

## **Work Capability Assessment Independent Review**

### **TUC response to the Call for Evidence**

1. The TUC welcomes the opportunity to present our views in this consultation. The TUC is the voice of Britain at work. With 58 affiliated unions representing more than six million working people from all walks of life, we campaign for a fair deal at work and for social justice at home and abroad. We negotiate in Europe, and at home build links with political parties, business, local communities and wider society.

### ***Disabled people and employment***

2. The TUC's overriding concern is that the Work Capability Assessment (WCA) does not assess the chances that disabled people have of actually moving into work. We do not believe that capability should be assessed separately from employability, and are concerned that the introduction of the WCA has led to large numbers of disabled people facing significant new responsibilities to seek work or engage in work-related activity while their chances of actually moving into jobs remain very low.
3. Research undertaken by the EHRC has shown that prior to the start of the recent recession, in the first quarter of 2008, adults who were DDA<sup>1</sup>-disabled had employment rates of 48 per cent.<sup>2</sup> In contrast, the general working-age employment rate for the same period was 73 per cent.<sup>3</sup> Government data shows that, in 2007, disabled people had the lowest employment rate and the highest employment rate gap of any of the large disadvantaged groups reported on in the DWP's Opportunity For All reports.<sup>4</sup>
4. The EHRC's study also shows that over the recession the employment prospects for disabled people became worse: the employment rate for DDA-disabled people fell slightly between Q1 2008 and Q3 2009 (-0.2 percentage points) and their ILO unemployment rate rose 1.1 points (in Q1 2008 the unemployment rates for DDA-disabled people was 8.5 per cent, and this had risen to 10.1 per cent by Q3 2009). While the EHRC's analysis suggests that disabled people have not been disproportionately affected by the downturn, they conclude that this has been "mainly because their prior levels of labour market participation were simply so low".<sup>5</sup> They also state that: "to the extent that they are perceived by employers to be more expensive to employ and/or less productive, [disabled people's] labour market outcomes may be more vulnerable if the return to growth is delayed...and there may be longer-term impacts on employers' willingness to employ them, or on the introduction of more workplace measures to support them, if the recovery is delayed or future downturns are expected. Thus, while in the short run employers may have tried to keep on those with disabilities, this may still change."
5. The DWP have also shown that disabled people's chances of having a job depend on many factors and that there are major variations in employment rates within the group

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<sup>1</sup> DDA refers to the Disability Discrimination Act 1995

<sup>2</sup> EHRC and Government Equalities Office (2009) *Monitoring update on the impact of the recession on various demographic groups* London: EHRC.

<sup>3</sup> ONS Labour Market statistics, August 2010 release.

<sup>4</sup> TUC (2009) *Recession Report July 2009 The Recession and Disabled People* London: TUC

<sup>5</sup> EHRC, *Ibid.* p27.

of disabled people. Employment rates vary significantly according to the specific conditions and impairments that disabled people have, and the overall severity of impairments, disabled people's ages and their educational backgrounds.<sup>6</sup> For people with learning disabilities and mental health conditions in particular, employment rates are low - recent data show that employment rates range from just over one in ten for people with mental health problems and less than one in five for people with learning disabilities to more than six in ten for those with diabetes, skin conditions or chest/breathing problems.<sup>7</sup> Overall, evidence shows that the multiple disadvantages that disabled people face mean that they are less likely to move into work. For example, a DWP survey of people who moved *voluntarily* from Incapacity Benefit (IB) to Jobseeker's Allowance – a group it seems reasonable to expect are closer to the labour market than the general group of IB claimants - found that while, on average, 28 per cent of all disabled and non-disabled people claiming JSA were still on the benefit a year later, for people who moved there from IB, the figure was 45 per cent.<sup>8</sup>

6. Across the economy, there are currently only 481,000 jobs available, with the most recent data showing a monthly fall in the vacancy level.<sup>9</sup> The ratio of jobs to unemployed people is 1:5, and in parts of the country there are even fewer vacancies (for example in Hackney, the ratio of jobs to jobseekers is around 1:27).<sup>10</sup> Nationally there are 2,457,000 people who are unemployed, and around 2,339,000 people who are economically inactive and would like to work. Competition for jobs is the greatest that it has been for many years, meaning that the chances of disabled people, particularly those who have experienced long-term worklessness, moving into employment are lower than they have been for much of the last decade. In addition, disabled people will not be able to reasonably undertake all of the few jobs that are available (as set out above, as a result both of their skills and experience – disabled people are more likely to have lower qualifications<sup>11</sup> – and/or their disabilities themselves) further limiting their access to job opportunities.
7. Labour market data do not suggest that vacancy levels will show significant improvement in the near future, and evidence from previous recessions suggests that it is likely to take close to a decade for employment levels to recover to their pre-recessionary levels.<sup>12</sup> CIPD believe<sup>13</sup> that by 2015 employment levels will only be 100,000 more than at present, and analysis undertaken by the Scottish Government<sup>14</sup> suggests that private sector jobs growth in future years will not be strong enough to counter public sector job losses, leading to an overall fall in employment by 2014/15.

