

## **Neglect to avail employment**

### **Introduction**

1. JSA is not payable if claimants have, without good reason, neglected to avail themselves of a reasonable opportunity of employed earner's employment.

### **Circumstances in which neglect to avail is likely to arise**

2. The circumstances in which neglect to avail cases are most likely to occur are where:

- a claimant behaves in such a way that they lose a reasonable opportunity of employment, for example they act in such a way which offends the employer or deliberately arrives late for the interview;
- a claimant is temporarily laid off due to shortage of work but fails to return to that job when work becomes available;
- a claimant fails to exercise their right to return to work, for example:
  - a woman who fails to exercise her right to return after maternity leave;
- an employer withdraws an offer of employment because of a claimant's behaviour.

3. Most cases will come to light either from a telephone call from an employer or on form ES85.

4. The claimant must always be advised at the time neglect to avail action is taken that their neglect may result in loss of JSA. This ensures that the claimant has full knowledge of the consequences of their actions.

5. Neglect to avail action must still be taken even if the claimant is within their permitted period. However, action is not appropriate when the employment opportunity was vacant owing to a trade dispute.

### **Failure to return to work following maternity leave**

6. With ex-maternity cases, it may be more appropriate to consider leaving voluntarily or both leaving voluntarily and neglect to avail when submitting to the Labour Market Decision Maker (LMDM).

7. The LMDM will decide when the claimant's statutory maternity pay period has ended and the date when the neglect occurred.

### **Offers of alternative employment when a claimant is made redundant**

8. Employers may give employees the option of choosing between redundancy or taking an alternative job. If the claimant declines the offer of alternative employment, and the employer reports this to Jobcentre Plus, neglect to avail action is appropriate.

9. Contact the employer and ask the relevant questions to enable form ES195(NTA) to be completed.

10. If the terms and conditions of the employment offered are less favourable than those which the claimant had in their previous job with the employer, the claimant may have good reason for their neglect. However, if the terms are not

less favourable than those which the claimant had in their previous job with the employer, the claimant will have to show good reason in order to avoid being sanctioned for their neglect.

11. Either case **must** be referred to the LMDM.

### **Claimant's behaviour**

12. A sanction may be appropriate if the claimant behaves in such a way that they lose a reasonable opportunity of employment.

13. Examples of such conduct are where a claimant:

- arrives late or does not turn up for an interview;
- arrives at the wrong place through their own negligence;
- imposes unreasonable conditions on acceptance of a job;
- behaves in such a manner at an interview that the employer decides not to offer them a job;
- delays acceptance of a job until it has been taken by somebody else;
- accepts a job but then fails to start on the agreed day.

14. In such circumstances, the claimant's conduct may amount to neglect to avail. It is possible that a reference to the LMDM on refusal or failure to apply for or accept employment may be more appropriate.

15. However, if there is a doubt about the correct question to be referred, check beforehand with the LMDM.

### **ES195(NTA)**

16. Where a claimant has neglected to avail themselves of a reasonable opportunity notify them of this on Form ES195(NTA).

17. Form ES195(NTA) is a clerical form. The front is completed after obtaining details of the vacancy from the employer; the reverse provides space for the claimant to give reasons for their neglect.

### **Obtaining information to complete ES195 report form**

18. In neglect to avail cases the information required about the vacancy will not be recorded on the Labour Market System (LMS).

19. Contact the employer who made the opportunity known to the claimant and record the following information on the ES195N.

20. The information you require is:

- The name and address of a contact in the company to whom enquiries may be despatched;
- The terms and conditions of the job the claimant had held previously, including: hours, salary, job title and location;
- The terms and conditions of the job offered now, including: hours, salary, job title and location;
- How, if at all, the terms and conditions of the job offered differ from those in the job the claimant held previously;
- The date the claimant last worked for the employer;
- The date that the claimant was made aware of the opportunity;

- The reasons the claimant gave the employer for their neglect;
- Details of any training opportunities the claimant may have undertaken recently.

21. The information entered on the ES195N can be used to populate the ES195(NTA).

22. The ES195N should be retained in the claimant's Labour Market Unit (LMU) pending the return of the ES195(NTA).

### Claimant Neglects to Avail

23. If a claimant Neglects to Avail themselves for employment, the case must be referred to a LMDM for a good reason decision.

24. To make a DMA referral take the following action on LMS:

Step	Action
1	Click the [Dec] or [NoDec] button in the Client Details window. <b>Note:</b> If no previous DMA action has been taken, you will automatically get a New Referral/Decision Details window. If one or more is already held, click [New]
2	Click the [Question] hotspot and select 'Avail/RE/ASW' then 'Neg to Avail - Emp' from the drop down menu
3	Record the Source as appropriate
4	Record the Ref to as 'LM DMA Office'
5	Click [Save]

25. In addition to taking the appropriate steps on LMS, action must be taken to prepare the submission before the case can be referred to the LMDM:

Step	Action
1	complete form ES195(NTA) using the information on ES195N;
2	print Referral Notification Letter (ES48S) from LMS;
3	post the ES195(NTA) together with leaflet ESL48JP and the ES48S to the claimant and ask them to provide a statement of the reasons why they neglected to avail themselves of employment
4	on the appropriate LMS 'View referral/decision details' screen, record the date of issue of the ES195(NTA) in the Notes and initial and date the entry.
5	where the ES195(NTA) is not returned immediately, input a workflow on LMS for 7 days from the date of issue;
6	advise the claimant that the case will be referred to the LMDM, either on the day they return form ES195(NTA) or in 7 calendar days, whichever is earlier.

