

21 September 2011

Dear Surplus Labour,

Thank you for your Freedom of Information request of 29th August 2011

You requested the following information:

On recently being proffered a, to me, unacceptable job opportunity for consideration, I was advised by a Jobcenter advisor that I had no right to object on conscientious or ethical grounds.

I was informed that all jobs on the DWP's systems were pre-vetted and deemed ethically "acceptable" by the "government".

I would be grateful if you would clarify this situation for me by answering the following 4 questions:-

1, Have I any right, as a jobseeker to decline making applications for situations that would strongly conflict with my own personal, conscientious and ethical beliefs without breaching my jobseekers agreement?

2, Who or what department conducts the "pre-vetting" and how are they qualified and selected for such work?

If it is considered that I don't have the right to discriminate between prospective employers offered by DWP or their agents on conscientious and ethical grounds:-

3, How does this denial of my free choice to express my conscientious and ethical objections in the choice of my employment vary from the rights of non-jobseekers?

4, What specific law/s gives the DWP the right to control the free expression of my conscientious and ethical beliefs in my choice of who might benefit from my labour?

I should note that as you have failed to supply your real name as is required under Section 8 of the Act, the Department is under no obligation to provide the information requested. However on this occasion we have decided to release the following.

In response to your first question, people claiming Jobseeker's Allowance may restrict their availability for work where they have a sincerely held religious belief or conscientious objection, providing they can show they have reasonable prospects of work and are able to explain how and why those beliefs affect the type of work they can do. The Jobseekers Act 1995, and Regulation 13(1) and 13(2) of the Jobseeker's Allowance Regulations 1996 contain the relevant legislation in relation to the free expression of conscientious and ethical beliefs while claiming Jobseeker's Allowance. Relevant extracts from each of these are attached at Appendix 1, and copies are available online at <http://www.legislation.gov.uk/>

In determining whether a claimant does have reasonable prospects of employment, the Personal Adviser will take into consideration the claimant's skills, qualification and experience; the local availability of vacancies; how long the claimant has been unemployed; what job applications he has made and what employment he is prepared to accept. An extract from the Jobcentre Plus guidance on restricting availability and reasonable prospects is at Appendix 2, which you may find helpful

Where such restrictions are agreed with a Jobcentre Plus adviser, these should be reflected in the Jobseeker's Agreement to ensure nobody is subsequently asked to apply for a job that conflicts with their sincerely held beliefs.

In the event that the claimant and Personal Adviser are unable to agree a restriction, the claimant has the right to request that the proposed restriction be sent to a Decision Maker to decide if the restriction should apply, or not.

Turning to your question about the vetting of jobs, we check all vacancies to ensure they comply with UK employment legislation and civil and criminal law. For those vacancies placed through our telephony-based system, agents who go through a structured internal learning routeway undertake these checks. In terms of our online vacancy service, employers cannot use these until they have agreed to our terms and conditions and all vacancies placed online are screened automatically to ensure compliance. That said, the issue of whether or not a vacancy is suitable, taking into account any sincerely held religious or other belief, is a separate issue and one that I have addressed earlier in this response.

As I have confirmed that claimants can decline a vacancy on the grounds of a sincerely held religious belief or conscientious objection I believe that questions 3 and 4 no longer require an answer.

If you have any queries about this letter please contact me quoting the reference number above.

Yours sincerely,

DWP Central Fol Team

Your right to complain under the Freedom of Information Act

If you are not happy with this response you may request an internal review by e-mailing XXXXXXXXXXXXXXXXXXXXXXXXXXXX@xxx.xxx.xx or by writing to DWP, Central Fol Team, 5th Floor The Adelphi, 1-11, John Adam Street, London WC2N 6HT. Any review request should be submitted within two months of the date of this letter.

If you are not content with the outcome of the internal review you may apply directly to the Information Commissioner's Office for a decision. Generally the Commissioner cannot make a decision unless you have exhausted our own complaints procedure. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow Cheshire SK9 5AF www.ico.gov.uk

Appendix 1

JSA Guidance – Labour Market Conditions Guide

Restricted availability

68. In any week, a person may restrict their availability for employment to 40 hours, or more, in that week provided:

- the times at which they are available for work, their pattern of availability is such as to give them reasonable prospects of securing employment;
- their pattern of availability is recorded on a Jobseeker's Agreement (JSAg); and
- any changes to the agreed pattern of availability are recorded on a varied JSAg before they occur.

69. Claimants who are not prepared to work for as many as 40 hours a week are unreasonably restricting their availability for employment, regardless of whether they have reasonable prospects of getting work, unless they are a claimant who can restrict their availability.

70. Where a claimant has agreed a pattern of availability in their JSAg, they are only required to take up employment at a time when they have agreed to be available.

71. Where it has been agreed that a person will be available within 24 hours, if they are providing a service, or within one week, if they have caring responsibilities or are volunteers, the 24 hour or one week periods of notice can include times at which the individual has not agreed to be available for employment. However, the claimant is not required to start work at a time which falls outside their agreed pattern of availability.

