## Employment and Support Allowance safeguarding guidance

Safeguards can apply when a claimant deemed to be vulnerable fails to comply with a requirement and, as a result, their benefit payments are at risk.

For the purposes of the existing Employment and Support Allowance (ESA) safeguards vulnerable claimants are those who have a mental health condition, learning disability, or condition affecting cognition (such as Autistic Spectrum Disorder or addiction). The DWP lists these conditions on the ESA Incapacity Reference Guide[[1]](#footnote-1). This definition of vulnerability is different to that used in the DWP vulnerability guidance[[2]](#footnote-2) which was introduced more recently.

The safeguards are mostly based around the use of home visits to vulnerable claimants carried out by the DWP Visiting Team (part of the Pension Service). These visits are called 'core visits’[[3]](#footnote-3). When the DWP attempt to visit a vulnerable client they must make two attempts to visit[[4]](#footnote-4). If the DWP has not correctly followed safeguarding procedures before sanctioning or terminating a claim then benefit should be immediately reinstated once this is pointed out to them.

There are four scenarios when safeguarding can occur. The following sections attempt to provide details for each.

### *Vulnerable ESA claimant fails to attend or participate in a mandatory interview with Jobcentre Plus or fails to undertake Work Related Activity set by Jobcentre Plus*[[5]](#footnote-5)

*Potential consequences for the vulnerable claimant if not safeguarded*

A sanction could be applied if the claimant does not or cannot show good cause. An ESA sanction applies to 100% of the prescribed amount for a single claimant (usually £73.10 per week[[6]](#footnote-6)) for an indefinite period[[7]](#footnote-7) until the claimant complies. After the claimant complies there is a further sanction of one, two, or four weeks. Claimants can apply for hardship payments if they are aware of them and capable of making an application, there can be a delay of a few weeks before the claimant is paid a hardship payment.

*The safeguarding process*

If a decision maker is considering not accepting good cause for a failure they must refer a vulnerable claimant for a core visit before any sanction decision is made[[8]](#footnote-8). The guidance states that a referral must take place every time benefit is at risk in order to safeguard those claimants with fluctuating mental health conditions[[9]](#footnote-9). At the home visit the visiting officer will check whether the claimant understood the requirement[[10]](#footnote-10) and collect good cause information[[11]](#footnote-11). In the event of two ineffective visits or where core visits cannot take place the case will be passed back to a Higher Executive Officer (HEO), a higher grade than the usual decision maker[[12]](#footnote-12). The HEO must review the safeguarding actions taken and, if visits have been ineffective, contact an appointee or family member, psychiatric nurse, social services and police. The guidance notes that the contact with third parties is because the DWP has a 'moral obligation to make third parties aware of potential incidents around vulnerable claimants'[[13]](#footnote-13). The guidance states that the notifications to third parties do not contravene the Data Protection Act, providing that there is evidence to support the referral[[14]](#footnote-14). Only once the HEO has reviewed all safeguarding steps will the case be sent to a labour market decision maker to decide whether a sanction should be applied[[15]](#footnote-15).

### *Failure to return the capability for work questionnaire (also known as ESA50 form) as part of the Work Capability Assessment process*

*Potential consequences for the vulnerable claimant if not safeguarded*

Suspension potentially followed by termination of the claim if no form is provided. Requesting, completing, returning, and processing a new form can mean that claimants are without benefit for weeks.

*The safeguarding process*

If a claimant has a 'mental health flag' on their record their case will be automatically referred to the next stage of the Work Capability Assessment (WCA) process[[16]](#footnote-16).

### *Vulnerable claimant fails to attend a Work Capability Assessment*

*Potential consequences for the vulnerable claimant if not safeguarded*

The claim could be terminated if the claimant does not or cannot show good cause.

*The safeguarding process*

If a claimant has a 'mental health flag' on their record the decision maker will check whether the claimant has a) had a sanctions safeguard visit for non-attendance at a mandatory interview, b) received a phone call collecting good cause information, or c) returned a form providing good cause information[[17]](#footnote-17). If any of the above apply then the decision maker will consider good cause as normal since the claimant has had their responsibilities explained to them or responded to provide 'good cause' reasons[[18]](#footnote-18). If none of the above has happened and the decision maker is considering not accepting good cause then the claimant will be referred for a pre-disallowance safeguard visit[[19]](#footnote-19) to check whether they understood their responsibilities and to collect good cause information[[20]](#footnote-20). When the decision maker receives the report from the home visit they will consider good cause.

