



FSDM01

Higher Level Sanctions

Illustrative Examples

Facilitator's Running Note 1
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Higher Level Sanctions Illustrative Examples - Facilitator's Running Note



Before delivery of this module you should familiarise yourself with the contents of the UCFS Facilitator's Preparation Pack.



FSDM07 Sanctions Workbook is pre-workshop reading. The learners should have read Topics 1, 2 and 3 before attending this workshop.

Timing

It will take approximately 3 hours to complete this workshop.

Workshop Aim and Objectives

Aim

This workshop aims to give you the knowledge and confidence to make reasoned decisions on higher level sanctionable failures.

Objectives

By the end of this workshop, with the aid of any reference material, you will be able to:

- demonstrate how to make a reasoned decision on a higher level sanctionable failure
- explain the principles of good reason
- demonstrate how to use Advice for Decision Making

How to use this Facilitator's Running Note

This Facilitator's Running Note must be read in conjunction with Facilitator's Running Note 2 (FRN 2).

There are six higher level illustrative examples for the learners to consider.

In each case, the learners should use guidance to determine whether or not to sanction the claimant.

Each example contains background details.

Ideally learners should have access to the internet. Get them to access Advice for Decision Making and give them a few minutes to look at the guidance.

Ask the learners the questions listed under each example

heading in this Facilitator's Running Note.

The expected answers are given under each question.

Learners may have answers that are not expected. The answer might not necessarily be wrong – as long as they can back up their opinion using the guidance.

Decision Makers must gather further evidence, if they need it.

For each example in '**ADM Paragraphs to Consider**' the paragraph numbers are listed. The actual paragraphs are in FRN 2.

Leaving Paid Work or Losing Pay Voluntarily

Rukshana Begum

Rukshana, age 32, is in the all work related requirements group

She claimed Universal Credit on 02/02/2016. She has no health conditions or caring responsibilities.

Information from Claimant

She was employed at Media Solutions from 04/02/2013 to 18/01/2016 as a web designer.

She states she left her job because split up from her partner. He owned the house and he kicked her out. She had nowhere to live, so moved back to her parents' home which is 200 miles away.



Is there enough information for you to make a reasoned decision?



Expected answer: No



See ADM Chapter K2 – Good Reason, paragraph K2031.

FSDM01 Higher Level Sanctions Illustrative Examples

FRN 1



Decision Makers are encouraged to talk to the claimant on the phone.



Discuss making the phone call with the learners.

How would they introduce themselves?

What questions would they ask?

The learners should ask questions that establish the sequence of events. They should try to establish a timeline to determine the speed at which the claimant was forced to leave her home. They should also establish what efforts she made to find alternative accommodation before leaving her job.

How would they end the call?



Get the learners to ask you the questions they would ask Rukshana.

Use the information in the facilitator's note below to answer them. Do not 'lie', but do not volunteer information unless they ask.



Rukshana has been living in Newcastle with her fiancé, Bram, for two years, in the house he owns.

On the evening of the 18/01/2016 Bram and Rukshana had a row about her spending. Bram became furious and started



swearing and shouting at her. Although Bram didn't become physically violent towards her, she was scared that he would.

He screamed at her to 'get out of his house'.

She rushed upstairs, stuffed some clothes and her wash-bag into a rucksack, and left. She drove the 200 miles to her parents in Birmingham, and has been staying with them ever since.

Rukshana has friends in Newcastle, but they are all also friends of Bram. Rukshana was unwilling to approach any of them for help.

She was very stressed, and very scared. She was completely unable to think clearly.

You must make it very clear that Rukshana was stressed, scared and not thinking clearly at the time she left home.

Rukshana's employer doesn't have offices outside Newcastle. She would not be able to work remotely in her job.

Bram works close to Rukshana's old employers. She doesn't want to see him.

Rukshana feels she needs to stay in Birmingham, where she has the support of her family and friends.



Can you now make your decision?



Expected answer: Yes.



What decision will you make?



Expected answer: No sanction.



