

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF LEGAL GROUP)

Decision Makers Guide

Volume 6

Amendment 46 – June 2016

1. This letter provides details on Amendment 46; the changes have already been incorporated in to the Intranet and Internet versions of the DMG.
2. PDF amendment packages are also available. These can be printed with the amended pages being reproduced in full. Each page will contain the amendment number in the footer

PDF amendment packages can be found on the **Intranet** at:

<http://intranet/1/lg/acileeds/guidance/decision%20makers%20guide/index.asp>

or on the **Internet** at the 'Amdt Packages' tab on the following link:

<http://www.dwp.gov.uk/publications/specialist-guides/decision-makers-guide/>

Note: When printing PDF packages set the print properties to Duplex/Long Edge in order to produce double sided prints.

3. Amendment 46 affects abbreviations and chapters 33 & 34 . The changes amend
 - DMG Chapter 33 – amendments expand the guidance on deductions for payments in place of child support maintenance.
 - DMG Chapter 34 – Please note DMG Memo 7/16 incorporated and some significant changes re Universal Jobmatch plus some minor amends and examples added.
4. The last two amendment packages amending Volume 6 were
Amendment 45 [February 2016]
Amendment 44 [October 2015]
5. **For reference purposes Decision Makers may find it useful to retain deleted pages for a short period after the introduction of this package.**
6. If using a PDF amendment package remove the sheets as stated in the left hand column of the Remove and Insert table below and insert the new sheets as stated in the right hand column (note the record of amendments at the back of the Volume).

Remove

Abbreviations

LCW – YT (3 pages)

Chapter 33

Appendix 1 (1 page)

Chapter 34

Conts 34761 – Appndix 4 (2 pages)

34051 – 34062 (1 page)

34177 – 34185 (1 page)

34292 – 34296 (1 page)

34370 – 34530 (14 pages)

34540 – 34564 (1 page)

34761 – 34830 (5 pages)

34856 – 34875 (3 pages)

34883 – 34900 (2 pages)

34907 – 34940 (4 pages)

Insert

Abbreviations

LCW – YT (3 pages)

Chapter 33

Appendix 1 (1 page)

Chapter 34

Conts 34761 – Appndix 4 (2 pages)

34051 – 34062 (1 page)

34177 – 34185 (1 page)

34292 – 34296 (1 page)

34370 – 34530 (14 pages)

34540 – 34564 (1 page)

34761 – 34830 (6 pages)

34856 – 34875 (3 pages)

34883 – 34900 (3 pages)

34907 – 34940 (6 pages)

LCW	Limited capability for work
LCWA	Limited capability for work assessment
LCWRA	Limited capability for work related activity
LEA	Local Education Authority
LEC	Local Enterprise Council
LEL	Lower Earnings Limit
LETS	Local Exchange Trading System
LPP	Lone Parent Premium
LPRO	Lone Parent run-on
LQPM	Legally Qualified Panel Member
LRP	Liable Relative Payment
LSC	Learning and Skills Council
LT	Linking Term
LTACP	Living Together as Civil Partners
LTAMC	Living Together as Married Couple
LTAHAW	Living Together as Husband And Wife
MA	Maternity Allowance
MAP	Maternity Allowance Period
MB	Maternity Benefit
MDB	Miscellaneous Diseases Benefit
MG	Maternity Grant
MID	Mortgage Interest Direct
MIRO	Mortgage Interest run-on
MP	Member of Parliament
MPP	Maternity Pay Period
MSC	Maximum Savings Credit
MSP	Member of the Scottish Parliament
NASS	National Asylum Support Service
NCET	National Council for Education and Training
NCIP	Non-Contributory Invalidity Pension
ND	New Deal
NDLP	New Deal for Lone Parents
NDP	New Deal for Partners
NDYP	New Deal for Young People
ND18-24	New Deal for 18-24 year olds
ND25+	New Deal for claimants aged 25 years and over
NHS	National Health Service
NI	National Insurance
NINO	National Insurance Number
NMW	National Minimum Wage

NRP	Non-Resident Parent
NVQ	National Vocational Qualification
OOT	Own Occupation Test
OPB	One Parent Benefit
PA	Personal Adviser
PAYE	Pay As You Earn
PB and MDB	Pneumoconiosis, Byssinosis and Miscellaneous Diseases Benefits scheme
PCA	Personal Capability Assessment
PD	Prescribed Disease
PETA	Personal Expenses Transitional Addition
PFA	Person(s) From Abroad
PIE	Period of Interruption of Employment
PILON	Pay In Lieu Of Notice
PILOR	Pay In Lieu Of Remuneration
PIP	Personal Independence Payment
PIW	Period of Incapacity for Work
PLCW	Period of limited capability for work
PLCWA	Period of limited capability for work assessment
PO	Post Office
POAOB	Payment on Account of Benefit
POA	Power of Attorney
PP	Pensioner Premium
PR	Preserved Right
PSIC	Person Subject to Immigration Control
P/T	Part-Time
PW	Pay-Week
PWC	Person With Care
PWHL	Permitted Work Higher Limit
PWHS	Permitted Work Higher Limit subsequent period
PWK	Permitted Work
PWLL	Permitted Work Lower Limit
PWP	Permitted Work Period
QB	Qualifying Benefit
QBP	Qualifying Benefit or Pension
QD	Qualifying Days
QEF	Qualifying earnings factor
QI	Qualifying Income
QP	Qualifying Period

QRW	Qualifying remunerative work
QW	Qualifying Week
QWfl	Quarterly Work-focused interview
RA	Retirement Allowance
RBD	Reduced Benefit Direction
RCH	Residential Care Home
REA	Reduced Earnings Allowance
Reg(s)	Regulation(s)
Res A	Residential Allowance
RISWR	Redundant Iron and Steel Employees re-adaptation scheme
RMPS	Redundant Mineworkers Payment scheme
RP	Retirement Pension
RQC	Relevant Qualifying Condition
RVU	Relationship Validation Unit
S	Section (of an Act)
S2P	State Second Pension
SAP	Shared Additional Pension
SAYE	Save As You Earn
SB	Sickness Benefit
SC	Savings Credit
Sch	Schedule (as in an Act)
SCT	Savings Credit Threshold
SDA	Severe Disablement Allowance
SDM	Sector Decision Maker
SDP	Severe Disability Premium
S/E	Self-Employed
Sec	Section (of an Act)
SED	Scottish Education Department
SERPS	State Earnings Related Pension Scheme
Sev DP	Severely Disabled Person
SF	Social Fund
SFFP	Social Fund Funeral Payment(s)
SFO	Social Fund Officer
SHA	Special Hardship Allowance
SI	Statutory Instrument
SIR	Standard Interest Rate
SJP	Supervised Jobsearch Pilot Scheme
SMG	Standard Minimum Guarantee
SMP	Statutory Maternity Pay
SP	State Pensions

SPC	State Pension Credit
SpTA	Special Transitional Addition
SPW	Supported Permitted Work
SRPS	Shipbuilding Redundancy Payment Scheme
SS	Social Security
SS benefits	Benefits payable under SS(CB) Act 92
SSMG	Sure Start Maternity Grant
SSP	Statutory Sick Pay
STCP	Skills Training Conditionality Pilot
Supp B	Supplementary Benefit
SVQ	Scottish Vocational Qualification
TA	Transitional Addition
TAW	Temporary Allowance for Widow(ers)
TBI	Total Benefit Income
TD	Trade Dispute
TE	Transitional Element
TEC	Training and Enterprise Council
TFEU	Treaty on the Functioning of the European Union
TS	Tribunals Service
TU	Trade Union
UB	Unemployment Benefit
UC	Universal Credit
UCP	Urgent Case Payment
UEL	Upper Earnings Limit
UK	United Kingdom
US	Unemployability Supplement
UT	Upper Tribunal
VAT	Value Added Tax
VSO	Voluntary Sector Option of New Deal for young people
WA	Widow's Allowance
WB	Widow's Benefit
WBLA	Work Based Learning for Adults
WBLfYP	Work Based Learning for Young People
WBTfA	Work Based Training for Adults
WBTfYP	Work Based Training for Young People
WC	Workmen's Compensation
WC(S)	The Workmen's Compensation (Supplementation) Scheme

WC (Supp)	Workmen's Compensation (supplementation) scheme
WCA	Work capability assessment
WDisP	War Disablement Pension
WFHRA	Work focused health related assessment
Wfi	Work-focused Interview
WFP	Winter Fuel Payment
WFTC	Working Families Tax Credit
WMA	Widowed Mother's Allowance
WMA(C)	WMA payable where late husband entitled to Cat C retirement pension
WP	Widow's Pension
Wp	Work programme
WPA	Widowed Parent's Allowance
WP(C)	Widow's Pension payable where late husband entitled to Cat C retirement Pension
WPT	Widow's Payment
WRAC	Work-related activity component
WRAG	Work-related activity group
WTB	Work and training beneficiary(ies)
WTC	Working Tax Credit
WtWB	Welfare to Work Beneficiary
WWP	War Widow's Pension/War Widower's Pension
YT	Youth Training

Appendix 1

Payments or awards (see DMG 33629 (3.1))

Payments or awards which can affect whether an absent parent is liable for contributions to maintenance

- IB
- MA
- AA
- SDA
- CA
- DLA
- WTC
- SSP
- SMP
- IIDB
- CAA
- W DisP
- ESDA
- Civilian War Injury Pension
- Severe Disablement Occupational Allowance
- Payments from the Independent Living Fund (see note)
- PIP
- AFIP.

Note: the Independent Living Fund (2006) closed on 30.6.15 with some funding responsibilities transferring to LA's in England, the Welsh Independent Living Grant in Wales and the Independent Living Fund Scotland for Northern Ireland and Scotland. Please contact DMA Leeds for advice if a claimant receives funding from any of these replacements.

Fails for no good reason to participate in a scheme of a prescribed description

Introduction.....34761

MWA scheme34762

 Selection for participation.....34764

 Requirement to participate and notification.....34765

 Failure to participate in the MWA scheme34769

 Pre-selection interview34770

 Induction/pre-start interview34771

 Evidence of notification34772

 Circumstances where requirement to participate is not required
 or ceases to apply34774

 Contracting out.....34776

 Provider gives good reasons when referring a sanction doubt.....34777

 Meaning of fails to participate34778

 Inappropriate behaviour34780

 Requirement to complete MWA.....34786

 The MWA notification is for a period other than 4 weeks34787

 Balance of time34788

 Provider makes an offer of employment34789

MWA Scheme ending34791

 Effect on sanctions34793

Failure to participate in an interview

Introduction.....34831

 Meaning of participation34833

Failure to participate – sanction applicable34834

 Relevant notification.....34835

Failure to participate – no sanction34841

Failure to participate – entitlement ends34842

Schemes for assisting claimants to obtain employment

Introduction.....34846

Day One Support for Young People.....34848

Derbyshire Mandatory Youth Activity Programme	34849
Full-time Training Flexibility.....	34850
New Enterprise Allowance	34851
The sector-based work academy	34852
Skills Conditionality	34853
The Work Programme	34854
Community Work Placements	34855
Traineeships.....	34856
Selection for and participation in a relevant scheme	
Selection for participation.....	34866
Requirement to participate and notification.....	34867
Contracting out.....	34868
Requirement to notify	34869
Failure to participate in the prescribed scheme	34870
Participating in a relevant scheme	34871
Evidence of notification	34872
Claimant raises issue of notification.....	34873
By way of participation	34875
Sanctions and good reason	34876
Circumstances where requirement to participate is suspended or ceases to apply.....	34877
Designation of Employment Officers	
Changes	34879
Approved Sub-contractor	34880
Prime Contractor	34881
Relevant contract	34882
Employees of Authorised Providers.....	34883
Work Programme	34884
Community Work Placements.....	34885
Refuses or fails to take up employment.....	34887
Refusal or failure	34888
Employment Officer status.....	34889
Evidence of Authorised Providers	34890

Evidence to determine refusal or failure	34891
CWP Scheme ending	34893
Early termination	34895
Effect on sanctions	34896
Exemptions from requirement to meet the jobseeking conditions	
New Enterprise Allowance scheme	34898
Full-time student.....	34899
Discharged from detention in prison	34900
Refusal or failure to carry out a jobseeker's direction	
Introduction.....	34901
Meaning of jobseeker's direction.....	34902
Reasonable	34908
Restrictions	34909
Back to work sessions.....	34910
Group Information sessions	34911
Day 1 conditionality	34914
Issuing a JSD to mandate JSA claimants to create a profile and public CV in Universal Jobmatch.....	34916
Access to the claimant's UJ account	34918
Evidence	34919
Exceptions.....	34921
Access to a DWP IAD	34922
Cookies fact sheet.....	34923
Refusal or failure to carry out a JSD	34926
Claimants change their mind.....	34927
Good reason- refusal or failure relates to the employment.....	34928
Good reason – refusal or failure relates to the JSD itself	34929
Training schemes and employment programmes	
Introduction.....	34941
Work experience	34951
Work experience opportunity	34953

Work experience arranged by work programme providers, sector-based work academies or traineeships	34954
Gross misconduct.....	34961
Sanctions	34964
Summary of Sanction Reasons and Structure for jsa claims (claimant 18 years and over) from 22.10.12.....	Appendix 1
People the Secretary of State has authorised as Employment Officers (see DMG 34015).....	Appendix 2
Approved Prime Contractors (Work Programme).....	Appendix 3
Approved Prime Contractors (Community Work Placements).....	Appendix 4

A second referral is received for a failure to participate in the Wp on 6.5.13. The DM decides there is no good reason for the failure and wishes to impose a second sanction.

The DM looks at Sue's sanctionable history and a previous lower-level sanctionable failure of 4 weeks is recorded for a failure on 21.5.13. There is one previous lower-level sanctionable failure recorded which was within 52 weeks of the current failure but not within 2 weeks therefore a sanction of 13 weeks will be appropriate.

This is the second sanctionable failure.

First failure 21.5.13 - 4 weeks sanction

Second failure 6.5.13 - 13 weeks sanction

The DM receives a further sanction doubt for Sue for another failure to participate in the Wp on 15.5.13 and decides Sue has no good reason for the current failure.

This failure is within 2 weeks of a previous lower-level sanctionable failure and there are 2 previous lower-level sanctionable failures recorded. The DM looks back and sees that there have been two previous lower-level sanctionable failures and that the dates of these fall within 2 weeks of the claimant's current failure. Because this new information has a bearing on decision 2 (because the date of failure falls between and within two weeks of decision 1 and decision 2) the DM will need to look at that decision again. The outcome will be that a 4 week sanction would be appropriate for decision 2 and for the new referral (sanction 3) because all 3 lower-level sanctionable failures fall within 2 weeks of each other.

This has the effect that the sanctionable failures are as follows:

Sanction 1 - 21.5.13 - 4 weeks

Sanction 2 - 6.5.13 - 4 weeks

Sanction 3 - 15.5.13 - 4 weeks

This provides consistency as the same sanctions would have applied if they had been made in date order.

34051 – 34055

Amount of the sanction

34056 The amount of the reduction in the case of a single claimant is 100% of the JSA payable to them¹.

1 JSA Regs, reg 70(1)(a)

Joint-claim couples

- 34057 In the case of a joint claim couple¹ the amount of the reduction is where the reduction relates to a sanctionable failure by
1. each member of the couple, 100% of the JSA payable to the couple² **or**
 2. only one member of the couple, a deduction that leaves
 - 2.1 for the member of the joint claim couple who has not committed the sanctionable failure and is entitled to JSA(Cont), a rate equal to the appropriate personal rate³
 - 2.2 for a couple who are in hardship, a rate equal to the appropriate applicable amount for a joint-claim couple in hardship⁴
 - 2.3 in any other case, an amount equal to the appropriate single claimant rate of JSA(IB)⁵

Note: In calculating **2.3**, the DM should treat the claimant who has not committed the sanctionable failure as a single claimant⁶.

*1 JS Act 95, s 19B(3); 2 JSA Regs, reg 70(1)(b)(i); 3 reg 70(1)(b)(ii) & (3)(a);
4 reg 70(1)(b)(ii) & (3)(b); 5 reg 70(1)(b)(ii) & (3)(c); 6 reg 70(1)(b)(ii) & (3)(c)*

- 34058 The amount of any reduction has to be zero for any period during which an award of JSA for a
1. single claimant is already reduced as a result of a sanctionable failure¹
 2. joint-claim couple where the award is already reduced as a result of a sanctionable failure by one or each member of the couple and the current failure is by the same claimant².

