

# DMG Chapter 34: JSA Sanctions

## Subpages

- Introduction 34001 - 34010
- Definitions 34011 - 34030
- Sanctions – General principles 34031 - 34088
- Summary of sanction structure 34089
- Higher-level sanctions 34091 - 34120
- Other sanctions 34121 - 34199
- Good reason 34200 - 34500
- Misconduct 34531 - 34650
- Leaving employment voluntarily 34651 - 34710
- Members of Her Majesty's Forces 34711 - 34714
- Share fishermen 34715 - 34720
- Refuses or fails to take up employment 34721 - 34747
- Trade dispute stoppage 34748 - 34750
- Neglect to Avail 34751 - 34760
- Fails for no good reason to participate in a scheme of a prescribed description (MWA) 34761 - 34830
- Failure to participate in an interview 34831 - 34845
- Schemes for assisting claimants to obtain employment (SAPOE schemes) 34846 - 34900
- Refusal or failure to carry out a jobseeker's direction (JSD) 34901 - 34940
- Training schemes and employment programmes 34941 - 34950
- Work experience 34951 - 34999
- Appendix 1 - Summary of sanction reasons and structures for JSA claimants 18 years and over
- Appendix 2 - People the Secretary of State has authorised as Employment Officers
- Appendix 3 : List of approved Prime Contractors for the provision of the Work Programme
- Appendix 4 - List of approved Prime Contractors for the provision of Community Work Placements
- Appendix 5 - List of approved Prime Contractors (Work & Health Programme)
- Appendix 6 The Jobseekers (Back to Work Schemes) Act 2013
- Appendix 7: The Jobseekers (Back to Work Schemes) Act 2013 (Remedial) Order 2020

# Introduction 34001 - 34010

[Introduction](#) 34001 - 34005

[Scope of chapter](#) 34006 - 34008

[The effect of new legislation on JSA claimants referred to Back to Work schemes prior to 26.3.13](#)

34009 - 34010

## Introduction

34001 The guidance in this Chapter applies to JSA(Cont) and JSA(IB) from 22.10.12. For guidance that applies to UC see ADM Chapters K1 – K9 and for new style JSA see ADM Chapters S1 – S7.

**Note:** If guidance is required for any sanctions that occurred before 22.10.12 contact DMA Leeds.

34002 This Chapter gives guidance on the process to follow when making decisions on sanctionable failures introduced by relevant legislation<sup>1</sup> which came into effect from 22.10.12 for JSA(Cont) and JSA(IB). These provisions amend the Act and regulations<sup>2</sup> previously in force.

**Note 1:** This guidance will apply to all failures that occur on or after 22.10.12 irrespective of when a claimant was referred to any programme or scheme.

**Note 2:** There are different rules for young people (see DMG 34186) and there are special rules for HMF and share fishermen (see DMG 34711 and DMG 34715).

1 WR Act 12, s 46, JSA (Sanctions) Amdt Regs; 2 JS Act 95, JSA Regs

34003 – 34005

## Scope of Chapter

34006 This Chapter gives guidance on

**1.** Definitions

**2.** Sanctions - general principles

**3.** Amount of the sanction

**4.** Application of a sanction to a new award

**5.** Level and period of sanction:

Higher-level sanctions

Other sanctions:

Intermediate-level sanctions

Low-level sanctions

16/17 year olds

**6.** Good reason

**7.** Misconduct

**8.** Leaving Voluntarily

**9.** Work Trials

**10.** Refusal of Employment

**11.** Neglect to Avail

**12.** Mandatory Work Activity

**13.** Failed to participate in an interview

**14.** Schemes for assisting claimants to obtain employment (SAPOE schemes)

**15.** Jobseeker's directions

**16.** Training and employment schemes

**17.** Work experience

34008

## **The effect of new legislation on JSA claimants referred to Back to Work schemes prior to 26.3.13**

34009 For guidance on how new legislation<sup>1</sup> may effect any JSA claimants who were referred to Back to Work schemes prior to 26.3.13 see Appendix 6 and 7 to this chapter.

*1 JS (BWS) Act 13, s 1(4), (5), (6), (7), (8) &(9)Jobseekers (Back to Work Schemes) Act 2013 (Remedial) Order 2020 , JSA (ESE Scheme) Regs & JSA (MWA(Scheme) Regs, The Queen on the application of Caitlin Reilly and Jamieson Wilson and the Secretary of State for Work and Pensions*

34010

## Definitions 34011 - 34030

[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

### Claimant

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

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

1 JS Act 95, s 35(1);

### Sanction or reduction period

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

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

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

## Meaning of week

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

1 JSA Regs, reg 75(3)

## Meaning of benefit week

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

NI No. Day

00 - 19 Monday

20 - 39 Tuesday

40 - 59 Wednesday

60 - 79 Thursday

80 - 99 Friday

1 JSA Regs, reg 1(3)

## Meaning of employment officer

34015 An employment officer (Emp O) means

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

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

**Note 2:** Other than with the Wp and CwP (see DMG 34879 et seq) contracting out provisions for prescribed work schemes do not give providers Emp O status. See further guidance at DMG 34776 and DMG 34868.

1 JS Act 95, s 35

## Meaning of employment

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

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

1 JSA Regs, reg 75(4A)

34017 – 34020

## Meaning of current sanctionable failure

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

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

## Meaning of sanctionable failure

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

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

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

34023 – 34030

## Sanctions – General principles 34031 - 34088

[The 'prior information requirement'](#) 34033 - 34038

[Regularity](#) 34039 - 34040

[Reduction period](#) 34041 - 34043

[Escalation of sanctions](#) 34044 - 34055

[Amount of the sanction](#) 34056 - 34060

[Application of a sanction to a new award](#) 34061 - 34080

[Hardship](#) 34081 - 34088

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 at the relevant time.

**Note 1:** The 'prior information requirement' may therefore be relevant both to whether the claimant has been validly referred to a specific requirement and also to whether there was good reason for not complying with 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 **and**
2. have the link between what they are required to do and the application of sanctions fully explained **and**
3. know when they are in danger of being sanctioned **and**
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. Also see the guidance on 'regularity' at DMG 34039.

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).

## **Notifications**

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.

## Regularity

34039 'Regularity' is discussed in case law<sup>1</sup>. 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)

34040 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 State ought generally to provide and ensure he is able to provide a copy of the contents of any relevant notification in every appeal case,

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

## 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.

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 so claimants do not accumulate lengthy sanction periods for failures which occur within a short period of time of each other and give the claimant chance to comply with requirements. 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.

### **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 re claims 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

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 - 34120

[Higher-level sanctions](#) 34091 - 34094

[Sanction period where sanctionable failure occurs prior to 27.11.19](#) 34095

[Sanction period where sanctionable failure occurs on or after 27.11.19](#) 34096

[Transitional Provision to end 156 week sanctions imposed prior to 27.11.19](#) 34097 - 34099

[Exceptions](#) 34100 - 34110

[When the sanction period begins](#) 34111

[Joint-claim couples](#) 34112 - 34120

## 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 unemployment so that 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 and ended on 31.3.16 (see further guidance on the MWA scheme at DMG 34762). For guidance on sanctions for other prescribed schemes see DMG 34846.

**Note 3:** Sanctions legislation<sup>1</sup> was amended so that the maximum duration of any higher-level sanction imposed on a JSA award for a sanctionable failure that occurs on or after 27.11.19 is 26 weeks<sup>4</sup>. This means in effect the 156 week higher-level sanction is removed from regulations. See further guidance at DMG 34096 for higher-level sanctionable failures that occur on or after 27.11.19 and DMG 34097 for guidance on the transitional provisions to end existing 156 weeks higher-level sanctions already imposed on an award of JSA prior to 27.11.19

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

3 JSA Regs, reg 70B; 4 JSA & UC (Higher-level Sanctions) (Amdt) Regs 19

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 – 34094

## **Sanction period where sanctionable failure occurs prior to 27.11.19**

34095 The higher-level sanctions period<sup>1</sup> where the higher-level sanctionable failure occurs prior to 27.11.19 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 and two 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.

**Note 3:** See guidance at DMG 34096 where the sanctionable failure occurs on or after 27.11.19 and DMG 34097 for guidance on the transitional provisions to end any 156 week sanctions already imposed on an award of JSA prior to 27.11.19.

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.

## **Sanction period where sanctionable failure occurs on or after 27.11.19**

34096 From 27.11.19 legislation<sup>1</sup> is amended to remove 156 week sanctions from regulations. The higher-level sanction period for a sanctionable failure which occurs on or after 27.11.19 will be



**1.** 13 weeks where

**1.1** there has been no previous higher-level sanctionable failure **or**

**1.2** the date of the previous most recent higher-level sanctionable failure is more than 52 weeks before the date of the current sanctionable failure **or**

**1.3** the date of the previous most recent higher-level sanctionable failure falls within 2 weeks of the current sanctionable failure and that sanction was for 13 weeks **or**

**2.** 26 weeks for any subsequent higher-level sanctionable failure which occurs within 52 weeks, but not 2 weeks, of a previous higher-level sanctionable failure<sup>2</sup>.

**Note 1:** The maximum reduction period for any higher-level sanctionable failure that can be imposed on an award of JSA for failures that occur on or after 27.11.19 is 26 weeks. See guidance at DMG 34097 for guidance on the transitional provision to end 156 weeks sanctions already imposed for higher-level sanctionable failures that occurred prior to 27.11.19

**Note 2:** The 52 (and 2) weeks refers to the time elapsed between failures and not failure determinations or the beginning or ending dates of a sanction period. Where a higher-level sanctionable failure occurs within 2 weeks of a previous higher-level sanctionable failure where a 13 week sanction was imposed, the reduction period for the current sanctionable failure will also be for 13 weeks and will not escalate to 26 weeks. See Example 2 and further guidance at DMG 34048.

*1 JSA & UC (Higher-level Sanctions) (Amdt) Regs 19 ; 2 JSA Regs, reg 69*

### **Example 1**

On 26.9.19 Amrita fails to take up, without good reason, an offer of paid work which was notified to her by the work coach. As this is Amrita's first higher-level sanctionable failure the sanction period is for 13 weeks.

On 1.11.19 Amrita fails to apply for a job, without good reason, which was notified to her by the work coach. This is a higher-level sanctionable failure and falls within 52 weeks, but not 2 weeks, of the previous higher-level sanctionable failure on 26.9.19. The reduction period is for 26 weeks.

On 28.11.19 Amrita fails again to apply for a job, without good reason, which was notified to her by the work coach. This is Amrita's third higher-level sanctionable failure and this current failure falls within 52 weeks, but not 2 weeks, of the previous higher-level sanctionable failure on 1.11.19. The reduction period will be for 26 weeks.

## Example 2

On 3.12.19 Gabriel refuses for no good reason to take up an offer of paid work. As this is Gabriel's first higher-level sanctionable failure the sanction period is for 13 weeks.

On 9.12.19 Gabriel fails to apply for a job notified to him by his work coach for no good reason. This current higher-level sanctionable failure on 9.12.19 falls within 2 weeks of the most recent previous higher-level sanctionable failure on 3.12.19 and so the sanction period will also be for 13 weeks.

## Transitional Provision to end 156 week sanctions imposed prior to 27.11.19

34097 Where an award of JSA has been reduced for a higher-level sanctionable failure that occurred prior to 27.11.19 for 156 weeks, that sanction will terminate on either,

1. 27.11.19, where on that date, 26 weeks of that sanction has been served **or**
2. on the date after 27.11.19 when 26 weeks of that sanction has been served.

## Example 1

Lara had a 156 week sanction applied to her award of JSA. This was applied from 12.6.18. The sanction terminates on 27.11.19 as Lara has already served 26 weeks of the 156 week sanction on 27.11.19.

## Example 2

James had a 156 week sanction applied to his award of JSA. This was applied from 8.7.19. The sanction terminates on 5.1.20 when 26 weeks of the 156 week sanction has been served.

34098 - 34099

## Exceptions

### Redundancy

34100 The DM should treat the claimant as not having left employment voluntarily<sup>1</sup> where the claimant either has

1. been dismissed by the employer by reason of redundancy **or**
2. volunteered or agreed to be made redundant

within the meaning defined in relevant legislation<sup>2</sup>.

**Note:** Please see further guidance at DMG 34666 where claimants volunteer for redundancy.

1 JS Act 95, s 19(3); 2 ER Act 96, s 139(1)

## **Pre-claim failures**

34101 Where a failure occurs before the claimant made a claim for JSA (known as a 'pre-claim failure') and relates to

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

that failure is not counted for the purpose of determining the sanction period for a subsequent sanctionable failure<sup>1</sup>.

**Note 1:** Pre-claim failures can be counted with previous higher-level failures for escalation purposes as long as the previous failures are within 52 weeks and are not other pre-claim failures but see guidance at DMG 34043 if failures are within 2 weeks.

**Note 2:** Part week sanctions may be appropriate for pre-claim failures<sup>2</sup> (see example at DMG 34103).

1 JSA Regs, reg 69(3); 2 reg 69(4)

### **Example 1**

On 16.11.12 Paula is sacked from her job due to misconduct. She claims JSA on 28.11.12. On 23.12.12 the DM determines that Paula lost her job due to misconduct and imposes a higher-level sanction of 13 weeks for a first failure. On 4.9.13 Paula leaves a job because she doesn't like it and reclaims JSA from 9.9.13. The DM considers a sanction at the higher-level. The second failure is within 52 weeks of the first failure but the first and second failures both occurred before she made a claim to JSA (i.e. both are pre-claim failures) and therefore the first failure is not counted

when determining the sanction period for the second failure. The DM imposes a 13 week sanction for the second failure.

### **Example 2**

On 1.11.12 Olwen refuses a job and the DM determines she has failed without good reason to accept a job and imposes a 13 weeks higher-level sanction for a first failure. On 17.1.13 she fails to apply for another job which is vacant and this time the DM imposes a 26 week sanction for a second higher-level failure as it occurred within 52 weeks of the first failure.

On 14.6.13 Olwen leaves a job because she is bored and reclaims JSA from 17.6.13. The DM determines Olwen left her job voluntarily without good reason and imposes a 156 weeks sanction as the third higher-level failure is a pre-claim failure and is within 52 weeks of a previous higher-level failure but the previous sanctionable failure was not a pre-claim failure.

### **Example 3**

On 7.12.12 Marc is sacked for Misconduct. He makes a claim to JSA on 10.12.12 and the DM imposes a 13 week sanction for a first higher-level sanctionable failure.

#### **1st sanctionable failure - 13 weeks.**

On 7.3.13 Marc fails to apply for an advertised vacancy and the DM decides he failed without good reason and considers a sanction. The DM looks back at any previous sanctionable failures within 52 weeks and has to discount sanction 1 as it is a pre-claim failure so the 2nd sanction is treated as if there are no previous sanctionable failures and a 13 week sanction is imposed.

#### **2nd sanctionable failure - 13 weeks.**

On 1.4.13 Marc leaves JSA to start employment.

On 1.7.13 he makes a new claim to JSA, he has left his employment on 28.6.13. The DM considers he has no good reason for the LV and considers a sanction. The DM looks back at previous sanctionable failures within 52 wks and discounts the 1st sanctionable failure as it is a pre-claim failure, however there is a sanctionable failure on 7.3.13 and so the current sanctionable failure becomes the 2nd failure for escalation purposes and a 26 weeks sanction is imposed.

#### **3rd sanctionable failure - 26 weeks.**

On 18.9.13 Marc fails to accept a job offered to him and the DM considers he can show no good reason. The DM looks back at previous sanctionable failures within 52 weeks and discounts the 1st and 3rd sanctionable failures as they are pre-claim failures so the current sanctionable failure doesn't escalate and is for a further 26 weeks.

#### **4th sanctionable failure - 26 weeks.**

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

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

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

## Example

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

## Employment for a limited period

34103 Where

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

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

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

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

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

## Example

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

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

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

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

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

1 JS Act 95, s 19A(3)

### Example

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

It is Sandra's first failure.

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

34105 - 34110

## When the sanction period begins

34111 The period of a reduction begins either on the first day of the benefit week

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

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

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

### Example 1

Andy's benefit week ends on a Tuesday and he was last paid JSA up to 30.10.12. On 1.11.12 he is dismissed due to inappropriate behaviour towards a customer in the charity shop where he is on a MWA placement.

On 9.11.12 the DM determines Andy has failed without good reason to participate in the MWA scheme. This is Andy's first higher-level failure and a 13 week sanction applies. The sanction begins on 31.10.12.

## **Example 2**

See the example at DMG 34097. Les is paid fortnightly in arrears. His benefit week ends on a Tuesday. He was last paid JSA up to 30.10.12. The failure to participate without good reason in the MWA scheme occurred on 23.10.12.

On Monday 5.11.12 the DM imposes a 13 week sanction which begins on 31.10.12.

## **Joint-claim couples**

34112 The reductions following a failure which incur a higher-level sanction applies to joint-claim JSA claimants. During any sanction period imposed on one of the claimants in a joint-claim couple, JSA is payable to the other member of the couple<sup>1</sup>, i.e. where one of a joint-claim couple has any failure, a sanction can only escalate up their own individual sanction ladder and not in line with failures incurred by the other member of the couple (see further guidance and example 1 at DMG 34042).

1 JS Act 95, s 19(7)

34113 – 34120

## Other sanctions 34121 - 34199

[Intermediate-level sanctions](#) 34121 - 34160

[Low-level sanctions](#) 34161 - 34186

[16/17 year olds claiming JSA](#) 34187 - 34199

### Intermediate-level sanctions

34121 A JSA claimant who ceases to be either

**1.** available for employment **or**

**2.** ASE

is not entitled to JSA<sup>1</sup>.

**Note 1:** From 22.10.12 a new sanction was introduced on new claims for claimants who have been disentitled after failures to be either not available or ASE. In this guidance we refer to these reductions or sanctions as intermediate-level sanctions.

**Note 2:** For further guidance on availability and ASE see DMG Chapter 21.

**Note 3:** Intermediate-level sanctions do not apply to 16/17 year olds (see DMG 34186 et seq).

1 JS Act 95, s 1(2)(a), (c) & (2B)(b)

34122 A claimant who

**1.** was previously entitled to JSA but then loses entitlement on the grounds of

**1.1** not being available for employment **or**

**1.2** not being ASE **and**

**2.** reclaims JSA

is to have any new award of JSA reduced<sup>1</sup>.



**Note:** There has to be a current award of JSA in order to impose a sanction for a failure to ASE or a failure to be available for employment. If there is no award on the new claim then there is no JSA to reduce for the failure to ASE or not being available in the previous claim (also see guidance at 34139).

1 JS Act 95, s 19B(1) & (2); JSA Regs, reg 69B(1) & (2)

34123 If a sanction is imposed by the DM then the period of the reduction will depend upon

1. the number of times that the claimant has lost entitlement in the past on the grounds of not being available or ASE
2. the length of time between any disallowance and any new claim to JSA.

**Note:** With these sanctions there is no 'good reason' for the DM to consider before imposing a reduction. The DM is considering whether entitlement has ended on a previous occasion due to the claimant not being available and/or ASE.

34124 - 34125

### **Sanction period**

34126 The reduction is for<sup>1</sup>

1. 4 weeks where there has been one occasion where the claimant's entitlement ceased on availability or actively seeking grounds<sup>2</sup>**and**

2. 13 weeks where

**2.1** there has been two or more occasions where the claimant's entitlement ceased on availability or actively seeking grounds **and**

**2.2** the most recent occasion of disallowance was within 52 weeks but not within 2 weeks of the last occasion of disallowance<sup>3</sup> (also see guidance at 34127).

**Note:** 'Occasion' refers to the day that entitlement ended. It does not refer to a period of disallowance. The length of any subsequent sanction depends on how many occasions the claimant's 'previous entitlement ceased'. That means the day that entitlement ended.

1 JS Act 95, s 19B(4)(b); 2 JSA Regs, reg 69B(6)(a); 3 reg 69B(6)(b)

### **Example 1**

Johnny was entitled to JSA but his award came to an end when the DM decided that he was not available for employment and could not be treated as available. This was Johnny's first ever claim to JSA. Following this disallowance, Johnny reclaimed JSA. The DM decides that a four week reduction will need to be considered with regards to any new award of JSA.

### **Example 2**

Anila was entitled to JSA but the DM decided that she was not ASE and could not be treated as being so. This was the second time in a year that Anila's award of JSA has come to an end in this way. The last time was three months ago. Anila reclaims JSA and the DM decides that a 13 week reduction will need to be considered with regards to any new award of JSA.

### **Example 3**

Kevin makes a claim for JSA. His only previous claim for JSA was three weeks ago but he wasn't entitled because the DM decided that Kevin was not available for employment and could not be treated as being available for employment. As a result no JSA was ever paid to him. The DM decides that Kevin's new claim can be considered without any consideration of a reduction on the grounds of availability or ASE. This is because Kevin has never been entitled to JSA in the past and therefore has never had an award come to an end on the grounds of not being available or not ASE.

### **Current disallowance within 2 weeks of a previous disallowance**

34127 With intermediate sanctions the DM is looking at whether entitlement has ended on a previous occasion due to the claimant not being available and/or ASE. A 4 week intermediate sanction can only occur where there has been one occasion on which the claimant's entitlement ceased. A 13 week sanction can only occur where there has been 2 or more occasions on which the claimant's previous entitlement ceased and the date of the most recent occasion was within 52 weeks but not within 2 weeks of the previous occasion<sup>1</sup>.

1 JSA Regs, reg 69B(6)(b)

### **Example**

Siobahn was entitled to JSA but the DM decided that she was not ASE and could not be treated as being so. This was the second time in a year that Siobahn's award of JSA has come to an end in this way. The last time was only one week ago. Anila reclaims JSA and the DM decides that a 4 week reduction will need to be considered with regards to any new award of JSA. The reduction cannot escalate to 13 weeks as the previous occasion was within 2 weeks of the current occasion to be determined.

## 13 weeks passed since last disallowance

34128 There can be no reduction to an award of JSA following a new claim where a period of over 13 weeks has passed since the last disallowance on either availability or ASE grounds<sup>1</sup>.

1 JS Act 95, s 19B(5)

### Example

Paul was entitled to JSA but the DM decided that he was not available for employment and could not be treated as so. Paul's award of JSA comes to an end on 6.5.15.

On 1.9.15 Paul makes a new claim to JSA. As over 13 weeks has passed since the last disallowance on the grounds of availability no reduction can be considered on his new award of JSA.

34129 - 34135

## When the sanction period begins

34136 Normally the period of an intermediate sanction would begin on the date of the new claim. However for some JSA claimants a new claim to JSA is not required to re-establish entitlement following a disallowance<sup>1</sup>. DMG 02009 **10**, provides guidance

on those particular cases. This means that, in some cases, an intermediate-level sanction could not be applied because there was no requirement for a new claim following a disallowance.

1 SS (C&P) Regs, reg 3(g)

34137 Where a reduction does apply then it will begin<sup>1</sup> on the

**1.** date of claim **or**

**2.** date on which the suspension ends in cases where a new claim is not required under DMG 02009 **10**.

1 JSA Regs, reg 69B(8)

34138 The period of the reduction has to be reduced<sup>1</sup> by the period of time

**1.** beginning with the first day of the benefit week after the benefit week in which the claimant was last paid JSA **and**

2. ending with the day before

2.1 the new claim or

2.2 date on which the suspension ends in cases where a new claim is not required under DMG 02009 10.

**Note:** This has the effect that the period away from benefit is deducted from the period of the sanction.

1 JSA Regs, reg 69B(7)

### **Example 1**

George attends on his regular fortnightly “signing day” at the Jobcentre on 17.4.13. Although he has met all his actively seeking requirements for the week 11.4.13 to 17.4.13, there is a doubt for the period 4.4.13 to 10.4.13 and payment of JSA for that week is suspended whilst the doubt is investigated.

The DM decides that George did not actively seek employment for the week 4.4.13 to 10.4.13 and nor could he be treated as actively seeking employment. Therefore, entitlement to JSA ends for that week.

As this is the first occasion that George has been disallowed JSA on these grounds, a four week sanction is appropriate less one week for the period 4.4.13 to 10.4.13. George’s award of JSA is sanctioned for the period 11.4.13 to 1.5.13.

### **Example 2**

Mothusi has been claiming JSA since April 2013. She has numerous disallowances continuously for not ASE for the period 19.6.14 to 13.8.14. On 14.8.14 she is reawarded JSA and the DM considers a 4 weeks reduction on the new claim. No reduction is applied as the 4 weeks period of sanction has eroded due to time off benefit.

Mothusi then has a continuous disallowance of JSA for not ASE from 11.9.14 to 22.10.14.

On 23.10.14 she claims and is awarded JSA. Her previous award ended because she was not ASE and could not be treated as such and the DM considers a 13 week reduction on the new award as there has been 2 or more occasions in the last 52 weeks but not in the last 2 weeks when a previous entitlement ended on ASE grounds.

### **Sanction following a termination of a JSA award on grounds of availability/ASE and no entitlement to benefit on new award**

34139 A sanction can only have effect where the claimant is entitled to JSA<sup>1</sup>. A sanction is a reduction in the amount of JSA which would otherwise be payable. If the claimant is not entitled to JSA then there is no award to which a reduction can apply. Where the claimant has lost entitlement on availability/or ASE grounds and reclaims and the new claim is disallowed, then there is no entitlement to JSA. In such a situation a sanction cannot apply to the new claim following the first disallowance. This is because the new claim was unsuccessful and so there is no award in place to which a reduction can apply

**Example**

Jamal was entitled to JSA but his award came to an end when the DM decided that he was not ASE and could not be treated as so. Two weeks later Jamal reclaims JSA but he is not entitled to benefit because he refuses to sign and agree the JSAg. As Jamal has no entitlement to JSA on the new claim a sanction cannot be considered for his failure to ASE on the previous claim (also see guidance at 34139).

34140

**Exceptions**

34141 Although there is no concept of good reason with these sanctions, there are certain circumstances where the DM should not impose a reduction following a disallowance on the grounds of not being available or not ASE.

34142 A claimant who re-claims JSA following a disallowance on availability and/or ASE grounds cannot have a reduction on the new award of JSA where the

**1.** claimant was treated as

**1.1** available for employment **or**

**1.2** ASE **and**

**2.** claimant can no longer be treated as

**2.1** available for employment **or**

**2.2** ASE **and**

**3.** claimant's award of JSA has come to end on the grounds of not being

**3.1** available for employment **or**

**3.2** ASE **and**

**4.** DM considers that it would not be appropriate in the claimant's circumstances to reduce the award of JSA<sup>1</sup>.

**Note:** All of the provisions in **1.** to **4.** have to be satisfied in order for the exemption to apply

34143 When considering whether it would not be appropriate to reduce the claimant's award the DM should consider

- 1.** whether the circumstances which led to the claimant being treated as available or ASE were outside of the claimant's control (for example, a domestic emergency) **and**
- 2.** whether the claimant was taking part in activities that would increase their job prospects (for example, attending an employment-related course) **and**
- 3.** anything else that is relevant to the claimant's circumstances.

**Note:** The fact that hardship may be suffered by the claimant as a result of a reduction is not a relevant consideration in deciding whether or not to reduce an award. This is because there are hardship provisions to cater for claimants whose JSA has been reduced. For detailed guidance on hardship see DMG Chapter 35. See DMG 34185 if hardship only in payment.

### **Example**

Eddie makes a claim for JSA. His previous award of JSA ended on the grounds that he was not available for employment and could not be treated as available. This was because Eddie was participating as a full-time student in an employment-related course. The course lasted three weeks but the DM could only deem Eddie to be available for two weeks. On deciding Eddie's new claim to JSA, the DM decides that it would not be appropriate in the circumstances to reduce any new award because Eddie fell foul of the availability rules whilst seeking to improve his prospects of finding employment.

### **Joint-claim couples**

34144 The reductions following a disallowance on availability or ASE grounds also apply to JSA joint-claim couples<sup>1</sup>.

1 JS Act 95, s 19B(2)

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

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

## Example

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

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

### 1. the couple

**1.1** were previously entitled to a joint-claim JSA **and**

**1.2** ceased to be entitled on the grounds of either or both of them not being available for employment or not ASE<sup>2</sup>**or**

### 2. either member of the couple was a member of another couple who

**2.1** were previously entitled to a joint-claim JSA **and**

**2.2** ceased to be entitled on the grounds of that person not being available for employment or not ASE<sup>3</sup>.

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

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

**Note:** Where one of a joint-claim couple has any failure, a sanction can only escalate up their own individual sanction ladder and not in line with failures incurred by the other member of the couple (see guidance and example 1 at DMG 34042).

34148 - 34160

## Low-level sanctions

34161 A fixed period low-level sanction will be appropriate<sup>1</sup> where a claimant

**1.** loses a place on a training scheme or employment programme through misconduct<sup>2</sup> (see DMG 34941)  
**or**

**2.** without good reason

**2.1** fails to participate in an interview at the JCP<sup>3</sup> (see DMG 34831)

**2.2** fails to participate in an employment scheme under relevant legislation<sup>4</sup> (e.g. Wp) (see DMG 34846)

**2.3** refuses or fails to carry out a JSD which was reasonable having regard to the claimant's circumstances<sup>5</sup> (see DMG 34901)

**2.4** neglected to avail themselves of a reasonable opportunity of a place on a training scheme or employment programme<sup>6</sup> (see DMG 34941)

**2.5** refuses or fails to apply for or accept if offered a place on a scheme or programme which an Emp O has notified is vacant or about to become vacant<sup>7</sup> (see DMG 34941)

**2.6** gives up a place on a scheme or employment programme or fails to attend such a scheme or programme having been given a place on it<sup>8</sup> (see DMG 34941).

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

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

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

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

## Meaning of Jobseeker's direction

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

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



## Meaning of employment programme

34163 An employment programme means a programme or scheme which is designed for a claimant to

**1.** prepare for **or**

**2.** move into

work<sup>1</sup>.

