

# **Quality Assurance Framework - Labour Market Decision Making**

## **Introduction**

1. This Quality Assurance Framework (QAF) has been introduced as part of a number of continuous improvement activities across the whole Labour Market decision making area.
2. The aim of the QAF is to ensure a level of consistency across decision making identifying training need where required.
3. A number of QAFs are already available to staff across different areas of the business, so this is nothing new.

## **Background**

### **Why is QAF required?**

4. There are a number of reasons why we need a QAF, namely:
  - A process is required to gauge whether a consistent approach is applied across the business to gathering, weighing and presenting evidence;
  - Information is required by Labour Market Decision Making Managers (LMDMMs) to enable meaningful discussions to be held at 1-2-1 performance discussions and to identify individual training and development needs;
  - An assurance route is required nationally for determining current knowledge and skills levels and for influencing the development of future bespoke training material and products (technical and “soft skills”). If and when the LMDMM identifies ongoing issues or trends they should raise this with their Cluster Manager;
  - Departmental reputation is also a driving factor. A level of assurance can be given to the Minister that an appropriate standard is equitably applied to benefit decisions for all claimants.
  - We are striving to achieve an overall quality measure of 85% of decisions made, being correct. This is an initial level and will be reviewed.

### **The Check ‘requirements’**

5. It is preferable for the checker to be fully conversant with all the legislation and guidance as they need to draw out national standards of consistency in the decision-making process, in particular, application of the law. This does not prohibit non technical LMDMMs undertaking the checks and clarifying points of law with a suitably trained colleague.
6. The QAF requirements are limited to a check against a series of questions that support the overall standard and whether the checker feels the LMDM has met this or not.

7. It is assumed that any LMDM subject to a QAF check would have previously completed all relevant training and reached an acceptable level of understanding and knowledge of:

- What the law requires to be decided; and
- How to establish the relevant facts to which the law should be applied.

8. The role of the checker is defined as confirming that the evidence available has been used correctly to apply the law. The assumption is that LMDMMs are able to identify where a standard might appear to have not been met because evidence of a relevant fact had not been sought.

9. A checking outcome decision would, generally, only be recorded as not meeting the standards where national guidance or legislation has clearly not been followed.

10. Although it is accepted that procedural errors might arise, the main purpose of the check is to ensure a consistent quality standard of decision making outcomes and determine whether the facts established support the decision and conclusions drawn.

11. This brief provides an outline of the standards expected and the level of detail and requirements needed to satisfy the QAF Checking Regime. Additional technical references are also included within this document to support managers and checkers with their understanding of the technical training and knowledge that LMDM's are expected to use in applying the law to the facts (i.e. the decision-making process).

12. The checker should refer to specific guidance if clarification is needed. It is important to note that the role of the checker is to establish that the relevant facts of the case have been considered and applied correctly to justify the decision outcome.

13. It may be necessary for some checkers to undertake some LMDMA-specific training, available via RM, although it is currently being reviewed and updated.

14. Further sources of information and full LMDMA guidance are available via the Conditionality Hub.

15. The checker is expected to record whether the required standards have or have not been met by completing relevant checks to the questions associated with each standard.

16. To support the checker, a list of the common decisions and their heads of proof are included within this document. The heads of proof documents support a more technical knowledge and understanding of the information that needs to be considered to make a decision.

17. However, the QAF requirements are limited to a simplified check against a series of questions that support the overall standard and whether the checker feels the LMDM has met this or not.

## **The Standard**

18. The aim of the check is to identify fundamental errors, rather than minor mistakes that have no potential to damage the process of decision-making or the outcome. A fundamental error is one in which the outcome is wrong or, an important stage of the decision-making process has been handled incorrectly so

that whether or not the outcome was right, there was potential for a wrong outcome. An example of the latter would be where a sanction is imposed and a claimant has not been given the opportunity to comment.

19. In situations where a procedural instruction has not been followed but the outcome is correct, e.g. decision details not updated in LMS, this should be highlighted to the LMDMs Line Manager in the notes section of the QAF template.

20. There are 7 standards that need to be met. Within each standard are further questions that will assist the checker in determining whether a specific standard has been met or not.

21. A decision that fails on one or more of these points will not reach the required standard.

22. Where a question is not appropriate to a particular case, this should be recorded as Not Applicable. For example, not contacting the claimant for good reason information for FTP for WP where the LMDM knows the claimant is no longer in receipt of benefit.

### **1. The crucial issues are correctly identified and the decision is focused on these**

Crucial issues are those on which the decision turns and any which are disputed. Questions to consider are:

- a) Was claimant entitled to JSA/ESA at the time the decision was given, where appropriate?
- b) Does the decision relate correctly to the reason for the doubt being raised?

### **2. The necessary evidence gathered has been used appropriately to establish the relevant facts, if any of these were missing, or to clarify any points of doubt**

LMDMs are expected to use the evidence provided from Jobcentre staff on all DART referrals and where relevant, information from providers, before choosing to seek additional evidence. An exemption to this would be for WP/MWA where the LMDM would gather evidence. Where a LMDM requires further evidence in order to decide a particular question, reasonable efforts should be made to obtain that information. LMDM's should not routinely seek corroborative evidence. The checker needs to consider:

- a) Has the relevant information to support the reason for the doubt / referral been correctly notified to the LMDM and, if not, has the LMDM sought to gather this information?
- b) Is the LMDM seeking more information or evidence than is reasonably needed to enable a decision to be made?

### **3. The law, including the legislation, has been interpreted and applied correctly to the facts of the case**

All the tests of the relevant piece of law must be correctly identified and applied to the facts of the case. Where a LMDM is required to apply a balance of probability to support the decision, the checker needs to understand the LMDMs reasoning for applying a sanction. You need to consider:-

- a) Has the LMDM considered all the relevant facts and evidence and applied the law correctly? and
- b) Has 'treated as'/reasonableness been correctly considered, where appropriate?

#### **4. The LMDM is neutral and the claimant has been treated fairly**

The LMDM has started from a neutral point and has not prejudged the case. Issues of doubt have been put to the claimant and no assumptions have been made. There has been no bias. You need to check that:-

- a) The claimant received the appropriate notifications/warnings from the appropriate person(s) in line with the DMG.
- b) The claimant had the opportunity to comment/respond within the appropriate timescales.

#### **5. The key conclusions and the decision is soundly based in fact and law**

The conclusion should flow naturally from the facts of the case and the correct application of the law to those facts. The conclusions should not be at odds with the relevant facts of the case. The checker is seeking to confirm that good reason has been correctly considered, where appropriate.

#### **6. The outcome of the decision is one that is right in the circumstances**

Overall, the decision should be one that is rational and reasonable, and which is supported by evidence. Additionally, within this standard, consideration should be given to the accuracy of the length of sanction imposed. The checker needs to confirm:

- a) The sanction starts and ends on the correct date, and takes any previous sanctions of the same level into account; and
- b) Based on all the relevant evidence, the decision appears correct.

#### **7. The decision meets the standard overall**

The outcome of the responses recorded above will determine the final standard. This field should be recorded as met providing the responses to the standards above are all met.

### **As LMDMM (or nominated checker), how many checks should I undertake, how do I select cases for check, and how should I record the outcome?**

23. The QAF checks should be undertaken on a rolling monthly basis. A minimum of three checks per LMDM per month should be undertaken, regardless of working pattern. This includes AO LMDMs in your team. How as a site you plan to do this is for you to decide, but you need to be aware that MI returns will be required. Please see the 'QAF MI returns, section below for further information.

24. The results are for you to use to ensure the quality and consistency of decision making in your site, and identify any training requirements.

25. The checker is responsible for randomly selecting the cases for check from DMAS. This can be done by running a report (QC1) in DMAS and making a

random selection of cases to check. If the QC1 is not available, we suggest the checker requests the LMDM administration team flag referrals randomly.

26. A variety of decision types should be selected for checking including sanctions, disallowances, reserved decisions, reviews, cancelled, and those allowed.

27. As DMAS does not have the functionality to record check outcomes, a basic QAF template has been designed for LMDMMs to record the outcomes against the questions.

28. The centralised process for QAF checking from 3 November 2014 can be found at annex 2 (this process may be subject to change).

## **QAF MI returns**

29. In addition to recording the outcome, there is a requirement to complete a *monthly* return and send it to LMDM.BUSINESSSUPPORT@DWP.GSI.GOV.UK.

30. The template to complete is available via the Conditionality Hub. Once opened, the template should be saved into a shared drive location ready for completion and returning to the above e-mail address using the automated “Send Stats Return” button

31. This will enable us to conduct some first level analysis of the data to identify trends and areas for improvement.

32. Please note, where you haven’t completed any checks in week, you must send in a “Nil Return” by forwarding a blank template.

33. In order that individual LM Decision Makers can be monitored on an ongoing basis, a template, in an identical format to the Weekly MI Template, has been produced for your own use. The template can accommodate up to 70 LMDMs. This template is available via the Conditionality Hub.

## **Providing Feedback**

34. Sites will e-mail the designated manager all failed QAF templates immediately and all correct templates at month end..

35. At month end sites will update a completed site summary. This will be done by examining the monthly folder for each site. As each check will be consecutively numbered it will be easy to see how many were done per LMDM and as those that fail have an x after it will be easy to identify how many failed. This site summary will be sent to the designated HEO.

36. The individual logs will be collated and used to produce an overall national summary for SMT. This will include a narrative summarising the national position and highlighting any issues or trends nationally or at individual sites. A top 3, 5 or 10 errors in the month and year to date may be something for the OLMU. If the decision is agreed to be incorrect, and was initially an adverse decision then the LMDM should take steps to revise the decision accordingly.

37. If the decision is agreed to be incorrect, and was initially an adverse decision then the LMDM should take steps to revise the decision accordingly.

38. If the decision given should have been adverse but was initially allowed, then the decision should not be revised.

39. LMDMs and LMDMMs have personal responsibility to act on feedback given to improve future decision making quality.

### **What if someone disagrees with my check findings?**

40. Checkers will have their own e-mail box. Any disputes must be made by LMDMs through their HEO and sent with reasons for dispute to the e-mail inbox.

41. The original checker will look again at the case and if agrees will amend stats records etc.

42. If the checker still thinks the case has failed the QAF check it will be looked at by the other two checkers and if still stands checker will ring the LMDM and explain the reasons for the case failing the QAF.

43. Exceptionally if the site HEO still considers the QAF standard met the case can be escalated to the checkers' HEO.

### **Supporting guidance and examples to help you**

44. The focus of this part of the document is to support checkers by:

- Providing examples of cases where the standards have been met / not met. (Checkers must note that examples included within this document are designed solely as illustrations);
- Factors for consideration to meeting the required standards within the check.

#### **Example 1**

- A claimant is referred to LMDM for failure to attend a WP appointment. The LMDM is unsure whether the claimant had received their WP05 from the Jobcentre. In line with guidance, they notify the failure and request good reason information. The claimant states on their response that they 'just forgot' about the appointment. As the claimant doesn't dispute notification as part of their good reason, the LMDM imposes a sanction.
- The standards have been met in this example, as the correct decision has been determined using the relevant evidence available to the LMDM.
- If a LMDM has allowed the case and you consider that the evidence is sufficient to support the decision, the check will end there. It is important to note that a LMDM may not be required to make further enquiries if, using their knowledge and judgements, they consider any additional relevant facts will not affect overall decision.

#### **Example 2**

- A Leaving Voluntary case was allowed and the LMDM has not established whether the employment would have lasted for a limited period. You agree with the decision to allow. As a result there was no need for the LMDM to establish whether the employment would have lasted for a limited period.

### **Collection of evidence**

45. The Decisions and Referrals Toolkit (DART) launched in April 2010 provides a basis for the standard questions that should be answered by claimants, and / or

evidence provided by the Jobcentre where a doubt exists against a claimant's eligibility / entitlement to JSA. DART captures information required to support the decision-making process for referrals in the following labour market AR types:

- Failure to Attend an Interview or Intervention;
- Refusal / Failure to carry out a Jobseekers Direction;
- Refusal / Failure to accept Employment;
- Actively Seeking Employment;
- Availability;
- Leaving Voluntarily;
- sector based work academy;
- Skills Conditionality
- ESA; and
- Income Support.

