

Chapter K1: Sanctions – general principles

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Chapter K1: Sanctions – general principles

Scope of Chapter

K1001 This Chapter

1. gives definitions of terms that are used throughout the ADM Chapters on sanctions (see K1010)
2. gives a general introduction on the process to follow when making decisions on sanctionable failures
3. explains where detailed guidance can be found in other ADM Chapters on sanctions (see K1002)
4. gives guidance on delegation and contracting out of certain functions to authorised persons (K1121)
5. gives guidance on issues that affect more than one type of sanction, for example
 - 5.1 the compliance condition for low and lowest level sanctions (see K1040)
 - 5.2 the 'prior information requirement' (see K1151)
 - 5.2a burden of proof (K1161)
 - 5.2b regularity (K1162)
 - 5.2c meaning of 'specify' (K1166)
 - 5.2d notifications (K1171).

K1002 Detailed guidance on sanctions can be found as follows:

1. Chapter K2 - Good Reason
2. Chapter K3 - Higher-level sanctions
3. Chapter K4 - Medium-level sanctions
4. Chapter K5 - Low-level sanctions
5. Chapter K6 - Lowest-level sanctions
6. Chapter K7 - Effect of ESA and JSA sanctions on UC
7. Chapter K8 - When reduction is to have effect
8. Chapter K9 - Amount of reduction.

K1003 – K1004

Introduction

K1005 Once a DM determines that a reduction should apply for a sanctionable failure, the period is added to the total outstanding reduction period (TORP) (see K1061) for that claimant. Reductions are then made to the award of UC based on the number of days in the TORP. The reduction is calculated by either

1. the number of days in the assessment period (where the TORP is greater than this number) multiplied by the daily sanction amount **or**
2. the number of days in the TORP (where the number of days in the TORP is lower than the number of days in the assessment period) multiplied by the daily sanction amount.

Note: See ADM Chapter K9 (Amount of reduction) for guidance on the daily sanction amount.

K1006 The reduction will then be taken from the award from

1. the first day of the assessment period in which the DM determines that a reduction should be imposed, or if a reduction is not taken on that date, then the first day of the new assessment period **or**
2. if the award is already subject to a reduction, the first day that the award is not subject to a reduction.

Note: See K1057 and ADM Chapter K8 (When a reduction is to have effect) for further details.

Imposing work-related requirements and sanctions

K1007 With the exception of provisions to impose sanctions for 'pre-claim failures' (see detailed guidance on 'pre-claim failures' in ADM Chapter K3), claimants should not be referred for a sanction decision for failures that occur when the claimant was not entitled to UC. This is because legislation¹ is limited to imposing work-related requirements upon claimants² (also see K1009). These powers do not stretch to individuals who have had an award of UC terminated, for example due to earnings, even if we anticipate that they may re-claim in the future under the re-award process or otherwise.

1 WR Act 12, s 13 - 25; UC Regs, reg 95; 2 WR Act 12, s 40

K1008 A work-related or connected requirement cannot be imposed upon an individual where there is no award (i.e. entitlement) of UC. There is also no legal provision to impose a requirement within an earlier notification that seeks to impose a binding obligation contingent upon the fact a claimant may be re-awarded benefit in the future (for detailed guidance on Work-related requirements in UC see ADM Chapter J3).

Note 1: A sanction is a reduction in the amount of UC 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 UC.

Note 2: When an award is reduced to nil due to a sanction the claimant remains entitled to UC but payment is nil for the sanction period and so conditionality and sanctions still apply throughout that period.

Connection between conditionality and sanctions

K1009 Sanctions can only apply where a claimant fails to meet a specified work-related or connected requirement¹ as follows;

1. higher-level sanctionable failures are restricted to claimants who fall in the AWRR group at the date of the failure² (however also see K1020 and further guidance in ADM Chapter K3)
2. all other sanctionable failures limit imposing a sanction on claimants that fail to comply with work-related or connected requirements³ (also see K1030).

Note: It is therefore important that the claimant is in the appropriate conditionality group in respect of the relevant claim to UC for the DM to be able to consider a sanction for any failure. For full guidance on conditionality groups see ADM Chapter J2 and for guidance on work-related requirements see ADM Chapter J3.

1 WR Act s 13; 2 s 26(2); 3 s 27(2)

Definitions

Meaning of sanctionable failure

K1010 A 'sanctionable failure' means a failure which is sanctionable under relevant legislation¹. Sanctionable failures can result in a higher, medium, low or lowest-level sanction². In some cases no reduction is applied³ – see ADM Chapter K3 (Higher-level sanctions) for further details.

Note: There is no discretion not to impose a sanction where the conditions to sanction apply. For each failure there must be a sanction decision made and an outcome notified to the claimant. This means there could be more than one reduction applied for the same period and in the case of a low-level sanction more than one open-ended period running at the same time for different failures if appropriate.

1 WR Act 12, s 26 & 27; 2 UC Regs, reg 101 – 105; 3 reg 113

K1011 Where a failure is a sanctionable failure, the claimant's award of UC is normally reduced. The period and amount of reduction depends on¹

1. which work-related requirement the claimant failed to comply with **and**
2. the number of previous sanctionable failures **and**
3. the period between failures.

1 WR Act 12, s 26(6) & (7) and 27(4) - (5) & (8)

Meaning of 'current sanctionable failure'

K1012 'Current sanctionable failure' means a sanctionable failure where the Secretary of State has not yet determined whether the amount of an award of UC is to be reduced under relevant legislation¹.

1 UC Regs, reg 100 (1A); WR Act 12 s 26 & 27

K1013 – K1019

Higher-level sanctions

K1020 A higher-level sanction is a reduction of the amount of an award of UC for sanctionable failures where a claimant in the AWRR group¹

1. fails for no good reason to comply with a work preparation requirement to undertake a specified work placement (MWA)² **or**
2. fails for no good reason to comply with a work search requirement to apply for a particular vacancy for paid work³ **or**
3. fails for no good reason to comply with a work availability requirement by not taking up an offer of paid work⁴ **or**
4. by reason of misconduct, or voluntarily and for no good reason, ceases paid work or loses pay⁵.

Note: See ADM Chapter J2 for guidance on work-related requirements groups, Chapter J3 for guidance on work-related requirements, Chapter K2 for guidance on good reason, and Chapter K3 (Higher-level sanctions) for guidance on MWA placements, refusing employment and voluntarily or through misconduct ceasing paid work.

*1 WR Act 12, s 26; UC Regs, reg 100(1); 2 WR Act 12, s 26(2)(a); UC Regs, reg 114
3 WR Act 12, s 26(2)(b); 4 s 26(2)(c); 5 s 26(2)(d)*

Claimant subject to NWRR due to earnings

K1021 Those claimants who

1. are in the NWRR group¹ **and**
2. are in work with earnings equal to or more than their individual threshold **and**
3. leave paid work or lose pay through
 - 3.1 misconduct **or**

3.2 voluntarily and for no good reason

cease to be in the NWRR group and become subject to AWRR from the first day of the Assessment Period in which the change occurred².

Note 1: This provision covers those claimants who have an existing UC award and are in NWRR because they (or their partner) are 'working enough', i.e. UC is reduced due to earnings but they still receive some UC. If they stop working or reduce their hours or pay so that their earnings fall below their CET they are put into the AWRR group and can face a higher-level sanction for leaving work or losing pay voluntarily or through misconduct.

Note 2: This provision however does not cover a claimant who loses UC entitlement through earnings and then either stops working or reduces hours or pay so they are entitled to UC again. Where there is nil entitlement to UC no conditionality applies and therefore no sanction can be imposed.

