

# ADM Chapter K3: Higher Level Sanctions

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# Introduction K3001 - K3010

## Introduction

K3001 A higher level sanction<sup>1</sup> is a reduction of UC for a sanctionable failure by a claimant who is in the AWRR group **and**

**1.** ceases paid work or loses pay through misconduct<sup>2</sup> (see [K3066](#)) **or**

**2.** for no good reason

**2.1** fails to comply with a requirement imposed by the Secretary of State under a work preparation requirement to undertake a work placement of a prescribed description<sup>3</sup> (see [K3036](#) et seq) **or**

**2.3** fails to comply with a requirement imposed by the Secretary of State under a work search requirement to apply for a particular vacancy for paid work<sup>4</sup> (see [K3051](#)) **or**

**2.4** fails to comply with a work availability requirement by not taking up an offer of paid work<sup>5</sup> (see [K3301](#) et seq ) **or**

**2.5** voluntarily ceases paid work or loses pay<sup>6</sup> (see [K3201](#)),

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

**Note 2:** Where a higher-level sanction applies, the DM has to balance between what is reasonable in the individual facts and circumstances and the interests of the claimant and those of the community whose contributions and taxes finance the benefit.

**Note 3:** See [ADM Chapter K1](#) (General principles) for the meaning of 'sanctionable failure' and 'current sanctionable failure' and the connection between sanctions and conditionality groups. See [ADM Chapter K2](#) (Good reason) for guidance on good reason.

1 [WR Act 12, s 26\(1\)](#); 2 [s 26\(2\)\(d\)](#); 3 [s 26\(2\)\(a\)](#); 4 [s 26\(2\)\(b\)](#); 5 [s 26\(2\)\(c\)](#); 6 [s 26\(2\)\(d\)](#)

K3002 See [ADM Chapter K4](#) (Medium-level sanctions) for guidance on sanctions where the claimant fails for no good reason to comply with a

**1.** specified work related requirement to take all reasonable action to obtain paid work, more paid work or better-paid work **or**

2. work availability requirement<sup>1</sup>.

1 [WR Act 12, s 17\(1\)\(a\) & 27](#); [UC Regs, reg 103](#)

K3003 See [ADM Chapter K5](#) (Low level sanctions) for guidance on sanctions where the claimant

1. falls within specified work-related groups **and**

2. fails without good reason to comply with specified work-related requirements<sup>1</sup>.

1 [WR Act 12, s 23 & 27](#); [UC Regs, reg 104](#)

K3004 See [ADM Chapter K6](#) (Lowest level sanctions) for guidance on sanctions where the claimant

1. falls within the work-focused interview requirement only group **and**

2. fails without good reason to take part in a WFI<sup>1</sup>.

1 [WR Act 12, s 13\(2\)\(a\), 15, 20 & 27](#); [UC Regs, reg 105](#)

K3005

## Imposition of requirements

K3006 For detailed guidance as to when and how a

1. work preparation

2. work availability **or**

3. work search

requirement is imposed by the Secretary of State see [ADM Chapter J3](#) (Work-related requirements).

**Note:** For guidance on the ‘prior information requirement’ and notifying requirements see [ADM Chapter K1](#) (Sanctions-General principles).

## Conditionality Group

K3007 Unless it is a ‘pre-claim’ failure (see [K3024](#)), in order to impose a higher-level sanction the claimant **must** fall into the AWRR group at the time of the failure<sup>1</sup>.

**Note:** For further guidance on conditionality groups see [ADM Chapter J2](#) and for further guidance on the connection between conditionality groups and sanctions see [ADM Chapter K1](#) – Sanctions – General

principles.

[1 WR Act s 26\(2\)](#)

K3008 – K3010

## What is the reduction period K3011 - K3034

[Claimant aged 18 or over and sanctionable failure occurs before 27.11.19](#) K3011

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### Claimant aged 18 or over and sanctionable failure occurs before 27.11.19

K3011 Where the claimant is in the AWRR group, is aged 18 or over on the date of the sanctionable failure and the sanctionable failure is not a pre-claim failure (see [K3024](#)), and the sanctionable failure occurs before 27.11.19, the reduction period is

1. 91 days where
  - 1.1 there has been no previous higher-level sanctionable failure **or**
  - 1.2 the date of the most recent previous higher-level sanctionable failure is more than 365 days before the date of the current sanctionable failure<sup>1</sup> **or**
2. 182 days if, the current sanctionable failure is within 365 days, but not within 14 days, of the previous most recent sanctionable failure and the reduction period applicable was 91 days<sup>2</sup> **or**
3. 1095 days if, the current sanctionable failure is within 365 days, but not within 14 days, of the previous most recent sanctionable failure and the reduction period applicable was either 182 or 1095 days<sup>3</sup>.

**Note 1:** See [ADM Chapter K1](#) (General principles) for the meaning of sanctionable failure and current sanctionable failure and also the general principles on calculating reduction periods, [ADM Chapter K8](#) (When reduction begins and ends) for guidance on when the reduction begins where there is more than

one sanctionable failure.

**Note 2:** The 365 days (and 14 days) refers to the time that has elapsed between failures and not failure determinations or the beginning or ending dates of a reduction period. See further guidance at [K3020](#). If failures are determined out of sequence, see guidance at [K3021](#).

**Note 3:** For higher-level sanctionable failures that occur on or after 27.11.19 the maximum period of a sanction can only ever be 182 days<sup>4</sup>. See guidance at ADM [K3012](#) and for guidance on transitional provisions to end existing 1095 days sanctions imposed prior to 27.11.19 see ADM [K3014](#).

*1 [UC Regs, reg 102\(2\)\(a\)\(i\)](#); 2 [reg 102\(2\)\(a\)\(ii\)](#);  
3 [reg 102\(2\)\(a\)\(iii\)](#); 4 [JSA & UC \(Higher-level Sanctions\) \(Amdt\) Regs, reg 5](#)*

### **Example 1**

Jono claims UC from 21.3.14.

On 28.3.14 the DM determines he had no good reason for failing to apply for a notified vacancy. As this is the first higher level failure a 91 day reduction of UC is applied.

### **Example 2**

On 2.7.14 Samara fails for no good reason to comply with a requirement to participate in the MWA scheme. This is her second higher level failure. A 91 day sanction was imposed for the previous failure on 28.4.14 for a failure without good reason to apply for a notified vacancy. As this is the second sanctionable failure within 365 days, but not within 14 days, of the previous sanctionable failure, a 182 day reduction of UC will apply.

### **Example 3**

Simon refuses without good reason to apply for a vacancy notified to him by his advisor. The date of the failure is 20.4.15. Previous higher-level sanctionable failures occurred on 22.2.14 and 10.10.14 which resulted in sanctions of 91 days and 182 days respectively. The sanction imposed for the current sanctionable failure will be 1095 days as it falls within 365 days, but not 14 days, of the previous most recent sanctionable failure on 10.10.14.

## **Claimant aged 18 or over and sanctionable failure occurred on or after 27.11.19**

K3012 From 27.11.19 regulations<sup>1</sup> were amended to remove 1095 day higher-level sanctions. This means where the claimant is in the AWRR group, is 18 years or over and the date of the sanctionable failure is on or after 27.11.19, the higher-level sanction period will be a reduction in benefit for

**1.** 91 days where

**1.1** there is no previous higher-level sanctionable failure **or**

**1.2** the date of the most recent previous higher-level sanctionable failure is more than 365 days 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 91 days<sup>1</sup> **or**

**2.** 182 days for any subsequent higher-level sanctionable failure occurring within 365 days, but not within 14 days, of a previous higher-level sanctionable failure.

**Note 1:** The maximum period of a higher-level sanction applied to a UC award where the date of failure is on or after 27.11.19 can only ever be for a maximum of 182 days (see **Note 3.** where the TORP applies).

**Note 2:** Where a higher-level sanctionable failure occurs on or after 27.11.19 and occurs within 14 days of a previous sanctionable failure, the reduction period will not escalate. A sanction will be imposed but at the same reduction rate as the previous sanction. See **Example 3** and further guidance at K3021.

**Note 3:** The TORP rules apply as normal<sup>2</sup>. See guidance in ADM [Chapter K1- Sanctions](#) – general principles.

**Note 4:** Transitional provisions apply to end any 1095 day higher-level sanctions already imposed on an award of UC before 27.11.19 and, since the date the reduction took effect, 182 days of that sanction has been served<sup>3</sup>. See further guidance at ADM [K3013](#).

*1 UC Regs, reg 102 ; 2 UC Regs, reg 101; 3 JSA & UC (Higher-Level Sanctions) (Amdt) Regs, reg 5*

**Example 1**

Sabih fails to apply for a job vacancy on 27.11.19 notified to him by his work coach and can show no good reason for the failure. There are no previous higher-level failures within 365 days of this failure. The reduction period will be for 91 days.

**Example 2**

On 29.11.19 Narinder fails to accept when offered a job vacancy notified to her by her work coach and can show no good reason for the failure. There are 2 previous higher-level sanctionable failures and sanctions were imposed for 91 days and 182 days respectively. The date of the most recent previous higher-level sanctionable failure is 16.4.19 which falls within 365 days, but not 14 days, of the current sanctionable failure. As the current failure occurred after 27.11.19 the reduction period will be for 182 days.

**Example 3**

See **Example 1.** On 9.12.19 Sabih fails to accept when offered a job vacancy notified to him by his work

coach and can provide no good reason for the failure. The most recent previous higher-level sanctionable failure was on 27.11.19 which falls within 14 days of the current failure. The reduction period will be for 91 days.

### **Transitional provisions to end 1095 days sanctions imposed prior to 27.11.19.**

K3013 Where an award of UC has already been reduced for a higher-level sanctionable failure for 1095 days, that sanction will terminate on either

- 1.** 27.11.19, where on that date, 182 days of that sanction has already been served **or**
- 2.** on the date after 27.11.19 when 182 days of that sanction has been served.

**Note:** Any TORP will be adjusted to deduct any remaining days of the 1095 day sanction that has been terminated.

#### **Example 1**

Lara had a 1095 day sanction applied to her award of UC. This was applied from 12.6.18. The sanction terminates on 27.11.19 as Lara has already served 182 days of the 1095 day sanction on 27.11.19. On 27.11.19 a total of 534 days of the 1095 day sanction has been served, therefore any TORP is reduced by 561 days.

#### **Example 2**

James had a 1095 day sanction applied to his award of UC. This was applied from 8.7.19. The sanction terminates on 5.1.20, the date when 182 days of the 1095 day sanction has been served. Any TORP would reduce by 913 days.

K3014 – K3015

### **Claimant aged 16 or 17**

K3016 Where the claimant is aged 16 or 17 on the date of the sanctionable failure, and the failure is not a pre claim failure (see K3024), the reduction period is

- 1.** 14 days<sup>1</sup> where there has been no previous higher-level sanctionable failure within 365 days of the current sanctionable failure **or**
- 2.** 28 days<sup>2</sup> if, within 365 days of the failure, there was another higher-level sanctionable failure for which a 14 or 28 day reduction period applies.

**Note 1:** The 365 days refers to the time that has elapsed between failures and not failure determinations

or the beginning or ending dates of a reduction period. See guidance at [K3021](#) if failures are determined out of sequence (also see ADM [K3011](#)). The DM considers whether there has been another sanctionable failure within 14 or 365 days of the current sanctionable failure. The reduction period is calculated based on the period of time that has elapsed between the previous most recent sanctionable failure and the current sanctionable failure.