72. Provided they can show that they have reasonable prospects of obtaining employment in spite of their restrictions, a claimant may restrict their availability by placing restrictions on the:

- nature of the work;
- pay;
- terms and conditions of employment, for example a claimant may not want to take a job which does not include paid holidays, or a pension; or
- locality or localities in which they are prepared to work.

73. If a claimant imposes restrictions on their availability, establish whether the restrictions placed are what they insist upon, or whether they are merely preferences.

74. A preference does not amount to a restriction unless it is all they are prepared to accept. Claimants should be warned that placing restrictions on their availability may affect their entitlement to JSA

75. After claiming JSA for 6 months, a person may not place restrictions on the level of pay they are willing to accept. This means that a claimant should not specify any minimum pay requirement at their 6 monthly review as this would amount to a restriction.

76. This applies even if the wage requirement is reasonable. This does not apply if the restriction on the level of pay is due to their physical or mental condition.

77. If the Claimant states they are willing to work for the National Minimum Wage(NMW) appropriate to them, take a statement to that effect and annotate it 'Treat as straightforward - NMW only required'.

78. No referral to the Benefit Delivery Expert Labour Market Decision Maker (BDE LM) will be necessary in these cases.

79. All other cases where the claimant insists on restricting the rate of pay they require after 6 months of unemployment, must be referred to the BDE LM for a decision.

Establishing reasonable prospects

80. To establish whether a claimant has reasonable prospects of securing employment, all the following circumstances must be taken into account:

- their skills, qualifications and experience;
- the type and number of vacancies within daily travelling distance of their home;
- if they want a type of job which is not available locally, consider whether they are willing to:
 - move home to do this type of work; or
 - work away from home during the week; or
 - work at home if the known employers commonly employ home working arrangements;
- how long it is since they last worked;
- the job applications they have made and the outcomes;
- any availability restrictions.

81. The claimant must show they have reasonable prospects of securing employment if they wish to restrict their availability in any way.

Claimants who can restrict their availability

82. Certain groups of claimants may restrict their availability, such as:

- Claimants with a sincerely held religious belief or conscientious objection;
- Claimants with a physical or mental condition;

- Claimants with caring responsibilities;
- Claimants with caring responsibilities for a child; and
- Lone Parents whose youngest child is aged 12 or under.

Restrictions because of religious or other belief

83. A claimant may restrict the type of work they are prepared to do, provided they can show they have reasonable prospects of employment, because of a sincerely held religious belief or conscientious objection.

84. They must explain why their religious or other belief affects the type of work they can do. For example:

- a vegetarian may object to working in an abattoir; or
- a person who follows a particular religion may object to taking employment which requires them to work on a day which is considered sacred.

Restrictions because of physical or mental condition

85. A claimant may restrict their availability in any way provided the restrictions are reasonable in the light of their physical or mental condition. For example, a person with emphysema could restrict the:

- type of work to avoid working in smoke or fumes;
- number of hours work in a week;
- number of hours in a shift.

86. Where the claimant imposes acceptable restrictions because of their physical or mental condition they do not have to show they have reasonable prospects of getting a job. However, they must show all the restrictions are reasonable and are connected with their health.

87. If a claimant places restrictions on their availability which are not connected to, or consistent with their physical or mental condition, they must show they have reasonable prospects of obtaining work within all these restrictions. For example, if a deaf claimant will only accept work within a two-mile walk from home they must show that they have reasonable prospects of getting a job with this restriction. This is because the restriction is not connected with their health condition.

88. If a claimant with a physical or mental condition requires additional help or advice in looking for work, consult the Disability Employment Adviser (DEA).

Restrictions because of caring responsibilities

89. A claimant with caring responsibilities may restrict their availability to less than 40 hours in a week provided that in that week:

- they are available for employment for as many hours as their caring responsibilities allow **and**:
- the hours they are available do not overlap with the hours of caring; **and**
- they have reasonable prospects of obtaining employment in spite of these restrictions; **and**
- they are available for employment of at least 16 hours.

90. In order to identify the number of hours for which a person with caring responsibilities is available, take the following circumstances into account:

- the particular days and hours spent caring;
- the age and physical and mental condition of the person being cared for; and
- whether the caring responsibility is shared with another person or persons.

91. To satisfy the availability conditions the claimant must be available for work for the total number of hours they are not caring. For example, if a claimant's caring responsibilities allow them to be available for 30 hours a week they could not satisfy the conditions if they said they were only available for 22 hours because they wanted some time to themselves.

Age, physical and mental condition of the person to be cared for

92. Claimants who are caring for a young child or a person with physical or mental limitations may need to spend more time caring than one who has a caring responsibility for teenage children.

93. A claimant with a young child may wish to restrict their availability to the minimum of 16 hours per week. This would be acceptable provided they continue to have reasonable prospects of securing employment.

