

Benefits and Work
Guides you can trust

The Best Possible

Ways To Prevent And Overturn ESA Sanctions

July 2014



Authors: Steve Donnison & Holiday Whitehead

Ways to prevent and overturn ESA sanctions

ESA sanctions in a nutshell.....	2
Quick tips to reduce the chances of a sanction	4
What to do if you are threatened with a sanction or actually sanctioned	6
Explaining the ways your condition affects you	8
Explaining your 'good cause' for not carrying out a mandatory activity	11
Making a written complaint to JCP and work programme providers.....	13
Complaining to your MP	16
Using the mandatory reconsideration and appeal process	18
Suing the DWP and work programme providers	26
Applying for a hardship payment.....	27
Applying to be placed in the support group	29

Disclaimer

Every care has been taken to ensure that the content of this work is accurate and that legislation and caselaw used is current at the time of writing. However, no responsibility for loss occasioned to any person acting or refraining from action as a result of any statement in this work can be accepted by the authors.

Copyright © 2014 Steve Donnison & Holiday Whitehead.

All rights reserved. No part of this work may be reproduced or transmitted in any form or by any means (photocopying, electronic, recording or otherwise), except for personal, non-commercial use, without the prior written permission of the authors. Crown copyright material is reproduced with the permission of the Controller of HMSO and the Queen's Printer for Scotland.

ESA sanctions in a nutshell

There has been a massive increase in the number of sanctions imposed on ESA claimants in recent months. The number imposed increased more than fourfold between December 2012 and December 2013, from 1,102 to 4,789 sanctions a month.

This guide is aimed at making you aware of the risk of being sanctioned and explaining how to cut the chances of it happening. If it does happen we explain all the steps you can take to deal with the sanction, from getting your benefit reinstated to suing the DWP and kicking up a fuss about your unfair treatment.

What is an ESA sanction?

A sanction is when your employment and support allowance (ESA) is reduced because the DWP consider that you didn't abide by the rules about work-related activity or work-focused interviews.

Who can be sanctioned?

You can be sanctioned if you are in the work-related activity group (WRAG) and do not adhere to certain conditions without good cause.

You can be sanctioned for:

- Failing to attend or take part in a work-focused interview.
- Failing to take part in compulsory work-related activity.

What is "good cause"?

Good cause means having an acceptable reason for not attending an interview or for not undertaking work-related activity. A decision maker should consider the following when deciding if you have good cause, before reducing your benefit:

- If you had transport problems
- If your health or disability prevented you attending
- If you have language, literacy or learning difficulties
- If you had a medical appointment that would be unreasonable to rearrange
- Bereavement

This list is not exhaustive and the decision maker may take into account other reasons as well.

How much will I lose from my benefits if I receive an ESA sanction?

Since December 2012, the benefit reduction has been 100 per cent of the personal allowance that applies for a single person who qualifies for ESA, where their award includes a work-related activity component. In other words, the sanction is the same amount as the personal allowance for main phase ESA.

In the current benefit year (from April 2014) the reduction is £72.40 per week.

Your weekly benefit cannot be reduced by more than this amount and you must be left with at least 10 pence a week.

This means that you will still be paid any other amounts to which you are entitled. This may include a component, if you qualify for one. In addition, if you are entitled to income-related ESA you will still be entitled amounts for a partner, premiums and, for example, housing costs if relevant.

How long does an ESA sanction last?

The sanction will last until you attend and take part in the work-focused interview or comply with the work-related activity.

You are also given a further fixed-period sanction as follows:

- one week, if it is the first time you have been sanctioned; or
- two weeks, if you failed to attend an interview two weeks or more after, but within 52 weeks of, a previous failure to attend an interview that resulted in a sanction; or
- Four weeks, if you failed to attend an interview two weeks or more after, but within 52 weeks of, a previous failure to attend that resulted in a two- or four-week sanction.

The sanction will also end if you are moved into the support group or if you stop being entitled to ESA.

What can I do if I am sanctioned

There are a lot of things you can do.

The first thing is to try to do whatever you were sanctioned for failing to do. So, for example, if you failed to attend an interview, try to arrange a new date and attend.

In addition, you can do some or all of the following:

- Apply for a hardship payment if you may be eligible.
- Use the mandatory reconsideration and appeal system to challenge the sanction.
- Sue the DWP and, where appropriate, the work programme provider, for discrimination. You can do this via the county court or via an employment tribunal and you may be able to get free legal help with your action.
- Complain to Jobcentre Plus and to your MP.
- Try to get into the support group.

Quick tips to reduce the chances of a sanction

If you can avoid getting sanctioned in the first place, that's obviously best. There are no guarantees in this regard if you are in the WRAG. But below are some simple steps you can take to make it less likely that you will be hit with a sanction.

Don't assume that your personal adviser has any knowledge at all about your health conditions or disabilities.

Bizarrely, information about any limitations on your work abilities is seldom passed on to personal advisers working for Jobcentre Plus or the private sector.

So, it's very definitely worth you giving full details in writing of the effects your disability or illness has on your everyday activities and your ability to move towards employment.

There's more about the ways you can do this in the section on ['How to explain the ways your condition affects you'](#).

Try to get to every appointment early.

People are unfairly sanctioned just for being a few minutes late.

Always ask for everything in writing, where possible.

It's much harder for the DWP or private sector provider to blame you for their mistakes if you have evidence that, for example, an appointment time was changed.

If something is agreed over the telephone, write or email confirming it.

When you write confirming what has been agreed ask for an immediate response if your understanding is not correct.

Keep every bit of paper, text and email you receive.

You might need them as evidence.

Record every telephone call if you can.

