

# Temporary Stopped Claims Guidance

## Background

1. A Temporary Stopped (TS) claim is a claim for Jobseeker's Allowance (JSA) from a claimant who, because of temporary adverse industrial conditions:
  - has been laid off by their employer; or
  - has had their working hours reduced.
2. A TS claimant laid-off from full or part-time work can claim JSA until their full employment starts again, if:
  - there is no work available for them to do for their employer for a temporary period; **and**
  - they are under a contract of service which has not been terminated; **and**
  - they clearly expect to return to employment with the same employer.
3. Alternatively, a claimant may be put on short time working (STW) by their employer. A claimant on STW works some days for their employer in each week. For this type of JSA claim to succeed the claimant must **not** be working 16 hours or more per week on average or have earnings that exceed the prescribed amount. Average hours and net earnings are calculated in the normal way.
4. Although periods of TS may be for any period, claimants are expected to meet the same Conditions of Entitlement as other claimants after 13 weeks.

## Adverse industrial conditions

5. A person could be laid-off from work or placed on short time work because of, for example:
  - bad weather;
  - a breakdown of machinery;
  - a lack of materials;
  - a fall in orders;
  - flood or fire;
  - an extension of holiday period; or
  - Trade disputes/lay offs elsewhere.

## Laid off and short time workers and Labour Market Conditionality

6. The conditions for receipt of JSA for TS/STW claimants are slightly modified for the first 13 weeks.
7. A worker who is laid off can be treated as available providing they are willing and able to resume the employment from which they have been laid off and to take up any casual work which is within daily travelling distance of their home.
8. A worker who is on short time working can also be treated as available providing they are willing and able to resume their employment and can

take up casual work for the hours they are not working, which is within daily travelling distance of their home.

9. Workers who are laid off, or on short time working must be able to take up employment immediately on being given 24 hours if they are providing a service, or a weeks notice if they are volunteering, or have caring responsibilities. They should be available within 48 hours to attend an interview.
10. This notice does not include the hours they are already working but they must be available for employment for at least 40 hours a week, unless one of the following circumstances applies;
  - the total number of hours may be less than 40 if they have imposed restrictions which are reasonable in the light of their physical or mental condition; or
  - they have caring responsibilities providing the total number of hours that they work and are available for casual employment is as many as the caring responsibilities allow and are not less than 16 hours in a week.
11. A worker who is laid off or on short time cannot be treated as available for more than 13 weeks starting with the day after the day they were laid off or first put on short time.
12. A worker who is laid off or on short time who has restricted their availability as above can also be treated as actively seeking employment if they take steps that are reasonable in order to have the best prospects of securing employment. This applies where they restrict their availability to 3 days or more in a week.
13. During the 13 week period, TS/STW claimants must satisfy the following availability and actively seeking employment conditions:
  - temporarily laid off claimants must be:
    - willing and able to immediately take up the work from which they have been laid off; and
    - be available for any casual work within daily travelling distance from their home, subject to any agreed restriction on immediate availability.
  - short time working claimants must be:
    - working for less than 16 hours per week on average;
    - willing and able to immediately resume the work in which they are being kept on short time; and
    - immediately available to take up casual work within daily travelling distance, for the balance of their un-worked hours, to a total of at least 40 hours. This applies, even if they are usually employed for less than this.
  - After the first 13 weeks of lay off or short-time work, TS, claimants must meet the same availability and actively seeking employment conditions as any other claimant and are subject to the usual advisory interviews.

## **Notification of Temporary Stoppage or Short Time Working**

14. If an employer contacts Jobcentre Plus to notify they intend to have a stoppage of work at their company, information will need to be gathered. Districts will decide who is best placed to do this.
15. If an employee contacts Jobcentre Plus to notify there has been a stoppage of work at their company, information will need to be gathered from the employer. Districts will decide who is best placed to do this.
16. It may be necessary to cascade information about the stoppage, particularly if numbers involved may have an adverse impact on current operations.
17. The Operational Delivery Network should be made aware of the stoppage; however districts should make a local decision on how this is done.