Note 3: See ADM Chapter J3 for guidance on work-related requirements, Chapter K2 for guidance on good reason, and Chapter K3 (Higher-level sanctions) for guidance on leaving voluntarily or through misconduct.

1 WR Act 12, s 19(2)(d) & (3); UC Regs, reg 90; 2 WR Act 12, s 22; WR Act s 26(3)

'Pre-claim' failures

K1022 Where the claimant is in the AWRR group when they are awarded UC¹, and a sanctionable failure occurs before making that claim, this is known as a 'pre-claim failure'².

Note: If the failure does not occur 'pre-claim' (i.e. it occurs during a claim) a sanction can still apply it is just not subject to the further refinements afforded to failures which occur 'pre-claim'. See ADM Chapter K3 for further guidance on 'pre-claim' failures.

1 WR Act 12, s 22; 2 UC Regs, reg 102(5)

K1023 Where K1022 applies, a sanctionable failure is where, at any time before the claim resulting in the award of UC is made, the claimant

1. for no good reason failed to take up an offer of paid work¹ **or**
2. by reason of misconduct, or voluntarily and for no good reason, ceased paid work or lost pay².

Note: See ADM Chapter K2 for guidance on good reason, and Chapter K3 (Higher-level sanctions) for further guidance on refusing employment, voluntarily or through misconduct ceasing paid work, and 'pre-claim' failures.

1 WR Act 12, s 26(4)(a); 2 s 26(4)(b)

Claimant has final earnings

K1024 Where final earnings equal or exceed the CET but the claimant retains some entitlement to UC then

1. those earnings can be disregarded for conditionality purposes **and**
2. the claimant can be placed in the AWRR group¹.

Note: For full guidance on conditionality groups and where the claimant receives final earnings see ADM Chapter J2.

1 WR Act 12, s 22

K1025 – K1029

Other sanctions

K1030 For all other sanctions, i.e. medium, low and lowest-level sanctions, the amount of an award of UC is reduced where the claimant fails to comply for no good reason with¹

1. a work-focused interview requirement²
2. a work preparation requirement³
3. a work search requirement⁴
4. a work availability requirement⁵ **or**
5. other requirements connected to work-related requirements, such as attending an interview to impose or verify compliance with a work-related requirement, or reporting specified changes in circumstances⁶.

Note: See ADM Chapter J3 for detailed guidance on work-related requirements, Chapter K4 for guidance on medium-level sanctions, Chapter K5 for guidance on low-level sanctions, and Chapter K6 for guidance on lowest-level sanctions.

1 WR Act 12, s 27; UC Regs, reg 100(1); 2 WR Act 12, s 15; 3 s 16; 4 s 17; 5 s 18; 6 s 23

K1031 – K1039

Compliance to end the open ended sanction period – low and lowest-level sanctions

K1040 Low and lowest-level sanctions have effect for a period which begins on the date of the sanctionable failure and continues until

1. the day before the claimant meets the compliance condition as specified by the Secretary of State¹ **or**
2. the day before the claimant moves into the no work-related requirements group² **or**

3. the day before the claimant is no longer required to take the action³ **or**
4. the day the award of UC ends⁴

whichever is soonest. This is known as the 'open-ended' sanction.

Note 1: Low-level sanctions are also subject to a fixed period sanction⁵ (for further guidance on low-level sanctions see ADM Chapter K5).

Note 2: Wherever a claimant fails to comply for no good reason then a sanctionable failure has occurred and a low-level sanction decision has to be made and a sanction applied if appropriate. This means there can be one or more open-ended sanctions running at the same time if there are multiple low-level sanctionable failures..

*1 UC Regs, reg 104(2)(a)(i) & 105(2)(a); 2 reg 104(2)(a)(ii)&105(2)(b); 3 reg 104(2)(a)(iii);
4 reg104 (2)(a)(iv)& 105(2)(c) ; 5 reg 104(2)(b)*

Compliance condition

K1041 The compliance condition is the requirement specified by the Secretary of State that the claimant needs to meet in order to

1. terminate the period of the open-ended reduction **and**
2. for low-level sanctions, start the fixed period.

This will **usually** be the original requirement the claimant failed to meet, but where this is not appropriate or no longer reasonable then it will be a suitable alternative requirement as specified¹ (also see guidance at K1049).

Note: The compliance condition can only be the compliance condition as specified to the claimant and cannot be something that is not a work-related or connected requirement (see K1044). For the meaning of specified see K1155.

1 WR Act 12, s 27(6)

K1042 Examples of compliance conditions include

1. meeting the actual requirement specified, for example updating a CV or registering with an employment agency
2. making and attending an appointment for a WFI or an interview
3. agreeing to and participating in the next available activity as specified such as a skills training course or a Jobs Fair
4. any reasonable, appropriate and achievable work-related activity as specified.

Note: This list provides examples only and is not exhaustive.

K1043 The claimant is notified by the Secretary of State what they must do to meet a compliance condition including where the compliance condition is revoked or varied¹.

Note 1: The compliance condition would usually be included in the claimant commitment at the same time as the original work-related requirement but can be notified to the claimant as the Secretary of State decides if not included on the claimant commitment. However it is notified to the claimant, a record must be kept to produce as evidence if required for an appeal or by the judiciary

Note 2:
Certain functions of the Secretary of State can be carried out by employees of such persons that are authorised by the Secretary of State for that purpose (see further guidance at K1121) but compliance conditions **must** be set by the Secretary of State.

1 WR Act 12, s 26(7)

K1044 A compliance condition can be

1. any work-related requirement or connected requirement¹ **or**
2. a subsequent or different requirement where the original requirement is no longer appropriate or reasonable, i.e. the claimant falls out of the All Work Related Requirements group into the Work preparation conditionality group².

Note 1: The claimant must always be in a position to be able to achieve the required action by the deadline date set. The requirement should be reasonable, appropriate and achievable in the claimant's individual circumstances.

Note 2: For guidance on deciding when the claimant has complied with a compliance condition see guidance at K1046 and for guidance on varying the compliance condition see guidance at K1049.

Note 3: Each requirement will have its own compliance condition set and therefore there could be more than one open-ended reduction period running at the same time for an overlapping period where the claimant has multiple sanctionable failures (see **Note 2.** at K1040). The claimant has to meet the relevant compliance condition for each failure in order to end each open-ended sanction (see **Example 8, Example 9** and **Example 10** at K1048).

1 WR Act 12, s 27(5)(a); 2 s 27(7)

K1045 It is important that the compliance condition is clearly explained at the time the requirement is set so that if the claimant fails to comply with the requirement they know immediately what to do to bring the open-ended part of a sanction to an end as quickly as possible. For example, if a claimant has failed to attend a meeting at the jobcentre the compliance condition should be to arrange, attend and participate in a meeting at the jobcentre if still appropriate. However, if for example the claimant is given a compliance condition to contact the jobcentre to rebook an appointment there is no requirement for the claimant to actually attend that appointment so if the

claimant calls and rebooks an appointment the open-ended part of the sanction will end regardless of whether he turns up at the interview. Also see the illustrative examples at K1048.

Compliance condition met

K1046 The open-ended part of a sanction is ended when the claimant meets the specified compliance condition, i.e. actually undertakes the activity¹. The open-ended sanction would run from the date of the failure and end on the day before the date of compliance (i.e. the date the claimant completes the activity) but see further guidance in K1047).

Note 1: The specified compliance condition is the required activity specified by the Secretary of State (see K1041).

