

# DIAL Network News

December 2012

**Serving the disability advice network**

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## Contents

Welcome

News – from around the network

News – from external sources

Legal update

Case study

Scope comment

Training

Publications and resources

Get in touch

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## News from around the network

### Peer support

#### **West Midlands meet up, a good example for other areas**

Freshwinds, Dudley Centre for Inclusive Living, DIAL Solihull and DIAL North Worcestershire met on 11 December in Solihull.

The meeting was facilitated by their Scope local contact, Jackie O’Kelly.

Groups requested an opportunity to share information, discuss ways of joint working, share expertise and funding opportunities. The group has planned to meet again in March and will be investigating different and more cost effective methods of holding meetings [Skype, Google+ etc].

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Maximising the benefits from such regional meetings, and the potential for encouraging other regions to carry out similar activities will be discussed in the next Advisory group meeting on 15 January.

If you would like to find out who your local Scope contact is please email [dialnetwork@scope.org.uk](mailto:dialnetwork@scope.org.uk)

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## News from external sources

### Welfare / Benefits

#### Response to Benefits Upgrading Bill

Source: The Guardian

The Government yesterday published a bill, which would see a host of benefits - including Employment Support Allowance, which many out-of-work disabled people rely on - increase by just 1%. This is less than the rate of inflation, so effectively a cut. Labour has called it an attack on 'strivers'. The Tories have called Labour 'irresponsible'. [Speaking to the Guardian](#), Richard Hawkes said: "This bill doesn't protect disabled people".

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#### Farewell to the myth of the 'welfare scrounger'

Source: The Guardian

[Exposing the modern-day myth of the 'benefits scrounger' is the first step towards better-informed debate and policy](#). Are we witnessing the growth of a new class, the "precariat", where people exist without predictability or security in their lives?

In the UK, almost 7 million working-age adults are living in extreme financial stress, despite being in employment and largely independent of state support. In addition, 2.2 million children live on the edge of, or in, poverty, despite one or both adults earning low to middle income.

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#### Benefits ad 'is insult to workers'

Source: Daily Mirror

The Tories were accused of sinking to a "new low" with an advert dismissing all benefits claimants as layabouts. The online ad contrasts a "hardworking family" - a smiling couple with two fair-haired children - with "people who won't work",

illustrated by an unshaven man lolling on his sofa. It asks internet users: "Who do you think this Government should be giving more support to?" Labour called the message "deliberately misleading", as in fact an estimated 4 million people struggling on benefits are in work, but get the cash to top up their meagre pay.

It follows Chancellor George Osborne's clobbering of working families in his mini-budget, which will leave single-earner couples around £534 a year worse off by 2015. Labour vice chair Michael Dugher said: "This is a new low for the Tories." It is offensive to those hardworking families who make up the majority of the people the Government is choosing to hit."

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### **Benefit cuts to hit disabled**

Source: The Independent

Some of the most severely disabled people in Britain will be more than £150 a year worse off because of George Osborne's benefit changes, despite the Chancellor's pledge to "support the vulnerable", it has been claimed. [Read more about cuts to disability benefits.](#)

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### **Nick Clegg hits out at 'draconian' wing of Conservative Party**

Source: BBC

Online Deputy Prime Minister Nick Clegg has criticised "siren voices" among Conservatives for seeking to impose "draconian" cuts on the welfare system. In a speech marking his five years as Lib Dem leader he claimed his party curbed plans for an extra £10bn in welfare cuts, and had "anchored reform in the sensible centre ground". He warned that "further reforms" to the welfare system are needed. [Read more about Nick Clegg's speech on welfare reform.](#)

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### **Disabled man takes government to court over benefit test**

Source: The Guardian

A disabled man who was incorrectly found fit for work under the government's disability benefit assessment is launching a legal action against the government and Atos, the private company performing the tests - [reports the Guardian.](#)

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## Disability Living Allowance change timetable extended

Source: BBC

Welfare assessments for people with disabilities will be made later than originally planned, [according to the BBC](#). About 3.2 million people receive Disability Living Allowance (DLA). From 8 April, it will be replaced by Personal Independence Payments (PIPs). Originally, the government said that claimants already receiving DLA would be contacted between October 2013 and March 2016 and invited to make a PIP claim.

