

# Considering JSA Labour Market Doubts

## Guidance Queries and Help

1. If you are unable to find an answer to a particular question regarding policy within this guide you must contact the Jobcentre Plus Live Support Advice Line. Do not give the Advice Line number to claimants or outside bodies under any circumstances, it is for the use of Jobcentre Plus staff only. Details of how to contact them can be found by clicking on the following hyperlink, Advice Line Home Page.
2. Please do not use the 'E-mail page owner' and 'Page information' links at the bottom of each page of guidance to raise policy queries. These should only be used to report broken hyperlinks.

## Background

3. This chapter sets out specific information regarding the consideration of each Jobseekers Allowance (JSA) labour market doubt. It must be used in conjunction with the DMG and the other chapters of this guide, primarily Chapter 1 which provides more general information on LMDMA processes.
4. At present this guidance only provides information on some LMDM doubts, however information on additional doubts will be added in due course.

## Types of Labour Market Doubt

5. LM doubts fall into several categories, however the main ones are entitlement doubts and sanction doubts:
  - **Entitlement doubts** - these are doubts about whether or not a claimant has fulfilled the JSA conditions of entitlement. Entitlement doubts arise if a claimant:
    - is not available for employment;
    - does not actively seek employment; or
    - fails to provide a signed declaration.
  - **Sanction doubts** - these are questions which may affect the payment, rather than the entitlement, of JSA. Sanction can arise in a number of circumstance, including where a claimant:
    - does not actively seek employment;
    - is not available for employment;
    - fails to participate in an adviser interview without good reason;
    - fails to participate in a mandatory work scheme for assisting persons to obtain employment, ie: "work for your benefit" schemes etc, without good reason;
    - fails to provide a signed declaration;
    - refuses to agree or fails to carry out the activities in a Jobseeker's Agreement without good reason;
    - refuses or fails to carry out any reasonable Jobseeker's Direction without good reason;
    - leaves employment voluntarily without good reason;
    - loses employment through misconduct;
    - neglects a reasonable opportunity of employment without good reason;

- refuses or fails to apply for or accept employment without good reason;

## **Actively Seeking Employment**

### **Background**

6. The Jobseeker's Act 1995, specifically sections 1 and 7, requires claimants to be Actively Seeking Employment (ASE), in order to be entitled to Jobseeker's Allowance (JSA).
7. Section 19B of the Jobseeker's Act 1995 and Regulation 69B(b) of the Jobseeker's Allowance (Sanctions) (Amendment) Regulations (2012) provide that a claimant can have a sanction imposed on subsequent entitlement to JSA, if a previous award has ended on the grounds of failure to actively seek employment.

### **AR Codes**

8. AR Code JSA/552 is used for the initial doubt (disallowance) in ASE cases.

### **Applicable Penalty**

9. Where a Labour Market Decision Maker (LMDM) determines that a claimant was not ASE, their entitlement to JSA will be disallowed.
10. If a claimant fails to meet the requirement to actively seek employment for a period that starts prior to 22 October 2012 (regardless of when the LMDM makes their determination), no further penalty is imposed.
11. If a claimant fails to meet the requirement to actively seek employment for a period that starts on or after 22 October, an intermediate level sanction may also be applied to their JSA.
12. Further information on determining the applicable sanction period can be found in DMG Memo 37/12.

### **What information should be included as part of DMA referral**

13. Within the DMA Referrals Guide, jobcentres are advised to include the following information as part of the LMDM referral:
  - Details of the number of steps required of the claimant in each benefit week as stated on his/her JSAG;
  - Details of the steps the claimant took to find work, with dates, during the period of doubt and the previous 2 weeks;
  - Details of any suitable, available vacancies, including the job reference number from LMS or Universal Jobmatch;
  - Statement from claimant detailing why they consider these steps gave them the best prospects of finding work and why the steps on the JSAG were not followed;
  - Details of anything that prevented the claimant from taking further steps to find work;
  - Statement from adviser detailing the reason why they think the steps taken by the claimant to find work were inadequate;
  - Details of whether the claimant has been treated as available and/or ASE for the period in doubt;

- Details of any periods within the previous 52 weeks, when the claimant has been treated as available and/or ASE;
  - Details of JSAg current during the period of doubt, or a copy of JSAg;
  - LMS Reference ID;
  - Referring officer contact details. This will help decision makers clear any queries quickly by phone.
14. This list is not exhaustive. Additional information should be included as necessary, to reflect particular aspects of each individual case.

### **Making a decision**

15. A LMDM should only impose a disallowance if they are satisfied that the claimant:
- has a current Jobseeker's Agreement (JSAg); **and**
  - is not in remunerative work; **and**
  - is not involved in a Trade Dispute; **and**
  - is capable of work/does not have a Limited Capability to Work; **and**
  - is not in relevant education; **and**
  - is in Great Britain (GB); **and**
  - is under pension age; **and**
  - satisfies the:
    - contribution based conditions for JSA (Cont); **or**
    - income based conditions for JSA(IB); **and**
  - has not been ASE in accordance with the number of steps agreed on their JSAg.
16. In addition, the LMDM should be substantially satisfied that the statements which are made are well founded and that claimant has been given an adequate chance to comment on all the statements made against them.
17. Further information around the LMDM considerations on ASE doubts is available within Chapter 21 of the DMG.
18. From 13 May 2013, the Jobcentre will not refer the case back to the LMDM team to consider the imposition of an intermediate level sanction following a disallowance. Instead, there will only be one referral with a LMDM recommending whether a sanction should be applied at the same time as imposing a disallowance'
19. In cases where a sanction is applicable the LMDM must record the following in the DMAS notes box: "My recommendation is that a sanction be applied for the period \_\_/\_\_/\_\_ to \_\_/\_\_/\_\_, as no exemptions apply."
20. In cases where a sanction is not applicable the LMDM must record the following in the DMAS notes box: "Sanction period not applied because (insert reason)."
21. In cases where there is both an avail and an ASE doubt for exactly the same period, only one decision is required. This is because once the first decision is made, there is no longer any entitlement to JSA and so a subsequent determination cannot be made.
22. An opinion only decision should be given on the other question.
23. It is up to the LMDM which one they choose; it would be advisable to choose that case which is the strongest should it subsequently go to dispute.

24. Should the original decision be overturned by a reconsideration or appeal, the other question may be considered but the LMDM will need to use their judgement as to whether this is desirable based on available evidence, passage of time and payment factors etc.

### **Considerations**

25. There are a number of considerations that need to be made before a decision is made.

#### **The types of jobs being sought**

26. There are very few reasons why a doubt might be raised against the types of work being sought. One reason may be because, although the claimant has conducted all of the steps on the JSaG, they relate to employment in a different area of the labour market than the types of work they have agreed to look for.
27. Regardless of the reason for the referral, the following considerations should be made:
- were the types of jobs sought relevant, given the qualifications and previous experience of the claimant?; and
  - were those types of jobs available within the claimant's Travel to Work area?
28. If the answer to either of these questions is 'no', the claimant cannot be accepted as having met the condition for that period.

#### **Steps to identify and apply for jobs**

29. During the period in doubt, were the steps undertaken by the claimant reasonable, given their circumstances?
30. The following are examples of the types of situations that may arise.

##### **Example 1**

31. Given the time expected to undertake the agreed steps and the time available to the claimant, taking account of any agreed restrictions, was the number undertaken appropriate?

##### **Example 2**

32. If the steps included accessing one or a number of employment websites each day, did the claimant have sufficient access to the Internet in order to meet this requirement?

##### **Example 3**

33. If a claimant completed one application form and adapted their CV for each vacancy accordingly each day, was it reasonable for them to have not conducted the agreed number of steps for that week, if each application took most of a day to complete?

##### **Example 4**

34. Did spending all day completing an application form on the same day as the local newspaper advertised vacancies give the claimant the best prospects of finding work, given that the application form could have been completed the next day?
35. When making their decision, the LMDM should not look only at the number of steps on the JSaG and how many steps were actually completed but should take into account whether only undertaking a few

steps gave the claimant the best prospects of finding work that week. For example, claimant had 20 steps on JSAg but only completed 5. One of those steps was the completion of a complicated competency based application form which took 25 hours to complete for a job for which the claimant was well qualified and has experience. The LMDM may decide that completion of this application gave the claimant the best prospects of finding work in that week.

### **Credits Only cases**

36. As a disallowance cannot be applied to a Credits Only claimant, the LMDM will be asked to give an opinion on these cases, rather than a decision. The same considerations are made, however.
37. No referral on a subsequent claim should be made by the jobcentre. If a referral to consider a sanction is received, in this situation, it should be cancelled.

### **Backdated Claims**

38. When considering a backdated claim, the LMDM need only make a decision for the period of backdating only; there is no need to make an additional decision covering the first benefit week. This is because a claimant can usually be treated as actively seeking during the first week of their claim.

