

AMENDMENTS TO THE JSA HARDSHIP REGULATIONS

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INTRODUCTION

- 1 This memo gives guidance on the Jobseeker's Allowance (Hardship) (Amendment) Regulations 2017 (S.I. 2017/ 760) which come into force on 23.10.17¹.

1 The Jobseeker's Allowance (Hardship) (Amendment) Regulations 2017, reg 1

- 2 These regulations insert
 1. mental impairment¹ **and**
 2. homelessness²

within the list of categories of claimants who are eligible for a JSA hardship payment without any waiting period. These are known as the 'vulnerable groups'.

Note: The changes are not inserted into legislation³ relevant to benefit fraud offences. Those who apply for hardship following a benefit fraud offence have to wait until day 15 to qualify for hardship payments even if they have a mental impairment or are homeless see DMG [35004](#).

1 JSA Regs, regs 140(1)(g) & 146A(1)(d); 2 reg 140(1)(l) & 146A(1)(i); 3 SS (Loss of Benefit) Regs, regs 5 - 16

BACKGROUND

3 Hardship payments are payments of JSA(IB) that are made to certain people who

1. do not qualify for JSA under normal rules **and**
2. would suffer hardship if JSA is not paid.

Note: The test of whether a claimant is in hardship is one of privation and has not changed, see the guidance in DMG Chapter 35. A claimant is judged to be in hardship if they have insufficient funds to meet their immediate, essential and basic necessities of life, e.g. accommodation, food, heating, clothing and hygiene requirements.

4 Once a claimant is considered to be in hardship, they will only be eligible for a hardship payment without a waiting period (i.e. from day one) if they fall within one of the categories listed in DMG [35057](#) (the 'vulnerable groups')¹. Otherwise they will become eligible for a hardship payment from day 15.

Note: See DMG [35055](#) for the definition of what is a 'vulnerable group' for hardship purposes.

1 JSA Regs, reg 140(1) & reg 146A(1)

5 From 23.10.17 the list at DMG [35057](#) will also include

1. certain people who have a mental impairment¹ **and**
2. people who are homeless².

Note: The changes are not inserted into equivalent legislation³ relevant to benefit fraud offences, also see the **Note** at paragraph 2.

1 JSA Regs, regs 140(1)(g) & 146A(1)(d); 2 reg 140(1)(l) & 146A(1)(i); 3 SS (Loss of Benefit) Regs, regs 5 - 16

MENTAL IMPAIRMENT

6 From 23.10.17 the guidance at DMG 35095 to 35097 no longer applies with regard to claimants with mental health conditions. A claimant will be treated as a member of a 'vulnerable group' if they or their partner

1. have a long term medical condition, i.e. that condition has lasted or is expected to last at least 26 weeks, that restricts their functional capacity to carry out ordinary activities because of

1.1 physical **or**

1.2 mental impairment **and**

2. would suffer a decline in their health more than that of an adult with no medical condition within two weeks of the DM's decision if JSA hardship is not paid¹.

Note 1: See paragraph 8 for the meaning of 'mental health impairment' for JSA hardship purposes.

Note 2: See paragraph 15 for further guidance on a decline in health.

1 JSA Regs, regs 140(1)(g) & 146A(1)(d)

7 Where a claimant

1. qualifies for a hardship payment **and**

2. satisfies all the criteria in paragraph 6

JSA hardship can be paid without any waiting period.

Note: From 23.10.17 the DM will consider the questions at DMG [35073](#) for mental health impairment in the same way as they do for physical impairment unless hardship occurs due to a benefit fraud offence (see **Note** at paragraph 2).

Meaning of mental impairment

8 The term 'mental impairment' is not defined in JSA legislation. For the purposes of JSA hardship, the consideration is whether the claimant (or their partner) is able to demonstrate that they are suffering from

1. any disorder or disability of the mind **or**

2. a learning disability or cognitive impairment.

Note: 'Mental health impairment' covers a broad range of conditions from mild depression to chronic disorders such as schizophrenia or bipolar disorder.