46. In the majority of these cases, referrals completed correctly using the templates within DART (with supporting evidence where required) should not require a LMDM to make further enquiries. Local liaison on the quality of referrals made through DART should address inadequacies.

47. Those AR types not currently covered by the DART should continue to be submitted to LMDMA teams clerically.

48. A pragmatic approach is required for LMDMs to **only** gather the evidence they **need** to apply the law – not what they 'want'. This does not preclude relevant further enquiries being made by the LMDM to ensure that a robust decision is ultimately made.

49. Any evidence obtained by the LMDMA team may be noted and input on any document, provided the information is appropriately annotated by the staff member. For example where the claimant telephones the LMDM directly to provide good reason. We would expect the LMDM to make a full account of the call.

50. Evidence which supports the referral should be gathered by Jobcentre staff for referrals made via DART, or those that are Jobcentre initiated. Evidence required for SAPOE schemes / MWA doubts may need to be obtained by the LMDM. Any additional evidence can be gathered either by letter, phone call or email.

51. Additionally, it is not unreasonable to discuss a specific case decision with a LMDM as part of the check.

52. A decision should not be recorded as a comment for reasons of inadequate evidence if the checker cannot point to some clear guidance or instruction the LMDM should have followed. It is for the checker to demonstrate that the evidence seeking was inadequate, rather than for the LMDM to demonstrate that it was adequate.

53. In situations where the QAF checker cannot prove that evidence was available to the LMDM at the time the decision was given, the LMDM should be given the benefit of the doubt.

54. For example, where the LMDM notes the decision that no reply was received to an outstanding enquiry, and DMAS shows that a reply was received on the same day as the LMDM decision was made, it should be accepted by the QAF

checker that the reply was logged as received after the LMDM made their decision.

E.g. LMDM makes the decision on 14/04/14 and states on the decision that no reply was received to form WP12. DMAS is noted that reply to enquiry was received on 14/04/14. As there is no way of knowing at what time of day the WP12 was marked as received on DMAS, the QAF checker accepts that reply was received after the decision was made.

## **Types of Doubt**

### **Sanctions**

55. Sanctions are decisions whereby the period of potential sanction applied is for a specified fixed period as determined in law.

56. Generally, these will be for 4, 13, 26 or 156 weeks dependant on the type of case. The sanction can in some cases be reduced as a result of time off benefit and in the case of LV / Misconduct the length of time the employment was due to last.

57. Further guidance can be found in the DMG.

### **Entitlement doubts**

58. These are doubts about whether or not a claimant has fulfilled the JSA conditions of entitlement. In most cases payment of JSA will be suspended until the entitlement doubt is resolved. Entitlement doubts arise if a claimant:

- Is not available for employment (including students); or
- Does not actively seek employment.

59. JSAg doubts (determinations, directions and terminations) are doubts about whether the content of a JSAg enables a claimant to satisfy the availability and / or ASE conditions and, if not, how they should be amended to do so. In certain situations, the JSAg can be terminated where the claimant fails to comply with the proposed directions. It is a condition of entitlement for JSA that a valid JSAg is in place.

60. These differ from sanction questions where the doubt does not affect the underlying entitlement to JSA and it continues to be paid until the LMDM gives an adverse decision.

### **The QAF itself**

61. The following section of the guide deals with each separate area individually. It includes what should be taken into consideration, what questions / issues need considering, and how to record your findings.

### **Leaving Voluntarily (LV)**

62. A sanction should be imposed if a person has left employment as defined in relevant legislation without showing good reason. It is for the LMDM to show the person had employment and that they left it voluntarily. It is then for the claimant



to show good reason for leaving. There has to be evidence of entitlement to JSA on the day the sanction decision is given by the LMDM.

63. Whether the claimant left employment voluntarily and had good reason for doing so must be decided on the balance of probabilities. It is not enough for claimants to make general statements, for example that they left for personal reasons. Claimants must disclose the relevant facts in detail.

64. Before imposing a sanction for leaving voluntarily, the LMDM should be satisfied that claimants have been given an adequate chance to comment on all the statements made against them.

65. LV attracts a HLS of 13, 26 or 156 weeks. However, a sanction applied to a claimant for LV that occurred pre-claim will not be used to escalate the claimant up the sanctions ladder for subsequent failures. A HLS would only escalate when there is a prior 'in-benefit' HLS, so if all HLS were made pre-claim they would never escalate.

66. If a claimant is to be sanctioned for Leaving Voluntary the LMDM should ascertain if the employment was only for a fixed period. If the employer states that the position was due to last less than the appropriate sanction period then the sanction must be reduced to the length of time remaining on the contract. E.g. a claimant's appropriate sanction is 13 weeks but there was only 4 weeks remaining of a 16 week contract. The sanction would be reduced to 4 weeks.

67. The LMDM must consider the following questions:

- Did the claimant leave employment voluntarily; and
- Had he / she good reason for doing so?

68. A sanction will be appropriate if the claimant:

- Is entitled to JSA; **and**
- Was in employed earners employment; **and**
- Job was not Employment on Trial; **and**
- The referral relates to their last job; **and**
- Has voluntarily left such employment without good reason.

### **Example of Standards Met**

- Paul was working as a head barman for 6 years before the pub closed and he was paid off. After 4 months claiming JSA he had the opportunity of employment as a full time trainee hotel manager in a local hotel. After 6 weeks of a probationary period of 3 months, Paul leaves the job because he thinks it is unfair to continue training when he has found that the work is too difficult for him. His employer was aware Paul had difficulties and would not say how long the job may have lasted. The LMDM makes an allowed decision because the job can be considered as EOT.

### **Examples of Standards Not Met**

- The claimant is sanctioned but medical evidence supplied clearly supports the claimant's decision to leave the employment. **Standard 5a**
- The claimant is sanctioned for LV. The claimant left the job because the employer moved the work to a new shift pattern which the claimant couldn't do. The employer verified the change of shift pattern on the ES85. The JSAg clearly shows that the claimant has caring responsibilities and

so cannot do shift work. The LMDM should have allowed the case.

### **Standard 3a**

#### **Heads of Proof References for LV**

69. These are the questions / issues that need to be considered when undertaking the checks:

- Claimant was entitled to JSA at the time the sanction was given. (Not required where the case is allowed).
- There was no other employment between the employment in question and the current claim to JSA. (Not required where the case is allowed).
- Was the claimant in employed earner's employment?
- Did the claimant leave employment voluntarily?
- Do the 'Employment on Trial' provisions apply?
- Did the claimant have good reason for leaving?
- If the employment was temporary, the sanction applied does not exceed the expected end date of the employment.
- Whether there were any mitigating circumstances due to physical or mental stress connected with the employment.
- Sanction period correctly calculated.
- Whether days that can be deducted from a period of sanction have been calculated and applied accurately. (Not required where the case is allowed).

<b>Entitled to JSA</b>	<b>Head of Proof 1</b>
Sanction only imposed if entitled to JSA	DMG 34031
<b>Claimant Left Voluntarily</b>	<b>Head of Proof 4</b>
LM LMDM must show the claimant Left Employment Voluntarily	DMG 34657
This must be decided on the balance of probabilities	DMG 34658
Must be as a result of their own acts and of their free will	DMG 34653
Claimant had no choice but to leave	DMG 34654
Claimant resigned as an alternative to dismissal	DMG 34673
Claimant resigned due to believing they had been immediately dismissed	DMG 342673
Claimant was absent from work or failed to return to work after a period of suspension prior to claim. No termination notice given by Claimant or Employer.	DMG 34681
No evidence that the Claimant left before they were given notice	DMG 34676
Claimant was offered Voluntary redundancy	DMG 34100
<b>Employment on Trial (EOT)</b>	<b>Head of Proof 5</b>

EOT applies if the Claimant has not worked in 13 weeks before employment started	DMG 34702
Claimant must leave after the start of the 5 <sup>th</sup> week of employment and before the end of the 12 <sup>th</sup> week	DMG 34702
The period of employment does not include absences	DMG 34704
<b>Good reason</b>	<b>Head of Proof 6</b>
Claimant must have the chance to comment on statements made against them.	DMG 34660
Good reason can not be accepted if claimant only acted in their own interests	DMG 34428
The onus is on the claimant to show good reason	DMG 34657
Circumstances that led to the claimant leaving must be urgent.	DMG 34473
Claimant can't show good reason if they took employment knowing the conditions that caused them to leave.	DMG 34438
Claimant can show good reason if they genuinely did not know or were mistaken about conditions (other than pay) when they accepted and gave the employment a fair trial	DMG 34432
Claimant should take any reasonable steps to sort out the situation /grievances rather than leave	DMG 34431 & 34451
If the claimant leaves only because they want a different job they must have a firm offer to start immediately and last a long time.	DMG 34470
If the claimant leaves because they want improved prospects, they must have offers or a strong expectation of a job to start very soon.	DMG 34471
Good reason can be accepted if the claimant leaves just before a course of study/training that would advance their career.	DMG 34472
If the claimant left due to moving, good reason not shown if they left early or made no attempts to look for work.	DMG 34477
If the job was beyond the physical or mental capacity of the claimant good reason is accepted.	DMG 34302
If the job was so harmful to the claimant's health it was unreasonable to expect them to stay any longer.	DMG 34302
Even without medical evidence if the work or workplace made the claimant's medical condition worse.	DMG 34313
Good reason not accepted if the claimant had another job to start but left work early and claimed in the gap	DMG 34500-34503
Good reason accepted if a claimant had another job to start which fell through before they left one job and they	DMG 34501-34503

attempted to remain in that job	
<b>Period of Sanction (including start date)</b>	<b>Heads of Proof 7, 8, 9, 10 or 11</b>
If employment was temporary, the sanction applied does not exceed the expected date that the job was due to end	DMG 34103
Days to be deducted from the sanction (time off benefit)	DMG 34102
Sanction starts from or ends on the wrong date	DMG 34111
Referral relates to 'pre-claim' or 'on-benefit' failure	DMG 34101

### How to record the check and subsequent findings

70. Please record your findings for each individual case in the QAF Template.

### Misconduct

71. A sanction must be imposed if a person has been dismissed from employed earner's employment due to misconduct. It is for those who allege misconduct to prove it. Misconduct can be defined as an act or omission that is blameworthy or wrong.

72. The LMDM must consider the following questions:

- Did the claimant act or fail to act as alleged?
- Did his / her conduct amount to misconduct? (within the accepted meaning)
- Did the claimant lose his / her employment as a result?

73. A sanction will be appropriate if the claimant:

- Is entitled to JSA **and**
- Was in employed earners employment **and**
- Behaved in such a way that it amounted to misconduct **and**
- Lost his / her employment as a result of that misconduct.

74. Evidence to support consideration of the sanction should, where appropriate, be gathered from:

- The employer describing the claimant's alleged acts or omissions;
- Witnesses;
- The claimant commenting on the employer's allegations.

75. Misconduct attracts a HLS of 13, 26 or 156 weeks. However, a sanction applied to a claimant for misconduct that occurred pre-claim will not be used to escalate the claimant up the sanctions ladder for subsequent failures. A HLS would only escalate when there is a prior 'in-benefit' HLS, so if all HLS were made pre-claim they would never escalate.

### Examples of Standards Met

- James was manager of a pub for 3 years. Over a period of weeks the owner discovered a number of irregularities in cash lodgings made solely by him. The police were called to investigate. James was charged with embezzlement but following a hearing he was acquitted of the charges. The owner confirmed in his response that James was dismissed for negligence in discharge of responsible duties which included supervision of staff and

checking all financial dealings. In response to enquiries by the LMDM, James was unable to explain why there were irregularities in the cash lodgings. The LMDM imposes a sanction because inadequate supervision amounted to serious carelessness. The outcome of the criminal proceedings is irrelevant as it is for the LMDM to decide misconduct.

