

Failure to Attend or Failure to Participate in Mandatory interview/intervention and Failure to Participate in WRA

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Please note that this guidance applies only to claimants who FTA or FTP in a mandatory interview/intervention or FTP WRA on or after 3 December 2012. Please refer to previous guidance prior to this date – this can be obtained by emailing the page owner on the link below.

1. Claimants who are aged 18 or over and in the Work Related Activity Group (WRAG) (excluding Credits Only claimants, Full Time Carers, claimants at or over the age at which they are entitled to receive Pension Credit, and some Lone Parents), are required to comply with conditionality, either via Jobcentre Plus or by participating in the Work Programme, as a condition of receiving ESA. See ESA Guidance for Jobcentres, 05 Jobcentre Plus Offer.
2. These WRAG claimants are required to take part in mandatory interviews or interventions (this includes New Joiner's Work-Focused Interview (NJWFI), Flexible Interventions, and Work Programme Referral Interview) and to undertake Work Related Activity (WRA).

Note: there are some exemptions/restrictions from being required to undertake WRA. See ESA Guidance for Jobcentres, 05 Jobcentre Plus Offer

3. ESA Claimants who Fail to Attend (FTA) or Fail to Participate (FTP) in a mandatory interview/intervention or fail to undertake WRA, must show they have good cause, if they are to avoid benefit sanctions.

Jobcentre Referrals

4. If a claimant FTA or FTP in a mandatory interview/intervention or fails to undertake Work Related Activity (WRA) the Adviser at the Jobcentre must consider whether they have shown good cause for the failure.
5. Where the Adviser considers that good cause has not been shown they refer the case to the Decision Maker – Labour Market (LM DM) in the Benefit Centre (BC), for a formal determination on good cause. The referral is recorded in LMS and associated paperwork submitted to the LM DM including all appropriate evidence, e.g. evidence from the claimant/partner if available, Core Visit report if appropriate, any additional evidence from the Adviser not already recorded on LMS. See also Labour Market DMA Procedural Guide.

Work Programme (WP) Provider Referrals

6. Once a claimant has been referred to the WP, the WP Provider will raise any doubt about compliance by issuing a WP08 direct to the BC for the LM DM to consider whether good cause can be accepted. See Work Programme Guidance.
7. If there is insufficient information for a decision to be made, the further information should be requested direct from the Provider who made the referral and not via the Jobcentre.

Good cause consideration

8. Good cause must always be considered, even where the claimant has not provided an explanation about why they FTA or FTP the mandatory interview/intervention, or failed to undertake WRA. When considering good cause the LM DM must:
 - take into account the claimant's individual circumstances and determine whether it was reasonable for them to attend/participate in the interview.
 - have particular regard to the welfare of less able claimants, e.g. those suffering from mental health conditions, learning disabilities, conditions affecting communication/cognition such as stroke or autistic spectrum disorder (not an exhaustive list).
9. The Regulations apply equally whether the claimant has FTA/FTP or failed to undertake WRA. A claimant can show good cause for FTA/FTP or failure to undertake WRA if, for example, they ;
 - Have misunderstood any requirement given to them due to any learning, language or literacy difficulties
 - Have been given misleading information by a member of staff
 - Were attending a medical or dental appointment, or accompanying a person for whom the claimant has caring responsibilities to such an appointment, and it would have been unreasonable for them to rearrange that appointment
 - Had difficulty with their normal mode of transport and there was no reasonable alternative
 - Have established customs and practices of religion, which prevented them from attending at that particular time
 - Were attending an interview for employment
 - Were pursuing an employment opportunity as a self employed earner
 - Had an accident, sudden illness or relapse in the case of a chronic condition which prevented the claimant from attending on the day
 - Are a person with caring responsibilities and the person for whom care is provided had an accident, sudden illness or relapse in the case of a chronic condition which prevented the claimant from attending on the day
 - Suffer from any disability or health condition, which prevented them from attending on the day
 - Were attending the funeral of a relative or close friend
 - Have any other issues/circumstances that the LM DM considers appropriate.

Note: the above list is not exhaustive.