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<sup>6</sup> Berthoud R (2006) *The Employment Rates of Disabled People* London: DWP.

<sup>7</sup> Office For Disability Factsheet: *Employment* <http://www.officefordisability.gov.uk/research/facts-and-figures.php>.

<sup>8</sup> Ashworth K, Hartfree Y, Stephenson A (2001) *Well Enough to Work? Research Report No 145* London: DWP p 50.

<sup>9</sup> <http://www.tuc.org.uk/economy/tuc-18364-f0.cfm>. Between June and July 2010 the number of vacancies fell by 9,000.

<sup>10</sup> TUC analysis of ONS vacancy data: <http://www.tuc.org.uk/welfare/tuc-18072-f0.cfm>.

<sup>11</sup> TUC (2009) *Recession Report July 2009: The Impacts of the Recession for Disabled People* London: TUC.

<sup>12</sup> TUC analysis published on the Touchstone Blog: <http://www.touchstoneblog.org.uk/2010/07/office-for-budget-responsibility-are-the-jobs-forecasts-credible/>.

<sup>13</sup> CIPD, Press Release, Britain facing at least half a decade of serious jobs deficit, says CIPD, 13<sup>th</sup> July 2010 <http://www.cipd.co.uk/pressoffice/articles/workaudit140710.htm>.

<sup>14</sup> Scottish Executive (2010) *Independent Budget Review: the report of Scotland's Independent Budget Review Panel - July 2010* Edinburgh: Scottish Executive.

8. The Office for Budget Responsibility estimate that 460,000 public sector jobs will be lost by 2014/15<sup>15</sup> – and other estimates suggest that job losses in the public sector will be even higher.<sup>16</sup> Recent years have seen significant increases in the numbers of disabled people employed in public sector jobs,<sup>17</sup> and DWP recognise that the “public administration, education and health” sector has the highest employment rate for disabled people.<sup>18</sup> As public sector vacancies reduce and posts are made redundant, an important source of jobs for disabled people will be closed.
9. The Government’s programme of public sector cuts will also have a disproportionate impact on disabled people’s chances of being able to move into work. For example, significant cuts in public transport services will impact on disabled people’s ability to travel to work, cuts in health and social care services are likely to limit some disabled people’s ability to work and cuts in Housing Benefit will limit the areas in which unemployed disabled people are able to live, meaning that they may have to move away from areas where there are accessible jobs. A long history of inequality in education means that disabled people already have much lower levels of qualifications than the rest of the population – cuts in training and university budgets will only serve to increase this gap.<sup>19</sup>
10. Research also demonstrates that across the economy disability discrimination remains widespread among employers. For example, one recent survey the Chartered Institute for Personnel and Development (CIPD) found that 33.1 per cent of CIPD members *excluded* people with a history of long-term sickness or incapacity from employment opportunities in their businesses, even though such a policy would almost certainly leave employers very exposed should a disappointed applicant use the Disability Discrimination Act against them.<sup>20</sup>
11. Research undertaken by the DWP<sup>21</sup> shows that in 2007, even before the recession, only eight countries internationally had higher employment rates for disabled people than the UK, with an average employment rate of 53 per cent among this group. Given that many of these countries invest far more than the UK in welfare to work programmes, that most have significantly more regulated labour markets and that the recession has reduced employment rates for all groups across the UK, it seems extremely unlikely that disabled people’s employment rates in the UK will surpass this level in the near future. We therefore question the appropriateness of an assessment that finds only 6 per cent

<sup>15</sup> Office for Budget Responsibility *Employment Forecast*, 30 June 2010.

[http://budgetresponsibility.independent.gov.uk/d/employment\\_forecast\\_300610.pdf](http://budgetresponsibility.independent.gov.uk/d/employment_forecast_300610.pdf).

<sup>16</sup>CIPD, Press Release, June 2010 *Deficit Reduction Measures Will Raise UK Unemployment Close to 3 Million by 2012* London: CIPD.