Note 2: The claimant can only be expected to meet the compliance condition as specified. Therefore the obligation is on the Secretary of State to ensure the compliance condition is identified clearly to the claimant for each activity (also see guidance at K1151 et seq)

1 UC Regs, reg 104(2) & reg 105(2)

K1047 In some cases the claimant may be willing but unable to undertake the activity because of circumstances outside their control (also see guidance at K1049). The intention of the open-ended sanction is to encourage claimants to take part in activities designed to help them find work and end the sanction as soon as they comply.

K1048 In some cases the claimant may be unable to meet the compliance condition immediately through no fault of their own. For example the claimant calls the jobcentre on Wednesday to make a new appointment for a missed Wfl but the earliest available appointment is the following Monday. In such a situation it would be unfair for the open-ended sanction to accrue when the claimant has done as much as they possibly can to meet the compliance condition but they have to wait for an appointment to be available. In this situation they are treated as having complied on the day they agree to undertake the activity, provided they do actually go on to complete the activity as required. In the example above that would mean if they participated in the rescheduled Wfl on Monday their compliance date would be the previous Wednesday when they contacted the jobcentre and the open-ended sanction would end on the previous Tuesday the day before the claimant contacted the jobcentre. However, if the claimant refuses or fails to actually complete the requirement, i.e. fails to attend the re-arranged appointment, the open-ended sanction will continue until they do so.

Note 1: If the compliance condition is to contact the provider and agree a date for future attendance and attend a re-arranged appointment and the claimant contacts

JCP then they should be advised to make contact with the provider as quickly as possible in order to end the open-ended sanction. JCP and UC contact centres do not have access to provider's diaries to arrange provider appointments (see **Example 3**).

Note 2: It is for the DM to consider each case on its own individual facts and circumstances and what is reasonable and appropriate for the claimant.

Example 1

On 24.12.13 Amie calls her Wp provider to make an appointment to attend an interview to re-comply with the scheme as she has received a letter from JCP telling her she is to be sanctioned as she failed to attend an interview with her Wp provider on 12.12.13.

Amie does not have a good reason for failing to participate in the appointment on 12.12.13.

Her compliance condition is to contact the provider and agree a date for future attendance and attend a re-arranged appointment.

The provider informs Amie that the first available appointment is on Monday 6.1.14 due to the Christmas holiday period.

In this case, provided Amie does attend and participate in the interview on 6.1.14, she has done everything she can to re-comply when she makes contact on 24.12.13 and can therefore be treated as having complied on 24.12.13.

The open-ended sanction will run from 12.12.13 (the date of the failure) until 23.12.13 (the day before the date of compliance).

Example 2

On 6.1.14 Giles should have attended an appointment with his Wp provider. He has no good reason for the failure.

The compliance condition is to contact the provider and agree and attend the first available appointment.

On 10.1.14 he contacts the provider and is offered an appointment on Monday 13.1.14 at 9.30am which he rejects as it is too early in the morning. He says the afternoon or the next day would be better for him but he provides no good reason why. The next available appointment is 15.1.14 at 12 noon which he accepts.

Giles attends the interview on 15.1.14.

In this case Giles will be treated as complying on 15.1.14 as although he contacted the provider on 10.1.14 he did not attend the first available appointment and had no good reason for not doing so.

The open-ended sanction will run from 6.1.14 (the date of the failure) until 14.1.14 (the day before the date of compliance).

Example 3

Troy fails to attend a Wp appointment on 22.7.15.

He does not have a good reason for failing to attend the appointment.

His compliance condition was to contact the provider and agree a date for future attendance and attend a re-arranged appointment.

He attends Jobcentre Plus on 29.7.15 for his normal work search review and he is advised as next steps he must contact the provider as quickly as possible to make and attend a further Wp appointment in order to end the open-ended part of the sanction.

The provider confirms the claimant made contact on 30.7.15 and made a further appointment for 7.8.15.

Troy attends the Wp appointment on 7.8.15 as required.

In this case Troy is treated as having complied on 30.7.15 when he contacted the provider to arrange the new appointment.

The open-ended sanction will run from 22.7.15 (the date of failure) to 29.7.15 (the day before the date of compliance).

Example 4

Rahil fails to attend a CV writing workshop on 27.7.15.

He has no good reason for failing to attend the workshop.

He makes contact with the Jobcentre on 29.7.15.

The next available CV writing course is 17.8.15.

Rahil complies and attends the course as required on 17.8.15.

He is treated as complying on 29.7.15 when he made initial contact with the Jobcentre.

A 2 days open-ended sanction is appropriate for the period 27.7.15 (the date of failure) to 28.7.15 (the day before the date of compliance).

Example 5

Sy fails to attend a meeting at the jobcentre with his advisor on 29.10.15.

He has no good reason for the failure.

His compliance condition is to participate in a meeting at the jobcentre. He makes contact with the Jobcentre on 10.11.15 and an appointment to attend/take part in a meeting with his advisor is made for 12.11.15.

Sy complies and attends the meeting as required with his advisor on 12.11.15.

He is treated as complying on 10.11.15 when he made initial contact with the Jobcentre.

A 12 day open-ended sanction is appropriate for the period 29.10.15 (the date of the failure) to 9.11.15 (the day before the date of compliance).

Example 6

Idina fails to attend an interview with her advisor at the Jobcentre on 4.11.15.

She has no good reason for the failure.

Idina has been given a compliance condition to contact the jobcentre to rebook an appointment with her advisor.

On 9.11.15 Idina contacts the Jobcentre and makes an appointment to see the advisor on 10.11.15.

Idina fails to attend the appointment on 10.11.15.

She has no good reason for the failure.

The date of compliance is 9.11.15 when she contacted the jobcentre to make a new appointment. As the compliance condition did not make it clear she also had to attend the appointment on 10.11.15 she had met her compliance condition when she made contact to arrange a new appointment on 9.11.15.

A 5 day open-ended sanction is appropriate for the period 4.11.15 (the date of the failure) to 8.11.15 (the day before the date of compliance).

Example 7

Tim fails to attend a Wp appointment on 22.7.15.

He does not have a good reason for failing to attend the appointment.

His compliance condition was to contact the provider and agree a date for future attendance and to attend/take part in a re-arranged appointment.

On 24.7.15 Tim attends his normal fortnightly work search review interview with jobcentre plus. He tells the work coach he understands to end the open-ended sanction he must contact the provider to make a new appointment but despite several attempts since 23.7.15 he has not been able to get through to the provider and he has even left a voice message to ring him back but there has been no returned call. The work coach advises Tim to continue to try and call the provider to

make another appointment but makes a note on his records that the claimant has had several failed attempts to make contact since 23.7.15.

On 26.7.15 Tim makes contact with the provider and arranges an appointment for 31.7.15.

Tim attends and takes part in the appointment with his Wp provider on 31.7.15.

The provider confirms that there was an answer machine message from Tim on 23.7.15.

The date of compliance is therefore 23.7.15.

A one day open ended sanction is appropriate for 22.7.15 (the date of the failure).

Example 8

Louis fails to attend a Wfl for no good reason on 10.10.17. The compliance condition is to contact his work coach and arrange and take part in another interview.

Louis contacts his work coach on 22.10.17 and attends and takes part in a re arranged appointment with his work coach on 23.10.17. The date of compliance is 22.10.17.

An open ended sanction is imposed for the period from 10.10.17 to 21.10.17 (12 days from the date of the failure to the day before the date of compliance) plus a 7 day fixed period as it is a first low-level failure. A total of 19 days sanction.

