

Considering ESA Labour Market Doubts

Guidance queries and help

1. If you are unable to find an answer to a particular question regarding policy within this guide you must contact the Jobcentre Plus Live Support Advice Line. Do not give the Advice Line number to claimants or outside bodies under any circumstances, it is for the use of Jobcentre Plus staff only. Details of how to contact them can be found by clicking on the following hyperlink, Advice Line Home Page.
2. Please do not use the 'E-mail page owner' and 'Page information' links at the bottom of each page of guidance to raise policy queries. These should only be used to report broken hyperlinks.

Background

3. This section sets out specific information regarding the processes to support consideration of Employment and Support Allowance (ESA) Labour Market Doubt. It must be used in conjunction with the DMG and the other chapters of this guide, primarily Chapter 1 which provides more general information on Labour Market Decision Making and Appeals processes.

Types of ESA Labour Market Doubt

4. Only one kind of doubt exists as part of ESA Labour Market Conditionality. This is referred to as a **Sanction doubt** - these are questions which may affect the payment of, rather than the entitlement to ESA.
5. An ESA claimant can be sanctioned for the following:
 - Failure to Attend (FTA) or Failure to Participate (FTP) in a Mandatory Interview (which includes the New Joiner Work Focused Interview (NJWFI), Flexible Intervention, Learning Focused Interview and Work Programme Referral Interview); and
 - Failure to Undertake Work Related Activity. This includes failure to participate in the Work Programme, and failure to undertake a Work Placement.

Failing to attend / participate in a mandatory adviser interview

Background

6. The Welfare Reform Act 2007 introduced the requirement for an ESA claimant to attend mandatory work focused interviews, which covers NJWFIs, Flexible Interventions, Learning Focused Interventions and Work Programme Referral Interviews.
7. Specifically ESA Regulations 2008 Part 8 Chapter 2 Regulation 54(1) requires the claimant to take part in one or more work-focused interviews as a condition of continuing to be entitled to the full amount of ESA payable to the claimant.
8. ESA Regulations 2008 Part 8 Chapter 2 Regulation 63(1) (b) provides that a claimant can have a sanction imposed on their ESA if they fail to attend an interview without good cause.

9. The amount and length of the sanction which can be applied, i.e. removed from the claimants benefit, is determined by ESA (Sanctions) (Amendment) Regulations 2012 Regulation 4. (SI 2012 No. 2756 (ESA (Sanctions)(Amdt) Regs)

AR Codes

- AR Code ESA/310 is used for FTA / FTP in a New Joiner WFI (ESA / 249/310 for a reconsideration)
- AR Code ESA/320 is used for FTA / FTP an ESA WFI (ESA /249/320 for a reconsideration)
- AR Code ESA/290 is used for FTA / FTP a WFI (16/17 year old) (ESA /249/290 for a reconsideration)

Failure to undertake Work Related Activity

Background

10. ESA (Work-Related Activity) Regulations 2011 Part 2 Section 3 introduced a requirement for some ESA claimants who are already required to take part in WFIs, to undertake Work-Related Activity ("WRA").SI 2011 No.1349
11. As a condition of continued entitlement to a full award of ESA, an Adviser can, where the claimant meets certain criteria, require the claimant to undertake WRA.
12. Regulation 17(2)(b) of the WRA Regs introduced the requirement for benefit to be sanctioned if the claimant who was required to undertake WRA has failed to do so and has failed to show good cause for that failure. SI 2011 No.1349
13. If a claimant fails to undertake WRA, they are sanctioned in the same way as Failure to Attend (FTA) or Failure to Participate (FTP) in a mandatory interview.

AR Codes

14. The AR Code ESA/301WRA is used for Failure to Undertake WRA (ESA/249/310WRA for a reconsideration)

Failure to Undertake Work Related Activity on the Work Programme

Background

15. ESA (Work-Related Activity) Regulations 2011 Part 2 Section 3 introduced a requirement for some ESA claimants who are already required to take part in WFIs, to undertake Work Related Activity (WRA) (SI 2011 No.1349), and this covers where a claimant fails undertake WRA in the Work Programme, as long as they are participating in the Work Programme on a mandatory basis.
16. If the claimant is found to fail to undertake WRA whilst in the Work Programme they are sanctioned in the same way as someone who Fails to Attend or Participate in a mandatory interview.

