

# Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF STRATEGIC COMMUNICATIONS)

## Decision Makers Guide

### Volume 6 Amendment 48 – February 2017

1. This letter provides details on Amendment 48; 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/lq/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 48 affects chapters 30, 34, 35; The changes
  - DMG Chapter 30 expands paras. 30285 - 86 to clarify and in para. 30306 example 6 added on p/t post graduate loans and makes various amendments.
  - DMG Chapter 34 incorporates DMG Memo 15/16 and some legal advice on good reason and other minor amendments.
  - DMG Chapter 35 incorporates DMG Memo 17/16 and makes other minor amends.
4. The last two amendment packages amending Volume 6 were  
Amendment 47 [October 2016]  
  
Amendment 46 [June 2016]
5. 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

##### Chapter 30

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30273 – 30390 (8 pages)

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##### Chapter 30

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**Chapter 35**

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**Chapter 34**

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**Chapter 35**

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- 3.1** 16 hours a week of classroom or workshop based programmed learning, under the direct guidance of teaching staff, as stated in a document signed on behalf of the college **or**
- 3.2** 21 hours a week in total, as stated in a document signed on behalf of the college made up of
  - 3.2.a** 16 hours or less of classroom or workshop based programmed learning, under the direct guidance of teaching staff **and**
  - 3.2.b** extra hours using structured learning packages, supported by teaching staff.

*1 IS (Gen) Regs, reg 61(1)*

**Note:** If a student attends more than one course the number of guided learning hours should be aggregated.

30039 - 30044

## Employment-related course

- 30045 Employment-related course means<sup>1</sup> a course that helps people gain or enhance the skills needed for
- 1. employment **or**
  - 2. seeking employment **or**
  - 3. a particular occupation.

*1 JSA Regs, reg 1(3)*

30046

## Sandwich course

- 30047 A sandwich course<sup>1</sup> is a course, other than a course of initial teacher training, made up of alternative periods of F/T study in the educational establishment and work experience. The F/T study must be for an average of at least 18 weeks a year<sup>2</sup>.

The average is worked out by dividing the total number of weeks attendance by the number of years in the course. For this purpose the course starts with the first period of F/T study and ends with the last period of F/T study.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 61(1); 2 Support Regs, reg 2(10); SL (Scot) Regs 2007, reg 4(2); Education (Student Support) Regs (Northern Ireland) 2007, reg 2(8)*

## Periods of experience

30048 Periods of experience means periods of work experience which form part of a sandwich course<sup>1</sup>.

*1 JSA Regs, reg 130; IS (Gen) Regs, reg 61(1)*

## Periods of work experience

30049 Periods of work experience are associated with the F/T study but are done outside an educational establishment. The experience has to be

1. industrial **or**
2. professional **or**
3. commercial<sup>1</sup>.

*1 Support Regs, reg 2(1)*

30050 If the course includes<sup>1</sup>

1. the study of one or more modern languages for at least half the time spent studying **and**
2. periods of residence in a country whose language is a part of the course

periods of work experience means any periods of overseas residence when the student is in gainful employment.

*1 Support Regs, reg 2(1)*

## Student unable to find placement

30051 A student may not be able to find a placement in the period of work experience. This does not automatically mean that they have stopped being a student. The DM should consider whether the student has abandoned or been dismissed from the course (see DMG 30228 et seq).

30052 - 30055

## Meaning of educational establishment

30056 The term educational establishment is not defined and so must be given its ordinary everyday meaning. Schools, colleges and universities are clearly such places. But other less obvious places may also be included. For example, the training division of a large organisation specially set up for that purpose.

30057 A person is attending an educational establishment if they are receiving

2. throughout the three years before the first day of the course have been ordinarily resident in the
  - 2.1 UK if
    - 2.1.a the student is settled in the UK **or**
    - 2.1.b the student, their spouse, civil partner or their parent have been granted leave to remain by the HO.
  - 2.2 EEA if the student, their spouse, or their partner have established migrant worker status **and** their stay is not wholly or mainly to receive FTE.

*1 Support Regs, Sch 1, SA (Scot) Regs, Sch 1*

## European Economic Area Nationals

- 30273 A student, who is an EEA national or the child of an EEA national, may be eligible for a student loan if<sup>1</sup>
1. the conditions at DMG 30272 2. are satisfied **and**
  2. the course in
    - 2.1 England and Wales, is provided wholly or partly by an institution in England or Wales **or**
    - 2.2 Scotland, is at a Scottish establishment.

*1 Support Regs, Sch 1, SA (Scot) Regs, Sch 1*

## Refugees

- 30274 A student may be eligible for a student loan if<sup>1</sup>
1. they, their spouse, civil partner or parent are granted refugee status **and**
  2. from the time they are recognised as a refugee they are ordinarily resident in the UK **and**
  3. they satisfy the conditions at DMG 30272 1..

*1 Support Regs, Sch 1, SA (Scot) Regs, Sch 1*

30275 - 30280

## Student loans treated as income

- 30281 Student loans are treated as income<sup>1</sup>. Students are treated as possessing a student loan for an academic year where
1. a student loan has been paid to them for that year<sup>2</sup> **or**
  2. they could acquire a loan in respect of that year by taking reasonable steps to get one<sup>3</sup>.

**Note:** If there is a condition of entitlement to a student loan that could not be met by taking reasonable steps the DM should not treat the student as having a student loan. If, exceptionally, the DM needs advice on whether or not a student has taken reasonable steps to acquire a loan, refer the case to DMA Leeds.

*1 JSA Regs, reg 136(1); IS (Gen) Regs, reg 66A(1); 2 JSA Regs, reg 136(3)(a); IS (Gen) Regs, reg 66A(3)(a);  
3 JSA Regs, reg 136(3)(b); IS (Gen) Regs, reg 66A(3)(b)*

## Amount of loan

30282 The maximum amount that can be advanced to a student depends on

1. where the student is studying **and**
2. whether the student has reached the final year of the course **and**
3. whether the student lives in the parental home.

30283 Where in any academic year a student loan is made to a student, the DM should take into account as income

1. the maximum amount of student loan the student could get by taking all reasonable steps<sup>1</sup> to do so (even if the student applies for less than the maximum loan) **and**
2. unless an exception at DMG 30297 applies<sup>2</sup>, the amount of any contribution whether or not it is paid to the student<sup>3</sup>.

*1 JSA Regs, reg 136(4)(a); IS (Gen) Regs, reg 66A(4)(a); 2 JSA Regs, reg 136(4)(a)(ii);  
IS (Gen) Regs, reg 66A(4)(a)(ii); 3 JSA Regs, reg 136(4)(a)(i); IS (Gen) Regs, reg 66A(4)(a)(i)*

30284 Where a student loan has not been made for an academic year, the DM should take into account as income the maximum loan that the student could get if

1. the student took all reasonable steps to obtain the maximum amount<sup>1</sup> **and**
2. no deduction was made from the loan because of a means test<sup>2</sup>.

*1 JSA Regs, reg 136(4)(b)(i); IS (Gen) Regs, reg 66A(4)(b)(i); 2 JSA Regs, reg 136(4)(b)(ii);  
IS (Gen) Regs, reg 66A(4)(b)(ii)*

## Postgraduate Master's Degree Loan

30285 A new postgraduate master's degree loan will be available for eligible full-time or part-time courses starting in September 2016. It will not be available to existing postgraduate master's students. Eligible students can apply for a loan of up to £10,000. The loan is only paid in the first and second academic years of a course, regardless of the total course length. For courses lasting two or more academic years (including part-time courses), the maximum amount paid will be up to £5,000 in the first year and the remainder in the second year. The loan is not specifically paid for tuition fees and/ or maintenance costs, it will be paid directly to the student and it will be at the student's discretion what they use it for.

30286 Regulations<sup>1</sup> specify that 30% of the maximum postgraduate master's degree loan will be the costs taken into account in the calculation<sup>2</sup> of IS, ESA (IR) and JSA (IB). This figure reflects the amount which will typically be available to spend on

maintenance costs, taking account of typical master's course tuition fees. If a claimant is eligible for a new postgraduate loan but has failed to take all reasonable steps to acquire it they will usually be treated as if they are in receipt of the maximum postgraduate master's loan to which they would be entitled<sup>3</sup>. For the purposes of these regulations, the maximum amount will be

1. £10,000 for courses lasting one academic year **and**
2. £5,000 in each of the first two years for courses lasting two or more academic years.

See DMG 30306 for an example of how to calculate student income for these loans.

*1 SS (Treatment of Postgrad Master's Degree Loans and Special Support Loans) (Amdt) Regs 2016,*

*2 ESA Regs, reg 137(5A), IS (Gen) Regs, reg 66A(4A) & JSA Regs, reg 136(4A),*

*3 ESA Regs, reg 137(4)(b) and (4A), JSA Regs, reg 136(3)(b); IS (Gen) Regs, reg 66A(3)(b)*

30287 - 30289

## Disregards

30290 The amount of student loan to be taken into account under DMG 30283 and DMG 30284 should be reduced by<sup>1</sup> a fixed amount for

1. travel costs **and**
2. the cost of books and equipment

whether or not the student has to meet the cost of those items.

**Note:** See Appendix 2 to this Chapter for the amounts to be disregarded.

*1 JSA Regs, reg 136(5); IS (Gen) Regs, reg 66A(5)*

### Example

Leslie is undertaking a P/T course of study for which she receives a loan of £500. After taking into account the disregards for travelling costs and books and equipment the DM fully disregards the loan.

30291 The disregard for books, travel and equipment applies only once in every academic year<sup>1</sup>.

*1 JSA Regs, reg 136(5); IS (Gen) Regs, reg 66A(5)*

## Disregard for fee loans

30292 In England and Wales changes to the student support system<sup>1</sup> mean that loans for course fees will be paid directly to the university or college. DMs should disregard<sup>2</sup> a loan for fees, known as a fee loan or a fee contribution loan paid under specified legislation<sup>3</sup>.

*1 Support Regs, regs 19-24 & 31-32; 2 JSA Regs, reg 136B; IS (Gen) Regs, reg 66C;*

*3 Support (NI) Order, Art 3; T & HE Act 98, s 22; Ed (Scot) Act 80, s 73(f)*

30293 - 30295

## Assessed contribution

30296 The education authority may decide that the student, their spouse, civil partner, parents or parents' partner should contribute to the loan. The contribution is assessed according to the income of the student, their spouse, civil partner, parent or parents' partner. The amount of loan awarded is then cut by the assessed contribution<sup>1</sup>.

*1 JSA Regs, reg 130; IS (Gen) Regs, reg 61(1)*

30297 The amount of contribution assessed by the education authority may not be paid to the student in part or in full. But the full amount of the contribution should still be treated as possessed by the student unless for

1. JSA<sup>1</sup>, the student is entitled to a disability premium **or**
2. IS<sup>2</sup>, the student is in a prescribed category of person because they are
  - 2.1 a lone parent **or**
  - 2.2 a lone foster parent **or**
  - 2.3 in relevant education<sup>3</sup>.

**Note:** Prior to 30.12.09 disabled and deaf students were included in DMG 30297 2.. In certain circumstances disabled and deaf students may still fall within DMG 30297 2.. For these savings provisions for prescribed categories of persons see DMG Chapter 20, Appendix 5.

*1 JSA Regs, reg 130, reg 136(4)(a)(ii); 2 IS (Gen) Regs, reg 61(1), reg 66A(4)(a)(ii); 3 Sch 1B, para 15A*

30298 - 30299

## Calculation of weekly income

### Course duration is for one academic year or less

30300 Where a student loan is made in respect of any academic year and the course is for one academic year or less, the student loan should be divided equally between the weeks in the period beginning with

1. the first benefit week that begins on or after the start of the academic year **or**
2. if the student starts attending the course in August or the course is for less than an academic years duration, the first benefit week that begins on or after the start of the course

and ending with the last benefit week that ends on or before the last day of the course<sup>1</sup>.

*1 JSA Regs, reg 136(2)(a); IS (Gen) Regs, reg 66A(2)(a)*

## **Course duration more than one academic year, any year except final academic year**

30301 Where a student loan is made in respect of an academic year that begins other than on 1 September the DM should divide the student loan equally between the period which

1. starts at the beginning of the first benefit week starting on or after the first day of the academic year **and**
2. ends on the last day of the last benefit week which ends on or before the last day of the academic year **and**

excludes any complete benefit weeks which fall entirely within the quarter where, in the opinion of the Secretary of State, the longest holiday period is taken<sup>1</sup>.

**Note:** Quarter means<sup>2</sup> one of the periods in the academic year from

1. 1 January to 31 March **or**
2. 1 April to 30 June **or**
3. 1 July to 31 August **or**
4. 1 September to 31 December.

*1 JSA Regs, reg 136(2)(aa); IS (Gen) Regs, reg 66A(2)(aa); 2 Support Regs, reg 2*

30302 Where a student loan is made in respect of an academic year that begins on 1 September the DM should divide the student loan equally between the weeks in the period beginning with the earlier of the first day of the first benefit week

1. in September **or**
2. that begins on or after the first day of the autumn term

and ending with the last benefit week that ends on or before the last day of June<sup>1</sup>.

*1 JSA Regs, reg 136(2)(c); IS (Gen) Regs, reg 66A(2)(c)*

30303

## **Final academic year, other than a course of one academic year or less**

30304 Where a student loan is made in respect of a final academic year of a course of more than one year that begins other than on 1 September the DM should divide the student loan equally between the period beginning with

1. the first benefit week that begins on or after the start of the academic year **and**
2. ending with the last benefit week that ends on or before the last day of the course<sup>1</sup>.

*1 JSA Regs, reg 136(2)(b)(i); IS (Gen) Regs, reg 66A(2)(b)(i)*

30305 Where a student loan is made in respect of a final academic year that begins on 1 September the DM should divide the student loan equally between the weeks in the period beginning with the first benefit week that begins on or after the earlier of

1. 1 September **or**
2. the first day of the autumn term

and ending with the last benefit week that ends on or before the last day of the course<sup>1</sup>.

*1 JSA Regs, reg 136(2)(b)(ii); IS (Gen) Regs, reg 66A(2)(b)(ii)*

### **Disregard**

30306 When the weekly amount has been calculated the DM should disregard up to £10 a week. This is subject to the overall limit on the disregarded income of students (see DMG 30391).

#### **Example 1**

Dilip is attending a course which lasts for less than a year. The course starts on 9.12.02 and ends on 18.4.03. He is a Tuesday BWE. He has a student loan which, after deducting the appropriate disregards, is taken into account from 11.12.02 until 15.4.03.

#### **Example 2**

Martha starts the final year of her course on 7.10.02 and ends it on 6.6.03. She is a Thursday BWE. The DM takes her student loan into account from 6.9.02 until 5.6.03 after deducting the appropriate disregards.

#### **Example 3**

Ellis is in his second year of a course. The autumn term begins on 14.10.02. Ellis is a Monday BWE. The DM takes his student loan into account, after deducting the appropriate disregards, from 3.9.02 until 30.6.03.

#### **Example 4**

Nasser's university course starts on 13.1.03. The main holiday period is between 30.6.03 and 12.10.03. He is a Wednesday BWE. After deducting the appropriate disregards the DM calculates the weekly income by dividing the loan equally between the periods 2.1.03 to 2.7.03 and 28.8.03 and 31.12.03. The DM takes the weekly amount into account from 16.1.03 because Nasser does not become a student until 13.1.03.

#### **Example 5 (postgraduate master's degree loans)**

Julia is in receipt of IS as a lone parent, she is responsible for her 1 year old daughter who lives with her. On 5.9.16 Julia begins a full-time postgraduate

master's degree in Health and Social Care. The course will last for one year and she successfully applies for a new loan of £10,000. Julia remains entitled to IS as a prescribed person when she begins her full-time course of study<sup>1</sup>. The amount of student income for IS purposes is calculated as follows:

Step 1: calculate the annual amount of the loan: £10,000 - £7,000 = £3,000 (30% of the new loan)

Step 2: deduct a fixed amount per academic year for travel costs and the cost of books and equipment<sup>2</sup>: £3000 - £303 - £390 = £2307

Step 3: divide the figure in step 2 equally between the weeks in the period beginning with the first benefit week that begins on or after the start of the academic year, and ending with last benefit week that ends on or before the last day of the course<sup>3</sup>. In this example this will be 52 weeks: £2307 ÷ 52 = £44.36

Step 4: deduct the general weekly disregard<sup>4</sup>: £44.36 - £10 = £34.36

This means that for IS purposes, Julia will have a weekly student income of £36.36.

*1 IS (Gen) Regs, reg 4ZA(3)(b), Sch 1B, para 1; 2, reg 66A(5); 3 reg 66A(2)(a);  
4 reg 66A(2)(c)*

Example 6 (part-time postgraduate master's degree loan)

Rick is undertaking a postgraduate Sociology course. The course is part-time and will last for three academic years. He has successfully obtained a postgraduate master's degree loan of £9,000. He will receive £5,000 in the first academic year and £4,000 in the second. The amount of student income for each of these two years will be calculated as follows:

Step 1: calculate the amount of the loan: £5,000 - £3,500 = £1500 (30% of the maximum loan available).

Step 2: deduct fixed amount per academic year for travel costs and the cost of books and equipment: £1500 - £303 - £390 = £817

Step 3: divide the figure in step 2 equally between the weeks in the period beginning with the first benefit week that begins on or after the start of the academic year, and ending with last benefit week that ends on or before the last day of the course in the academic year. In this example this will be 40 weeks: £807 ÷ 40 = £20.17

Step 4: deduct the general weekly disregard: £20.17 - £10 = £10.17.

Rick will have a weekly student income of £10.17 for the first and second academic years. Rick will have no student income for the third and final academic year of the course for the purpose of calculating his award of benefit.

**Note:** A student loan should not be taken into account until the student commences their course of study because prior to this day they are not a student. As the weekly amount is calculated by apportioning the loan to full benefit weeks it should similarly be attributed to full benefit weeks.

30307 - 30309

## Student from Northern Ireland

30310 A student from Northern Ireland may be eligible for a student loan under Northern Ireland law<sup>1</sup>. The qualifying conditions are the same as in the rest of the UK. Treat any loan for which the student is eligible in the same way.

*1 Education (Student Loans) (Northern Ireland) Order 1990, art 3*

30311 - 30314

## Grants

30315 A student may receive a grant from a number of different sources. Grants, bursaries or allowances etc may be paid in respect of various types of study such as Nursing and Teacher training.

30316 Students who are paid under specific law<sup>1</sup> may be entitled to supplementary grants

1. for extra costs incurred because they are disabled students<sup>2</sup>
2. to prevent hardship, for weeks during the long vacation that the student is not attending the place of study<sup>3</sup>. These grants can be paid to students under the age of 21 at the start of their course and who have been in the care of the LA.
3. towards fees<sup>4</sup>
4. for childcare<sup>5</sup>
5. for living costs<sup>6</sup>
6. for adult dependants<sup>7</sup>
7. for Parents' Learning Allowance<sup>8</sup>.

**Note:** This list is not exhaustive.

*1 Student Support Regs 2005; 2 reg 14; 3 reg 15; 4 reg 11; 5 reg 18; 6 reg 13; 7 reg 17; 8 reg 19*

30317 - 30325

## Amount of grant income

### Initial disregard

#### [See DMG Memo JSA/IS 64]

- 30326 The DM should disregard from the student's grant income any payment
1. intended to meet tuition or examination fees<sup>1</sup>
  2. intended to meet additional expense a disabled student has for attending a course<sup>2</sup>
  3. intended to meet additional expenses connected with term time residential study away from the student's educational establishment<sup>3</sup>
  4. on account of the student maintaining a home at a place other than where they live during the course<sup>4</sup>
  5. on account of any other person if<sup>5</sup> that person lives outside the UK and there is no applicable amount for them
  6. intended to meet the cost of books and equipment<sup>6</sup>
  7. intended to meet travel expenses caused by the student's attendance on the course<sup>7</sup>
  8. intended for the maintenance of a child dependant<sup>8</sup>
  9. intended for the child care costs of a child dependant<sup>9</sup>
  10. of higher education bursary for care leavers made under specified legislation<sup>10</sup>.

