

How to

Win an appeal about your Work Capability Assessment

advicenow

Making sense of the law and your rights

Introduction

If your claim for Employment Support Allowance or the limited capability for work element of Universal Credit has been refused, stopped or reduced, don't give up.

This guide and **accompanying tool** will help you to challenge the decision by asking the DWP to look at their decision again (called a 'mandatory reconsideration').

If they don't change the decision, this guide shows you how to appeal the decision and win. (You must ask for a reconsideration before you can appeal).

An appeal is when an independent panel (who do not work for the DWP) will look at your claim to see if the right decision was made. Appeals take much longer, but they are much more likely to be successful. This guide will help you.

This guide will help you challenge a decision that:

- Closed your application because you didn't send back the questionnaire in time without good reason.
- Closed your application because you didn't go to a face to face assessment without good reason.
- Found you are not entitled because your disability or illness does not limit your ability to work enough (in DWP speak, you do not have limited capability for work).
- Gave you the wrong award by putting you in the wrong group. For example, if you claim Universal Credit, a decision that put you in the limited capability for work (LCW) group when you believe you meet the criteria to be put in the limited capability for work-related activity (LCWRA) group. Or if you claim ESA, put you in the work-related activity group instead of the support group.

It won't help you to appeal a sanction. If you have been sanctioned, see **A survival guide to benefit sanctions**.

How this guide will help

Unfortunately, most people find it hard to get all the help they would like to sort the problem out. We will explain where you might be able to get advice on **page 12**. But bear in mind many people have to do most or all of the work themselves, or with the help of their family and friends.

We have made this guide as helpful as possible. This guide will take you step-by-step through the whole process of getting the decision about your ESA or Universal Credit changed. We will show you what to do at each stage, how to stop it from getting too stressful, and how to give yourself the best chance of getting a good result. And we have created a tool to help you write a really good letter that sets out your case.

This guide looks long, but don't be put off – you will only need to read a few pages at each stage. We have colour-coded the sections, so you know where you are and what you have to do next. If you are confused about where you are in the process or what might happen next, see **page 14**.

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What countries does this guide cover?

The information in this guide applies to England, Wales and Scotland. It will also be useful for people in Northern Ireland where the rules are the same but the names of the relevant government departments and forms are different. Please bear in mind that if you are in Northern Ireland it is the Department for Communities (DfC) rather than the Department for Work and Pensions (DWP), the Northern Ireland Courts and Tribunal Service (NICTS) rather than Her Majesty's Courts and Tribunal Service (HMCTS), and the form NOA1(SS) rather than SSCS1.

Things to understand



Universal credit was brought in to replace 6 means-tested benefits. The part of Universal credit that replaces Employment Support Allowance (ESA) is called the limited capability for work element. Whether or not you are entitled is worked out in exactly the same way – this is called the Work Capability Assessment.

The Work Capability Assessment for each uses the exact same activities, descriptors and points system. The mandatory reconsideration and appeal process is also exactly the same. This is why we have written this guide and our **Work Capability Assessment Mandatory Reconsideration Tool** that covers them both.

The main difference is that they called the two groups in each benefit by different names (see below).

For many people, the amount you get from Universal Credit is lower than you would have done if you got all your benefits separately.

Whether or not you are entitled to ESA or Universal Credit on the basis of being unable to work is based on how your illness or impairment affects you, and what very specific things you are unable to do without assistance. When you are thinking about whether or not you want to appeal, you have to look at what the criteria actually are (as set out in the law) – not what would be fair.

Whether or not you are found capable of work is decided using a complicated points system. For example, if you cannot usually stay standing or sitting (or a combination of the two) at a desk for more than an hour because it makes you too tired or it hurts, you get 6 points. If you cannot usually go to even a familiar place on your own, you get 9 points, etc. You can see the activities, descriptors and points on **pages 40–44**.

Employment Support Allowance	Limited capability for work element of Universal Credit
Support group	Limited capability for work-related activity group (LCWRA)
Work-related activity group	Limited capability for work group (LCW)

You only score one set of points from each activity (for example, getting about), so use the one that you meet that gives you the most points. In order to be found unable to work (and therefore receive ESA or Universal Credit on that basis) you need to score at least 15 points. Or there needs to be a 'substantial risk' to you or others if you were found not to be entitled (see box).

Substantial risk

If you do not get enough points to be found unable to work, you can still get the benefit if you can argue that there is a risk that you (or someone else) would be in danger if you were refused. For example, if you have seizures, violent outbursts, frequent falls, or need supervision to stay safe, you could argue it would be dangerous for you to work or have to travel to a job without help. Or if you have poor memory or confusion, and would be unable to meet the requirements to receive Jobseeker's Allowance (or Universal Credit on the basis that you are looking for work), you could argue that there was a substantial risk that you wouldn't be able to feed or care for yourself. If looking for a job or going to work is likely to make your condition worse or risk you having a relapse (for example, if you are a recovering addict, or have a condition like Chronic Fatigue Syndrome), then that too can be counted.

Similarly, if you have been put in the work-related activity group but it is fairly clear that you could not manage to reliably do the work-related activity you would have to do to keep receiving the benefit, you could argue that there is a substantial risk of harm to you if you were not put in the support group (in ESA) or limited capability for work-related activity group (in Universal Credit).

The risk counts as 'substantial' if it cannot reasonably be ignored. When judging if the risk is substantial, the DWP or appeal panel are supposed to judge both the likelihood of something happening and the potential seriousness if it does happen. So it is possible to argue that although the likelihood is not big, the consequences would be very bad and therefore the risk is 'substantial'.

Lots of people with mental health problems, cognitive difficulties, Chronic Fatigue Syndrome, or conditions that are much worse on some days than others, get ESA or Universal Credit this way.

Many advisers say it is always worth raising the argument of substantial risk if you can, as it allows the appeal panel to use their common sense.

If you get 15 points on any one indicator (except in activities 8, 10 and 15 – ‘Finding your way and being safe’, ‘Consciousness during waking moments’, and ‘Getting about’), you will be put into the support group in ESA or the limited capability for work-related activity (LCWRA) group in Universal Credit. If you are in these groups, you get extra money to support your higher needs, and you don’t need to do ‘work-related activity’ (meet regularly with an adviser at the Jobcentre, go to occasional training courses, and do various tasks that the DWP say will make you better able to get a job later). If you are entitled to contribution-based ESA (because you have paid enough NI contributions) you can also receive it for more than a year.



If you haven’t checked what rate you should be getting yet, use our **Work Capability Assessment Mandatory Reconsideration Tool**. It will help you work out if the DWP has given you the right decision. If they haven’t, the tool helps you to write a really good letter that asks for a mandatory reconsideration and sets out your case.

What are you going to live on?

What are you going to live on?

If you have been refused any ESA, you will be worried about what you are going to live on. Once you have lodged an appeal, you can ask ESA or UC to pay you on the assessment rate while you are waiting for the hearing. So the main problem is what to live on while you are waiting for the mandatory reconsideration.

If you are on Universal Credit, it is less of a problem. You could get Universal Credit on the basis of looking for work. (Don't worry, it won't mean you can't argue that you are not fit for work in the appeal).

But if you claimed ESA you need to think carefully before putting in a claim for Universal Credit on the basis of looking for work, as it will mean you cannot go back onto ESA if you win your appeal. If you claim Universal Credit while you are waiting, you will have to stay on Universal Credit if you win.



This is a problem as it may be much less money than you would have received on ESA.

Find out more about getting other benefits while you wait for a decision on your reconsideration on the **Citizens Advice website**.

What is your situation?

What is your situation?

They said I was well enough to work

Some people in this situation feel like they should just give up, others feel absolutely furious. The DWP often don't apply the criteria correctly. Challenging the decision can take a long time, but everybody should get what the law says they are entitled to. Remember you have nothing to lose. Start by using our **Work Capability Assessment Mandatory Reconsideration Tool**.



They have put me in the wrong group! I should be in the limited capability for work-related activity (LCWRA) group, but they've put me in the limited capability for work (LCW) group



This is the same as being put in the work-related activity group, rather than the support group in ESA. Some people in this situation feel like they should just be happy they got something. Others are concerned that if they ask for the decision to be looked at again, they might lose their award. This is technically true, but if the DWP have recognised you are entitled to at least 15 points, you are unlikely to lose your award completely. If you are concerned, try to see an adviser.

Remember, everybody should get what the law says they are entitled to, and the DWP often don't apply the criteria correctly. Use our **Work Capability Assessment Mandatory Reconsideration Tool** check what award you think you should have got. If it's not the same as you were awarded, use our tool to ask the DWP to look again at their decision. If they don't change their decision, you should appeal.



I was on contribution-based ESA in the support group until I was reassessed. I got moved to the work-related activity group and now I don't get anything

What is your situation?

This is because you can only get contribution-based ESA for one year if you are in the work-related activity group. If you were in the support group you could stay on contribution-based ESA as long as necessary. Use our **Work Capability Assessment Mandatory Reconsideration Tool** to check what award you think you should have got. If you might still be entitled to be in the support group, use our tool to request a mandatory reconsideration. If they don't change their decision you should appeal.