It's not illegal and you don't have to inform the DWP or private sector provider that you are doing it.

Consider recording face-to-face interviews covertly.

Again it's not illegal and there are plenty of devices, including some mobile phones, which can do the job without drawing attention to themselves.

If you're given an unreasonable mandatory activity, use the Jobcentre Plus complaints procedure immediately.

Most people don't complain, possibly because they think it will make things worse. But the evidence of people on jobseeker's allowance (JSA) is that staff have targets to meet and they are looking for easy victims, not people who will cause them problems.

Now that sanctions for ESA are rapidly increasing it seems likely that a similar regime will apply to claimants in the WRAG too.

There's more about how to complain in the section on ['Making a written complaint to JCP and work programme providers'](#).

If you fail to carry out a mandatory activity, always explain in writing if you had good cause for not doing it.

If there's a good reason why you didn't carry out a mandatory activity, it's absolutely vital that you explain this – preferably in writing – as soon as possible. Don't wait to be asked because you won't be.

The decision maker has to take your explanation into account when deciding whether to impose a sanction. However, personal advisers are instructed that they should never ask if you have good cause, but only take details if you volunteer the information without being prompted.

There's more about this in the section on ['Explaining your 'good cause' for not carrying out a mandatory activity'](#).

If you're given an unreasonable mandatory activity, get legal advice about suing immediately; don't wait until a sanction has been imposed.

If an activity is made mandatory even though you will struggle with it because of sickness or disability, or if a reasonable adjustment is refused, get advice about suing immediately – don't delay. Running out of time is the main reason why actions like this fail – otherwise they have a very high success rate, with most being settled before going to court.

You may still be able to get legal aid to sue the DWP for discrimination.

There's more about this in the section on ['Suing the DWP and work programme providers'](#).

What to do if you are threatened with a sanction or actually sanctioned

If you're threatened with a sanction for failing to carry out a mandatory activity, always explain in writing if you had good cause for not doing it.

If there's a good reason why you didn't carry out a mandatory activity, it's absolutely vital that you explain this – preferably in writing – as soon as possible. Don't wait to be asked because you won't be.

The decision maker has to take your explanation into account when deciding whether to impose a sanction. However, personal advisers are instructed that they should never ask if you have good cause, but only take details if you volunteer the information without being prompted.

There's more about this in the section on ['Explaining your 'good cause' for not carrying out a mandatory activity'](#).

If possible, carry out the activity you have been sanctioned - or threatened with a sanction - for failing to undertake.

So, for example, if you failed to attend an interview, try to arrange a new date and attend. Your sanction should end after you have done this and the fixed period of the sanction has come to an end.

You can still complain about any threat or actual sanction, sue the DWP and appeal against any sanction that is imposed.

Complain to Jobcentre Plus and to your work programme provider.

If you are unfairly threatened with a sanction or actually sanctioned, just keeping quiet and hoping for the best is a risky strategy. The likelihood is that the DWP are looking for easy targets and are more likely to back down when confronted by a claimant who fights back.

So, if you are unfairly threatened with a sanction by Jobcentre Plus or your work programme provider, make a complaint.

There's more about this in the section on ['Making a written complaint to JCP and work programme providers'](#).

Complain in writing to your MP's office.

As well as complaining to Jobcentre Plus and your work programme provider, if you have one, make a separate complaint to your MP.

Explain what has happened and why you think it is unfair. Ask for their help in dealing with the matter. Also consider asking your MP to make the relevant minister at the DWP aware of the way in which you are being treated.

There's more about this in the section on ['Complaining to your MP'](#).

Challenge the decision via the mandatory reconsideration and appeal process.

There is a very high success rate for appeals against sanctions overall. More than 50% are successful and it's likely that many more are resolved in the claimant's favour before they ever get to a tribunal hearing.

There's more about challenging decisions in the section on '[Using the mandatory reconsideration and appeal process](#)'.

Consider suing the DWP and/or private sector provider

If you haven't already got advice about suing the DWP then act quickly. Running out of time is the main reason why actions like this fail – otherwise they have a very high success rate before even going to court.

You may still be able to get legal aid to sue the DWP for discrimination.

There's more about this in the section on '[Suing the DWP and work programme providers](#)'.

Consider applying to be in the support group.

If your condition has deteriorated, perhaps due to the stress of the sanctions regime, you might want to consider asking for your ESA award to be looked at again if you think you may now be eligible for the support group.

There's more about this in the section on '[Applying to be placed in the support group](#)'.

Apply for a hardship payment.

If your benefits are sanctioned you may be eligible for hardship payments. There are strict conditions about who is eligible for these payments, however.

There's more about this in the section on '[Applying for a hardship payment](#)'.

How to explain the ways your condition affects you

Don't assume that your personal adviser has any knowledge at all about your health conditions or disabilities.

Information about any limitations your health or disabilities impose on your work readiness are seldom passed on to personal advisers working for Jobcentre Plus or the private sector.

So, it's very definitely worth you giving full details in writing of the effects your disability or illness has on your everyday activities and your ability to move towards employment.

There are a number of ways you can do this.

One way is to put in writing what your limitations are in relation to things like travel, times of day you can do things, ability to mix with people and give the document to your personal adviser. There are examples of the kind of things you might want to include below.

Irritable Bowel Syndrome

I wish to make you aware of the following limitations I face in undertaking work-related activities as a result of my IBS.