Sanctions

10. On 03 December 2012 a revised sanctions regime was introduced for ESA claimants. A new hardship regime was also introduced.
11. If the LM DM determines the claimant has **not** shown good cause for a failure to FTA or FTP in a mandatory interview/intervention or to undertake

Work Related Activity (WRA), a sanction decision is made. The sanction should be entered onto JSAPS.

12. The claimant's benefit is reduced by 100% of the personal allowance of ESA.

Note: Where this guidance refers to “personal allowance” this means that the reduction is 100% of the amount prescribed for a single person.

13. The sanction consists of an open-ended period followed by a fixed term period:

Open-ended Period

14. The reduction in ESA applies from the first day of the benefit week in which the failure determination is made (by the DM), unless the claimant has been paid benefit since the failure occurred in which case the reduction will be applied from the first day of the benefit week after the claimant was last paid.
15. The open-ended element of the sanction will usually remain in place until the start of the benefit week in which the claimant **re-complies**. This means the claimant has done the activity required e.g. attended an interview, or agreeing to do the activity may count such as contacting the Jobcentre to rearrange an interview. The Adviser/Provider will notify the BC immediately if a claimant re-complies.

Fixed Term Period

16. A fixed term period (ESA still reduced by 100% of the personal allowance) immediately follows the open-ended period, from the start of the benefit week in which the claimant re-complies. The length depends on the number of sanctionable failures within **52 weeks** of the current failure. The 52 week period begins on the date of the current failure and counts back for 52 weeks.
17. The fixed term periods are one, two or four weeks. A one week fixed term period will apply if there are no sanctionable failures within the previous 52 weeks, and a two week period will apply when there is only one previous sanctionable failure within 52 weeks. A four week period will apply if there is a previous sanctionable failure in the 52 week period with a fixed term period of 2 or 4 weeks.
18. The fixed term period will escalate if it is within 52 weeks of the last sanction but not within **two weeks** of it. When two or more sanctionable failures occur in the same two weeks each one will be given the same level of fixed period, it does not escalate.

Example 1

An ESA claimant FTA a WFI on 25/03/2013. They also fail to undertake WRA on 28/03/2013.

Both Sanctionable Failures attract a one week fixed period.

The claimant then fails to undertake another WRA on 07/06/2013. This attracts a two week fixed period, as the previous sanction included a one week fixed period.

19. The LM DM will determine the length of the fixed term period and must record their decision on Decision and Making Appeals System (DMAS), and notify the ESA maintenance team. Full details on recording the decision are available in the DMAS System User Guide.

20. It is essential that the details of the Sanction recommendation, including the fixed term period, are detailed on the DMA decision notification.
21. In cases where a sanction is applied, the decision notification (including the sanction recommendation) must be sent to the appropriate ESA Claims maintenance Team and to the appropriate Jobcentred
22. See examples of How the fixed term period is calculated.
23. In some circumstances the fixed term period is not applicable;
 - If the sanction being lifted is on a pre- 3 December 2012 failure;
 - If participation in the Jobcentre Plus Offer or WP becomes voluntary e.g. the claimant has been placed in the Support Group **or**
 - If the claimant completes the Work Programme.

Note: Sanctionable Failures or sanctions that happened prior to 3 December 2012 do not count toward the new Sanctions Regime.

Multiple Sanctions

24. A claimant may have a further sanction imposed before they re-comply with an earlier one. Sanctions will run concurrently; that is two (or more) sanctions may be on the claim at the same time. When the claimant complies with the mandated activity in question a sanction may be lifted but any other sanction/s will remain in place until the claimant complies with the mandated activity for the other sanction/s (followed by the appropriate fixed term period).

Note: When the rate of ESA payable to the claimant changes e.g. at uprating time, the rules for calculating the reduction should be applied to the new rates in payment.