**Note:** DMG 30326 4. applies only to the extent that the student's rent is not met by HB.

*1 JSA Regs, reg 131(2)(a); IS (Gen) Regs, reg 62(2)(a); 2 JSA Regs, reg 131(2)(b); IS (Gen) Regs, reg 62(2)(c);  
3 JSA Regs, reg 131(2)(c); IS (Gen) Regs, reg 62(2)(d); 4 JSA Regs, reg 131(2)(d); IS (Gen) Regs, reg 62(2)(e);  
5 JSA Regs, reg 131(2)(e); IS (Gen) Regs, reg 62(2)(f); 6 JSA Regs, reg 131(2)(f); IS (Gen) Regs, reg 62(2)(g);  
7 JSA Regs, reg 131(2)(g); IS (Gen) Regs, reg 62(2)(h) 8 JSA Regs, ref 131(2)(h); IS (Gen) Regs, reg 62(2)(i);  
9 JSA Regs, reg 131(2)(i); IS (Gen) Regs, reg 62(2)(j);  
10 JSA Regs, reg 131(2)(j); IS (Gen) Regs, reg 62(2)(k); Children Act 1989, Part III*

- 30327 Disregard amounts under DMG 30326 only if the grant is specifically intended to be used for one of those purposes.

## Higher education grant

- 30328 The Higher Education Grant<sup>1</sup> was introduced in September 2004. A student qualified for this grant if he began the designated course on or after 1 September 2004. The grant is to defray the cost of books, equipment, travel or childcare for the purpose of attending that course. DMs should disregard<sup>2</sup> the amount of Higher Education Grant paid to an existing student.

*1 Support Regs, reg 66; 2 JSA Regs, reg 131(2); IS (Gen) Regs, reg 62(2)*

## Special support grant (England and Wales only)

- 30329 The Special Support Grant<sup>1</sup> was introduced from 1 September 2006. The grant is to defray the cost of books, equipment, travel or childcare incurred for the purpose of attending that course. DMs should disregard<sup>2</sup> the amount of Special Support Grant paid to students from 1 September 2006 if it falls within the disregards listed at DMG 30326.

*1 Support Regs 2006, reg 50; 2 JSA Regs, reg 131(2); IS (Gen) Regs, reg 62(2)*

## Special Support Loan (England only)

- 30330 Special Support Grants are intended to meet the cost of books, equipment, travel expenses and childcare, and so can be fully disregarded under existing legislation - DMG 30329 refers. From the beginning of the 2016/17 academic year, Special Support Loans will replace Special Support Grants<sup>1</sup> for new students. Regulations (2-5) amend existing legislation<sup>2</sup> to provide that the Special Support Loan can also be disregarded.

*1 Support Regs 2011 (S.I. 2011/1986), reg 68;  
2 ESA Regs, reg 64B, IS (Gen) Reg, reg 66D, JSA Regs, reg 136Cs*

30331 - 30340

## Disregards for students with child care responsibilities

### **[See DMG Memo JSA/IS 64]**

- 30341 In England and Wales, a Parents Learning Allowance is available to F/T students with child care responsibilities. DMs should disregard this allowance in full<sup>1</sup>.

*1 JSA Regs, reg 131; IS (Gen) Regs, reg 62*

30342 - 30345

## Extra disregards

30346 Where a student does not have a student loan and is not treated as having a student loan, the DM should disregard from the grant a fixed amount<sup>1</sup> for

1. travelling expenses **and**
2. books and equipment.

**Note:** These disregards apply whether or not the student spends that amount on those items. See Appendix 2 to this Chapter for the amounts to be disregarded.

*1 JSA Regs, reg 136(5); IS (Gen) Regs, reg 62(2A)*

### Example 1

Georgia is a student nurse attending a diploma course. She is not entitled to a student loan. She receives a NHS bursary which includes £200 for travelling expenses but no additional amount for books and equipment. The DM disregards a total, of £779 from Georgia's allowance. This is made up of an amount awarded specifically to meet travelling expenses - £200; extra disregard for travelling costs - £260 (2001/2002); extra disregard for books and equipment - £319 (2001/2002).

### Example 2

Isobella is a student teacher completing her last year of teacher training in a school. She receives a training bursary which does not specifically include any amount for travelling costs or books and equipment. She is not entitled to a student loan. The DM disregards a total of £579 from Isobella's income. This is made up of extra disregard for travelling costs - £260 (2001/2002) extra disregard for books and equipment - £319 (2001/2002).

30347 The disregard for books, travel and equipment applies only once in every academic year<sup>1</sup>.

*1 JSA Regs, reg 131(3); IS (Gen) Regs, reg 62(2A)*

30348 - 30350

## Period over which grant income taken into account

30351 The amount of grant income to be taken into account should be spread equally over the relevant period. The length of that period depends on

1. what elements of grant are involved **and**
2. whether the grant is paid for the period of study.

## Dependant and lone parent grants

30352 **[See DMG Memo JSA/IS 64]** The DM should take these grants into account

1. for the same period as the loan **or**
2. for the period a loan would have been taken into account had the student taken reasonable steps to get one<sup>1</sup>.

*1 JSA Regs, reg 131(5A), IS (Gen) Regs, reg 62(3B)*

### Example

Gregg is a student with two children who started his course in September 2000. He receives a loan for living expenses. He is also entitled to an extra amount for the children and because he is a lone parent, this is a non-repayable grant. The DM takes the extra grant income into account for the same period as the loan.

30353 - 30360

## NHS dependant grants

30361 **[See DMG Memo JSA/IS 64]** A grant or bursary paid for dependants, under relevant law<sup>1</sup>, to an NHS student should be taken into account over

1. 52 weeks **or**
2. 53 weeks, if there are 53 benefit weeks (including part-weeks) in the year<sup>2</sup>.

**Note:** These grants are apportioned over the number of benefit weeks in the year rather than over the period of study.

*1 Health Services and Public Health Act 1968, s 63(6); 2 JSA Regs, reg 131(5), IS (Gen) Regs, reg 62 (3A)*

## Students who started their course of study before 1.9.98

30362 A grant awarded under specific law<sup>1</sup> to a student who started the course of study before 1.9.98 may include additional amounts for

1. the maintenance of one or more dependants, including adult dependants **or**
2. a lone parent.

*1 Award Regs 1999*

30363 The DM should take these elements into account from the first day of the period of study for<sup>1</sup>

1. 52 weeks **or**
2. 53 weeks, if there are 53 whole or part benefit weeks in the year.

*1 JSA Regs, reg 131(5), IS (Gen) Regs, reg 62(3A)*

## Other grant income

30364 Other grant income should be taken into account equally between the weeks in the period

1. of study, where it is paid for the period of study **or**
2. for which it is payable.

## Period of study for grant income purposes

30365 Period of study has two different meanings. One for grant income purposes<sup>1</sup> and one for eligibility<sup>2</sup> (see DMG 30218 - 30219). DMs should not confuse the two definitions.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 61(1); 2 JSA Regs, reg 4; IS (Gen) Regs, reg 2(1)*

30366 For grant income purposes<sup>1</sup>, each year of a course has a separate period of study. That period

1. starts with
  - 1.1 the first day of the course, in the first or only year **or**
  - 1.2 the first day of that years course, in any later year **and**
2. ends with
  - 2.1 the last day of the course, in the last or only year **or**
  - 2.2 the day before the summer holiday, where the grant is not for study throughout the whole year **or**
  - 2.3 the day before the start date of the next years course where
    - 2.3.a the grant is for study throughout the year **or**
    - 2.3.b if the student does not have a grant, where a loan would have been assessed as payable throughout the year.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 61(1)*

## Example

Jenny is on a standard three year degree course commencing in the Autumn. Her grant is not for study throughout the whole year. She has three periods of study. These are

1. the first year - the first day of the course to the day before the summer holiday separating the first and second years
2. the second year - the first day of that years course to the day before the summer holiday separating the second and third years
3. the third (final) year - the first day of that years course to the last day of the course.

## Last day of course

30367 For IS and JSA the last day of the course means<sup>1</sup> the date on which the last day of the final academic term falls in respect of the course in which the student is enrolled.

30368- 30370

*1 JSA Regs, reg 130; IS (Gen) Regs, reg 61(1)*

## Grant payable for period of study

30371 Grant income may be payable for the period of study. If so the DM should take the income into account equally between the weeks in the period beginning with the first benefit week that begins on or after the first day of the period of study and ending with the last benefit week which ends on or before the last day of the period of study<sup>1</sup>.

*1 JSA Regs, reg 131(4)(a); IS (Gen) Regs, reg 62(3)(a)*

## Sandwich course

30372 Where a student is on a sandwich course, any periods of experience should be excluded from the period of study. Grant income is then spread equally between the weeks in the period beginning with the benefit week that begins on or after the last day of the period of experience and ends with the last benefit week which ends on or before the last day of the period of study<sup>1</sup>.

*1 JSA Regs, reg 131(6); IS (Gen) Regs, reg 62(4)*

## Grant not payable for period of study

30373 Grant income may be awarded for a specific period. In these cases the grant income should be taken into account equally between the weeks in the period beginning with the first benefit week that begins on or after the first day of the period for which the grant is payable and ending with the last benefit week which ends on or before the last day of the period for which the grant is payable<sup>1</sup>.

*1 JSA Regs, reg 131(4)(b); IS (Gen) Regs, reg 62(3)(b)*

30374 - 30380

## Access funds

30381 **[See DMG Memo JSA/IS 64]** Students who are in financial difficulties may receive payments from access funds (see DMG 30087). Treatment of these payments depends upon

1. when the payment is made

2. what the payment is intended for **and**
3. whether the payment is a
  - 3.1 regular payment **or**
  - 3.2 single lump sum.

30382 The DM should fully disregard an access fund payment where it is made<sup>1</sup>

1. before the first day of the course in anticipation of the person becoming a student **or**
2. on or after the earlier of
  - 2.1 1 September **or**
  - 2.2 the first day of the course **and**
  - 2.3 the student loan has not been received **and**
  - 2.4 the payment is intended to help them manage financially until they receive their loan.

*1 JSA Regs, reg 136A(4), IS (Gen) Regs, reg 66B(4)*

## Regular payments

30383 Any access fund payment should be fully disregarded unless it is intended and used for

1. food
2. ordinary clothing or footwear
3. household fuel
4. rent for which HB is payable
5. housing costs met in the applicable amount
6. council tax
7. water charges.

**Note:** The DM should disregard £20 from any payments that are intended and used for the above items. This is subject to the overall limit on disregarded income<sup>1</sup> (see DMG 30391 et seq).

*1 JSA Regs, reg 136A(3), IS (Gen) Regs, reg 66B(3)*

## Lump sum payments

30384 Any lump sum payment from an access fund should be treated as capital<sup>1</sup>.

*1 JSA Regs, reg 138(2), IS (Gen) Regs, reg 68(2)*

30385 Where a lump sum payment is intended and used for items other than those listed at DMG 30383 the DM should disregard the capital for 52 weeks from the date of payment<sup>1</sup>.

*1 JSA Regs, reg 138(3); IS (Gen) Regs, reg 68(3)*

30386 - 30390

# Chapter 34 - JSA Sanctions

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## Scope of Chapter

34006 This Chapter gives guidance on

1. Definitions (DMG 34011 et seq)
2. Sanctions - general principles (DMG 34031)
3. Amount of the sanction (DMG 34056)
4. Application to a new award (DMG 34061)
5. Level and period of sanction:
  - Higher-level sanctions (DMG 34091)
  - Other sanctions:
    - Intermediate-level sanctions (DMG 34121)
    - Low-level sanctions (DMG 34161)
    - 16/17 year olds (DMG 34191)
6. Good reason (DMG 34200)
7. Misconduct (DMG 34531)
8. Leaving Voluntarily (DMG 34651)
9. Work Trials (DMG 34701)
10. Refusal of Employment (DMG 34721)
11. Neglect to Avail (DMG 34751)
12. Mandatory Work Activity (DMG 34762)
13. Failed to participate in an interview (DMG 34831)
14. Schemes for assisting claimants to obtain employment (DMG 34846)
15. Jobseeker's directions (DMG 34901)
16. Training and employment schemes (DMG 34941)
17. Work experience and gross misconduct (DMG 34951)

34007 – 34010



# Definitions

## Claimant

34011 Throughout this Chapter the term claimant refers to a claimant or member of a joint claim couple who has claimed JSA unless otherwise stated.

**Note:** From 13.3.14 couple means two people who are married to, or civil partners of, each other and are members of the same household **or** two people who are not married to, or civil partners of, each other but are LTAMC<sup>1</sup>.

*1 JS Act 95, s 35(1);*

## Sanction or reduction period

34012 Sanction and reduction period have the same meaning in JSA. It is a period where JSA is reduced for a failure to comply with prescribed requirements<sup>1</sup>.

**Note:** In order for any sanction to be applied there has to be an award of JSA.

*1 JS Act 95, s 19, 19A & 19B*

## Meaning of week

34013 For the purposes of sanctions a week means any period of 7 consecutive days<sup>1</sup>.

*1 JSA Regs, reg 75(3)*

## Meaning of benefit week

34014 Throughout this Chapter, wherever the phrase “benefit week” is used it means<sup>1</sup> a period of seven days ending with the day determined by the last two digits of the claimant’s NINO as is shown in the following table unless the Secretary of State arranges otherwise

NI No.	Day
00 - 19	Monday
20 - 39	Tuesday
40 - 59	Wednesday
60 - 79	Thursday
80 - 99	Friday

*1 JSA Regs, reg 1(3)*

## Meaning of employment officer

34015 An employment officer (Emp O) means

1. an officer of the Secretary of State **or**
2. such other person as may be designated for that purpose by an order made by the Secretary of State<sup>1</sup>.

**Note 1:** Appendix 2 gives details of the people authorised as Emp Os in relation to sanctions.

**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 further guidance at DMG 34776 and DMG 34868.

*1 JS Act 95, s 35*

## Meaning of employment

34016 Other than if the conditions at DMG 34072 apply employment means employed earner's employment other than such employment in which a person is employed whilst participating in an employment programme<sup>1</sup>.

**Note:** For full guidance on employed earners employment see DMG Chapter 26.

*1 JSA Regs, reg 75(4A)*

34017 – 34020

## Meaning of current sanctionable failure

34021 Throughout this Chapter wherever the term 'current sanctionable failure' is used it means<sup>1</sup> a failure which is sanctionable under relevant legislation<sup>2</sup> in relation to which the DM has not yet determined whether the amount of an award of JSA is to be reduced.

*1 JSA Regs, reg 75(5); 2 JS Act 95, s 19, 19A & 19B*

## Meaning of sanctionable failure

34022 Throughout this Chapter wherever the term 'sanctionable failure' is used it means<sup>1</sup> a failure which is sanctionable under relevant legislation<sup>2</sup>.

**Note:** Sanctionable failures can result in a reduction of JSA at the higher, intermediate or low-level (see guidance at DMG 34091 et seq).

*1 JSA Regs, reg 75(5); 2 JS Act 95 s 19, 19A & 19B*

34023 – 34030

## Sanctions – General principles

34031 A sanction is a reduction in the amount of JSA which would otherwise be payable. It therefore follows that a DM can only impose a sanction on a claimant if the claimant is entitled to JSA<sup>1</sup>.

*1 JS Act 95 s 19(1); 19A(1) & 19B(1)*

34032 A sanction could not be imposed for an action or activity not carried out during a period of waiting days as there is no entitlement to JSA. For further guidance see DMG 34901 and for full guidance on waiting days see DMG Chapter 20.

### Reduction period

34033 Where a failure is a sanctionable failure the claimant's award of JSA is normally reduced. The period and amount of reduction depends on<sup>1</sup>

1. which requirement the claimant failed to comply with **and**
2. the number of sanctionable failures **and**
3. the period between failures **and**
4. the claimant's age at the date of the sanctionable failure.

**Note 1:** Also see guidance at DMG 34090.

**Note 2:** For guidance on 16 and 17 year olds see DMG 34186.

*1 WR Act 12, s 46*

34034 The reduction period depends on whether the sanctionable failure results in a

1. higher–level sanction<sup>1</sup> (see DMG 34091 et seq) **or**
2. other sanctions
  - 2.1 intermediate–level sanction<sup>2</sup> (see DMG 34121 et seq) **or**
  - 2.2 low–level sanction<sup>3</sup> (see DMG 34161 et seq).

*1 JS Act 95 s 19(2); 2 s 19B; 3 s 19A*

34035 All sanctions are for a fixed period and run concurrently. Each sanctionable failure is treated separately even if this means that the period of a sanction overlaps a previous sanction or more than one sanction applies to the same reduction period due to the claimants signing and payment cycle.

**Note:** From 22.10.12 there are no discretionary length sanctions.

34036 – 34038

### Escalation of sanctions

34039 All sanctions run concurrently and all sanctions must be at the same level (i.e. higher, intermediate, low) in order to escalate to the next penalty. The sanction length will only escalate if there has been one or more 'previous failure' (see DMG 34040) at the same level.

**Note:** See DMG 34041 for guidance on escalation of higher-level sanctions, DMG 34042 for low-level and DMG 34126 for intermediate sanctions.

### Previous failure

34040 A previous failure is a sanctionable failure which has been the subject of a sanction decision at the same level<sup>1</sup>.

**Note:** When considering previous failures the relevant date is the date on which the previous failure occurred not the date on which the decision to sanction was made.

*1 JSA Regs, reg 69(2), 69A(2), reg 69B(6)*

### Higher-level sanctions

34041 In the case of higher - level sanctions, previous failure<sup>1</sup> means

1. a failure which resulted in a decision to impose a higher-level sanction<sup>2</sup> **and**
2. in the case of a joint-claim couple, a failure by the same claimant (see Example 2) **and**
3. the date of the earlier failure which resulted in a higher-level sanction is within 52 weeks but not within 2 weeks of the date of the claimant's current sanctionable failure (see **Note 2.**)

**Note 1:** See the definition of week at DMG 34013.

**Note 2:** See DMG 34043 if the previous failure is within 2 weeks of the date of the current sanctionable failure.

**Note 3:** See guidance at DMG 34046 if sanctions are determined out of sequence and DMG 34102 if the previous failure is a 'pre-claim' failure<sup>3</sup> (i.e. in the case of higher-level sanctions for misconduct or leaving voluntarily).

**Note 4:** For further guidance see DMG 34091.

*1 JSA Regs, reg 69(2); 2 JS Act 95, s 19; 3 reg 69(3)*

### Example 1

Shareena is in receipt of JSA and fails without good reason to participate in her fortnightly job search review on 28.8.13. The DM determines a 4 weeks sanction is imposed for the low-level failure.

On 7.10.13 Shareena fails without good reason to apply for a job vacancy and the DM imposes a 4 weeks sanction. The sanction is within 52 weeks of a previous sanctionable failure but not within 2 weeks. However this is a higher-level sanction and the previous failure was a low-level sanctionable failure. Therefore the failure on 28.8.13 will not apply to escalate the sanction for the current sanctionable failure as it is at a different level. A 13 weeks sanction will be imposed for this higher-level failure.

A sanction must be at the same level in order to escalate to the next penalty.

### **Example 2**

Melinda and her partner David are a joint-claim couple in receipt of JSA. On 10.12.12 Melinda failed without good reason to accept a job offered to her. It is Melinda's first failure and a 13 week sanction is imposed.

On 8.8.13 Melinda's partner David, fails to participate without good reason in the MWA scheme. Although this is within 52 weeks of Melinda's failure the failure is not by the same claimant in the joint-claim. The sanction imposed for David's failure will be for 13 weeks.