My condition has got worse since I was assessed



If your illness or impairment has got worse since the date of your decision, it cannot be taken into account in an appeal. Instead, if you now meet higher scoring descriptors you should:

- make a new claim, if you were refused benefit altogether, or
- ask for your benefit to be reassessed (the proper name for this is a supersession) if you were given some benefit but not as much as you think you should get. If they don't put up your award, you can appeal *that* new decision.

What is your situation?

My claim was closed because they say I didn't send back the questionnaire on time

You should ask for a mandatory reconsideration of the decision to close your claim and explain what happened. Maybe you did send the form back but it went missing, or maybe you failed to send the form back but you had a good reason. If the reason for your difficulties returning the form is connected to your condition (for example, if you were in hospital, if you are unable to deal with your post without help, or if you were too anxious or distressed to complete the form) you have a very good case for them to reinstate your claim.

If you don't think you ever received the form, bear in mind the DWP will have evidence of having posted it to you. So, you will need to explain either that you have had difficulties in general with post not being delivered to your address, or that you didn't know the form had arrived because you need help to manage your post, and you didn't receive that help.



My claim was closed because they say I didn't go to the medical examination without good reason



You should ask for mandatory reconsideration of the decision to close your claim and explain why you failed to go to the assessment. If the reason for your difficulties is connected to your condition (for example, you were unwell that day, are unable to go to the assessment centre alone, or were too anxious to cope) you have a very good case for them to reinstate your claim.

Similarly, if you had asked for a home assessment and were waiting to hear back from the DWP about whether that was possible, you could argue that that was a good reason not to go to the assessment at an assessment centre.

If you have had a hard time with the assessment stage, you are not alone.

Forms that were definitely sent back often go missing, wheelchair users have been sent to assessments in buildings that are up a flight of steps with no ramps available, and there are often things in assessors' reports that didn't actually happen.

It is unfortunately true that instances of grotesque unfairness like this seem to be commonplace. It is one of the many reasons that we have written this guide to help you get what you are entitled to.

How to find an adviser

For many people, it is not easy to find advice and help with your benefits. You should expect that you will have to do most of the work yourself (or with help from your friends or carers). Don't worry, this guide will show you what to do, and how to do it.

How to find an adviser

But if you can get advice to help you work out what rate you should be getting and if you should ask for a mandatory reconsideration, it will be really helpful. Obviously if you do find someone who offers to help you further, take it.

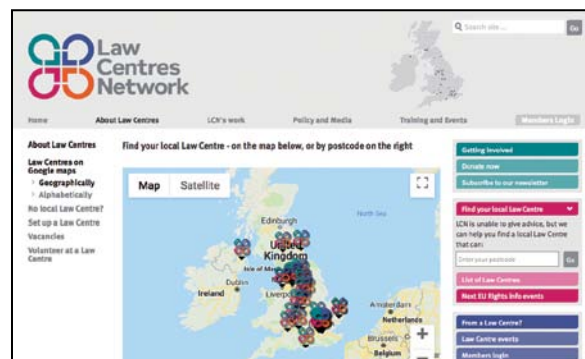
Use **Advice Local** to find the best options near you. Enter your postcode and select 'welfare benefits' from the drop down menu and search. This will tell you about any Citizen's Advice, law centres, or independent advice agencies in your county. (Beware – it misses out ones in your area but in another county or borough. If you live near a county border, definitely check you there isn't a closer option by following the advice below).

If that doesn't bring up a service that you can get to, check with **Citizens Advice** if there is a Bureau that helps with benefits problems near you. Many now offer advice over the telephone.

See if there is an independent advice agency in your area on **Advice UK's site**.

Check if your local council has a welfare rights service. If you didn't find their details in the Advice Local search, phone the council and ask for 'welfare rights', check the website, or ask in your local library.

Check if there is a **Law Centre** near you.



There are sometimes services that you can access through your GP, social worker, or community centre. There's no harm in asking – so call your GP, and your social worker, or community centre if you have one, and ask if there is a service for you.

Some charities provide advice services for particular groups – for example, MS society provides a legal advice over the phone from the **Disability Law Service**. The **Royal British Legion** support people who have served in the armed forces and their families and even represent at appeal. Check if there is a charity that provides benefits advice to people with your illness or impairment. If they provide information on their website about appealing or claiming ESA (or the limited capability for work element of Universal Credit) it may also be very useful as it will usually show how people with similar symptoms to yours have proved their entitlement. (If they don't have a guide to appealing – ask them to link to this one).

If you've nowhere else to turn, try your MPs caseworker. These are not usually expert benefits advisers but they will often be familiar with the problem and might well be able to help you. (You could point them towards this guide).

How to find an adviser

If the organisation you contact says they are too busy, ask them to keep your name on a waiting list, or to tell you how long before they might be taking on new clients.

Ask if they know any other organisations you should contact for help if they cannot give you an appointment themselves.

Remember that you are likely to have to wait a long time for the appeal hearing (6–12 months, depending on where you are in the country) so you do have a bit of time to find an organisation which might be able to help you prepare for the appeal tribunal.



The process

Step 1

You get a letter from the DWP telling you their decision on your claim. It may be that:

- your claim has been closed because you didn't send back the form in time or go to the medical assessment
- you have been found fit for work because you didn't score enough points in the assessment, or
- you have been put in the wrong group.

If you are unhappy with this decision, you have one month from the date at the top of the letter to ask for a 'mandatory reconsideration'. This is where the DWP look at the decision again. (If one month has already passed, see **page 17**.)

Step 2

Ask for the DWP to look again at their decision. This is called a mandatory reconsideration. Use our **Work Capability Assessment Mandatory Reconsideration Tool** to check what award you should have got and write a really good letter to the DWP that sets out your case.

The DWP will look at your questionnaire again, the face-to-face assessment report, and any other evidence they have to see if they will change the decision.

Step 3

The DWP will send you two copies of their reconsideration decision. It should say at the top of the letter "Mandatory Reconsideration Notice". You need these if you wish to appeal. If their decision has been changed and you are happy with it, you can stop here. But if it hasn't (and for most people, it hasn't), don't be put off. You have 1 month to ask for an appeal. (If one month has already passed, see **page 17**).

(continued)

Step 4

Ask for an appeal. You can use the **SSCS1 form** or ask for one **online** when that service is available. You can attach the wording from the letter generated by our **Work Capability Assessment Mandatory Reconsideration Tool** to help make your case (see **pages 18–19** for more advice). Send the form to HM Courts and Tribunal Service (HMCTS). This is the government department that organises the appeal tribunal and hearing.

Step 5

The DWP will send both you and the HMCTS a bundle of documents called the 'appeal papers' – this is an explanation of why they gave you the award that they did. Don't be put off by the size of it. Read through this bundle and make a note of anything which you disagree with, especially in the medical assessor's report about you. In addition, make a note of anything important relating to your impairment or illness which has not been included.

Sometimes after you have appealed, the DWP phone you up and offer you a new award because they recognise that you will win your appeal. Only accept their offer if you believe it is what you are entitled to. If it is lower than the award you were hoping for, politely say no. Don't let the DWP pressure you into accepting. If this happens to you, please let us know by completing our survey (www.surveymonkey.co.uk/r/SFVXXKZ).

The process

Step 6

You need to prepare for your appeal and, if you can, send HMCTS more information about your difficulties. See **pages 20–25** for details.

Step 7

You will be told the date of the hearing. If you have any further evidence about your difficulties that you haven't yet sent to the tribunal, send it now. Keep a copy.

Step 8

Your appeal will be heard by an independent panel, called a Social Security and Child Support Tribunal. They will make a new decision. See **pages 26–31** for details of what will happen and advice about what to do on the day.

If you were successful, you will usually receive your money in 4–6 weeks.

How to ask the DWP to look again at their decision



How to ask the DWP to look again at their decision

You need to ask the DWP to look again at their decision (called a 'mandatory reconsideration') within one month of the date on the letter they sent to tell you of their decision. If one month has already passed, don't worry. See **page 17**.

Technically you can ask for a mandatory reconsideration over the phone, but it is definitely better to do it in writing. Only ask for a mandatory reconsideration over the phone if you are about to miss the one-month time-limit. If you do this, follow up your request in writing. There is a form you can use but we suggest that you write a letter using our free **Work Capability Assessment Mandatory Reconsideration Tool**.

If you have any more evidence that you think will help (for example, a letter from your doctor, social worker, support worker, or carer, or any other recent reports you have had) send that too. If you need a few weeks to get more evidence, you need to decide if it is worth waiting. Many advisers say it is not, as it is better not to delay the mandatory reconsideration, as only about 10% of these types of decisions are changed at this stage. Instead, as you will probably need to appeal, get the evidence ready to send with the appeal form.

Don't take advice from the DWP about whether you should ask for a mandatory reconsideration or appeal. Remember any advice they give you is likely to be incorrect and may be self-serving. We suggest you get independent advice if you can, or follow the information in this guide.

When you ask for the DWP to look at their decision again, people are often told that they need to provide further medical evidence or there is no point. This isn't true. They may not change the decision at the reconsideration stage, but it's very possible to win at the appeal hearing without any new information or evidence. Indeed, they often don't change the decision at the reconsideration stage even when presented with excellent evidence.