- David, an ambulance driver, was transferring a patient to another hospital when he was involved in a minor accident. On the same day his supervisor told him not to drive the ambulance until told otherwise. On reporting to work on the following Monday morning David was on the driving rota so he drove the ambulance that day. He was subsequently dismissed for disobeying the order not to drive. He says that he understood he was being taken off driving, but did not understand that this was to happen at once. The LMDM has allowed the case because David was on the rota the following week for ambulance driving – he has not wilfully disobeyed the order, but acted on a genuine misunderstanding. This is not misconduct

#### **Example of Standards Not Met**

- The claimant said they were sacked. The ES85 was not returned by the employer. The LMDM disallows on the basis of what the claimant said.

#### **Standard 2a**

#### **Heads of Proof – Misconduct**

76. These are the questions / issues that need to be considered when undertaking the checks:

- Claimant was entitled to JSA at the time the sanction was given. (Not relevant to allowances).
- There was no other employment between the employment in question and the current claim to JSA.
- Was the claimant in employed earner's employment?
- Did the claimant act or fail to act as alleged?
- Did claimant's acts or omissions amount to misconduct?
- Did the claimant lose the employment through misconduct?
- If the employment was temporary, the sanction applied does not exceed the expected end date of the employment.
- Sanction period correctly calculated.
- Whether days that can be deducted from a period of sanction have been calculated and applied accurately. (Not relevant to allowed cases).

<b>Entitled to JSA</b>	<b>Head of Proof 1</b>
Sanction only imposed if the Claimant is entitled to JSA	DMG 34031
<b>Whether claimants actions amount to misconduct</b>	<b>Head of Proof 5</b>
The person who alleges the claimant has committed misconduct must prove it.	DMG 34566

LMDM must decide what amounts to misconduct	DMG 34539
Before a sanction can be imposed, the DM should be substantially satisfied that the allegations are well founded.	DMG 34567
Misconduct is defined as conduct which is blameworthy and wrong	DMG 34536-39
Claimant must have the chance to comment on statements made against them	DMG 34571
Any conduct outside the employment must affect their suitability for the job	DMG 34589-90
It can not include conduct which happened before employment started	DMG 34589
Driving offences which have a direct effect on the claimants ability to do their jobs are misconduct	DMG 34613
It's not necessary for the person to be employed as a driver as long as the claimant needed to be able to drive as part of their job.	DMG 34617
Absence without permission or justification is misconduct	DMG 34619
If absence is unavoidable the claimant must have complied with the employers rules about notification of absences.	DMG 34624
If the claimant was unable to contact employer it is not Misconduct	DMG 34625
Fighting (and other offensive behaviour) is Misconduct	DMG 34626
Dishonesty in the course of employment is Misconduct	DMG 34631
Dishonesty outside employment may also be Misconduct if it means the claimant wasn't fit to hold the employment as a result.	DMG 34631
<b>Whether the misconduct caused the loss of employment</b>	<b>Head of Proof 6</b>
Doesn't matter how the employment ended (i.e. left or dismissed)	DMG 34637
Misconduct need not be the only cause of the loss of employment	DMG 34640
<b>Period of sanction (including start date)</b>	<b>Heads of Proof 7, 8</b>
If employment was temporary, the sanction applied does not exceed the expected end date that the job was due to end	DMG 34103
Days to be deducted from sanction (time off benefit)	DMG 34102
Sanction starts from or ends on the wrong date	DMG 34111
Referral relates to a 'pre-claim' or 'on-benefit' failure	DMG 34101

## How to record the check and subsequent findings

77. Please record your findings for each individual case in the QAF Template.

## Refusal of Employment (RE)

78. If a person has, without good reason, refused an opportunity of employment, or failed to apply for or accept it then a fixed period sanction must apply. This would also include cases where an individual acted in such a way that it was intended to deliberately deter the employer from offering the opportunity.

79. RE attracts a HLS of 13, 26 or 156 weeks.

80. A sanction can only be imposed if:

- The claimant is entitled to JSA; **and**
- He / she was notified by an Employment Officer of employed earners employment which was vacant or about to become vacant; **and**
- He / she refused or failed to apply for the vacancy **or** refused to accept this when offered; **and**
- The vacancy was not vacant because of a Trade Dispute; **and**
- He / she does not have good reason for the refusal or failure.

## Examples of Standards Met

- Joshua has been unemployed and claiming JSA for two years. On 15/11/12, he was interviewed by an Employment Officer and offered a vacancy as a joiner with a local firm. Joshua is a fully trained joiner and is willing to accept any kind of joinery or building work. He refused to apply for this vacancy because he would be expected to work shifts and he is unable to do this as he is the primary carer for his wife, who is unable to look after herself. He can only accept constant day shift work as there is a home help available through the day. He has stated this on his JSAG and the Employment Officer has accepted the restrictions he has placed on the hours he is available for work. The LMDM has considered the claimant's reasons for not applying and determined that good reason has been shown because the employment offered was significantly different to the restrictions he has placed on his availability and allowed the case.
- Penny was interviewed by an Employment Officer on 8/11/12. At this interview she was offered a vacancy with The Friendly Hotel. She agreed to attend an interview at the hotel on 11/11/12 at 10:00am and was given a card by the Employment Officer detailing when and where she should attend for this interview. On 11/11/12, the employer telephoned to say that Penny had not turned up. Penny stated that she did not attend the interview because she had missed the bus and would not have been able to get to the hotel by 10:00am. She did not contact the hotel to rearrange the interview because she thought that they would not be interested in employing someone who could not attend on time. The LMDM has decided that a sanction should be applied as Penny does not have good reason because she did not attend the interview through her own negligence.

### Example of Standards Not Met

- Stuart has been claiming JSA for 18 months. He was offered a vacancy by an Employment Officer on 22/11/11 with a local whisky distillery. He was interviewed for the job on 29/11/11 and offered employment at the interview. Stuart turned the vacancy down as the wage offered was not enough to pay his mortgage. The distillery was within walking distance of his home and there were no other expenses he would have incurred by taking this job. The LMDM has allowed the case. As pay alone does not merit good reason, the decision is incorrect. **Standard 3a, 5a**

### Heads of Proof References – RE

81. These are the questions / issues that need to be considered when undertaking the checks:

- The claimant was entitled to JSA at the time the employment was refused. (Not relevant to allowances).
- Did an employment officer (or a person designated as such) notify the claimant of employed earner's employment that was vacant or about to become vacant?
- Was the job vacant because of a stoppage of work due to a trade dispute?
- Did the vacancy offer at least 24 hours work each week or 16 hours if it has been agreed that the claimant can restrict hours of availability to less than 24 a week; or where the hours are not advertised, the claimant does not cite the number of hours as the reason for refusing the vacancy?
- Were the reasons for refusal, or failure to apply due to:
  - The job being different from the claimant's usual occupation or at less than the claimant's accustomed rate of pay and the refusal/failure was within the permitted period; **or**
  - The claimant undertaking a minimum of two months training and the employment offered being another kind and the refusal/failure was within four weeks of the training ending.
- Did the claimant refuse or fail to apply for the vacancy, or fail to accept the vacancy?
- Did the claimant have good reason for the refusal or failure?
- Sanction period correctly calculated.

Entitled to JSA	Head of Proof 1
Sanction only imposed if entitled to JSA. (If the date of failure occurs within an ILS disentitlement period then proceed as if the claimant is not entitled to JSA)	DMG 34722
Notified by an Employment Officer	Head of Proof 2
Job offered by an Employment Officer (definition of an 'Employment Officer')	DMG 34015 DMG 34721



'Self Service' vacancies are not applicable	DMG 34737
<b>Hours of work must be 24 (16 if JSAg agreed)</b>	<b>Head of Proof 4</b>
Good reason may be shown if below the hours but should not be accepted automatically	DMG 34366 to 34369
Shift/Rota systems	DMG 34370
<b>Permitted period issues</b>	<b>Head of Proof 5</b>
Good reason should have been accepted if within the permitted period	DMG 34928 (example)
<b>The jobseeker refused etc to apply/accept</b>	<b>Head of Proof 6</b>
Claimant behaves in such a way that they may lose the chance of getting the vacancy.	DMG 34732
<b>Good reason</b>	<b>Head of Proof 7</b>
"Test of reasonableness"	DMG 34221
Claimants already working and need to give notice	DMG 34384
Weekly hours of work are more than 48	DMG 34409/10
National Minimum wage	DMG 34423
Income/Outgoings are not good reason Exceptions	DMG 34421
Travelling time	DMG 34261 to 34261
LMDM must take into account any agreed restrictions and the hours of the vacancy. (Current JSAg must be viewed)	DMG 34340 to 34342
LMDM must take into account significant harm to health and or unreasonable physical or mental stress	DMG 34302 to 34310
LMDM must take into account any sincere religious or conscientious objection	DMG 34321 to 34324
Claimant must provide enough evidence to show that terms/conditions conflict with their objection and that the religious or conscientious objection is sincerely held	DMG 34321
LMDM must take into account any caring responsibilities that make a particular employment unreasonable	DMG 34331 to 34334
LMDM must take into account any expenses a person has to meet which would be an unreasonable proportion of their pay	DMG 34340 DMG 34346 to 34362
Expenses which can and cannot be taken into account	DMG 34347 to 34348
All reasons put forward by the claimant should be	DMG 34203

considered by the LMDM	
Good reason is shown if the claimant has a definite offer of other work starting in the very near future, lasting as long as the employment offered and will be lost by accepting the employment offered	DMG 34501 to 34503
Work Trials	DMG 34742
Zero Hours Contracts	DMG 34415-17 and 34743
Employee Shareholder Contracts	DMG 34744
Apprenticeships	DMG 34745
Vacancy not closed	DMG 34733
Vacancy suspended or withdrawn	DMG 34736
Employer UJ account closed or suspended	DMG 34740
<b>Period of sanction including start date</b>	<b>Heads of Proof 8 or 9</b>
Employment would not have lasted for as long as the period of sanction selected	DMG 34091 to 34097
The period of sanction is not affected if vacancy is filled before decision given.	DMG 34091 to 34097

### **How to record the check and subsequent findings**

82. Please record your findings for each individual case in the QAF Template.

### **Provider Refusal of Employment – AR Code JSA/723 (WP) & JSA/724 (CWP)**

83. If a person has, without good reason, refused an opportunity of employment, or failed to apply for or accept it then a fixed period sanction must apply. This would also include cases where an individual acted in such a way that it was intended to deliberately deter the employer from offering the opportunity.

84. RE attracts a HLS of 13, 26 or 156 weeks.

85. A sanction can only be imposed if:

- The claimant is entitled to JSA; and
- He / she was notified by an Employment Officer of employed earners employment which was vacant or about to become vacant; and
- He / she refused or failed to apply for the vacancy or refused to accept this when offered; and
- The vacancy was not vacant because of a Trade Dispute; and
- He / she does not have good reason for the refusal or failure and
- None of the RE Discretions apply

### **Examples of Standards Met**

- Joshua is unemployed and is participating in the Work Programme (WP). On 15/11/14, he was interviewed by a WP advisor who is an “Employment

Officer” and offered a vacancy as a joiner with a local firm. Joshua is a fully trained joiner and is willing to accept any kind of joinery or building work. He refused to apply for this vacancy because he would be expected to work shifts and he is unable to do this as he is the primary carer for his wife, who is unable to look after herself. He can only accept constant day shift work as there is a home help available through the day. He has stated this on his JSAg and the Employment Officer has accepted the restrictions he has placed on the hours he is available for work. The LMDM has considered the claimant’s reasons for not applying and determined that good reason has been shown because the employment offered was significantly different to the restrictions he has placed on his availability and allowed the case.

