

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF STRATEGIC COMMUNICATIONS)

Decision Makers Guide

Volume 6 Amendment 49 – June 2017

1. This letter provides details on Amendment 49; 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 49 affects chapters 30, 34, 35; The changes make amendments to
 - Chapter 30 added a ref to the 19+ Bursary at DMG 30089
 - Chapter 34 incorporates some new case law and guidance given in two notice board postings since the February amendments.
 - Chapter 35 makes minor amendments, remove some confusing cross refs and update Appendix 2.1
4. The last two amendment packages amending Volume 6 were

Amendment 48 [February 2017]

Amendment 47 [October 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
30078 – 30095 (1 page)

Chapter 34
Conts 34761 – Appendix 4 (2 pages)

Insert

Chapter 30
30078 – 30095 (1 page)

Chapter 34
Conts 34761 – Appendix 4 (2 pages)

34322 – 34323 (1 page)
34852 – 34916 (13 pages)

Chapter 35

35290 – 35291 (1 page)
Appendix 2.1 (1 page)

34322 – 34323 (1 page)
34852 – 34916 (14 pages)

Chapter 35

35290 – 35291 (1 page)
Appendix 2.1 (1 page)

Libraries, open learning centres and learning workshops are examples of where this may take place. Time spent by staff assessing students' achievements, for example in the assessment of competence for GNVQs, are also included. But it does not include time spent in private study.

30078 Always ask for specific written evidence of the number of guided learning hours involved. Only a document signed on behalf of the establishment concerned should be accepted. That is, where the course is funded by the Secretary of State for education, the Chief Executive of Skills Funding or the Welsh Ministers¹

1. for England - the person's learning agreement, signed on behalf of the establishment which is funded to deliver the course **or**
2. for Wales - a document signed on behalf of the establishment which is funded to deliver the course.

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

30079

Student loan

30080 A student loan¹ is a loan made for a student's maintenance under specific law². The Student Loan Company administers student loans.

1 JSA Regs, reg 130; IS (Gen) Regs, reg 61(1); 2 T & HE Act 98, s 22; ED (Scot) Act 80, s 73; Support (NI) Order, Article 3

30081 In Scotland only, a 'Young Student's Bursary' may be paid under specific law¹. The DM should treat such a payment in the same way as a student loan.

1 JSA Regs, reg 130; IS (Gen) Regs, reg 61(1); SA (Scot) Regs, reg 4(1)(c)

30082 - 30085

Grant

30086 Grant means¹ any kind of educational grant or award and includes any

1. scholarship
2. studentship
3. exhibition
4. allowance
5. bursary.

DMs should note that it does not include any payment derived from access funds or any payment of education maintenance allowance.

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

Access funds

30087 Access funds are grants, loans or other payments made under specific law¹ that are paid on a discretionary basis to assist students in financial difficulties².

*1 F & HE Act 92, s 68; Ed (Scot) Act 80, s 73(a), (c) & s 74(1); Education and Libraries (Northern Ireland) Order 1993, Art 30; Further Education (Northern Ireland) Order 1997, Art 5;
2 JSA regs, reg 130; IS (Gen) Regs, reg 61(1)*

30088 Access funds also include

1. in England – ‘Learner Support Funds’ which may be made available to students under specific law¹. For those in further education they are paid out of funds provided by the Secretary of State for Education, the Chief Executive of Skills Funding²
2. in Wales – ‘Financial Contingency Funds’ made available by the Welsh Ministers².

1 F & HE Act 92, s 7; L & S Act 2000, s 5, 6 & 9; 2 JSA Regs, reg 130; IS (Gen) Regs, reg 61(1)

Note: Access funds do not include Assembly Learning Grants. Financial Contingency Funds are made available to prevent the financial hardship of students who are not eligible for an Assembly Learning Grant.

Education maintenance allowance and the 16 - 19 Bursary Fund

30089 Education maintenance allowance consists of means-tested payments paid under specific law¹ to support young people who remain in non-advanced education after the age of 16. Payments can be made for up to two years to support young people between the ages of 16 and 19, but in some cases an allowance may continue to be paid for up to three years between the ages of 16 and 20.

*1 Education Act 1996, s 518; Ed (Scot) Act 80, s 49 & 73(f);
F & HE (Scot) Act 92, s 12(2)(c) & 21; Education Act 2002, s 14 & 181*

30090 From September 2011 education maintenance allowance was replaced in England by payments from the 16 – 19 Bursary Fund¹.

