seated position to another unaided.

## **Home environment**

G1064 The claimant's domestic environment is potentially relevant – see G1058 8.. However, given

1. the underlying purpose of the WCA **and**
2. the circumstances in the modern workplace

an inability to use or store the wheelchair at home, due to factors such as inaccessible doors or stairs, is unlikely to be important, as the wheelchair could be stored at the workplace as part of the employer's duty to make reasonable adjustments.

## **Availability of manual wheelchairs**

G1065 The availability of manual wheelchairs is a question of fact requiring evidence of how they could be obtained, including local knowledge. There is no requirement for an NHS wheelchair assessment before considering whether the claimant could reasonably use a manual wheelchair, although such evidence would be useful if it existed.

G1066 It should be possible for the Secretary of State to

1. provide evidence about ways of obtaining inexpensive manual wheelchairs, such as from private companies or charities, if one is required to enable the claimant to work **or**
2. ensure that the availability of manual wheelchairs is not an issue through a DWP scheme.

G0167 The DM will therefore need to explain in decisions, and responses to the FtT, how the claimant could obtain a manual wheelchair if that is required to enable them to take up employment.

## **Evidence**

G1068 The DM should consider requesting advice from disability employment advisers about what provision is available in the claimant's area, including under any DWP Scheme, such as Access to Work, or the Flexible Support Fund, that would enable the claimant to take up an offer of employment.

G1069 For more generic evidence, the FtT could be referred to on-line NHS or local authority guidance about provision of wheelchairs. The DM should also consider whether a manual wheelchair could be made available on rental terms.

### **Reasons for DM's decision**

G1070 DMs in decisions, and responses to the FtT, should explain, based on evidence specific to the claimant, and generic published evidence, why it is considered that

1. it is reasonable to assess the claimant's ability to mobilise with a manual wheelchair if they do not have one **and**
2. the use of a manual wheelchair by the claimant promotes the underlying purpose of the WCA.

G1071 The underlying purpose of the WCA is to assess a person's functionality i.e. what they can do in the modern workplace, and enable them to engage in the labour market where appropriate. People who can use aids such as a manual wheelchair to mobilise, if working in a fully accessible area, are not limited in their capability for some types of work if they are unable to walk. Manual wheelchairs are widely available. It is therefore reasonable to assess a person as if using a manual wheelchair for the required distances where appropriate.

#### **Example 1**

Vincent has mobility problems after an accident at work affecting his right foot. He also suffers from asthma, diabetes and depression. He claimed UC after being medically retired from his job as a van driver. At the face-to-face assessment, Vincent told the HCP that the pain in his ankle stopped him from walking more than short distances using crutches. He went round the supermarket slowly leaning on a shopping trolley, or using an electric wheelchair trolley. When on holiday recently he had been given a wheelchair to get around the airport which his wife had pushed, and he spent his holiday at the hotel or on coach trips. He had not asked to be assessed for a wheelchair as he had nowhere to keep it; he lived in a first floor flat over a shop.

The HCP advises that Vincent has no upper body problem, and the asthma and diabetes are controlled by medication. He should not have any difficulty using a manual wheelchair independently for more than 200 metres. Although Vincent claimed he had problems with standing and sitting, he was able to sit for more than an hour without significant discomfort. His depression is treated with mild anti-depressants, and did not affect his functions to the extent that any mental or cognitive descriptor applied. The DM determines that it was reasonable to assess

Vincent's mobility as if he had a manual wheelchair, and there was no reason why he could not obtain one through the NHS wheelchair service if he needed one to use at work, where it could be stored. Vincent is found not to have LCW.

### **Example 2**

Sasje suffered from injuries to her head and legs in a road traffic accident. She claimed UC after being discharged from hospital. At the face-to-face assessment, her mother told the HCP that Sasje is still unable to walk more than a few steps. She pushes Sasje about in a manual wheelchair supplied by the NHS wheelchair service. Sasje was not given a self-propelled wheelchair, as the wheelchair assessment had identified that she had poor road safety and spatial awareness, possibly as a result of the head injury.