1 JSA Regs, reg 70(2)(a); 2 reg 70(2)(b)

34059 – 34060

Application of a sanction to a new award

- 34061 Where a sanction decision is made in respect of an award of JSA but the JSA award comes to an end before the expiry of the sanction period the remaining sanction period can apply to future awards of JSA. This is known as the “outstanding period”¹.

1 JSA Regs, reg 70C(3)

- 34062 All sanctions run concurrently and once a sanction has begun it continues unbroken until its period comes to an end. A sanction will continue to run even if the award it is applied to comes to an end. However, if the award ends and the claimant re-applies for benefit while the sanction period is still running, the remaining sanction period will apply to the new claim.

Note: See guidance at DMG 34185 if JSA hardship is in payment

Example 2

Gustaffo fails without good reason to apply for a job vacancy and then also fails to attend for his normal fortnightly job search review. Although both failures occur on 2.8.13 they are separate failures and the DM would consider 2 sanctions, a higher-level sanction for the failure to apply for the job vacancy and a lower-level for the failure to participate in his JCP interview (also see the guidance at DMG 34044 where there are two failures for the same period).

34177 If a claimant commits multiple lower-level failures the sanction period will not escalate to the next level where

1. the second or subsequent failure is within the same two week period **or**
2. in the case of joint claimants, the failure is not by the same claimant¹.

Note 1: Also see guidance at DMG 34041 et seq for full guidance on the escalation of sanctions and DMG 34046 where sanctions are determined out of sequence.

Note 2: During any sanction period imposed on one of the claimants in a joint-claim couple, JSA is payable to the other member of the couple², see DMG 34179.

1 JSA Regs, reg 69A(2); 2 JS Act 95, s 19A(10)

Example

Maxine and her partner Gary are a joint-claim couple in receipt of JSA. On 22.1.13 the DM makes a determination that JSA is not payable because Maxine failed without good reason to comply with a JSD request to register with an employment agency on 14.1.13. It is Maxine's first lower-level failure and a 4 week sanction is imposed.

On 8.8.13 Maxine's partner Gary, fails to participate in an interview with his Wp provider. On 12.8.13 the DM determines that Gary has failed without good reason to participate in the Wp. Although this is within 52 weeks of Maxine's lower-level failure, the failure is not by the same claimant in the joint-claim. The DM imposes a 4 week sanction for Gary's first lower-level failure.

On 20.8.13 Gary fails to attend a job search workshop arranged by his Wp provider. On 30.8.13 the DM determines that Gary has failed without good reason to participate in the Wp. This is his second lower-level failure but as the failure falls within the same 2 week period as Gary's previous lower-level failure the fixed period sanction imposed is for 4 weeks.

When the sanction period begins

34178 The period of a reduction begins either on the first day of the benefit week

1. in which the sanctionable failure occurred where on the date of determination to reduce the award the claimant has not been paid JSA since the failure occurred¹ **or**
2. after the end of the benefit week in respect of which the claimant was last paid JSA where on the date of determination to reduce the award, the claimant has been paid a JSA since the failure occurred².

Note 1: See DMG 34014 for the meaning of benefit week.

Note 2: See DMG 34185 if hardship only in payment.

1 JSA Regs, reg 69A(3)(a); 2 reg 69A(3)(b)

Example 1

On 2.11.12 Jamil fails to attend an interview with a Skills Conditionality provider. On 19.11.12 the DM determines Jamil failed without good reason to participate in the Skills Conditionality programme and imposes a 4 week sanction. Jamil's benefit week ends on a Thursday and he was last paid JSA to 8.11.12. The sanction begins on 9.11.12.

Example 2

On 25.10.12 Anila fails to comply with a JSD to attend a Jobs Fair. On 1.11.12 the DM determines that Anila failed without good reason to comply with a JSD and imposes a 4 weeks sanction. Anila's benefit week ends on a Monday and she was last paid JSA to 22.10.12. The sanction begins on 23.10.12.

Joint-claim JSA

34179 During any sanction period imposed on one of the claimants in a joint-claim couple, JSA is payable to the other member of the couple¹.

Note: Where one of a joint-claim couple has any failure, a sanction can only escalate up their own individual sanction ladder and not in line with failures incurred by the other member of the couple (see example at DMG 34177).

1 JS Act 95, s 19A(10)

34180 – 34184

When the sanction period begins if hardship only in payment

34185 A payment of JSA hardship is still an award of JSA. However, to withhold hardship payments when we have determined someone is in hardship would be unfair. Therefore the sanction period is applied and starts from

1. the first day of the benefit week after the end of the benefit week after JSA was last paid in the case of higher-level or lower-level sanctions¹ **or**
2. from the date of claim in the case of intermediate-level sanctions².

34292 The conditions are that¹

1. this is the first time that the young person has, without good reason, committed one of the sanctionable failures listed at 34291 **1. to 4. and**
2. the young person has not
 - 2.1 failed to complete a course of training, without a certificate being issued² **or**
 - 2.2 whilst claiming JSA and having a severe hardship direction in force
 - 2.2.a failed to pursue an opportunity of getting training without good reason **or**
 - 2.2.b rejected an offer of training without good reason **and**
3. at the time the young person
 - 3.1 acted as in 34859 **2., 3. or 4.** the young person was a new jobseeker **or**
 - 3.2 first attended the scheme, if a place on a training scheme was given up without good reason, the young person was a new jobseeker.

1 JSA Regs, reg 67(1); 2 JS Act 95, s 17(4)

Example

Matthew refuses to go on a training scheme and gives no reason for his refusal. He previously left a scheme where he was training to be a hairdresser because the shampoos and perm solutions made his eczema worse, and his GP advised him to leave. The DM decided that he had good reason because of the GP's advice. Matthew satisfies all the conditions **1. to 3.** so has good reason for refusing to go on the training scheme.

Meaning of new jobseeker

34293 New jobseeker means¹ a young person (16/17 year old) who has not, since first leaving FTE

1. been employed or S/E for 16 or more hours per week **or**
2. completed a course of training **or**
3. if a severe hardship direction is in force, failed to complete a course of training, without a certificate being issued² **or**
4. given up a place on a training scheme without good reason³ **or**
5. lost a place on a training scheme through misconduct⁴.

1 JSA Regs, reg 67(3); 2 JS Act 95, s 17(4); 3 s 19A(2)(f); 4 s 19A(2)(g)

Good reason for refusing employment or neglecting a reasonable opportunity of employment

34294 16/17 year olds also have good reason for

1. refusing employment¹ **and**
2. neglecting to avail themselves of employment²

if the conditions given in DMG 34295 are met³.

1 JS Act 95, s 19(6)(c) and 20A(2)(f); 2 s 19(6)(d) and 20A(2)(g); 3 JSA Regs, reg 67(2)

34295 The conditions are that¹

1. the employer did not offer suitable training **and**
2. the young person is not laid off or on short time and is available as in DMG Chapter 21² **and**
3. the young person has not accepted a firm offer of enlistment in the Armed Services to start within 8 weeks as in DMG Chapter 30³ **and**
4. the young person's JSA has not been reduced by a severe hardship direction⁴ or because of a sanction⁵ because the young person has
 - 4.1 given up a place on a training scheme without good reason⁶ **or**
 - 4.2 failed to attend a place on a training scheme without good reason⁷ **or**
 - 4.3 refused a place on a training scheme without good reason⁸ **or**
 - 4.4 neglected a reasonable opportunity of a place on a training scheme without good reason⁹ **or**
 - 4.5 lost a place on a training scheme through misconduct¹⁰ **or**
 - 4.6 refused employment without good reason¹¹ **or**
 - 4.7 neglected a reasonable opportunity of employment without good reason¹² **and**
5. the young person has not been sanctioned for
 - 5.1 leaving employment voluntarily without good reason¹³ **or**
 - 5.2 losing employment through misconduct¹⁴.

*1 JSA Regs, reg 67(2); 2 reg 61(1)(a); 3 reg 61(1)(f); 4 reg 63; 5 reg 68;
6 JS Act 95, s 19(5)(b)(iii) and 20A(2)(b)(iii); 7 s 19(5)(b)(iv) and 20A(2)(b)(iv);
8 s 19(5)(b)(ii) and 20A(2)(b)(ii); 9 s 19(5)(b)(i) and 20A(2)(b)(i); 10 s 19(5)(c) and 20A(2)(c);
11 s 19(6)(c) and 20A(2)(f); 12 s 19(6)(d) and 20A(2)(g); 13 s 19(6)(b) and 20A(2)(e);
14 s 19(6)(a) and 20A(2)(d)*

Meaning of suitable training

34296 Suitable training is¹ training that is suitable for the particular young people, taking into account

the vacancy and when he remembered the deadline date to apply had passed. The DM considers Remi does not have a good reason for failing to apply for the vacancy.

Example 4

Francis fails to apply for a vacancy. He says the reason he didn't apply for the vacancy was the travelling distance which is 80 minutes each way from his home and he cannot afford the costs of the travel. He does not mention the hours. In consideration of good reason the DM considers the travelling time in itself does not provide good reason as it is less than 90 minutes (see DMG 34261). In consideration of good reason the DM thinks the hours may be a relevant factor and asks the jobcentre to contact the employer for the number of hours involved. On checking, it is confirmed the vacancy is only for 20 hours per week - 4 hours per day over 5 days. The DM decides that we would not reasonably expect a claimant to travel 80 minutes to work for 4 hours a day followed by a return journey of 80 minutes and taking into account the travel costs in comparison to possible earnings. Francis is looking for full time work and it is not practicable or reasonable in the circumstances. The DM considers in this case Francis has good reason for not applying for the vacancy.

Example 5

Horace's JSAG shows that he has no restrictions and is available for work for 40 hours per week, Monday to Saturday. A suitable vacancy is put into the Saved Inbox of his UJ account and the advisor informs Horace he must apply for the vacancy before the closing date. No hours are provided.

Horace applies for the job and is called for an interview.

The employer advises JCP that Horace has been offered the job but he has refused it on the grounds that there are not enough hours for him. The maximum number of hours they can offer him at the present time is 18 hours per week.

As the vacancy was outside his agreed availability on his JSAG and Horace says this is the reason he refused the job, Horace has a good reason for the refusal and cannot be sanctioned for refusing to accept the job.

Shifts or rota systems

34370 If the employment on offer requires work on a shift or rota system where the claimant would have to work for 24 or more hours in some weeks, and less than 24 hours in others, the hours should be averaged. A claimant who refused or failed to apply for or accept employment averaging less than 24 hours a week may have good reason, and the DM should not impose a sanction.

34371 - 34375

Other circumstances that may amount to good reason

34376 The DM should

1. consider all matters put forward by the claimant **and**
2. decide whether or not to take them into account when deciding good reason.

34377 Account should also be taken of any other factor that appears relevant. In particular when the terms of a job on offer break the laws on

1. minimum working conditions **or**
2. they knowingly connive with an employer or agency in a
 - 2.1 tax avoidance scheme **or**
 - 2.2 PAYE is not being properly accounted for.

Attitude of claimant's trade union

34378 The fact that

1. the prospective employer is on the "black list" of the claimant's trade union¹
or
2. the claimant refused the employment on union instructions or advice²

does not, **of itself**, provide good reason.

1 R(U) 1/52; 2 R(U) 9/64

Possible return to previous employment

34379 The fact that a claimant

1. has a previous employment that has not ended **and**
2. may at some time return to it

does not **of itself** provide good reason for refusing other employment¹.

1 R(U) 1/52

Laid off and short time workers

34380 If claimants

1. are laid off **and**
2. are being allowed to and do in fact restrict the employment they are willing to take to
 - 2.1 the job they are laid off from **or**
 - 2.2 casual employment within daily travelling distance of home **and**
3. refuse or fail to apply for or accept employment because it does not meet any of the restrictions claimants imposed within **2.1 to 2.2**.

they will be considered to have good reason. The DM should not impose a sanction.

- 34381 If the claimants are
1. on short time **and**
 2. are being allowed to and do in fact restrict the employment they are willing to take to
 - 2.1 the job they are on short time in **or**
 - 2.2 casual employment within daily travelling distance of home for the hours they are not working in their short time employment **and**
 3. refuse or fail to apply for or accept employment because it does not meet any restrictions claimants impose within **2.1** to **2.2**
- they will have good reason. The DM should not sanction them.

Decision of Employment Tribunal pending

- 34382 The fact that a claimant is waiting for the result of an Employment Tribunal hearing on unfair dismissal does not **of itself** provide good reason for refusing other employment.

Claimant already working

- 34383 A claimant who is working and is still entitled to UC does not have good reason for refusing other employment just because the claimant would have had to give up their existing job. But see DMG 34384 if the claimant's reason for refusing other employment was that notice had to be given to end the current job.
- 34384 If the other employment offered would only have lasted for a short period, and the claimant would then have been unable to return to the previous work, the claimant may have good reason. It is for the DM to consider all the facts and circumstances of the individual case on its merits.

Example

Jack, who is working 10 hours a week at NMW rate is offered four weeks employment of 39 hours a week in the same type of employment, with a different employer. He is not sure that his current employer will take him back on when the new employment ends. Jack has good reason for failing to apply for the vacancy¹.

1 R(U) 34/56

Temporary employment

34385 Subject to DMG 34384 the fact that the employment offered is only temporary does not of itself provide good reason¹. It is for the DM to consider all the facts of the individual case on its merits and apply a common sense approach in the individual's circumstances and apply the reasonableness test in consideration of good reason. Temporary employment can assist the claimant by

1. updating existing skills
2. learning new skills
3. becoming more confident
4. improving their CV
5. showing employers they can keep regular hours and stay committed to a task
6. meeting people who can help them find work
7. giving them something to talk about in a job interview **and**
8. gaining references to improve their prospects of further employment.

Note: For the purposes of a failure to apply for or accept if offered, any employment opportunity, regardless of the duration of the employment, the sanction duration is for a fixed period. The failure is not a failure prescribed for in relevant legislation² which allows for the sanction to be reduced (see DMG 34097 et seq).

1 R(U) 35/52; 2 JSA Regs, reg 69(3)

Definite chance of other employment

34386 If the claimant has a definite chance of other employment that

1. will start in the very near future **and**
2. is likely to last at least as long as the employment offered **and**
3. will be lost if the claimant accepts the employment offered

this will be good reason. Whether a chance is definite must be decided on the individual facts of the case.

Personal preference

34387 Claimants do not have good reason for refusing employment because they

1. would prefer another type of work¹ **or**
2. wish to find employment for themselves without the help of Jobcentre Plus².

1 CU 3/48(KL); 2 R(U) 29/53

Other more suitable people unemployed

34388 A claimant does not have good reason for refusing employment just because there are other unemployed people who are more suited to the vacancy. The question is whether the **claimant** has good reason for refusing it taking into account all the individual circumstances of the case.

Job vacant because of a trade dispute stoppage

34389 Claimants cannot be sanctioned just because they refuse or fail to apply for or accept a job that is vacant because of a stoppage of work due to a TD. This applies even if the fact is not known at the date of refusal, but comes to light later. If a sanction has already been imposed, the adviser should let the DM know of the change so that he can consider revising or superseding the decision.

34390 For the job to be vacant because of the TD stoppage

1. the **stoppage** must exist at the time the vacancy is notified or offered. It is not enough that there is a TD, or that a stoppage seems imminent **and**
2. the vacancy must have been caused by the stoppage. This will not be the case if the vacancy
 - 2.1 was caused by the illness of an employee, even if there is a stoppage of work at the employer's premises **or**
 - 2.2 arose normally after the stoppage had ended and the places of the employees affected by the TD had been filled **or**
 - 2.3 arose because an employee left a job where there was no stoppage in order to take a job where there **was** a stoppage.

34391 – 34394

Employment which the claimant has previously left

34395 If the claimant has in the past left, or been dismissed from

1. the same employment **and**
2. employment with the same employer

that fact is not **in itself** good reason but the circumstances in which the previous employment ended may give the claimant good reason for refusing re-employment (for example consideration should be given to any mental or physical health issues or any of the circumstances in DMG 34236).