Access to toilet facilities: *because of bowel urgency when I experience a flare-up of my condition, I need immediate access to toilet facilities at all times. When these flare-ups are particularly unmanageable, I am unable to leave my home at all, as I spend many hours sitting on the toilet.*

Travel: *because of my IBS, I am unable to travel on public transport. I frequently have no warning of a flare-up and therefore I am often unable to attend appointments and also unable to give notice that I won't be attending. I request that when I am prevented from attending appointments due to my condition, this is taken into account and that my claim is not referred for a sanction decision.*

ME/CFS

I wish to make you aware of the following limitations I face in undertaking work-related activities as a result of my ME/CFS.

Appointments: *because of my condition, I become extremely exhausted in the afternoons and need to lie down in bed to rest most days. I request that, where possible, all appointments are arranged in the mornings and if not, that consideration is given if I need to cancel appointments at short notice when I am too fatigued to attend.*

Training and interviews: *because of my condition, I become extremely exhausted following any outside activity, such as attending appointments or training. I am therefore unable to undertake any activity two days in succession. I request that any work-related activity or training takes account of this and that I am not required to attend training or interviews on two consecutive days.*

Depression and anxiety

I wish to make you aware of the following limitations I face in undertaking work-related activities as a result of my depression and anxiety.

Travel: *because of my anxiety I can only travel by taxi as I become extremely shaky and panicky on public transport. I am unable to afford to take a taxi for my interviews with you, so I request that my expenses are reimbursed or that interviews take place in my home or by telephone.*

Mixing with other people: *because of my depression and anxiety, I am unable to cope with other people. I request that all interviews and activities are arranged in a private interview room, to avoid causing me severe distress.*

Agoraphobia

I wish to make you aware of the following limitations I face in undertaking work-related activities as a result of my agoraphobia.

Travel: *Because of my agoraphobia, I need to be accompanied by my husband whenever I leave the house; he is only available to accompany me in the afternoons, from 2pm onwards, as he is working part-time.*

Arthritis

I wish to make you aware of the following limitations I face in undertaking work-related activities as a result of my arthritis.

Standing/sitting: *because of my arthritis I cannot wait for long periods without being able to sit down. I request that seating is made available to me when I attend each appointment.*

I am also unable to sit for periods of longer than 20 minutes, without needing to stand and move around. I request that I am not required to sit at a computer terminal for longer than 20 minutes at a time when undertaking training or other work related activity.

Give a copy to your personal adviser and ask for a written acknowledgement. Whether they give you one or not, keep a copy yourself.

Also, consider making a request to the office dealing with your ESA claim for a copy of your ESA85 medical report, if you had a face-to-face assessment, or ESA85A if the decision was made just on the papers.

This is the report prepared by Atos which will give information about what activities the DWP consider you have difficulties with. If you are happy to do so, you can give this report to your adviser. You might also want to give them a copy of the decision letter setting out on what grounds you have been placed in the work-related activity group.

Sample subject access request

Name:

DOB:

NINO:

Please treat this as a subject access request under the Data Protection Act 1998.

I had a face-to-face assessment in March of this year as part of my application for ESA.

Please supply me with a copy of the ESA85 medical report form that was created following that assessment.

In addition please supply me with any other documents, such as medical evidence from my GP, used by the decision maker in reaching a decision on my entitlement to ESA.

If you do not normally deal with these requests, please pass this letter to your Data Protection Officer.

Yours faithfully
[Signature]

Explaining your 'good cause' for not carrying out a mandatory activity

If you fail to carry out a mandatory activity, always explain in writing if you had good cause for not doing it.

If there's a good reason why you didn't carry out a mandatory activity, it's absolutely vital that you explain this – preferably in writing – as soon as possible. Don't wait to be asked because you won't be.

The decision maker has to take your explanation into account when deciding whether to impose a sanction. However, personal advisers are instructed that they should never ask if you have good cause, but only take details if you volunteer the information without being prompted.

Good cause for not carrying out a mandatory activity could include, for example: a medical appointment; caring responsibilities; transport problems; unreasonably high travelling or childcare costs if you did as required.

Where possible, also include any supporting evidence. This could even be a letter from a friend or relative if you were taken ill and they were present.

Sample good cause letters

Name:

DOB:

NINO:

On 25 June 2014 I missed a work-focused interview because when I was leaving the house, I experienced a panic attack and I had to get back inside. I felt overwhelmed, was shaking and sweating and I couldn't breathe. I thought I was going to pass out. For the rest of the day, I was in a distressed state and I was only able to calm down once my daughter was home from work. I couldn't inform the jobcentre because I was too distressed at the time.

Please take these circumstances into account in relation to any procedure to sanction my benefits.

Name:

DOB:

NINO:

On 19 June 2014 I was unable to attend the computer training because my car broke down. I can't use public transport because the nearest bus stop is in town, 4 miles away and I can't walk that far because of my arthritis. I did try to phone the office to inform my adviser, but the line was continuously engaged. I gave up after 5.30pm.

I have not been provided with any alternative method of contacting my adviser, such as an email address or number that I can text.

Please take these circumstances into account in relation to any procedure to sanction my benefits.

Name:

DOB:

NINO:

On 23 June 2014 I missed my appointment with my adviser. My son was sent home from school and I had to take him to the doctor - he had tonsillitis. I am a single parent and there was nobody else I could ask to look after him.

I am now ill with tonsillitis too, so I can't attend my next appointment tomorrow.

Please take these circumstances into account in relation to any procedure to sanction my benefits.

Making a written complaint to JCP and work programme providers

If you are unfairly threatened with a sanction, just keeping quiet and hoping for the best is a risky strategy. The likelihood is that the DWP are looking for easy targets and are more likely to back down when confronted by a claimant who fights back.

So, if you are threatened with a sanction and you consider that it is unfair, then it's definitely worth considering making a complaint. You can either complain to your work programme provider, if you have one, or to Jobcentre Plus, or both.