### **Extended Periods of Sickness**

39. A claimant who is ill, may elect to remain on JSA for up to 13 weeks rather than claim ESA. Such a claimant will be treated as available for this period of sickness but their Work Coach will determine the degree to which the claimant must look for work or undertake any form of work related activity. Therefore, a claimant, depending on their individual circumstances, may be required to be actively seeking work to some extent. Where there is a temporary change to their conditionality requirements, a new Claimant Commitment will not be issued. Instead, any amendments will be recorded in LMS Conversations.
40. For more information, please see Extended Periods of Sickness

### **Recording the decision**

41. When a LM doubt is decided, the LMDM must record their decision on Decision Making & Appeals System (DMAS). Full details on recording the decision are available in the DMAS System User Guide.
42. It is essential that the details of the Intermediate Level Sanction recommendation are detailed on the DMAS decision notification.
43. In cases where a disallowance is applied, the decision notification (including the sanction recommendation) must be emailed to the appropriate JSA Claims Maintenance Team and to the appropriate Jobcentre.
44. In cases where a disallowance is not applied, the LMDM must:
  - enter the details of the decision into JSAPS in order to lift the suspension that was imposed on the claimant's benefit in the Jobcentre;
  - and**

- issue any overdue payment to the claimant via Fast Electronic Payment.

**Note:** This only applies for the original disallowance decision. Where a disallowance decision is overturned following an explanation or review the LMDM must send the case to the appropriate claims maintenance team for them to update JSAPS.

### Inputting the decision into JSAPS

45. If the decision is to allow the claim, the following action must be taken in JSAPS by the LMDM:

Step	Action
1	Access dialogue JA513: Suspension and AR Decision Enquiry screen, enter the claimants National Insurance number in the NINO field and press [ENTER] to access dialogue JA513525.
2	In the AR CASE STATUS screen JA513525 identify the appropriate case number relating to the suspension
3	access <b>dialogue JA210: Maintain Suspension and Decision Details</b>
4	in the <b>MAINTAIN SUSPENSION AND DECISIONS screen JA210213</b> , complete the following fields: <ul style="list-style-type: none"> <li>• input [D] in the '(S)usp/(D)ecision field'</li> <li>• input the case number relating to the suspension in the 'Number' field</li> </ul> press [ENTER] to access dialogue JA210212.
5	in <b>the MAINTAIN DECISION DETAILS screen JA210212</b> input details of the decision by completing the following fields: <ul style="list-style-type: none"> <li>• AR Code – Input the appropriate JSAPS code, which can be found on the DMAS decision notification</li> <li>• AR Period in doubt – Leave blank (Delete any dates that are pre-populated)</li> <li>• JS85 Number - Leave blank</li> <li>• Decision – enter ALLD</li> <li>• Source – Input '2'</li> <li>• Date of Transgression – Input the date of transgression</li> <li>• Decision Date – Input the date that the decision was made.</li> </ul>
6	access <b>dialogue JA200: Award and Decision</b> to reassess the claim;
7	access <b>dialogue JA405: Compute Payment</b>
8	in the PAYMENT DETAILS screen JA405407 press [F2] to access dialogue JA405406
9	In the RECORD TEMPORARY METHOD OF PAYMENT screen JA405406 input [CG] into the 'Temporary Method of Payment field' and press [ENTER] return to dialogue JA405407.
10	in the PAYMENT DETAILS screen JA405407 Input [N] into the 'Inhibit Award Notification field'. Press [END] to save the details and produce the FF100.
11	Access dialogue JA400: Method of Payment, press [F3] to access dialogue JA400402.
12	In the ACT DETAILS screen JA400402 press [CONTROL] + [F3] to print the screen.

**NOTE:** In JA405407 the 'Inhibit award Notification' must **ALWAYS be overtyped with 'N'** when a decision has been made. This ensures the claimant is issued a Single Outcome Decision Notification.

46. The FF100 produced from JSAPS should be used alongside the screen print from dialogue JA400402 to generate a payment to the claimant using the Fast Electronic Payment method via the Central Payment System (CPS). The CPS Learning Pathway provides e-learning on the CPS system, including creating payments.
47. A deskaid flowchart is available for LMDMs covering the actions required to input decisions into JSAPS and issuing payment via CPS. This deskaid can be accessed via the following link: [ILS Deskaid Flowchart](#)
48. Further information around inputting decisions into JSAPS and issuing payments to claimants are included within the Sanctions, Suspensions and Disallowances chapter and the Making Payments chapter of the JSA Procedural Guidance respectively. In addition, information is also available in the Payments Guide

### **Cases where a LMDM cannot input the allowance decision into JSAPS**

49. If a LMDM is unable to input the allowance decision into JSAPS, for example due to an unforeseen error message or because the claim is clerically maintained, they must annotate the DMAS decision notification with information around the actions they have taken and the problems encountered.
50. The decision notification must be emailed to the appropriate claims maintenance team for them to input the decision. The email must be marked as urgent.

### **Cases where a LMDM must not input the allowance decision into JSAPS**

#### **Claimant had deductions applied to their JSA award.**

51. Where a claimant had deductions applied to their JSA award before the suspension was input (for example due to social fund or maintenance deductions), LMDMs must not input the allowance decision into JSAPS. This is because additional system action is required in order to re-institute the deductions if appropriate.
52. In these cases, the LMDM must annotate the DMAS decision notification with details of why they have not input the decision into JSAPS, and send it by email to the appropriate claims maintenance team for them to input the decision. The email must be marked as urgent.
53. To check whether deductions applied to the claimants JSA award, take the following action in JSAPS:

Step	Action
1	Access dialogue JA523: Award Details Enquiry, enter the claimants National Insurance number in the NINO field and press [ENTER] to access dialogue JA523613.
2	In the Award Details Summary Screen JA523613 press [F2] to access the Awards for Claim Screen JA523614.

3	In the Awards for Claim Screen JA523614, enter the appropriate option number in the 'Selected Option No Field' and press [ENTER] to access dialogue JA523613.
4	In the Award Details Summary Screen JA523613 the 'Deductions Field' will display [Y] if deductions were applied to the award.

### **Claimant in receipt of JSA Hardship**

54. If the claimant is in receipt of JSA Hardship during the suspension period, it is essential that the LMDM does not input the allowance decision into JSAPS. This is because additional system action is required in JSAPS to end the hardship award and pay any benefit arrears that are due.
55. In these cases, the LMDM must annotate the DMAS decision notification with details of why they have not input the decision into JSAPS, and send it by email to the appropriate claims maintenance team for them to input the decision. The email must be marked as urgent.
56. To check whether a claimant is in receipt of JSA Hardship, take the following action in JSAPS:

Step	Action
1	Access dialogue JA523: Award Details Enquiry, enter the claimants National Insurance number in the NINO field and press [ENTER] to access dialogue JA523613.
2	In the Award Details Summary Screen JA523613 the 'H/ship field' will display [Y] if the claimant is in receipt of JSA Hardship

## **Availability for employment**

### **Background**

57. The Jobseeker's Act 1995, specifically sections 1 and 6, requires claimants to be available for employed earner's employment in order to be entitled to Jobseeker's Allowance (JSA).
58. Section 19B of the Jobseeker's Act 1995 and Regulation 69B(b) of the Jobseeker's Allowance (Sanctions) (Amendment) Regulations (2012), provide that a claimant can also have a sanction imposed on subsequent entitlement to JSA if a previous award has ended on the grounds of failure to be available for employment.

### **AR Codes**

59. AR Code JSA/550 is used for the initial doubt (disallowance) in Availability cases.

### **Applicable Penalty**

60. Where a Labour Market Decision Maker (LMDM) determines that a claimant was not ASE, their entitlement to JSA will be disallowed.
61. If a claimant fails to meet the requirement to actively seek employment for a period that starts prior to 22 October 2012 (regardless of when the LMDM makes their determination), no further penalty is imposed.



62. If a claimant fails to meet the requirement to actively seek employment for a period that starts on or after 22 October, an intermediate level sanction may also be applied to their JSA.
63. It should be noted that the length of the sanction will be reduced by the:
- period served under disallowance; and
  - the length of time between the end of the disallowance period and the date the claimant reclaims JSA.
64. Further information on determining the applicable sanction period can be found in DMG Memo 37/12.
65. NOTE: The change in the sanctions regime from 22 October 2012 does not apply to claimants who are deemed as not being available because they are a full time student (AR553S), a prisoner on temporary release or in receipt of Maternity/Paternity Allowance (both AR553).
66. Although a disallowance is applied in these cases, no sanction is imposed on any subsequent claim.

### **What information should be included as part of DMA referral**

67. Within the DMA Referrals Guide, jobcentres are advised to include the following information as part of the LMDM referral:
- Statement from adviser detailing the reason why the claimant's availability is in doubt;
  - Statement from claimant detailing how/why they consider themselves as being available if they dispute the doubt;
  - Details of any agreed restrictions to the claimant's availability;
  - Details of the steps the claimant took to find work during the period of doubt;
  - Details of any jobs the claimant applied for;
  - Details of whether the claimant has been treated as available for the period in doubt;
  - Details of any periods within the previous 52 weeks, when the claimant has been treated as available;
  - Details of backdated claim if appropriate;
  - Details of the Jobseeker's Agreement (JSAg) current during the period of doubt, or a copy of that JSAg;
  - LMS Reference ID; and
  - Referring officer contact details. This will help decision makers clear any queries quickly by phone.
68. This list is not exhaustive. Additional information should be included as necessary to reflect particular aspects of each individual case.