### **Example 3**

On 10.12.12 Francesca failed to participate in the MWA scheme without good reason and a 13 weeks sanction was imposed.

On 16.12.13 Francesca fails without good reason to apply for a suitable job vacancy. A sanction of 13 weeks is appropriate.

Although there has been a previous higher-level failure, the current sanctionable failure does not fall within 52 weeks of the claimant's previous failure and therefore the sanction cannot escalate to the next penalty.

### **Low-level sanctions**

34042 In the case of low-level sanctions 'previous failure'<sup>1</sup> means

1. a failure which resulted in a decision to impose a low-level sanction **and**
2. the date of the earlier failure which resulted in a low-level sanction is within 52 weeks but not within 2 weeks of the date of the current sanctionable failure at the low-level (see **Note 2**) **and**
3. in the case of joint claimants, the failure is by the same claimant.

**Note 1:** See the definition of week at DMG 34013.

**Note 2:** Also see DMG 34043 if the previous failure is within 2 weeks of the date of the current sanctionable failure and see guidance at DMG 34046 if sanctions are determined out of sequence.

**Note 3:** When looking back at a previous sanctionable failure it has to be established if that failure was for the same member of a joint claim couple. A sanction can only escalate to the next penalty if the previous sanctionable failure was for the same member of a joint claim couple.

*1 JSA Regs, reg 69A(2)*

### **Example 1**

Mohammed is a JSA claimant and fails to participate without good reason in an interview on 30.11.12. There has been no earlier low-level sanctionable failures and a 4 weeks sanction is imposed.

On 3.12.13 Mohammed fails to comply with a JSD to attend a CV writing course without good reason.

There has been one earlier low-level sanctionable failure but the current low-level sanctionable failure does not fall within 52 weeks of the earlier failure and therefore does not apply to escalate the sanction and a 4 week sanction will apply for the failure on 3.12.13.

### **Example 2**

Morwena fails to participate without good reason in the Wp on 6.11.13 and a 4 weeks sanction is imposed on her JSA.

On 29.9.14 Morwena fails to take part in an interview without good reason.

The failure on 6.11.13 is a previous failure at the low-level and is within 52 weeks but not 2 weeks of the current low-level sanctionable failure and so will apply to escalate the sanction for the failure that occurred on 29.9.14 and a 13 weeks sanction will be imposed on her JSA.

### **Example 3**

Charlie is in a joint claim with his partner Angelina.

He fails to participate in the Skills Conditionality initial assessment interview with the provider without a good reason on 14.4.15 and a 4 weeks sanction is imposed on his JSA.

On 15.7.15 Angelina fails to take part in her fortnightly job search interview without good reason.

Although Charlie's sanctionable failure on 14.4.15 is within 52 weeks, but not 2 weeks of Angelina's current sanctionable failure, that failure was not for the same member of the joint claim and therefore the appropriate sanction for Angelina's failure on 15.7.15 is 4 weeks.

### **Current sanctionable failure occurred within 2 weeks of an earlier failure at the same level**

- 34043 The sanction period for higher-level and low-level sanctions will not escalate to the next penalty where the subsequent failure at the same level is within the same 2 week period as the earlier failure<sup>1</sup>. This means where failures occur within 2 weeks

of the most recent sanctionable failure, the sanction duration for the current failure should be imposed for the same duration as the previous sanctionable failure and does not escalate to the next penalty. A failure does not count as a previous failure until a decision to sanction is made.

**Note 1:** This is to help claimants not to accumulate lengthy sanctions for failures which occur within a short period. This depends on the dates of the failures and not the claimants signing period. It is the period between the date of the current sanctionable failure and the most recent previous sanctionable failure that counts.

**Note 2:** For guidance on where a subsequent failure is within 2 weeks of a previous failure in the case of intermediate sanctions<sup>2</sup> see DMG 34127.

*1 JSA Regs, reg 69(2)(c), reg 69A(2)(c); 2 reg 69B(6)(b)*

### **Example 1**

Jane signs on on 30.10.12 and is due a payment of JSA for the period 17.10.12 – 30.10.12. There are 2 previous higher-level sanctionable failures that occurred on 23.10.12 and 30.10.12.

As both failures occur within the same 2 week period both failures will attract a 13 weeks sanction.

The higher-level failure that occurred on 23.10.12 will attract a 13 week sanction because there is no previous failure to escalate beyond the minimum period of 13 weeks.

The second failure will not escalate to 26 weeks as there is not an earlier higher – level failure that occurred less than 52 weeks ago but more than 2 weeks ago. However this does not mean that the failure on 30.10.12 goes without a sanction. It merely means that the 30.10.12 failure does not attract an escalated sanction and so will be a 13 week sanction.

### **Example 2**

Joe signs on on 30.10.12 and is due a payment of JSA for the period 17.10.12 – 30.10.12. He has committed a low-level sanctionable failure on 30.10.12 which attracts a 4 week sanction.

On 13.11.12 Joe signs on again. He has committed a further low-level sanctionable failure on 5.11.12. This is within 2 weeks of the previous low-level sanctionable failure on 30.10.12.

The earlier failure on 30.10.12 will not apply to escalate the current sanctionable failure on 5.11.12 because it occurred less than 2 weeks after the failure on 30.10.12 and is therefore not a previous failure for the purposes of determining a sanction for the current sanctionable failure.

The sanction for the failure on 5.11.12 will therefore be for 4 weeks even though it occurs in a separate signing period.

### **Example 3**

Jordan signs on on 30.10.12 and is due a payment of JSA for the period 17.10.12 – 30.10.12. He has committed a higher-level sanctionable failure on 23.10.12 which attracts a 13 week sanction.

On 13.11.12 Jordan signs on again. He has committed a subsequent higher-level sanctionable failure on 13.11.12.

When considering the sanction for the failure on 13.11.12, the failure that occurred on 23.10.12 is regarded as a previous failure because the 23.10.12 failure occurred within 52 weeks but not within 2 weeks of the current failure on 13.11.12.

Therefore the sanction for the current failure on 13.11.12 is for 26 weeks.

### **Example 4**

Ranj fails to participate in his fortnightly jobsearch review interview on 30.10.12. The DM considers he has no good reason for his failure and imposes a 4 week sanction for a low-level sanction.

On 13.11.12 Ranj fails to participate without good reason in the Wp and the DM considers a sanction.

The 30.10.12 failure is a previous failure and so will apply to escalate the sanction for the current sanctionable failure that occurred on 13.11.12. This is because the 30.10.12 failure occurred more than 2 weeks but less than 52 weeks before the current failure.

Therefore a 13 week sanction is applied for the low-level sanctionable failure on 13.11.12 (the 2 week period from 30.10.12 finishes on 12.11.12).

### **Example 5**

Darya has multiple low level failures for failing to participate in the Wp without a good reason which are shown in the table below.

Dates of Sanctionable Failures	Period between current sanctionable failure & most recent previous sanctionable failure	Duration of sanction
21/01/15		4 weeks – it is Darya's first failure.

28/01/15	7days	There is one previous failure and the date of the failure is within 52 weeks but is also within 2 weeks of the date of the current failure so the sanction duration has to be for 4 weeks
04/02/15	7days	There is more than one previous sanctionable failure and <b>the most recent</b> previous sanctionable failure is within 52 weeks but is also within 2 weeks of the date of the current failure so the sanction duration also has to be for 4 weeks
11/02/15	7days	Again there is more than one previous sanctionable failure and <b>the most recent</b> sanctionable failure is within 52 weeks and within 2 weeks of the date of the current failure so the sanction duration also has to be for 4 weeks

Darya will have 4 x 4 weeks sanctions imposed. None would escalate to 13 weeks as each failure occurs within 2 weeks of the previous most recent sanctionable failure.

### More than one failure for the same period

34044 All failures have to be treated as individual failures even if this means the sanction periods will overlap<sup>1</sup>. All determinations are considered on their own merits and the facts and evidence presented, each must be given an outcome decision and appeal rights even if due to the claimants signing and payment cycle sanctions are applicable to the same reduction period (see guidance at DMG 04587).

*1 SS CS (D&A) Regs, reg 6(2)(f)*

**Note 1:** It is important that individual sanction decisions are made regardless of whether the claimant will feel the full impact of the sanction as it may count towards escalating a sanction if there is another sanctionable failure at the same level within 52 weeks.

**Note 2:** For guidance where the same failure is a low-level failure but could also be a higher-level failure see DMG 34176.

#### Example 1

On 23.4.13 Sue forgot to attend an Adviser Interview. Her signing day was also 23.4.13. When she did attend on 25.4.13 she told the Adviser that she had not completed the JSD to create a CV by 23.4.13.

In this case there are 2 sanction determinations to be made. The DM decides Sue cannot show good reason for either of the failures. Because both failures occurred within the same 2 weeks period the sanctions imposed are 2 x 4 weeks failures as the second failure cannot escalate to 13 weeks. The sanctions run concurrently and so apply to the same 4 week period but both are individual determinations and the claimant has to have an outcome decision and appeal rights for each one.

### **Example 2**

Fatou has been disallowed JSA due to a decision that she was not available for employment and could not be treated as available. Her payday is Monday and she was last paid JSA to 10.6.13. The date of the failure is 11.6.13 and JSA was disallowed from 11.6.13 – 24.6.13. Fatou has reclaimed JSA from 25.6.13. An intermediate-level sanction is imposed from 25.6.13 to 8.7.13 for a first intermediate-level failure.

A further referral is received for a failure to participate in the Wp on 10.6.13. The DM determines Fatou did not have good reason for the failure and considers a first lower-level sanction. The period off benefit has to be deducted from the sanction period from the date of the failure to the day before the date of the new claim, i.e. from 10.6.13 to 24.6.13, 2 weeks and 1 day, and a sanction is imposed from 25.6.13 to 7.7.13 of 1 week and 6 days.

On 21.10.13 Fatou fails to attend her job search review and the DM determines she has no good reason for the failure and considers a sanction. As there is a previous lower-level sanctionable failure for the failure on 10.6.13 which is within 52 weeks of the current sanctionable failure, but not within 2 weeks, a 13 week sanction can be imposed for the failure on 21.10.13.

### **Previous failures before 22.10.12**

34045 Any failures that occurred before 22.10.12 do not count towards the total number of failures when considering whether a failure that occurred on or after 22.10.12 is a first, second or subsequent failure. If a failure occurred prior to 22.10.12 it is subject to the old provisions. For guidance for any failure that occurred prior to 22.10.12 contact DMA Leeds.

### **Example**

Maggy is a JSA claimant and on 10.9.12 she failed without good cause to participate in the Wp and a sanction was applied. On 6.8.13 she again fails without good reason to participate in the Wp. Although she has failures prior to 22.10.12 which fall within 52 weeks of the current failure these do not count as previous failures when considering the failure on 6.8.13. This is a first failure under the new sanctions regime.

## Failures determined out of sequence

34046 When looking at whether the sanction for the current failure should escalate, DM's must consider whether there has been any previous sanctionable failures which

1. have been subject to a sanction decision **and**
2. occurred within 52 weeks, but not 2 weeks, of the current failure<sup>1</sup>.

**Note 1:** See DMG 34022 for definition of sanctionable failure<sup>2</sup>.

**Note 2:** For guidance where the DM is considering an intermediate sanction<sup>3</sup> for a failure to ASE or on availability see DMG 34121 et seq. In those cases the DM is looking at whether entitlement has ended on a previous occasion due to the claimant not being available and/or ASE and not at sanctionable failures.

*1 JSA Regs, reg 69(2) & 69A(2); 2 reg 75(5); 3 69B(6)(b)*

34047 This allows for the fact that

1. DMs cannot always make decisions on failures in failure date order **and**
2. when deciding the length of a sanction the DM needs to check whether the claimant has any sanctions at the same level already recorded.

If so the DM needs to check the dates of any of the failures relating to those sanction decisions. If any took place within 52 weeks, but not within 2 weeks, of the date of the failure under consideration then they should be counted as previous sanctionable failures<sup>1</sup>. However, see DMG 34102 where the failures are pre-claim failures<sup>2</sup>, i.e. in the case of higher-level sanctions for misconduct or leaving voluntarily.

*1 JSA Regs, reg 69(2), 69A(2) & 69B(6)(b); 2 reg 69(3)*

## Only one sanction already recorded

34048 Where only one sanction is recorded, the DM needs to check the actual date of failure for that sanctionable failure. If it took place within 52 weeks, but not within 2 weeks, of the date of the current failure it should be counted as a previous sanctionable failure. This is the case even if the actual date of the failure is after the date of failure currently under consideration.

**Note 1:** Sanctions can only escalate where they are at the same level (i.e. higher, intermediate, lower) see DMG 34039 .

**Note 2:** See further guidance at DMG 34102 where the failures are pre-claim failures in the case of higher-level sanctions for misconduct or leaving voluntarily.

### Example

Sean refuses to apply for a job vacancy notified to him by his advisor and the DM determines he has no good reason and imposes a 13 weeks sanction as there are

no previous failures at the higher-level recorded. The date of the failure is 28.6.13.

**This is the first sanctionable failure.**

A second referral is received for a failure to apply for a job vacancy 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 Sean's sanctionable history and a previous higher-level sanctionable failure of 13 weeks is recorded for a failure on 28.6.13. There is one previous higher-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.**

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

First failure 28.6.13 - 13 weeks sanction

Second failure 6.5.13 - 26 weeks sanction

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

### **More than one sanction already recorded**

34049 Where more than one sanction is recorded, the DM will need to check the previous sanctions to see whether the sanction decisions were made in order of the date of failure. If so, the DM should have regard only to the most recent of the previous sanctionable failures when considering whether it meets the definition in relevant legislation<sup>1</sup>.

*1 JSA Regs, reg 69(1)(c)(ii), 69A(1)(b)(ii) & 69B(6)*

34050 If previous sanction decisions of the same level have been determined out of order of the date of failure the DM will need to look at all the previous sanctionable failures of the same level to see whether any have a date of failure within 2 weeks of the failure currently under consideration. If so, the DM should treat that as the most recent failure as it would have been had the failures been determined in date order.

**Note:** The DM must ignore any sanctionable failures at the same level where the date of the failure was within 2 weeks of the current failure or not within 52 weeks when deciding whether a sanction can escalate (see DMG 34041).

### **Example**

Sue has failed to participate in the Wp on 21.5.13. The DM decides she has no good reason for the failure and imposes a sanction of 4 weeks as no previous lower-level sanctionable failures are recorded.

**This is the first sanctionable failure.**

1. employed earners employment other than employment whilst participating in an employment programme **and**
2. self employment

as long as the employment resulted in the claimant not claiming or receiving any employment-replacement benefit such as JSA, IS or ESA (also see DMG 34016).

*1 JSA Regs, reg 70C(4)*

## **Claimant has two jobs**

34073 Where a claimant has two jobs and loses one of them a sanction can be imposed if the JSA claim results from the loss of that job.

### **Example 1**

Danny has two jobs, one of which ends on 17.12.12 and the other on 31.1.13. He claims JSA from 1.2.13. No sanction can be imposed in respect of the first job. Any sanction applied should be as a result of the second job.

### **Example 2**

Daphne has two jobs. She leaves one and claims JSA, declaring her other job as P/T work. A sanction can be considered in respect of the first job.

### **Example 3**

Diana has two jobs, both end on 31.12.12. As she worked in both jobs simultaneously and left both at the same time, a sanction can be considered in respect of both jobs.

## **“Reserved” decisions**

34074 A “reserved” decision is not specifically prescribed for in legislation but where an award of JSA ends before a sanction determination is made the DM can make a “reserved” or delayed decision. This is where a sanction would be appropriate but cannot be imposed because the claimant does not have a current claim to JSA.

34075 Where a new claim is made, the indicative start date for the sanction period is the date of failure and any time away from benefit is treated as time served and is deducted from the relevant sanction period in the same way as if the decision had been made before the claimant left benefit. Any balance of the sanction period should be applied from the first available pay day in the new claim.

**Note:** See guidance at DMG 34102 where the failures are pre-claim failures (i.e. for misconduct or leaving voluntary).

### Example 1

Stuart is dismissed from his job on 2.11.12 and makes a new claim to JSA on 5.11.12. On 10.11.12 he goes abroad and his JSA award comes to an end. Stuart makes a new claim to JSA on his return from abroad on 23.11.12. A sanction decision had not been made on the earlier claim to JSA. A sanction can be imposed on the new claim if appropriate but the period away from benefit, i.e. 10.11.12 to 22.11.12, would be deducted from the reduction period.

### Example 2

Karen refuses to apply for a vacancy on 29.10.12. She left JSA on 30.10.12 before a decision could be made on the RE question. She reclaims JSA on 12.11.12. The DM determines Karen has no good reason for the failure and she would have been subject to a 13 week sanction for the higher-level failure. The sanction period is calculated from 29.10.12 (the date of the sanctionable failure) and the period from 30.10.12 to 11.11.12 (the period away from benefit) is deducted from the 13 week sanction. An 11 week sanction is imposed from the beginning of the new claim on 12.11.12 and starts from the first available pay day.

### Example 3

Sienna fails to participate in the Wp on 18.4.13 and on 3.6.13 the DM determines there is no good reason. This is a low-level failure and there has been a previous low-level failure within 52 weeks, but not within 2 weeks, which incurred a sanction of 4 weeks, therefore a 13 weeks sanction period applies.

However, the claimant has had 2 periods away from benefit since the date of the failure on 18.4.13.

23.4.13 – 6.5.13 = 14 days disallowance due to a failure to ASE.

31.5.13 – 11.6.13 = 12 days where back dated claim disallowed.

Therefore the 13 weeks sanction period is reduced by 26 days and the 'outstanding period' of 65 days (9 weeks and 2 days) is applied to the new award.

34076 – 34080

## Hardship

34081 Where

1. the DM decides to impose a sanction **and**

2. the claimant's benefit is reduced

the claimant may be eligible for hardship payments

**Note 1:** See DMG Chapter 35 for detailed guidance on Hardship and who has access to hardship when sanctioned.

**Note 2:** For guidance on how to apply a sanction when hardship only is in payment see the guidance at DMG 34185

34082 - 34088

## Summary of sanction structure

34089 See Appendix 1 to this Chapter for a summary of the sanction reasons and structure for all sanctions from 22.10.12 for claimants aged 18 and above. For guidance on sanctions for claimants who are 16/17 year olds see DMG 34186.

34090 The reduction periods that apply for relevant failures<sup>1</sup> are provided for in tables for each level of sanctions

1. higher-level<sup>2</sup> (see DMG 34091)
2. intermediate-level<sup>3</sup> (see DMG 34121)
3. low-level<sup>4</sup> (see DMG 34161).

**Note:** The circumstances of the failure are described in the first column of each table and has effect for the period set out in the second column.

*1 JS Act, s19, 19A & 19B; 2 JSA Regs, reg 69(1); 3 reg 69B(6); 4 reg 69A (1)*



34102 Where a failure occurs before the date on which a claimant applies for JSA and relates to

1. losing employment due to misconduct **or**
2. leaving employment voluntarily **or**
3. neglecting to avail themselves of a reasonable opportunity of employment

the sanction will be reduced by the period beginning with the day after the failure and ending with the date of claim<sup>1</sup>, except where DMG 34103 applies.

*1 JSA Regs, reg 69(4)(a)*

### **Example**

See example 1 at DMG 34101. When considering the first higher-level failure the DM imposes a 13 week sanction for Paula losing her job due to misconduct. Paula's benefit week ending day is a Tuesday therefore the sanction period runs for 13 weeks from 14.11.12 (the first date of the benefit week in which the failure occurred – see DMG 34111). Paula's date of claim is 28.11.12 which in effect reduces the sanction by 2 weeks between the date of the failure 16.11.12 and the date of claim 28.11.12.

