

# Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF STRATEGIC COMMUNICATIONS)

## Decision Makers Guide

### Volume 6 Amendment 50 – February 2018

1. This letter provides details on Amendment 50; 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 50 affects the abbreviations, chapters 30 and 34. The changes make amendments to:
  - Chapter 30 - minor legal reference amendments to 30326 and 30682; re-drafting of 30285 and 30330.
  - Chapter 34 incorporate the findings from the Reilly/Wilson Supreme Court case (i.e. the prior information requirement); inserts the new employment scheme Work & Health Programme and the findings of recent case law regarding good reason.
4. If using a PDF amendment package remove the sheets as stated in the left hand column of the Remove and Insert table below and insert the new sheets as stated in the right hand column (note the record of amendments at the back of the Volume).

#### Remove

##### Abbreviations

Abbreviations (5 pages)

##### Chapter 30

30273 – 30286 (1 page)

30326 – 30345 (1 page)

30680 – 30715 (1 page)

##### Chapter 34

Conts (6 pages)

34031 – 34099 (10 pages)

34164 – 34176 (1 page)

#### Insert

##### Abbreviations

Abbreviations (5 pages)

##### Chapter 30

30273 – 30286 (1 page)

30326 – 30345 (1 page)

30680 – 30715 (1 page)

##### Chapter 34

Conts (6 pages)

34031 – 34099 (12 pages)

34164 – 34176 (1 page)

34200 – 34291 (13 pages)  
34322 – 34323 (1 page)  
34615 – 34621 (1 page)  
34651 – 34659 (1 page)  
34706 – 34710 (1 page)  
34721 – 34747 (4 pages)  
34761 – 34768 (1 page)  
34846 – 34900 (11 pages)  
34908 – 34910 (1 page)

34200 – 34291 (15 pages)  
34322 – 34323 (1 page)  
34615 – 34621 (1 page)  
34651 – 34659 (1 page)  
34706 – 34710 (1 page)  
34721 – 34747 (4 pages)  
34761 – 34768 (1 page)  
34846 – 34900 (12 pages)  
34908 – 34910 (1 page)

## Abbreviations

AA	Attendance Allowance paid under s 64 of the SS (CB) Act 92
"AA"	Attendance Allowance as defined in IS (Gen) Regs, reg 2(1) or JSA, reg 1(3)
ADC	Actual Date of Confinement
ADF	Adviser Discretion Fund
ADI	Adult Dependency Increase
AFIP	Armed Forces Independence Payment
AIP	Assessed Income Period
AMG	Appropriate Minimum Guarantee
AP	Additional Pension
APP	Adoption Pay Period
Art	Article
ASE	Actively seeking employment
AT	Appeal Tribunal
AWT	All Work Test
BA	Bereavement Allowance
BACS	Bankers Automated Clearing System
BB	Bereavement Benefits
BL	Board and Lodging
BP	Basic Pension/Bereavement Premium
BPT	Bereavement Payment
BSP	Bereavement support payments
BTEC	Business and Technology Education Council
BWC	Benefit Week Commencing
BWE	Benefit Week Ending
CA	Carer's Allowance
CAA	Constant Attendance Allowance
Cat	Category
CB	Contributory Benefit
CC	Community Charge
CDI	Child Dependency Increase
CESC	Council of European Social Charter
CHB	Child Benefit
CHB(LP)	Child Benefit for Lone Parents
CJEU	Court of Justice of the European Union
CMB	Child Maintenance Bonus
CMP	Child Maintenance Premium
CP	Carer Premium
CPen	Civil Penalty
CSM	Child Support Maintenance

CT	Council Tax
CTA	Common Travel Area
CTB	Council Tax Benefit
CTC	Child Tax Credit
CTF	Community Task Force
CTM	Contribution to Maintenance
CWP	Cold Weather Payment
CwP	Community work Placements
DCP	Disabled Child Premium
DCT	Direct Credit Transfer
DH	Department of Health
Dis G	Disablement Gratuity
Dis P	Disablement Pension
DLA	Disability Living Allowance
DM	Decision Maker
DMA	Decision Making and Appeals
DMG	Decision Makers Guide
DO	District Office
DP	Disability premium
DPTC	Disabled Persons Tax Credit
DWA	Disability Working Allowance
DWP	Department for Work and Pensions
EC	European Community
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECJ	European Court of Justice
ECsMA	European Convention on Social & Medical Assistance
EctHR	European Court of Human Rights
EDP	Enhanced Disability Premium
EEA	European Economic Area
EFC	Earnings factor credits
EFTA	European Free Trade Association
ELDS	Eligible loan deduction scheme
Emp O	Employment Officer
EO	Employment Option of New Deal for young people
EO(E)	Employed Employment Option
EO(S/E)	Self-Employed Employment Option of the New Deal for young people
EPP	Enhanced Pensioner Premium
ERC	Employment Rehabilitation Centre

ERA	Employment Retention and Advancement
ESA	Employment and Support Allowance
ESA(Cont)	Employment and Support Allowance (contributory allowance)
ESA(IR)	Employment and Support Allowance (income-related allowance)
ESA(Y)	Employment and Support Allowance for those with limited capability for work in youth
ESDA	Exceptionally Severe Disablement Allowance
ET	Employment Training
ETFO	Environment Task Force Option of New Deal for young people
EU	European Union
EWC	Expected Week of Confinement
EZ	Employment Zone
FamC	Family Credit
FAS	Financial Assistance Scheme
FND	Flexible New Deal
FP	Family Premium
FP(LP)	Family Premium (Lone Parent Rate)
FRIY	Flat Rate Introduction Year
FRM	Flat Rate Maintenance
F/T	Full-Time
FTE	Full-Time Education
FTET	Full-Time Education and Training Option
FtT	First-tier Tribunal
GA	Guardian's Allowance
GB	Great Britain
GC	Guarantee Credit
GCE	General Certificate of Education
GCSE	General Certificate of Secondary Education
GMP	Guaranteed Minimum Pension
GNVQ	General National Vocational Qualification
GP	General Practitioner
GPoW	Genuine Prospect of Work
GRB	Graduated Retirement Benefit
GRC	Gender Recognition Certificate
GRP	Gender Recognition Panel
HA	Health Authority
HB	Housing Benefit
HBS	Housing Benefit Supplement
HCP	Health care professional
Hep C	Hepatitis C

HIV	Human Immunodeficiency Virus
HM	Her Majesty
HMF	Her Majesty's Forces
HMRC	Her Majesty's Revenue and Customs
HO	Home Office
HPP	Higher Pensioner Premium
HRP	Home Responsibilities Protection
IA	Industrial Accident
IAP	Intensive Activity Period for those aged 25 and over and under 50
IAP for 50+	Intensive Activity Period for those aged 50 or over
IB	Incapacity Benefit
IBLT	Long-term Incapacity Benefit
IBS	Infected Blood Scheme
IBST	Short-term Incapacity Benefit
IBST(H)	Higher rate of short-term Incapacity Benefit
IBST(L)	Lower rate of short-term Incapacity Benefit
IB(Y)	Incapacity Benefit for those incapacitated in youth
IC	Intermittent Custody
IDB	Industrial Death Benefit
IFM	Immediate Family Member
IfW	Incapacity for Work
II	Industrial Injury(ies)
IIDB	Industrial Injuries Disablement Benefit
Incs	Increments (of Retirement Pension)
IND	Immigration and Nationality Department
IPC	International Pension Centre
IPPIW	Immediate Past Period of Incapacity for Work
IS	Income Support
IT	Industrial Tribunal (now Employment Tribunal)
IVA	Invalidity Allowance
IVB	Invalidity Benefit
IVP	Invalidity Pension
IVS	Invalid Vehicle Scheme
JSA	Jobseeker's Allowance
JSA 18-21 Pilot Scheme	Jobseeker's Allowance 18-21 Work Skills Pilot Scheme
JSA(Cont)	Contribution based JSA
JSAg	Jobseeker's Agreement
JSA(IB)	Income based JSA
JSD	Jobseeker's Direction
JSP	Jobseeking Period

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

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

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

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

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



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

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

## European Economic Area Nationals

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

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

## Refugees

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

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

30275 - 30280

## Student loans treated as income

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

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

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

## Amount of loan

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

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

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

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

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

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

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

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

## Postgraduate Master's Degree Loan

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

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

## Amount of grant income

### Initial disregard

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

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

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

*1 JSA Regs, reg 131(2)(a); IS (Gen) Regs, reg 62(2)(a); 2 JSA Regs, reg 131(2)(b); IS (Gen) Regs, reg 62(2)(c); 3 JSA Regs, reg 131(2)(c); IS (Gen) Regs, reg 62(2)(d); 4 JSA Regs, reg 131(2)(d); IS (Gen) Regs, reg 62(2)(e); 5 JSA Regs, reg 131(2)(e); IS (Gen) Regs, reg 62(2)(f); 6 JSA Regs, reg 131(2)(f); IS (Gen) Regs, reg 62(2)(g); 7 JSA Regs, reg 131(2)(g); IS (Gen) Regs, reg 62(2)(h) 8 JSA Regs, ref 131(2)(h); IS (Gen) Regs, reg 62(2)(i); 9 JSA Regs, reg 131(2)(i); IS (Gen) Regs, reg 62(2)(j); 10 JSA Regs, reg 131(2)(j); IS (Gen) Regs, reg 62(2)(k); Children Act 1989, Part III, Social Services and Well-being (Wales) Act 2014, Part 6*

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

## Higher education grant

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

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

## Special support grant (England and Wales only)

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

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

## Special Support Loan (England only)

- 30330 From the beginning of the 2016/17 academic year, Special Support Loans replaced Special Support Grants<sup>1</sup> for new students. Special Support Loans are awarded for the same purposes as a Special Support Grant and are also disregarded<sup>2</sup> subject to the disregards listed at DMG 30326.

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

30331 - 30340

## Disregards for students with child care responsibilities

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

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

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

30342 - 30345

## Young people entitled to income based Jobseeker's Allowance at the end of the Child Benefit extension period

30680 A young person is entitled to JSA(IB) after the end of the CHB extension period if<sup>1</sup> the young person

1. is
  - 1.1 of necessity, living away from parents and any person acting in place of parents and has left certain LA accommodation (DMG 30682-30685) **or**
  - 1.2 in certain circumstances and has been discharged from youth custody or a detention centre (DMG 30691-30692) **and**
2. any other entitlement conditions are met.

*1 JSA Regs, reg 60*

### Meaning of week

30681 For the purpose of deciding entitlement at the end of the CHB extension period week means any period of seven consecutive days<sup>1</sup>.

*1 JSA Regs, reg 60(3)*

### Young person has left certain local authority accommodation

30682 A young person is entitled to JSA(IB) at the end of the CHB extension period if the young person<sup>1</sup>

1. is, of necessity, living away from parents and any person acting in place of parents **and**
2. has left accommodation provided by an LA under specified legislation<sup>2</sup>.

*1 JSA Regs, reg 60(1)(a); 2 The Children Act 1989, Part III; The Social Services and Well-being (Wales) Act 2014, Part 4 or 6*

30683 The young person does not need to have been in care. An LA can provide accommodation in a number of ways, for example by arranging independent living. A person who has moved from one type of accommodation to another may still have their accommodation provided by an LA.

30684 Social services should be contacted to confirm if the accommodation was provided by the LA under specified legislation<sup>1</sup>. The LA should

1. have provided the accommodation **and**
2. not simply have assisted the young person to find accommodation.

*1 The Children Act 1989*

- 30685 A young person who satisfies this condition is entitled to JSA(IB) for the period starting on the day that the young person left LA care and ending on the earlier of<sup>1</sup>
1. the last day of the eight week period following that date **or**
  2. the day before the young person's 18th birthday.

Any week that the young person is entitled to JSA(IB) in the CHB extension period will count towards the eight week period.

*1 JSA Regs, reg 60(2)(a)*

30686 - 30690

### **Young person discharged from youth custody or a detention centre**

- 30691 A young person is entitled to JSA(IB) at the end of the CHB extension period if the young person
1. has been discharged from
    - 1.1 youth custody **or**
    - 1.2 a detention centreafter the CHB extension period **and**
  2. is in any of the circumstances that leads to entitlement to JSA(IB) in the CHB extension period, for example estranged or orphaned.

- 30692 A young person who satisfies this condition is entitled to JSA(IB) for the period starting on the day of discharge and ending on the earlier of<sup>1</sup>
1. the last day of the eight week period following that date **or**
  2. the day before the young person's 18th birthday.

*1 JSA Regs, reg 60(2)(b)*

30693 - 30715

# Chapter 34 - JSA Sanctions

## Contents

<b>Introduction</b> .....	34001
<b>Scope of Chapter</b> .....	34006
<b>Definitions</b>	
Claimant .....	34011
Sanction or reduction period .....	34012
Meaning of week .....	34013
Meaning of benefit week .....	34014
Meaning of employment officer .....	34015
Meaning of employment .....	34016
Meaning of current sanctionable failure .....	34021
Meaning of sanctionable failure .....	34022
<b>Sanctions – general principles</b> .....	34031
Prior information requirement.....	34033
Reduction period .....	34041
Escalation of sanctions.....	34044
Previous failure .....	34045
Higher-level sanctions .....	34046
Low-level sanctions .....	34047
Current sanctionable failure occurred within 2 weeks of an earlier failure at the same level.....	34048
More than one failure for the same period .....	34049
Previous failures before 22.10.12 .....	34050
Failures determined out of sequence .....	34051
Only one sanction already recorded .....	34053
More than one sanction already recorded .....	34054
Amount of the sanction.....	34056
Joint-claim couples.....	34057
Application of a sanction to a new award.....	34061
Exceptions.....	34071

Meaning of employment where a sanction is applied to a new award of JSA .....	34072
Claimant has two jobs .....	34073
"Reserved" decisions .....	34074
Hardship .....	34081
<b>Summary of sanction structure</b> .....	34089
<b>Higher-level sanctions</b> .....	34091
Sanction period .....	34097
Exceptions	
Redundancy .....	34100
Pre-claim failures .....	34101
Employment for a limited period .....	34103
Same failure can be both a higher-level and low-level sanction .....	34104
When the sanction period begins .....	34111
Joint-claim couples .....	34112
<b>Other sanctions</b>	
Intermediate-level sanctions .....	34121
Sanction period .....	34126
Current disallowance within 2 weeks of a previous disallowance .....	34127
13 weeks passed since last disallowance .....	34128
When the sanction period begins .....	34136
Sanction following a termination of a JSA award on grounds of availability/ASE and no entitlement to benefit on new award .....	34139
Exceptions .....	34141
Joint-claim couples .....	34144
Low-level sanctions .....	34161
Meaning of Jobseeker's direction .....	34162
Meaning of employment programme .....	34163
Meaning of training scheme .....	34164
Sanction period .....	34171
Exceptions .....	34176
When the sanction period begins .....	34178

Joint-claim JSA .....	34179
When the sanction period begins if hardship only in payment.....	34185
16/17 year olds claiming JSA	
Meaning of young person.....	34186
Young people who have a severe hardship direction in force .....	34187
Escalation of sanctions .....	34191
<b>Good reason</b>	
Introduction.....	34200
Meaning of good reason .....	34203
Burden of proof .....	34205
Time to show good reason .....	34211
The 'reasonable' test.....	34221
Evidence.....	34223
Claimant's evidence .....	34225
Previous failures.....	34226
What constitutes good reason.....	34228
Complex needs .....	34230
Victims of domestic violence .....	34231
Mental health.....	34236
Victims of harassment and bullying .....	34246
Homelessness.....	34251
Work experience .....	34259
Travelling time .....	34261
Exceptions.....	34263
Domestic situations .....	34271
Disability .....	34276
Learning difficulties, poor literacy or numeracy.....	34277
Substance abuse .....	34281
Legal constraints .....	34283
Temporary changes in circumstances .....	34286
16/17 year olds	
Good reason for training schemes.....	34291
Meaning of new jobseeker .....	34293

