

THE LAW ON SOCIAL SECURITY

All service providers must make reasonable adjustments for disabled people. And in common with all other public authorities it must also have due regard of the need to advance equality of opportunity and remove barriers faced by people with protected characteristics.

DWP therefore cannot have “one size fits all” approaches to benefits services.

Examples of common practices that could be considered unlawful:

- Standardised imposition of work-search diary sheets for claimants with learning difficulties
- Standard requirement to fill in disability questionnaires (e.g. ESA50s, PIP2s) without support
- Automatic referral to the Work Programme and similar schemes
- Automatic selection for face-to-face consultations

Failure to make reasonable adjustments also bars many claimants from benefitting from the full range of in-to-work support available to non-disabled claimants.

Failure to understand basic benefits rules

Here are three examples of common misunderstandings:

1. Employment and Support Allowance Work Related Activity Group – referrals to Work Programme are discretionary

SOCIAL SECURITY (EMPLOYMENT AND SUPPORT ALLOWANCE)
(WORK-RELATED ACTIVITY) REGULATIONS 2011 SI 2011/1349

Requirement to undertake work-related activity

3.—(1) The Secretary of State **may** require a person who satisfies the requirements in paragraph (2) to undertake work-related activity(a) as a condition of continuing to be entitled to the full amount of employment and support allowance payable to that person.



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2. Jobseekers Allowance – selection for Schemes for Assisting Persons to Obtain Employment is discretionary

The same goes for Jobseekers Allowance:

JOBSEEKER'S ALLOWANCE (SCHEMES FOR ASSISTING PERSONS TO OBTAIN EMPLOYMENT) REGULATIONS 2013

Schemes for Assisting Persons to Obtain Employment

SI 2013/276 JOBSEEKER'S ALLOWANCE (SCHEMES FOR ASSISTING PERSONS TO OBTAIN EMPLOYMENT) REGULATIONS 2013

Selection for participation in a Scheme

4. –(1) The Secretary of State **may** select a claimant for participation in a scheme described in regulation 3. (regulation 3 lays out details of Skills Conditionality, Work Programme etc)

3. Universal Credit – “all reasonable work-search action” is not necessarily 35 hours per week demonstrated on diary sheets

Jobcentre staff appear to have been told that claimants in the “all work-related requirements” group must demonstrate 35 hours per week work search on diary sheets. Nothing could be further from the truth. In a decision of 28th April 2015 (unchallenged by the DWP) the HMCTS Social Entitlement Chamber stated,

“Although it is common ground that the appellant had not spent 35 hours during the week in question undertaking his job search I am satisfied that in the week in question the actions that he did take were reasonable in the circumstances”

In our experience Work Coaches appear to believe that if any claimant falls short of their claimant commitment then they must be referred for a sanction. And decision-makers appear to believe that claimants must be sanctioned if they don't fulfil their claimant commitment. This approach disempowers staff who in fact should decide whether the claimant has undertaken **all reasonable** work search action. Currently, claimants must go to a Tribunal for the law to be considered for the first time.

Public Law

This is a body of case-law that has grown up around the evolution of public bodies. Various principles have been established by the courts that all citizens can expect public bodies to comply with. These include fairness, reasonableness and keeping operations within the law.

Conclusion

DWP procedures appear to be drawn up with little reference to the law, undermining democracy, causing massive distress to vulnerable claimants, and misleading staff into unwittingly departing from the law.