The [Independent](#) leads on the suggestion that more than 300,000 people will lose out on DLA under the plans.

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## Care and support

### Winterbourne View abuse scandal: care patients to be moved from private hospitals

Source: Daily Telegraph

Vulnerable patients are to be moved from NHS-funded private hospitals over the next 18 months in the wake of the Winterbourne View abuse scandal, the Government said yesterday. Ministers warned tougher regulation, including possible new criminal laws to strengthen corporate accountability, could also be introduced. Under the proposals, private companies would be stripped of the right to provide hospital care for patients with learning disabilities after the “devastating” scandal. There are currently 3,400 people in NHS-funded learning disability inpatient beds of which around 1,200 are in assessment and treatment units. Other measures announced yesterday include a care plan must be in place for all children, young people and adults with learning disabilities by April 2014.

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## Paralympics

### You have to be quite scary, give evil stares and tell them to get out of my way, says... the Weirwolf of London!

Source: Daily Mail

The man known as the 'Animal' of wheelchair racing, who won four gold medals at

the Paralympic Games in London, is sitting in a cafe in Richmond Park, south-west London, sipping a coffee. David Weir is quiet, humble and softly spoken, smiling tiredly as he talks about his 10-week-old daughter, Tillia Grace London. He still seems overawed by the scale of his achievements and how his life has changed since that glorious summer. But when the conversation turns to sport — and, specifically, competition — Weir is transformed. His blue eyes become piercing and intense as he explains what it means to him to race in a British vest and the ruthlessness it takes to succeed. [Read the article here.](#)

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## **Paralympics boost disabled access to bus and Tube**

Source: Evening Standard

London's Tube and bus services are to be upgraded to make them more wheelchair friendly as a legacy of the Paralympics, [according to the Standard and C4.](#)

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## **Survey shows discrimination continues despite Paralympics**

Source: ITV News

The Paralympics were the games which were meant to change our views of people with disabilities. But having passed 100 days since they ended, [a new survey carried out by Scope shows that discrimination continues.](#) While Paralympians themselves continue to enjoy celebrity status, two-thirds of people living with disabilities feel that the games have done nothing to improve how they are treated and spoken to.

[Access the full survey here.](#)

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## **Hate crime**

### **Hate crime offenders face tougher sentences**

Source: Daily Telegraph

People who target others because they are homosexual, disabled or transsexual will face tougher sentences under a review of hate crime. Those that stir up hatred against disabled or transsexual will also face harsher punishments under proposals being considered by Government's law advisers... A spokesman for Scope, the disability charity, said it was important that victims of hate crime were

given more confidence to come forward and report offences.

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## Finance

### **Charities cannot rely on handouts, says aid minister Lynne Featherstone**

Source: The Independent

The Aid minister has called for charities to stop depending on government “handouts” and become more self-sufficient. The minister for International Development, Lynne Featherstone said that charities needed to be imaginative in seeking new sources of funding because austerity was here for the foreseeable future. “Charity is amazing but I think it also got too used to Government being the only funder,” said Ms Featherstone, in an interview with The Independent. Organisations needed to be more “active” and look for “other funders to step in perhaps where Government couldn’t do everything”, she said

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### **Political leaders warn of 'looming financial crisis' for councils**

Source: The Guardian

A joint open letter to Eric Pickles talks of the axing of swathes of services currently provided by local authorities. [Political leaders of seven of England's biggest cities, representing nearly 4 million people, have warned of a "looming financial crisis"](#) for councils that will result over the next five years in the axing of swathes of services currently provided by local authorities.

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### **Government spending by department, 2011-12: get the data**

Source: The Guardian

Government spending by department is under the microscope. [Find out how Whitehall spends your money - and download the wallchart for yourself](#). Guardian Data's annual audit of UK government spending this year shows huge cuts taking place across supposedly protected areas of government as the austerity programme hits home. Public spending in 2011-12 was £694.89bn - compared to £689.63bn in 2010-11. That may look like an increase but once inflation is taken into account, it is a real-terms cut of 1.58%, or £10.8bn.