17. Once the claimant has been referred to the Work Programme Provider (WPP), the Provider is responsible for identifying if there is a compliance doubt and raising the doubt with the LMDM.
18. The WPP will refer a compliance doubt on form WP08 direct to the LMDM to decide if a sanction should be imposed.
19. The WPP will have considered whether the claimant is vulnerable and if so taken all reasonable steps to contact them to ensure that they fully understand the WP requirements placed upon them.
20. WPP are subject to safeguarding but unlike advisers they do not have to follow the Jobcentre Plus strict guidance steps. Their guidance simply states, they are required "to make every effort to ensure that the participant has understood the requirement to undertake the agreed mandatory activity". For more information see Chapter 6 of the Work Programme Provider Guidance.

AR Codes

21. The AR code for ESA WP Sanctions is ESA/101WP.(ESA/249/101WP for a reconsideration)

Action to take on receipt of the JCP referral

What information should be included as part of the DART referral

22. Where the Personal Adviser does not accept good cause for FTA/FTP an interview, or for the Failure to undertake Work Related Activity they will refer cases to the Benefit Centre using DART. If DART is not available use form ESA/IS285.
23. Supporting evidence may be attached to the referral. This can be:
 - Evidence from the claimant
 - A core visit report
 - Additional evidence from the Personal Adviser.
24. The Personal Adviser will have accessed LMS and in the View Referral / Decision Details screen selected the appropriate Acts and Regulation (AR) code before linking the doubt to an outstanding Adviser interview.
25. The referral must include the Date of the Sanctionable Failure. Where there are multiple sanction decisions outstanding, this will enable the LMDM and the Customer Service Officer-Claims Maintenance (CSO-CM) to be able to match the decision to the referral.

Action upon receipt of the referral

26. On receipt of the referral within the Benefit Centre the Customer Service Officer Labour Market Decision Making Appeals (CSO LM DMA) admin officer registers the referral on Decision Making and Appeals System (DMAS) and should input the date of the sanctionable failure in the DMAS notes box. They then pass the referral on to the LMDM
27. Once the LMDM is satisfied that they have all the evidence they need they make their decision.

Action to take on receipt of the WP referral

What information should be included as part of the WP08 referral

28. The Work Programme Provider (WPP) will refer any cases to the LMDM, via the Customer Service Officer Labour Market Decision Making Appeals (CSO LM DMA) admin officer on form WP08.
29. The relevant information from the Mandatory Activity Notification (MAN) issued to the claimant giving detail of the specific action that there is now a doubt against, should be transposed by the WPP onto the WP08.
30. The WPP will have also have notified the claimant of an activity to re-comply and this should be detailed within the WP08. It is not however a requirement to send a copy of the MAN with the WP08.
31. The WPP will not however have approached the claimant asking why they failed to undertake the specific action in doubt, and will therefore not have considered good cause. The WPP may however be able to supply some background information about the claimants' circumstances / behaviours which may help the LMDM, within the WP08.
32. The WPP will identify vulnerable claimants, and provide detail of what steps they have taken to contact them to ensure that they fully understand the requirements placed upon them.
Note: If the WPP has not identified the claimant as vulnerable and they are, then continue with LM DMA action up to and including imposing a sanction if appropriate. You should also take steps to inform the WPP so they can update their records.
33. It is essential that the WPP gives the provider correspondence address on the WP08 to enable the LMDM to return the sanction decision to the correct address.
Note: The WPP may have undertaken activities to seek re-engagement with the claimant in the same way that JCP would.
34. Further generic information on the Labour Market doubts received from the Work Programme can be found in Chapter 3.