People who have been put in the work-related activity group for ESA or limited capability for work (LCW) group in Universal credit, are often 'warned' that they could lose their current award if they appeal and be left with nothing. This is technically true, but it is not common. Be aware that the DWP are trying to put you off. We suggest that you look at the descriptors that you meet and the points that you think you should have got – if you get far more than 15 points, it is unlikely that you will lose your award completely.

What next?

If you have not heard back after 6 weeks, you should ring them and find out what is happening.

If they have changed their minds, congratulations! Your award will be backdated to the date you claimed. Any amount above the amount you received (either from ESA, or Jobseeker's Allowance, Income Support, or Universal Credit) will be backdated. If you originally claimed for ESA, but then claimed Universal Credit while the mandatory reconsideration happened, you will stay on Universal Credit but will now get the limited capability for work element.

If they didn't change their decision, or they did but still didn't give you the award you think you are entitled to, you should appeal. You need to tell them using the appeal form (or online version where that is available) within one month of the date at the top of the mandatory reconsideration notice.

Don't be downhearted if they didn't change their minds – they often don't, even where it appears to be very clear that they are wrong. Only about 10% of decisions are changed at this stage, but most are changed when you go to appeal.

Increasingly, we are hearing from people who have been unsuccessful with their mandatory reconsideration, only to find that the DWP change their decision after they have lodged an appeal and are waiting for the hearing. If this happens to you, only accept their offer if you believe it is what you are entitled to. If it is lower than the award you were hoping for, politely say no. Don't let the DWP pressure you into accepting. Please also let us know about it by completing our survey (www.surveymonkey.co.uk/r/SFVXXKZ).

If one month has already passed

If one month has already passed, you have the time-limit to ask for a mandatory reconsideration. You can still ask but they don't have to accept it. They usually do however.

It will help a great deal if you can explain that the delay was unavoidable or a result of your illness or disability. For example, if you were unable to deal with it until now because you need help to deal with your post, you have depression, you get confused, or you were very unwell. Longer delays will need better explanations.

Similarly, if you miss the one-month time-limit to appeal, you can ask for an appeal anyway. You will need to explain your reasons for missing the time-limit. It will be helpful if you can explain that the delay was a result of your impairment, illness or disability (see above for examples). Other good reasons might be that you did not receive the mandatory reconsideration notice safely, or were away from home when it was delivered.

A judge will then decide whether to allow the appeal despite its lateness. The DWP then has one month to object to your reasons for missing the time-limit. If they do not object, your appeal continues. If they do object, a Judge makes the decision of whether or not to accept your late appeal.

Your appeal will only definitely not be accepted if 13 months have passed since you were sent the decision.

How to ask the DWP to look again at their decision

How to ask for an appeal



You need to use the form SSCS1 to ask for an appeal. You can download the form from **GOV.UK**.

You may be able to ask for an appeal online

HM Courts and Tribunal Service are slowly rolling out a new system that allows you to **ask for an appeal online**. If it is available in your area and for this benefit, you can choose to use it or fill in the form by hand. Pick the option that makes you (or the person helping you) feel most comfortable. The useful thing about the online form is that you receive proof that they received the appeal via email.

Whichever you choose, follow the guidance below. The ordering of the sections is different on the online version, but all the information they ask for is the same.

You must include a copy of the mandatory reconsideration decision with your appeal (this is why you got two copies). You need to tick the box to confirm that you are including it in **section 1** of the paper form.

In **section 2**, give your name, contact details, date of birth and National Insurance number and include the date of the decision you are appealing (this is the date on the letter they sent you). If you are informally helping the claimant with their appeal, you put their details in this section, but if you have been appointed to formally look after their benefits, you put your name here and their details in **section 3**.

If you do have an adviser who can help and represent you, put their details in **section 4**. (If you haven't, don't worry. The most important thing is that you go to the hearing. Nobody knows more about how your impairment or illness affects you than you do.)

In **section 5** you have to explain *why* their decision is wrong. You need to give them as much detail as you can. It might be easiest to use the letter created by our **Work Capability Assessment Mandatory Reconsideration Tool**. If you have already used it and had the letter sent to your email, go to the email and copy and paste it on to a fresh document. (For less confident users of computers, you do that by opening the email, and pressing Ctrl and A at the same time. Then press Ctrl and C at the

same time. Then open a new document and press Ctrl and V at the same time). If you haven't used the tool, you might find it helpful to do that now.

- Delete the words at the top which were our explanation to you.
- Remove the phrase 'Mandatory Reconsideration Request' at the top and replace it with 'Reasons for appeal'.
- Read it through, and add in anything you can think of that is missing.
- Print it out and send it with the form. On the form just write 'See attached'.

You also need to confirm if your appeal is within the time limit or not. If it isn't, explain why the delay was unavoidable or a result of your disability (for example, if you were unable to deal with it until now because you need help to deal with your post, or you were particularly unwell).

In **section 6** you have to choose whether you want to go to a hearing or whether you want the case to be decided on the papers alone. Almost everybody wants to choose the paper hearing – because it seems less scary. However, you are *much* more likely to win if you go and speak to them face-to-face. It gives them a chance to meet you and see and hear for themselves how your disability affects you, and gives them the chance to ask questions. Don't worry, the hearing won't be nearly as frightening as you might think.

Section 7 asks about your needs for the hearing. First it asks if there are any times in the next 6 months that you won't be available to go to the hearing. It's probably best to keep this simple – only tell them about times when you know you will be away or in hospital or recovering from something. It is probably best not to ask them to avoid dates that you can re-schedule easily.

Question 2 asks about your needs for the hearing. This might include hearing loops, any special transport to get you there, or if you need the building to be accessible to a wheelchair.

Question 3 asks if you need a signer or interpreter at the hearing. If you can sometimes cope, but sometimes need help, ask for help. It is very important that you can say everything you want to say and can understand everything that is said. Tell them what type of support you need.

Question 4 asks if you are willing to be given a date for the hearing at short notice. You should get at least 14 days notice of the hearing, unless you agree to accept less. It is up to you whether you do this. If you say that you do not need 14 days notice, make sure you get all the evidence you need ASAP.

Make sure you sign and date the form in **section 8**.

Send the form to HM Courts and Tribunals Service (the address is on the last page of the form). If you can, keep a photocopy or take a photo of each page on your phone.

What next?

The HMCTS will send a copy of your appeal to the DWP and ask them to explain how they came to their decision. The DWP must do this within 28 days, although they can ask for an extension. You will receive a copy of their response. It is often around 80–150 pages. Don't be put off by the size of it. Keep it safe. You will need it to prepare for your hearing.

You should start preparing now. The next section explains everything you need to do.

How to
ask for an
appeal

What to prepare before the hearing

There are a lot of things for you to do over the next few months. So it is important to start preparing as soon as you can. Some things can take a long time.

Get advice

If you have not already tried to get advice, do so now (See **How to find an adviser on page 12**). Some advisers may be able to help do some of this preparation for you. If you are lucky enough to find someone who can help with the preparation, make sure you are clear which things they are going to do for you, and which you need to do yourself.

Do not wait until you know the date of the tribunal, as most advice centres have a long waiting list.



When will the hearing be?

How long it takes for the hearing to be scheduled varies from three to 12 months, depending on where you are in the country. Usually you won't get told the date of the hearing until 2–3 weeks before (you should be given at least 14 days notice unless you agreed to be given less on the form) so it's important to start getting ready as soon as you can.

It is useful to know how long you have to prepare for your appeal. You can phone the tribunal centre dealing with your appeal and ask them how long you are likely to be waiting for a date for the hearing.

Track your appeal

HM Courts and Tribunal Service are rolling out a new system that makes it easier for you to track your appeal. This new system will send you texts or emails at crucial points in the process, when evidence has been received, and when your hearing date is. If it is available in your area, you should have received details of how to register when you completed your appeal form online or with your appeal papers. You could also ask when you call your tribunal centre.

Getting help

If you are not getting any professional help to prepare for the hearing, you might want to ask somebody else to help you. You may not need any help, but it might stop it from feeling too stressful. It might be particularly useful if you are not very good with paperwork or deadlines.

If you do think it might be useful, think about who you could ask – do you have a family member, friend, neighbour, or someone who helps you who is good with paperwork and organising things?

What to prepare before the hearing

Support groups

Support groups can sometimes be very helpful. There are likely to be other people there who have had the same problems, who can give you emotional or practical help.

There are also online communities that can offer you support in the same way. **Yourable.com** is popular. There are also lots of Facebook groups for people with particular conditions.



The papers from the DWP

Look at the big pack of papers that you were sent by the DWP explaining why they made the decision they did. Many people get very confused by the inclusion of relevant test cases at the beginning. Don't let them put you off. If you don't have time to become an expert on all the legal ins and outs of work capability assessment decisions, ignore these.

The most important part is the report from the medical assessment. Read through it and look for anything you don't agree with.

- Did the assessor ask you the right questions and correctly record your answers?
- Are there things in there that didn't happen or don't reflect your conversation at all?
- If your health condition or disability is better or worse on different days, did the assessor understand that?