### **Information needed regarding the Temporary Stoppage/Short Time working**

18. As much information as possible should be gathered from the employer regarding the stoppage of work. This should include:
  - Numbers involved;
  - Date it is to start;
  - Duration of the lay off if known;
  - Estimate of end date;
  - Any pattern of work;
  - Whether Guarantee Days have been paid under the Employment Rights Act. Further information regarding Guarantee Payment Days is available in Appendix 1;
  - Whether any other payments have been or are to be made, e.g. SSP, holiday pay, etc; and
  - Reason for lay off.
19. Individual employees could be treated differently depending on their personal situation and how Short Time Work (STW) affects them,
20. Draft letter DLJA357 can be used to gather the information needed from the employer.
21. Information about the stoppage of work needs to be passed on to CCD, BFD and CSD colleagues.
22. Decisions about handling the stoppage of work will be made locally, in conjunction with the District Manager if appropriate, based on the specific circumstances of the stoppage and the local conditions. Additional consideration should be local impacts against Jobcentre Plus Roll Out Risk Assessments (JPRRA) as large volumes may impact against existing control measures (support for the dynamic Impact Assessment is available from Health & Safety Business Partner).
23. Once contact has been made with an employer, consideration needs to be given to gathering information from the employees, and attendance and payment arrangements. For example:
  - if the number of employees involved in the stoppage is small and/or would cover a number of jobcentres, it may be possible for each claimant to make their claim via the Contact Centre (CC); or
  - if the numbers involved are large and cover a limited number of jobcentres, the jobcentres may not have the capacity to deal with

- the high volume of new claims. In this situation, arrangements could be made to send clerical claim forms to the employer.
24. These decisions are discretionary and should be made following consultation between the District Manager, jobcentre, CC and BDC managers following a review of the JPRRA (against capacity and footfall).

## **Contact Centre Action**

25. If the claimant contacts the CC to make a claim to JSA, the full information gather is taken.
26. The questions in CMS will identify that the claimant is a Temporary Stopped (TS) claim.
27. Once identified as TS, it should be noted in LMS Conversations that it is a TS claim.
28. Further information about creating the LMS claimant record is available within the following guidance: Create System Record. However, only the minimum information needs to be recorded on LMS.
29. A 20 minute 'JP – Non Caseload' interview should be booked.

## **Jobcentre Action following CC Action**

### **Contact Made Through the Contact Centre**

30. When the claimant attends the jobcentre, their identity is checked in the usual way.
31. The Customer Statement is printed after all unanswered questions are cleared. If a JSA1 has been used to make a claim by local arrangement (see below), the following process may still apply.
32. The Customer Statement/JSA1 must be clearly marked 'Temporary Stopped' and the CMS record **must not** be pushed to JSAPS as a claim for a Temporary Stopped (TS) claimant must be clerically maintained in all cases. The CMS record should be withdrawn.
33. It may not be discovered that the claimant is TS until they attend the jobcentre. If possible, the PA should find out how many employees are involved in the stoppage and pass the information to the Jobcentre Manager, or an appointed contact if there is one, to consider cascading further.

### **Alternative Contact at Jobcentre**

34. Not all TS/STW claimants will make contact through the Contact Centre or the jobcentre. There may be instances where the employer contacts National/Regional offices to notify a stoppage of work.
35. Arrangements must be made locally depending on the circumstances of the stoppage and the effect on jobcentres. It may be preferable to hold Group Session NJIs at the employer's premises rather than have individuals attend the jobcentre.
36. Claimants should not be referred to the contact centre in these cases but are to be issued with form JSA1 and advised to return it when they attend the NJI.