- Penny is participating in the WP. On 15/10/14, she was interviewed by a WP advisor who is an “Employment Officer”. At this interview she was offered a vacancy with The Friendly Hotel. She agreed to attend an interview at the hotel on 20/10/14 at 10:00am and was given a card by the Employment Officer detailing when and where she should attend for this interview. On 20/10/14, the employer telephoned to say that Penny had not turned up. Penny stated that she did not attend the interview because she had missed the bus and would not have been able to get to the hotel by 10:00am. She did not contact the hotel to rearrange the interview because she thought that they would not be interested in employing someone who could not attend on time. The LMDM has decided that a sanction should be applied as Penny does not have good reason because she did not attend the interview through her own negligence.

### **Example of Standards Not Met**

- Stuart is participating in the WP. He was offered a vacancy by his WP advisor on 22/10/14 with a local whisky distillery. He was interviewed for the job on 29/10/14 and offered employment at the interview. Stuart turned the vacancy down as the wage offered was not enough to pay his mortgage. The distillery was within walking distance of his home and there were no other expenses he would have incurred by taking this job. The LMDM has allowed the case. As pay alone does not merit good reason, the decision is incorrect.

### **Heads of Proof References**

86. These are the questions / issues that need to be considered when undertaking the checks:

1. The claimant was entitled to JSA at the time the employment was refused. (Not relevant to allowances).
2. Did an employment officer (or a person designated as such) notify the claimant of employed earner’s employment that was vacant or about to become vacant?
3. Did the claimant refuse or fail to apply for the vacancy, or fail to accept the vacancy?
4. Did the claimant have good reason for the refusal or failure?

5. Sanction period correctly calculated.
6. Sanction starts from the correct date.

<b>Entitled to JSA</b>	<b>Head of Proof 1</b>
Sanction only imposed if entitled to JSA. (If the date of failure occurs within an ILS disentitlement period then proceed as if the claimant is not entitled to JSA)	DMG 34722
<b>Notified by an Employment Officer</b>	<b>Head of Proof 2</b>
Job offered by an Employment Officer (definition of an 'Employment Officer' including certain Providers)	DMG 34015  DMG 34721  DMG Memo 24/14, 29/14 & 30/14
Informing the claimant	DMG 34723 - 34729
<b>The jobseeker refused etc to apply/accept</b>	<b>Head of Proof 3</b>
Claimant behaves in such a way that they may lose the chance of getting the vacancy.	DMG 34732
Claimants change their mind	DMG 34735 - 34736
Exempt vacancies	DMG 34742 – 34746
Trade Dispute stoppage	DMG 34748 - 34749
<b>Good reason</b>	<b>Head of Proof 4</b>
Do any of the RE Discretions Apply	Get Britain Working, Jobseekers Allowance Claimants, Refusal of Employment.
Meaning / Consideration of Good Reason  (the “reasonable” test, evidence, previous failures)	DMG 34203 – 34206 & 34221 - 34225  .
What constitutes good reason  (Victims of Domestic Violence, Mental Health, Victims of Harassment & Bullying, Homelessness, Work Experience and Travelling Time.	DMG 34226 – 34262

What may be good reason in specific circumstances  (Significant harm to health or unreasonable physical and mental stress, sincere religious or conscientious objection, other terms and conditions which affect the claimant's personal freedom and beliefs, caring responsibilities and employee shareholder contracts)	DMG 34301 - 34338
Circumstances that may show good reason  (Restrictions on work search, employment expenses, employment of less than 24 hours a week, attitude of claimant's trade union, possible return to previous employment, laid off and short time workers, decision of employment tribunal pending, claimant already working, temporary employment, definite chance of other employment, personal preference, other more suitable people unemployed, job vacant because of a trade dispute stoppage, employment which the claimant has previously left, objection to employer or fellow employees, claimant does not have necessary equipment, seafarers, working time regulations, anti- social behaviour order..., claimant given incorrect details of employment, zero hour contracts, employee shareholder contracts and other reasons)	DMG 34340 - 34419
Circumstances that do not show Good Reason  (Rate of pay offered and National Minimum Wage)	DMG 34421 - 34423
Exceptions  (Travelling time over 1.5 hours, Domestic situation, Disability, Learning difficulties, Substance abuse, Legal constraints, Temp change in circs)	DMG 34263 - 34286
<b>Period of sanction</b>	<b>Heads of Proof 5</b>
Period	DMG 34097
Regardless of the duration of the employment the sanction is for a fixed period.	DMG 34385 Note
<b>Start date of sanction</b>	<b>Head of Proof 6</b>
	DMG 34111

## Neglect to Avail

87. A person is subject to a fixed period sanction if they have neglected to avail themselves of a reasonable opportunity of employment. Examples of claimants who neglect to avail themselves of a job with a former employer would be those

who have been temporarily laid off by their employer because no work is available for them, and who do not return to their employment when work becomes available or women who do not return to work following maternity leave.

88. Neglect to Avail attracts a HLS of 13, 26, or 156 weeks.

89. For a sanction to be considered there must be:

- Less than a year from when the claimant last worked there; *and*
- Terms and conditions of the employment are not less favourable than they were when the claimant last worked for that employer.
- The claimant knew, or had the means of finding out how to get the job.
- The claimant does not have good reason for the neglect

#### **Example of Standards Met**

- Brandon was employed by Flash Electrics Ltd as an electrical engineer until he was temporarily laid off because the firm lost a commercial contract. He claimed JSA immediately. Three months later, following the award of a contract the firm invited him to resume work as an electrical engineer again with same conditions of employment. Brandon didn't return. When asked by the Department for his reasons he stated he was unhappy being laid off by them previously. The LMDM has decided that Brandon has neglected to avail himself of this opportunity of employment as he failed to return to work with his employer and did not have good reason for not doing so. A sanction was applied.

#### **Example of Standards Not Met**

- Shane worked for Tesco from 25/09/06 to 26/11/10 when he was made redundant because there was no more work for him. On 05/01/12, the former employer wrote to Shane to ask him if he wanted to work for Tesco again under the same terms and conditions as before but Shane refused. In this case, the vacancy is not in a qualifying former employment as there is more than one year between the date he last worked for that employer and the date when the sanction question arose. The LMDM has applied a sanction to their decision. **Standard 3a, 5a**

#### **Heads of Proof for References – Neglect to Avail**

90. These are the questions/issues that need to be considered when undertaking the checks:

- Claimant was entitled to JSA at the time the sanction was considered. (Not relevant to allowances).
- Did a vacancy in a qualifying former employed earner's employment exist?
- Did the claimant know, or have the means of finding out, how to get the employment?
- Was the claimant's chance of obtaining it by that means a reasonable one?
- Did the claimant take the steps necessary to make use of the opportunity?
- Was the claimant in a trial period?
- Was the job vacant because of a stoppage of work due to a trade dispute?
- Did the claimant have good reason for "neglect"?

- Whether there were any mitigating circumstances due to physical or mental stress connected with the employment.
- Whether days that can be deducted from a period of sanction have been calculated and applied accurately. (Not required where the case is allowed).
- The length of time the employment was due to last.
- Sanction period correctly calculated.

<b>Entitled to JSA</b>	<b>Head of Proof 1</b>
Sanction only imposed if the claimant is entitled to JSA	DMG 34567
<b>A Vacancy in A Qualifying Former Employed Earners Employment Existed</b>	<b>Head of Proof 2</b>
Definition of Qualifying Former Employment	DMG 34569
The terms and conditions are not less favourable than they were when the claimant last worked for the employer	DMG 34569
<b>Claimant knew about the employment or could have found out and was their chance of obtaining by these means was a 'reasonable' one</b>	<b>Heads of Proof 3, 4, 5</b>
Claimants can be sanctioned if they knew employment was available to them, even if the LMDM can not prove if or when it was notified to the claimant by the employer	DMG 34573
Examples of when this may happen	DMG 34573
The definition of 'reasonable'	DMG 34577
Personal or domestic circumstances.	DMG 34578
<b>Trial Period</b>	<b>Head of Proof 6</b>
Claimants can not be sanctioned if they are in a trial period	DMG 34581
<b>Was the employment vacant as a result of a Trade Dispute?</b>	<b>Head of Proof 7</b>
The job is vacant because of a trade dispute	DMG 34582, & 34403 – 34404, DMG Memo 37/12
<b>Good reason</b>	<b>Head of Proof 8</b>
If the claimant has trained for a particular kind of employment for 2 calendar months or more and the training was in the previous 4 weeks they have good reason for neglecting to avail.	DMG 34413

Definition of training	DMG 34414
Claimants already working and need to give notice	DMG 34430
Weekly hours of work are more than 48	DMG 34435 DMG Memo 37/12
National Minimum wage	DMG 34437
Income/Outgoings are not good reason Exceptions	DMG 34438/34439 DMG 34440
Travelling time is not good reason Travelling time of more than 1.5 hours each way	DMG 34441 DMG 34442/34443, DMG memos 20, 37 and 39/12
LMDM must take into account any agreed restrictions and the hours of the vacancy. (Current JSAG must be present)	DMG 34466, DMG memo 37/12
LMDM must take into account any sincere religious or conscientious objection	DMG 34480, DMG memo 37/12
Claimant must provide enough evidence to show that terms/conditions conflict with their objection and that the religious or conscientious objection is sincerely held	DMG 34481
LMDM must take into account any caring responsibilities that make a particular employment unreasonable	DMG 34487, DMG memo 37/12
The job must be unreasonable not just inconvenient	DMG 34489 to 34491
LMDM must take into account any expenses a person has to meet which would be an unreasonable proportion of their pay	DMG 34504 and 34510 to 34513
Expenses which can and cannot be taken into account	DMG 34505 and 34506
All reasons put forward by the claimant should be considered by the LMDM	DMG 34526
<b>Whether there were any mitigating circumstances due to physical or mental stress connected with the employment</b>	<b>Head of Proof 10</b>
LMDM must take into account significant harm to health and or unreasonable physical or mental stress	DMG 34468 to 34476
<b>Period of sanction including start date</b>	<b>Heads of Proof 9, 10, 11</b>
Employment would not have lasted for as long as the period of sanction selected	DMG Memo 37/12
Sanction starts from or ends on the wrong date	DMG Memo 37/12
Days to be deduced from sanction (time off benefit)	DMG Memo 37/12



## **How to record the check and subsequent findings**

91. Please record your findings for each individual case in the QAF Template.

## **Work for your benefit schemes (MWA and SAPOE)**

92. Work for your benefit schemes are designed to help certain claimants enhance their employment prospects and gain opportunities to develop skills and disciplines associated with a normal working environment.

93. Initiatives within the SAPOE Scheme are Work Programme, Skills Conditionality, New Enterprise Allowance, sector based work academies, Full-Time Training Flexibility, Day One Support for Young People, and Derbyshire Mandatory Youth Activity Programme, JSA Supervised Jobsearch Pilot Scheme, Community Work Placement and Traineeships.

94. In JSA cases fixed sanctions are imposed for 4 or 13 weeks for SAPOE (LLS) schemes, and 13, 26 or 156 weeks for MWA (HLS).

95. In ESA cases a sanction is imposed for 1 week for each 7 day period of non-compliance and a fixed sanction of 1, 2, or 4 weeks.

96. In general, the LMDM must establish that the JSA claimant has failed, without good reason, to participate in the MWA/SAPOE scheme, or for ESA, failed to undertake work-related activity and then make a decision accordingly.

97. A sanction will be appropriate if

- The claimant is entitled to JSA / ESA; and
- The claimant failed to participate or undertake work-related activity without good reason/cause.

98. Evidence to support a sanction would need to show that:

- Claimant was correctly notified of the MWA / SAPOE Scheme and
- The claimant has been offered the opportunity to provide reasons for failing to participate or undertaking work-related activity and good reason/cause has not been shown.

## **Examples of Standards Met**

- WP08 received from provider stating that Jon failed to attend an appointment on 13/8/12. WP08 confirmed that Jon had been properly notified of this appointment. WP12 was sent to the claimant, asking for a response within 10 days, but no reply was received. The LMDM decides to impose a sanction of four weeks, as this is Jon's first failure.