**Note 2:** Once a claimant reaches 18 any subsequent failures will be at the aged 18 or over level (see example 2).

1 [UC Regs, reg 102\(2\)\(b\)\(i\)](#); 2 [reg 102\(2\)\(b\)\(ii\)](#)

### **Example 1**

Maisie is entitled to UC, and is aged 17. On 16.7.14 Maisie fails to apply for a job vacancy and the DM determines it is a failure without good reason and a 14 day reduction to her UC is imposed as this is Maisie's first higher-level sanctionable failure.

On 8.12.14 Maisie refuses to accept a temporary vacancy offered to her and the DM determines she can show no good reason for the failure. As this is her second higher-level sanctionable failure and the current sanctionable failure falls within 36 days of the previous sanctionable failure a 28 day reduction to her UC is imposed.

### **Example 2**

Callum is entitled to UC and is aged 17.

On 12.5.14 Callum fails without good reason to comply with a requirement to participate in the MWA scheme.

This is Callum's first higher-level failure and a 14 day reduction is imposed.

On 23.12.14 Callum fails to apply for a job vacancy for no good reason notified to him by his advisor.

This is Callum's second higher-level failure and falls within 365 days of the previous most recent failure on 12.5.14.

However, Callum has had his birthday since the previous sanctionable failure and on the date of the current sanctionable failure is now 18 years old.

A 91 day sanction is imposed for Callum's first failure as an adult as there is no provision to escalate to the next penalty level.

K3017 – K3019

## Escalation of sanctions

K3020 All sanctions run consecutively<sup>1</sup>. The length of a sanction will only escalate to the next penalty if there has been one or more previous sanctionable failures at the same level, i.e. another higher-level sanction<sup>2</sup>.

**Note 1:** A previous failure is a sanctionable failure which has been the subject of a decision to reduce UC at the same level.

**Note 2:** When considering previous failures the relevant date is the date on which the most recent sanctionable failure occurred not the date on which the decision to reduce benefit was made. The DM considers whether there has been another sanctionable failure at the same level within 14 or 365 days of the current sanctionable failure. The reduction period is calculated based on the period of time that has elapsed between the previous most recent sanctionable failure and the current sanctionable failure.

**Note 3:** When escalating higher-level sanctions the DM must always be mindful of the TORP rules<sup>3</sup>. For full guidance on the TORP see [ADM Chapter K1](#) – Sanctions general principles.

1 [UC Regs, reg 101\(2\)](#); 2 [reg 102](#); 3 [reg 101\(3\)](#)

### Example 1

Shareena is in receipt of UC and fails without good reason to participate in her fortnightly work search interview on 28.8.13. The DM determines a low-level sanction should be imposed for the failure.

On 7.10.13 Shareena fails without good reason to apply for a job vacancy and the DM decides a sanction is appropriate. The sanction is within 365 days of a previous sanctionable failure but not within 14 days. However, the current sanctionable failure is a higher-level sanctionable failure 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 91 days sanction will be imposed for the first higher-level sanctionable failure on 7.10.13 (see [K3011](#)).

### Example 2

On 10.12.12 Francesca failed to participate in the MWA scheme without good reason and a 91 day reduction was imposed. On 16.12.13 Francesca fails without good reason to apply for a suitable job vacancy. A sanction of 91 days is appropriate.

Although there has been a previous higher-level failure, the current sanctionable failure does not fall within 365 days of the claimant's previous most recent higher-level sanctionable failure and therefore the sanction cannot escalate to the next penalty.

## Current sanctionable failure occurred within 14 days of the previous most recent sanctionable failure

K3021 The reduction period will not escalate to the next penalty level where the current sanctionable failure is within 14 days of the most recent previous sanctionable failure<sup>1</sup>. This means where higher-level failures occur within 14 days 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.

**Note 1:** This is to help claimants not to accumulate lengthy sanctions for failures which occur within a short period. This depends on the dates of the failures (see [K3020 Note 2](#)), i.e. it is the period between the date of the current sanctionable failure and the most recent previous sanctionable failure that counts.

**Note 2:** For more guidance on how to calculate the reduction period where the current sanctionable failure occurred within 14 days of a previous sanctionable failure<sup>1</sup> see [ADM Chapter K1](#) (General principles).

**Note 3:** The maximum reduction period that can be imposed on a UC award for higher-level sanctionable failures that occur on or after 27.11.19 is 182 days. See guidance at [K3012](#) and **Example 3**.

<sup>1</sup> [UC Regs, reg 102](#)

### Example 1

Darya has multiple higher-level sanctionable failures for failing to apply for specific job vacancies without a good reason as required under a work-search requirement and as notified by the Wp provider which are shown in the table below.

Dates of Higher-level Sanctionable Failures	Period between current higher-level sanctionable failure & most recent previous sanctionable higher-level failure	Duration of sanction
21/01/15		91days – it is Darya’s first higher-level sanctionable failure.
28/01/15	7days	There is one previous higher-level failure and the date of the failure is within 365 days and is also within 14 days of the date of the current sanctionable failure so the sanction duration also has to also be for 91 days.
04/02/15	7days	There is more than one previous higher-level

		sanctionable failure and <b>the previous most recent</b> previous sanctionable failure is within 365 days but is also within 14 days of the date of the current sanctionable failure so the sanction duration also has to be for 91days
11/02/15	7days	Again there is more than one previous higher-level sanctionable failure and <b>the previous most recent</b> sanctionable failure is within 365 days and also within 14days of the date of the current sanctionable failure so the sanction duration also has to be for 91 days

Darya will have 4 x 91 days sanctions imposed on her UC. None would escalate to 182 days as each sanctionable failure occurs within 14 days of the previous most recent sanctionable failure.

### Example 2

Dates of Higher-level Sanctionable Failures	Period between current higher-level sanctionable failure & most recent previous sanctionable higher-level failure	Duration of sanction
27.7.16 - he fails without a good reason to apply for a specific vacancy notified to him by the Work Coach		<b>91 days</b> – it is Wayne’s first higher-level failure.
4.8.16 - he fails without a good reason to apply for a specific vacancy notified to him by his Wp provider.	8 days	<b>91 days</b> - there is one previous higher-level failure on 27.7.16 and the current sanctionable failure on 4.8.16 is within 365 days and is also within 14 days so the sanction duration also has to be for 91 days and cannot escalate to the next level.
11.8.16 – he fails without a good reason to accept a job offer notified to him by his Wp provider	7 days	<b>91 days</b> - there is more than one previous higher-level sanctionable failure and the most recent previous sanctionable failure on 4.8.16 is within 365 days and also within 14 days of the date of the current failure on 11.8.16 so the sanction duration also has to be for 91days and cannot escalate to the next level.

1.9.16 – he fails without good reason to apply for a specified vacancy in his UJ ‘Saved Jobs’ page	21 days	<b>182 days</b> - there is more than one previous higher-level sanctionable failure and the most recent sanctionable failure on 11.8.16 is within 365 days but not within 14 days of the date of the current failure on 1.9.16 so the sanction duration escalates to 182 days.
2.9.16 – he fails without a good reason to apply for a specified vacancy notified to him by his Wp provider	1 day	<b>182 days</b> - there is more than one previous higher-level failure and the most recent sanctionable failure on 1.9.16 is within 365 days and also within 14 days of the date of the current failure on 2.9.16 so the sanction cannot escalate and must be for the same duration as the previous sanction, i.e. 182 days.
2.11.16 – he fails without a good reason to apply for a specified vacancy notified to him by his Work Coach	60 days	<b>1095 days</b> – there is more than one previous higher-level failure and the most recent failure on 2.9.16 is within 365 days but not within 14 days of the date of the current sanctionable failure on 2.11.16 so the sanction escalates to 1095 days*.

Wayne will have 3 x 91 days, 2 x 182 days and 1 x 1095 days sanctions imposed on his UC.

[\* When imposing the sanction for the failure on 2.11.16, consideration has to be given to whether the reduction period would result in the TORP exceeding 1095 days on the day the DMs decision is made and whether the reduction period has to be adjusted accordingly (see further guidance in [ADM Chapter K1](#) – General principles)].

### Example 3

On 3.6.19 Mufaza fails to take up, for no good reason, an offer of paid work which was notified to her by the work coach. As this is Mufaza’s first higher-level sanctionable failure the reduction period will be for 91 days.

On 12.6.19 Mufaza refuses to apply for no good reason for a job notified to her by her work coach. This failure falls within 14 days of the most recent previous higher-level sanctionable failure on 3.6.19 so the reduction period will also be for 91 days.

On 1.11.19 Mufaza 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 365 days, but not 14 days, of the most recent previous higher-level sanctionable failure on 12.6.19. The reduction period will be for 182 days.

On 28.11.19 Mufaza 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 that occurred after 27.11.19 and falls within 365 days, but not 14 days, of the previous most recent higher-level sanctionable failure on 1.11.19. The reduction period will be for 182 days.

On 9.12.19 Mufaza again fails to accept when offered a job without good reason which was notified to her by the work coach. This is a higher-level sanctionable failure that has occurred within 14 days of the previous most recent higher-level sanctionable failure on 28.11.19. The reduction period will also be for 182 days.

### **Failures determined out of sequence**

K3022 DM's should make sanction decisions in order of date of failure and should check IT systems to ensure when making a sanction decision there are no other outstanding sanction decisions outstanding. However in the event that it has been unavoidable that a sanction decision is made out of sequence, the period of the reduction will only escalate if there has been a previous sanctionable failure within 365 days of the failure in question but see K3020 if the failure is within 14 days of the previous most recent sanctionable failure.

**Note 1:** A previous sanctionable failure means one where a decision to reduce benefit has been made. This means it is the date of the previous most recent sanctionable failure for the purposes of escalation that counts but only where that sanctionable failure has led to a reduction period. The DM considers whether there has been another sanctionable failure at the same level within 14 or 365 days of the date of the current sanctionable failure. It is not necessary in live service areas to revise and put the sanctions back into date order of failure unless the outcome would be beneficial for the claimant.

**Note 2:** For the definition of 'sanctionable failure' and 'current sanctionable failure' see [ADM Chapter K1](#) (General principles).

**Note 3:** In Digital service areas the IT system changes the duration of any sanctions that are made out of sequence back into date of failure order. This means in the Example below when Sanction 2 is input on the Full Service system, it will show as 91 days, and Sanction 1 will change to 182 days.

### **Example**

On 31.7.14 the DM is considering a case where Keiza failed to comply with a requirement to participate in the MWA scheme without good reason on 28.4.14 and decides a sanction is appropriate.

On checking, the DM finds there is a previous higher-level sanction recorded for a failure without good reason to apply for a job vacancy. This was decided on 30.6.14 for a failure that occurred on 26.6.14 and a 91 day reduction to Keiza's UC was imposed.

The DM applies a 182 day sanction for the failure on 28.4.14 as there has been a previous higher-level

sanctionable failure within 365 days which led to a reduction of UC of 91 days.

Sanction 1 decided 30/6/14, date of failure 26/6/14 – 91 days sanction imposed.

Sanction 2 decided 31/7/14, date of failure 28/4/14 – 182 days sanction imposed.

Keiza claims UC in a full service area and when the outcome of sanction 2 is input into the system it will show as 91 days, and Sanction 1 will change to 182 days to put the sanctions back into date of failure order with the appropriate sanction duration.

