

Favourable decisions

28. A favourable decision, sometimes referred to as being an allowance decision, is one that is found in the claimants favour.

29. Favourable decisions will be applied when a LMDM is content that the claimant satisfied the JSA conditions of entitlement or that they had good reason for a sanctionable failure whether JSA or ESA.

Adverse decisions

30. An adverse decision is one that is found against the claimant.

31. Adverse decisions will be applied when the LMDM considers that the claimant did not satisfy the LM conditions of entitlement to JSA or that they did not have good reason for a [sanctionable failure](#) whether for JSA or ESA.

JSAg/Claimant Commitment Determinations and directions

32. If the doubt relates to a JSAg/Claimant Commitment, the LMDM will give a determination as to whether:

- the proposed JSAg/Claimant Commitment would enable the jobseeker to satisfy the availability and/or ASE conditions **and**
- it is reasonable to expect the jobseeker to comply with the proposed JSAg/Claimant Commitment

33. Following the determination it may be necessary to give one or more directions on what terms and conditions, in the opinion of the LMDM, should be included in the JSAg/Claimant Commitment. The LMDM may also direct the date from which the JSAg/Claimant Commitment should take effect and, in certain situations, may also terminate a JSAg.

34. Detailed guidance on JSAs can be found in [Chapter 21 of the DMG](#).

Opinion decisions

35. LMDMs may be asked to give their opinion on whether a claimant was available for and/or actively seeking employment. This is usually where a payment DM has decided there is no entitlement to JSA and a LM doubt arises. The LM opinion given by the LMDM is taken into account when a payment DM decides whether to award National Insurance (NI) credits.

Note: Where the doubt has been referred for a 'full' decision and there is no entitlement to JSA, the AR (Acts and Regulations) code on DMAS should be amended to reflect an opinion only. See the [DMAS User Guide](#) for further guidance.

36. Decisions issued on the award of NI credits are outcome decisions in the same way as other decisions on entitlement of JSA. As such, credits decisions carry the same dispute and appeal rights. If a claimant

disputes a credits decision, or appeals against it, the LMDM may be asked to provide a detailed explanation of the opinion, reconsider the <https://intranet.dwp.gov.uk/manual/dmas-user-guide> opinion or to provide a contribution to the appeal submission.

Opinion decisions for sanction doubts

37. Credit regulations do not support the disallowance of credits solely because a claimant commits a sanctionable failure. A claimant can be awarded a NI credit providing they are:

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

38. Jobcentre staff have been advised not to make LMDM referrals for opinion decisions for sanction doubts. If any are received, the case should be cancelled.

Note: The above advice did not extend to providers (such as Work Programme providers) due to the complexities involved in providers identifying these cases correctly. Therefore, it is possible that some cases will be referred from providers requiring an opinion decision for a sanction doubt. These cases should be cancelled upon receipt and a note must be issued to the provider stating why a decision cannot be made.

Reserved Decisions

Note: Reserved decisions do not apply to ESA or IS doubts; applies to JSA only

39. A reserved decision is not prescribed for in legislation, but where an award of JSA ends before a sanction determination is made, the LMDM can in certain circumstances make a reserved decision.

40. A LMDM should give a reserved decision where a sanction would be appropriate but cannot be imposed because the claimant does not have a current claim to JSA.

41. As a reserved decision has no standing in law, Jobcentres are required to re-refer cases to the LMDM for further consideration (as a new referral on LMS) if the claimant reclaims JSA within the period of the reserved decision.

42. Notification of reserved decisions must be sent to the Jobcentre so that the case can be re-referred if/when applicable. However, as there is no input to JSAPS for reserved decisions there is no requirement for processing staff to be informed of the decision.

43. The length of a reserved decision will usually equal the maximum sanction period applicable but LMDMs can specify a shorter reserved decision period if it would be more appropriate.

Level of Doubt	Maximum Sanction Length
Higher Level (first failure)	13 weeks
Higher Level (second failure)	26 weeks
Higher Level (third and subsequent failures)	156 weeks
Intermediate Level (first failure)	4 weeks
Intermediate Level (second and subsequent failures)	13 weeks
Lower Level (first failure)	4 weeks
Lower Level (second and subsequent failures)	13 weeks

44. Where a claimant makes a new claim to JSA after a reserved decision, it is essential that the length of any sanction imposed takes into account any time away from benefit.

