

## BENEFITS



# ESA sanctions and proportionality

In Adviser 162, Sandie Lock looked at the benefit sanctions regime and outlined the different schemes for Jobseekers Allowance (JSA) and Employment and Support Allowance (ESA) claimants. ESA claimants in the work activity group are required to attend work focused interviews and work-related activity. Here, Juan Ramirez looks at evidence of the disproportionate impact of ESA sanctions on claimants with mental health conditions and those with learning difficulties in the city of Leicester.

**The sanctions regime for ESA claimants is a relatively new development. It is part of the build up to Universal Credit and the Government drive to require claimants to take steps to come off benefit in order to continue receiving benefit.**

This is the so-called 'conditionality' which has, at its heart, the 'claimant commitment'. As part of the claimant commitment there are 'work-related requirements' which the claimant must undertake or be sanctioned.

## ESA sanctions in theory

Claimants in the ESA work-related activity group (WRAG) can be sanctioned for failing to attend, or take part in, a work-focused interview and for failing to take part in compulsory work-related activity. (See 'Sanctions: a step too far?' in Adviser 162 for more details.)

Some exemptions do exist. For example, claimants in the support group are exempt from the requirement to attend work-focused interviews or carry out

work-related activity and hence cannot be sanctioned. Also if claimants are above the qualifying age for pension credit or if the claimant is a lone parent, responsible for a child under one, sanctions cannot apply.

A proposed sanction can be challenged within five working days if the claimant can show 'good cause' for not attending an interview or for not complying with the work-related activity. Although 'good cause' is not defined in the ESA rules, a decision-maker should consider the following factors:

- Any misunderstanding on the claimants part because of learning, literacy or language difficulties, or due to misleading information given by the DWP;
- Transport problems;
- The customs and practices of the claimants religion preventing them from attending at the fixed time;
- The claimant's health or disability preventing them attending, or if this applied to a dependant of the claimant or a

person they are caring for;

- The claimant, or a person for whom they are caring, had a medical appointment that would be unreasonable to rearrange;
- Attending the funeral of a close friend or relative; or
- The claimant has a disability that makes attendance impracticable.

This list is not exhaustive so the claimant should always give their reasons for not attending and ask for them to be considered as good cause.

Any sanctions imposed will last until the claimant attends the work-focused interview or complies with the work-related activity. A first sanctionable failure lasts one week, whereas two weeks can be imposed for a second sanctionable failure within 52 weeks of a previous failure that resulted in a sanction. Furthermore, four weeks can be sanctioned for subsequent failures within 52 weeks of a previous failure.

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### ESA sanctions in practice

At first sight it would appear that these sanctions are limited to one week if the claimant complies, unless the claimant is a repeat offender. This may be seen as a reasonable punishment for failing to comply with a clear instruction from the DWP. However, as explored later in this article, the length of a sanction can extend well beyond a week and can continue for an unreasonable period. In practice the sanction can continue for as long as the failure to comply continues and it has no prescribed time limit.

Nationally, a picture is beginning to emerge of unprecedented increases in sanctions being imposed on ESA claimants. According to independent website, Benefits and Work ([www.benefitsandwork.co.uk](http://www.benefitsandwork.co.uk)), the latest available figures show that sanctions have increased fourfold. The website states:

‘Employment and support allowance (ESA) claimants in the work-related activity group (WRAG) are being subjected to a massively increased sanctions regime that deliberately targets the most vulnerable. Sanctions, primarily aimed at claimants on the work programme who have mental health conditions or learning difficulties, have quadrupled in the course of a year, even though referrals to the programme have fallen by 43%. The number of sanctions rose from 1,102 a month in December 2012 to 4,789 a month in December 2013, the most recent date figures are available for.’<sup>1</sup>

Furthermore, Benefits and Work conclude that a particular set of claimants is being targeted: ‘And

the main targets of those sanctions are claimants with mental health conditions or learning difficulties. Back in April we pointed out that the proportion of this group receiving a sanction had risen from 35% of sanctioned claimants in 2009 to a massive 58% by June 2013. That figure has now increased again to 62% in December 2013, even though claimants with these conditions make up just 50% of the work-related activity group.’<sup>2</sup>

Locally, in Leicester, the Social Welfare Advice Partnership (SWAP) Forum has independently been monitoring JSA and ESA sanctions in the city since 2012. The SWAP Forum was set up by Leicester City Council as a way of supporting the development of a co-ordinated strategy for social welfare law advice services in the city. The Forum members include Leicester City Council’s in-house welfare rights service and the majority of the free social welfare law providers in the city.