Make a note of all the things that are wrong. If you can, say why they are wrong. You can include this in your statement to the tribunal.

Don't be shocked if the assessment report is full of inaccuracies. This seems to happen horribly frequently. We have heard of completely incorrect diagnoses being recorded, easily verifiable physical conditions being ignored or incorrectly recorded, and records of whole conversations that never occurred. If you find this has happened to you, you are right to be angry about it – it is terrible – but don't take it personally. It happens to a lot of people. However, don't get too focused on it. Appeal panels know how bad assessment reports often are and so it is easy to get them set aside in favour of other evidence.

If you are angry about it and have the energy for two things, put it in a complaint to the organisation who did the assessment. For most claimants, that is **Health Assessment Advisory Service**, although there are two centres run by the DWP themselves. If you only have the energy for one thing though, focus on your appeal as that is the only thing that will change your award.

What to prepare before the hearing

Getting evidence

For most people, the thing that is of most help is written evidence from their doctor or other professionals. If you have a social worker, community psychiatric nurse, occupational therapist, support worker, or any other professional, evidence from them will be very useful too.

The most useful evidence will explain how your illness or disability affects you, and the help you need (paying particular attention to the descriptors that you meet). This is unusual and really complicated, so your doctor/social worker or other professional may not understand that.

Look at **pages 38–44**. This is a guide for your doctor, social worker, or anybody else writing evidence for you. Mark the particular activities and descriptors you believe you meet on this page, and write the date of the DWP decision in the box. When you ask them for evidence to support your appeal, give them these pages and ask for them to comment on those specifically. It will help them to write evidence that will be really helpful to you.

The best evidence will come from people who know you well and who understand your situation. If your GP does not know you well, you should still ask him or her for evidence, but try to get evidence from other professionals too. This could be your social worker or community psychiatric nurse, a paid support worker, a personal assistant, your occupational therapist, somebody who works at a day centre you go to, support staff at your school or college, or somebody else.

You are appealing the decision the DWP made on a particular date (on the top of the letter). You need to prove how your illness or impairment was at that time, not how it is now. The tribunal cannot take into account any improvement or worsening of your condition since the date of the DWP's original decision. Write the date of the decision you are appealing in the little purple box on **page 39**, before you ask anybody for evidence. Then show them **pages 38–44**.

Paying for medical evidence

GP's and other medical professionals are allowed to charge for evidence and many do. However, if they know you cannot afford it they are often willing to do it for free.

If your doctor suggests that he or she will charge you, tell them that it doesn't need to be terribly long, and that it could be hand-written if this is quicker. Reassure them that it will only take the time of an appointment. Use **How to write useful evidence for an ESA appeal** on **page 38** and mark which descriptors you meet. Ask them to read it, so that they are sure of what you need from them.

If they insist on charging you, consider whether you can find the money or whether they would provide useful evidence. If they will, it might be worth the money. On the other hand, some only charge if they really don't want to do it and therefore probably won't write a very useful report anyway. If you cannot afford the fee, ask for the last two years of your medical records. They will give you this for free and it may contain some useful evidence.

What to prepare before the hearing

Evidence from your support worker, personal assistant, carer or anybody that helps you

If there is somebody who helps you a lot (this might be somebody you pay, or who helps you at college or work, or it might be your partner, a family member, or a friend), they may be able to write some very useful evidence too. Ask them to write a letter to the tribunal panel explaining what help they give you and how often. Show them the section for doctors and other professionals on **pages 38–44** – it will help them to remember everything.

It can be very useful for this person to come to the hearing with you – so that the panel can ask them questions. They may be asked to wait outside until their evidence is needed – so you may need to be prepared to go in alone at first.

Is there any evidence that you already have?

There may be useful evidence you already have or can easily get. Maybe you have letters from doctors or support services already that support your case. Perhaps you have had an occupational health assessment at work or for adaptations at home? Or young people may have an Education and Health Care Plan (EHCP), or Disabled student grant assessment. If you have recently been assessed and awarded PIP it is well worth requesting that report and sending it in. Similarly, if you have successfully appealed a work capability assessment decision previously, send in that previous tribunal decision, or ask the tribunal office to find a copy of it and pass it to the new tribunal.



Diary

You should think about keeping a diary of the difficulties and help you need each day. It will help the tribunal panel to get a proper understanding of your situation. It is particularly helpful if your illness or disability isn't the same every day. It also needs to reflect the time of the decision about your benefit, so is of most use if your health has not got worse since then.

Keep a diary for a week (or if you have a condition which fluctuates, a longer period will be helpful). It can be very brief. For example – 'Monday – Very confused today. Marie needed to remind and prompt me to do simple everyday tasks, and not to get distracted. We went to the shops and I needed help to cross the road safely'. Include everything that is connected to the activities and descriptors that entitlement to these benefits are based on (see **pages 40–44** for the list).

If you get help from somebody and find this sort of thing hard, you could ask them to keep a diary of the help they have given you instead (as an alternative to the letter – see above).

What to prepare before the hearing

Be realistic

Be realistic about what you want to happen. There is no point going to the tribunal hearing hoping to get put into the support group if you don't meet any of the required indicators. If you have seen or spoken to an adviser – did they tell you what rate they thought you might be entitled to? Have you used our **Work Capability Assessment Mandatory Reconsideration Tool** to check what points you should get, by your own assessment?



What to prepare before the hearing

Write a statement

If you (or someone who is helping you) are good with writing, you should think about writing a statement for the tribunal. These can be very useful as they set out all your points, which means that you don't have to remember everything to say on the day. They also give the panel time to think about what you've said before they meet you.

They are also a useful way of telling the panel about mistakes and things left out of the assessment report. Stay away from accusing the assessor of lying as that is very difficult to prove. Instead give a flavour of the sort of things that are wrong and ask that the tribunal give the report a low weighting and listen to other evidence instead.

For more advice on how to write a statement and what to put in it, see **How to write a statement on page 45**. You can also read Mikaela's statement and see what she put in hers.

What to do with the evidence

Read all the evidence through – does it reflect your difficulties accurately? If it doesn't, you don't have to send it to the panel. If you don't think the evidence is useful it may be worth going back to the person who wrote it and discussing it with them. Looking again at our guidance on how to write useful evidence on **pages 38–44**, is there anything they can add to make it more useful?

If you've got useful evidence, photocopy it (or take a picture of it on your phone in which all the text is clear), and send it into the HM Courts and Tribunal Service as soon as possible before your hearing. Many tribunal centres now prefer email, but you **MUST** put the appeal number in the subject heading or it may not be read. (Sending the evidence now is useful because sometimes the DWP will change the decision on the strength of it. However, if they contact you to suggest a higher award, only accept it if you think it is the right award. If you think you are entitled to more, don't accept it). If you haven't got the evidence more than two weeks in advance, just take it with you on the day.

On the day of your hearing, take your copies with you and ask the clerk or panel to confirm that they have received them.



How will you get to the hearing?

Some people find it helpful to work out how they will get to the hearing and even do a 'dry run', so that you know how to get there. The letter you receive about the hearing will usually give you details of public transport links and parking. At some venues, you can book an accessible parking spot if you phone them in advance.

How can you afford to go to the hearing?

You should be able to claim travel expenses for the day of the hearing if you use public transport or travel by car. You can also claim for a meal if you are away for more than five hours. If you have had to pay a carer or childminder you can claim expenses up to the National Minimum Wage for the time you have been away. In some circumstances, they will pay for a taxi for you – but you need to get this agreed in advance (you are likely to need a letter from your

doctor saying that you cannot use public transport). Before you go to your hearing, check what the current rules on expenses are on **GOV.UK**

The clerk will help you fill in a claim form when you go to the hearing if you ask. Make sure you take receipts.

Contact the tribunal before the hearing if you need help.

What to prepare before the hearing

What will happen at the hearing?

Going to a hearing isn't like going to court. You can go alone or take a friend or family member with you for moral support.

The hearing itself will usually last about 40 minutes.

When you arrive at the tribunal centre you will usually be shown into a waiting room. You might have to wait here for a little while. While you are waiting, the clerk to the tribunal will call your name and come over to talk to you. This is your opportunity to check that the tribunal received the evidence you have sent them, and to hand in any evidence you have not already sent. When the panel are ready for you, the clerk will call you into the room.

The room the hearing is in will look like a rather boring office and everybody is wearing normal clothes. When you go in there will be a big table in front of you. You (and anyone who goes with you) will sit at one side of the table and the panel sit on the other side.

The panel will usually be made up of two people. A judge, who is legally qualified and should know a lot about benefits and the other is a doctor. The doctor does not work for the government or the DWP. The panel should introduce themselves and explain what will happen.

Remember the panel do not work for the DWP. They are here to see that you get the benefit if you can show you are entitled to it.

Usually the members of the panel will be nice and easy to talk to, and will just want to get a full picture of your illness or disability and the help you need.



However, you might be very unlucky and get a panel member who isn't easy to talk to. If this happens, try to keep calm. Don't take it personally. Stick to what you wanted to say, and answer their questions fully. It is ok to tell them that you feel they are going too fast, or making you anxious, or you feel you are not getting an opportunity to explain.