Good reason for refusing employment or neglecting a reasonable opportunity of employment .....	34294
Meaning of suitable training .....	34296
Examples of what may be a good reason in specific circumstances .....	34301
Significant harm to health or unreasonable physical or mental stress ...	34302
Significant harm to health.....	34303
Unreasonable physical or mental stress .....	34309
Consideration of claimant's health where claimant has left employment .....	34313
Sincere religious or conscientious objection .....	34321
Other terms and conditions which affect a claimant's personal freedom and beliefs .....	34326
Caring responsibilities .....	34331
Employee Shareholder Contracts .....	34335
Circumstances that may show good reason for a refusal or failure to apply for or accept if offered a job vacancy .....	34340
Restrictions on work search .....	34341
Employment expenses.....	34346
Child care expenses.....	34351
Unreasonably high proportion of pay .....	34360
Employment of less than 24 hours a week .....	34366
Shifts or rota systems.....	34370
Other circumstances that may amount to good reason .....	34376
Attitude of claimant's trade union.....	34378
Possible return to previous employment.....	34379
Laid off and short time workers .....	34380
Decision of Employment Tribunal pending .....	34382
Claimant already working.....	34383
Temporary employment .....	34385
Definite chance of other employment .....	34386
Personal preference.....	34387
Other more suitable people unemployed .....	34388
Job vacant because of a trade dispute stoppage .....	34389
Employment which the claimant has previously left .....	34395

Objection to employer or fellow employees .....	34397
Claimant does not have necessary equipment .....	34400
Seafarers .....	34406
Working time regulations .....	34409
Anti-social behaviour order, community order or community disposal ...	34411
Claimant given incorrect details of employment .....	34412
Zero hours contracts .....	34415
Employee shareholder contracts .....	34418
Other reasons .....	34419
Circumstances that do not show good reason .....	34421
National minimum wage .....	34423
Circumstances that may show good reason where a claimant leaves employment	
General .....	34426
Other circumstances that may show good reason .....	34431
Terms and conditions of employment .....	34436
Employer changes terms and conditions .....	34446
Police officers .....	34449
Grievances .....	34451
Work outside of agreed duties .....	34454
Contracts, terms and conditions .....	34456
Short time and overtime working .....	34461
Retirement and resignation .....	34466
Early retirement .....	34469
Leaving to take better paid or preferred employment .....	34470
Leaving to take up training .....	34472
Personal and domestic circumstances .....	34473
Moving home .....	34474
Relocation .....	34480
Partner going abroad .....	34481
Moving with parents .....	34482
Financial difficulties .....	34484
Living away from home .....	34491

Long daily journey to and from work .....	34493
Long or awkward working hours .....	34494
Chances of getting other employment .....	34496
Firm offer of other employment .....	34501
<b>Misconduct</b>	
Introduction .....	34531
What is misconduct .....	34536
What constitutes misconduct .....	34539
Mental illness .....	34560
Whether the claimant acted or failed to act as alleged	
Unfair dismissal .....	34561
Employment tribunal's finding of facts .....	34565
Proof .....	34566
Evidence .....	34568
Giving the claimant a chance to comment .....	34571
Whether the claimant acted or failed to act as alleged	
Claimant prosecuted .....	34576
Claimant acquitted .....	34577
Reports of court or employer's hearings .....	34578
Hearsay and eye-witness evidence .....	34582
Whether the claimant's conduct was misconduct .....	
Misconduct outside employment .....	34589
Instructions not obeyed .....	34591
Failure to follow rules and regulations .....	34592
Trade union membership and activities .....	34594
Health and safety .....	34598
Refusal to do work .....	34599
Refusal to work overtime .....	34605
Refusal on grounds of religion or conscience .....	34608
Negligence and inefficient work .....	34609
Carelessness or negligence .....	34611
Inefficiency .....	34612
Driving offences and road accidents .....	34613

Unauthorized absence and lateness.....	34619
Looking for other work.....	34621
Time off work under employment protection and trade union law .....	34622
Notification of absences .....	34624
Offensive behaviour .....	34626
Dishonesty.....	34631
Whether misconduct caused the loss of employment.....	34636
<b>Leaving employment voluntarily</b>	
Introduction.....	34651
Meaning of voluntarily .....	34653
Employment immediately before the claim .....	34655
Relationship with trade dispute .....	34656
Proof.....	34657
Evidence.....	34659
Giving the claimant a chance to comment .....	34660
Whether the claimant left voluntarily	
Claimants who have no employment .....	34666
Women on maternity leave .....	34667
Mariners .....	34668
Police.....	34669
Resignation and dismissal .....	34671
Relationship to misconduct .....	34673
Notice cancelled or suspended .....	34676
Changing the terms and conditions of employment.....	34677
The national minimum wage .....	34678
Absence from work .....	34680
Claimants who volunteer for redundancy.....	34686
Meaning of redundant .....	34687
Meaning of laid off and short-time.....	34690
Claimants who leave employment early .....	34691
Trial periods	
Introduction.....	34701
When claimants can benefit from the trail period rule.....	34702

Meaning of work.....	34704
The effect of a trial period .....	34706
4 week paid work trials through a work placement .....	34707
Apprenticeships .....	34708
<b>Members of Her Majesty's Forces</b>	
Voluntarily ceased employment .....	34711
Misconduct .....	34712
<b>Share fisherman .....</b>	<b>34715</b>
<b>Refuses or fails to take up employment</b>	
Introduction.....	34721
Informed by an employment officer.....	34723
Informing the claimant.....	34727
Refusal or failure .....	34732
Vacancy not closed .....	34733
Claimants change their mind.....	34735
Vacancy suspended or withdrawn .....	34736
Self service vacancies .....	34737
Universal jobmatch.....	34738
UJ account closed or suspended .....	34740
Exempt vacancies	
Work trials .....	34742
Zero Hours Contract.....	34743
Employee Shareholder Contracts .....	34744
Apprenticeships.....	34745
<b>Trade dispute stoppage.....</b>	<b>34748</b>
<b>Neglect to Avail</b>	
Introduction.....	34751
Meaning of neglect	
Claimant knew about employment, or could have found out .....	34753
Women on maternity leave .....	34754
Unreasonable behaviour .....	34755

Guidance on refusing employment applies .....	34756
Reasonable opportunity .....	34757
Trial periods/Employee Shareholder Contracts/Zero hours contract.....	34759
Apprenticeships.....	34760
<b>Fails for no good reason to participate in a scheme of a prescribed description</b>	
Introduction.....	34761
MWA scheme .....	34762
Selection for participation.....	34764
Requirement to participate and notification.....	34765
Failure to participate in the MWA scheme .....	34769
Pre-selection interview .....	34770
Induction/pre-start interview .....	34771
Evidence of notification .....	34772
Circumstances where requirement to participate is not required or ceases to apply .....	34774
Contracting out.....	34776
Provider gives good reasons when referring a sanction doubt.....	34777
Meaning of fails to participate .....	34778
Inappropriate behaviour .....	34780
Requirement to complete MWA.....	34786
The MWA notification is for a period other than 4 weeks .....	34787
Balance of time .....	34788
Provider makes an offer of employment .....	34789
MWA Scheme ending .....	34791
Effect on sanctions .....	34793
<b>Failure to participate in an interview</b>	
Introduction.....	34831
Meaning of participation .....	34833
Failure to participate – sanction applicable.....	34834
Relevant notification.....	34835
Failure to participate – no sanction .....	34841

Failure to participate – entitlement ends ..... 34842

**Schemes for assisting claimants to obtain employment**

Introduction..... 34846

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

Derbyshire Mandatory Youth Activity Programme ..... 34849

Full-time Training Flexibility..... 34850

New Enterprise Allowance ..... 34851

The sector-based work academy ..... 34852

Skills Conditionality ..... 34853

The Work Programme ..... 34854

Community Work Placements ..... 34855

Traineeships ..... 34856

Work and Health Programme..... 34859

Work Able Scotland and Work First Scotland ..... 34860

**Selection for and participation in a relevant scheme**

    Selection for participation..... 34865

    Requirement to participate and notification..... 34866

    Contracting out..... 34867

    Requirement to notify ..... 34868

    Failure to participate in the prescribed scheme ..... 34870

    Participating in a relevant scheme ..... 34871

    Evidence of notification ..... 34872

    Claimant raises issue of notification..... 34873

    By way of participation ..... 34875

    Sanctions and good reason ..... 34876

    Circumstances where requirement to participate is  
    suspended or ceases to apply..... 34877

**Designation of Employment Officers**

    Changes ..... 34879

    Approved Sub-contractor ..... 34880

    Prime Contractor ..... 34881

    Relevant contract ..... 34882

Employees of Authorised Providers .....	34883
Work Programme .....	34884
Community Work Placements .....	34885
Refuses or fails to take up employment .....	34887
Refusal or failure .....	34888
Employment Officer status .....	34889
Evidence of Authorised Providers .....	34890
Evidence to determine refusal or failure .....	34891
CwP Scheme ending .....	34893
Early termination .....	34895
Effect on sanctions .....	34896
Exemptions from requirement to meet the jobseeking conditions	
New Enterprise Allowance scheme .....	34898
Full-time student .....	34899
Discharged from detention in prison .....	34900
<b>Refusal or failure to carry out a jobseeker's direction (JSD)</b>	
Introduction .....	34901
Reasonable in the claimant's circumstances .....	34903
Restrictions .....	34904
Meaning of jobseeker's direction .....	34905
Considering good reason .....	34911
Back to work sessions .....	34912
Group Information sessions .....	34913
Day 1 conditionality .....	34916
Issuing a JSD to mandate JSA claimants to create a profile and public CV in Universal Jobmatch .....	34917
Access to the claimant's UJ account .....	34919
Evidence .....	34920
Exceptions .....	34922
Access to a DWP IAD .....	34923
Cookies fact sheet .....	34925
Refusal or failure to carry out a JSD .....	34926
Claimants change their mind .....	34927

Good reason- refusal or failure relates to the employment.....34928

Good reason – refusal or failure relates to the JSD itself .....34929

**Training schemes and employment programmes**

Introduction.....34941

Work experience .....34951

    Work experience opportunity .....34953

    Work experience arranged by work programme providers,  
    sector-based work academies or traineeships .....34954

Gross misconduct.....34961

    Sanctions.....34964

    Summary of Sanction Reasons and Structure for jsa claims  
    (claimant 18 years and over) from 22.10.12..... **Appendix 1**

    People the Secretary of State has authorised as Employment  
    Officers (see DMG 34015)..... **Appendix 2**

    Approved Prime Contractors (Work Programme)..... **Appendix 3**

    Approved Prime Contractors (Community Work Placements)..... **Appendix 4**

## Sanctions – General principles

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

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

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

### The ‘prior information requirement’

34033 The ‘prior information requirement’ principle is from a judgement of the Court of Appeal<sup>1</sup>. The judgement provided, in the general interest of fairness,

1. each claimant’s responsibilities **and**
2. the consequences of not meeting them

should be set out clearly in understandable terms at the stage of specification of particular actions or activities so that claimants can make informed and meaningful representations.

**Note 1:** The ‘prior information requirement’ may therefore be relevant both to whether the claimant has been validly referred to a specific activity and also to whether there was good reason for not participating in it.

**Note 2:** The fact that participation in or compliance with an activity or requirement is mandatory is beside the point. The whole purpose of the claimant having relevant information to be able to make representations, where benefit is under threat of sanction, is so the Secretary of State, or such authorised person, may be persuaded that the requirement, action or activity should be withdrawn or modified. This will be judged on the facts of the individual case.

*1 SSWP v Reilly and Hewstone and SSWP v Jeffrey and Bevan [2016] EWCA Civ 41*

34034 The amount and quality of information provided to the claimant about their responsibilities and the consequences of any failure to comply will therefore be relevant when considering whether a sanctionable failure has occurred in each individual case. Claimants need to be properly informed and

1. have clear and unambiguous communications to inform them of what is required of them
2. have the link between what they are required to do and the application of sanctions fully explained
3. know when they are in danger of being sanctioned
4. when a sanction has been imposed, the amount and the duration.

34035 The 'prior information requirement' should be approached on an individual case by case basis. The ability of claimants to access information and express themselves will vary considerably in their levels of education and ability to understand the complexities of the sanctions regime at a time when

1. they may be under considerable stress **and**
2. the outcome of which any failure to comply may have serious consequences on their ability to meet their living needs.

In the interests of fairness, therefore, they should be in no doubt of what is expected of them, the consequences of failing to comply with any requirement and be able to make meaningful representations to a DM before a decision is made.

34036 There will need to be cogent documentary evidence that shows that the claimant was adequately notified and required to undertake a specific action on a given day which they failed to do. For example;

1. apply for a job vacancy by a certain date,
2. participate in an interview at the Jobcentre
3. participate in an interview with a provider as part of a 'work for your benefit' scheme,
4. provide a CV,
5. attend a jobs fair.

This list is not exhaustive. The 'prior information requirement' applies to any action notified to the claimant where there is a threat of sanction for non compliance.

34037 The onus is on the claimant to establish that any representations would have changed the decision to

1. refer the claimant to a particular scheme **or**
2. ask them to comply with a specific requirement.

Once adequately informed the DM would determine under good reason if the claimant advocated any activity or requirement as notified was unreasonable, taking into account all the individual circumstances of the case (see guidance at DMG 34200 et seq on good reason).

34038 Notifications form an integral part of any appeal submission to demonstrate that the department was legally compliant with the 'prior information requirement' and have to be available if requested by the judiciary. Therefore whatever is required of a claimant in their responsibilities, the Secretary of State has to be able to produce evidence to support that the claimant was adequately informed if a sanction is to be imposed. This can be a copy of a formal written notification or a screen print of

system records showing records of a telephone conversation, face to face interview, text or email message. For guidance on specific notification requirements in certain circumstances see further guidance at

1. DMG 34723 regarding informing the claimant of a job vacancy
2. DMG 34765 regarding mandating a claimant to the MWA scheme
3. DMG 34866 regarding mandating a claimant to a SAPOE ('work for your benefit') scheme
4. DMG 34901 et seq regarding issuing a JSD.

**Note 1:** The DM should be mindful of the 'prior information requirement' whenever the Secretary of State requires the claimant to take part in an action or activity which could result in a sanction to benefit.

**Note 2:** It is not essential that the DM routinely sees a copy of every notification in order to be able to consider good reason and whether a sanction would apply but they should be satisfied records show the claimant was adequately notified and that copies can be obtained if required for an appeal. Many notifications are standard issue forms and copies are not kept on individual records. Also see further guidance at DMG 34872.

34039 - 34040

## Reduction period

34041 Where a failure is a sanctionable failure the claimant's award of JSA is normally reduced. The period and amount of reduction depends on<sup>1</sup>

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

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

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

*1 WR Act 12, s 46*

34042 The reduction period depends on whether the sanctionable failure results in a

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

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

34043 All sanctions are for a fixed period and run concurrently. Each sanctionable failure is treated separately even if this means that the period of a sanction overlaps a previous sanction or more than one sanction applies to the same reduction period due to the claimants signing and payment cycle.

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

## Escalation of sanctions

34044 All sanctions run concurrently and all sanctions must be at the same level (i.e. higher, intermediate, low) in order to escalate to the next penalty. The sanction length will only escalate if there has been one or more 'previous failure' (see DMG 34045) at the same level.

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

## Previous failure

34045 A previous failure is a sanctionable failure which has been the subject of a sanction decision at the same level<sup>1</sup>.

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

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

## Higher-level sanctions

34046 In the case of higher - level sanctions, previous failure<sup>1</sup> means

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

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

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

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

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

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

### **Example 1**

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

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

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

### **Example 2**

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

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

### **Example 3**

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

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

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

## **Low-level sanctions**

34047 In the case of low-level sanctions 'previous failure'<sup>1</sup> means

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

3. in the case of joint claimants, the failure is by the same claimant.

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

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

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

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

### **Example 1**

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

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

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

### **Example 2**

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

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

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

### **Example 3**

Charlie is in a joint claim with his partner Angelina.