The expected answer is that the claimant will not be sanctioned. However, some Decision Makers may choose to sanction the claimant.

This will depend on whether the learners consider that the claimant needed to return to her parents urgently, and whether the circumstances she found herself in temporarily affected her mental health.

This example may cause considerable discussion.

This example has been designed to be a border-line domestic violence example as the claimant wasn't subject to violence but had reason to feel afraid.

ADM paragraphs to consider

Good reason and onus of proof

ADM K2004

ADM K2005

Gathering and Considering Evidence

ADM K2021

ADM K2022

ADM K2023

ADM K2052



Advice for Decision Making, Chapter K2 paragraph K2051 gives examples of a claimant's circumstances which may be treated as contributing to good reason.

Moving home and homelessness:

ADM K2091

ADM K2093

ADM K2271

ADM K2272

ADM K2274

ADM K2275



This part of the guidance should not be read in isolation, as there are other parts of Advice for Decision Making that have a bearing on this example.

Mental health and individual circumstances:

ADM K2062

ADM K2073

ADM K2112 (note 2)

In this scenario and, in view of the timescales involved, it is not reasonable to expect the claimant to have made efforts to find employment in the area she moved to, before leaving her job.

It may be reasonable to expect her to have made some efforts to find alternative accommodation or at least have asked her employer for time off to do so.

However, the answers to her questions indicate that she felt stressed by the situation and was not able to make rational decisions. While you can't be expected to assess a claimant's mental state, it is reasonable to assume that she was not thinking clearly due to distress.

You must consider if the claimant had good reason for acting as she did. Did she behave as a reasonable person would

behave in these circumstances? Was she in a vulnerable state?

Draw attention to the fact that in these circumstances a person thrown out of their home by a partner could be threatened with domestic violence. A work coach may decide not to impose work related requirements for a limited period on a claimant who has been threatened with domestic violence. The Work Coach has not made such a decision in this example.



Decision Makers must be aware that a claimant who has left employment because of threatened or actual domestic violence from an estranged family member are to be treated as having good reason for so doing.

In this example though, there was no direct threat made, but the answers suggest the claimant is nervous about meeting her ex-partner.

Antony Gale

Antony, age 40, is in the all work related requirements group.

He claimed Universal Credit on 25/01/2016. He has no health conditions or caring responsibilities.

Information from Claimant

He states that he was made redundant from his job at Prestige Radiators on 22/01/2016.

Information from Employer

Antony left his job after refusing to take on additional responsibilities. He said he did not want to do the extra travelling that was required.



Is there enough information for you to make a decision?



Expected answer: No



The claimant's reason for his job ending does not agree with the employer's reason.



The DM should seek further evidence where it is considered necessary. See Advice for Decision Making, Chapter K2 – Good Reason K2031



Decision Makers are encouraged to talk to the claimant on the phone.



Discuss making the phone call with the learners.

How would they introduce themselves?

How would they explain that Antony's employer does not say he was made redundant, but left voluntarily?

What questions would they ask?

The learners should ask questions that establish why Antony considered he was made redundant. They should establish why his objections to low cost airlines led to him leaving his job. They should also establish what efforts he made to find another job before leaving, and why he couldn't have remained in his job until he had found alternative employment.



Get the learners to ask you the questions they would ask Antony.

Use the information in the facilitator's note below to answer them. Do not 'lie' to them, but do not volunteer information unless they ask.



Prestige Radiators went through an expansion in November 2015. They are opening a new branch in Dublin, Ireland. Antony's employer confirmed that they wanted him to

manage the new branch.

This would have involved Antony staying in Dublin during the initial set-up (from 16/03/2015 for a week).

After the initial set-up Antony would be expected to visit the Dublin branch on a regular basis – although the employer isn't sure at the moment how often he would need to go there.

The flight to Dublin takes 45 minutes from Antony's local airport. He would be expected to use a low-cost airline. He lives close to an airport that has a regular low-cost service to Dublin.

Antony's job already involved extensive traveling throughout the UK, but he normally only has to stay away from home for one night at a time.