Action upon receipt of WP08

35. On receipt of the WP08 the CSO LM DMA admin officer registers the referral on Decision Making and Appeals System and inputs the date of the sanctionable failure in the DMAS notes box. They then pass the referral on to the Labour Market Decision Maker (LMDM)
36. Upon receipt of the completed WP08 and any supporting evidence, the LMDM should consider whether the referral contains all of the information required to enable a decision to be made. If not, the LMDM should contact the provider for clarification or further information.
37. The LMDM should also:
 - decide whether the activity they were mandated to undertake was reasonable in the claimant's circumstances.
 - check cases where the provider has stated that the claimant is vulnerable to ensure that there is evidence that the provider has made every effort to ensure that the participant has understood the requirement to undertake the agreed mandatory activity. If any evidence

- is provided, the LMDM should accept that the activity meets safeguarding requirements.
38. To speed up the decision making process, the LMDM must telephone the claimant in an attempt to establish good reason. If telephone contact fails, a letter WP13 must be sent to the claimant on the same day as the failed call inviting them to provide their reasons for failing to participate to establish if there is good cause for non-compliance.
 39. The good cause letters WP13 have a 'Reply Due Date' of 7 working days from the date sent included on them. The reply date is automatically calculated by DMAS.
 40. Good cause letters that do not receive a reply will automatically appear on the 'BF Cases' report when the 'Reply Due Date' has been reached, with the name of the good cause letter (see below)

SDM Ref	SDM	B/F Date Entered	Comments
195	DEN	08/Dec/2011	Overdue WP12
195	DEN	08/Dec/2011	Overdue WP13
197	DEN	12/Dec/2011	Overdue WP12
Number of B/F Cases identified: 3			
*** END OF REPORT ***			

41. If necessary the LMDM can contact the Work Programme Provider (WPP) for additional evidence.
42. If the claimant cites non-receipt of the notification from the WPP as a reason for non-participation in the scheme, the LMDM will need to investigate further before making their determination. This detail is not included in legislation and is based purely on the evidence presented.
43. Things to consider may include:
 - Have they recently changed address?
 - Was the notification sent to the correct address?
 - Previous history. Have they a record of non-participation before? Have they given non-receipt as reason in the past?
 - Have they previously reported non-receipt of other items sent by DWP e.g. giro, advisory interview appointments, letters etc
 - Do they have an otherwise good history of participation?
44. Once the LMDM is satisfied that they have all the evidence they need they make their decision

Making a decision

45. Once the LMDM is satisfied that they have all the evidence required to make their decision as to whether the ESA claimant has good cause for failing to undertake work-related activity, they need to make the decision.
46. The LMDM needs to decide:
 - Whether to sanction the claimant; and

- The sanction to be applied.

Whether to sanction the claimant

47. The first part of the decision is to consider if the claimant has good cause.

Consider good cause

48. In all cases referred to the LMDM for a decision from the Jobcentre, a Personal Adviser will have already considered good cause. However it is important that even though the Personal Adviser has not allowed good cause the LMDM always considers good cause, even where the claimant has not provided an explanation about why they Failed to Attend / Participate in a mandatory interview, or failed to undertake Work Related Activity (WRA)

49. When considering whether good cause has been shown the LMDM must consider the following:

- Taking into account the claimants individual circumstances was it reasonable for the claimant to attend / participate / undertake the WRA?
- Is the claimant suffering from a mental health condition, learning disabilities, or a condition affecting communication / cognition such as a stroke, which may have prevented their attendance or ability to show good cause?
- May the claimant have misunderstood any requirement given to them due to any learning, language or literacy difficulties,
- For vulnerable claimants on the Work Programme has the provider made every effort to ensure that the participant has understood the requirement to undertake the agreed mandatory activity.

Note: Where the WPP has provided evidence, the LMDM should accept that the activity meets safeguarding requirements.

- For vulnerable claimant supported by Jobcentre Plus, is there evidence that the adviser has considered/undertaken all safeguarding activity laid out in Chapter 8 of the ESA guidance for Jobcentres

50. The LMDM should also check that the appointment letters, and letters asking the claimant to provide good cause have been issued at the correct time.

51. Evidence from the claimant with regard to good cause may be attached to the referral, or may have been received on form WP13 in the case of a claimant on the Work Programme failing to undertake Work Related Activity.