K3023

## Pre-claim failures

K3024 Where a failure occurs before the claimant makes a first claim to UC (known as a ‘pre-claim failure’) and the claimant

**1.** ceased paid work or lost pay through misconduct **or**

**2.** for no good reason

**2.1** fails to take up an offer of paid work **or**

**2.2** voluntarily ceased paid work or lost pay

that failure may not be counted for the purpose of determining the reduction period for a subsequent sanctionable failure<sup>1</sup> (see [K3025](#)).

**Note:** For the definition of a pre-claim failure see [ADM Chapter K1](#).

1 [UC Regs, reg 102\(5\)](#); [WR Act 12, s 26\(4\)](#)

K3025 Pre-claim failures can only be counted with previous higher-level failures for escalation purposes as long as the previous failure is

**1.** within 365 days but not 14 days of the current sanctionable failure in question **and**

**2.** the previous failure is not another pre-claim failure<sup>1</sup>.

However, see K3020 if the previous failure is within 14 days of the current sanctionable failure.

**Note 1:** A ‘pre claim failure’ cannot count towards escalation of a sanction to the next level but it does not

preclude a sanction from being imposed where a failure without good reason occurs during the currency of a UC claim it just doesn't apply as a 'pre-claim' failure.

**Note 2:** See [K3066](#) for guidance on Misconduct and [K3201](#) for guidance on leaving paid work or losing pay voluntarily.

**Note 3:** See [K3063](#) for guidance on refusal or failures to take up an offer of paid work that occurs 'pre-claim'.

[1 UC Regs, reg 102\(3\)](#)

### **Example 1**

On 29.4.14 Jamilla is sacked from her job due to misconduct.

She claims UC on 29.4.14.

On 19.5.14 the DM determines that Jamilla lost her job due to misconduct and imposes a reduction of 91 days for a first higher-level sanctionable failure.

On 4.3.15 Jamilla leaves a job because she doesn't like it and reclaims UC from 4.3.15.

The DM considers a sanction at the higher-level.

The second sanctionable failure is within 365 days of the previous failure but both occurred before she made a claim to UC (i.e. both are pre-claim failures) and therefore the previous failure is not counted when determining the reduction period for the subsequent failure.

The DM imposes a 91day reduction to Jamilla's UC for the sanctionable failure on 4.3.15.

### **Example 2**

On 5.8.14 Abdul refuses a job and the DM determines he has failed without good reason to accept paid work and imposes a 91 day higher-level sanction.

On 17.12.14 he fails to apply for another job which is vacant and this time the DM imposes a 182 day reduction for a second higher-level failure which has occurred within 365 days of the first failure. On 31.7.15 Abdul leaves a job because he says he is bored and reclaims and is awarded UC from 31.7.15.

The DM determines Abdul left paid work voluntarily and without good reason and imposes a 1095 day reduction.

The third failure is a pre-claim failure but is within 365 of a previous higher-level failure which is not a pre-claim failure.

## **Reduction period for a pre-claim failure**

K3026 Where the sanctionable failure is a pre-claim failure (see [K3024](#)) the reduction period is reduced by the number of days between the date of the day

**1.** after the date of the sanctionable failure **and**

**2.** before the date of the claim to UC<sup>1</sup>

except where K3027 applies.

[1 UC Regs, reg 102\(4\)\(a\)](#)

### **Example 1**

On 16.11.14 Camilla is sacked from her job due to misconduct.

She claims UC on 28.11.14.

On 23.12.14 the DM determines that Camilla has lost paid work due to misconduct and imposes a higher level sanction of 91 days for a first higher-level sanctionable failure.

The reduction period is reduced by 11 days, i.e. the period from 17.11.14 (the date after the failure) to 27.11.14 (the date before the date of claim to UC).

### **Example 2**

Duncan claims UC from 26.8.14 after leaving his job on 22.8.14.

The DM determines he had no good reason for leaving his job.

As this is a first higher level sanctionable failure a 91 day reduction of UC is applicable.

The reduction period is reduced by 3 days, i.e. the period from 23.8.14 (the date after the failure) to 25.8.14 (the date before the claim to UC).

### **Example 3**

Mia is in full time employment and leaves her job on 11.11.16 for no good reason.

On 14.11.16 she claims UC. After applying waiting days, Mia's Assessment Period runs from the 21st of each month.

Mia receives final earnings on 30.11.16 and has nil entitlement to UC for her first Assessment Period from 21.11.16 to 20.12.16.

Mia is awarded UC from 21.12.16.

The failure on 11.11.16 is a 'pre-claim' failure. Mia has left full time work voluntarily and with no good reason before the claim to UC. Mia is placed in the AWRR group from 21.12.16, the date when UC is awarded.

This is Mia's first higher-level sanctionable failure and on 26.1.17 the DM determines a 91 days reduction is to apply.

A period of 2 days is deducted from the 91 day reduction period, for the period from 12.11.16 (the day after the date of failure) to 13.11.16 (the day before the date of claim to UC).

The balance of the reduction period (i.e. 89 days) would be applied commencing from the first day of the first Assessment Period 21.11.16 treating the date of determination as being made on 19.11.16 and the sanction runs as if a daily reduction period were being applied.

For full guidance on reduction periods see [ADM Chapter K8](#).

#### **Example 4**

On 29.1.16 Sebastian leaves his job for no good reason and he claims UC that day. After applying waiting days, Sebastian's Assessment Period runs from the 5th of each month and his first Assessment Period runs from 5.2.16 to 4.3.16.

The failure on 29.1.16 is a 'pre-claim' failure and Sebastian would fall in the AWRR group from 5.2.16.

Sebastian receives a payment of final earnings on 12.2.16.

Whilst the final earnings do not reduce his UC award to nil entirely for that Assessment Period, they are above the CET and would normally place him in the NWRR group for that Assessment Period.

As there remains some entitlement to UC and Sebastian does not have a new job to move into in the near future, the DM disregards his final earnings in order to place him in the AWRR group from 5.2.16.

Within 365 days there has been a previous higher-level failure for which a 91 day sanction was imposed which was also a 'pre-claim' failure and so cannot count when deciding on the duration of the reduction period for the failure on 29.1.16.

On 16.2.16 the DM decides a 91 day sanction is appropriate for the LV failure on 29.1.16.

A period of 6 days is deducted from the 91 days for the period 30.1.16 (the day after the date of failure) to 4.2.16 (the day before the date of the relevant award of UC).

The balance of 85 days is applied and starts in the Assessment Period from 5.2.16.

For full guidance on earnings and conditionality groups see [ADM Chapters J2](#) and [K1](#).

## Example 5

Viola leaves her employment voluntarily for no good reason on 5.8.16 and makes a claim for UC on 30.9.16. After waiting days have been served her Assessment Period runs from the 7th of each month.

She then obtains further employment from 10.10.16 to 23.10.16 but still remains entitled to an award of UC throughout.

On 30.1.17 the DM considers whether a sanction can be applied for the LV on 5.8.16.

The failure on 5.8.16 is a 'pre-claim' failure and from 7.10.16 Viola falls in the AWRR group even though due to her earnings in her new employment from 10.10.16 she would be placed into the NWRR as her earnings are above the AET but below the CET.

There are no previous higher-level sanctionable failures within 365 days.

The DM determines a 91 day sanction would apply, less time already served by Viola between leaving her job on 5.8.16 and making the claim for UC on 30.9.16 (i.e. 6.8.16 (the day after the date of the failure) to 29.9.16 (the day before the date of the relevant UC claim) = total of 55 days already served.

The balance of the sanction (i.e. 36 days) would commence from the Assessment Period that includes the date of the DMs decision.

## Reduction period for a pre-claim failure where paid work is for a limited period

K3027 Where the sanctionable failure is a pre-claim failure and relates to paid work that was due to last for a limited period, the reduction period will

1. begin with the day after the date of the sanctionable failure **and**
2. end with the date on which the limited period would have ended minus the number of days beginning with the day after the date of the sanctionable failure and the day before the date of claim to UC<sup>1</sup>.

**Note:** Limited period means a specific period which is fixed in advance, for example a short term contract. If the employment was due to end 28 days after the person left that employment then the maximum period of reduction which could be imposed would be for 28 days.

<sup>1</sup> [UC Regs, reg 102\(4\)\(b\)](#)

## Example

Emily is a dancer and has a 6 month contract with a dance company from 1.9.14 to 28.2.15.

She voluntarily leaves her contract on 4.1.15 and claims UC on 12.1.15.

The DM determines that Emily left her employment voluntarily and for no good reason.

This is a first higher level sanctionable failure and a 91 day sanction would normally apply.

Emily's contract was due to finish on 28.2.15. therefore the reduction period actually imposed is for 48 days which is the period from the failure to the end of the contract minus the period between the failure and date of claim.

## Failures following a re-award of UC

K3028 A higher level sanction cannot be imposed on someone who

1. has failed to take up an offer of paid work<sup>1</sup> or
2. has lost their job or reduced their hours and earnings voluntarily or because of misconduct<sup>2</sup>

**unless** they have done so before making a claim for UC (see [K3029](#)).

**Note:** The provisions apply to claimants in the all work-related requirement group (for guidance on work-related requirements see [ADM Chapter J3](#)).

1 [WR Act 12, s 26\(4\)\(a\)](#); 2 [s 26\(4\)\(b\)](#)

K3029 This means imposing a higher-level sanction on claimants for 'pre-claim failures' does not apply to claimants who come back onto UC through the re-award process (see [ADM K3030 – K3031](#)). This is because legislation<sup>1</sup> defines this category of sanctionable failure as being where a claimant at any time **before making a claim** has

1. failed to take up an offer of paid work or
2. ceased work or lost pay without good reason voluntarily or through misconduct.

A claimant can be automatically re-awarded UC without having to make a claim<sup>2</sup> and therefore falls outside the scope of 'pre-claim failures'.

**Note:** For definition of 'sanctionable failure' see [ADM Chapter K1](#).

1 [WR Act 12, s 26\(4\)\(a\) & \(b\)](#); 2 [UC C&P Regs, reg 6\(1\)](#)

## Re-award of UC (live service areas only)

K3030 If a former claimant would become re-entitled to UC within six months of the last day of their previous entitlement and they

1. failed to take up an offer of paid work **or**
2. without good reason voluntarily or through misconduct
  - 2.1 had their hours or wages reduced **or**
  - 2.2 lost their job

then they have two options for returning to UC. They can either make a fresh claim or they can notify the change in their circumstances and their UC can be re-awarded<sup>1</sup> without them having to make a claim.

**Note 1:** Where an award is made without a claim, the claimant is treated as having accepted a claimant commitment from the first day of the assessment period in relation to the award<sup>2</sup>. Any claimant leaving work or losing pay voluntarily for no good reason or through misconduct should be placed in the AWRR group from that same date (i.e. the first day of the relevant award).

**Note 2:** This does not apply to digital services areas as those claimants have to make a claim to UC<sup>3</sup>. There is no automatic re-award process therefore if the claimant leaves work or loses pay, the failure will be a 'pre-claim' failure and falls to be considered in the normal way (see guidance at [K3024](#)).