Hardship

25. ESA claimants who are sanctioned under the revised sanctions regime are able to apply for Hardship from day 1 of the sanction at 60% of the personal allowance.
26. The claimant must have an award of ESA(IR) or be in receipt of ESA (C) but has an underlying entitlement to ESA(IR) before making a claim for hardship.
27. An ESA hardship award is an award of Income Related ESA (ESA (IR)) made at a reduced rate to give a minimum level of financial support.
28. ESA Hardship payments can be made to certain people who would suffer hardship if ESA was not paid.
29. The decision about whether or not to make an ESA hardship award is usually made by an ESA Hardship Officer in the Jobcentre.
30. Hardship awards should be processed on JSAPS by a Claimant Service Officer - Claims Maintenance (CSO CM) in the Benefit Centre. See ESA Hardship Guidance for further information.

Voluntary Claimants

31. Sanctions can only be applied to claimants who are required to attend a mandatory interview/intervention or to undertake WRA as a condition of receiving ESA. Voluntary claimants cannot be required to attend mandatory interviews/interventions or to undertake WRA. They are:
 - Support Group claimants

- Credits Only claimants
- Full time carers
- Lone Parents with a youngest child under one
- Claimants at or over the age at which they are eligible to receive Pension Credit. See the State Pension Age Calculator for more information
- Claimants awaiting their initial WCA outcome (no Work Programme access)
- Claimants appealing a WCA decision that they have no LCW (disallowed ESA)
- Incapacity Benefit claimants – prior to IB (IS) Reassessment
- Other benefit recipients
- Wholly Abated cases (claimants whose ESA is not payable due to pension income or overlapping benefits). However, where the pension income/overlapping benefits cease then the claimant would be subject to conditionality.

See DMG Memo 41/12.

32. Additionally voluntary claimants, **can** be sanctioned if the claimant's **partner** fails to attend a mandatory interview without good cause under the Work Focused Interviews for Partners regime.

Local Authority Youth Service Referrals (under 18s)

33. 16/17 year old claimants (“Young Person” (YP)) unless they are in the Support Group are required to attend a **Learning Focused Interview (LFI)** (not a WFI) with the Local Authority Youth Service, once they have been placed in the Work Related Activity Group (WRAG) and the Work Related Activity Component is in payment at week 14 of the claim.
34. The YP has one opportunity to attend the LFI. If they (FTA)/ (FTP) the LFI, unless they can demonstrate Good Cause, benefit may be sanctioned in accordance with the revised sanctions regime from 03 December 2012. Jobcentre Plus is responsible for making any decisions when a YP FTA/FTP their LFI. The Local Authority Youth Service will advise the 16/17 year old Specialist Adviser that the YP has FTA. The Adviser then takes FTA action.
35. All FTA/FTP doubts raised against LFIs are recorded by the DM-LM directly into DMAS, not LMS. To apply the sanction on JSAPS, see Good Cause Not Accepted - Recording Sanction Decision on JSAPS .
36. The FTA/FTP process for 16/17 year olds mirrors that for adult claimants. If the claimant FTA/FTP and good cause is not shown, their ESA may be subject to a sanction in the normal way.

Action Required by Benefit Centre (BC) Claimant Service Officer Claims Maintenance (CSO CM)

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Good Cause Accepted

37. If the LM DM has determined that good cause has been shown for FTA or FTP the mandatory interview/intervention, or failure to undertake WRA, the DMAS system will notify the Adviser that the good cause has been accepted. The Adviser will then update LMS and determine the next steps for the claimant.

Good Cause Not Accepted

38. If the LM DM determines that good cause has **not** been shown, a DMAS decision notification is sent to notify the CSO CM to impose a sanction. The LM DM will also calculate the appropriate fixed term period and record this on the notification. A sanction decision is made which must be notified to the claimant and recorded on JSAPS.

Issuing Decision Letters for Sanctions and changing suppression defaults

39. The claimant must be notified of the sanction decision via a JSAPS notification regardless of whether the claimant has an open ended, or closed sanction.
40. From 16th November 2015 where a labour market sanction or disallowance has been input, the 'Inhibit award notification' will not appear. Notification to the claimant will be sent automatically.

Note: in certain scenarios, the automatic notification function will not work and the 'inhibit award notification' field will still be displayed. In these cases, users will be required to overwrite the default with 'N' to prevent the notification being inhibited. If in any doubt, **do not** inhibit the notification.