34396 Where the claimant refuses re-employment the DM should consider

1. all the circumstances surrounding the termination **and**
2. the effect of the termination on the relations between the claimant and the employer

Objection to employer or fellow employees

34397 A claimant may refuse employment because

1. the claimant objects to the employer or other employees **or**
2. it would mean working with a person whose conduct is known to be offensive.

34398 In extreme cases the claimant may be able to show that such employment would be likely to cause

1. unreasonable mental stress (see DMG 34309) **or**
2. be grounds for a sincere religious objection (see DMG 34321).

Otherwise, such an objection will only be good reason if it is so great that it would be unreasonable to expect the claimant to work in those conditions.

Example

Terry has previously left employment because of a personal disagreement with a colleague. She is offered a job by a different employer, but finds out that the colleague she had the disagreement with is now working there, and will be her supervisor. She is still on bad terms with the ex-colleague. She turns the job down. The DM considers that Terry has good reason.

34399 Unless there are exceptional circumstances, an objection to an employer because that employer has previously sacked the claimant does not provide good reason if there are no other reasons to consider.

Claimant does not have necessary equipment

34400 Claimants sometimes say that they are available for a particular type of employment where it is customary for employees to have their own tools, special clothes etc. If claimants do not have such tools, clothes etc, this will not generally be good reason. But in some cases there may be special reasons which will be good reason. For example, a claimant's tools are accidentally destroyed or stolen, and the claimant cannot replace them at once. But the DM should also take into account that the claimant may be able to buy such tools and equipment with help from the Flexible Support Fund.

34401 It is important to remember that health and safety is the responsibility of employers (class 1 employment) and that the provision of suitable protective equipment lies with the employer¹. Any available information concerning provision of equipment or tools should be used to decide whether a jobseeker has good reason for refusing vacancies offered.

1 Personal Protective Equipment at Work Regulations 1992

34402 - 34405

Seafarers

34406 Seafarers may refuse an opportunity to go back to sea because they want to

1. change their occupation **or**
2. take shore leave which they are due, and by the time the leave is finished the chance of employment is lost, for example because the ship has sailed.

34407 It is difficult for seafarers who want to change their occupation, particularly if they are abroad or at sea, to find alternative employment to start as soon as their contract ends. If they

1. have taken whatever steps they could **and**
2. seem to have reasonable prospects of finding other employment fairly quickly

the DM should accept that they have good reason.

34408 The DM should take into account that seafarers are entitled to some leave after voyages. But this does not mean that they have good reason for refusing chances of employment during **any** period of leave, regardless of the circumstances. They must show that they have not acted unreasonably in relying on UC.

Working time regulations

34409 The Working Time Regulations 1998 provide that a worker's working time, including overtime, shall not exceed an average of 48 hours for each seven days (the average being calculated over a 17 week period) except where a worker has agreed with his employer in writing that this limit should not apply in his case.

34410 A jobseeker has good reason for refusing employment of over an average of 48 hours per week if he gives the number of hours as his reason for refusal, irrespective of whether he selected the vacancy himself, applied for the job or attended an interview being fully aware of the hours required.

Anti-social behaviour order, community order or community disposal

34411 Claimants may refuse employment because it would mean that they would break their anti social behaviour order, community order or community disposal taking into account any necessary travelling time. If claimants have tried unsuccessfully to get their order or disposal varied they would have good reason for refusing employment.

Claimant given incorrect details of employment

34412 Claimants may refuse or fail to apply for or accept a vacancy, and it may later be found that they have been given incorrect details about the vacancy.

34413 The DM should impose a sanction if

1. the claimant **cannot** show good reason for refusing a job on the terms wrongly notified **and**
2. the **actual** terms of the job would have been more favourable¹.

1 R(U) 20/55

34414 The DM should not impose a sanction if the claimant can show good reason for refusing a job on the terms they were wrongly notified. The DM does not need to consider whether the claimant could have shown good reason for refusing the job had the actual terms been known.

Example

An adviser informs Dan about a vacancy as a packer in a local meat factory. He mistakenly tells Dan the rate of pay is £10 per hour. The actual rate is £12 per hour. Dan refuses to apply for the vacancy because in his last job, which ended two weeks ago, as he was paid more than £10 per hour as a packer. When considering good reason the DM treats the vacancy as if it was paying £10 per hour.

Zero hours contracts

34415 A claimant should never be mandated to apply for or accept a zero-hours contract but if the details of the zero-hours contract comes to light after the claimant starts work or during the application process then they will always have good reason for leaving voluntarily or due to misconduct, or for failing or refusing to accept the contract and a sanction should never apply.

34416 A zero-hour contract is a contract of employment used in the UK which is not defined in legislation and whilst meeting the terms of the relevant legislation¹ by providing a written statement of the terms and conditions of employment, contains provisions which create an "on call" arrangement between employer and employee. It does not oblige the employer to provide work for the employee. The employee agrees to be

available for work as and when required, so that no particular number of hours or times of work are specified. The employee is expected to be on call and receives compensation only for hours worked.

1 ER Act 96

34417 Zero-hour contracts may be ideal for some people such as retirees and students who want occasional earnings and are able to be entirely flexible about when they work, but people in the general working population, including those with mortgages and responsibility for supporting a family, run the risk of unpredictable hours and earnings. The possibility of the use of such contracts by management as a tool to reward or reprimand employees for any reason or no reason raises issues about how workers can adequately assert their employment rights or maintain decent employment relations. Therefore there can be no mandate to any zero hours contract (exclusive or not) and there can be no sanction imposed for Refusing Employment, Leaving Voluntary or losing work because of misconduct.

Employee Shareholder Contracts

34418 Employee Shareholder Contracts are entirely voluntary and JSA claimants must not be mandated to apply for such vacancies. For further guidance on Employee Shareholder Contracts see DMG 34335

Other reasons

34419 The reasons mentioned in this chapter are not exhaustive. The DM must consider any other reason the claimant puts forward for refusing or failing to apply for or accept employment applying the test of reasonableness in consideration of all the facts and evidence in the individual case. The DM should not just consider one factor but should consider the overall picture of the claimant's individual circumstances.

Note: Where the claimant changes their mind or the vacancy is withdrawn there will be no refusal or failure and no need to consider good reason (see DMG 34723 and DMG 34724).

34420

Circumstances that do not show good reason

34421 A claimant cannot refuse to apply for a job because of the rate of pay offered, except where this is below the NMW, (see DMG 34423) or because

1. of their income or outgoings or those of any member of their household (either as they were or would be if they took the job or carried out the work-related requirement. 'Outgoings' excludes expenses (such as for childcare) taken into

account that would be an unreasonably high proportion of the claimant's income

2. they argue they need a high wage because they have a large mortgage or an expensive lifestyle.

34422 The DM must disregard anything relating to the level of pay in the employment in question when deciding whether the claimant has good reason. The fact that the pay offered was

1. lower than the pay the claimant had previously received **or**
2. not enough to cover the claimant's financial commitments **or**
3. lower than the pay received by most other employees in that occupation **or**
4. less than the claimant is getting in benefits

are all related to the level of pay, and must be disregarded.

National minimum wage

34423 Claimants have good reason for refusing employment if they do so because

1. the national minimum wage applies to them **and**
2. the employment does not pay at least the national minimum wage that applies to them.

34424 – 34425

Circumstances that may show good reason where a claimant leaves employment

General

34426 To have good reason for leaving a job the claimant must show

1. they acted reasonably in leaving **and**
2. that their circumstances make it proper that public funds should support them.

34427 There are no hard and fast rules as to when claimants have shown good reason for leaving or losing employment, because the circumstances in which they leave or lose employment are so varied. The DM should consider as a whole all the circumstances in which the claimant left or lost the employment¹.

1 R(U) 20/64(T)

34428 Claimants cannot show good reason just because they acted reasonably in their own interests¹. The DM does not have to look at whether or not the claimant's leaving was in the **public** interest². It is the interests of other tax payers which should be taken into account³. The DM should decide whether the claimant has good reason for relying on JSA⁴.

Note: In all cases the DM should have regard to the guidance at DMG 34231 et seq when considering all the individual facts and circumstances of a case where the claimant has voluntarily left or loses paid work.

1 R(U) 20/64(T); 2 R(U) 3/81 Appendix; 3 R(U) 20/64(T); 4 R(U) 3/81 Appendix

34429 – 34430

Other circumstances that may show good reason

34431 The DM should have regard to the following when considering good reason that can apply to JSA claims for cases where a claimant leaves paid work or loses pay voluntarily:

1. any caring responsibilities which made it unreasonable for the claimant to stay in their job. In deciding whether it was unreasonable, the DM may look at whether childcare was (or could have been) reasonably available and, if it was (or would have been) unsuitable because of the claimant's or the child's, needs **and**
2. any childcare expenses the claimant had to pay as a result of being in the job, (and sources available to meet those expenses), if they amounted to an unreasonably high proportion of the income the claimant received. The proportion that is considered reasonable increases the more is paid (see **Note**) **and**
3. whether, if possible, where the conditions of employment are poor, a claimant took reasonable steps to sort out any problems, e.g. by using any grievance procedure, and to look for another job seriously before giving one up (see DMG 34451).

Note: There are no rules for deciding whether child care expenses would be an unreasonably high proportion of the pay received from that employment. Each case must be decided on its own facts. But the greater the pay the more reasonable it is for the expenses to be a higher proportion of it.

34432 Good reason may be shown if;

1. the claimant's chances of getting paid work were good and, in addition, there were strong reasons for leaving their job and they acted reasonably in doing so (see DMG 34496)
2. the claimant genuinely did not know or were mistaken about the conditions of the job (eg, it was beyond their physical or mental capacity, or was harmful to their health), gave it a fair trial before leaving and it was reasonable for them to have left when they did (see DMG 34436 et seq)
3. the claimant left a job for personal or domestic reasons (eg, gave up work to look after a sick relative). The claimant has to justify leaving the job before

looking for alternative employment or tried negotiating an arrangement with their employer to resolve a problem (see DMG 34473)

4. the claimant leaves to move with their partner who has taken a job elsewhere and can show they have good reason. The claimant may have to demonstrate how important it was to their partner's career to make the move and how good their chances are of finding work in the new area (see DMG 34474 et seq)
5. the claimant's employer changed the terms and conditions of employment that does not amount to the contract of employment ending. The claimant is expected to use any available grievance procedure first. DMs should not take account of any matter about the level of remuneration into account other than national minimum wage (see DMG 34446)
6. the claimant left their job because of a firm offer of alternative employment, but claimed JSA because the offer fell through, unless
 - 6.1 the offer was cancelled before they left their previous employment **or**
 - 6.2 they changed their mind and did not take the new job and could have stayed in their existing employment or did not ask their employer if they could stay (see DMG 34501).

Note: As in every case in the consideration of good reason for any of the reasons listed at 1.–6. the DM has to consider all the individual circumstances of the case on its own merits taking into account in particular any mental health issues that may arise as a consequence and any of the circumstances listed at DMG 34226.

34433 – 34435

Terms and conditions of employment

34436 Claimants cannot show good reason for leaving employment because

1. they found it distasteful **or**
2. it was below their expectations.

34437 But claimants may have good reason¹ if

1. they genuinely did not know, or were mistaken, about the nature or conditions of the employment (other than pay) when they accepted it and left after a fair trial **or**
2. they tried a different kind of employment because there was no work in their own line and the new work did not suit them.

1 R(U) 3/73

Example

Stewart leaves his employment as a trainee office manager after six weeks of a probationary period of three months. He considers it is unfair to his employer to continue training when he believes that the work is too difficult for him and he would never be able to do the work and prior to leaving he has provided evidence that he has started to apply for other jobs. Stewart has acted responsibly and has good reason for leaving.

34438 Claimants will not have good reason for leaving if they

1. knew about the conditions that caused them to leave when they took the employment **and**
2. they took the employment in spite of those conditions.

The claimant is expected to give the job a fair trial to try to resolve the difficulties.

34439 A claimant may leave their employment because they were required to work more than 48 hours a week, in contravention of the EU Working Hours Directive. If they have taken no action to resolve their complaint with the employer, they cannot show good reason.

34440 A claimant cannot argue they had good reason simply because the conditions of employment were poor (other than for a breach in the law). They are expected if possible to take steps to sort out any problems, eg, by using any grievance procedure, and to look for another job seriously before giving one up¹.

1 R(U) 20/64(T)

34441 The terms and conditions of employment (other than the level of pay) must make the employment so unsuitable that the claimant could not reasonably have been expected to stay in the job any longer. If this is the case, the claimant has good reason even if there were no prospects of other employment (see DMG 34236 and DMG 34246 where a claimant leaves or loses employment because of mental health issues, harassment or bullying).

34442 A claimant may have good reason for leaving if

1. the employer did not comply with some part of the contract of employment **and**
2. the claimant left shortly after the employment starts.

In such a case the DM should consider the terms of the contract of employment, both express and implied. The DM should always obtain a copy of the contract where there is a dispute about its terms.

34443 Claimants may have good reason for leaving if they suffered detriment under the national minimum wage legislation (see DMG 34423).

34444 – 34445

Employer changes terms and conditions

34446 If claimants left employment because they refused to accept a change to their terms and conditions, they may not have voluntarily left employment. If they have left voluntarily, the fact that new conditions were imposed may give them good reason for leaving. But if the only reason claimants left was that the change would have reduced their level of pay, they do not have good reason.

Example 1

Kevin, a piece worker, refuses to accept a change to the way his pay is calculated, that is paid for the amount of time he works rather than for each article completed, which his employer wants to impose at once. The change would mean a substantial drop in his wages. The drop in his wage is disregarded when the DM considers good reason, but Kevin has good reason for leaving, as he had no proper chance to consider the situation¹.

1 R(U) 15/53

Example 2

Teresa is given one months notice by her employer that her pay will be cut because of a change in the way her pay is calculated. The change will mean a substantial drop in her pay. Teresa leaves at the end of the month because she thinks it unfair that her pay is to be cut, and she says she will find it hard to pay all her bills on a lower wage. The claimant does not have good reason.

34447 A claimant will not have good reason for leaving

1. if it was not possible to say for definite what the effect of the changes in terms or conditions would mean **and**
2. the claimant left before giving the changes an adequate trial.

34448 A claimant will not have good reason for leaving

1. if the change to the terms and conditions was
 - 1.1 generally agreed and affected many or all of the employees **or**
 - 1.2 meant to bring the employees in the particular firm or department into line with employees elsewhere **or**
2. if the
 - 2.1 claimant stayed in the employment for longer than could be regarded as a trial period **and**

- 2.2 DM decides that by doing so the claimant had accepted the change to the terms and conditions of employment.

Note: For further guidance on trial periods see DMG 34701.

Police officers

- 34449 Police officers take employment knowing that its terms will become less favourable after 30 years. If, at that time, they choose to retire early they have left voluntarily and do not have good reason for leaving just because the terms become less favourable¹.

1 R(U) 4/70

34450

Grievances

- 34451 A claimant has good reason for leaving employment if the claimant
1. had a genuine and substantial grievance about the employment (other than the level of pay) **and**
 2. had tried in a proper and reasonable way to get it settled, but failed.

However also see the guidance at DMG 34 on contracts, terms and conditions.

- 34452 An employer has to give employees a written statement within two months of them starting work. The statement should include details of the person to whom employees should apply to sort out any grievances. The statement should also tell them how to apply¹. So every employee who has been in employment for at least two months should be aware of a procedure by which they can try to sort out any grievance.

1 ER Act 96, s 1 & 3

- 34453 If a claimant could not sort out a grievance with the employer, the claimant might have been expected to remain in the employment for a time. If this is so, the claimant will not have good reason for leaving unless the claimant had tried hard to find other employment.

Note: Consideration should also be given to the guidance in DMG 34236 and DMG 34246 if the reasons for leaving were due to mental health issues, harassment or bullying.

The facts in the following examples are not exactly the same as the case law quoted and are used for illustrative purposes only.

Example 1

David, the foreman in charge of a building site, complains that his office is unsuitable, but does not use the workers or materials available to make it suitable. He also complains that his employer is hostile to trade unions and their members and is going to give work to non-union firms. But he does not consult his union. David does not have good reason for leaving his employment¹.