<sup>17</sup> Hirst M, Thornton P, Dearey M and Maynard Campbell S (2004) *The Employment of Disabled People in the Public Sector: A Review of Data and Literature* London: Disability Rights Commission.

<sup>18</sup> DWP (2008) *Department for Work and Pensions: Secretary of State Report on Disability Equality* London: DWP p37.

<sup>19</sup> TUC (2009) *Recession Report* Ibid.

<sup>20</sup> CIPD (2005) *Labour Market Outlook: Winter 2005* London: CIPD

<sup>21</sup> International comparative research on disabled people’s employment undertaken internally by the DWP and provided to the Social Security Advisory Committee in August 2010. The DWP has indicated that the information is not confidential and may be referenced externally. The countries are Austria (48 per cent); Luxemburg (50 per cent); Sweden (51 per cent); Switzerland (52 per cent); Denmark (52 per cent); Finland (54 per cent); Mexico (55 per cent); and Iceland (61 per cent).

of disabled people are incapable of work: the international evidence suggests that a minimum of 41 per cent of the disabled people who are not in the support group will not move into jobs.

12. Despite the reduced employment opportunities that disabled people face, the WCA is designed to assess whether a person is 'capable' of work regardless of what their chances are of being 'employable'. *We believe that disabled people's benefit entitlements should take account of their actual chances of getting a job, rather than on abstract notions of whether they are capable of working in non-existent employment opportunities. We agree with the Disability Benefits Consortium that rather than simply assessing whether someone can work, the WCA should be amended to evaluate the full range of employability factors including an individual's barriers to work. We would like to see the WCA amended so as to reflect not just individuals who are incapable to taking any work at all, but the specific barriers that disabled people face to accessing work and their broad chances of finding sustainable work.*

### **WCA and wider social security and welfare policy**

13. Our concern about the limitations of the WCA, and its assessment of 'capability' as separate from 'employability', is particularly acute given wider Government reforms to the social security system. Specifically, we are extremely concerned about the 10 per cent reduction in Housing Benefit that, from 2013/14, will be incurred by those who have spent a year on JSA without moving into work, and about the likely introduction of a workfare programme (as set out in the Conservative manifesto) for those who have spent two years out of work and claiming JSA. As a result of the WCA process, disabled people who are assessed to be 'fit for work' or 'capable of some work', yet have an extremely low chance of being employed, will therefore face not only lower weekly benefit payments than those in the ESA support group, but a risk of significant financial hardship and compulsory unpaid work should they spend more than a year on JSA.
14. The wider system social security and welfare to work systems also have real impacts both for disabled people's welfare and their chances of moving into work – and we do not believe that an assessment of disabled people's capability to work should be undertaken without regard to the quality of services and support that are available to disabled people who have the responsibility to seek work placed upon them.
15. We are concerned that as the conditionality that disabled people face has increased there has not been a corresponding improvement in the programmes and support available for disabled jobseekers. Evidence from the evaluation of Pathways to Work found very clearly that those who were the hardest to help were subject to 'parking' and that providers were not providing adequate resources to support those facing the greatest disadvantage to move into jobs.<sup>22</sup> International evidence on privately contracted welfare to work services suggests similar outcomes. For example, one recent review of practice in Australia, Denmark, Germany and the Netherlands concluded that: "a market-driven approach to providing employment support has been found to be ineffective because it promotes the 'creaming' and 'parking' of jobseekers, particularly

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<sup>22</sup> Hudson M, Phillips J, Ray K, Vegeris S and Davidson R (2010) *The influence of outcome-based contracting on Provider-led Pathways to Work* London: DWP

for those who have complex, multiple and long-term needs".<sup>23</sup> To date we have seen no evidence from the Government that the new Work Programme will not have similar flaws.