### **Employment for a limited period**

34103 Where

1. the claimant leaves employment voluntarily, through misconduct or neglects to avail **and**
2. the failure was in relation to employment that was for a limited period<sup>1</sup> **and**
3. the date of claim to JSA is on or before the end date of the limited period

the sanction relating to that failure is to have effect for the period beginning on the date of the failure and ending on the last date of the period of employment minus the period beginning on the date of the failure and ending on the day before the date of claim<sup>2</sup>.

**Note 1:** Limited period means a specific period which is fixed in advance, for example a short term contract of employment.

**Note 2:** If the employment was due to end 4 weeks after the person left that employment the maximum sanction which could be imposed would be for 4 weeks.

*1 JSA Regs, reg 69(4)(b); 2 reg 69(5)*

### **Example**

Emily is a dancer and has a 6 month contract with a cruise company from 1.9.12 to 28.2.13. She voluntarily leaves her contract on 13.1.13 and claims JSA on 21.1.13.

Her benefit week ending date is Tuesday. On 6.3.13 the DM determines that Emily left her employment voluntarily without good reason. Emily was due to leave her employment on 28.2.13. The sanction imposed is for 5 weeks and 4 days which is the difference between the day after the date of the failure and the end date of employment (14.1.13 – 28.2.13) and the day after the date of the failure and the date of claim (14.1.13 – 20.2.13).

### **Same failure can be both a higher-level and low-level sanction**

34104 A low-level sanction should not be applied to a failure where it is also a sanctionable failure at the higher-level<sup>1</sup>.

**Note:** When any failure occurs which could result in a sanction both at the higher-level and the low-level only the higher-level sanction will apply, for example failing to carry out a JSD to apply for an employment vacancy.

*1 JS Act 95, s 19A(3)*

#### **Example**

A JSD is issued to instruct Sandra to apply for a vacancy advertised at the JCP office. Sandra fails to apply for the vacancy. The DM determines that Sandra has failed without good reason to apply for an advertised vacancy. She has also failed without good reason to carry out the direction in the JSD.

It is Sandra's first failure.

As the failure could attract both a higher-level sanction and a low-level sanction it is the higher-level sanction that takes precedent if all the criteria at DMG 34721 et seq are fulfilled for failing to apply for a notified vacancy and the DM imposes a 13 week sanction for a first higher-level failure.

34105 - 34110

### **When the sanction period begins**

- 34111 The period of a reduction begins either on the first day of the benefit week
1. in which the failure occurred where on the date of determination to reduce the award the claimant has not been paid JSA since the failure occurred<sup>1</sup> **or**
  2. after the end of the benefit week in respect of which the claimant was last paid JSA where on the date of the determination to reduce the award, the claimant has been paid a JSA or a joint-claim JSA since the failure occurred<sup>2</sup>.

**Note:** See DMG 34014 for the meaning of benefit week. See DMG 34185 if hardship only in payment.

*1 JSA Regs, reg 69(7)(a); 2 reg 69(6)(b)*

34145 An award of a joint-claim JSA will be reduced<sup>1</sup> where one of the members of the joint-claim couple

1. was previously entitled to JSA (but not a joint-claim JSA) **and**
2. had ceased to be entitled on the grounds of
  - 2.1 not being available for employment **or**
  - 2.2 not being ASE<sup>2</sup>.

*1 JSA Regs, reg 69B(2); 2 reg 69B(3)*

### **Example**

Chris was in receipt of JSA as a single claimant. His award of JSA ended on 20.11.12 because Chris was not available for employment and could not be treated as available. This was the second time in the last 52 weeks that Chris's award of JSA has come to an end on these grounds. Chris reclaimed JSA on 30.11.12 as a member of a joint-claim couple with his new partner Vicky. The DM determines that a sanction applies to the new award of joint-claim JSA due to the fact that Chris's two previous awards of JSA had ended on the grounds that he was not available for employment.

34146 An award of a joint-claim JSA has to be reduced<sup>1</sup> where

1. the couple
  - 1.1 were previously entitled to a joint-claim JSA **and**
  - 1.2 ceased to be entitled on the grounds of either or both of them not being available for employment or not ASE<sup>2</sup> **or**
2. either member of the couple was a member of another couple who
  - 2.1 were previously entitled to a joint-claim JSA **and**
  - 2.2 ceased to be entitled on the grounds of that person not being available for employment or not ASE<sup>3</sup>.

*1 JSA Regs, reg 69B(2); 2 reg 69B(4)(a); 3 reg 69B(4)(b)*

34147 The period of the reduction and the exceptions where a reduction does not apply as described in DMG 34141 - 34143 also apply to members of joint-claim couples.

**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 guidance and example 1 at DMG 34042).

34148 – 34160

## Low-level sanctions

- 34161 A fixed period low-level sanction will be appropriate<sup>1</sup> where a claimant
1. loses a place on a training scheme or employment programme through misconduct<sup>2</sup> (see DMG 34941) **or**
  2. without good reason
    - 2.1 fails to participate in an interview at the JCP<sup>3</sup> (see DMG 34831)
    - 2.2 fails to participate in an employment scheme under relevant legislation<sup>4</sup> (e.g. Wp) (see DMG 34846)
    - 2.3 refuses or fails to carry out a JSD which was reasonable having regard to the claimant's circumstances<sup>5</sup> (see DMG 34901)
    - 2.4 neglected to avail themselves of a reasonable opportunity of a place on a training scheme or employment programme<sup>6</sup> (see DMG 34941)
    - 2.5 refuses or fails to apply for or accept if offered a place on a scheme or programme which an Emp O has notified is vacant or about to become vacant<sup>7</sup> (see DMG 34941)
    - 2.6 gives up a place on a scheme or employment programme or fails to attend such a scheme or programme having been given a place on it<sup>8</sup> (see DMG 34941).

**Note 1:** For the meanings of JSD, training scheme and employment programme see the definitions at DMG 34162 - 34164. For the meaning of Emp O see the definition at DMG 34015.

**Note 2:** For the purposes of low-level sanctions the prescribed mandatory work schemes at 2.2 exclude the MWA scheme (see DMG 34762).

**Note 3:** For the meaning of good reason see further guidance at DMG 34200 et seq.

*1 JS Act 95, s 19A; 2 s 19A(2)(g); 3 s 19A(2)(a), 8(1) & 8(1A);  
4 s 19A(2)(b), 17A; 5 s 19A(2)(c); 6 s 19A(2)(d); 7 s 19A(e); 8 s 19A(2)(f)*

### Meaning of Jobseeker's direction

- 34162 For the meaning of and guidance on JSD<sup>1</sup> see DMG 34901 et seq.

*1 JS Act 95, s 19A(11)(a)*

### Meaning of employment programme

- 34163 An employment programme means a programme or scheme which is designed for a claimant to
1. prepare for **or**
  2. move into  
work<sup>1</sup>.

**Note:** For further detailed guidance on prescribed employment programmes see DMG 34941.

*1 JS Act 95, s 19A(11)(b); JSA Regs, reg 75(1)(a)*

## Meaning of training scheme

34164 Training scheme<sup>1</sup> means a scheme or course which is designed to assist a claimant gain the skills, knowledge or experience that will make it more likely, in the opinion of the Secretary of State, that the claimant will

1. obtain work **or**
2. be able to obtain work.

*1 JS Act 95, s 19A(11)(b); JSA Regs, reg 75(1)(b)*

34165 - 34170

## Sanction period

34171 The low-level sanctions period will be a reduction in benefit for failures detailed at DMG 34161 of

1. 4 weeks for the first failure<sup>1</sup> **or**
2. 13 weeks<sup>2</sup> where there has been
  - 2.1 only one previous low level failure and that failure
    - 2.1.a resulted in a 4 week sanction **and**
    - 2.1.b was within 52 weeks but not 2 weeks of the current failure **and**
    - 2.1.c in the case of a joint claim couple, the failure was by the same claimant **or**
  - 2.2 more than one previous low level failure and the most recent failure
    - 2.2.a resulted in a low level sanction **and**
    - 2.2.b was within 52 weeks but not 2 weeks of the current failure **and**
    - 2.2.c in the case of a joint claim couple, the failure was by the same claimant.

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

### Example 1

Audrey fails to comply with a JSD to update her CV. On 1.11.12 she attends to sign at her normal time saying she forgot to update her CV as she was too busy. On 6.11.12 the DM determines that Audrey failed without good reason to comply with the JSD. There are no previous failures. A 4 week sanction is imposed.

## Example 2

On 22.1.13 Carol refuses to attend her Wp interview. On 16.2.13 the DM determines Carol failed without good reason to participate in the Wp and imposes a 4 week sanction for her first failure. Carol's benefit week ends on a Monday and she was last paid JSA to 11.2.13. The sanction runs from 12.2.13 to 11.3.13.

On 7.5.13 Carol fails to attend a CV writing workshop arranged by her Wp provider. On 9.5.13 the DM determines Carol has failed without good reason to participate in the Wp on 7.5.13 and imposes a 13 week sanction for a further failure within 52 weeks of the previous failure. Carol was last paid JSA to 6.5.13. The 13 week sanction runs from 7.5.13 - 5.8.13. On 20.5.13 Carol attends a CV writing course. Even though she has re-engaged with the Wp the 13 week sanction has to run its course and cannot be revised. Carol makes a claim for hardship payments.

On 14.10.13 Carol fails to attend an interview with her Wp provider. On 24.10.13 the DM determines that Carol failed without good reason to participate in the Wp and imposes a 13 week sanction as this is Carol's third failure and the current failure is within 52 weeks of the previous failure and there has been more than one previous failure. Carol has been paid JSA to 21.10.13 and the sanction runs from 22.10.13 to 27.1.14.

34172 – 34175

## Exceptions

34176 A low-level sanction should not be applied to a failure where that failure is also a sanctionable failure at the higher-level<sup>1</sup>.

**Note 1:** When any failure occurs which is both a failure at the higher-level and the low-level only the higher-level sanction will apply, for example failing to carry out a JSD to apply for an employment vacancy (see example 1). Also see guidance at DMG 34901.

**Note 2:** Where there are two separate failures at different levels two sanctions would apply (see example 2) but a sanction can only escalate to the next penalty where any previous failure is for the same level of sanction (i.e. higher, intermediate, lower) see DMG 34039 and Example at DMG34104.

*1 JS Act 95, s 19A(3)*

### Example

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 low-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 low-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 claimant<sup>1</sup>.

**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 couple<sup>2</sup>, 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 low-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 low-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 low-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 low-level failure but as the failure falls within the same 2 week period as Gary's previous low-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 occurred<sup>1</sup> **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 occurred<sup>2</sup>.

**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 couple<sup>1</sup>.

**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 low-level sanctions<sup>1</sup> **or**
2. from the date of claim in the case of intermediate-level sanctions<sup>2</sup>.

# Good reason

## Introduction

34200 From 22.10.12 all references to claimants having to show 'just' or 'good cause' for a failure, act or omission which leads to a sanction being considered become considerations for good reason instead<sup>1</sup>. For guidance on good cause or just cause for any sanctions before 22.10.12 contact DMA Leeds.

34201 For JSA intermediate sanctions there is no 'good reason' for the DM to consider before imposing a reduction<sup>1</sup>. The DM is considering whether entitlement has ended on a previous occasion due to the claimant not being available and/or ASE (see guidance at DMG 34121 et seq).

*1 JS Act 95, s 19B*

34202 For sanctionable failures due to misconduct the claimant will not have an opportunity to show good reason for the failure but will be given the opportunity to provide facts and evidence for consideration by the DM (see guidance on Misconduct at DMG 34531).

## Meaning of good reason

34203 Good reason is not defined in legislation. DMs should take into account all relevant information about the claimant's circumstances and their reasons for their actions or omissions.

34204 The concepts of 'good cause' and 'just cause' were considered in case law. It includes facts which would probably have caused a reasonable person to act as the claimant did<sup>1</sup>. This principle is equally applicable to good reason.

*1 R(SB) 6/83*

34205 Claimants will be given the opportunity to explain why they have not complied with requirements and it will remain the responsibility of the claimant to show good reason for the failure and provide information and evidence as appropriate to explain why they have not complied. It is the reasonableness of the claimant's actions and behaviours that is being considered (see DMG 34221).

34206 The following guidance is to provide a framework for DMs to use when considering whether or not good reason is demonstrated and is not an exhaustive list of individual circumstances. In every case the DM should take into account all the individual facts and circumstances and consider the case on its own merits.

34207 - 34210

## Time to show good reason

34211 The time a claimant will have to contact JCP where there is a failure to participate in an interview at JCP is 5 working days (see further guidance at DMG 34831). For all other sanctions in JSA there are no specified time constraints for a claimant to show good reason.

34212 It is up to the DM to consider the merits of each individual case when setting a time limit to provide good reason but in most cases the benchmark will continue to be

1. 5 days, where the information is to be obtained by post (see note 1) **or**
2. depending on the individual circumstances of the case, less than 5 days where
  - 2.1 the DM can contact the claimant by phone or face to face (and the DM is satisfied that the claimant is clear about what they are being asked to provide and do not need to collate and provide evidence) **or**
  - 2.2 where the claimant has agreed the preferred method of contact is by electronic means such as by text or email **or**
3. longer than 5 days where the claimant
  - 3.1 needs to seek information or evidence from a third party **or**
  - 3.2 has an agent or representative **or**
  - 3.3 has a health condition or other temporary circumstances that prevents them from replying (e.g. a pre existing health condition that is relevant or existing caring or parental responsibilities that may be relevant).

**Note 1:** Reference to days is working days excluding Saturdays, Sundays and bank holidays. Allowance must be made for posting where a notification is made by post<sup>1</sup>. Where the information is to be obtained by post the adviser should normally make some attempt to contact the claimant by telephone or face to face to inform that a letter they should respond to is on its way to them.

**Note 2:** If the claimant agrees to provide evidence face to face, by telephone or by electronic means the claimant must be informed of the consequences of not providing good reason by a certain time.

*1 Inte Act 78, sec 7*

34213 The DM will then consider whether the evidence constitutes good reason taking into consideration all the facts and evidence particular to the individual circumstances and make rational decisions when considering sanctions which are responsive to both the individual's circumstances and the changing labour market. If the claimant can show good reason a sanction will not be imposed.

34214 Any requirements placed on claimants should be personalised according to their needs and circumstances taking into account any restrictions and limitations agreed on the JSAg (Claimant Commitment) on their ASE and/or availability. In circumstances where there is an agreed restriction the claimant would not have to show good reason (see DMG Chapter 21 for guidance on restrictions and limitations on ASE and availability).

34215 - 34220



## The 'reasonable' test

34221 DMs should establish facts which would probably have caused a reasonable person to act as the claimant did by establishing three key points,

1. what would it be reasonable to expect someone to do in the particular circumstances, i.e. was the action or failure to act preventable?
2. what did the claimant do or fail to do that was different to what was the expected action **and**
3. what was the claimant's reasons for their action or failure to act?

**Note 1:** A distinction must be drawn between having a good excuse and having a good reason **in law** which is not about one moment in time but about a person acting reasonably in the light of all the facts and circumstances.

**Note 2:** The criteria for considering good reason are not legislated for specifically (see DMG 34204). The DM should not just consider one factor but should consider the overall picture of the claimant's individual circumstances. The consideration is whether the reasons given for the specific failure contributed to the claimant not complying with what we are expecting them to do and whether that was reasonable in the circumstances.

34222 The general rule for taking each incidence on its own merits and considering all the facts and evidence should be applied in all cases. Consideration of all the evidence should be made on

1. the balance of probabilities (see the guidance at DMG 01343 et seq) **and**
2. whether the evidence is inherently improbable (see the guidance at DMG 01392).

**Note:** The DM should also take into account that a claimant is expected to take care in matters to do with the claiming of and receiving of benefits. Failure to take such care cannot be good reason of itself however genuine or deserving an error or mistake may appear to be. It is the reasonableness of the claimant's actions and behaviours that is being considered in light of all the facts and circumstances and whether there is any evidence of mitigating or exceptional circumstances that contributed to the claimant's actions and whether the circumstances would have caused a reasonable person to act as the claimant did. Also see examples at DMG 34876 and DMG 34903.

### Example 1

Iqbal is in receipt of JSA and has been participating in the Wp for approximately 3 months. He has been issued with an appointment letter to attend a Wp appointment on 1.4.15 at 12:30pm with his provider by way of his participation in the Wp scheme Iqbal did not attend the appointment and stated in his good reasons that the night.

before the appointment he was informed that his uncle had passed away and that the funeral was on the next day, 1.4.15 at 11:00am.

He stated that it was a bit of a shock as the uncle had not been unwell recently. As a result of the short notice of when the funeral was taking place, he had to leave home at 7am to travel to attend the funeral so he had not contacted the provider as it was too early and the office was not open.

The claimant also stated that he had not seen his uncle recently but felt obligated to attend the funeral as he came from a big family and all the family would be expected to attend. He also stated that following the funeral he would not have had enough time to get to the Wp appointment by 12.30 due to the distance to travel and he would also be expected to attend the family gathering afterwards. He also stated he had meant to phone the provider later in the day but had forgotten.

The provider confirms that Iqbal did not make any contact to advise his reasons for his non – participation.

### **Facts and evidence**

Iqbal was notified of the funeral of his uncle by family members the night before. He comes from a big family and he would be expected to attend the funeral and the family gathering afterwards. He had to leave home at 7am the next morning to be able to get to the funeral on time.

He stated he was 'shocked' by his uncle's death as he did not know he was ill but was not close to him, he had not seen him recently and was only attending the funeral due to family expectations.

Iqbal had been notified in advance of his requirement to attend his interview with his Wp provider on 1.4.15 at 12.30pm. He did not attend the appointment and so failed to participate as required.

The notice told him if he could not attend for any reason he would have to let the provider know as his benefit could be affected. Therefore he knew of the consequences if he did not participate. There are no previous failures.

### **Decision**

It was reasonable that Iqbal would want to attend his uncle's funeral and due to the short notice and the early start to travel to the funeral it is reasonable that he did not contact the provider to let them know he would not be attending his appointment on the day. Iqbal can show he had good reason for the failure.

### **Example 2**

Lily is in receipt of JSA. She has been participating in the Wp for approximately 6 months. Lily is single, lives an isolated life with no friends or family locally. She has an elderly dog as a pet.

Lily is issued with an appointment letter to attend a Wp appointment on 1.4.15 at 12:30 pm by way of participation in the Wp scheme.

Lily did not attend the appointment and in her reasons stated that her dog appeared to be unwell on the morning of the appointment. She did not telephone the vet on this occasion but decided to stay home and not attend her Wp appointment to look after the dog. She did not telephone the Wp provider because she says she forgot as she was worried and concentrating on looking after the dog.

The provider referral confirms Lily did not attend the Wp appointment on 1.4.15 and did not make any contact to provide the reasons for non-participation in the interview.

Lily has had 2 previous referrals for failing to participate in the Wp on 30.11.14 and 15.1.15. On both previous occasions her good reasons were accepted. On the first occasion her dog became ill and had to attend an emergency vet appointment and on the second occasion she was too ill to attend due to a heavy cold and stayed in bed for most of the day.

### **Decision**

Lily did not phone the provider or make other arrangements to enable her to fulfil her obligations as a single jobseeker. She has agreed responsibilities as a jobseeker and there are no agreed restrictions on her JSAG so if she is solely responsible for her sick dog during the day then she would not be available for work. Lily agrees when she 'signs on' to be available to start work immediately and therefore it is reasonable to expect her to attend Wp interviews as required as part of her participation in the scheme. On notifications sent to Lily there were clear warnings of the possible consequences of failing to participate in the WP scheme and that she should make contact as soon as possible if for any reason she cannot attend an appointment.

Therefore whilst it is reasonable to accept in her circumstances, Lily would not want to leave the sick dog to attend the Wp appointment it is not reasonable that she did not telephone the provider to let them know she would not be attending and rearrange the appointment or to make alternative arrangements in order that she could attend. There is no evidence to suggest that she could not use her phone for that purpose on this occasion. In this case Lily cannot show good reason for the failure to participate.