Meaning of restriction or limitation of functional capacity

- 9 A restriction or limitation of functional capacity is a partial or complete inability to perform an activity in the manner or within the range considered normal for a human being.

Evidence

- 10 The guidance at DMG [35074](#) to 35090 regarding medical evidence for physical impairment will apply equally to mental health impairment from 23.10.17.
- 11 It is important that the DM collects the appropriate and relevant information to be able to determine whether hardship can be paid from day one at the face to face hardship interview. The claimant should have been advised appropriately of what evidence they may need to bring with them when they attend their hardship application interview.
- 12 The claimant has to provide evidence of
1. the relevant medical condition and
 2. how the medical condition will mean the relevant person's health will decline in the next two weeks more than that of an adult with no medical condition in the same circumstances if hardship is not paid.

Note: Care should be taken to obtain the relevant information from claimants who have mental health conditions who might lack the insight to appreciate how their health might decline. Benefit records should be carefully checked for any indications that a claimant has any restrictions or limitations agreed due to a mental health impairment or any note on the JSAG or action plan that might indicate the claimant has a mental health condition.

- 13 Examples of evidence that may confirm the existence of a mental health condition or that the claimant may have in their possession may be
1. a personal treatment or care plan
 2. a repeat prescription
 3. evidence of prescribed medication (see **Note 2**)
 4. an appointment card

5. the JSA claim form
6. the JSA hardship application
7. any letters or written statements regarding the claimant's, or partner's medical condition
8. any records of interviews with the claimant or their partner regarding the medical condition
9. records held by the DM about relevant incapacity test results or recent DLA, AA, IIDB or SDA claims
10. any medical certificates or statements from any of the doctors treating the claimant, or their partner, with the condition
11. any medical reports from people treating the medical condition, together with any interpretation from a medical services HCP
12. any reports from a medical services HCP about the condition and its likely effects
13. evidence from the Disability Employment Advisor if the claimant is on a Disability Employment Advisor's case load.

Note 1: This list is not exhaustive and some of the sources of evidence may not be available in a particular case. The DM should usually make a decision based on the evidence that is available on the hardship application and should not expect the claimant to incur costs to obtain further evidence (also see paragraph 14).

Note 2: Whilst medication may provide evidence of the existence of a mental health condition some people with mental health conditions do not take prescribed medication and so any absence of taking medication is not always proof of no mental health condition being present.

- 14 Only if the available evidence is unclear, improbable or self contradictory will the decision maker ask the claimant to provide any additional information and this **must not**
1. require the claimant to incur any costs to provide any further evidence **or**
 2. delay a hardship payment.

Note: Care should be taken when completing the application for hardship with vulnerable claimants to ensure they fully understand how they can qualify for hardship

from day one. In this context 'vulnerable claimants' as referred to in this paragraph are those which meet the wider DWP definition of vulnerable and not those specified in legislation¹ as a 'vulnerable group' specifically for hardship purposes.

1 JSA Regs, reg 140(1) & 146A(1)

Decline in health

15 When deciding if a decline in health will occur as per paragraph 6 **3**, the guidance at DMG [35098](#) will apply equally for mental health impairment. The test is whether the

1. relevant person has a long term mental health impairment **and**
2. health of the person with the mental health impairment would decline more than that of an adult with no medical condition who is in similar circumstances in the next two weeks if JSA hardship is not paid.

Each case must be considered carefully on its own facts and circumstances.

Note: It would be usual for any healthy adult to suffer some deterioration in their health and well being if they were without essential items, such as food, clothing, heating and accommodation or if they do not have sufficient money to buy essential items for a period of two weeks. What varies is what an individual may require in order for that essential need to be met. The test is that the DM is satisfied the decline in health would be greater than that of a healthy adult in similar circumstances.

Example:

Dee has suffered from a medically diagnosed eating disorder and depression for several years. She only eats certain types of foods and sticks to a very strict set of dietary rules about what she eats and how food should look. She becomes extremely anxious and upset if she breaks her diet rules and has to eat something different and this impacts on her depression.

Dee has more expensive needs to follow her strict diet regime than those of a healthy adult who can buy cheaper food without it impacting their health.