## Conducting the NJI

37. The actions taken on a TS/STW claim are different to those of any other claim to JSA. The main steps necessary in a TS/STW NJI are to:
  - explain the eligibility conditions;
  - advise the claimant of any attendance arrangements; and
  - explain what will happen if the claimant continues to be TS /STW.
38. Although these claimants are still expected to declare their availability to return to their current job, they should not be referred to the Work Programme during the TS period. Entry to the Work Programme will be calculated from the point at which they become wholly unemployed.
39. Therefore, a basic LMS record will have been created by the contact centre. This will still allow activities relating to the claimant to be recorded.
40. The JP Marker should be 'exited' with a Destination Reason of 'Other'. The Employment Status should be amended to 'Employed' and the record marked as 'Inactive'.
41. When the claimant becomes wholly unemployed, a full LMS record is created and at the point of the NJI, the appropriate date of referral to the Work Programme will be calculated, as with any other JSA claims.
42. A TS/STW claimant does not have a permitted period at this stage and can be treated as having a Jobseekers Agreement (JSAg) for the first 13 weeks. This period runs from the day after the first day the person was laid off or first kept on short-time, so may not equate to 13 weeks from the date of claim.
43. If the claimant becomes wholly unemployed, the time as TS/STW counts towards any permitted period considered when the full claim is taken.
44. All TS/STW claims should:
  - have a Saturday week ending day;
  - be paid fortnightly in arrears;
  - be kept separate from other claims; and
  - MUST be kept clerical.
45. Attendance arrangements for TS/STW claimants are determined by local agreement, depending on volumes involved and accommodation issues.
46. The following options may be considered:
  - Normal attendance arrangements;
  - Postal signing;
  - A list of employees who have not worked could be provided by employers. (This list should include details of any payments made and pattern of work);
  - Excusal of signing if stoppage of work is short. That is, attendance is not required;
  - Using alternative signing arrangements. For example:
    - Signing at the employer's premises. (Additional guidance for working in employer's premises can be found in the Working Away from the Office in Host Employers Premises Guidance); or
    - Using ES108; and.
  - Whether the claimant should sign a declaration to the BWE date or to the date they attend.

### **Claimant reaches 13 weeks of TS**

47. Once a claimant has been laid off or short time work for 13 weeks, they can no longer be treated as available.
48. At the 13 week stage, an advisory interview should be booked as a normal to put a JSAg in place. This may need to be arranged using a clerical diary.

**NOTE: How the need for identifying this action is left to local arrangements. For example, a workflow might be set at the NJI, for the last Jobsearch Review before this point, or it may be left to Assistant Advisers to identify this, without the need of a prompt.**

49. Interviews should be booked to suit local requirements. For example, a group session may be conducted on the employer's premises. Where this approach is adopted, it should be noted so it is clear that the interview has been booked and giving an explanation of the circumstances.
50. If the claimant is still TS/STW after 13 weeks, the claim continues to be maintained clerically. This includes a clerical Jobseekers Agreement (JSAg).

### **Repeat claims due to stoppages of work**

51. Decisions must be taken locally about accommodation and footfall, in order to manage claimants who's working pattern means they resume work and return to claim within 26 weeks.
52. Where there are large numbers of TS/STW and the pattern of working is known, consideration should be given to issuing form JSA4RR to the employer to be completed and returned in bulk.
53. Close working relationships will be required with the relevant BDC to make sure that they are aware of
  - Patterns of employment;
  - Dates of any future stoppages; and
  - Dates that claimants may potentially become wholly unemployed.

### **Action at the BDC**

54. Temporary Stopped (TS)/Short Time Work (STW) claims are always assessed and maintained clerically. Otherwise they are processed in the same way as other JSA claim. The Customer Statement should be used as a claim form, if the information gather was conducted using CMS.
55. See the Initial Assessment chapter of the JSA Procedural Guidance for further information on registering clerical claims.
56. Local arrangements must be put in place to arrange for information to be passed from the jobcentre to the BDC. This includes evidence that the conditions are satisfied and any changes to the pattern of work or earnings.

### **Confirm claim is Temporary Stopped - Short time working**

57. To confirm that a claim is TS/STW, establish whether the claimant has declared on their Customer Statement or claim form that they have been temporarily laid off. In addition, it should be established whether the

TS/STW information has already been provided to the BDC by the jobcentre.

- 58. If the claimant has provided evidence of the TS/STW, such as a letter from the employer and the jobcentre has not notified the BDC, consider whether information needs cascading, particularly if it may adversely impact operations.
- 59. If the claimant has not provided evidence of the TS/STW, contact the employer. Draft letter DLJA357 can be used to gather the information needed.

### **Assessing the claim**

- 60. The claimant should receive Guarantee Payments from their employer for the first 5 full days of the lay off. Payments are made for days on which the employee would normally be required to work.
- 61. These Guarantee Payments will need to be taken into account in the assessment. Further information regarding Guarantee Payment Days is available in Appendix 1.
- 62. Guarantee Payment days are reviewed and payable every thirteen weeks.
- 63. Any holiday payments made by the employer at the beginning of the claim can be fully disregarded. Any holiday pay received during the life of a claim must be taken into account.
- 64. Any work or earnings declared by the claimant should be actioned and checked and if a regular pattern emerges, averaging should be considered.