1 CU 155/50(KL)

Example 2

Suzy, an actress, and her colleagues, without consulting their union, tell their employer they will leave unless he meets certain demands. The employer treats the ultimatum as notice of termination of their contracts of employment. They do not have good reason for leaving. They should have referred the matter to their union¹.

1 R(U) 33/51

Example 3

Carole, a sales representative, resigns because she does not agree with her employer's sales policy, and she is not happy with her working conditions or her colleagues. She has not found other employment. Carole does not have good reason for leaving¹.

1 R(U) 17/54

Example 4

Sophia claims JSA. She left her job as a midwife as she was ordered to have direct involvement with abortion procedures which she morally objected to. Sophia has good reason for leaving her job on moral grounds (see DMG 34326). Sophia should have raised the issue through the normal grievance procedures and with her trade union before leaving her job as there is certain legislation regarding midwives which cannot require them to assist in abortion procedures and so she would not have good reason for leaving. However full consideration should be given to any mental health, stress or harassment issues raised in her reasons for leaving.

Work outside of agreed duties

34454 A common grievance is where the claimant was ordered to do work which was not covered by the contract of employment. This may amount to good reason, particularly if the employer gave an ultimatum of either doing the work or leaving.

Note: Consideration should also be given to the guidance in DMG 34236 and DMG 34246 if the reasons for leaving were due to mental health issues, harassment or bullying.

The facts in the following examples are not exactly the same as the case law quoted but are used for illustrative purposes only.

Example 1

Gaik, a waitress, agrees to work behind a self service counter at a holiday camp until she is needed as a waitress. She leaves when she is made to peel potatoes. She finds work as a waitress at another holiday camp a fortnight later. Gaik has good reason for leaving voluntarily¹.

1 R(U) 40/53

Example 2

Hector, an apprentice electrician, is ordered to repair a leak in a water pipe. He had done this type of work before, but his employer has already admitted that it is outside his contractual duties. He refuses to do the work, but the employer tells him to do it or leave. Hector leaves. Hector has good reason for leaving¹.

1 R(U) 18/57

34455 In some unskilled and semi skilled jobs the duties of employees are not clearly defined. Such employees have to do or are expected to do whatever is reasonable taking into account

1. any broad categories of work specified in the contract of employment **and**
2. the job title **and**
3. the normal duties of similar employees.

So they may find it more difficult to show good reason but also see DMG 34456. The DM should consider all the facts of each individual case on its own merits taking into consideration all the circumstances.

Contracts, terms and conditions

34456 Some employers may show no awareness or interest in complying with employment law and may not provide anything for their employees such as written terms and conditions or grievance procedures, not even payslips. It would be for the DM to consider all the individual facts of the case on its own merits where for example a claimant leaves paid work because they are given no meal breaks or expected to work for 12 hours non-stop or don't get paid on time. If an employer persistently breaches health and safety law or does not pay an employee the claimant would have good reason for leaving the paid work.

Example

Anya starts work in a shoe shop. She is given no written terms and conditions of employment. Her understanding when she takes the job is that she will work 4 days per week 9am to 5pm and she will be paid weekly. This suits Anya's personal circumstances as she helps out her family by caring for her sister's children in the evenings and at weekends so that her sister can work.

After the first 4 weeks Anya complains to her boss as she has had no meal breaks and has worked until 7pm on most days to complete stock taking and tidy the store room after the shop has closed and has still received no pay

The boss tells her this is during her period of training until she is up to speed with the job. He tells her she will be paid as soon as he sorts the details out with head office. He also tells her that it is part of the duties of the job to stay behind to clean up after the store closes and she will get meal breaks as and when the business allows as the store has been so busy lately. He tells Anya that he expects his employees to do what is expected, as and when, as the trade demands on any particular day.

Anya continues to work at the shoe shop for a further 3 weeks and the boss continues to ignore her complaints about the extra hours, no meal breaks and no pay. He tells her she is also now expected to work weekends in addition to the 4 days in the week when the store is busy. She decides to leave. Anya has good reason to leave the paid work.

34457 - 34460

Short time and overtime working

- 34461 A claimant does not have good reason for leaving just because
1. overtime stopped or reduced and the earnings were less **or**
 2. short time working was introduced, and the claimant could not earn full wages. A claimant may have good reason because of short time working if there was a firm offer of better paid employment elsewhere.
- 34462 But if claimants' earnings were substantially reduced and they had a lot of expenses because of living and working away from home, they may have good reason if
1. redundancies were clearly likely and the claimants thought they would find employment very soon **or**
 2. they were working P/T, and left to take up F/T employment¹.
- 34463 If claimants left employment because they disliked working overtime, whether they have good reason depends on the

1 R(U) 4/73

1. reason they were unwilling to work overtime **and**
2. amount of the overtime working and how long it was due to last for **and**
3. what they were obliged to do under their contracts of employment.

34464 If claimants

1. left employment only because they **wanted** to work overtime, or more overtime (see DMG 34746) **or**
2. lost employment because they refused to work overtime

the question of whether they have lost employment through misconduct should be considered if appropriate.

Note: Consideration should also be given to the guidance in DMG 34236 and DMG 34246 if the reasons for leaving were due to mental health issues, harassment or bullying and also see DMG 34456 where an employer breaches the terms and conditions of employment.

34465

Retirement and resignation

34466 Claimants who reached normal retirement age for their employment, but did not have to retire, will not have good reason for leaving if they retired because

1. they wanted to **or**
2. they wanted to get their pension.

It will not help such claimants to say that they would have continued working on certain conditions (for example that they could get their lump sum pension) if this was not acceptable to the employer.

34467 The DM is not deciding whether it was reasonable and proper for claimants to retire on pension. The DM is deciding whether, if claimants chose to retire, it is reasonable that they should be allowed to benefit from the NI fund¹.

1 R(U) 26/51

34468 Where the claimant gives other reasons for leaving employment on reaching retirement age, they should be considered in the normal way giving full consideration to all the facts and evidence in the individual case.

The facts in the following examples are not exactly the same as the case law quoted but are used for illustrative purposes only.

Example 1

Elizabeth, a police officer, aged 52, retires on maximum pension after 30 years' service. She leaves because she does not want to stand in the way of younger officers' promotion prospects, and because she believes she has a better chance of getting another job than she would if she waited three years until compulsory police retirement age. She does not register for employment or make any other efforts to find any other work before leaving. Elizabeth does not have good reason for leaving¹.

1 R(U) 23/59

Example 2

Joe, a police officer, aged 51, retires on maximum pension after 30 years service. If he had stayed at work, his terms of employment would have been financially less attractive. He leaves because he wants to obtain a lump sum payment of pension with which to buy a house for himself and his wife, and to make his wife more financially secure. He had tried very hard to find other work before leaving, but had not been successful. Joe does not have good reason for leaving¹.

1 R(U) 4/70

Early retirement

34469 Sometimes an employer runs an early retirement scheme to speed up normal wastage. A claimant who left on such a scheme will not have good reason just because the employer wanted, and indeed may have encouraged, the claimant to retire early.

Example

Richard, a school teacher, aged 62, applies for early retirement after reading a circular from his LEA on early retirement. The LEA accepts his application and certifies that his leaving allows them to carry out their services more efficiently. He has no pressing personal or domestic circumstances for leaving, and has no reasonable chance of finding other work. Richard has no good reason for leaving¹.

1 R(U) 3/81 Appendix

Leaving to take better paid or preferred employment

34470 A claimant may have left employment, not because there was a fault with it, but because the claimant wanted a different type of work. In such a case the claimant will only have good reason if there was a firm offer of new employment which the claimant could reasonably have expected would start immediately and would last for a reasonably long time.

34471 Claimants may have left employment because they wanted employment that offered

1. improved prospects **or**
2. the chance to improve their career **or**
3. F/T instead of P/T work.

In such cases claimants will have good reason if they had offers or strong expectations of such employment which would start very soon. Sometimes there may have been a risk of occasional unemployment in the new employment (for example because it depended on the weather).

Leaving to take up training

34472 If claimants left employment just before they started a course of study or training that would advance their careers, they have good reason but may face a disallowance if not available for work. If the questions have been referred to the DM for a decision, the DM should consider availability during the period of the course (see DMG Chapter 21 for full guidance on availability).

Personal and domestic circumstances

34473 A claimant's personal or domestic circumstances may have become so urgent that the claimant will have good reason for leaving employment without having looked for other employment. But if there was no urgency, the claimant should have taken all reasonable steps to avoid leaving, or the claimant will not have good reason¹. In some cases the claimant's reasons for leaving may show that the claimant is not available for employment.

1 R(U) 20/64(T)

The facts in the following examples are not exactly the same as the case law quoted but are used for illustrative purposes only.

Example 1

Megan, a school teacher, leaves her employment to look after her youngest child, as there is no one else available to do so. Megan has good reason for leaving employment, but availability will have to be considered if this has been referred to the DM for a decision¹.

1 R(U) 6/59

Example 2

Patrick, a painter, who lives and works in England leaves employment to go to Scotland because his father is dying. Before he leaves he asks his employer about employment when he returns. But when he comes back, there is no vacancy because of a redundancy. Patrick has good reason for leaving employment¹. Asking

his employer about employment when he returned amounted to asking for a leave of absence.

1 R(U) 32/59

Moving home

34474 If claimants moved home to a place beyond the normal 90 minutes daily travelling distance either way of their employment, that alone does not give them good reason for leaving¹. But the DM will need to find out the reasons for the move. If there was some urgent personal reason for moving, for example

1. the claimant or partner was ill **or**
2. their current accommodation was totally inadequate **or**
3. they lost their accommodation

they may have good reason for leaving.

1 R(U) 20/64(T)

Example

Matthew lives in two attic rooms with his wife and year old baby. He gets a house, but it is too far away from the place he works to allow him to travel daily. He has not found work in the town he is moving to. Matthew leaves his job and moves to the new house. He has good reason for leaving¹.

1 R(U) 31/59

34475 If the reasons for moving are not quite enough to establish good reason, the DM should consider how likely the claimant was to get other employment quickly, and what steps had been taken to obtain other employment. But the DM should bear in mind that it would be difficult to organize buying or renting accommodation to start on exactly the same date as a new job.

Example

Andy, a police sergeant, buys his own house. Nearly a year later he is transferred to a different place of work, which he finds it difficult to travel to and from. He makes enquiries of other employers, but retires voluntarily from the police force after 25 years service before having found other employment. He finds other work two weeks later. Andy does not have good reason for leaving, but the facts of the case are taken into account in deciding whether to sanction¹ taking into consideration all the facts of the case and in particular any mental health issues (see DMG 34236 et seq).

1 R(U) 20/64(T)

34476 In all cases where the claimants say they left employment because of moving home, the DM will need the following information

1. the reason for the move

2. the date of the move
3. the date on which the claimants gave notice to end the employment
4. the date on which the claimants first knew they would be moving and, if the new home is being bought, the date on which contracts were exchanged
5. what efforts the claimants made to find employment in the new area between the dates in 4. and 2.

34477 Sometimes, although the reasons for the move would seem to amount to good reason, the claimant may fail to show good reason overall because, for example the claimant

1. did not make any attempt to find new employment in the new area before moving, despite having ample notice of the move **or**
2. left employment before it was necessary to do so.

34478 The DM should take into account

1. the distance and the practicality of going to interviews in the new area
2. the difficulty of arranging everything for a particular date
3. the possibility of daily travelling, at least for a temporary period, if the distance is not too great
4. the employment prospects in the new area.

There is no general rule in this type of case, and while one fact alone may not give good reason, all the facts together may do so. The claimant's availability for employment may be in doubt for the days surrounding the move.

34479 Claimants often leave employment to

1. marry, form a civil partnership or join someone who lives in an area beyond daily travelling distance **or**
2. go with a partner who takes employment in another area **or**
3. move to another area where there is more suitable accommodation

To show good reason such claimants must show that they had done everything reasonably possible to find employment in the new area which they could start immediately after moving.

Relocation

34480 Where an employer relocates within the UK it would be necessary to look at the notice given for such a move and the DM should consider all the individual circumstances of each case on its own merits.

Partner going abroad

34481 Claimants may have left their job to go with a partner whose employment takes them abroad. In these circumstances it may not be reasonable for claimants to take steps to find work abroad before leaving the UK. If they left employment no earlier than was reasonably necessary in order to arrange the move, then they will have good reason. But in such cases availability for employment will often be in doubt. Claimants cannot show good reason if they left employment earlier than they needed to.

Example

Faziz leaves employment ten days before leaving the UK to go with her husband, a Royal Air Force officer, to a posting in Holland. She leaves when she does to make the arrangements for going abroad. Faziz has good reason for leaving¹.

1 R(U) 2/90

Moving with parents

34482 Sometimes claimants give up employment to accompany their parents when they move home to another area. If claimants are under 18, and their parents objected to them living and working away from home, they will have good reason for leaving their employment. Claimants 18 or over may also have good reason if they, or their parents, can show that there was a strong reason why they should have continued to live with their parents. Some examples of reasons which would amount to good reason are where claimants

1. have to be with their parents because of the parents' age and health **or**
2. need their parent's help or guidance **or**
3. would have a lot of difficulty and expense (compared with their earnings) if they lived somewhere else until they found other employment in the new area.

34483 A less strong reason for moving with parents will not amount to good reason.

Example

Glenys, a typist aged 21, lives with her parents. They move home. She leaves her employment to move with them because they object to her living on her own. She does not make any efforts to find lodgings so that she can stay in employment whilst she looks for work in the new area. Glenys does not have good reason for leaving employment¹. However the DM should consider Glenys' efforts to find affordable lodgings.

1 R(U) 6/53

Financial difficulties

34484 The fact that

1. the claimant's earnings were reduced because of

- 1.1 an alteration in the terms and conditions of employment **or**
 - 1.2 short time working **or**
2. the claimant would be better off financially if claiming JSA¹

does not by itself give the claimant good reason for leaving. However each case should be looked at on its own individual merits and circumstances.

1 R(U) 10/61(T); R(U) 15/62

34485 Sometimes claimants were not dissatisfied with their earnings. But they left to get extra money, for example a lump sum or holiday pay which would be paid when the employment ended, to meet some financial difficulties. They will have good reason only if they were unexpectedly faced with urgent financial difficulties which could not be resolved in any other way. They will not have good reason if

1. they left only to
 - 1.1 gain a financial advantage **or**
 - 1.2 avoid a financial disadvantage¹ **or**
2. they have had financial difficulties for a long time and they are due mainly to their failure to manage their finances.

1 R(U) 14/55; R(U) 4/70

34486 In all cases where a claimant loses pay or leaves paid work voluntarily the DM should take special care to consider any mental health issues that could affect the claimant's reasons for leaving (see DMG 34236).

34487 – 34490

Living away from home

34491 Claimants who had to live away from home permanently, or for long periods, have good reason if they had to leave their employment because

1. they were urgently needed at home **or**
2. their expenses for living away were unreasonably high when compared to their earnings.

Example

Ross, aged 61, has to live in lodgings 113 km (70 miles) away from his wife, Maureen aged 68. He tries to find her accommodation with him and to get a job near his home, but is unsuccessful. His wife falls ill, and there is no one to care for her, so he leaves his employment to look after her. Ross has good reason for leaving¹.

1 R(U) 14/52

34492 A long period of working away from home may also provide good reason for leaving employment. When deciding this, the DM should take all the circumstances into account, including

1. what opportunity there was to look for other work while still in employment
2. the claimant's chances of getting work nearer home
3. whether the claimant could have found accommodation for the family nearer the employment.

A **short** period of working away from home does not give the claimant good reason for leaving employment, unless there are other urgent reasons for leaving.

Long daily journey to and from work

34493 Claimants who live in remote places must expect to put up with a lot of inconvenience and expense in travelling daily to work. But they will have good reason for leaving if, taking their personal and domestic circumstances into account

1. they could not move their homes nearer to work **and**
2. the travelling took up an unreasonably high part of their earnings and prevented them from looking for work nearer home.

Note 1: The DM should consider each case on its own merits and the individual circumstances having regard to any transport difficulties created by public transport which make it difficult to get to and from work in rural areas.

Note 2: For detailed guidance on travelling time to paid work see DMG Chapter 21.

Long or awkward working hours

34494 Claimants are expected, within reason, to organize their domestic lives to suit their working hours. But they have good reason if

1. it became essential for them to reduce or alter their working hours (for example because a relative is ill) **and**
2. they tried but were unable to get their hours changed.