The advantage of complaining to both is that the complaint will then be handled by Jobcentre Plus, which may oblige the work programme provider to take it rather more seriously.

Even if the sanction threat is made by the work programme provider you can complain to Jobcentre Plus on the grounds that their agent is behaving unfairly and it is their responsibility to ensure that their agents fulfil their duties, for example under the Equality Act.

There are four possible stages to the complaints procedure, though you may not have to use them all.

Stage 1

A complaint is always better if made in writing. You should make your complaint, in the first instance to the office which you have been dealing with.

Explain what has happened, how this has affected you and what you want to happen to put things right.

Complaining to the work programme provider

If your complaint is specifically about the actions of the work programme provider, their guidance states that they must give a copy of their complaints procedure if you ask for it. If you complain directly to them, they have to respond within the timescales stated in their policy.

If they do not respond within 8 weeks, you are entitled to take the complaint to the Independent Case Examiner's office, a free and independent complaint resolution and examination service provided by DWP. (See stage 3 below).

You can read more guidance to work programme providers on how to deal with complaints here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/299404/wp-pg-chapter-16.pdf

However, you may also wish to complain to Jobcentre Plus about their failure to ensure that their agent behaves acceptably.

If your complaint is about Jobcentre Plus and the work programme provider, it is up to Jobcentre Plus to deal with it. The work programme provider is expected to reply and issue the paperwork required by Jobcentre Plus within 5 working days.

If your complaint is about Jobcentre Plus

If you complain to Jobcentre Plus, their procedure states that they will try to resolve the issue over the phone or deal with your complaint within 15 working days.

You can see brief details of the Jobcentre Plus complaints procedure here:

www.gov.uk/complain-jobcentre-plus

Sample stage 1 complaint to Jobcentre Plus about work programme provider.

This should be addressed to the Complaints Manager at the local Jobcentre Plus office which you deal with.

Dear Sir/Ms ,

NINO:

I am writing to make a complaint about the Work Programme provider New Job Directions, where I attend regularly for work-related activity.

I was recently placed in the work-related activity group by a Tribunal, where I submitted medical evidence about my personality and anxiety disorder. The effects of this were outlined in the letter and the Tribunal awarded me points under the descriptor 'getting about' and 'coping with social engagement'. This information was given to you and you were made aware of my difficulties from the outset. I advised you that I would be happy to engage with the work programme provider as long as someone could go with me on the first few occasions (which they did) and as long as I did not have to participate in any group training sessions.

I am sure you can understand that my anxiety disorder makes it very difficult to cope when I am in a room with people I don't know. I feel physically sick and faint in these situations and feel unable to even leave my home if required to attend a group session. This causes me to neglect looking after myself in other ways as I am consumed by the anxiety, and cannot focus on anything else.

However, the work programme provider has asked me twice to attend a group session to help me to prepare for work. I am unable to do so and am under threat of being sanctioned. The provider has stated that they have no information from you about my restrictions and have refused to make any allowances for me. They will not take a copy of my medical evidence.

I wish to complain about the following;

- 1. You have not made the work programme provider aware in writing of the limitations I have due to my disorder even though you have written evidence of this, and have discussed my limitations with me.*
- 2. You are not monitoring the provider and checking whether they are acting in accordance with the Equality Act.*
- 3. You have failed in your duties under this Act as you are aware of my long-term disability and my limitations and are failing to instruct and monitor an Agent who is carrying out your duties and functions.*

Please respond to this as soon as possible, as I am at risk of being sanctioned without a good reason which would cause undue hardship and a further deterioration in my health.

Yours faithfully

Sign name

Print name

Stage 2

If you're unhappy with the response you will be asked if you want your complaint sent to the Director General of Operations for the Department for Work and Pensions. They aim to deal with complaints within 15 working days.

Stage 3

If you are still not satisfied, the next stage would be to ask the Independent Case Examiner's (ICE) office to examine your complaint.

You can read more about ICE here:

www.gov.uk/government/organisations/independent-case-examiner

You can email ICE at: ice@dwp.gsi.gov.uk

You can write to ICE at:

The Independent Case Examiner
PO Box 209
Bootle
L20 7WA

Telephone: 0345 606 0777. (You can use the 0845 code to call 0345 numbers. Check with your phone company which code is cheaper for you).

Stage 4

After all the above has been carried out; you may wish to ask your MP to send your complaint to the Parliamentary and Health Service Ombudsman (PHSO).

You can read more about the PHSO here:

<http://www.ombudsman.org.uk/>

You can email the PHSO at: phso.enquiries@ombudsman.org.uk

You can write to the PHSO at:

The Parliamentary and Health Service Ombudsman
Millbank Tower
Millbank
London SW1P 4QP

Telephone: Complaints Helpline 0345 015 4033

Complaining to your MP

As well as complaining to Jobcentre Plus and your work programme provider, if you have one, consider making a separate complaint to your MP.

Explain:

- what has happened
- why you think it is unfair
- what you would like your MP to do about it.

You may also want to ask that they make the relevant minister at the DWP aware of the way in which you are being treated.

Send a copy to Jobcentre Plus and the private sector provider so that they know that your MP's office is now involved. Complaints where an MP is known to be involved are taken much more seriously and generally handled by a separate team at the DWP. So, even if your MP turns out to be useless or even hostile, sending a complaint to them may be helpful.

How to contact your MP

You can write to them at:

House of Commons, London, SW1A 0AA

You can find their email address, telephone number and constituency office address here:

<http://www.parliament.uk/mps-lords-and-offices/mps/>

You can type your letter directly into a blank page on the website

www.theyworkforyou.com/

after first searching for your MP by postcode.

