



## FAQ

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# Engaging with the work capability questionnaire and examination

## Overview

This Frequently Asked Questions document provides an overview of the different aspects of the work capability questionnaire, with a particular focus on;

- the Department’s duty to provide notice to claimants,
- what happens if a claimant fails to engage with the work capability assessment,
- and what is ‘good reason’ when it comes to failing to engage with the questionnaire or medical examination.

**For free, tailored advice on any of the issues discussed in this document, or any other aspect of social security law, please call (028) 9024 4401 to speak with the specialist advice team at the Law Centre.**

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### What is the work capability assessment?

The work capability assessment examines a claimant’s ability to perform specified activities in light of their physical or mental health condition. Capability is judged against a set of activities, with points attributed to different descriptors within each activity. Generally a score of 15 points is necessary to demonstrate limited capability for work. The test considers a claimant’s ability to perform any form of work or work-related activity – it is not associated with a specific occupation.

### Why is the work capability assessment important?

The work capability assessment is used to determine whether a claimant has Limited Capability for Work (LCW) or Limited Capability for Work Related Activity (LCWRA), which is relevant for both Universal Credit (UC) and Employment & Support Allowance (ESA) claims.

An assessment of LCW can lead to a reduction in a claimant’s work conditions and provide entitlement to National Insurance credits. An LCW assessment can also provide access to a work allowance for Universal Credit claimants. An award of the LCWRA can furthermore result in an additional payment and no work related requirements. can also have an impact upon claimant income and work allowance deductions or their entitlement to receive a Carer’s element within their award.

## When is a work capability assessment carried out?

A work capability assessment is usually carried out where a decision maker is asked to determine, for the first time, whether a claimant has limitations in their ability to work as a result of their physical or mental health condition. In this case, the claimant would start their health journey and begin their work capability and medical assessment.

Alternatively, a decision maker may want to determine whether a claimant who has already been found to have LCW or LCWRA continues to have limited capability for work and work related activity.

## Does a claimant with pre-existing LCW or LCWRA under ESA have to be reassessed if they move to UC?

A claimant moving from ESA to UC will continue to have the same work capability status attached to their award as they previously were assigned.<sup>1</sup> However, a further work capability assessment may be carried out in order to reconsider whether the claimant continues to have LCW or LCWRA, i.e. if a change in circumstances has occurred.<sup>2</sup>

## A claimant was previously found **not** to have LCW or LCWRA, can they request a work capability assessment again?

If a claimant has been found to not have LCW or LCWRA in either their UC or ESA claim, a new work capability assessment will not be carried out unless there is evidence to suggest that the determination was incorrect in relation to a material fact, or there has been a relevant change in their circumstances and their physical and/or mental health condition has gotten worse.<sup>3</sup>

## How does the work capability assessment work?

After a claimant has reported their illness or disability, the Department will ask the claimant to complete a '**capability for work questionnaire**'. The questionnaire has been designed for the claimant to give as much information as possible about their condition and how it impacts their daily ability to perform the assessed functional activities.

The Department will review the claimant's returned questionnaire and any supportive evidence before determining if there is enough evidence to support a decision of LCW or LCWRA. If a claimant has additional supporting evidence they should submit this along with their questionnaire as this may allow a decision to be made without an assessment. If it is determined that there is insufficient evidence to support an LCW/LCWRA award the Department will request the claimant attend a medical

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<sup>1</sup> Department for Communities, [Advice for Decision Making – G: Work Capability Assessment | LCW | LCWRA](#), G1035

<sup>2</sup> Ibid 1, G1020

<sup>3</sup> The [Universal Credit Regulations \(Northern Ireland\) 2016](#), Reg. 42(4)

assessment with the Department's Assessment Provider (Capita). In the majority of cases the claimant is referred for an assessment with the Assessment Provider.

### What happens if a claimant fails to respond to a work capability request or engage with the medical assessment?

A claimant can be treated as not having LCW or LCWRA if, without good reason, they fail to:

- Return their work capability questionnaire, or
- Participate in their medical assessment,

### Is the work capability questionnaire a mandatory step in the work capability assessment?

If a decision maker is satisfied that there is sufficient information and evidence to determine LCW or LCWRA without a questionnaire, then this information will not be required and a decision can be made without the need for further input from the claimant.<sup>4</sup> In most circumstances however the Department will require the claimant to provide a completed work capability questionnaire.

### How long do I have to return my work capability questionnaire?

Claimants normally have at least four weeks to return their completed work capability questionnaire. The claimant should be sent a reminder about returning the questionnaire three weeks after it was initially sent, and at least one week has passed since then, i.e. 4 weeks from the date their original letter was sent.<sup>5</sup>

### What happens if I fail to return my work capability questionnaire?

If a claimant fails to return their work capability questionnaire they will be treated as **not** having LCW or LCWRA if the Department can show:

1. That the questionnaire was sent to the claimant, and
2. A further request to return the questionnaire was sent at least three weeks after the initial letter, and one week has passed since then<sup>6</sup>, and
3. The claimant did not have a '**good reason**'<sup>7</sup> for their delay in returning the questionnaire.