The DM is satisfied Dee's mental health would decline more than that of a person without a medical condition in similar circumstances if JSA is not paid if she cannot follow her normal dietary rules.

Fluctuating conditions

16 The DM must be satisfied that a decline in health will occur within the 2 weeks following their decision at the date of the determination and not if a decline in health

may occur in the future. The claimant can re apply for hardship payments if a fluctuating medical condition deteriorates (for example they suffer a flare up) and/or circumstances change such that it means they will suffer a decline in health if JSA hardship payments are not paid in the 14 days following the DMs decision (see Example 4 at paragraph 20).

Note 1: This is not a revision of whether the claimant is a person in hardship. This is a revision of the date hardship may be payable from and whether the claimant is able to demonstrate at a later point that they, or the relevant person suffering from a mental health impairment, will suffer a decline in health if hardship is not paid until day 15.

Note 2: The decline in health has to be associated with JSA hardship not being paid and not for any other reason. A person's health condition could decline for other reasons.

Sanctions and vulnerable claimants

- 17 DMs should ensure that safeguarding checks have been followed for any 'vulnerable claimants', (i.e. those with mental health impairment, learning difficulties and cognitive impairment) to ensure that claimants fully understand their responsibilities and the consequences of failing to comply with a requirement before imposing a sanction.

Note: In this context 'vulnerable claimants' as referred to in this paragraph and paragraph 19 are those which meet the wider DWP definition of vulnerable and not those specified in legislation¹ as a 'vulnerable group' specifically for hardship purposes.

1 JSA reg 140(1) & reg 146A(1)

- 18 Support should be targeted at the point of any failure to comply, including

1. further opportunities to provide good reason
2. sign posting claimants **and**
3. considering home visits if appropriate

before finally deciding if a decision making referral to consider a sanction is appropriate.

Note: Such safeguards for the claimant could help improve the claimant's prospects of complying with whatever activity it is they are required to do and avoid a sanction and a subsequent application for hardship in the first place.

- 19 Where a sanction referral is made, DMs should fully explore the concept of good reason for any 'vulnerable claimants' before imposing a sanction.

Note 1: Consideration should be given to ensure that JSA is the appropriate benefit for any claimant with a chronic severe mental health condition.

Note 2: In all cases the DM should consider all the individual facts and circumstances and the evidence available and in particular how any mental health impairment may have contributed to the act, omission or failure under consideration. Full guidance on the consideration of good reason is in DMG Chapter 34 at [34200](#) et seq.

Examples

- 20 The following are examples for illustrative purposes only in consideration of whether a claimant with mental health impairment satisfies the criteria to qualify for a JSA hardship payment without a waiting period.

Example 1

Amber applies for a hardship payment following a sanction being imposed on her JSA for failing without good reason to apply for a suitable, notified vacancy. She satisfies the criteria to be a person in hardship.

On her application Amber says since she has been unemployed, some 6 weeks, she has suffered from very low mood as she is worried about the future and her finances. Now her benefit has been sanctioned she feels more distressed and is not sleeping well due to the worry.

Amber has no diagnosed mental health condition and is not taking any prescribed medication. She lives with her parents.

The DM considers that Amber is not in one of the 'vulnerable groups' for hardship purposes as she is not suffering from a long term mental health impairment that has lasted or is expected to last at least 26 weeks.

JSA hardship will therefore be paid from day 15.

Example 2

Jeremy satisfies the criteria to qualify for a JSA hardship payment.

He provides medical evidence that he has suffered from low mood and severe anxiety for several years which is controlled by regular medication which Jeremy receives via free prescriptions. Without the medication, Jeremy states he would struggle to get through the day and wouldn't be able to do everyday tasks such as cooking, shopping and bathing.

He has an adequate supply of his prescription medication to last for the next two weeks and has no other known medical conditions.

Jeremy also relies however on the peace of mind that his regular benefit payments provide. Without them, his anxiety condition worsens which impacts on his behaviour, including a tendency not to take his medication which means he suffers severe panic attacks.