1 Education Act 2002, s 14

Note: The 19+ Bursary, available in most Further Education colleges, falls within the definition of an access fund – see DMG 30087.

30091 - 30095

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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 principles¹.

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)¹. 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 the product 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.

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 process¹.

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 scheme² 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 sanction³ (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 employment¹.

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 regulations¹.

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 community¹.

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

Note 5: From 31.3.17 referrals to the Wp scheme will cease. All claimants referred to the scheme up to and including 31.3.17 will be expected to complete their usual 104 weeks of participation which includes claimants coming back onto JSA within that time. Current processes should be followed for considering a sanction for any failure to participate in the scheme where the original date of referral to the scheme is on or before 31.3.17.

Note 6: Existing Wp scheme participants in Scotland referred to the scheme on or before 31.3.17 will be expected to participate as normal and DMs will consider

failures to participate following current processes but see 34859 for guidance on employability provision in Scotland from 3.4.17.

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 activity¹.

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

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

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

Traineeships

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

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

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

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

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

1. aged between 16 and 23 years² **or**
2. 16 and 24 years and subject to

2.1 an EHC plan or

2.2 a Learning Difficulty Assessment³.

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

*1 JSA (SAPOE) Regs, reg 3(8B)(b)(ii); 2 reg 3 (8B)(b)(i);
3 reg 3 (8B)(b)(ii); 4 reg 3(9) & Children and Families Act 2014, s 37(1)*

34858 Participation in the traineeship is voluntary, but once the claimant has agreed to take part, they are then mandated to attend the training elements. However, a claimant cannot be mandated to take part in the work experience element of Traineeships. The only reason a claimant could be sanctioned for a failure to take part in the work experience element of the Traineeship is if the claimant lost the place due to gross misconduct (see DMG 34921).

Work Able Scotland and Work First Scotland

34859 From 3.4.17 the Scottish Government will use its powers¹ to deliver new employability support in Scotland. The current Wp and Work Choice schemes run by DWP (UK) will be replaced by two new schemes for Scottish claimants;

1. Work Able Scotland, which will offer support to claimants with LCW, **and**
2. Work First Scotland, which will deliver employment support for disabled claimants with complex needs.

1 Scotland Act 2016

34860 Referrals to both schemes will commence from 3.4.17 and cease on 22.12.17. Participation will be on a purely voluntary basis and therefore will not attract a sanction for any failure to participate.

Note: Existing claimants living in Scotland who are already participating in the Wp prior to 3.4.17 will be expected to continue to participate as normal and will be subject to a sanction for any failure to participate without good reason (see 34854).

34861 – 34865

Selection for and participation in a relevant scheme

Selection for participation

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

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

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

Requirement to participate and notification

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

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

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

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

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

Contracting out

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

1. requirement to participate in the prescribed scheme and notify (see DMG 34866) **and**
2. notification that requirement to participate in the prescribed scheme ends (see DMG 34874).

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

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

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

1 JSA (SAPOE) Regs, reg 17

Requirement to notify

34869 The requirement to notify¹ is usually met by

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

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

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

1 JSA (SAPOE) Regs, reg 5

Failure to participate in the prescribed scheme

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

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

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

Participating in a relevant scheme

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

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

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

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

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

Evidence of notification

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

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

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

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

Claimant raises issue of notification

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

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

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

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

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

Example 1

See example at DMG 34223.

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

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

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

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

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

Example 2

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

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

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

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

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

By way of participation

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

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

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 suspended¹ where the claimant is not required to meet the jobseeking conditions².

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 earlier¹.

Note 1: If DMG 34876 1. applies the requirement ceases to apply on the date specified in the notice².

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 27.10.14¹ 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 vacant².

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 contract¹.

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 Wp¹ and CwP scheme.

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

Relevant contract

34882 Relevant contract means¹, 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

Employees of Authorised Providers

34883 Employees of

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

are designated a Emp Os¹.

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

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

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

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

Work Programme

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

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

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

2 Wp (Emp O) Des O 14

Community Work Placements

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

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

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

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

2 CwP (Emp O) (Des O 14)

34886

Refuses or fails to take up employment.