1 [UC, PIP, JSA & ESA \(C&P\) Regs, reg 6\(1\)](#); 2 [UC Regs, reg 15\(2\)](#);

3 [UC \(Digital Services\) Amdt Regs 2014, reg \(2\)\(a\)](#)

### Example

Michelle is in receipt of UC (live service area). Her assessment period runs from the 20th of each month. On 21.3.16 Michelle begins a job and her earnings reduce her UC award to nil. Michelle's UC award ends on 19.3.16 and she enters the re-award period.

On 12.8.16 Michelle reports that she lost her job on 10.8.16 and received final earnings on that day which reduce her UC award to nil in the first assessment period (20.7.16 – 19.8.16) of the re-award.

As Michelle is within the re-award period she retains the same assessment period as in her previous award and the failure cannot be a 'pre-claim' failure.

Where an award is made without a claim the claimant is treated as having accepted a claimant commitment from the first day of the assessment period of the re-award and so Michelle is placed in the AWRR conditionality group from 20.8.16. At the time of the failure, 10.8.16, Michelle was not in any conditionality group as she had nil entitlement and the failure cannot be a 'pre-claim failure' as she is not

required to make a new claim to receive UC, therefore no sanction can be applied.

## Joint claimants

K3031 Regulations<sup>1</sup> enable an award of UC to be made in some instances to joint claimants without the need for a claim being made.

**Note:** It is less likely that a pre-claim failure would arise in these cases because where two existing single claims merge (or a joint claim is converted to a single claim(s)) there will be no break in entitlement, but it is possible that in certain cases pre-claim failures may arise, e.g. if one partner did not have a subsisting UC claim (for further guidance on UC claims see [ADM Chapter A2](#)).

1 [UC, PIP, JSA & ESA \(C&P\) Regs, reg 9](#)

## Higher-level sanctions where there is a re-award of UC

K3032 Where a person is re-awarded UC

**1.** without making a claim **and**

**2.** a pre-claim failure is identified

they will not fall under relevant legislation<sup>1</sup>. This means there can be no 'pre-claim failure' for the intervening period.

**Note:** See note at [K3030](#). As digital services claimants always have to make a claim to UC higher-level sanctions can apply in the normal way.

1 [WR Act 12, s 26\(4\)](#)

## Work-related requirements

K3033 With the exception of powers to impose sanctions for pre-claim failures, claimants should not be referred for a sanction decision for failures committed when the claimant was not entitled to UC. This is because legislation<sup>1</sup> is limited to imposing work-related requirements upon claimants<sup>2</sup>. These powers do not stretch to individuals who have come off benefits even if we anticipate that they may re-claim in the future under the re-award process or otherwise.

**Note:** When an award is reduced to nil due to a sanction the claimant remains entitled to UC but payment is nil for the sanction period and so conditionality and sanctions still apply throughout that period (see further guidance in [ADM Chapter K1](#) – General Principles).

1 [WR Act 12, s 13 - 25](#); [UC Regs, reg 95](#); 2 [WR Act 12, s 40](#)

K3034 Therefore we cannot impose a requirement upon an individual where there is no subsisting claim/award for UC. There is also no power to impose a requirement within an earlier notification that

seeks to impose a binding obligation contingent upon the fact a claimant may be re-awarded benefit in the future (for detailed guidance on Work-related requirements in UC see [ADM Chapter J3](#)).

# Failures for which no reduction applies K3035

## Failures for which no reduction applies

K3035 No reduction may be made where the sanctionable failure in question

**1.** is a failure to

**1.1** apply for a particular vacancy **or**

**1.2** take up an offer of paid work

where the vacancy is because of a strike arising from a trade dispute<sup>1</sup> (see K3276)

**2.** occurs because the claimant ceases paid work or loses pay and the following circumstances apply

**2.1** the claimant's work search and work availability requirements are subject to limitations imposed in respect of work available for a certain number of hours

**2.2** the claimant takes up paid work or more paid work that is for a greater number of hours **and**

**2.3** the claimant voluntarily ceases that paid work or more paid work or loses pay within a trial period<sup>2</sup> (see K3211)

**3.** is that the claimant voluntarily ceases paid work or loses pay because of a strike arising from a trade dispute<sup>3</sup> (see K3276)

**4.** is that the claimant voluntarily ceased paid work as a member of the regular or reserve forces (see **note 1**) or loses pay in that capacity<sup>4</sup> (see K3272)

**5.** is a pre-claim failure (see K3024 – K3027) and the period of the reduction is the same as or shorter than the number of days beginning with the day after the date of the sanctionable failure and ending with the date of claim<sup>5</sup>

**6.** is that the claimant voluntarily ceases paid work because the claimant has

**6.1** been dismissed because of redundancy after volunteering or agreeing to be dismissed

**6.2** ceased work on an agreed date without being dismissed in pursuance of an agreement relating

to voluntary redundancy **or**

**6.3** been laid off or kept on short-time as provided for in relevant legislation<sup>6</sup> and has complied with those requirements<sup>7</sup> (see K3251)

**7.** is that the claimant by reason of misconduct or voluntarily and for no good reason ceases paid work or loses pay and the claimant's monthly earnings or, in the case of a joint-claim couple, their joint earnings, have not fallen below the amount specified by the Secretary of State when considering what work search and work availability requirements should be imposed<sup>8</sup>.

**Note 1:** Regular or reserve forces has the same meaning as in relevant legislation<sup>9</sup> (see K3272).

**Note 2:** The circumstances in **2.1, 2.2 or 2.3** apply when a claimant has restrictions on work search and availability and tries out work in excess of those limitations and then ceases that work or loses pay in the trial period. For guidance on trial period see K3211.

**Note 3:** See ADM Chapter J3 (Work-related requirements) for guidance on work search, work-related requirements and paid work and ADM Chapter H3 (Earned income: employed earners) for guidance on trade disputes.

1 [UC Regs, reg 113\(1\)\(a\)](#); 2 [reg 113\(1\)\(b\)](#); 3 [reg 113\(1\)\(c\)](#); 4 [reg 113\(1\)\(d\)](#); 5 [reg 113\(1\)\(e\)](#);

6 [ER Act 1996, s 148](#); 7 [UC Regs, reg 113\(1\)\(f\)](#); 8 [reg 113\(1\)\(g\)](#); 9 [Armed Forces Act 2006, s 374](#)

## Fails for no good reason to comply with a work placement of a prescribed description K3036 - K3050

[Fails for no good reason to comply with a work placement of a prescribed description K3036](#)

[MWA scheme K3037 - K3044](#)

[MWA scheme ends K3045 - K3050](#)

## Fails for no good reason to comply with a work placement of a prescribed description

K3036 It is a failure for no good reason to comply with a requirement imposed by the Secretary of State under a work preparation requirement to undertake a work placement of a prescribed description that gives the DM the provision to reduce benefit at the higher level<sup>1</sup>.

1 [WR Act 12, s 26\(2\)\(a\); UC Regs, reg 102](#)

### MWA scheme

K3037 The Mandatory Work Activity (MWA) scheme<sup>1</sup> is a specified work placement scheme for the purposes of higher-level sanctions. It is a scheme known by that name 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:** 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 (see further guidance at K3045 et seq).

**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 comply without good reason then a higher-level sanction should be imposed (see K3038 et seq).

**Note 3:** See the guidance in ADM Chapter K5 (Low level sanctions) for other placements and employment schemes, e.g. Work Programme, sector-based work academies, Skills Conditionality.

1 [UC Regs, reg 114\(2\)](#)

## **Failure to comply in the MWA scheme**

K3038 Failure to comply is not defined in legislation and therefore takes its everyday meaning of fulfilling a specified requirement. Claimants will be expected to comply with all requirements specified to them as part of a work preparation requirement which makes it more likely in the opinion of the Secretary of State that the claimant will obtain paid work, more paid work or better-paid work (see **Note**). For MWA this can include a failure to

- 1.** attend and take part in the placement (see K3039) **and/or**
- 2.** meet expected standards of behaviour (see K3040).

**Note 1:** For detailed guidance on the imposition of a work preparation requirement see ADM Chapter J3 (Work-related requirements).

**Note 2:** For guidance on the 'prior information requirement' and notifying requirements see ADM Chapter K1 (Sanctions – General principles).

K3039 Failing to take part in the MWA 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.

“Non complying” is basically not fulfilling any specified requirement that a claimant is instructed to do as part of a work preparation requirement.

**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 comply with a work preparation requirement. The claimant would have to show good reason for the failure (for detailed guidance on good reason see ADM Chapter K2 (Good reason)).

### **Example**

Vanessa is notified of a MWA 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 complying in the scheme as part of a work preparation requirement 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 these tasks or anything appropriate to her position as a shop assistant without good reason a sanction can be considered (also see the guidance on inappropriate behaviour at K3040).

## **Inappropriate behaviour**

K3040 Work preparation requirements are 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)

in order to prepare them to return to or enter the labour market. Work preparation requirements can also include 'behaviours' acceptable in a place of work (see K3041).

K3041 Participation can 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.

K3042 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 bad or offensive language
- 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.

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.

K3043 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 ADM Chapter K2.

**Note:** Inappropriate behaviour can be any unreasonable act or omission shown towards the employer, other employees or customers and the DM should consider each case on its individual merits taking all the facts and circumstances into account.

### **Example**

Hannah starts her MWA 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 rude to the other staff and customers in the coffee shop and constantly moans about having to be on the placement and what she is asked to do. The DM can consider a sanction as Hannah's behaviour is a failure to comply with a work preparation requirement as specified. It is not considered acceptable behaviour and does not meet the code of conduct of the placement provider and her behaviour justified her dismissal from the placement. Such conduct meant the provider was not prepared to continue Hannah's placement on the MWA scheme. 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 in Hannah's case to develop her interpersonal and social skills to overcome her barriers to work.

### **Balance of time**

K3044 Where a claimant is mandated to the MWA scheme and does not complete the allotted time of 4 weeks on the placement because they

- 1.** leave UC for a reason other than going into employment and return to benefit within 14 days **or**
- 2.** are sanctioned for a failure to participate without good reason **or**
- 3.** failed to participate but the DM accepts good reason

they can be re-referred to the same placement and a further higher-level sanction could apply if they fail 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 work 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 91 day reduction 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 365 days, but not within 14 days, of the previous sanctionable failure on 12.2.14, a 182 day reduction is imposed.

## **MWA scheme ends**

K3045 The MWA scheme will end 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.

K3046 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.

## **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**

K3047 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 (see guidance at ADM K3038 et seq).

**Note:** Any sanction referrals received with a date of failure to participate in the scheme after the last date a claimant can participate in the MWA scheme (i.e.27.4.16) should be cancelled.

K3048 The period of any sanctions applied will not be affected by the end of provision date. The appropriate sanction period is applied to the next available Assessment Period and/or added to the TORP in the usual way. It is the date of failure which is the important date for the DM to consider and that must occur on or before the last date for participation in the relevant scheme (see paragraph 9).

**Note:** For further guidance on applying sanctions see ADM Chapter K1 (General Principles – Sanctions).

### **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 91 day sanction is appropriate as this is Mark's first higher-level sanctionable failure.

The 91 day sanction is applied to the next available Assessment Period.

### **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.

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 182 day sanction is appropriate as there has been a previous higher-level sanctionable failure in the 364 days immediately preceding the current failure.

The reduction period for this latest sanctionable failure is added to the TORP.