The DM accepts the HCP's recommendation that Sasje is unable to mobilise 50 metres without help, and also requires supervision when in the wheelchair to ensure she does not put herself or others in danger. The DM determines that Sasje satisfies Sch 6 Activity 1(a)(i) (15 points) and 12(c) (6 points), as well as Sch 7 Activity 1(a). She is placed in the support group.

G1072 - G1074

## **Information requirements**

G1075 [\[See memo ADM 16/17\]](#) The information required to determine whether a claimant has LCW or LCWRA is

1. any information relating to the descriptors that may be requested in the form of a questionnaire **and**
2. any additional information that may be requested<sup>1</sup>.

*1 UC Regs, reg 43(1) & Sch 6 & 7*

## **The questionnaire**

G1076 Where the DM is satisfied there is sufficient information to determine whether a claimant has LCW or LCWRA without the questionnaire, that information will not be required<sup>1</sup>.

*1 UC Regs, reg 43(2)*

G1077 Claimants who are treated as having LCW (see ADM Chapter G2) are not required to complete a questionnaire for the purposes of determining LCW, but will be required to provide information relating to the descriptors for LCWRA unless they are also treated as having LCWRA (see ADM Chapter G3).

G1078 The questionnaire is designed for the claimant to give as much information about their condition, how it affects them in their daily functioning, and how they manage their condition.

G1079 Medical services

1. scrutinises evidence regarding a claimant's condition and gives an opinion as to whether
  - 1.1 they are treated as having LCW or LCWRA
  - 1.2 in second or subsequent referrals they actually have LCW or LCWRA without requiring a medical examination
2. provides impartial medical advice on request.

G1080 [\[See memo ADM 16/17\]](#) Medical services is responsible for gathering any information required to support the WCA process. This includes

1. sending the questionnaire (form UC50)
2. sending a reminder if the claimant does not reply within three weeks
3. deciding if further medical evidence is required from the claimant's GP or health care professional.

## The medical report

G1081 Medical services provides an independent medical opinion on the claimant's condition, functionality and their ability to perform activities related to work. They do not provide a diagnostic examination. The focus is on a claimant's abilities rather than their disabilities. HCPs should provide relevant information and good justification for their recommendations with regard to LCW and LCWRA.

G1082 In the main, medical reports are completed electronically. There is no requirement for the report (form UC85) to be signed by the examining HCP<sup>1</sup>. However the report must identify the status of the HCP, i.e. whether he or she is a doctor, a registered nurse, or a registered occupational therapist or physiotherapist as in G1012.

*1 R(IB) 7/05*

G1083 The personalised summary statement forms part of the report form where that is produced electronically, and is also produced as a separate form. It is part of the evidence considered by the DM when making determinations as to whether the claimant has LCW or LCWRA.

G1084 The personalised summary statement is a statement of facts and findings made by the HCP, and is personal to the claimant. It gives the HCP the opportunity to

1. justify their recommendation on the LCW and LCWRA activities and descriptors **and**
2. explain where the recommendation conflicts with the claimant's view of their condition.

G1085 The personalised summary statement should refer to all of the claimant's health conditions, and consider the combined impact where multiple conditions are

present. This should reflect the consensus of medical opinion. It should not introduce new information not already in the report form.

G1086 – G1089

- G1090 The questionnaire, the medical report, and any other medical evidence obtained by medical services, are referred to the DM to consider whether the claimant has LCW or LCWRA. There may be differences between the answers from the claimant and the HCP.

### **Example**

On the questionnaire Kevin indicates he can walk on level ground but cannot walk 200 metres. He also indicates on the form that he can walk about 50 metres before he has to stop due to severe pain. On the medical report the HCP should collect more evidence to identify the actual distance the claimant can walk and the amount of pain and discomfort experienced and how that affects the daily functioning.

The DM then considers the merit of each answer and any other evidence. As with all evidence DMs have to decide what weight to give to the content of the medical report.

**Note:** The report should be read as a whole and any concerns over inconsistent or improbable entries addressed before a determination of LCW or LCWRA is made.

- G1091 There should be no changes made to the content of the medical report other than of a very minor nature e.g. a typing error, and these are to be carried out by the same HCP who completed the original wherever possible. It is permissible for another approved HCP to make the amendment, having consulted the author of the original report, for example to avoid unnecessary delay. However the HCP making the amendment should make it clear that it has been made following consultation. Any other additions or alterations should be provided in a separate document.