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

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

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

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

34048 The sanction period for higher-level and low-level sanctions will not escalate to the next penalty where the subsequent failure at the same level is within the same 2 week period as the earlier failure<sup>1</sup>. This means where failures occur within 2 weeks of the most recent sanctionable failure, the sanction duration for the current failure should be imposed for the same duration as the previous sanctionable failure and does not escalate to the next penalty. A failure does not count as a previous failure until a decision to sanction is made.

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

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

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

#### **Example 1**

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

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

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

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

### **Example 2**

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

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

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

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

### **Example 3**

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

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

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

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

### **Example 4**

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

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

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

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

### Example 5

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

Dates of Sanctionable Failures	Period between current sanctionable failure & most recent previous sanctionable failure	Duration of sanction
21/01/15		4 weeks – it is Darya’s first failure.
28/01/15	7days	There is one previous failure and the date of the failure is within 52 weeks but is also within 2 weeks of the date of the current failure so the sanction duration has to be for 4 weeks
04/02/15	7days	There is more than one previous sanctionable failure and <b>the most recent</b> previous sanctionable failure is within 52 weeks but is also within 2 weeks of the date of the current failure so the sanction duration also has to be for 4 weeks
11/02/15	7days	Again there is more than one previous sanctionable failure and <b>the most recent</b> sanctionable failure is within 52 weeks and within 2 weeks of the date of the current failure so the sanction duration also has to be for 4 weeks

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

### More than one failure for the same period

34049 All failures have to be treated as individual failures even if this means the sanction periods will overlap<sup>1</sup>. All determinations are considered on their own merits and the facts and evidence presented, each must be given an outcome decision and appeal rights even if due to the claimants signing and payment cycle sanctions are applicable to the same reduction period (see guidance at DMG 04587).

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

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

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

### **Example 1**

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

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

### **Example 2**

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

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

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

### **Previous failures before 22.10.12**

34050 Any failures that occurred before 22.10.12 do not count towards the total number of failures when considering whether a failure that occurred on or after 22.10.12 is a first, second or subsequent failure. If a failure occurred prior to 22.10.12 it is subject to the old provisions. For guidance for any failure that occurred prior to 22.10.12 contact DMA Leeds.

## Example

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

## Failures determined out of sequence

34051 When looking at whether the sanction for the current failure should escalate, DM's must consider whether there has been any previous sanctionable failures which

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

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

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

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

34052 This allows for the fact that

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

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

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

## Only one sanction already recorded

34053 Where only one sanction is recorded, the DM needs to check the actual date of failure for that sanctionable failure. If it took place within 52 weeks, but not within 2 weeks, of the date of the current failure it should be counted as a previous sanctionable failure. This is the case even if the actual date of the failure is after the date of failure currently under consideration.

**Note 1:** Sanctions can only escalate where they are at the same level (i.e. higher, intermediate, lower) see DMG 34044.

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

### **Example**

Sean refuses to apply for a job vacancy notified to him by his advisor and the DM determines he has no good reason and imposes a 13 weeks sanction as there are no previous failures at the higher-level recorded. The date of the failure is 28.6.13.

**This is the first sanctionable failure.**

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

The DM looks at Sean's sanctionable history and a previous higher-level sanctionable failure of 13 weeks is recorded for a failure on 28.6.13. There is one previous higher-level sanctionable failure recorded which was within 52 weeks of the current failure (but not within 2 weeks) therefore a sanction of 13 weeks will be appropriate.

**This is the second sanctionable failure.**

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

First failure 28.6.13 - 13 weeks sanction

Second failure 6.5.13 - 26 weeks sanction

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

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

34054 Where more than one sanction is recorded, the DM will need to check the previous sanctions to see whether the sanction decisions were made in order of the date of failure. If so, the DM should have regard only to the most recent of the previous sanctionable failures when considering whether it meets the definition in relevant legislation<sup>1</sup>.

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

34055 If previous sanction decisions of the same level have been determined out of order of the date of failure the DM will need to look at all the previous sanctionable failures of the same level to see whether any have a date of failure within 2 weeks of the failure currently under consideration. If so, the DM should treat that as the most recent failure as it would have been had the failures been determined in date order.

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

**Example**

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

**This is the first sanctionable failure.**

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

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

**This is the second sanctionable failure.**

First failure 21.5.13 - 4 weeks sanction

Second failure 6.5.13 - 13 weeks sanction

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

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

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

Sanction 1 - 21.5.13 - 4 weeks

Sanction 2 - 6.5.13 - 4 weeks

Sanction 3 - 15.5.13 - 4 weeks

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

## Amount of the sanction

- 34056 The amount of the reduction in the case of a single claimant is 100% of the JSA payable to them<sup>1</sup>.

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

## Joint-claim couples

- 34057 In the case of a joint claim couple<sup>1</sup> the amount of the reduction is where the reduction relates to a sanctionable failure by

1. each member of the couple, 100% of the JSA payable to the couple<sup>2</sup> **or**
2. only one member of the couple, a deduction that leaves
  - 2.1 for the member of the joint claim couple who has not committed the sanctionable failure and is entitled to JSA(Cont), a rate equal to the appropriate personal rate<sup>3</sup>
  - 2.2 for a couple who are in hardship, a rate equal to the appropriate applicable amount for a joint-claim couple in hardship<sup>4</sup>
  - 2.3 in any other case, an amount equal to the appropriate single claimant rate of JSA(IB)<sup>5</sup>

**Note:** In calculating **2.3**, the DM should treat the claimant who has not committed the sanctionable failure as a single claimant<sup>6</sup>.

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

- 34058 The amount of any reduction has to be zero for any period during which an award of JSA for a

1. single claimant is already reduced as a result of a sanctionable failure<sup>1</sup>
2. joint-claim couple where the award is already reduced as a result of a sanctionable failure by one or each member of the couple and the current failure is by the same claimant<sup>2</sup>.

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

34059 – 34060

## Application of a sanction to a new award

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

*1 JSA Regs, reg 70C(3)*

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

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

**Example**

Lee's JSA is subject to a 13 week sanction for a failure to apply for a job vacancy without good reason. The sanction runs from 30.9.13 to 29.12.13. Lee starts a job on 21.10.13 and his claim to JSA ends on 20.10.13. On 8.12.13 Lee is laid off and reclaims JSA from 9.12.13. 3 weeks of the original 13 weeks sanction will be applied to his new award of JSA (i.e. the remaining balance or 'outstanding period' of the original sanction from 9.12.13 to 29.12.13).

34063 In cases where<sup>1</sup>

1. the DM has imposed a sanction **and**
2. that award of JSA is terminated **and**
3. the sanction period has not begun or not ended when the award of JSA was terminated **and**
4. a new award of JSA or a joint-claim JSA is made to the claimant who had been entitled to the previous award **and**
5. the reduction on the previous award was in relation to a sanctionable failure by the claimant who is entitled to the new award

then the sanction continues to apply to the new award of JSA<sup>2</sup>.

*1 JSA Regs, reg 70C(1); 2 reg 70C(2)*

34064 The reduction<sup>1</sup> on the new award has to apply for the

1. period of the reduction **less**
2. benefit weeks in respect of which the previous award was actually reduced **less**
3. period between the end of the benefit week in which the previous award was terminated and the start of the benefit week in which entitlement to the new award of JSA begins.

**Note:** Any time away from benefit is treated as time served and deducted from the sanction period.

*1 JSA Regs, reg 70C(3)*

### **Example**

A sanction decision has been made on Karen's award of JSA. This sanction is due to a disallowance on availability grounds on a previous award of JSA. The sanction is due to end on 12.11.12 but Karen finds remunerative work and her award of JSA ends on 26.10.12. Karen's temporary job comes to an end and she makes a new claim for JSA with a date of claim of 8.11.12. This award of JSA will be sanctioned with a sanction running from the date of claim to 12.11.12 because there was still an outstanding sanction on her last award of JSA.

- 34065 If a sanction has been imposed it will continue to apply through any subsequent awards until the expiry of the sanction period.

### **Example**

Jake is sanctioned for leaving his employment voluntarily, the sanction period of 13 weeks is to run from 23.2.13 to 24.5.13. On 27.3.13 Jake starts a temporary job and his JSA award comes to an end. The temporary job ends and Jake makes a new claim to JSA on 15.4.13. As this is still within the sanction period the outstanding period can be applied to Jake's new claim. Therefore a sanction will continue to be applied to the new award up until 25.4.13.

34066 – 34070

### **Exceptions**

- 34071 If a claimant becomes re-entitled to JSA after being in employment for
1. 26 weeks or more **or**
  2. more than one period of employment where the total of those periods amount to at least 26 weeks

the balance of the most recent sanctionable failure will be lifted and not applied to the new award<sup>1</sup>.

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

### **Example**

On 5.1.12 Channi voluntarily leaves her job. The DM considers Channi's sanction history and notes that within 52 weeks of the current failure (but not 2 weeks) Channi has on 2 previous occasions been sanctioned for voluntarily leaving her job. The most recent sanction was for 26 weeks. Therefore the DM imposes a 156 week sanction on Channi's JSA to run from 5.1.12.

On 10.2.12 Channi finds employment and her award of JSA comes to an end.

On 31.8.12 Channi's job comes to an end and she makes a claim for JSA. If the ordinary principles of applying the outstanding period were applied Channi would still

have the balance of the 156 weeks sanction applied to her new claim. However, as she has been in employment between 10.2.12 and 31.8.12 (i.e. for more than 26 weeks) the balance of the 156 week sanction will not apply to her new claim.

### **Meaning of employment where a sanction is applied to a new award of JSA**

34072 Employment for the purposes in DMG 34071 is defined in legislation<sup>1</sup> and means any employment including

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

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

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

### **Claimant has two jobs**

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

#### **Example 1**

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

#### **Example 2**

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

#### **Example 3**

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

### **“Reserved” decisions**

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

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

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

#### **Example 1**

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

#### **Example 2**

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

#### **Example 3**

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

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

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

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

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

34076 – 34080

## Hardship

34081 Where

1. the DM decides to impose a sanction **and**
2. the claimant's benefit is reduced

the claimant may be eligible for hardship payments

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

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

34082 - 34088



## Summary of sanction structure

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

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

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

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

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



## Higher-level sanctions

34091 Legislation<sup>1</sup> sets out the sanctions periods for a higher-level sanction which apply to failures to comply with requirements in relation to

1. employment **or**
2. specified mandatory employment schemes for assisting claimants to obtain employment<sup>2</sup>.

**Note 1:** Sanctions at the higher-rate are imposed in respect of voluntary employment, whether in terms of conduct bringing about a loss of employment or conducing to the continuance of a claimant's unemployment so claimant's are not compensated for unemployment caused by their own unreasonable conduct.

**Note 2:** The MWA scheme<sup>3</sup> is a specified mandatory employment scheme for the purposes of higher-level sanctions (see further guidance on the MWA scheme at DMG 34762). For guidance on sanctions for other prescribed schemes see DMG 34846.

*1 JSA Regs, reg 69; JS Act 95, s 19(2); 2 s 17A; 3 JSA Regs, reg 70B*

34092 The amount of JSA will be reduced for a fixed period<sup>1</sup> dependant upon previous failures (see DMG 34041) in the event of a failure to comply where the claimant

1. loses employment as an employed earner through misconduct (see DMG 34531 et seq)
2. without good reason
  - 2.1 voluntarily leaves employed earners employment (see DMG 34651 et seq)
  - 2.2 refuses or fails to apply for or accept if offered a situation in any employment which an Emp O (see DMG 34096) has informed the claimant is vacant or about to become vacant (see DMG 34721 et seq)
  - 2.3 neglects to avail himself of a reasonable opportunity of employment (see DMG 34751 et seq) **or**
  - 2.4 fails to participate in the MWA scheme (see DMG 34762 et seq).

**Note 1:** For the meaning of Emp O see the definition at DMG 34015.

**Note 2:** For the meaning of good reason see further guidance at DMG 34200 et seq.

*1 JS Act 95, s 19*

34093 – 34096

## Sanction period

34097 The higher-level sanctions period<sup>1</sup> will be a reduction in benefit for

1. 13 weeks where there is no previous failure **or**

2. 26 weeks for a subsequent failure occurring within 52 weeks, but not within 2 weeks, of a previous failure **or**
3. 156 weeks where there have been two or more previous failures and the most recent failure occurred within 52 weeks, but not within 2 weeks, and the most recent failure
  - 3.1 resulted in a 26 week or 156 week sanction **or**
  - 3.2 would have resulted in a 26 week or 156 week sanction but for the provisions in relevant legislation<sup>2</sup> (see DMG 34101).

**Note 1:** All higher-level sanctions are for a fixed reduction period. There are no discretionary length sanctions.

**Note 2:** The 52 weeks refers to the time elapsed between failures and not failure determinations or the beginning or ending dates of a sanction period. See DMG 34041 for the meaning of 'previous failure' and DMG 34043 for further guidance where sanctions are within 2 weeks of a previous sanctionable failure.

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

### **Example 1**

Les is a JSA claimant whose benefit week ends on a Tuesday. He is paid fortnightly in arrears. On 29.10.12 Les fails to commence his MWA placement. On Monday 5.11.12 the DM determines that JSA is not payable because Les did not participate without good reason in the MWA scheme. As this is Les' first higher-level failure the sanction is for 13 weeks.

On 7.5.13 Les fails to apply for a job. On 23.5.13 the DM makes another determination that JSA is not payable because of a failure without good reason to apply for an advertised vacancy. As this is the second higher-level failure and no more than 52 weeks but more than 2 weeks have elapsed since the date of the previous higher-level failure the duration of the sanction is 26 weeks.

### **Example 2**

On Thursday 22 8.13 the DM makes a determination that JSA is not payable to Wendy as she has refused without good reason to apply for a job in a shop that was notified to her by her advisor. Wendy states she does not want to apply for jobs in shops as she wants to work outside and use her trained skills as a gardener. The date of the failure is 8.8.13. This is Wendy's third higher-level failure within 52 weeks. Previous failures on 20.12.12 and 1.5.13 resulted in a 13 week and 26 week sanction being imposed. As this is Wendy's third higher-level failure within 52 weeks of the previous failure and the most recent failure resulted in a 26 week sanction being imposed the sanction will be for 156 weeks.

34098 - 34099

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

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

## Meaning of training scheme

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

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

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

34165 - 34170

## Sanction period

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

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

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

### Example 1

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

## Example 2

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

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

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

34172 – 34175

## Exceptions

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

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

**Note 2:** Where there are two separate failures at different levels two sanctions would apply (see example 2) but a sanction can only escalate to the next penalty where any previous failure is for the same level of sanction (i.e. higher, intermediate, lower) see DMG 34044 and Example at DMG 34104.

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

# Good reason

## Introduction

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

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

*1 JS Act 95, s 19B*

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

## Meaning of good reason

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

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

**Note:** Good reason expresses the same concept as its predecessor good cause but in more modern language. Therefore the principles established for good cause apply equally to the term good reason.

*1 R(SB) 6/83*

## Burden of proof

34205 The onus is on the Secretary of State to show there is a sanctionable failure (also see further guidance at DMG 34033). Except in misconduct cases, once the Secretary of State has shown a sanctionable failure has occurred, it is the claimant's burden of proof to show good reason for that failure (see DMG 34207).

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

34206 Claimants have to be given the opportunity to explain why they have not complied with requirements and it will remain the responsibility of the claimant to show good reason for the failure and provide information and evidence as appropriate to explain why they have not complied. It is the reasonableness of the claimant's actions and behaviours that is being considered (see DMG 34221).

34207 The following guidance is to provide a framework for DMs to use when considering whether or not good reason is demonstrated and is not an exhaustive list of individual circumstances. In every case the DM should take into account all the individual facts and circumstances and consider the case on its own merits.

34208 - 34210

### **Time to show good reason**

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

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

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

**Note 1:** Reference to days is working days excluding Saturdays, Sundays and bank holidays. Allowance must be made for posting where a notification is made by post<sup>1</sup>. Where the information is to be obtained by post the adviser should normally make

some attempt to contact the claimant by telephone or face to face to inform them that a letter they should respond to is on its way to them. If the notification goes out by second class post and a reply is likely to be returned by post, allowing more than 5 days may be more reasonable.

