



# Fit for Work Assessments

Guidance for union representatives

## Fit for Work Referrals

Fit for Work is a new Government service involving a referral for a voluntary assessment for employees who are off work through illness or injury. A phased roll-out of referrals to the Fit for Work assessment will take place over a period of months starting in January 2015.

Once an employee has reached or is expected to reach four weeks sickness absence they can be referred by their GP for a Fit for Work assessment by an occupational health professional who, if the worker agrees, will look at the issues preventing a return to work. The referral will usually lead to a Return to Work Plan.

The referral service could have significant implications for employees and trade union representatives will need to be aware of what the new service entails and the issues that are likely to arise so they can advise members who are referred to the service.

## How will Fit for Work operate?

### ***Who will run it?***

Fit for Work is being provided by a private company called Health Management Limited (HML) in England and Wales and by the Scottish Government (through the NHS) in Scotland. Health Management Limited are owned by a US company called Maximus who also have a contract to run the Work Capability Assessments for those applying for Employment and Support Allowance.

### ***Referrals to Fit for Work Assessments***

Anyone can be referred to the service if they live in England Wales or Scotland, are in paid employment, are off sick and are likely to return to work. The service will not be available to the self-employed. You can also only be referred once in a 12 month period.

Most people can be referred though their GP after they have been signed off work for 4 weeks. This will normally happen as part of a normal visit. In some cases a person will not be referred. Examples will be if the person is already ready to return to work, or if it is clear that there is an ongoing serious issue which will clearly mean that the person is going to be off work for some considerable time.

In addition, after four weeks, an employer can make a referral if the GP has not done so. Individuals cannot self-refer, nor can hospital consultants. Any referral is voluntary and the employee must give consent. There is no requirement on them to have a referral, however in many cases it may help them return to work earlier.

### ***What will the referral entail?***

The purpose is to give the worker, their employer and the GP advice and recommendations to assist in a return to work more quickly after an injury or illness.

In most cases the referral will lead to an assessment with an occupational health professional such as a nurse, doctor or physiotherapist. Usually it will simply be a telephone assessment, although in some cases a face to face meeting will be suggested. This should happen within a couple of days of the referral (or five days for a face to face meeting). Every person referred should be given a case manager who will be their point of contact.

Before any assessment takes place the worker will be asked to give consent. It should be made clear to them that they can withdraw that consent at anytime during the process. The worker will be asked about their condition, job and any other factors that might be affecting their health or their work. That could include personal issues and issues outside work.

The health professional will then develop a “Return to Work Plan” which they should discuss with the patient. These will be recommendations that can be aimed at the worker, their GP or their employer. Examples could be a referral for some form of therapy or treatment, or adjustments to the workplace.

If the worker agrees, the Return to Work Plan is then sent to the employer and the GP.

A Return to Work Plan is simply recommendations that may help the worker return to work earlier if they are followed. It may not mean the person is ready to return to work and should set out whether they are not fit for work, may be fit for work (subject to the employer meeting the recommendations), or fit for work.

There may be cases where no particular recommendations will be necessary as the worker will already be getting appropriate treatment and will be able to return to work when sufficiently recovered with no further action by the GP or employer.

#### **Advice line:**

In addition to referrals to Fit for Work assessments the Government has already introduced an advice line from 15<sup>th</sup> December 2014 which gives general work-related health advice and offer solutions to support any return to work, or at least sign post the caller to other sources of help.

The advice line for Scotland is 0800 019 2211 9:00-17:00, Mon-Fri. In England in Wales it is 0800 032 6235, 8:30 – 18:00 Mon-Fri. There is also a Welsh Language line on 0800 032 6233.

Unlike the assessment service the advice line will be open to everyone, including the self-employed and those not in work.

## ***What happens then?***

It is up to the GP, employer or worker to take the recommendations forward. In some cases it may mean a referral to a specialist within the NHS through the GP. In other cases, the plan may propose some forms of support or action from the employer. There is no compulsion on the employer to take action on any recommendation and the cost of anything that the employer provides will fall on the employer, not Fit for Work. If the employer pays for any treatment that has been recommended by Fit for Work there will be no tax liability for the first £500, however if there is any cost above that in any tax year the employer and/or worker themselves may be liable for tax.

Fit for Work will then contact the worker again to see whether the plan is being implemented. If it is, and the worker is not on track to return to work as anticipated, then another assessment may be made.

In some cases the employer will not implement what is recommended in the Return to Work Plan. This may be because they are unwilling to do so, or they may be unsure or unclear about how to. Where this happens the worker should notify their case manager who may be willing to speak to the employer. The worker should also be encouraged to contact their union representative.