- G1092 The medical report includes an opinion of a HCP approved by the Secretary of State on whether any prescribed exceptional circumstances apply. The DM should consider that opinion when deciding whether a claimant can be treated as having LCWRA if they do not satisfy the test from the descriptors<sup>1</sup> (see ADM Chapter G3).

*1 UC Regs, reg 40(1)(b) & (4) & Sch 9 para 5*

## **Second or subsequent referrals**

- G1093 The medical report also includes advice on the period of time that should pass before a claimant is reconsidered for the next WCA process. This advice is given in all cases but the DM can determine afresh whether the claimant still has LCW in prescribed circumstances (see G1020 et seq). This may be at a different time from the advice given on the medical report.

- G1094 In second and subsequent referrals medical services will



1. provide confirmation of the assessments which reach or exceed the threshold to satisfy LCW or LCWRA **or**
2. arrange for a HCP to examine all claimants who do not reach the threshold and provide a medical report on their ability to perform the specified activities **or**
3. provide a recommendation on whether the claimant has LCWRA.

G1095 Not all claimants require an assessment in subsequent referrals. Medical services decides if LCW or LCWRA can be assessed on scrutiny of the available evidence.

## **Failure to return the questionnaire**

G1096 A claimant is treated as not having LCW or LCWRA for failure to return the questionnaire without a good reason<sup>1</sup> if the Secretary of State can show that

1. the questionnaire was sent **and**
2. a further request was sent at least three weeks after the first letter and at least one week has passed since then<sup>2</sup> **and**
3. a good reason has not been given or accepted for delay beyond the period stated in **2.** above.

*1 UC Regs, reg 43(3); 2 reg 43(4)*

## **The Secretary of State's duty**

G1097 The DM needs to make sure that the Secretary of State has complied with the duty set out in the legislation<sup>1</sup> to send the questionnaire and the reminder to the claimant. The DM can accept that it has been sent if there is a record of its issue and no indication that it was not properly addressed, stamped and posted.

*1 Inte Act 78, s 7*

## **Has the questionnaire been sent**

G1098 Care must be taken to identify the date the questionnaire was sent. The date of its issue is only an indication of the date on which it was posted. The DM should consider whether the questionnaire actually left the issuing office and was put into the external mail on the date recorded<sup>1</sup>.

*1 R(IB) 1/00*

## **Has the correct amount of time passed**

G1099 The correct period of time must have passed since the first questionnaire was sent. The period of time starts on the day after the questionnaire is sent and ends at midnight on the last day provided for. If the questionnaire is posted to the claimant's last known address, the date on which it is sent is the date it was posted<sup>1</sup>.

*1 UC, PIP, JSA & ESA (D&A) Regs, reg 3(2)*

### Example

A questionnaire was sent to Jack on 7.10.13. A reminder is due and sent on 29.10.13. If he still does not return the questionnaire, the first day on which the DM can consider whether he should be treated as not having LCW is 6.11.13.

### Good reason

- G1100 If the DM concludes that the Secretary of State has complied with the duty set out in the legislation, they may then go on to consider whether the claimant had a good reason for their failure to return the questionnaire<sup>1</sup> (see G1125 et seq).

*1 UC Regs, reg 43(3)*

### Questionnaire returned before good reason considered

- G1101 As in G1096, the law imposes time limits on the Secretary of State in relation to the sending of the questionnaire and the reminder. However, there is no law imposing a time limit on the claimant for the return of the questionnaire. Sometimes the questionnaire is returned **after** the time limit imposed on the Secretary of State but **before** the DM has considered whether there was a good reason for the earlier failure to return the questionnaire. In these circumstances, the determination cannot be made because it cannot be held that the claimant has failed to return the questionnaire. Instead, normal WCA action should resume.