Whilst it is reasonable that Lily would be concerned for the welfare of her elderly dog, it is her failure to make contact with the provider that makes her failure unreasonable.

A reasonable person in the same circumstances would have, having known of the obligation to let the provider know and the affect it could have on benefit, contacted the provider and it is reasonable for the S of S to have expected Lily to do so.

### **Example 3**

Drew was required to attend an appointment to discuss progress with her provider by way of participation in the Work Programme on 10.12.16. She was adequately notified of the requirement and the consequences of non participation.

Drew says in her good reasons that she made a mistake with the date and ringed the wrong day on the calendar. This was a genuine mistake and she contacted the provider to re arrange the appointment when she realised her mistake.

A claimant has a responsibility to attend to his/her affairs with due diligence and care which equally applies to cases where the claimant makes a mistake about an appointment.

Drew therefore cannot show good reason for failing to participate in the Work Programme interview. She had a duty of care in the claiming of and receiving of benefits and it is reasonable to have expected that she should have taken care to correctly record the date and time of the relevant appointment knowing that a failure to participate could result in a sanction of her benefit.

Drew could provide no evidence to suggest there were any mitigating or exceptional circumstances that contributed to the mistake.

### **Example 4**

Ada fails to attend an interview at the Jobcentre on 27.8.15.

On 28.8.15 the work coach phones Ada who gives the reasons for her failure to attend the appointment the previous day.

Ada is very upset and distressed on the phone at having missed her appointment as she is aware it could affect her benefit. She explains that she has been particularly stressed over the last few days and she completely forgot about the appointment. She has severe financial problems as her ex husband has been failing to meet his maintenance payments. She is a single parent and has three children aged 5, 6 and 8 and not only has all her regular bills and food to buy but also new school uniforms for the new term next week. Yesterday she received a letter to say her electricity supply would be cut off due to failure to pay the bill and she had been rushing around panicking and contacting the electric supplier to make some arrangements for payment. She had a very stressful phone conversation with her ex husband regarding his non payment of the maintenance and had visited her parents to try and loan some money to help her pay the electric bill until her husband pays her the arrears of maintenance that she is due.

In her stressed state she had completely forgotten about her appointment.

The DM considers whether Ada has good reason.

On checking claim records Ada has no previous non-compliance and has always attended appointments as required.

The DM considers Ada can show good reason for the failure to comply. Her anxiety and domestic circumstances had contributed to her failure to forget about her appointment. Her first priority had been to ensure her electric supply remained connected which is reasonable in her circumstances and she had made very effort to re book and attend the appointment the following day.

Also see further guidance eq for the consideration of good reason in the event of domestic emergencies and mental health issues.

### **Example 5**

Britney is a single non householder who lives at home with her mum and her brother. She has been claiming JSA for more than 6 months and is participating in the Wp scheme.

On 5.8.15 Britney fails to take part in an interview with her Wp provider as required. The provider confirms Britney made no contact to let them know she could not attend the appointment.

A letter is sent to the claimant on 25.8.15 to invite her to provide good reason for the failure.

On 27.8.15 she phones to give her reasons for the failure to comply. She states she failed to attend the interview with the provider as her mum is going through a difficult time at present and the family is threatened with losing their home. The bailiffs are due to come on 1.9.15 to evict them and she is very worried about their future and was trying to provide support to her mum.

The DM considers whether Britney can show good reason.

On checking claim records Britney has a history of previous non-compliance and has failed to participate in interviews with the Wp provider before but no sanction had been imposed as the claimant was sick with minor ailments on both previous occasions and the DM determined she had good reason.

Records also show she attended her normal fortnightly work-search review with her work coach on 10.8.15 and 24.8.15.

On this occasion the DM decides Britney cannot show good reason for the failure to comply. Whilst it is reasonable Britney would have some natural degree of concern for her family situation, as a single non-dependent in the household there is very little she could do to change the situation. It is her Mum's responsibility as the householder to sort the domestic problem out.

Britney can provide no evidence that she had to provide any specific kind of support or assistance for the family on 5.8.15 which meant she could not meet her obligation

as a jobseeker to attend the appointment with the provider. She would have received a notification from the provider informing her she had to contact the provider if for any reason she could not attend as a failure to do so could affect her benefit, therefore, it is not unreasonable to have expected her to phone the provider to tell them she could not attend on the day and rearrange the date and time.

## Evidence

34223 The DM should seek further evidence where it is considered necessary in order to clarify reasons or seek further evidence as sufficient proof to justify good reason particularly where the claimant has a history of previous failures or one of the circumstances in DMG 34226 applies. This could involve

1. writing to or telephoning the claimant or the provider **or**
2. asking advisors to interview claimants when they next sign on **or**
3. acting on an indicator from the advisor to investigate further.

**Note:** A record of all evidence relied upon to reach a decision should be documented for evidentiary reasons in the event of reconsideration and/or appeal.

### Example

Naveed failed to attend an interview with his Wp provider and provides no good reasons. A decision is made to impose a 4 week sanction and Naveed phones to say he did not receive the appointment letter from the provider. The DM decides she requires further evidence in order to consider whether Naveed can show good reason. She checks first if the letter was sent to Naveed's normal contact address and then asks Naveed if he has ever reported a problem with receiving post at that address before or reported difficulties receiving post from any other organisations and whether the address is considered a 'safe' address for the delivery of post before determining good reason.

## Previous failures

34224 If the claimant has a record of previous failures the DM should consider those failures as evidence relevant to the credibility of the evidence presented to support the claimant's reasons for a current failure. The DM should consider how likely is it that

1. a claimant happens to have a problem coinciding with when they are required to participate with some activity that will help them into employment **and**
2. it would happen twice or more than that.

**Note:** It is for the DM to identify any patterns and trends in a claimant's behaviour when considering a claimant's reasons for a failure in consideration of all the facts of the individual case. However previous non-compliance is not always an indication that the claimant doesn't have a good reason on the occasion under consideration. It

## **Unreasonable physical or mental stress**

34309 Sometimes a particular employment would be likely to cause unreasonable stress without being likely to cause actual significant harm but the claimant perceives it will. For example, claimants may be likely to suffer unreasonable

1. physical stress if they
  - 1.1 are disabled and take employment which is physically hard **or**
  - 1.2 take employment which means they have to work at night, but they find it difficult to sleep during the day **or**
2. mental stress if they work somewhere they dread, for example an abattoir or an undertaker's **or**
3. distress because a certain type of work exacerbates experiences of anxiety or mental distress, for example a person with social anxiety or a history of agoraphobia who is expected to deal with large numbers of people.

**Note:** Often this is a very individual and personal thing and may not have been identified as a restriction with their advisor. What one person can cope with will not be the same for another person and the DM should consider each case on its individual merits and circumstances and what is reasonable in the individual's case.

34310 Where the claimant genuinely believes that a particular employment is likely to cause

1. significant harm to the claimant's health **or**
2. the claimant unreasonable physical or mental stress

the DM should take this into account when deciding whether or not the claimant has good reason (see also DMG 34236).

34311 – 34312

## **Consideration of claimant's health where claimant has left employment**

34313 The best evidence is confirmation from the claimant's doctor that

1. the work was harmful to the claimant's health **or**
2. the doctor advised the claimant to leave.

The DM should check any medical evidence to make sure that it is relevant to the claimant's capacity to do the job in question but also see DMG 34314.

34314 If medical evidence is not available, the facts may still allow the DM to decide that the claimant had good reason for leaving. The DM can accept that there is good reason, without requesting medical evidence, where

1. the work itself **or**
2. the place the claimant works in

made the medical condition worse

**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.

34315 Where a claimant

1. was suffering from pneumoconiosis on its own or with tuberculosis **and**
2. had a
  - 2.1 certificate of suspension **or**
  - 2.2 letter of advice

issued by a PMB, the DM should follow the guidance at DMG 34307 to decide whether the claimant has good reason for leaving employment.

34316 – 34320

### **Sincere religious or conscientious objection**

34321 If a claimant refuses to comply with a requirement because of any religious or conscientious objection, which the claimant sincerely holds, the DM should take this into account when deciding good reason. Claimants cannot show good reason just by saying, for example, that they conscientiously object to doing a certain employment. They must

1. show that one or more of the terms and conditions of the employment conflicts with the principles of their religion or belief **and**
2. give enough evidence to satisfy the DM that their religious or conscientious objection is sincerely held **and**
3. show that the conflict between the principles of their religion or belief are reasonably unavoidable.

**Note 1:** The degree to which the claimant's beliefs are commonly held or considered reasonable by others is immaterial. The belief held must be in respect of a weighty and substantial matter.

**Note 2:** It may well depend on the specific job involved and the capacity of the employer to organise how certain tasks are performed when considering good reason.

34322 A principled objection is not the same as a conscientious objection. The terms and conditions of the employment **must** require the claimant to act in a way which is contrary to their ethical or moral principles<sup>1</sup>.

*1 R(JSA) 7/03*

34323 The following are examples of religious or conscientious objections which may provide good reason

1. an objection to employment that involves the handling or supply of alcohol, cigarettes , tobacco or certain food products (e.g. pork)
2. a religious objection to being in employment on a particular day each week
3. an objection to employment with something which may be used to destroy life, whether human or animal
4. a religious objection to being in employment with members of the opposite sex (but also see **Note 3** and **Example 6**).

**Note 1:** This is not an exhaustive list or specific criteria that mean a claimant would have automatic good reason but examples of some of the more commonly raised religious or cultural beliefs. The DM should consider any issue raised by the claimant in consideration of good reason however the DM would have to be satisfied that all the criteria at DMG 34321 are met for it to be good reason due to a sincere religious or conscientious objection.

**Note 2:** Where a restriction or limitation on ASE or availability has been agreed on the JSAg, the claimant will not have to show good reason (also see DMG 34214). The claimant must show that they have reasonable prospects of obtaining employment with all restrictions (also see further guidance in DMG Chapter 21).

**Note 3:** Good reason would not be allowed where there is direct impermissible discrimination (i.e. unlawful discrimination based on characteristics protected by law, such as race, colour, national origin, religion, sex, age, gender identity etc)<sup>1</sup>. However, whilst a religious requirement might be indirectly discriminatory to another protected group, that is not the question at hand. The question at hand is whether an employer can accommodate the religious belief. For example, in some religions men are not allowed to work in close quarters with women or groups of women who are not members of their own family and vice versa. Whether good reason can be shown may well depend on the specific job and the capacity of the employer to organise how tasks are performed to accommodate the religious belief. The DM

should consider all the facts and circumstances and what is reasonable in the individual case and whether all the criteria at DMG 34321 are met (see **Example 6**).

*1 Equality Act 2010*

### **Example 1**

Aabish is a practising Muslim. Alcohol is forbidden in Islam and some Muslims also refuse to handle it. Aabish has good reason for not applying for an advertised vacancy in a local off-license. The job will involve handling and selling alcohol.

However, one of the major supermarket chains is also recruiting for till operators. They have a written policy to respect the wishes of any employee not to handle specific products for religious or cultural reasons and where any employees who have religious beliefs about certain products or what foods or drink they could handle, would place them on a till where alcohol is not usually served, such as clothing, or on tasks away from a till.

Aabish would not be able to show a good reason for failing to apply for a job at the supermarket based on her religious beliefs regarding alcohol.

### **Example 2**

Yuraj refuses to apply for a vacancy at a building site as he will be required to wear a hard hat at all times for his own health and safety. Yuraj is a Sikh and his beliefs require him to wear a turban which means he cannot meet the requirement to wear a hard hat. Yuraj would have good reason not to apply for the vacancy.

### **Example 3**

Billy is offered a job as a waiter in a restaurant at a casino. He states he has an objection to gambling, it is against his moral principles. Billy's opinion of gambling is irrelevant to the people gambling. His duties as a waiter in the restaurant will not require him to act in a way which is contrary to his beliefs with regard to gambling and therefore he would not be able to show good reason for refusing the job on that basis.

### **Example 4**

Akinta is referred to a MWA scheme placement for 4 weeks. At the end of the third week he asks if he can be excused the morning off his placement on Friday to attend prayers to participate in Eid. Akinta is a practicing Muslim and Eid is one of the most important religious festivals for the Islamic faith. The DM considers it would be reasonable that Akinta be allowed 'time off' his placement to attend the religious festival Eid.

### **Example 5**

Isaac is a practicing orthodox Jew. He refuses to accept a job offer as a care worker as the employer will not allow him to follow his religious observance of the Jewish Sabbath. Even though Isaac had offered to work longer hours Sunday through to Thursday, the employer states they have a duty to make sure the children in its care have proper supervision on Saturdays and they do not have the number of staff available on their payroll to allow him to have every Friday afternoon and Saturday off work. He would be required to take his turn to work Saturdays pro rata.

Isaac has an agreed limitation on his JSAg to restrict his job search to meet his religious observance and has demonstrated that even within the restraints of his religion he has reasonable prospects of securing employment.

Isaac does not have to show good reason for the failure to accept the job.

### **Example 6**

Nazir is a machine operator and has worked in a small factory for 5 years on a bench by himself away from other operators.

Due to a reorganisation of the factory floor and how tasks are to be performed Nazir is told he will have to go work as part of a team comprised of women co-workers.

Nazir explains to his employer that his religion forbids him from working in close quarters with women who are not his own family and requests that he be allowed to continue to work by himself or in a male only group.

The employer says they cannot accommodate Nazir's request as they do not have enough male operators to make up a team, the new processes are to cut costs and it is no longer possible to provide him with space separately on his own. The policy is to make all the operators multi skilled and flexible rather than to concentrate on being skilled in just one part of the process.

Nazir leaves the job.

When considering whether Nazir has good reason for leaving the employment the DM considers that in his circumstances it is a reasonably held and bone fide religious belief and as the employer cannot accommodate Nazir's religious beliefs to ensure he has no direct interaction with women he has good reason.

Whilst the religious requirement may be discrimination to women that is not the question. The question is whether the employer can accommodate Nazir's religious belief as the rule requiring him to work directly with women indirectly discriminates on the basis of Nazir's religion.

34324 - 34325

## **Other terms and conditions which affect a claimant's personal freedom and beliefs**

34326 Claimants will have good reason for leaving paid work if the employer ordered them to do something that conflicted with their sincerely held religious or conscientious principles (see DMG 34321).

### **Example**

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. However see the guidance at DMG 34436 et seq, Sophia should have raised the issue through the normal grievance procedures before leaving her job but full consideration should be given to all the facts and evidence in the individual circumstances.

34327 DMG 34326 may also apply where claimants left employment because they

1. objected to medical examinations or injections **or**
2. were genuinely afraid that the examinations or injections would cause them harm.

34328 But if the

1. requirement to have a medical examination or injection was reasonable **and**
  2. claimant's reasons for refusing were only dislike or some irrational excuse
- then the claimant does not have good reason<sup>1</sup>.

**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.

*1 R(U) 16/52*

34329 - 34330

## **Caring responsibilities**

34331 If a claimant is the responsible carer of a child aged 5 – 13 they have good reason

1. not to accept a job that is not compatible with the child's normal school hours, including the time it takes the child to travel to and from school
2. for leaving employment because working hours are incompatible with caring responsibilities

**Note:** Advisers should have identified any reasonable constraints when setting activities in the JSAG (see DMG Chapter 21).

# 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-level<sup>1</sup>.

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

## MWA scheme

34762 The Mandatory Work Activity (MWA) scheme<sup>1</sup> 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 legislation<sup>1</sup>, 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 employment<sup>2</sup>.

**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 low-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 age<sup>1</sup> **and**
2. required to meet the jobseeking conditions<sup>2</sup>

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 JSA<sup>3</sup>.

*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 notice<sup>1</sup> which must specify

1. that the claimant is required to participate in the scheme<sup>2</sup>
2. the day on which the participation will start<sup>3</sup>
3. that the participation is for four weeks<sup>4</sup>
4. the details of what is required by way of participation<sup>5</sup>
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 earlier<sup>6</sup>
6. the consequences of failing to participate in the MWA scheme<sup>7</sup>.

*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 writing<sup>1</sup>. This can be done by the provider<sup>2</sup> (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 posting<sup>1</sup>.

**Note:** Working day means any day except for a Saturday, Sunday, Christmas Day, Good Friday or bank holiday prescribed under relevant legislation<sup>2</sup> in England, Wales or Scotland.

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

34768 The requirement to notify<sup>1</sup> 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**

# Failure to participate in an interview

## Introduction

34831 DMG Chapter 20 gives guidance on the way in which the claimant, including each member of a joint-claim couple, have to participate in an interview. Legislation<sup>1</sup> amended the requirement from 22.10.12 to allow the claimant (or in the case of a joint-claim couple, each member of the couple) to participate in an interview without having to attend at the Jobcentre in person.

*1 JS Act 95, s 8(1)(a) & (1A)(a); JSA Regs, regs 23 & 23A*

34832 It is a failure to participate in an interview in such a manner, time and place as specified in a relevant notification that provides the reason to sanction and not a failure to attend<sup>1</sup> (also see DMG 34833).

*1 JS Act 95, s 19A(2)(a)*

## Meaning of participation

34833 Attendance is just one way a claimant can take part in an interview. Participation includes all ways of taking part in an interview whether by

1. actual attendance
2. telephone **or**
3. electronic means (e.g. e mail) **and**
4. answering questions and completing relevant forms.

It is the advisor who will specify the manner of participation.

**Note:** The claimant can still be required to attend interviews at the time and place as specified. That requirement is not changed in any way. However, the requirement has changed to a requirement that claimant's participate. Requiring claimants to 'participate' has two implications. It permits other ways of taking part in an interview in addition to attending the office. It also means that it is no longer enough for the claimant to simply join in the interview, by turning up on time at the right place, they now have to 'participate' in the interview by answering questions and completing forms which are an integral part of the interview (see DMG Chapter 20 for full guidance on participation). A failure to take part in an arranged telephone interview could not be regarded as 'attending' and so the reason for sanction is changed to a 'failure to participate' to encompass all types of interview and not just attending at the office.

## Example

Malik claims JSA and his regular fortnightly signing day is Tuesday. He lives in a remote area with a poor bus service to the local office and requests that he conducts

his job search reviews by telephone. The advisor instructs Malik that he is to be available to participate in his interview by phone on 17.9.13 at 11am. If he fails to answer the phone at 11am on 17.9.13 without good reason the DM can consider a sanction.

## **Failure to participate – sanction applicable**

34834 From 22.10.12 where

1. the claimant (or in the case of a joint-claim couple, either member of the couple)
  - 1.1 fails to participate on the day specified in a relevant notification **and**
  - 1.2 makes contact with the Emp O in the manner set out in the notification before the end of 5 working days, those 5 days beginning with the first working day after the day they failed to participate **and**
  - 1.3 fails to show good reason for that failure **or**
2. the claimant (or in the case of a joint-claim couple, either member of the couple)
  - 2.1 participates on the day and at the place specified in a relevant notification but fails to participate at the correct time **and**
  - 2.2 has been informed by the Emp O in writing that if they do not participate at the right time the next time they are required to participate then this may result in entitlement to JSA ceasing or a reduction being made to the award **and**
  - 2.3 fails to participate at the right time on the next occasion **and**
  - 2.4 makes contact with the Emp O in the manner set out in the notification before the end of 5 working days, those 5 days beginning with the first working day after the day on which they fail to participate at the correct time **and**
  - 2.5 fails to show good reason for that failure

a sanction may be imposed to the amount of benefit payable<sup>1</sup>.

**Note 1:** From 22.10.12 non - participation in the interview leads to disentitlement in all cases except where the claimant makes contact within 5 days in which case the DM considers a sanction<sup>2</sup>. See DMG Chapter 20 for further guidance.