### **Remunerative work rule**

- 65. It should be remembered that each case and each employer should be considered individually, as circumstances will vary.
- 66. Depending on the particular circumstances of each case, claims can have different outcomes. Even where two people work for the same employer. The availability of varied working patterns is an important factor but in order to consider the case properly, it is also necessary to establish the nature of the stoppage, the employee's position in relation to it and the likelihood of future work for the employee.
- 67. Examples of types of situation that could occur are:

#### **Example 1**

**The employer has laid off workers for an undefined period with no indication of when work will restart;**

- 68. Where the employer has laid staff off for the next 2 weeks and indicated that they do not know what will happen after that, this would be a situation when each period would be taken separately.
- 69. When the claim is made they would not be engaged in work at that point or for the next 2 weeks. It is not appropriate to look at a past period or a forward estimate, as it is not known if any future work will be available.

## Example 2

### **The employer has indicated an expected pattern of future work;**

70. The employer has set out an expected pattern of work for the future and this can be used to estimate average hours.
71. For example, where the employer says there will be work for 3 weeks on, one week off and the weekly hours they will work are 32 per week, the hours will be averaged over a 4 week period:
- $32 \times 3$  divided by 4 = 24 hours on average, therefore they are in remunerative work.

## Example 3

### **The employer has already been operating short time working for a period before the workers claim JSA;**

72. The employer has been operating short time working for some time before the JSA claim is made and it is appropriate to look at a past period to average hours, unless a further change occurs.

## Example 4

### **The periods of work and no work are erratic.**

73. The working is erratic and the employer makes a weekly decision as to whether they need workers or not. In this situation the hours estimate should include future hours, using whatever period thought suitable, until average hours over a past period can be calculated.
74. These are only examples and other variations may occur, so it is important to remember that each case **MUST** be considered using the information provided for that case.

## **Working Tax Credit and Temporary Stopped/Short Time working**

75. One of the conditions of entitlement for WTC is that the claimant is engaged in remunerative work. They must:
- be working at the date of claim; **and**
  - be undertaking work for at least 16/30 hours a week as appropriate; **and**
  - expect the work to last at least 4 weeks; **and**
  - expect to be paid for the work done.
76. Where a person is TS/STW, they may still be considered as normally engaged in remunerative work for tax credits purposes if:
- for a temporary period there is no work available for them to do for their employer, **and**
  - they are still under a contract of service which has not been terminated; **and**
  - they clearly expect to return to employment with the same employer.
77. However, depending on the circumstances and the length of time a person is laid off, some WTC claimants will no longer be treated as being in qualifying remunerative work and will lose entitlement to WTC altogether. Others, especially those where the stoppage is short, or where it is



established that they work more often than they do not, will continue to receive WTC.

78. HM Revenue and Customs (HMRC) must be notified of any change in circumstance. For TS/STW claimants, the key information required is as follows:

- Date the claimant was laid off from work or started short time working;
- How many guaranteed pay days have been paid; and
- Date JSA entitlement begins (if known).

79. The claimant should inform HMRC within 4 weeks of reducing their hours of work to less than 30.

80. Further information regarding the effect of TS/STW on WTC is available in the Tax Credit Guidance.

81. Any Working Tax Credit (WTC) received by the claimant will affect their JSA entitlement.

## **Tax Action on Temporary Stopped/STW Claims**

82. Guidance for the Tax action required on TS/STW Claims can be found in the Taxation chapter of the JSA Procedural guidance.

## **Advance claims**

83. If the start date of a stoppage is known in advance, claims can be taken in advance, provided all the relevant information is known. It may be easier to manage taking claims over a period of time, rather than wait until the first day of the stoppage.

## **Claimant becomes wholly unemployed**

84. If the claimant is subsequently made wholly unemployed, there is no need for a new claim to be made via the Contact Centre

85. The claim should be built from clerical onto JSAPS using the previous clerical TS claim as linking information. A full LMS record should be created and the claimant may need to attend an adviser interview to draw up or revise the Jobseekers Agreement.

## **Other information**

86. Further information about Temporary Stopped (TS) and Short Time Working (STW) can be found in:

- Fact sheet for Employees; and
- Fact sheet for Employers.

87. These fact sheets are also available in Welsh:

- Welsh Fact sheet for Employees; and
- Welsh Fact sheet for Employers.