Note1: The DM should consider each case on its own merits and the individual circumstances having regard to any transport difficulties created by public transport which make it difficult to get to and from work in rural areas. For detailed guidance on travelling to and from paid work see DMG Chapter 21.

Note 2: Consideration should also be given to the guidance in DMG 34236 and DMG 34246 if the reasons for leaving were also due to mental health issues, harassment or bullying.

34495

Chances of getting other employment

34496 If the circumstances in which a claimant left employment fall just short of providing good reason, the DM should take into account the claimant's chances of getting other paid work quickly. When looked at together these may mean that the claimant has acted reasonably in leaving and becoming dependent on the NI fund¹.

1 R(U) 4/73

34497 How good the chances of getting other work must be will vary from case to case. Claimants will have good reason if

1. there was a promise of continuous employment, which was expected to last for some time, to start in the near future **or**
2. they got another job and the circumstances in which they left employment almost amounted to good reason.

Claimants will not have good reason if they hoped they would get other employment quickly, but the evidence does not support this.

34498 The DM should take the following into account when deciding what weight to give to the claimant's prospects or lack of prospects

1. the claimant's occupation, or type of employment sought if different
2. the chances of getting such employment
3. the area where the claimant lived compared to the area where the claimant wanted to work, if different
4. whether it would have been easy or difficult for the claimant to find new employment while staying in the existing employment
5. the results of any enquiries the claimant had already made about other employment
6. the claimant's work record.

34499 The date at which the claimant's chances of getting other employment should be considered is the date on which the claimant

1. gave notice to leave **or**
2. took the action that led to leaving employment **or**
3. left employment, if it is to the claimant's advantage.

34500 Claimants would not normally have good reason for leaving if their only reason for leaving was because they

1. had a good chance of getting other employment **or**
2. are claiming JSA only for a very short time.

Firm offer of other employment

34501 Claimants may have left employment because they had firm offers of other employment to start at once. But such claimants may have to claim UC because the

1. offers fell through unexpectedly **or**
2. new employment did not last very long.

34502 Such claimants will have good reason for leaving unless

1. the offers were cancelled before they left their existing employment **and**
 - 1.1 they could have stayed in their existing employment **or**
 - 1.2 they did not ask their employer whether they could stay **or**
2. they changed their minds and decided not to take the new job **and 1.1 or 1.2** applies.

34503 Sometimes claimants have left employment because they had firm offers of other employment to start shortly, but **not** immediately. They may then claim UC because

1. they changed their original intention not to claim JSA during the interval **or**
2. the offer fell through and they are claiming JSA for longer than they expected.

They do not have good reason for leaving, because they left their original employment before they needed to.

34504 – 34530

8. a refusal to work overtime is misconduct if the claimant was under a duty to work overtime when required and the request to do it was reasonable (see DMG 34605).

This list is not exhaustive. See guidance at DMG 34586 et seq for other considerations with regard to misconduct.

34540 - 34559

Mental illness

34560 The DM should **not** impose a sanction for misconduct if there is evidence from someone who is medically qualified that at the time of the alleged misconduct the claimant was

1. suffering from a mental illness **and**
2. not responsible for the actions in question.

Note: See the guidance in DMG 34236 if **1.** or **2.** apply. The DM should apply the same principles for good reason to misconduct.

Whether the claimant acted or failed to act as alleged

Unfair dismissal

34561 Employment protection legislation¹ protects employees against and defines unfair dismissal². Sometimes a case will arise where the DM is deciding on a sanction for misconduct, and the claimant has also made a complaint of unfair dismissal to an Employment Tribunal. These are separate questions, decided on different criteria. The decision making authorities and Employment Tribunals are entirely independent of each other. Decisions by one are not binding on the other.

1 ER Act 96, s 111(1); 2 s 98 & 100

34562 The main difference between unfair dismissal and misconduct is that in

1. **unfair dismissal**, the emphasis is on the conduct of the employer
2. **misconduct**, the main emphasis is on the conduct of the claimant.

But the employer's behaviour will be relevant to the question of whether the claimant lost employment through misconduct¹.

1 R(U) 2/74

34563 There will be cases where a claimant succeeds before an Employment Tribunal on the unfair dismissal question, but the DM decides a sanction is appropriate for misconduct, and vice versa. The FtT is entitled to decide a case without waiting for the employment tribunal's decision and to do so without giving reasons¹.

1 AA v SSWP (JSA) [2012] UKUT 100 AAC [2012] AACR 42

34564 It is up to the DM to decide on the merits of each individual case whether the issues are so closely connected and whether the Employment Tribunal decision may have an affect on the misconduct decision. The DM can decide that the question of dismissal would make no difference to the decision on misconduct in an individual case and therefore the case need not await the Employment Tribunal decision as the DM could show that it would make no difference to the outcome. For example: if a claimant admitted his misconduct then whether his subsequent dismissal was unfair is irrelevant. In another case it might make a difference, because the claimant might argue that his dismissal was unfair because there was no misconduct. The DM would have to apply the consideration of the "overriding test of reasonableness" in each individual case.

Example

Samir worked as a school business manager. He made enquiries of the Head Teacher about alleged discrepancies in her travel expenses claim. He failed to resolve his concerns and sent an email to a Principal Employee Relations Officer of the Council which he also copied to other members of junior staff in the school. The claimant was suspended from work and later dismissed on the ground of gross misconduct. The DM decided Samir lost his employment through misconduct. Samir appealed to the Employment Tribunal on the grounds of unfair dismissal.

In this case there was no need to await the outcome on unfair dismissal. The consideration is whether the issue of the email was misconduct. It is in no dispute that the claimant made this action. The claimant admitted his misconduct, and whether or not his subsequent dismissal was unfair is therefore irrelevant. On the consideration of the "overriding test of reasonableness" the DM considers the facts of the misconduct and concludes it was inappropriate to do what he did. That is the consideration for Misconduct not whether the dismissal was fair or the disclosure of information qualified for protection.

At the time the disclosure was made it was reasonable that Samir raised the issue with the principal officer of the council as the headteacher was his direct superior but it is Samir's act to send an email informing all the junior staff in the school that constitutes misconduct for our purposes and the claimant does not dispute his actions. Whether his intentions were honourable or not it cannot be denied he committed the act which was unreasonable. By disclosing the information to the principal officer he was fulfilling his 'duty to inform' of an alleged offence. There was no reason for him to also inform junior staff.

Samir lost his employment through misconduct and a sanction would be appropriate

Fails for no good reason to participate in a scheme of a prescribed description

Introduction

34761 It is a failure without good reason to participate in a prescribed scheme that gives the DM the provision to sanction benefit at the higher-level¹.

1 JS Act 95, s 19(2)(e)

MWA scheme

34762 The Mandatory Work Activity (MWA) scheme¹ is a prescribed scheme for the purposes of higher-level sanctions.

Note: The MWA scheme ends on 31.3.16. Therefore the cut off date for claimants starting MWA provision is 31.3.16 which means there will be no claimants taking part in the scheme after 27.4.16 and the last date a claimant can participate is 27.4.16 (see further guidance at DMG 34791 et seq).

1 JSA Regs, reg 70B

34763 The MWA scheme means a scheme, known by that name under relevant legislation¹, provided in arrangement with the Secretary of State that is designed to provide work or work-related activity for up to 30 hours per week over a period of 4 consecutive weeks with a view to assisting claimants to improve their prospects of obtaining employment².

Note 1: See DMG 34846 for guidance regarding other prescribed schemes, e.g. Wp, sector-based work academies, Skills Conditionality. These are prescribed schemes for the purposes of lower-level sanctions.

Note 2: There is no work experience element for the MWA scheme, instead there is a work placement for community benefit and if a claimant does not participate without good reason in the work placement then a higher-level sanction should be imposed.

1 JS Act 95, s 17A(1); 2 JSA (MWA Scheme) Regs, reg 2(1)

Selection for participation

34764 The Secretary of State may select any claimant who is

1. at least 18 years of age¹ **and**
2. required to meet the jobseeking conditions²

for participation in the MWA scheme.

Note 1: For guidance on jobseeking conditions (availability, ASE and JSaG) see DMG Chapter 21. Where a person is not required to meet the job seeking conditions, a claimant cannot be mandated to participate in the MWA scheme.

Note 2: The meaning of claimant means a person who claims a JSA³.

1 JSA (MWA Scheme) Regs, reg 3(1); 2 reg 3(2); 3 reg 2(1)

Requirement to participate and notification

34765 Subject to DMG 34770 claimants who are selected to participate in the MWA scheme have to be notified of this in a written notice¹ which must specify

1. that the claimant is required to participate in the scheme²
2. the day on which the participation will start³
3. that the participation is for four weeks⁴
4. the details of what is required by way of participation⁵
5. that the claimant is required to participate until
 - 5.1 notice is given by the Secretary of State that participation is no longer required **or**
 - 5.2 the award of JSA endswhichever is earlier⁶
6. the consequences of failing to participate in the MWA scheme⁷.

1 JSA (MWA Scheme) Regs, reg 4(1); 2 reg 4(2)(a); 3 reg 4(2)(b); 4 reg 4(2)(c); 5 reg 4(2)(d); 6 reg 4(2)(e); 7 reg 4(2)(f)

34766 Any changes to the details at 34765 4. (i.e. what is required by way of participation) after the date the claimant starts participating in the MWA scheme must be notified separately to the claimant in writing¹. This can be done by the provider² (see further guidance at DMG 34776).

1 JSA (MWA Scheme) Regs, reg 4(3); 2 reg 20(2)(a)

34767 Where the written notice is given by post it is taken to have been received on the second working day after posting¹.

Note: Working day means any day except for a Saturday, Sunday, Christmas Day, Good Friday or bank holiday prescribed under relevant legislation² in England, Wales or Scotland.

1 JSA (MWA) Regs, reg 2(2); 2 reg 2(1)

34768 The requirement to notify¹ is usually met by

1. the issue of a letter to the claimant by the JCP advisor at the point of referral to the MWA scheme **and**

2. a notification from JCP or the provider to tell the claimant what specific activity they are actually being mandated to do.

Note 1: As long as all the requirements at DMG 34765 are fulfilled, even if it is by a combination of 1. and 2., this will meet the legal requirement for notification and a sanction may be considered if the claimant fails to participate without good reason. Also see DMG 34771 regarding evidence of notification.

Note 2: See guidance at DMG 34778 for the meaning of “failure to participate” in relation to what specific activities a claimant may be mandated to do at 2. For guidance on good reason see DMG 34200 et seq, but also see DMG 34780 where the claimant is dismissed from the MWA scheme due to ‘inappropriate behaviour’.

1 JSA (MWA Scheme) Regs, reg 4

Failure to participate in the MWA scheme

- 34769 A claimant is regarded as failing to participate in the MWA scheme where they fail without good reason to comply with any of the requirements notified in DMG 34765¹.

Note: A sanction can only be made where the Secretary of State complies with the notification requirements. If the notice does not meet the requirements the claimant cannot be sanctioned. See DMG 34787 where the notification is for any period other than 4 weeks.

1 JSA (MWA Scheme) Regs, reg 6

Pre-selection interview

- 34770 The informal pre-selection discussion does not form part of the mandatory work scheme¹ as notified under relevant legislation². A sanction will only be appropriate once the claimant has been offered a placement and has been notified of their requirement to participate in the scheme and the claimant fails to participate in the scheme without good reason.

Note: The pre-selection interview is a normal advisor interview to discuss further case management and a sanction would be considered under the normal JSA rules for refusal or failure to carry out any reasonable JSD (see DMG 34901) or failed to participate in an interview rules (see DMG 34831) whichever is appropriate in the circumstances.

1 JS Act 95, s 17A; 2 JSA (MWA Scheme) Regs, reg 4

Induction/pre-start interview

- 34771 If there is a request by the provider to attend a pre-start interview that is outside the MWA 4 week mandated period and the claimant fails to attend, a sanction cannot be considered as this interview is not part of the MWA as notified.

Example

Vanessa is notified by her JCP advisor she has been selected to participate in the MWA scheme and is referred to a relevant provider. The provider subsequently notifies Vanessa she is required to start her work placement on Monday 7 November at 9am for 4 weeks. The provider then invites Vanessa to attend a pre-start interview on Friday 4 November for 1 hour at 2pm. Vanessa does not attend the interview on 4 November and the provider informs the DM of the failure. A sanction is not appropriate as the interview is outside the 4 week mandated period of the MWA scheme as notified by the provider and attendance would be voluntary. If Vanessa does not attend the placement on the start date, i.e. 7 November, then a sanction will be considered.

Evidence of notification

- 34772 When considering whether to sanction or not the burden of proof is on the Secretary of State to show that the correct notification was issued. It is not necessary for the DM to see a copy of the relevant notification before considering a sanction. An assumption can be made that the claimant was correctly notified unless the claimant raises the issue as a reason for non-participation in the scheme.
- 34773 It would be for the claimant to prove on the balance of probabilities they did not receive the notice in order to show good reason if the DM can show it was sent (see DMG 34768). The normal considerations on good reason should be followed as per the guidance in DMG 34200 et seq and each case considered on the individual circumstances of the case. Also see guidance at DMG 34872 and DMG 34873 where the claimant raises the issue of notification.

Example

Keiran is notified that he is required to participate in the MWA scheme. He fails to participate and explains that the reason why he did not attend his placement was because he thought that he would not gain the skills that he thinks he needs to obtain work. The DM considers whether this is good reason. The DM need not consider the notification issue. It can be assumed Keiran was correctly notified. Departmental records show both a notice from JCP and the provider were issued and the claimant does not raise the issue of notification in his good reasons.

Circumstances where requirement to participate is not required or ceases to apply

- 34774 A requirement to participate in the MWA scheme ceases to apply if the
1. Secretary of State gives notice in writing that the claimant is no longer required to participate **or**

2. award of JSA ends

whichever is the earlier¹.

1 JSA (MWA Scheme) Regs, reg 5(1)

- 34775 The requirement to participate ceases to apply on the day specified in the notice given in DMG 34773 1.¹.

1 JSA (MWA Scheme) Regs, reg 5(2)

Contracting out

- 34776 Functions of the Secretary of State which can be carried out by, or by employees of, any person authorised by the Secretary of State¹ are the

1. notification of the MWA scheme (see DMG 34765) **and**
2. requirement to participate in the MWA scheme (see DMG 34765) **and**
3. notification that requirement to participate in the MWA scheme ends (see DMG 34773).

Note 1: Functions relating to the consideration of good reason and the imposition of sanctions cannot be contracted out. It is for the DM to determine those questions.

Note 2: Other than with the Wp and CwP (see DMG 34879 et seq), contracting out provisions for prescribed work schemes do not give providers Emp O status, see the guidance on Emp O at DMG 34015.

1 JSA (MWA Scheme) Regs, reg 20

Provider gives good reasons when referring a sanction doubt

- 34777 On consideration of good reason the DM would examine all the available evidence including any information from the provider on the referral notice of a sanction doubt. The DM may choose to contact the claimant by phone or letter where the claimant has already given his reasons for the non participation to the provider to clarify the reasons or seek further evidence as considered appropriate. The DM considers all the individual facts of the case (see the detailed guidance on good reason at DMG 34200 et seq).

Meaning of fails to participate

- 34778 'Fails to participate' is not defined in legislation and therefore takes its everyday meaning of fulfilling a specified requirement. For the MWA scheme it will include a failure to participate in the scheme, failure to attend a work placement, take part in or meet expected standards of any activity

1. notified to them by the placement provider **and**
2. what is considered

2.1 reasonable **and**

2.2 acceptable

in the individual circumstances which makes it more likely in the opinion of the Secretary of State that the claimant will obtain employment or improve their prospects of obtaining employment.

34779 This may include for example

1. turning up for an interview
2. preparing an action plan
3. writing a CV
4. working as a team
5. displaying interpersonal skills
6. taking part in skills training
7. improving personal presentation
8. attending a skills assessment
9. taking part in a community based work placement.

This list is not exhaustive. "Fails to participate" is basically not fulfilling any specified reasonable requirement that a claimant is notified to do as part of the scheme.

Note: It would be for the DM to consider the claimant's reasons for any particular behaviour, act or omission when considering whether to sanction if a claimant fails to participate in the MWA scheme. The claimant would have to show good reason for the failure (for detailed guidance on good reason see DMG 34200 et seq). Also see example at DMG 34876.