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

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

## Meaning of training scheme

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

**1.** obtain work **or**

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

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

34165 - 34170

## Sanction period

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

**1.** 4 weeks for the first failure<sup>1</sup>**or**

**2.** 13 weeks<sup>2</sup> where there has been

**2.1** only one previous low level failure and that failure

**2.1.a** resulted in a 4 week sanction **and**

**2.1.b** was within 52 weeks but not 2 weeks of the current failure **and**

**2.1.c** in the case of a joint claim couple, the failure was by the same claimant **or**

**2.2** more than one previous low level failure and the most recent failure

**2.2.a** resulted in a low level sanction **and**

**2.2.b** was within 52 weeks but not 2 weeks of the current failure **and**

**2.2.c** in the case of a joint claim couple, the failure was by the same claimant.

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

### **Example 1**

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

### **Example 2**

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

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

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

34172 – 34175

### **Exceptions**

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

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

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

1 JS Act 95, s 19A(3)

### Example

Gustaffo fails without good reason to apply for a job vacancy and then also fails to attend for his normal fortnightly job search review. Although both failures occur on 2.8.13 they are separate failures and the DM would consider 2 sanctions, a higher-level sanction for the failure to apply for the job vacancy and a low-level for the failure to participate in his JCP interview (also see the guidance at DMG 34044 where there are two failures for the same period).

34177 If a claimant commits multiple low-level failures the sanction period will not escalate to the next level where

1. the second or subsequent failure is within the same two week period **or**
2. in the case of joint claimants, the failure is not by the same claimant<sup>1</sup>.

**Note 1:** Also see guidance at DMG 34041 et seq for full guidance on the escalation of sanctions and DMG 34046 where sanctions are determined out of sequence.

**Note 2:** During any sanction period imposed on one of the claimants in a joint-claim couple, JSA is payable to the other member of the couple<sup>2</sup>, see DMG 34179.

1 JSA Regs, reg 69A(2); 2 JS Act 95, s 19A(10)

### Example

Maxine and her partner Gary are a joint-claim couple in receipt of JSA. On 22.1.13 the DM makes a determination that JSA is not payable because Maxine failed without good reason to comply with a JSD request to register with an employment agency on 14.1.13. It is Maxine's first low-level failure and a 4 week sanction is imposed.

On 8.8.13 Maxine's partner Gary, fails to participate in an interview with his Wp provider. On 12.8.13 the DM determines that Gary has failed without good reason to participate in the Wp. Although this is within 52 weeks of Maxine's low-level failure, the failure is not by the same claimant in the joint-claim. The DM

imposes a 4 week sanction for Gary's first low-level failure.

On 20.8.13 Gary fails to attend a job search workshop arranged by his Wp provider. On 30.8.13 the DM determines that Gary has failed without good reason to participate in the Wp. This is his second low-level failure but as the failure falls within the same 2 week period as Gary's previous low-level failure the fixed period sanction imposed is for 4 weeks.

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

34178 The period of a reduction begins either on the first day of the benefit week

- 1.** in which the sanctionable failure occurred where on the date of determination to reduce the award the claimant has not been paid JSA since the failure occurred<sup>1</sup>**or**
- 2.** after the end of the benefit week in respect of which the claimant was last paid JSA where on the date of determination to reduce the award, the claimant has been paid a JSA since the failure occurred<sup>2</sup>.

**Note 1:** See DMG 34014 for the meaning of benefit week.

**Note 2:** See DMG 34185 if hardship only in payment.

1 JSA Regs, reg 69A(3)(a); 2 reg 69A(3)(b)

### **Example 1**

On 2.11.12 Jamil fails to attend an interview with a Skills Conditionality provider. On 19.11.12 the DM determines Jamil failed without good reason to participate in the Skills Conditionality programme and imposes a 4 week sanction. Jamil's benefit week ends on a Thursday and he was last paid JSA to 8.11.12. The sanction begins on 9.11.12.

### **Example 2**

On 25.10.12 Anila fails to comply with a JSD to attend a Jobs Fair. On 1.11.12 the DM determines that Anila failed without good reason to comply with a JSD and imposes a 4 weeks sanction. Anila's benefit week ends on a Monday and she was last paid JSA to 22.10.12. The sanction begins on 23.10.12.

### **Joint-claim JSA**

34179 During any sanction period imposed on one of the claimants in a joint-claim couple, JSA is payable to the other member of the couple<sup>1</sup>.

**Note:** Where one of a joint-claim couple has any failure, a sanction can only escalate up their own

individual sanction ladder and not in line with failures incurred by the other member of the couple (see example at DMG 34177).

1 JS Act 95, s 19A(10)

34180 – 34184

### **When the sanction period begins if hardship only in payment**

34185 A payment of JSA hardship is still an award of JSA. However, to withhold hardship payments when we have determined someone is in hardship would be unfair. Therefore the sanction period is applied and starts from

- 1.** the first day of the benefit week after the end of the benefit week after JSA was last paid in the case of higher-level or low-level sanctions<sup>1</sup> **or**
- 2.** from the date of claim in the case of intermediate-level sanctions<sup>2</sup>.

If the claimant claims hardship then the claimant would receive the hardship rate of JSA (IB) but the sanction would run its course in the background.

**Note:** If for some reason the claimant ceased to be in hardship during the sanction period, for example a claimant's partner did some paid part-time work then no JSA would be payable for the 'outstanding period' of the sanction. If the claimant was not entitled to hardship payments then he or she would not receive any benefit.

1 JSA Regs, reg 69(3), 69A(3); 2 reg 69B(8)

## **16/17 year olds claiming JSA**

### **Meaning of young person**

34186 In this Chapter a young person means a person<sup>1</sup>

**1.** who is at least 16 but has not yet reached the age of 18 **and**

**2.** who

**2.1** does not satisfy the contributions conditions for JSA(Cont)<sup>2</sup> **or**

**2.2** has had their 182 days of JSA(Cont)<sup>3</sup>.

**3.** who is not excluded from IS or JSA under relevant legislation<sup>4</sup> after leaving the care of a LA.

**Note:** Intermediate-level sanctions (see DMG 34121) do not apply to 16/17 year olds.

1 JSA Regs, reg 57(1); 2 JS Act 95, s 2; 3 s 5(1); 4 CLC Act 2000, s 6

## **Young people who have a severe hardship direction in force**

34187 If the Secretary of State has issued a severe hardship direction for a young person, sanctions in respect of a JSD or training scheme cannot be applied if that young person has acted in such a way to risk<sup>1</sup>

- 1.** having the hardship direction revoked because of failing to pursue a chance of getting training without good reason<sup>2</sup>
- 2.** having the hardship direction revoked because of rejecting an offer of training without good reason<sup>3</sup>
- 3.** having JSA reduced because of failing to complete a course of training and the Secretary of State has not issued a certificate saying there was good reason<sup>4</sup>.

1 JS Act 95, s 20(2) and 20B(2); 2 s 16(3)(b)(i); 3 s 16(3)(b)(ii); 4 s 17

34188 Young people who have had severe hardship directions issued by the Secretary of State will have decisions made by the Secretary of State (a specialist team within Jobcentre Plus Head Office) if they do any of the things mentioned in 34187 **1.** to **3.**

34189 16/17 year olds who are sanctioned for

- 1.** leaving voluntarily without good reason **or**
- 2.** losing employment through misconduct

will be treated the same as those aged 18 or over and the higher-level sanction penalties will apply (see DMG 34091 et seq).

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

### **Example**

Zayn is 17 years old and on 29.12.12 leaves his job. The DM determines this is a failure without good reason. As there is no previous higher-level failure a 13 week sanction applies.

34190 For 16/17 year olds who

- 1.** refuse, fail to apply for or accept if offered employment **or**
- 2.** neglect to avail themselves of an employment opportunity

without good reason the sanction will be two weeks.

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

### **Example**

Britney is entitled to JSA, and is aged 17. On 4.11.13 she fails to apply for a job vacancy and the DM determines it is a failure without good reason. A 2 weeks sanction applies as there is no previous higher-level sanctionable failure.

## **Escalation of sanctions**

34191 Sanctionable failures that occur

- 1.** on or after 22.10.12 **and**
- 2.** prior to the claimant reaching their 18th birthday

will count for escalation once they reach 18 provided the failure is within 52 weeks of the previous sanctionable failure.

**Note:** Sanctions that occur prior to 22.10.12 do not count for escalation purposes when considering a sanctionable failure that occurs on or after 22.10.12.

### **Example**

Zac is entitled to JSA and is aged 17. On 9.12.12 he fails without good reason to accept a temporary job offer. There is no previous higher-level failure and so a 2 weeks sanction applies (see DMG 34192).

On 8.9.13 Zac fails to apply for a job vacancy notified to him by his advisor. This is Zac's second higher-level failure within 52 weeks of the previous sanctionable failure on 9.12.12.

However Zac has had his birthday since the previous sanctionable failure and on the date of the current sanctionable failure is now 18 years old, therefore a 26 weeks sanction applies for the failure on 8.9.13.





## **Good reason 34200 - 34500**

[Introduction](#) 34200 - 34202

[Meaning of good reason](#) 34203 - 34204

[Burden of proof](#) 34205 - 34210

[Time to show good reason](#) 34211 - 34220

[The 'reasonable' test](#) 34221 - 34222

[Evidence](#) 34223 - 34225

[Previous failures](#) 34226 - 34227

[What constitutes good reason](#) 34228 - 34229

[Complex needs](#) 34230

[Victims of domestic violence](#) 34231 - 34235

[Mental health](#) 34236 - 34245

[Victims of harassment and bullying](#) 34246 - 34250

[Homelessness](#) 34251 - 34258

[Exceptions](#) 34259 - 34290

[16/17 year olds](#) 34291 - 34300

[Examples of what may be good reason in specific circumstances](#) 34301 - 34339

[Circumstances that may show good reason for a refusal or failure to apply for or accept if offered a job vacancy](#) 34340 - 34425

[Circumstances that may show good reason where a claimant leaves employment](#) 34426 - 34530

## **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 1:** 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.

**Note 2:** The DM should also consider whether it would have been reasonable to expect a claimant to give prior notice they cannot attend or participate in a work-related activity. DMs have the flexibility to consider prior notice of non participation in any circumstance is not required where they believe it was unreasonable to expect the claimant to have done so. Even though a claimant may have been physically able to give advance notice, it may still not have been reasonable to expect them to have done so at the time of the failure. For example, a parent whose child is seriously ill may have access to a phone but it may still be unreasonable to expect them to think of calling their work coach (or a provider) as relevant in the particular circumstances (see **Example 6** ). Also see **Example 2** below.

### **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.

## **Example 6**

Mikka is due to attend an interview at the Jobcentre at 9.30 am on 30.10.17. She fails to attend. Later that day she phones her work coach to explain why she missed her appointment. Mikka's daughter fell in the school playground and broke her arm.

The school called her around 9.20 am as she was on her way to the jobcentre. They had called an ambulance and asked Mikka to come to the school urgently. Her daughter was particularly distressed

and crying for her mum. Mikka went to school immediately.

Mikka is a single parent and was very worried about her daughter. She did not think about her appointment at the jobcentre as she was thinking about her daughter and trying to get back to the school as quickly as possible. She says she has only just got in from the hospital and has phoned straight away to explain why she could not attend. She arranges to attend an interview the next day and says she will arrange for a friend to come sit with her daughter whilst she attends.

Mikka has good reason for her failure to attend in the circumstances. It is reasonable she would be concerned for her daughter and want to attend hospital with her. She phoned to make a new appointment as soon as her domestic crisis was over. It was unreasonable to expect Mikka to think of calling her work coach as relevant in the particular circumstances.

## 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 Jadyd 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 Jadyd's part and in his circumstances. There is no evidence that does not lend support to the credibility or plausibility of Jadyd's account of events and no previous history of non-compliance with his obligations as a jobseeker.

The DM should therefore accept Jadyd'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**

2.3 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 individual's 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 friend's house is over an 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).

# Exceptions

## 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.

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)

34292 The conditions are that<sup>1</sup>

**1.** this is the first time that the young person has, without good reason, committed one of the sanctionable failures listed at 34291 **1.** to **4.** **and**

**2.** the young person has not

**2.1** failed to complete a course of training, without a certificate being issued<sup>2</sup> **or**

**2.2** whilst claiming JSA and having a severe hardship direction in force

**2.2.a** failed to pursue an opportunity of getting training without good reason **or**

**2.2.b** rejected an offer of training without good reason **and**

**3.** at the time the young person

**3.1** acted as in 34859 **2., 3.** or **4.** the young person was a new jobseeker **or**

**3.2** first attended the scheme, if a place on a training scheme was given up without good reason, the young person was a new jobseeker.

1 JSA Regs, reg 67(1); 2 JS Act 95, s 17(4)

### **Example**

Matthew refuses to go on a training scheme and gives no reason for his refusal. He previously left a scheme where he was training to be a hairdresser because the shampoos and perm solutions made his eczema worse, and his GP advised him to leave. The DM decided that he had good reason because of the GP's advice. Matthew satisfies all the conditions **1.** to **3.** so has good reason for refusing to go on the training scheme.

### **Meaning of new jobseeker**

34293 New jobseeker means<sup>1</sup> a young person (16/17 year old) who has not, since first leaving FTE

**1.** been employed or S/E for 16 or more hours per week **or**

**2.** completed a course of training **or**

**3.** if a severe hardship direction is in force, failed to complete a course of training, without a certificate being issued<sup>2</sup> **or**

**4.** given up a place on a training scheme without good reason<sup>3</sup> **or**

**5.** lost a place on a training scheme through misconduct<sup>4</sup>.

## **Good reason for refusing employment or neglecting a reasonable opportunity of employment**

34294 16/17 year olds also have good reason for

**1. refusing employment<sup>1</sup>and**

**2. neglecting to avail themselves of employment<sup>2</sup>**

if the conditions given in DMG 34295 are met<sup>3</sup>.

1 JS Act 95, s 19(6)(c) and 20A(2)(f); 2 s 19(6)(d) and 20A(2)(g); 3 JSA Regs, reg 67(2)

34295 The conditions are that<sup>1</sup>

**1. the employer did not offer suitable training and**

**2. the young person is not laid off or on short time and is available as in DMG Chapter 21<sup>2</sup>and**

**3. the young person has not accepted a firm offer of enlistment in the Armed Services to start within 8 weeks as in DMG Chapter 30<sup>3</sup>and**

**4. the young person's JSA has not been reduced by a severe hardship direction<sup>4</sup> or because of a sanction<sup>5</sup> because the young person has**

**4.1 given up a place on a training scheme without good reason<sup>6</sup>or**

**4.2 failed to attend a place on a training scheme without good reason<sup>7</sup>or**

**4.3 refused a place on a training scheme without good reason<sup>8</sup>or**

**4.4 neglected a reasonable opportunity of a place on a training scheme without good reason<sup>9</sup>or**

**4.5 lost a place on a training scheme through misconduct<sup>10</sup>or**

**4.6 refused employment without good reason<sup>11</sup>or**

**4.7 neglected a reasonable opportunity of employment without good reason<sup>12</sup>and**

5. the young person has not been sanctioned for

5.1 leaving employment voluntarily without good reason<sup>13</sup> **or**

5.2 losing employment through misconduct<sup>14</sup>.

1 JSA Regs, reg 67(2); 2 reg 61(1)(a); 3 reg 61(1)(f); 4 reg 63; 5 reg 68;  
6 JS Act 95, s 19(5)(b)(iii) and 20A(2)(b)(iii); 7 s 19(5)(b)(iv) and 20A(2)(b)(iv);  
8 s 19(5)(b)(ii) and 20A(2)(b)(ii); 9 s 19(5)(b)(i) and 20A(2)(b)(i); 10 s 19(5)(c) and 20A(2)(c);  
11 s 19(6)(c) and 20A(2)(f); 12 s 19(6)(d) and 20A(2)(g); 13 s 19(6)(b) and 20A(2)(e);  
14 s 19(6)(a) and 20A(2)(d)

### Meaning of suitable training

34296 Suitable training is<sup>1</sup> training that is suitable for the particular young people, taking into account

1. their personal capacity, for example, to learn, to concentrate
2. their ability or potential to acquire particular skills
3. their preference
4. the preference of the training provider
5. the level of approved qualification aimed for
6. the duration of the training
7. how near the training is to their home
8. whether the training can be made available to the claimant quickly.

1 JSA Regs, reg 57(1)

34297 – 34300

### Examples of what may be good reason in specific circumstances

34301 There are certain examples of what **may** be good reason in specific circumstances based on case law and employment regulations where a claimant has

1. failed to comply with a requirement to take up or apply for paid work **or**

**2.** left work or loses pay voluntarily.

**Note:** From 22.10.12 there are no discretionary length sanctions. All sanctions are for a fixed period therefore some of the case law for the previous sanctions regime, which was actually based on the old unemployment benefit regime, may not apply. It is for the DM to consider all the individual facts and circumstances of the case when considering whether the claimant can show good reason having regard to previous case law and whether it can apply to a specific case.

## **Significant harm to health or unreasonable physical or mental stress**

34302 The DM can take into account when deciding good reason any condition or personal circumstance of the claimant which shows that a particular employment would be likely to cause

**1.** significant harm to the claimant's health **or**

**2.** the claimant unreasonable physical or mental stress (also see DMG 34236).

## **Significant harm to health**

34303 The best evidence is confirmation from the claimant's doctor that the employment is likely to cause significant harm to the claimant's health. The DM should check any

medical evidence provided to make sure that it is relevant to the type of employment in question.

34304 If medical evidence is not available, the facts may still allow the DM to decide that the claimant had good reason. The DM can accept that there is good reason, without requesting medical evidence, where they are satisfied that medical evidence is not necessary to establish that

**1.** the work itself **or**

**2.** the place the claimant works in would make the medical condition worse.

For example, a claimant with asthma, is offered employment working in a dusty atmosphere.

34305 The DM should never decide to impose a sanction based on medical evidence which could not be shown to the FtT because the claimant does not agree to it being shown.

34306 Claimants who suffer from pneumoconiosis or pneumoconiosis and tuberculosis may hold a

1. certificate of suspension (issued before 27.11.74) **or**
2. letter of advice.

These documents are issued by a PMB. A certificate of suspension tells the person to give up employment in a stated industry, and not to take employment in certain occupations. A letter of advice advises the person whether it is safe to work in a particular occupation.

34307 The DM should accept that the claimant has good reason if the claimant

1. holds a certificate or letter **and**
2. refuses employment of a type listed in the certificate or letter.

If the claimant refuses employment of another type, and the DM is not sure whether it would harm the claimant's health, a medical adviser should be asked whether the claimant's health would be at risk if the claimant accepted the employment.

34308 The employment must be **likely** to cause significant harm to the claimant's health.

### **Example**

Guy refuses to apply for a job in a firework factory because there has recently been an explosion there. There is no evidence to suggest accidents are likely to happen frequently or in the future. Guy does not have good reason<sup>1</sup>.

1 R(U) 32/56

## **Unreasonable physical or mental stress**

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

1. physical stress if they

**1.1** are disabled and take employment which is physically hard **or**

**1.2** take employment which means they have to work at night, but they find it difficult to sleep during the day **or**

**2.** mental stress if they work somewhere they dread, for example an abattoir or an undertaker's **or**

**3.** distress because a certain type of work exacerbates experiences of anxiety or mental distress, for example a person with social anxiety or a history of agoraphobia who is expected to deal with large numbers of people.

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

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

**1.** significant harm to the claimant's health **or**

**2.** the claimant unreasonable physical or mental stress

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

34311 – 34312

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

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

**1.** the work was harmful to the claimant's health **or**

**2.** the doctor advised the claimant to leave.

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

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

evidence, where

**1.** the work itself **or**

**2.** the place the claimant works in

made the medical condition worse

**Note:** Consideration should also be given to the guidance in DMG 34236 and DMG 34246 if the reasons for leaving were due to mental health issues, harassment or bullying.

34315 Where a claimant

**1.** was suffering from pneumoconiosis on its own or with tuberculosis **and**

**2.** had a

**2.1** certificate of suspension **or**

**2.2** letter of advice

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

34316 – 34320

## **Sincere religious or conscientious objection**

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

**1.** show that one or more of the terms and conditions of the employment conflicts with the principles of their religion or belief **and**

**2.** give enough evidence to satisfy the DM that their religious or conscientious objection is sincerely held **and**

**3.** show that the conflict between the principles of their religion or belief are reasonably unavoidable.

**Note 1:** The degree to which the claimant's beliefs are commonly held or considered reasonable by



others is immaterial. The belief held must be in respect of a weighty and substantial matter.

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

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

1 R(JSA) 7/03

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

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

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

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

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

family and vice versa. Whether good reason can be shown may well depend on the specific job and the capacity of the employer to organise how tasks are performed to accommodate the religious belief. The DM should consider all the facts and circumstances and what is reasonable in the individual case and whether all the criteria at DMG 34321 are met (see **Example 6**).

1 Equality Act 2010

### **Example 1**

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

### **Example 5**

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

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

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

### **Example 6**

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

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

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

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

Nazir leaves the job.

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

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

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

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

### **Example**

Sophia claims JSA. She left her job as a midwife as she was ordered to have direct involvement with abortion procedures which she morally objected to. Sophia has good reason for leaving her job on moral grounds. However see the guidance at DMG 34436 et seq, Sophia should have raised the issue through the normal grievance procedures before leaving her job but full consideration should be given to all the facts and evidence in the individual circumstances.

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

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

34328 But if the

- 1.** requirement to have a medical examination or injection was reasonable **and**
- 2.** claimant's reasons for refusing were only dislike or some irrational excuse

then the claimant does not have good reason<sup>1</sup>.

**Note:** Consideration should also be given to the guidance in DMG 34236 and DMG 34246 if the reasons for leaving were due to mental health issues, harassment or bullying.

1 R(U) 16/52

34329 - 34330

## **Caring responsibilities**

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

- 1.** not to accept a job that is not compatible with the child's normal school hours, including the time it

takes the child to travel to and from school

**2.** for leaving employment because working hours are incompatible with caring responsibilities

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

34332 However where DMG 34331 does not apply, the claimant's caring responsibilities must make it **unreasonable** to take the employment. A claimant should do all that is reasonably possible to fit in responsibilities with the employment on offer. But the claimant is not expected to take employment where the hours are so long or inconvenient that the claimant could not carry out the caring responsibilities. For example where the claimant has caring responsibilities for a teenager with health problems.

**Note:** Each case should be considered on its own merits taking all the individual circumstances into consideration. Advisers should normally have taken all the claimant's circumstances into account when setting the JSAg, see DMG Chapter 21 and it is only where any easements do not apply that the DM will be considering good reason.

34333 If claimants are responsible for children, they cannot show good reason for a failure because they have to supervise them at certain times **unless** they can show that there is no reasonable alternative. The DM should ensure that claimants have taken reasonable steps to secure appropriate and affordable child care. For example options such as

- 1.** day nurseries
- 2.** breakfast and after school clubs
- 3.** child care schemes
- 4.** registered childminders
- 5.** the help of friends or relatives (see note)

should be considered and reasons given if claimants state they are not suitable. This list is not exhaustive.

**Note:** There is no requirement that friends and family are asked to provide informal childcare in order for a claimant to show good reason only that it is reasonable that they are considered.

**Example:**

Georgina is a LP with one son, aged 14, who has special needs. She has been offered paid work for 30 hours per week. She will need after school care for 2 hours each day. The Adviser has referred her to the Children's Information Services to obtain details of the child care schemes available in the area and has explained the financial help available with child care costs. Georgina refuses the job as she states that the childminders in the area have no vacancies for the times she needs, the after school club is full and there are no friends or family who can look after her son. The DM considers that Georgina has good reason for refusing the job.

34334 Good reason may be shown where the claimant refuses employment which would involve, for example

**1.** employment at night **or**

**2.** a very early start or late finish to the employment, or other unsocial hours **or**

**3.** overnight stays away from home **and**

it would not be practicable for anyone else to take over the claimant's caring responsibilities at these times<sup>1</sup>.

**Note:** Advisers should normally have taken all the claimant's circumstances into account when setting the JSAG.

1 R(U) 20/60

## **Employee Shareholder Contracts**

34335 Employee Shareholder Contracts were introduced from 1.9.13. An employee shareholder will be given an equity share of the company and have different employment rights to an employee or a worker. Employee Shareholder Contract jobs are entirely voluntary and JSA claimants must not be mandated to apply for such vacancies. Therefore sanction referrals for RE should not be made.

34336 It may not be obvious from the details available whether the vacancy is actually an Employee Shareholder job or not. It will be dependent on the employer stating this when they advertise the vacancy, so may only become apparent during the interview stage, or when the individual and employer are discussing the terms and conditions of the job. If it later becomes apparent that the vacancy is an Employee Shareholder job, and the claimant no longer wishes to pursue the vacancy, then Refusal of Employment sanction action must not be taken.

34337 If a claimant voluntarily takes up an Employee Shareholder job on the full understanding and acceptance of the associated terms and conditions, and then leaves voluntarily or is dismissed, Leaving Voluntarily and Misconduct should be considered in the normal way. As part of this consideration claimants would have good reason for leaving voluntarily if

- 1.** they had not fully understood the financial implications associated with an Employee Shareholder contract. Employee Shareholders may be liable for upfront Income Tax and National Insurance Contributions charges on any share value received and these expenses could be a source of financial difficulties **or**
- 2.** some aspects of the Employee Shareholder terms and conditions only became apparent after their employment had started.

34338 If an existing employee is made redundant or is forced to leave their job because they refused to accept a move to an Employee Shareholder contract, then a claimant would have good reason and a sanction would not be appropriate.

34339

### **Circumstances that may show good reason for a refusal or failure to apply for or accept if offered a job vacancy**

34340 Other circumstances the DM may take into account when determining the doubt relating to a refusal or failure to apply for or a failure to accept if offered a job vacancy which an Emp O has notified is vacant or is about to become vacant includes

- 1.** any restrictions the claimant has been allowed to place on their work search, having regard to any discrepancy between these and the requirements of the job, although minor differences may not count (see DMG 34341)
- 2.** expenses unavoidably incurred (e.g. childcare and travelling expenses), or that the claimant had to or would have had to, incur if they had taken the job, if they amounted ,or would have amounted, to an unreasonably high proportion of the income they would have received. The proportion that is considered reasonable increases the more they are paid (see DMG 34346 et seq)
- 3.** any other factor that appears relevant (see DMG 34416).

**Note:** For guidance on what constitutes a refusal or failure see DMG 34721 et seq. Also see guidance at DMG 34928 where the refusal or failure is to carry out a JSD which relates to an employment vacancy.

## Restrictions on work search

34341 It is extremely important for advisers to ensure that any job vacancy is weighted to the specific claimant and their personal circumstances and any limitations or restrictions identified in the JSAg taken into consideration.

34342 The JSAg sets the context of the claimant's jobsearch. Types of jobs recorded on the JSAg as the types of jobs the claimant is looking for are not necessarily restrictions. Jobs identified are the best prospects at the time the JSAg is signed and that may change with time, however, the advisor should update and amend the JSAg at the regular job search fortnightly review.

### Example:

Samara has been claiming JSA for 3 months. She agreed on her JSAg that the type of work she was looking for was office work, receptionist or bank clerk. Samara is notified by her advisor of a vacancy for a retail job at a local supermarket and she

fails to apply for the job stating it is not the type of job she is looking for. The DM considers Samara does not have good reason for failing to apply for the vacancy.

34343 - 34345

## Employment expenses

34346 The DM should take into account when deciding good reason any expenses which

1. claimants have to meet only for the purpose of the employment **and**
2. would be an unreasonably high proportion of the expected pay from the employment.

34347 Expenses which can be taken into account include

1. travelling expenses to and from the place of employment by a route and means appropriate to the claimant's circumstances
2. the cost of tools or equipment which the claimant has to provide
3. the cost of essential protective clothing, not provided by the employer



4. the cost of a criminal record check (known as a disclosure).

34348 Deductions from wages of tax, NI and occupational pension contributions cannot be taken into account. This is because they are not expenses incurred for the purposes of the employment.

34349 – 34350

### **Child care expenses**

34351 The DM should take into account when deciding good reason any child care expenses which

1. are or would be necessarily incurred as a result of the claimant being in the employment **and**
2. did or would represent an unreasonably high proportion of the remuneration which it is reasonable to expect that he would receive from the employment.

34352 There are no rules for deciding whether expenses would be an unreasonably high proportion of remuneration. Each case must be decided on its own facts. But the greater the level of remuneration is, the more reasonable it is for the expenses to be a higher proportion of it. The DM should also consider support available towards childcare from UC or other sources.

34353 The DM should consider employment expenses as in DMG 34346 and child care expenses as in DMG 34351 separately. They should not be aggregated when considering good reason.

34354 – 34359

### **Unreasonably high proportion of pay**

34360 The expenses must be an unreasonably high proportion of the **expected pay** for good reason to apply. Other issues about the level of pay or the claimant's income or outgoings cannot be taken into account. For example, the claimant cannot show good reason by arguing that the expenses are unreasonable because the claimant's

1. wages would have been the only income the household has **or**
2. household expenses are particularly high.

34361 There are no rules for deciding whether expenses would be an unreasonably high proportion of pay. Each case must be decided on its own facts. But the greater the level of pay is, the more reasonable it is for the expenses to be a higher proportion of it.

34362 If the claimant would have an expense

**1.** for only a short time, for example where the claimant would have to pay for transport to work initially, but then works transport would be provided after a time **or**

**2.** as a “one-off”, for example cost of tools

It would be reasonable for the claimant to spend more to meet such an expense than would be the case if the expense would last as long as the employment. The DM should also take into account that the claimant may be able to meet such expenses through the Flexible Support Fund.

**Note:** The Flexible Support Fund comprises of resources available to Jobcentre Plus Managers to cater for a variety of local needs for claimants.

34363 - 34365

### **Employment of less than 24 hours a week**

34366 If a claimant refused to apply for or accept a job involving fewer than 24 hours work a week they may be able to show good reason (see DMG 34368).

**Note 1:** Claimants are not automatically allowed good reason and the DM should consider each case on its individual merits where the claimant raises the hours issue as the reason for not applying for a vacancy.

**Note 2:** This does not apply if the claimant refuses or fails to carry out a JSD although a claimant may be able to challenge the direction as unreasonable (see DMG 34908)

34367 This guidance also applies when considering whether employment is for less than 16 hours a week. If

**1.** it has been agreed that the claimant can restrict their hours of availability to less than 24 hours in a benefit week, for example because of caring responsibilities **and**

**2.** the employment on offer is for less than 16 hours a week

the claimant may have good reason for refusing or failing to apply for or accept that employment.

34368 Claimants should not be mandated to vacancies of

**1.** less than 24 hours where that is not appropriate **or**

**2.** where a claimant has a pattern of availability of less than 24 hours, to vacancies where the hours are less than 16 hours a week.