### **Credits Only cases**

69. As a disallowance cannot be applied to a Credits Only claimant, the LMDM will be asked to give an opinion on these cases, rather than a decision. The same considerations are made, however.
70. No referral on a subsequent claim should be made by the jobcentre. If a referral to consider a sanction is received, in this situation, it should be cancelled.

## **Appearance in court**

71. A claimant can only be treated as available (and ASE) for an appearance in a court or tribunal (as a magistrate, plaintiff, defendant, witness or juror etc) provided that they provide advance notice of their appearance to an Employment Officer. The EO has the discretion to request such notice to be in writing.
72. If no advance notice is given, the LMDM should consider the availability question as per current guidelines.
73. If notice is given, any such referral should be cancelled.

## **Backdated Claims**

74. When considering a backdated claim, the LMDM need only make a decision for the period of backdating only; there is no need to make an additional decision covering the first benefit week. This is because a claimant can usually be treated as available during the first week of their claim.

## **Extended Periods of Sickness**

75. A claimant who is ill, may elect to remain on JSA for up to 13 weeks rather than claim ESA. Such a claimant will be treated as available for this period of sickness but their Work Coach will determine the degree to which the claimant must look for work or undertake any form of work related activity.. Where there is a temporary change to their conditionality requirements, a new Claimant Commitment will not be issued. Instead, any amendments will be recorded in LMS Conversations.
76. For more information, please see Extended Periods of Sickness

## **Making a decision**

77. A LMDM should only consider imposing a disallowance if they are satisfied that the claimant:
- has a current JSAg; **and**
  - is not in remunerative work; **and**
  - is not involved in a Trade Dispute; **and**
  - is capable of work/does not have a Limited Capability to Work; **and**
  - is not in relevant education; **and**
  - is in Great Britain (GB); **and**
  - is under pension age; **and**
  - satisfies the:
    - contribution based conditions for JSA (Cont); **or**
    - income based conditions for JSA(IB); **and**
  - has not made themselves available for employment.
78. In addition, the LMDM should be substantially satisfied that the doubt is well founded and that the claimant has been given an adequate chance to comment on all the statements made against them.
79. Further information around the LMDM considerations for a claimant not availing themselves of employment is available within Chapter 21 of the DMG.
80. From 13 May 2013, the Jobcentre will not refer the case back to the LMDM team to consider the imposition of an intermediate level sanction

following a disallowance. Instead, there will only be one referral with a LMDM recommending whether a sanction should be applied at the same time as imposing a disallowance'

81. In cases where a sanction is applicable the LMDM must record the following in the DMAS notes box: "My recommendation is that a sanction be applied for the period \_\_/\_\_/\_\_ to \_\_/\_\_/\_\_, as no exemptions apply."
82. In cases where a sanction is not applicable the LMDM must record the following in the DMAS notes box: "Sanction period not applied because (insert reason)."
83. In cases where there is both an avail and an ASE doubt for exactly the same period, only one decision is required. This is because once the first decision is made, there is no longer any entitlement to JSA and so a subsequent determination cannot be made.
84. An opinion only decision should be given on the other question.
85. It is up to the LMDM which one they choose; it would be advisable to choose that case which is the strongest should it subsequently go to dispute.
86. Should the original decision be overturned by a reconsideration or appeal, the other question may be considered but the LMDM will need to use their judgement as to whether this is desirable based on available evidence, passage of time and payment factors etc

### **Restrictions on Availability**

87. There are a number of circumstances when restrictions to either the notice a claimant must be given to start work, the days and hours they are available for each week or the type of work they are prepared to do. Whether these are appropriate must be considered when making a decision on whether the claimant is available for employment.
  - Part-time student;
  - Time Limits;
  - Hours/nature considerations;
  - Sincerely held religious belief or conscientious objection considerations;
  - Physical or mental condition;
  - Caring responsibilities;
  - Caring responsibilities for a child; or
  - Lone parents whose youngest child is aged 12 or under.
88. Further information on restrictions that can be placed on availability can be found in the Labour Market Conditions Guide.

### **Considerations**

89. There are a number of considerations that need to be made before a decision is made.

### **Notice of starting work**

90. Given the criteria for determining when a claimant should be able to start work, were they given the appropriate amount of notice, given their circumstances during the period of the doubt?

### **Hours and days of availability and other restrictions on availability**

91. Regardless of the reasons for the doubt being raised, there are two considerations that need to be made:
- Does the change reduce the total number of hours the claimant is available in each week of the doubt to below the minimum appropriate to that claimant;
  - Does the claim still have reasonable prospects of finding work, given the period they are unavailable; and
  - Will the claimant still be available to start employment, having been given the amount of notice appropriate to them.
92. If the answer to any of these questions is 'no', the claimant cannot be accepted as having met the condition for that period.
93. For example, a claimant looking for office work has an availability pattern of 10 hours per weekday and is available for a total of 40 hours each week. If they were unavailable on a particular day because they had to take their cat to the vets, which took 2 hours, their weekly availability is unaffected.
94. However, their prospects of securing employment during that week is in doubt because the normal hours of office work coincides with the opening times of the vets.

### **Restrictions because of religious or other belief**

95. Some claimants have sincerely held religious or other beliefs that may affect the type of work they are willing to accept or the days they are available to work.

### **Restrictions to type of work**

96. A claimant may restrict the type of work they are prepared to do because of a sincerely held religious belief or conscientious objection, provided they can show they have reasonable prospects of employment despite this restriction and any other. For example:
- a vegetarian may object to working in an abattoir; or
  - a Muslim may object to work in a bar as they would have to handle alcohol.

### **Restrictions to pattern of availability**

97. In addition, a claimant may restrict the days on which they are available for work due to a sincerely held religious belief, provided they are available for at least 40 hours per week and can show that they have reasonable prospects of securing employment despite this restriction and any other. For example:
- a Christian may object to working on a Sunday; or
  - a religious Jew may object to working on the Sabbath.

### **Restrictions due to religious holidays and festivals**

98. A Jobseekers Agreement (JSAg) or Claimant Commitment will have been drawn up at the New Jobseeker Interview. This will reflect the pattern of availability of the claimant taking into account any religious reasons for not wanting to work on specific days in a week.

99. If the claimant notifies that they will not be available on a particular day(s) they should be advised to vary their JSAg for that week only. However, they must remain available for 40 hours in the week and have reasonable prospects of finding work within the hours specified.
100. A claimant will also have to actively seek work and they must take those steps each week which are reasonable in their case, and which offer the best prospects of securing employment. However, any time spent taking part in religious festivals or holidays can be taken into account when determining what is reasonable in any given week.
101. Where large numbers of claimants are involved in a particular Jobcentre the Manager may use some discretion. Claimants may be excused from varying their JSAs where, for reasons not specific to the claimant, it would be impractical to deal with the numbers involved. However, this practice should only be used in exceptional circumstances to avoid the risk of abuse and/or undermining of the JSA conditions of entitlement.

### **The Jewish Sabbath**

102. Every week religious Jews observe the Sabbath, the Jewish holy day, and keep its laws and customs, including resting from work. This day is also known as the Shabbat in Hebrew or Shabbos in Yiddish.
103. The Sabbath begins at nightfall on Friday and lasts until nightfall on Saturday. In practical terms the Sabbath starts a few minutes before sunset on Friday and runs until an hour after sunset on Saturday, so it lasts about 25 hours.
104. Further information regarding the Sabbath start and end times is available via The United Synagogue Internet site.
105. If a Jewish JSA claimant objects to working on the Sabbath, they can restrict their pattern of availability to take into account of this objection, as long as they are available for at least 40 hours per week and have reasonable prospects of securing employment despite the restriction and any other agreed restriction on their availability

#### **Example 1:**

- Saul has been working for 10 years as a teacher but has recently been made redundant, so has claimed Jobseeker's Allowance.
- He is Jewish and observes the Sabbath each week, therefore during his New Jobseeker Interview Saul states that he is not available for work on this day.
- Saul states that he is looking to return to teaching, and is available for work Monday to Thursday between 8am and 6pm, and on Friday's between 8am and 3.30pm.
- Saul is available to work more than 40 hours per week.
- Despite the restrictions Saul has placed on his availability, he has reasonable prospects of securing employment.
- Therefore, Saul is able to restrict his availability for employment to take into account his religious beliefs, so a DMA referral on availability **must not** be made.

#### Example 2:

- David has claimed Jobseeker's Allowance after completing his A-Levels.
- He is Jewish and observes the Sabbath each week; therefore David wants to restrict his availability to take his religious beliefs into account.
- David states he is looking any type of work and is available to work Monday to Thursday at any time, and on Friday's up until just before sunset.
- David is available to work more than 40 hours per week.
- Despite the restrictions David has placed on his availability, he has reasonable prospects of securing employment.
- Therefore, David is able to restrict his availability for employment to take into account his religious beliefs, so a DMA referral on availability **must not** be made.