Example

Vanessa is notified of a MWA work placement as a shop assistant in a charity shop. She will be required to perform any reasonable duties of a shop assistant by way of participation in the scheme as notified to her by the provider. These include serving customers, stocking shelves, keeping the shop tidy and answering queries. She will also be expected to turn up on time, be presentable and polite to customers and other staff. If she fails to do any of the tasks notified to her without good reason a sanction can be considered (also see the guidance on inappropriate behaviour at DMG 34780).

Inappropriate behaviour

34780 The MWA scheme is designed to help claimants

1. enhance and improve their employment prospects **and**

2. gain opportunities to develop skills and disciplines associated with a normal working environment (e.g. attending on time, carrying out tasks, working as a team and interpersonal skills etc)

in order to prepare them to return to or enter the labour market. Participation can also include 'behaviours' acceptable in a place of work. For example participants are expected to comply with the required codes of conduct, policies and procedures expected by their work placement provider, which includes for example being courteous to employees, staff and customers and treating the provider and other employees politely, fairly and considerately.

34781 Whilst participating in the MWA scheme if a claimant uses inappropriate behaviour this may be perceived as 'failing to participate' and a sanction may be appropriate. Examples of conduct which could amount to a failure to participate, even if the placement continues, may include

1. the use of bad or offensive language
2. constantly complaining about the scheme or the provider or what they are asked to do
3. being unwilling, uncooperative or obstructive
4. a failure to dress appropriately or having an unkempt appearance
5. a general bad attitude
6. using threatening or intimidating behaviour.

This list is not exhaustive and it will be for the DM to consider all the facts and evidence of the individual case as presented and decide on the balance of probabilities whether the claimant's behaviour was so inappropriate that it was considered they were no longer suitable to remain on the placement and whether any dismissal from the scheme was on account of the claimant's own behaviour.

34782 A claimant's acts and omissions will be judged by the DM under good reason with reference to that claimant's personal and individual circumstances, considering what is reasonable behaviour expected by a reasonable person in a working situation. For detailed guidance on good reason see DMG 34200 et seq.

Example

Hannah starts her MWA work placement as required in a coffee shop but is sent home on her first day because of her attitude and rude behaviour towards the other staff and customers. She continually uses obscene language, is unwilling and uncooperative. The DM can consider a sanction as Hannah's behaviour is a failure to participate as required by way of participation in the MWA scheme. It is not considered acceptable behaviour in the coffee shop and does not meet the code of conduct of the placement provider and this therefore justified her dismissal from the

placement. Such conduct meant the provider was not prepared to continue with Hannah's placement. The DM will consider whether Hannah can show good reason for her actions and behaviour taking all the individual circumstances into account. The advisor may need to consider what other actions may be considered in Hannah's case to develop her interpersonal and social skills to overcome her personal barriers to work.

34783 – 34785

Requirement to complete MWA

34786 Once a claimant has been sanctioned for not participating in the MWA scheme they will not be required to complete the balance of the 4 weeks on the placement. JSA will not be payable for the full period of any MWA scheme sanction regardless of whether they attempt to re-engage with the scheme (also see the guidance in DMG 34787). If the JCP advisor feels that a MWA scheme is still appropriate for a claimant they will have the option of referring that claimant to a further MWA placement.

The MWA notification is for a period other than 4 weeks

34787 Unless the circumstances in DMG 34788 apply, if the dates on the notification do not equate to 4 weeks the notification does not comply with the legal requirements¹. There can be no failure to participate and the question of good reason does not arise.

1 JSA (MWA Scheme) Regs, reg 4(2)(c)

Balance of time

34788 The only time a period of less than 4 weeks should appear on a MWA scheme notification is where the claimant was re-referred to a placement to complete the balance of time following an interruption because the claimant

1. failed to participate and shows good reason for the failure **or**
2. stops claiming for a reason other than going into employment and reclaims JSA within 14 days.

In these cases the provider may have issued a second notification stating the balance of time for the completion of the scheme which will be for a period of less than the mandatory 4 weeks. The claimant will only be referred back for complete weeks (also see DMG 34786). A further higher-level sanction could apply if the claimant fails to participate without a good reason for the balance of time.

Note 1: The balance of time is the remaining time on the placement rounded down to the nearest week.

Note 2: Claimants may only be re-referred for a balance of time if they actually started their placement but left before completing their 4 weeks.

Example 1

Vanessa is notified of a MWA placement as a shop assistant in a charity shop which is to commence on 7.10.13 at 9am for four weeks, finishing on 2.11.13. On 18.10.13 Vanessa fails to participate with the scheme due to a domestic emergency and the DM accepts good reason for the failure. Vanessa receives a second notification stating she is required to attend the balance of 2 weeks from 21.10.13 to 2.11.13 on the MWA placement.

Example 2

Marion starts her MWA work placement in a coffee shop on 3.2.14. The placement is to run for 4 consecutive weeks to 2.3.14. On 12.2.14 Marion fails to attend her placement as she says her alarm failed to go off and she slept in. On 14.2.14 the DM decides Marion had no good reason for the failure and a sanction is appropriate. There are no previous higher-level sanctionable failures recorded and a 13 weeks sanction is imposed.

Marion is re-referred to her placement at the coffee shop for the balance of time of 2 weeks from 17.2.14 to 2.3.14. On 2.3.14 Marion again fails to turn up to the placement. She says she didn't think it would matter as it was the last day of her placement and she wanted to attend her niece's birthday party on that day. The DM decides Marion has no good reason for the failure on 2.3.14 and that a further sanction will be appropriate. As the current failure on 2.3.14 is within 52 weeks, but not within 2 weeks, of the previous sanctionable failure on 12.2.14, a 26 weeks sanction is imposed.

Provider makes an offer of employment

34789 Where a claimant is offered a job by a provider as part of the MWA scheme, but the claimant refuses, the DM should consider whether the claimant was correctly notified of the vacancy by an Emp O¹ (see DMG 34723). A sanction doubt for a failure or refusal to apply for a vacancy can only be raised and applied by Jobcentre Plus.

Note: A MWA scheme provider is not necessarily an Emp O for the purpose of notifying a job vacancy. Other than with the Wp and CwP (see DMG 34879 et seq), contracting out provisions for prescribed work schemes do not give providers Emp O status. See further guidance on Emp Os at DMG 34015 and 34723. The provider should have notified JCP of the relevant vacancy and JCP should inform the claimant of the vacancy in the normal way (see DMG 34721 et seq).

1 JSA (MWA Scheme) Regs, reg 6

34790 If the vacancy has been correctly notified by an Emp O the consideration is whether the offer is reasonable for the particular claimant considering all their circumstances. It would be for the claimant to show good reason for the failure to take the employment (see the guidance at DMG 34721 et seq).

MWA Scheme Ending

34791 The MWA scheme ends on 31.3.16. Therefore the cut-off date for claimants starting MWA provision is 31.3.16 which means there will be no claimants taking part in the scheme after 27.4.16.

Note: The last date a claimant can participate in the MWA scheme is 27.4.16.

34792 As MWA providers have 20 working days in which to start the claimant on a placement, the final date for work coaches to refer a claimant to the MWA scheme, including for any 'balance of time', is 1.3.16.

Note: If a claimant fails to participate after 1.3.16 they cannot be re referred to the scheme for any 'balance of time'.

Example

Leo is referred to the MWA scheme and is required to participate in a 4 week placement on 22.2.16.

Leo fails to participate in the scheme on 7.3.16.

The DM determines Leo has a good reason for the failure to participate in the scheme on 7.3.16 due to illness.

There is no sanctionable failure and although the claimant has only completed 2 weeks of the 4 weeks placement Leo cannot be referred to the scheme to complete the balance of time as it is passed the deadline of 1.3.16 for referrals to the MWA scheme.

Effect on sanctions

34793 DM action should be undertaken as normal following current processes for considering a sanction for any failures to participate in the MWA scheme received with a date of failure to participate on or before 27.4.16.

Note: Any sanction referrals received with a date of failure to participate in the MWA scheme after the relevant last date a claimant can participate in the scheme should be cancelled.

34794 The period of sanction applied will not be affected by the end of provision date. Any sanction will run to a date after the provision has ended until the duration of the sanction period ends as normal. If the claimant leaves benefit during the period of the sanction, any balance of sanction will be applied to a new claim to JSA following the normal rules for sanctions (see DMG 34061et seq). It is the date of failure which is the important date the DM has to consider and that **must** occur on or before the last date for participating in the scheme (i.e. 27.4.16).

Example 1

Mark is referred to the MWA scheme and is required to participate in a 4 week placement from 29.3.16.

Mark fails to attend to start the placement on 29.3.16.

On 7.4.16 the DM decides that Mark cannot show a good reason for the failure to participate on 29.3.16 and a 13 week sanction is appropriate as this is Mark's first higher-level sanctionable failure.

Mark was last paid JSA up to 4.4.16. His benefit week ending day is a Monday. The sanction runs from 5.4.16 to 4.7.16.

Example 2

Alejandro is referred to the MWA scheme and is required to participate in a 4 week placement on 15.2.16.

Alejandro fails to participate in the scheme on 22.2.16. The DM determines Alejandro has good reason for the failure to participate in the scheme on 22.2.16 due to a family bereavement.

On 1.3.16 the work coach refers Alejandro to the MWA scheme to complete the balance of time on his placement starting on 31.3.16.

Alejandro fails to participate in the scheme on 11.4.16.

On 28.4.16 the DM determines Alejandro cannot show a good reason for the failure to participate in the MWA scheme on 11.4.16 and a 26 week sanction is appropriate as there has been a previous higher-level sanctionable failure within 52 weeks of the current failure.

Alejandro was last paid JSA up to 22.4.16. His benefit week ending day is Friday. The sanction runs from 23.4.16 to 21.10.16.

34795 - 34830

motivation. It is a mandatory programme delivered by providers who are expected to deliver work placements for claimants of up to 26 weeks, alongside supporting job search of at least 2 hours a week but with the flexibility to deliver up to 10.

Note 2: CwP is a work placement of community benefit and a failure to participate in the placement without good reason is sanctionable at the lower-level.

Note 3: From 27.10.14² employees of specified organisations are designated as Emp Os for the purposes of requiring claimants to apply for or accept if offered a situation in any employment which an Emp O has informed them is vacant or about to become vacant² (see DMG 34879 et seq).

Note 4: The CwP scheme ends on 27.10.16 and in certain areas will end earlier (see DMG 34893 et seq for further guidance).

1 JSA (SAPOE) Regs, reg 3(8A); 2 CwP (Emp O) (Des O 14), art 1(2)

Traineeships

34856 Traineeships¹ is a scheme for a claimant who has limited educational qualifications and work history and meets the age criteria in DMG 34857. The scheme consists of a government-funded course which, for a period of up to 6 months, provides the claimant with work preparation training, a work experience placement and, where required, English and Maths tuition.

Note: From 27.3.15 Traineeships are no longer defined as a scheme under relevant legislation².

1 JSA (SAPOE) Regs, reg 3(8B)(a);

2 SS (Traineeships and Qualifying Young Persons) Amendment Regs 2015

34857 From 1.9.14 legislation is amended to include an EHC plan¹. The age criteria are that on the first day of the course the claimant must be

1. aged between 16 and 23 years² **or**
2. 16 and 24 years and subject to
 - 2.1 an EHC plan **or**
 - 2.2 a Learning Difficulty Assessment³.

Note: A Learning Difficulty Assessment³ has the same meaning as in relevant legislation⁴. An EHC plan means an educational, health and care plan maintained under relevant legislation⁴.

1 JSA (SAPOE) Regs, reg 3(8B)(b)(ii); 2 reg 3 (8B)(b)(i);

3 reg 3 (8B)(b)(ii); 4 reg 3(9) & Children and Families Act 2014, s 37(1)

34858 Participation in the traineeship is voluntary, but once the claimant has agreed to take part, they are then mandated to attend the training elements. However, a claimant cannot be mandated to take part in the work experience element of Traineeships. The only reason a claimant could be sanctioned for a failure to take part in the work

experience element of the Traineeship is if the claimant lost the place due to gross misconduct (see DMG 34921).

34859 – 34865

Selection for and participation in a relevant scheme

Selection for participation

34866 The Secretary of State may select a claimant for participation in a scheme described in relevant legislation¹.

Note: The meaning of claimant means a person who claims a JSA².

1 JSA (SAPOE) Regs, reg 4(1) & reg 3(1); 2 reg 2(1)

Requirement to participate and notification

34867 Claimants who are selected to participate in a relevant scheme have to be notified of this in a written notice¹ which specifies

1. that the claimant is required to participate in the scheme²
2. the day on which the claimant's participation will start³
3. the details of what the claimant is required to do by way of participation⁴
4. that the claimant is required to participate until
 - 4.1 notice is given by the Secretary of State that participation is no longer required **or**
 - 4.2 the award of JSA endswhichever is earlier⁵
5. information about the consequences of failing to participate in the relevant scheme⁶.

Note 1: Any changes to the details at **3.** (ie: details of what the claimant is required to do by way of participation) after the date the claimant starts participating in a relevant scheme must be notified to the claimant in writing⁷.

Note 2: Where the written notice is given by post it is taken to have been received on the second working day after posting⁸.

1 JSA (SAPOE) Regs, reg 5(1); 2 reg 5(2)(a); 3 reg 5(2)(b); 4 reg 5(2)(c); 5 reg 5(2)(d); 6 reg 5(2)(e); 7 reg 5(3); 8 reg 2(2)

Contracting out

34868 Certain functions in relation to a relevant scheme can be contracted out by the Secretary of State¹ to providers including the

1. requirement to participate in the prescribed scheme and notify (see DMG 34866) **and**

2. notification that requirement to participate in the prescribed scheme ends (see DMG 34874).

Note 1: Functions relating to the consideration of good reason and the imposition of sanctions cannot be contracted out. It is for the DM to determine those questions.

Note 2: Of the relevant schemes listed at DMG 34847, Day One Support for Young People, the Derbyshire Mandatory Youth Activity Programme, the Wp and the CwP are delivered by third party providers. **N.B.** National Careers Service do not have contracted out functions for the Sc scheme and cannot mandate claimants to attend skills training or skills assessments. Notifications for participating in Sc must be sent by JCP.

Note 3: Providers of relevant prescribed schemes are not necessarily Emp Os for the purpose of notifying a job vacancy, employment or training scheme. Other than the Wp and CwP (see DMG 34879 et seq), contracting out provisions for prescribed work schemes do **not** give providers Emp O status. See the guidance on Emp O at DMG 34015.

1 JSA (SAPOE) Regs, reg 17

Requirement to notify

34869 The requirement to notify¹ is usually met by

1. the issue of a letter to the claimant by the JCP advisor at the point of referral to the relevant scheme **and**
2. a notification from JCP or the provider to tell the claimant what specific activity they are actually being mandated to do.

Note 1: As long as all the requirements at DMG 34867 are fulfilled, even if it is by a combination of **1.** and **2.**, this will meet the legal requirement for notification and a sanction may be considered if the claimant fails to participate without good reason (see guidance on evidence of notification at DMG 34872).

Note 2: See guidance at DMG 34853 with regard to the Sc scheme.

1 JSA (SAPOE) Regs, reg 5

Failure to participate in the prescribed scheme

34870 A claimant is regarded as failing to participate in a prescribed scheme where they fail without good reason to comply with any of the requirements notified to them¹.

Note: A sanction for a failure to participate can only be imposed where the Secretary of State complies with the notification requirements. If the notice does not meet the requirements the claimant cannot be sanctioned. See DMG 34872 for guidance on evidence of notification.

1 JS Act 95, s 19A(2)(b)

Participating in a relevant scheme

34871 Fails to participate is not defined in legislation and therefore takes its everyday meaning of failing 'to take part in'. For the schemes listed at DMG 34847 this will include a failure to take part in any activity which is notified by the Secretary of State

1. in relation to the specific placement **and**
2. what is considered
 - 2.1 reasonable **and**
 - 2.2 acceptable

in a working situation and in the claimant's individual circumstances.

Note 1: All these schemes aim to support JSA claimants towards or into employment and address various issues such as a lack of experience of work and the associated skills needed within the work place which can have a significant effect on the chances of unemployed people.