41. The following system action should be taken:

Step	Screen	Action
1	JA513525	Check dialogue JA513 to establish if claimant has a reduction to the WRAC under the pre 3 December 2012 sanctions regime (that is, the sanction AR code is not CSL015 or CSL017). If so, take action as per Claimant has existing sanction under pre 3 December 2012 sanctions regime.
2	JA210213	<ul style="list-style-type: none">• (S)usp/(D)ecision field – input D• Case Number field – leave blank• Press Enter.
3	JA210212	<ul style="list-style-type: none">• AR Code field – input the appropriate AR Code (See AR Decision Codes)• Doubt field – input the start date of the sanction in the AR Period (see Sanctions for

		<p>details of the date ESA reduces)</p> <ul style="list-style-type: none"> • End Date field – leave blank unless you need the sanction to end on a particular date • JS85 Number field – leave blank. • Decision field – input DISD • In the Source field input either: <ul style="list-style-type: none"> • Decision Maker (limited) • Decision Maker • Regional Decision Maker • Date of Transgression field – input the date of the <i>failure</i> (FTA or FTP the mandatory interview/intervention, or failed to undertake WRA) • ES Action field – leave blank • Credits Allowed field – displays Y or N to show whether credits are allowed • Decision Current At Field – displays blank • Decision Date field – input the date of the Sanction Decision • FTA Time field – leave blank • Employer field – leave blank • Press F1 to proceed to screen JA200201: Award and Decision.
4	JA200201	<ul style="list-style-type: none"> • Press F12 to scroll through the Evidence Summary screen(s) • Press Enter to proceed to Award Summary screens.
5	JA200202	<ul style="list-style-type: none"> • Press F12 to scroll through Award Summary Screens – check details are correct • Press F24 to proceed to Screen JA405407.
6	JA405407	<ul style="list-style-type: none"> • Check Payment details are correct

		<p>Input [N] into the 'Inhibit Award Notification?' field if a decision notification is required.]. This field will not display for most sanction decisions as notification will be sent automatically to the claimant. Where the field is displayed a notification must be issued where the claimant's award has changed.</p> <p>(ESA payment must not fall below 10p per week, this makes sure pass-porting arrangements stay in place. The sanction deducted amount may need to be changed to make sure ESA does not fall below 10p)</p> <ul style="list-style-type: none"> • Press End to update JSAPS.
7	JA110111	<ul style="list-style-type: none"> • In notepad record "Sanction with date of Failure (transgression) **/**/** [insert date] - * week [insert appropriate number of weeks 9of fixed term period] fixed term period applies. Do not remove this note"
8	TPD	<p>Where there are third party deductions on the award and after applying a sanction, there is insufficient ESA in payment to continue all or some of any existing third party deductions consult your specialist third party deductions team for the appropriate action to take.</p>
9	CAM	<p>Update CAM contact history.</p>

42. In addition a case control must be set 4 weeks from the effective date of the sanction in cases where claimants have a sanction on their claim which may last for 4 weeks or more (for FTA or FTP the mandatory interview/intervention, or failure to undertake WRA). This is for the Claimant Compliance Team to extract the appropriate information from the legacy system and initiate Claimant Compliance investigation action.

43. In JA530: Case Controls :

- Insert type 'U' for user set.
- Insert reason as 'Claimant Compliance Risk E.'
- Insert section as type '7' for visits.

44. When the Case Control matures, do not refer to Claimant Compliance if the claimant was sanctioned for less than 4 weeks.

Third party Deductions

45. If after applying a sanction, there is insufficient ESA in payment to continue all or some of any existing third party deductions consult your specialist third party deductions team for the appropriate action to take.

Claimant Re-complies

46. **Re-compliance** means the claimant has done the activity required e.g. attended an interview, or agreeing to do the activity may count e.g. contact the Jobcentre to rearrange an interview.
47. Where a claimant subsequently re-complies the Adviser notifies the CSO CM BC immediately on form JCP27 so that the claimant's ESA can be reassessed.
48. If there has not yet been a determination on the original failure, the JCP27 is sent to the LM DM.
49. Where a claimant on the WP complies, the Provider sends form WP09 to the LM DM who takes action to ensure DMAS/LMS is updated then issues a DMAS notification to the CSO CM to end the sanction. For further information ESA – Claimants – DMAS activity to take upon receipt of WP09.
50. On receipt of the JCP27/WP09 check JSAPS to see whether a sanction has been entered onto the system. If a sanction has been imposed the open-ended element is lifted from the first day of the benefit week in which the claimant re-complied, and an additional 1, 2 or 4 weeks is added for the appropriate fixed term period.