### Recording the decision

106. When a LM doubt is decided, the LMDM must record their decision on Decision Making & Appeals System (DMAS). Full details on recording the decision are available in the DMAS System User Guide.
107. It is essential that the details of the Intermediate Level Sanction recommendation are detailed on the DMAS decision notification.
108. In cases where a disallowance is applied, the decision notification (including the sanction recommendation) must be emailed to the appropriate JSA Claims Maintenance Team and to the appropriate Jobcentre.
109. In cases where a disallowance is not applied, the LMDM must:
- enter the details of the decision into JSAPS in order to lift the suspension that was imposed on the claimant's benefit in the Jobcentre; **and**
  - issue any overdue payment to the claimant via Fast Electronic Payment.

**Note:** This guidance only applies for the original disallowance decision. Where a decision is overturned following an explanation or review the LMDM must send the case to the appropriate claims maintenance team for them to update JSAPS.

### Inputting the decision into JSAPS

110. If the decision is to allow the claim, the following action must be taken in JSAPS by the LMDM:

Step	Action
1	Access dialogue JA513: Suspension and AR Decision Enquiry screen, enter the claimants National Insurance number in the NINO field and press [ENTER] to access dialogue JA513525.
2	In the AR CASE STATUS screen JA513525 identify the appropriate case number relating to the suspension
3	access <b>dialogue JA210: Maintain Suspension and Decision Details</b>
4	in the <b>MAINTAIN SUSPENSION AND DECISIONS</b> screen <b>JA210213</b> , complete the following fields:

	<ul style="list-style-type: none"> <li>input [D] in the '(S)usp/(D)ecision field'</li> <li>input the case number relating to the suspension in the 'Number' field</li> </ul> <p>press [ENTER] to access dialogue JA210212.</p>
5	<p>in <a href="#">the MAINTAIN DECISION DETAILS screen JA210212</a> input details of the decision by completing the following fields:</p> <ul style="list-style-type: none"> <li>AR Code – Input the appropriate JSAPS code, which can be found on the DMAS decision notification</li> <li>AR Period in doubt – Leave blank (Delete any dates that are pre-populated)</li> <li>JS85 Number - Leave blank</li> <li>Decision – enter ALLD</li> <li>Source – Input '2'</li> <li>Date of Transgression – Input the date of transgression</li> <li>Decision Date – Input the date that the decision was made.</li> </ul>
6	access <a href="#">dialogue JA200: Award and Decision</a> to reassess the claim;
7	access <a href="#">dialogue JA405: Compute Payment</a>
8	in the PAYMENT DETAILS screen JA405407 press [F2] to access dialogue JA405406
9	In the RECORD TEMPORARY METHOD OF PAYMENT screen JA405406 input [CG] into the 'Temporary Method of Payment field' and press [ENTER] return to dialogue JA405407.
10	in the PAYMENT DETAILS screen JA405407 Input [N] into the 'Inhibit Award Notification field'. Press [END] to save the details and produce the FF100.
11	Access dialogue JA400: Method of Payment, press [F3] to access dialogue JA400402.
12	In the ACT DETAILS screen JA400402 press [CONTROL] + [F3] to print the screen.

**NOTE:** In JA405407 the 'Inhibit award Notification' must **ALWAYS be overtyped with 'N'** when a decision has been made. This ensures the claimant is issued a Single Outcome Decision Notification.

111. The FF100 produced from JSAPS should be used alongside the screen print from dialogue JA400402 to generate a payment to the claimant using the Fast Electronic Payment method via the Central Payment System (CPS). The CPS Learning Pathway provides e-learning on the CPS system, including creating payments.
112. A deskaid flowchart is available for LMDMs covering the actions required to input decisions into JSAPS and issuing payment via CPS. This deskaid can be accessed via the following link: [ILS Deskaid Flowchart](#)
113. Further information around inputting decisions into JSAPS and issuing payments to claimants are included within the Sanctions, Suspensions and Disallowances chapter and the Making Payments chapter of the JSA Procedural Guidance respectively. In addition, information is also available in the Payments Guide

## **Cases where a LMDM cannot input the allowance decision into JSAPS**

114. If a LMDM is unable to input the allowance decision into JSAPS, for example due to an unforeseen error message or because the claim is clerically maintained, they must annotate the DMAS decision notification with information around the actions they have taken and the problems encountered.
115. The decision notification must be emailed to the appropriate claims maintenance team for them to input the decision. The email must be marked as urgent.

## **Cases where a LMDM must not input the allowance decision into JSAPS**

### **Claimant had deductions applied to their JSA award.**

116. Where a claimant had deductions applied to their JSA award before the suspension was input (for example due to social fund or maintenance deductions), LMDMs must not input the allowance decision into JSAPS. This is because additional system action is required in order to re-institute the deductions if appropriate.
117. In these cases, the LMDM must annotate the DMAS decision notification with details of why they have not input the decision into JSAPS, and send it by email to the appropriate claims maintenance team for them to input the decision. The email must be marked as urgent.
118. To check whether deductions applied to the claimants JSA award, take the following action in JSAPS:

Step	Action
1	Access dialogue JA523: Award Details Enquiry, enter the claimants National Insurance number in the NINO field and press [ENTER] to access dialogue JA523613.
2	In the Award Details Summary Screen JA523613 press [F2] to access the Awards for Claim Screen JA523614.
3	In the Awards for Claim Screen JA523614, enter the appropriate option number in the 'Selected Option No Field' and press [ENTER] to access dialogue JA523613.
4	In the Award Details Summary Screen JA523613 the 'Deductions Field' will display [Y] if deductions were applied to the award.

### **Claimant in receipt of JSA Hardship**

119. If the claimant is in receipt of JSA Hardship during the suspension period, it is essential that the LMDM does not input the allowance decision into JSAPS. This is because additional system action is required in JSAPS to end the hardship award and pay any benefit arrears that are due.
120. In these cases, the LMDM must annotate the DMAS decision notification with details of why they have not input the decision into JSAPS, and send it by email to the appropriate claims maintenance team for them to input the decision. The email must be marked as urgent.
121. To check whether a claimant is in receipt of JSA Hardship, take the following action in JSAPS:



Step	Action
1	Access dialogue JA523: Award Details Enquiry, enter the claimants National Insurance number in the NINO field and press [ENTER] to access dialogue JA523613.
2	In the Award Details Summary Screen JA523613 the 'H/ship field' will display [Y] if the claimant is in receipt of JSA Hardship

## Failing to participate in an adviser interview

### Background

122. The Jobseeker's Allowance regulations (1996), specifically regulation 23, require claimants to participate in an interview in such manner, time and place as an employment officer may specify by a notification which is given or sent to the claimant and which may be in writing, by telephone or by electronic means.
123. Regulation 70A(3) of The Jobseeker's Allowance (Sanctions) (Amendment) Regulations (2012), provide that a claimant can have a sanction imposed on their JSA if they fail to attend an interview or intervention without good reason.
124. Consequently, a claimant can have a sanction imposed if they fail to participate in a face to face interview. However, as Regulation 70A refers to attendance, a sanction cannot be imposed if a claimant fails to take part in a telephone interview.

**NB: Although regulations refer to 'participation', no DMA action can be taken against claimants for failing to participate. Only failing to attend action can be considered. In this section, therefore, 'participate' should be read as 'attend' only.**

### AR Codes

125. AR Code JSA/719S is used for Fail to Participate cases.

### Applicable sanction

126. The length of the sanction imposed if a claimant fails to participate in an interview, will depend upon when the claimant commits the failure:
- If a claimant fails to participate in an interview prior to 22 October 2012 (regardless of when the LMDM makes their determination), they will receive a fixed sanction of 1 or 2 weeks. See Chapter 20 of the DMG for further information around determining the applicable sanction period.
  - If a claimant fails to participate in an interview on or after 22 October, they will receive a lower level sanction of 4 or 13 weeks.

### What information should be included as part of DMA referral

127. DMA referrals for failing to participate are made using DART, therefore an integral part of the DMA referral should be a fully completed DART template.
128. However, the information on the template is not exhaustive. Additional information should be included as necessary to reflect particular aspects of each individual case.

129. The referral should include the date and method of any notifications to attend an interview along with details of any reminders sent. LMDMs should only make a decision on a case for which the initial notification of the interview was by letter which was either posted to the claimant or handed to them in person. Any referrals received for which the initial notification was not by letter should be cancelled (except for rapid reclaims and more frequent attendance cases which are notified by telephone or SMS). Reminders can be sent by electronic means or by telephone.
130. However, if once the initial invitation letter has been sent, the appointment time/day is changed (upon application by the claimant, for example), there is no requirement for an amended appointment letter to be sent. Amendments to the original appointment can be made and accepted by telephone, in person, by email or SMS and should be advised to the LMDM as part of the DART referral.