On 12.10.17 Louis also failed to participate in an interview with his Work Programme provider for no good reason. The compliance condition is to contact his provider and arrange and attend/take part in another interview. Louis meets the compliance condition on 22.10.17. On the same day he rang to arrange a new Wfl appointment with his work coach, he also contacted his provider and made a new appointment for 26.10.17 which he duly attended and participated in.

An open ended sanction is imposed from 12.10.17 to 21.10.17 (10 days from the date of the failure to the day before the date of compliance) plus a 7 days fixed period (this failure is within 14 days of the previous sanctionable failure on 10.10.17). A total of 17 days sanction.

There are two open ended sanction periods which overlap for the 2 separate sanctionable failures for the period 12.10.17 to 21.10.17.

Example 9

Nicky fails to attend a Wfl with her work coach on 18.4.18 and makes no contact. Nicky then fails to attend a further Wfl on 25.4.18 and makes no contact. An open ended sanction is imposed from 25.4.18 and another 7 day fixed period sanction will be applicable when the open-ended sanction ends.

On 30.4.18 Nicky contacts the work coach to give her reasons for failing to attend her appointments and agrees to attend and take part in a new appointment on 2.5.18. Nicky has no good reason for the failures to attend. She attends and takes part in the appointment on 2.5.18 as required.

Two low-level sanctions are imposed as follows:

1. an open ended sanction is imposed for the first failure from 18.4.18 to 29.4.18 (12 days) plus a fixed period of 7 days = 19 days,
2. an open ended sanction is imposed for the second failure from 25.4.18 to 29.4.18 (5 days) plus a fixed period of 7days = 12 days (the fixed period does not escalate because it is within 14 days of the previous most recent sanctionable failure).

Example 10

Rose fails to attend an appointment with her work coach on 30.4.18.

She fails to make contact despite being asked to provide her good reasons for the failure.

The compliance condition has been notified to her as “to arrange and take part in an appointment with her work coach”.

On 9.5.18 Rose makes contact. She has no good reason for failing to attend on 30.4.18. She agrees to take part in an appointment the following day on 10.5.18.

Rose fails to attend the appointment on 10.5.18.

An open ended sanction would run from the date of the sanctionable failure, i.e. 30.4.18.

There would be no referral for the failure on 10.5.18 as participation is required as part of the compliance condition of the sanction already running for the failure on 30.4.18. Rose has not fully met her compliance condition and therefore the open ended sanction for the failure on 30.4.18 continues to accrue.

A further appointment is notified to Rose via her ‘To Do’ in her on line journal to take part in an appointment with her work coach on 14.5.18.

The compliance condition has been notified to her as “to arrange and take part in an appointment with her work coach”.

Rose fails to attend the appointment on 14.5.18.

This failure would be a new sanctionable failure and require a sanction doubt being raised.

A notification is placed in Rose’s ‘To Do’ to provide her reasons for the failure to attend on 14.5.18.

On 16/5/18 Rose makes contact with her work coach. She has no good reason for failing to attend the appointment on 14.5.18. She agrees to attend an appointment on 17.5.18 which she does attend and takes part in as required.

There are 2 sanctions applicable:

- 1) An open ended sanction would run for the first failure on 30.4.18 for 16 days from 30.4.18 to 15.5.18 (i.e. from the date of failure to the day before Rose met the compliance condition which in this case would be 16.5.18 when she made contact as she then attended and took part in the newly arranged appointment on 17.5.18) plus a fixed period of 7 days for a first failure.
- 2) An open ended sanction would run for the second failure on 14.5.18 for 2 days from 14.5.18 to 15.5.18 (i.e. from the date of failure to the day before Rose, met the compliance condition which in this case would be 16.5.18 when she made contact as she then attended and took part in the newly arranged appointment on 17.5.18) plus a fixed period of 14 days for a second failure within 365 days, but not 14 days, of the sanctionable failure on 30.4.18.

There are two open ended sanction periods which overlap for the period 14.5.18 and 15.5.18 for the 2 separate sanctionable failures.

Compliance condition revised or varied

K1049 When a requirement is set the claimant must always be in a position to achieve that action by the deadline in order to be able to comply with the requirement. This will **usually** be the original requirement the claimant failed to meet, but where this is not appropriate or no longer reasonable then it will be a suitable alternative requirement as specified¹. For example

1. a one off event may have passed and cannot be repeated such as the claimant is required to attend a Jobs Fair **or**
2. the same requirement is not available within a reasonable amount of time, e.g. a claimant failed to attend a training course which is no longer running or the next available course is available at a date too far in the future.

In such a situation the compliance condition could be changed (see further guidance at K1050).

1 WR Act 12, s 27(7)

K1050 The requirement can be any work-related or connected activity and can be revoked or varied at any time. However, the compliance condition should only be revised if the claimant cannot achieve the original requirement within a reasonable time. For example, if the requirement is to present a CV the claimant can still achieve that activity or if it is to attend a Wfl they can make contact and arrange a new

appointment. However, if it is a one off event then a revised compliance condition must be set, see **examples 1 and 2**.

Note: The examples used are not an exhaustive list of circumstances where the compliance condition can be varied or changed. It is for the DM to consider each case on its own individual facts and circumstances and what is reasonable, appropriate and achievable for the claimant.

Example 1

Brian fails to attend a Jobs Fair on 29.7.15. He has no good reason for the failure. On 3.8.15 he contacts JCP and is set a revised compliance condition as the Jobs Fair was a one off event.

Brian is required to contact the relevant employers represented at the fair and find out what they were offering and if it is still on offer. He is set a deadline to do this by 10.8.15.

When Brian attends his normal work search review on 10.8.15 he provides evidence that he complied with the revised compliance requirement.

He is treated as complying on 3.8.15 (the day he made contact) and an open ended sanction would be appropriate for the period from 29.7.15 (the date of the failure) to 2.8.15 (the date before the day of compliance).

Example 2

Irina fails to attend an Interviewing Skills workshop on 21.10.15. She has no good reason for the failure.

She is set a revised compliance condition to contact the workshop provider to enquire about future courses and attend an interview with her advisor to discuss next steps on 29.10.15.

On 29.10.15 she attends her advisor interview and says she phoned the provider on 27.10.15 and was informed the course will not be running again until January 2016. The course provider confirms the claimant contacted them on 27.10.15 and the course is not available till January.

Irina is treated as having complied on 27.10.15 when she contacted the provider regarding other courses.

The open-ended sanction runs from 21.10.15 (the date of the failure) to 26.10.15 (the day before the date of compliance).

Meaning of reduction period

K1056 The reduction period is the number of days for which an award of UC is reduced for each sanctionable failure¹. The reduction periods that apply, depending on the circumstances in which the failure has occurred, are provided for in a table for each level of sanctions

1. higher-level²
2. medium-level³
3. low-level⁴.

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.

Note 1: See full guidance and illustrative examples in Chapter K3 (Higher-level sanctions), K4 (Medium-level sanctions) and K5 (Low-level sanctions).

Note 2: It is the date of the failures that determines which reduction period applies, i.e. it is the period between the date of the current sanctionable failure and the most recent previous sanctionable failure and not the dates of the DMs decisions.

1 UC Regs, reg 101(1), 2 reg 102(2), 3 reg 103(2); 4 reg 104(2)

K1057 The reduction period takes effect from

1. the first day of the assessment period in which the DM determines that a reduction should be imposed **or**
2. if the UC award is not reduced as in **1.**, the first day of the next assessment period **or**
3. if the UC award is already subject to a reduction as in **1.** or **2.**, the first day for which the award is no longer subject to a reduction¹.