94. They should not restrict hours to 16 if they can do more.

95. If there is a doubt that a claimant is making themselves available for as many hours as their caring responsibilities will allow, refer the doubt to the BDE LM.

Caring responsibility shared with another claimant

96. Where the claimant shares the caring responsibility with another claimant, it is up to them how to split their responsibilities.

97. Their individual availability for work must, however, be for at least 16 hours a week.

98. When one claimant is available for work, the other should be undertaking the caring responsibility and vice versa. Therefore, the claimants involved in caring should have different patterns of availability.

99. They must both show they have reasonable prospects of securing employment.

100. If the claimant is sharing the caring responsibility;

- both claimants/carers may make their claim at the same time; or
- one claimant/carer may already be claiming, or claim, at the same or different Jobcentre.
- they may be part of a joint claim.

101. Consider each claimant's availability individually but make sure the hours of caring by them do not overlap with each other. A claimant cannot be available at the same times in the week as they are caring.

102. Record on LMS 'Client Conversation' screen and the JSAg:

- that the claimant is a carer;
- the name of the claimant who shares the caring responsibility, if appropriate;
- any acceptable restrictions resulting from their caring responsibility.

103. Refer any doubts about availability to the BDE LM.

Restrictions for Claimants with caring responsibilities for a child

104. A Claimant with caring responsibilities for a child can restrict their availability for employment to less than 40 hours per week, providing that:

- they are available for work for as many hours as their caring responsibilities allow; **and**
- they have reasonable prospects of securing employment; **and**
- they are available for at least 16 hours per week.

105. In a small number of areas, there may be few or no jobs available which would fit within the restricted patterns of employment sought.

106. To accommodate such a situation, where the Adviser agrees that no suitable jobs are likely to be found, claimants with caring responsibilities for a child can restrict their hours to as many as their caring responsibilities allow, subject to a minimum of 16 hours per week, regardless of whether they can show reasonable prospects or not.

107. The claimant's circumstances will be reviewed regularly.

108. Claimants who have additional caring responsibilities for a child because they have an outstanding parenting order in England, Wales & Scotland or a parenting contract in England or Wales agreed or issued after exclusion, truancy or misbehaviour at school, can restrict their availability for work providing the restrictions are reasonable in light of the order/contract.

109. These circumstances will be considered good cause for not attending the office during this period. In these circumstances, where the claimant is required to care for

a child, Advisers will consider treating the claimant as available for work to safeguard the parent from being disallowed JSA and attendance can be excused for this period.

Restrictions for Lone Parents

110. From 26 April 2010, in addition to being able to restrict their availability as a Claimant with caring responsibilities for a child, a Lone Parent who has a child aged 12 or under, has the **right** to restrict their availability for work to school hours if they wish.

111. This right is restricted to normal school hours, for example 9am to 3.15pm subject to a minimum of 16 hours per week.

112. Where a Lone Parent restricts their availability to school hours, they do not have to show they have reasonable prospects of getting a job.

113. If a Lone Parent has more than one child aged 12 or under, they can restrict their availability in line with the school hours of all of their children. See Example 7 and Example 8.

114. An Adviser should make all eligible Lone Parents aware of this right.

115. The provision whereby a Lone Parent can choose to restrict their availability to school hours only applies to term time. If a Lone Parent wants to restrict their availability during the school holidays they will have to meet the criteria of a Claimant who has caring responsibilities for a child.

Appendix 2

Jobseeker's Allowance Legislation

Jobseekers Act 1995 c.18

6 Availability for employment.

- (1) For the purposes of this Act, a person is available for employment if he is willing and able to take up immediately any employed earner's employment.
- (2) Subsection (1) is subject to such provisions as may be made by regulations; and those regulations may, in particular, provide that a person—
 - (a) may restrict his availability for employment in any week in such ways as may be prescribed; or
 - (b) may restrict his availability for employment in any week in such circumstances as may be prescribed (for example, on grounds of conscience, religious conviction or physical or mental condition or because he is caring for another person) and in such ways as may be prescribed.
- (3) The following are examples of restrictions for which provision may be made by the regulations—
 - (a) restrictions on the nature of the employment for which a person is available;
 - (b) restrictions on the periods for which he is available;
 - (c) restrictions on the terms or conditions of employment for which he is available;
 - (d) restrictions on the locality or localities within which he is available.
- (4) Regulations may prescribe circumstances in which, for the purposes of this Act, a person is or is not to be treated as available for employment.

Jobseeker's Allowance Regulations 1996 No. 207

Additional restrictions on availability for certain groups

13.
 - (1) In any week a person may restrict his availability for employment in the following ways, if the circumstances set out apply.
 - (2) Subject to regulations 6, 7 and 9, a person may impose restrictions on the nature of the employment for which he is available by reason of a sincerely held religious belief, or a sincerely held conscientious objection providing he can show that he has reasonable prospects of employment notwithstanding those restrictions and any restrictions on his availability in accordance with regulation 7(2), 8, paragraph (3) or (4) of this regulation or regulation 17(1) or (2).