### Example

A questionnaire was sent to Jayne on 1.7.14. This was not returned so a reminder was sent to her on 23.7.14. If the questionnaire is not returned, the first day on which the DM could consider making a determination treating Jayne as not having LCW is 31.7.14. The DM obtains the case on 11.8.14 to make the determination, but notes that the questionnaire had been received in the office on 6.8.14. The DM cannot make the determination treating Jayne as not having LCW because she has not failed to return the questionnaire. Instead, normal WCA action resumes.

G1102 – G1104

## Medical examination

### General

- G1105 Claimants may be called to attend a medical examination by a HCP approved by the Secretary of State where it has to be determined whether they have LCW or LCWRA<sup>1</sup>. The purpose of the medical examination is to enable the DM, with the benefit of a medical opinion, to determine whether a claimant meets the threshold for LCW or LCWRA.

## **Failure to attend or submit to a medical examination**

G1106 Claimants can be treated as not having LCW or LCWRA if

1. they fail without a good reason to attend for or submit to a medical examination<sup>1</sup> **and**
2. they
  - 2.1 had at least seven days' notice of the examination **or**
  - 2.2 agreed to accept a shorter period of notice<sup>2</sup>.

*1 UC Regs, reg 44(2); 2 reg 44(3)*

G1107 Medical services

1. where possible contacts the claimant by telephone to arrange an appointment for the examination **and**
2. keeps a detailed record of the date, time and place of the examination agreed with the claimant **and**
3. issues written notice to confirm the arrangement (unless the claimant has agreed to accept a shorter period of notice).

## **The Secretary of State's duty**

G1108 Unless the claimant has agreed to accept a shorter period of notice, when considering whether a claimant should be treated as not having LCW or LCWRA, the DM has to be satisfied that the Secretary of State has complied with the duty set out in the legislation<sup>1</sup>, that

1. a written notice was sent **and**
2. the notice included the time and place of the examination **and**
3. the notice was sent at least seven days before the date of the examination **and**
4. the examination had not been cancelled.

*1 UC Regs, reg 44(3)(a)*

G1109 If, after calculating the period of time which passed between the date the written notice was sent and the time of the examination, the DM decides that seven days had not elapsed<sup>1</sup>, they should consider whether the claimant has agreed to accept a shorter period of notice whether given in writing or by telephone. If there is no evidence that the claimant had agreed to accept a shorter period of notice the claimant cannot be treated as not having LCW.

*1 UC Regs, reg 44(3)(a)*

G1110 Where the claimant has agreed to accept a shorter period of notice the DM considers the appropriate amount of time agreed between medical services and the claimant<sup>1</sup>. Medical services always send a confirmation of the date, time and venue of the appointment whether or not this has been agreed in a telephone call with the claimant.

*1 UC Regs, reg 44(3)(b)*

G1111 Only one rescheduled appointment can be offered during a WCA referral. If the claimant cannot attend the rescheduled appointment, medical services will record that the claimant has failed to attend. The DM will have to consider the reasons why the claimant cannot attend and consider whether this was because of a good reason (see G1125 et seq).

G1112 If the DM cannot confirm that the provisions in G1108 were met, the claimant cannot be treated as not having LCW or LCWRA.

**Note:** Medical services can provide evidence of notification for requests from DMs who are considering revision or supersession of disallowance determinations and preparing appeal responses.

### **Has notice been sent**

G1113 The DM needs to be sure that the claimant has been sent notice. The DM can accept that it has been sent if there is a record of its issue and no indication that it was not properly addressed, stamped and posted<sup>1</sup>. In addition the DM should make sure that the notice was in writing and included the time and place of the medical examination unless the claimant had agreed to accept a shorter period of notice. Medical services always send a confirmation of the date, time and venue of the appointment whether or not this has been agreed in a telephone call with the claimant.

*1 Inte Act 78, s 7*

### **Have seven days passed**

G1114 Where there is no evidence that the claimant agreed to accept a shorter period of notice, the DM needs to be sure that the correct period of notice has been given. The DM has to decide when the notice was sent. The day after is day one. Seven clear days of notice have to pass before the date of the examination<sup>1</sup>.