The DM determines hardship can be paid from day one as Jeremy satisfies the criteria to be in a 'vulnerable group'. Jeremy has a long term mental health impairment and without the payment of JSA hardship his mental health is likely to deteriorate in the next two weeks more than that of a normal healthy adult in similar circumstances.

Example 3

Theresa satisfies the criteria to qualify for a JSA hardship payment.

Theresa provides evidence that she has suffered from OCD for many years and has obsessions and associated ritual compulsive activity relating to contamination and dirt. She says that she has to shower several times a day and use freshly laundered towels on each occasion.

The DM considers that Theresa has additional water heating and laundry costs and that if she were unable to shower frequently, then this would result in an increase in her anxiety and a worsening of her OCD.

Theresa states she does not have enough soap or washing detergent to last her for the next 14 days as she uses more than a normal healthy adult due to her condition. She has an adequate supply of her prescribed anti-depressant tablets for the next 14 days.

Theresa qualifies to be in a vulnerable group as the DM considers she has a long term mental health condition that is likely to deteriorate in the next two weeks more than that of a normal healthy adult in similar circumstances if JSA hardship is not paid.

Theresa qualifies for JSA hardship to be payable from day one.

Example 4

Sadiq satisfies the criteria to qualify for a JSA hardship payment.

He provides medical evidence that he suffers from Crohn's disease and related depression. For all his adult life he has suffered recurrent episodes of diarrhoea and abdominal pain which tends to flare up every three to six months when he has to shower several times a day and use incontinence pads for minor leakage. His depression is worse when he suffers a flare up of his Crohn's disease.

Sadiq confirms that at the time of his application for hardship he is symptom free and has an adequate supply of his normal medication.

The DM considers that Sadiq may well incur additional water heating and laundry costs during a flare up of his Crohn's disease and that if he were unable to shower

and change this might result in a worsening of his depression.

The DM considers that although Sadiq has a long term physical and related mental health condition, his health will not deteriorate in the next 2 weeks more than that of a normal healthy adult in similar circumstances if hardship is not paid as he is currently symptom free.

JSA hardship therefore would not be payable until the 15th day.

However if during those 2 weeks Sadiq experiences a flare up of his symptoms such that it means he will suffer a decline in his health before the 15th day if JSA hardship is not paid, he can re apply for hardship payments from the date his symptoms flare up.

Example 5

Tim is 29 years old and provides evidence that he has suffered from mild depression for several years. He lives in a flat with his older sister. He applies for JSA hardship in August following a sanction being imposed and satisfies the criteria for a hardship payment.

The flat has gas central heating and Tim says without hardship payments he has no money to put in the gas meter. He confirms that the flat has an electric hob, microwave and kettle. He has no other known health conditions. He confirms he takes a mild anti-depressant for his condition and has sufficient medication to last him for the next two weeks.

The DM considers that the lack of heating in August for a single man aged 29 years with no mobility restrictions or respiratory problems would not lead to Tim's health condition deteriorating more than that of a normal healthy adult in similar circumstances if JSA hardship is not paid in the next two weeks. He has alternative cooking facilities available to be able to cook a meal and his depression is mild and controlled by his medication.

The DM considers that Tim would qualify for a hardship payment from day 15.

HOMELESSNESS

- 21 From 23.10.17 a claimant or their partner who is homeless as defined by prescribed legislation¹ falls within a 'vulnerable group' for the purposes of an award of JSA under hardship provisions². This means that they are eligible for hardship payments from day one, i.e. without a waiting period, if they are considered to be a person in hardship (see the guidance at paragraph 3).

1 Housing Act 1996, Part 7; Housing (Wales) Act 2014, Part 2; Housing (Scotland) Act 1987, Part 2;

2. JSA Regs, reg 140(1)(l); reg 146A(1)(i)

Meaning of homeless

- 22 In general terms, a person is homeless if they have no accommodation available for their legal occupation¹.

1 Housing Act 1996, s 175(1); Housing (Wales) Act 2014, s 55(1); Housing (Scotland) Act 1987, s 24(1)

- 23 This includes

1. sleeping rough
2. sleeping in friends' homes **or**
3. staying in temporary accommodation.