Note 2: Any requirements must have been notified to the claimant. The DM would determine under good reason if the claimant advocated the requirements as notified were unreasonable, taking into account all the individual circumstances of the case.

Evidence of notification

34872 In addition to the notifications outlined at DMG 34869 **1.** and **2.** the JCP advisor will have discussed or advised the claimant

1. the benefits of participation in a relevant scheme **and**
2. what is expected of them whilst participating **and**
3. the consequences of failing to participate

before they are mandated to take part. For example: when a claimant is selected to participate in the WP they are issued with an information leaflet which outlines the responsibilities of the claimant whilst participating in the WP to include attending meetings and taking phone calls as arranged and completing activities the provider tells the claimant to do. The issue of all correspondence should be recorded for evidentiary purposes but the DM does not have to see evidence of all the notifications in order to impose a sanction. As long as the Secretary of State can show the notifications were sent, then the DM can go on to consider the reasons for the non-compliance, unless the claimant raises the issue of notification in their reasons for failing to comply (also see DMG 34772).

Note: The issue of all notifications should be recorded in departmental records for evidentiary reasons in the event of a reconsideration and/or appeal.

Claimant raises issue of notification

34873 Where a claimant fails to participate in the mandatory back to work schemes but raises the issue of notification in his reasons, for example he says he did not receive the relevant notification, the DM will have to investigate further and obtain copies of the relevant notifications to decide whether the claimant can show he did not receive it.

Note: If the claimant is able to show that the notification has not been received the notification cannot be treated as correctly served and a sanction could not be imposed for any failure.

34874 The DM would check the relevant notifications and any other supporting evidence to try and ascertain

1. the address to which the letter(s) was/were addressed
2. the security of that address
3. whether or not it was the address agreed with the claimant as his normal contact address and there are no reported changes of address
4. whether there were problems receiving mail at that address before or reported difficulties receiving mail
5. the claimants compliance history
6. whether the claimant received a text reminder of the appointment **and**
7. any other relevant information.

Note: The DM will make a reasoned decision considering all the available evidence and individual circumstances of the case and on the balance of probabilities whether it is inherently improbable that the notification was received. If the claimant cannot show the notification was not received then the notification was correctly served and the DM will go on to consider a sanction for the failure.

Example 1

See example at DMG 34223.

Naveed responds to say there have been problems on a couple of occasions with the delivery of post as he lives at number 1 Accommodation Close and around the corner is number 1 Accommodation Road. He is Mr Naveed Ali and Mr Murad Ali lives at number 1 Accommodation Road.

Records show that the letter was addressed to Mr Ali at number 1 Accommodation Close. Naveed also provides evidence in a letter that on checking with the post office the week the letter was supposed to arrive there was a relief post man working on that route as the regular post man was on holiday. The date of the appointment was 19.12.14 and there was extra post due to Christmas.

He cannot recall receiving a text reminder to attend the appointment.

There are no records of any previous non-compliance. Naveed has been participating in the Wp for 6 months.

The DM considers it is probable that the appointment letter could have been delivered to the incorrect address and decides on the balance of probabilities that on this occasion Naveed has shown that the notification was not properly served.

Example 2

Lynsey fails to attend a Wp appointment on 2.9.15 with the provider. In her good reasons for the failure Lynsey says she did not receive the letter notifying her of the appointment on 2.9.15.

Lynsey can provide no evidence to show she did not receive the notification. Records show the letter was sent to her normal contact address and there are no records that Lynsey has reported problems receiving post at that address before. Indeed she has received all other appointment letters posted to the same address. She lives with her parents and the address is considered a 'safe' address for the delivery of post. There is no evidence to suggest she is not capable of dealing with her own post.

Lynsey has had two previous incidents of non-compliance when she failed to attend a Wp appointment when she forgot or got confused over the date of the appointment and sanctions are currently imposed on her benefit.

Lynsey confirms she received a text reminder from the provider but didn't understand which appointment the text was referring to but didn't consider to chase the matter up.

The DM considers Lynsey cannot provide a good reason for the failure as on the balance of probabilities it is probable she did receive the notification as she can provide no evidence that she did not and it was reasonable in her circumstances to have expected her to chase up the text reminder from the provider.

By way of participation

34875 By way of participation is not defined in legislation and means any activity that is reasonable in the individual circumstances. For further guidance see DMG 34777 - 34781. The guidance for the MWA scheme applies equally to the prescribed schemes listed at DMG 34847. Also see example at DMG 34876.

Note: It would be for the DM to consider the claimant's reasons for any failure to participate and the claimant would have to show good reason for the failure. For detailed guidance on good reason see DMG 34200 et seq.

Employees of Authorised Providers

34883 Employees of

1. a Prime Contractor **or**
2. an Approved Sub-contractor

are designated a Emp Os¹.

Note 1: For details of authorised Prime Contractors see Appendices 3 and 4.

Note 2: For details of designated sub-contractors see the guidance at DMG 34890.

Note 3: Where guidance refers to the provider it means the Scheme provider which are designated employees of a Prime Contractor or Approved Sub-contractor.

1 Wp (Emp O) Des O 14, art 3(1); CwP (Emp O) (Des O 14), art 3(1)

Work Programme

34884 Wp¹ has the same meaning as in the definition at DMG 34854.

Note: The order² gives specific Emp O powers to designated employees of Prime Contractors and Approved sub-contractors who have a relevant contract for the provision of the Wp scheme. Other than the CwP Scheme, it does not give Emp O status to the providers of any other SAPOE scheme or the MWA scheme.

*1 Wp (Emp O) Des O 14, art 2; JSA (SAPOE) Regs, reg 3(8);
2 Wp (Emp O) Des O 14*

Community Work Placements

34885 CwP¹ has the same meaning as in the definition at DMG 34855.

Note 1: The order² gives specific Emp O powers to designated employees of Prime Contractors and Approved sub-contractors who have a relevant contract for the provision of the CwP scheme. Other than the Wp (see DMG 34884) it does not give Emp O status to the providers of any other SAPOE scheme or MWA scheme.

Note 2: The CWP scheme ends on 27.10.16 and in certain areas will end earlier (see DMG 34893 et seq for further guidance).

*1 CwP (Emp O) (Des O 14), art 2; JSA (SAPOE) Regs, reg 3(8A);
2 CwP (Emp O) (Des O 14)*

34886

Refuses or fails to take up employment.

34887 Legislation provides that a failure is a sanctionable failure at the higher-level where a claimant refuses or fails without good reason to

1. apply for **or**
2. accept if offered

a situation in any employment which an Emp O has informed the claimant is vacant or is about to become vacant¹.

Note 1: For the meaning of Emp O see [DMG 34015](#) and for the meaning of employment see DMG 34016.

Note 2: DMs should follow the existing guidance for making Refusal of Employment (RE) decisions. For guidance on good reason see [DMG 34200](#) et seq and for guidance on higher-level sanctions see [DMG 34091](#) et seq.

1 JS Act 95, s 19(2)(c)

Refusal or failure

34888 Claimants may not actually refuse or fail to apply for or accept employment for it to be a sanctionable failure. A failure includes not taking the appropriate steps to improve chances of getting the job such as

1. failing to attend an interview **or**
2. behaving in such a way that they lose the chance of getting the vacancy

The guidance in [DMG 34732](#) gives further examples of failures to take the appropriate steps to improve chances of getting the job.

Note: For detailed guidance on refusal or failure to take up employment see DMG [34721](#) to 34744.

Employment Officer status

34889 From 27.10.14 designated Wp and CwP scheme providers have Emp O status and can

1. inform the claimant of a reasonable vacancy or employment opportunity
2. mandate a claimant to attend a job interview
3. gather evidence to send to the DM (also see DMG 34891, **Note 2**) **and**
4. make a higher-level sanction referral to the DM if the claimant fails to comply.

Note 1: Emp O status does not give providers the power to make determinations on good reason or to impose sanction decisions. Those decisions are determined by the DM.

Note 2: The CwP scheme ends on 27.10.16 and in certain areas will end earlier (see DMG 34893 et seq for further guidance).

Evidence of Authorised Providers

34890 Appendices 3 and 4 list the Prime organisations that have been authorised by the Secretary of State to act as Emp Os in respect of the Wp and CwP schemes¹. Emp O status also applies to the employees of any approved sub-contractors of those

Prime contractors listed² who have a relevant contract for the provision of the Wp and CwP scheme (see definitions at DMG 34880 to 34885).

Note 1: DMs should not routinely ask for evidence of an approved sub-contractor in every case. The DM should be able to check Departmental records to ensure a sub-contractor is approved and has a related Prime Contractor which are listed at Appendices 3 and 4.

Note 2: The DM should only seek evidence in cases where the claimant, the claimant's representative or a FtT/UT have asked for that evidence in a specific case.

1 Wp (Emp O) Des O 14, sch 1; 2CwP (Emp O) (Des O 14), sch 1; 2 art 2

Evidence to determine refusal or failure

34891 The provider will send a sanction referral to the DM to consider whether the claimant has good reason for any refusal or failure and to determine whether a sanction is appropriate. The provider will provide

1. full details of the job vacancy or opportunity
2. details of the refusal or failure **and**
3. where appropriate any relevant information regarding the failure
 - 3.1 from the employer should they contact them
 - 3.2 that the claimant volunteers as evidence (see **Note 2**),

Note 1: The provider may provide copies of the relevant job vacancy as evidence as providers do not have access to Departmental computer systems such as LMS and UJ.

Note 2: The Wp or CwP provider will not normally ask the claimant for their good reasons for the failure, the DM will usually ask the claimant for their reasons following existing processes, however, the provider will give the DM any information the claimant volunteers as evidence on the referral form.

34892 The provider will not routinely send a copy of the MEN notification with the referral to the DM. The relevant information from the MEN should be duplicated on the sanction referral form but copies of the MEN will be available from the provider should the DM require it at any time as evidence, for example

1. in the event of an appeal **or**
2. if the claimant raises the issue of notification in their good reasons.

Note 1: The DM may contact the provider, the claimant or a third party for further information if required at any time where it is considered necessary in order to clarify

reasons or seek further evidence as sufficient proof to justify good reason and to determine whether a sanction is appropriate (also see guidance at [DMG 34873](#)).

Note 2: DMs should follow the existing guidance for making RE decisions and on good reason in this chapter.

CwP Scheme ending

34893 Unless DMG 34895 applies, the CwP programme will end on 27.10.16. Therefore the final date a work coach can refer a claimant to CwP is 31.3.16 and the last date claimants can participate in the CwP scheme will be on or before 26.10.16.

34894 Claimants referred to the CwP scheme prior to 31.3.16 will, generally, participate for the 30 weeks allotted time on the scheme. The exception is those claimants who either do not attend their initial engagement meeting or do not start the placement offered. Those claimants will be required to attend a standard work search interview to discuss the next steps to move the claimant closer to or into work with their advisor.

Early termination

34895 Referrals to the CwP scheme in certain areas will end early, i.e. at the close of business on Monday 29.2.16. Accordingly, the corresponding referral opportunities will also end at 6pm on that date and the last date a claimant can participate in the scheme for a provider affected by early termination will be 25.9.16.

The areas affected by early termination are:

1. CPA1 (Seetec) – covering East Anglia, Essex, and Bedfordshire & Hertfordshire districts
2. CPA 8 (Learn Direct) - covering all districts in Scotland
3. CPA 10 (Seetec) - covering Kent district along with the Surrey & Sussex sides of Berkshire, Surrey & Sussex district **and**
4. CPA 14 (Seetec) - covering Black Country and Birmingham & Solihull districts.

Note: Referrals to the CwP scheme in these areas will not be made after 29.2.16.

Effect on sanctions

34896 DM action should be undertaken as normal following current processes for considering a sanction for any failures to participate in the CwP scheme received with a date of failure to participate on or before

1. 26.10.16 for CwP **or**

2. 25.9.16 for CwP providers with early termination (see DMG 34895).

Note 1: All CwP scheme providers, including those with early termination are contractually obliged to deliver the provision, in full, for those claimants referred to the scheme on or before the final referral date.

Note 2: Any sanction referrals received with a date of failure to participate in the CwP scheme after the relevant last date a claimant can participate in the scheme should be cancelled.

34897 The period of any sanctions applied will not be affected by the end of provision date. The sanction will run to a date after the provision has ended until the duration of the sanction period ends as normal. If the claimant leaves benefit during the period of the sanction, any balance of sanction will be applied to a new claim to JSA following the normal rules for sanctions (see DMG Chapter 34061 et seq). It is the date of failure which is the important date the DM has to consider and that **must** occur on or before the last date for participating in the CwP (see DMG 34896).

Example 1

Brie was referred to the CwP scheme on 30.3.16.

On 26.10.16 Brie fails to attend an appointment with her CwP provider by way of participation in the scheme. The provider is not one with an early termination date.

On 15.11.16 the DM considers Brie cannot show a good reason for the failure to participate in the CwP scheme on 26.10.16 and a 4 week sanction is appropriate as there has been no previous low-level sanctions within 52 weeks of the current sanctionable failure.

Brie was last paid JSA up to 10.11.16. Her benefit week ending day is Thursday.

The sanction runs from 11.11.16 to 8.12.16.

Example 2

Alicia is referred to the CwP scheme on 29.2.16. The provider is one affected by early termination.

On 23.9.16 Alicia fails to participate in a required case management meeting with her CwP provider.

On 12.10.16 the DM determines Alicia does not have a good reason for the failure to participate in the scheme on 23.9.16 and a 13 week sanction is appropriate as there has been a previous low-level sanctionable failure within the previous 52 weeks but not 2 weeks of the current failure.

Alicia was last paid JSA up to 4.10.16. Her benefit week ending day is Tuesday.

The 13 week sanction runs from 5.10.16 to 3.1.17.

On 14.11.16 Alicia starts temporary employment for 4 weeks. Her JSA award ends on 13.11.16.

On 10.12.16 Alicia reclaims JSA as her contract of employment ended on 9.12.16.

The balance of the sanction, 3 weeks and 4 days, is imposed on her new award for

the period 10.12.16 to 3.1.17. (The period off benefit 14.11.16 to 9.12.16 (3 weeks and 5 days) is deducted from the sanction period).

Exemptions from requirement to meet the jobseeking conditions

New Enterprise Allowance scheme

34898 Where a claimant is participating in the NEA scheme¹ (see DMG 34851) they are not required to be ASE under JSA legislation². However the claimant may be required to do some jobseeking activity as a condition of participating in the scheme³.

Note: For guidance on ASE see DMG Chapter 21.

1 JSA (SAPOE) Regs reg 3(5); 2 reg 7(1); 3 reg 5(2)(c)

Full-time student

34899 Where a claimant is participating in a relevant scheme¹ as a F/T student² (see DMG Chapter 30 for the meaning of F/T student) they are not required to meet the jobseeking conditions of availability and ASE under JSA legislation³. However the claimant may be required to do some jobseeking activity as a condition of participating in a relevant scheme⁴.

Note: For guidance on availability and ASE see DMG Chapter 21.

1 JSA (SAPOE) Regs, reg 3; 2 JSA Regs, reg 1(3); 3 JSA (SAPOE) Regs, reg 7(2); 4 reg 5(2)(c)

Discharged from detention in prison

34900 claimant who is participating in a relevant scheme¹ is not required to meet the jobseeking conditions of availability and ASE under JSA legislation for a period of one week beginning with the date of discharge, if they have been discharged from detention in a prison, remand centre or youth custody centre². Instead these claimants will be subject to the requirements of the relevant scheme³.

1 JSA (SAPOE) Regs, reg 3; 2 reg 7(3); 3 reg 5(2)(c)

Example

Dear M

When you are claiming Jobseeker's Allowance, you must make suitable efforts to find a job and put yourself in the best position to get offers of work.