We recommend you use your own words to describe the problem you have faced with a sanction or a threat of a sanction but we have provided an example to be used to guide you.

Dear [name of MP],

NINO:

[What has happened]

I am 38 years old and currently in receipt of ESA. I have been placed in the work-related activity group and have to attend interviews regularly with the Work Programme provider in my area (please state who this is).

I suffer from paranoid schizophrenia and take regular medication for this. I have bouts of depression and lethargy at times and sometimes I feel angry and agitated. At times I feel positive and I want to go out more. However, I need help from a Social Worker to deal with important appointments as I struggle with understanding forms and letters.

One thing that can make me very agitated is sitting in a crowded waiting room with lots of strangers. I have asked my work programme contact to allow me to wait in a quiet room whilst I am waiting for my appointment with her. However, this is never provided and I have been unable to attend my appointments recently as I am worried I will be in a crowded room and become aggressive.

I recently received a telephone call to say I would be sanctioned if I did not attend the next appointment. I am very anxious about this and have become fearful and paranoid.

[Why you think it is unfair]

I have asked for this adjustment to take into account my disability and to enable me to participate, however, I feel that the work programme provider and the Jobcentre are simply ignoring my requests. I am going to be punished through no fault of my own.

[What you would like your MP to do about it]

I am writing to you to ask you to intervene and to ask the Jobcentre and the work programme provider to make the provision I have requested before I will attend an appointment. If they fail to do so I believe they are breaching their duties under the Equality Act and that this could amount to discrimination.

I also request that I am not sanctioned for failing to attend an interview, as this would be a further disadvantage to me and would cause my health to deteriorate rapidly.

I would also like you to bring this to the attention of the Secretary of State for Work and Pensions as an example of when a sanction or a threat of a sanction can cause deterioration in health and prevent any participation in work-related activities.

If you would like further medical evidence please contact me or my Social Worker as we have a letter from my GP which both the Jobcentre and the work programme provider already have.

I look forward to hearing from you as I am very concerned about losing my benefit and am certain that this should not happen.

Yours sincerely

Sign name

Print name

Using the mandatory reconsideration and appeal process

The mandatory reconsideration and appeal process can be a very long drawn out one, but the success rate is very high: well over 50% of sanction appeals that go to tribunal are upheld.

We produce a very detailed guide to mandatory reconsiderations and appeals for ESA which you can download from the members' area of the Benefits and Work website. It is aimed at people challenging a work capability assessment decision, but the process is exactly the same for challenging a sanction decision.

Mandatory reconsideration

If you decide to go down this route, the most important thing is to ask for a mandatory reconsideration within one month of the date on the letter informing you of the sanction.

The best way to do this is to write to the office which sent you the sanction notification setting out why you think the decision was wrong.

Name:

DoB:

NINO:

Mandatory reconsideration request

Date at the top of the decision letter: 22 June 2014

I am writing to ask you to reconsider the decision to sanction my employment and support allowance.

I think your decision was wrong for the reasons set out below.

I full explained in writing that I am unable to sit in an open public area and discuss my health conditions and limitations.

Despite having explained this, my adviser has insisted that I meet with her in an open area every 2 weeks.

During these interviews, she has frequently referred to my mental health condition, such that other people sitting nearby can hear.

I failed to stay at our last meeting, as I was so embarrassed and humiliated that I started to feel very panicky and paranoid.

Subsequently, my ESA has been sanctioned.

I believe the decision is unfair and unjustified. I enclose my letters explaining my difficulties and concerns about meeting with the adviser in an open plan area, and asking that reasonable adjustments are made to accommodate my needs.

I request that, in light of the enclosed evidence (which includes a letter from my GP confirming that I suffer from severe anxiety and depression), the decision to sanction my ESA is changed.

Signed

You are likely to receive a phone call from a decision maker as part of the reconsideration process. There's more information about this in our ESA appeals guide.

Once the reconsideration is complete you will receive 2 copies of the 'Mandatory Reconsideration Notice'. This notice contains the reconsidered decision. One copy is for you to keep. The second copy is for you to send to the Tribunals Service if you wish to appeal against the decision.

If the reconsidered decision is in your favour you will receive any payments that you lost as a result of the sanction. If the decision is unchanged you can now lodge your appeal with the Tribunals Service.

If you do decide to lodge an appeal the most important thing is to do so within one month of the date on the Mandatory Reconsideration Notice.

You can get a copy of the Tribunals Service booklet SSCS1A 'How to Appeal against a decision made by the Department of Work and Pensions' from the Tribunals Service website www.justice.gov.uk. This explains the appeals process.

You can get a copy of the SSCS1 appeal form at:

www.justice.gov.uk/downloads/forms/tribunals/sscs/sscs1.pdf

There is a lot more information about the appeals process in our ESA appeals guide, including guidance on how to complete the SSCS1 form.

On the following pages there is a sample completed SSCS1 form.

Notice of appeal against a decision of the Department for Work and Pensions

You should use this form to appeal against a decision made by the Department for Work and Pensions (DWP) about social security benefits. For decisions regarding child support or child maintenance, you should use form SSCS2. For appeals regarding recovery of compensation you should use form SSCS3. If you need this form in an alternative format, please see the note on page 6 of this form.

Further guidance to help you fill in this form is available in booklet SSCS1A 'How to appeal against a decision made by the Department for Work and Pensions'. You can download the booklet or find out where it can be obtained from by visiting the justice website www.justice.gov.uk

About this form

This form helps you provide all the information the tribunal requires to register your appeal. It will also ensure that your appeal contains all the necessary details which the law requires.