Members of the Forum have been collating evidence of sanctions, including the type and length of sanction. In addition they have monitored the impact of the sanction on the individual in terms of finance and the ability to maintain daily living, pay their bills and manage debts. Information on disabilities and the ability to understand what action is being required of them is also recorded.

The sanctions monitoring has been used to inform Council policy and has helped to change the allocation policy for the Local Welfare scheme, as of April 2014.

Detailed analysis of the figures shows that there has been a 3.3 fold increase in sanctions so far in

2014, as compared to the period July 2013 to March 2014. (There was no monitoring of ESA sanctions prior to July 2013 as this had not yet shown itself to be an issue.) This is a remarkable increase in sanctions on people who are, by definition, sick and who may also be disabled.

Monitoring, over the period July 2013 to July 2014, shows that 79% of sanctioned claimants had a mental health disability and 21% had a learning disability. Some claimants fell into both of these groups and many had additional physical disabilities. This figure is much greater than the national figure and would support the conclusion that those with mental health conditions and learning difficulties are having greater difficulties in meeting the requirements imposed by the work related activity regime.

The most worrying part is that as the sanctions do not have a prescribed time limit. Furthermore, it is those very claimants with mental health conditions and learning difficulties who are least able to comply with the requirements and therefore end up with potentially limitless sanctions leading to destitution.

The SWAP monitoring shows that many claimants have been unable to comply with the requirement for which they are being sanctioned, which results in long sanctions ranging between four and 12 weeks. For example, a single parent suffering from agoraphobia and receiving the low rate of the mobility component of DLA had already been sanctioned for nine weeks before she approached a SWAP member for help. She had been living on DLA

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plus Child Benefit of £20.30 and sanctioned ESA of £28.45. She had no food and no credit on her gas and electricity cards. She was referred for an emergency food parcel. She simply could not comply, as she was unable to walk outside due to anxiety and stress levels, required an escort and needed to travel by taxi. She also has language difficulties and did not understand what was required of her as a result. It would seem that she had 'good cause' for not attending the interview and yet found herself sanctioned for a long period of time.

This is not an isolated case.

**"Another claimant who suffered anxiety and panic attacks on going out was refused a telephone work-focused interview and sanctioned."**

Another claimant who suffered anxiety and panic attacks on going out was refused a telephone work-focused interview and sanctioned. In addition to her own disability, she also cared for her disabled partner. The stress of being sanctioned, having to go to a face-to-face interview and losing nearly £300 in benefit, caused deterioration in her mental health. Again, this claimant had 'good cause' and, according to the guidelines, should have been given a telephone interview.

There seems to be some reluctance on behalf of the DWP to be flexible and make reasonable adjustments for ESA claimants in the above groups. Polly Toynbee, in *The Guardian*, recently asserted that Job Centre Plus staff have targets to push claimants off ESA. Discussions with an anonymous jobcentre manager in the Midlands led her to report:

'Neglect of the mentally ill is bad enough, but now consider how the Department for Work and Pensions deliberately torments them. I just met a jobcentre

manager. It had to be in secret, in a Midlands hotel, several train stops away from where she works. She told me how the sick are treated and what harsh targets she is under to push them off benefits. A high proportion on employment and support allowance have mental illnesses or learning difficulties. The Department denies there are targets, but she showed me a printed sheet of what are called 'spinning plates', red for missed, green for hit. They just missed their 50.5% target for 'off flows', getting people off ESA. They have been told to 'disrupt

and upset' them – in other words, bullying. That's officially described, in Orwellian fashion, as 'offering further support'. As all ESA claimants approach the target deadline of 65 weeks on benefits – advisers are told to report them all to the fraud department for maximum pressure. In this manager's area 16% are 'sanctioned' or cut off benefits.<sup>13</sup>

The above statement would seem to support the conclusions of the SWAP monitoring in respect to the suspected targeting of people who 'have mental illnesses or learning difficulties'. It could also

### Case study

A couple (56 year-old husband with Bipolar disorder and 54 year-old wife who is his full time carer) are in receipt of IR-ESA (Support Group), indefinite award of DLA (LRM & MRC) and Carers Allowance.