If the number of hours are not shown on the advertised vacancy and the claimant has raised the hours as the reason for not applying for the vacancy then the JCP adviser or member of staff in the Jobcentre must seek to establish the hours before the referral to the DM is made.

34369 The DM **must** only then consider hours on the basis of good reason as a fact of the case rather than an automatic allowance, bearing in mind that the hours alone may not in itself count as good reason. The DM should consider all the available evidence and information the claimant presents covering the reasons for their actions and the circumstances in which they were in. The number of hours is just one factor the DM should consider in the overall picture of the claimant's circumstances.

**Note:** This also applies to vacancies advertised in UJ – see further guidance at DMG 34911.

### **Example 1**

Alexander is notified of a job vacancy. At his next fortnightly job-search review he confirms he did not apply for the vacancy because he couldn't be bothered. He didn't think he'd like the job. The DM considers Alexander did not have good reason for the failure to apply for the vacancy.

### **Example 2**

Sergei fails to apply for a notified job vacancy and states that when he checked out the details of the vacancy with the employer it was for 10 hours a week and his JSAg shows he has a pattern of availability of over 24 hours a week. The advisor has confirmed with the employer that the vacancy was for 10 hours. The claimant has good reason for not applying for the vacancy.

### **Example 3**

Remi has an agreed limitation of looking for work for up to 20 hours per week on his JSAg. He fails to apply for a notified job vacancy which is for 20 hours a week. He can show no good reason for the failure. He states his reason was he forgot about

the vacancy and when he remembered the deadline date to apply had passed. The DM considers Remi does not have a good reason for failing to apply for the vacancy.

#### **Example 4**

Francis fails to apply for a vacancy. He says the reason he didn't apply for the vacancy was the travelling distance which is 80 minutes each way from his home and he cannot afford the costs of the travel. He does not mention the hours. In consideration of good reason the DM considers the travelling time in itself does not provide good reason as it is less than 90 minutes (see DMG 34261). In consideration of good reason the DM thinks the hours may be a relevant factor and asks the jobcentre to contact the employer for the number of hours involved. On checking, it is confirmed the vacancy is only for 20 hours per week - 4 hours per day over 5 days. The DM decides that we would not reasonably expect a claimant to travel 80 minutes to work for 4 hours a day followed by a return journey of 80 minutes and taking into account the travel costs in comparison to possible earnings. Francis is looking for full time work and it is not practicable or reasonable in the circumstances. The DM considers in this case Francis has good reason for not applying for the vacancy.

#### **Example 5**

Horace's JSAg shows that he has no restrictions and is available for work for 40 hours per week, Monday to Saturday. A suitable vacancy is put into the Saved Inbox of his UJ account and the advisor informs Horace he must apply for the vacancy before the closing date. No hours are provided.

Horace applies for the job and is called for an interview.

The employer advises JCP that Horace has been offered the job but he has refused it on the grounds that there are not enough hours for him. The maximum number of hours they can offer him at the present time is 18 hours per week.

As the vacancy was outside his agreed availability on his JSAg and Horace says this is the reason he refused the job, Horace has a good reason for the refusal and cannot be sanctioned for refusing to accept the job.

### **Shifts or rota systems**

34370 If the employment on offer requires work on a shift or rota system where the claimant would have to work for 24 or more hours in some weeks, and less than 24 hours in others, the hours should be averaged. A claimant who refused or failed to apply for or accept employment averaging less than 24 hours a week may have good reason, and the DM should not impose a sanction.

34371 - 34375

## **Other circumstances that may amount to good reason**

34376 The DM should

- 1.** consider all matters put forward by the claimant **and**
- 2.** decide whether or not to take them into account when deciding good reason.

34377 Account should also be taken of any other factor that appears relevant. In particular when the terms of a job on offer break the laws on

- 1.** minimum working conditions **or**
- 2.** they knowingly connive with an employer or agency in a
  - 2.1** tax avoidance scheme **or**
  - 2.2** PAYE is not being properly accounted for.

## **Attitude of claimant's trade union**

34378 The fact that

- 1.** the prospective employer is on the "black list" of the claimant's trade union<sup>1</sup>**or**
- 2.** the claimant refused the employment on union instructions or advice<sup>2</sup>

does not, **of itself**, provide good reason.

1 R(U) 1/52; 2 R(U) 9/64

## **Possible return to previous employment**

34379 The fact that a claimant

- 1.** has a previous employment that has not ended **and**
- 2.** may at some time return to it

does not **of itself** provide good reason for refusing other employment<sup>1</sup>.

## **Laid off and short time workers**

34380 If claimants

**1.** are laid off **and**

**2.** are being allowed to and do in fact restrict the employment they are willing to take to

**2.1** the job they are laid off from **or**

**2.2** casual employment within daily travelling distance of home **and**

**3.** refuse or fail to apply for or accept employment because it does not meet any of the restrictions claimants imposed within **2.1** to **2.2**.

they will be considered to have good reason. The DM should not impose a sanction.

34381 If the claimants are

**1.** on short time **and**

**2.** are being allowed to and do in fact restrict the employment they are willing to take to

**2.1** the job they are on short time in **or**

**2.2** casual employment within daily travelling distance of home for the hours they are not working in their short time employment **and**

**3.** refuse or fail to apply for or accept employment because it does not meet any restrictions claimants impose within **2.1** to **2.2**

they will have good reason. The DM should not sanction them.

## **Decision of Employment Tribunal pending**

34382 The fact that a claimant is waiting for the result of an Employment Tribunal hearing on unfair dismissal does not **of itself** provide good reason for refusing other employment.

## **Claimant already working**

34383 A claimant who is working and is still entitled to UC does not have good reason for refusing other employment just because the claimant would have had to give up their existing job. But see DMG 34384

if the claimant's reason for refusing other employment was that notice had to be given to end the current job.

34384 If the other employment offered would only have lasted for a short period, and the claimant would then have been unable to return to the previous work, the claimant may have good reason. It is for the DM to consider all the facts and circumstances of the individual case on its merits.

### **Example**

Jack, who is working 10 hours a week at NMW rate is offered four weeks employment of 39 hours a week in the same type of employment, with a different employer. He is not sure that his current employer will take him back on when the new employment ends. Jack has good reason for failing to apply for the vacancy<sup>1</sup>.

1 R(U) 34/56

### **Temporary employment**

34385 Subject to DMG 34384 the fact that the employment offered is only temporary does not of itself provide good reason<sup>1</sup>. It is for the DM to consider all the facts of the individual case on its merits and apply a common sense approach in the individual's circumstances and apply the reasonableness test in consideration of good reason. Temporary employment can assist the claimant by

1. updating existing skills
2. learning new skills
3. becoming more confident
4. improving their CV
5. showing employers they can keep regular hours and stay committed to a task
6. meeting people who can help them find work
7. giving them something to talk about in a job interview **and**
8. gaining references to improve their prospects of further employment.

**Note:** For the purposes of a failure to apply for or accept if offered, any employment opportunity, regardless of the duration of the employment, the sanction duration is for a fixed period. The failure is not a failure prescribed for in relevant legislation<sup>2</sup> which allows for the sanction to be reduced (see DMG 34097 et seq).

### **Definite chance of other employment**

34386 If the claimant has a definite chance of other employment that

- 1.** will start in the very near future **and**
- 2.** is likely to last at least as long as the employment offered **and**
- 3.** will be lost if the claimant accepts the employment offered

this will be good reason. Whether a chance is definite must be decided on the individual facts of the case.

### **Personal preference**

34387 Claimants do not have good reason for refusing employment because they

- 1.** would prefer another type of work<sup>1</sup>**or**
- 2.** wish to find employment for themselves without the help of Jobcentre Plus<sup>2</sup>.

1 CU 3/48(KL); 2 R(U) 29/53

### **Other more suitable people unemployed**

34388 A claimant does not have good reason for refusing employment just because there are other unemployed people who are more suited to the vacancy. The question is whether the **claimant** has good reason for refusing it taking into account all the individual circumstances of the case.

### **Job vacant because of a trade dispute stoppage**

34389 Claimants cannot be sanctioned just because they refuse or fail to apply for or accept a job that is vacant because of a stoppage of work due to a TD. This applies even if the fact is not known at the date of refusal, but comes to light later. If a sanction has already been imposed, the adviser should let the DM know of the change so that he can consider revising or superseding the decision.

34390 For the job to be vacant because of the TD stoppage



**1.** the **stoppage** must exist at the time the vacancy is notified or offered. It is not enough that there is a TD, or that a stoppage seems imminent **and**

**2.** the vacancy must have been caused by the stoppage. This will not be the case if the vacancy

**2.1** was caused by the illness of an employee, even if there is a stoppage of work at the employer's premises **or**

**2.2** arose normally after the stoppage had ended and the places of the employees affected by the TD had been filled **or**

**2.3** arose because an employee left a job where there was no stoppage in order to take a job where there **was** a stoppage.

34391 – 34394

### **Employment which the claimant has previously left**

34395 If the claimant has in the past left, or been dismissed from

**1.** the same employment **and**

**2.** employment with the same employer

that fact is not **in itself** good reason but the circumstances in which the previous employment ended may give the claimant good reason for refusing re-employment (for example consideration should be given to any mental or physical health issues or any of the circumstances in DMG 34236).

34396 Where the claimant refuses re-employment the DM should consider

**1.** all the circumstances surrounding the termination **and**

**2.** the effect of the termination on the relations between the claimant and the employer.

### **Objection to employer or fellow employees**

34397 A claimant may refuse employment because

**1.** the claimant objects to the employer or other employees **or**

**2.** it would mean working with a person whose conduct is known to be offensive.

34398 In extreme cases the claimant may be able to show that such employment would be likely to cause

1. unreasonable mental stress (see DMG 34309) **or**
2. be grounds for a sincere religious objection (see DMG 34321).

Otherwise, such an objection will only be good reason if it is so great that it would be unreasonable to expect the claimant to work in those conditions.

### **Example**

Terry has previously left employment because of a personal disagreement with a colleague. She is offered a job by a different employer, but finds out that the colleague she had the disagreement with is now working there, and will be her supervisor. She is still on bad terms with the ex-colleague. She turns the job down. The DM considers that Terry has good reason.

34399 Unless there are exceptional circumstances, an objection to an employer because that employer has previously sacked the claimant does not provide good reason if there are no other reasons to consider.

### **Claimant does not have necessary equipment**

34400 Claimants sometimes say that they are available for a particular type of employment where it is customary for employees to have their own tools, special clothes etc. If claimants do not have such tools, clothes etc, this will not generally be good reason. But in some cases there may be special reasons which will be good reason. For example, a claimant's tools are accidentally destroyed or stolen, and the claimant cannot replace them at once. But the DM should also take into account that the claimant may be able to buy such tools and equipment with help from the Flexible Support Fund.

34401 It is important to remember that health and safety is the responsibility of employers (class 1 employment) and that the provision of suitable protective equipment lies with the employer<sup>1</sup>. Any available information concerning provision of equipment or tools should be used to decide whether a jobseeker has good reason for refusing vacancies offered.

1 Personal Protective Equipment at Work Regulations 1992

## Seafarers

34406 Seafarers may refuse an opportunity to go back to sea because they want to

1. change their occupation **or**
2. take shore leave which they are due, and by the time the leave is finished the chance of employment is lost, for example because the ship has sailed.

34407 It is difficult for seafarers who want to change their occupation, particularly if they are abroad or at sea, to find alternative employment to start as soon as their contract ends. If they

1. have taken whatever steps they could **and**
2. seem to have reasonable prospects of finding other employment fairly quickly

the DM should accept that they have good reason.

34408 The DM should take into account that seafarers are entitled to some leave after voyages. But this does not mean that they have good reason for refusing chances of employment during **any** period of leave, regardless of the circumstances. They must show that they have not acted unreasonably in relying on UC.

## Working time regulations

34409 The Working Time Regulations 1998 provide that a worker's working time, including overtime, shall not exceed an average of 48 hours for each seven days (the average being calculated over a 17 week period) except where a worker has agreed with his employer in writing that this limit should not apply in his case.

34410 A jobseeker has good reason for refusing employment of over an average of 48 hours per week if he gives the number of hours as his reason for refusal, irrespective of whether he selected the vacancy himself, applied for the job or attended an interview being fully aware of the hours required.

## **Anti-social behaviour order, community order or community disposal**

34411 Claimants may refuse employment because it would mean that they would break their anti social behaviour order, community order or community disposal taking into account any necessary travelling time. If claimants have tried unsuccessfully to get their order or disposal varied they would have good reason for refusing employment.

## **Claimant given incorrect details of employment**

34412 Claimants may refuse or fail to apply for or accept a vacancy, and it may later be found that they have been given incorrect details about the vacancy.

34413 The DM should impose a sanction if

- 1.** the claimant **cannot** show good reason for refusing a job on the terms wrongly notified **and**
- 2.** the **actual** terms of the job would have been more favourable<sup>1</sup>.

1 R(U) 20/55

34414 The DM should not impose a sanction if the claimant can show good reason for refusing a job on the terms they were wrongly notified. The DM does not need to consider whether the claimant could have shown good reason for refusing the job had the actual terms been known.

## **Example**

An adviser informs Dan about a vacancy as a packer in a local meat factory. He mistakenly tells Dan the rate of pay is £10 per hour. The actual rate is £12 per hour. Dan refuses to apply for the vacancy because in his last job, which ended two weeks ago, as he was paid more than £10 per hour as a packer. When considering good reason the DM treats the vacancy as if it was paying £10 per hour.

## **Zero hours contracts**

34415 A claimant should never be mandated to apply for or accept a zero-hours contract but if the details of the zero-hours contract comes to light after the claimant starts work or during the application process then they will always have good reason for leaving voluntarily or due to misconduct, or for failing or refusing to accept the contract and a sanction should never apply.

34416 A zero-hour contract is a [contract](#) of [employment](#) used in the [UK](#) which is not defined in

legislation and whilst meeting the terms of the relevant legislation<sup>1</sup> by providing a written statement of the terms and conditions of employment, contains provisions which create an "on call" arrangement between employer and employee. It does not oblige the employer to provide work for the employee. The employee agrees to be available for work as and when required, so that no particular number of hours or times of work are specified. The employee is expected to be [on call](#) and receives compensation only for hours worked.

1 ER Act 96

34417 Zero-hour contracts may be ideal for some people such as retirees and students who want occasional earnings and are able to be entirely flexible about when they work, but people in the general working population, including those with mortgages and responsibility for supporting a family, run the risk of unpredictable hours and earnings. The possibility of the use of such contracts by management as a tool to reward or reprimand employees for any reason or no reason raises issues about how workers can adequately assert their employment rights or maintain decent employment relations. Therefore there can be no mandation to any zero hours contract (exclusive or not) and there can be no sanction imposed for Refusing Employment, Leaving Voluntary or losing work because of misconduct.

### **Employee Shareholder Contracts**

34418 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.

### **Other reasons**

34419 The reasons mentioned in this chapter are not exhaustive. The DM must consider any other reason the claimant puts forward for refusing or failing to apply for or accept employment applying the test of reasonableness in consideration of all the facts and evidence in the individual case. The DM should not just consider one factor but should consider the overall picture of the claimant's individual circumstances.

**Note:** Where the claimant changes their mind or the vacancy is withdrawn there will be no refusal or failure and no need to consider good reason (see DMG 34723 and DMG 34724).

34420

## **Circumstances that do not show good reason**

34421 A claimant cannot refuse to apply for a job because of the rate of pay offered, except where this is below the NMW, (see DMG 34423) or because

**1.** of their income or outgoings or those of any member of their household (either as they were or would be if they took the job or carried out the work-related requirement. 'Outgoings' excludes expenses (such as for childcare) taken into

account that would be an unreasonably high proportion of the claimant's income

**2.** they argue they need a high wage because they have a large mortgage or an expensive lifestyle.

34422 The DM must disregard anything relating to the level of pay in the employment in question when deciding whether the claimant has good reason. The fact that the pay offered was

**1.** lower than the pay the claimant had previously received **or**

**2.** not enough to cover the claimant's financial commitments **or**

**3.** lower than the pay received by most other employees in that occupation **or**

**4.** less than the claimant is getting in benefits

are all related to the level of pay, and must be disregarded.

## **National minimum wage**

34423 Claimants have good reason for refusing employment if they do so because

**1.** the national minimum wage applies to them **and**

**2.** the employment does not pay at least the national minimum wage that applies to them.

34424 – 34425

## Circumstances that may show good reason where a claimant leaves employment

### General

34426 To have good reason for leaving a job the claimant must show

1. they acted reasonably in leaving **and**
2. that their circumstances make it proper that public funds should support them.

34427 There are no hard and fast rules as to when claimants have shown good reason for leaving or losing employment, because the circumstances in which they leave or lose employment are so varied. The DM should consider as a whole all the circumstances in which the claimant left or lost the employment<sup>1</sup>.

1 R(U) 20/64(T)

34428 Claimants cannot show good reason just because they acted reasonably in their own interests<sup>1</sup>. The DM does not have to look at whether or not the claimant's leaving was in the **public** interest<sup>2</sup>. It is the interests of other tax payers which should be taken into account<sup>3</sup>. The DM should decide whether the claimant has good reason for relying on JSA<sup>4</sup>.

**Note:** In all cases the DM should have regard to the guidance at DMG 34231 et seq when considering all the individual facts and circumstances of a case where the claimant has voluntarily left or loses paid work.

1 R(U) 20/64(T); 2 R(U) 3/81 Appendix; 3 R(U) 20/64(T); 4 R(U) 3/81 Appendix

34429 – 34430

### Other circumstances that may show good reason

34431 The DM should have regard to the following when considering good reason that can apply to JSA claims for cases where a claimant leaves paid work or loses pay voluntarily:

1. any caring responsibilities which made it unreasonable for the claimant to stay in their job. In deciding whether it was unreasonable, the DM may look at whether childcare was (or could have been) reasonably available and, if it was (or would have been) unsuitable because of the claimant's or the child's, needs **and**
2. any childcare expenses the claimant had to pay as a result of being in the job, (and sources available to meet those expenses), if they amounted to an unreasonably high proportion of the income the claimant received. The proportion that is considered reasonable increases the more is paid (see **Note**) **and**

**3.** whether, if possible, where the conditions of employment are poor, a claimant took reasonable steps to sort out any problems, e.g. by using any grievance procedure, and to look for another job seriously before giving one up (see DMG 34451).

**Note:** There are no rules for deciding whether child care expenses would be an unreasonably high proportion of the pay received from that employment. Each case must be decided on its own facts. But the greater the pay the more reasonable it is for the expenses to be a higher proportion of it.

34432 Good reason may be shown if;

**1.** the claimant's chances of getting paid work were good and, in addition, there were strong reasons for leaving their job and they acted reasonably in doing so (see DMG 34496)

**2.** the claimant genuinely did not know or were mistaken about the conditions of the job (eg, it was beyond their physical or mental capacity, or was harmful to their health), gave it a fair trial before leaving and it was reasonable for them to have left when they did (see DMG 34436 et seq)

**3.** the claimant left a job for personal or domestic reasons (eg, gave up work to look after a sick relative). The claimant has to justify leaving the job before

looking for alternative employment or tried negotiating an arrangement with their employer to resolve a problem (see DMG 34473)

**4.** the claimant leaves to move with their partner who has taken a job elsewhere and can show they have good reason. The claimant may have to demonstrate how important it was to their partner's career to make the move and how good their chances are of finding work in the new area (see DMG 34474 et seq)

**5.** the claimant's employer changed the terms and conditions of employment that does not amount to the contract of employment ending. The claimant is expected to use any available grievance procedure first. DMs should not take account of any matter about the level of remuneration into account other than national minimum wage (see DMG 34446)

**6.** the claimant left their job because of a firm offer of alternative employment, but claimed JSA because the offer fell through, unless

**6.1** the offer was cancelled before they left their previous employment **or**

**6.2** they changed their mind and did not take the new job and could have stayed in their existing employment or did not ask their employer if they could stay (see DMG 34501).

**Note:** As in every case in the consideration of good reason for any of the reasons listed at **1.–6.** the DM has to consider all the individual circumstances of the case on its own merits taking into account in particular any mental health issues that may arise as a consequence and any of the circumstances listed at DMG 34226.



## **Terms and conditions of employment**

34436 Claimants cannot show good reason for leaving employment because

- 1.** they found it distasteful **or**
- 2.** it was below their expectations.

34437 But claimants may have good reason<sup>1</sup> if

- 1.** they genuinely did not know, or were mistaken, about the nature or conditions of the employment (other than pay) when they accepted it and left after a fair trial **or**
- 2.** they tried a different kind of employment because there was no work in their own line and the new work did not suit them.

1 R(U) 3/73

## **Example**

Stewart leaves his employment as a trainee office manager after six weeks of a probationary period of three months. He considers it is unfair to his employer to continue training when he believes that the work is too difficult for him and he would never be able to do the work and prior to leaving he has provided evidence that he has started to apply for other jobs. Stewart has acted responsibly and has good reason for leaving.

34438 Claimants will not have good reason for leaving if they

- 1.** knew about the conditions that caused them to leave when they took the employment **and**
- 2.** they took the employment in spite of those conditions.

The claimant is expected to give the job a fair trial to try to resolve the difficulties.

34439 A claimant may leave their employment because they were required to work more than 48 hours a week, in contravention of the EU Working Hours Directive. If they have taken no action to resolve their complaint with the employer, they cannot show good reason.

34440 A claimant cannot argue they had good reason simply because the conditions of employment were poor (other than for a breach in the law). They are expected if possible to take steps to sort out any problems, eg, by using any grievance procedure, and to look for another job seriously before giving one up<sup>1</sup>.

34441 The terms and conditions of employment (other than the level of pay) must make the employment so unsuitable that the claimant could not reasonably have been expected to stay in the job any longer. If this is the case, the claimant has good reason even if there were no prospects of other employment (see DMG 34236 and DMG 34246 where a claimant leaves or loses employment because of mental health issues, harassment or bullying).

34442 A claimant may have good reason for leaving if

1. the employer did not comply with some part of the contract of employment **and**
2. the claimant left shortly after the employment starts.

In such a case the DM should consider the terms of the contract of employment, both express and implied. The DM should always obtain a copy of the contract where there is a dispute about its terms.

34443 Claimants may have good reason for leaving if they suffered detriment under the national minimum wage legislation (see DMG 34423).

34444 – 34445

### **Employer changes terms and conditions**

34446 If claimants left employment because they refused to accept a change to their terms and conditions, they may not have voluntarily left employment. If they have left voluntarily, the fact that new conditions were imposed may give them good reason for leaving. But if the only reason claimants left was that the change would have reduced their level of pay, they do not have good reason.

#### **Example 1**

Kevin, a piece worker, refuses to accept a change to the way his pay is calculated, that is paid for the amount of time he works rather than for each article completed, which his employer wants to impose at once. The change would mean a substantial drop in his wages. The drop in his wage is disregarded when the DM considers good reason, but Kevin has good reason for leaving, as he had no proper chance to consider the situation<sup>1</sup>.

1 R(U) 15/53

#### **Example 2**

Teresa is given one months notice by her employer that her pay will be cut because of a change in the way her pay is calculated. The change will mean a substantial drop in her pay. Teresa leaves at the end of the month because she thinks it unfair that her pay is to be cut, and she says she will find it hard to pay all

her bills on a lower wage. The claimant does not have good reason.

34447 A claimant will not have good reason for leaving

1. if it was not possible to say for definite what the effect of the changes in terms or conditions would mean **and**
2. the claimant left before giving the changes an adequate trial.

34448 A claimant will not have good reason for leaving

1. if the change to the terms and conditions was
  - 1.1 generally agreed and affected many or all of the employees **or**
  - 1.2 meant to bring the employees in the particular firm or department into line with employees elsewhere **or**
2. if the
  - 2.1 claimant stayed in the employment for longer than could be regarded as a trial period **and**
  - 2.2 DM decides that by doing so the claimant had accepted the change to the terms and conditions of employment.

**Note:** For further guidance on trial periods see DMG 34701.

### **Police officers**

34449 Police officers take employment knowing that its terms will become less favourable after 30 years. If, at that time, they choose to retire early they have left voluntarily and do not have good reason for leaving just because the terms become less favourable<sup>1</sup>.

34450

## Grievances

34451 A claimant has good reason for leaving employment if the claimant

1. had a genuine and substantial grievance about the employment (other than the level of pay) **and**
2. had tried in a proper and reasonable way to get it settled, but failed.

However also see the guidance at DMG 34 on contracts, terms and conditions.

34452 An employer has to give employees a written statement within two months of them starting work. The statement should include details of the person to whom employees should apply to sort out any grievances. The statement should also tell them how to apply<sup>1</sup>. So every employee who has been in employment for at least two months should be aware of a procedure by which they can try to sort out any grievance.

1 ER Act 96, s 1 & 3

34453 If a claimant could not sort out a grievance with the employer, the claimant might have been expected to remain in the employment for a time. If this is so, the claimant will not have good reason for leaving unless the claimant had tried hard to find other employment.

**Note:** Consideration should also be given to the guidance in DMG 34236 and DMG 34246 if the reasons for leaving were due to mental health issues, harassment or bullying.

**The facts in the following examples are not exactly the same as the case law quoted and are used for illustrative purposes only.**

### Example 1

David, the foreman in charge of a building site, complains that his office is unsuitable, but does not use the workers or materials available to make it suitable. He also complains that his employer is hostile to trade unions and their members and is going to give work to non-union firms. But he does not consult his union. David does not have good reason for leaving his employment<sup>1</sup>.

1 CU 155/50(KL)

### Example 2

Suzy, an actress, and her colleagues, without consulting their union, tell their employer they will leave unless he meets certain demands. The employer treats the ultimatum as notice of termination of their contracts of employment. They do not have good reason for leaving. They should have referred the

matter to their union<sup>1</sup>.

1 R(U) 33/51

### **Example 3**

Carole, a sales representative, resigns because she does not agree with her employer's sales policy, and she is not happy with her working conditions or her colleagues. She has not found other employment.

Carole does not have good reason for leaving<sup>1</sup>.

1 R(U) 17/54

### **Example 4**

Sophia claims JSA. She left her job as a midwife as she was ordered to have direct involvement with abortion procedures which she morally objected to. Sophia has good reason for leaving her job on moral grounds (see DMG 34326). Sophia should have raised the issue through the normal grievance procedures and with her trade union before leaving her job as there is certain legislation regarding midwives which cannot require them to assist in abortion procedures and so she would not have good reason for leaving. However full consideration should be given to any mental health, stress or harassment issues raised in her reasons for leaving.

### **Work outside of agreed duties**

34454 A common grievance is where the claimant was ordered to do work which was not covered by the contract of employment. This may amount to good reason, particularly if the employer gave an ultimatum of either doing the work or leaving.

**Note:** Consideration should also be given to the guidance in DMG 34236 and DMG 34246 if the reasons for leaving were due to mental health issues, harassment or bullying.

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

#### **Example 1**

Gaik, a waitress, agrees to work behind a self service counter at a holiday camp until she is needed as a waitress. She leaves when she is made to peel potatoes. She finds work as a waitress at another holiday camp a fortnight later. Gaik has good reason for leaving voluntarily<sup>1</sup>.

1 R(U) 40/53

#### **Example 2**

Hector, an apprentice electrician, is ordered to repair a leak in a water pipe. He had done this type of work before, but his employer has already admitted that it is outside his contractual duties. He refuses to do the work, but the employer tells him to do it or leave. Hector leaves. Hector has good reason for leaving<sup>1</sup>.

1 R(U) 18/57

34455 In some unskilled and semi skilled jobs the duties of employees are not clearly defined. Such employees have to do or are expected to do whatever is reasonable taking into account

**1.** any broad categories of work specified in the contract of employment **and**

**2.** the job title **and**

**3.** the normal duties of similar employees.

So they may find it more difficult to show good reason but also see DMG 34456. The DM should consider all the facts of each individual case on its own merits taking into consideration all the circumstances.

### **Contracts, terms and conditions**

34456 Some employers may show no awareness or interest in complying with employment law and may not provide anything for their employees such as written terms and conditions or grievance procedures, not even payslips. It would be for the DM to consider all the individual facts of the case on its own merits where for example a claimant leaves paid work because they are given no meal breaks or expected to work for 12 hours non-stop or don't get paid on time. If an employer persistently breaches health and safety law or does not pay an employee the claimant would have good reason for leaving the paid work.

### **Example**

Anya starts work in a shoe shop. She is given no written terms and conditions of employment. Her understanding when she takes the job is that she will work 4 days per week 9am to 5pm and she will be paid weekly. This suits Anya's personal circumstances as she helps out her family by caring for her sister's children in the evenings and at weekends so that her sister can work.

After the first 4 weeks Anya complains to her boss as she has had no meal breaks and has worked until 7pm on most days to complete stock taking and tidy the store room after the shop has closed and has still received no pay

The boss tells her this is during her period of training until she is up to speed with the job. He tells her she will be paid as soon as he sorts the details out with head office. He also tells her that it is part of the duties of the job to stay behind to clean up after the store closes and she will get meal breaks as and

when the business allows as the store has been so busy lately. He tells Anya that he expects his employees to do what is expected, as and when, as the trade demands on any particular day.

Anya continues to work at the shoe shop for a further 3 weeks and the boss continues to ignore her complaints about the extra hours, no meal breaks and no pay. He tells her she is also now expected to work weekends in addition to the 4 days in the week when the store is busy. She decides to leave. Anya has good reason to leave the paid work.

34457 - 34460

### **Short time and overtime working**

34461 A claimant does not have good reason for leaving just because

- 1.** overtime stopped or reduced and the earnings were less **or**
- 2.** short time working was introduced, and the claimant could not earn full wages. A claimant may have good reason because of short time working if there was a firm offer of better paid employment elsewhere.

34462 But if claimants' earnings were substantially reduced and they had a lot of expenses because of living and working away from home, they may have good reason if

- 1.** redundancies were clearly likely and the claimants thought they would find employment very soon **or**
- 2.** they were working P/T, and left to take up F/T employment<sup>1</sup>.

1 R(U) 4/73

34463 If claimants left employment because they disliked working overtime, whether they have good reason depends on the

- 1.** reason they were unwilling to work overtime **and**
- 2.** amount of the overtime working and how long it was due to last for **and**
- 3.** what they were obliged to do under their contracts of employment.