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

*1 Inte Act 78, sec 7*

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

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

**Note:** The DM should also be mindful of any temporary easements that may apply to particularly vulnerable claimants who have complex needs and are suffering personal crisis or life events which may not become evident until the case has been referred to the DM to consider a sanction (see DMG 34230).

34215 - 34220

## **The 'reasonable' test**

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

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

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

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

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

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

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

### **Example 1**

Iqbal is in receipt of JSA and has been participating in the Wp for approximately 3 months. He has been issued with an appointment letter to attend a Wp appointment on 1.4.15 at 12:30pm with his provider by way of his participation in the Wp scheme Iqbal did not attend the appointment and stated in his good reasons that the night before the appointment he was informed that his uncle had passed away and that the funeral was on the next day, 1.4.15 at 11:00am.

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

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

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

### **Facts and evidence**

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

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

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

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

### **Decision**

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

### **Example 2**

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

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

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

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

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

### **Decision**

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

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

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

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

### **Example 3**

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

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

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

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

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

#### **Example 4**

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

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

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

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

The DM considers whether Ada has good reason.

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

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

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

#### **Example 5**

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

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

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

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

The DM considers whether Britney can show good reason.

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

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

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

Britney can provide no evidence that she had to provide any specific kind of support or assistance for the family on 5.8.15 which meant she could not meet her obligation as a jobseeker to attend the appointment with the provider. She would have received a notification from the provider informing her she had to contact the provider if for any reason she could not attend as a failure to do so could affect her benefit, therefore, it is not unreasonable to have expected her to phone the provider to tell them she could not attend on the day and rearrange the date and time.

## Evidence

34223 The DM should seek further evidence where it is considered necessary in order to clarify reasons or seek further evidence as sufficient proof to justify good reason particularly where the claimant has a history of previous failures or one of the circumstances in DMG 34228 applies. This could involve

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

**Note 1:** A record of all evidence relied upon to reach a decision should be recorded for evidentiary reasons and a copy be available in the event of reconsideration and/or appeal.

**Note 2:** The DM should not expect the claimant to incur any costs to provide further evidence. The claimant may have in their possession letters or documents which could be provided to clarify the claimant's account of events (for example; a letter or text message confirming a hospital or dental appointment).

**Note 3:** Where evidence is not available the DM has to make a decision using the 'balance of probability' which involves the DM deciding whether it is more likely than not that an event occurred, or that an assertion is true (for full guidance on the balance of probability see DMG Chapter 1 – The principles of decision making and evidence) but also see DMG 34225 regarding direct evidence.

### Example

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

34224 The weight given to evidence should be carefully judged in the circumstances of the particular case. As a general rule

1. direct evidence is more significant than indirect or hearsay evidence **and**
2. the closer in time to the event the DM obtains and considers the evidence, the more helpful it is likely to be.

**Note 1:** Direct evidence is a statement by a witness and this includes the statement of the claimant (also see DMG 34225).

**Note 2:** The information must be relevant, accurate and current (see full guidance on evidence in DMG Chapter 1 – The principles of decision making and evidence).

### **Claimant's evidence**

34225 A claimant's statement, whether oral or in writing, is evidence. It is often the best evidence and sometimes the only evidence available, even after further enquiries. The evidence given by the claimant therefore cannot be dismissed without contradictory or conflicting evidence to show it is

1. self-contradictory **or**
2. improbable **or**
3. it so implausible it cannot be probable (this is where it is very unlikely that what has been asserted can be true, i.e. inherently improbable.)

**Note:** It is not always appropriate to draw an adverse inference where a claimant is unable to produce evidence. Regard has to be had to the reason, or probable reason, that the evidence cannot be produced just as regard has to be had to the probable reason for a refusal to produce evidence that does exist. For full guidance on evidence see DMG Chapter 1 – The principles of decision making and evidence.

### **Example**

Jaydn fails to attend for his normal work search review. His explanation is that he had flu but he did not visit his doctor and has no evidence to support his statement of good reason.

From a health point of view it would be appropriate and common sense for Jadydn to refrain from attending the office if he did indeed have flu as it could be passed onto other people and general medical advice would be to refrain from attending a place of employment.

The Secretary of State has no evidence to suggest this was not a good reason on Jaydn's part and in his circumstances. There is no evidence that does not lend support to the credibility or plausibility of Jaydn's account of events and no previous history of non-compliance with his obligations as a jobseeker.

The DM should therefore accept Jaydn's evidence as a true account of events and accept good reason.

Also see Example 2 (Ava) and Example 3 (Alpa) at DMG 34227.

## Previous failures

34226 If the claimant has a record of previous failures the DM should consider those failures as evidence relevant to the credibility of the evidence presented to support the claimant's reasons for a current failure. The DM should consider how likely is it that

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

**Note:** It is for the DM to identify any patterns and trends in a claimant's behaviour when considering a claimant's reasons for a failure in consideration of all the facts of the individual case. However previous non-compliance is not always an indication that the claimant doesn't have a good reason on the occasion under consideration. It is important to bear in mind that a claimant's circumstances may fluctuate frequently and vary significantly but the DM may want to see further evidence to support the claimant's reasons where there is a history of non compliance (see DMG 34227).

34227 The DM should not automatically accept good reason even if the reasons given for the failure would in isolation normally support good reason if there is evidence of a history of non-compliance. When considering previous failures to comply the DM should be satisfied that the good reason is valid by seeking supporting evidence, especially where there is compelling or contradictory evidence that may require further enquiry. It is not unreasonable for the DM to ask the claimant to provide written evidence to support their reasons for a failure, for example, medical evidence from a doctor or a letter to provide evidence of another appointment (also see further guidance at DMG 34286 where the claimant has a temporary change of circumstances).

**Note:** The DM should be mindful not to incur costs on the claimant to provide any further evidence (see DMG 34223) and also mindful of the guidance at DMG 34225.

### Example 1

The DM receives a sanction referral from the MWA provider. Abel has failed to start his placement on the scheme. The evidence shows that this is the fourth consecutive failure by Abel to engage in the MWA scheme. Previous failures are documented as allowances for a period of sickness, a period of sickness of his elderly mother and a period of sickness of his daughter.

On this occasion he states he felt too ill to attend on the start date. The DM asks Abel to provide written medical evidence to support his illness. He replies saying he did not seek medical attention and did not visit his doctor on this occasion. He says it was a migraine and he went back to bed to sleep it off. There is no evidence of a known underlying physical or mental health condition.

The DM decides that it is inherently improbable that on four consecutive occasions Abel cannot start his MWA placement on the required day due to illness of either himself or a close relative and he can provide no written evidence.

The DM considers that it was reasonable in the circumstances to have expected Abel to contact the provider on that morning and rearrange the start date for the following day.

The DM determines Abel failed to participate without good reason in the MWA scheme and imposes a 13 week sanction for a first higher-level failure.

### **Example 2**

The DM receives a sanction referral from the JCP advisor. Ava has failed to attend her normal fortnightly job search review. The evidence shows that this is the fifth time Ava has failed to 'sign on' at the appointed time. Previous failures are documented as two periods of sickness, attending a family funeral, she was late due to road works and looking after her elderly sick mother.

Ava fails to attend her interview on 11.12.17 and later in the day telephones to say that she could not travel to the appointment due to the bad weather. On the day of the interview there are light snow flurries and a severe frost but nothing serious to cause major issues for travelling, certainly public transport appears to be running as normal.

The advisor asks Ava why weather conditions have meant she could not travel to the Jobcentre. Ava states she was involved in a road traffic accident 2 years ago on her way home from work when her car spun off the road in icy conditions. She fractured her collar bone, right arm and right leg. She is now fully recovered from her physical injuries. However, since the accident Ava states she suffers from mild depression and anxiety which is exacerbated when she has to travel in adverse weather conditions.

She says she had a panic attack about travelling to the appointment on 11.12.17 when she saw the snow and ice. She was too anxious and distressed to drive her car. When asked if she could have arranged for a taxi, or a lift or to get a bus instead she said she just wasn't thinking straight, she saw the snow and panicked. She lives with her elderly mother who doesn't drive and who in any event would not be a suitable companion to travel with in adverse weather conditions due to her age and frailty. Ava says she does take a mild medication for her anxiety and her doctor could confirm her story if required. On the morning of the appointment she had taken her medication to calm down and then had telephoned in the afternoon when she felt better.

The DM asks Ava to provide some relevant medical evidence as she has a particularly bad history of failing to attend appointments. She provides a copy of her

repeat prescription for her anxiety medication. On the day of the appointment Ava's mental health state contributed to her reasons for not attending her appointment. She was temporarily distressed by particular circumstances, i.e. the bad weather, which was reasonable in her circumstances. She had telephoned the office to explain why at her earliest opportunity and provided satisfactory evidence to support her reasons. Ava had demonstrated good reason for the failure on this occasion Also see guidance at DMG 34236 et seq when considering the effect of mental health conditions on a claimant's reasons for failing to comply.

### **Example 3**

Alpa fails to attend his normal work search interview at the Jobcentre on 31.10.17. He has a history of previous non compliance attending interviews.

Alpa telephones his work coach on 1.11.17 and says he started with severe stomach pains and vomiting during the evening of 30.10.17.

He has no previous recorded history of a stomach related condition.

He says he was still in pain and being sick at the time of the Jobcentre appointment and was unable to leave the house. He says he didn't think about his jobcentre appointment at the time, he had been awake all night being sick and in pain and was really worried about this. He was trying to speak to his doctor to see if he should go there or to hospital. He was also concerned he would run out of credit on his mobile phone. When he finally got through to the surgery, he went into the triage system and was advised to go to A&E as there were no appointments available to see his own doctor on that day.

He contacted a friend to drive him to A&E where he was given pain medication and an ultrasound scan. He was told to rest for a couple of days and avoid certain foods and advised to see his GP after 48 hours if the condition persisted.

Alpa tells the work coach he does not have any documentary evidence of his A&E visit but says his friend who drove him to A&E could vouch for him if required.

The hospital should have sent notes of his visit to his GP but his GP would charge him for a letter to confirm this.

He does however have the medication that was given to him at the hospital and he can show a text confirmation of the follow up appointment he has made to see his GP on 2.11.17.

The DM accepts on the balance of probabilities Alpa has good reason for his failure to attend. There is no contradictory evidence that does not lend support to the credibility or plausibility of Alpa's account of events. He can provide confirmation of the prescribed medication and a follow up appointment with his GP. If required

confirmation of events could be sought from the hospital, his doctor or his friend

## What constitutes good reason

34228 Examples of a claimant's circumstances which should be treated as contributing to good reason for an action or failure include those who

1. are victims of domestic violence (see DMG 34231)
2. have mental health conditions or disorders (see DMG 34236)
3. are victims of bullying or harassment (see DMG 34246)
4. are homeless (see DMG 34251) **or**
5. lose or leave a work experience opportunity or placement other than for reasons of gross misconduct (see DMG 34954)
6. have complex needs or are experiencing difficult personal circumstances or crises (also see DMG 34230 and 34271).

**Note 1:** Advisors can highlight cases during the claims process where a claimant's personal circumstances may have influenced their behaviour and the relevant evidence the DM should consider (for example: mental health or domestic violence, homelessness etc, also see **Note 3.** regarding complex needs)). This may not be sufficient proof in itself of good reason but would serve as an indicator to the DM to investigate supporting evidence to justify their determination on good reason.

**Note 2:** This is not an exhaustive list or specific criteria that mean a claimant would have automatic good reason but examples of what **may** contribute to a claimants actions or omissions when considering what may be reasonable in light of all the individual facts and circumstances.

**Note 3:** The DM should be mindful that claimants often have complex needs or require additional support that may contribute to their failure to comply with any requirement. Claimants may not provide a full account of events without further discussion (see further guidance at DMG 34230).

34229 The list in DMG 34228 is in addition to the range of easements prescribed in regulations<sup>1</sup> for the circumstances in which a claimant can be treated as being available for and ASE (see DMG Chapter 21 for further guidance). If one of the easements apply then the DM will not consider good reason.

*1 JSA Regs, reg 14, 14A & 19(1)(x)*

## Complex needs

34230 Complex needs means the claimant is experiencing some difficult

1. life event(s) **or**
2. personal circumstances

that means it would be unreasonable to expect them to complete their requirements for a temporary period of time. Such needs can happen unexpectedly at any time and often the truth of the claimant's situation is not fully revealed until the case has been referred to the DM to consider good reason and whether a sanction applies. This can often be dependant on the sensitive nature or the complexity of the issue(s) and the vulnerability of the individual claimant. Some claimants fear being stigmatised because of their complex needs and each claimant deals with their circumstances and crisis differently. Some claimants may readily disclose complex needs, however, other claimants may be unwilling to reveal that they are experiencing difficult life events or personal situations. They may have mental or physical disabilities and they may be particularly 'vulnerable', for example, suffering from homelessness, addiction or the results of domestic violence, abuse, slavery or are ex prisoners.

**Note 1:** It is for the DM to consider all the individual facts and circumstances and personal situation of the claimant (also see DMG 34271 regarding Domestic situations).

**Note 2:** Claimants who have complex needs may have extreme difficulty in dealing with the demands of benefit processes at a time when they may be under considerable personal stress which makes compliance with requirements unreasonable for them. The DM should consider whether good reason is satisfied and whether requirements can be temporarily eased.

### **Example 1**

Marjory claims JSA as a single person in February 2017. She fails to attend her normal fortnightly work search review with her work coach on 9.3.17.

In her good reasons Marjory explains she left her home in February which she shared with her partner due to being a victim of domestic violence.

She was a housewife with no children.

She has been staying with a friend, sleeping on her settee as she has nowhere else to live, but her friend has asked her to move out at the end of the month as she is getting in the way and it could only ever have been a temporary arrangement.

Marjory does not have any personal income or savings of her own as she was totally dependent on her partner and his wage.

She has no qualifications or recent employment skills because she was a full time housewife for over 5 years.

Marjory's friend helped her to make her JSA claim.

Marjory says she is extremely anxious and frightened for the future as she feels she'll have to move back in with her ex-partner or she will be homeless. Her partner

was physically abusive and she has suffered black eyes, bruising and even broken bones due to his violence over the past five years. She left him in February following a particular violent attack when she suffered black eyes and a broken nose.

Marjory has no family in the area to turn to but her friend offered her a temporary solution to get away from her partner. She is struggling emotionally and finding it hard to cope being independent and is worried about her future.

She says she was so overwhelmed by the enormity of her current situation when her friend said she had to leave at the end of the month she couldn't face attending her work search interview and went into panic. With no skills or qualifications she cannot see how she could possibly find a job and doesn't know where to start or how to search for a place to live.

Marjory's confidence and self esteem are very low, she is feeling despondent and has even contemplated suicide. She says she did not mention any of this on her claim form or to her work coach as she was ashamed but she cannot afford for her JSA to be sanctioned as she has no other form of income.

The DM decides Marjory has good reason for the failure on 9.3.17 and considers that Marjory has so many complex issues to cope with at present that a temporary easement of her work search and availability requirements would be appropriate to give her time to focus on finding suitable accommodation, to make financial arrangements and to attend any counselling support. The case is returned to the work coach to apply an easement of Marjory's current work related requirements.

Marjory is given details of specific websites and phone numbers which could be helpful to her (e.g. The National Domestic Violence Helpline and RESPECT).

Marjory's easement would start on the date she disclosed her needs and continue as long as she provides evidence of her continued need. This could be evidence, for example, that she has made contact with the appropriate helplines and made some progress in looking to secure alternative accommodation as a first step.

## **Example 2**

Aamira claims JSA. She is a single parent and has a young child age 3.

On 16.5.17 she fails to attend her regular work search appointment with her work coach.

In her good reasons Aamira states she was afraid to leave her home and didn't have any child care for her 3 year old at the time of the appointment.

Aamira states she has been advised to stay at home as much as possible due to racial threats from her neighbour which so far have not resulted in actual physical violence only verbal abuse but there have been minor incidents where she has had mud thrown at her door and windows, washing disappearing from the washing line

and written threats posted through her letter box. This is due, she says, to racial tensions following recent terrorist attacks that have happened in major cities around the world.