Antony was offered a salary increase and 2 additional days' holiday per year.

Antony doesn't like traveling by low-cost airlines, so doesn't want to do the extra travelling

He told his employer this.

His employer said that they really needed him to take on the new role. They suggested that he try out it to see how it goes. They didn't want to bring in a new manager just to manage the Ireland branch.

However Antony wasn't willing to try it out.

As far as he was concerned he was made redundant because his employer no longer wanted him in the role he was doing. However, he was not given a statutory redundancy payment or any other compensation.

He made no attempt to find alternative employment, because he felt he didn't have time to.



Do you now have enough information to make a reasoned decision?



Expected answer: Yes



Though the expected answer is yes, some learners may feel that they want to contact the employer to find out their normal policy on flying and what happened to Antony's job after he left. If the learners want this information you can play the employer and give them the following:

1. Company policy is that all travelling is done by the most cost-effective means possible. If air-travel is necessary they use low-cost airlines wherever possible.
2. The employer has advertised for a replacement who will take on Antony's role.



What decision would you make?



Expected answer: sanction.

ADM paragraphs to consider

Good reason and onus of proof

ADM K2004

ADM K2005

Gathering and Considering Evidence

ADM K2021

ADM K2022

ADM K2023

ADM K2052

Leaving voluntarily and redundancy

ADM K3203

ADM K3251

ADM K3252

ADM K3253

In this example the business was expanding. They were not recruiting new employers, but were not losing staff. Antony (or another person) would still have been expected to continue with his previous duties.

Changing terms and conditions

ADM K3241

Although the employer wanted to impose a change to Antony's terms and conditions, the change could not be considered 'a lot less favourable' because:

- he was offered a pay rise and extra holiday which would compensate for the extra responsibility and travelling
- he was not certain how much extra travelling would be required after the initial set up.

Antony has not given any reason for his objection to the extra travelling other than having to fly on a low-cost airline.

He has not objected to flying or staying away overnight in general.

In these circumstances it would have been reasonable for Antony to have accepted the change and then see how much extra travelling was required.

Loss of Paid Work or Pay through Misconduct

David Carr

David, age 45, is in the all work related requirements group.

He claimed Universal Credit on 08/02/2016. He has no health conditions or caring responsibilities.

Information from Employer:

Employer - Golden Jackpot Casino

Dates of employment 16/06/2003 to 02/02/2016

Employed as a croupier

Reason for employment ending: dismissed for breach of company policy.



Is there enough information for you to make a reasoned decision?



Expected answer: No



In misconduct cases the onus of proof is on the employer to demonstrate that the claimant acted as they alleged.

The Decision Maker determines whether the claimant's actions constituted misconduct.



See Advice for Decision Making, Chapter K3 paragraph K3081.

From the information that you have you can't tell whether the 'breach of company policy' is misconduct.



Ask the learners to draw up a list of questions that they would ask the employer.



The following questions are suggestions. Learners may think of other questions that are still valid.

Suggested questions:

1. Please state what company rules Mr Carr had broken.
2. Had he previously broken these rules? If yes, on how many occasions?
3. Was he aware that he had broken the rules? If yes, please state how he was made aware of the rules and on what date.
4. Please describe the incident (or incidents) that lead to Mr Carr's dismissal.
5. What reason, if any, did he give for his actions?



6. Why did you feel it necessary to dismiss Mr Carr?

The learners will probably suggest questions that are different to those above. This does not mean that the learners' questions are wrong.

However the learners should ask questions that establish the sequence of events and whether the claimant's actions constitute misconduct.

These exact questions have been used in the next part of this exercise.

Answers from the Employer

1. Please state what company rules Mr Carr had broken.

The Company's policy on drug use.

2. Had he previously broken these rules? If yes, on how many occasions?

No

3. Was he aware that he had broken the rules? If yes, please state how he was made aware of the rules and on what date.

Yes - the rules are in the staff hand-book which was issued to Mr Carr when he started work.