How to fill in this form

Please use black ink to fill in this form and use BLOCK CAPITALS unless the form tells you not to.

You must complete Sections 1, 2, 5, 6 and 8

If you want to **attend a hearing**, you must also complete **Section 7**

If you are appealing on **behalf of someone who a court or DWP has appointed you to act for**, you must also complete **Section 3**

If you have a **representative**, you must also complete **Section 4**

What to include with this form

You **must** include a copy of the **mandatory reconsideration notice** which shows the decision you are appealing against. You do not need to include evidence/information you have already sent to DWP as they will send it to us as part of their response.

Section 1 ABOUT THE DECISION YOU ARE APPEALING AGAINST

This section is about your **mandatory reconsideration notice**. This is the letter sent to you by DWP explaining that they have looked at your decision again.

Does your **mandatory reconsideration notice** tell you that you have the right to appeal against the decision?

☒ Yes ☐ No

If No, please ensure you have read the section 'Can I Appeal?' in the booklet SSCS1A 'How to appeal against a decision made by the Department for Work and Pensions' before continuing with this form.

Please tick this box to confirm that you have attached a copy of the **mandatory reconsideration notice** with your appeal form.

☒

Remember to include a copy of your mandatory reconsideration notice with your appeal form. If you do not do so, we will be unable to register your appeal until this is provided.

Now go to Section 2 

Section 2 ABOUT YOU

Fill in this section if the decision you are appealing against is about **your** benefit or the benefit of a person **you** have been appointed by DWP or a court to take care of. If you are appointed by DWP or a court to take charge of another person's benefit, you should also record **their** details in Section 3.

☒ Mr ☐ Mrs ☐ Miss ☐ Ms ☐ Other (please specify)

First name(s)

Ronald

Surname

Jones

Address

123 High Street
Ilkley

Date of birth (DD/MM/YYYY)

1 2 / 1 2 / 1 9 6 0

National Insurance number*

letters		numbers						letter
A	B	1	2	3	4	5	6	C

** If you are appealing on behalf of a child or other person and you have provided their National Insurance number in Section 3, you do not need to provide your own National Insurance number.*

Postcode

L S 2 9 2 B C

Daytime phone number


012324 567890

Mobile phone number

Now go to Section 3 

Section 3 ABOUT A CHILD OR OTHER PERSON YOU ARE APPEALING FOR

This section is for people who are making an appeal on behalf of someone they have a legal responsibility for. This might be a parent acting for a child or a person who has been appointed by DWP or a court to look after the affairs of another adult.

Are you appealing on behalf of a child or other person whose affairs you have been appointed to take care of? ☐ Yes If Yes, please tell us about the person below ☐ No If No, please go to Section 4 

☐ Mr ☐ Mrs ☐ Miss ☐ Ms ☐ Other (please specify)

First name(s)

Surname

Address (if the person's address is different from your own)

Date of birth (DD/MM/YYYY)

/ /

National Insurance number

letters		numbers						letter
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Postcode

Now go to Section 4 

Section 4 ABOUT YOUR REPRESENTATIVE (If you have one)

This section is about your representative (if you have one).

By representative we mean someone acting on your behalf in a formal capacity. This might be an organisation like the Citizens Advice Bureau or a welfare rights service or it may be a friend or advisor who knows about social security matters. If you name a representative here and give your signature at Section 8, this will authorise us to deal with your representative about your appeal. If you are unsure about this, please read the section 'About Your Representative' in the guidance booklet SSCS1A.

Do you have a representative?

☐ Yes If Yes, please tell us about the person below

☒ No If No, please go to Section 5 

Name of organisation or of person representing

Phone number

Address

Postcode

If you are being represented by an organisation and you know the name of the person acting on your behalf, please tell us below

☐ Mr ☐ Mrs ☐ Miss ☐ Ms ☐ Other (please specify)

First name

Surname

Now go to Section 5 

Section 5 ABOUT YOUR APPEAL

Grounds for appeal

In this section we need to know why you are appealing. Please write down in your own words the reasons why you disagree with DWP's decision. You do not have to use BLOCK CAPITALS in this section if your handwriting is clear. If you do not complete this section this will delay dealing with your appeal and the appeal form may be returned to you. For more information on grounds for appeal please refer to the 'About Your Appeal' section of the guidance booklet SSCS1A.

I wish to appeal against the decision to sanction my ESA for not undertaking work-related activity.
I consider that I provided enough evidence of my limited capability for engaging in group activity (and my inability to cope with social engagement) to my adviser and that he has failed to take this into account when referring my case for a sanction decision.
Consequently, the decision maker has not taken fully into account of the severity of my condition or of the way that it affects my everyday activities and bodily functions.
For example, in my letter, I also stated that because of my depression I usually cannot motivate myself to do everyday things like getting out of bed, washing, dressing or eating breakfast unless my partner repeatedly encourages me.
Yet, despite me explaining these limitations in writing, it has not been accepted as good reason for not being able to attend the training course I was sent on, which starts at 9am each day.
This is why I think the decision is wrong.
I wish to have an oral hearing so that I can explain the full effects of my condition to a tribunal and answer any questions they may wish to ask

(if necessary, continue on a separate sheet)

Is your appeal in time?

According to the law, your appeal **must be received by the tribunal** no later than **one calendar month** after the date the **mandatory reconsideration notice** was sent to you. If your appeal is received after this date, it is a late appeal and the tribunal will need to know why it is late.

Is your appeal late?

☐ Yes If Yes, you must give reasons below why your appeal is late

☒ No If No, please go to Section 6 

If your appeal is late, you must give an explanation why. The tribunal will consider your reasons and can extend the time limit for you. If you do not give reasons why your appeal is late your appeal form may be sent back to you. Please tell us below why your appeal is late. You do not need to use BLOCK CAPITALS.