52. In addition for vulnerable claimants supported by Jobcentre Plus (i.e. not on the Work Programme) a core visit report may be attached in circumstances where the claimant has a condition, normally either a mental health condition or learning difficulty, which could affect their ability to understand and comply with conditionality. A core visit to the claimants' home must be completed by the Jobcentre before any sanction decision is considered for claimants suffering these conditions. If the core visit shows that the claimant has a condition which affects their ability to understand the requirement a sanction should not be applied until further efforts have been made to explain the requirement, and the claimant has been given the chance to comply with the requirement.

53. Good cause reasons are not listed or covered by legislation, but detail is given in DMG53052.

Applicable sanction

54. The second part of the decision is to determine what sanction should be applied. For details of the sanction to be applied see Chapter 4 ESA Sanctions

Recording the decision

55. When a LM doubt is decided, the LMDM must record their decision on DMAS, recording the date of transgression (date of sanctionable failure), and the length of the fixed term period on the DMAS template. They must then issue the decision notifications DMAS template to the correct recipients including the Benefit Centre, Jobcentre, claimant or Work Programme Provider.
56. When the LMDM selects that a sanction is applicable within DMAS, they also need to make a selection to detail whether the referral is pre or post 3/12/12.
57. See the DMAS System User Guide for further information around entering the decision and notification options.

Issuing notifications that claimant has shown good cause

58. If the LMDM determines that good cause has been shown for FTA or FTP the mandatory interview/intervention, or failure to undertake WRA, the DMAS system will produce a printed notification which needs to be sent to the Adviser to notify that good cause has been accepted.
59. DMAS will also update LMS with the details of the decision.
60. Upon receipt of the notification the Adviser will determine the next steps for the claimant.

Issuing notifications that claimant has not shown good cause and to implement sanction

61. Notifications regarding the implementation of sanctions are issued by the Benefit Centre.
62. When the decision is made that the claimant has not shown good cause, action needs to be taken as follows:
- Upon receipt of the DMAS template the Benefit Centre Claimant Service Officer Claims maintenance (CSO CM) will notify the claimant of the sanction
 - If the DMAS template shows an open ended period, as the claimant has not re-complied, manually issue clerical notification JCP 80b (ESA) or JCP 80b (ESA WRA).
 - If the DMAS template shows a closed period, as the claimant has already re-complied, remove the inhibit from JSAPS and the outcome decision will be automatically issued to the claimant.
63. For further information see Action Required by Benefit Centre (BC) Claimant Service Officer Claims Maintenance (CSO CM)

Reconsiderations

64. This guidance covers the action to take for cases where the original decision was notified to the claimant prior to 28 October 2013. For details of the action to take for cases where the original decision was notified on or after 28 October 2013 see Chapter 06 – Mandatory Reconsideration Guidance for LMDMs.
65. If the claimant is not satisfied with the decision that has been made they can ask for the decision to be reconsidered.
66. A claimant can request as many reconsiderations as they wish.
67. Claimants are allowed one month from the date shown on the Decision Notification to apply for the decision they do not agree with to be reconsidered.
68. Where possible a different, appropriately qualified, Decision Maker (DM) should reconsider the decision.
69. The evidence will be considered again and any new information taken into account. The LMDM will then make another decision.
70. The original decision can be either:
 - 'revised' which means changed; or
 - 'not revised' which means not changed.
71. The claimant may provide further information of a medical nature which could give grounds for a new decision, the LM DM may refer the case to medical services for further advice.
72. If a claimant requests a reconsideration, a LM DM takes ownership of the case. The LM DM:
 - offers the claimant an initial explanation and record this in Jobseekers Allowance Payment System (JSAPS) dialogue JA320: Explanations and Reconsiderations.
 - updates Customer Account Manager (CAM) Contact history as to why the decision was made.
73. If the claimant is not satisfied with the response, the reconsideration process starts, and the LM DM reviews the case, recording the reconsideration in dialogue JA320: Explanations and Reconsiderations.
74. For further information on Reconsiderations and Appeals see Code of Appeals procedure
75. For DMAS action to take for reconsiderations see DMAS guide.