K3049 - K3050

## Failure to comply with a requirement to take up or apply for particular vacancy for paid work K3051 - K3065

[Failure to comply with a requirement to take up or apply for a particular vacancy for paid work](#) K3051

[Failure or refusal to apply for a specified vacancy](#) K3052 - K3056

[Refusal or failure](#) K3057

[Claimants change their mind](#) K3058 - K3059

[Failure or refusal to apply for a specified vacancy in the UJ account](#) K3060 - K3062

[Failure or refusal to take up offer of paid work occurs 'pre-claim'](#) K3063 - K3065

## Failure to comply with a requirement to take up or apply for a particular vacancy for paid work

K3051 Legislation<sup>1</sup> provides that a failure is a higher-level sanctionable failure where a claimant in the AWRR group fails without good reason to comply with a requirement imposed by the Secretary of State under a work search requirement to apply for a particular vacancy for paid work<sup>1</sup>.

**Note 1:** For detailed guidance on paid work and the imposition of work search and work availability requirements see ADM Chapter J3 (Work-related requirements). For guidance on failing to comply with a work availability requirement by not taking up an offer of paid work<sup>2</sup> see guidance at K3301 et seq.

**Note 2:** It is for the DM to consider in every case where there is a failure whether the claimant had good reason. For detailed guidance on good reason see ADM Chapter K2 (Good reason).

**Note 3:** Providers can be authorised persons to act on behalf of the Secretary of State to mandate claimants to apply for or accept if offered a job vacancy<sup>3</sup>. See ADM Chapter K1 (General principles) for guidance on delegation and contracting out of certain functions to authorised persons.

**Note 4:** Where the vacancy is a Kickstart Job the claimant cannot be mandated to apply for a specific job. See the guidance on the Kickstart Job Scheme at K3330 et seq.

**Note 5:** If the claimant is an Afghan citizen on the Resettlement Scheme see guidance at J3331 when setting work-related requirements and considering easements for this particular claimant group. A claimant may turn down work through concern about starting a job when they may be rehoused elsewhere in the country and they don't want to commit in the short term. It will be for the DM to consider each case on its own merits, facts and circumstances when considering what is reasonable and fully considering the complex needs of this claimant group in particular their temporary accommodation

status. For full guidance on good reason see ADM Chapter K2.

[1 WR Act 12, s 26\(2\)\(b\)](#); [2 s 26\(2\)\(c\)](#); [s 29](#)

### **Example 1**

Riley is given a suitable job vacancy by the Work Coach on 18.5.15 when he attends his work search review and is required to apply for the vacancy by the closing date of 29.5.15. When Riley attends his work search review on 1.6.15 he has not applied for the vacancy as he says he forgot about it. The DM decides Riley did not have a good reason for the failure and imposes a higher-level sanction. The date of the sanctionable failure is 29.5.15.

### **Example 2**

Evelyn is participating in the Wp and her provider asks her to apply for a suitable identified job vacancy before their next meeting in a week's time. Evelyn fails to apply for the vacancy by the date of the next meeting with her provider on 27.5.15. She says she didn't think the pay was enough. The provider raises a sanction doubt and refers the case to the DM to consider whether Evelyn can show good reason for the failure and whether a sanction can be imposed. The date of the sanctionable failure is 27.5.15.

## **Failure or refusal to apply for a specified vacancy**

### **The meaning of a 'particular' vacancy**

K3052 'Particular' is not defined in legislation and so takes its ordinary meaning which would be 'an individual item'. In this context within the legislation this would be

- 1.** an identified individual vacancy that is 'specified' by the Secretary of State (see K3053 for the meaning of specified) **and**
- 2.** a vacancy that exists, or is about to arise, at the point it is specified to the claimant (see **Note 1**) **and**
- 3.** reasonable and suitable in the claimant's individual circumstances (see **Note 2**).

**Note 1:** A claimant cannot fail to apply for a vacancy which does not actually exist. For example, registering with an employment agency would not constitute an actual job vacancy. Registration with such an agency may well be considered to improve the claimant's chances of getting paid work (more or better-paid work) and a refusal to comply with a requirement to register with such an agency for no good reason would be considered as a failure to meet a work preparation requirement. This would fall to be considered as a low-level sanctionable failure and would not be a higher-level sanctionable failure. See guidance at K3056 regarding work trials.

**Note 2:** There is no express provision that the vacancy should be for work that is suitable for the claimant in question. However, any limitations and restrictions should have been noted on the Claimant Commitment when setting work-related requirements at the outset of the claim and taken into account

when specifying the vacancy to the claimant. Suitability of the vacancy based on the claimant's individual skills, ability, location, capabilities and capacity and their own resource would normally be discussed with the claimant at the work search review and will also be relevant to the issue of whether a claimant can show good reason for any refusal or failure to apply for a specific vacancy. For example the job required a skill or qualification the claimant did not have. See ADM Chapter K2 for full guidance on Good reason.

### **The meaning of 'specified'**

K3053 The word 'specified' 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 particular job vacancy or accept a job when offered it. That context does not require a special meaning to be given to it, so 'specified' must be given its ordinary meaning (see K3054).

K3054 In its ordinary meaning, 'specified' means to 'identify clearly and definitely'. Therefore in order for a higher-level sanction to be imposed some obligation has to be applied to it and the claimant should be clearly informed of

- 1.** the particular 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:** A claimant can only be mandated under threat of a sanction to apply for an individual vacancy that has been clearly identified and defined to the claimant and the claimant understands the consequences of failing to comply . See the guidance on the public law principles of fairness in ADM Chapter K1.

### **Informing the claimant of a particular vacancy**

K3055 Legislation does not prescribe how a claimant is to be informed of a particular suitable vacancy. The claimant may be informed

- 1.** personally when attending the UC outlet or elsewhere **or**
- 2.** by letter **or**
- 3.** by telephone **or**
- 4.** by electronic means (such as by text or email if agreed with the claimant as the preferred method of contact) **or**
- 5.** by setting the requirement on the Claimant Commitment **or**
- 6.** by setting a 'to do' in the claimants on line journal.

**Note 1:** The most important thing is that however the claimant is notified of the vacancy, a record that all the criteria in K3054 have been met is kept in the claimant history should it be required for evidence purposes later should a decision maker be required to make a sanction determination or in the event of an appeal.

**Note 2:** If the claimant is informed by a requirement on the Claimant Commitment or by a letter a copy should be retained for 3 years.

**Note 3:** A failure to record the relevant evidence could result in a sanction not being able to be imposed where appropriate. See guidance on the public law principles of fairness in ADM Chapter K1 – Sanctions general principles.

## **Trial work**

K3056 The offer of trial work would normally be specified to the claimant under a work search action<sup>1</sup> and any failure to apply for or accept the offer of the trial for no good reason would fall to be considered under different legislation<sup>2</sup>.

1 [WR Act 12, s 17](#); 2 s [27\(2\)\(a\)](#); [UC Regs, reg 103](#)

## **Refusal or failure**

K3057 Failure to apply for a vacancy also encompasses an outright refusal to apply or accept the job if offered and also behaviour that is considered tantamount to the employer not employing the claimant. Claimants may not actually refuse or fail to apply for or accept paid work for it to be a failure to comply. A failure to comply as per K3051 includes not taking the appropriate steps to improve their chances of getting the job such as no-attendance at 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 **or**
4. deliberately spoil the job application so it is unfit to put before an employer **or**
5. exhibit behaviours that are evidence of an intention to put the employer off considering employing them, i.e. the claimant deliberately spoils their chances of getting the job. For example; arriving in an unkempt manner or uses inappropriate behaviour at the interview.

These actions amount to refusals or failures to comply. 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.

**Note:** In all cases the claimant should be given opportunity to provide reasons for their acts, omissions and behaviours and the DM will consider those under good reason. For full guidance on good reason see ADM Chapter K2.

### Example 1

Seelma is looking for work as a supervisor in a bank, and has been getting UC 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. However, see the guidance at K3053. Also see guidance at K3301 regarding failing to comply with a work availability requirement to take up an offer of paid work.

### Example 4

The Work Coach 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.

### **Example 5**

An employer provides feedback to the Work Coach that Andy arrived for his job interview 'unkempt, stinking of alcohol, wearing a tracksuit and trainers and his body language was that he lacked motivation and was uninterested'.

The DM considers Andy has refused the vacancy and applies a reduction.

## **Claimants change their mind**

K3058 Claimants who refuse or fail to apply for or accept a vacancy for paid work 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.

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

## **Vacancy suspended or withdrawn**

K3059 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. If he 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 1**

Jamhal refuses to apply for an advertised vacancy given to him by the Work Coach and the DM decides a sanction can be applied. Before the determination to impose a reduction to his UC is made Jamhal changes his mind and applies for the vacancy as the closing date for applications has not passed. No reduction is imposed.

### **Example 2**

Jamie-Lee fails to apply for a vacancy given to her by her Work Coach and the DM decides a sanction can be applied. A 91 day reduction is imposed to Jamie-Lee's UC. Jamie-Lee contacts the Work Coach 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 particular vacancy for paid work.

## **Failure or refusal to apply for a specified vacancy in the UJ account**

K3060 Only vacancies informed to the claimant which meet the requirements of K3051 to K3056 can attract a higher-level sanction if the claimant fails or refuses to apply without good reason, including vacancies that appear on UJ and in the 'Saved Jobs' section.

**Note 1:** A general failure to apply for vacancies within the UJ account will be considered when determining whether the claimant did everything reasonable to obtain work in any relevant week (see further guidance regarding the consideration of general work search activity in ADM Chapter K4 (Medium-level sanctions).

**Note 2:** For further guidance on UJ see ADM Chapter K5.

**Note 3:** Universal Jobmatch 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 Universal Jobmatch 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 4:** One of the fundamental differences to its predecessor UJ 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. For further guidance on the 'Find a Job' site see ADM Chapter K5.

K3061 A generic requirement on the Claimant Commitment (for example: "I will log into my Universal Jobmatch account to find and apply for jobs I can do" will not meet the criteria to consider a higher-level sanction as it is not specific enough).

A claimant has to have been given enough details of a particular suitable vacancy to enable them to pursue the vacancy for a higher-level sanction to apply should the claimant fail or refuse to apply for that vacancy without good reason (see K3060).

K3062 If the claimant fails or refuses to apply for any particular suitable vacancy that is in the UJ account without a good reason by the relevant date and the vacancy was correctly informed to the claimant, the Decision Maker will consider whether a higher-level sanction should be imposed.

A copy of the requirement to apply for a particular vacancy should be available to Decision Maker (for example, the Claimant Commitment or system records identifying the particular vacancy) along with the claimant's reasons for any failure to comply.

**Note 1:** The relevant date will be the date set by the Work Coach by when the claimant has to comply. This is not necessarily the closing date for the application (see guidance at K3059).

**Note 2:** Consideration should be given as to whether more than one failure has occurred and more than one sanction applies (see further guidance in ADM Chapter K4 (Medium-level sanctions)).

### **Example**

Sydney has a generic requirement on her Claimant Commitment “to apply for all jobs in the ‘Saved Jobs’ page of her UJ account” and also a specific job detailed in Section 4 of the Claimant Commitment that the work coach discussed with her and advised her she must apply for before the closing date. Sydney signed and accepted her Claimant Commitment.

Sydney does not apply for the specified job and cannot provide a good reason for not doing so. She says she forgot when the closing date for applications to be made by was and thought she had more time to consider applying for the vacancy. She stated she had spent her time during that particular week applying for 2 jobs from the ‘Saved Jobs’ page that were nearer to her home address as she thought they were more suitable for her as there would have been no travelling costs to work. As the closing date has now passed Sydney has missed all opportunity to apply for the specified vacancy.