The reduction period determination is incorporated in a supersession decision which takes effect from the same date². See ADM Chapter K8 (When reduction is to have effect) for detailed guidance. See also Chapter A4 (Supersession) for guidance on the supersession effective date rules.

1 UC Regs, reg 106; 2 UC, PIP, JSA & ESA (D&A) Regs, reg 27 & 35(1)(e)

K1058 Reduction periods run consecutively¹. If it is determined that an award of UC should be reduced as a result of a sanctionable failure, and a reduction has already been imposed for a previous sanctionable failure, the later reduction is added to the TORP, and takes effect once the previous reduction has ended. This may mean that more than one reduction could be made in the same assessment period.

1 UC Regs, reg 101(2) & 106(c)

Example

Danny has been entitled to UC since 8.5.13. He fails for no good reason to attend a MWA work placement on 23.6.14, and on 1.7.14 the DM imposes a higher-level sanction for 91 days. The reduction takes effect from 8.6.14.

Danny fails to attend for his fortnightly interview on 13.8.14. He comes in to the Jobcentre on 15.8.14, saying that he forgot about the interview, and provides evidence of his fortnight's work search and work availability. The DM decides to impose a low-level sanction for a reduction period of 9 days (2 days non-compliance, followed by a 7 day fixed period).

Danny's 91 day higher-level sanction is due to finish on 6.9.14. The payment due on 7.9.14 only has one day not affected by the higher-level sanction, so the low-level reduction starts on 7.9.14. The remaining 8 days reduction period take effect in the next assessment period starting on 8.9.14.

K1059 When calculating which reduction period applies, the previous most recent sanctionable failure is disregarded for the purposes of escalation (see K1088) if

1. it occurred within 14 days of the current sanctionable failure¹ **or**
2. it occurred more than 365 days before the current sanctionable failure² **or**
3. it is not at the same level as the current sanctionable failure.

Note: See ADM Chapters K3 to K6 for further examples in relation to higher, medium, low and lowest-level sanctions.

1 UC Regs, reg 101(4); 2 reg 102(2), 103(2) & 104(2) & (3)

K1060 This means

1. the current sanctionable failure **must** be within 365 days of the previous most recent sanctionable failure in order to escalate to the next penalty **or**
2. where there are two failures within 14 days of each other, a sanction will be imposed for each failure but the duration of the second sanction will not escalate to the next penalty but remain at the same duration as the previous failure.

Note: The purpose of escalating sanctions is to deter claimants who repeatedly fail to meet the work-related requirements placed upon them within the same fortnightly signing period. Safeguards are included to ensure the sanction length does not escalate too quickly to the maximum period during a short period. The DM considers whether there has been another sanctionable failure for which a reduction was imposed within 14 or 365 days of the current sanctionable failure in question.

Example

Raheem has multiple sanctions as detailed in the table shown:

Dates of the sanctionable failures	Period between sanctionable failures	Duration of sanction
26.7.16 - Raheem fails without good reason to attend his work search review with his work coach.		9 days - Raheem complies on 28.7.16. This is his first low-level sanctionable failure and a reduction period of 9 days applies - 2 days open ended period from 26.7.16 to 27.7.16 + a 7 day fixed period sanction.
28.7.16 - Raheem fails without a good reason to apply for a specified vacancy notified to him by the Work Coach.		91 days - this is Raheem's first higher-level sanctionable failure and a reduction period of 91 days applies.
29.7.16 - Raheem fails to attend a Jobs Fair as part of a work-related requirement on his Claimant Commitment without a good reason.	3 days – previous most recent low-level sanctionable failure occurred on 26.7.16.	11 days - Raheem complies on 2.8.16. This is Raheem's 2nd low-level failure and is within 365 days and also 14 days of the previous most recent low-level failure on 26.7.16, therefore an 11 day reduction period applies - a 4 days open ended sanction from 29.7.16 to 1.8.16 plus a 7 day fixed period sanction. The fixed period sanction cannot escalate to 14 days and has to be for the same duration as the previous low-level sanctionable failure (i.e. 7 days).
4.8.16 - Raheem fails without good reason to apply for a vacancy notified in the 'Saved	13 days – previous most recent higher-level sanctionable failure occurred on 28.7.16.	91 days - as there is a previous higher-level sanctionable failure and the most recent previous

<p>Jobs' page of his UJ account.</p>		<p>sanctionable failure on 28.7.16 is within 365 days and also within 14 days of the date of the current higher-level failure on 4.8.16, the sanction duration also has to be for 91 days and cannot escalate to the next level.</p>
<p>9.8.16 - Raheem has not met his work search requirements as agreed on his Claimant Commitment.</p>		<p>28 days - it is Raheem's first medium-level failure.</p>
<p>16.8.16 - Raheem fails to attend a work search review appointment with his Work Coach without a good reason.</p>	<p>18 days – previous most recent low-level failure occurred on 29.7.16.</p>	<p>15 days - Raheem complies on 17.8.16. A 15 day reduction period applies – a 1 day open ended sanction for 16.8.16 plus a 14 day fixed period sanction. There has been a previous low-level sanctionable failure on 29.7.16 which is within 365 days of the current low-level failure on 16.8.16 but not within 14 days, therefore the fixed period sanction escalates to 14 days.</p>
<p>16.8.16 - Raheem has not met his work search requirements.</p>	<p>7 days – previous most recent medium-level failure occurred on 9.8.16.</p>	<p>28 days – there has been a previous medium-level sanctionable failure on 9.8.16 which is within 365 days and also within 14 days of the current medium-level sanctionable failure on 16.8.16 therefore the reduction period cannot</p>

		escalate and has to be for the same duration.
29.8.16 - Raheem fails to attend an interview with his Wp provider without good reason.	13 days – previous most recent low–level failure occurred on 16.8.16.	16 days. Raheem complies on 31.8.16. A 16 day reduction period applies – a 2 day open ended sanction from 29.8.16 to 30.8.16 plus a 14 day fixed sanction period. The previous most recent low–level sanctionable failure on 16.8.16 occurred within 365 days and also within 14 days of the current low–level failure on 29.8.16. Therefore the fixed period sanction cannot escalate to 28 days and has to be for the same duration as the previous low–level sanctionable failure (i.e. 14 days).
1.9.16 - Raheem fails to apply for a specified vacancy without a good reason.	28 days – previous most recent higher–level sanctionable failure occurred on 4.8.16.	182 days - as there is a previous higher–level sanctionable failure and the most recent previous higher–level sanctionable failure on 4.8.16 is within 365 days but not within 14 days of the date of the current higher–level failure on 1.9.16, the sanction duration escalates to 182 days.
18.10.16 – Raheem has not met his work search requirements.	63 days – previous most recent medium–level sanctionable failure was 16.8.16.	91 days – there has been a previous medium–level sanctionable failure on 16.8.16 which is within 365 days but not 14 days

		of the current medium–level sanctionable failure on 18.10.16 for which a 28 day sanction was imposed therefore the sanction escalates to 91 days.
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K1061 See ADM Chapter K8 for guidance on when a reduction period begins and ends, including where

1. a reduction is
 - 1.1 suspended when the amount of UC is restricted following one or more benefit fraud offences¹ or
 - 1.2 terminated where the claimant satisfies specified weekly earnings rules²
2. the reduction period continues after UC entitlement terminates³.