Note: Where the claimant re-complies within the same benefit week as the failure determination is made, the appropriate fixed term period will be imposed from the start of the same benefit week (there is no open-ended period if the claimant complies within a week of the failure).

Lifting the Sanction on JSAPS

51. The following system action should be taken:

Step	Action
1	<p>Upon receipt of the JCP27 or DMAS template/notification access dialogue JA210 and input an end date on the appropriate sanction decision. The end date will be the final date in the benefit pay week before the claimant re-complied, plus 1, 2 or 4 weeks for the appropriate fixed term period as recorded in JA110 notepad.</p> <p>See Sanctions.</p> <p>Note:</p> <ul style="list-style-type: none"> • If the sanction being lifted is on a pre- 3 December 2012 failure, the fixed term period is not applicable. • If the claimant's participation in the Jobcentre Plus Offer becomes voluntary e.g. placed in the Support Group the sanction should end the day before, and the fixed term period is not applicable. <ul style="list-style-type: none"> • If the claimant completes the Work Programme, the sanction should be lifted from the first day of the benefit week in which the WP end date falls, and the fixed

	term period is not applicable.
2	<p>Reassess the award from the relevant benefit week using dialogue JA200 and dialogue JA405.</p> <ul style="list-style-type: none"> • This triggers a system notification to the claimant advising them that the sanction decision has been changed. • For clerically maintained claims, complete form ESA14P, noting it in red 'claim revised because – reason why – from dd/mm/yy to dd/mm/yy'
3	<p>In dialogue JA110 notepad add “Re-complied on **/**/**” [insert date re-complied]” to the appropriate original sanction decision note.</p> <p>Or, if appropriate, add a note stating - Pre 3 December 2012/ date participation became voluntary (e.g. 'Claimant placed in SG on **/**/**')/date WP completed, and fixed term period not applicable.</p>

How the fixed term period is calculated

52. The following examples demonstrate how the fixed term period is calculated by the LM DM. The LM DM calculates the fixed term period using the date of determination.

Example 2

Jean FTA her NJWFI on 07/02/13.

This is her first failure.

Jean's benefit payday is Wednesday (her last payment was on 06/02/13).

Date of determination (by DM) is 18/02/13.

ESA is reduced from 14/02/13 (first day of the benefit week in which the determination is made).

The LM DM states that the fixed term period of the sanction will be for one week as there are no previous sanctions within 52 weeks.

Note: failures prior to 03/12/12 do not count.

Jean rang on 21/02/13 to rearrange her NJWFI.

NJWFI rearranged for 22/02/13 and Jean attended this interview.

Date of re-compliance is 21/02/13.

The open-ended period is lifted from 21/02/13 (the start of the benefit week in which the claimant re-complies).

The one week fixed term period is applied from 21/02/13 – 27/02/13.

Example 3

Jean then FTA a Flexible Intervention on 16/07/13.

Her 52 week period starts from 16/07/13 (the date of failure) and ends 52 weeks previously on 18/07/12.

Note: failures prior to 03/12/12 do not count.

Jean's last payment was on 24/07/13.

Date of determination is 24/07/13.

ESA is reduced from 25/07/13 (from the first day of the benefit week after the claimant was last paid).

The LM DM states that the fixed term period will be for two weeks (because there is only one sanctionable failure in the previous 52 week period – the one on 07/02/13).

Jean rang on 26/07/13 to rearrange the Flexible Intervention.

This is rearranged for 29/07/13 and Jean attends.

Date of re-compliance is 26/07/13.

The open-ended period is lifted from 25/07/13 (the start of the benefit week in which the claimant re-complies).

The two week fixed term period is applied from 25/07/13 – 07/08/13.