The DM considers the job was a suitable vacancy for Sydney.

Sydney is primarily looking for work in retail or warehouse work and the vacancy was for a full time sales assistant in a newsagents in the local town. The travelling involved would have been 25 minutes by bus and there is a bus twice per hour from her village.

Sydney was advised on the Claimant Commitment of all the relevant details of the vacancy, when the closing date was and the consequences if she failed to apply and the DM decides that a higher-level sanction is appropriate for the failure. As there has been no previous higher-level sanctions within 385 days of the current failure a 91 day sanction is applied to the TORP.

### **Failure or refusal to take up offer of paid work occurs ‘pre-claim’**

K3063 If a claimant fails or refuses to take up an offer of paid work before they claim UC (i.e. the failure is ‘pre-claim’) a sanction could apply if the claimant cannot show a good reason for the failure<sup>1</sup>.

**Note:** For further guidance on ‘pre-claim failures’ and the effect on reduction periods see K3024 et seq.

*1 [WR Act 12, s 26\(4\)\(a\)](#)*

K3064 All questions of whether

- 1.** the work is suitable for the claimant **and**
- 2.** it was reasonable for the claimant not to take up any offer of paid work

will be considered under good reason.

**Note:** The DM has to consider all the individual facts and circumstances of the case in consideration of what is reasonable in the claimant's circumstances (see further guidance on good reason in ADM Chapter K2).

K3065 The DM should also consider

- 1.** whether the offer of paid work is compatible with the requirements currently imposed by the Secretary of State
- 2.** why those requirements may have been different in some way 'pre-claim' **and**
- 3.** whether that was reasonable in the claimant's circumstances. Also see further guidance and illustrative examples at ADM K2167.

**Note:** Any limitations<sup>1</sup> on availability and the kinds of paid work an individual claimant must be able and willing to take up should have been considered before a referral is made to the DM to consider good reason for any failure. Also see the guidance at K3301 regarding failing to comply with a work availability requirement by not taking up an offer of paid work.

*1 [UC Regs, reg 96 & 97](#)*

### **Example**

John makes a claim for UC. Before he made his claim he was working for a major supermarket chain. As part of a restructuring of jobs, his role disappeared and he was told he had to either apply for a new higher graded role, of which there were fewer opportunities, take redundancy or be assigned to a lower graded role.

He applied for the higher graded role but was offered a job at the lower graded role in the organisation but refused to take it, but said this was purely based on the fact that he would not earn as much and he didn't want to take a demotion to a lower graded role.

The DM considers a sanction for the 'pre-claim' failure and whether John can show good reason for the failure to take the job offer taking into account all the individual facts and circumstances of the case and whether John's decision was reasonable.

John cannot merely refuse to accept a paid job offer because the rate of pay offered is less than his previous job, except where this is below the NMW, (see guidance in ADM Chapter K2 – Good reason, in particular K2211). Therefore, in the absence of him providing any other reason for his failure to accept the job offer, the DM imposes a 91 day sanction for the failure which runs from the date he failed to accept the job offer (see guidance at K3026).



# Misconduct K3066 - K3200

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## Introduction

K3066 Legislation provides that a failure is a sanctionable failure where a claimant by reason of misconduct

**1.** ceases paid work **or**

**2.** loses pay<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 (see K3086).

**Note 2:** For guidance on paid work see ADM Chapter J3 (Work-related requirements).

<sup>1</sup> [WR Act 12, s 26\(2\)\(d\)](#)

K3067 A sanction should only be imposed where the claimant

- 1.** acted or failed to act as alleged (see K3074) **and**
- 2.** behaved in such a way that it amounted to misconduct (see K3072) **and**
- 3.** lost paid work or pay through the misconduct (see K3186).

K3068 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 misconduct<sup>1</sup>.

1 [C\(U\) 190/50](#) ; [R\(U\) 2/77](#)

## **What is misconduct**

K3069 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](#)

K3070 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.

K3071 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**

K3072 In addition to the circumstances listed as good reason in ADM Chapter K2, 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 K3141)

**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 K3101)

**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 (such as giving inaccurate information about themselves when applying for the job) (see K3186 et seq)

**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 K3181)

**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 K3166)

**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 K3111)

**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 K3132).

This list is not exhaustive. See guidance at K3101 et seq for other considerations with regard to misconduct.

## **Mental illness**

K3073 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 ADM Chapter K2 (Good reason) if **1.** or **2.** apply.

# Whether the claimant acted or failed to act as alleged

## Unfair dismissal

K3074 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](#)

K3075 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>.

**Note:** Under UC legislation there are no sanctions of discretionary length. Reductions on benefit will be for a fixed period (see ADM Chapter K8 for general guidance on the length and periods of reductions).

1 [R\(U\) 2/74](#)

K3076 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.

## Employment Tribunal's finding of facts

K3077 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>.

K3078 – K3080

## Proof

K3081 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](#)

K3082 Usually the DM decides questions of fact on the balance of probabilities. But in misconduct cases the probability should be high because it may bring disgrace on the claimant<sup>1</sup>. Before a sanction is imposed the DM should be substantially satisfied that the allegations which are made are well founded.

1 [R\(U\) 2/60](#) ; [R\(U\) 7/61](#)

## Evidence

K3083 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.

K3084 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.

K3085 Claimants can ask their employer for a statement as in K3084 **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>.

1 [ER Act 96, s 92](#)

## **Giving the claimant a chance to comment**

K3086 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.

K3087 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.

K3088 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.

K3089 – K3090

## **Whether the claimant acted or failed to act as alleged**

### **Claimant prosecuted**

K3091 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**

K3092 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>.

## Reports of court or employer's hearings

K3093 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 \(Misc Provs\) \(Scotland\) Act 1968, s 10](#)

K3094 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](#)

K3095 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](#)

K3096 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

K3097 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 [R\(U\) 2/60](#) ; [R\(U\) 7/61](#)

K3098 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.

K3099 – K3100

## **Whether the claimant's conduct was misconduct**

K3101 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.

K3102 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.

K3103 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.

K3104 – K3105

### **Misconduct outside employment**

K3106 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](#)

K3107 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](#)

K3108 – K3110

### **Instructions not obeyed**

K3111 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**

K3112 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**

Christos, 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.

**Note:** Under UC legislation there are no sanctions of discretionary length. Reductions 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. For detailed guidance on Good reason see ADM Chapter K2.

1 [R\(U\) 10/54](#)

K3113 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](#)

K3114 – K3115

## **Trade union membership and activities**

K3116 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](#)

K3117 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\(1\)](#)

K3118 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\(1\)](#)

K3119 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\(1\)\(c\)](#)

K3120

## Health and safety

K3121 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.

K3122 – K3125

### **Refusal to do work**

K3126 Subject to K3127, 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.

K3127 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.

K3128 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.

K3129 If a claimant refused to perform work which was not part of the employment, it is not misconduct.

K3130 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.

K3131 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 UC 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**

K3132 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 ADM Chapter K2 for detailed guidance on mental health issues and good reason)

**Note:** Under UC legislation there are no sanctions of discretionary length. Reductions on benefit will be for a fixed period see ADM Chapter K8 for general guidance on the length and periods of reductions. 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\(U\) 35/58](#)

K3133 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.

K3134 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.

K3135

### **Refusal on grounds of religion or conscience**

K3136 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 ADM Chapter K2 (Good reason) 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.

K3137 – K3140

### **Negligence and inefficient work**

K3141 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.

K3142 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.**

#### **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

K3143 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

K3144 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](#)

K3145 – K3150

### **Driving offences and road accidents**

K3151 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.**

#### **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](#)

K3152 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>.

**Note:** Under UC legislation there are no sanctions of discretionary length. Reductions on benefit will be for a fixed period (see ADM Chapter K8 for general guidance on the length and periods of reductions). 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 ADM Chapter K2 for detailed guidance on Good reason).

1 [R\(U\) 13/53](#)

K3153 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 K3151 and K3152 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.

K3154 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.

K3155

## **Unauthorized absence and lateness**

K3156 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.**

### **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](#)

K3157 Where a claimant was arrested, the absence from work is not misconduct. But the question arises whether the offence causing the arrest is.

K3158 – K3160

### **Looking for other work**

K3161 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 Anili 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 ADM Chapter K2 (Good reason). The DM may want to consider obtaining further evidence regarding Anili's health.

**Note:** Under UC legislation there are no sanctions of discretionary length. Reductions on benefit will be for a fixed period (see ADM Chapter K8 for general guidance on the length and periods of reductions). 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 ADM Chapter K2 for detailed guidance on good reason).

## **Time off work under employment protection and trade union law**

K3162 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](#)

K3163 If claimants who fall within K3132 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.

K3164 – K3165

## **Notification of absences**

K3166 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](#)

K3167 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.

K3168 – K3170

### **Offensive behaviour**

K3171 Insolence, quarrelling, scuffling or fighting and other forms of offensive behaviour are misconduct. But they will 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. If there was substantial provocation this should be taken into account when deciding whether it was misconduct.

K3172 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](#)

K3173 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>.

## **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.

K3174 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](#)

K3175 Intimidating fellow employees to stop them working is misconduct. A claimant may not be entitled to UC where the intimidation is connected with a stoppage of work due to a TD.

K3176 – K3180

## **Dishonesty**

K3181 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.**

### **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>.

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:** Under UC legislation there are no sanctions of discretionary length. Reductions on benefit will be for a fixed period (see ADM Chapter K8 for general guidance on the length and periods of reductions). 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 ADM Chapter K2 for detailed guidance on good reason).

1 [C\(U\) 190/50](#) ; 2 [R\(U\) 27/52](#) ; 3 [R\(U\) 10/53](#) ; 4 [R\(U\) 20/59](#)

K3182 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.

K3183

## **Vaccination as a Condition of Deployment (VCOD)**

K3184 From 11.11.21 to 15.3.22 vaccination as a condition of deployment (VCOD) requires workers entering a registered social care home in England to be vaccinated against COVID-19 in order to carry out their duties unless they are medically exempt. If vaccine refusal is the **only** reason for dismissal, claimants will not be found to be 'blameworthy', which is the legal test for misconduct (see K3069) and no sanction should be applied.

**Note 1:** It should not be necessary to require the claimant's reasons for not being vaccinated. It will be the reasons they were dismissed from their employment that are considered in deciding whether misconduct occurred. Decision Makers will consider any other reasons for dismissal as they would in any other cases for Misconduct. Claimants should be able to provide a letter or email of termination to verify their dismissal or resignation.

**Note 2:** For further guidance on VCOD and when a claimant leaves employment or loses pay due to VCOD see K3248.

K3185

## **Whether misconduct caused the loss of paid work or pay**

K3186 For a sanction to be imposed it must be proved that the claimant lost pay or paid work because of

misconduct. For guidance on paid work see ADM Chapter J3 (Work-related requirements).

K3187 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.

K3188 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](#)

K3189 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](#)

K3190 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.

K3191 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.**

### **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](#)

# Leaving paid work or losing pay voluntarily K3201 - K3270

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## Introduction

K3201 Legislation provides that a failure is a sanctionable failure where a claimant voluntarily and without good reason

**1.** ceases paid work **or**

**2.** loses pay<sup>1</sup>.

**Note:** For guidance on paid work see [ADM Chapter J3](#) (Work -related requirements) and for detailed guidance on good reason see ADM Chapter K2 (Good reason).