The Department for Work and Pensions has the right to object to a late appeal. The tribunal will consider any objection they make and we will let you know the outcome.

Now go to Section 6 

Page 4

Section 6 ABOUT YOUR CHOICE OF HEARING

Appeals are considered by an independent panel. We will make arrangements for your appeal to be heard by the panel and you or your representative will be expected to attend the hearing. If, however, you do not wish to attend a hearing you can ask for your appeal to be decided on the papers. Please tell us below how you would like us to deal with your appeal.

I want to attend a hearing of my appeal ☒ If you have ticked this box, please go to Section 7 

I want my appeal decided on the papers ☐ If you have ticked this box, please go to Section 8 

If you change your mind about this, you must tell us as soon as possible as it may be too late to change this once the hearing has been arranged. For more information, please refer to the 'About Your Choice of Hearing' section in the guidance booklet SSCS1A.

Section 7 THE HEARING — YOUR NEEDS AND REQUIREMENTS

You only need to answer these questions if you told us in Section 6 that you wanted to attend a hearing. If you have asked for your appeal to be decided on the papers, please skip this section and go straight to Section 8.

In this section we need to ask you a number of questions to help us arrange a suitable hearing for you. We will try to accommodate your needs and availability, but it may not always be possible to do this. Please answer questions 1 to 4 to give us the information we require. If you do not answer some of the questions we will have to contact you again and this may delay your appeal. You do not have to answer these questions using BLOCK CAPITALS.

Question 1 – Your availability

Tribunal hearings are held Monday to Friday from 10am to 5pm and in our larger hearing centres also on Saturday. To allow you to attend your hearing, we will try to arrange a time and date in line with your availability. It is important that you tell us here if there are any days of the week or times of the day when you **cannot** attend a tribunal or any dates when you are unavailable because of things like booked holidays and hospital appointments. You should consider your availability for the six months ahead.

Are you available to attend a hearing at any time? ☒ Yes

☐ No If No, please tell us when you cannot attend in the box below

Question 2 – Your needs

Please tell us here about any special needs you may have which we need to take into account when arranging your hearing. This might be things such as hearing loops or disability access.

Do you have any special needs? ☒ Yes If Yes, please tell us about this in the box below
☐ No

Disabled access

Question 3 – Your signer or interpreter and language requirements

Do you require an interpreter or signer to assist you at the hearing?

☐ Yes If Yes, please tell us the language and dialect required below

☒ No

Language or type of sign language interpreter

Dialect

We will arrange for a professional interpreter to be present at the hearing. Please refer to the section 'Completing form SSCS1' in the guidance booklet SSCS1A for more information about interpreters.

Page 5

Question 4 – Your notice of hearing

We will usually give you at least 14 days' notice of the date of the hearing. If you agree, we can also give you less than 14 days' notice. This may allow the hearing to be arranged more quickly if, for example, another hearing is cancelled and yours can replace it at short notice.

Do you agree to receiving less than 14 days' notice of a hearing? ☐ Yes ☒ No

Now go to Section 8 

Section 8 YOUR SIGNATURE

You must sign your appeal form for it to be valid. If you have named a representative in Section 4, your signature will also give HMCTS your authority to deal with them when they contact us on your behalf.

Signature



Date (DD/MM/YYYY)

1 2 / 0 7 / 2 0 1 4

Name

Ronald Jones

If you are a representative signing this form on behalf of the person who is appealing, you must send their signed authority for you to act on their behalf with this form.

WHAT TO DO NOW

You need to send your appeal form **and a copy of the mandatory reconsideration notice** to HM Courts & Tribunals Service.

If you live in England or Wales send your appeal to:

HMCTS SCS Appeals Centre
PO Box 1203
BRADFORD
BD1 9WP

If you live in Scotland send your appeal to:

HMCTS SCS Appeals Centre
PO Box 27080
GLASGOW
G2 9HQ

We will send you a letter to tell you we have received your appeal and explain what happens next.

CHECKLIST

You may find this checklist useful to help you make sure you have given all the information we need.

- ☒ I have included a copy of the **mandatory reconsideration notice** (Section 1)
- ☒ I have given grounds for my appeal (Section 5)
- ☒ I have chosen the type of hearing I want (Section 6)
- ☒ I or my representative have signed my appeal form (Section 8)

Alternative Formats

If you need this form in an alternative format, for example in large print or Welsh, please call 0300 123 1142 if you live in England or Wales and 0141 354 8400 if you live in Scotland

Suing the DWP and work programme providers

If an activity is made mandatory even though you will struggle with it because of sickness or disability, or if a reasonable adjustment is refused, get advice about suing immediately – don't delay. There is still legal aid available for discrimination cases.

Examples of discrimination could include:

- being forced to travel long distances by public transport to attend group activities with strangers, even though you have a mental health condition that makes travelling alone and interacting with strangers extremely distressing for you;
- being forced to attend appointments in the late afternoon even though you suffer from severe fatigue and your condition is at its worst at that time of day;
- being kept waiting for long periods of time, even though your condition makes this difficult or painful for you;
- being obliged to provide information over the telephone even though you have great difficulty in concentrating because of your health condition and would rather be able to give information in writing;
- being expected to discuss your health condition in an open-plan office where you can be overheard by other people, causing you significant distress.

It's vital that you get advice as early as possible, because it takes time to work through the legal aid system.

So, if possible, don't wait until you've been sanctioned.