**Note 2:** For guidance on notification see DMG 20911 et seq. For guidance on good reason see DMG 34200 et seq. For the meaning of Emp O see DMG 34015. For guidance on the length of a low-level sanction and when it should begin see DMG 34161 et seq.

## Relevant notification

34835 The meaning of “relevant notification” in DMG 34834 is a notification to the claimant of when, where and how they are to participate in an interview<sup>1</sup> but which is not a notification to participate in an employment programme, training scheme, the MWA scheme or any other prescribed scheme.

**Note:** Please note the provision at DMG 34834 **2.4** which allows a claimant five working days to contact JCP only applies where a claimant fails to participate in an interview at JCP and does not apply to a failure to participate in a prescribed scheme, the MWA scheme or failures in relation to employment or training schemes or job seeker’s directions.

*1 JSA Regs, reg 70A(5); reg 23 & 23A; reg 25(1A)*

34836 The period and amount of the reduction applicable for a failure to participate in an interview will be the low-level sanction<sup>1</sup> (see DMG 34161 et seq).

*1 JS Act 95, s 19A(2)(a)*

34837 - 34840

## Failure to participate – no sanction

34841 Where a claimant (or in the case of a joint-claim couple, either member of the couple)

1. fails to participate as in DMG 34834 **and**
2. makes contact with the Emp O within 5 days **and**
3. shows good reason for that failure

no reduction is applied to the amount of benefit payable<sup>1</sup>.

**Note:** For guidance on good reason see DMG 34200 et seq.

*1 JSA Regs, reg 70A(2)(b)*

## Failure to participate – entitlement ends

34842 Where a claimant (or in the case of a joint-claim couple, each member of the couple) fails to

1. participate in an interview as specified in a relevant notification **and**
2. make contact with the Emp O within the prescribed period,
3. the guidance at DMG 20919 and DMG 20956 applies<sup>1</sup>.

*1 JS Act 95, s 8(2); JSA Regs, reg 25*

34843 For guidance on the provision of information and evidence see DMG Chapter 20.

34844 – 34845



# Schemes for assisting claimants to obtain employment

## Introduction

34846 It is a failure without good reason to comply with regulations under relevant legislation<sup>1</sup> that allows a claimant's JSA to be sanctioned<sup>2</sup>. Failures for schemes as described in relevant legislation<sup>3</sup> are sanctionable at the low-level. For guidance on the length of a low-level sanction and when it should begin see DMG 34161 et seq.

**Note:** The MWA scheme is not a prescribed scheme for low-level sanctions purposes, see DMG 34762 et seq for guidance on the MWA scheme.

*1 JS Act 95, s 17A; 2 s 19A(2)(b); 3 JSA (SAPOE) Regs*

34847 The following schemes are prescribed as schemes in which claimants are required to participate under relevant legislation<sup>1</sup>

1. Day One Support for Young People
2. The Derbyshire Mandatory Youth Activity Programme
3. Full-time Training Flexibility
4. New Enterprise Allowance
5. The sector-based work academy
6. Skills Conditionality
7. The Work Programme
8. Community Work Placements

**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:** Unless the exemptions at DMG 34893 – 34895 apply, claimants are required to continue to comply with the jobseeking conditions (i.e. JSAg, ASE and availability) whilst participating in a relevant prescribed scheme (see DMG Chapter 21 for guidance on jobseeking conditions).

**Note 3:** A claimant cannot be mandated to participate in any scheme or notified activity on a day when there is no award of JSA.

*1 JS Act 95, s 17A(1); JSA (SAPOE) Regs, reg 3(1)*

## Day one Support for Young People

34848 The Day One Support for Young People is a scheme comprising up to

1. 30 hours per week in a work placement for the benefit of the community **and**
2. 10 hours per week of supported work search

over a period of 13 weeks for any claimant between 18 and 24 years who has less than 6 months work history since leaving full-time education<sup>1</sup>.

**Note:** Work history includes employment, voluntary work, internships and work experience<sup>2</sup>.

*1 JSA (SAPOE) Regs, reg 3(2); 2 reg 3(9)*

## Derbyshire Mandatory Youth Activity Programme

34849 The Derbyshire Mandatory Youth Activity Programme is a scheme comprising up to

1. 30 hours per week in a work-related activity for the benefit of the community **and**
2. 6 hours per week of supported work search

over a period of 8 weeks for any claimant aged between 18 and 34 years<sup>1</sup>.

**Note:** This scheme is running as a trailblazer in the Derbyshire JCP District and is targeted at young people on JSA providing work based experience and basic work habits, i.e. turning up on time or working as a team. The scheme will run until 2014 and identify if this support increases the likelihood of young JSA claimants being in employment.

*1 JSA (SAPOE) Regs, reg 3(3)*

## Full-time Training Flexibility

34850 Full-time Training Flexibility is a scheme comprising training of 16 to 30 hours per week for any claimant who has been receiving JSA for a continuous period of not less than 26 weeks ending on the first required entry date to the scheme<sup>1</sup>.

**Note:** These schemes are used to support longer-term JSA claimants who need to develop numeracy, literacy or general employability skills through full-time training.

*1 JSA (SAPOE) Regs, reg 3(4)*

## New Enterprise Allowance

34851 NEA is a scheme designed to assist a claimant into S/E earner's employment comprising

1. guidance and support provided by a business mentor
2. access to a loan to help with start up costs (subject to status) **and**
3. a weekly allowance for a period of 26 weeks once the claimant starts trading<sup>1</sup>

**Note 1:** S/E earner has the same meaning as in relevant legislation<sup>2</sup>.

**Note 2:** Once a claimant has stopped claiming JSA, has started trading and is

claiming the NEA weekly allowance, they are deemed to be no longer participating in the scheme.

*1 JSA (SAPOE) Regs, reg 3(5); 2 reg 3(9) & SS CB Act 92*

## The sector-based work academy

34852 The sbwa is a scheme which provides for

1. a period of up to 6 weeks training to enable a claimant to gain the skills needed in the work place **and**
2. a work experience placement for a period to be agreed with the claimant **and**
3. either a job interview with an employer or support to help participants through an employer's application process<sup>1</sup>.

**Note 1:** The academies are designed to support JSA claimants aged 18 years or over who are relatively job ready. The training and work experience is tailored to employers' needs to help fill vacancies more efficiently whilst supporting participants into sustained employment.

**Note 2:** Participation in the sbwa is voluntary, but once a claimant has agreed to participate in the scheme, they are then mandated to attend the training element and guaranteed job interview (also see Note 3). The work experience element of sbwa is not mandatory. The only reason a claimant could be sanctioned for a failure to take part in the work experience element of the scheme is if the claimant lost the place due to gross misconduct (see further guidance at DMG 34921).

**Note 3:** As the guaranteed job interview forms part of what is required by way of participation in the swba employment programme, failure to comply with the requirement to attend that interview without good reason is a failure to participate in the sbwa scheme<sup>2</sup> and not a refusal or failure to take part in a job interview and as such a low-level sanction would apply. If the sbwa provider offers employment following the guaranteed job interview but the claimant refuses, the DM should consider whether the claimant was correctly notified of the vacancy by an Emp O and consider a higher-level sanction<sup>3</sup> (see DMG 34723).

**Note 4:** If a claimant fails or refuses to take an apprenticeship which was offered to them at the end of the sbwa scheme. DMs should check whether the apprenticeship vacancy falls into the criteria at DMG 34708 and apply the relevant guidance

*1 JSA (SAPOE) Regs, reg 3(6); 2 JS Act 95 s 19A (2)(b); 3 s 19(2)(c )*

## Skills Conditionality

34853 Sc is a scheme comprising training or other activity designed to assist a claimant to obtain skills needed to obtain employment<sup>1</sup>.

**Note 1:** Sc embraces all types of training. Claimants are referred on a mandatory basis to undertake activity to address an identified skills search.

**Note 2:** National Careers Service do not have contracted out authority and cannot mandate claimants to participate in any activity as part of their participation in the Sc scheme. JCP have to issue the notifications to meet the requirements in the regulations<sup>1</sup>.

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

## The Work Programme

34854 The Wp is a scheme designed to assist a claimant at risk of becoming long-term unemployed in which, for a period of up to 2 years, the claimant is

1. given such support as the provider of the Wp considers appropriate and reasonable in the claimant's circumstances **and**
2. subject to minimum levels of support published by the provider to assist the claimant to obtain and sustain employment which may include work search support, provision of skills training and work placements for the benefit of the community<sup>1</sup>.

**Note 1:** The Wp is designed to assist a claimant at risk of becoming long-term unemployed to move into and stay in work. The scheme is delivered by contracted private, public and voluntary and community sector providers.

**Note 2:** The work placement element of the Wp is for placements of community benefit and a failure to participate in the placement without good reason is sanctionable at the low-level.

**Note 3:** The Wp can include work experience. This is not mandatory. The only reason a claimant could be sanctioned for a failure to take part in the work experience element of the scheme is if the claimant lost the place due to gross misconduct (see further guidance at DMG 34921).

**Note 4:** From 27.10.14<sup>2</sup> 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 vacant (see DMG 34879 et seq).

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

## Community Work Placements

34855 CwP is a scheme lasting up to 30 weeks, designed to assist a claimant who requires further support in order to obtain and sustain employment, in which participants undertake work placements for the benefit of the community and work-related activity<sup>1</sup>.

**Note 1:** This is primarily aimed at claimants returning from the Wp who require additional support to find employment. CwP is an external provision to support claimants whose key barriers to employment are lack of work history and/or lack of

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 low-level.

**Note 3:** From 27.10.14<sup>2</sup> 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 vacant<sup>2</sup> (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 Traineeships<sup>1</sup> 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 legislation<sup>2</sup>.

*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 plan<sup>1</sup>. The age criteria are that on the first day of the course the claimant must be

1. aged between 16 and 23 years<sup>2</sup> **or**
2. 16 and 24 years and subject to
  - 2.1 an EHC plan **or**
  - 2.2 a Learning Difficulty Assessment<sup>3</sup>.

**Note:** A Learning Difficulty Assessment<sup>3</sup> has the same meaning as in relevant legislation<sup>4</sup>. An EHC plan means an educational, health and care plan maintained under relevant legislation<sup>4</sup>.

*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 legislation<sup>1</sup>.

**Note:** The meaning of claimant means a person who claims a JSA<sup>2</sup>.

*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 notice<sup>1</sup> which specifies

1. that the claimant is required to participate in the scheme<sup>2</sup>
2. the day on which the claimant's participation will start<sup>3</sup>
3. the details of what the claimant is required to do by way of participation<sup>4</sup>
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 earlier<sup>5</sup>
5. information about the consequences of failing to participate in the relevant scheme<sup>6</sup>.

**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 writing<sup>7</sup>.

**Note 2:** Where the written notice is given by post it is taken to have been received on the second working day after posting<sup>8</sup>.

*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 State<sup>1</sup> to providers including the

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

## Sanctions and good reason

34876 Once the DM is satisfied that claimants have

1. been correctly notified of a requirement to participate in one of the schemes listed in DMG 34847 **and**
2. committed a sanctionable failure **and**
3. no good reason for that failure

a relevant sanction can be imposed.

**Note:** For detailed guidance on low-level sanctions see DMG 34161 et seq. For guidance on good reason see DMG 34200 et seq.

### Example

Bob is participating in the CwP scheme. He is single and in receipt of JSA. He was issued with a notification to attend a CwP placement starting on Monday 13.4.15 at 09:00am.

The sanction referral from the provider states that Bob attended on 13.4.15 at the correct time. He was requested to complete some basic gardening duties and all appropriate tools were provided. The placement host stated that Bob appeared very unhappy at being asked to do this type of work and informed them that this was not the kind of work he was looking for. The host stated he was very bad tempered and became abusive and left.

When contacted for his reasons for the failure to participate, Bob stated he turned up to the CwP on time. Although his notification from the provider did not specifically state what kind of work he would be expected to carry out, he was under the impression it would involve some local driving or delivery duties. However, when the host explained what he was going to be expected to do, he stated that this was incorrect and not the kind of work he had been lead to believe he would be doing. He stated he was not abusive and on the contrary the CwP placement host was very abrupt telling him that this was the kind of work they had available and that is the work he would be doing so he should just get on and do it or leave. He stated at that point he left quietly due to being upset of how he had been spoken to.

**History** - there is no evidence held in Departmental records that Bob has ever previously been referred for failing to participate in any mandatory activity. He has previously completed 104 weeks participating in the Wp. All relevant mandatory notifications are recorded as being issued.

### **Did the claimant fail to participate?**

Bob failed to participate as he left the placement early. He was not happy doing the activities he was asked to do by the placement host as part of his participation in the CwP scheme.

### **Has he demonstrated good reason for the failure?**

Bob was issued with the relevant notifications for participation in the CwP scheme therefore he was fully aware

- of what being mandated to the CwP would entail and what types of activities he may be required to do,
- that he was required to participate until told otherwise
- of the consequences should he fail to take part in any of the activities the CwP provider or placement host asked him to do as part of his participation in the scheme **and**
- of the complaints procedures to follow if he was not happy.

The DM considers it was not reasonable that Bob thought he would get a driving/delivery placement.

The notification of referral to the scheme contains the following information:

*“Your work placement(s) will be of benefit to the community, but the type of placement won’t be decided until you have met with your provider and discussed what is appropriate for you.*

*It may consist of a single or multiple placements. You could be placed in a variety of roles within the voluntary and community sector, such as cleaning public spaces, recycling services, or supporting local charities. The particular placement will vary from person to person, and will depend on your own individual needs and local placement opportunities.*

*Your provider will assess your needs, and arrange your work placement and jobsearch. Your provider will explain to you when and where these will take place. They will also tell you what kind of things you will need to do on your work placement.”*

The notification does not refer to a specific activity and the claimant could have been under no mistaken belief that he would be given a driving/delivery placement. On the balance of probabilities, therefore, it is inherently improbable that the advisor, the provider or the placement host would have led him to believe he could have a certain type of placement even though driving may have been mentioned as one of the types of activities he may be asked to do.

Moreover the CwP notification clearly sets out the following:

***“What if you are not happy?”***

*Whether you are dealing with the Jobcentre or with one of our providers, you should expect to be treated fairly. Your provider must explain the minimum standards of service you can expect from them.*

*If you're not happy with our service or that of the provider, you can make a complaint. Making a complaint will not affect your Jobseeker's Allowance. If you wish to complain about the service of the provider, please get in touch with them first. They will explain their complaints procedures to you at your first meeting”.*

Therefore there was a complaints procedure that was clearly set out for the claimant that he should have followed if he was not happy on the placement.

The DM considers a reasonable person in the same circumstances would have followed the complaints procedure before leaving the placement.

Therefore Bob failed to participate in the CwP scheme and could not show a good reason for the failure and a sanction would be appropriate.

### **Circumstances where requirement to participate is suspended or ceases to apply**

34877 A requirement to participate in a relevant scheme is suspended<sup>1</sup> where the claimant is not required to meet the jobseeking conditions<sup>2</sup>.

**Note:** For guidance on jobseeking conditions (availability, ASE and having a JSAg) see DMG Chapter 21.

*1 JSA (SAPOE) Regs, reg 6(1); 2 JS Act 95, s 17A(4) & (10)*

34878 A requirement to participate in a relevant 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 earlier<sup>1</sup>.

**Note 1:** If DMG 34876 1. applies the requirement ceases to apply on the date specified in the notice<sup>2</sup>.

**Note 2:** If the award of JSA ends and then the claimant returns to JSA, the claimant has to be re-notified of all the requirements of participation in a relevant scheme as per DMG 34867 for the new claim. Any notifications issued on the previous claim **cannot** apply to any failures to comply that occur in the new award.

This is regardless of whether the claimant is referred to the same provider from the previous claim and regardless of how short the break in the claim.

*1 JSA (SAPOE) Regs, reg 6(2); 2 reg 6(3)*

## Designation of Employment Officers

### Changes

34879 From 27.10.14<sup>1</sup> employees of specified organisations (see Appendices 3 and 4) are designated as Emp Os for the purposes of requiring claimants

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

a situation in any employment which an Emp O has informed them is vacant or about to become vacant<sup>2</sup>.

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

*1 Wp (Emp O) Des O 14, art 1;  
CwP (Emp O) Des O 14, art; 2 JS Act 95, s 19(2)(c)*

### Approved Sub-contractor

34880 Approved Sub-contractor means, in relation to any Prime Contractor, an organisation engaged by the Prime Contractor to perform its obligations under a relevant contract and which is approved by the Secretary of State, whether at the date of the order or from time to time, pursuant to that contract<sup>1</sup>.

**Note:** This refers only to sub-contractors who are contracted to provide specific services or facilities for the provision of the Wp and CwP scheme (also see definition of relevant contract at DMG 34882).

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

### Prime Contractor

34881 Prime Contractor means an organisation specified in the Schedule (see Appendices 3 and 4) and appointed by the Secretary of State to provide services or facilities for the provision of the Wp<sup>1</sup> and CwP scheme.

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

### Relevant contract

34882 Relevant contract means<sup>1</sup>, in relation to any Prime Contractor, a call-off contract made between the Secretary of State and the Prime Contractor for the provision of services or facilities for the Wp and CwP scheme.

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

# Refusal or failure to carry out a jobseeker's direction (JSD)

## Introduction

34901 A sanction can only be imposed on a claimant's JSA where a claimant refuses or fails without good reason to carry out a JSD which was reasonable having regard to the claimant's individual circumstances<sup>1</sup>.

**Note 1:** A JSD can be issued during the period of waiting days but it should only mandate any action or activity for a date after waiting days have been served. A sanction could not be imposed for an action or activity not carried out during a period of waiting days as there is no entitlement to JSA. For full guidance on waiting days see DMG Chapter 20.

**Note 2:** See DMG 34200 et seq for full guidance on good reason. For guidance on the length of a low-level sanction and when it should begin see DMG 34161 et seq.

<sup>1</sup> JS Act 95, s 19A(2)(c)

34902 The DM has to consider if the

1. direction is reasonable giving full consideration to all the claimant's individual circumstances including any restrictions or limitations agreed on their JSAg (Claimant Commitment) (also see DMG 34903 and 34904) **and**
2. direction meets the criteria at DMG 34905, i.e. it
  - 2.1 assists the claimant to find employment **and/or**
  - 2.2 improves the claimant's prospects of being employed **and**
3. claimant can show good reason for the failure or refusal to comply (also see DMG 34911 and DMG 34200 et seq for further guidance on good reason).  
Reasonable in the claimant's circumstances

34903 A JSD has to be reasonable and appropriate for the claimant in their circumstances.

### Example

Fraser lives in a remote village and conducts his work search review with his advisor fortnightly by public telephone using a free phone number. He does not have a mobile phone and so uses the post office telephone in the village to make contact with his advisor as arranged.

Fraser has shown an interest in working in the care sector and his advisor wants to set up an interview to discuss Fraser attending a Jobs Fair to gain knowledge of roles available and the skills/qualifications required before his next regular scheduled phone interview.

A direction requiring him to use the public telephone at a specific time would not be reasonable as the phone could be in use. A reasonable JSD would be to direct Fraser to use a public telephone within a specific time band, for example on Tuesday 10.1.17 between the hours of 9am and 1pm, to contact his advisor to discuss the feasibility of him being able to attend the Jobs Fair.

## Restrictions

34904 Any restrictions or limitations the claimant has agreed on their availability for work must be considered as well as whether they will benefit from completing a particular action.

### Example

Maureen is a lone parent and has restricted availability due to caring responsibilities. She has children of school age and therefore cannot attend any courses that are outside school hours.

The advisor identifies Maureen would benefit from attending an interviewing skills course but the only one currently available with a vacancy is in the evening and Maureen says it would be difficult and costly for her to arrange child care to attend.

It would not be reasonable to direct Maureen to attend the course.

The advisor puts Maureen's name down on a waiting list for a course that is during school hours.