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

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

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

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

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

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

Refusal or failure

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

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

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

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

Employment Officer status

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

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

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

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

Evidence of Authorised Providers

34890 Appendices 3 and 4 list the Prime organisations that have been authorised by the Secretary of State to act as Emp Os in respect of the Wp and CwP schemes¹. Emp O status also applies to the employees of any approved sub-contractors of those Prime contractors listed² who have a relevant contract for the provision of the Wp and CwP scheme (see definitions at DMG 34880 to 34885).

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

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

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

Evidence to determine refusal or failure

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

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

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

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

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

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

Note 1: The DM may contact the provider, the claimant or a third party for further information if required at any time where it is considered necessary in order to clarify reasons or seek further evidence as sufficient proof to justify good reason and to determine whether a sanction is appropriate (also see guidance at [DMG 34873](#)).

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

CwP Scheme ending

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

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

Early termination

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

The areas affected by early termination are:

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

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

Effect on sanctions

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

1. 26.10.16 for CwP **or**
2. 25.9.16 for CwP providers with early termination (see DMG 34895).

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

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

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

Example 1

Brie was referred to the CwP scheme on 30.3.16.

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

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

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

The sanction runs from 11.11.16 to 8.12.16.

Example 2

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

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

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

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

The 13 week sanction runs from 5.10.16 to 3.1.17.

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

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

The balance of the sanction, 3 weeks and 4 days, is imposed on her new award for the period 10.12.16 to 3.1.17. (The period off benefit 14.11.16 to 9.12.16 (3 weeks and 5 days) is deducted from the sanction period).

Exemptions from requirement to meet the jobseeking conditions

New Enterprise Allowance scheme

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

Note: For guidance on ASE see DMG Chapter 21.

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

Full-time student

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

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

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

Discharged from detention in prison

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

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

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 circumstances¹.

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.

1 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 1

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.

Example 2

The advisor wants Veronica to open an email account and provide an email address to enable employers to be able to contact her directly and for her to be able to make job applications via email and have access to job vacancies that are only advertised online. The advisor considers Veronica is restricting her work search by not having an email account and her current methods of searching for work are proving unsuccessful.

Veronica has raised objections to opening an email account as she does not want her personal details held on a public computer system due to security fears.

Veronica is 55 years old, lives alone in rented accommodation and does not own her own computer or a mobile phone. She is, however, computer literate and uses a computer regularly at her local library, her place of voluntary work and at the Jobcentre to search for job vacancies. She then uses non personalised resources to apply for any identified suitable vacancies (post/telephone). She has been unemployed for 7 years.

Veronica has some previous experience of working in retail, administration and catering and is fully computer literate, although she says she is not confident in using emails to apply for jobs and has concerns about security and cyber theft. She has continuously shown she has met the work search requirements on her JSAG and demonstrated sufficient evidence of job search each week without an email address but has not been successful in securing employment.

JSA claimants are expected to do all that is reasonably expected of them to actively seek employment and DWP would expect them to look for work through as many different sources as possible. The rationale for having claimants create an email account is that, depending on the area of business, this is the means by which many employers communicate in a 'digital age' and modern labour market and how they would normally expect prospective job applicants to upload their CV to apply for vacancies. Furthermore, an email address is usually necessary to register with employment agencies and to create an account on such job sites to gain access to more vacancies that are only advertised online.

The advisor considers using a JSD to mandate Veronica to set up an email account.

The direction would be linked to action to assist Veronica to find work and would improve her prospects of being employed and therefore would meet that criteria. It

could open up avenues to pursue more suitable advertised job vacancies and have direct contact via email with prospective employers. However, consideration also has to be given to whether the direction would be personalised and appropriate to Veronica at this point in time and whether it is reasonable in her circumstances.

Veronica has genuine fears and concerns regarding online security and these need to be fully explored and support offered to her to overcome those barriers before issuing a JSD.

In particular, expert support could be offered to Veronica to explain what is required of her and the security in place to protect her personal details and any email account she may set up or by requiring her to attend a digital workshop or training course to try and overcome her personal barriers to using email.

The advisor asks Veronica to attend an interview to discuss the options and sit with a computer expert who will demonstrate how emails work, how to set an account up and explain about security and data protection.

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 employed¹.

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.

Also see Example 2 at DMG 34903

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

1. provide a person who attends with information, support and advice to help them find employment **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 online they are advised that it would be beneficial for them to

1. register with UJ **and/or**

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 groups¹.

Note: See DMG 35055 for the meaning of vulnerable group for JSA hardship purposes.

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).

Appendix 2.1

Claimant sanctioned - not in vulnerable group