*1 [WR Act 12, s 26\(2\)\(d\)](#)*

K3202 The purpose of the sanction is to protect the NI fund from claims arising from circumstances that claimants have brought upon themselves<sup>1</sup>.

**Note:** A claimant can only be sanctioned if they have voluntarily left the employment that they held **immediately** before making a claim for UC, i.e. the employment which is the reason for the claim to benefit (see further guidance at K3205) but see K3206 where a claimant leaves work or loses pay during a current award of UC.

1 [R\(U\) 3/81](#)

## Meaning of voluntarily

K3203 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.

K3204 Claimants have **not** voluntarily left their employment if

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

**Note:** It is for the DM to consider in every case whether the claimant had good reason for the failure. For detailed guidance on good reason see [ADM Chapter K2](#).

## Employment immediately before the claim

K3205 A claimant can only be sanctioned if they have voluntarily left the employment that they held **immediately** before making a new claim for UC, but see K3206 if the claimant voluntarily leaves employment or loses pay during a current award of UC.

**Note 1:** If the claimant has voluntarily left employment without a good reason and has not had any other employment between doing so and making a claim for UC, 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.

**Note 2:** What the claimant has done in any employment prior to the last job they held immediately before making the UC claim is irrelevant. The only prohibition imposed by the public interest is that if a person chooses to claim benefit as a consequence of having exercised their right to withdraw from employment then unless that person can show good reason for leaving that employment benefit can be sanctioned.

1 [WR Act 12, s 26\(2\)\(d\)](#)

## Example

Harmeet voluntarily left employer (A) on 30.09.14. Harmeet then worked for employer (B) for a fixed period from 01.10.14 to 31.01.15 when her contract expired. Harmeet makes a claim to UC on 01.02.15. The DM does not consider why Harmeet left employer (A), it is irrelevant to the claim to UC on 1.2.15.

In this case the claimant made no claim to UC after leaving Employment (A), she took up new employment (B) for more hours and a better rate of pay and the claim to benefit was made after the second employment (B) ended and therefore Harmeet did not claim benefit as a consequence of leaving employment (A).

## Leaves employment or loses pay during current UC award

K3206 Because UC is an in-work benefit as well as for those who are unemployed, a sanction could apply to an existing UC award if the claimant could show no good reason for leaving any employment or losing pay during the current award of benefit.

**Note:** The consideration is whether any increase in the amount of UC benefit awarded is as a consequence of leaving (or losing pay) the particular employment in question (see K3202). Did the claimant leave or lose pay of their own actions and if so, can they show good reason for leaving or losing pay?

## Example

Saket has a current award of UC and has a part time job which he leaves on 03.11.14. The DM considers whether Saket has a good reason for voluntarily leaving his part time job and whether he has through his own actions of leaving that employment become a bigger burden on the welfare state from 4.11.14.

Saket cannot show a good reason for leaving his part time job and the DM decides a sanction can be imposed as the increase in UC benefit now due to Saket from 4.11.14 is as a result of him leaving his part time job without good reason.

## Self-employment

K3207 UC legislation<sup>1</sup> does not refer just to employed earners. 'Paid work' applies to any paid work which includes self-employment as well as employed earners. However the policy is that sanctions are not imposed for leaving voluntarily in self-employed cases. The claimant merely loses their self-employed status.

**Note:** To determine whether someone was self-employed as opposed to being in employment it depends on where the wages were paid from and whether the claimant is registered with HMRC as self-employed. If the wages are paid by another company direct to them then they would essentially be sub-contracted rather than self employed but if they are responsible for making their own NI contributions and PAYE payments then they would be self-employed. For further guidance on self-employment see [ADM Chapter H4](#).

[1 WR Act s 26\(2\)\(d\)](#)

K3208 – K3210

## Trial periods

K3211 A reduction will not be imposed where a claimant takes up a job which is in excess of their agreed limitations as to hours of work and then voluntarily

**1.** ceases paid work or more paid work **or**

**2.** loses pay

within a trial period<sup>1</sup>.

[1 UC Regs, reg 113\(1\)\(b\)\(iii\)](#)

K3212 This provision ensures that a sanction will not be applied if a claimant takes up work in excess of agreed limitations and subsequently leaves that work or reduces their pay during a trial period. However if they leave as an alternative to being dismissed, they may still be sanctioned for losing paid work through misconduct (see [K3066](#) et seq).

**Note:** For detailed guidance on the meaning of paid work see [ADM Chapter J3](#) (Work-related requirements).

K3213 A trial period will be 56 days beginning on the 29<sup>th</sup> day and ending on the 84<sup>th</sup> day that the claimant took up the paid work or more paid work.

## Example

Savannah is a single parent with 2 children, aged 7 and 9 in receipt of UC. 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 4.8.14. Her trial period will start on 1.9.14, ending on 26.10.14. If she leaves the job within that period she will not be sanctioned for leaving the job voluntarily.

K3214 - K3215

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

K3216 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 first 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.

K3217 – K3220

#### **Claimants who have no employment**

K3221 Claimants cannot leave paid work at a time when they do not have any. Claimants whose jobs were abolished have not left their work or lost pay 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 K3051 et seq).

**Note:** For guidance on paid work see [ADM Chapter J3](#) (Work-related requirements).

#### **Women on maternity leave**

K3222 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 [K3051](#) et seq).

#### **Mariners**

K3223 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

K3224 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](#)

K3225 – K3230

## Resignation and dismissal

K3231 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 C\(U\) 155/50 ; R\(U\) 2/57 ; R\(U\) 1/96; 2 R\(U\) 27/59](#)

K3232 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 K3066 et seq).

## Relationship to misconduct

K3233 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 K3066 et seq).

K3234 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.

### **Example**

Melanie Jackson 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 and impose a reduction of 91 days.

K3235 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**

K3236 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 K3051 et seq).

K3237 – K3240

## Changing the terms and conditions of employment

K3241 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 take up a reasonable employment opportunity with the new conditions of employment and whether failure to do so was reasonable in the circumstances (see [K3051](#) et seq). The DM would also consider if reasonable steps had been made to redeploy the claimant and whether any grievance procedures in place had been followed and adhered to before the claimant left the employment or lost pay.

**Note 1:** 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 [ADM Chapter K2](#) (Good reason).

**Note 2:** Where the claimant has left employment from the care sector due to a refusal or failure to be vaccinated against Covid 19 also see guidance at [K3248](#).

1 [R\(U\) 25/52](#); 2 [R\(U\) 7/74](#); [R\(U\) 2/77](#)

## The national minimum wage

K3242 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 national minimum wage legislation<sup>1</sup> **or**
2. employer was prosecuted for an offence under the national minimum wage 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](#)

K3243 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 K3242 **1.**, **2.** or **3.**. See ADM Chapter K2 (Good reason) for detailed guidance on good reason.

## **Absence from work**

K3244 Claimants who had been absent from work can often be sanctioned for misconduct. But sometimes they may have voluntarily left their employment.

K3245 If when they first claim UC 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.

K3246 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.

K3247

## **Vaccination as a Condition of Deployment (VCOD)**

K3248 Currently in the UK vaccination requires an individual's informed and voluntary consent and cannot be forced. Most people will welcome the opportunity to be vaccinated but there will be some individuals who will be reluctant or refuse to have the vaccine. Their reasons could be many and varied. Most employers will adopt a policy to encourage staff to be vaccinated and publicise the benefits of being so but the vaccine is just one measure of protection and other measures can be put in place such as handwashing, sanitising, PPE equipment, ventilation and hybrid working even though from April 2022 most legal restrictions have come to an end.

## **Care Homes**

K3249 From 11.11.21 to 15.3.22 vaccination as a condition of deployment (VCOD) required workers (or volunteers) entering a registered social care home in England to be vaccinated against COVID-19 in

order to carry out their duties unless they are medically exempt.

**Note 1:** Where the claimant is dismissed see the guidance at [K3184](#). Claimants should be able to provide a letter or email of termination to verify their dismissal or resignation.

**Note 2:** From 15.3.22 vaccination remains strongly advised for care home staff but it is not compulsory.

K3250 Some claimants may resign before they are dismissed. VCOD of itself, does not provide good reason for the loss of paid work or pay and the DM should consider each individual case on its own merits and the reasons for leaving early (also see the guidance at [K3261](#)).

**Note 1:** It should not be necessary to require the claimant's reasons for not being vaccinated. It will be the reasons they left their employment early (or lost pay) before being dismissed that are considered in deciding whether they can show good reason for the loss of paid work or pay. Also see guidance at [K3241](#).

**Note 2:** See [ADM Chapter K2](#) for extensive guidance on considering good reason.

## Claimants who volunteer for redundancy

K3251 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> (see [K3035 6.](#)).

<sup>1</sup> [UC Regs, reg 113\(1\)\(f\)](#); <sup>2</sup> [ER Act 96, s 135\(1\) & 148 - 152](#)

## Meaning of redundant

K3252 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 ER Act 96, s 139(1)(a) & (b); 2 s 135(1)*

K3253 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)*

K3254 The business of the employer and any associated employers should be treated as one business to satisfy any of the conditions in [K3253](#)<sup>1</sup>. The conditions in [K3255](#) 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**

K3255 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)*

K3256 – K3260

## Claimants who leave employment early

K3261 Claimants have left voluntarily if they satisfied the condition in K3251 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.

K3262 If the claimant does not have good reason a sanction should be imposed.

**Note 1:** See [ADM Chapter K2](#) (Good reason) for detailed guidance on good reason.

**Note 2:** In UC all higher level sanctions are for a fixed reduction period, there are no discretionary length sanctions (see K3011).

**Note 3:** For guidance on claimants who leave employment early due to VCOD see [K3248](#).

K3263 – K3265

## Claimants who leave a job or lose pay to take part in the National Retraining Scheme

K3266 The National Retraining Scheme (NRS) is a government led scheme introduced to capture people who are in jobs and are likely to be made redundant due to automation or economic downturn. The scheme will identify what skills people have and what alternative employment would be appropriate in business sectors not at risk via an on-line training tool. This means that normally working people on UC could do this training in their own time. However, there could be some classroom based training at fixed times which could involve an individual needing to reduce their working hours in order to complete the training if an employer will not allow time-off to complete the training. The individual should attempt to **negotiate time off or change working hours/patterns to accommodate the classroom training** but this may also be dependent on what is reasonable for the individual depending on their circumstances, for example if they have caring responsibilities outside of work.

K3267 It will be up to the work coach to ensure that individual claimants have relevant and appropriate

restrictions and limitations reflected on the most up to date claimant commitment which are reasonable and achievable for the claimant so they can take part in the NRS scheme. If the claimant has to reduce their hours to accommodate the training then the claimant would normally be able to show good reason for losing pay and no sanction could apply. However, if the claimant were to leave their current employment because of taking part in the NRS, as in every case, the DM would consider all the individual facts, circumstances and evidence of the case in line with the principles of good reason and the advice and guidance in [ADM Chapter K2](#).

## Afghan Citizens on the Resettlement Scheme

K3268 If Afghan citizens on the Resettlement Scheme start a job whilst in a bridging hotel, they may feel compelled to resign and leave the job if their allocated permanent housing is

1. in another part of the country **or**
2. considered to be too far away from their place of work (over 90 minutes on public transport).