1 UC Regs, reg 108; SS Fraud Act 01, s 6B, 7 & 9; 2 UC Regs, reg 109; 3 reg 107

K1062 – K1065

Maximum reduction period

K1066 Where imposing a reduction period for a sanctionable failure would mean that the TORP would exceed 1095 days, the number of days in the reduction period is adjusted to ensure that this limit is not exceeded¹. The calculation of the total outstanding reduction period is made at the date when the DM makes the determination of the reduction period.

1 UC Regs, reg 101(3)

Meaning of total outstanding reduction period (TORP)

K1067 When considering whether K1066 applies, the TORP is the total number of days of a reduction period for which an award of UC has not yet been reduced¹.

1 UC Regs, reg 101(5)

Example

Sally has had several different sanctions imposed for failure to comply with work–related requirements since her entitlement to UC began on 15.8.13. She had a higher–level sanction of 91 days imposed on 9.10.13, because she left her part–time job voluntarily for no good reason. Sally later refused to apply for a job vacancy on 19.12.13, and a further higher–level sanction of 182 days was imposed. The reduction period for the failures began on 15.9.13, and is due to end on 14.6.14.

After Sally failed to attend a MWA work placement which started on 12.5.14, the DM decides on 20.5.14 to impose a further higher-level sanction. This ought to be for 1095 days, as there was a previous 182 day higher-level sanctionable failure within 365 days. However, as at 20.5.14 the TORP is 25 days, that is the number of days for which Sally's award of UC has not yet been reduced. The DM therefore imposes a reduction period of 1070 days, effective from 15.6.14.

K1068 – K1069

Sanctionable failure decision making

Introduction

K1070 This section gives guidance on general principles the DM should consider when making decisions on sanctionable failures.

K1071 – K1074

Has the claimant failed to comply with a work-related or connected requirement

K1075 When considering whether to impose a higher, medium, low or lowest-level sanction, the DM should first determine whether the claimant has failed to comply with a work-related requirement and if so, what that failure is. See ADM Chapter J3 for detailed guidance on work-related requirements.

Note 1: Also see guidance at K1007 with regard to the imposition of work-related requirements and sanctions. If the claimant is not entitled to UC on the date of the failure no conditionality and no sanctions can be imposed but see ADM Chapter 8 for guidance on reserving sanction decisions where the claimant was entitled to UC on the date of the failure but the decision to sanction has not been made before the claimant's award of UC has terminated.

Note 2: The DM should be satisfied that the Secretary of State has met the obligation to correctly notify any mandatory requirement. The amount and quality of information provided to the claimant about their responsibilities will be relevant when considering whether a sanctionable failure has occurred (see further guidance at K1151 et seq).

Does a reduction apply

K1076 Where the DM determines that the claimant has failed to comply with a work-related requirement, the next step is to consider whether it is a failure for which

1. no reduction would apply **or**
2. a reduction would apply.

K1077 See ADM Chapter K3 (Higher-level sanctions) for guidance on where no reduction is made for specified higher-level sanctionable failures¹.

1 UC Regs, reg 113

K1078 – K1079

Good reason

K1080 If the failure is one for which no reduction is applied, for example failing to apply for a vacancy which exists due to a strike during a trade dispute, the DM does not need to consider good reason.

K1081 If the DM determines that the failure is one for which a reduction would apply, they should consider whether the claimant had a good reason for the failure to comply. See ADM Chapter K2 for detailed guidance on good reason.

K1082 – K1084

Which sanction level and reduction period applies

K1085 Where

1. the claimant has no good reason for a failure to comply with a work-related requirement **and**
2. the sanctionable failure is one for which a reduction applies

the DM should consider which sanction level and reduction period applies.

K1086 The reduction period depends on whether the sanctionable failure results in a

1. higher-level sanction¹ (see ADM Chapter K3) **or**
2. medium-level sanction² (see ADM Chapter K4) **or**
3. low-level sanction³ (see ADM Chapter K5) **or**
4. lowest-level sanction⁴ (see ADM Chapter K6).

1 UC Regs, reg 102; 2 reg 103; 3 reg 104; 4 reg 105

K1087 Reduction periods can be for

1. an open period until the claimant meets a compliance condition **or**
2. a fixed period **or**
3. a combination of both.

Higher and medium-level sanctions are for a fixed period, low-level sanctions have a combination of an open period until compliance, followed by a fixed period, while lowest-level sanctions are for an open period until compliance.

K1088 Reduction periods are for different lengths depending on

1. the claimant's age at the date of the sanctionable failure **and**

2. whether there have been other sanctionable failures at the same level before the current sanctionable failure.

Where **2.** applies, this is known as escalation. For example, higher-level sanctions for a claimant aged 18 or over are for 91 days, 182 days or 1095 days, depending on whether the current sanctionable failure is a first, second or subsequent sanctionable failure within a 365 day period but not within 14 days (see ADM K1059). Higher-level sanctions for a claimant aged 16 or 17 are for 14 days or 28 days.

K1089 As part of the process of considering whether escalation applies, the DM should consider whether there have been previous sanctionable failures

1. at the same level **and**
2. for which a decision to impose a reduction has been made, even if the reduction has not yet begun.

Note 1: See ADM Chapter K7 for guidance on the effect of a JSA or ESA sanction on UC reduction periods, where the JSA or ESA sanction is moved to UC.

Note 2: The DM considers whether there has been another sanctionable failure at the same level (i.e. higher, medium or low) within 14 or 365 days of the date of the current sanctionable failure in question.

K1090 A failure

1. for which no reduction is applied¹ **or**
2. which is a pre-claim failure²

is excluded when calculating which reduction period applies. See ADM Chapter K3 (Higher-level sanctions) for further details.

1 WR Act 12, s 26(8)(a); UC Regs, reg 113; 2 WR Act 12, s 26(4); UC Regs, reg 102

K1091 When considering the period of the reduction (see K1050) for higher, medium and low-level sanctions, the DM should consider whether there was another sanctionable failure in the period preceding the current sanctionable failure. This includes failures which were subsequent to the failure in question, but were decided earlier.

Example

Siân is entitled to UC. She had been required by the adviser to register with a specified employment agency by 20.5.14, as part of her search for catering work, but fails to do so. She notifies the adviser on 23.5.14 that she registered with the agency on the same day. The failure is referred for determination by the DM, who writes to Siân asking for an explanation for the failure to comply.

Siân has not yet replied when she fails to attend her fortnightly interview at the Jobcentre on 5.6.14, and attends on 19.6.14 saying she forgot about the previous appointment. The interview on 19.6.14 meets the compliance condition.

On 23.6.14 the DM imposes a reduction of 21 days (14 days before compliance + 7 days as there are no previous sanctionable failures) for the failure to attend the fortnightly interview. The failure of 20.5.14 is not taken into account as no sanction has been imposed.

On 26.6.14 the DM considers the failure to comply with a specific work search requirement of 20.5.14. Siân has not given any good reason for the failure. The DM imposes a reduction of 17 days (3 days before compliance + 14 days as there was another sanctionable failure before the current failure). The 17 day reduction period is added to the existing 21 days reduction period.

K1092 – K1099

Start of reduction period

K1100 Once the DM has determined which sanction level and reduction period applies, including where the period is reduced as in K1060, the reduction period is added to the TORP (see K1067). The next step is to determine when the reduction period begins. This is normally the first day of the assessment period in which the determination is made, or if it is not possible to implement the reduction then, the following assessment period¹. The DM also needs to consider whether the period should follow a previous reduction as in K1058. See ADM Chapter K8 (When a reduction is to have effect) for detailed guidance.