34464 If claimants

**1.** left employment only because they **wanted** to work overtime, or more overtime (see DMG 34746) **or**

**2.** lost employment because they refused to work overtime

the question of whether they have lost employment through misconduct should be considered if appropriate.

**Note:** Consideration should also be given to the guidance in DMG 34236 and DMG 34246 if the reasons for leaving were due to mental health issues, harassment or bullying and also see DMG 34456 where an employer breaches the terms and conditions of employment.

34465

### **Retirement and resignation**

34466 Claimants who reached normal retirement age for their employment, but did not have to retire, will not have good reason for leaving if they retired because

**1.** they wanted to **or**

**2.** they wanted to get their pension.

It will not help such claimants to say that they would have continued working on certain conditions (for example that they could get their lump sum pension) if this was not acceptable to the employer.

34467 The DM is not deciding whether it was reasonable and proper for claimants to retire on pension. The DM is deciding whether, if claimants chose to retire, it is reasonable that they should be allowed to benefit from the NI fund<sup>1</sup>.

1 R(U) 26/51

34468 Where the claimant gives other reasons for leaving employment on reaching retirement age, they should be considered in the normal way giving full consideration to all the facts and evidence in the individual case.

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

#### **Example 1**

Elizabeth, a police officer, aged 52, retires on maximum pension after 30 years' service. She leaves



because she does not want to stand in the way of younger officers' promotion prospects, and because she believes she has a better chance of getting another job than she would if she waited three years until compulsory police retirement age. She does not register for employment or make any other efforts to find any other work before leaving. Elizabeth does not have good reason for leaving<sup>1</sup>.

1 R(U) 23/59

## **Example 2**

Joe, a police officer, aged 51, retires on maximum pension after 30 years service. If he had stayed at work, his terms of employment would have been financially less attractive. He leaves because he wants to obtain a lump sum payment of pension with which to buy a house for himself and his wife, and to make his wife more financially secure. He had tried very hard to find other work before leaving, but had not been successful. Joe does not have good reason for leaving<sup>1</sup>.

1 R(U) 4/70

## **Early retirement**

34469 Sometimes an employer runs an early retirement scheme to speed up normal wastage. A claimant who left on such a scheme will not have good reason just because the employer wanted, and indeed may have encouraged, the claimant to retire early.

## **Example**

Richard, a school teacher, aged 62, applies for early retirement after reading a circular from his LEA on early retirement. The LEA accepts his application and certifies that his leaving allows them to carry out their services more efficiently. He has no pressing personal or domestic circumstances for leaving, and has no reasonable chance of finding other work. Richard has no good reason for leaving<sup>1</sup>.

1 R(U) 3/81 Appendix

## **Leaving to take better paid or preferred employment**

34470 A claimant may have left employment, not because there was a fault with it, but because the claimant wanted a different type of work. In such a case the claimant will only have good reason if there was a firm offer of new employment which the claimant could reasonably have expected would start immediately and would last for a reasonably long time.

34471 Claimants may have left employment because they wanted employment that offered

1. improved prospects **or**
2. the chance to improve their career **or**
3. F/T instead of P/T work.

In such cases claimants will have good reason if they had offers or strong expectations of such employment which would start very soon. Sometimes there may have been a risk of occasional unemployment in the new employment (for example because it depended on the weather).

### **Leaving to take up training**

34472 If claimants left employment just before they started a course of study or training that would advance their careers, they have good reason but may face a disallowance if not available for work. If the questions have been referred to the DM for a decision, the DM should consider availability during the period of the course (see DMG Chapter 21 for full guidance on availability).

### **Personal and domestic circumstances**

34473 A claimant's personal or domestic circumstances may have become so urgent that the claimant will have good reason for leaving employment without having looked for other employment. But if there was no urgency, the claimant should have taken all reasonable steps to avoid leaving, or the claimant will not have good reason<sup>1</sup>. In some cases the claimant's reasons for leaving may show that the claimant is not available for employment.

1 R(U) 20/64(T)

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

#### **Example 1**

Megan, a school teacher, leaves her employment to look after her youngest child, as there is no one else available to do so. Megan has good reason for leaving employment, but availability will have to be considered if this has been referred to the DM for a decision<sup>1</sup>.

1 R(U) 6/59

#### **Example 2**

Patrick, a painter, who lives and works in England leaves employment to go to Scotland because his father is dying. Before he leaves he asks his employer about employment when he returns. But when he

comes back, there is no vacancy because of a redundancy. Patrick has good reason for leaving employment<sup>1</sup>. Asking

his employer about employment when he returned amounted to asking for a leave of absence.

1 R(U) 32/59

## **Moving home**

34474 If claimants moved home to a place beyond the normal 90 minutes daily travelling distance either way of their employment, that alone does not give them good reason for leaving<sup>1</sup>. But the DM will need to find out the reasons for the move. If there was some urgent personal reason for moving, for example

1. the claimant or partner was ill **or**
2. their current accommodation was totally inadequate **or**
3. they lost their accommodation

they may have good reason for leaving.

1 R(U) 20/64(T)

## **Example**

Matthew lives in two attic rooms with his wife and year old baby. He gets a house, but it is too far away from the place he works to allow him to travel daily. He has not found work in the town he is moving to. Matthew leaves his job and moves to the new house. He has good reason for leaving<sup>1</sup>.

1 R(U) 31/59

34475 If the reasons for moving are not quite enough to establish good reason, the DM should consider how likely the claimant was to get other employment quickly, and what steps had been taken to obtain other employment. But the DM should bear in mind that it would be difficult to organize buying or renting accommodation to start on exactly the same date as a new job.

## **Example**

Andy, a police sergeant, buys his own house. Nearly a year later he is transferred to a different place of work, which he finds it difficult to travel to and from. He makes enquiries of other employers, but retires voluntarily from the police force after 25 years service before having found other employment. He finds other work two weeks later. Andy does not have good reason for leaving, but the facts of the case are taken into account in deciding whether to sanction<sup>1</sup> taking into consideration all the facts of the case and

in particular any mental health issues (see DMG 34236 et seq).

1 R(U) 20/64(T)

34476 In all cases where the claimants say they left employment because of moving home, the DM will need the following information

- 1.** the reason for the move
- 2.** the date of the move
- 3.** the date on which the claimants gave notice to end the employment
- 4.** the date on which the claimants first knew they would be moving and, if the new home is being bought, the date on which contracts were exchanged
- 5.** what efforts the claimants made to find employment in the new area between the dates in **4.** and **2.**

34477 Sometimes, although the reasons for the move would seem to amount to good reason, the claimant may fail to show good reason overall because, for example the claimant

- 1.** did not make any attempt to find new employment in the new area before moving, despite having ample notice of the move **or**
- 2.** left employment before it was necessary to do so.

34478 The DM should take into account

- 1.** the distance and the practicality of going to interviews in the new area
- 2.** the difficulty of arranging everything for a particular date
- 3.** the possibility of daily travelling, at least for a temporary period, if the distance is not too great
- 4.** the employment prospects in the new area.

There is no general rule in this type of case, and while one fact alone may not give good reason, all the facts together may do so. The claimant's availability for employment may be in doubt for the days surrounding the move.

34479 Claimants often leave employment to

1. marry, form a civil partnership or join someone who lives in an area beyond daily travelling distance **or**
2. go with a partner who takes employment in another area **or**
3. move to another area where there is more suitable accommodation

To show good reason such claimants must show that they had done everything reasonably possible to find employment in the new area which they could start immediately after moving.

## **Relocation**

34480 Where an employer relocates within the UK it would be necessary to look at the notice given for such a move and the DM should consider all the individual circumstances of each case on its own merits.

## **Partner going abroad**

34481 Claimants may have left their job to go with a partner whose employment takes them abroad. In these circumstances it may not be reasonable for claimants to take steps to find work abroad before leaving the UK. If they left employment no earlier than was reasonably necessary in order to arrange the move, then they will have good reason. But in such cases availability for employment will often be in doubt. Claimants cannot show good reason if they left employment earlier than they needed to.

## **Example**

Faziz leaves employment ten days before leaving the UK to go with her husband, a Royal Air Force officer, to a posting in Holland. She leaves when she does to make the arrangements for going abroad. Faziz has good reason for leaving<sup>1</sup>.

1 R(U) 2/90

## **Moving with parents**

34482 Sometimes claimants give up employment to accompany their parents when they move home to another area. If claimants are under 18, and their parents objected to them living and working away from home, they will have good reason for leaving their employment. Claimants 18 or over may also have good reason if they, or their parents, can show that there was a strong reason why they should have continued to live with their parents. Some examples of reasons which would amount to good reason are where claimants

- 1.** have to be with their parents because of the parents' age and health **or**
- 2.** need their parent's help or guidance **or**
- 3.** would have a lot of difficulty and expense (compared with their earnings) if they lived somewhere else until they found other employment in the new area.

34483 A less strong reason for moving with parents will not amount to good reason.

### **Example**

Glenys, a typist aged 21, lives with her parents. They move home. She leaves her employment to move with them because they object to her living on her own. She does not make any efforts to find lodgings so that she can stay in employment whilst she looks for work in the new area. Glenys does not have good reason for leaving employment<sup>1</sup>. However the DM should consider Glenys' efforts to find affordable lodgings.

1 R(U) 6/53

### **Financial difficulties**

34484 The fact that

- 1.** the claimant's earnings were reduced because of
  - 1.1** an alteration in the terms and conditions of employment **or**
  - 1.2** short time working **or**

- 2.** the claimant would be better off financially if claiming JSA<sup>1</sup>

does not by itself give the claimant good reason for leaving. However each case should be looked at on its own individual merits and circumstances.

1 R(U) 10/61(T); R(U) 15/62

34485 Sometimes claimants were not dissatisfied with their earnings. But they left to get extra money, for example a lump sum or holiday pay which would be paid when the employment ended, to meet some financial difficulties. They will have good reason only if they were unexpectedly faced with urgent financial difficulties which could not be resolved in any other way. They will not have good reason if

**1.** they left only to

**1.1** gain a financial advantage **or**

**1.2** avoid a financial disadvantage<sup>1</sup>**or**

**2.** they have had financial difficulties for a long time and they are due mainly to their failure to manage their finances.

1 R(U) 14/55; R(U) 4/70

34486 In all cases where a claimant loses pay or leaves paid work voluntarily the DM should take special care to consider any mental health issues that could affect the claimant's reasons for leaving (see DMG 34236).

34487 – 34490

### **Living away from home**

34491 Claimants who had to live away from home permanently, or for long periods, have good reason if they had to leave their employment because

**1.** they were urgently needed at home **or**

**2.** their expenses for living away were unreasonably high when compared to their earnings.

### **Example**

Ross, aged 61, has to live in lodgings 113 km (70 miles) away from his wife, Maureen aged 68. He tries to find her accommodation with him and to get a job near his home, but is unsuccessful. His wife falls ill, and there is no one to care for her, so he leaves his employment to look after her. Ross has good reason for leaving<sup>1</sup>.

1 R(U) 14/52

34492 A long period of working away from home may also provide good reason for leaving employment. When deciding this, the DM should take all the circumstances into account, including

**1.** what opportunity there was to look for other work while still in employment

**2.** the claimant's chances of getting work nearer home

**3.** whether the claimant could have found accommodation for the family nearer the employment.

A **short** period of working away from home does not give the claimant good reason for leaving employment, unless there are other urgent reasons for leaving.

### **Long daily journey to and from work**

34493 Claimants who live in remote places must expect to put up with a lot of inconvenience and expense in travelling daily to work. But they will have good reason for leaving if, taking their personal and domestic circumstances into account

**1.** they could not move their homes nearer to work **and**

**2.** the travelling took up an unreasonably high part of their earnings and prevented them from looking for work nearer home.

**Note 1:** The DM should consider each case on its own merits and the individual circumstances having regard to any transport difficulties created by public transport which make it difficult to get to and from work in rural areas.

**Note 2:** For detailed guidance on travelling time to paid work see DMG Chapter 21.

### **Long or awkward working hours**

34494 Claimants are expected, within reason, to organize their domestic lives to suit their working hours. But they have good reason if

**1.** it became essential for them to reduce or alter their working hours (for example because a relative is ill) **and**

**2.** they tried but were unable to get their hours changed.

**Note1:** The DM should consider each case on its own merits and the individual circumstances having regard to any transport difficulties created by public transport which make it difficult to get to and from work in rural areas. For detailed guidance on travelling to and from paid work see DMG Chapter 21.

**Note 2:** Consideration should also be given to the guidance in DMG 34236 and DMG 34246 if the reasons for leaving were also due to mental health issues, harassment or bullying.



## Chances of getting other employment

34496 If the circumstances in which a claimant left employment fall just short of providing good reason, the DM should take into account the claimant's chances of getting other paid work quickly. When looked at together these may mean that the claimant has acted reasonably in leaving and becoming dependent on the NI fund<sup>1</sup>.

1 R(U) 4/73

34497 How good the chances of getting other work must be will vary from case to case. Claimants will have good reason if

- 1.** there was a promise of continuous employment, which was expected to last for some time, to start in the near future **or**
- 2.** they got another job and the circumstances in which they left employment almost amounted to good reason.

Claimants will not have good reason if they hoped they would get other employment quickly, but the evidence does not support this.

34498 The DM should take the following into account when deciding what weight to give to the claimant's prospects or lack of prospects

- 1.** the claimant's occupation, or type of employment sought if different
- 2.** the chances of getting such employment
- 3.** the area where the claimant lived compared to the area where the claimant wanted to work, if different
- 4.** whether it would have been easy or difficult for the claimant to find new employment while staying in the existing employment
- 5.** the results of any enquiries the claimant had already made about other employment
- 6.** the claimant's work record.

34499 The date at which the claimant's chances of getting other employment should be considered is the date on which the claimant

1. gave notice to leave **or**
2. took the action that led to leaving employment **or**
3. left employment, if it is to the claimant's advantage.

34500 Claimants would not normally have good reason for leaving if their only reason for leaving was because they

1. had a good chance of getting other employment **or**
2. are claiming JSA only for a very short time.

### **Firm offer of other employment**

34501 Claimants may have left employment because they had firm offers of other employment to start at once. But such claimants may have to claim UC because the

1. offers fell through unexpectedly **or**
2. new employment did not last very long.

34502 Such claimants will have good reason for leaving unless

1. the offers were cancelled before they left their existing employment **and**
  - 1.1 they could have stayed in their existing employment **or**
  - 1.2 they did not ask their employer whether they could stay **or**
2. they changed their minds and decided not to take the new job **and 1.1 or 1.2** applies.

34503 Sometimes claimants have left employment because they had firm offers of other employment to start shortly, but **not** immediately. They may then claim UC because

1. they changed their original intention not to claim JSA during the interval **or**

**2.** the offer fell through and they are claiming JSA for longer than they expected.

They do not have good reason for leaving, because they left their original employment before they needed to.

34504 – 34530

# Misconduct 34531 - 34650

[Introduction](#) 34531 - 34535

[What is misconduct](#) 34536 - 34538

[What constitutes misconduct](#) 34539 - 34560

[Whether the claimant acted or failed to act as alleged](#) 34561 - 34585

[Whether the claimant's conduct was misconduct](#) 34586 - 34635

[Whether misconduct caused the loss of employment](#) 34636 - 34650

## Introduction

34531 Legislation provides that a failure is a sanctionable failure where a claimant by reason of misconduct loses employment as an employed earner<sup>1</sup>.

**Note 1:** For 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.

**Note 2:** For guidance on employment as an employed earner see DMG Chapter 21.

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

34532 A sanction should only be imposed where the claimant

- 1.** acted or failed to act as alleged (see DMG 34561) **and**
- 2.** behaved in such a way that it amounted to misconduct (see DMG 34576 et seq) **and**
- 3.** lost employment through the misconduct (see DMG 34586 et seq).

34533 The sanction is not to punish claimants for losing a job, but to protect the NI fund from claims which claimants bring upon themselves by their own misconduct<sup>1</sup>.

1 CU 190/50(KL); R(U) 2/77

34534 - 34535

## What is misconduct

34536 The word "misconduct" is not defined in SS legislation, but it suggests an element of blameworthiness<sup>1</sup>. It means such misconduct as would persuade or oblige a reasonable employer to dismiss employees because, considering their misconduct, they are no longer fit to hold their employment<sup>2</sup>. Misconduct is conduct which is connected, but not necessarily directly, with the employment. And taking into account the

**1.** relationship of employer and employee **and**

**2.** rights and duties of both

misconduct must be conduct that can fairly be described as blameworthy and wrong<sup>3</sup>.

1 R(U) 8/57; 2 R(U) 24/55; R(U) 7/57; 3 R(U) 2/77

34537 The claimant is guilty of misconduct only if their actions or omissions are 'blameworthy'. This does not mean that it has to be established that the claimant did anything dishonest or deliberately did something wrong, serious carelessness or negligence may be enough.

34538 Everyone makes mistakes or is inefficient from time to time. So, for example, if a claimant is a naturally slow worker who, despite making every effort, cannot produce the output required by their employer, they are not guilty of misconduct even if the poor performance may justify their dismissal.

## What constitutes misconduct

34539 In addition to the circumstances listed as good reason in DMG 34200 DMs should take account of the following points when considering whether to impose a sanction for misconduct

**1.** the claimant is guilty of misconduct only if their actions or omissions are 'blameworthy'. This does not mean that it has to be established that the claimant did anything dishonest or deliberately did something wrong, serious carelessness or negligence may be enough (see DMG 34611)

**2.** everyone makes mistakes or is inefficient from time to time. So, for example, if a claimant is a naturally slow worker who, despite making every effort, cannot produce the output required by their employer, they are not guilty of misconduct even if the poor performance may justify their dismissal (see DMG

34609)

**3.** the misconduct has to have some connection with the claimant's employment. It does not have to take place during working hours to count as misconduct. However, a sanction cannot be imposed if the actions or omissions took place before their employment began

**4.** some behaviour is clearly misconduct, eg, dishonesty (whether or not connected with work) if it causes the claimant's former employer to dismiss them because they no longer trusts them (see DMG 34631)

**5.** bad timekeeping and failing to report in time that they are sick might amount to misconduct, eg, if lateness was persistent or failed to report they were sick on a number of occasions (see DMG 34619)

**6.** a refusal to carry out a reasonable instruction by an employer is not misconduct if the claimant had a good reason for refusing or their refusal was due to a genuine misunderstanding (see DMG 34599)

**7.** breaking rules covering personal conduct might be misconduct, depending on the seriousness of the breach. A breach of a trivial rule might not be misconduct

**8.** a refusal to work overtime is misconduct if the claimant was under a duty to work overtime when required and the request to do it was reasonable (see DMG 34605).

This list is not exhaustive. See guidance at DMG 34586 et seq for other considerations with regard to misconduct.

34540 - 34559

## **Mental illness**

34560 The DM should **not** impose a sanction for misconduct if there is evidence from someone who is medically qualified that at the time of the alleged misconduct the claimant was

**1.** suffering from a mental illness **and**

**2.** not responsible for the actions in question.

**Note:** See the guidance in DMG 34236 if **1.** or **2.** apply. The DM should apply the same principles for good reason to misconduct.

# Whether the claimant acted or failed to act as alleged

## Unfair dismissal

34561 Employment protection legislation<sup>1</sup> protects employees against and defines unfair dismissal<sup>2</sup>. Sometimes a case will arise where the DM is deciding on a sanction for misconduct, and the claimant has also made a complaint of unfair dismissal to an Employment Tribunal. These are separate questions, decided on different criteria. The decision making authorities and Employment Tribunals are entirely independent of each other. Decisions by one are not binding on the other.

1 ER Act 96, s 111(1); 2 s 98 & 100

34562 The main difference between unfair dismissal and misconduct is that in

**1. unfair dismissal**, the emphasis is on the conduct of the employer

**2. misconduct**, the main emphasis is on the conduct of the claimant.

But the employer's behaviour will be relevant to the question of whether the claimant lost employment through misconduct<sup>1</sup>.

1 R(U) 2/74

34563 There will be cases where a claimant succeeds before an Employment Tribunal on the unfair dismissal question, but the DM decides a sanction is appropriate for misconduct, and vice versa. The FtT is entitled to decide a case without waiting for the employment tribunal's decision and to do so without giving reasons<sup>1</sup>.

1 AA v SSWP (JSA) [2012] UKUT 100 AAC [2012] AACR 42

34564 It is up to the DM to decide on the merits of each individual case whether the issues are so closely connected and whether the Employment Tribunal decision may have an affect on the misconduct decision. The DM can decide that the question of dismissal would make no difference to the decision on misconduct in an individual case and therefore the case need not await the Employment Tribunal decision as the DM could show that it would make no difference to the outcome. For example: if a claimant admitted his misconduct then whether his subsequent dismissal was unfair is irrelevant. In another case it might make a difference, because the claimant might argue that his dismissal was unfair because there was no misconduct. The DM would have to apply the consideration of the "overriding test of reasonableness" in each individual case.

## Example

Samir worked as a school business manager. He made enquiries of the Head Teacher about alleged discrepancies in her travel expenses claim. He failed to resolve his concerns and sent an email to a Principal Employee Relations Officer of the Council which he also copied to other members of junior staff in the school. The claimant was suspended from work and later dismissed on the ground of gross misconduct. The DM decided Samir lost his employment through misconduct. Samir appealed to the Employment Tribunal on the grounds of unfair dismissal.

In this case there was no need to await the outcome on unfair dismissal. The consideration is whether the issue of the email was misconduct. It is in no dispute that the claimant made this action. The claimant admitted his misconduct, and whether or not his subsequent dismissal was unfair is therefore irrelevant. On the consideration of the "overriding test of reasonableness" the DM considers the facts of the misconduct and concludes it was inappropriate to do what he did. That is the consideration for Misconduct not whether the dismissal was fair or the disclosure of information qualified for protection.

At the time the disclosure was made it was reasonable that Samir raised the issue with the principal officer of the council as the headteacher was his direct superior but it is Samir's act to send an email informing all the junior staff in the school that constitutes misconduct for our purposes and the claimant does not dispute his actions. Whether his intentions were honourable or not it cannot be denied he committed the act which was unreasonable. By disclosing the information to the principal officer he was fulfilling his 'duty to inform' of an alleged offence. There was no reason for him to also inform junior staff.

Samir lost his employment through misconduct and a sanction would be appropriate.

## Employment Tribunal's finding of facts

34565 An Employment Tribunal's finding of facts is convincing evidence that can be taken into account by the decision making authorities, although the issues may be different. It is more likely that the facts will be fully investigated by an Employment Tribunal than by the decision making authorities because

1. the employers are party to the case before the Employment Tribunal **and**
2. Employment Tribunals can compel the attendance of witnesses.

But the decision making authorities are not bound to decide the facts in the same way as an Employment Tribunal<sup>1</sup>.

1 R(U) 2/74

## Proof

34566 The person who alleges the claimant has committed misconduct must prove it<sup>1</sup>. The DM



determines what is misconduct<sup>2</sup>.

1 R(U) 12/56; R(U) 2/60; 2 R(U) 10/54

34567 In misconduct cases, before a sanction is imposed the DM should be substantially satisfied that the allegations which are made are well founded<sup>1</sup>.

1 R(U) 2/60; R(U) 7/61

## **Evidence**

34568 In misconduct cases the DM will usually have

- 1.** statements by the employer describing the claimant's alleged acts or omissions
- 2.** statements by the claimant replying to the employer's allegations.

**Note:** The DM should take all relevant circumstances into account and consider if any further evidence is required in each individual case and if they feel further evidence is required they should ask for it either from the claimant, the employer or a third party in person or by letter.

34569 It may also be useful to have

- 1.** statements by witnesses to the alleged acts or omissions
- 2.** a written statement from the employer, giving reasons for the dismissal.

34570 Claimants can ask their employer for a statement as in DMG 34568 **2.**, and should receive it within 14 days, if they have worked for the employer for at least one year and

- 1.** the employer has given them notice of the termination of the contract of employment **or**
- 2.** the employer has terminated the contract of employment without notice **or**
- 3.** they are employed under a fixed term contract and the contract expires without being renewed<sup>1</sup>.

**Note:** The DM will determine whether additional evidence is required and from whom (see DMG 34568 **Note**).

## **Giving the claimant a chance to comment**

34571 Before imposing a sanction for misconduct, the DM should be satisfied that claimants have been given an adequate chance to comment on all the statements made against them.

34572 If the employer's statements are not complete, the DM can still arrange for claimants to have a chance to comment. But if

- 1.** it is clear that the employer will not or cannot provide any further information **and**
- 2.** decision making is not waiting for other legal action to be completed, for example a court case or Employment Tribunal hearing **and**
- 3.** the evidence is insufficient for a sanction to be imposed

claimants should not be approached again in the hope that they may provide further evidence which would justify a sanction for misconduct. See the guidance on evidence at DMG 34568 - 34570.

34573 If fresh allegations are made at a FtT hearing in the claimant's absence, the DM should normally request an adjournment to allow the claimant to attend or answer the allegations in writing.

34574 - 34575

## **Claimant prosecuted**

34576 If claimants are prosecuted for an offence which would be misconduct if proved, a DM can decide that they have committed misconduct before they have been found guilty<sup>1</sup>. A sanction can be imposed before the case has been heard in court.

1 R(U) 10/54

## **Claimant acquitted**

34577 A DM should not decide that a claimant did not lose employment through misconduct just because the claimant was acquitted of an offence. The evidence

that was before the court may be enough to establish misconduct, or there may be other acts or omissions which were not dealt with by the court<sup>1</sup>.

1 R(U) 8/57

## Reports of court or employer's hearings

34578 Where claimants have been convicted of offences in England and Wales<sup>1</sup> or Scotland<sup>2</sup>, the DM should accept that they have committed these offences, unless the claimants can prove the contrary. So a conviction should be treated as strong evidence that a person did commit the offence, though it is not conclusive. The decision making authorities must still decide whether

1. that offence is misconduct **and**
2. the misconduct caused the claimant's loss of employment.

1 Civil Evidence Act 68, s 11; 2 Law Reform (Misc Prov) (Scotland) Act 1968, s 10

34579 A statement from the employer and claimant about the conviction may be sufficient evidence. But if there is disagreement about the

1. offence for which the claimant was convicted **or**
2. nature of the conviction

a certificate giving the date and precise nature of the offence should be obtained from the Clerk to the Justices<sup>1</sup>. This may become increasingly difficult in the light of the Data Protection Act.

1 R(U) 24/64

34580 A finding by a Chief Constable, after formal disciplinary proceedings, that a police officer committed certain acts is strong evidence that the officer committed those acts, though it is not conclusive<sup>1</sup>.

1 R(U) 10/63

34581 Findings of fact by an administrative body, for example a hospital management committee, are not evidence<sup>1</sup>. Findings of fact by an ad hoc board or committee of enquiry appointed by the employer are relevant to the question of misconduct, but by themselves may be insufficient. There should be other evidence before a sanction can be imposed.

1 R(U) 7/61

## Hearsay and eye-witness evidence

34582 Hearsay evidence is acceptable, but its value must be very carefully considered<sup>1</sup>. The DM should ensure that, where possible, the most direct evidence, generally of eye-witnesses, is obtained. The allegations against the claimant can then be properly tested. Direct evidence is particularly important where the claimant denies

the facts which are alleged to amount to misconduct<sup>2</sup>. The surrounding circumstances may, however, be just as convincing as eye witness evidence.

1 R(U) 12/56; 2 R(U) 2/60; R(U) 7/61

34583 The DM should decide the case on the available evidence where the allegations

1. are disputed by the claimant, **and**
2. they are based on information of which the person replying to enquiries for the employer does not have personal knowledge.

A vague or general allegation is not sufficient to establish misconduct by itself. But sometimes, when put together with the claimant's own statement, it may establish misconduct.

34584 - 34585

## Whether the claimant's conduct was misconduct

34586 Claimants may have behaved or performed their job in such a way that would lead to dismissal by a reasonable employer - but this may not be misconduct.

### Example 1

Rachael is often clumsy and inefficient at work. The employer, after investigating why, comes to the conclusion that she is naturally clumsy, and is doing the best she can. He dismisses Rachael. Rachael's clumsiness and inefficiency is not misconduct.

### Example 2

Anwar is absent for a total of 27 weeks in a year. All the periods of absence are due to sickness or accidents and are covered by medical certificates. The employer's rules about notifying absences are all obeyed. The employer dismisses Anwar. Anwar's absences are not misconduct.

34587 A deliberate act or omission by a claimant which could have been avoided can be misconduct. For example, where claimants are late for work, the test is whether the lateness was preventable, or whether there was a failure on the part of the claimant to take care to attend at the proper time. Lateness which is outside the claimant's control does not amount to misconduct.

34588 The decision making authorities decide whether the claimant's actions are misconduct. It does not matter that the employer has not described the claimant's actions as misconduct.

### **Example**

An employer ends Sheila's employment by contractual notice. In answer to an enquiry from the DM, the employer says that she dismissed Sheila because she had

not been maintaining a proper standard of work. After further enquiries have been made, it becomes clear that Sheila had been particularly careless. Sheila has lost her employment through misconduct.

### **Misconduct outside employment**

34589 Misconduct which happened outside working hours and was not in the course of the claimant's employment can be misconduct within the meaning of the legislation<sup>1</sup>. It may cover both criminal and non criminal acts. But it cannot include conduct which happened before the employment started<sup>2</sup>.

1 R(U) 7/57; R(U) 20/59; 2 R(U) 26/56; R(U) 1/58

34590 The claimants' behaviour must have affected, either directly or indirectly, their suitability for the employment before it can be misconduct, even if their behaviour would amount to misconduct in a social or moral sense<sup>1</sup>. Sexual offences committed outside the employment are likely to fall into this category, and should not generally be treated as misconduct. But sometimes, where claimants' employment brought them into close contact with members of the public, their conduct could amount to misconduct and a sanction would be appropriate. Employees in certain professions, for example teachers, government and LA employees and social workers, know they are expected to maintain a high moral standard and anyone dismissed for such offences would be particularly likely to be subject to a sanction<sup>2</sup>.

1 R(U) 24/55; 2 R(U) 1/71

## **Instructions not obeyed**

34591 If claimants wilfully disobeyed a reasonable order by an employer or other superior, this will usually be misconduct. But it is not misconduct if claimants

- 1.** had compelling reasons for the refusal **or**
- 2.** acted or failed to act on a genuine misunderstanding **or**
- 3.** reasonably, but mistakenly, believed they were entitled to refuse.