### Action on return of ES195(NTA)

26. Claimants are allowed, by law, one week to return form ES195(NTA). On its return take the following action:

Step	Action
1	select the appropriate DMA screen on LMS and record receipt of ES195(NTA) in the notes area;
2	ensure all relevant information is gathered for the submission;
3	Send the submission to the LMDM to enable them to make a good reason decision

### Action when ES195(NTA) is not returned within one week of issue

27. If the claimant has not returned form ES195(NTA) after one week take the following action:

Step	Action
1	select the appropriate DMA screen on LMS and in LMS notes screen enter [ES195(NTA) Not Returned];
2	ensure all relevant information is gathered for the submission;
3	Send the submission to the LMDM to enable them to make a good reason decision

28. If the claimant has not returned the ES195(NTA) within 7 days but they are no longer claiming JSA, reference to the LMDM is not appropriate at that stage. Note the LMU and LMS Conversations that DMA action remains outstanding if the claimant subsequently reclaims.

29. The case must be referred to the LMDM if the claimant reclaims within 26 weeks of the last day paid

30. In such cases, you will need to let the LMDM know why there was a delay in submission and the reason why the claim was terminated initially.

### Submission action

31. Prior to submitting the case to the Labour Market Decision Maker (LMDM), it should be established using JSAPS dialogue JA504: General Enquiry whether or not the claimant is claiming credits only.

### Credits only claimants

32. A submission to the LMDM for an opinion decision must not be made for 'credits only' claimants who NTA. However, Jobcentres should check the reasons claimants give for NTA to identify any availability and/or ASE doubts. Where a doubt exists, an availability and/or ASE referral should be made to the LMDM as appropriate.

33. The following action is required on LMS:

Step	Action
1	on the LMS 'View referral/decision details' screen amend the 'Ref To' field for the appropriate NTA doubt to [N/A – Lifted]
2	in the 'Notes' field enter the reason why the doubt has been lifted as Credits only claim.

## **JSA Claimants**

34. If a claimant in receipt of JSA neglected to avail themselves of a reasonable opportunity of employment, the case must be referred to a LMDM for a good reason decision.

35. Access LMS and check the 'View Referral / Decision Details' screen.

36. The following steps must be taken before making the submission:

- Ensure all relevant information is gathered for the submission; and
- Prepare the Sector Referral Form on LMS and add any additional clerical entries where appropriate; and
- Enter the claimant's details on an ES66

37. Send the submission to the LMDM to enable them to make a good reason decision. See the DMA Referrals Guide chapter for further information on what must be included in the submission.

## **Decision made by the Labour Market Decision Maker**

38. The details of the decision will be automatically entered into the LMS 'Referral/Decision Details' screen once the LMDM has input their decision into DMAS.

39. The LMDM will email their decision notification to JSA Maintenance team from DMAS for action; therefore no further action is required in the Jobcentre.

**Note:** If copies of the decision notification and/or case papers are received at the Jobcentre these should be retained for monitoring purposes.

40. If a claimant neglects to avail themselves of employment prior to 22 October 2012, they will receive a variable sanction of between 1 and 26 weeks regardless of when the LMDM determines that a sanction is applicable.

41. However, if a claimant neglects to avail on or after 22 October they will receive a higher level sanction of 13 weeks, 26 weeks or 156 weeks. Further information around the new sanctions regime is available within the Sanctions and DMA Guidance.

## **Hardship**

42. When a claimant has been sanctioned for neglect to avail, JSA will not be payable under the normal rules for the period of the sanction. In these circumstances, the claimant may wish to apply for a hardship payment.

## **Reserved Decisions**

43. A Decision Maker may decide to reserve a decision. This will normally be when a sanction is appropriate, but cannot be imposed because the claimant is no longer claiming JSA.

44. In these cases the LMDM will send a DMAS produced notification to the Jobcentre advising them of this, and at the same time LMS will be automatically updated with this decision.

45. There is no input to JSAPS for reserved decisions.

46. The case must be re-referred to the LMDM, as a new referral on LMS, if the claimant reclaims within a timescale:

- as specified by the LMDM in their reserved decision; or
- equal to the maximum sanction period applicable for the case.

47. If a case is re-submitted and the claim was originally a joint claim for JSA, it is important to ensure that the details held on LMS are up to date. It should be established whether the claimant is still part of a joint claim and if so, full details of the other member at the time that the decision was made, must be indicated in the referral.

## **Additional Information**

### **NTA and credits only claimants**

48. Credit regulations do not support the disallowance of credits solely because a claimant neglected to avail themselves of a reasonable opportunity of employed earner's employment. Providing a claimant is:

- Available;
- Actively Seeking Employment;
- under the age they can get Pension Credit; **and**
- not in remunerative work or relevant education

they can be awarded a National Insurance credit.

49. Therefore, a submission to the LMDM for an opinion decision must not be made for 'credits only' claimants who NTA.

50. However, Jobcentres should check the reasons claimants give for NTA to identify any availability and/or ASE doubts. Where a doubt exists, an availability and/or ASE referral should be made to the LMDM as appropriate.

### **Joint Claims**

51. In a joint claim both claimant's are subject to the same JSA entitlement conditions, unless they fall within one of the exempt categories.

52. One or both claimants in a joint claim can be sanctioned for Neglect to Avail, take the same action for one or both claimants, as appropriate.