**Edited submission on reg 35**

Miss X is 32. She suffers from whisper dysphonia exacerbated by extreme muscle tension and neuropsychological issues, from severe acid reflux and heartburn, from IBS, and from anxiety and depression. All these conditions, and the medication in relation to them, interact.

The Inner House of the Court of Session in *Secretary of State for Work and Pensions v Brade* [2014] AACR 29 [2014] CSIH 39 emphasised the need to take a purposive approach to the ESA regulations. The purpose of the distinction between the two ESA groups is to identify those who may be able to enter or re-enter the labour market if they undertake work-related activity.

Placement in the work-related activity means that Miss X must attend one or more work-focused interviews and then undertake work-related activity. The respondent is vague about what that activity might be or what is available [G; 10-11].

We ask the tribunal to conclude that the barrier to Miss X’s going to work is not a deficiency in skills or motivation, which is what work-related activity is intended to address, but her very real and debilitating mix of physical and mental health issues. The kind of work-related activity available from the DWP and its contractors would not, we suggest, address those issues. They should be dealt with in a medical context, not as part of a regime involving, potentially, sanctions. For instance, the suggestion that Miss X might be required to contact or research “organisations or support groups that deal with your medical problems” [10] in our view borders on the irresponsible.

We invite the tribunal to conclude that attending one or more work-focused interviews would inevitably cause Miss X serious distress. It is difficult to see how such an interview could realistically meet any of the purposes set out in regulation 55 of the ESA Regulations, given Miss X’s health issues. We suggest that any activities required would be pointless, and so it would be unreasonable for the respondent to require them to be undertaken. In Miss X’s situation placement in the work-related activity group would, we submit, be not just futile but positively detrimental to her mental and physical health.