### **Example**

An employer orders Abdul, a van driver, not to drive after he has been involved in an accident. The next day Abdul finds his van waiting, loaded as usual, and he takes it out. He is dismissed for disobeying the order. He says that he understood he was being taken off driving, but did not understand that this was to happen at once. Abdul has not wilfully disobeyed the order, but acted on a genuine misunderstanding. This is not misconduct<sup>1</sup>.

1 R(U) 14/56

## **Failure to follow rules and regulations**

34592 In many employments there are rules or laws about the work and the way it is done for example, safety rules and licensing laws. Breaking such a rule is misconduct, unless it is very trivial. The fact that the rule is often broken does not excuse the breaking of it, or mean that it is not misconduct.

### **Example**

Cristos, the manager of a pub, is sacked because he broke the licensing laws. It is accepted that he did not know he was breaking the law, and he has done the same thing on previous occasions without the police objecting. This is misconduct<sup>1</sup>, however all the facts should be reflected in the DM's decision on whether to impose a sanction taking into consideration all the individual circumstances of the case.

1 R(U) 10/54

34593 In some employments there are rules covering personal conduct. Breaking such a rule may be misconduct, depending on the seriousness of the offence. It is no excuse that the rule is often broken.

### **Example**

Omar, a postman is sacked for breaking a PO rule forbidding certain types of postal betting. This is misconduct<sup>1</sup>.

1 R(U) 24/56

### **Trade union membership and activities**

34594 Under employment and trade union law all trade union **officials** are entitled to a reasonable amount of time off work with pay to

- 1.** carry out their industrial relations duties **or**
- 2.** undergo union-approved training in industrial relations<sup>1</sup>.

Trade union **members** are entitled to a reasonable amount of unpaid time off work to take part in trade union activities (excluding industrial action)<sup>2</sup>.

1 TULR(C) Act 92, s 168 & 169; 2 s 170

34595 All employees have the right not to have any action taken against them by their employer to

- 1.** stop or deter them from being or trying to become a member of an independent trade union, or punish them for doing so **or**
- 2.** stop or deter them from taking part in the activities of an independent trade union at any appropriate time, or punish them for doing so **or**
- 3.** force them to become members of any trade union, or of a particular trade union, or one of a number of particular trade unions<sup>1</sup>.

1 TULR(C) Act 92, s 146(1)

34596 The dismissal of any employee is regarded as unfair if the reason or main reason for it was that the employee

- 1.** was, or intended to become, a member of an independent trade union **or**
- 2.** had taken part, or intended to take part, in the activities of an independent trade union at an appropriate time **or**

**3.** was not a member of

**3.1** any trade union **or**

**3.2** one, or a number of, particular trade unions **or**

**4.** had refused, or intended to refuse, to become or remain a member of

**4.1** any trade union **or**

**4.2** one, or a number of, particular trade unions<sup>1</sup>.

1 TULR(C) Act 92, s 152(1)

34597 If claimants' terms and conditions of employment were changed by a closed shop agreement and they were dismissed because they refused to join a union, a sanction is not appropriate<sup>1</sup>. Dismissal for refusing to join a union is now in all circumstances unfair<sup>2</sup>.

1 R(U) 2/77; 2 TULR(C) Act 92, s 152(1)(c)

## **Health and safety**

34598 Under employment and trade union law all employees have the right not to be dismissed<sup>1</sup>, selected for redundancy or subjected to any disadvantage<sup>2</sup> for

**1.** carrying out or planning to carry out any health and safety activities for which they are appointed by their employer **or**

**2.** carrying out or planning to carry out any of their tasks as official or employer acknowledged health and safety representatives or committee members **or**

**3.** bringing to their employer's attention

**3.1** by reasonable means **and**

**3.2** in the absence of a representative or committee who could do so on their behalf a reasonable health and safety concern **or**

**4.** leaving or planning to leave, or refusing to return to

**4.1** the workplace **or**



#### **4.2** any dangerous part of it

because they reasonably believed there was a serious and imminent danger which they could not reasonably be expected to avert **or**

**5.** taking, or planning to take, steps which were appropriate to protect themselves or others from danger which was reasonably believed to be serious and imminent. When deciding what was appropriate, all the circumstances should be taken into account, including

**5.1** their knowledge **and**

**5.2** the facilities **and**

**5.3** the advice

available at the time.

1 TURER Act 93, s 57A; 2 s 22A

### **Refusal to do work**

34599 Subject to DMG 34600, if a claimant refused to do work that should be done under the terms of the contract of employment, this is misconduct. But the work must be

**1.** appropriate to the grade **or**

**2.** work which there is an express or implied obligation to do (for example alternative work under a guarantee agreement) **or**

**3.** work which may reasonably be required in an emergency.

34600 Sometimes the exact scope of a claimant's duties was not defined in the contract of employment. There may have been disagreement between a claimant and the employer about the extent of the duties. In this situation the DM should look at the work they had previously done. If they had done particular work for a long period without complaint, that is strong evidence that it has come to be recognized as part of the duties.

34601 If a claimant

**1.** should have done certain work **and**

**2.** had a reason for not doing so that was so compelling as to leave no choice in the matter (for example if there is medical evidence that the work would have been harmful to health)

the refusal is not misconduct.

34602 If a claimant refused to perform work which was not part of the employment, it is not misconduct.

34603 Some trades require apprentices or trainees to do some work outside their trade. In such a case it is misconduct if they refuse. But if it interferes with their training, their refusal is not misconduct.

34604 If claimants refused, because of a TD, to do work which they should have done, their refusal is misconduct. The case against them is even stronger if there is a recognized procedure for settling disputes and they chose to ignore it. The claimants may also not be entitled to JSA because they are involved in a TD.

### **Example**

Stan, a crane driver who is a shop steward, refuses to carry out a proper order because of an argument about pay, so he is sacked. There is a detailed negotiating procedure for settling disputes but he ignores this. Stan has lost his employment through his misconduct<sup>1</sup>.

1 R(U) 41/53

### **Refusal to work overtime**

34605 If a claimant

**1.** had an express or implied duty under the contract of employment to work overtime when required **and**

**2.** refused a reasonable request to do so

the refusal will normally be misconduct<sup>1</sup> but the claimant should have been given adequate notice if possible. The amount of overtime required and the time when it was to be done should be reasonable for the employment. If the claimant had a reason for refusing the request, for example domestic difficulties, this should be taken into account when deciding whether to sanction or if it would have caused the claimant undue mental stress (see DMG 34236 for detailed guidance on mental health issues and good reason)

34606 If a claimant was dissatisfied with the rate of pay for overtime work, the claimant should have worked as instructed and pursued the matter in the proper way (for example through the trade union). Refusal to work overtime for this reason when there is an obligation to do so is misconduct.

34607 Refusal to work overtime is not misconduct if

1. the claimant was not under an obligation to work overtime **or**
2. the claimant genuinely believed that there was no obligation to do so **or**
3. the employer tried to introduce the requirement to work overtime into the terms and conditions of the employment, or to increase the amount already provided for in the contract **or**
4. although obliged to work overtime, the reasons for refusing were so compelling as to leave the claimant with no choice but to refuse.

### **Refusal on grounds of religion or conscience**

34608 An employer sometimes tries to impose terms or conditions of employment which would have restricted a claimant's personal freedom or conflicted with a claimant's genuinely held beliefs. If a claimant refused to comply with such conditions, this will not be misconduct. The principles explained in DMG 34321 should be followed. If the claimant would have had good reason for refusing the employment, the refusal to comply with such conditions is not misconduct.

### **Negligence and inefficient work**

34609 Whether negligence or carelessness is misconduct is a matter of degree. If it was deliberate it is misconduct. Otherwise it depends on the

1. responsibility, care and skill expected in the job **and**
2. seriousness of the act or omission **and**
3. extent of the claimant's blame.

If claimants were doing their best, then inefficiency is not misconduct, even though it may lead to their dismissal.

34610 It is for the DM to establish that the claimant was so much to blame for the acts complained of that they are misconduct. If a claimant held a position of responsibility which called for a high standard of care or skill, a single incident, if proved, may amount to misconduct.

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

### **Example 1**

Steven, a bus driver, is sacked because the bus hit another bus, causing slight damage to both vehicles. The collision happened on a dark road. Steven had a clean driving record for 21 years. As this is an isolated error of judgement, it is not misconduct<sup>1</sup>.

### **Example 2**

Sam, a fitter, is told to check some bearings in a compressor. He says that he has completed the job. But, when the compressor is used, it is found that part of a bearing has not been replaced and is lying loose in the crankcase. He is therefore sacked. This is gross negligence on his part, and he has lost his employment through his misconduct<sup>2</sup>.

### **Example 3**

See La Wang, the manager of a pharmacy, is sacked after several cash shortages are discovered. She is charged with embezzlement and acquitted. As she has been negligent in carrying out responsible duties, she has lost her employment through her misconduct<sup>3</sup>.

### **Example 4**

Andrea, an insurance agent, returns her books to her employers, explaining that about three months before she lost £400 belonging to the company. An employee who has charge of her employer's money is under a duty to take care to safeguard it. Andrea can not explain why she was carrying such a large amount of money, or how she came to lose it. Her carelessness on this one instance is misconduct<sup>4</sup>.

1 R(U) 10/52; 2 R(U) 35/53; 3 R(U) 8/57; 4 R(U) 17/64

## **Carelessness or negligence**

34611 A certain amount of carelessness or negligence may be acceptable in doing less responsible tasks. Provided it is not deliberate, such an act or omission does not amount to misconduct even though the employee concerned lost employment as a result. Similarly, an isolated error of judgement which had no serious consequences may not be misconduct.

## Example

Stuart, a fire tender, has to tend and keep alight a number of fires. He is sacked following a report that he has allowed the fires to go out one night. But this is not proved. Stuart admits that he let one fire go out, but tried to relight it at once. This is not misconduct. One fire might go out even if the fire tender is reasonably careful. And the fact that he took steps to rekindle it did not suggest a serious neglect of duty<sup>1</sup>.

1 R(U) 2/60

## Inefficiency

34612 Inefficiency alone is not misconduct when it is due only to the claimant's natural lack of skill or ability.

## Example

Malcolm, a thread tapper, is sacked because although the quality of his work is satisfactory, he is unable to produce the quantity of work wanted. This is not misconduct<sup>1</sup>.

1 R(U) 34/52

## Driving offences and road accidents

34613 If claimants committed road traffic offences which had a direct effect on their ability to do their jobs, then this is misconduct. This will be the case, even where the offence was committed outside the employment. But if the offence was an isolated and minor act of negligence or was trivial or merely technical, it will not be misconduct. An offence should not be regarded as minor, trivial or technical if, on conviction, claimants

1. have their licences suspended **or**
2. are disqualified from holding a licence.

Conviction in such cases is evidence of misconduct. A certificate giving the date and precise nature of the offence should be obtained if there is any disagreement about the nature of the offence.

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

## Example 1

Lesley, a lorry driver, is convicted of being in charge of a car while under the influence of drink and her licence is withdrawn. She is sacked. The offence took place in her own time and in her private car but since her employment is dependent on her holding a driving licence, Lesley has lost her employment through her misconduct<sup>1</sup>.

### **Example 2**

Edmund, a bus driver, leaves his employment when he is disqualified from holding a driving licence for 6 months because he is convicted of driving without insurance. The conviction is evidence that he has committed the offence and, since his employment depends on his holding a driving licence, it is a strong indication of misconduct<sup>2</sup>.

1 R(U) 7/57; 2 R(U) 24/64

34614 Even if claimants were not prosecuted under road traffic legislation, they may have been involved in incidents which reflected on their driving ability and resulted in loss of employment. Whether their acts or omissions amount to misconduct depends on all the circumstances of the case.

### **Example**

Jose, an experienced driver, is sacked after his van hits a low railway bridge. He wrongly assumed that an oncoming bus had passed under the bridge and that there was therefore enough headroom for his vehicle. In fact the bus had come from a

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

when dealing with requests for leave for such purposes, this should be taken into account when considering all the facts of the case. The DM should consider whether

- 1.** the claimant had a compelling reason for wanting a change of employment
- 2.** it was necessary to have time off, and when and for how long
- 3.** the claimant had grounds for thinking the employer would be unreasonable.



## Example

Anili, a labourer, is sacked, after a previous warning, because of repeated unauthorized absences from work. The employment is harmful to his health, and he has been absent because he is looking for more suitable employment but Anil did not explain this, or ask permission to have time off. This is misconduct<sup>1</sup> but the overall circumstances should be taken into account when deciding whether to sanction taking particular account of Anili's mental and physical health and having regard to the guidance in DMG 34236. The DM may want to consider obtaining further evidence regarding Anili's health.

**Note:** Sanctions on benefit are for a fixed period. The DM should take account of all the individual circumstances when deciding if a sanction is appropriate having particular regard to any mental health factors.

1 R(U) 8/61

## Time off work under employment protection and trade union law

34622 Under employment protection and trade union law certain employees are entitled to a reasonable amount of time off work for various reasons. If the employer refuses to allow them to take time off, employees may complain to an Employment Tribunal. If the Employment Tribunal finds the complaint well founded they may, in certain circumstances, award claimants compensation. The following types of employees fall within the provisions

**1.** trade union officials and members<sup>1</sup>

**2.** people undertaking public duties as

**2.1** justices of the peace

**2.2** LA members

**2.3** police authority members

**2.4** Broads Authority members

**2.5** National Park Authority members

**2.6** members of any statutory tribunal

**2.7** members of boards of prison visitors (England and Wales) or prison visiting committees (Scotland)

**2.8** members of National Health Service Trusts or Regional Health Authorities, Area Health Authorities, District Health Authorities, Family Health Services Authorities (England and Wales) or

Health Boards (Scotland)

**2.9** school or college governors

**2.10** members of the Environmental Agency or the Scottish Environmental Protection Agency<sup>2</sup>.

Employees in **1.** and **2.** are all entitled to a reasonable amount of time off during working hours to perform their duties.

**3.** employees under notice of redundancy are entitled to reasonable time off to look for new employment or make arrangements for training for future employment<sup>3</sup>

**4.** pregnant employees have the right not to be unreasonably refused time off during working hours for ante natal care appointments<sup>4</sup>

**5.** occupational pension scheme trustees are entitled to reasonable time off to perform their duties and do training relevant to those duties<sup>5</sup>

**6.** employee representatives or election candidates to be employee representatives for redundancies for TUPE legislation<sup>6</sup> are entitled to reasonable time off to perform their functions<sup>7</sup>.

1 TULR (C) Act 92, s 168-170; 2 ER Act 96, s 50 & 51; 3 s 52; 4 s 55; 5 s 58;  
6 TULR (C) Act 92, Part IV, Chap II; TUPE Regs, reg 10 & 11; 7 ER Act 96, s 61

34623 If claimants who fall within DMG 34622 were refused time off, or as much time off as they wanted, they should have complained to an Employment Tribunal. If they took an unreasonable amount of time off against their employer's wishes, and were dismissed for unauthorized absence, their dismissal will usually be due to misconduct.

## **Notification of absences**

34624 Absence from work which was

**1.** unavoidable, for example because of illness, **or**

**2.** justified by some reasonable excuse, such as domestic difficulties

is not in itself misconduct. But a claimant must have complied with the employer's rules about notification of absences. If there were no such rules, claimants should have taken all reasonable steps to notify the employer promptly (beforehand if practicable) of the reason for the absence. They should also have kept employers informed if the absences were long ones. Failure to do so is misconduct.

### **Example 1**

Gary, a welder, is absent from work for three weeks and for some odd days because either he, or his wife (Mary), is ill. He says that his wife has written to his employer once during the three weeks, but the employer says that he has not received the letter. Gary has lost his employment through his misconduct. Even if his statement is true, one letter during an absence of three weeks is not sufficient<sup>1</sup>.

### **Example 2**

Lionel, a painter, does not return to work after a holiday because he is sick, but he does not inform his employer. Lionel has lost his employment through his misconduct. On a previous occasion he delayed giving a reason until after he returned to work, and the employer had accepted his explanation<sup>2</sup>.

1 R(U) 23/58; 2 R(U) 11/59

34625 If the claimants' failure to notify was beyond their control, for example they were living alone and had no way of contacting the employer (for example they were in an accident, unconscious or seriously ill), they have acted reasonably and their failure is not misconduct.

### **Offensive behaviour**

34626 Insolence, quarrelling, scuffling or fighting and other forms of offensive behaviour are misconduct. But they may not be misconduct if the claimants were suffering from mental illness (for example nervous and depressive attacks) which meant that they were not fully responsible for their actions. Also if there was substantial provocation the DM should take all the facts and evidence into account when considering whether there was misconduct.

34627 The use of bad language may also be misconduct, depending on

**1.** the place **and**

**2.** the people present.

The use of bad language in conversation with others who are using it, and if it cannot be overheard, is not misconduct. But its use in circumstances when it is known, or might be expected, to give offence to others is misconduct. An apology does not excuse such conduct, nor is it necessarily an admission of guilt. People sometimes apologize even though they consider themselves unfairly accused.

### **Example 1**

Peter, a clerk, often uses obscene language and makes indecent remarks about women employees. His colleagues complain and he is sacked. Peter has lost his employment through his misconduct<sup>1</sup>.

### **Example 2**

Jon, a fitter in an aircraft company is sent to work on a Royal Canadian Air Force base and is provided with quarters. He is drunk in these quarters in his own time. The Royal Canadian Air Force complains to his employer and he is sacked. Jon has lost his employment through his misconduct<sup>2</sup>.

1 R(U) 12/56; 2 R(U) 14/57

34628 If claimants complained in reasonable terms about their conditions of employment, this is not misconduct. But if, because of their discontent, they

**1.** did their work badly **or**

**2.** refused to work

it may be misconduct. A criminal charge made against a superior is misconduct if it was known to be false or was made recklessly<sup>1</sup>.

1 R(U) 24/55

### **Example**

Christopher Jessop brings a charge against his supervisor for assault while on his way to work, but the case is dismissed. There is no allegation of any other misconduct against the claimant. He is dismissed in the interests of discipline. Christopher has not lost his employment through misconduct because there is no evidence that he knew the charge was false or made it recklessly.

34629 Sexual misbehaviour is not necessarily misconduct, but it may be where it affects the claimant's suitability for the employment concerned, for example working with children or vulnerable groups<sup>1</sup>.

1 R(U) 1/71

34630 Intimidating fellow employees to stop them working is misconduct. A claimant may not be entitled to JSA where the intimidation is connected with a stoppage of work due to a TD.

## **Dishonesty**

34631 Dishonesty in the course of employment is misconduct. Dishonesty outside employment is also misconduct if it means that the claimant was not a fit person to hold the employment.

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

### **Example 1**

Mariam, a painter, steals an almost empty tin of paint from her employer. She is convicted and dismissed. Mariam has lost her employment through her misconduct.

But the paint was only worth about 10p, and the claimant thought that it was worthless and that there was no objection to her taking it. The DM should give full consideration of all the facts of the individual case when considering whether to impose a sanction<sup>1</sup>.

### **Example 2**

Kevin, a warehouseman, receives tobacco stolen from his employer. He is convicted and dismissed. Kevin has lost his employment through his misconduct<sup>2</sup>.

### **Example 3**

Barbara, a factory worker, steals some cigarettes from a fellow worker at a club dance and is sacked. Barbara has lost her employment through her misconduct<sup>3</sup>.

### **Example 4**

Rose, an apprentice draughtsman, is dismissed after she is convicted for breaking into and stealing from premises which are not connected with her employment. Rose has lost her employment through her misconduct<sup>4</sup>.

**Note:** There are no sanctions of discretionary length. Sanctions on benefit will be for a fixed period. The DM should take account of all the individual circumstances when deciding if a sanction is appropriate having particular regard to any mental health factors (see DMG 34236).

1 CU 190/50(KL); 2 R(U) 27/52; 3 R(U) 10/53; 4 R(U) 20/59

34632 People who have been sacked from positions of trust or public prominence because of personal financial difficulties have not lost their employment through misconduct unless they have acted

dishonestly or abused their positions.

34633 - 34635

## **Whether misconduct caused the loss of employment**

34636 For a sanction to be imposed it must be proved that the claimant lost their employment through misconduct. A sanction cannot be imposed if the acts or omissions took place before the paid work began. Claimants may sometimes have failed to disclose anticipated or pending court proceedings when applying for employment. Normally any non-disclosure will have been before employment commenced. However, DMs should look at the facts of each case before deciding whether such failure was during the employment. If claimants obtained their employment by misrepresenting their ages or their qualifications and were dismissed when the true position came to light, they have not lost their employment through their misconduct.

34637 The exact way in which the claimant lost paid work is not important. The claimant may

- 1.** be summarily dismissed **or**
- 2.** be dismissed with notice **or**
- 3.** leave voluntarily<sup>1</sup>**or**
- 4.** resign as an alternative to probable or possible dismissal<sup>2</sup>.

In any of these circumstances, claimants can be held to have "lost their employment" through misconduct. If they resign, this is so even though their employer might not have dismissed them for the misconduct.

1 R(U) 17/64; 2 R(U) 2/76

34638 It is also immaterial that the claimant was allowed to continue working for some time after the act of misconduct (or the last such act) if there is an adequate explanation. Examples of this are

- 1.** the misconduct was being investigated
- 2.** the result of criminal proceedings was awaited
- 3.** the employer had not heard of the misconduct

4. the employer was awaiting a report<sup>1</sup>.

1 R(U) 14/57

34639 If, however, there is no adequate explanation for the delay it may be reasonable to infer that it was decided at the time not to discharge the claimant and that the eventual loss of employment was really due to some other cause. If the employer has issued a statement that will provide strong evidence of the reason(s) for the dismissal.

34640 The claimant's misconduct need not be the only cause, or even the main cause, of the loss of employment, provided it is an immediate and substantial reason for the loss **at that particular time**. It is irrelevant that there are or may have been other contributory factors.

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

#### **Example 1**

Tim loses his employment because of inefficient workmanship, "trouble-making" and absenteeism. The actual cause of his dismissal one afternoon is that he is absent that morning and has been late on the two previous days. Tim has lost his employment through misconduct<sup>1</sup>.

#### **Example 2**

Brian, a fitter, is dismissed for "trouble-making" and for drunkenness on a customer's premises. He is dismissed on receipt of a report about his drunkenness from the customer. Brian has lost his employment through his misconduct<sup>2</sup>.

#### **Example 3**

Rose, an apprentice draughtsman, is dismissed after she has been convicted of a criminal offence unconnected with her employment. A further reason for her dismissal is that she has failed to attend evening classes. The criminal offence is misconduct and is the direct reason for her discharge. Rose has lost her employment through misconduct<sup>3</sup>.

#### **Example 4**

Paige is dismissed because her employer's insurance company increase the premiums they have to pay to insure their fleet of vehicles. The insurance company do so because Paige has been involved in four accidents. The insurance companies of the other vehicles involved in the accidents show that all the accidents were Paige's fault, so the employer's insurer cannot recover any costs. Paige has not lost her

employment through misconduct. She was dismissed because she was too big a liability to be kept on.

1 R(U) 1/57; 2 R(U) 14/57; 3 R(U) 20/59

34641 - 34650



# Leaving employment voluntarily 34651 - 34710

[Introduction](#) 34651 - 34652

[Meaning of leaving work voluntarily](#) 34653 - 34665

[Whether the claimant left voluntarily](#) 34666 - 34685

[Claimants who volunteer for redundancy](#) 34686 - 34690

[Claimants who leave employment early](#) 34691 - 34700

[Trial periods](#) 34701 - 34707

[Apprenticeships](#) 34708 - 34710

## 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 leaving work 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.

**Note:** The DM should take all relevant circumstances into account and consider if any further evidence is required in each individual case and if they feel further evidence is required they should ask for it either from the claimant, the employer or a third party in person or by letter.

## **Giving the claimant a chance to comment**

34660 Before imposing a sanction for leaving voluntarily, the DM should be satisfied that claimants have

been given an adequate chance to comment on all the statements made against them (see DMG 34659 **Note**).

34661 If the employer's statements are not complete, the DM can still arrange for claimants to have a chance to comment. But if

**1.** it is clear that the employer will not or cannot provide any further information **and**

**2.** the evidence is insufficient to establish that the claimant left voluntarily

claimants should not be approached again in the hope that they may provide further evidence which would justify a sanction for leaving voluntarily. The DM should decide not to impose a sanction.

34662 If fresh allegations are made at a FtT hearing in the claimant's absence, it would be normal to ask for an adjournment to allow the claimant to attend or answer the allegations in writing.

34663 - 34665

## **Whether the claimant left voluntarily**

### **Claimants who have no employment**

34666 Claimants cannot leave paid work at a time when they do not have any. Claimants whose jobs were abolished have not left their work voluntarily even if they were offered or could apply for alternative jobs. But the DM may need to consider whether they failed to comply with a requirement to take up or apply for paid work (see DMG 34721).

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

### **Women on maternity leave**

34667 A woman may decide not to return to work for up to 52 weeks after the beginning of the week in which she has a child depending on her length of service. She has not left her employment voluntarily unless the contract of employment continued up to

the date on which she decided not to return. But the DM may need to consider whether she failed to comply with a requirement to take up paid work (see DMG 34721).

## Mariners

34668 Mariners whose employment comes to an end with the normal termination of articles do not voluntarily leave employment if they then decide not to renew their contracts.

## Police

34669 Police officers qualify for maximum service pensions after 30 years. But this does not mean that their contracts of employment will end. They will have left their employment voluntarily if their contracts of employment have not ended and they leave after 30 years<sup>1</sup>.

1 R(U) 4/70

34670

## Resignation and dismissal

34671 When claimants' employments ended because they had given notice, they have left voluntarily even if they

1. were dismissed at once instead of being allowed to work out their notice<sup>1</sup> **or**
2. tried unsuccessfully to withdraw or cancel their notice<sup>2</sup>.

1 CU 155/50(KL); R(U) 2/54; R(U) 1/96; 2 R(U) 27/59

34672 While working out their notice, people may be dismissed in circumstances which have no connection with those in which they gave notice. They have not left their employment voluntarily. But the DM may need to consider whether they have lost their employment through misconduct (see DMG 34531 et seq).

## Relationship to misconduct

34673 Claimants have **not** voluntarily left their employment if they resigned

1. because they genuinely believed that their employer was about to end their employment at once **or**
2. when they were given the choice of resignation or dismissal.

In these cases the DM may need to consider whether they have lost their employment through misconduct (see DMG 34531 et seq).

34674 Sometimes claimants have left their employment before the date on which the employer would have dismissed them. Such claimants have voluntarily left their employment and can be sanctioned. But the period of the sanction cannot be longer than the number of days between the date they left and the date on which they would have been dismissed. So, in cases where

1. claimants left because they expected to be dismissed **and**
2. the dismissal would have been because of the claimants' misconduct

it may be preferable to sanction the claimant on the grounds of misconduct if this has been referred to the DM for a decision. See guidance at DMG 34103 for sanctions where employment is for a limited period.

### **Example**

Melanie is suspended from work on full pay whilst police investigate an alleged theft by her from her employer. The employer tells her that she will stay suspended until any court case against her has been heard. If she is found guilty she will be sacked at once. The claimant, knowing that she is guilty of theft, resigns before she can be dismissed. Three weeks after she resigns she goes to court and pleads guilty to the charge of theft. If both misconduct and leaving voluntarily have been referred to the DM for a decision, the DM can decide both that Melanie

1. left her employment voluntarily without good reason, because she left earlier than she needed to **and**
2. lost her employment through misconduct.

The DM should impose a sanction on the ground that Melanie lost her employment through misconduct.

34675 If claimants and their employers agreed to end or suspend the claimants' employment because of offences committed before their employment began they have not voluntarily left employment<sup>1</sup>.

1 R(U) 26/56; R(U) 1/58

### **Notice cancelled or suspended**

34676 Employers may have given claimants notice to end their employment. They may then have cancelled or suspended this notice, so that the claimants could have continued in the same employment.

If claimants did not do so, they have voluntarily left their employment. But if an offer of further employment was made after the claimants' employment had ended, they have not voluntarily left their employment. The DM may need to consider whether they failed to comply with a requirement to take up or apply for paid work (see DMG 34721 et seq).

## **Changing the terms and conditions of employment**

34677 If employers tried to impose a change in the terms and conditions of employment

- 1.** without agreement **and**
- 2.** which makes them a lot less favourable than before

they may have ended the employment by breaking the contract of employment<sup>1</sup>. If claimants left their employment in such circumstances, they will not have left voluntarily. Employees who are dismissed for refusing to accept such changes have not left voluntarily<sup>2</sup>. However the DM may have to consider whether the claimant failed to comply with a requirement to take up or apply for paid work (see DMG 34721 et seq).

**Note:** It is for the DM to consider in every case whether the claimant had good reason for the particular act, omission or behaviour. For detailed guidance on good reason see DMG 34200 et seq.

1 R(U) 25/52; 2 R(U) 7/74; R(U) 2/77

## **The national minimum wage**

34678 Claimants may suffer detriment caused by their employer because the

- 1.** employees (or someone on their behalf) were going to take action to enforce or benefit from a right under the NMW legislation<sup>1</sup>**or**
- 2.** employer was prosecuted for an offence under the NMW legislation<sup>2</sup>**or**
- 3.** employees qualify or may qualify for the national minimum wage or a particular rate of the national minimum wage<sup>3</sup>.

1 NMW Act 98; 2 s 31; 3 s 23

34679 If claimants have suffered such detriment they may either

**1.** not have left employment voluntarily because they have been constructively dismissed **or**

**2.** have good reason for leaving their paid work voluntarily.

**Note:** The DM should make sure that the detriment was because of the reasons given in DMG 34378 **1.**, **2.** or **3.**. See DMG 34200 et seq for detailed guidance on good reason.

## **Absence from work**

34680 Claimants who had been absent from work can often be sanctioned for misconduct. But sometimes they may have voluntarily left their employment.

34681 If when they first claim JSA claimants have

**1.** been absent from work **or**

**2.** failed to return to work after a period of suspension

it may be reasonable to decide that the employment has come to an end by the date they claim, even though neither the claimant nor the employer have given notice. A sanction for leaving voluntarily should be considered.

