

LMDM Procedural Guide

Employment Programmes

Vulnerable claimants (ESA only)

75. For Work Programme Providers, vulnerable ESA participants are those who have mental health conditions or learning disabilities or conditions affecting communication/cognition.

Provider states that claimant is not vulnerable

76. If the LMDM has evidence that the claimant is, in fact, vulnerable, they should still consider the case but take the claimant's medical condition into account when determining their decision. The referral must **not** be cancelled unless the LMDM has evidence that the provider has been notified that the claimant is vulnerable.

77. The provider must be notified of the claimant's vulnerable status by way of a note added to the DMAS decision notification stating:

'Please note that claimant is considered to be vulnerable. Please note your records and ensure that appropriate safeguarding action is undertaken before any future referrals are made. Any further referrals for which no safeguarding action has been undertaken may be cancelled.'

The email to the provider containing the DMAS decision notification must contain, 'Change identified – action required' in the subject line.

78. LMDMs must record in LMS Conversations the fact that the provider has been notified of the claimant's vulnerable status. A robust system must be established to ensure that future referrals are checked for this information before a decision is made.

79. The LMDM should allow four weeks to have elapsed between notification (as per para 77) being sent before cancelling the referral to enable the vulnerability information to be cascaded throughout the provider's network. Cases which may 'overlap' or for which there is any doubt, should not be cancelled. **Note: LMDMs must not retain referral for four weeks before making a decision. If four weeks have elapsed since notification sent and new referral received stating that claimant is not vulnerable, this should be cancelled. If less than four weeks have elapsed, consider referral as per para 76 above.**

80. If the LMDM has evidence that the provider has previously been informed of the claimant's vulnerability but referrals are received stating that the claimant is not vulnerable, the referral should be cancelled, DMAS decision notification annotated with reason for cancellation and the date that the claimant's vulnerability was notified and returned to the provider.

Provider states that claimant is vulnerable

81. Where an ESA participant is identified by the WPP as having a vulnerable status, and they fail to participate with a mandatory activity, the provider is required to undertake safeguarding action to ensure that the participant has understood the requirement to undertake the mandatory activity.
82. It is the Provider's responsibility to make every effort to see vulnerable ESA participants face to face (which may include a visit to their home) to ensure that they fully understand their responsibilities before proceeding with a compliance doubt.
83. Where the provider is aware that the claimant is vulnerable, they will state on the WP08 whether or not safeguarding has been carried out. If the provider states that they have, then the LMDM must accept this on trust. Providers will not provide an explanation of the safeguarding activities they have carried out.
84. Where the provider is aware that the claimant is vulnerable but they have been unable to carry out safeguarding action, they will provide an explanation of the reasons on the WP08. In these circumstances, the LMDM should **not** cancel the referral but attempt to establish 'good cause' as per current instructions.
85. Only if the provider offers no explanation as to why they have failed to undertake safeguarding should the referral be cancelled.

Good cause and vulnerable claimants

86. In establishing whether the claimant had 'good cause' for their failure, the LMDM should try to determine whether their medical condition affects cognition and whether they genuinely did not understand the requirements placed upon them. In such cases, the case should be allowed; a sanction should never be applied to a claimant who is genuinely unable to understand the conditionality requirements.
87. A referral in respect of a vulnerable claimant must not be automatically allowed. Each case must be determined upon its own merits as vulnerability can take many forms and can sometimes be temporary in duration or variable in nature.

88. If a claimant is suffering from a mental health condition which may affect cognition, and all attempts to contact the claimant for 'good cause' or to establish their comprehension of the conditionality requirements have failed, no sanction should be applied.
89. In all cases, a claimant's medical condition should always be taken into account as this may provide them with a good reason for acting as they did or failing to act as required.

Examples

- Neil has learning difficulties and has failed to participate as required in the Work Programme. A WP08 is received which states that the provider has undertaken safeguarding action. The LMDM sends Neil a WP13 letter to establish his reasons but receives no response. In this case, a sanction can be applied as Neil has failed to provide good cause for his failure and the provider has confirmed that Neil has understood the requirements placed upon him.
- Kath has agoraphobia and has failed to participate as required in the Work Programme. A WP08 is received which states that the provider been unable to undertake safeguarding action. LMDM telephones Kath to establish her reasons for failing to attend an interview with the provider. The call establishes that Kath knew that she had to meet with the provider on the date and time specified and actually left home to attend the meeting but whilst waiting for the bus to arrive, had a panic attack and had to rush back home. The LMDM decides that Kath is not vulnerable as she understood the requirements but that as she had demonstrated good cause for the failure to participate in the WP, no sanction is to be applied.
- Dan is claiming ESA due to back pain and has been referred to the Work Programme. He has failed to attend an interview with the provider as mandated and a WP08 is received which states that no safeguarding action has been undertaken. In response to a WP13, Dan explains that in addition to the pain he is in, his wife left him the week before and his dog died the day before the interview. That morning he found that his car had been stolen and two letters had arrived in the post: one from his employer saying that his job had been terminated and another from his wife's solicitor stating that divorce proceedings were being started. He provides copies of these letters as evidence. The LMDM decides that Dan should not be sanctioned as his mental health condition on the day meant that he was in no fit state to have regard to the requirements placed upon him.

- Diane starting claiming ESA 9 months ago due to a chronic bowel infection. She was referred to the Work Programme 6 months ago. A WP08 is received which states that no safeguarding action has been undertaken. When the LMDM checks on LMS/JSAPS, it is found that Diane's medical condition is now recorded as schizophrenia. LMDM's attempts to contact Diane but there is no reply to letters or response to telephone calls. The LMDM notifies the provider that Diane is vulnerable and decides that no sanction should be applied.