Note: The DM's decision is the starting point from which to consider when to apply the reduction period. Once the decision is made the reduction must be made from the first day of the current assessment period or the first day of the following assessment period. If a sanction reduction has not taken effect in either the assessment period in which the decision is made, or the assessment period following it, there will be an overpayment of UC.

1 UC Regs, reg 106

Amount of reduction

K1101 The final step in the process of making a decision on a sanctionable failure is to determine the amount of the reduction¹, including the daily reduction rate². This varies depending on the claimant's circumstances at the end of the assessment period, and whether they are a joint claimant. The daily reduction rate is

1. an amount equivalent to the standard allowance multiplied by 12 and divided by 365 **or**

2. where the claimant satisfies certain conditions at the end of the assessment period (including a change to work-related requirements during the assessment period)
 - 2.1 40% of the daily reduction rate in 1. (for example where they are aged 16 or 17, or are responsible for a child aged between one and four) **or**
 - 2.2 nil (where they have LCWRA).

Reduction rates for joint claimants are considered separately, and half the daily reduction rate in 1. or 2. applies. See ADM Chapter K9 (Amount of reduction) for detailed guidance.

1 UC Regs, reg 110; 2 reg 111

K1102 – K1104

Recoverable hardship payments

- K1105 Where the DM decides to impose a sanction, and the claimant's benefit is reduced, the claimant may be eligible for recoverable hardship payments. See ADM Chapter L1 (Hardship) for detailed guidance.

K1106 – K1120

Delegation and contracting out of Secretary of State functions

- K1121 The functions of the Secretary of State under certain legislation¹ can be carried out by employees of such persons that are authorised by the Secretary of State for that purpose (i.e. the 'authorised person')².

1 WR Act 12, s 13 – 25; 2 s 29

- K1122 The authorised person (or an employee of that person) can act on behalf of the Secretary of State with regard to functions relating to the following

1. Work-related requirements¹
2. Claimant commitment²
3. Work focused interview requirement³
4. Work preparation requirement⁴
5. Work search requirement⁵
6. Work availability requirement⁶
7. Claimant's subject to no work-related requirements⁷
8. Claimant's subject to work-focused interview requirement only⁸
9. Claimant's subject to work preparation requirements⁹

10. Claimant's subject to all work-related requirements¹⁰
11. Connected requirements¹¹
12. Imposition of requirements¹²
13. Compliance with requirements¹³.

Note: For detailed guidance on claimant responsibilities see ADM Chapters J1, J2 and J3.

*1 WR Act 12, s 13; 2 s 14, 3 s 15, 4 s 16; 5 s 17; 6 s 18;
7 s 19; 8 s 20; 9 s 21; 10 s 22; 11 s 23; 12 s 24; 13 s 25*

K1123 This means an authorised person can carry out any of the functions listed at K1122 wholly or partly and is to be treated as acting on behalf of and as an officer of the Secretary of State¹.

Note: An authorised person does not have the power to decide good reason or whether a sanction is applicable. That function remains the sole responsibility of the DM to consider the facts and evidence and all the individual circumstances of the case to make an impartial, independent and reasoned decision. (See ADM Chapter K2 (Good reason) for full guidance on good reason.)

1 WR Act 12, s 29

Example 1

When a Wp provider mandates a claimant to apply for a particular job vacancy they are acting as an authorised person on behalf of the Secretary of State asking a claimant to comply with a work search requirement.

This means the provider can require the claimant to take all reasonable action for the purpose of obtaining paid work and can mandate the claimant to apply for a particular job vacancy just as the Secretary of State would.

If the claimant fails to comply without a good reason the DM considers a higher-level sanction as the claimant will have failed to comply with a work search requirement to apply for a job vacancy for paid work (see ADM Chapter K3 for guidance on refusal of employment and higher-level sanctions).

Example 2

When a Wp provider mandates a claimant to participate in the Wp scheme by attending an interview with the provider they are acting on behalf of the Secretary of State asking a claimant to comply with a work-related requirement.

This means the provider can impose a work-related requirement on the claimant and mandate them to take part in the scheme and participate in reasonable activities in relation to obtaining work.

If the claimant fails to comply without a good reason the DM considers a low-level sanction as the claimant will have failed to comply with a work-related requirement (see ADM Chapter K5 for guidance on low-level sanctions).

- K1124 When the DM is considering a sanction they must first consider what the authorised person is requiring the claimant to do and under which section of the legislation¹ and whether this will mean it is a higher-level failure² or another level failure³ that applies.

1 WR Act, s 13 – 25; 2 s 26; 3 s 27

K1125 – K1150

The ‘prior information requirement’

[See Memo ADM 05/09]

- K1151 The ‘prior information requirement’ principle is from a judgment of the Court of Appeal¹. 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 fact that participation in 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 is so the Secretary of State, or such authorised person, may be persuaded that the requirement to do any specific action or activity should not be made and either withdrawn or modified. This will be judged on the facts of the individual case.

Note 2: The ‘prior information requirement’ may be relevant both to whether the claimant has been validly referred to a specific work-related requirement and to whether there was good reason for not participating in it. It applies to any work-related or connected requirement notified to the claimant where there is a threat of sanction for non compliance.

1 SSWP v Reilly and Hewstone and SSWP v Jeffrey and Bevan [2016] EWCA Civ 413

- K1152 The amount and quality of information provided to the claimant

1. in the claimant commitment **or**
2. in such manner as the Secretary of State may determine if not included in the claimant commitment

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 (also see further guidance on Notifications at K1166).

K1153 Claimants need to

1. have the link between conditionality and the application of sanctions fully explained at the start of any claim
2. have clear and unambiguous communications
3. know when they are in danger of being sanctioned and to be told when a sanction has been imposed, the amount and the duration
4. know what actions they have to take to end a sanction (i.e. compliance condition in the case of low and lowest-level sanctions).

K1154 The 'prior information requirement' should be approached on an individual case by case basis as 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 conditionality and sanctions regime at a time when they may be under considerable stress and the outcome of which (i.e. a sanction) of any failure to comply may have serious consequences on a claimant's ability to meet their living needs.

K1155 In the interests of fairness, therefore, they should be in no doubt of what is expected of them and the consequences of failing to comply with any requirement and be able to make meaningful representations to a decision maker before a decision is made.

K1156 – K1160

Burden of proof

K1161 The onus is on the Secretary of State to show there is a sanctionable failure and only then must the claimant show good reason for the failure. There will therefore need to be cogent documentary evidence that shows that the claimant was required to undertake a work-related or connected requirement on a given day which they failed to do.

Note: Notifications form 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 K1164). Therefore whatever is required of a claimant in their responsibilities, the Secretary of State has to be able to produce evidence to support that requirement 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.

In digital areas this could also be a copy of the 'To Do' or ALP from the claimant's on line journal.

'Regularity'

K1162 'Regularity' is discussed in case law¹. The justification for presuming regularity is that things are usually done regularly and thus, in the absence of any contrary evidence, it may be regarded as probable that they will have been done regularly in any particular case. However, the presumption is no more than that, it is rebuttable. Moreover, since it may be contrary to experience that certain things are always done regularly, a party wishing to rely on the presumption may properly be required to prove that things were in fact done regularly in the particular case in hand.

1 SSWP v DC(JSA) [2017] UKUT 464 (AAC)

K1163 The DM therefore has to be able to show the contents of what was sent to the claimant, if and when, when requested not just rely on 'regularity' and showing that a particular notification or letter was sent. In essence the Secretary of Work and Pensions ought generally to provide and ensure he is able to provide a copy of the contents of any relevant notification in every appeal case,

K1164 This will turn on the facts of the individual case and whether the absence of the notification is relevant. There should be no ambiguity that a claimant

1. did not in fact receive the relevant notification **or**
2. had been, or could have been, confused by it.