## **Examples of Standards Not Met**

- Danny was notified to attend a Mandatory Work Activity placement on 13/8/12. Danny attended this placement but was asked to leave due to his conduct as he was swearing at claimants and staff. A sanction was imposed for 13 weeks as Danny had not previously failed to participate in the MWA.
- The LMDM imposed a sanction based on the information from the placement provider without asking the claimant to provide his reasons for failing to participate.

## **Heads of proof references for failing to participate or undertake work-related activity in an MWA/SAPOE Scheme**

99. These are the questions that need to be considered when undertaking the checks:

- Claimant was entitled to JSA/ESA at the time the sanction was given. (Not for allowed cases).
- The LMDM can assure themselves that the claimant has been issued with a notification which specifies that the claimant is required to participate in the scheme, the day participation will start, that the participation is for four weeks (MWA only), details of what is required by way of participation, that the claimant is required to participate until told otherwise and the consequences of failing to participate. The LMDM should assume that the claimant has been properly notified unless the claimant states otherwise as part of their 'good reason'. In these cases, the LMDM should investigate further and not just accept the claimant's word.
- Claimant failed to participate or undertake work-related activity in the MWA / SAPOE Scheme.
- Claimant did not have good reason/cause for failing to participate or undertake work-related activity.
- If a sanction is appropriate, the correct period of sanction 4 or 13 weeks for SAPOE, and 13, 26, or 156 weeks for MWA, has been imposed. (JSA only). That the sanction is correctly calculated taking into account time off benefit.
- The sanction starts from the correct date.

<b>Entitled to JSA / ESA</b>  (JSA ONLY - If the date of failure occurs within an ILS disentitlement period then proceed as if the claimant is not entitled to JSA)	<b>Head of Proof 1</b>  DMG 34012 (JSA)  DMG 34847 (JSA)  DMG 53013 – 53014 (ESA)
<b>Claimant was notified to participate in writing</b>	<b>Head of Proof 2</b>  DMG 34867, 34869 – 34870, 34872 – 34874 (JSA)  DMG 34765 – 34768 (MWA)  DMG 53044 – 53046 (ESA)

<b>Claimant failed to participate or undertake work related activity</b>	<b>Head of Proof 3</b>  DMG 34778 (JSA)  DMG 34769 (MWA)  DMG 53050 (ESA)
<b>Good reason/cause</b>	<b>Head of Proof 4</b>
Meaning of....	DMG 34203 – 34206 (JSA & MWA)  DMG 53050 – 53053 (ESA)
Test of Reasonableness	DMG 34221 - 34222 (JSA & MWA)
Evidence	DMG 34223 (JSA & MWA)
Previous Failures	DMG 34224 (JSA & MWA)
What constitutes Good Reason	DMG 34226 et seq (JSA & MWA)
<b>Period of sanction</b>	<b>Head of Proof 5</b>
Period	DMG 34171 (JSA)  DMG 34097 (MWA)  DMG 53060 & 53073 – 53075 (ESA)
Time off Benefit	DMG 34064 (JSA & MWA)
Failures determined Out of sequence	DMG 34046 – 34047 (JSA & MWA)

<b>Start date of sanction</b> (To avoid causing overpayments DMs should start Sanctions from the day after evidence is held to if JSAPS shows the claimant has signed (JSA) and consider whether another payment is likely to be issued before the sanction is processed in ESA cases. LMDMA Procedural Guide Chapter 1 para 84 Note & para 86 Note (JSA) and Chapter 4 para 87 (ESA))	<b>Head of Proof 6</b>  DMG 34178 (JSA)  DMG 34111 (MWA)  DMG 53081 (ESA)
--	---

### How to record the check and subsequent findings

100. Please record your findings for each individual case in the QAF Template.

### Refusal or failure to carry out a Jobseeker's Direction (JSD)

101. A JSD is a detailed instruction (including what, why and where they are required to do this) given by an Employment Officer, with a view to:

- Assisting a claimant find employment; **and / or**
- Improving their prospects of finding employment.

102. Refusal or failure to carry out a JSD attracts a LLS of 4 or 13 weeks.

103. A period sanction may be appropriate if:

- The claimant is entitled to JSA; and
- Was given a direction (in writing, verbally, email, telephone or other electronic means i.e. text) by an Employment Officer for the purposes of assisting them find employment and/or improve their prospects of finding employment; and
- The direction was **reasonable** in light of the claimant's circumstances.
- The claimant refused/failed to carry out the direction; and
- The direction did not involve finding specific employment which was only vacant due to a Trade Dispute; and
- The claimant does not have good reason for the refusal.

### Example of Standards Met

- Anthony worked as an engineer five years ago. He then trained as a fitness instructor and has worked in that employment for the last four years. He claims JSA and agrees with an Adviser that he will look for work only as a fitness instructor for 13 weeks. After 10 weeks, the Adviser issues a JSD which requires Anthony to go on a course to update his engineering skills as a new employer is moving into the area and will have 30 vacancies for engineers. Anthony refuses to go on the course. The LMDM has allowed the case because, Anthony will have good reason for this refusal as he is being asked to take a particular type of employment but he is in his permitted period and has restricted the type of employment he is available for to his usual occupation.

### Example of Standard Not Met

- JSD - The LMDM has imposed a sanction, but there is no evidence that the claimant was given a JSD. **Standard 4a**

### Heads of Proof References for JSD

104. These are the questions/issues that need to be considered when undertaking the checks:

- Claimant was entitled to JSA at the time the sanction was given. (Not appropriate to allowances)
- Claimant was given a JSD that was in writing, verbally, email, telephone or other electronic means (i.e. text); **and** given by an Employment Officer with a view to:
  - Helping the claimant find employed earner's employment, **or**
  - Improving the claimant's chances of being employed.
- Reasonable taking the claimant's circumstances into account.
- The claimant refused or failed to carry out the JSD.
- If the JSD was given to help the claimant find a specific employment, the employment in question was not vacant because of a stoppage of work due to a trade dispute.
- The claimant does not have good reason for the refusal or failure.
- If a sanction is appropriate, it is correctly calculated.
- The sanction starts from the correct date.

Entitled to JSA	Head of Proof 1
Sanction only imposed if entitled to JSA (If the date of failure occurs within an ILS disentitlement period then proceed as if the claimant is not entitled to JSA)	DMG 34031
JSD was given in by the appropriate means, and by an Employment Officer	Head of Proof 2
A JSD will ask or advises claimants to take a particular course of action that can help them find employment or improve their chances of being employed.	DMG 34902
Examples of the contents of a JSD	DMG 34907
The JSD must explain why the jobseeker is being directed to attend a particular place (example)	DMG 34906
The JSD was reasonable	Head of Proof 3
A JSD has to be reasonable (example)	DMG 34908
Claimant refuses or fails to carry out the JSD	Head of Proof 4

JSA is not payable if the claimant, without good reason, refused or failed to carry out a JSD	DMG 34901
Claimants may not actually refuse or fail to follow the JSD they may behave in such a way it can not be followed	
If a claimant initially refuses to carry out a JSD but then subsequently changes their mind and notifies an Employment Officer, they can be considered to have complied if they are still able to meet some of the terms of the JSD.	DMG 34927
Claimants who fail to carry out a JSD, then change their minds, can still achieve something by following the JSD and carry out the JSD have not failed to carry it out.	DMG 34927
<b>Specific Employment in a JSD is vacant as the result of Trade Dispute</b>	<b>Head of Proof 5</b>
Claimants cannot be sanctioned because they refuse or fail to carry out a JSD which was given to help them find work in a job that is vacant because of a stoppage of work due to a Trade Dispute	DMG 34389
<b>Good reason for refusal or failure</b>	<b>Head of Proof 6</b>
If JSD is specific to a particular type of employment, claimant has good reason if they would have had good reason for refusing the employment concerned	DMG 34928
Claimant will not have good reason just because the employment the JSD was aimed at was for less than 24 hours or 16 hours a week	DMG 34366-34370
If Employment to which the JSD applied did not at least pay the national minimum wage and the claimant refused to follow the JSD because of this the claimant has good reason	DMG 34423
Claimant does not have good reason if they refuse to carry out a JSD because of their income or outgoings or those of household members	DMG 34360
Examples of reasons linked to income and outgoings	
DMG 34612 does not apply where the claimant has agreed a restriction on the level of pay as they are in the permitted period or have a physical or mental condition	DMG 34340
Claimants will not have good reason if they refuse or fail to carry out a JSD because of the time it would normally take them to travel from their homes to the place mentioned in the JSD and back	DMG 34261
Exceptions to this	DMG 34263

If the journey to the place mentioned in the JSD would take an hour and a half or more and the journey home would take less than an hour and a half (or vice versa) the claimant may have good reason	DMG 34264
If the Journey takes less than an hour and a half, but may occasionally take more than an hour and a half then the claimant will not have good reason	DMG 34618
Definition of Travelling time	DMG 34619
A claimant cannot argue it would take more than an hour and a half to and from the place mentioned in the JSD by a particular route and means of transport if there is another route or means of travel which it is appropriate to use, which would take less than an hour and a half.	DMG 34621
The LMDM should decide whether the route and means of travel are appropriate	DMG 34622
Is walking reasonable?	DMG 34623
The LMDM should obtain details of the claimants health problems & how they affect the claimants ability to travel or the extent and nature of the claimant's caring responsibilities and how they affect the time for which it is reasonable for the claimant to travel	DMG 34624
The LMDM should take all the facts into account and decide whether in view of the claimant's health or caring responsibilities the journey would take an unreasonable time	DMG 34263
Examples of when it may be reasonable to expect the claimant to travel for more than an hour and a half either way	DMG 34264
The LMDM must take into account when deciding good reason any condition or personal circumstance of the claimant which shows that carrying out the JSD would be likely to cause significant harm to the claimant's health or cause them unreasonable physical or mental stress	DMG 34226
If the claimant refuses or fails to carry out the JSD because of any religious or conscientious objection which the claimant sincerely holds, the LM LMDM should take this into account	DMG 34321
Examples	DMG 34322
LMDM should take into account caring responsibilities which would make it unreasonable for the claimant to carry out the JSD	DMG 34333
This is limited to caring responsibilities and does not include other domestic duties.	
LMDM should take into account any expenses, which claimants have to meet only for the purpose of carrying	DMG 34346

out the JSD if they would be an unreasonably high proportion of the expected income while carrying out the JSD in question. The expected income will be JSA (and any other benefits etc in payment)	
Expenses which can be taken into account	DMG 34347
The cost of child care can be taken into account	DMG 34351
The expenses must be an unreasonably high proportion of the expected income if good reason is to be shown. Other issues about the claimant's income or outgoings can not be taken into account	DMG 34360
There are no rules for deciding whether expenses would be an unreasonably high proportion of income. Each case must be decided on its own facts.	DMG 34361
The greater the level of income the more reasonable it is for the expenses to be a higher proportion of it.	DMG 34361
LMDM should consider all matters put forward by the claimant, not just those covered in legislation and decide whether or not to take them into account when deciding good reason.	DMG 34226
Claimants may be able to show good reason if the JSD required them to do something on a particular day and unforeseen circumstances prevented them from doing so on that day	DMG 34271-34272
If claimants refuse or fail to carry out the JSD because they do not believe it will help them find employment, they will not usually have good reason	DMG 34929
Claimants need to produce convincing evidence that carrying out the JSD probably would not have helped them	DMG 34205
<b>Period of sanction including start date</b>	<b>Heads of Proof 7 &amp; 8</b>
Period of sanction	DMG 34171
Sanction starts from wrong date	DMG 34178

### How to record the check and subsequent findings

105. Please record your findings for each individual case in the QAF Template.

### FTA Decisions (Not SAPOE / MWA)

106. The Labour Market FTA decision is to establish if good reason has been shown for the time and date, or day of the Failure to Attend, or Failure to Provide a Signed Declaration and, if so, whether it was shown within five working days of that failure.