### **Appearance in court**

131. A failure to attend an interview can only be treated as straightforward for an appearance in a court or tribunal (as a magistrate, plaintiff, defendant, witness or juror etc) provided that they provide advance notice of their appearance to an Employment Officer. The EO has the discretion to request such notice to be in writing.
132. If no advance notice is given, the LMDM should consider the good reason question as per current guidelines.
133. If notice is given, any such referral should be cancelled.

### **Making a decision**

134. Further information around the generic processes that LMDMs are required to take when making a decision is available within Chapter 1 of this Labour Market DMA Procedural Guide
135. A LMDM should only impose a sanction if they are satisfied that, the claimant:
- is entitled to JSA **and**
  - was properly notified of the date, time and place of the interview **and**
  - failed to participate in the interview **and**
  - made contact within 5 working days of the failure **and**
  - did not show good reason for failing to participate in the interview.

**Note:** LMDMs are not required to make sanction decisions for claimants who fail to participate in an interview and do not make contact within 5 working days. In these circumstances the claimants JSA claim should be terminated by the Jobcentre.

136. When considering whether a claimant has good reason for failing to participate in an interview, LMDMs should take into account all of the individual circumstances of the case, including:
- whether the claimant misunderstood what they had to do because of language, learning or literacy difficulties, or because they were misled;
  - whether the claimant (or someone they care for) was attending a medical or dental appointment which it would have been unreasonable to expect them to rearrange;
  - any transport difficulties;

- any religious reasons why they could not participate;
  - whether the claimant was attending a job interview.
137. Further information around the LMDM considerations for failing to participate in an interview is available within Chapter 20 of the DMG.

### **Recording the decision**

138. When a LM doubt is decided, the LMDM must record their decision on DMAS. See the DMAS System User Guide for further information.

### **Failing to provide a signed declaration**

#### **Background**

139. The Jobseeker's Allowance regulations (1996), specifically regulation 24(6), requires claimants to provide a signed declaration that they have been available for and actively seeking work (or treated as such) and that there has been no change in their circumstances, except for anything they have already told the Secretary of State about.
140. These declarations have to be provided on the day on which claimants are told to attend in a notification, or on any other day as the Secretary of State may state.
141. Regulation 25(1)(c) of the Jobseeker's Allowance Regulations (1996), provides that a claimant's entitlement to JSA will cease if they fail to provide a signed declaration on the day on which they are required to do so and do not show good reason for that failure within 5 working days.

#### **AR Codes**

142. AR Code JSA/719A is used for failing to provide a signed declaration cases.

#### **Applicable penalty**

143. If a claimant fails to provide a signed declaration on the day on which they are required to do so, their JSA claim will be disallowed. This disallowance ends the claimants' entitlement to JSA.
144. However, a claimants' JSA entitlement will not cease following a failure to provide a signed declaration, if that claimant:
- makes contact with an Employment Officer in the manner set out in the notification before the end of 5 working days; **and**
  - shows good reason for that failure.

#### **What information should be included as part of DMA referral**

145. DMA referrals for failing to provide a signed declaration are made using DART. Therefore an integral part of the DMA referral should be a fully completed DART template.
146. However, the information on the template is not exhaustive. Additional information should be included as necessary to reflect particular aspects of each individual case.

## **Making a decision**

147. Further information around the generic processes that LMDMs are required to take when making a decision is available within Chapter 1 of this Labour Market DMA Procedural Guide
148. A LMDM should only impose a disallowance decision if they are satisfied that, the claimant:
- was entitled to JSA **and**
  - was properly notified of the date, time and method that they were required to provide a signed declaration **and**
  - failed to provide a signed declaration **and**
  - did not show good reason for failing to provide a signed declaration within 5 working days of the failure.
149. When considering whether a claimant has good reason for failing to provide a signed declaration, LMDMs should take into account all of the individual circumstances of the case, including:
- for postal signers, whether there were problems or delays with the post; **or**
  - whether the claimant misunderstood, because of language, learning or literacy difficulties, that they had to provide a signed declaration and that they had to provide it on a particular day or
  - because they were misled.
150. Further information around the LMDM considerations for failing to provide a signed declaration, including determination of good reason, is available within Chapter 20 of the DMG and DMG Memo 37/12.

## **Recording the decision**

151. When a LM doubt is decided, the LMDM must record their decision on DMAS. See the DMAS System User Guide for further information.

## **Jobseeker's Agreement doubt**

### **Background**

152. The Jobseeker's Act 1995, specifically Section 1, requires claimants to enter into a Jobseeker's Agreement (JSAg) as a condition of entitlement to Jobseeker's Allowance (JSA).

### **AR Codes**

153. The following AR Codes are used for the disallowance in JSAg cases:
- JSA/540 – refusal to enter into a JSAg;
  - JSA/541 – whether JSAg is reasonable - dispute;
  - JSA/543 – proposed variation to JSAg; and
  - JSA/544 – termination of JSAg.

### **Applicable penalty**

154. As entering into a JSAg is one of the entitlement conditions for JSA, the claim is disallowed from either the Date of Claim or the date on which the JSAg could not be agreed, depending on whether the decision is made against the first JSAg or a revision/variation.

155. This penalty was not affected by the changes from 22 October 2012.

### **What information should be included as part of DMA referral**

156. Within the DMA Referrals Guide, jobcentres are advised to include the following information as part of the Labour Market Decision Maker (LMDM) referral:

- JSAg - showing claimant's proposals (signed only by the claimant) and a statement from claimant (signed and dated) - stating the reasons why their terms are reasonable and why they do not agree with any of the adviser's proposed terms;
- JSAg – showing the terms the adviser (signed only by the adviser) wants to include and a statement from adviser showing the reasons why they disagree with the terms proposed by the claimant;
- Relevant Labour Market Information; and
- Referring officer contact details. This will help decision makers clear any queries quickly by phone.

**NOTE: If the claimant requests a variation in the terms of the JSAg, the referral should include the current JSAg, in addition to the list above.**

### **Making the decision**

157. A LMDM should only disallow entitlement if they are satisfied that the JSAg is reasonable, given the claimant's circumstances and;

- does not allow the claimant to meet the conditions of entitlement; and
- does not provide the claimant with reasonable prospects of finding work.

158. When considering this decision, the LMDM should take account of the following:

#### **where the proposed JSAg is made by the Employment Officer**

- why the claimant refused to accept the JSAg proposed by the adviser; **and**
- whether the claimant was reasonable in refusing to accept the proposed JSAg; **and**
- what terms the claimant proposes; **and**
- why the adviser considers that the proposed JSAg is reasonable; **and**
- the claimant's availability, including any restrictions on availability; **and**
- the:
  - types of employment that the claimant is seeking; **and**
  - rate of pay that the claimant is seeking; **and**
  - localities in which the claimant is seeking employment; **and**
  - hours that the claimant is prepared to work; **and**
- the guidance at DMG 21600 - 21666 on steps to seek employment and whether they are reasonable.

#### **where the proposed JSAg is made by the claimant**

- why the adviser refused to accept the JSAg proposed by the claimant; **and**
- what terms the adviser proposes; **and**
- why the claimant considers that the proposed JSAg is reasonable; **and**

- the claimant's availability, including any restrictions on availability; **and**
- the:
  - types of employment that the claimant is seeking; **and**
  - rate of pay that the claimant is seeking; **and**
  - localities in which the claimant is seeking employment; **and**
  - hours that the claimant is prepared to work; **and**
- the guidance at DMG 21600 - 21666 on steps to seek employment and whether they are reasonable.

## **Providing Directions**

159. Having considered whether the claimant's proposed JSAG will allow them to meet the conditions of entitlement and whether it is reasonable, the same considerations should be given to the adviser's proposed JSAG, if not.
160. If neither JSAG will allow the claimant to meet the conditions of entitlement or is not reasonable, the LMDM may provide directions as to the content of the JSAG.
161. This may include preparing a new JSAG.
162. Further information around the LMDM considerations for a claimant not availing themselves of employment is available within Chapter 21 of the DMG.

## **Recording the decision**

163. When a LM doubt is decided, the LMDM must record their decision on Decision Making & Appeals System (DMAS). Full details on recording the decision are available in the DMAS System User Guide.

## **Credits only**

164. There is no requirement under The Social Security (Credits) Regulations 1975 for a JSAG (or JSA Claimant Commitment) to be in place before a credit is awarded. As credits can still be awarded even if there is no JSAG/CC in place, an LMDM referral should not be made for credits only cases where the claimant refuses to enter into a JSAG/CC. Any such referrals received will be cancelled by the LMDM.
165. However referrals should still be made where the claimant seeks a variation to or disputes the reasonableness of an existing JSAG/CC.

## **Jobseeker's Direction**

### **Background**

166. The Jobseeker's Act 1995, specifically section 19A, requires claimants to carry out a Jobseeker's Direction (JSD).
167. Regulation 69A of The Jobseeker's Allowance (Sanctions) (Amendment) Regulations (2012), provides that a claimant can have a sanction imposed on their JSA if they refuse or fail to carry out a JSD.