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# World view

## US Senate rejects UN disability rights treaty

Source: BBC

A UN treaty on disability rights has been rejected by the US Senate. [The BBC explains](#) that 61-38 vote on the [Convention on the Rights of Persons with Disabilities](#) meant the treaty failed to reach the two-thirds majority needed.

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## Case Study

### Guardian and Observer Christmas appeal 2012: the Disability Law Service

Source: The Guardian

Before he begins his afternoon session, offering legal support over the phone, solicitor Douglas Joy remarks that he often finds his work harrowing. It's quickly obvious why. Within the next hour he offers calm advice to two mothers, who are both so distraught that at times they struggle to speak.

The first explains how her adult son, who has autism, was kicked in the stomach by a carer at his day centre. She wonders why the man who kicked him still has a job as a carer; why the police questioned her son (causing him profound distress), despite the fact that he is unable to say more than a handful of words; why she has not been allowed to see files relating to the case, and how she can get justice for her son.

The second woman describes how her 40-year-old daughter, who has severe learning disabilities, is about to be moved from the care home where she has lived for the last eight years, and rehoused in the community – against her will and against the advice of her carers. The move is apparently the result of a cost-cutting drive by the council that funds her daughter's care.

She needs help challenging the decision, which she believes will be catastrophic for her daughter, but doesn't know where to begin and is alarmed by the speed of the process. The social worker has told her that she wants the move "done and dusted" before she goes on maternity leave in mid-December.

The Disability Law Service offers legal advice on discrimination, employment-related issues, welfare and care payments, to disabled people and their carers. It is a service that offers practical assistance to vulnerable people who often have nowhere else to turn. Its solicitors say demand for their services is rocketing just at the time when funding for their work has plummeted.

An afternoon at their offices in east London gives an insight into the severity of need experienced by people who call the free telephone advice line for help.

Joy listens as his first caller explains how horrified she was to learn details of the attack on her son five months after it happened, and how upset her son had been when police came to question him about the assault.

"I would have told them he cannot answer questions from the police, he doesn't have the capacity," she says. Her son was so distressed by the police visit that he came home from the centre sobbing and shaking, she says, and she has to stop speaking for a while because the memory of his unhappiness makes her cry.

"I'm just looking to get to the truth. At the end of all this – I still don't know what happened. I haven't had any information from the police at all. There's been no communication with the family at all," she says.

Joy explains how to go about securing power of attorney so that she can make a freedom of information request for the police files on her son's assault.

The call is not particularly unusual, Joy says. "I can do an advice line session and get six similarly distressed people. By the end of it you feel, 'My God ...'"

Readers who donate to this charity can be reasonably confident that their money will not be wasted on unnecessary overheads and staffing costs. Joy and his colleagues operate out of a shabby basement, peering at their screens beneath the harsh light of bare lightbulbs (no money wasted on lamp shades), sitting on chairs that have bits of stuffing falling out. Joy is anxious to point out that donations do not fund generous wage packets for the solicitors, explaining that the lawyers love their work at the charity, but are probably paid around 2% of the amount city lawyers working half a mile down the road receive.

He spends the next half-hour advising the second mother on how she can challenge the decision to move her daughter.

"The social worker is treating her like a 40-year-old but she is not a 40-year-old, she's still a child. They said she would benefit from being in the community, but I know she won't be able to cope," the mother says. She is aware that the council needs to cut costs, but argues that in the longer term the move will backfire. "I know it all comes down to finance but what happens if things go wrong for her?"

Across the room another adviser is offering help on benefits claims. This is another area of the charity which has been overwhelmed by the surge in demand for help, as the government pushes through its reform of disability benefits, reassessing claimants with the controversial, and often inaccurate, work capability assessment. Advisers in this department expect to see their workload soar next



year as cost-cutting reform to disability living allowance is introduced.