### *Vulnerable ESA work programme claimant fails to comply with an activity they have been mandated to undertake by a Work Programme Provider*

*Potential consequences for the vulnerable claimant if not safeguarded*

A sanction could be applied if the claimant does not or cannot show good cause. See above for an explanation of ESA sanctions.

*The safeguarding process*

Safeguarding is described in guidance as a 'high level must do'[[21]](#footnote-21). Before raising a compliance doubt (which could lead to a sanction) for a vulnerable claimant a Work Programme Provider (WPP) must ensure that the claimant understood the requirement placed on them and the possible consequences of not complying[[22]](#footnote-22). The WPP must use information from the DWP referral, DWP updates, and their own information to determine whether a claimant is vulnerable[[23]](#footnote-23). At a minimum the WPP must have a face to face discussion with the claimant for each mandated activity. This can be done by a home visit if necessary. If the claimant was mandated to carry out an activity in a face to face appointment then there is no requirement to have another face to face meeting if they then fail to comply[[24]](#footnote-24). If the WPP meets with the claimant face to face and decides that they did understand the requirements and possible consequences then they will raise a compliance doubt so that a DWP decision maker can consider a sanction. In this circumstance they do not have to explain to the DWP what safeguarding steps have taken place[[25]](#footnote-25). If the WPP has attempted to safeguard and has been unsuccessful in meeting the claimant, they will raise a compliance doubt which explains their attempts to carry out safeguarding. The DWP will then consider whether to apply a sanction[[26]](#footnote-26). If the WPP carries out safeguarding and decides that the claimant did not understand the mandatory activity then the WPP should not make a compliance doubt referral[[27]](#footnote-27). The guidance also states that if the claimant has given the WPP written consent to talk to a third party representative then the WPP is free to do so[[28]](#footnote-28).