88. Other information about stoppages of work and redundancy can be found on the Directgov website:

- Temporary lay-off: introduction; and

- Temporary lay-off: applying for redundancy.

## **Appendix 1 - Statutory Guarantee Payments DMG Chapter 26**

### **General**

1. Some employees working short time or who are laid off can get Statutory Guarantee payments (GP). Statutory Guarantee payments cannot be paid for any day after employment has terminated.
2. Payments are made for days on which the employee would normally be required to work. For example, if the employee is only required to work 4 instead of 5 days a week for 5 weeks the GP days would be one day in each of those 5 weeks. Those days are fixed in the contract of employment. A fresh contract can be drawn up by agreement between the employer and employee.
3. A contract may provide for work only on certain days of the week. The employee normally has to work on those days but not on other days. Statutory guarantee payments are only payable for the days the employee is contracted to work.

### **Employees who do not qualify**

4. GP's are not payable to employees who:
  - usually work outside GB under their contracts of employment. However, most employees on off-shore oil and gas rigs, in British sectors of the Continental Shelf, are entitled to payments;
  - have not been continuously employed for more than three months; **and**
    - are employed for a fixed period of three months or less; **or**
    - are employed for a specific task which is not expected to last for more than three months;
  - have not been continuously employed by their employer for at least one month;
  - have no normal working hours fixed by a contract of employment. For example, some insurance agents and sales representatives;
  - are engaged in share fishing and paid only by a share of the profits or earnings of a fishing boat; or:
  - are members of the police service and armed forces.
5. Statutory guarantee payments are also not payable if the appropriate Decision Maker (DM) has made an exemption order (see DMG 26359).

### **Calculation**

6. GP's can be paid for a maximum of five days in a specified period. Limits on their amount and extent may be varied by the appropriate DM. Whether those limits are revised or superseded each year, depends on whether the retail prices index for September is higher (or lower) than the index for the previous September.

### **Employees not entitled**

7. An employee is not entitled to a guarantee payment if:

- there is no work because employees of the same or an associated employer are involved in;
  - a strike; **or**
  - a lock out; **or**
  - other industrial action; **or**
- an employer's offer of suitable alternative work has been unreasonably refused by the employee; **or**
- reasonable requirements imposed by the employer to ensure that the employee's services are available have not been met

### **Payments not made by employer**

8. GP's may not have been paid for the first five workless days in a three month period. The employee and employer should be asked to state the reason and if they say that it is because a condition is not satisfied, the DM should normally accept that statement.
9. The reason given may seem unlikely. For example, the condition quoted may not be one that would stop payment being due (see DMG 26317), or there may be no good reason given. The appropriate DM should make a determination based on the available evidence.

### **Complaints to a tribunal**

10. Employees may complain to an Employment Tribunal that they have not received all the payments that they should have. If this is confirmed, the employer will be ordered to pay any amount owing. Settlements can also be reached by conciliation or arbitration.
11. Where such a complaint is outstanding, the DM cannot determine whether an employee is due to be paid statutory guarantee payments. That question can only be decided by:
  - Employment Tribunals;
  - an Employment Appeal Tribunal;
  - the Court of Appeal; or
  - the Court of Session (in Scotland).
12. It may be a long time before a decision is made on an employee's complaint. Do not wait until the tribunal's decision is known before deciding the claim. The appropriate DM can allow the claim then revise the award, once a decision is made.

### **Effect of statutory guarantee payments**

13. The period over which a payment is taken into account depends on the date it is due to be paid. That date is not always clear. It may not be the date they are actually paid.
14. A decision can only be made when all the evidence is available. The appropriate DM should find out:
  - when any payments are due to be paid; **and**
  - how many days are to be paid; **and**
  - when the payments will actually be paid.
15. In cases of doubt the DM should contact the employer. The employer may be making a guarantee payment, or may say that one is due. That

evidence should normally be accepted. The claimant's own evidence can also be accepted. Any decision by a tribunal must always be accepted.

16. Statutory guarantee payments are payable only for the first five days of lay off in a three month period. They cannot be paid for any other days. Payments for other days will usually be because of a collective agreement or wages order (see DMG 26335 et seq).

### **Effect of statutory guarantee payments on JSA**

17. GP's should be taken into account as earnings for both elements of JSA.
18. The daily amount of GP from 1 February 2012 is £23.50. However, employers may choose to pay more than the daily amount of GP.