The afternoon goes on, and Joy advises a man with both physical and mental health problems who has been released from hospital to inappropriate housing, and without being allocated anyone to help him to care for himself. He speaks to a very confused and vulnerable woman who says both she and her husband are increasingly disabled, but are being given almost no support by the council and are forced to rely on daily visits from their son, for help with cooking and washing.

Aydin Djemal, the charity's director, said demand for its services was soaring. "2013 is looking to be a very challenging year for disabled people. We have already had a couple of years of substantial cuts to services, but it is really 2013 when many of the larger cuts will start to bite.

"Social services will be rolling back their budgets as they have less money coming to them. Fewer people will be getting appropriate care packages, allowing them to live with some element of dignity. We have already seen a rise in the severity of the situations faced by our clients, more people living in severe poverty, with their care needs not being met."

In the last quarter, around 7,000 people called the service, but limited capacity meant that staff were only able to offer advice to around half of them.

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## Legal update

### **Ladd v Bromley LBC – council's policy for medical assessments prior to issuing Blue Badges did not amount to disability discrimination**

Source: Journal of Community Care Law

As a result of this case, councils with a general policy of requiring medical assessments prior to making a decision on whether to issue a 'Blue Badge' (parking concession voucher) are unlikely to face successful legal challenges to their policy. While the case was considered under the Disability Discrimination Act 1995, a similar result would be expected under the replacement legislation contained in the Equality Act 2010.

What happened?

The relevant events in this case were as follows:

(i) L had mobility problems and was the holder of a 'Blue Badge' which entitled her to park in reserved parking bays. She was clearly disabled within the meaning of

the Disability Discrimination Act 1995 (DDA 1995) and the Equality Act 2010.

(ii) L applied to a different local authority for renewal of her Blue Badge. As she was a first-time applicant to that authority, it applied its policy of requiring her to be assessed by a medical professional at council offices.

(iii) L declined to undergo the council's assessment. She said that the council should contact her GP if it needed information about her disability but it did not do so. L then sent the council a letter from her GP supporting her case for a Blue Badge.

(iv) The council refused to issue L with a Blue Badge.

(v) L's solicitor threatened to bring a claim for judicial review. The solicitor also proposed that L have a medical examination at her home.

(vi) The council then relented and decided to issue L with a Blue Badge. Despite that, L brought a disability discrimination action against L in the county court. The county court allowed L's claim.

(vii) The council challenged the county court's discrimination findings in the Court of Appeal.

Why did the Court of Appeal conclude that the council had not discriminated against the Blue Badge applicant?

The Court of Appeal allowed the council's appeal. It found the reasoning of the county court difficult to follow and identified the following flaws:

(i) the county court judge decided that the council had discriminated against L by treating her less favourably due to her disability (contrary to s.21D of the DDA 1995). The judge had held that the council had effectively made it impossible for L to obtain a Blue Badge, a finding which was not sustainable on the evidence. The judge also failed to identify a comparator (the person than whom L had been treated less favourably), an essential element of any finding of less favourable treatment. The judge should have rejected the claim that L had been treated less favourably due to her disability.

(ii) the county court judge had also found that the council had rigidly applied their policy on medical assessments, without considering whether an exception should have been made for L. That showed the judge to have applied the wrong legal test. The judge seemed to be applying the principles of administrative law, which are enforced using judicial review proceedings not by way of a claim for disability discrimination.

(iii) the county court judge also held that the council were guilty of discrimination

contrary to s.21E. Again, this finding could not be sustained on the evidence. Section 21E is concerned with discrimination against disabled persons as a group. The judge had simply failed to assess whether disabled people as a group would face problems in attending the council offices for a medical assessment.

The reality was that all disabled people as a group would not find it unreasonably difficult to attend the council's premises for medical examination.

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## **Employment Law Update: Changes in fees for Tribunals from 2013**

Source: Forward Employment Services

Chancellor George Osborne has announced that from April 2013 there will be, for the first time ever, a fee for the lodging of an employment tribunal claim.

It is expected that the fees will start to be charged from April 2013 (subject to consultation)

### **Results of the changes**

Currently there is no fee for an applicant who wants to make an employment tribunal claim. Under the new scheme, employees will face a fee of between £150 and £250 for lodging a claim against their employer, and a further £1,000 for proceeding to a hearing.