4. Please describe the incident that lead to Mr Carr's dismissal.

On 01/02/2016 Mr Carr asked to see the Personnel Manager. He told her that he had been to court due to a drug related offence. He was found guilty and fined £500. The local press were present and Mr Carr felt it was better to confess now rather than let us read about it in the paper.

5. What reason if any did he give for his actions?

A lapse of judgment.

6. Why did you feel it necessary to dismiss Mr Carr?

Under Gaming Licence Laws if drugs are found on premises the licence is withdrawn. The staff handbook states that if employees have dealings with drugs they will be dismissed immediately.



Can you make a decision at this point for this example?



No. In misconduct cases the claimant must be given an opportunity to comment on all statements that their employer made about them.



See ADM Chapter K3 – Higher Level Sanctions K3086



What must you consider before you show the claimant the employer's answers?



Whether the employer has made a defamatory statement.



In this example the Decision Maker has written to the claimant to ask him to comment on his employer's statements. The claimant has **not** replied.



Can you now make your decision?



Expected answer: Yes.



What decision will you make?



Expected answer: sanction.

ADM paragraphs to consider

What is misconduct

ADM K3067

ADM K3069

ADM K3070

ADM K3071

ADM K3072 point 3

ADM K3072 point 7

Onus of proof and evidence

ADM K3081

ADM K3082

ADM K3086

ADM K3097

Court convictions

ADM K3093

ADM K3094

**There is no disagreement about the offence for which
David was convicted or the nature of the conviction.**

Misconduct outside employment

ADM K3106

Failure to follow rules and regulations

ADM K3112

Charlotte Johnson

Charlotte, age 22, is in the all work related requirements group.

She claimed Universal Credit on 15/01/2016. She has no health conditions or caring responsibilities.

Information from claimant:

I was sacked because I stood up for myself to a so called customer.

Information from Employer:

Employer - ABC Cars

Dates of employment 04/10/2014 to 10/01/2016

Employed as a cab co-ordinator

Reason for employment ending: dismissed for misconduct - offensive behaviour.



See Advice for Decision Making, Chapter K3 paragraph K3081.



Is there enough information for you to make a reasoned decision?



Expected answer: No



In this example, the Decision Maker has rung the employer, but the employer has asked them to write to them.



What questions would you ask the employer?



Suggested questions:

1. Please state the nature of the misconduct, and when it took place.
2. Had there been previous incidents of swearing? If so please describe them.
3. If yes, on how many occasions?
4. Was she given any warning?
5. If yes, please state how and on what date.
6. Please describe the incident (or incidents) that lead to Ms Johnson's dismissal.
7. On what dates did these incidents occur?
8. What reason if any did she give for her actions?
9. Why did you feel it necessary to dismiss Ms Johnson?



The learners will probably suggest questions that are different to those above. This does not mean that the learners' questions are wrong. However, the learners should

ask questions that establish the sequence of events, whether the claimant's actions constitute misconduct and whether that misconduct lead to her dismissal.



You have received the following reply from the employer:

Give the learners the following replies from the employer. (You may choose to give these statements verbally, copy them on to flip-chart or a wipe-board, or create another handout containing them.)

Question 1: Please state the nature of the misconduct and when it took place.

Employer's statement: Offensive behaviour - swearing at a customer. 22/12/2015.

Question 2: Had there been previous incidents of swearing? If so please describe them.

Employer's statement: Ms Johnson used the 'f-word' in front of a driver.

Question 3: Were there any other incidents? If yes, on how many occasions?

Employer's statement: Two or three.

Question 4: Was she given a warning? If yes please state how and on what date.

Employer's statement: Yes. I told her to watch her language

on 10/11/2014.

Question 5: Please describe the incident (or incidents) that lead to Ms Johnson's dismissal.

Employer's statement: A driver overheard Ms Johnson tell a customer to p*ss off over the phone.

Question: Were there other witnesses?

"They all occurred in front of Jack Dunn. Jack is my most experienced driver. I have known him twenty years and he doesn't tell lies."