34682 Where the employer has dismissed the claimant because of absence, and there is no evidence that the claimant had already left the employment by that time, a sanction for misconduct should be considered (see the guidance at DMG 34531 et seq for further guidance on misconduct).

34683 - 34685

## **Claimants who volunteer for redundancy**

34686 The DM should treat the claimant as not having left employment voluntarily where<sup>1</sup>

**1.** the claimant

**1.1** volunteered or agreed to be made redundant **and**

**1.2** either

**1.2.a** was dismissed by the employer **or**



**1.2.b** was **not** dismissed but left on a date agreed with the employer following an agreement on voluntary redundancy **or**

**2.** the claimant had been laid off or on short-time for four weeks or six weeks out of 13 and asked the employer for a redundancy payment<sup>2</sup>.

1 JS Act 95, s 19(3); JSA Regs, reg 71(1); 2 ER Act 96, s 135(1) & 148 - 152

## **Meaning of redundant**

34687 The claimant could only volunteer or agree to be made redundant if there was a redundancy situation as defined in employment legislation<sup>1</sup>. The DM can accept that there was a redundancy situation if the claimant had received a statutory redundancy payment<sup>2</sup>.

1 JSA Regs, reg 71(1); ER Act 96, s 139(1)(a) & (b); 2 s 135(1)

34688 There was a redundancy situation as defined in employment legislation if the main or only reason for the dismissal was

**1.** the employer stopped or intended to stop running the business

**1.1** in which the employee was employed **or**

**1.2** in the place where the employee was employed **or**

**2.** the business needed or expected to need fewer employees

**2.1** to carry out a specific type of work **or**

**2.2** to carry out a specific type of work in the place where the employee was employed **or**

**3.** the business did not need or expected not to need any employees

**3.1** to carry out a specific type of work **or**

**3.2** to carry out a specific type of work in the place where the employee was employed<sup>1</sup>.

1 ER Act 96, s 139(1)

34689 The business of the employer and any associated employers should be treated as one business

to satisfy any of the conditions in DMG 34688<sup>1</sup>. The conditions in DMG 34688 will be satisfied if they happened either permanently or temporarily, and no matter what caused them<sup>2</sup>.

1 ER Act 96, s 139(2); 2 s 139(6)

### **Meaning of laid off and short-time**

34690 Laid off means that a person employed under a contract of employment does not have any work provided for them and as a result does not receive any pay for a week<sup>1</sup>. Short-time means that a person receives less than half the pay they usually get for any week because there has been a reduction in the work they normally do<sup>2</sup>.

1 ER Act 96, s 147(1); 2 s 147(2)

### **Claimants who leave employment early**

34691 Claimants have left voluntarily if they satisfied the condition in DMG 34651 but they left

**1.** earlier than the date they

**1.1** were to be dismissed by the employer **or**

**1.2** agreed with the employer they would leave **and**

**2.** without the employer's agreement.

34692 If the claimant does not have good reason a sanction should be imposed.

**Note 1:** See DMG 34200 et seq for detailed guidance on good reason.

**Note 2:** All higher-level sanctions for leaving employment voluntarily from 22.10.12 are for a fixed period, there are no discretionary length sanctions (see full guidance on higher-level sanctions at DMG 34091 et seq).

34693 – 34700

## Trial periods

34701 The trial period rule<sup>1</sup> allows people who have not worked for some time to take employment without the risk of being sanctioned for leaving employment voluntarily if they leave that employment within a certain period. But if they leave as an alternative to being dismissed, they may still be sanctioned for losing their employment through misconduct (see DMG 34531 et seq).

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

### When claimants can benefit from the trial period rule

34702 Claimants can benefit from the trial period rule if

**1.** they have not

**1.1** worked in employed earner's employment **nor**

**1.2** been a S/E earner **nor**

**1.3** been a F/T student or been in relevant education (see DMG Chapters 20 and 30)

during the 13 weeks before the day the employment in question started<sup>1</sup>**and**

**2.** they **do not** leave the employment in question

**2.1** before or at the end of the fourth week in each of which they have worked for at least 16 hours  
**nor**

**2.2** after the end of the twelfth week in each of which they have worked for at least 16 hours<sup>2</sup>.

The four and twelve weeks need not be consecutive. "Week" means any continuous period of seven days<sup>3</sup>. The meaning of work is explained at DMG 34704.

1 JSA Regs, reg 74(1); 2 reg 74(4); 3 reg 75(2)

34703 For the purpose of DMG 34701 **1.**

**1.** crewing or launching a lifeboat **or**

**2.** performing duty as a P/T member of a fire brigade **or**

**3.** attending a work camp (see DMG 21368) for up to 14 days

does not count as employed earner's employment, self employment or relevant education<sup>1</sup>. And a claimant doing any study or training as part of **1.** to **3.** is not to be regarded as a F/T student just because of those activities.

1 JSA Regs, reg 4, 74(2) & (3)

## Meaning of work

34704 Work is not the same as employment. Work

**1. includes** periods when claimants are not actually working, but required under their contracts of employment to be in certain places ready to respond to the needs of the job (for example, firefighters on duty at a fire station, doctors on call at a hospital)

**2. does not** include periods

**2.1** when claimants are not at work because of sickness, holiday etc., even if they are still paid

**2.2** spent in preparatory work that claimants do not have to do under their contracts of employment<sup>1</sup>

**2.3** when retained firefighters have to remain within a certain distance of the fire station, ready to respond to a fire<sup>2</sup>.

1 R(U) 3/82; 2 Suffolk County Council v S of S for the Environment & Alcock [1985] IRLR 24, [1984] ICR 882 HL

34705 The following examples show how to work out whether the trial period rule applies.

### Example 1

Mary previous job ends on 9 September.

On 9 December she starts F/T work as an employed earner.

She leaves that job after eight weeks.

The 13 weeks before 9 December are 9 September - 8 December.

The trial period rule cannot help Mary because she worked on 9 September (see DMG 34702 **1.1**).

### Example 2

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

He works for 37 hours in that week. He has a week's paid holiday from 16 September to 22 September. He is off work sick from 23 September to 13 October. He works for 37 hours in weeks commencing 14 October and 21 October and for seven hours on 28 October.

He then leaves the job.

The trial period rule cannot help Michael because he worked for at least 16 hours in only three weeks since starting the job (see DMG 34702 **2.1**).

### **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.

# Members of Her Majesty's Forces 34711 - 34714

[Voluntarily ceased employment](#) 34711

[Misconduct](#) 34712 - 74714

## Voluntarily ceased employment

34711 The DM cannot impose a sanction for leaving employment voluntarily on serving members of HMF who are discharged at their own request<sup>1</sup>. The DM should accept the discharge document signed by or on behalf of the Secretary of State as evidence of discharge<sup>2</sup>.

1 SS (Ben) (Members of the Forces) Regs, reg 3(2); 2 reg 3(3)

## Misconduct

34712 Serving members of HMF who are discharged, cashiered or otherwise dismissed because they have been convicted under

1. relevant forces legislation<sup>1</sup> **or**
2. proceedings before any civil court

should be treated as if they have lost their employment through misconduct<sup>2</sup>.

1 Naval Discipline Act 57; Army Act 55; Air Force Act 55;  
2 SS (Ben) (Members of the Forces) Regs, reg 3(1)

34713 A certificate signed by a person authorized by the Secretary of State which gives

1. confirmation **and**
2. the date of the
  - 2.1 discharge **or**
  - 2.2 cashiering **or**
  - 2.3 dismissal

is conclusive proof, unless it is proved that the person who signed the certificate was not a person authorized by the Secretary of State<sup>1</sup>.



34714 If serving members of HMF are dismissed otherwise than outlined in DMG 34713 although the DM cannot treat them as having lost employment through misconduct, the DM can consider whether they in fact lost their employment through misconduct.

## Share fishermen 34715 - 34720

34715 Employment as a share fisherman, even though it is actually self employment, is treated as employment as an employed earner for all the sanctions questions<sup>1</sup>. So all the sanctions questions can apply to a share fisherman and employment as a share fisherman. See DMG Chapter 27 for the meaning of share fisherman.

1 JSA Regs, reg 159

34716 - 34720

# Refuses or fails to take up employment 34721 - 34747

[Introduction](#) 34721 - 34722

[Informed by an employment officer](#) 34723 - 34731

[Refusal or failure](#) 34732 - 34741

[Exempt vacancies](#) 34742 - 34747

## 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 3rd party 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

### **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, newspaper or by any other means 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. However the DM can consider whether the



claimant Neglected to Avail themselves of a job see further guidance at DMG 34751 et seq.

## **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.

**Note:** UJ is to be replaced by a new job matching service, 'Find a Job'. The free government recruitment service will continue to connect jobseekers with thousands of employers across the UK. The change will come into effect on 14.5.18 and access to existing UJ accounts will be available up until 23:59 hours on 17/06/18, although employers will no longer be able to post new jobs from 17/05/18. This means 'Find a job' and UJ will run side by side between 14/05/18 and 23:59 hours on 17/06/18. See further guidance at 34917 et seq.

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.

## Trade dispute stoppage 34748 - 34750

34748 No sanction should be made where the sanctionable failure in question is

**1.** a failure to

**1.1** apply for a particular vacancy **or**

**1.2** take up an offer of employment **or**

**2.** that the claimant leaves employment voluntarily

because of a strike arising from a trade dispute<sup>1</sup>.

**Note:** This applies even if the fact is not known at the date of the failure but comes to light later. The DM can consider revising or superseding the decision if a sanction has already been imposed.

1 JS Act 95, s 20(1) & 20B(1)

34749 For the job to be vacant because of the TD stoppage, the

**1. stoppage** must exist at the time the vacancy is notified or offered. It is not enough that there is a TD, or that a stoppage seems imminent **and**

**2.** vacancy must have been caused by the stoppage. This will not be the case if the vacancy

**2.1** was caused by the illness of an employee, even if there is a stoppage of work at the employer's premises **or**

**2.2** arose normally after the stoppage had ended and the places of the employees affected by the TD had been filled **or**

**2.3** arose because an employee left a job where there was no stoppage in order to take a job where there **was** a stoppage.

34750

# Neglect to Avail 34751 - 34760

[Introduction](#) 34751 - 34752

[Meaning of neglect](#) 34753 - 34760

## Introduction

34751 Legislation provides that a failure is a sanctionable failure where a claimant without good reason neglects to avail himself of a reasonable opportunity of employment<sup>1</sup>.

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

34752 From 22.10.12 'neglects to avail' is no longer defined in legislation. In every case the DM has to consider any employment opportunity together with the claimant's circumstances and decide if the claimant had a good reason for the neglect. The DM no longer considers the former employment of the claimant or one which has been notified by an Emp O.

## Meaning of neglect

### Claimant knew about employment, or could have found out

34753 Claimants can be sanctioned if they knew employment was available to them, even if the DM cannot show whether, or when, it was notified to them by the employer. This may happen if, for example

1. claimants are temporarily laid off because their employer has no work for them, but they do not go back to work when it becomes available again
2. women do not return to work after maternity leave.

### Women on maternity leave

34754 Where

1. a woman does not return to work after maternity leave **and**
2. her contract of employment **continues** during the period of maternity leave

the DM can also impose a sanction for leaving voluntarily without good reason<sup>1</sup> if the question is referred for a decision. But if the contract continues, it does not prevent the DM considering a sanction for neglect to avail<sup>2</sup>. If the DM finds it difficult to decide whether the contract continued, the DM can make a decision on neglect to avail to avoid the need to decide this question.

1 JS Act 95, s 19(2)(b); 2 s 19(2)(d)

### **Unreasonable behaviour**

34755 If claimants behave unreasonably and, as a result, lose the chance of employment, the DM can decide that the claimants have neglected to avail themselves of employment.

#### **Example**

Guy, a teacher, refuses to register with the General Teaching Council for Scotland. As all teachers have to register to remain teachers, he is sacked. He has neglected to avail himself of employment, as he knew he could keep his job or return to it, if he had registered<sup>1</sup>.

1 R(U) 5/71; R(U) 23/51; R(U) 32/52

### **Guidance on refusing employment applies**

34756 The guidance at DMG 34721 et seq on failure or refusal and claimants who change their mind, also applies to neglect to avail.

### **Reasonable opportunity**

34757 The opportunity of employment must be a **reasonable** one. The word reasonable should be given its ordinary meaning, that is, sensible or likely. An opportunity may not be reasonable if there were, for example, over a 100 applicants for the vacancy<sup>1</sup>. If the employment offered a rate of pay below the national minimum wage, it would not be a reasonable opportunity of employment.

1 R(U) 9/72

34758 The claimant's personal or domestic circumstances are not relevant when deciding whether an opportunity of employment is reasonable<sup>1</sup>. But they may be relevant when deciding good reason (see full guidance on good reason at DMG 34200 et seq).

### **Trial periods/Employee Shareholder Contracts/Zero hours contract**

34759 Claimants cannot be sanctioned if they neglect to avail themselves of an employment opportunity where they are

- 1.** within a trial period(see guidance at DMG 34701) **or**
- 2.** the employment opportunity is an Employee Shareholder Contract (see guidance at DMG 34335) **or**
- 3.** the employment opportunity is a zero hours contract (see DMG 34415).

### **Apprenticeships**

34760 If a claimant neglects to avail themselves of a place on an apprenticeship opportunity see the guidance at DMG 34743.

# Fails for no good reason to participate in a scheme of a prescribed description (MWA) 34761 - 34830

[Introduction](#) 34761

[MWA scheme](#) 34762 - 34790

[MWA scheme ending](#) 34791 - 34800

[The effect of new legislation on JSA claimants referred to the MWA scheme prior to 26.3.13](#) 34801 - 34830

## 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.



## **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 ends

whichever 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**
- 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 34765 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. Also see DMG 34771 regarding evidence of notification.

**Note 2:** See guidance at DMG 34778 for the meaning of “failure to participate” in relation to what specific activities a claimant may be mandated to do at **2.** For guidance on good reason see DMG 34200 et seq, but also see DMG 34780 where the claimant is dismissed from the MWA scheme due to ‘inappropriate behaviour’.

1 JSA (MWA Scheme) Regs, reg 4

## **Failure to participate in the MWA scheme**

34769 A claimant is regarded as failing to participate in the MWA scheme where they fail without good reason to comply with any of the requirements notified in DMG 34765<sup>1</sup>.

**Note:** A sanction can only be made 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 34787 where the notification is for any period other than 4 weeks.

1 JSA (MWA Scheme) Regs, reg 6

## **Pre-selection interview**

34770 The informal pre-selection discussion with the advisor (work coach) does not form part of the mandatory work scheme<sup>1</sup> as notified under relevant legislation<sup>2</sup>. A sanction will only be appropriate once the claimant has been offered a placement and has been notified of their requirement to participate in the scheme and the claimant fails to participate in the scheme without good reason.

**Note:** The pre-selection interview is a normal advisor interview to discuss further case management and a sanction would be considered under the normal JSA rules for refusal or failure to carry out any reasonable JSD (see DMG 34901) or failed to participate in an interview rules (see DMG 34831) if appropriate in the circumstances.

1 JS Act 95, s 17A; 2 JSA (MWA Scheme) Regs, reg 4

## **Induction/pre-start interview**

34771 If there is a request by the provider to attend a pre-start interview that is outside the MWA 4 week mandated period and the claimant fails to attend/take part a sanction cannot be considered as this interview is not part of the MWA as notified.

### **Example**

Vanessa is notified by her JCP advisor she has been selected to participate in the MWA scheme and is referred to a relevant provider. The provider subsequently notifies Vanessa she is required to start her work placement on Monday 7 November at 9am for 4 weeks. The provider then invites Vanessa to attend a pre-start interview on Friday 4 November for 1 hour at 2pm. Vanessa does not attend the interview on 4 November and the provider informs the DM of the failure. A sanction is not appropriate as the interview is outside the 4 week mandated period of the MWA scheme as notified by the provider and attendance would be voluntary. If Vanessa does not attend the placement on the start date, i.e. 7

November, then a sanction will be considered.

## **Evidence of notification**

34772 When considering whether to sanction or not the burden of proof is on the Secretary of State to show that the correct notification was issued. It is not necessary for the DM to see a copy of the relevant notification before considering a sanction but the DM should check system records to ensure a record has been made of the issue of the relevant letter. An assumption can be made that the claimant was correctly notified if the relevant notifications are recorded as being issued unless the claimant raises the issue as a reason for non-participation in the scheme.

34773 It would be for the claimant to prove on the balance of probabilities they did not receive the notice in order to show good reason if the DM can show it was sent (see DMG 34768). The normal considerations on good reason should be followed as per the guidance in DMG 34200 et seq and each case considered on the individual circumstances of the case. Also see guidance at DMG 34872 and DMG 34873 where the claimant raises the issue of notification.

## **Example**

Keiran is notified that he is required to participate in the MWA scheme. He fails to participate and explains that the reason why he did not attend his placement was because he thought that he would not gain the skills that he thinks he needs to obtain work. The DM considers whether this is good reason. The DM need not consider the notification issue. It can be assumed Keiran was correctly notified. Departmental records show both a notice from JCP and the provider were issued and the claimant does not raise the issue of notification in his good reasons.

## **Circumstances where requirement to participate is not required or ceases to apply**

34774 A requirement to participate in the MWA 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>.

<sup>1</sup> JSA (MWA Scheme) Regs, reg 5(1)

34775 The requirement to participate ceases to apply on the day specified in the notice given in DMG 34773 **1**.<sup>1</sup>

1 JSA (MWA Scheme) Regs, reg 5(2)

## **Contracting out**

34776 Functions of the Secretary of State which can be carried out by, or by employees of, any person authorised by the Secretary of State<sup>1</sup> are the

- 1.** notification of the MWA scheme (see DMG 34765) **and**
- 2.** requirement to participate in the MWA scheme (see DMG 34765) **and**
- 3.** notification that requirement to participate in the MWA scheme ends (see DMG 34773).

**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:** Other than with the Wp and CwP (see DMG 34879 et seq), contracting out provisions for prescribed work schemes do not give providers Emp O status, see the guidance on Emp O at DMG 34015.

1 JSA (MWA Scheme) Regs, reg 20

## **Provider gives good reasons when referring a sanction doubt**

34777 On consideration of good reason the DM would examine all the available evidence including any information from the provider on the referral notice of a sanction doubt. The DM may choose to contact the claimant by phone or letter where the claimant has already given his reasons for the non participation to the provider to clarify the reasons or seek further evidence as considered appropriate. The DM considers all the individual facts of the case (see the detailed guidance on good reason at DMG 34200 et seq).

## **Meaning of fails to participate**

34778 'Fails to participate' is not defined in legislation and therefore takes its everyday meaning of 'fulfilling a specified requirement'. For the MWA scheme it will include a failure to participate in the scheme, failure to attend a work placement, take part in or meet expected standards of any activity

- 1.** notified to them by the placement provider **and**

## 2. what is considered

### 2.1 reasonable **and**

### 2.2 acceptable

in the individual circumstances which makes it more likely in the opinion of the Secretary of State that the claimant will obtain employment or improve their prospects of obtaining employment.

34779 This may include for example

1. turning up for an interview
2. preparing an action plan
3. writing a CV
4. working as a team
5. displaying interpersonal skills
6. taking part in skills training
7. improving personal presentation
8. attending a skills assessment
9. taking part in a community based work placement.

This list is not exhaustive. "Fails to participate" is basically not fulfilling any specified reasonable requirement that a claimant is notified to do as part of participation in the scheme.

**Note:** It would be for the DM to consider the claimant's reasons for any particular behaviour, act or omission when considering whether to sanction if a claimant fails to participate in the MWA scheme. The claimant would have to show good reason for the failure (for detailed guidance on good reason see DMG 34200 et seq). Also see example at DMG 34876.

### **Example**

Vanessa is notified of a MWA work placement as a shop assistant in a charity shop. She will be required to perform any reasonable duties of a shop assistant by way of participation in the scheme as notified to her by the provider. These include serving customers, stocking shelves, keeping the shop tidy and answering queries. She will also be expected to turn up on time, be presentable and polite to customers and other staff. If she fails to do any of the tasks required of her without good reason a sanction can be

considered (also see the guidance on inappropriate behaviour at DMG 34780).

## **Inappropriate behaviour**

34780 The MWA scheme is designed to help claimants

- 1.** enhance and improve their employment prospects **and**
- 2.** gain opportunities to develop skills and disciplines associated with a normal working environment (e.g. attending on time, carrying out tasks, working as a team and interpersonal skills etc)

in order to prepare them to return to or enter the labour market. Participation can also include 'behaviours' acceptable in a place of work. For example participants are expected to comply with the required codes of conduct, policies and procedures expected by their work placement provider, which includes for example being courteous to employees, staff and customers and treating the provider and other employees politely, fairly and considerately.

34781 Whilst participating in the MWA scheme if a claimant uses inappropriate behaviour this may be perceived as 'failing to participate' and a sanction may be appropriate. Examples of conduct which could amount to a failure to participate, even if the placement continues, may include

- 1.** the use of offensive language, whether swearing or not, that is not appropriate in any reasonable work setting
- 2.** constantly complaining about the scheme or the provider or what they are asked to do
- 3.** being unwilling, uncooperative or obstructive
- 4.** a failure to dress appropriately or having an unkempt appearance
- 5.** a general bad attitude
- 6.** using threatening or intimidating behaviour
- 7.** showing disinterest and not doing anything and/or not following instructions
- 8.** intimidating or bullying other staff or
- 9.** behaving in an unreasonable manner.

This list is not exhaustive and it will be for the DM to consider all the facts and evidence of the individual case as presented and decide on the balance of probabilities whether the claimant's behaviour was so

inappropriate that it was considered they were no longer suitable to remain on the placement and whether any dismissal from the scheme was on account of the claimant's own behaviour.

34782 A claimant's acts and omissions will be judged by the DM under good reason with reference to that claimant's personal and individual circumstances, considering what is reasonable behaviour expected by a reasonable person in a working situation. For detailed guidance on good reason see DMG 34200 et seq.

### **Example**

Hannah starts her MWA work placement as required in a coffee shop but is sent home on her first day because of her attitude and rude behaviour towards the other staff and customers. She continually uses obscene language, is unwilling and uncooperative. She constantly complains about having to do menial tasks and will not follow simple instructions.

The DM can consider a sanction as Hannah's behaviour is a failure to participate as required by way of participation in the MWA scheme. It is not considered acceptable behaviour in the coffee shop and does not meet the code of conduct of the placement provider and this therefore justified her dismissal from the placement.

Such conduct meant the provider was not prepared to continue with Hannah's placement.

The DM will consider whether Hannah can show good reason for her actions and behaviour taking all the individual circumstances into account. The advisor may need to consider what other actions may be considered for Hannah to develop her interpersonal and social skills to overcome her personal barriers to work.

34783 – 34785

### **Requirement to complete MWA**

34786 Once a claimant has been sanctioned for not participating in the MWA scheme they will not be required to complete the balance of the 4 weeks on the placement. JSA will not be payable for the full period of any MWA scheme sanction regardless of whether they attempt to re-engage with the scheme (also see the guidance in DMG 34787). If the JCP advisor feels that a MWA scheme is still appropriate for a claimant they will have the option of referring that claimant to a further MWA placement.

### **The MWA notification is for a period other than 4 weeks**

34787 Unless the circumstances in DMG 34788 apply, if the dates on the notification do not equate to 4 weeks the notification does not comply with the legal requirements<sup>1</sup>. There can be no failure to participate and the question of good reason does not arise.



## Balance of time

34788 The only time a period of less than 4 weeks should appear on a MWA scheme notification is where the claimant was re-referred to a placement to complete the balance of time following an interruption because the claimant

1. failed to participate and shows good reason for the failure **or**
2. stops claiming for a reason other than going into employment and reclaims JSA within 14 days.

In these cases the provider may have issued a second notification stating the balance of time for the completion of the scheme which will be for a period of less than the mandatory 4 weeks. The claimant will only be referred back for complete weeks (also see DMG 34786). A further higher-level sanction could apply if the claimant fails to participate without a good reason for the balance of time.

**Note 1:** The balance of time is the remaining time on the placement rounded down to the nearest week.

**Note 2:** Claimants may only be re-referred for a balance of time if they actually started their placement but left before completing their 4 weeks.

### Example 1

Vanessa is notified of a MWA placement as a shop assistant in a charity shop which is to commence on 7.10.13 at 9am for four weeks, finishing on 2.11.13. On 18.10.13 Vanessa fails to participate with the scheme due to a domestic emergency and the DM accepts good reason for the failure. Vanessa receives a second notification stating she is required to attend the balance of 2 weeks from 21.10.13 to 2.11.13 on the MWA placement.

### Example 2

Marion starts her MWA work placement in a coffee shop on 3.2.14. The placement is to run for 4 consecutive weeks to 2.3.14. On 12.2.14 Marion fails to attend her placement as she says her alarm failed to go off and she slept in. On 14.2.14 the DM decides Marion had no good reason for the failure and a sanction is appropriate. There are no previous higher-level sanctionable failures recorded and a 13 weeks sanction is imposed.

Marion is re-referred to her placement at the coffee shop for the balance of time of 2 weeks from 17.2.14 to 2.3.14. On 2.3.14 Marion again fails to turn up to the placement. She says she didn't think it would matter as it was the last day of her placement and she wanted to attend her niece's birthday party on that day. The DM decides Marion has no good reason for the failure on 2.3.14 and that a further sanction will be appropriate. As the current failure on 2.3.14 is within 52 weeks, but not within 2 weeks, of the

previous sanctionable failure on 12.2.14, a 26 weeks sanction is imposed.

### **Provider makes an offer of employment**

34789 Where a claimant is offered a job by a provider as part of the MWA scheme, but the claimant refuses, the DM should consider whether the claimant was correctly notified of the vacancy by an Emp O<sup>1</sup> (see DMG 34723). A sanction doubt for a failure or refusal to apply for a vacancy can only be raised and applied by Jobcentre Plus.

**Note:** A MWA scheme provider is not necessarily an Emp O for the purpose of notifying a job vacancy. Other than with the Wp and CwP (see DMG 34879 et seq), contracting out provisions for prescribed work schemes do not give providers Emp O status. See further guidance on Emp Os at DMG 34015 and 34723. The provider should have notified JCP of the relevant vacancy and JCP should inform the claimant of the vacancy in the normal way (see DMG 34721 et seq).

1 JSA (MWA Scheme) Regs, reg 6

34790 If the vacancy has been correctly notified by an Emp O the consideration is whether the offer is reasonable for the particular claimant considering all their circumstances. It would be for the claimant to show good reason for the failure to take the employment (see the guidance at DMG 34721 et seq).

### **MWA Scheme Ending**

34791 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.

**Note:** The last date a claimant can participate in the MWA scheme is 27.4.16.

34792 As MWA providers have 20 working days in which to start the claimant on a placement, the final date for work coaches to refer a claimant to the MWA scheme, including for any 'balance of time', is 1.3.16.

**Note:** If a claimant fails to participate after 1.3.16 they cannot be re referred to the scheme for any 'balance of time'.

Example

Leo is referred to the MWA scheme and is required to participate in a 4 week placement on 22.2.16.

Leo fails to participate in the scheme on 7.3.16.

The DM determines Leo has a good reason for the failure to participate in the scheme on 7.3.16 due to illness.

There is no sanctionable failure and although the claimant has only completed 2 weeks of the 4 weeks placement Leo cannot be referred to the scheme to complete the balance of time as it is passed the deadline of 1.3.16 for referrals to the MWA scheme.

### **Effect on sanctions**

34793 DM action should be undertaken as normal following current processes for considering a sanction for any failures to participate in the MWA scheme received with a date of failure to participate on or before 27.4.16.

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

34794 The period of sanction applied will not be affected by the end of provision date. Any 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 34061et 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 scheme (i.e. 27.4.16).

### **Example 1**

Mark is referred to the MWA scheme and is required to participate in a 4 week placement from 29.3.16.

Mark fails to attend to start the placement on 29.3.16.

On 7.4.16 the DM decides that Mark cannot show a good reason for the failure to participate on 29.3.16 and a 13 week sanction is appropriate as this is Mark's first higher-level sanctionable failure.

Mark was last paid JSA up to 4.4.16. His benefit week ending day is a Monday. The sanction runs from 5.4.16 to 4.7.16.

### **Example 2**

Alejandro is referred to the MWA scheme and is required to participate in a 4 week placement on 15.2.16.

Alejandro fails to participate in the scheme on 22.2.16. The DM determines Alejandro has good reason

for the failure to participate in the scheme on 22.2.16 due to a family bereavement.

On 1.3.16 the work coach refers Alejandro to the MWA scheme to complete the balance of time on his placement starting on 31.3.16.

Alejandro fails to participate in the scheme on 11.4.16.

On 28.4.16 the DM determines Alejandro cannot show a good reason for the failure to participate in the MWA scheme on 11.4.16 and a 26 week sanction is appropriate as there has been a previous higher-level sanctionable failure within 52 weeks of the current failure.

Alejandro was last paid JSA up to 22.4.16. His benefit week ending day is Friday.

The sanction runs from 23.4.16 to 21.10.16.

34795 - 34800

## **The effect of new legislation on JSA claimants referred to the MWA scheme prior to 26.3.13**

34801 For guidance on how new legislation<sup>1</sup> may effect any JSA claimants who were referred to the MWA scheme schemes prior to 26.3.13 see Appendix 6 and 7 to this chapter.

*1 JS (BWS) Act 13, s 1(4), (5), (6), (7), (8) &(9) Jobseekers (Back to Work Schemes) Act 2013 (Remedial Order 2020 , JSA (MWA(Scheme) Regs, The Queen on the application of Caitlin Reilly and Jamieson Wilson and the Secretary of State for Work and Pensions*

34802 - 34830

## Failure to participate in an interview 34831 - 34845

[Participating in an interview](#) 34831 - 34833

[Failure to participate – sanction applicable](#) 34834 - 34840

[Failure to participate – no sanction](#) 34841

[Failure to participate – entitlement ends](#) 34842 - 34845

### Participating in an interview

34831 DMG Chapter 20 gives guidance on the way in which the claimant, including each member of a joint-claim couple, are required to participate in an interview. Legislation<sup>1</sup> amended the requirement from 22.10.12 to require the claimant (or in the case of a joint-claim couple, each member of the couple) to **participate** in an interview and not to just attend an interview.