To assist your search for and/or to improve your prospects of being employed, I am directing you to take the action stated below:

1. Discuss Work Based Training for Adults (Training for Work in Scotland) opportunities in hairdressing at your interview with Mr Brown at 10.30am on 3/2/97 at Anytown Training Centre, 5 High Street, Anytown **or**
2. To attend an Induction day on Tuesday 6 March at the XX, High Street, Anytown, from 9.45am to 2.00pm **or**
3. You have expressed interest in working in the Care sector. You must attend and participate in the Care Sector information session on
at..... **or**

This will be held at: Anytown Jobcentre, Anytown. By attending this session you will gain knowledge of roles available and skills/qualifications required. You will provide evidence of this knowledge when you attend your interview with your Personal Advisor on **or**

4. To attend a basic skills assessment at XX Training Services on Thursday 14/2/02 at 14.00pm **or**
5. To attend a Careers Choice pre-induction event at Kent Street Resource Centre on Wednesday 22/5/02 at 10.30am **or**
6. To attend the programme centre at 1 High Street, Anytown on Tuesday 21/5/02 at 11.00am to help and support you in your search and return to work.

If you refuse or fail to carry out this JSD and cannot show good reason for this or that it is unreasonable in your circumstances, you could lose Jobseeker's Allowance/National Insurance credits. (Details of the progression of lower-level sanctions would be included here).

I will interview you again at (time) on (date) at the above address to discuss how you got on with carrying out this Direction.

34907 Examples of JSDs are directions or requests from Emp Os to the claimant to

1. attend for interview at a given time at a Jobcentre Plus office or elsewhere about
 - 1.1 an existing vacancy for a job that the claimant might be able to get **or**
 - 1.2 a course to help the claimant prepare a CV

2. apply for a vacancy advertised in the local press or at a Jobcentre Plus office
3. make a speculative approach to an employer, for example by sending a CV
4. register with a specialist employment agency
5. go to an interview to see if the claimant will be accepted for WBLA
6. attend a course on job search skills
7. go on certain Jobcentre Plus programmes
8. telephone the Jobcentre Plus office on a certain day from a payphone using a freephone number, to enquire about vacancies or training programmes (claimants who live in remote areas and/or those for whom access to the Jobcentre Plus office is difficult)
9. attend a Back to Work Session (see DMG 34900)
10. create a profile and public CV in UJ (see DMG 34911).

Note 1: This is not an exhaustive list. It is up to the adviser to consider what is a reasonable request in each specific case taking into account the individual circumstances of the claimant. The test is whether that particular course of action will help a particular claimant get employment or improve their prospects of employment in the specific circumstances and that the claimant has no good reason for failing to comply with the request.

Note 2: Consideration should also be given as to whether the claimant is likely to undertake the action voluntarily. If so, the need for the JSD may not be required and the time spent creating one negated.

Note 3: Participation in any work experience opportunity is voluntary (see DMG 34951) and so a JSD cannot be used to mandate a claimant to take part in a work experience opportunity.

Note 4: A JSD cannot be issued to mandate a claimant to give JSP access to their UJ account (see DMG 34912).

Note 5: A JSD should **not** be used to mandate a claimant to attend a Group Information Session (see DMG 34911).

Note 6: A JSD should not be issued to mandate a claimant to do some activity during waiting days as there is no entitlement to JSA. A JSD can be issued during the period of waiting days but it should mandate the action/activity for a date after waiting days have been served. (See DMG Chapter 20 for further guidance on waiting days).

Reasonable

- 34908 A JSD has to be reasonable, for example; a written notice requiring a claimant to use a public telephone at a specific time would not be reasonable as the phone could be in use. A reasonable JSD would be to direct a claimant to use a public telephone within a specific time band.

Restrictions

- 34909 Any restrictions the claimant has on their availability for work must be considered, as well as whether they will benefit from completing a particular action.

Example

It is not reasonable to expect a claimant who has restricted their availability, for example; due to caring responsibilities, to attend an ESOL course that is outside, or spans that period of restriction (e.g. is outwith school hours where claimants have children of school age).

Back to Work sessions

- 34910 Back to Work Session means¹ a seminar or appointment referred to as a “Back to Work Session” arranged by or on behalf of the Secretary of State to

1. provide a person who attends with information, support and advice to help them find employment **or**
2. improve their chances of finding employment.

If Back to Work Sessions are structured to help claimants find employment or improve their chances of finding employment, they should meet the requirement for a JSD to be used to mandate the claimant to attend the session. However if the sessions are to provide general information, for example; a Group Information Session (see DMG 34911) they do not.

1 JSA Regs, reg 1(3)

Group Information Sessions

- 34911 Generally a claimant cannot be mandated to attend a Group Information Session. There needs to be a clearly identified and tangible benefit to the individual claimant in terms of improving their employment prospects by attending the session.
- 34912 If it is identified that a particular claimant needs a CV or a better CV, we can require attendance at something that helps address that need, but if that help is provided within the wider context of a general group information session, lots of which the claimant may or may not need or which may or may not improve their employment prospects, we cannot require them to attend the whole session. For example if the session includes advice on, debt counselling or better off in work calculations or conditionality information. Whilst it may be desirable knowing how work affects their finances it is not a specific activity that will assist a specific claimant to get work or improve their prospects of work.

34913 There needs to be a clearly identified and tangible benefit to the individual claimant in terms of improving their employment prospects and the activity **must** be reasonable in the claimant's circumstances.

Example:

If a JSD states that the requirement to attend a GIS will give them information about European Skills Funding and it explains that the benefit for the claimant is the additional support available through the fund, the benefit to the claimant is not in attending the GIS, but in taking part in European Skills Funding. The benefit of attending the GIS is simply that the claimant will have more information about the fund and the benefits it can provide. It does not help the claimant find work or improve their chances of doing so.

Day 1 conditionality

34914 Claimants will be advised to do certain job search activities from day 1 of their claim and operational processes are in place so that when a claimant makes a claim on - line they are advised that it would be beneficial for them to

1. register with UJ **and/or**
2. create an email address **and/or**
3. create a CV

if they haven't already done so. Claimants are not mandated to do so at this stage. There is no mandation until the claimant attends the jobcentre. The advisor will check what the claimant has done and the reasons why if they haven't. The advisor can decide whether to mandate or not using a JSD but for a period out with the period of waiting days.

Note: A JSD should not be issued to mandate a claimant to do some activity during waiting days as there is no entitlement to JSA. A JSD can be issued during the period of waiting days but it should mandate the action/activity for a date after waiting days have been served. (See DMG Chapter 20 for further guidance on waiting days).

Example

Dorek makes a claim to JSA on line on 11.5.15. He is requested to attend the jobcentre on 14.5.15 for his initial worksearch interview with an advisor and is advised to register with UJ, create an email address and create a CV.

Dorek attends the interview on 14.5.15 and confirms he has an email address and a CV but has not registered with UJ yet. The advisor advises Dorek that he must create a UJ account by his next fortnightly review on 28.5.15. (See DMG 34916 et seq). The advisor issues a JSD to mandate Dorek to register with UJ in the period from 18.5.15 to 28.5.15 allowing for 7 waiting days to be served.

34915

Issuing a JSD to mandate JSA claimants to create a profile and public CV in Universal Jobmatch

34916 A DM may receive a referral to consider a sanction for a failure or refusal to create a profile in UJ. The DM considers the

1. guidance for JSDs (see DMG 34901 et seq) and good reason (see DMG 34200 et seq) **and**
2. guidance at DMG 34917 – 34922 regarding creating a UJ account.

Only if they are satisfied that it was reasonable to require the claimant to create an account and that there has been a failure to comply with the JSD without good reason can a sanction be imposed.

34917 A claimant can only be mandated to create a UJ account and public CV if

1. it has been explained to the claimant the benefits of creating a UJ account and public CV and they refuse **and**
2. a DWP IAD service is reasonably available to the claimant should they need to use one (see DMG 34922) **and**
3. none of the exceptions at DMG 34921 apply **and**
4. a cookies fact sheet has been issued (see DMG 34923).

Note: A JSD **cannot** be issued to mandate a claimant to give JCP access to their UJ account, this is a voluntary action by the claimant (see guidance at DMG 34918).

Example

Dear M

When you are claiming Jobseeker's Allowance, you must make suitable efforts to find a job and put yourself in the best position to get offers of work.

I am directing you to take the action stated below.

You are currently seeking work in the X, Y, Z sectors. Hundreds of new jobs, in these sectors are, advertised every day through the Jobcentre Plus website UJ. Therefore, as a current JSA Jobseeker, you must register yourself with a UJ account and create a public CV. This will significantly increase your prospects for finding work.

You must complete the UJ registration and have a public CV by _____ date and then confirm this to your personal adviser in the Jobcentre no later than _____.

If you refuse or fail to carry out this JSD and cannot show good reason for this or that it is unreasonable in your circumstances, you could lose Jobseeker's Allowance/National Insurance credits. (Details of the progression of sanctions would be included here).

Access to the claimant's UJ account

34918 A JSA claimant **cannot** be mandated to give DWP access to their UJ account, this is a voluntary action by the claimant. The advisor should encourage the claimant to do so, but the benefits need to be explained fully to the claimant and it needs to be exactly clear what this means and what the access will be used for.

Note: Access to the claimant's UJ account will help provide evidence of job search activity and the advisor can provide extra support to the claimant by looking out for and saving jobs for them in the UJ saved inbox. Advisors can set this up as one of the claimants work search activities helping them achieve enough work related activity each week.

Evidence

34919 A record of

1. all advice **and**
2. issue of the cookies fact sheet **and**
3. whether the claimant agrees for DWP to access the UJ account **and**
4. any other relevant issues regarding the UJ account

should be recorded in the claimant's action plan for evidentiary reasons should it be needed in the event of any sanction determination or subsequent appeal.

Note: Failure to record the relevant evidence may affect whether or not a sanction can be imposed in the event of any failure to comply by the claimant.

34920 Claimants can be asked to produce evidence of their public CV but we cannot dictate how they produce the evidence, for example, by email. Evidence can be provided via a smart phone or a screen print brought in or printed off using the IAD.

Exceptions

34921 For the majority of claimants, creating a profile and public CV in UJ will be an important part of improving employment prospects. However, creating a profile, a public CV and using UJ may be less than straightforward for some claimants if they are not reasonably able to use the service, for example those

1. with a learning difficulty, cognitive impairment or other health-related conditions **or**

2. for whom English is their second language **or**
3. who lack appropriate literacy and/or numeracy skills **or**
4. who are not reasonably able to access
 - 4.1 their own computer/device (for example, because they do not have such a device or cannot afford to access the internet) **and**
 - 4.2 an alternative internet access device in their area (for example, because of their personal circumstances, poor internet service in the area or lack of access to affordable internet access).

Note: The particular barrier to using UJ should be addressed first (e.g: English language or numeracy skills).

Example

Ranjit has English as a second language and refuses to use UJ. He does not wish to accept cookies and has no reasonable access to an IAD. He cannot be mandated to use UJ and a JSD would not be appropriate. His other barriers to work should be addressed first and Ranjit is referred to an English Language Skills course.

Access to a DWP IAD

34922 Whether the claimant can reasonably access a DWP IAD should they either not have reasonable access to the internet or should they wish to exercise their right not to accept cookies should be taken into account. All the claimant's individual circumstances should be considered (for example, their health, any restrictions on their availability, whether they have childcare available) and the availability of IADs in the local office. For example, if the office has a high number of claimants who need access to a DWP IAD or because they do not have access to the internet or are required to use UJ and wish to exercise their choices relating to cookies. Claimants using an IAD must be offered an IAD appointment time so they are able to carry out the direction.

Note: The examples are not exhaustive it is up to the advisor to consider all the claimant's individual circumstances and what would affect reasonable access to the internet depending on the claimants capabilities and capacity and their own resources.

Example

Evelyn discusses setting up a UJ account with her advisor and is happy to do so but she does not have internet access at home and has restricted availability during school hours due to childcare arrangements. She lives in a remote village where there is no public library or public access to free Wifi. The advisor arranges for

Evelyn to have access to the DWP IAD and makes her an IAD appointment which fits in with her availability.

- 34923 If one or more of the circumstances in DMG 34921 apply and it is unreasonable for the claimant to use UJ, a JSD should not be issued but if this only comes to light after a referral to the DM, the claimant would be able to show good reason for a refusal or failure to comply. The referral should not be cancelled.

Cookies fact sheet

- 34924 When it is reasonable to issue a JSD, the claimant should be informed they must create a UJ profile and public CV. The Cookies factsheet should always be attached to the JSD letter, explaining the use of an IAD should the claimant not wish to accept cookies. A sanction will **not** be able to be imposed if the cookies fact sheet has not been issued.

Note 1: The cookies fact sheet gives the claimant assurances on how data is protected in terms of reported data-fishing by bogus employers, that relevant checks are in place to ensure that these are not placed on the system again, that employers comply with the terms and conditions of the use of the site and that there is a process of 'accepting cookies' and EU data protection principles so that the site is secure.

Note 2: A record of the issue of the cookies fact sheet should be made in the claimant's action plan for evidentiary reasons should the claimant appeal any decision to sanction. Failure to record the issue of the cookies fact sheet could result in a sanction, that would otherwise be appropriate, not being imposed.

34925

Refusal or failure to carry out a JSD

34926 The guidance at DMG 34732 with regard to employment vacancies applies equally if a JSD was to direct a claimant to contact an employer or training provider in some way.

Note: See guidance at DMG 34176. Normally a JSD will not be used to mandate a claimant to apply for an employment vacancy, normal RE action will be taken (see DMG 34721 et seq) but also see guidance at DMG 34928. It will be for the DM to decide which action was the more appropriate in the individual case and whether the claimant can show any good reason for any failure to comply. When any failure occurs which is both a failure at the higher-level and the lower-level only the higher-level sanction will apply¹, for example failing to carry out a JSD to apply for an employment vacancy.

1 JS Act 95, s 19A(3)

Claimants change their mind

34927 If claimants who refuse or fail to carry out a JSD

1. change their minds **and**
2. can still achieve something by following the JSD **and**
3. notify an Emp O that they have changed their minds

they have not refused or failed to carry it out.

Example 1

On Wednesday, Janice is directed to send her CV to a local employer, which she does not wish to do. The following Tuesday, she changes her mind. She can still send her CV to the employer, still carry out the JSD, and still achieve something by doing so.

Example 2

On Wednesday, Jacob is directed to contact an employer who is advertising a job vacancy in the local press. He does not do so. The following Tuesday he decides that he would like to apply for the job, and contacts the employer, however the closing date for applications was Friday. Although Jacob can still follow the JSD, he cannot achieve anything by doing so. Therefore he has failed to comply with the JSD.

Example 3

John lives in a remote area of Scotland and cannot get into his nearest Jobcentre Plus office at all during the winter months. The Jobcentre Plus office send him a letter on Monday telling him to phone them on Thursday between 10am and 11am,

using a freephone number. This is to discuss a Jobskills course that is being run in his local village hall, starting the following Tuesday.

John is not interested in the course and does not telephone on Thursday as directed. He changes his mind and telephones on Friday. Even though they will still be able to discuss the course when John rings on the Friday, and it is not too late to start it, he has not and cannot now follow the JSD because it was time specific and required him to phone on Thursday between 10am and 11am, which he did not do. He therefore has failed to comply with the JSD.

Good reason – refusal or failure relates to the employment

34928 A JSD may require a claimant take steps to get a particular employment or type of employment. If so, the claimant will have good reason for refusing or failing to carry out the JSD if they would have had good reason for refusing or failing to apply for the employment concerned. The DM should also follow the guidance at DMG 34721 et seq but also be aware of the guidance at DMG 34926.

Example

Alexander worked as a painter and decorator five years ago. He then trained as a furniture restorer, and has worked at this employment for the last four years. He claims JSA, and agrees with an Emp O that he will look for work only as a furniture restorer for 13 weeks. After ten weeks, the Emp O issues a JSD which requires him to go on a course to update his painting and decorating skills, as a new employer is moving into the area and will have 30 vacancies for painters and decorators.

Alexander refuses to go on the course. He will have good reason to refuse. He is being asked to take steps (such as joining a training course) to get a particular type of employment, but he is in his permitted period, and has restricted the type of employment he is available for to his usual occupation (see DMG Chapter 21 for guidance on permitted period). Alexander will have good reason for the refusal of employment and a refusal to carry out the JSD.

Good reason – refusal or failure relates to the JSD itself

34929 A claimant might refuse or fail to carry out a JSD

1. which was not aimed at any particular employment or type of employment **or**
2. because they did not want to carry out the JSD itself (rather than having any objection to the employment or type of employment it may have led to).

The DM should follow the guidance in DMG 34200 et seq when deciding good reason in these circumstances taking all the individual circumstances of the case into account.

34930 - 34940