107. The LMDM must consider the following questions:

- Was the claimant properly notified; and



- Had he/she shown good reason within 5 working days, for failing to attend or failure to provide a signed declaration?
108. FTA attracts a LLS of 4 or 13 weeks.
109. A sanction or sanction will be appropriate if:
- Entitled to JSA;
  - The claimant did not show, within the 5 working days, good reason for failing to attend or providing a declaration as notified;
  - Cannot be treated as straightforward (TaS).

### **Example of Standards Met**

110. Jean attends Cambridge Jobcentre every other Tuesday at 1.30pm to sign her declaration in accordance with her ES40. This Tuesday she did not attend but instead came into the office on Friday. She stated that she was unable to come into the office because her house had been burgled. Jean stated “I was unable to come into the office to sign because my house was burgled and I had to sort it out.” The LMDM has allowed the case.

### **Example of Standards Not Met**

111. The LMDM gives a sanction, as the claimant has not shown good reason for his failure to attend an interview with a Jobcentre adviser. However, there is also evidence that the claimant was treated as available for employment on that day. **Standard 3a, 3b**

## **Heads of Proof References – FTA**

### **Attendance and signing - claimant does not attend on the day specified**

112. These are the questions / issues that need to be considered when undertaking the checks:

- Claimant was entitled to JSA at the time the sanction was given (not appropriate to allowances).
- The claimant was issued with a notification to attend at a particular place on a particular day at a particular time.
- The notification did not tell the claimant to attend an employment programme or training scheme.
- Claimant did not attend on the day, at the place mentioned in the notification.
- The claimant did not show, within 5 working days, good reason for not attending on the date and time required.
- Sanction period correct. (This does not apply for allowances)

### **Attendance and signing - claimant attends at wrong time**

113. These are the questions / issues that need to be considered when undertaking the checks:

- Claimant was entitled to JSA at the time the sanction was given (not appropriate to allowances).
- The claimant was issued with a notification to attend at a particular place on a particular day at a particular time.

- The notification did not tell the claimant to attend an employment programme or training scheme.
- Claimant did not attend at the time and place on the date stated in the notification.
- The claimant was warned by the issuing of form ES19 on the previous attendance that if they did not attend on time on the next attendance, entitlement to JSA might end.
- The claimant failed to attend, at the correct time and place; on the next time the above notification told the jobseeker to attend.
- The claimant did not show, within 5 working days, good reason for not attending at the time and on the date required.
- Sanction period correct. (*This does not apply for allowances*).

<b>Regulation 23 notice issued</b>	<b>Head of Proof 1</b>
Claimant was properly notified	DMG 20911– 20913, DMG Memo 37/12
Notification can be by electronic means	DMG 20911
Date of issue of reg. 23 notice only necessary if disputed that it was issued	DMG 20911-20913, DMG Memo 37/12
Claimant fails to provide a signed declaration as notified	DMG 20915 – 20918, DMG Memo 37/12
Claimant is entitled to JSA (If the date of failure occurs within an ILS disentitlement period then proceed as if the claimant is not entitled to JSA)	DMG 20910
<b>Good reason</b>	<b>Head of Proof 4</b>
Good reason “reasonable”	DMG 20945
Good reason to be shown within 5 working days	DMG 20932, DMG Memo 37/12
Good reason only needed for signing time not rest of the day.	DMG 20936
Good reason only needed for signing time/day not other days up to date of attendance	DMG 20936
Good reason accepted if they have caring responsibilities and do not have 48 hours notice of interview	DMG 20938, DMG Memos 29 and 37/12
Good reason accepted if they are providing a service and do not have 24 hours notice of interview	DMG 20938, DMG Memos 29 and 37/12
Good reason accepted if treated as available	DMG 20939
Must take into account whether misunderstood because	DMG 20948

language learning literacy difficulties	
Must take into account whether misunderstood because of misleading information from employment officer	DMG 20948
Must take into account whether any medical appointment could be re-arranged	DMG 20948
Must take into account whether any reasonable alternative when difficulty with normal transport	DMG 20948
Must take into account customs/practices of religion	DMG 20948
Must take into account whether attending interviews for employment	DMG 20948
<i>Decision given for wrong date</i>	DMG 20956
<i>Sanction for correct period</i>	DMG 20922

### How to record the check and subsequent findings

114. Please record your findings for each individual case in the QAF Template.

### Availability

115. A claimant is entitled to JSA if they are available for employment.

116. To satisfy the availability conditions most claimants must be:

- Willing and able to take up paid employment immediately;
- Prepared to work for a minimum of 40 hours per week (unless agreed restrictions apply); **unless they are**
- A member of a joint claim exempt from being available.

117. The LMDM is required to consider-

- Is the claimant available for employed earner's employment?
- Is the claimant willing and able to take up employment within the appropriate timeframes?
- Any restrictions the claimant may have imposed on their availability;
- Whether the claimant can be 'treated as' available; and
- Member of a joint claim exempt from being available for employment.

118. Availability attracts an ILS of 4 or 13 weeks after the period of disentitlement. However, a sanction period is reduced by the period of disallowance plus any period without entitlement. When LMDMs make a decision to disentitle the claimant for either part, or the whole period referred, current operational guidelines dictate that they make a recommendation decision as to the length of the sanction period that follows the period of disentitlement. As part of the check (although not a Head of Proof) the checker should be checking that the dates and period of sanction taking into account any previous failures in escalating the length are correct.

119. Although a 'recommended' sanction decision will usually be made at the same time as a disallowance (to avoid the Jobcentre making a re-referral), a sanction does not have to be applied in every case as per The Jobseeker's Allowance Regulations 1996 Reg 69B(5). For example, a claimant can attend an Employment Related Course of up to two weeks in any 12 month period. If they

then attend a second ERC, they can not be treated as available and normal availability considerations will apply. The LMDM may decide that the claimant is not available and apply a disallowance but may also decide that because the claimant is trying to improve their employment prospects, the application of a sanction would not be appropriate in the claimant's circumstances.

### **Guidance**

120. A flow chart detailing the process can be found by clicking on the following link [availability process](#) .

### **Example of Standards Met**

- Simon has caring responsibilities on Monday and Wednesday. On Friday 16 June he is offered a job which starts on the following Monday 19 June. Simon says that he is not available to start work on Monday 19 June because he has caring responsibilities. He will not be able to start work until Friday 23 June because he needs time to organize someone to take over his caring.
- Simon is still willing and available to take up employment within one week's notice. He is available.

### **Example of Standards Not Met**

- The LMDM decided that the jobseeker is not available for 40 hours or more in a benefit week, but the evidence clearly shows that the jobseeker was available for more than 40 hours in that week. **Standard 3a**
- The jobseeker states, "attending a funeral of a close relative and not available for work." The LMDM allows the case, treating the jobseeker as available for employment. The Jobcentre has noted the case papers that the jobseeker has been treated as available for this reason on 4 occasions during the last 12 months. **Standard 3b**

### **Heads of Proof References – Availability**

121. These are the questions / issues that need to be considered when undertaking the checks:

- The claimant is available for employed earner's employment.
- The claimant is willing and able to take up employment:
  - At once; **or**
  - Within 24 hours of being given notice (if the claimant is providing a service); **or**
  - Within 48 hours of being given notice if the claimant has caring responsibilities or if doing voluntary work; **or**
  - Within the statutory notice period (if the claimant has part-time work).
- On the nature, rate of pay, locality or other conditions of employment, the claimant must have reasonable prospects of employment; **or**
- Because they have caring responsibilities they
  - are available for as many hours as the caring responsibilities allow; **and**
  - are available for the specific hours the caring responsibilities allow; **and**
  - have reasonable prospects of employment; **and**

- are available for at least 16 hours in a week.
- Because of some physical or mental condition those restrictions must be reasonable in light of the claimants condition; **or**
- Because they have religious beliefs or conscientious objections those beliefs or objections must be sincerely held and claimant must have reasonable prospects of employment.
- Whether the claimant can be treated as available.
- Sanction period correctly calculated where appropriate.

<b>Claimant is Available for Employed Earners Employment</b>	<b>Head of Proof 1</b>
Claimants must prove they are available for employment for each benefit week of their claim to JSA	DMG 21190
They are available if they are willing and able to accept all offers of employment brought to their notice	DMG 21190
To be available for employment claimants must be available in an active, positive sense and draw attention to their availability	DMG 21191
The LMDM determines whether the type or types of employment that the claimant is available for are employed earners employment	DMG 21192
The LMDM can decide that claimants are not available for employment, even if they have not refused an offer of work.	DMG 21193
<b>Claimant is willing and able to take up employment</b>	<b>Head of Proof 2</b>
Claimants are not entitled to JSA unless they are willing and able to take up any employment at once	DMG 21180
Claimants do not have to be able to take up any employment at once on any day that they have caring responsibilities or are doing voluntary work	DMG 21265
This only applies if they are able to take up employment within 48 hours of being given notice	DMG 21265
<p>LM LMDM should establish whether claimants with caring responsibilities or undertaking voluntary work can;</p> <ul style="list-style-type: none"> <li>▪ On being given one week's notice, start employment; <b>and</b></li> <li>▪ Attend an interview in connection with the opportunity of any such employment within 48 hours notice.</li> </ul> <p>And can be contacted promptly enough for any notification to reach them in time. If a claimant has caring responsibilities for a child and can show the above is unreasonable, then it can be extended 28 and 7 days' notice respectively.</p>	DMG 21265 - 21271
Claimants are not required to take up employment at once	DMG 21276

on any day they are providing a service	
This only applies if they are willing and able to take up any employment within 24 hours of being given notice	DMG 21276
What may be defined as 'Providing a service'	DMG 21278-93
Claimants required to give notice to terminate current employment	DMG 21298
<b>Claimants Impose Restrictions</b>	<b>Head of Proof 3</b>
Claimants may restrict hours they are available in certain circumstances but they must be willing and able to take up employment of less than 40 hours in a benefit week.	DMG 21420 - 21421
Claimants on short time	DMG 21327
Claimants with caring responsibilities	DMG 21434 - 21440
Claimants with physical or mental disabilities	DMG 21443
If claimants restrict the total number of hours they are available as a result of being on short time, caring responsibilities or physical or mental disabilities they are treated as available for the number of hours stated on their JSaG	DMG 21421
If claimants restrict the total number of hours of availability in any week to 40 hours or more their pattern of availability must give them reasonable prospects of securing employment and must be recorded in their JSaG	DMG 21424
Where claimants are only available at certain times they do not have to be able to take up employment outside these hours but must be willing and able to take up employment as soon as they are available	DMG 21432
Any variations to their pattern of availability must be recorded in a varied JSaG	DMG 21424
Their prospects of securing employment must not be reduced considerably by the restriction imposed on their pattern of availability	DMG 21424
Claimants are not available if they place restrictions on the nature, rate of pay, locality or conditions of employment they are available for	DMG 21427
Exceptions to this rule	DMG 21428
It is for the LMDM to prove the claimant has placed restrictions	DMG 21429
It is for the claimant to prove that one of the conditions in DMG 21428 is satisfied.	DMG 21429
Restrictions on Pay	DMG 21430 to 21431
Claimants on curfews, restriction of liberty orders, and	DMG 21441

mandatory probation service programmes	
<b>Treated as Available</b>	<b>Head of Proof 4</b>
Claimants can be treated as available under certain circumstances	DMG 21305, DMG Memo 37/12
If the claimant is absent from Great Britain to attend an interview for employment Notice to employment officer	DMG 21313 DMG 21313 - 21314
Taking a family member abroad for medical treatment Definition of 'treatment'	DMG 21314 DMG 21315
Member of a Couple – both absent	DMG 21317
Mariners and Share Fishermen	DMG 21318
Claimants who are laid off	DMG 21321 - 21323
Claimants on short time	DMG 21324 - 21327
Claimants previously incapable of work	DMG 21328
Deaths, funerals and domestic arrangements Length of time a claimant can be treated as available as a result of this	DMG 21329 DMG 21330
Points to consider in domestic emergencies	DMG 21337
Claimants discharged from detention	DMG 21338
Engaged during an emergency in duties for the benefit of others Lifeboat crew Part time member of a fire brigade	DMG 21346-21348 DMG 21349 DMG 21355-21356
Looking after a child if one member of a couple is absent from the UK	DMG 21350
The person who looks after a child cannot look after the child	DMG 21351
Open University	DMG 21354
Availability in term time	DMG 21417
Availability during examinations and vacations	DMG 21418
Programmes provided by the venture trust	DMG 21357 - 21359
Treated as capable of work	DMG 21362
Work Camp	DMG 21363 - 21364
Claimants attending a court or tribunal	DMG 21309 - 21310
Detained in Custody	DMG 21311
Period from the date of claim	DMG 21319
Employment-related course	DMG 21340 -

	21343
End of Entitlement to JSA	DMG 21345
Child away from education	DMG 21353
Temporary absence from Great Britain for NHS treatment abroad	DMG 21361
Treated as capable of work or as not having limited capability for work	DMG 21362
Domestic violence	DMG 21369 - 21385
Permitted period	DMG 21386

### **How to record the check and subsequent findings**

122. Please record your findings for each individual case in the QAF Template.

### **Actively Seeking Employment (ASE)**

123. In order to be entitled to JSA a claimant/member of a joint claim must also be ASE. This means that the claimant/member of a joint claim must take steps to seek employment in each week that they claim JSA. This means that they must take those steps each week which are reasonable in their case, and which offer the best prospects of securing employment. The number of steps that the claimant will undertake is detailed within their JSAG or Claimant Commitment. Claimants are expected to take the number of steps detailed in each week of their claim, to ensure they fulfil the ASE condition.