## AR Codes

168. AR Code JSA/718 is used for refusing or failing to carry out a JSD, unless the direction was related to creating a profile and CV in Universal Jobmatch. In this case, AR code JSA/718UJ is used.

## Applicable sanction

169. The length of the sanction imposed if a claimant fails to carry out a JSD will depend upon when the claimant refuses or the point at which they were expected to complete it:

- If a claimant refuses or fails to carry out a JSD prior to 22 October 2012 (regardless of when the Labour Market Decision Maker (LMDM) makes their determination), they will receive a sanction for a fixed period of 2 or 4 weeks.
- If a claimant refuses or fails to carry out a JSD on or after 22 October, they will receive a lower level sanction for a fixed period of 4 or 13 weeks.

170. Further information around determining the applicable sanction period can be found in DMG Memo 37/12.

## What information should be included as part of DMA referral

171. DMA referrals for failing to carry out a JSD are made using Decision And Referral Toolkit (DART), therefore an integral part of the DMA referral should be a fully completed DART template.

172. However, the information on the template is not exhaustive. Additional information should be included as necessary to reflect particular aspects of each individual case. For example, details from JSA28 or ES674JP.

## Making the decision

173. A LMDM should only impose a sanction if they are satisfied that:

- the claimant is entitled to JSA; **and**
- the claimant was given a JSD as in DMG 34584 (see DMG 34591 - 34595); **and**
- the JSD contained the information necessary for the claimant to undertake the action; **and**
- the JSD was reasonable, taking the claimant's circumstances into account; **and**
- the claimant refused or failed to carry out the JSD (see DMG 34601 - 34605); **and**
- if the JSD was given to help them find a specific employed earner's employment, the employment in question was not vacant because of a stoppage of work due to a Trade Dispute (see DMG 34606); **and**
- the claimant does not have good reason for the refusal or failure (see DMG 34607 - 34643).

## Recording the decision

174. When a LM doubt is decided, the LMDM must record their decision on Decision Making & Appeals System (DMAS). Full details on recording the decision are available in the DMAS System User Guide.

## Leaving employment voluntarily

### Background

175. In accordance with Section 19(2)(b) of the Jobseekers Act (1995), a claimant can have a sanction imposed on their JSA if they voluntarily leave employed earners employment (LV) without good reason.
176. The purpose of the sanction is to protect the National Insurance fund from claims arising from circumstances that claimants have brought upon themselves.
177. Claimants have voluntarily left their employment if they brought it to an end by their own acts, of their own free will. However, claimants have **not** voluntarily left their employment if they had no choice in the matter **or** there is convincing evidence (preferably medical) that they were not responsible for their actions.

### AR Code

178. AR Code JSA/660 is used for LV cases.

### Applicable sanction

179. The length of the sanction imposed if a claimant voluntarily leaves employed earners employment will depend upon when the claimant commits the failure:
- If a claimant leaves their employment voluntarily prior to 22 October 2012 (regardless of when the LMDM makes their determination), they will receive a variable sanction of between 1 and 26 weeks depending upon their circumstances. See Chapter 34 of the DMG for further information around determining the applicable sanction period.
  - If a claimant leaves their employment voluntarily on or after 22 October, they will receive a higher level sanction of 13 weeks, 26 weeks or 156 weeks. However, the length of the sanction imposed will be dependant upon the various exceptions for pre-claim failures, such as LV or misconduct.

### What information should be included as part of DMA referral

180. From 13 October 2014, LV referrals will be made by DART.
181. Within the DMA Referrals Guide, Jobcentres are advised to include the following information as part of the LMDM referral:
- A fully completed DART referral template;
  - LMS Reference ID; and
  - Referring officer contact details.
182. This list is not exhaustive. Additional information should be included as necessary to reflect particular aspects of each individual case.
183. Jobcentres may decide to scan and attach documents (such as the ES84) to the referral rather than transcribe the information into DART.
- Note:** A LMDM can still consider an LV doubt without the claimant's reasons for leaving their job, as long as they have been given adequate chance to provide their statement.



## **Making a decision**

184. Further information around the generic processes that LMDMs are required to take when making a decision is available within Chapter 1 of this Labour Market DMA Procedural Guide
185. A LMDM should only impose a sanction if they are satisfied that, the claimant:
- is entitled to JSA **and**
  - was in employed earner's employment **and**
  - employment on trial did not apply **and**
  - left employment voluntarily **and**
  - did so without good reason.
186. There are no hard and fast rules as to when claimants have shown good reason for leaving employment because the circumstances in which they leave are so varied. The DM should consider as a whole all the circumstances in which the claimant left employment
187. Before imposing a sanction for LV, the DM should be satisfied that the claimant has been given an adequate chance to comment on all the statements made against them.
188. Further information around the LMDM considerations for LV is available within Chapter 34 of the DMG.

## **Entitlement ceases before a sanction decision is made**

189. LV action can only be taken on the clmt's last employment. Therefore, if they cease claiming, start work for employer B and reclaim before the LMDM has decided the question arising from the end of employment with employer A, then the employer A referral should be cancelled. Any issues resulting from the end of employment with employer B would then need to be determined if applicable.
190. If at the time the decision is made in respect of employer A, the clmt has ceased claiming, a reserved decision should be made. If the clmt reclaims before the end of any applicable sanction, the case may be referred back to the LMDM. If the clmt has not worked, a sanction can be applied for the remainder of the sanction period. If the clmt has worked (and the Jobcentre have established that it is 'genuine'), then the reserved decision should not be referred back - but if it is, it should be cancelled.

## **Recording the decision**

191. When a LM doubt is decided, the LMDM must record their decision on DMAS. See the DMAS System User Guide for further information.

## **Employee Shareholder Contracts**

192. If a claimant **voluntarily** takes up an Employee Shareholder job on the full understanding and acceptance of the associated terms and conditions, and then leaves voluntarily or is dismissed, Leaving Voluntarily and Misconduct action should be considered in the normal way. As part of this consideration **claimants would have good reason for leaving voluntarily** if:
- they had not fully understood the financial implications associated with an Employee Shareholder contract. Employee Shareholders may be

- liable for upfront Income Tax and National Insurance Contributions charges on any share value received and these expenses could be a source of financial difficulties; or
- some aspects of the Employee Shareholder terms and conditions only became apparent after their employment had started.
193. If an existing employee is made redundant – or is forced to leave their job – because they refused to accept a move to an Employee Shareholder contract, then sanction action **must not** be taken.

### **Zero Hours Contracts**

194. A claimant will always have good reason if they leave a zero hours contract voluntarily (DMG 34415 relates).
195. Although Jobcentres have been advised not to refer cases where they have established that the employment was on a zero hours contract, it may not be until the LMDM makes further enquiries that this comes to light. Therefore any such cases should be allowed.
196. However, forms ES84/85 and DART have now been amended to specifically ask about zero hours contracts. Where it is obvious from the referral evidence that the claimant was employed on a zero hours contract, the case should be cancelled.

### **Losing employment through misconduct**

#### **Background**

197. In accordance with Section 19(2)(a) of the Jobseekers Act (1995), a claimant can have a sanction imposed on their JSA if they lose employment as an employed earner through misconduct.
198. The sanction is not to punish claimants for losing a job, but to protect the NI fund from claims which claimants bring upon themselves by their own misconduct.
199. The word "misconduct" is not defined in legislation, but it suggests an element of blameworthiness. It means such conduct as would persuade or oblige a reasonable employer to dismiss employees because, considering their misconduct, they are no longer fit to hold their employment.
200. Misconduct is conduct which is connected, but not necessarily directly, with the employment.

#### **AR Code**

201. AR Code JSA/680 is used for misconduct cases.

#### **Applicable sanction**

202. The length of the sanction imposed if a claimant loses employment through misconduct will depend upon when the claimant commits the failure:
- If a claimant loses employment through misconduct prior to 22 October 2012 (regardless of when the LMDM makes their determination), they will receive a variable sanction of between 1 and 26 weeks depending upon their circumstances. See Chapter 34 of the DMG for further information around determining the applicable sanction period.

- If a claimant loses employment through misconduct on or after 22 October, they will receive a higher level sanction of 13 weeks, 26 weeks or 156 weeks. However, the length of the sanction imposed will be dependant upon the various exceptions for pre-claim failures, such as LV and Misconduct.

### **What information should be included as part of DMA referral**

203. Within the DMA Referrals Guide, Jobcentres are advised to include the following information as part of the LMDM referral:

- A completed ES85, giving employer details, employers reasons for the job ending and details of the job;
- Details of the claimant's reason for their employment ending and the dates of employment copied exactly from new claim form/CMS;
- Copy of ES85AS;
- LMS Reference ID.
- Referring officer contact details.

204. This list is not exhaustive. Additional information should be included as necessary to reflect particular aspects of each individual case.

### **Making a decision**

205. Further information around the generic processes that LMDMs are required to take when making a decision is available within Chapter 1 of this Labour Market DMA Procedural Guide

206. A LMDM should only impose a sanction if they are satisfied that, the claimant:

- is entitled to JSA **and**
- was in employed earner's employment **and**
- acted or failed to act as alleged **and**
- behaved in such a way that it amounted to misconduct **and**
- lost employment through misconduct.