## Meaning of Jobseeker's direction

34905 A JSD is defined as a direction given by an Emp O, in such a manner as is seen fit, with a view to achieving one or both of the following

1. assisting the claimant to find employment
2. improving the claimant's prospects of being employed<sup>1</sup>.

**Note 1:** This provision means a direction has a fairly wide but not open ended meaning. The formulation must therefore require that the direction can objectively be found to have such a purpose as in **1.** and **2.** not merely that the Emp O subjectively believes it has. So there has to be a clearly identified tangible benefit to the individual claimant in terms of improving their employment prospects with whatever is directed (also see DMG 34904). The requirement that the direction has to be reasonable in the claimants circumstances provides a further limit (see DMG 34902).

**Note 2:** See DMG 34015 for the meaning of Emp O.

*1 JS Act 95, s 19A(11)(a)*

34906 A JSD can be given to the claimant in whatever manner the Emp O sees fit. For example

1. verbally
2. in writing
3. by email
4. by telephone
5. by other electronic means (e.g. text message).

**Note:** There is no requirement for a direction to be in writing or any other permanent form. However, a record **must** be made of the issue and details of the JSD (either written or computer records) as acceptable proof of the existence and terms of the direction if required (for example; if the claimant appeals a sanction determination following a failure to comply with the direction).

34907 A JSD **must** be

1. linked to an action to improve the claimant's chances of finding work (for example, a JSD can ask a claimant to produce a current CV but it cannot dictate how the claimant presents the evidence)
2. personalised and appropriate for that individual claimant (see DMG 349903 and 34904)
3. related to labour market activities
4. a one-off specific activity, which the claimant can reasonably be expected to perform
5. time bound and reviewed by the Personal Adviser or Assistant Adviser within 2 to 4 weeks
6. give full information about the activity (for example, details of: the full name and address (including post code) of the employer, agency or course referred to)
7. inform the claimant exactly what the claimant must do (for example, send a CV to a specific employer, or a range of employers in a particular trade)
8. give the date by which it must be done **and**
9. explain what will happen if they do not comply.

34908 The issue of a JSD **must** be tailored to each individual claimant's requirements and **must not** be used as a means of filling places in a particular opportunity in any circumstances.

### **Example**

Paul comes in for his fortnightly job review and during the past 2 weeks he has had another 3 job interviews but been unsuccessful and this appears to be a regular pattern, he seems to get to the interview stage but not get the job. There is a JCP course on 'Interviewing techniques' that the advisor considers will benefit Paul and a JSD is issued to mandate him to attend. This is a reasonable request in Paul's specific case.

Karen however is failing to get to the interview stage, she is meeting all her job search activity and applying for plenty of jobs but not getting an interview. The advisor identifies that the problem may be that Karen's job search skills need improving. It would be reasonable and appropriate to mandate Karen to an activity to help her improve her job search skills, e.g. that provides some support in how to complete job applications, but unreasonable at this stage to send her to the 'Interviewing techniques' course with her friend Paul even though there are available places on the course.

Each individual claimant referred to the specific course/activity has to have been selected because the activity itself is reasonable and relevant to that particular claimant in his/her individual circumstances and that it will help that specific individual in their search for employment.

- 34909 If an Emp O gives or sends a letter to a claimant asking them to attend at a Jobcentre Plus office or other place without explaining why, or just tells them to telephone but does not tell them why, this will not be a JSD. The JSD should explain why the jobseeker is being directed to attend a particular place or take a specific action and how this will improve their prospects of employment and the consequences (i.e. sanctions) if the claimant does not comply.

### **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 low-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.

34910 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 or other identified need
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 34912)

**10.** create a profile and public CV in UJ (see DMG 34917).

**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 JCP access to their UJ account (see DMG 34919).

**Note 5:** A JSD should **not** normally be used to mandate a claimant to attend a Group Information Session (but see further guidance at DMG 34913).

**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).

## Considering good reason

34911 There will inevitably be some overlap between the requirement that the direction be 'reasonable having regard to the claimant's circumstances' and the consideration of 'good reason' so that the same factors might be argued as rendering the direction as 'unreasonable' or as constituting 'good reason' for the refusal or failure to comply (also see DMG 34903).

### Example

Karina has hearing problems and wears a hearing aid in one ear. At her normal fortnightly work search review on 3.1.17, her advisor identifies a need for Karina to update and improve her CV and directs Karina to attend and complete a 1 hour CV writing course at the Jobcentre on 10.1.17 at 11.15am.

She is given a letter (JSD) to confirm the direction.

Karina turns up at the course on 10.1.17 at 11.25 am and is told she is too late to take part in the course and therefore is deemed to have missed her appointment. She contacts her advisor immediately to rebook another appointment for the course. She says that at her meeting on 3.1.17 she had miss-heard the time of the appointment as 11.50 am, the time that she normally signs on, as she was not wearing her hearing aid on that day and had not thought to check the time of the appointment on the letter as she genuinely thought it was the same time as her previous appointments at the Jobcentre.

**Is the direction reasonable and will it improve the claimant's employment prospects?**

The DM considers firstly whether the direction was reasonable and appropriate in the circumstances. It is identified on her action plan that Karina's CV is out of date and could be improved.

As Karina would leave the course with an improved and updated CV then the DM is satisfied that the direction is reasonable as it meets the identified need to improve her CV.

An improved CV will assist her to find employment.

**Has there been a failure to comply with the direction?**

Secondly the DM must consider if Karina has failed to comply with the direction. Taking into account that the claimant made a genuine error regarding the time the course started due to her hearing difficulties and that she took immediate steps to rebook the course it would be disproportionate to treat the late arrival in isolation as amounting to a failure to comply with the direction. However there was nothing unreasonable about the conclusion that arriving 10 minutes late for a course that only lasted an hour amounted to a failure to comply with the direction to attend at 11.15 no matter how genuine the error was that led to the late arrival. The DM therefore considers there was a failure to comply.

**Was there good reason for the failure to comply?**

The DM then goes on to consider whether the reasons for failing to comply with the direction amount to good reason (also see DMG 34222). Karina does have a hearing problem and genuinely thought the start time of the course was 11.50 am.

However the DM considers that Karina should have shown due care and checked the notification given to her which confirmed the correct time, place and date of the course especially as she knows she is hard of hearing and had forgotten her hearing aid on the day she attended the Jobcentre. It is reasonable to have expected her to check and make a correct note of the date and time of the course in advance.

The DM determines Karina has no good reason for the failure and imposes a sanction. (See DMG 34200 et seq for further guidance on good reason).

## Back to Work sessions

34912 Back to Work Session means<sup>1</sup> 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 **and**
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, e.g. they will find out about actual vacancies or meet prospective employers who are recruiting to find out about the skills and qualifications required, 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 34913) they do not.

*1 JSA Regs, reg 1(3)*

## Group Information Sessions

34913 Generally a claimant cannot be mandated to attend a Group Information Session. These sessions can range from informing new claimants of the conditionality requirements and expectations of them during their claim, to details about how to go about finding suitable vacancies or training opportunities, to more specific information about a particular type of employment. However in order to issue a JSD 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 (see DMG 34905).

34914 For example, if it is identified that a particular claimant needs a CV or a better CV, the Secretary of State 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. Therefore if the session on CV writing means the claimant will leave with an improved CV, that would be tangible evidence that could improve the claimant's prospects of employment (see example at DMG 34911). However if the session also 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. So as long as the claimant attends the CV writing element of the Group Information Session they could not be sanctioned for not attending the rest of the session.

### **Example**

Pontus has been unemployed for 4 years. His advisor has identified he would benefit from some training on how to complete a good job application. He has shown an interest in working in the retail sector.

Pontus is given a direction to attend a Group Information Session as it includes a session on how to complete good job applications and what the employer looks for in a good applicant for a job by a representative from a local major supermarket.

Pontus attends the session but in the general session regarding the sanctions regime he was asked to leave because he was disruptive by asking questions and heckling.

As Pontus attended and fully participated in the session on job applications a sanction cannot be applied for his failure to participate (misconduct) during the remainder of the session.

Whilst his behaviour was unacceptable and inappropriate and he was rightly asked to leave, participation in that part of the session was not mandatory and would not meet the criteria for a JSD and therefore he could not be sanctioned.

- 34915 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**

- 34916 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 mandate 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.

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

34917 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 34918 – 34925 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.

34918 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 34923) **and**

3. none of the exceptions at DMG 34922 apply **and**
4. a cookies fact sheet has been issued (see DMG 34925).

**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 34919).

### **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**

- 34919 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**

- 34920 A record of  
all advice **and**

1. issue of the cookies fact sheet **and**
2. whether the claimant agrees for DWP to access the UJ account **and**
3. 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.

34921 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

34922 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

34923 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.

34924 If one or more of the circumstances in DMG 34922 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

34925 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.

## 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 low-level only the higher-level sanction will apply<sup>1</sup>, 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

# Training schemes and employment programmes

## Introduction

34941 JSA is not payable if claimants

1. lose a place on a training scheme or employment programme through misconduct<sup>1</sup> **or**
2. without good reason
  - 2.1 neglected to avail themselves of a reasonable opportunity of a place on a training scheme or employment programme<sup>2</sup>
  - 2.2 refuses or fails to apply for or accept if offered a place on a training scheme or employment programme which an Emp O has notified is vacant or about to become vacant<sup>3</sup>
  - 2.3 gives up or fails to attend a place on a training scheme or employment programme having been given a place on it<sup>4</sup>.

However see DMG 34951 if the training or employment opportunity includes work experience.

**Note 1:** For the meaning of training scheme see DMG 34164. For the meaning of employment programme see DMG 34163. For the meaning of Emp O see DMG 34015. For guidance on good reason see DMG 34200 et seq.

**Note 2:** For guidance on the length of a low-level sanction and when it should begin see DMG 34161 et seq.

*1 JS Act 95, s 19A(2)(g); 2 s 19A(2)(d); 3 s 19A(2)(e); 4 s 19A(2)(f)*

34942 Unless the employment or training opportunity is Work experience, in which case follow the guidance in DMG 34951, for the purposes of considering

1. losing a place on an employment programme or training scheme through misconduct the guidance in DMG 34531 et seq should be followed where relevant **or**
2. a refusal of a training scheme or employment programme the guidance in DMG 34721 et seq should be followed **or**
3. giving up or failing to attend a training scheme or employment programme the guidance in DMG 34651 et seq should be followed **or**
4. whether a claimant neglected to avail a reasonable opportunity of a place on a training scheme or employment programme the guidance in DMG 34751 et seq should be followed substituting references to 'the employer' as references to 'the training provider' or 'employment programme provider'.

## **Work experience**

34951 Work experience is not defined in legislation since October 2012. For any work experience opportunity a sanction may only be imposed where the claimant loses a place or is dismissed from the work experience due to gross misconduct (see DMG 34961 for guidance on Gross misconduct). Participation in work experience is voluntary.

**Note:** This followed an announcement by Ministers on 1.3.12 of a change in policy as regards the application of sanctions to JSA claimants participating in work experience.

34952 Work experience opportunities should provide claimants who have little or no knowledge of working with the opportunity to gain some tangible work related experience which will help them improve their future job prospects. They should gain an insight into the skills and behaviours employers want and see how the skills they do have can be adapted to the work place. It helps fill gaps in their CVs, and ideally they should get a work related reference.

**Note:** Work experience includes any opportunities arranged through WP providers, the work experience element of sbwa or Traineeships. It does not include work placements for community benefit such as those arranged through the MWA or CwP schemes (see further guidance at DMG 34763 and DMG 34855).

## **Work experience opportunity**

34953 The claimant has to have been informed of the work experience by an Emp O and participation will be voluntary. For guidance on how a claimant will be informed of a work experience opportunity see DMG 34727 - 34729. For the meaning of Emp O see DMG 34015. The claimant should have been notified that whilst participation in the work experience opportunity is voluntary, if their behaviour whilst participating is such as to amount to gross misconduct a sanction to their JSA may be applied.

**Note:** For work experience arranged through SAPOE scheme providers see DMG 34921.

## **Work experience arranged by work programme providers, sector-based work academies or traineeships**

34954 For any voluntary work experience arranged by a WP provider or SBWA provider the claimant will be notified that whilst participation in the work experience is voluntary, once they are participating they are expected to maintain basic standards of good behaviour during their participation and if they fail to maintain those standards a sanction may apply.

**Note:** These schemes fall to be considered under relevant legislation<sup>1</sup> and so if no written notice is given to the claimant notifying them of the requirement to maintain good standards of behaviour, then no sanction can be imposed. The failure to maintain good standards of behaviour will only amount to a failure to participate if maintaining good standards of behaviour was set out as a requirement in a notification given to the claimant. See further guidance at DMG 34867 et seq.

*1 JS Act 95, s 17A; JSA (SAPOE) Regs, reg 5*

34955 – 34960

## Gross misconduct

34961 Gross misconduct is not defined in legislation but suggests misconduct that is 'blatantly wrong' or 'unacceptable'. It is conduct that is so serious that only one instance of such behaviour will warrant the employer's immediate termination of the work experience.

**Note:** For guidance on misconduct see DMG 34531 et seq.

34962 The DM should be able to establish when making a decision to sanction for gross misconduct that it was fair and reasonable in all the circumstances. Instances of gross misconduct and the seriousness of the conduct will need to be assessed in the light of all the individual particular circumstances having regard to all the relevant facts and evidence.

**Note:** The claimant will be given the opportunity to comment on allegations made against them but good reason will not apply to gross misconduct.

34963 Examples of gross misconduct which would normally justify the imposition of a sanction are

1. dishonesty or theft from the employer or co-workers
2. fighting with or assault on another person in the workplace
3. abusive behaviour towards co-workers or customers
4. deliberately damaging the employer's property
5. a serious act of insubordination towards a person in a position of authority in the workplace
6. endangering the safety of self or others by some deliberate act or omission
7. serious incapability through the use of alcohol or illegal drugs.

**Note 1:** This list is not exhaustive and each case should be considered on its own merits.

**Note 2:** Repeated instances of minor misconduct such as lack of punctuality or carelessness in performing tasks will not amount to gross misconduct.

### **Example 1**

Karen has an argument with her supervisor regarding her standard of work. She storms off and deliberately punches and smashes a glass door panel. She says she needed to let off steam. She is dismissed from her work experience placement. Her actions were deliberate and damaged the employer's property and could have endangered her safety or the safety of others. Her conduct can be regarded as gross misconduct and a sanction imposed.

### **Example 2**

Jason is constantly late for his work experience opportunity. He says he finds it hard to get up in the mornings. Although his actions are minor misconduct and he is dismissed from his work experience opportunity, they do not amount to gross misconduct and so no sanction would be imposed.

### **Example 3**

John swears at and punches his boss who tells him off for arriving late. He is dismissed from his work experience placement. His actions can be considered as a serious act of insubordination that amounts to gross misconduct and a sanction imposed.

### **Example 4**

Ann tells her WP provider she has decided to leave her work experience placement and then turns up for work drunk. She is asked to leave the placement immediately. A sanction is imposed on the grounds of gross misconduct. Ann requests a review of the decision stating she had already decided to leave the placement before the gross misconduct occurred and she didn't think it would matter as her attendance on the work experience is voluntary. The DM determines the sanction is still appropriate as Ann failed in her obligation to maintain a minimum standard of good behaviour whilst participating in the work experience regardless of the fact that she had already announced an intention to leave the voluntary work experience element of the WP and is regarded as having failed to participate without good reason.

## **Sanctions**

34964 If the DM decides a sanction is to be imposed where a claimant has lost a place or been dismissed from a work experience opportunity due to gross misconduct see DMG 34161 et seq for guidance on the length of a low-level sanction and when it should begin<sup>1</sup>.

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

# Chapter 35 - Hardship

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## What is a vulnerable group for hardship purposes

35055 Vulnerable group is the term used in this guidance to describe people who are more likely to suffer hardship if JSA is not paid without a waiting period, i.e. those people who are defined as “persons in hardship” in JSA legislation<sup>1</sup>. Claimants in a defined vulnerable group are entitled to hardship payments in circumstances where other claimants are not<sup>2</sup>.

**Note 1:** The test of hardship is not a test of ‘vulnerability’ but a test of the lack of the basic essential necessities of life, e.g. accommodation, food, water, heating and hygiene (see DMG 35155).

**Note 2:** The term ‘vulnerable group’ for hardship purposes is not the same as the DWP wider definition of ‘vulnerability’, or ‘vulnerable groups’ for any other purposes and applies exclusively to those defined in JSA regulations as “persons in hardship”<sup>1</sup>. Where the term ‘vulnerable group’ is used throughout this chapter it means those defined exclusively for hardship purposes (i.e. those who have access to hardship without a waiting period).

*1 JSA Regs, regs 140(1) & 146A(1); 2 regs 141 & 146C(1)*

35056 The date from which entitlement to hardship payments starts also depends on whether the claimant is in a defined vulnerable group for hardship purposes<sup>1</sup>.

*1 JSA Regs, regs 141, 142, 146C & 146D*

## People who are members of a vulnerable group for hardship purposes

35057 The DM must treat claimants or partners who are

1. pregnant women **or**
2. lone parents responsible for a young person **or**
3. members of couples or polygamous marriages responsible for children or young people **or**
4. people who qualify for DP **or**
5. certain people with long-term medical conditions **or**
6. certain people who provide care for disabled people **or**
7. certain people aged 16 or 17 **or**
8. certain people under the age of 21

as “persons in hardship”, (members of a vulnerable group for hardship purposes<sup>1</sup> i.e. those who can have access to hardship without a waiting period).

**Note 1:** Further guidance on these categories is given in DMG 35060 - 35135. Some of these people may satisfy the conditions of entitlement for IS or ESA(IR). If a claimant or partner satisfies an IS or ESA(IR) condition of entitlement the claimant cannot be a person in hardship (see DMG 35013).

**Note 2:** DMs should not interpret those with language difficulties, long term mental health conditions, or drug/alcohol dependencies as being in a vulnerable group for the purposes of JSA hardship unless the condition causes limitations in functional capacity because of a physical impairment<sup>2</sup> (see further guidance on physical and mental health conditions at DMG 35070 et seq and 35095).

*1 JSA Regs, reg 140(1); 2 reg 140(1)(g)*

35058 - 35059

## People with mental health conditions

35095 Requests for hardship payments may be made by people who say they have a mental health condition. A person will only be a member of a vulnerable group for hardship purposes, i.e. have access to hardship without a waiting period, if the condition causes limitation in functional capacity because of a physical impairment<sup>1</sup> (see Example 3 at DMG 35099).

**Note:** Hardship means a lack of the necessities of life, i.e. food, heating, accommodation, clothing and hygiene. What varies is what an individual may require in order for that essential need to be met, for example, a person with a severe mobility problem may need more heating, or a person with severe diabetes may have more complex and more expensive needs to provide food than a normal healthy adult. All JSA claimants fall in scope to be considered as “persons in hardship” after 14 days, therefore it is the physical needs that put them into an ‘at risk’ (vulnerable) category for hardship purposes for the first 14 days.

*1 JSA Regs, reg 140(1)(g)*

35096 The DM should seek the expert opinion of a Medical Services doctor if it is not clear if there is physical impairment as well as a mental health condition. In cases of doubt the Medical Services doctor should be asked for an opinion on the likelihood of the particular physical problem occurring because of the mental health condition.

35097 If the muscles and sensory organs all function normally but the person has a problem with mood or motivation a physical impairment is not present. It is extremely rare for a mental health condition to produce a physical impairment that limits or restricts functional capacity but it can happen.

## Deciding if a decline in health will occur

### Comparing the decline in health with a healthy adult

35098 The DM must consider if the health of the person with the medical condition would decline more than a normal healthy adult. The DM should make this comparison based on a normal healthy adult who is in similar circumstances to the person with the medical condition.