Example 4

Jean FTA a further Flexible Intervention on 21/02/14.

Her 52 week period starts on the date of failure and ends 52 weeks previously on 23/02/13.

Jean's last payment was on 19/02/14.

Date of determination is 03/03/14.

ESA is reduced from 27/02/14 (first day of the benefit week in which the determination is made).

The LM DM states that the fixed term period will be for four weeks (because the most recent failure within the previous 52 weeks incurred a two week fixed period.).

Jean rang on 28/02/14 to rearrange the Flexible Intervention.

This is rearranged for 03/03/14 and Jean attends.

Date of re-compliance is 28/02/14.

The open-ended period is lifted from 27/02/14 (the start of the benefit week in which the claimant re-complies).

A four week fixed term period is applied from 27/02/14 – 26/03/14.

For further examples see DMG Memo 41/12.

Claimant has existing sanction under pre 3 December 2012 sanctions regime

53. ESA claimants cannot be sanctioned under the new regime (from 3 December 2012) whilst there is a sanction in place under the old regime (pre 3 December 2012, 50% or 100% reduction to the WRAC).
54. Where a claimant FTA or FTP in a mandatory interview/intervention or fails to undertake WRA, the Adviser or LM DM will check JSAPS to establish if claimant has a reduction to the WRAC under the pre 3 December 2012 regime. If so, no further action is required as the claimant cannot be sanctioned under the new regime until the existing sanction has ended.
55. **Do not** impose a sanction if a DMAS template is received and there is already an existing sanction under the pre 3 December 2012 regime. The DMAS template must be returned to the LM DM annotated "Unable to action - claimant has existing sanction under the pre 3 December 2012 regime".
56. Record the reason for return of the DMAS template in JA110 notepad.
57. If a pre 3 December 2012 sanction is to be lifted the adviser notifies the BC on form JCP27. The date of transgression box will be left blank, and the inappropriate wording about the open ended sanction struck through.
58. Fixed term periods do not apply where a pre 3 December 2012 sanction is lifted.

Claimant moves into Support Group/Participation in the Jobcentre Plus Offer or WP becomes voluntary

59. If a claimant's participation in the Jobcentre Plus Offer or WP becomes voluntary, for example they are placed in the Support Group, they are not required to attend mandatory interviews or undertake WRA. Therefore, the sanction must be lifted and the fixed term period is not applicable.
60. Take action to end the sanction in JSAPS on the day before the claimant's participation became voluntary e.g. day before placed in the Support Group.
61. If the claimant's participation becomes mandatory again e.g. they move back into the WRAG, the sanction remains lifted.

Work Programme completed

62. If a claimant completes 104 weeks of the Work Programme any mandatory WRA requirements cease and any outstanding sanctions must be ended. The fixed term period is not applicable.
63. The Adviser notifies the BC immediately on form JCP27, annotated '**The claimant completed WP**' in the info box at part 2.
64. Take action to lift the sanction in JSAPS from the first day of the benefit week in which the WP end date falls, the fixed term period is not applicable.

Claim ends whilst sanction in place

65. If an ESA award ends whilst a sanction is in place, the sanction will be lifted.
66. Take the following action when terminating an ESA award whilst a sanction is in place:
 - Use the award termination date as the end date of the sanction.

Repeat claims

67. When a claimant makes a new claim for ESA, any previous claims must be checked for sanctionable failures and sanctions. This is because sanctions that occurred on previous claims may affect the length of any new sanctions (if they have occurred within 52 weeks).

Partners

68. Where the Partner fails to participate in a mandatory interview/intervention an amount equal to 20% of the personal allowance component of Income Support for a person 25 years or over can be applied. This should be applied using exceptional condition 15: Change to personal allowances.

Note: A sanction for Failure to Undertake WRA cannot be applied to a partner unless they are entitled to ESA(C) in their own right).

69. Where a partner subsequently re-complies the Adviser/Provider notifies the BC immediately so that the claimant's ESA can be reassessed.

70. The end date of the sanction input in dialogue JA210 is the final date in the benefit pay week before the week in which the partner has re-complied.