1. <http://www.rightsnet.org.uk/?ACT=39&fid=3&aid=1326_02GtUOXLbZmYESHMwKe0&board_id=1> and <http://www.rightsnet.org.uk/?ACT=39&fid=3&aid=1327_3yW1cLUXfpTPTJGemNkn&board_id=1> [↑](#footnote-ref-1)
2. <http://www.rightsnet.org.uk/?ACT=39&fid=3&aid=1328_0yKlSHrlTPKYIJHfWKPI&board_id=1> [↑](#footnote-ref-2)
3. <http://www.rightsnet.org.uk/?ACT=39&fid=3&aid=1324_LBrWUlayQppBWllmEpU8&board_id=1> [↑](#footnote-ref-3)
4. Para.8 <http://www.rightsnet.org.uk/?ACT=39&fid=3&aid=1324_LBrWUlayQppBWllmEpU8&board_id=1> [↑](#footnote-ref-4)
5. Para.1 & 2 <http://www.rightsnet.org.uk/?ACT=39&fid=3&aid=1323_YuaLIQGgbhqDjlopOORa&board_id=1> [↑](#footnote-ref-5)
6. For many claimants (e.g. those getting the assessment rate of ESA while awaiting a WCA or those with an occupational pension or an earnings replacement benefit such as Carer’s Allowance) this could reduce their payments of ESA to the 10p minimum payment. [↑](#footnote-ref-6)
7. Employment and Support Allowance is the only benefit with an open ended and indefinite sanction period. All Jobseeker’s Allowance sanctions are for fixed periods. [↑](#footnote-ref-7)
8. Para.7 & 106 <http://www.rightsnet.org.uk/?ACT=39&fid=3&aid=1323_YuaLIQGgbhqDjlopOORa&board_id=1> [↑](#footnote-ref-8)
9. Para.8 <http://www.rightsnet.org.uk/?ACT=39&fid=3&aid=1323_YuaLIQGgbhqDjlopOORa&board_id=1> [↑](#footnote-ref-9)
10. Para 113 <http://www.rightsnet.org.uk/?ACT=39&fid=3&aid=1323_YuaLIQGgbhqDjlopOORa&board_id=1> [↑](#footnote-ref-10)
11. <http://www.rightsnet.org.uk/?ACT=39&fid=3&aid=1324_LBrWUlayQppBWllmEpU8&board_id=1> [↑](#footnote-ref-11)
12. Para.125 <http://www.rightsnet.org.uk/?ACT=39&fid=3&aid=1323_YuaLIQGgbhqDjlopOORa&board_id=1> [↑](#footnote-ref-12)
13. Para.127 <http://www.rightsnet.org.uk/?ACT=39&fid=3&aid=1323_YuaLIQGgbhqDjlopOORa&board_id=1> [↑](#footnote-ref-13)
14. Para.128 <http://www.rightsnet.org.uk/?ACT=39&fid=3&aid=1323_YuaLIQGgbhqDjlopOORa&board_id=1> [↑](#footnote-ref-14)
15. Para.131 <http://www.rightsnet.org.uk/?ACT=39&fid=3&aid=1323_YuaLIQGgbhqDjlopOORa&board_id=1> [↑](#footnote-ref-15)
16. Para.147 <http://www.rightsnet.org.uk/?ACT=39&fid=3&aid=1322_oIpQ3RmTyP2r48nuUIJ7&board_id=1> [↑](#footnote-ref-16)
17. Para.187 <http://www.rightsnet.org.uk/?ACT=39&fid=3&aid=1322_oIpQ3RmTyP2r48nuUIJ7&board_id=1> [↑](#footnote-ref-17)
18. Para.188 <http://www.rightsnet.org.uk/?ACT=39&fid=3&aid=1322_oIpQ3RmTyP2r48nuUIJ7&board_id=1> [↑](#footnote-ref-18)
19. Para.190 <http://www.rightsnet.org.uk/?ACT=39&fid=3&aid=1322_oIpQ3RmTyP2r48nuUIJ7&board_id=1> [↑](#footnote-ref-19)
20. Para.193 <http://www.rightsnet.org.uk/?ACT=39&fid=3&aid=1322_oIpQ3RmTyP2r48nuUIJ7&board_id=1> and <http://www.rightsnet.org.uk/?ACT=39&fid=3&aid=1324_LBrWUlayQppBWllmEpU8&board_id=1> [↑](#footnote-ref-20)
21. Pg.2 <http://www.rightsnet.org.uk/?ACT=39&fid=3&aid=1316_aQyw7wVouJpCwUQMzmHU&board_id=1> [↑](#footnote-ref-21)
22. Para.3 <http://www.rightsnet.org.uk/?ACT=39&fid=3&aid=1316_aQyw7wVouJpCwUQMzmHU&board_id=1> [↑](#footnote-ref-22)
23. Para.7 <http://www.rightsnet.org.uk/?ACT=39&fid=3&aid=1316_aQyw7wVouJpCwUQMzmHU&board_id=1> [↑](#footnote-ref-23)
24. Para.8 <http://www.rightsnet.org.uk/?ACT=39&fid=3&aid=1316_aQyw7wVouJpCwUQMzmHU&board_id=1> [↑](#footnote-ref-24)
25. Para.10 <http://www.rightsnet.org.uk/?ACT=39&fid=3&aid=1316_aQyw7wVouJpCwUQMzmHU&board_id=1> [↑](#footnote-ref-25)
26. Para.12 <http://www.rightsnet.org.uk/?ACT=39&fid=3&aid=1316_aQyw7wVouJpCwUQMzmHU&board_id=1> [↑](#footnote-ref-26)
27. Flowchart in <http://www.rightsnet.org.uk/?ACT=39&fid=3&aid=1316_aQyw7wVouJpCwUQMzmHU&board_id=1> [↑](#footnote-ref-27)
28. Para.34 <http://www.rightsnet.org.uk/?ACT=39&fid=3&aid=1316_aQyw7wVouJpCwUQMzmHU&board_id=1> [↑](#footnote-ref-28)