As soon as you are told that something is mandatory and you think that this amounts to discrimination, seek advice – the act of threatening you with a sanction can be discrimination, whether the sanction is applied or not. According to insiders in the legal profession, actions like this are virtually always settled by the DWP and the only ones that don't succeed are those that are out of time because advice is sought too late.

Use the Civil Legal Advice gateway to find out if you are eligible for legal aid and to get help with bringing a claim:

www.gov.uk/civil-legal-advice

Alternatively, if you are having difficulty accessing the Civil Legal Advice gateway or you are concerned that they are misunderstanding the nature of your complaint, then contact one of the agencies involved in providing legally aided advice directly. These include Stephenson's solicitors:

Ryan.Bradshaw@cla.stephensons.co.uk

Applying for a hardship payment

If your income-related ESA is sanctioned you may be eligible for hardship payments. However, there are strict conditions about who is eligible for these payments.

A hardship payment is set at 60% of the ESA personal allowance. This is currently 60% of £72.40 which is £43.45 a week. It is paid on top of any other amounts of ESA which can continue to be paid after the sanction is applied.

You must be able to show that you or a member of your household would experience hardship if you did not receive a payment. In essence hardship means that you would lack some of the necessities of life such as food, clothes or fuel.

The decision maker should take into account whether any member of your household is in receipt of any premiums for severe disability or enhanced disability, or if there is a child for which you receive the disabled or severely disabled child element of Child Tax Credit.

You will usually be required to complete a form call a JSAESA10JP and to attend an interview with the ESA Hardship Officer in the Jobcentre.

If you are on Contributory ESA and apply for a hardship payment the DWP should check to see if you have an underlying entitlement to income-related ESA by asking you to complete an ESA3 form.

The hardship payment application form asks a range of question about, amongst other things your health, including:

- *Do you or your partner have a chronic medical condition?*
- *What is the name of the medical condition?*
- *When did the medical condition start?*
- *How long is the medical condition expected to last?*
- *Will the health of the person with the medical condition get worse in the next 2 weeks if hardship payments are not made?*

The form also asks if you are caring for someone, what benefits you get, about money coming and money you owe, about savings, help you get from others and any other information.

The section for other information may well be the most important as it asks;

- *Use this space to tell us why you are applying for hardship payments.*
- *We need to know what essential items are available to you now.*
- *We mean things like food, clothing, heating, and accommodation, anything else you think is essential.*
- *We need to know what will happen if you do not get hardship payments.*
- *Please tell us how this would affect the availability of food, clothing, heating, accommodation; anything else you think is essential.*

A hardship payment will end when the reduction in your ESA ends.

If you are refused a hardship payment you can challenge the decision by requesting a mandatory reconsideration and if you still do not receive a payment, an appeal.

If your circumstances change in the meantime, however, you should ask for a hardship payment based on these new circumstances.

For example you now have a letter to say your electricity supply will be cut off and you need this to stay warm, cook and allow your child to revise for their exams. Or you have been prescribed medication that you can only take after a meal, and have not been able to afford a meal.

Applying to be placed in the support group

If your condition has deteriorated, perhaps due to the stress of being sanctioned, you might want to consider asking for your ESA award to be looked at again if you think you may now be eligible for the support group.

You will find detailed information about the qualifying criteria for the support group in our guides to the work capability assessment in the members' area of the Benefits and Work website. It's important that you are clear in your mind about which support group descriptor, exemption or exceptional circumstance applies to you before you apply to have your award looked at again. If you can't identify any then it is unlikely that it would be worth proceeding.

Claimants in the support group do not have to undertake work-related activities and do not run the risk of having their ESA sanctioned.

However, there is always a risk involved in asking to have your award looked at again. This is because by asking to have the decision looked at again, you open up the possibility that a new decision will be made that you are not entitled to any rate of ESA at all.

In the vast majority of cases this will not happen, but it is a risk you need to be aware of. There is more about this issue in our guide to ESA appeals in the members' area of the Benefits and Work website.

If you decide to ask to be placed in the support group you need to notify the DWP in writing of your change of circumstances.

It helps if you have kept a record of any deterioration of your condition whether gradual or sudden, including any change in medication, any increase in your need for care or any referrals for treatment that you were not previously having. This information will support your request.

Reassessments can take many months before they are acted upon by the DWP. You will be sent a questionnaire to complete which in itself can be a very lengthy and distressing experience. However, if it is completed thoroughly, it is sometimes possible for a decision maker to make a decision on the papers alone, and they may not need a medical assessment to be carried out to decide whether you qualify to be placed in the support group.

Evidence

Good supporting medical evidence sent with your original request and again with the questionnaire will help the process and will lessen the chances of being called for a face-to-face assessment.

This could include:

- Hospital admission or discharge letters
- Prescription indicating a new treatment or a higher dosage of medication
- Referrals for treatment; to Community Mental Health Team, a Pain clinic or Incontinence Service for example
- Evidence of requiring surgery and being placed on a waiting list
- Diagnosis following a test or investigative procedure
- A letter from your GP outlining what you have told them about your health, for example if you have tried to harm yourself or you are falling more regularly

- A letter from a Consultant or specialist showing specifically which of the descriptors (in the support group) applies to you
- A letter from a community organisation or support worker showing what help you need to go out or communicate with others
- A statement from your carer as to what help you need and how often
- A diary where you have listed what problems you are having and what help you need

Once a decision is made you will either

- be placed in the support group
- remain in the work related activity group
- or if it is found you have no limitation on your capability for work, your ESA will be stopped

If the decision is not favourable to you may wish to challenge it by requesting a mandatory reconsideration and an appeal. There is a detailed guide to ESA appeals in the member's area of the Benefits and Work website.