

Benefit Safeguards – SSAC Workshop, 22/10/15

The SSAC may like to scrutinise the safeguarding procedures DWP follow before making any decision to remove benefit from vulnerable claimants. A safeguarding process already exists within the current legacy benefit system to protect those claimants unable to meet their responsibilities whilst claiming the benefit. These procedures were introduced after a coroners report into the death of a claimant (Timothy Finn) in 2000.

Benefit safeguards in Employment and Support Allowance

DWP must follow safeguarding procedures before removing benefit from ESA claimants who are defined as 'vulnerable' and who have not met their responsibilities whilst claiming benefit. For the purpose of safeguarding 'vulnerability' is defined as having a mental health problem, learning disability, or condition affecting cognition (such as autism or addiction). The safeguards are largely based around the use of home visits (or 'core visits') to check the claimant understood their responsibilities and to collect good cause information. The safeguards DWP have to follow differ according to the claimant failure and the organisation responsible for safeguarding the claimant.

JCP procedures in the event of claimant failures which could result in a sanction

This is the earliest version of the safeguarding guidance based on core visits. Whenever DWP are considering not accepting good cause for failing to attend an appointment or not carrying out work related activity they must attempt to visit the claimant at home. If they are unable to successfully visit the claimant they have a 'moral obligation' to attempt to contact next of kin, psychiatric nurse, social services, and police to notify them of a potential incident around the vulnerable claimant. The procedures must be followed every time a claimant is at risk of sanction for these reasons 'in order to safeguard those claimants with fluctuating conditions'.

Work Programme Provider procedures in the event of claimant failures which could result in a sanction

The existing guidance chapter on safeguarding was introduced in May 2015. Before raising a sanction doubt for a claimant classed as vulnerable the work programme provider must attempt to see the claimant face to face to check whether they understood the requirements placed upon them. If necessary this can include a home visit to the claimant. If the claimant is judged not to understand their responsibilities or the provider is unable to see the claimant face to face then a sanction referral will not be made.

DWP procedures for claimants who fail to return an ESA50

If a vulnerable client fails to return an ESA50 the case is referred for a Work Capability Assessment without closing the claim.

DWP procedures for claimants who fail to attend a Work Capability Assessment

Vulnerable claimants who do not provide good cause reasons for failing to attend a WCA will receive a home visit unless they have already had a home visit after failing to attend an interview.

Benefit safeguards in Universal Credit

- The Work Programme Provider safeguards are largely replicated though there are a few significant differences. Safeguards will not apply to people until they have successfully been through a WCA (at the moment safeguards apply to people in the assessment phase of ESA) In addition the UC Work Programme Provider guidance states that safeguarding must be attempted but that a sanction doubt must always be raised even if the claimant did not understand their responsibilities or if safeguarding has not been possible.
- While the UC Work Programme Provider Guidance retains the definition of vulnerability used above the definition is scrapped in DWP guidance. Rather than vulnerability the DWP guidance looks at whether a claimant has 'complex needs' which removes the focus from people with mental health conditions, learning disabilities, and condition affecting cognition. Complex needs have a much wider definition and include things like having language barriers.
- The safeguards for people who miss a UC WCA are much less clear.
- There appear to be no safeguards for failing to comply with requirements set by JCP.

Weaknesses

- The safeguards are not in legislation. The Work and Pensions Select Committee Report on benefit sanctions after the Oakley review recommended that "[g]iven the complexity of the existing legislation, there is a strong case for a review of the underpinning legislative framework for conditionality and sanctions, to ensure that the basis for sanctioning is clearly defined, and safeguards to protect vulnerable groups clearly set out. We recommend that the clarity and coherence of the legislative framework for benefit sanctions policy be included in the terms of reference of the full independent review which we have recommended".
- The purpose of the home visit (or core visit) is not clearly defined in guidance. The Select Committee Report recommended that DWP "review the programme of Core Visits as soon as possible, to clarify what changes to conditionality and the application of sanctions occur as a consequence of such Core Visits".
- A lack of monitoring of the use of core visits. When giving oral evidence the Minister for Employment stated that around 40,000 core visits are carried out by DWP each year. However, these figures were estimates and included core visits carried out for reasons other than safeguarding. DWP do not monitor core visits carried out by the DWP (FOI requests are refused on this basis) and do not monitor safeguarding by Work Programme Providers (despite the guidance referring to safeguarding as a 'high level must do').
- There are no safeguards for vulnerable JSA claimants. The Oakley Review quoted JCP advisers who had found that people with learning disabilities were particularly at risk of sanctions.
- There are no safeguards once a decision has been made on a WCA. They would not have been relevant in the Michael O'Sullivan case, as the DWP response to the coroner's report made clear.
- The safeguards have been weakened since their introduction. For example, the Work Programme Provider procedures do not allow for notifications to third party organisations without need for signed permission despite the DWP version of guidance stating that there is a 'moral obligation' to do so. Another example is that there is no requirement to safeguard a claimant every time a claimant misses a WCA despite the earlier guidance for JCP sanctionable failures stating that safeguarding after every failure is necessary to protect those with fluctuating conditions. Similarly, while the earlier guidance requires a visit each time DWP are considering not accepting good cause from a claimant, the guidance to be followed when a claimant misses a WCA only allows for safeguarding if a claimant has not supplied good cause information. The claimant could submit good cause information which is then rejected (stopping benefit) without any safeguarding taking place.
- Universal Credit Work Programme Provider Guidance weakens the existing guidance used by WPPs. The existing guidance is itself a watered down version of the JCP safeguarding guidance.. There appear to be no JCP procedures for UC claimants.
- Waiving the need for a completed ESA50 can reduce the quality of decision making for vulnerable claimants if no further information is submitted to support the claim.
- Apart from those within WPP guidance it is unclear whether safeguards will continue to exist in Universal Credit.

Points for consideration

- Is a set of clearly defined safeguards desirable?
- Are the current safeguards effective? What are the weaknesses?
- How should safeguards develop? If at all?
- Will Universal Credit claimants be adequately safeguarded?

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