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<sup>4</sup> Ibid 3, Reg. 44(1) & Sch 6 & 7

<sup>5</sup> Ibid 3, Reg. 44 (4)

<sup>6</sup> Ibid 3, Reg. 44(4)

<sup>7</sup> Ibid 3, Reg. 44(3)

## What is the Department's duty when sending the work capability questionnaire?

The Department must comply with their duties, including that:

- The questionnaire and the reminder had been sent to the claimant and that there is a clear record of its issue. The date of its issue is only an indication of the date on which it was posted and decision makers should consider whether the questionnaire actually left the issuing office on the date recorded.<sup>8</sup>
- The correct period of time has passed since the initial questionnaire was sent to the claimant. This period of time starts on the day after the questionnaire is sent and ends at midnight on the last day as provided.<sup>9</sup> Advisers should also note that if the questionnaire is posted to the claimant's last known address, the date on which it is sent is the date that the questionnaire was posted.<sup>10</sup>

If we consider the example of Joe:

A work capability questionnaire was sent to Joe on the 03/03/2025. A reminder was sent on the 24/03/2025. If Joe does not return the questionnaire, the first day on which the Department can consider that he does **not** have LCW or LCWRA due to him not returning the questionnaire is 01.04.2025.

## What happens if the claimant returns the work capability questionnaire late?

The law imposes specific timeframe, before which the Department can determine if there has been a failure without good reason to return the work capability questionnaire, i.e. three weeks after the initial questionnaire is sent and then at least one week has passed since the reminder was sent.<sup>11</sup> This means that overall at least four weeks will have passed before the decision maker is able to determine if there was a failure to return the form without good reason.

If a claimant returns their form before a determination, then there can be no decision that the claimant failed to return the form without good reason. This is because the form has already been returned.<sup>12</sup>

Let's consider Elise's circumstances:

Elise was sent a questionnaire on 26.02.24, but she did not return it straight away. The Department waited at least 3 weeks before sending a reminder on 20.03.25. If Elise does not return her questionnaire, the first day that the decision maker can determine that she failed without good reason to return the questionnaire is 28.03.25. If the decision maker does not make a determination until 04.04.25, but discovers that the questionnaire was returned on 03.04.25 then they are unable to treat Elise as not having LCW for failure to return the questionnaire. Therefore, the normal work

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<sup>8</sup> R(IB) 1/00

<sup>9</sup> Ibid 1, G1099

<sup>10</sup> The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment And Support Allowance (Decision and Appeals) Regulations (Northern Ireland) 2016, Reg.3(2)

<sup>11</sup> Ibid 3, Reg. 44(4)

<sup>12</sup> Ibid 1, G1101

capability assessment will continue and Elise will receive her decision or have to attend a medical examination.

### What is the medical examination?

If there is not enough information and evidence with the work capability questionnaire, a claimant can be asked to attend a medical examination with a healthcare professional to determine whether they have LCW and LCWRA.<sup>13</sup>

The purpose of the medical examination is to enable the decision maker, with the benefit of a medical opinion, to determine whether a claimant meets the threshold for LCW or LCWRA. The examination can be conducted in person, by telephone or even by video appointment.

The healthcare professional should have a copy of the claimant's work capability questionnaire and during the assessment they will be trying to identify which descriptors apply to them with respect to both parts of the work capability assessment. This will include asking the claimant questions about their day-to-day life, hobbies and leisure activities.

### What happens if the claimant fails to attend or submit to a medical examination?

A claimant can be treated as **not** having LCW or LCWRA if they fail to attend or submit to a medical examination without a 'good reason'<sup>14</sup>, **and** they have had at least seven days' notice in advance of the examination or agreed to accept a shorter period.<sup>15</sup>

Where a claimant attends the examination for their work capability assessment but fails to participate in the assessment process then their work capability assessment can be terminated.<sup>16</sup> Examples of failing to submit include:<sup>17</sup>

- Refusing to be examined.
- Posing a threat to staff.
- Showing inappropriate or threatening behaviour.
- Showing intoxication from alcohol or substance abuse.
- Being persistently uncooperative.

A claimant can also fail to participate in the assessment process if they do not undergo an examination or if they seek to impose a condition on their examination that would render it useless for the purpose it was required.<sup>18</sup> For example, the claimant requested that the medical report not be shared with the decision maker and insisting on complete confidentiality.<sup>19</sup> In the case of *CH v SSWP (ESA)* [2017] UKUT 6 (AAC), the claimant refused to submit to their examination because the healthcare

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<sup>13</sup> Ibid 3, Reg.54(1)

<sup>14</sup> Ibid 3, Reg.45(2)

<sup>15</sup> Ibid 3, Reg 45(3)

<sup>16</sup> Ibid 1, G1117

<sup>17</sup> Ibid 1, G 1117

<sup>18</sup> CIB/849/2001

<sup>19</sup> Ibid 1, G1120 & CIB/849/2001

professional was not a doctor and their insistence of this as a pre-condition to the assessment ultimately lead to a decision that they failed to attend/submit.