Question 6: Did the customer make a complaint about being sworn at?

"No"

Question 7: If there was a gap between the incident that led to Ms Johnson's dismissal and the date of her dismissal, please explain the reason for the gap.

"I was trying to find out who the customer was."

Question 8: Why did you feel it necessary to dismiss Ms Johnson?

Employer's statement: I can't have staff being offensive to customers.



In this example, the claimant comments on the statements that the employer made.

Give the learners the following statement from Ms Johnson. (You may choose to give these statements verbally, copy them on to flip-chart or a wipe-board, or create another handout containing them.)

Question 1: Please state the nature of the misconduct and when it took place.

Employer's statement: Offensive behaviour - swearing at a customer. 22/12/2015.

Claimant response: "The so-called customer sounded like a kid messing about. He said his name was Ivor Biggun and he started giggling. I could hear giggling in the background too. I lost my temper a bit."

Question 2: Had there been previous incidents of swearing? If so please describe them.

Employer's statement: Ms Johnson used the 'f-word' in front of a driver.

Claimant response: "I broke a nail and I swore. I didn't realise that anyone else was in the room until I looked up and saw that Jack was there."

Question 3: Were there any other incidents? If yes, on

how many occasions?

Employer's statement: Two or three.

Claimant response: "I only remember this one incident."

Question 4: Was she given a warning? If yes please state how and on what date.

Employer's statement: Yes. I told her to watch her language on 10/11/2014.

Claimant response: "Kevin (the manager) called me in and told me that I mustn't use the 'f-word' because it upsets some people. I haven't used it since then."

Question 5: Please describe the incident (or incidents) that lead to Ms Johnson's dismissal.

Employer's statement: A driver overheard Ms Johnson tell a customer to p*ss off over the phone.

Claimant response: "As I said, the customer sounded like a kid messing about. I can't remember exactly what I said to him. I think it something like 'stop wasting my time!' Again Jack overheard me."

Question 6: Did the customer make a complaint about being sworn at?

Employer's statement: No

Claimant response: N/A

Question 7: If there was a gap between the incident that led to Ms Johnson's dismissal and her the date of her dismissal, please explain the reason for the gap.

Employer's statement: I was trying to find out who the customer was.

Claimant response: N/A

Question 8: Why did you feel it necessary to dismiss Ms Johnson?

Employer's statement: I can't have staff being offensive to customers.

Claimant response: "That was just an excuse. Jack didn't like me and Mike's niece needed a job. That was why I was dismissed!"



Do you have enough information to make a decision for this example?



Expected answer: Yes



What decision would you make?



Expected answer: No sanction.

ADM paragraphs to consider:

What is misconduct

ADM K3067

ADM K3069

ADM K3070

Onus of proof and evidence

ADM K3081

ADM K3082

ADM K3097

ADM K3186

Use of bad language

ADM K3172

Claimant continues working for some time after the misconduct

ADM K3189

ADM K3190

ADM K3191

In this example the misconduct was not an immediate cause.

Failure to Take up Paid Work or Apply for a Vacancy

Amelia Smith

Amelia, age 55, is in the all work related requirements group.

She has been receiving Universal Credit for five months. She has no health conditions or caring responsibilities.

On 17/02/2016, Amelia's Work Coach gave her a work-search requirement to apply for a job at a local supermarket by 24/02/2016.

Method of notification: Face to Face

Amelia refused to apply for the job.

The vacancy is still open.

Details of Vacancy

The vacancy was for a shop floor assistant at a supermarket, with duties including customer service and replenishing shelves. The new employee would be expected to work 30 hours per week. They would be given training in all areas, including health and safety.

Statement from Work Coach

There are no restrictions on the claimant's availability. She is looking for 'shop work' and there are no restrictions on the

hours she is willing to work (up to 40 hours per week).

Claimant's Reasons for Not Applying

I don't want this job because it might involve lifting heavy boxes. I don't want to do a job with heavy lifting. My sister permanently damaged her back doing that.