Fees will be even higher for cases where damages of more than £30,000 are sought, although the low-paid, or those without an income, may have the fee waived or reduced at the start of the process on a sliding scale basis.

This comes further to the Chancellor's confirmation that, as of 6 April 2012, the qualifying period for a claim for unfair dismissal increased from one to two years.

### **Why bring in these changes?**

More than 80 per cent of tribunal claims lodged do not proceed to a hearing, with nearly half of those withdrawn by the claimant as stated by the Treasury. Employers, however, are still faced with the need to spend time and money preparing a defence.

While the new rules may be seen as a disincentive to employees from bringing a claim, it should be noted that there will be a refund of fees for any individual who wins their case.

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# Scope comment

## Independent Living Fund closure

Richard Hawkes responded to an [announcement made by the Government on its consultation about the Independent Living Fund \(ILF\)](#).

"Disabled people are extremely concerned about the Government's decision to close the ILF.

"For many disabled people, it is only this support that prevents them from having to give up their independence and their homes and moving into a residential care home.

"The Government's expectation that the support these disabled people need will be provided through local council social care packages could not be further from the truth.

"We know that local councils are already struggling to keep up with demand for social care and that many have had to restrict support as a result of budget cuts.

"This raises important questions about whether the local council safety net the Government refers to even exists.

"Today's announcement will just add even more pressures to an already struggling social care system.

"The Government has delayed and sent mixed messages about its plans for social care reform and has still not yet clarified how it plans to solve the growing funding crisis in the long term.

"Disabled people desperately need clarity on how this vital support will be available to them wherever they live."

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## Autumn Statement

Source: the Guardian

What does George Osborne's autumn statement mean for disabled people? - [Comment piece in The Guardian, by Richard Hawkes](#)

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## The Bill of Rights Commission's final report misses the point

[Cristina Sarb blogs](#)

It's been a long wait, but the much anticipated report by the Bill of Rights Commission has finally seen the light of the day.

The strength of feeling of support for preserving existing levels of human rights protection is something that the Commission will have heard loud and clear, at least if one is to judge by the responses to its consultation exercises. There has been an unequivocal call from disabled people as well as many other groups not to erode the crucial safety net provided by the Human Rights Act (HRA).

It can only be welcomed then that the Commission's report – though otherwise largely mired in differences of positions between the various members on the Commission – stresses that there should be "no less protection" than is currently contained in the HRA. However, the prospects of a different language being used in a future Bill of Rights does raise at least some doubts of how this will be achieved in practice.

### **UK Bill of Rights**

More important is, however, what the report identifies as being the need for change. This would appear to mostly come from the need for a rebranding exercise inasmuch as a UK Bill of Rights is seen to provide a way to bring about a greater sense of ownership among the public. The majority of the Commission appears to believe that given the polarised nature of the debate, it is unlikely that "public perceptions are likely to change in any substantial way" through public education.

If we were to go down this route, repackaging the Human Rights Act as a UK Bill of Rights would not only be potentially dangerous as it would risk diluting current protection, but also amount to a missed opportunity. Disabled people have been clear that consideration of a Bill of Rights need a discussion about how best to progress protection further and how to afford greater recognition to the rights contained in the UN Convention on the Rights of Persons with Disabilities.

On that count, the Commission's report fails to deliver. Both the Government's disability strategy and disabled people agree that the UN Convention needs to be at the heart of reforms moving forwards. In considering the future of our human rights laws, the Government should recognise that rather than an exercise about mere cosmetic re-branding, the prospects of developing a Bill of Rights should be driven by a need to look where additional protections could be brought in, and set a path towards incorporation of internationally recognised standards into domestic law.