207. In addition, the LMDM should be substantially satisfied that the allegations which are made are well founded and that claimant has been given an adequate chance to comment on all the statements made against them.

208. Further information around the LMDM considerations for Misconduct is available within Chapter 34 of the DMG.

### **Entitlement ceases before a sanction decision is made**

209. Misconduct action can only be taken on the clmt's last employment. Therefore, if they cease claiming, start work for employer B and reclaim before the LMDM has decided the question arising from the end of employment with employer A, then the employer A referral should be cancelled. Any issues resulting from the end of employment with employer B would then need to be determined if applicable.

210. If at the time the decision is made in respect of employer A, the clmt has ceased claiming, a reserved decision should be made. If the clmt reclaims before the end of any applicable sanction, the case may be referred back to the LMDM. If the clmt has not worked, a sanction can be applied for the remainder of the sanction period. If the clmt has worked

(and the Jobcentre have established that it is 'genuine'), then the reserved decision should not be referred back - but if it is, it should be cancelled.

## **Recording the decision**

211. When a LM doubt is decided, the LMDM must record their decision on DMAS. See the DMAS System User Guide for further information.

## **Zero Hours Contracts**

212. A claimant will always have good reason if they leave a zero hours contract.

213. Although Jobcentres have been advised not to refer cases where they have established that the employment was on a zero hours contract, it may not be until the LMDM makes further enquiries that this comes to light. Therefore any such cases should be allowed.

214. However, form ES85 has now been amended to specifically ask about zero hours contracts. Where it is obvious from the referral evidence that the claimant was employed on a zero hours contract, the case should be cancelled.

## **Neglect to Avail of employment**

### **Background**

215. Section 19 of the Jobseeker's Allowance Act 1995 requires claimants to avail themselves of a reasonable opportunity of employed earner's employment with a qualifying former employer.

216. Regulation 69 of The Jobseeker's Allowance (Sanctions) (Amendment) Regulations (2012), provides that a claimant can have a sanction imposed on their Jobseeker's Allowance (JSA) if they neglect to avail themselves of a reasonable opportunity of employed earner's employment.

217. For the action to take regarding apprenticeship vacancies, please see paragraphs 179-182 below.

### **AR Codes**

218. AR Code JSA/690 is used for Neglect to Avail cases.

### **Applicable sanction**

219. The length of the sanction imposed if a claimant loses employment through Neglect to Avail will depend upon when the claimant commits the failure:

- If a claimant neglects to avail themselves of employment prior to 22 October 2012 (regardless of when the Labour Market Decision Maker (LMDM) makes their determination), they will receive a variable sanction of between 1 and 26 weeks depending upon their circumstances.
- If a claimant neglects to avail themselves of employment on or after 22 October, they will receive a higher level sanction of 13 weeks, 26 weeks or 156 weeks. However, the length of the sanction imposed will be

- dependant upon the various exceptions for pre-claim failures, such as Leaving Voluntarily (LV) and Misconduct.
220. Further information about determining the applicable sanction period can be found in DMG Memo 37/12.

### **What information should be included as part of DMA referral**

221. Within the DMA Referrals Guide, jobcentres are advised to include the following information as part of the LMDM referral:
- ES195(N).
  - ES195(NTA) if returned.
  - ES85 if available
  - Details of the claimant's reason for neglecting to avail themselves of employment copied exactly from new claim form/CMS;
  - Copy of ES85AS where applicable;
  - Details of the Jobseeker's Agreement (JSAg) current during the period of doubt, or a copy of that JSAg;
  - LMS Reference ID.
  - Referring officer contact details. This will help decision makers clear any queries quickly by phone.

### **Making the decision**

222. A LMDM should only impose a sanction if they are satisfied that:
- the claimant is entitled to JSA **and**
  - a vacancy in a qualifying former employed earner's employment existed; **and**
  - the claimant knew, or had the means of finding out how to get the job; **and**
  - the chance of getting it by that means was a reasonable one; **and**
  - the claimant did not take the steps necessary to make use of the opportunity; **and**
  - the claimant was not in a trial period; **and**
  - the job was not vacant because of a stoppage of work due to a Trade Dispute; **and**
  - the claimant does not have good reason for the neglect.

**Note: Since 22 October 2012, claimants no longer have automatic good cause for neglecting to avail themselves of any employment opportunity other than a qualifying former employer.**

### **Recording the decision**

223. When a LM doubt is decided, the LMDM must record their decision on Decision Making & Appeals System (DMAS). Full details on recording the decision are available in the DMAS System User Guide.

## **Refusal of Employment**

### **Background**

224. The Jobseekers Act 1995 section 19 provides that Jobseeker's Allowance (JSA) will not be payable if a claimant has, without good reason,:
- refused to apply for a job notified to them by an Employment Officer;
  - failed to apply for a job notified to them by an Employment Officer; or
  - refused to accept a job which was offered, having been notified of that job by an Employment Officer.
225. Regulation 69 of The Jobseeker's Allowance (Sanctions) (Amendment) Regulations (2012) provides that a claimant can have a sanction imposed on their JSA for these reasons.
226. A sanction may be also appropriate for Refusal of Employment (RE) if a claimant did not actually refuse or fail to apply for or accept the job but behaved in such a way that they lose the chance of employment. This could involve:
- arriving late for an interview or going to the wrong place through their own negligence;
  - imposing unreasonable conditions on acceptance of the job so that the employer withdraws the offer;
  - behaving in such a manner at an interview that the employer decides not to offer them the job; or
  - refusing to give references or allow references to be taken up.

### **AR Codes**

227. The following AR Codes are to be used for RE referrals:
- JSA/710 for cases referred from WSD.
  - JSA/723 for cases referred from WP providers.
  - JSA/724 for cases referred from CWP providers.

### **Applicable sanction**

228. The length of the sanction imposed if a claimant refuses to apply for a job, fails to apply for a job, or refuses to accept a job which was offered will depend upon when the claimant refuses to apply for a job, fails to apply for a job, or refuses to accept a job which was offered:
- If, prior to 22 October 2012, a claimant fails to meet this requirement (regardless of when the Labour Market Decision Maker (LMDM) makes their determination), they will receive a variable sanction of between 1 and 26 weeks.
  - If, on or after 22 October 2012, a claimant fails to meet this requirement, they will receive a higher level sanction for a fixed period of 13, 26, or 156 weeks.

### **What information should be included as part of DMA referral**

229. Within the DMA Referrals Guide, jobcentres are advised to include the following information as part of the LMDM referral:
- Details of the vacancy issued to the claimant;

- Universal Jobmatch (UJ) job ID number
- Employer's name;
- Whether the job was as a result of a spec sub and if so, details;
- Date and how offer was made;
- Date and how offer was refused;
- Details of the Jobseeker's Agreement (JSAg) current during the period of doubt, or a copy of JSAg;
- LMS Referral Reference ID;
- The claimant's reasons for refusing employment;
- Referring officer contact details. This will help decision makers clear any queries quickly by phone' and
- The claimant's Universal Jobmatch ID.

**Note:** Where the claimant's reasons for refusing or failing to apply for employment relate to the number of hours, the DMA referral must include details of the hours of the vacancy.

### **Refusal of Employment process for vacancies notified through Universal Jobmatch**

230. In response to work ongoing in relation to Universal Jobmatch (UJ) employer/recruiter accounts, some important changes to the Refusal of Employment procedures for vacancies that are notified to Jobseeker's Allowance (JSA) claimants via the UJ system have been introduced.
231. These changes affect the actions that a Labour Market Decision Maker is required to undertake upon receipt of an RE referral.
232. When considering a Refusal of Employment referral for a claimant who has been notified of a vacancy via the UJ system, the LMDMs **must** check the status of the employer and recruiter UJ accounts.
233. Prior to the LMDM checking the status of the employer/recruiter UJ account, there is also a requirement for the same check to be performed by an adviser prior to making the RE referral. In addition, for quality assurance purposes, the adviser is required to record the fact that they have undertaken the status check in LMS Conversations.
234. However, irrespective of whether or not the adviser has checked the status of the employer/recruiter UJ account and whether or not they have noted LMS Conversations, the LMDMs **must** also check the status of the employer/recruiter UJ account prior to making their decision and take the appropriate action where the account is suspended or closed.

#### **UJ employer/recruiter account has been closed**

235. Where a RE referral relates to a vacancy where DWP has closed the employer UJ account regardless of the reason, the DMA referral must be cancelled, whether or not the claimant has demonstrated good reason for their refusal/failure.
236. Do not take RE action in any circumstances. A sanction must not be applied.

#### **UJ employer/recruiter account has been suspended**

237. Where **DWP** has suspended the employer/recruiter account, and the claimant has **not** demonstrated good reason, do not make a decision on

the Refusal of Employment doubt. The case must be BF'd pending the outcome of the investigations into the employer/recruiter.

238. If, following the investigations, the employer/recruiter account is re-instated then a decision can be made on the Refusal of Employment doubt, and a sanction imposed if applicable.