## **Consent and confidentiality**

No worker should be forced to have an assessment and must consent before they take part. The Department for Work and Pensions says “Your consent must be explicit, informed, specific and freely given and must be given at different parts of the process”. Anyone referred for an assessment can also withdraw that consent at any time. In addition no report or plan should be sent to the GP or employer without it being discussed with the worker first who can ask for changes or refuse to agree to it being shared. If the Return to Work Plan includes recommendations for the worker, GP and employer, the worker can ask that the employer only be sent the parts that relate to them. Where a worker has any concerns or doubts they should be encouraged to contact their union.

## **Fit for Work and sick pay**

Fit for Work Assessments should not affect any individual’s entitlement to sick pay. The Return to Work Plan should be accepted in the same way as a sick/fit note. If any person does not get an assessment, continues to be unfit for work at the end of the period of the Plan, or refuses to take part in the process, the GP should continue to provide a note for the employer. The GP should use their professional judgement to decide whether a fit note is required. The same should apply if a person withdraws consent during at any time.

Employers are likely to update their sickness absence policies to reflect the availability of Fit for Work. This should be done in consultation with the trade unions in the workplace. Unions should ensure that updated policies do not include penalties in cases where workers refuse to give their consent at any stage in the Fit for Work referral. Some employers may seek to refuse occupational sick pay to any employee who declines to take part in the service or who withdraws

consent. Workers may be unwilling to take part in the assessment for a variety of reasons so it is important that union representatives ensure that sick pay agreements are not changed to allow that to happen. If any employer does say that they will refuse sick pay to anyone who does not take part then you should contact the union immediately. This is because workers for that employer will not be able to have the choice of giving consent and the provider should not be conducting any assessments on workers employed by them.

## **Existing occupational health services.**

Many employers already provide occupational health services that do what the new service will do, but these existing providers are likely to have a better knowledge of the workplace and close links with the employer. There is no reason why employers should reduce the level of occupational health support because of the introduction of Fit for Work.

Employers' occupational health services are usually far more comprehensive and cover a wider range of services such as sickness monitoring, health surveillance and advice on prevention. They also provide important information to the employer on the health of their workforce and possible problems in the workplace.

### **The TUC view**

Most workers would rather be well and at work than ill and off sick. We support anything that will help people recover when they are ill, and so we welcome Fit for Work. There is strong evidence that early interventions when people are off sick can make a return to work more likely, especially in cases of stress related illnesses and musculoskeletal disorders.

However we do have reservations. The aim of Fit for Work is not to help people get well but to help them return to work. It is possible that people will find themselves under pressure to return to work before they feel well enough. In addition there is no compulsion on the employer to implement what is recommended in the Return to Work Plan and many employers will simply ignore the recommendations but still expect their workers to return to work regardless.

The TUC is also concerned that employers will not accept the voluntary nature of Fit for Work and will try to insist that a person agrees to be referred or will threaten to withdraw sick pay.

Workplaces with an existing occupational health service may also find these undermined as employers view Fit for Work as an alternative and will seek to reduce the level of occupational health support.

However if unions ensure that employers embrace Fit for Work in a positive way and that workers are offered support from their union, Fit for Work may be helpful for many workers who otherwise are denied any kind of access to occupational health support or advice.

## Union support.

Because Fit for Work will contact people when they are off sick it may be difficult for union representatives to find out if members are experiencing issues with Fit for Work and need support. It is therefore important that every member knows about Fit for Work so that they can contact their union representative if they have a problem, such as concern over whether to agree to an assessment, fears about the information or recommendations being given to the employer, or a failure by the employer to implement any recommendations. They may also feel that they are being pressurised to come back to work before they are sufficiently recovered.

Union representatives should make themselves available to give advice if a member has concerns over the service. They may even occasionally be asked to sit in on any face-to-face assessments if there is a particularly difficult problem. This may be resisted by Fit for Work but the member can refuse to attend without a representative. Members also should be advised that they have the right to union representation in any dealings with the employer over the return to work process or any dispute over the implementation of any recommendations made by Fit for Work.

However one of the most important things that the union representative can do is make sure that they always keep in touch with any member who is off work through illness for a period of time.

## Checklist for union representatives

- Inform your members about Fit for Work and make sure they know they can come to the union for advice.
- Contact the employer to make sure that they have procedures in place to act on any recommendations made by Fit for Work.
- Check any occupational sick pay arrangements to make sure that they will accept Return to Work Plans as evidence of employees not being fit for work.
- Review the general sickness absence procedures to make sure that they fully take into account the changes being brought in.
- Ask for regular reports to the joint health and safety committee on the operation of the service.
- If you have an existing OH provider, monitor that the contact is not being removed or downgraded because of the introduction of Fit for Work.

## Advice and Support

More information on the service can be found at <http://fitforwork.org/> or <http://fitforworkscotland.scot/>

There is specific guidance for employees on the assessment at <http://fitforworkscotland.scot/fit-for-work-assessment/guidance-for-employees/>

If you have any problems with the service please contact your union.