### What is the Department's duty when notifying the claimant of the medical examination?

Under the Universal Credit Regulations<sup>20</sup>, the Department must follow strict guidelines when it comes to notifying claimants of their medical examination (unless a shorter period of notice has been agreed in advance of the medical examination):

- 1) They must send a written notice to the claimant;
- 2) The notice must have included the date, time and place of the examination;
- 3) The notice must be sent at least seven days before the date of the medical examination.

In the case of *PPE v SSWP (ESA) [2020] UKUT 59 (AAC)*, Judge Poyner held that the Secretary of State must use clear and unambiguous language when imposing a legal obligation on a claimant, i.e. their attendance at a medical examination. They concluded that no legal obligation would be imposed if the SSWP merely invited, advised encouraged the claimant to do a particular task – the language must be clear and unambiguous that this is something that a claimant must do.

### What happens if the claimant didn't receive a notification about the medical examination or it arrived with too short of a notice?

If a claimant has been sent notice of their examination at last seven days in advance and fail to attend, then they can be treated as not having limited capability for work - unless they can show good reason for failure to attend. If they received insufficient notice to arrange attendance then this might be accepted as good cause. However, they would be advised to try to reschedule the appointment as soon as possible if they are unable to attend.

### Can the claimant reschedule the medical examination?

Departmental guidance permits a claimant to reschedule a medical examination **once** per work capability assessment referral.<sup>21</sup> However, if they cannot attend the rescheduled appointment this will be recorded as a failure to attend and the claimant will have to demonstrate 'good reason' for failing to attend.

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<sup>20</sup> Ibid 3, Reg. 45(3)

<sup>21</sup> Ibid 1, G1111

## The medical assessment was cancelled, how will this impact the work capability assessment?

A claimant cannot fail to attend their medical examination if the appointment is cancelled in advance. They should be notified and if necessary an additional assessment should be arranged.

However, in these circumstances the Department will look to see if there is an indication that the claimant made contact with the office before the time of examination in order to determine whether the appointment had in reality been left open for the claimant.<sup>22</sup>

## What is 'good reason' when it comes to the work capability assessment?

A claimant will be asked to provide a 'good reason' if they fail to comply with the Department/decision maker's request for information, failure to attend their medical examination or failure to submit for their examination. However, the onus is on the claimant to prove they had 'good reason' for the failure.

A decision maker will look at a claimant's reason for not complying with their work capability request (whether it's a request for additional information, a request to complete the questionnaire or a request to attend the medical examination) and judge it against the balance of probabilities of whether or not the claimant should have reasonably been expected to have complied with the request.

## What are some examples of 'good reason' for not complying with a work capability request?

There is no strict or exhaustive list of activities/barriers that can potentially be determined as 'good reason' for not completing a work capability assessment. The list below outlines some examples of what could potentially be accepted as 'good reason':

- If a claimant is unable to attend their examination because of the nature of their disability it could be a good reason. However, the claimant will have to provide evidence to support their inability to attend and it will only be accepted if it is unreasonable to expect the claimant to have attended on this occasion.<sup>23</sup> Remember, it is possible for a claimant to have their medical examination at home if they are unable to travel and they should notify Medical Services of this barrier as soon as possible.
- A claimant could have a good reason for not attending their appointment if they are too ill because of a condition that is not related to their disability and they are unable to attend their appointment, e.g. cold or flu.
- If a claimant does not receive a notification of their appointment with at least 7 days' notice, this can amount to a good reason. However, if it can be shown

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<sup>22</sup> Ibid 1, G1115

<sup>23</sup> Ibid 1, G1129



that the letter was sent to the claimant, it is assumed that it has been delivered unless there is evidence to the contrary.<sup>24</sup>

- If a claimant has postal difficulties that are specific to them or their address, then this could potentially amount to a good reason if they did not receive the notification of the work capability request.
- In some circumstances, a claimant living in accommodation with a communal mail system can have a potentially good reason if someone has gone through the mail before the claimant had a chance to and they never received the notification.<sup>25</sup>
- If a claimant attends their examination, but refuses to have a physical examination because of genuinely held religious beliefs this could amount to good reason. However, if it is evidenced that the claimant refused to partake in the physical examination because of prejudice or distaste for the examination rather than a particular belief this will not normally be seen as a good reason for their refusal.<sup>26</sup>
- A claimant could have a potentially good reason for failing to submit to an examination because of drunkenness, drug abuse or other behavioural problems. However, the occurrence will usually have to be linked to the claimant's stated medical condition, such as alcoholism, rather than a one-off isolated incident.<sup>27</sup>

A claimant whose medical condition means that they are unable to make a choice or understand the consequences of their non-attendance at a medical examination may have good reason for their non-compliance.<sup>28</sup>

## Further support & questions

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<sup>24</sup> Ibid 1, G1133

<sup>25</sup> Ibid 1, G1135

<sup>26</sup> Ibid 1, G1137

<sup>27</sup> Ibid 1, G1138

<sup>28</sup> Ibid 1, G1139

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