The DWP have a right to send somebody to your appeal to explain why they made their decision and they now do this more and more. Don't worry about this though. If they send someone, they are nice and non-confrontational. It will not be the person that made the original decision about your claim.

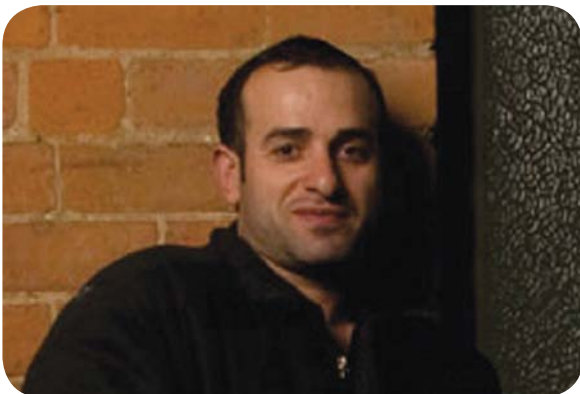
Remember it is YOUR appeal. If you get upset, you can ask for a short break. If you are in discomfort from sitting in the chair after a while, you can simply get up and walk around the room a bit.

What will happen at the hearing?

In the unlikely event that the panel are considering a reduction of your existing award (for example because you appealed the decision not to put you in the support group, and the panel feel that you may not be entitled to any award at all), the judge will give you warning and ask if you want a few minutes to consider your options. This is very rare. But if it does happen to you, ask for the hearing to be stopped and explain that you wish to withdraw the appeal. If you do this, the Tribunal is very unlikely to take away the benefit you get at the moment.

Your hearing might be postponed

In some areas, hearings are often postponed. Usually, if this has happened, you will get a phone call earlier in the day to warn you not to go. Sometimes, you don't get a warning. Hopefully this won't happen to you, but it is possible that you will arrive to find that you have had a wasted journey.



At the end of the hearing

The panel will usually make the decision that day. You will be asked to go to the waiting room while the panel discuss your case. This usually takes between 10–20 minutes. You will then be asked back into the room and told the decision. They will give you a written outline of their decision as well.

Sometimes the panel will not be able to make a decision quickly. If this happens, they will post it to you instead. It should arrive within a week.

If you can't go on the date the hearing has been scheduled for

If you can't go on the date they give you, contact the tribunal centre and ask for another date as soon as you can. Don't put it off or just do nothing about it – they are usually extremely helpful. You may have to explain why you can't go and you should have a very good reason, like a hospital appointment.

If you leave it until the last minute or don't give a good reason, they may not change the day and the appeal might happen whether you are there or not. Don't delay. If they refuse to change the date, you should do everything you can to move your other appointment.

What will happen at the hearing?

How do I stay calm?

Staying calm isn't easy, particularly in very stressful situations, like waiting for your appeal hearing. Having a friend or family member or support worker with you can help.

Many people find that the best way of reducing stress immediately is to concentrate on their breathing. Take several long, deep breaths. If you can, breathe in through your nose. Try to take the air into your stomach (you should feel your stomach rising). And then slowly breathe out through your mouth. It might help to close your eyes and picture nothing, others like to imagine a scene they find calming. Some people prefer to keep their eyes open and to slowly read all the notices on the wall. If you do this, try to concentrate on details. It doesn't matter what you look at or think about – what is helpful is slowing down your thoughts and your breathing.

Some people also find it useful to clench and then relax their fists, arms, and jaw; and to frown and then relax, or raise their eyebrows and then relax them.

If you are getting stressed because of the number of things you have to remember – write a list (or get someone to write a list for you). As soon as it is down on paper, you don't have to remember it.

What to do on the day



- If you think it might help, ask a friend or family member to come with you for emotional support. They might also be able to help by reminding you of things you have forgotten. If you do ask a friend, show them the box 'For friends and relatives' on **page 31**.
- Make sure you arrive in plenty of time.
- Don't dress up or make a big effort with your appearance. It is important that the panel see you as you are on a normal day. Otherwise, they might get the impression that you don't need help, even if you do.
- The panel may be running late and so you might have to wait. If you have made any notes of what you want to say, use this time to go over them. It might also be useful to get used to the numbering of the papers from the DWP. The panel sometimes refer to particular pages and it can be stressful if you can't follow what they are saying.
- Be aware that the tribunal may take into account what they see you do. For example, if you have said you can't sit still for long, or have great difficulty walking, they might watch how you are. If you are having a good day, and your illness or disability is normally worse, make sure you tell them.
- If the person who helps you a lot has come with you to give evidence they may be asked to wait outside until the panel are ready to speak to them. This is very rare however. Usually they will be allowed to come in with you.
- If you had asked for any help with communication or translation and it is not available, insist on having the hearing another day.
- If you don't understand a question, ask them to repeat it or put it another way. If you still don't understand, tell them that. Don't agree to anything you don't understand to be polite.
- If they say something that isn't right, make it clear that it is not true. For example, if they say "You don't have much trouble with sitting do you?" make it clear if you do have trouble with sitting for more than an hour.
- If you have written a statement, ask if they have had a chance to read it. If they have, you won't need to worry about covering everything in the discussion. If they haven't, they will usually pause for a moment while they read it.

What to do
on the day

- Don't worry about using the 'right' language or 'buzz words'. It is much better to use your own words. If you think they haven't understood something you have said, say it again in a different way.
- They usually ask whether your condition has changed since the decision. Remember that you need to prove that the DWP made the wrong decision *at the time*, so it is unhelpful to dwell too much on how your condition has got worse. It is better to emphasise where your difficulties have remained broadly the same.
- They will often ask you about how you got there or if you had any problems this morning. If somebody has helped you on the day (perhaps by physically helping you to get up and get there, or by prompting and encouraging you and keeping you calm so that you can manage the hearing) be sure to tell the panel. If you needed to get a taxi because of your problems walking or because you need help going to places you don't know – tell them. Similarly tell them if you needed help to read or understand the signs when you got to the tribunal centre.
- Don't make light of your illness or disability. It's tempting to gloss over the difficulties you have, particularly if you find them embarrassing, but you will only harm your case if you do. Be as frank about your condition as you can be. Try to make sure that you explain how you meet the specific descriptors.
- Try to make sure you don't exaggerate the problems that you have either. If you do, the panel might not believe you when you are not exaggerating.



- Try to make sure that you explain how you meet the specific descriptors. For example, if they ask if you manage when things don't go according to plan, don't just say yes or no. Spell out what difficulties you have and give examples of when you have not coped well and what happened as a result.
- If you find you haven't said everything you want to say because they haven't asked the right question – tell them anyway. It is important that you say everything (unless you wrote a statement, in which case you don't have to worry about this). A clever tactic is to make notes about what you want to tell them (for example, take a list of everything you think you should have been given points for and why you meet those descriptors) and tick them off as you say them. Make sure that they are all ticked off before you leave. If you have taken somebody with you for moral support – this is a very useful thing for them to do.

What to do on the day

- If how your illness or impairment affects you changes and you need different amounts of help on different days, you will need to make this clear. It is best if you can say roughly how often you need help with each thing, rather than saying 'sometimes'. For example, 'My health is bad for three weeks out of every four. For those weeks my joints are very painful and I cannot raise my arms to my face. This means I need help to wash, brush my teeth and brush my hair'. If you have kept a diary of your needs (see **page 23**) you should be able to use that to work out how often you need help with different tasks. The rules say that the tribunal must make their decision based on how you are on the majority of days.
- Many people find they get very emotional at the hearing. It doesn't matter if you get upset. It won't make any difference to your chances. Remember – you can ask for a break to compose yourself.

What to take with you on the day

- Take the appeal papers you were sent by the DWP.
- Take copies of the evidence and/or the statement you have sent in beforehand.
- If you have any new evidence that you think will be useful that you haven't already sent in, take that and hand it in when you arrive.

You can take a friend or relative to the appeal with you. If you have asked somebody to come with you to give you support, show them the information in the box below. It explains what they can do to help.

For friends or relatives

If someone has asked you to go with them to the hearing to give them support, there are several things that you could do that would be very useful.

- Before the hearing, sit down with your friend and write a list of all the ways in which they meet the activities and descriptors that their case is based on. Take it with you on the day and tick them off as they are said. If, at the end of the hearing, there are still things that haven't been said – you can remind them.
- Try not to answer questions on your friend's behalf. If you realise that your friend has left bits out when answering a question – try to remind them, rather than say it for them. However, if they are finding it difficult or becoming very emotional you can answer the question yourself (although ask the Judge if it is OK first, just to be polite).
- If they get upset or stressed you can try to calm them down. If this doesn't work, ask them if they want a short break (don't over do this though – too many breaks will prolong the stress and won't help anybody).
- Read through this guide (particularly the sections about the hearing and what to do on the day). This will help you to know what will happen so that you can help your friend.

What to do on the day

After the hearing

The tribunal panel will tell the DWP their decision and you'll get an official notice of the decision.

If you were successful, the DWP will work out how much they owe you. You will start receiving the new amount every month, and a sum covering any amount they owe you while you waited for the appeal. You will usually receive your money in about 4–6 weeks.