124. The LMDM is required to consider:

- That the claimant/member of a joint claim has a claim for JSA;
- The type of employment the claimant/member of a joint claim is seeking;
- The steps that the claimant/member of a joint claim took in the weeks in question;
- Whether the steps offered the claimant/member of a joint claim with the best chance of getting employment and it appears reasonable that these could have been taken; and
- Whether the claimant can be 'treated as' ASE.

125. ASE attracts an ILS of 4 or 13 weeks after the initial period of disentitlement. However, the sanction periods are reduced by the period of disallowance plus any period off benefit.

126. When LMDMs make a decision to disentitle the claimant for either part, or the whole period referred, current operational guidelines dictate that they make a recommendation decision as to the length of the sanction period that follows the period of disentitlement. As part of the check (although not a Head of Proof) the checker should be checking that the dates and period of sanction taking into account any previous failures in escalating the length are correct.

### **Example of Standards Met**

- Tanya has been unemployed for two weeks. Tanya is seeking work as a computer operator or as a computer programmer. She has various formal qualifications including a degree in computer programming. There are a



number of vacancies in this field in the local area. Tanya has been doing this type of work for the past year. During this benefit week she contacts a specialist employment agency at least once regarding suitable vacancies. She has also visited the local library to read specialist professional magazines and apply for suitable vacancies. She has applied for one vacancy with a local firm as a computer operator. She has also made one speculative approach to a local company by sending her CV. As she has no fixed address, she has spent four full days looking for accommodation. She has contacted several housing associations and the local council. She has also viewed numerous private properties. The LMDM has allowed the case because she has taken all of the steps that were reasonable for her in that week.

### **Example of Standard Not Met**

- Mark has been sanctioned for ASE, but the evidence shows that the claimant was treated as available, under regulation 14(2), for 3 days due to the death and funeral of his close friend, Clive during the benefit week in question. The claimant should therefore have been treated as ASE and not sanctioned. **Standard 3b**

### **Heads of Proof References – Actively Seeking Employment**

127. These are the questions / issues that need to be considered when undertaking the checks:

- Claimant/member of a joint claim has a claim for JSA.
- The type of employment the claimant is seeking.
- The steps the claimant took in the weeks in question.
- Whether those steps offered the claimant/member of a joint claim the best chance of getting employment, and if the claimant/member of a joint claim is a young person, steps to seek training.
- Whether the claimant/member of a joint claim has taken the steps, which he/she could be reasonably expected to have taken.
- Whether the claimant/member of a joint claim can be treated as ASE.
- Sanction period correctly calculated where appropriate.

<b>Claimant/member of joint claim has a claim for JSA</b>	<b>Head of Proof 1</b>
Claimant/member of joint claim has a claim for JSA	DMG 21571
<b>The type of employment the claimant is seeking</b>	<b>Head of Proof 2</b>
Restrictions that can be placed on the type of employment	See availability section for more details.
<b>The Steps the claimant takes</b>	<b>Head of Proof 3</b>

The steps the claimant is expected to take in any week are those steps that they can reasonably be expected to have to take and offer them their best chance of getting employment	DMG 21600
In order to have the best chance of getting employment claimants are expected to take more than two steps in a week unless taking two steps or less is all that it is reasonable for them to do in that week	DMG 21601
What may be classed as 'Steps'	DMG 21606
Any other steps can be taken into account providing they give the claimant their best chance of getting offers of employment	DMG 21607
Steps that could give rise to offers only of S/E cannot be regarded as steps to seek employment unless the claimant is in the permitted period	DMG 21608
Steps that could give rise to offers only of training cannot be regarded as steps to seek employment	DMG 21609
Taking steps to join certain courses or programmes should be taken into account when deciding what steps to seek employment it was reasonable to expect the claimant to take	DMG 21609
A step that would otherwise count as a step does not count if, in taking the step, the claimant acts in a violent or abusive manner or the act is the completion of an application for employment and the claimant spoils the application or the claimant's behaviour or appearance undermines their chances of getting employment	DMG 21610
The steps that all amount individually to a single step to seek employment	DMG 21611
<b>The best chance of getting employment</b>	<b>Head of Proof 4</b>
Claimant's best chance of getting employment will vary from claimant to claimant.	DMG 21616
Claimants who have a good chance of getting employment may have many steps open to them that may lead to offers of employment. But they need not take all those steps as long as they take those steps that they can reasonably be expected to take to offer them their best chance of getting employment	DMG 21617
Claimants who have a poor chance of getting employment may only have a few steps open to them. In these cases it may be reasonable to expect them to take all of the steps	DMG 21618
Claimants are not required to take any steps that do not offer them any chance of getting employment (unless it is a step listed in 21606). If they do take such a step it	DMG 21619

cannot help them satisfy the ASE test.	
LMDM should take into account the type of employment the claimant is seeking when deciding which steps would give them the best chance of getting employment	DMG 21620
If claimants are subject to curfews or restriction of liberty orders that require them to be home during the day the LMDM should consider whether working from home gives them the best prospects of finding the type of work they are looking for	DMG 21621
If claimants are seeking employment where recruitment is usually by personal application, appointing someone else to help them find employment may not be a step that gives them their best chance of getting offers of employment	DMG 21626
If claimants are seeking work where employment is often obtained through someone else appointing such a person may give the claimant their best chance of getting employment	DMG 21627
Where someone else has been appointed, claimants should still take other such steps as they can reasonably be expected to take to have the best chance of getting employment	DMG 21628
<b>If the claimant is a young person they have taken steps to seek training</b>	<b>Head of Proof 4</b>
Young people are expected to take steps to seek training and full time education as well as steps listed in 21606	DMG 21683
Factors to take into account when deciding if training is suitable for young people	DMG 21684
Definition of Full Time Education	DMG 21685
Young people whose JSA has not been reduced by the LMDM under a severe hardship direction or whose JSA has not been reduced by the LMDM because of a sanction can be expected to take more than two steps a week unless taking two or less steps is all that it is reasonable for them to do in that week	DMG 21687
<b>Whether the claimant has taken the steps, which he/she could be reasonably expected to have taken</b>	<b>Head of Proof 5</b>
What claimants can reasonably be expected to do varies from claimant to claimant and week to week.	DMG 21632
LMDM should consider the nature and conditions of employment that it is reasonable to expect the claimant to seek and steps that are reasonable to expect a claimant to take to seek that employment	DMG 21632

What can reasonably be expected of a claimant may change during the length of their claim	DMG 21633
Circumstances that can be taken into account when determining whether claimants have taken the steps that they can reasonably be expected to take	DMG 21634
Claimants' skills, qualifications, abilities and limitations may affect both the type and number of steps to seek employment the claimant can reasonably be expected to take	DMG 21638
Claimants with mental, physical, communication or learning disabilities	DMG 21639
Claimants with travel difficulties	DMG 21640
Illiterate claimants	DMG 21641
The steps a claimant took in previous weeks often affect what they can reasonably be expected to do in the week in question	DMG 21644
Claimants who take part in one or more of the activities above (DMG 21634 no.7) do not have as much time as other claimants and this should be taken into account when deciding what steps could reasonably be expected to take in a week	DMG 21648 - 21649
Courses or programmes which help employment prospects	DMG 21655
Claimants with nowhere to live	DMG 21659 - 21662
It is not reasonable to expect claimants to take steps that could result in an offer of employment in a job outside the restrictions they have placed on the hours, nature or conditions of employment they are available for if they show they can satisfy the availability conditions	DMG 21664
Travelling time	DMG 21665 -21666
<b>Whether the claimant can be treated as ASE</b>	<b>Head of Proof 6</b>
Claimant absent from GB to attend an interview for employment	DMG 21699 - 21700
Taking a member of the family abroad for treatment	DMG 21702 - 21703
Member of a couple – both absent	DMG 21705
Mariners and Share Fishermen	DMG 21707
Claimants who are laid off	DMG 21710
Claimants on short time	DMG 21713
Claimants previously incapable of work	DMG 21714
Deaths, Funerals and Domestic Emergencies	DMG 21716 - 21718
Serious Illness	DMG 21719
Discharged from Detention	DMG 21722-21723
Employment or Training Programmes	DMG 21725-21726

Employment-related course	DMG 21727-21730
End of claim to JSA	DMG 21731
Engaged during an emergency in duties for the benefit of others Lifeboat Crew	DMG 21733 DMG 21736
Looking after a child – one member of a couple is absent from the UK	DMG 21737
Person who looks after a child cannot look after the child	DMG 21738
No intention to actively seek employment	DMG 21741 - 21742
Domestic violence	DMG 21724
Open university	DMG 21746
Detained in custody	DMG 21697
Term time	DMG 21789
Programmes provided by Venture Trust	DMG 21754 - 21755
Taking steps to become Self Employed	DMG 21760 - 21771
Temporary absence from GB for NHS treatment abroad	DMG 21772
Treated as capable of work or as not having limited capability for work	DMG 21774
Work Camp	DMG 21776 - 21778

### **How to record the check and subsequent findings**

128. Please record your findings for each individual case in the QAF Template.

### **Jobseeker's Agreement (JSAg)**

129. A full description of what should be included in the JSAg is contained in DMG 21826.

130. 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 variation.

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

### **Heads of Proof References for JSAg**

132. These are the questions / issues that need to be considered when undertaking the checks:

- Claimant has a claim for JSA.
- The proposed JSAg or LMDM direction allows the jobseeker to satisfy both the availability and ASE tests.
- It is reasonable to expect the claimant to do what is in the proposed JSAg/LMDM direction.
- Whether the JSAg can be treated as having been made.
- Whether the JSAg should be brought to an end.
- Whether the JSAg should stay in force.
- Sanction period correctly calculated.