K1165

Meaning of 'specify'

K1166 Although UC legislation does not prescribe what is required in notifications it does use the word 'specify' throughout legislation in relation to claimant responsibilities and therefore has some obligation attached to it. For example;

1. the Secretary of State may **specify** how, when and where a Wfl is to take place¹
2. a work search requirement is a requirement that a claimant take any particular action **specified** by the Secretary of State².

Note: These are just examples and not an exhaustive list. Wherever the term 'specified' appears in UC legislation³ with regard to claimant responsibilities it has the same obligation attached to it (see K1167)

1 WR Act s 15(4); 2 s 17(1)(b); 3 s 14 to 25

K1167 'Specify' is not defined in legislation and therefore has to be given its ordinary meaning which is to 'identify clearly and definitely'. Therefore the Secretary of State

has an obligation to ensure any requirement is identified clearly and definitely to the claimant in order to meet the legal obligation of the 'prior information requirement' (see K1151).

- K1168 Claimants should be in no doubt as to what is expected of them in order to retain full entitlement to UC and should understand the consequences (i.e. sanctions) of failing to meet such requirements however the Secretary of State may choose to notify the claimant of any requirement (see guidance on the 'prior information requirement' at K1151 et seq and on notifications at K1171 et seq).
- K1169 – K1170

Notifications

- K1171 **[See Memo ADM 05/09]** 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 of the specific requirement if a sanction is to be imposed (also see K1164). All parts of the notifications process should be recorded in departmental systems and copies made available for the judiciary in the event of an appeal. This can be

1. a copy of a formal written notification **or**
2. a screen print of departmental system records showing details of a
 - 2.1 telephone conversation
 - 2.2 face to face interview
 - 2.3 text
 - 2.4 e mail message **or**
 - 2.5. the issue of a specific letter (for example for participation in a particular employment scheme such as the WHP or sbwa.

Note: In full service areas this could also be a copy of the 'To Do' or the ALP for the specific activity from the claimant's on line journal or a screen shot of journal notes.

- K1172 The DM should check system records to be satisfied that relevant and adequate notifications were sent in order to go on to consider good reason and whether a sanction is appropriate. As long as the DM is satisfied

1. adequate notifications were sent **and**
2. there has been a sanctionable failure

the DM can go on to consider whether the claimant can show good reason for the failure.

Note: See ADM Chapter K5 for full guidance on low-level sanctions.

K1173 For guidance on specific notification requirements in certain circumstances see further guidance at

1. ADM Chapter K3 (Higher-level sanctions) regarding
 - 1.1 informing the claimant of a job vacancy
 - 1.2 mandating a claimant to the MWA scheme
2. K1181 regarding requiring a claimant to attend and participate in an interview
3. K1186 regarding mandating a claimant to an employment scheme, for example the Wp.

Note: The DM should be mindful of the 'prior information requirement' whenever the Secretary of State requires the claimant to take part in any work-related or connected requirement which could result in a sanction of benefit. The claimant can be in no doubt as to what is required of them, by when, and the consequences of failing to comply (also see the guidance at K1161 Burden of proof and on regularity at K1162).

K1174 – K1175

Claimant commitment

K1176 **[See Memo ADM 05/09]** Once accepted, the claimant commitment is proof for both parties of

1. what was discussed
2. what work-related requirements were agreed in order to receive UC **and**
3. that the claimant was made aware of the consequences of any failure to comply with their work-related requirements (i.e. sanctions).

Note: For full guidance on the Claimant Commitment and claimant responsibilities see ADM Chapter J1.K1177 The claimant commitment is regularly reviewed and used to document requirements as they change. For example; specific work search, one-off work search and work preparation activities (mandatory and voluntary) in addition to the generic requirements, such as attending and participating in interviews when required to do so or agreeing to regularly access the on line journal and complete all the 'To do's' listed (full service areas).

Note 1: The claimant commitment current at the time of the relevant sanctionable failure should always be available as evidence to show what was accepted.

Note 2: In full service areas the 'commitments' is found in the claimant's journal and the sanctions information is found on a separate tab within the journal.

K1178 A generic requirement on the claimant commitment, however, does not meet the evidence requirement as proof of notification of a specific action or activity on a given date at a specific time. For example;

1. "to attend and take part in appointments with my adviser when required" (also see K1181) **or**
2. "participating in the Work Programme" (also see K1186) **or**
3. "to access my journal often and complete all the activities listed in the "To Do's" (full service areas).

These are general requirements and do not meet the evidence requirement as proof of notification of a specific appointment on a given date at a specific time.

Note 1: At the point a Claimant Commitment is created the work coach would not have details of a specific appointment or activity to participate. For example a work preparation requirement, such as participating in the Wp, as these are notified separately by the provider and different processes cover the issue of such notifications.

Note 2: A general requirement to comply with the claimant commitment does not in itself give grounds to impose a sanction although sanctions may be imposed for failures to comply with work-related and connected requirements that are recorded within the claimant commitment. Separate notifications are used to notify a specific requirement or activity. The validity of the requirement therefore is not dependant on it being in the claimant commitment.

K1179 – K1180

Participating in an interview

K1181 Notice of the specific appointment has to be available as evidence detailing the relevant appointment showing the date, time and place of the interview in addition to the current claimant commitment. This could be

1. a printed copy of the appointment notification in departmental system records **or**
2. a copy of the appointment notification letter from departmental records (if one was issued) **or**
3. the appointment card detailed in the claimant commitment pack **or**
4. system records of a telephone conversation, face to face interview, text or email message **or**
5. in digital areas, a copy of the specific 'To Do'.

Note 1: This list is not exhaustive. However the claimant is notified a copy must be available as evidence and must show details of the specific appointment (i.e. the

date, time and place) and that the claimant was aware of the consequences of failing to comply. Normally there should also be a record within departmental systems of the claimant's appointment history.

Note 2: For full guidance on claimant responsibilities and the claimant commitment see ADM Chapters J1, J2 and J3.

K1182 – K1185

Participating in an employment programme

K1186 In addition to a generic requirement on the claimant commitment to participate in a relevant employment programme, the requirement to notify is usually met by

1. the issue of a letter and accompanying leaflet (see **Note 2.**) to the claimant by DWP at the point of referral to the relevant employment scheme (also see K1187) **and**
2. a notification from JCP or the provider to tell the claimant what specific activity they are actually being mandated to do including the specifics of the date, time and place as required.

Note 1 : These notifications 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 and mirror the requirements in JSA legislation¹ which have been tested in the courts² and found to be valid notices within the legal requirements.

Note 2: The claimant will also usually be issued with a leaflet outlining the specific scheme, i.e. Sc, sbwa, Youth Obligation, Wp. 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.

Note 3: For full guidance on employment schemes see ADM Chapter K5 (Sanctions- low-level sanctions).

1 JSA(SAPOE)Regs, reg 5;

2 SSWP v Reilly and Hewstone and SSWP v Jeffrey and Bevan [2016] EWCA Civ 413

K1187 In addition to the notifications outlined in ADM K1186 the work coach should have discussed with or advised the claimant

1. the benefits of participation in a relevant employment 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 K1151). The onus is on the claimant to establish that any representations would have changed the decision to refer the claimant to the scheme.

Note 2: 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. For full guidance on employment schemes see ADM Chapter K5 (Sanctions - low-level sanctions).

K1188 – K1999

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