If you weren't successful, you will be sent a leaflet to explain your options. Sometimes you might be able to appeal to the Upper Tribunal. This is like a higher court. However, this can only be done if the panel did something wrong with the law. It is very complicated, and very few people can do this without an experienced adviser. If you want to look into this possibility, you need to move quickly – you will need to ask for a copy of the tribunal's statement of reasons within one month. You cannot appeal to the Upper Tribunal without the Statement of Reasons. See **How to find an adviser**.

If you don't believe you are well enough to work (or manage the jobseeking tasks you need to do to get JSA or Universal Credit on the basis that you are looking for a job) you may be able to put in a new claim for Universal Credit (or contribution-based ESA if you have recent NI contributions because you have been working).



But you won't get the assessment rate while you are waiting for a Work Capability Assessment again, unless you can show that your condition has got significantly worse, or that you have a new condition.

The DWP also has the right to appeal to the Upper Tribunal if they think the tribunal panel did something wrong. This rarely happens. If it does happen, they will write and tell you.

After the hearing

What does it mean?

Adviser	This is a benefit expert who can give you advice about your claim. They may also be able to help you prepare for the hearing or even represent you.
Appeal	This means a panel of two experts who do not work for the DWP will look at your claim and see if the right decision was made. If they think the wrong decision was made, they will change it.
Carer	This is a person who helps you often, like every day or every week. It might be somebody you pay, or might be your partner, a family member, or a friend or neighbour. The help they give you might be physical help (for example to get in the bath or up the stairs), they might help you by getting your shopping or helping you prepare a meal, or they might help you by encouraging and prompting you to do things.
Continuous online resolution	This is a new process Her Majesty's Courts and Tribunal Service may start testing and rolling out in different areas. It is hoped that under this system, some cases will be able to be resolved earlier. If the Tribunal panel think they can see what the outcome should be, they will suggest that. You and the DWP then have the option to accept that or ask for a face to face hearing. We do not know yet how well this will work for users. We advise you, if you are not happy with the outcome, to ask for a face to face hearing.
Clerk to the Tribunal	This is the person who organises the hearing and deals with the paperwork.
Department for Work and Pensions (DWP)	This is the government department that deals with most benefits, including Employment Support Allowance. They also run Jobcentres and the office which arranges the face to face assessments.
Descriptors	These are the descriptions of very specific difficulties on which entitlement to ESA or Universal Credit on the basis of being unable to work is based. Each descriptor that applies to you gives you points. If you receive 15 or more points, you are entitled to ESA. If you receive more than 15 points on one descriptor (except in activities 8, 10 and 15 – 'Finding your way and being safe', 'Consciousness during waking moments', and 'Getting about') you will be put in the support group (for ESA) or limited capability for work and work-related activity group (for Universal Credit) and are entitled to a higher rate.

(continued)

What does it mean?

Social Security and Child Support Tribunal	This is the name for the panel of experts who do not work for the DWP who will hear your appeal to see if the DWP made the right decision.
HM Courts and Tribunal Service (HMCTS)	This is the government department that organises the tribunal panel and the hearing.
Hearing	This is when your appeal is looked at by the Tribunal. You can either have a hearing in person (also called an ‘oral hearing’) when you go and speak to the Tribunal face to face. Or you can have a written hearing (also called a ‘paper hearing’) when the tribunal just look at the papers again on their own. We strongly advise you to go to a hearing in person. You have a <i>much</i> better chance of success if you do.
Limited capability for work (LCW)	This is the group that you are put in if you claim Universal Credit and the DWP accept that your condition limits your ability to work now, but that there are things you can do to improve this. It is the equivalent of the work-related activity group in ESA. You have to get 15 points on the work capability assessment to be put in this group and you have to do work-related activity to continue receiving the benefit. The DWP sometimes just use LCW in the belief that that is easier.
Limited capability for work and work-related activity (LCWRA)	This is the group you are put in if the DWP or the tribunal agree that you get 15 points on any one indicator (except in activities 8, 10 and 15 – ‘Finding your way and being safe’, ‘Consciousness during waking moments’, and ‘Getting about’). It is the Universal Credit version of the support group in ESA. If you are in this group you get extra money to support your higher needs, and you don’t need to do ‘work-related activity’ to continue receiving the benefit. The DWP sometimes just use LCWRA in the belief that that is easier.
Mandatory Reconsideration	This means the DWP will look at their decision again. You must ask for a mandatory reconsideration before you can appeal a decision. See page 16 .
Limited capability for work element	Universal Credit is a new benefit being brought in to replace 6 other benefits – one of which is income-based Employment Support Allowance. The phrase ‘limited capability for work element’ refers to the part of Universal Credit that replaces income-based Employment Support Allowance, that is, the part you are entitled to if you are unable to work because of a health condition or disability.

(continued)

What does it mean?

Representative	This is an expert in benefits who might help you prepare for the hearing, gather evidence for the appeal, write to the tribunal and may be able to will come with you to help you put your case.
SSCS1	This is the form you must use to ask for an appeal (unless you can do it online in your area and for this benefit). See pages 18–19 for advice on how to fill it in.
Submit your appeal	This is a new system HM Courts and Tribunal Service is testing that allows you to lodge your appeal online. If it is available in your area and for this benefit, you can choose to use it or fill in the form by hand. Pick the option that makes you (or the person helping you) feel more comfortable.
Supersession	This means having your claim looked at again because your illness or disability has worsened since the date of the decision.
Support group	This is the group you are put in if the DWP or the tribunal agree that you get 15 points on any one indicator (except in activities 8, 10 and 15 – ‘Finding your way and being safe’, ‘Consciousness during waking moments’, and ‘Getting about’). It is the ESA equivalent of limited capability for work and work-related activity in Universal Credit. If you are in this group you get extra money to support your higher needs, and you don’t need to do ‘work-related activity’ to continue receiving the benefit. If you are entitled to contribution-based ESA (because you have paid enough NI contributions) you can also receive it for more than a year.
Track your appeal	This is a new system Her Majesty’s Courts and Tribunal Service is testing and rolling out in different areas that allows you to get updates on how your appeal is progressing by text or email. If it is available in your area, you will get a letter about it after you lodge your appeal.
Tribunal Judge	This is the legally qualified member of the panel who will make a decision on your case. He or she will usually welcome you to the hearing. If the members of the panel do not agree what should happen on your case, the Judge gets the deciding vote. He or she will be wearing ordinary clothes and will not have a judge’s wig on.
Upper Tribunal	This is like a higher court. If you weren’t successful in your appeal, you might be able to appeal to the Upper Tribunal, but you can only do this if the panel made a mistake with the law. See page 32 .

What does it mean?

(continued)

<p>Work Capability Assessment</p>	<p>This is the process by which the DWP assess whether you have limited capability to work or limited capability for work-related activity, and are therefore entitled to Employment Support Allowance or the limited capability for work element of Universal Credit.</p>
<p>Work-related activity group</p>	<p>This is the group that you are put in if you claim ESA and the DWP accept that your condition limits your ability to work now, but that there are things you can do to improve this. It is the equivalent of the limited capability for work group in Universal Credit. You have to get 15 points on the Work Capability Assessment to be put in this group and you have to do work-related activity to continue receiving the benefit.</p>
<p>Work-related activity</p>	<p>This is activities that the DWP believe will help you be able to have a job in the future. If you are in either the limited capability for work (LCW) group on Universal Credit or the Work-related activity group on ESA you need to do the work-related activity you have agreed with the DWP to continue receiving the benefit. Work-related activity consist of meeting regularly with an adviser at the Jobcentre, going to occasional training courses, and doing various tasks that the DWP say will make you more able to get a job later.</p>

What does it mean?

Further help

Find the appeal form

[gov.uk/government/publications/appeal-a-social-security-benefits-decision-form-sscs1](https://www.gov.uk/government/publications/appeal-a-social-security-benefits-decision-form-sscs1)

Speak to the DWP

DWP Enquiry Line

Telephone: **0800 055 6688**

Textphone: **0800 023 4888**

Monday to Friday, 8am to 6pm

Universal Credit helpline

Telephone: **0800 328 9344**

Textphone: **0800 328 1344**

Monday to Friday, 9am to 4pm

Find further information about appeals

GOV.UK

Benefit appeals come under the section known as the Social Security and Child Support Tribunal. You can find details about how to claim expenses, appeal venues and how to get to them, as well as other information about the appeal process. Remember our guidance about whether to appeal, how to appeal, and how to put your case well will be more helpful than theirs as we are independent.

[gov.uk/social-security-child-support-tribunal](https://www.gov.uk/social-security-child-support-tribunal)

Find an adviser

See **page 12** for help to find an adviser or representative.

Find further information and support

Citizens Advice

Citizens Advice have some helpful information about ESA, how claims are assessed, and how to appeal.

www.citizensadvice.org.uk

WCAinfo

This site is really helpful if you are trying to find out a bit more about what a particular descriptor or regulation means. It's by LASA and aimed very much at advisers, so it gets a bit complicated, but the introductory information is useful for lots of people.

<https://wcainfo.net>

Youre able

Youre able is an online community of and for disabled people with some really useful and supportive forums. Run by the Disabled Living Foundation.

www.youreable.com

Find further information about how to complain about your assessment

You can write a short complaint letter detailing the errors in your assessment (and any other problems) to the **Health Assessment Advisory Service**. Up-to-date details of postal and email address for complaints can be found on their contact us page.