Aamira has contacted the police about the incidents but does not want to make an official statement for fear of making the situation worse. Her health visitor has advised Aamira to stay inside as much as possible and to temporarily take her 3 year old child out of the local nursery to avoid contact with her neighbour as the neighbour's child also attends the same nursery.

Aamira has been placed at the top of the council housing list for priority re housing due to the current situation.

She does go out for shopping locally as and when required but is very careful when she goes out, trying to go at off peak times and is constantly looking over her shoulder and worried she may bump into her neighbours.

Aamira is finding the whole situation very distressing and is genuinely frightened of her abusive neighbour and what might happen.

The DM considers Aamira has good reason for failing to attend the appointment on 16.5.17 and returns the case to the advisor to consider a temporary easement of Aamira's availability and work search requirements until such time as she is rehoused and can arrange a new nursery for her son in the new area, as it is unreasonable in her current circumstances to expect her to meet her current requirements in her situation.

## **Victims of domestic violence**

34231 Claimants who have been a victim of threatened or actual domestic violence are treated as available and ASE for up to 13 weeks<sup>1</sup> (see guidance in DMG Chapter 21).

**Note:** For the definition of domestic violence see DMG Chapter 21.

*1 JSA (Domestic Violence) (Amdt) Regs*

34232 Similarly claimants who are forced to leave, or refuse employment because of threatened or actual domestic violence from an estranged family member are to be treated as having good reason for so doing. This would be where the claimant notifies JCP or the DM that keeping or taking up a position would represent a risk to their safety because, for example:

1. the estranged spouse, partner, or family member would know where they work and could inflict harm on them **or**
2. taking up or retaining a job would be likely to expose the claimant to the area or place their estranged family member

**2.1** resides

**2.2 works or**

habitually travels to or visits

3. with the risk that harm could be inflicted on the claimant.

**Note:** This list is not exhaustive. Other conditions might also apply that would put the claimant at risk. The DM should consider each case on the individual facts and circumstances.

34233 In the same way a claimant is to be treated as available and ASE, a claimant would qualify as having good reason if

1. they are not living with the family member who inflicted or threatened violence
2. the threatened or actual domestic violence falls within the definition in DMG 21371
3. the person threatening or inflicting that violence or abuse is a family member (see guidance at DMG 21372 for definition of family member)
4. the claimant can provide evidence, or consents to validation, that they have reported the threat or actual violence to the police, healthcare professional, social worker or other official (see guidance at DMG 21373 – 21376 for relevant definitions).

**Example**

Rebecca has made a claim for JSA from 19.11.12. She has recently left the marital home following the breakdown of her marriage. Rebecca left her husband after a period of emotional abuse which culminated in her leaving on 15.11.12. Rebecca notifies the Jobcentre on 22.11.12 that she has been a victim of domestic abuse. The DM treats Rebecca as being available for work for four weeks beginning on 22.11.12.

On 23.1.13 Rebecca fails to apply for a job vacancy notified to her by JCP. She says she refused to apply for the vacancy as it is on the same industrial estate where her ex husband works and she is afraid she may bump into him if she was to work there. The DM determines that Rebecca has good reason for not applying for the vacancy as it could result in a risk to her safety.

34234 - 34235

**Mental health**

34236 Claimants may have good reason if they lose or leave work or fail to carry out tasks or participate in relevant activities if they were experiencing poor mental health which meant that

1. they were not able to comply with a reasonable request **or**
2. complying with the request in question would put their mental health at risk **or**

**3.** complying with the request would have put the health of other people at risk.

**Note:** The consideration at **3.** would apply to any situation where the claimant was involved with others, for example their mental health may involve unprovoked violent episodes or may mean they cannot concentrate fully and so could not drive or operate machinery around others or their mental state may be such that spending time with them could result in others feeling stressed.

34237 The DM should consider each individual case on its own merits taking into consideration all the facts and evidence and whether the claimant understood what was required of them and their reasons for the failure taking into account in particular their mental health and how it affected them at the relevant time.

34238 As well as giving consideration to those claimants who have a clinically diagnosable mental health condition the DM should consider whether a claimant who has no diagnosed condition may be temporarily distressed by particular circumstances that could worsen or precipitate mental ill health, in particular where a claimant has no previous history of mental ill health, and seek supporting medical evidence or other information suggests that continuing in a particular work environment was prejudicial to that individual's mental health or to participate in a certain activity would exacerbate a mental health condition.

**Example**

Dennis is required to attend a 3 days training course with a manufacturing company starting on 28.7.15 at 9am. He fails to attend.

On 7.8.15 Dennis provides his good reasons and explains that on the day he was due to attend the training course he slept in. He goes on to say that at the time of the training course he was prescribed anti-depressants and sleeping pills from his GP as he is very anxious and stressed and not sleeping well at night as he is going through a difficult court case and if convicted could face going to prison. The day before the training course he had been in court all day and was very stressed and couldn't sleep so he took a sleeping pill in the early hours of the morning and as a result did not wake up until 2pm. He phoned the manufacturing company immediately and re arranged the training course for the following week and has since attended and completed the 3 day course successfully.

The DM considers Dennis has good reason for the failure. His mental health state and circumstances had contributed to his failure. He could provide evidence he was taking medication prescribed by his GP for his anxiety state. He had acted reasonably in the circumstances by immediately contacting the training provider and re arranging the course.

Also see Example 2 at DMG 34225.

34239 Where the DM is satisfied that the claimant

1. left a job voluntarily **or**
2. engaged in alleged misconduct

which was a product of their poor mental health they should not impose a sanction.

34240 Although some claimants may have an existing mental health condition others may not but their actions may represent the onset of a mental health issue which may be a temporary response associated with a particular problem in a specific type of workplace. It is for the DM to determine whether the claimant's mental state is the genuine reason for leaving or losing work as distinguished from those that result from dissatisfaction or genuine misconduct.

**Note:** Relevant information may include for example deterioration in a previously satisfactory work attendance record, more frequent medical consultations (not restricted to mental health issues) and uncharacteristic behaviour in the workplace.

#### **Example 1**

Helen is a 32 year old lady who was previously working at a large department store had felt her work situation was intolerable so left several weeks ago. She makes a claim to JSA.

At her job search interview Helen provides details of her previous employment. She was employed as a stock clerk, did her job well and had an excellent attendance record. Seven months ago, she was asked to fill in temporarily for a colleague at the Customer Service desk for 4 weeks but was kept in that role until her resignation. She had always been a slightly nervous person, but noticed that with the hectic pace of her new role and being bombarded with requests and at times even harsh words from customers, she was struggling to cope. She asked her manager on more than 5 occasions to reassign her to her previous role, but she was told they were short of staff. Her situation worsened, she started missing work regularly and saw her GP four times for insomnia, headaches and 'nerves'. During the Christmas sales period things became even more hectic and her manager told her there was no way she could be re-assigned. While she was well at home, she was becoming increasingly frightened to go to work and spent increasing amounts of time crying in the bathroom at work. She finally could not cope anymore and decided to leave.

Helen provides her sick leave record and a letter from her GP to support her condition and her prescription for sleep aids and headache medication. Further evidence sought from her employer confirms the reasons for her leaving. The DM determines Helen has good reason for leaving her employment.

#### **Example 2**

George who is 59 years old leaves his job as an engineering manager of 30 years and makes a claim to JSA. On his claim form and at his advisor interview George states he could no longer cope with the stress of the job and the increased hours

and pressures as the company had suffered staff cuts and he was doing more duties than normal.

Over the last year he had been asked to do more and more and the pressure was causing him health concerns. He says during this period he also had several short periods of sick absence for minor ailments which he says in past years would not have resulted in an absence from work. He says he had discussed his concerns with his doctor over the past 6 months who had not diagnosed a specific mental health condition but it was noted on each visit his blood pressure was slightly raised, he was irritable, he was suffering from a lack of sleep and that he felt stressed.

He was taking medication to help him sleep. On the day he decided to leave there had been an accident where a colleague had been seriously injured and the extra stress the resulting paperwork caused him and his distress for his colleague had caused a panic attack and this triggered his decision to leave. George provides a letter from his doctor supporting his health condition, details of his sleeping medication and further evidence of his sick record. The doctor provides an opinion that if George was to continue in that stressful environment it could precipitate mental ill health. The DM determines George has good reason for leaving his employment.

34241 - 34245

### **Victims of harassment and bullying**

34246 Similar to cases of mental health disorders, those claimants who leave or lose employment because they are a victim of bullying or harassment should not face benefit sanctions. Where a person is an injured party of others' actions further support for treating these victims as having good reason for leaving or losing work is provided by the recognition that bullying and harassment undermine a victim's physical and mental health, causing a range of symptoms such as

1. sleeplessness
2. loss of confidence
3. loss of appetite
4. self-doubt
5. hypervigilance
6. excessive double-checking of all actions
7. inability to relax.

34247 Bullying and harassment can be defined as any unwanted behaviour that makes someone feel intimidated, degraded, humiliated or offended. This may happen in the workplace between two individuals or involve groups of people and may be obvious or subtle. It may be persistent or an isolated incident that can occur in written

communications, by phone or through email or text, as well as face-to-face. The method of bullying or harassment are manifold, and could include for example

1. spreading malicious rumours, or insulting someone
2. exclusion or victimisation
3. unfair treatment
4. deliberately undermining a competent worker by constant criticism.

34248 The key, as with cases of mental ill health, will be in advisors identifying those who may have left or lost work as a result of harassment and or bullying. This will likely be through their discussions with the claimant and from the individual's statement on their claim form. Alternatively, it may transpire later, after enquiries have been made with the former employer, that the claimant could be a victim of harassment or bullying. In either case, supporting evidence will be required for DMs to be able to reach their decision. This might be from, for example,

1. staff or trade union representatives
2. a legal representative
3. employment adviser **or**
4. witnesses.

### **Example**

Jayne makes a claim for JSA. On her claim form Jayne indicates that she left her last employment due to being bullied by her supervisor. On investigation it is confirmed that Jayne suffered bullying at her last employment. She provides a witness statement as evidence from a colleague and a letter from her trade union representative whom she had reported the bullying to. The DM determines that Jayne left her employment voluntarily due to bullying and so no sanction is imposed.

34249 – 34250

### **Homelessness**

34251 Being homeless can reasonably influence a claimant's ability to maintain their performance in a job at a sufficient level to warrant keeping that place prior to claiming JSA in the same way as it can contribute to them ASE (see guidance in DMG Chapter 21)

**Note 1:** Each case should be considered on the individual merits and circumstances. There are certain conditionality easements for rough-sleepers and those in direct access hostels and advisers should have taken account of any restrictions or individual circumstances when drafting the JSAg.

**Note 2:** Those who are homeless often have linked complex **issues** to take into consideration but may not divulge all the circumstances at the outset (also see DMG 34230).

34252 A claimant is treated as homeless if an advisor considers the accommodation status impacts the claimant's capacity to retain or find work or comply with any reasonable work search requirement. This includes

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

34253 An adviser may consider the claimant can be treated as dealing with a domestic emergency when they are homeless if the advisor considers the accommodation status impacts the claimant's capacity to retain or find work. However the DM may have to consider good reason in any circumstances where a sanction could be considered for a failure to comply or where an easement does not or no longer applies. See DMG 34254 if the claimant has lost or left paid work due to being homeless).

**Example**

Angus claimed JSA on 20.8.15. He was required to attend an interview at the Jobcentre on 14.9.15.

On 22.9.15 Angus phones to say he did actually attend the outlet on that day but he was 5 minutes late arriving due to him not catching his regular bus from home and not realising how long he needed to allow for the journey from his mate's house as he is currently sleeping on his mate's settee. He had a row with his stepdad who threw him out. He waited for 20 minutes at the Jobcentre and he was not called for interview. He approached the security guard to let him know he was waiting but was advised to leave as his appointment time had been missed and phone up. He could not phone at the time as he had no use of a phone due to being made homeless and had no credit on his mobile phone.

Records show Angus has no previous non-compliance and normally attends his interviews at the right time and place.

The DM considers Angus has good reason as his homelessness has impacted on his actions on 14.9.15 and contributed to the failure and it was reasonable in the circumstances. He had made every effort to attend but had arrived late and been unable to use his phone.

The DM should advise that the work coach should now consider a temporary easement due to the claimant's homelessness.

34254 Being homeless can contribute to a claimant having good reason for leaving or losing a job or lost pay when they

1. were dismissed or had their hours or rate of pay reduced by their employer who states because of their accommodation status means it was impossible for the claimant to perform their job role satisfactorily **or**

2. left work or had reduced hours or rates of pay voluntarily giving the reasons as due to their accommodation status and can provide evidence of why the job was unsustainable.

34255 When asked to show good reason the claimant will need to provide evidence to show why they were unable to sustain work and bring any relevant circumstances to the attention of the DM. For example evidence that verifies the claimants address as a hostel or bed and breakfast or other temporary accommodation. The claimant may also need to show evidence of

1. a lack of hygiene facilities
2. time required to seek housing
3. a link to other influences that are reasons for the behaviour such as being a victim of harassment, bullying or domestic violence.

**Note:** It will be for the DM to consider all the facts and evidence in an individuals circumstances but good reason may not apply if a claimant is homeless but lost work because of other reasons such as misconduct.

#### **Example 1**

Garreth makes a claim to JSA. He has left his job in a bar and states on his claim form that he had to leave his job as he could not attend work at the hours required as he is homeless and sleeping at a friend's house where there is no public transport to get him to the job. He was having to walk to and from work as he cannot afford a taxi as his friends house is over a hour away from his employer and he was constantly arriving late. Because of the long and awkward working hours, starting at 11am and often not finishing until 1 or 2 am he has no time to look for alternative housing and his friend had only offered him his couch on a temporary basis and was putting pressure on him to leave. He states he is homeless because he had suffered physical abuse from his alcoholic father and he had left the parental home for his own safety after a row when his father had beaten him and he suffered a fractured jaw. His parents address was near his place of work and he was constantly worried he would encounter his father whilst on his way to or from work.

Garreth provides written confirmation of his temporary address from his friend and confirmation from the hospital of his broken jaw. The DM can ascertain from local knowledge from the temporary address the problems the claimant would have with transport to the place of work. The DM determines that it was due to his homelessness that Garreth had left his job and does not impose a sanction.

#### **Example 2**

Asha makes a claim to JSA. On her claim form she states she is living in a hostel and has lost her job because she is homeless and has a drug problem. On further investigation her employer confirms she was dismissed for misconduct. She was

caught stealing money from another employee. Although Asha is homeless she was dismissed from her current job due to misconduct and not due to being homeless. The DM should then go on to consider the misconduct, for example any other issues such as mental health issues and her drug addiction when considering whether to impose a sanction (for further guidance on Misconduct see DMG 34531 et seq).

34256 - 34258

### **Work experience**

34259 Claimants who leave or lose a place on a work experience opportunity or placement will be treated as having good reason unless they lose the place through gross misconduct.

**Note:** For further guidance on Work experience and what constitutes Gross Misconduct see DMG 34954.

34260

### **Travelling time**

34261 Claimants will not be able to show good reason<sup>1</sup> because of the time it would normally take for them to travel from their homes to the

1. place mentioned in a JSD and back **or**
2. location of a notified vacancy and back **or**
3. location of where there is a reasonable opportunity of employment which they have neglected to avail themselves of and back

where that time is normally less than one hour and thirty minutes either way by a route and means appropriate to their circumstances unless this is unreasonable in view of the claimant's health or caring responsibilities<sup>1</sup>.

*1 JSA Regs, reg 72*

34262 Where a claimant cannot show good reason for such refusals or failures then their JSA will be sanctioned<sup>1</sup>.

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

### **Example**

Olu is in receipt of JSA. The Emp O notifies Olu of an employment vacancy which is about 75 minutes away from Olu's home by bus. Olu refuses to apply for the vacancy on the grounds that he does not want to travel for more than an hour by public transport. The DM determines that Olu does not have good reason for refusing to apply for the vacancy on the grounds of how long it takes to travel to get there.