- 24 A person is also homeless¹ if they have accommodation but

1. cannot secure entry to it **or**
2. it consists of a moveable structure, vehicle or vessel designed or adapted for a person to live in and there is no place where it can be legally placed in order to live in it.

1 Housing Act 1996, s 175(2); Housing (Wales) Act 2014, s 55(2); Housing (Scotland) Act 1987, s 24(2)

- 25 A person cannot be treated as having accommodation unless it is accommodation which is reasonable for them to continue to occupy¹.

1 Housing Act 1996, s 175(3); Housing (Wales) Act 2014, s 55(3); Housing (Scotland) Act 1987, s 24(2A)

Application for hardship

- 26 If the claimant can show they are homeless then JSA hardship will be paid without a waiting period. Each case should be considered on the individual merits and circumstances and the evidence available at the time of the hardship application.

- 27 An adviser may consider the claimant can be treated as dealing with a domestic emergency when they are homeless if they consider their accommodation status impacts the claimant's capacity to retain or find work.

Note: Care needs to be taken to ensure that any conditionality easements for rough-sleepers and those in direct access hostels have been applied and that any restrictions or limitations have been applied to the requirement to ASE or be available for work to avoid unnecessary loss of benefit. See guidance in DMG Chapter 21 and Chapter 34.

- 28 Where a sanction referral is made, DMs should fully explore the concept of good reason and the impact of the claimant being homeless on their acts, omissions or failures before imposing a sanction to reduce JSA thus avoiding a sanction and a subsequent application for hardship in the first place, if and where appropriate.

Note: See DMG [34200](#) et seq for full guidance on the consideration of good reason.

- 29 It is important that the DM collects the appropriate and relevant information at the face to face hardship interview. The claimant has to demonstrate that they are homeless and bring any relevant circumstances to the attention of the DM. For example evidence that verifies the claimant's address as a hostel or bed and breakfast or other temporary accommodation.

Note 1: Only if the available evidence is unclear, improbable or self contradictory will the decision maker ask the claimant to provide any additional information and this **must not** require the claimant to incur any costs to provide any further evidence or delay a hardship payment.

Note 2: Care should be taken to ensure all the claimant's individual circumstances are taken into account. Homeless people often have complex needs and issues that may have led to their homelessness, for example; mental health conditions, drug or alcohol related problems.

Examples

- 30 The following are examples for illustrative purposes only in consideration of whether a claimant can show they are homeless to be considered as a member of a 'vulnerable group'¹ for JSA hardship purposes.

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

Example 1

Donald applies for a hardship payment. His JSA has been sanctioned for a second higher-level failure as he has failed without good reason to apply for a suitable notified vacancy. He now has a 26 week sanction imposed on his JSA.

Donald has been claiming JSA for four months and lived with his mum and her husband who are also living on benefits.

On receipt of the second sanction, Donald had a row with his step dad who has thrown him out as he has no money to contribute to his board and lodging. He is currently sleeping on a friend's sofa.

At the hardship interview Donald provides the telephone number of his friend and the hardship officer confirms Donald's current homeless state by telephoning his friend for confirmation of his current situation.

The DM considers Donald is homeless and qualifies for a hardship payment from day 1.

Example 2

Ivan makes an application for JSA hardship.

On his application he states he is living in a hostel. He was sacked from his last job.

On further investigation his employer confirmed he was dismissed for misconduct as he was caught stealing money from another employee.

A higher-level sanction was imposed on his JSA.

He provides a letter from the hostel as evidence of his current address.

The DM considers Ivan is homeless and qualifies for a hardship payment from day 1.

ANNOTATIONS

Please annotate the number of this memo (18/17) against DMG paragraphs:

35004, 35055, 35057, 35060, 35070, 35073, 35074, 35095, 35098, 35230, 35250, 35270, 35271, 35273, 35274, 35278, 35280, 35283, 35307, Appendix 6 to DMG Chapter 35.

CONTACTS

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, 1S25, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in [Memo DMG 03/13](#) - Obtaining legal advice and guidance on the Law.

DMA Leeds: October 2017

The content of the examples in this document (including use of imagery) is for illustrative purposes only.