You may also like to send a copy to your MP – it may help them to understand the scale of the problems faced by disabled people accessing benefits.

Further help

How to write useful evidence for Work Capability Assessment appeals

Show this page to the people you are asking to write evidence for you

Remember to mark the descriptors you meet below. Remember that you can only score points for one descriptor (either a, b, c or d) in each of the activities so choose the descriptor that you meet on pages 40–44 that gives you the most points.

We have written this page for medical staff, social workers, support workers, and other professionals who might be able to tell the tribunal what they need to know. It explains how to write helpful evidence for this kind of benefit appeal.

Evidence from doctors and other professionals helps the tribunal to come to the right decision more than anything else. Your evidence doesn't need to be long or typed.

1 Consider if your patient/client could reasonably be expected to manage finding a job, going to work, or doing all the things they need to do in order to claim Jobseeker's Allowance (or the Universal Credit version of it). Your client can be entitled to these benefits if the panel recognise they face a substantial risk from being found fit to work even if they don't meet enough of the descriptors below. For example, if they sometimes have seizures, violent outbursts, frequent falls, suicidal thoughts, delusions, or need supervision to stay safe, it would arguably be dangerous for them to be forced to travel and work without supervision. Or if they would be unable to look for jobs, and go to meetings and training on time and without fail (perhaps because of depression or confusion) there is a substantial risk that their benefit payments would stop and they would be unable to feed or care for themselves. If the stress of looking for a job or going to work might make them relapse, that can be counted too.

If you can see that any of this applies to your client please write in your evidence that 'Looking for work or working poses a substantial risk to the health and well-being of [name of patient/client] because of....'

2 Consider if your patient/client could reasonably be expected to manage going to the meetings and training sessions they need to in order to continue getting the benefit if they are put in the 'work-related activity group' (in ESA) or 'limited capability for work' group (in Universal Credit). If you are concerned that they will not manage it, include a sentence along the lines of 'Being obliged to do work-related activity also poses a substantial risk to their health and well-being because of....'

(continued)

How to write useful evidence for WCA appeals

3 Confirm which of the descriptors below they meet. Your patient/client has marked which descriptors they think they meet on **pages 40–44**. Please confirm all those that you can in your evidence. For example, if they cannot walk into your consulting room without discomfort, or if they are slow and it takes them twice as long as somebody else, please say that.

If you cannot confirm the descriptor your patient has marked but can confirm another in that activity, please include that. If you cannot confirm any from that activity, please just leave it out as your patient may have evidence from someone else who knows more about their problems with this. If you don't understand why your patient meets the descriptor they have indicated, please ask them.

If your patient/client could do the activity described but not for a reasonable, continuous period, or sometimes, but not on most days, it counts as being unable to do it. For example, if they can stand and walk for 50 meters, but they can only do it a few times in a day, it hurts them, or they wouldn't be able to do it the next day, the law sees this as not being able to walk for 50 metres.

This appeal is about a decision that was made on
[patient to fill in]. Your evidence needs to be about how their condition affected them at that time.

4 If you are a medical professional, please also confirm any diagnosis or treatment.

How to
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Physical disabilities

Activity 1: Moving around without the help of another person – including using a walking stick, manual wheelchair or other aid you could use.

Descriptors:

- (a) Cannot move more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion, or cannot repeatedly move 50 metres within a reasonable timescale because of significant discomfort or exhaustion **15 Points**
- (b) Cannot go up or down two steps without the help of another person, even with the support of a handrail **9 Points**
- (c) Cannot move more than 100 metres on level ground without stopping in order to avoid significant discomfort or exhaustion, or cannot do it repeatedly within a reasonable timescale because of significant discomfort or exhaustion **9 Points**
- (d) Cannot move more than 200 metres on level ground without stopping in order to avoid significant discomfort or exhaustion, or cannot do it repeatedly within a reasonable timescale because of significant discomfort or exhaustion **6 Points**

Activity 2: Standing and sitting

Descriptors:

- (a) Cannot move between one seated position and another seated position located next to one another without receiving physical help from another person **15 Points**
- (b) Cannot, for the majority of the time, remain at a work station, either:
(i) standing without help from another person (even if free to move around); or
(ii) sitting (even in an adjustable chair) for more than 30 minutes, before needing to move away in order to avoid significant discomfort or exhaustion **9 Points**
- (c) Cannot, for the majority of the time, remain at a work station, either:
(i) standing unassisted by another person (even if free to move around); or
(ii) sitting (even in an adjustable chair) for more than an hour before needing to move away in order to avoid significant discomfort or exhaustion **6 points**

Activity 3: Reaching

Descriptors:

- (a) Cannot raise either arm as if to put something in the top pocket of a coat or jacket **15 Points**
- (b) Cannot raise either arm to top of head as if to put on a hat **9 Points**
- (c) Cannot raise either arm above head height as if to reach for something **6 Points**

Activity 4: Picking up and moving or things using your upper body and arms

Descriptors:

- (a) Cannot pick up and move a 0.5 litre carton full of liquid **15 Points**
- (b) Cannot pick up and move a one litre carton full of liquid **9 Points**
- (c) Cannot transfer a light but bulky object such as an empty cardboard box **6 Points**

Activity 5: Manual dexterity

Descriptors:

- | | | |
|--|-----------|--------------------------|
| (a) Cannot press a button or turn the pages of a book with either hand | 15 Points | <input type="checkbox"/> |
| (b) Cannot pick up a £1 coin with either hand | 15 Points | <input type="checkbox"/> |
| (c) Cannot use a pen or pencil to make a meaningful mark | 9 Points | <input type="checkbox"/> |
| (d) Cannot use a suitable keyboard or mouse | 9 Points | <input type="checkbox"/> |

Activity 6: Making yourself understood through speaking, writing, typing, or other means, without help from someone else

Descriptors:

- | | | |
|--|-----------|--------------------------|
| (a) Cannot convey a simple message, such as the presence of a hazard | 15 Points | <input type="checkbox"/> |
| (b) Has significant difficulty conveying a simple message to strangers | 15 Points | <input type="checkbox"/> |
| (c) Has some difficulty conveying a simple message to strangers | 6 Points | <input type="checkbox"/> |

Activity 7: Understanding communication by either verbal means (such as hearing or lip reading) and non-verbal means (such as reading large print), using anything to help that you could use (glasses, hearing aid etc), without help from someone else

(For the descriptors below, you only have to show that you have difficulty or are unable to understand a spoken or written message, and not both).

Descriptors:

- | | | |
|---|-----------|--------------------------|
| (a) Cannot understand a simple message due to sensory impairment, such as the location of a fire escape | 15 Points | <input type="checkbox"/> |
| (b) Has significant difficulty understanding a simple message from a stranger due to sensory impairment | 15 Points | <input type="checkbox"/> |
| (c) Has some difficulty understanding a simple message from a stranger due to sensory impairment | 6 Points | <input type="checkbox"/> |

Activity 8: Finding your way and being safe, using a guide dog or other aid if normally used

Descriptors:

- | | | |
|--|-----------|--------------------------|
| (a) Unable to find your way around familiar places, without the help of another person, due to sensory impairment | 15 Points | <input type="checkbox"/> |
| (b) Cannot safely cross the road (or complete another potentially dangerous task), without the help of another person, due to sensory impairment | 15 Points | <input type="checkbox"/> |
| (c) Unable to find your way around unfamiliar places, without the help of another person, due to sensory impairment | 9 Points | <input type="checkbox"/> |

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Activity 9: Extensive incontinence (other than bed-wetting) despite using any aids normally used

Descriptors:

- (a) At least once a month experiences loss of control leading to incontinence, or substantial leakage of the contents of a collecting device, so that you need to wash and change your clothes **15 Points**
- (b) At risk of incontinence, bad enough for you to need to wash and change your clothes, if you are not able to reach a toilet quickly **6 Points**

Activity 10: Consciousness during waking moments

Descriptors:

- (a) At least once a week, has an involuntary episode of lost or altered consciousness that causes significant reduction in awareness or concentration **15 Points**
- (b) At least once a month, has an involuntary episode of lost or altered consciousness that causes significant reduction in awareness or concentration **6 Points**

Mental, cognitive and intellectual function

Activity 11: Learning tasks

Descriptors:

- (a) Cannot learn how to complete a simple task, such as setting an alarm clock **15 Points**
- (b) Cannot learn anything beyond a simple task, such as setting an alarm clock **9 Points**
- (c) Cannot learn anything beyond a moderately complex task, such as the steps involved in operating a washing machine **6 Points**

Activity 12: Awareness of everyday hazards (such as boiling water or sharp objects)

Descriptors:

- (a) Reduced awareness of everyday hazards so that there is a significant risk that they will hurt themselves or others, or damage property or possessions, so that they need supervision most of the time to stay safe **15 Points**
- (b) Reduced awareness of everyday hazards so that there is a significant risk that they will hurt themselves or others, or damage property or possessions, so that they need frequent supervision to stay safe **9 Points**
- (c) Reduced awareness of everyday hazards so that there is a significant risk that they will hurt themselves or others, or damage to property or possessions, so that they occasionally need supervision to stay safe **6 Points**