### **Exceptions**

34263 A claimant may have good reason if any of the following circumstances apply, and the DM must take them into account<sup>1</sup>

1. the travelling time is normally one and a half hours or more each way by a route and means of travel which is appropriate to the claimant's circumstances or to the circumstances of the employment or JSD **or**
2. the travelling time is unreasonable because of
  - 2.1 the claimant's health **or**
  - 2.2 any caring responsibilities the claimant has (see DMG Chapter 21).

*1 JSA Regs, reg 72*

### **Example 1**

Sean is in receipt of JSA. The Emp O notifies Sean of an employment vacancy which is located 95 minutes away by public transport. Sean does not drive and has to rely on the bus service. Sean refuses to apply for the vacancy on the grounds that he would be spending over 3 hours a day travelling to and from the job if he successfully applied for it. The DM must take this into account when deciding if Sean has good reason for failing to apply for the vacancy.

### **Example 2**

Penelope is in receipt of JSA. She is also a wheelchair user. The Emp O notifies Penelope of a vacancy which is located about 30 minutes from home. Penelope refuses to apply for the vacancy on the grounds that she lives in a rural area, does not have a car and the local bus service is not suitable for wheelchair users. The DM must take this into account when deciding if Penelope has good reason for failing to apply for the vacancy.

34264 The circumstances at DMG 34265 does **not** mean that where normal travelling time from home to work and back would exceed an hour and a half each way, the claimant **will** have good reason. However the DM should accept that the claimant has good reason in such circumstances, unless it would be reasonable to expect the claimant to undertake a journey of more than an hour and a half either way<sup>1</sup>. The DM must take into account all of the facts. Some examples of where it may be reasonable for the claimant to travel for more than an hour and a half either way include where the claimant

1. is restricting availability to the type of employment offered, although other types of employment are available nearer home
2. previously had regular employment which involved travelling for more than an hour and a half either way, and there is no evidence that the claimant found this unreasonable
3. lives in a remote location in which people usually have long journeys to work
4. is in the process of moving home to within an hour and a half's travelling distance of the employment, so the longer journey would be for a short time only

5. would have to make a journey which takes less than an hour and a half in one direction, and only slightly more than an hour and a half in the other direction.

**Note:** Unless the legislation explicitly says they should not, DMs must consider any other reason the claimant puts forward as good reason for refusing or failing to act in line with the guidance at DMG 34200 et seq. The travelling time alone may not provide good reason but may when considered with other factors in the overall picture of the claimant's circumstances.

*1 JSA Regs, reg 72*

34265 – 34270

### **Domestic situations**

34271 Where crises arise unexpectedly which limit a claimant's ability to meet their requirements the DM should give careful consideration when deciding whether a claimant can show good reason and take into account in particular the nature of the crises and what is reasonable in the individual's circumstances. For example

1. a break up of the family
2. short notice caring commitments of the elderly, sick or young children
3. a domestic emergency
4. a family bereavement
5. homelessness (see DMG 34251)
6. language or cultural barriers
7. victim of a crime, abuse or violence
8. ex offenders or criminals
9. declaration of suicide attempt or self harm
10. victim of discrimination (e.g. race, colour, religion, sexual orientation, gender etc).

**Note 1:** This list is not exhaustive. The DM should consider each case on the individual facts and circumstances of the case (also see DMG 34230 and the guidance on complex needs).

**Note 2:** The DM should in particular consider what is reasonable behaviour expected by a reasonable person in a working situation, for example; how would someone working react in a similar situation, for example; would they be expected to attend work or is it reasonable they would need time off to deal with the emergency.

34272 The DM should consider

1. the nature of the emergency **and**
2. when the emergency arose **and**

3. any alternative arrangements the claimant has made **and**
4. any alternative arrangements the claimant could reasonably have made.

**Note:** There is no automatic good reason, the DM should consider all cases on the individual merits and circumstances of the case applying the 'reasonableness' test (see DMG 34221). See also the guidance and the illustrative examples on complex needs at DMG 34230.

34273 – 34275

### **Disability**

34276 Disability in itself should not be a factor that should be deemed as good reason for failing to carry out requirements but related factors should be considered, for example;

1. the level of support available to the claimant should be considered in the claimant's ability to meet the requirements, e.g. a single disabled claimant living alone may find meeting their obligations harder than those with support from others such as other members of their household **or**
2. some reasonable adjustments may be needed when a claimant is newly disabled in helping them to come to terms with their disability

**Note:** Advisers should have taken account of any disability or impairment when drafting the JSAG (see DMG Chapter 21).

### **Learning difficulties, poor literacy or numeracy**

34277 Good reason would not be likely to apply if the claimant's failure was because they did not take action to address a basic skill requirement that could assist them into the job market. However consideration of the claimant's

1. ability to understand what requirements are expected of them **and**
2. ability to be able to perform those tasks **and**
3. any distress or anxiety or other mental health issues suffered as a consequence

should be born in mind when deciding good reason for any failure, act or omission.

### **Example**

Bindu is a kitchen porter whose job is washing up and getting things out for the cooks. One day he is asked to clean an oven and flips and walks out. Bindu has significant learning difficulties, can only read a little and can only understand limited English.

Bindu had a very simple contract of employment which specified his duties very closely but this was different from the version the employer had produced which included 'any other reasonable instruction'.

He had been very distressed at being asked to do something he had never done before, he did not know how to do and that he could not understand or read the instructions how to do it.

The DM determines Bindu had good reason for leaving his job and no sanction is imposed.

- 34278 DMs are not judging the claimants capacity to learn, simply whether they performed the required task to their capability. Any task should be reasonable in the claimant's individual circumstances and they should be capable of performing it.

**Note:** Advisers should have taken account of any restrictions when setting any work search requirement on the JSAG (see DMG Chapter 21). This includes taking account of what literacy, numeracy and language skills the claimant has and what opportunities may or may not be available to improve learning new skills. For example: using digital technology and the access to a computer may well be restricted for some claimants and should be born in mind.

34279 – 34280

### **Substance abuse**

- 34281 If a claimant failed to meet a requirement because they were under the influence of drugs or alcohol then this would not amount to good reason for a failure. However other circumstances, e.g. medical issues, might contribute to the failure and the DM should consider all the facts and circumstances of the individual case when deciding whether a claimant had good reason for a failure.

- 34282 If a claimant was sacked from their job for being under the influence of drugs or alcohol then a sanction should normally apply. If however they lost their job because they were in treatment, the DM would normally consider this to be good reason and a sanction should not apply.

**Note:** Each case would have to be judged separately on its own merits.

### **Example**

See example 2 at DMG 34254. On further investigation the DM establishes that Asha has a severe addiction problem and stole money to pay for drugs. She is now being referred to a rehabilitation programme. The DM does not impose a sanction for her misconduct (see DMG 34531 for further guidance on Misconduct).

### **Legal constraints**

- 34283 Any legal constraints that prevent a claimant

1. taking-up or

2. retaining work

may well give the claimant good reason for a failure. For example where they fail CRB checks or are listed on the sex offenders register. It will be up to the DM to consider all the facts and circumstances of the individual case.

**Note 1:** Where a claimant has a driving ban alternative travel arrangements could be made and this in itself would not constitute good reason for a failure.

**Note 2:** Advisers should have taken account of any restrictions when matching a claimant to suitable job vacancies.

34284 – 34285

### Temporary changes in circumstances

34286 It is unreasonable for a claimant to be expected to comply with a work search opportunity if the reason for doing so was that the claimant was

1. attending court as a witness, juror or party to any proceedings **or**
2. arranging or attending the funeral of a close relative or close friend
3. crewing or launching a lifeboat **or**
4. on duty as a P/T member of a fire brigade.

**Note:** DMs should give careful consideration when deciding whether a claimant can show good reason and take into account in particular the nature of the change, how long it is going to last and what is reasonable in the individual's circumstances.

34287 – 34290

## 16/17 year olds

### Good reason for training schemes

34291 In addition to the reasons in DMG 34226 - 34286, 16/17 year olds also have good reason for

1. giving up a place on a training scheme<sup>1</sup> **and**
2. failing to attend a place on a training scheme<sup>2</sup> **and**
3. refusing a place on a training scheme<sup>3</sup> **and**
4. neglecting a reasonable opportunity of a place on a training scheme<sup>4</sup>

if the conditions in DMG 34292 are met<sup>5</sup>.

**Note 1:** See DMG 34186 for the definition of young person.

**Note 2:** See DMG 34164 for the definition of training scheme.

*1 JS Act 95, s 19A(2)(d); 2 s 19A(2)(f); 3 s 19A(2)(e); 4 s 19A(2)(d); 5 JSA Regs, reg 67(1)*

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

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

*1 R(JSA) 7/03*

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

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

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

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

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

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

*1 Equality Act 2010*

### **Example 1**

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

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.

concealed side road. There was a warning sign on the bridge, which he saw too late to stop. Jose has been negligent but the fact that

1. there was no advance warning sign of the bridge ahead **and**
2. no sign to show the side road

are taken into account when deciding whether to impose a sanction for losing his job through misconduct<sup>1</sup>.

*1 R(U) 13/53*

34615 - 34616

34617 It was not necessary for a claimant to have been employed as a driver or for the contract of employment specifically to have provided for the claimant to use a company vehicle for DMG 34614 to apply. If a claimant

1. had used a vehicle **and**
2. needed to be able to drive to do the job properly and efficiently **and**
3. was disqualified from holding a driving licence

the claimant has lost the job through misconduct.

34618 But where the offence did not have a direct effect on claimants' abilities to carry out their duties, this will not be misconduct. For example, a claimant who used a car to get to work because there was no public transport might be disqualified for holding a driving licence. It is not misconduct if the employer would have continued to employ them if they could have got to work without a car.

### **Unauthorized absence and lateness**

34619 Repeated or lengthy absence from work without permission or justification is usually misconduct. But one short absence may also be misconduct. It is no excuse that such absence was common practice or that the claimant had not been warned. Absence includes not only whole days of non-attendance but also late arrival, early departure and short periods of absence during working hours.

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

#### **Example 1**

Bruce, an electrician, is sacked because he is often absent from work without permission. He says that, due to shortage of materials, he often has no work to do and can only earn the basic rate. He could spend his time better elsewhere. Even if this is true, it does not justify being absent without leave. Bruce has lost his employment through misconduct<sup>1</sup>.

### **Example 2**

Jennifer is sacked because she is absent from work for a week without permission in order to attend a convention. She applied for leave but was refused. Jennifer has lost her employment through misconduct<sup>2</sup>.

### **Example 3**

Sue does not go into work on a Saturday after she has been refused leave of absence because other people were on holiday. When told off by her employer she gives two weeks notice, but she is then told to leave at once. If referred to the DM a sanction for leaving voluntarily or misconduct can be imposed<sup>3</sup>.

### **Example 4**

Chris is sacked because he often doesn't turn up for work, or turns up late without permission. He makes up the lost time by working late and says that this is the recognized practice. Chris has lost his employment through his misconduct<sup>4</sup>.

### **Example 5**

Nineteen employees leave their jobs as a protest because their foreman has withheld a tax rebate due to a fellow worker. As a result the employer closes the site for several weeks. There has not been a TD. The claimants have lost their employment through their misconduct. Instead of walking off the site they should have referred their grievance to the Trade Union. However, the foreman's action, which provoked the employees, is taken into account when deciding whether to sanction<sup>5</sup>.

### **Example 6**

Adam is suspended from work by the employer for a month because of unauthorized absence from work. Adam's conduct amounts to misconduct, but the DM should take account of all the circumstances of the case when deciding whether to sanction<sup>6</sup>, for example the DM may wish to investigate Adam's reasons for the unauthorised absence and take account of any mitigating circumstances such as domestic emergencies, mental health issues etc.

*1 R(U) 22/52; 2 R(U)8/53; 3 R(U)2/54; 4 R(U)1/57; 5 R(U)26/59; 6 R(U)10/71*

34620 Where a claimant was arrested, the absence from work is not misconduct. But the question arises whether the offence causing the arrest is.

### **Looking for other work**

34621 Absence from work without permission to look for other employment, or to be interviewed for another job, is misconduct but if the employer was unreasonable

# Leaving employment voluntarily

## Introduction

34651 Legislation provides that a failure is a sanctionable failure where a claimant voluntarily and without good reason leaves employment<sup>1</sup>.

**Note:** For the meaning of employment see DMG 34016 and for detailed guidance on good reason see DMG 34200 et seq.

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

34652 The purpose of the sanction is to protect the Welfare Reform fund from claims arising from circumstances that claimants have brought upon themselves<sup>1</sup>. Claimant's should not be compensated for unemployment caused by their own unreasonable behaviour. The basic purpose of JSA is to provide against the misfortune of unemployment happening against a person's will<sup>2</sup>.

*1 R(U) 3/81, 2 R(U)20/64*

## Meaning of voluntarily

34653 Claimants have voluntarily left their employment if they brought it to an end

1. by their own acts **and**
2. of their own free will.

34654 Claimants have **not** voluntarily left their employment if

1. they had no choice in the matter **or**
2. there is convincing evidence that they were not responsible for their actions.

**Note:** It is for the DM to consider all the facts and evidence in every case and whether the claimant had good reason for leaving their employment. For detailed guidance on good reason see DMG 34200 et seq.

## Employment immediately before the claim

34655 A claimant can only be sanctioned if they have voluntarily left the employment that they held **immediately** before making a claim for JSA. What the claimant has done in any jobs prior to the last job they held before making the JSA claim is irrelevant.

**Note:** If the claimant has voluntarily left employment without a good reason and has not had any other employment as an employed earner between doing so and making a claim for JSA, then he can be sanctioned under relevant legislation<sup>1</sup>. A claimant cannot be sanctioned unless a claim has been made and the sanction is in respect of employment immediately preceding the claim.

*1 JS Act 95, s 19(2)(b).*

## Relationship with trade dispute

34656 In some cases the DM may have to consider whether

1. claimants are entitled to JSA because they are involved in a TD<sup>1</sup> **and**
2. they left employment voluntarily without good reason.

The TD question should be decided first. Also see guidance at DMG 34594.

**Note:** If the claimant is not entitled to JSA, a sanction cannot be imposed for leaving voluntarily.

*1 JS Act 95, s 14*

## Proof

34657 The DM determines whether employment was employment as defined in relevant legislation (see DMG 34016). The DM has to be satisfied that the claimant left employment voluntarily. The claimant then has to show good reason for leaving.

**Note:** See DMG 34200 et seq for guidance on good reason.

34658 Whether the claimant

1. left employment voluntarily **and**
2. had good reason for doing so

must be decided on the balance of probabilities<sup>1</sup> taking all the individual facts of the case into consideration. It is not enough for claimants to make general statements, for example that they left for personal reasons. Claimants must disclose the relevant facts in detail.

**Note 1:** For guidance on good reason see DMG 34200 et seq.

**Note 2:** For failures that occurred before 22.10.12 the DM had to consider just cause and not good reason.

*1 R(U) 17/54; R(U) 20/64*

## Evidence

34659 In leaving voluntarily cases the DM will usually have statements from

1. the employer
2. the claimant.

Sometimes there will also be evidence from third parties. See DMG 34223 for the types of evidence that may be relevant when considering whether a claimant left voluntarily.

### **Example 3**

Gupta, who has not worked for over a year, starts work on Monday 9th September.

He works seven hours a day from Monday to Friday until Tuesday 3 December, when he leaves the job.

The trial period rule cannot help Gupta. Although he has worked for 16 hours in only twelve weeks, he has left after the end of the twelfth week in which he worked 16 hours (see DMG 34702 2.2).

### **Example 4**

Diane, who has not worked for over a year starts work on Monday 9 September.

She works five hours a day Monday to Sunday until she leaves the job on Sunday 6 October.

The trial period rule cannot help Diane. Although she has worked for 16 hours in four weeks, she has left the job at the end of the fourth week (see DMG 34702 2.1). The trial period rule would have helped her if she had left on Monday 7 October.