**Note:** For further guidance on Afghan citizens on the resettlement scheme see [ADM J3331](#).

K3269 Where a claimant leaves a job voluntarily because of the location of their permanent housing this will most likely constitute good reason. The DM would check all the facts and circumstances of the individual case, taking into account the actions of the claimant and employer and looking at the housing allocation evidence. If work is unsustainable due to commuting distance then this will constitute good reason but it will be for the DM to consider all the facts and circumstances of each individual case and apply the guidance on good reason in [ADM Chapter K2](#) in considering what is reasonable in the circumstances.

**Note:** In particular, the DM should consider whether the claimant acted reasonably in the circumstances. For example, where appropriate has the claimant made reasonable enquiries of the employer to see if a transfer to another area of the country could be arranged where they are being permanently housed.

K3270 If the claimant leaves their employment early before they are rehoused the DM will consider the reasons for leaving their employment early along with all the facts and circumstances of the individual case ensuring any complex needs or vulnerabilities are taken fully into account.

**Note:** For guidance on leaving a job early see [K3248](#). For guidance on good reason see [ADM Chapter K2](#). In particular, the DM should consider whether the claimant acted reasonably in the circumstances. For example, could they have worked for longer up to the date of the relevant change of circumstance for example up to the day before being rehoused to the new location.

## Zero hours contracts K3271 - K3280

K3271 In UC, claimants can be required to apply for and take-up employment that is based on a zero hours contract provided that the contract allows the claimant to take-up further work with different employers that will take them to or above their Conditionality Earnings Threshold.

**Note 1:** See [ADM Chapter J3](#) (Work-related requirements) for guidance on conditionality earnings threshold).

**Note 2:** UC is designed to be responsive to fluctuations in earnings. For people who are working, financial support will be reduced at a consistent and predictable rate and they will generally keep a higher proportion of their earnings. In weeks where a claimant has lower or no income from their zero hours contract UC payments will automatically increase.

K3272 A claimant cannot be required to apply for or take-up work that is based on a zero hours contract if that employer prevents them from working for any other employer, business or self-employment (i.e the zero hours contract contains an 'exclusivity' clause).

**Note:** From 26.5.15 a ban of exclusivity clauses came into force<sup>1</sup>.

1 [Small Business, Enterprise and Employment Act 2015](#)

K3273 A zero hours contract is a contract of employment used in the UK which is not defined in legislation and whilst meeting the terms of 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 [Employment Rights Act 1996](#)

K3274 UC claimants **cannot** be sanctioned for any failure where they

1. fail or refuse to apply for or accept if offered a zero hours contract vacancy **or**
2. leave a zero hours contract voluntarily **or**
3. are dismissed from a zero hours contract due to misconduct

where the contract includes an exclusivity clause however see **Note** at K3272 and guidance at K3275

K3275 A UC claimant can still be mandated to apply for and take up a zero hours contract and could still

be sanctioned if without a good reason they

**1.** refuse or fail to apply for or accept if offered a zero hours contract

**2.** leave a zero hours contract voluntarily **or**

**3.** are dismissed from a zero hours contract due to misconduct.

**Note:** For guidance on good reason see [ADM Chapter K2](#) (Good reason) and in particular [K2301](#) with regard to zero hours contracts.

K3276 – K3280

# Members of His Majesty's Forces (HMF) K3281 - K3285

[Voluntarily ceased paid work or loses pay](#) K3281

[Misconduct](#) K3282 - K3285

## Voluntarily ceased paid work or loses pay

K3281 The DM cannot impose a sanction for leaving paid work or losing pay 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 [UC Regs, reg 113\(1\)\(d\); SS \(Ben\) \(Members of the Forces\) Regs, reg 3\(2\)](#); 2 [reg 3\(3\)](#)

## Misconduct

K3282 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\(1\)](#)

K3283 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>.

1 [SS \(Ben\) \(Members of the Forces\) Regs, reg 3\(3\)](#)

K3284 If serving members of HMF are dismissed otherwise than outlined in [K3272](#) 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.

K3285

## Trade dispute stoppage K3286 - K3300

K3286 No reduction 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 paid work **or**

**2.** that the claimant voluntarily

**2.1** ceases paid work **or**

**2.2** loses pay

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 reduction period has already been imposed.

1 [UC Regs, reg 113\(1\)\(a\) &\(c\)](#)

K3287 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.

K3288 – K3000



## **Fails for no good reason to comply with a work availability requirement by not taking up an offer of paid work K3301 - K3329**

K3301 Legislation<sup>1</sup> provides that a failure is a higher-level sanctionable failure where a claimant fails without good reason to comply with a requirement imposed by the Secretary of State under a work availability requirement<sup>2</sup> by not taking up an offer of paid work, more or better-paid work.

**Note 1:** This provision is not appropriate where there is a failure or refusal to apply for or accept a particular vacancy that has been notified to the claimant by the Secretary of State. See the guidance at K3051 et seq where those circumstances apply.

**Note 2:** Where it is a Kickstart Job see the guidance on the Kickstart Jobscheme at K3330 et seq.

*1 [WR Act 12, s 26 \(2\)\(c\)](#); 2 [s 18](#)*

K3302 The work availability requirement is in general terms of being able and willing to take up employment immediately<sup>1</sup>. Therefore, the relevance of not taking up the offer of paid work, more or better-paid work can only be in revealing an absence of such ability and willingness. Any limitations on the kinds of paid work the claimant must be able and willing to take up immediately and any accepted restrictions must be taken into account in determining whether the claimant has failed to comply with the requirement.

*1 [WR Act 12, s 18](#)*

K3303 Consideration has to be given to whether the offer of work is compatible with the availability requirements currently imposed by the Secretary of State and accepted on the claimant's current claimant commitment or whether the claimant can show a good reason for the failure to take up the offer of paid work, more or better-paid work.

**Note 1:** If the claimant is in the AWRR group<sup>1</sup> then generally they must be able and willing to immediately take up paid work, more or better-paid work. See guidance in [ADM Chapter J3](#).

**Note 2:** The DM must always consider all the facts and circumstances and whether in the individual case there are any indicators of complex needs, vulnerabilities or other mitigating factors that contributed to why they were unwilling to take the paid work offered. For full guidance on good reason see [ADM Chapter K2](#).

### **Example**

Halina is claiming UC and has a zero hours contract with a well known high street fast food restaurant. Normally she is offered 2 or 3 shifts a week.

She is in the AWRR group and there are no known exceptional or mitigating circumstances. She is 25 years old and lives alone.

At her work search review Halina tells her work coach she worked 2 shifts on the 7th and 8th December 2019 and has been offered extra shifts throughout the period from the 14th to the 24th of December but has turned down the offer of the increased hours. She says she is prepared to cover the 2 shifts on 14th and 15th December and the 21st and 22nd of December but no more.

Her reasons are that she cannot afford the fares to work every day. Her next payment of UC is not due until 19.12.19.

The work coach offers a payment from the Flexible Support Fund to help with her travel expenses to work until her next UC payday but Halina still refuses to consider the extra hours work saying she has other things to do.

The decision maker will consider whether Halina can show good reason for the failure taking into account all the individual facts, circumstances and evidence available and whether Halina's refusal to take up the offer of more paid work is reasonable.

K3304 - K3329

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

## Kickstart Jobscheme K3330 - K3999

Kickstart Job scheme	<a href="#">K3330 - K3335</a>
Mandation and sanctions	<a href="#">K3336 - K3338</a>
Leaving voluntary and misconduct	<a href="#">K3339 - K3999</a>

### Kickstart Job scheme

K3330 The Kickstart Job scheme provides jobs for UC claimants aged 16-24 who are deemed at risk of long-term unemployment. The scheme provides a job of at least 25 hours per week for 6 months paid at the NMW.

K3331 Work coaches will be able to refer claimants to Kickstart Jobs via the UC Service but participation is purely voluntary.

**Note 1:** Once referred to a job, it is the claimant's responsibility to apply for the job but participation is entirely voluntary (also see K3336 for guidance on mandation and sanctions).

**Note 2:** Being referred does not mean that the claimant will automatically be offered the job, they will compete with other referred claimants in an application process.

K3332 As the jobs within the scheme include 25 hours work per week paid at the NMW, most claimants will lose entitlement to UC when they start the Kickstart job because of earnings and those that don't will move into the NWRR group and so cannot be mandated to other conditionality requirements. The UC claim remains open purely to enable the work coach to communicate with the young person and provide any ongoing support during the job if required on a voluntary basis. After 6 full Assessment Periods the award will terminate.

**Note:** UC earnings rules still apply to claimants who participate in a Kickstart job. This includes the Work Allowance and Earnings Taper. For guidance on earnings see [ADM Chapter H3](#).

K3333 - K3335

### Mandation and sanctions

K3336 Applying for a Kickstart job is entirely voluntary. A claimant **cannot** be mandated to apply for a specific Kickstart job and therefore they **cannot** be sanctioned if they do not apply.

K3337 If a claimant is successful in applying for a Kickstart job, accepting and starting the job is also entirely voluntary.

**Note:** The claimant **must not** be sanctioned if they do not undertake a Kickstart job even after receiving a job offer.

K3338 However, a job secured through the Kickstart scheme is treated like any other job when considering LV and Misconduct as the claimant is earning the NMW for at least 25 hours per week (see K3332 and K3339).

## Leaving voluntary or misconduct

K3339 Once a claimant has started a Kickstart job and before the end of their 6 months, either

1. leaves voluntarily for no good reason **or**
2. is dismissed for misconduct

the DM will consider a sanction in the normal way following the guidance on Leaving Voluntary (K3201 et seq) or Misconduct (K3066 et seq) and the principles and guidance on good reason in [ADM Chapter K2](#) (however see K3340).

## Adequate support not provided

K3340 If a claimant states the reason for leaving the Kickstart job was that adequate support, as per the job advert was not given, unless there is contradictory or conflicting evidence or the claimant's statement is inherently improbable, the claimant will be able to show good reason for leaving the job.

**Note:** It will be for the DM to consider fully in light of all the facts, circumstances and evidence available in each individual case. It may be that further fact finding is required from the claimant regarding what support was not provided that was offered in the job advert (see K3341).

K3341 Kickstart employers are paid government funding per job placement for setup costs and to provide support. Employability support may include on-the-job training, work search support, skills development, mentoring, careers advice and other related support to help participants in a Kickstart job find sustained employment after they have completed the Kickstart Scheme job.

K3342 In the Kickstart job advert the employer should provide details of;

1. what support will be offered (for example; helping with writing a CV or preparing for an interview)
2. when this support will be provided (for example; halfway through the job placement or towards the end)
3. how many hours the support will take
4. who will provide the support (for example; the Kickstart employer may already have a pre-existing

relationship with training providers)

**5.** how the support will be monitored **and**

**6.** how the young person can provide feedback during their job placement and afterwards and how this will be actioned.

### **Example**

Zander takes a Kickstart job in a library. After 5 months he leaves the job as he says he was told after 3 months he would receive help and training in how to write a job application. Zander has seen similar full time posts advertised for which he wanted to apply but when he asked for the relevant training to help him with the application process it was denied. The employer told him they didn't have the time to help train him on job applications and all training providers who offered such courses were already full, even though it had passed the time when this was promised. Zander has good reason for leaving the Kickstart job.

K3343 - K3999

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