239. If the employer/recruiter account is subsequently closed by DWP the DMA referral must be cancelled. A sanction must not be applied.

### **Good reason demonstrated**

240. Where the claimant has demonstrated good reason, the case can be allowed, regardless of the status of the UJ employer and recruiter accounts.

### **How to determine the status of Universal Jobmatch employer and recruiter accounts**

241. To determine whether or not an employer account has been closed by DWP, take the following action:

- Access UJ from the desktop icon.
- Click the 'Find company/recruiter' link.
- Enter the Job ID into the search details field, click on the Job ID button and click 'Go'.
- 'Manage Jobs' screen will appear.
- Click on the 'Recruiter name' link - e.g. Joe Bloggs and the 'Recruiter Search Results' screen will appear.
- Click on the 'UJ employer reference number' at the top of screen.
- If DWP have closed the account – e.g. because they have breached the UJ Terms and Conditions, this will be recorded in the 'Notes' field. If DWP have closed the account, because the jobs do not exist, the 'Notes' field may detail "fraudulent", "bogus" or "Jobs do not exist".

242. If in any doubt about why a UJ employer/recruiter account has been closed, please contact the employer complaints team by email at Employer Complaints Team

243. To determine whether or not the recruiter account has been suspended by DWP, take the following action:

- Access UJ from the desktop icon.
- Click the 'Find company/recruiter' link.
- Enter the Job ID into the search details, click on the Job ID button and click 'Go'.
- 'Manage Jobs' screen will appear.
- Click on the Recruiter name link - e.g. Joe Bloggs and the 'Recruiter Search Results' screen will appear.
- Check 'Account suspension notes' on the screen. If the account has been suspended by DWP the date and reason will be shown:
  - e.g. '19/02/2014 DWP: Inappropriate Behaviour – Terms and Conditions'. In addition, the reason for account suspension will be shown in 'red' at the top of the screen.

### **Making the decision**

244. A LMDM should only impose a sanction if they are satisfied that the:

- claimant is entitled to JSA; **and**



- claimant has been notified of the job by an Employment Officer in writing, face to face or by telephone, if DWP does not have access to their UJ account or they do not have one; **and**
- vacancy did not become available because of a trade dispute;
- vacancy was not for self-employed work; **and**
- job was broadly be in line with the pattern of availability agreed on the claimants JSAg; **and**
- job is in the claimant's usual occupation and/or offers at least their accustomed rate of pay, if a Permitted Period is in place; **and**
- claimant was given at least:
  - 24 hours notice to start the job, if they are providing a service; **or**
  - 1 week's notice to start the job, if they have caring responsibilities or the job was voluntary work; **or**
  - 28 days notice to start the job, if they have caring responsibilities for a child;
- claimant does not have good reason for the refusal or failure; and
- claimant has not provided the required statutory period of notice to an employer for whom they work part-time, that means they can not start work in the relevant time-frame.

**Note:** There is no requirement for a LMDM to consider the number of hours offered by a vacancy unless the claimant specifically states that they refused or failed to apply for the employment because of the number of hours.

245. Further information around the LMDM considerations for Refusal of Employment is available within Chapter 34 of the DMG.

### **Setting the time to apply**

246. UJ provides a default vacancy closing date of 60 days. Advisers have been informed that where a closing date is not set by the employer, and the system default is applied, they should set a maximum period of four weeks for the claimant to apply. In these cases, the date by which the claimant had to apply will be entered into the 'Final date they could apply' field in DART and provide a covering note accordingly.
247. The adviser will have discretion as to how long a period they allow depending on the individual circumstances of the claimant and the vacancy.

### **Vacancy Still Open**

248. An RE determination can still be made even if the vacancy is still open.
249. In certain circumstances, the adviser can apply a discretion and give the claimant a second chance to apply. This is for the adviser to determine, not the LMDM. The LMDM only needs to decide if the claimant has good reason for their failure.
250. If the vacancy is still open, the clmt may change their mind and subsequently apply for the vacancy. In these cases, if a sanction has already been applied, the decision will need to be reviewed and revised with any sanction being allowed. If a referral has been made but a decision is outstanding, the referral should be cancelled.
251. The LMDM will only need a statement from the adviser confirming the application to revise/cancel.

## Apprenticeships

252. The Minister made a decision on 14/11/13 that legacy JSA claimants should not be mandated to apply for government-funded Apprenticeships. There was an administrative delay in getting this policy decision out.
253. If the legacy JSA claimant was mandated to apply for any type of Apprenticeship on or before 14/11/13, the referral should be actioned in the normal way.
254. If the legacy JSA claimant was mandated to apply for an apprenticeship vacancy on or after 15/11/13 **and** that vacancy was advertised by the National Apprenticeship Service in England, Careers Wales in Wales or as a Modern Apprenticeship in Scotland, the referral should be cancelled.
255. If the legacy JSA claimant was mandated to any other type of apprenticeship vacancy which was **not** advertised by the bodies named above refusal to apply should be actioned in the normal way (regardless of the date of mandation).

## Recording the decision

256. When a LM doubt is decided, the LMDM must record their decision on Decision Making & Appeals System (DMAS). Full details on recording the decision are available in the DMAS System User Guide.

## Employee Shareholder Contracts

257. Employee Shareholder Contract jobs are entirely voluntary and JSA claimants must **never** be required to apply for such vacancies.
258. It may not be obvious from the details available whether the vacancy is actually an Employee Shareholder job or not. It will be dependent on the employer stating this when they advertise the vacancy, so may only become apparent during the interview stage, or when the individual and employer are discussing the terms and conditions of the job. If it later becomes apparent that the vacancy is an Employee Shareholder job, and the claimant no longer wishes to pursue the vacancy, then Refusal of Employment sanction action **must not** be taken.
259. If an RE referral is received, the LMDM should take the following action:
- If it is obvious from the information on the referral that the vacancy is an employee shareholder one, the referral should be cancelled as it should never have been submitted by the Jobcentre;
  - If it only comes to light after LMDM enquiries to the employer or claimant that the vacancy is an employee shareholder one, the referral should be allowed as the referral was made correctly but the claimant has a good reason for refusing the vacancy.

## Zero Hours Contracts

260. Any RE referral received for which the claimant failed or refused to apply for a zero hours contract vacancy should be cancelled. Claimants should never be mandated to apply for such a vacancy.

## **RE Referrals From Providers**

261. A Designation Order came into effect on 27 October 2014 which gives Employment Officer status to providers delivering:
- Work Programme; and
  - Community Work Placements
262. This order will enable providers to mandate their JSA participants to apply for suitable job vacancies and to raise an RE sanction doubt if the participant refuses or fails to apply or accept the vacancy if offered.
263. An RE sanction doubt referred by a provider will attract the same higher level sanction as it would if were referred by a Jobcentre. Fail to participate doubts will continue to attract a lower level sanction.
264. Claimants will be notified at the point of referral to WP or CWP that providers may mandate them to apply for a job and that failure to comply may result in a higher level sanction.
265. Guidance has been produced to give providers an understanding of submitting claimants to appropriate jobs which closely mirrors the guidance used by Jobcentres and includes information on the following:
- Consideration of any agreed restrictions on availability;
  - Providing the claimant with adequate notice of any interview;
  - Consideration of any disabilities or health condition;
  - Consideration of any sincerely held religious or conscientious beliefs;
  - Travel time to and from the job/interview;
  - How to notify the claimant of the requirement; and
  - Ensuring the claimant is aware of the consequences of failure
266. Although the provider will have Employment Officer status, it does not extend to their considering whether the participant had good reason for their failure. This will be for the LMDM to determine. Additionally, providers are unable to take into account factors such as RE discretions.
267. Providers will mandate participants to apply for a vacancy through the issue of a Mandatory Employment Notification (MEN) which will include details of the vacancy, location and date by which they have to apply etc. List not exhaustive.
268. If the participant fails or refuses to apply, the provider will make a referral to the LMDM by email on a form which largely mirrors the content of the ES195. Please note that the generic RE referral form is called the PRE01 but this may change depending on which programme the provider is delivering but the content will remain the same.
269. Upon receipt of the referral, the LMDM will be required to undertake any evidence gather needed, which may also include contacting the employer. Even if the participant's reasons for their failure have been supplied by the provider, the LMDM must still contact the participant to establish/confirm their reasons.
270. If the vacancy is still open when the referral is made or after a sanction has been imposed and the participant subsequently applies, the referral must be cancelled or sanction lifted.
271. If the provider becomes aware that the participant has applied, they will notify the LMDM and supply copies of any supporting evidence. It is unlikely that the provider will contact the employer to confirm the

participant's application and so if there is no supporting evidence available, it will fall to the LMDM to either contact the employer themselves or ask the participant to supply such evidence as may be required.

272. Once the LMDM has made their decision, a copy of the DMAS decision notice must be sent to the provider as well as to the JSA benefit processing team.

273. As the referral form and RE activity is new for providers, it would be good practice to provide them with feedback on the quality of the referral.