## **The effect of a trial period**

34706 If claimants can benefit from the trial period rule, they cannot be sanctioned for leaving the employment voluntarily. The question of good reason need not be considered<sup>1</sup>.

*1 JS Act 95, s 20(3)*

### **Example**

Savannah is a single parent with 2 children, aged 7 and 9 in receipt of JSA. She has agreed with her adviser that in light of her caring responsibilities she is available for part time work of 25 hours. She is offered a full time job working as a beautician in a nail bar which is what she has trained for. She decides to take the job on a trial basis to see if she can manage to work and organise after school child care for the children. She decides to take the job and starts on 5.8.13. Her trial period will start on 1.9.13 ending on 27.10.13. If she leaves the job within that period she will not be sanctioned for leaving the job voluntarily.

## **4 week paid work trials through a work placement**

34707 Some employers or providers offer 4 week paid work trials through a work experience placement. Where a claimant leaves such a paid work trial within the 4 weeks the claimant will be treated as having good reason where the employer and claimant agree the job is not suitable unless they lose the place due to misconduct. For example, the paid placement is not working out and the behaviours or actions of the claimant have not prompted the early exit.

**Note:** This would only apply where both parties agree that the work is not for them and so by mutual consent agree to terminate the 4 week paid contract. Where the employee decides for whatever reason that they want to leave and the employer say that they would have been happy to continue with the contract the usual considerations regarding leaving paid work voluntarily would apply.

## Apprenticeships

34708 Advisors should **not** mandate any claimant to an apprenticeship vacancy where that vacancy is

1. government-funded **and**
2. has been advertised by
  - 2.1 The National Apprenticeship Service in England;
  - 2.2 Careers Wales in Wales **or**
  - 2.3 Modern Apprenticeship in Scotland **and**
3. advertised prior to 7.9.15 (see **Note 2**).

**Note 1:** The Minister for Employment made a decision on 14.11.13 that legacy JSA claimants should **not** be mandated to apply for government-funded apprenticeships. Advisors can still mandate where appropriate to vacancies that have the word “apprentice” in the title but do not meet the criteria in DMG 34708.

**Note 2:** Following a change in policy, from 7.9.15 advisors **can** mandate claimants to apply for suitable apprenticeship vacancies irrespective of whether the vacancy meets the criteria in DMG 34708.

34709 Where advisors have mandated to

1. apprenticeship vacancies that do not fulfil the criteria at DMG 34708 **or**
2. any suitable apprenticeship vacancy on or after 7.9.15

the DM should consider a sanction for leaving voluntarily in the normal way following the relevant guidance in DMG 34651 et seq.

**Note 1:** For RE and NTA failures see DMG 34744.

**Note 2:** If a JSA claimant is mandated to apply for an apprenticeship vacancy prior to 7.9.15 and that vacancy meets the criteria at DMG 34708 no sanction can be taken and the referral should be cancelled.

34710 If a claimant accepts an offer of any apprenticeship, even those outlined at DMG 34708, even though they haven’t been mandated to it, and starts it, normal action should be taken if a sanction doubt is later referred for a decision to consider leaving voluntarily in the normal way.

# Refuses or fails to take up employment

## Introduction

34721 Legislation provides that a failure is a sanctionable failure 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 is vacant or about to become vacant<sup>1</sup>.

**Note 1:** For the meaning of Emp O see DMG 34015 and for the meaning of employment see DMG 34016.

**Note 2:** It is for the DM to consider in every case where there is a refusal or failure whether the claimant had good reason. For detailed guidance on good reason see DMG 34200 et seq.

**Note 3:** See further guidance at DMG 34887 et seq where the claimant was informed of the vacancy by a provider.

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

34722 A sanction can only be imposed if the claimant

1. is entitled to JSA
2. was informed by an Emp O of employment which was vacant or about to become vacant (see DMG 34723)
3. has
  - 3.1 refused or failed to apply for the vacancy **or**
  - 3.2 refused to accept the vacancy when offered (see DMG 34732) **and**
4. does not have good reason for the refusal or failure (see DMG 34200 et seq).

**Note 1:** If the job was a zero hours contract see DMG 34415. If the job was vacant because of a trade dispute see DMG 34746. If the claimant fails to apply but the job vacancy is still open see DMG 34733.

**Note 2:** If the vacancy is for a temporary job see DMG 34385. For guidance where a prescribed scheme provider (for example: MWA or WP) makes an offer of employment see DMG 34809 and 34876.

## Informed by an employment officer

34723 The claimant may be informed

1. personally when attending the Jobcentre Plus office or elsewhere **or**

2. by letter **or**
3. by telephone.

34724 If the information of the vacancy is sent by post, the claimant may not get it because of

1. a move of home **or**
2. an absence from home

which has not been notified to the relevant Jobcentre Plus office or elsewhere. The DM should decide that the claimant has been notified on the day on which the notification would have been delivered to the claimant's old address in the normal course of post.

34725 The DM should take into account the fact that a claimant does not receive the notification and the reasons why in deciding good reason.

34726 Claimants need not be given complete and precise details of the vacancy. But they must be given enough details to enable them to pursue it<sup>1</sup> (also see DMG 34729). Claimants will have been informed even if they are given incorrect details about a vacancy. However see DMG 34436 when considering good reason.

*1 R(U) 32/52*

### **Informing the claimant**

34727 The word 'informed' is not defined in legislation and therefore has to be interpreted in its normal context. The context here is that it allows a sanction to be imposed on a claimant who fails or refuses to apply for a job vacancy or accept a job when offered it. That context does not require a special meaning to be given to it, so 'informed' must be given its ordinary meaning.

34728 In its ordinary meaning, 'informed' means to provide information about something in particular in a formal manner. The important issue is that however the claimant is informed it should be

1. by an Emp O **and**
2. some obligation should be attached to it.

34729 The claimant should be clearly informed of

1. the specified vacancy **and**
2. what is expected of him **and**
3. by when he has to comply **and**
4. the consequences of failing to comply.

**Note:** Also see the guidance at 34033 regarding the 'prior information requirement' and notifications. However the claimant is informed of the vacancy a record should

be kept as evidence in the event of an appeal. The claimant should have enough information to be able to reasonably apply for the vacancy and make representations if they feel the vacancy would not be suitable or applying for the vacancy would be unreasonable in their circumstances.

34730 - 34731

## **Refusal or failure**

34732 Claimants may not actually refuse or fail to apply for or accept employment for it to be a sanctionable failure. A failure as per DMG 34721 includes not taking the appropriate steps to improve their chances of getting the job such as attending an interview or they may behave in such a way that they lose the chance of getting the vacancy. For example they may

1. not arrive on time for interview or go to the wrong place through their own negligence **or**
2. impose unreasonable conditions, so that the employer withdraws the job offer **or**
3. make statements which, although reasonable in themselves, are intended to put the prospective employer off.

These actions may amount to refusals or failures. However, if any statement under 3. was reasonable in the circumstances, and it was not made **only** to put the employer off, the claimants have not refused the vacancy. Also, claimants will have failed to accept a vacancy if they accept the job when it is offered, but then fail to start it.

### **Example 1**

Seelma is looking for work as a supervisor in a bank, and has been getting JSA for six months. She is offered a job as a bank clerk at an interview. She tells the person interviewing her that she will take the job, but will only stay until she finds a job as a supervisor. The employer decides not to give her the job. The DM decides that Seelma has not refused the vacancy.

### **Example 2**

Pauline is offered a job. She says that she wants three weeks holiday within a month of starting. The employer withdraws the offer of a job. In this case her attitude is considered unreasonable and Pauline has refused an offer of a job without good reason<sup>1</sup>.

*1 R(U) 23/51*

### Example 3

Franz refuses to complete a form before he is interviewed for a vacancy. Because of this, the employer will not interview him. Franz has failed to apply for a vacancy without good reason<sup>1</sup>.

*1 R(U) 32/52*

**Note:** DMs should remember, when reading the caselaw, references to the employment having to be suitable no longer apply and from 22.10.12 there are no discretionary length sanctions all sanctions are fixed period sanctions.

### Example 4

A Jobcentre Plus office gives Chin Lu an application form for a job in a local factory. She completes the application form and sends it to the employer.

Chin Lu has written on the application form, in the space provided for additional information,

“I am frequently advised by personnel managers and other simple-minded people that “it is easier to get a job if you have one already”. **Why is it easier??** What do you expect the unemployed to do about it?

There will always be long-term unemployed until **you buck up your ideas!!**”

The employer does not invite Chin Lu for an interview. The DM decides Chin Lu has failed to apply for the job.

### Vacancy not closed

34733 There is no provision in legislation for

1. a specific deadline to be set by when a claimant must apply for a vacancy **or**
2. that a vacancy must be closed before a sanction can be considered.

The Emp O sets the deadline of when the claimant is expected to apply for the vacancy when informing the claimant of the vacancy (see DMG 34729). The DM considers what is reasonable in the individual circumstances and whether the claimant can show good reason for any failure or refusal.

34734 Where the claimant has refused a vacancy immediately and a sanction could be applied at that point in time, i.e. the claimant can show no good reason for the failure, a sanction can be imposed regardless of whether the vacancy is still “open”. If the claimant changed his mind and applied, i.e. the vacancy is still “open”, the DM can take account of that and decide not to sanction.

### **Example**

Jamhal is informed by his advisor of a suitable job vacancy when he attends his job search review on 29.10.13. The advisor informs Jamhal that he has to apply for the vacancy before his next review on 12.11.13. On 12.11.13 Jamhal attends his job search review and informs his advisor he did not apply for the vacancy because he thinks it will be a waste of time. The vacancy is still open until 1.12.13 but Jamhal has failed to apply by 12.11.13. The advisor refers the case to the DM to consider a sanction for the failure.

### **Claimants change their mind**

34735 Claimants who refuse or fail to apply for or accept a vacancy may change their minds and apply for or accept it

1. **before** it has been filled **and**
2. **before** the job was due to start **and**
3. their application is accepted for consideration by the employer.

In such cases claimants have not refused or failed to apply for or accept the vacancy. There is no consideration of good reason.

**Note:** If claimants change their minds after a sanction has been imposed the DM should consider revising or superseding the original decision.

### **Example**

See example at DMG 34733. Jamhal attends his job search review on 26.11.13 and informs his advisor that he has changed his mind and has applied for the vacancy and the employer has accepted his application. The DM has not yet determined whether to impose a sanction but as Jamhal has changed his mind and applied for the vacancy before the closing date has passed no sanction is imposed.

### **Vacancy suspended or withdrawn**

34736 If a claimant changes his mind, but can't apply because the vacancy has been either suspended or withdrawn, his change of mind will not assist him and he can still be sanctioned.

### **Example**

Jamie-Lee fails to apply for a vacancy given to her at the Jobcentre and the DM decides a sanction can be applied. A 13 weeks sanction is imposed to Jamie-Lee's JSA for a first higher-level failure. Jamie-Lee contacts the Jobcentre and says she has changed her mind and will apply for the vacancy after all, however the closing date for applications has passed. The DM decides the decision to sanction was

correct and the decision is not revised, Jamie-Lee failed for no good reason to apply for a specified vacancy.

### **Self-service vacancies**

- 34737 A claimant reading a job advertisement displayed in a Jobcentre Plus office does not by itself amount to being informed by an Emp O. There must be some communication between an Emp O and the claimant about the vacancy (see DMG 34727) in order for the DM to consider a sanction if the claimant does not apply for it.

### **Universal Jobmatch**

- 34738 Claimants can search and view jobs, set up an account and build and upload their public CV through Universal Jobmatch (UJ). Claimants will receive automatic matches to employer's jobs from the 'Profile' they create.
- 34739 A claimant will be expected to apply for any vacancies identified through UJ as suitable in the same way as any other vacancy. If a claimant refuses or fails to apply for a vacancy identified through the UJ service the normal considerations for a refusal or failure apply following the guidance in DMG 34721 - 34736. However see DMG 34740 if the vacancy relates to a UJ employer/recruiter account that has been suspended or closed and DMG 34366 if the vacancy is for less than 24 hours.

### **UJ account closed or suspended**

- 34740 Where a vacancy is linked to a UJ employer/recruiter account that has been closed or suspended the DM must check the status of the UJ account. Under **no** circumstances should a sanction be imposed where a claimant refuses/fails to apply for a job linked to a UJ employer/recruiter account that has been closed because no actual job vacancy exists regardless of whether the claimant has demonstrated good reason or not.
- 34741 Where DWP has suspended the employer/recruiter account and the claimant has not demonstrated good reason the DM should wait until the UJ service is restored to determine whether a sanction can be applied. The DM should check the status of the account at regular intervals. If the suspension is lifted and normal service is resumed the DM considers a sanction following existing guidance on refusals and failures following the guidance in DMG 34721 – 34736. If the account is closed no sanction can be applied regardless of whether the claimant has demonstrated good reason or not.

## Exempt vacancies

### Work Trials

- 34742 It is fundamental to the concept of Work Trials that they offer the claimant the opportunity to test the suitability of a job, as well as for the employer to test the suitability of the claimant. Therefore, if a claimant is offered a Work Trial but decides not to accept it the claimant cannot have refused employment.

### Zero Hours Contract

- 34743 Claimants cannot be mandated to apply for vacancies which include a Zero Hours Contract. Therefore, if a claimant refuses or fails to apply for or accept a notified Zero Hours Contract vacancy the claimant has not failed or refused employment and a sanction should not be considered (also see DMG 34415).

### Employee Shareholder Contracts

- 34744 Employee Shareholder Contracts are entirely voluntary and JSA claimants must not be mandated to apply for such vacancies. For further guidance on Employee Shareholder Contracts see DMG 34335.

### Apprenticeships

- 34745 Sanctions should not be imposed where a claimant is referred to an apprenticeship vacancy that is advertised prior to 7.9.15 and meets the criteria at DMG 34708 and the claimant

1. fails to apply or take up a place **or**
2. neglects to avail themselves

of that apprenticeship opportunity

**Note:** Following a change in policy, from 7.9.15 advisors **can** mandate claimants to apply for suitable apprenticeship vacancies irrespective of whether the vacancy meets the criteria in DMG 34708 (see further guidance at DMG 34708).

- 34746 All referrals made to DMs to consider a sanction for RE or NTA failures where the apprenticeship offer fits the criteria in DMG 34708 and where the date of mandation is on or after 15.11.13 but prior to 7.9.15, should be returned to the relevant JCP office as the advisor should not have mandated. No sanction action should be taken.

- 34747 For any failure where the date of mandation to a suitable apprenticeship vacancy is on or after 7.9.15 the DM should consider good reason and whether a sanction applies in the normal way following guidance at

1. DMG 34721 et seq for RE failures **or**
2. DMG 34751 et seq for NTA failures.

**Note:** For guidance on apprenticeship vacancies and LV failures see DMG 34708.



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

## Introduction

34761 It is a failure without good reason to participate in a prescribed scheme that gives the DM the provision to sanction benefit at the higher-level<sup>1</sup>.

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

## MWA scheme

34762 The Mandatory Work Activity (MWA) scheme<sup>1</sup> is a prescribed scheme for the purposes of higher-level sanctions.

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

*1 JSA Regs, reg 70B*

34763 The MWA scheme means a scheme, known by that name under relevant legislation<sup>1</sup>, provided in arrangement with the Secretary of State that is designed to provide work or work-related activity for up to 30 hours per week over a period of 4 consecutive weeks with a view to assisting claimants to improve their prospects of obtaining employment<sup>2</sup>.

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

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

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

## Selection for participation

34764 The Secretary of State may select any claimant who is

1. at least 18 years of age<sup>1</sup> **and**
2. required to meet the jobseeking conditions<sup>2</sup>

for participation in the MWA scheme.

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

**Note 2:** The meaning of claimant means a person who claims a JSA<sup>3</sup>.

**Note 3:** See guidance on the 'prior information requirement' at DMG 34033. The onus is on the claimant to establish that any representations would have changed the decision to refer the claimant to the scheme.