**Note:** This applies **only** to an interview to provide information and such evidence as prescribed as to the claimant's circumstances, availability for employment and the extent to which they are actively seeking employment<sup>2</sup> (i.e. their normal fortnightly work-search review) and does **not** apply to failures to participate in any other type of interview as part of participation in a SAPOE scheme, the MWA scheme, failures in relation to employment or training schemes or job seeker's directions. See the relevant guidance within this chapter on failures to participate in other types of interviews under the relevant headings.

1 JS Act 95, s 8(1)(a) & (1A)(a); JSA Regs, regs 23 & 23A; 2 JS Act, sec 8(1)

34832 It is therefore a failure to participate without good reason in an interview in such a manner, time and place as specified in a relevant notification that provides the reason to sanction and not a failure to attend<sup>1</sup> (see DMG 34833).

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

34833 Participation entails at least turning up at the place and time specified, i.e. attending. However participation also extends to making some meaningful contribution to the interview and includes all ways of taking part in an interview whether by

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

A failure to take part in an arranged telephone interview could not be regarded as 'attending' and so the requirement to participate encompasses all types of interview and not just attendance at the office. It is the advisor who will specify the manner of participation (see 34835 regarding relevant notification).

### **Example**

Malik claims JSA and his regular fortnightly signing day is Tuesday. He lives in a remote area with a poor bus service to the local office and requests that he conducts his job search reviews by telephone. The advisor instructs Malik that he is to be available to participate in his interview by phone on 17.9.13 at 11am. If he fails to answer the phone at 11am on 17.9.13 without good reason the DM can consider a sanction.

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

34834 From 22.10.12 where

- 1.** the claimant (or in the case of a joint-claim couple, either member of the couple)
  - 1.1** fails to participate on the day specified in a relevant notification **and**
  - 1.2** makes contact with the Emp O in the manner set out in the notification before the end of 5 working days, those 5 days beginning with the first working day after the day they failed to participate **and**
  - 1.3** fails to show good reason for that failure **or**
- 2.** the claimant (or in the case of a joint-claim couple, either member of the couple)

**2.1** participates on the day and at the place specified in a relevant notification but fails to participate at the correct time **and**

**2.2** has been informed by the Emp O in writing that if they do not participate at the right time the next time they are required to participate then this may result in entitlement to JSA ceasing or a reduction being made to the award **and**

**2.3** fails to participate at the right time on the next occasion **and**

**2.4** makes contact with the Emp O in the manner set out in the notification before the end of 5 working days, those 5 days beginning with the first working day after the day on which they fail to participate at the correct time **and**

**2.5** fails to show good reason for that failure

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

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

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

1 JSA Regs, reg 70A(3) & (4) ; 2 reg 25

## **Relevant notification**

34835 The meaning of “relevant notification” in DMG 34834 is a notification to the claimant of when, where and how they are to participate in an interview<sup>1</sup>.

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

34835 The notification can be given or sent to the claimant in writing, by telephone or by electronic means<sup>1</sup>. However the claimant is notified he **must** be clearly informed of the date, time and place of the interview and the consequences of failing to take part (i.e. sanction) and a record of the notification and it's issue should be recorded in system records should it be required as evidence of notification should any resulting decisions to sanction for a failure to participate be challenged.

Note: See guidance at DMG 34033 et seq regarding notifications and the 'prior information

requirement'.

1 JSA regs, reg 23

## **Sanction**

34836 The period and amount of the reduction applicable for a failure to participate in an interview without good reason will be the low-level sanction<sup>1</sup> (see DMG 34161 et seq). For guidance on good reason see DMG 34200 et seq.

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

34838 - 34840

## **Failure to participate – no sanction**

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

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

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

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

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

## **Failure to participate – entitlement ends**

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

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

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



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

34844 – 34845

# Schemes for assisting claimants to obtain employment (SAPOE schemes) 34846 - 34900

[Introduction](#) 34846 - 34847

[Definitions of SAPOE schemes](#) 34848 - 34864

[Selection, notification and participation in a relevant scheme](#) 34865 - 34878

[Designation of Employment Officers](#) 34879 - 34892

[CwP scheme ending](#) 34893 - 34897

[Exemptions from requirement to meet the jobseeking conditions](#) 34898 - 34900

## 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 to participate in 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:** 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.

**Note 2:** The MWA scheme is not a SAPOE scheme - see DMG 34762 et seq for guidance on the MWA scheme.

**Note 3:** For guidance on how new legislation<sup>4</sup> may affect any JSA claimants who were referred to the ESE scheme, predecessors of the SAPOE schemes, prior to 26.3.13 see Appendix 6 and 7 to this chapter.

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

4 *Jobseekers (Back to Work Schemes) Act 2013 (Remedial) Order 2020, JS (BWS) Act 13, JSA (ESE Scheme) Regs, The Queen on the application of Caitlin Reilly and Jamieson Wilson and the Secretary of State for Work and Pensions*

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 (See **Note 6**).
8. Community Work Placements (see **Note 5**)
9. Work and Health Programme
10. The Restart Scheme (see **Note 7**).

**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 obtain 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.

**Note 6:** The Work Programme is removed from legislation<sup>1</sup> from 14.3.22 as the scheme is no longer operational.

**Note 7:** The Restart Scheme<sup>6</sup> is inserted as a SAPOE scheme from 14.3.22. See further guidance at DMG 34864.

*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;  
5 reg 3(8); 6 reg 3(8D)*

## Definitions of SAPOE schemes

### 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 (NEA)**

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 (sbwa)**

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 (Sc)**

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 (Wp)

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.

**Note 7:** The Work Programme is removed from legislation<sup>1</sup> from 14.3.22 as the scheme is no longer operational.

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

## Community Work Placements (CwP)

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 (WHP)**

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 claimants 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 from 3.4.18.

**Note 4:** The long term unemployed are those claimants who have not moved into employment within 24 months of their claim. The work coach will select claimants for the WHP following the eligibility criteria detailed in the policy for the scheme and operational instructions. The current guidance for notification and participating in a SAPOE scheme will apply equally to the WHP (see DMG 34865 et seq).

**Note 5:** The WHP will not roll out in Scotland or Northern Ireland. The power to create employment support programmes for the long term unemployed and disabled people in Scotland has been devolved to the Scottish Government. See DMG 34860 for guidance on employment support in Scotland.

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

### **Public Sector Comparator (PSC)**

34862 PSC has been given the resource and flexibility to deliver a successful programme of Work & Health Programme (WHP) provision for the most vulnerable customers and long term unemployed alongside the WHP.

**Note:** The purpose of the PSC is to provide an assessment of whether, given similar resources and freedoms to a contracted provider, DWP can deliver the same level or better performance than

contracted provision.

34863 The PSC will not operate nationally. Only a small number of selected districts will run the provision alongside the WHP. Those districts are

1. Lincolnshire, Nottingham and Rutland
2. Leicestershire and Northamptonshire
3. Devon and Cornwall
4. Dorset, Hampshire, Isle of Wight and Wiltshire.

**Note 1:** Selection, Notification & Participation in the programme is done in exactly the same way as for the WHP and other employment schemes.

**Note 2:** Normal WHP letters will be issued to mandate the claimant to the programme and the PSC has its own MAN's and MEN's which are equivalent to those issued by providers to mandate to appointments, activities and job vacancies.

## **The Restart Scheme**

34864 The Restart Scheme<sup>1</sup> is a SAPOE scheme which provides support for a period of up to 12 months for claimants who

1. have been unemployed for 9 months or more **and**
2. reside in England or Wales.

**Note 1:** The Restart Scheme is not available in Scotland.

**Note 2:** The guidance in DMG 34865 et seq regarding selection, notification and participation in an employment scheme and failures to participate, good reason and sanctions will apply to participants in the Restart Scheme from 14.3.22.

*1 JSA(SAPOE) Regs, reg 3(8D)*

## Selection, notification 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 work coach will select claimants for a SAPOE scheme following the eligibility criteria detailed in the policy and operational instructions for the individual scheme (also see DMG 34869).

**Note 3:** 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 4:** 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 ends

whichever 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. The notification letter should include a description of the opportunity and what the claimant should expect. The notice need not detail each and every task the claimant is required to do or participate in, but should give the claimant a practical understanding of what is involved and that the expectations placed on the claimant include behaviours, dress codes and other relevant standards.

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, the CwP and the WHP 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, CwP, and WHP (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>.

**Note 6:** The Work Programme is removed from legislation<sup>3</sup> from 14.3.22 as the scheme is no longer operational. The Restart Scheme is inserted into legislation<sup>4</sup> from 14.3.22 and becomes the new contracted employment provision (see DMG 34864).

*1 JSA (SAPOE) Regs, reg 17; 2 reg 3; 3 reg 3(8); 4 reg 3(8D)*

## **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 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 regarding the meaning of failure to participate 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 1:** For the definition of Emp O see DMG 34015 and for the meaning of employment see DMG 34016.

**Note 2:** From 3.4.18 employees of specified organisations are designated as Emp Os<sup>3</sup> for the purposes of mandating JSA claimants participating in the WHP (see guidance at DMG 34886 and Appendix 5).

**Note 3:** Th CwP scheme is no longer in use and removed from relevant legislation from 20.11.17

**Note 4:** From 14.3.22 the Work Programme is no longer operational and removed from relevant legislation.

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

*3 The Jobseeker's Allowance (Work and Health Programme) (Employment Officers) Designation Order 2017;*

*4*

### **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 1:** 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).

**Note 2:** The CwP scheme and the Work Programme are no longer operational schemes.

*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.

**Note:** The CwP scheme and the Work Programme are no longer operational schemes.

*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.

**Note:** The CwP scheme and the Work Programme are no longer operational schemes.

*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 as Emp Os<sup>1</sup>.

**Note 1:** For details of authorised Prime Contractors see Appendices 3, 4 and 6.

**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.

**Note 4:** The CwP scheme and the Work Programme are no longer operational schemes.

*1 Wp (Emp O) Des O 14, art 3(1); CwP (Emp O) (Des O 14), art 3(1);  
The Jobseeker's Allowance (Work and Health Programme) (Employment Officers) Designation Order  
2017*

## **Work Programme (Wp)**

34884 Wp<sup>1</sup> has the same meaning as in the definition at DMG 34854.

**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 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.

**Note 2:** The Work Programme is no longer an operational scheme and is removed from legislation from 14.3.22.

*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 (CwP)**

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>.



## **Work and Health Programme (WHP)**

34886 WHP<sup>1</sup> has the same meaning as in the definition at DMG 34859. From 3.4.18 employees of specified organisations are designated as Emp Os<sup>2</sup> for the purposes of mandating JSA claimants participating in the WHP

**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>3</sup> ((see Appendix 5 ).

**Note 1:** The order gives specific Emp O powers to designated employees who have a relevant contract for the provision of the WHP scheme.

**Note 2:** The guidance in DMG 34887 to 34892 equally applies to WHP.

*1 JSA (SAPOE) Regs ,reg 3(8C); 2 The Jobseeker's Allowance (Work and Health Programme) (Employment Officers) Designation Order 2017; 3 JS Act, s 19(2)(c)*

## **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.

## **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 and from 3.4.18 designated WHP 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.

**Note 4:** The Work Programme is no longer an operational scheme and is removed from legislation from 14.3.22.

## Evidence of Authorised Providers

34890 Appendices 3, 4 and 5 list the Prime organisations that have been authorised by the Secretary of State to act as Emp Os in respect of the Wp, CwP and WHP schemes respectively<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, 4 and 5.

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

**Note 3:** The CwP scheme and the Work Programme are no longer operational schemes and are removed from relevant legislation as SAPOE schemes<sup>3</sup>.

*1 Wp (Emp O) Des O 14, sch 1; CwP (Emp O) (Des O 14), sch 1;  
The Jobseeker's Allowance (Work and Health Programme) (Employment Officers) Designation Order  
2017;*

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

*3 JSA(SAPOE) Regs reg 3*

## 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 relevant Wp, CwP or WHP 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 of good reason on the referral form.

**Note 3:** The CwP scheme and the Work Programme are no longer operational schemes and are removed from legislation.

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.

## 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 (NEA)

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)*

# Refusal or failure to carry out a jobseeker's direction (JSD) 34901 - 34940

[Introduction](#) 34901 - 34903

[Restrictions](#) 34904

[Meaning of Jobseeker's direction](#) 34905 - 34910

[Considering good reason](#) 34911

[Back to Work sessions](#) 34912

[Group Information Sessions](#) 34913 - 34915

[Day 1 conditionality](#) 34916 - 34925

[Refusal or failure to carry out a JSD](#) 34926 - 34927

[Good reason – refusal or failure relates to the employment](#) 34928

[Good reason – refusal or failure relates to the JSD itself](#) 34929 - 34940

## Introduction

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

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

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

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

34902 The DM has to consider if the



**1.** direction is reasonable giving full consideration to all the claimant's individual circumstances including any restrictions or limitations agreed on their JSAg (Claimant Commitment) (also see DMG 34903 and 34904) **and**

**2.** direction meets the criteria at DMG 34905, i.e. it

**2.1** assists the claimant to find employment **and/or**

**2.2** improves the claimant's prospects of being employed **and**

**3.** claimant can show good reason for the failure or refusal to comply (also see DMG 34911 and DMG 34200 et seq for further guidance on good reason). Reasonable in the claimant's circumstances.

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

### **Example 1**

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

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

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

### **Example 2**

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

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

Veronica is 55 years old, lives alone in rented accommodation and does not own her own computer or a mobile phone. She is, however, computer literate and uses a computer regularly at her local library, her

place of voluntary work and at the Jobcentre to search for job vacancies. She then uses non personalised resources to apply for any identified suitable vacancies (post/telephone). She has been unemployed for 7 years.

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

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

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

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

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

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

In particular, expert support could be offered to Veronica to explain what is required of her and the security in place to protect her personal details and any email account she may set up or by requiring her to attend a digital workshop or training course to try and overcome her personal barriers to using email. The advisor asks Veronica to attend an interview to discuss the options and sit with a computer expert who will demonstrate how emails work, how to set an account up and explain about security and data protection.

## **Restrictions**

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

## Example

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

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

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

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

## Meaning of Jobseeker's direction

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

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

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

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

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

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

1. verbally
2. in writing
3. by email
4. by telephone

5. by other electronic means (e.g. text message).

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

34907 A JSD **must** be

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

**8.** telephone the Jobcentre Plus office on a certain day from a payphone using a freephone number, to enquire about vacancies or training programmes (claimants who live in remote areas and/or those for whom access to the Jobcentre Plus office is difficult)

**9.** attend a Back to Work Session (see DMG 34912)

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

**Note 1:** This is not an exhaustive list. It is up to the adviser to consider what is a reasonable request in each specific case taking into account the individual circumstances of the claimant. The test is whether that particular course of action will help a particular claimant get employment or improve their prospects

of employment in the specific circumstances and that the claimant has no good reason for failing to comply with the request.

**Note 2:** Consideration should also be given as to whether the claimant is likely to undertake the action voluntarily. If so, the need for the JSD may not be required and the time spent creating one negated.

**Note 3:** Participation in any work experience opportunity is voluntary (see DMG 34951) and so a JSD cannot be used to mandate a claimant to take part in a work experience opportunity.

**Note 4:** A JSD cannot be issued to mandate a claimant to give JCP access to their UJ account (see DMG 34919).

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

**Note 6:** A JSD should not be issued to mandate a claimant to do some activity during waiting days as there is no entitlement to JSA. A JSD can be issued during the period of waiting days but it should mandate the action/activity for a date after waiting days have been served. (See DMG Chapter 20 for further guidance on waiting days).

## Considering good reason

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

### Example

Karina has hearing problems and wears a hearing aid in one ear. At her normal fortnightly work search review on 3.1.17, her advisor identifies a need for Karina to

update and improve her CV and directs Karina to attend and complete a 1 hour CV writing course at the Jobcentre on 10.1.17 at 11.15am.

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

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

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

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

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

An improved CV will assist her to find employment.

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

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

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

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

However the DM considers that Karina should have shown due care and checked the notification given to her which confirmed the correct time, place and date of the course especially as she knows she is hard of hearing and had forgotten her hearing

aid on the day she attended the Jobcentre. It is reasonable to have expected her to check and make a correct note of the date and time of the course in advance.

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

## **Back to Work sessions**

34912 Back to Work Session means<sup>1</sup> a seminar or appointment referred to as a "Back to Work Session" arranged by or on behalf of the Secretary of State to

**1.** provide a person who attends with information, support and advice to help them find employment **and**



**2.** improve their chances of finding employment.

If Back to Work Sessions are structured to help claimants find employment or improve their chances of finding employment, e.g. they will find out about actual vacancies or meet prospective employers who are recruiting to find out about the skills and qualifications required, they should meet the requirement for a JSD to be used to mandate the claimant to attend the session. However if the sessions are to provide general information, for example; a Group Information Session (see DMG 34913) they do not.

1 JSA Regs, reg 1(3)

## **Group Information Sessions**

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

34914 For example, if it is identified that a particular claimant needs a CV or a better CV, the Secretary of State can require attendance at something that helps address that need, but if that help is provided within the wider context of a general group information session, lots of which the claimant may or may not need or which may or may not improve their employment prospects, we cannot require them to attend the whole session. Therefore if the session on CV writing means the claimant will leave with an improved CV, that would be tangible evidence that could improve the claimant's prospects of employment (see example at DMG 34911). However if the session also includes advice on, debt counselling or better off in work calculations or conditionality information. Whilst it may be desirable knowing how work affects their finances it is not a specific activity that will assist a specific claimant to get work or improve their prospects of work. So as long as the claimant attends the CV writing element of the Group Information Session they could not be sanctioned for not attending the rest of the session.

### **Example**

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

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

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

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

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

### **Reasonable in the claimant's circumstances**

34915 There needs to be a clearly identified and tangible benefit to the individual claimant in terms of improving their employment prospects and the activity **must** be reasonable in the claimant's circumstances.

#### **Example:**

If a JSD states that the requirement to attend a GIS will give them information about European Skills Funding and it explains that the benefit for the claimant is the additional support available through the fund, the benefit to the claimant is not in attending the GIS, but in taking part in European Skills Funding. The benefit of attending the GIS is simply that the claimant will have more information about the fund and the benefits it can provide. It does not help the claimant find work or improve their chances of doing so.

### **Day 1 conditionality**

34916 Claimants will be advised to do certain job search activities from day 1 of their claim and operational processes are in place so that when a claimant makes a claim on-line they are advised that it would be beneficial for them to

- 1.** register with an online jobseeking site (usually UJ before 14.5.18 or from 14.5.18 'Find a Job', see **Note 2) and/or**
- 2.** create an email address **and/or**
- 3.** create a CV

if they haven't already done so. Claimants are not mandated to do so at this stage. There is no mandation until the claimant attends the jobcentre. The advisor will check what the claimant has done and the reasons why if they haven't. The advisor can decide whether to mandate or not using a JSD but for a

period out with the period of waiting days.

**Note 1:** A JSD should not be issued to mandate a claimant to do some activity during waiting days as there is no entitlement to JSA. A JSD can be issued during the period of waiting days but it should mandate the action/activity for a date after waiting days have been served. (See DMG Chapter 20 for further guidance on waiting days).

**Note 2:** See guidance at DMG 34917 **Note 1:** regarding the 'Find a Job' service which replaces UJ as the government's online recruitment service from 14.5.18. Day 1 conditionality will still apply to all claimants from 14.5.18 but because of the differences in the new 'Find a job' service in comparison to UJ, it may be more appropriate for claimants to create an account and upload a CV in another jobsite instead. Where the claimant has already created an account and uploaded a CV with another jobsite prior to the Initial Work Search Interview, or where the claimant has not done so, but after discussion between the work coach and claimant at this interview it is deemed more appropriate to do this instead of creating an account and uploading a CV in 'Find a job', then the claimant will have met Day 1 conditionality or alternatively may be mandated to complete this activity.

### **Example 1**

Dorek makes a claim to JSA on line on 11.5.15. He is requested to attend the jobcentre on 14.5.15 for his initial worksearch interview with an advisor and is advised to register with UJ, create an email address and create a CV.

Dorek attends the interview on 14.5.15 and confirms he has an email address and a CV but has not registered with UJ yet. The advisor advises Dorek that he must create a UJ account by his next fortnightly review on 28.5.15. (See DMG 34916 et seq). The advisor issues a JSD to mandate Dorek to register with UJ in the period from 18.5.15 to 28.5.15 allowing for 7 waiting days to be served.

### **Example 2**

Christie makes a claim to JSA on line on 16.5.18. She is requested to attend the Jobcentre on 22.5.18 for an initial work search interview with an advisor and is advised to register with 'Find a Job', create an email address and create a CV on line.

Christie attends the interview on 22.5.18 and confirms she already had registered with Reed and Indeed jobsites on line and has an email address and public CV. Christie has met her requirements for Day 1 conditionality. The work coach advises Christie about the free government site 'Find a Job' and she agrees to also register with 'Find a Job' before her next work search review. A JSD is not appropriate.

## **Issuing a JSD to mandate JSA claimants to create an on line jobseeking profile and public CV**

34917 A DM may receive a referral to consider a sanction for a failure or refusal to create an on line

jobseeking profile. The DM considers the

- 1.** guidance for JSDs (see DMG 34901 et seq) and good reason (see DMG 34200 et seq) **and**
- 2.** guidance at DMG 34918 - 34925 regarding creating an online jobseeking account.

Only if they are satisfied that it was reasonable to require the claimant to create an account and that there has been a failure to comply with the JSD without good reason can a sanction be imposed.

**Note 1:** UJ, the DWP's on line jobseeking service, is to be replaced by a new job matching service, 'Find a Job'. The free government recruitment service will continue to connect jobseekers with thousands of employers across the UK. The change will come into effect on 14.5.18 and access to existing UJ accounts will be available up until 23:59 hours on 17/06/18, although employers will no longer be able to post new jobs from 17/05/18. This means 'Find a job' and UJ will run side by side between 14/05/18 and 23:59 hours on 17/06/18.

**Note 2:** One of the fundamental differences between the 2 services is that DWP staff will not be able to access the claimant's 'Find a Job' account and so will not be able to save jobs for claimants to apply for or send messages to claimants. In terms of claimants, the new service will no longer have free text functionality to enable claimants to type any ad-hoc activity they have done to look and/or apply for jobs, enable them to receive on-going job matches to their account, send anonymous matches to employers jobs posted on the site from information recorded on the claimants public CV or enable employers to send messages to them.

34918 A claimant can only be mandated to create an online jobseeking account and public CV if

- 1.** it has been explained to the claimant the benefits of creating an on line account and public CV and they refuse **and**
- 2.** a DWP IAD service is reasonably available to the claimant should they need to use one (see DMG 34923) **and**
- 3.** none of the exceptions at DMG 34922 apply **and**
- 4.** a cookies fact sheet has been issued (see DMG 34925).

**Note:** A JSD **cannot** be issued to mandate a claimant to give JCP access to their UJ account, this is a voluntary action by the claimant (see guidance at DMG 34919). See **Note 2.** at DMG 34917 regarding access to 'Find a Job' accounts from 14.5.18.

### **Example**

Dear M

When you are claiming Jobseeker's Allowance, you must make suitable efforts to find a job and put yourself in the best position to get offers of work.

I am directing you to take the action stated below.

You are currently seeking work in the X, Y, Z sectors. Hundreds of new jobs, in these sectors are, advertised every day through the Jobcentre Plus website UJ. Therefore, as a current JSA Jobseeker, you must register yourself with a UJ account and create a public CV. This will significantly increase your prospects for finding work.

You must complete the UJ registration and have a public CV by \_\_\_\_\_ date and then confirm this to your personal adviser in the Jobcentre no later than \_\_\_\_\_.

If you refuse or fail to carry out this JSD and cannot show good reason for this or that it is unreasonable in your circumstances, you could lose Jobseeker's Allowance/National Insurance credits. (Details of the progression of sanctions would be included here).

### **Access to the claimant's UJ account**

34919 A JSA claimant **cannot** be mandated to give DWP access to their UJ account, this is a voluntary action by the claimant. The advisor should encourage the claimant to do so, but the benefits need to be explained fully to the claimant and it needs to be exactly clear what this means and what the access will be used for.

**Note 1:** Access to the claimant's UJ account will help provide evidence of job search activity and the advisor can provide extra support to the claimant by looking out for and saving jobs for them in the UJ saved inbox. Advisors can set this up as one of the claimants work search activities helping them achieve enough work related activity each week.

**Note 2:** See **Note 2:** to DMG 34917 regarding access to a claimant's 'Find a Job' account from 14.5.18 (also see **Note 1.** and **Note 2.** to DMG 34917).

### **Evidence**

34920 A record of

all advice **and**

**1.** issue of the cookies fact sheet **and**

**2.** whether the claimant agrees for DWP to access the UJ account (but see **Note 2.** at DMG 34917 regarding access to the 'Find a Job' service) **and**

**3.** any other relevant issues regarding the account

should be recorded in the claimant's action plan for evidentiary reasons should it be needed in the event of any sanction determination or subsequent appeal.

Note: Failure to record the relevant evidence may affect whether or not a sanction can be imposed in the event of any failure to comply by the claimant.

34921 Claimants can be asked to produce evidence of their public CV but we cannot dictate how they produce the evidence, for example, by email. Evidence can be provided via a smart phone or a screen print brought in or printed off using the IAD.

## **Exceptions**

34922 For the majority of claimants, creating an online profile and public CV will be an important part of improving employment prospects. However, creating a profile, a public CV and using on line jobseeking sites may be less than straightforward for some claimants if they are not reasonably able to use the service, for example those

**1.** with a learning difficulty, cognitive impairment or other health-related conditions **or**

**2.** for whom English is their second language **or**

**3.** who lack appropriate literacy and/or numeracy skills **or**

**4.** who are not reasonably able to access

**4.1** their own computer/device (for example, because they do not have such a device or cannot afford to access the internet) **and**

**4.2** an alternative internet access device in their area (for example, because of their personal circumstances, poor internet service in the area or lack of access to affordable internet access).

**Note:** The particular barrier to using an on line jobseeking site should be addressed first (e.g: English language, numeracy or IT skills).

## **Example**

Ranjit has English as a second language and refuses to use UJ. He does not wish to accept cookies and has no reasonable access to an IAD. He cannot be mandated to use UJ and a JSD would not be appropriate. His other barriers to work should be addressed first and Ranjit is referred to an English Language Skills course.

## Access to a DWP IAD

34923 Whether the claimant can reasonably access a DWP IAD should they either not have reasonable access to the internet or should they wish to exercise their right not to accept cookies should be taken into account. All the claimant's individual circumstances should be considered (for example, their health, any restrictions on their availability, whether they have childcare available) and the availability of IADs in the local office. For example, if the office has a high number of claimants who need access to a DWP IAD or because they do not have access to the internet or are required to use UJ and wish to exercise their choices relating to cookies. Claimants using an IAD must be offered an IAD appointment time so they are able to carry out the direction.

**Note:** The examples are not exhaustive it is up to the advisor to consider all the claimant's individual circumstances and what would affect reasonable access to the internet depending on the claimants capabilities and capacity and their own resources.

### Example

Evelyn discusses setting up a UJ account with her advisor and is happy to do so but she does not have internet access at home and has restricted availability during school hours due to childcare arrangements. She lives in a remote village where there is no public library or public access to free Wifi. The advisor arranges for Evelyn to have access to the DWP IAD and makes her an IAD appointment which fits in with her availability.

34924 If one or more of the circumstances in DMG 34922 apply and it is unreasonable for the claimant to use an on line jobseeking site, a JSD should not be issued but if this only comes to light after a referral to the DM, the claimant would be able to show good reason for a refusal or failure to comply. The referral should not be cancelled.

## Cookies fact sheet

34925 When it is reasonable to issue a JSD, the claimant should be informed they must create an online jobseeking profile and public CV (see **Note 3**). The Cookies factsheet should always be attached to the JSD letter, explaining the use of an IAD should the claimant not wish to accept cookies. A sanction will **not** be able to be imposed in any case if the cookies fact sheet has not been issued.

**Note 1:** The cookies fact sheet gives the claimant assurances on how data is protected in terms of reported data-fishing by bogus employers, that relevant checks are in place to ensure that these are not placed on the system again, that employers comply with the terms and conditions of the use of the site and that there is a process of 'accepting cookies' and EU data protection principles so that the site is

secure.

**Note 2:** A record of the issue of the cookies fact sheet should be made in the claimant's action plan for evidentiary reasons should the claimant appeal any decision to sanction. Failure to record the issue of the cookies fact sheet could result in a sanction, that would otherwise be appropriate, not being imposed.

**Note 3:** Whichever online jobseeking site the claimant is mandated to set up an account with, a cookies fact sheet **must** be issued. This can be with UJ up to 23:59 on 17/06/18 or with the 'Find a Job' service from 14.5.18 (see **Note 1** to DMG 34917).

## **Refusal or failure to carry out a JSD**

34926 The guidance at DMG 34732 with regard to employment vacancies applies equally if a JSD was to direct a claimant to contact an employer or training provider in some way.

**Note:** See guidance at DMG 34176. Normally a JSD will not be used to mandate a claimant to apply for an employment vacancy, normal RE action will be taken (see DMG 34721 et seq) but also see guidance at DMG 34928. It will be for the DM to decide which action was the more appropriate in the individual case and whether the claimant can show any good reason for any failure to comply. When any failure occurs which is both a failure at the higher-level and the low-level only the higher-level sanction will apply<sup>1</sup>, for example failing to carry out a JSD to apply for an employment vacancy.

1 JS Act 95, s 19A(3)

## **Claimants change their mind**

34927 If claimants who refuse or fail to carry out a JSD

- 1.** change their minds **and**
- 2.** can still achieve something by following the JSD **and**
- 3.** notify an Emp O that they have changed their minds

they have not refused or failed to carry it out.

### **Example 1**

On Wednesday, Janice is directed to send her CV to a local employer, which she does not wish to do. The following Tuesday, she changes her mind. She can still send her CV to the employer, still carry out the JSD, and still achieve something by doing so.



## **Example 2**

On Wednesday, Jacob is directed to contact an employer who is advertising a job vacancy in the local press. He does not do so. The following Tuesday he decides that he would like to apply for the job, and contacts the employer, however the closing date for applications was Friday. Although Jacob can still follow the JSD, he cannot achieve anything by doing so. Therefore he has failed to comply with the JSD.