35099 It would be usual for a normal healthy adult to suffer some deterioration in their health if they were without

1. essential items, such as food, clothing, heating and accommodation **or**
2. sufficient money to buy essential items

for a period of two weeks. See Appendix 6 to this Chapter for further guidance.

The DM must determine if a person with a medical condition would suffer a **greater** decline in health than a normal healthy adult and would suffer hardship (DMG 35142 et seq).

### **Example 1**

Michelle has applied for hardship payments. She suffers from diabetes. Medical evidence provided by Michelle suggests that the condition will get much worse in the next two weeks if she is not able to follow her regular specialist diet.

The DM determines that Michelle's health would decline further than a normal healthy adult because lack of funds would not allow her to follow her regular specialist diet (also see guidance at DMG 35216).

### **Example 2**

Eleanor makes an application to hardship. She has a diagnosis of Detrusor Instability (Urge Incontinence) and depression.

Eleanor's GP provides clarification on how her health conditions affect her. He confirms that she has suffered incontinence for more than 26 weeks. She needs to use the toilet frequently, at least 15 to 20 times per day, and often has 'accidents' which means she frequently has to wash and change her clothing, wash soiled bedding and underwear/clothes and clean up after 'accidents'. Her condition causes her to feel depressed and her depression would get worse if she cannot follow her normal hygiene routine. She takes a prescribed mild anti-depressant.

Eleanor confirms she does not have enough sanitary products, soap, toilet paper, or washing detergent to last her for the next 14 days as she uses more than a normal healthy adult due to her incontinence condition. She can get incontinence pads free on prescription but she does not have access to free supplies of soap, detergent or toilet rolls from her local social or health services. She has an adequate supply of her anti-depressant tablets for the next 14 days.

The DM determines that Eleanor's health would decline further than a normal healthy adult in the next 14 days because lack of funds would not allow her to buy essential cleaning products, soap, toilet paper and washing detergent (also see guidance at DMG 35227).

### **Example 3**

Martin suffers from anxiety state. He provides medical evidence that he has suffered from low mood and anxiety for several years but this is controlled by regular medication. He has no other known medical conditions. Martin gets free prescriptions so he will not suffer any greater hardship than a normal healthy adult in the next 14 days as he has no physical impairment as a result of his condition

and his medical condition will not deteriorate as he has access to his normal medication (also see guidance at DMG 35095).

### **Medical conditions that are likely to lead to hardship**

35100 DMs must consider the **effect** of a medical condition on the individual claimant or partner. Certain conditions may be more likely to lead to a decline in a person's physical health if JSA is not paid.

For further guidance on medical conditions and likely effects on a person's health see Appendix 6 to this Chapter.

35101 - 35104



## Carers

35105 Certain people who are carers should be treated as members of a vulnerable group. Some carers may satisfy the conditions of entitlement for IS. See DMG 35117 et seq for guidance.

**Note:** See DMG 35055 for the meaning of vulnerable group.

### What are the conditions for being treated as a member of a vulnerable group for hardship purposes

35106 To be a member of a vulnerable group the carer must

1. be the claimant or partner or member of a joint-claim couple **and**
2. care for a person
  - 2.1 who gets or has been awarded
    - 2.1.a an AA **or**
    - 2.1.b the highest or middle rate care component of DLA **or**
    - 2.1.c is in receipt of or has been awarded the daily living component of PIP at the standard or enhanced rate **or**
    - 2.1.d is in receipt of or has been awarded AFIP
  - 2.2 in certain circumstances has claimed AA, DLA, PIP or AFIP but the claim has yet to be decided **and**
3. provide care for the person for a considerable portion of each week **and**
4. be unable to continue providing care if JSA is not paid<sup>1</sup>.

**Note 1:** See DMG Chapter 28 for the definition of AA.

**Note 2:** See ADM Chapter P1 for guidance on PIP.

*1 JSA Regs, reg 140(1)(h) & 146A(1)(e)*

### AA, DLA, PIP or AFIP claimed but not awarded

35107 In the case of a person who has claimed AA, DLA, PIP or AFIP the carer can only qualify as a member of a vulnerable group until the earlier of

1. a decision being made on the AA, DLA, PIP or AFIP claim **or**
2. 26 weeks after the AA, DLA, PIP or AFIP claim has been made<sup>1</sup>.

*1 JSA Regs, reg 140(1)(h)(ii) & 146A(1)(e)(ii)*

### AA, DLA, PIP or AFIP awarded but not paid

35108 A person who claims DLA must need care for a period of three months before an award of DLA care component can be made. A person who claims AA must need

care for six months before an award can be made. A person who claims PIP or AFIP must serve a qualifying period of 3 months before an award of PIP or AFIP daily living allowance can be made. Carers of people who have been awarded AA, DLA, PIP or AFIP that has not been paid because the appropriate qualifying period has not been completed can qualify as a member of a vulnerable group<sup>1</sup>.

*1 JSA Regs, reg 140(1)(h)(iii) & 146A(1)(e)(iii)*

### **What is a considerable portion of the week**

- 35109 The DM must determine if the carer spends a considerable portion of each week providing care for the disabled person.
- 35110 The term considerable portion is not defined in legislation. It should therefore be given its normal everyday meaning<sup>1</sup> of a large or significant part.

*1 R(SB) 19/82*

### **Meaning of week**

- 35111 The DM should consider the amount of time that the carer spends caring for the person each week. A week for JSA purposes is defined as a period of seven consecutive days starting on a Sunday<sup>1</sup>.

*1 JS Act 95, s 35*

### **Does the claimant or partner provide care each week**

- 35112 The care provided must be more than occasional or of short duration. A claimant or partner or member of a joint-claim couple who does not provide care for a person every week will not qualify as a member of a vulnerable group.

#### **Example**

Nicholas has requested JSA hardship payments.

He states he provides care for his grandmother, who receives AA. His mother usually provides care but Nicholas does so when his mother goes on holiday.

The DM decides that Nicholas is not a member of a vulnerable group because he does not provide care every week.

35113 - 35115

### **How much care does the claimant or partner provide each week**

- 35116 Claimants or partners or members of a joint-claim couples who provide care for a short time every week will not qualify as members of a vulnerable group. This is because they will not be providing care for a considerable portion of the week.

## People in hardship who are not in a vulnerable group for hardship purposes

### When is a claimant who is not in a vulnerable group a person in hardship

35141 A claimant who is not in a vulnerable group is a person in hardship if the

1. claimant **or**
2. partner

would suffer hardship if JSA is not paid<sup>1</sup>.

**Note 1:** The person in hardship is always the claimant, even though it may be another member of the family who must be likely to suffer hardship.

**Note 2:** See guidance at DMG 35055 et seq for the meaning of vulnerable groups for hardship purposes.

*1 JSA Regs, reg 140(2) & 146A(2)*

### Comparison with vulnerable groups

35142 People in hardship who are not in vulnerable group have entitlement to hardship payments in fewer circumstances than those who are in vulnerable group. See DMG 35290 et seq for guidance when people who are not in vulnerable groups may be entitled to hardship payments.

35143 A person in hardship who is not a member of a vulnerable group cannot get hardship payments if the DM has determined that there is no entitlement to JSA because the claimant does not satisfy the condition of

1. availability **or**
2. ASE **or**
3. having a JSAg.

**Note:** DMs should not confuse the above with cases where the claimant has been disallowed JSA on the grounds of availability or ASE and makes a subsequent claim which is subject to an intermediate sanction. In those cases the guidance at DMG 35007 and 35299 et seq will apply.

35144 - 35152



**Note:** Other costs may link to food needs for example running electrical equipment such as a cooker to cook raw food or a fridge or freezer to keep food cold or frozen until needed.

35217 The DM should establish

1. when did the claimant last shop for food for the household
2. the period this shopping was designed to cover and any reasons for running out of food any earlier
3. the nature of any special dietary requirement of any member of the household because of a medical condition.

35218 The claimant should be regarded as being in immediate hardship if they have insufficient resources to provide meals for the coming week where they

1. have responsibility for a child or qualifying young person
2. provide care for an adult
3. or someone in the household is pregnant **or**
4. have in the household a person with a health condition where a lack of food would cause suffering.

Also see the guidance at DMG 35227.

**Note 1:** Claimants are not expected to rely on food banks or soup kitchens to meet their food needs.

**Note 2:** Where possible the claimant should present receipts but in practical terms the claimant's testimony may be the only source of information available. It is up to the DM to consider whether the evidence presented is reasonable in the individual circumstances and inherently improbable (i.e. unlikely).

#### **Example 1**

Karen applies for a hardship payment, she states she has no money to buy food. In her locality there is a known food bank. JCP should not refer Karen to the food bank and should consider the hardship application.

#### **Example 2**

Ann applies for a hardship payment, she states she has no money to buy food but has already been to the food bank of her own accord. The DM establishes how long the food from the food bank will last when considering when she will be a person in hardship.

#### **Example 3**

Marilyn claims JSA. She is a single parent with two children aged 9 and 11. She has a part-time job which pays her £20 per week. The DM decides that Marilyn

failed to participate in a job search review interview without good reason and imposes a 4 weeks sanction.

Marilyn makes an application for hardship. The family's only income is CHB for the children and her part time earnings of £20 per week. She states she has sufficient food for a week in her freezer. The DM decides Marilyn has sufficient food for her family for a week. She will be able to buy fresh food such as bread and milk using her part time earnings. The CHB is disregarded when considering hardship. The family would not suffer hardship because of a lack of food until the end of a week.

However the DM considers whether there are any other essential needs that could not be met.

### **Seeking other accommodation**

35219 If a claimant is at risk of losing their home they cannot be required to

1. seek an alternative dwelling that would not house their current household **or**
2. put the family at risk or their friends or family in hardship **or**
3. find cheaper housing **or**
4. become homeless before we consider hardship.

**Note:** Claimants cannot be required to access or increase credit as actions to support themselves (see DMG 35196).

### **Help from family or friends**

35220 It will not be reasonable for claimants to expect assistance from close family or friends but it may be reasonable to expect some claimants to consider the possibility of asking. What is or isn't reasonable will depend on the individual's circumstances. Families and friends may be only willing to help for a short period of time. For example it would not be reasonable where

1. families and friends have their own difficulties **or**
2. the request may put strain on relationships **or**
3. the request may have a risk of violence (especially for estranged relations and young people) **or**
4. the person is not in the proximity to offer assistance **or**
5. the period of hardship is expected to last for a considerable period of time.

# Circumstances when hardship payments can be made

## When can hardship payments be made vulnerable groups for hardship purposes

### Introduction

35250 People who are in vulnerable groups may be entitled to hardship payments in circumstances when other people in hardship do not qualify.

**Note: See guidance at DMG 35055 for the meaning of vulnerable groups for hardship purposes.**

35251 A person in hardship in a vulnerable group may be entitled to hardship payments from an earlier date than other people in hardship.

35252 The DM should bear in mind that the person who allows the claimant to qualify as a member of a vulnerable group must be likely to suffer hardship if JSA is not paid. People who satisfy the conditions of membership of a vulnerable group but who will not suffer hardship do not qualify for hardship payments.

35253

### People who are not available for employment

35254 A person or a couple in hardship in a vulnerable group whom the DM has decided is not available for employment<sup>1</sup> may be entitled to hardship payments<sup>2</sup>.

*1 JS Act 95, s 1(2)(a); 2 JSA Regs, reg 141(4) & 146C(4)*

35255 To be entitled the claimant must satisfy all other conditions of entitlement for JSA(IB) apart from

1. ASE or
2. having a JSAG.

**Note:** DMs should not confuse cases above with those where a claimant has been disallowed JSA on the grounds of availability or ASE and makes a subsequent claim which is subject to an intermediate sanction. In those cases the guidance at DMG 35007 and 35299 et seq will apply.

### People who are treated as not available for employment

35256 Claimants who are treated as not available for employment<sup>1</sup> by the DM because they are

1. prisoners on home leave **or**
2. F/T students **or**
3. women getting MA or SMP **or**
4. on paternity leave or ordinary adoption leave under certain legislation<sup>2</sup> cannot get hardship payments<sup>3</sup>.

See DMG Chapter 21 for full guidance on claimants who are not treated as available for employment.

**Note:** DMs should not confuse cases above with those where a claimant has been disallowed JSA on the grounds of availability or ASE and makes a subsequent claim which is subject to an intermediate sanction. In those cases the guidance at DMG 35007 and 35299 et seq will apply.

*1 JSA Regs, reg 15; 2 ER Act 96, s 75A, 80A & 80B; 3 JSA Regs, reg 141(4) & 146C(4)*

## People who are not ASE

35257 A person or couple in hardship in a vulnerable group whom the DM has decided is not ASE<sup>1</sup> may be entitled to hardship payments<sup>2</sup>. To be entitled the claimant must satisfy all other conditions of entitlement for JSA(IB) apart from

1. being available for employment **or**
2. having a JSAG.

**Note:** DMs should not confuse cases above with those where a claimant has been disallowed JSA on the grounds of availability or ASE and makes a subsequent claim which is subject to an intermediate sanction. In those cases the guidance at DMG 35007 and 35299 et seq will apply.

*1 JS Act 95, s 1(2)(c); 2 JSA Regs, reg 141(4) & 146C(4)*

35258 - 35259

## People who have not made a JSAG

35260 A person or couple in hardship in a vulnerable group who has not made a JSAG<sup>1</sup> may be entitled to hardship payments<sup>2</sup>. To be entitled the claimant must satisfy all other conditions of entitlement for JSA(IB) apart from

1. being available for employment **or**
2. ASE.

*1 JS Act 95, s 1(2)(b); 2 JSA Regs, reg 141(4) & 146C(4)*

- 2.1 subject to labour market sanctions (which have their own existing hardship provisions)<sup>3</sup> **or**
- 2.2 subject to a payment restriction under the breach of community order provisions (which have their own existing hardship provisions)<sup>4</sup>.

*1 SS (Loss of Benefit) Regs, reg 5(1) & reg 11(2); 2 SS Fraud Act 01, s 7;*

*3 JSA Regs, regs 141-146; 4 SS (Breach of Community Order) Regulations 2001, regs 6-17*

## **From what date should the DM award hardship payments to a person in a vulnerable group**

### **People waiting for a decision at the start of a claim**

35274 Unless DMG 35275 applies, from 27.10.14 a person or couple in hardship who are members of a vulnerable group is entitled to a hardship payment from the latest of

1. either<sup>1</sup> the
  - 1.1 eighth day of the JSP **or**
  - 1.2 date of claim if the claimant does not have to serve waiting days (see DMG Chapter 20) **or**
2. the date the claimant becomes a person in hardship<sup>2</sup>.

**Note:** See DMG Chapter 21 for guidance on JSPs.

*1 JSA Regs, reg 141(2) & 146C(2); 2 reg 141(2) & 146C(2)(a)*

35275 The DM may award hardship payments for the period between

1. the earliest date calculated in DMG 35274 **1.** and **2.** **and**
2. the date that the statement of circumstances is provided (see DMG 35400)

if satisfied that the claimant suffered hardship because of a lack of resources in that period<sup>1</sup>.

*1 JSA Regs, reg 141(3) & 146C(3)*

35276 The DM should

1. decide the date when the claimant became a person in hardship **and**
2. ensure that there is evidence of the circumstances of the claimant and any members of the family from the date of claim **and**
3. consider any final payments from employers and whether that money has been spent.

35277 The DM may determine that the claimant was not in hardship at the date of claim but became a person in hardship before the statement of circumstances was provided.

## Example

Bishen claims JSA on 2 January. He lives with his partner and baby daughter.

A question about Bishen's JSAg is referred to the DM. On 17 January Bishen requests a hardship payment.

Bishen states he was living on money in his building society account. His money ran out on 10 January. Since then he has not been able to feed his daughter properly.

The DM determines that Bishen was not a person in hardship while he had money from his savings. He became a person in hardship on 10 January when the money ran out.

Hardship payments are awarded from 10 January.

## People who are disallowed because they are not available, ASE or have not made a JSAg

35278 A person or couple in hardship who are members of a vulnerable group are entitled to hardship payments from the later of the

1. first day for which JSA is disallowed because of
  - 1.1 availability **or**
  - 1.2 ASE **or**
  - 1.3 a JSAg **or**
2. date the claimant or couple becomes a person or couple in hardship.

**Note 1:** People who are treated as not available for employment are not entitled to hardship payments (see DMG 35256)<sup>1</sup>.

**Note 2:** DMs should not confuse cases above with cases where the claimant was disallowed JSA on the grounds of availability or ASE and makes a subsequent claim which is subject to an intermediate sanction. In those cases the guidance at DMG 35007 and 35299 et seq will apply.

*1 JSA Regs, reg 141(4) & 146C(4)*

35279 The JSA claim will come to an end if

1. the DM decides the claimant
  - 1.1 is not available **or**
  - 1.2 ASE **or**
  - 1.3 does not have a JSAg in force **and**
2. the claimant is not a person in hardship at the date the DM makes the decision.

# When hardship payments can be made - people who are not in vulnerable groups

## Introduction

35290 There are certain circumstances in which only people in vulnerable groups can qualify for hardship payments. People who are not in vulnerable groups have no entitlement to hardship payments in those circumstances. The date from which hardship payments can be awarded is decided under different rules from those for people in vulnerable groups<sup>1</sup> (see guidance at DMG 35144 and DMG 35299).

**Note:** See DMG 35055 for the meaning of vulnerable group.

*1 JSA Regs, reg 142 & 146D*

35291 The DM should revise or supersede and end the award of hardship payments if the claimant

1. ceases to be a person or member of a couple in hardship **or**
2. no longer satisfies other conditions of entitlement to JSA(IB).



# People waiting for a DM's decision - new claims

## Claimants who qualify while waiting for a DM's decision

35292 A person or couple in hardship who

1. has made a new claim for JSA **and**
2. is not in a vulnerable group

may qualify for hardship payments before the claim is decided while waiting for a decision by the DM on availability for employment, ASE or a JSA<sup>1</sup>.

**Note:** DMs should not confuse the above with cases where a claimant was disallowed JSA on the grounds of availability or ASE and makes a subsequent claim which is subject to an intermediate sanction. In those cases the guidance at DMG 35007 and 35299 et seq will apply.

*1 JSA Regs, reg 142(2) & 146D(2)*

## From what date are hardship payments payable

35293 A person or couple in hardship who are not in a vulnerable group are entitled to a hardship payment from the latest of either<sup>1</sup>

1. the
  - 1.1 22<sup>nd</sup> day if waiting days have to be served **or**
  - 1.2 15<sup>th</sup> day of the claim, if waiting days were served at the start of a previous claim which is part of the same JSP **or**
  - 1.3 15<sup>th</sup> day of the claim, if the claimant does not have to serve waiting days (see DMG Chapter 20) **or**
2. the date the statement of circumstances is provided<sup>2</sup>
3. the date the claimant becomes a person in hardship<sup>3</sup>.

**Note:** A 14 days waiting period has to be served and hardship is paid from the 15<sup>th</sup> day as per sub para **1.2** and **1.3**. or from the 22<sup>nd</sup> day where waiting days have to be served as per sub para **1.1**.. The 7 day waiting days period begins with and includes the day the claim was made.

*1 JSA Regs, reg 142(2) & 146D(2); 2 reg 142(2)(c) & 146D(2)(b); 3 reg 142(2) & 146D(2)*

## On what date do hardship payments end

35294 If the DM awarded hardship payments while a decision on the claim was awaited or there was a suspension because of those questions, the DM should revise or supersede the original decision so that the award ends on the day before entitlement was determined by the DM<sup>1</sup>.

**Note:** This date may not necessarily be the same date as the DM's decision on

1. availability **or**
2. ASE **or**
3. a JSAG.

*1 JSA Regs, reg 142(2) & 146D(2)*

## Appendix 4

### New claims delay in DM deciding on availability, actively seeking employment or a Jobseeker's agreement