# Training

## Rightsnet welfare rights training 2013

Source: Lasa

### Half day training

- Housing benefit reform – 15 January
- Personal Independence Payment – 25 January, 21 February

### Full day courses

- Employment and Support Allowance – problem areas and migration from incapacity benefits – 2 January
- Personal Independence Payment – 7 February
- Universal Credit – 24 January, 22 February, 14 March
- Older people and benefits – 7 March
- Moving between benefits and work – 14 May

For more information or to book a place on any of the training events visit:

<http://www.rightsnet.org.uk/training/courselist/>

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## DIAL Network training and development

As part of the new DIAL Network membership offer we would like to improve the training and professional development available to DIAL groups. If you have any thoughts about opportunities that would be particularly appealing to your group please do let us know.

As highlighted before, Suzi Mackenzie is keen to get your feedback, so please contact her on [suzi.mackenzie@scope.org.uk](mailto:suzi.mackenzie@scope.org.uk) or on 0207 619 7305

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# Publications and resources

## Template GP letters for DWP/ATOS Work Capacity Assessment (WCA) appeals

Source: Black Triangle Campaign

Black Triangle Campaign has produced 2 documents to support with WCA appeals. They are designed to be given to an individual's GP to submit to the DWP in the hope that their case will be reconsidered without having to wait for a tribunal hearing. [Access the documents here.](#)

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## **National Family Carer Network Personal Independence Payment (PIP) resources**

On Thursday 13 December the government presented parliament with the Personal Independence Payment (PIP) regulations.

Under the Welfare Reform Act, PIP will replace Disability Living Allowance (DLA) next year. The regulations set out that, by May 2018, 600,000 fewer people will be in receipt of PIP than would have been the case under DLA – 450,000 of these are of working age.

The reassessment timetable will also be slower than anticipated. New claims will be assessed for PIP from April 2013 (in controlled areas), with a national roll out for new claims taking place from June 2013. October 2013 will see

Updated [information relating to Personal Independence Payments can be found in the Resources and Benefits section of the National Family Carer Network website.](#)

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## **Turn2us benefits myth-busting resources**

Following on from the launch of their Benefits Stigma in Britain research last month, 'Turn to Us' have also produced a ['Read between the lines: confronting the myths about the benefits system' report and video.](#) Aiming to help campaigners tackle the inaccuracies that have, for too long, dominated the discussion around benefits, these resources dispel the most common myths surrounding benefit claimants.

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## **CHANGE: Easy Read Solicitor Information**

CHANGE has been working to develop [easy read information to support people with learning disabilities through various aspects of the criminal justice system.](#)

A number of free resources including: Notes of Rights and Entitlements (Police); Licence Conditions (Probation); and The Court and your Child can be accessed via the CHANGE website.

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## **Jobseeker's Allowance sanctions and Employment and Support Allowance**

## work-related activity change guides

Source: Turn to Us

There have been a number of changes to the Jobseeker's Allowance (JSA) and Employment and Support Allowance (ESA) rules about the conditions you have to meet in order to remain entitled to receive benefits and the penalties that can be imposed if you do not meet those conditions.

These amendments are part of the preparation for Universal Credit which will bring together the main working age benefits and introduce common rules about conditionality and the sanctions that may be applied if you fail to carry out a required action.

No sanctions should be imposed in either JSA or in ESA if you can show good reason or good cause for your action that led to the sanction being considered. All decisions to apply a sanction are able to be appealed if you disagree.

[Read their guide to Jobseeker's Allowance sanctions](#)

[Read their guide to Employment and Support Allowance work-related activity changes](#)

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## Disability History Month

**22<sup>nd</sup> November – 22<sup>nd</sup> December**

Source: BBC

Throughout the month the BBC has run a series of online features about prominent historical figures whose disability has been overlooked

[Access the online features here.](#)

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## Get in touch

**Do you have something to tell the network?**

This is your newsletter and we are always happy to hear from you. If you have something you'd like to share before next month's newsletter, please contact us. We'll do our best to add it in.



We also welcome your thoughts on this newsletter – does it meet your needs? Is there anything you'd like to see more or less of? Do you like this format or would you prefer an email with links?

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Please note we have made every effort in this mailing to use language in keeping with the social model of disability. However, some terms used might not reflect this.

Although these are not our preferred terms, some of the materials used are quoted directly from source and used in their original format.