*1 R(1B) 1/00*

### **Example 1**

A letter giving the time and place of a medical examination is prepared and placed in the post tray at 3pm on Friday 1st. Because of the timing of the internal post collection it does not reach the post room until Monday lunchtime and leaves the office in the external mail on Monday at 5pm. The appointment is timed for Monday 11th. The recipient does not attend. It is not possible to treat the claimant as not

having LCW because if Tuesday 5th is Day one, Monday 11th is Day seven and they have not received seven days clear notice.

### **Example 2**

A letter giving the time and place of a medical examination leaves the office on Wednesday 6th. The appointment is timed for Thursday 14th. The recipient does not attend. Subject to good reason the claimant is treated as not having LCW because Thursday 7th is Day one, Thursday 14th is Day eight and they have received at least seven days clear notice.

### **Has the appointment been cancelled**

G1115 Claimants cannot fail to attend the medical examination if the appointment had already been cancelled by medical services. The DM should investigate any indications that the claimant had made contact with the issuing office before the time of the examination. This is so that they can satisfy themselves that the appointment had been left open for the claimant.

### **Good reason**

G1116 If the DM concludes that the Secretary of State has complied with the duty set out in G1108 they may go on to consider whether the claimant had a good reason for their failure to attend to medical examination.

### **Failure to submit**

G1117 Where a claimant attends a WCA but fails to participate in the process the assessment is terminated. This may happen where a claimant

1. refuses to be examined **or**
2. poses a threat to staff or others **or**
3. shows inappropriate or threatening behaviour **or**
4. shows intoxication from alcohol or substance abuse **or**
5. is persistently uncooperative.

G1118 Medical services will record a full and detailed account of the claimant's behaviour and refer to the DM to decide whether the claimant should be treated as not having LCW or LCWRA due to a failure to submit to an examination.

G1119 If a claimant makes it clear after going to the examination that they will not be medically examined then that constitutes a failure to submit to an examination<sup>1</sup>.

G1120 A claimant fails to submit to an examination not only by refusing to be examined but also if that claimant seeks to impose as a condition of being examined a term which would render the examination useless for the purpose for which it is required.

### **Example**

The claimant requests the medical report should not be passed to a layman, including a DM, insisting on complete confidentiality. By imposing such a condition the examination becomes useless for the purposes for which it was required and the claimant is failing to submit to an examination.

### **Good reason**

G1121 If the DM concludes that the Secretary of State has complied with the duty set out in G1108 they may go on to consider whether the claimant had a good reason for their failure to submit to a medical examination (see G1125 et seq).

G1122 – G1124

## **Consideration of good reason**

G1125 The claimant will have been asked to give the reasons for not complying with the Secretary of State's request for information or to attend or submit for examination. The DM should bear in mind the guidance about considering evidence in ADM Chapter A1 (Principles of decision making and evidence).

G1126 The onus of proving good reason lies with the claimant who fails to comply. The test of good reason is whether the DM judges the reason for non-return or non-attendance or failure to submit to be reasonable and likely on the balance of probabilities.

G1127 The DM may determine that a claimant is treated as not having LCW if

1. they have failed to
  - 1.1 return the questionnaire **or**
  - 1.2. attend or submit for examination **and**
2. they have
  - 2.1 not replied to enquiries **or**
  - 2.2 given an explanation that does not amount to a good reason.

### **Repeated failures**

- G1128 Where a claimant repeatedly fails to attend an examination and good reason is accepted the DM should consider the previous reasons critically. It may be appropriate to require further evidence to support any explanation of the subsequent failure. Wherever possible the DM should contact the claimant to discuss the importance of attendance.
- G1129 However, the fact that good reason was previously accepted is not a reason for concluding that the claimant should be aware of the requirement to attend a subsequent appointment. The same reasons for the failure may continue to demonstrate that good reason is shown, such as in the case of a claimant who has a long term mental health problem who can only intermittently comply with the processes necessary to manage their benefit claim due to the effects of their condition and its treatment.
- G1130 The DM may wish to consider whether it would be possible to ensure that the claimant does not fail to attend future appointments where the nature of the claimant's health condition is the reason for good reason being accepted and the health condition is likely to be long term. For example, if the evidence shows that the claimant is not capable of arranging their own affairs, is appointee action appropriate? Should a home visit be considered?