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

## Requirement to participate and notification

34765 Subject to DMG 34770 claimants who are selected to participate in the MWA scheme have to be notified of this in a written notice<sup>1</sup> which must specify

1. that the claimant is required to participate in the scheme<sup>2</sup>
2. the day on which the participation will start<sup>3</sup>
3. that the participation is for four weeks<sup>4</sup>
4. the details of what is required by way of participation<sup>5</sup>
5. that the claimant is required to participate until
  - 5.1 notice is given by the Secretary of State that participation is no longer required **or**
  - 5.2 the award of JSA endswhichever is earlier<sup>6</sup>
6. the consequences of failing to participate in the MWA scheme<sup>7</sup>.

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

34766 Any changes to the details at 34765 4. (i.e. what is required by way of participation) after the date the claimant starts participating in the MWA scheme must be notified separately to the claimant in writing<sup>1</sup>. This can be done by the provider<sup>2</sup> (see further guidance at DMG 34776).

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

34767 Where the written notice is given by post it is taken to have been received on the second working day after posting<sup>1</sup>.

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

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

34768 The requirement to notify<sup>1</sup> is usually met by

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

# Schemes for assisting claimants to obtain employment

## Introduction

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

**Note 1:** The MWA scheme is not a prescribed scheme for low-level sanctions purposes, see DMG 34762 et seq for guidance on the MWA scheme.

**Note 2:** These schemes are known as Schemes for Assisting Claimants to Obtain Employment, commonly referred to as 'SAPOE' schemes or may also be referred to as 'work for your benefit' schemes.

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

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

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

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

**Note 2:** Unless the exemptions at DMG 34893 – 34895 apply, claimants are required to continue to comply with the jobseeking conditions (i.e. JSAG, ASE and availability) whilst participating in a relevant prescribed scheme (see DMG Chapter 21 for guidance on the jobseeking conditions).

**Note 3:** SAPOE ('work for your benefit') schemes<sup>1</sup> are not designed to provide claimants with experience of work of a suitable type or status to that which they have

undertaken previously or have aspirations to get but are designed to offer transferable skills to other employments and help to develop disciplines to improve the chances of obtaining and sustaining employment and making the claimant more attractive to prospective employers. They do not provide for consultation with claimants about what placements would be most suitable or beneficial for them but the claimant should understand fully what is required of them and by when and what the consequences of failing to comply will be, to be able to raise any meaningful representations at the relevant time (also see DMG 34865 et seq for guidance on selection and notification for participation in a relevant scheme and 34033 for guidance on the 'prior information requirement').

**Note 4:** A claimant cannot be mandated to participate in any scheme or notified activity on a day when there is no award of JSA.

**Note 5:** The Day One Support for Young People, The Derbyshire Mandatory Youth Activity Programme and the Community Work Placements are removed from relevant legislation<sup>4</sup> from 20.11.17 as they are no longer in use.

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

*3 JS Act 95, s 17A (1); 4 JSA (SAPOE) Regs, reg 3*

## Day one Support for Young People

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

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

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

**Note 1:** Work history includes employment, voluntary work, internships and work experience<sup>2</sup>.

**Note 2:** This scheme is no longer in use and removed from relevant legislation<sup>3</sup> from 20.11.17.

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

## Derbyshire Mandatory Youth Activity Programme

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

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

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

**Note 1:** This scheme is running as a trailblazer in the Derbyshire JCP District and is targeted at young people on JSA providing work based experience and basic work habits, i.e. turning up on time or working as a team. The scheme will run until 2014 and identify if this support increases the likelihood of young JSA claimants being in employment.

**Note 2:** This scheme is no longer in use and removed from relevant legislation<sup>2</sup> from 20.11.17.

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

## Full-time Training Flexibility

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

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

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

## New Enterprise Allowance

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

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

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

**Note 2:** Once a claimant has stopped claiming JSA, has started trading and is claiming the NEA weekly allowance, they are deemed to be no longer participating in the scheme.

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

## The sector-based work academy

34852 The sbwa is a scheme which provides for

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

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

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

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

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

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

## Skills Conditionality

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

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

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

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

## The Work Programme

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

1. given such support as the provider of the Wp considers appropriate and reasonable in the claimant's circumstances **and**

2. subject to minimum levels of support published by the provider to assist the claimant to obtain and sustain employment which may include work search support, provision of skills training and work placements for the benefit of the community<sup>1</sup>.

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

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

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

**Note 4:** From 27.10.14<sup>2</sup> employees of specified organisations are designated as Emp Os for the purposes of requiring claimants to apply for or accept if offered a situation in any employment which an Emp O has informed them is vacant or about to become vacant (see DMG 34879 et seq).

**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 activity<sup>1</sup>.

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

deliver work placements for claimants of up to 26 weeks, alongside supporting job search of at least 2 hours a week but with the flexibility to deliver up to 10.

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

**Note 3:** From 27.10.14<sup>2</sup> employees of specified organisations are designated as Emp Os for the purposes of requiring claimants to apply for or accept if offered a situation in any employment which an Emp O has informed them is vacant or about to become vacant<sup>2</sup> (see DMG 34879 et seq).

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

**Note 5:** This scheme is no longer in use and removed from relevant legislation from 20.11.17<sup>3</sup>.

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

## Traineeships

34856 Traineeships<sup>1</sup> is a scheme for a claimant who has limited educational qualifications and work history and meets the age criteria in DMG 34857. The scheme consists of a government-funded course which, for a period of up to 6 months, provides the claimant with work preparation training, a work experience placement and, where required, English and Maths tuition.

**Note:** From 27.3.15 Traineeships are no longer defined as a scheme under relevant legislation<sup>2</sup>.

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

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

34857 From 1.9.14 legislation is amended to include an EHC plan<sup>1</sup>. The age criteria are that on the first day of the course the claimant must be

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

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

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

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

34858 Participation in the traineeship is voluntary, but once the claimant has agreed to take part, they are then mandated to attend the training elements. However, a claimant

cannot be mandated to take part in the work experience element of Traineeships. The only reason a claimant could be sanctioned for a failure to take part in the work experience element of the Traineeship is if the claimant lost the place due to gross misconduct (see DMG 34921).

## Work and Health Programme

34859 The Work and Health Programme (WHP) is a scheme designed to assist a claimant who is long-term unemployed in which, for a period of up to 456 calendar days, the claimant is

1. given such support **and**
2. required to participate in such activity

as the provider of the WHP considers appropriate and reasonable in the claimant's circumstances to assist the claimant to obtain and sustain employment<sup>1</sup>.

**Note 1:** From 24.11.17 the WHP will be the DWP's new contracted employment provision that will help claimant's with a disability or member of an early access disadvantaged group to find sustained work.

**Note 2:** The scheme will be rolled out in stages in England and Wales from November 2017 and claimants will be referred on a voluntary basis because they need the additional support to move into employment.

**Note 3:** The long term unemployed who have not moved into work within 24 months of their claim to JSA will be eligible to be referred to the scheme on a mandatory basis after February 2018.

*1 JSA (SAPOE) Regs, reg 8C*

## Work Able Scotland and Work First Scotland

34860 From 3.4.17 the Scottish Government will use its powers<sup>1</sup> 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*

34861 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).

34862 – 34864

## **Selection for and participation in a relevant scheme**

### **Selection for participation**

34865 The Secretary of State may select a claimant for participation in a scheme described in relevant legislation<sup>1</sup>.

**Note 1:** The meaning of claimant means a person who claims a JSA<sup>2</sup>.

**Note 2:** The 'prior information requirement'<sup>3</sup> (see DMG 34033) may be relevant to whether a claimant has been validly selected and referred to a relevant scheme. The Secretary of State has to be able to show that relevant DWP operational guidance has been considered before a claimant is referred to a scheme in the interests of fairness to allow the claimant to make representations regarding their suitability for the scheme (also see guidance at DMG 34871). The onus is then on the claimant to establish that any representations would have changed the decision to refer the claimant to the relevant scheme.

**Note 3:** Even though the 'prior information requirement' means claimants should have the relevant information about a scheme prior to referral to a scheme, there is no obligation to allow claimants to negotiate and decide which scheme they participate in.

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

*3 SSWP v Reilly and Hewstone and SSWP v Jeffrey and Bevan [2016] EWCA Civ 41*

### **Requirement to participate and notification**

34866 Claimants who are selected to participate in a relevant scheme have to be notified of this in a written notice<sup>1</sup> which specifies

1. that the claimant is required to participate in the scheme<sup>2</sup>
2. the day on which the claimant's participation will start<sup>3</sup>
3. the details of what the claimant is required to do by way of participation<sup>4</sup>
4. that the claimant is required to participate until
  - 4.1 notice is given by the Secretary of State that participation is no longer required **or**
  - 4.2 the award of JSA endswhichever is earlier<sup>5</sup>

5. information about the consequences of failing to participate in the relevant scheme<sup>6</sup>.

**Note 1:** Any changes to the details at 3. (ie: details of what the claimant is required to do by way of participation) after the date the claimant starts participating in a relevant scheme must be notified to the claimant in writing<sup>7</sup>.

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

**Note 3:** Also see guidance on the 'prior information requirement' at DMG 34033. The claimant has to fully understand what is required of them, by when and the consequences (i.e. sanctions) of failing to participate.

*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

34867 Certain functions in relation to a relevant scheme can be contracted out by the Secretary of State<sup>1</sup> to providers including the

1. requirement to participate in the prescribed scheme and notify (see DMG 34865) **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.

**Note 4:** The Day One Support for Young People, The Derbyshire Mandatory Youth Activity Programme and the Community Work Placements are removed from relevant legislation<sup>2</sup> from 20.11.17 as they are no longer in use. From 24.11.17 the WHP is introduced and becomes the new contracted employment provision (see DMG 34859)<sup>2</sup>.

*1 JSA (SAPOE) Regs, reg 17; 2 reg 3*

## Requirement to notify

34868 The requirement to notify<sup>1</sup> is usually met by

1. the issue of a letter to the claimant by the JCP advisor at the point of referral to the relevant scheme (also see **Note 3.** and DMG 34869) **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 34866 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:** The notifications at **1.** and **2.** contain the crucial information required for mandatory participation in an employment scheme. The combined effect of these two notices meet the obligations to properly notify<sup>1</sup> which have been tested in the courts<sup>2</sup> and found to be valid notices within the legal requirements. Also see guidance on the 'prior information requirement' at DMG 34033 et seq.

**Note 3:** The claimant will also usually be issued with a leaflet outlining the specific scheme. For example, Wp claimants are issued with an information leaflet which outlines the responsibilities whilst participating in the scheme to include attending meetings and taking phone calls as arranged and completing activities the provider tells the claimant to do. All notifications should be recorded and copies made available for the judiciary in the event of an appeal (also see guidance at DMG 34872).

**Note 4:** See guidance at DMG 34853 with regard to the Sc scheme.

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

*2 SSWP v Reilly and Hewstone and SSWP v Jeffrey and Bevan [2016] EWCA Civ 413*

34869 In addition to the notifications outlined at DMG 34868 **1.** and **2.** the JCP advisor will have discussed with or advised the claimant

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

before they are mandated to take part.

**Note 1:** This gives the claimant opportunity to raise any representations about the scheme in order to meet the 'prior information requirement' (also see DMG 34033).

**Note 2:** The onus is on the claimant to establish that any representations would have changed the decision to refer the claimant to the scheme (also see guidance at DMG 34865).

## 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 them<sup>1</sup>.

**Note 1:** 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.

**Note 2:** See further guidance on the 'prior information requirement' at DMG 34033.

*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 finding and sustaining employment.

**Note 2:** Any requirements must have been adequately notified to the claimant in order to meet the Secretary of State's obligation to meet the 'prior information requirement' (also see guidance at DMG 34033 and DMG 34867 to 34869). Once selected to participate and mandated to a scheme, the DM would determine under good reason if the claimant advocated the requirements or any activity as notified were unreasonable, taking into account all the individual circumstances of the case (see guidance at DMG 34200 et seq on good reason).

## Evidence of notification

34872 The issue of all notifications should be recorded in departmental records for evidentiary reasons and a copy should be able to be produced in the event of a reconsideration and/or appeal. The onus is on the Secretary of State to show there has been a sanctionable failure and notifications form an integral part of any appeal submission to demonstrate that the department was legally compliant and have to

be available if requested by the judiciary (also see the guidance at DMG 34033 on the 'prior information requirement').

**Note 1:** 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. If the claimant raises the issue of notification in their reasons for failing to comply also see DMG 34772.

**Note 2:** It is not essential that the DM routinely sees a copy of every notification in order to be able to consider good reason and whether a sanction would apply but they should be satisfied records show the claimant was adequately notified and that copies can be obtained if required for an appeal. For example many notifications are standard issue forms. Evidence of the issue of the WP05, for example, to notify a claimant of the requirement to participate in the Work Programme is a standardised computer based letter and copies are not kept on individual records but it's issue should be recorded in system records. Therefore the DM should be checking system records to ensure there is a record that a WP05 was sent to the claimant.

### **Claimant raises issue of notification**

34873 Where a claimant fails to participate in a mandatory 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 adequately notified of a requirement to participate in one of the schemes listed in DMG 34847 **and**
2. there is 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 failed 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.

Was it reasonable to expect Bob to participate in the placement?

The DM considers it was reasonable to expect Bob to participate in a work placement. He had been unemployed for over 2 years and the placement would have provided the opportunity to get an up to date work-related entry for his CV. He would also would have had opportunity to gain some tangible work related experience and gain an insight into the skills and behaviours employers require and how those skills can be adapted to the work place. For example; attending on time, following instructions, being cooperative, reliable, willing, motivated and hard working.

He may even have got an employer based reference if he had done well on the placement. All which could have made him a more attractive employee to other prospective employers. Therefore Bob failed to participate in the CwP scheme and could not show a good reason for the failure and a sanction would be appropriate.

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

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

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

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

34878 A requirement to participate in a relevant scheme ceases to apply if the

1. Secretary of State gives notice in writing that the claimant is no longer required to participate **or**
2. award of JSA ends

whichever is the earlier<sup>1</sup>.

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

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

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

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

## **Designation of Employment Officers**

### **Changes**

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

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

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

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

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

## Approved Sub-contractor

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

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

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

## Prime Contractor

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

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

## Relevant contract

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

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

## Employees of Authorised Providers

34883 Employees of

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

are designated a Emp Os<sup>1</sup>.

**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 Wp<sup>1</sup> has the same meaning as in the definition at DMG 34854.

**Note:** The order<sup>2</sup> 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 (see DMG 34885), 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 CwP<sup>1</sup> has the same meaning as in the definition at DMG 34855.

**Note 1:** The order<sup>2</sup> 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).

**Note 3:** The CwP scheme is no longer in use and removed from relevant legislation from 20.11.17<sup>3</sup>.

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

*2 CwP (Emp O) (Des O 14); 3 JSA (SAPOE)(Amdt) Regs 2017*

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 vacant<sup>1</sup>.

**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).

**Note 3:** The CwP scheme is no longer in use and removed from relevant legislation from 20.11.17<sup>1</sup>.

*1 JSA (SAPOE)(Amdt) Regs 2017*

## 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 schemes<sup>1</sup>. Emp O status also applies to the employees of any approved sub-contractors of those Prime contractors listed<sup>2</sup> 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; 2 CwP (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.

**Note:** This scheme is no longer in use and removed from relevant legislation<sup>1</sup> from 20.11.17.

*IJSA (SAPOE) Regs, reg 3*

## 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 scheme<sup>1</sup> (see DMG 34851) they are not required to be ASE under JSA legislation<sup>2</sup>. However the claimant may be required to do some jobseeking activity as a condition of participating in the scheme<sup>3</sup>.

**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 scheme<sup>1</sup> as a F/T student<sup>2</sup> (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 legislation<sup>3</sup>. However the claimant may be required to do some jobseeking activity as a condition of participating in a relevant scheme<sup>4</sup>.

**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 scheme<sup>1</sup> 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 centre<sup>2</sup>. Instead these claimants will be subject to the requirements of the relevant scheme<sup>3</sup>.

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

9. explain what will happen if they do not comply (i.e. sanction).

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