I want to work in a clothes shop. My last job was a temporary one in a clothes shop and that didn't involve heavy lifting.



The work coach should interview the claimant before referral and to give them an opportunity to comment on the employer's statements.



Has the Work Coach provided enough information to make a decision?



Expected answer: yes.



What decision would you make?



Expected answer: sanction.

ADM paragraphs to consider

Good reason and onus of proof

ADM K2004

ADM K2005

Gathering and Considering Evidence

ADM K2021

ADM K2022

ADM K2023

ADM K2052



Specific examples of a claimant's circumstances which may be treated as contributing to good reason are listed in ADM K2051

Claimant fails to take up or apply for paid work

ADM K3051

Refusal or failure

ADM K3057

Claimant changes their mind

ADM K3058

Vacancy suspended or withdrawn

ADM K3059

Josef Kriek

Josef, age 51, is in the all work related requirements group.

He claimed Universal Credit on 11/03/2014. He has no health conditions, no caring responsibilities. He drives and has his own car. He has an HGV Licence.

Failure Details

On 04/02/2016 Josef's Work Coach gave him a work search requirement to attend a job interview ACB Furniture on 09/02/2016. Mr Kriek says that he attended the interview but was not offered the job.

Method of notification: Face to Face

Vacancy Details

The vacancy was for a delivery driver for a furniture store, with duties including loading and unloading the van and delivering furniture. The employee would be expected to work 40 hours per week. They would be given training in all areas, including health and safety.

Information from Employer

The employer contacted the work coach and states that, at the interview, Josef told him that he had only come because he has been made to go by his work coach, and didn't seem interested in getting the job.

Josef asked him to sign a statement to say that he had attended the interview.

Statement from Work Coach

There are no restrictions on Josef's availability. He is looking for work as a truck driver or delivery driver. There are no restrictions on the hours he is willing to work (up to 40 hours per week).

The employer is a small family based company, who have advertised with the job centre once before. On that occasion they took on a claimant referred to them, and provided constructive feedback on unsuccessful applicants.

The work coach has discussed how to prepare for interviews with Josef (including how to dress, researching the company and behaviour at interviews).

Josef has a history of meagre job search, and being late for interviews.

He has been sanctioned twice for failing to take part in Work Focused Interviews.

The work coach interviewed Josef and asked the following questions:

Did you say that you had only gone to the interview because your work coach told you to?

Josef replied 'No I never'

What happened at the interview?

Josef replied 'The boss didn't seem impressed with me. I don't think I had the experience he was looking for. He asked me why I wanted to work for his firm and I told him I didn't know that much about the firm and that my work coach had sent me. I really want a job. I went there as I said I would, but he didn't seem to like me.'



Claimants may not actually refuse or fail to apply for or accept paid work for it to be a failure to comply. A failure to comply includes not taking the appropriate steps to improve their chances of getting the job such as attending an interview and behaving in such a way that they lose the chance of getting the vacancy.



Is there enough information for you to make a decision?



Expected answer: Yes



What decision would you make?



Expected answer: sanction

ADM paragraphs to consider

Good reason and onus of proof

ADM K2004

ADM K2005

Gathering and Considering Evidence

ADM K2021

ADM K2022

ADM K2023

ADM K2052

Claimant fails to take up or apply for paid work

ADM K3051

Refusal or failure

ADM K3057

Claimant changes their mind

ADM K3058

Vacancy suspended or withdrawn

ADM K3059

In this example the employer states that Josef made a statement which led him to doubt that Josef wanted the job.

Previous failures

ADM K2041

There is evidence from both the work coach and the employer which contradicts Josef's statement.

The employer has a good relationship with the office and the action he has previously taken does not indicate that he would make unfounded allegations.

Josef's job search history is not impressive, and he has a history of late attendance for interviews. His replies about what happened at the interview indicate there might have been a misunderstanding between him and the employer.

Josef admitted that he did not know anything about the company, although he had time to research it before the interview.

Standard of proof and balance of probability

ADM A1340

ADM A1341

ADM A1392