16. We are also concerned about the level and quality of support that will be made available to disabled people who are receiving support from Jobcentre Plus. We note that the Department has pledged to make this provision 'low cost'<sup>24</sup> and question what this means for the quality of services that disabled people are likely to be provided with.
17. An additional concern is that the WCA takes no account of whether or not aids and adaptations are actually *available* for disabled people to enable them to work. The recent Work Capability Assessment Internal Review stated that "by accounting for any aids and adaptations which an individual may successfully and reasonably use to mitigate the disabling impact of their condition, their actual capability can be identified." However, should these aids and adaptations not be available it stands to reason that capability as assessed by the WCA will be reduced. The Government has as yet failed to confirm that it will honour the previous Government's pledge to double the budget for Access to Work,<sup>25</sup> is committed to significant cuts in departmental expenditure (which are highly likely to impact, for example, on social care services) and has also proposed measures which aim to reduce the DLA caseload by 20 per cent.<sup>26</sup> In this context of likely reductions in the support that disabled people can expect to help them with aids and adaptations in the workplace, it seems incongruous that the WCA does not take account of whether or not such support will actually be provided.
18. Finally, we are concerned that the conditionality disabled people face in the benefit system, and the WCA's assessment as to whether or not they are capable of work, takes no account of the quality of the jobs they are being asked to undertake. Some of the jobs that are available for disabled people, and other jobseekers, are not beneficial for health. We do not believe that the benefits system should force disabled people into jobs that could damage their health or exacerbate existing conditions, and maintain that people whose condition causes them pain or fatigue should not have to look for (or stay in) employment. The recent Marmot Review of Strategic Health Inequalities concluded that "being in good employment is protective of health", but that "insecure and poor quality employment is also associated with increased risks of poor physical and mental health".<sup>27</sup> For disabled people, the damaging impacts of bad work can be even greater than for the general population. In our view, any measure of capability for work should take account of the negative impacts that bad work can have for disabled people's health.

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<sup>23</sup>Child Poverty Action Group (2008) *Contracting out employment services: lessons from Australia, Denmark, Germany and the Netherlands* London: CPAG

<sup>24</sup> DWP, Explanatory Memorandum, The Employment and Support Allowance (Limited Capability for Work and Limited Capability for Work-Related Activity) Amendment Regulations 2011, published by the Social Security Advisory Committee, p.11. <http://www.ssac.org.uk/pdf/esa-amendment-regulations-2011.pdf>.

<sup>25</sup> The previous Government committed to double the budget from £69m to £138 by 2013/14 – as yet there has been no announcement as to whether or not this pledge will be upheld by the new Coalition administration.

<sup>26</sup> HMT (2010) *Budget 2010 policy costings* London: HMT

<sup>27</sup> The Marmot Review (2010) *Fair Society, Healthy Lives Strategic Review of Health Inequalities in England post-2010* London: Department of Health, p.26

## **The work of ATOS Healthcare**

19. The TUC note that much criticism has been directed at the quality of the assessments undertaken by ATOS healthcare. We do however reiterate the views of Prospect, set out in their full submission to this call for evidence, that it is not the medical professionals and advisers employed by ATOS who are responsible for the content of the assessments that they are employed to administer.
20. We also highlight the view of ATOS employees, as set out in the Prospect submission, that ATOS are not allowing their staff adequate time to complete assessments. Their view that 'the number of claimants a Medical Adviser/Health Care Professional might be expected to see in a day can be wholly unrealistic' is of concern to the TUC as we believe this suggests that staff resources may be one reason for large numbers of incorrect assessments being challenged at tribunal.

## **Monitoring and evaluation**

21. We have a number of specific concerns as to how the roll out of the WCA is being monitored. The numbers of appeals being made against WCA assessments are high, and as the DWP acknowledge the number of successful appeals (40 per cent of decisions) are also significant. We believe that this suggest fundamental flaws with the process by which evidence is gathered for the WCA assessment. We would like to see further work being done to segment the group of claimants who have achieved successful appeals and to understand the problems that are arising.
22. We also share the concern of the Disability Benefits Consortium regarding the large proportion of claimants (37 per cent) who close their claims before the assessment process has ended. A significant number of claimants in this group may simply give up on their claims due to frustration with the process, and will therefore find themselves without access to the support they are entitled to. We believe that DWP should act to improve its information on this group, and to track outcomes among them.
23. In addition, we would like to see a comprehensive evaluation process put in place to ensure that learning is captured as the WCA is rolled out among existing incapacity benefit claimants, and to ensure that outcome data are collected for disabled people who are assessed. At present little information appears to be available on the post-assessment outcomes for disabled people including outcome data by type of disability, skill level or age. We believe that such data should form an important part of future assessments of the WCA.

## **Conclusion**

24. Unions have always feared that theoretical 'new rights' for disabled people would go hand-in-hand with concrete new responsibilities, meaning that many disabled people would face years of being bullied into applying for jobs they know they have little chance of getting, and with stress, loss of self-esteem and deteriorating health conditions as a consequence.<sup>28</sup> The introduction and implementation of the WCA has confirmed these concerns. We strongly believe that the Government needs to evaluate

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<sup>28</sup> TUC (2008) *Response to Welfare Reform White Paper* London: TUC <http://www.tuc.org.uk/welfare/tuc-15630-f0.pdf>

its approach to assessing capability to work, recognising that employability is a far fairer and more accurate measure of disabled people's labour market prospects.