<b>The proposed JSAg or LM LMDM decision allows the claimant to satisfy availability and ASE</b>	<b>Head of Proof 2</b>
The LMDM determines whether if the claimant were to do what is in the proposed JSAg they would satisfy the availability or ASE condition	DMG 21840
See Availability & ASE sections for more details	DMG 21120 – 21488 (avail) DMG 21520 – 21790 (ASE)
<b>The JSAg is reasonable</b>	<b>Head of Proof 3</b>
It is not reasonable for the claimant to do what is in the proposed JSAg if, in doing so, the claimant is unable to satisfy availability and ASE	DMG 21850
The LMDM should not expect the claimant to comply with the JSAg if its terms are not reasonable. Even if it enables the claimant to satisfy availability and ASE.	DMG 21851
<b>Whether the JSAg can be treated as being made</b>	<b>Head of Proof 4</b>
When a claimant can be treated as having entered into a JSAg.	DMG 21910
Where the office is unable to carry out their normal business	DMG 21911
When young people should be treated as having entered into a JSAg	DMG 21920 - 21921
<b>Whether the JSAg should be brought to an end</b>	<b>Head of Proof 5</b>
A JSAg entered into by a claimant and an employment officer should usually end when an award of JSA ends	DMG 21900
This may occur because the claimant's award of JSA is terminated or the claimant's definite award of JSA (cont.) ends	DMG 21901
<b>When JSAg stays in force</b>	<b>Head of Proof 6</b>
If a further claim is made within 14 days of the award ending	DMG 21905
Periods of suspension	DMG 21905
Variation of a JSAg	DMG 21930 – 21951

## How to record the check and subsequent findings

133. Please record your findings for each individual case in the QAF Template.

## Students

134. Claimants who undertake a course of full-time study or training are not generally entitled to JSA because they are not regarded as available for employment.

135. The only exception to this is if:

- They are available for employment or treated as available in specific circumstances and want to claim during the summer vacation from their course, and
- They are single or have a partner who is also a full time student; and
- They or their partner, in the case of a student couple, are or are treated as being responsible for a child or young claimant.

136. Claimants who are participating in part-time courses of study or training or who meet the conditions in the above paragraph may be entitled to JSA provided they satisfy the availability and actively seeking employment conditions.

137. The 'student consideration' for LMDMs is availability which attracts an intermediate level disallowance/sanction of 4, 13 weeks, or indefinitely.

138. The definition of full and part-time students and courses is as follows:

## Full-time Students

139. A full-time student is defined as someone who is:

- undertaking a full-time course of study or training **and**
- not receiving a training allowance.

## Full-time Course

140. The establishment providing the course will define the course as either full or part-time. If they say it is full-time that is how you should treat it regardless of the number of hours involved, unless the course is funded by either:

- Skills Funding; or
- Secretary of State for Education; or
- Welsh Ministers.

141. If the course is funded by any of these bodies, it is only classed as full-time if the course involves more than 16 guided learning hours per week as set out within the student's signed learning agreement (England), or document signed on behalf of the college (Wales).

142. It is a full-time course if the course is partly, or wholly funded by;

- Scottish Ministers; and
- Involves **more** than 16 class-room or workshop based study; or
- 16 hours or less of classroom or workshop based study plus additional hours of structured learning so the total hours are more than 21 per week, as set out within the document signed on behalf of the college (Scotland).

## Part-time Students

143. A part-time student is a person who is attending or undertaking a course of study, and who is not a full-time student.

Note: A person who attends a full-time course on a part-time basis is still a full-time student.

## Part-time Course

144. The establishment providing the course will define the course as either full or part-time. If they say it is part-time that is how you should treat it regardless of the number of hours involved unless the course is funded partly or wholly by either:

- Skills Funding; or
- Secretary of State for Education; or
- Welsh Ministers.

145. If the course is funded by any of these bodies and involves 16 or **less** guided learning hours per week it is a part-time course.

146. The course is part-time if the course is partly or wholly funded by;

- Scottish Ministers; and
- Involves 16 hours or less of classroom or workshop based study; or
- 16 hours or less of classroom or workshop based study and additional hours of structured learning up to a maximum of 21 hours per week.

147. If it is clear that a course is part-time the claimant may be able to receive JSA provided they are available for and actively seek employment and is willing to rearrange or give up the course to take up employment.

148. If it is not clear whether the course is part-time, you should either ask the claimant to provide a letter from the college/training establishment or check their website if one is available. Alternatively, if the course has been running for some time it may be well known that it is a part-time course and should continue to be accepted as such.

149. The LMDM must consider the following questions:

- Is the claimant in full or part-time education?
- Are they available for work?

150. A disallowance/sanction will be appropriate if the claimant:

- Is entitled to JSA (opinion only decision required for credits only cases); **and**
- Is a full-time student (and the exemptions do not apply); **or**
- Is a part-time student and is not available for work.

## Guidance

151. A process map detailing how claimants undertaking a course of study are to be treated can be found here

## Example of Standards Met

152. Paul is undertaking a degree course at university. His partner, Daphne is also a student and has caring responsibility for their son, Tarquin. Paul claims and is awarded JSA for a claim made in the summer. When his course resumes



in the autumn, Paul continues with his claim. The LMDM disallows his claim as he is a full-time student and cannot be regarded as available.

### Examples of Standards Not Met

153. Alan is undertaking a course of photography evening classes at his local college each Monday and Wednesday from 7pm to 9pm. His JSAg shows that he is available for work every day between the hours of 6am to 6pm. He states that he would not be prepared to abandon the course to take a job as he has paid a fee which he would lose. Because of this, the LMDM decides that Allan is not available for work and applies an adverse decision. However, because the course is outside of his agreed pattern of work, the case should have been allowed.

### Heads of Proof References for Students

154. These are the questions / issues that need to be considered when undertaking the checks:

- Claimant was entitled to JSA at the time the disallowance/sanction was given. (Not required where the *case is allowed*). *Not applicable for opinion only cases*.
- Claimant is undertaking a course of study.
- Claimants who are full time students during a period of study are not available;
  - For any period that is not a summer vacation; **and**
  - For the summer vacation unless the claimant
  - Has a partner who is also a full time student **or**
  - is a single student **and**
  - is, or their partner is, treated as responsible for a child or young person **and**
  - can satisfy all of the availability conditions **or**
  - be treated as available because they are taking part in an employment related course or a programme provided by the Venture Trust
- Disallowance/sanction period correctly calculated.
- Disallowance/sanction starts from the correct date.
- Whether days that can be deducted from a period of sanction have been calculated and applied accurately. (Not required where the case is allowed).

Entitled to JSA	Head of Proof 1
Sanction only imposed if entitled to JSA	DMG 34012
Claimant is undertaking a course of study	Head of proof 2
Meaning of course	DMG 30023-30026
Full time course of advanced education	DMG 30027-30028
Course of study	DMG 30035-30038
Employment Related Course	DMG 30045 & 21340-

	21343
Sandwich course	DMG 30047
Meaning of educational establishment	DMG 30056-30057
Terms used in Scotland	DMG 30066-30069
Meaning of student and full time	DMG 30110-30157
Meaning of full time	DMG 30161-30168
Evidence from Educational Establishment	DMG 30170 - 30173
Other evidence	DMG 30175 - 30182
Number of hours involved	DMG 30186 - 30188
Courses funded by the Secretary of State for Education, the Chief Executive of Skills Funding, the Welsh Ministers or the Scottish Ministers	DMG 30190 - 30198
Non funded courses	DMG 30201 – 30203
Eligibility	DMG 30206 - 30210
Meaning of abandons	DMG 30228 - 30233
Meaning of dismissed	DMG 30235
Temporary absences	DMG 30236 - 30238
Part-time student	DMG 30244
Partner only is a full time student	DMG 30245
<b>Claimants who are full time students and make a claim to JSA are not available...</b>	<b>Head of Proof 3</b>
	DMG 21257
<b>Period of disallowance/sanction (including start date)</b>	<b>Heads of Proof 4 &amp; 5</b>
Disallowance/sanction is for the correct period(s)	DMG 34126 - 34128 & 34138 - 34139
Disallowance/sanction starts from the correct date	DMG 34136 - 34137

### How to record the check and subsequent findings

155. Please record your findings for each individual case in the QAF Template.

## Annex 1 - Glossary of Abbreviations Used In This Guide

AR	Acts and Regulations
ASE	Actively Seeking Employment
BtWS	Back to Work Session
DART	Decision and Automated Referrals Toolkit
LMDM	Decision Maker
LMDMA	Decision Making and Appeals
DMAS	Decision Making and Appeals System
LMDMACR	Decision Making and Appeals Case Recorder
DMG	LMDMs Guide
DWP	Department for Work and Pensions

EOT	Employment on Trial
ESA	Employment and Support Allowance
FAVA	Favourable revision
FAVD	Favourable Disallowance
FTA	Failure to Attend
FTP	Failure to Participate
HLS	Higher Level Sanction
HoP	Head of Proof
ILS	Intermediate Level Sanction
JSA	Jobseeker's Allowance
JSAg	Jobseeker's Agreement
JSD	Jobseeker's Direction
LM	Labour Market
LMDM	Labour Market Decision Maker
LMDMA	Labour Market Decision-Making and Appeals
LMDMM	Labour Market Decision Making Manager
LMS	Labour Market System
LV	Leaving Voluntarily
LLS	Lower Level Sanction
MISC	Misconduct
MWA	Mandatory Work Activity
NAMT	National Account Manager Team for benefits
N/REV	Not Revised
OED	Operational Excellence Directorate
PIT	Performance Improvement Team
PP	Permitted Period
RE	Refusal of Employment
RM	Resource Management
SAPOE	Schemes for Assisting Persons to Obtain Employment
SODN	Single Outcome Decision Notification
UFAV	Unfavourable
WP	Work Programme
YP	Young Person

## **Annex 2 - Centralised QAF Process**

### **A. SELECTION PROCESS**

1. The checkers at the QAF site will have manager access to all live DMAS sites
2. They will have a list of all LMDMs doing decisions. (and the initials used on DMAS) for each site.
3. Each Monday a checker will run the SUB7 for the previous week which will show volumes of decisions by LMDM. They will then run individual QC1s for those LMDMs that need to checks to be done and were in work. The

- number of QC1s to be run based on capacity of checking team and where they are up to in the month with each individual LMDM.
4. The QC1s will be split between the checkers depending on how many each checker will be expected to perform.

## **B. CHECKING PROCESS**

5. Each checker should then aim to select the first three decisions, review decisions should be excluded and a maximum of one cancellation.
6. If the case is electronic and all the evidence is stored in ESRO they will then perform the check in accordance with the existing QAF guidance. On electronic cases checkers will assume there is no paperwork unless there is evidence on DMAS that there is additional paperwork on site (e.g. a returned WP12 or an entry in NOTES).
7. If paperwork is required they will send an e-mail to the designated HEO manager, this should be scanned and returned within 24 hours and the check performed on return.

## **C. RECORDING PROCESS**

8. The checker will record the result of the check on a slightly amended existing QAF template (i.e. we can lean this by removing the entries for NI No and LMS Ref No as name and DMAS No are sufficient to subsequently identify a case. An entry for the site name will be needed).
9. Each individual check will be saved into a central shared folder. Each site will have its own sub folder each of which will have a further sub folder for the month being checked. The document will be named as surname of LMDM followed by a number (1 for first check in the month, 2 for second etc.) followed by x if the check failed. So, for example for a LMDM at Walsall called roberts the third check in November would be the Walsall November folder and called "roberts 3" if it passed or if it failed walsall/november/roberts 3x.
10. Each individual checker will keep a log in the central shared folder. This will serve as a record of work done for individual performance purposes and will be used to compile national statistics. This is an amended version of the existing log.

## **D. SITE FEEDBACK**

11. Sites will e-mail the designated manager all failed QAF templates immediately and all correct templates at month end.
12. At month end sites will update a completed site summary. This will be done by examining the monthly folder for each site. As each check will be consecutively numbered it will be easy to see how many were done per LMDM and as those that fail have an x after it will be easy to identify how many failed. This site summary will be sent to the designated HEO.

13. The individual logs will be collated and used to produce an overall national summary for SMT. This will include a narrative summarising the national position and highlighting any issues or trends nationally or at individual sites. A top 3, 5 or 10 errors in the month and year to date may be something for the OLMU..

## **E. DISPUTES**

14. Checkers will have their own e-mail box. Any disputes must be made by LMDMs through their HEO and sent with reasons for dispute to the e-mail inbox.
15. The original checker will look again at the case and if agrees will amend stats records etc.
16. If the checker still thinks the case has failed the QAF check it will be looked at by the other two checkers and if still stands checker will ring the LMDM and explain the reasons for the case failing the QAF.
17. Exceptionally if the site HEO still considers the QAF standard met the case can be escalated to the checkers' HEO.