## **Example 3**

John lives in a remote area of Scotland and cannot get into his nearest Jobcentre Plus office at all during the winter months. The Jobcentre Plus office send him a letter on Monday telling him to phone them on Thursday between 10am and 11am, using a freephone number. This is to discuss a Jobskills course that is being run in his local village hall, starting the following Tuesday.

John is not interested in the course and does not telephone on Thursday as directed. He changes his mind and telephones on Friday. Even though they will still be able to discuss the course when John rings on the Friday, and it is not too late to start it, he has not and cannot now follow the JSD because it was time specific and required him to phone on Thursday between 10am and 11am, which he did not do. He therefore has failed to comply with the JSD.

## **Good reason – refusal or failure relates to the employment**

34928 A JSD may require a claimant take steps to get a particular employment or type of employment. If so, the claimant will have good reason for refusing or failing to carry out the JSD if they would have had good reason for refusing or failing to apply for the employment concerned. The DM should also follow the guidance at DMG 34721 et seq but also be aware of the guidance at DMG 34926.

## **Example**

Alexander worked as a painter and decorator five years ago. He then trained as a furniture restorer, and has worked at this employment for the last four years. He claims JSA, and agrees with an Emp O that he will look for work only as a furniture restorer for 13 weeks. After ten weeks, the Emp O issues a JSD which requires him to go on a course to update his painting and decorating skills, as a new employer is moving into the area and will have 30 vacancies for painters and decorators. Alexander refuses to go on the course. He will have good reason to refuse. He is being asked to take steps (such as joining a training course) to get a particular type of employment, but he is in his permitted period, and has restricted the type of employment he is available for to his usual occupation (see DMG Chapter 21 for guidance on permitted period). Alexander will have good reason for the refusal of employment and a refusal to carry out the JSD.

## **Good reason – refusal or failure relates to the JSD itself**

34929 A claimant might refuse or fail to carry out a JSD

- 1.** which was not aimed at any particular employment or type of employment **or**
- 2.** because they did not want to carry out the JSD itself (rather than having any objection to the employment or type of employment it may have led to).

The DM should follow the guidance in DMG 34200 et seq when deciding good reason in these circumstances taking all the individual circumstances of the case into account.

34930 - 34940

## Training schemes and employment programmes 34941 - 34950

34941 JSA is not payable if claimants

**1.** lose a place on a training scheme or employment programme through misconduct<sup>1</sup>**or**

**2.** without good reason

**2.1** neglected to avail themselves of a reasonable opportunity of a place on a training scheme or employment programme<sup>2</sup>

**2.2** refuses or fails to apply for or accept if offered a place on a training scheme or employment programme which an Emp O has notified is vacant or about to become vacant<sup>3</sup>

**2.3** gives up or fails to attend a place on a training scheme or employment programme having been given a place on it<sup>4</sup>.

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

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

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

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

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

**1.** losing a place on an employment programme or training scheme through misconduct the guidance in DMG 34531 et seq should be followed where relevant **or**

**2.** a refusal of a training scheme or employment programme the guidance in DMG 34721 et seq should be followed **or**

**3.** giving up or failing to attend a training scheme or employment programme the guidance in DMG 34651 et seq should be followed **or**

**4.** whether a claimant neglected to avail a reasonable opportunity of a place on a training scheme or employment programme the guidance in DMG 34751 et seq should be followed substituting references

to 'the employer' as references to 'the training provider' or 'employment programme provider'.

34943 - 34950

## Work experience 34951 - 34999

[Definition of work experience](#) 34951 - 34960

[Gross misconduct](#) 34961 - 34999

### Definition of work experience

34951 Since October 2012, Work experience is not defined in legislation. Participation in work experience is voluntary and is designed to let claimant's try out work and for employers to try participants out to see if they are suitable for that type of work. Whilst participation in work experience is voluntary, certain standards of behaviour are expected once the claimant decides to take part. Therefore if the claimant decides to leave the work experience or the employer decides to finish the placement benefit will not be affected unless the claimant is dismissed for gross misconduct (see guidance at 34961 on what constitutes gross misconduct).

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

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

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

### Work experience opportunity

34953 The claimant has to have been informed of the work experience by an Emp O and participation will be voluntary. For guidance on how a claimant will be informed of a work experience opportunity see DMG 34727 - 34729. For the meaning of Emp O see DMG 34015. The claimant should have been notified that whilst participation in the work experience opportunity is voluntary, once they agree to take part, if

their behaviour whilst participating is such as to amount to gross misconduct a sanction to their JSA may be applied.

**Note:** For work experience arranged through SAPOE scheme providers see DMG 34921. See DMG 34961 for what constitutes gross misconduct.

### **Work experience arranged as part of a SAPOE scheme**

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

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

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

34955 – 34960

### **Gross misconduct**

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

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

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

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

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

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

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

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

### **Example 1**

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

### **Example 2**

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

### **Example 3**

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

### **Example 4**

Ann tells her WP provider she has decided to leave her work experience placement and then turns up for

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

## **Sanctions**

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

1 JS Act 95, s 19A(2)

34965 - 34999



# Appendix 1 - Summary of sanction reasons and structures for JSA claimants 18 years and over

## Appendix 1

### SUMMARY OF SANCTION REASONS AND STRUCTURE FOR JSA CLAIMS (CLAIMANT 18 YEARS AND OVER) FROM 22.10.12

Note: See guidance at DMG34091 et seq - from 27 11.19 the 156 week sanction is removed from legislation

<u>High level</u>		<u>Intermediate level</u>		<u>Low level</u>		
No previous high-level failure <b>= 13 weeks</b>	Failure within 52 weeks (but not 2 weeks) of a previous high-level failure <b>= 26 weeks</b>	Failure within 52 weeks (but not 2 weeks) of the last previous high-level failure where a sanction was imposed for 26 or 156 weeks <b>= 156 weeks (3 years)</b>	One previous disentitlement <b>= 4 weeks</b>	Subsequent disentitlement within 52 weeks (but not 2 weeks) of the most recent disentitlement <b>= 13 weeks</b>	No previous lowlevel failure <b>= 4 weeks</b>	Subsequent failure within 52 weeks (but not 2 weeks) of the last previous lowlevel failure <b>= 13 weeks</b>
<p><b>Higher level – fixed period for:</b></p> <ul style="list-style-type: none"> <li>Leaves or loses a job voluntarily</li> <li>Loses a job through misconduct</li> <li>Failed to participate in MWA scheme</li> <li>Neglect to avail of employment opportunity</li> <li>Refuses or fails to apply for, or accept if offered, a job</li> </ul>			<p><b>Intermediate level – fixed period reduced by the period of disallowance.</b></p> <p><b>On new claims for:</b></p> <ul style="list-style-type: none"> <li>Not actively seeking work</li> <li>Not being available for work job</li> </ul>		<p><b>Lower level – fixed period sanction for:</b></p> <ul style="list-style-type: none"> <li>Failed to participate in adviser interview</li> <li>Failed to participate in a scheme under SAPOE regs.</li> <li>Failed to comply with Jobseeker direction</li> <li>Neglect to avail of place on an employment programme/training course</li> <li>Refuses, fails to apply for or accept a place on an employment programme/training course</li> </ul>	

# Appendix 2 - People the Secretary of State has authorised as Employment Officers

## Appendix 2

### People the Secretary of State has authorised as Employment Officers (see DMG 34015)

#### Careers advisers

The Secretary of State has authorized people who work in the Careers Service or Connexions giving careers or employment advice as Emp Os for the purpose of

1. notifying places on training schemes and employment programmes (see DMG 34911) **and**
2. notifying situations in employment (see DMG 34721).

#### ONE

The Secretary of State has authorized people who work for

- LAs who are participating in the ONE service
- Action for Employment Ltd
- Deloitte Consulting PLC
- The Reed Partnership Ltd

where they are employed to give training or employment advice to claimants as part of the ONE service as Emp Os.

They can

1. notify places on training schemes and employment programmes (see DMG 34911) **and**
2. notify situations in employment (see DMG 34721).

## **EZs 2000**

The Secretary of State has authorized people who work for

- Working Links (Employment) Ltd
- Reed in Partnership (Newham) Ltd
- Reed in Partnership (Haringey) Ltd
- Reed in Partnership (Liverpool and Sefton) Ltd
- Reed in Partnership (Doncaster) Ltd
- Pertemps Employment Alliance Ltd

in a 2000 EZ as Emp Os.

They can

- 1.** notify places on training schemes and employment programmes (see DMG 34911) **and**
- 2.** notify situations in employment (see DMG 34721) **and**
- 3.** give a JSD (see DMG 34901).

## **EZs 2003**

The Secretary of State has authorised people who work for

- Pertemps Employment Alliance Ltd
- Reed in Partnership Ltd
- Working Links (Employment) Ltd
- Work Directions UK Ltd

in a 2003 EZ as Emp Os.

They can

- 1.** notify places on training schemes and employment programmes (see DMG 34911) **and**

**2.** notify situations in employment (see DMG 34721) **and**

**3.** give a JSD (see DMG 34901).

## **Working Neighbourhoods EZs**

The Secretary of State has authorised people who work for

• Pertemps Employment Alliance Ltd

• Reed in Partnership Ltd

• Working Links (Employment) Ltd

in a Working Neighbourhoods EZ as Emp Os.

They can

**1.** notify places on training schemes and employment programmes (see DMG 34911) **and**

**2.** notify situations in employment (see DMG 34721) **and**

**3.** give a JSD (see DMG 34901).

## Appendix 3 : List of approved Prime Contractors for the provision of the Work Programme

### Appendix 3

#### Schedule 1 - List of approved Prime Contractors for the provision of the Work Programme

Prime Contractor	Contractor Number or Numbers
A4e Ltd	WP/CPA02/A4e WP/CPA04/A4e WP/CPA06/A4e WP/CPA09/A4e WP/CPA17/A4e
Avanta Enterprise Ltd	WP/CPA05/Avanta WP/CPA07/Avanta WP/CPA10/Avanta
Careers Development Group	WP/CPA04/CDG
ESG Holdings Limited	WP/CPA15/ESG
EOS Works Ltd	WP/CPA14/Fourstar
G4SD Regional Management (UK & I) Ltd	WP/CPA07/G4S WP/CPA10/G4S WP/CPA18/G4S
Ingeus UK Ltd	WP/CPA01/IngUK WP/CPA02/IngUK WP/CPA03/IngUK

	WP/CPA05/IngUK WP/CPA06/IngUK WP/CPA08/IngUK WP/CPA16/IngUK
Interserve Working Futures Ltd	WP/CPA16/Best

Learndirect Ltd	WP/CPA12/JHP
Maximus Employment UK	WP/CPA03/Maximus WP/CPA09/Maximus
Newcastle College Group	WP/CPA14/Newcastle WP/CPA18/Newcastle
Pertemps People Development Group	WP/CPA14/PPDG
Prospects Services Ltd	WP/CPA11/Prospects
Reed In Partnership Ltd	WP/CPA03/Reed
Rehab Jobfit LLP	WP/CPA12/Rehab WP/CPA13/Rehab
Seetec Business Technology Centre Ltd	WP/CPA01/Seetec WP/CPA04/Seetec WP/CPA07/Seetec
Serco Limited	WP/CPA15/Serco WP/CPA17/Serco
Working Links (Employment) Ltd	WP/CPA08/Working Links WP/CPA11/Working Links WP/CPA13/Working Links

## Appendix 4 - List of approved Prime Contractors for the provision of Community Work Placements

Prime Contractor	Contract Number or Numbers
G4S Regional Management (UK & I) Ltd	100625-2 100625-3 100625-4 100625-6 100625-9 100625-18
Interserve Working Futures Ltd	100625-16 100625-17
Learndirect Ltd	100625-8
Pertemps People Development Group	100625-5 100625-15
Rehab Jobfit LLP	100625-11
Seetec Business Technology Centre Ltd	100625-1 100625-7 100625-10 100625-12 100625-14
Working Links (Employment) Ltd	100625-13

## Appendix 5 - List of approved Prime Contractors (Work & Health Programme)

	<b>Prime Contractor</b>
1 Central England	Shaw Trust
2 North East	Reed In Partnership
3 North West	Ingeus
4 Southern	Pluss
5 Home Counties	Shaw Trust
6 Wales	Remploy
7 Greater Manchester	InWorkGM
8 Central London Forward	Ingeus
9 Local London	Maximus
10 South London Partnership	Reed In Partnership
11 West London Alliance	Shaw Trust

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



# Appendix 6 The Jobseekers (Back to Work Schemes) Act 2013

## Appendix 6:

### The Jobseekers(Back to Work Schemes) Act 2013

Contents	Paragraphs
Introduction	1 - 2
DMA action	3 - 4
Regulations and notices requiring participation in a scheme	
Employment Skills and Enterprise Scheme (ESE scheme)	5 - 7
Notifications – ESE scheme	8 - 11
Notifications – MWA scheme	12
Effect of the revocation of regulations	13
Sanction already imposed	14

## Introduction

1. The Jobseekers (Back to Work Schemes) Act 2013 (JS (BWS) Act 13) received Royal Assent on 26.3.13 and makes provision about the effect of provisions relating to

1. participation in a scheme designed to help claimants to obtain employment **and**
2. notices relating to participation in such a scheme<sup>1</sup>.

*1 JS (BWS) Act 13*

2. This Appendix provides guidance on these provisions at the time the Act came into force. However the retrospectivity question of whether the Act could apply to cases where the claimant had an appeal in the system prior to the coming into force of the Act on 26.3.13 was challenged in the Supreme Court - see guidance in Appendix 7 which will apply to those cases.

## **DMA action**

3. The provisions outlined have the effect that for any case where there has been a failure to participate in the ESE scheme the DM can impose a sanction where the claimant does not show good cause/good reason.

4. The Act makes provision to treat the ESE scheme as validly made under the ESE Regulations. It also makes provision to treat all notices given under regulations governing the ESE Scheme or the MWA Scheme as effective despite the court's judgement<sup>2</sup> so long as they contained the information referred to in paragraphs 8 – 11<sup>3</sup>.

*1 JSA (ESE Scheme) Regs & JSA (MWA(Scheme) Regs; 2 The Queen on the application of Caitlin Reilly and Jamieson Wilson and the Secretary of State for Work and Pensions; 3 JS (BWS) Act 13, s 1(4), (5), (6), (7), (8) &(9)*

## **Regulations and notices requiring participation in a scheme**

### **Employment Skills and Enterprise Scheme (ESE scheme)**

5. The provisions introduced on 26.3.13<sup>1</sup> ensure that the ESE Regulations are to be treated for all purposes as properly made under their enabling powers<sup>2</sup> and that the ESE scheme mentioned in those regulations is to be treated as a scheme within the relevant section of the JS Act<sup>3</sup> until the coming into force of the new regulations which replace the ESE Regulations<sup>4</sup>.

*1 JS (BWS) Act 13, s 1(2); 2 JSA (ESE scheme) Regs; 3 JS Act, s 17A ; 4 JSA (SAPOE) Regs*

6. The provisions also ensure that the following programmes are to be treated as having been part of the ESE scheme<sup>1</sup>

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

## 8. Community Action Programme.

7. These provisions have the effect of reversing the Court's finding that the ESE Regulations and the programmes within them were not effective.

*1 JS (BWS) Act 13, s 1(3)*

### **Notifications – ESE scheme**

8. A notice given to a claimant at any time from 20.5.11 to 12.2.13 under the provisions in the JSA(ESE Scheme) regulations relating to details of what a person is required to do by way of participation, is to be treated as an effective notice where it refers to the ESE scheme or any programme listed at paragraph 7<sup>1</sup>.

*1 JSA (ESE scheme) Regs, reg 4 (1)(c), JS (BWS) Act 13, s 1(4)*

9. A notice given to a claimant at any time from 20.5.11 to 12.2.13 under the provisions in the JSA(ESE Scheme) regulations relating to information about the consequences of failing to participate in the ESE scheme or any programme listed at paragraph 7 is to be treated as an effective notice that complies with the specified requirements<sup>1</sup> where it described an effect on payments of JSA as a consequence or possible consequence of not participating as required.

*1 JSA (ESE scheme) Regs, reg 4(1)(e), JS (BWS) Act 13, s 1(5)*

10. A notice of changes in what a claimant is required to do by way of participation in the ESE scheme is to be treated as correctly notified provided it notified the person of any changes made to details given in an earlier notice<sup>1</sup>.

*1 JS (BWS) Act 13, s 1(6), JSA (ESE scheme) Regs, reg 4(2)(c)*

11. The effect is that all notices given under the ESE regulations<sup>1</sup> are to be treated as effective despite the court's judgement so long as they contained the information referred to in paragraphs 8 - 10<sup>1</sup>.

**Note:** The DM can accept that the ESE scheme is a valid scheme and that claimants were correctly notified of their requirements and of the consequences of not meeting those requirements as required by the regulations. Therefore any appeal based on such grounds can be rejected.

*1 JS Act, s 17A, JSA (ESE scheme) Regs, reg 4(1), 4(2)(c), 4(2)(e) & reg 4(3)*

### **Notifications – MWA scheme**

12. In relation to MWA notices the position is the same as outlined in paragraphs 8 – 11 for ESE scheme notices due to the almost identical provisions in the MWA regulations regarding notification and participation in the scheme.

**Note:** The DM can accept that claimants were correctly notified as required by the MWA regulations<sup>1</sup>.

*1 JS (BWS) Act 13, s 1(7), (8) & (9); JSA (MWA scheme) Regs, reg 4(2)(d) & (f) and reg 4(3)*

## Effect of the revocation of regulations

13. From 22.10.12 certain regulations applicable to the ESE scheme were revoked<sup>1</sup> (i.e. the provisions on good cause and the consequences of failing to participate). Amended legislation<sup>2</sup> provided for a new sanctions regime. The effect is that any failure to participate in the ESE scheme prior to 22.10.12 is to be considered under the old provisions and guidance in the previous version of DMG Chapter 34 would apply. DMs would need to contact DMA Leeds for access to that guidance as it is no longer available generally. The guidance in DMG 34846 et seq will apply to any failure from 22.2.13 where the claimant was issued with the correct notice.

**Note 1:** The provisions in the revoked regulations are treated as having effect for any determination made after 22.10.12 which relates to a failure that occurs before 22.10.12<sup>3</sup>.

**Note 2:** The 2011 regulations<sup>4</sup> are to be treated as having been revoked by the coming into force of the 2013 regulations<sup>5</sup> on 12.2.13<sup>6</sup>. The sanctions provisions effective from 22.10.12 apply to any failures to comply with requirements to participate in a programme under the 2013 Regulations. However, stockpiled cases which relate to failures that occurred prior to 22.10.12, are subject to the old sanctions provisions in the ESE Regulations.

*1 JSA (ESE scheme) Regs, reg 7 & 8; 2 JSA (Sanctions) Amdt Regs; 3 JS (BWS) Act 13, s 1(10); 4 JSA (ESE scheme) Regs; 5 JSA(Sanctions) Amdt Regs; 6 JS (BWS) Act 13, s 1(14)*

## Sanction already imposed

14. Where a sanction determination for a failure to participate in a relevant scheme<sup>1</sup>

**1.** has already been imposed that sanction is to be treated as being lawfully made<sup>2</sup> **or**

**2.** is to be imposed on a case that has been stayed due to the court of appeal decision<sup>3</sup> a sanction decision can now be made<sup>4</sup>.

**Note:** This guidance does not affect the claimant's right to apply for a revision or supersession or to appeal against a decision to impose a sanction on any other grounds, for example good cause/good reason<sup>5</sup>.

*1 JS Act, s 17A; 2 JS (BWS) Act 13, s 1(12); 3 The Queen on the application of Caitlin Reilly and Jamieson Wilson and the Secretary of State for Work and Pensions; 4 JS (BWS) Act 13, s 1(12); 5 s 1(13)*



# Appendix 7: The Jobseekers (Back to Work Schemes) Act 2013 (Remedial) Order 2020

## The Jobseekers (Back to Work Schemes) Act 2013 (Remedial) Order 2020

### INTRODUCTION

1. This Appendix gives guidance on the Jobseekers (Back to Work) Schemes Act 2013 (Remedial) Order 2020 which came into force on 3.10.20 (SI number [2020/1085 \(link is external\)](#)).

### BACKGROUND

2. The Court of Appeal<sup>1</sup> ruled that the [Jobseekers \(Back to Work Schemes\) Act 2013 \(link is external\)](#) (“the 2013 Act”) is incompatible with article 6(1), the right to a fair hearing, of the European Convention on Human Rights. Further guidance on the 2013 Act can be found in Appendix 6.

**Note:** The Declaration of Incompatibility does not have any impact on the continuing validity of the 2013 Act, which the Court of Appeal found effectively validates the [Jobseeker’s Allowance \(Employment, Skills and Enterprise Scheme\) Regulations 2011 \(link is external\)](#) (“the ESE Regulations”) and all notifications and sanctions decisions made under the ESE Regulations.

*1 R (Reilly & Hewstone) v Secretary of State for Work & Pensions; Jeffrey and Others v Secretary of State for Work & Pensions [2016] EWCA Civ 413*

3. The Declaration of Incompatibility affects a limited group of individuals, those Jobseeker’s Allowance (JSA) claimants who had live appeals against a sanction decision made under the ESE Regulations on 26.3.2013 (the date the 2013 Act came into force)<sup>1</sup>.

*1 The Jobseekers (Back to Work Schemes) Act 2013, s1A*

4. The Secretary of State decided to use a Remedial Order<sup>1</sup> to amend the 2013 Act and remedy The Declaration of Incompatibility.

*1 Human Rights Act 1998, s10*

5. The Secretary of State also decided to include those claimants who had a live appeal under the [Jobseeker’s Allowance \(Mandatory Work Activity Scheme\) Regulations 2011 \(link is external\)](#) (“the MWA Regulations”) in the Tribunal system on 26.3.2013<sup>1</sup>.

6. The Remedial Order<sup>1</sup> was made on 2.10.2020 and came into force on 3.10.2020.

*1 Jobseekers (Back to Work Schemes) Act 2013 (Remedial) Order 2020*

## **THE EFFECT OF THE REMEDIAL ORDER**

7. The Remedial Order<sup>1</sup> amends the 2013 Act to remedy the incompatibility of the 2013 Act with Article 6(1) of the European Convention on Human Rights.

*1 Jobseekers (Back to Work Schemes) Act 2013 (Remedial) Order 2020*

8. In the case of appeals live in the Tribunal system on 26.3.2013 against a sanction imposed on a JSA claimant for a failure to comply with the

**1.** ESE 2011 regulations **or**

**2.** MWA 2011 regulations, where the claimant received a notification that was validated by the 2013 Act,

the Secretary of State now has the power to revise or supersede the relevant sanction decision.

### **Revising the sanction decision**

#### **ESE cases**

9. The Secretary of State will revise in the claimant's favour on the basis that the 2011 regulations were invalid<sup>1</sup>.

**Note:** An appeal against a sanction which is revised will lapse under relevant legislation<sup>2</sup>.

*1 Jobseekers (Back to Work Schemes) Act 2013 (Remedial) Order 2020, s 1A(2);*

*2 Social Security Act 1998, s 9(6)*

#### **MWA cases**

10. The decision maker must look at the notification issued to the claimant for the sanctionable failure that was appealed and determine if it meets the requirements set out in the MWA 2011 Regulations<sup>1</sup>. To meet those requirements, the notifications must include

**1.** a description of the likely nature of the tasks, hours and place of work to give the claimant enough details of what they were required to do by way of participation in the scheme<sup>2</sup> **and**

**2.** information about the consequences of failing to participate in the scheme (i.e. sanctions)<sup>3</sup>**and**

**3.** details of the circumstances when the claimant will be notified of any changes<sup>4</sup>.

*1 JSA (MWA Scheme Regulations) 2011 reg 4(2); 2 reg 4(2)(d); 3 reg 4(2)(f); 4 reg 4(3)*

11. If the notification does not meet the requirements as outlined at paragraph 10, the decision maker should decide that the notification is inadequate and only validated by the effect of the 2013 Act and revise the decision in the claimant's favour<sup>1</sup>.

**Note 1:** An appeal against a sanction which is revised will lapse under relevant legislation<sup>2</sup>.

**Note 2:** If the DM is in any doubt whether the MWA notification meets the legal requirements the DM should send the case to DMA Leeds for advice.

*1 Jobseekers (Back to Work Schemes) Act 2013 (Remedial) Order 2020, s 1B;*

*2 Social Security Act 1998, s 9(6)*

## **Superseding where the appeal has already been heard**

### **ESE cases**

12. Where a tribunal has

**1.** already heard an appeal lodged before 26.3.13 against a sanction **and**

**2.** upheld the sanction (in whole or in part)

the Secretary of State will supersede the tribunal's decision in the claimant's favour, on the basis that the 2011 ESE regulations were invalid<sup>1</sup>.

**Note:** This power of supersession is treated for all purposes as if it had been made under an existing power<sup>2</sup>.

*1 Jobseekers (Back to Work Schemes) Act 2013 (Remedial) Order 2020, s 1A(4)*

*2 Social Security Act 1998, s10*

### **MWA cases**

13. Where a tribunal has already

**1.** heard an appeal lodged before 26.3.13 against a sanction **and**

**2.** upheld the sanction (in whole or in part) **and**



3. where it appears the effect of the 2013 Act may be relevant to the tribunal's decision<sup>1</sup>

the decision maker will look at the notifications issued to the claimant as per the guidance at paragraph 10, and if the notifications do not meet the requirements, supersede the tribunal's decision in the claimant's favour on the basis that notices sent to claimants advising them that they were required to take part in the MWA scheme were inadequate, and only validated by the 2013 Act<sup>2</sup>.

**Note 1:** This power of supersession is treated for all purposes as if it had been made under an existing power<sup>3</sup>.

**Note 2:** If the DM is in any doubt whether the MWA notification meets the legal requirements they should send the case to DMA Leeds for advice.

*1 Jobseekers (Back to Work Schemes) Act 2013, s 1(7),(8),(9) & (12);*

*2 Jobseekers (Back to Work Schemes) Act 2013 (Remedial) Order 2020;*

*3 Social Security Act 1998, s10*

## **Claimant appeals the revision or supersession**

14. After 3.10.20 where a court or tribunal is considering an appeal that was lodged before 26.3.13, or an appeal against a revised or superseded decision, they are able to overturn the sanction decision on the same basis that the

1. ESE 2011 regulations were invalid or

2. notices sent to JSA claimants advising them that they were required to take part in the MWA scheme were inadequate<sup>1</sup>.

**Note:** The result, in any event, is that the appeal should be decided in the claimant's favour.

*1 Jobseekers (Back to Work Schemes) Act 2013 (Remedial) Order 2020*

## **THE EFFECT ON SANCTIONS**

### **Duration of other sanctions**

15. In every case the DM will need to check the claimant's sanction history for any sanctions that were imposed at the same level within 52 weeks, but not 2 weeks, of the relevant sanction (see Note 1) and take any action required to revise and amend the sanctionable period(s) accordingly.

**Note 1:** Relevant sanction means the sanction affected by the remedial order as per paragraphs 9 to 14.

**Note 2:** For ESE cases this will be any low-level sanctions imposed within 52 weeks, but not 2 weeks, of the relevant sanction. For MWA cases this will be any higher-level sanctions imposed within 52 weeks, but not 2 weeks, of the relevant sanction.

**Note 3:** For full guidance on sanction duration and escalation rules see further guidance in this Chapter at 34041 et seq.

**Example 1:**

Joe's appeal against a 4 weeks sanction for failing to comply with the ESE Regs is revised by the DM in line with the guidance at paragraph 9. On checking his sanction history there is a subsequent 26 week low-level sanction that was imposed within 52 weeks, but not 2 weeks, of the relevant sanction for failing to attend a job search review which is impacted. That sanction is to be reduced to 4 weeks accordingly and a payment of 22 weeks is now due to the claimant along with the 4 weeks of the relevant sanction subject to any other concurrent sanctions imposed for the same period as per the guidance at paragraph 16.

**Example 2:**

Jill's appeal against a 13 weeks sanction for failing to comply with the MWA Regs is revised by the DM in line with the guidance at paragraph 10. On checking her sanction history there is a subsequent 26 week higher-level sanction that was correctly imposed for failing to apply for a job vacancy for no good reason within 52 weeks, but not 2 weeks, of the relevant sanction which is now impacted by the decision. That sanction is to be reduced to 13 weeks accordingly which means a payment of 13 weeks JSA is now due to the claimant along with the 13 weeks of the relevant sanction subject to any other concurrent sanctions imposed for the same period as per the guidance at paragraph 16 and Example 2.

## Repayment of a sanction

16. A

1. revised sanction decision **or**
2. superseded tribunal decision **or**
3. court or tribunal decision to overturn a sanction

relating to either the ESE Regulations or the MWA Regulations will enable the entire sanction imposed to be repaid to the claimant subject to any other overlapping sanctions for the same period appropriate on the individual case.

**Note:** In JSA sanctions run concurrently. Therefore, it is possible for multiple sanctions to be applied to the same period of time which could mean that, in some cases, even though the relevant sanction is revised or superseded, no payment, or a reduced number of weeks, of JSA would be due. For further guidance see [paragraph 34049](#). Also see the guidance at paragraph 15 regarding other sanctions at the same level within 52 weeks, but not 2 weeks, which may also impact the amount of JSA due to be repaid.

**Example 1**

Doug's appeal for failing to comply with the ESE regs is revised. The sanction duration was for 26 weeks. On checking Doug's sanction history there were no other sanctions imposed that are impacted by the decision. Doug will receive a repayment of the total 26 weeks JSA.

**Example 2**

See Example 2 at paragraph 15. On checking Jill's sanction history there are 4 other sanctions that were running concurrently with the higher-level sanctions which are not impacted because they are medium-level and low-level sanctions amounting in total to 23 weeks which were correctly imposed. Therefore, although the 13 weeks relevant sanction is revised and the subsequent 26 week sanction is changed to 13 weeks as a result, only 3 weeks JSA would actually be repaid to the claimant.

**Example 3**

Kamala's 3 appeals for failing to comply with the ESE Regs are all superseded in line with the guidance at paragraph 12. These are for 2, 4 and 26 weeks respectively. However, on checking Kamala's sanction history there are other medium-level sanctions correctly imposed for failing to ASE running concurrently that amount to 43 weeks which are not impacted. Therefore, no JSA would be due to be repaid to Kamala.

**For further guidance on any individual case contact DMA Leeds.**