A letter was received on Thursday 10/07/14 (dated 09/07/14), sent by the Job Centre Plus, giving a date for a 'group information session'. On 11/07/14 they called the number on the letter to say that he would not be able to attend and were informed that if he did not attend his benefits may be stopped. On the telephone they were informed of 'mandatory work activity'. The claimants queried the appropriateness of 'mandatory work activity' for Support Group claimants, but did not receive a response. They were told that their details would be passed to the relevant department, who would call them at some point in the next two working days.

On Monday 14/07/14 the couple received a phone call asking if he struggles in mixed groups, to which the claimant answered 'yes'. He was told that if he was not well enough to attend a group session, he would be required to attend a one-to-one interview. The gentleman passed the phone immediately to his wife who asked what had been said and this information was repeated. His wife said that her husband would not be able to attend a one-to-one interview, due to his condition. Once more, she queried the appropriateness of 'mandatory work activity' and was informed that they were not mandating this activity.

The claimants had raised the issue with their local MP. On 31/07/14 the MP's office contacted the DWP on the claimant's behalf and was informed that the claimant had been called in to check he was receiving his correct entitlement. No mention was made of 'mandatory work activity' or having to attend at the Jobcentre Plus office.

explain why Job Centre Plus staff are reluctant to be flexible and make reasonable adjustments when considering sanctions. Considering SWAP members have helped 81% of sanctioned claimants to appeal the decision to impose a sanction, the assumption that most sanctions are incorrectly imposed seems a safe one.

Another more sinister aspect of sanctions is the threat of sanctions where none can be imposed, possibly part of the 'disrupt and up-set' approach recorded by Polly Toynbee. The SWAP Forum has found that ESA claimants in the Support Group are receiving letters stating that 'you are expected to visit the jobcentre as part of the conditions for receiving ESA'. This holds the implication that benefit could stop if compliance is not forthcoming. In the case study (below), one such claimant contacted the DWP to be told that he would be sanctioned if he did not attend the interview.

The case study would seem to fit with Polly Toynbee's conclusion; that the DWP are employing 'dirty tricks' tactics in order to get people off benefits. Ambiguous letters sent to vulnerable claimants, who have in reality no obligation to attend, are causing sick people to believe that they have to comply or lose benefits.

**"Ambiguous letters sent to vulnerable claimants, who have in reality no obligation to attend, are causing sick people to believe that they have to comply or lose benefits."**

### CONCLUSION

It would appear from the available evidence that the ESA sanctions regime is having a disproportionate effect on people with mental health conditions and those with learning disabilities. This may be due to government policy or to the operation of the regime and the inherent difficulties encountered by

these groups of claimants in complying with the strictly enforced requirements. There would appear to be little flexibility, or a deliberate policy of 'dirty tricks', which has resulted in a dramatic increase in the number of sanctions imposed on people in this group and a run-away increase in the length of sanctions.

It is time that this policy was formally reviewed, in order to establish the truth behind the figures.

### FOOTNOTES

1. [www.benefitsandwork.co.uk](http://www.benefitsandwork.co.uk) (last accessed 04.08.14)
2. Ibid.
3. Polly Toynbee in The Guardian 08.07.14 (at <http://tinyurl.com/ksevtvp>)

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### the range of people who would be eligible.

DROs were introduced in 2009 as low-cost alternatives to bankruptcy. Almost 30,000 DROs are made each year and almost half are for debts between £5,000 and £10,000. However, DROs are only available for people who owe less than £15,000, have less than £50 a month available income, not own their home and have less than £300 worth of assets. An individual is usually discharged from their debts after 12 months, but the DRO will stay on their credit record for six years.

The Insolvency Service has issued a call for evidence and is particularly interested in whether the rules and eligibility levels need to be changed. Jo Swinson, the business minister, said: 'Helping people to break out of the cycle of problem debt is a key objective for the government. We want to ensure that debt relief orders are continuing to meet this objective.'

### Appeals jargon

Disability Rights UK has published an 'appeals jargon wiki' - an A to Z of useful terms and legal jargon used in the reconsideration and appeal process of challenging decisions on social security benefits and tax credits.

It can be found at [www.disabilityrightsuk.org/appeals-jargon-wiki](http://www.disabilityrightsuk.org/appeals-jargon-wiki)