Activity 13: Initiating and completing personal action (which means planning, organisation, problem solving, prioritising or switching tasks without needing prompting from somebody else)

Descriptors:

-
- | | | |
|---|-----------|--------------------------|
| (a) Cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions | 15 Points | <input type="checkbox"/> |
| (b) Cannot, due to impaired mental function, reliably initiate or complete at least 2 personal actions for the majority of the time | 9 Points | <input type="checkbox"/> |
| (c) Frequently cannot, due to impaired mental function, reliably initiate or complete at least 2 personal actions | 6 Points | <input type="checkbox"/> |
-

Activity 14: Coping with change

Descriptors:

-
- | | | |
|--|-----------|--------------------------|
| (a) Cannot cope with any change to the extent that day to day life cannot be managed | 15 Points | <input type="checkbox"/> |
| (b) Cannot cope with minor planned change (such as a pre-arranged change to the routine time scheduled for a lunch break), to the extent that overall day to day life is made significantly more difficult | 9 Points | <input type="checkbox"/> |
| (c) Cannot cope with minor unplanned change (such as the timing of an appointment on the day it is due to occur), to the extent that overall, day to day life is made significantly more difficult | 6 Points | <input type="checkbox"/> |
-

Activity 15: Getting about

Descriptors:

-
- | | | |
|--|-----------|--------------------------|
| (a) Cannot get to any specified place with which the claimant is familiar | 15 Points | <input type="checkbox"/> |
| (b) Is unable to go to a familiar place without being accompanied by another person | 9 Points | <input type="checkbox"/> |
| (c) Is unable to go to an unfamiliar place without being accompanied by another person | 6 Points | <input type="checkbox"/> |
-

Activity 16: Coping with social engagement due to cognitive impairment or mental disorder

(This is about your ability to interact with people in face-to-face social situations. It must be more than shyness or reticence.)

Descriptors:

-
- | | | |
|--|-----------|--------------------------|
| (a) Engagement in social contact is always impossible due to difficulty relating to others or significant distress experienced by the individual | 15 Points | <input type="checkbox"/> |
| (b) Engagement in social contact with someone unfamiliar is impossible due to difficulty relating to others or significant distress experienced by the individual | 9 Points | <input type="checkbox"/> |
| (c) Engagement in social contact with someone unfamiliar is not possible for the majority of the time due to difficulty relating to others or significant distress experienced by the individual | 6 Points | <input type="checkbox"/> |
-

How to write useful evidence for WCA appeals

Activity 17: Appropriateness of behaviour with other people, due to cognitive impairment or mental disorder

Descriptors:

-
- (a) Has, on a daily basis, uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace **15 Points**
-
- (b) Frequently has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace **15 Points**
-
- (c) Occasionally has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace **9 Points**
-

Activity 18: Conveying food or drink to the mouth

If any of the below descriptors apply, you should automatically be put in the support group (ESA) or Limited capability for work-related activity group (Universal Credit).

-
- (a) Cannot get food or drink to own mouth without physical help from someone else
-
- (b) Cannot get food or drink to own mouth without repeatedly stopping, experiencing breathlessness or severe discomfort
-
- (c) Cannot get food or drink to own mouth without needing somebody with you to regularly prompt or remind you
-
- (d) Fails to get food or drink to own mouth without receiving either physical help from somebody else or needing somebody with you to regularly prompt or remind you, because of a severe disorder of mood or behaviour
-

Activity 19: Chewing or swallowing food or drink

If any of the below descriptors apply, you should automatically be put in the support group (ESA) or Limited capability for work-related activity group (Universal Credit).

Descriptors:

-
- (a) Cannot chew or swallow food or drink
-
- (b) Cannot chew or swallow food or drink without repeatedly stopping, experiencing breathlessness or severe discomfort
-
- (c) Cannot chew or swallow food or drink without needing somebody with you to repeatedly and regularly prompt or remind you
-
- (d) Fails to chew or swallow food or drink or fails to do so without needing somebody with you to regularly prompt or remind you, because of a severe disorder of mood or behaviour
-

How to write a statement for your appeal hearing

On the left, is information to help you write your statement to the tribunal. It tells you all the things you should try to put in your statement and how to begin.

On the right is the statement Mikaela sent to the panel looking at her appeal. We have included it to show you what sorts of details about your condition you should include in your statement.

Mikaela's Statement

- Explain why you are writing.

I am writing to explain my reason for appealing the decision to refuse me an award of the limited capability for work component of Universal Credit.

- Tell them what you think you should be entitled to.

I am appealing the decision as I believe that I should have been placed in the limited capability for work-related activity group.

- Explain the main symptoms or difficulties you have because of your illness or disability.

I have severe epilepsy and depression. I get little or no warning of seizures and have frequently been hurt when they occur. Immediately after a seizure I am confused and disorientated and have acted irrationally and hurt people. I feel terrible and 'foggy' for about four days afterwards.

- Remember to explain how they affect you.

Because of my depression and because of the lethargy caused by seizures, I often can't face getting up, so I stay in bed – sometimes all day, because I know I won't get hurt if I have a seizure there.

- If you feel better on some days than on others, explain what help you need on both. If you can, say how frequently you have better days and bad days.

I have 3–6 seizures a month on average. Immediately after a seizure I feel very disorientated and confused, and I can be panicky and aggressive. I also feel very lethargic and I can't think straight for about 4 days afterwards. I feel depressed every day.

How to write a statement for your appeal hearing

- Explain what descriptors you meet and why you should get those points. Try to be as clear as you can how your difficulties meet the descriptors, and that this is despite any medication you take.

I meet descriptor 10a (At least once a week, has an involuntary episode of lost or altered consciousness that causes significant reduction in awareness or concentration). This is because, on average, I have more than one involuntary episode of lost consciousness (a seizure) a week, in spite of the medication I take. During a seizure I fall to the floor, and when I come to, I'm very confused and foggy and have very significantly reduced awareness or concentration.

- Remember to say everything – even things that you find embarrassing. It will be a lot easier to write it down than to say it in the hearing. Going into a lot of detail may seem unnecessary, but it will help the panel understand your condition.

I also meet the requirements for 12a (Reduced awareness of everyday hazards so that there is a significant risk that they will hurt themselves or others, or damage property or possessions, so that they need supervision most of the time to stay safe). Following a seizure, I have reduced awareness of everyday hazards so that there is a significant risk that I will hurt myself or others, so that I need supervision most of the time to stay safe. I have done unsafe things in the past as I come to – I have panicked and ran into the road, and I sometimes act aggressively and violently towards others. I once punched a woman who came to try to help me. I believe I meet the requirements for descriptor 17c (Occasionally has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace) for the same reason.

- If you think you might meet the 'substantial risk' rule (see **page 5**), it is always best to mention it, even if you don't have any evidence that specifically backs it up.

Working, looking for work, and doing work-related activity poses a substantial risk that either myself or someone else would be put in danger. If I were to travel to either work or work-related activity unsupervised and I had a seizure then not only might I get badly hurt, I might hurt others in my confusion afterwards.

My ability to go to meetings, interviews and trainings on time and without fail is severely compromised by the frequency of my seizures. It is highly unlikely that I would manage it every time and I would then be left without benefit and unable to feed or care for myself.

The stress that this would cause is also likely to make my epilepsy and depression worse.

- If there is any other evidence that backs up what you are saying, refer to it.

The letter from my social worker, Steve Scott, confirms the frequency of my seizures and that the confusion and sometimes aggression and fear I experience afterwards.

- If you disagree with anything in the papers from the DWP, you need to tell them what was wrong and why this isn't right. Did the doctor ask you the right questions and listen to your answers?

The report from the assessor said I had seizures every 3 to 6 months, rather than 3 to 6 times every month. She didn't ask me many questions and didn't listen when I explained that I get no warning of my seizures or how out of it I am when they happen and how I need help to stay safe and keep others unharmed. She also doesn't seem to have recorded anything about the fact that I have hurt people without understanding what is going on because I am so confused, although we did discuss it.

- It is fine to say that the assessor didn't listen to you, didn't understand, or failed to write something in the report. But it is probably best to avoid the temptation to vent your frustration about the assessment or the assessor here.

- If there was something in the report that isn't true, just say it is not correct – rather than call the assessor a liar.

In the report, the assessor wrote that I am OK again the next day. This isn't correct. I feel confused and foggy for the next 3 or 4 days usually.

- If you have made a complaint about the report, you can say so. Don't worry if you haven't – it isn't necessary.

I made a complaint about the report soon after I received a copy.

When you have finished writing the statement, read it back through more than once. Does it say everything it would be helpful to say?

How to write a statement for your appeal hearing

The information in this guide applies to England, Wales and Scotland. It will also be useful for people in Northern Ireland.

The law is complicated. We recommend you try and get advice from the sources we have suggested.

The cases we refer to are not always real but show a typical situation. We have included them to help you think about how to deal with your own situation.

advicenow.org.uk

If you would like this guide in another format please email guides@lawforlife.org.uk

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