### **Example**

Gerry failed to attend for an examination and does not respond to enquiries as to why, so the DM ends his UC award. Subsequently, he provides evidence that on the day of the examination he had a panic attack on the way to the assessment centre. He was taken to the hospital and was discharged later that day. The DM accepts that good reason was shown and so reinstates his UC.

Gerry fails to attend a subsequent appointment and in response to enquiries says that he had a panic attack and felt unable to leave the house on the day of the appointment and was too anxious to explain this at the time. The DM accepts that good reason was shown and asks Medical Services to consider a home visit.

### **Good reason - some scenarios**

- G1131 Any reasons given for the non-return of the questionnaire should be judged on the balance of probabilities. Whether the reasons for delay amount to good reason depends upon whether the DM considers, for example,
1. it was reasonable not to return the questionnaire on this occasion **or**
  2. if non receipt by the office or claimant was more probable than not.
- G1132 If a claimant says that they were too ill to attend because of the nature of their disability, the DM should ask for evidence to support this. If the claimant is usually able to get out, for example to the doctor or hospital, good reason should only be

accepted if it is unreasonable to expect the claimant to have attended on that occasion. Exceptionally, a claimant may be examined at home if they are unable to travel.

- G1133 A claimant may say they were too ill to attend because of a condition unrelated to their disability, for example they may say that they had flu at the time of the appointment. If the DM accepts the evidence, the claimant has a good reason for their non-attendance.
- G1134 Good cause (or reason) was not accepted in a case where a claimant had tried to avoid attending several examinations by submitting final certificates. In the particular circumstances the final certificate was irrelevant because it was replaced by an open statement which included the day of the examination<sup>1</sup>.
- 1 R(S) 12/59*
- G1135 If the claimant contends that they did not receive the notice of the appointment, DMs should satisfy themselves that the notice was sent. The DM should give consideration to the date on which the written notice was posted, the time sufficient to show whether or not it would have been collected from the post box, the address to which it was posted and whether by first or second class post. The DM should also be satisfied the letter has not been returned undelivered.
- G1136 The DM will normally need better evidence of the address to which it was posted than a later computer generated print out showing the address on the file at that later date. If there is no evidence to show whether first or second class post was used the DM should assume that second class post was used. If it was sent it can be assumed it was delivered unless there is evidence to the contrary.
- G1137 Where the claimant says the postal difficulties are specific to them or their address, all of their circumstances are to be given fair consideration. They will have to show that they have done enough to ensure as far as is reasonably possible that they receive their mail, special care may be expected in the cases of accommodation addresses and premises in multiple occupation.
- G1138 Sometimes it may be right to reject a claimant's allegation of non-receipt where the excuse extends to a number of letters, or is coupled with suspicious circumstances, or if the non-receipt of mail is selective so that only certain letters are not received. However the uncontradicted evidence of the non-receipt of a single letter in plausible circumstances, such as the communal delivery of mail to particular premises where another person went through the mail before the claimant had a chance to do so may establish a good reason.
- G1139 DMs can see all changes of address and when the changes were effective from in the relevant medical services computer system to help them decide where the questionnaire was sent and when.



G1140 If a claimant attends but refuses to have a physical examination, for example because of genuinely held religious beliefs, the DM should normally accept a good reason unless it is evident that the refusal is based on a prejudice against or distaste for the examination rather than because of a particular belief<sup>1</sup>.

*1 R(S) 9/51*

G1141 It is possible for the DM to consider that a claimant did not have a good reason for failure to submit to an examination because of drunkenness, drug abuse or other problem behaviour. However if the behaviour is a symptom of the stated medical condition such as alcoholism, rather than an isolated occurrence, the claimant may have a good reason.

G1142 If a claimant did not attend for medical examination because a consultant advised that attendance was not necessary, that does not show a good reason for failing to attend for medical examination. Irrespective of the claimant's medical advisor's opinion as to LCW or LCWRA, a claimant is obliged to abide by the rules for claiming benefit.

G1143 A failure to comply with a notice to attend a medical examination will usually be deliberate, except in cases where, through mental illness or disablement, the claimant is unable to make a choice between attendance and non-attendance. The question is whether there is a good reason for the deliberate failure to comply with the notice.

G1144 – G1999

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