45. The reserved sanction period should start with the date of failure so that any time away from benefit is treated as time served and deducted from the relevant sanction period. (Please see DMG 34075)

46. For example:

- Claimant who has not had any previous sanctionable failures fails to participate in the Work Programme on 31/03/2014
- JSA claim closed with LED 07/04/2014
- DM makes the decision on 09/04/2014
- Normally a 4 week sanction would be appropriate, but as the claimant is no longer claiming JSA the DM makes a 4 week reserved decision from the date of failure (31/03/2014)

47. There is no requirement for a reserved decision notification to be sent to the JSA claims maintenance team as there is no input required in JSAPS for a reserved decision.

48. If a claimant was in receipt of JSA at the point at which they failed to comply with the employment programme requirement, but ceased to claim benefit before a sanction decision is made, the LMDM should make a reserved decision. The LMDM should then:

- - send a copy of their decision to the provider
 - send a copy of their decision to the appropriate Jobcentre, including the final date on which the case should be re-referred if the claimant makes a new claim to JSA
 - send a copy of DMAS letter to claimant
 - if storage allows locally, retain decision documents within LMDM team. It is suggested that these are retained until the end of notional sanction period + 7 days (to allow for any new claim to be registered/processed) then send off to remote storage
 - if decision documents cannot be stored locally, send to Jobcentre with copy of DMAS Reserved Decision notification

Unable to make a decision

49. In cases where a decision has already been made not to apply a sanction but new evidence is received which would overturn that decision and the claimant is no longer signing, no new decision should be made. The sanction period which would have been applied should be calculated but the case should not be recorded on DMAS. The paperwork should be sent to the Jobcentre asking them to refer back if a reclaim is made before the end of the notional sanction period.

Cancelled decisions

50. In specific circumstances, a case referred and input to DMAS can be cancelled without the LM doubt being decided.

51. The DMAS decision notification, detailing the reason for cancellation, should be sent to the originating Jobcentre or provider. If there is any action to be taken this should be detailed on the template as this allows any training requirements to be addressed.

52. Further information concerning [cancelling cases on DMAS](#) is available within the DMAS Procedural Guidance.

53. A referral should **not** be cancelled, however, in cases where the claimant may not have been given enough time in which to undertake the mandated activity. Such a situation may arise, but not exclusively, where the provider's MAN letter is issued to undertake an activity a couple of days later. A letter posted first class is deemed to have arrived two working days later but this has no bearing on whether the claimant can actually undertake what is required. In these cases, the LMDM should contact the claimant to establish their reasons for their failure and either sanction or allow as appropriate. It may well be that the short notice will provide the claimant with a good reason but this needs to be established.

54. A referral can be cancelled where:

Generic:

- The referral has been made in error. This is where the referral is contrary to current guidance and should never have been made. Examples of this may include (list not exhaustive):
 - No current claim to benefit
 - The claimant Failed to Participate in a work coach interview/intervention but the case should have been [treated as straightforward](#) by the Jobcentre
- The claimant stops claiming before they actually committed the sanctionable failure. For example, if a claimant failed to participate with the Work Programme scheme on 25 October 2012, the referral should be cancelled if the claimant ended their claim prior to 25 October.
- If incomplete referrals are received by LMDM, for example, not fully completed, wrong NI number, lack of evidence etc, LMDMs should try to obtain the required information but should exercise their judgement and take a common sense approach in deciding:
 - what information is actually required
 - whether there are other sources which can be used to obtain the required information such as other systems, telephone Jobcentre, claimant etc
 - whether a correct decision can be made without it
 - whether the LMDM can reasonably obtain it themselves
 - whether the referral should be returned to the originator for omissions etc to be corrected. Examples may include (list not exhaustive):
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 - claimant's comments on ES84 require clarification or raise further questions for which an answer is required and claimant is due to attend in the next few days
 - details from claimant's JSAg or JSA Claimant Commitment not included as part of DART ASE referral
 - date the MAN was issued to the claimant omitted from WP08
 - DART referral for FTA states date actually attended is in the future
- If the referral is returned to the originator and 10 calendar days have elapsed with no response and it is not possible to obtain the required information from another source, it should be cancelled. However, the originator should be contacted prior to cancellation to see if a reply is imminent
- Jobcentre staff have requested that a case referred to the LMDM be cancelled before the doubt is decided. This may be where, for example, the doubt is removed by the claimant supplying additional information following the referral to the LMDM

- The claimant raises the issue of notification in their reasons for failing to participate and there is no evidence of the issue of a WP05 (or equivalent for other prescribed schemes) in LMS, the referral should be cancelled
- The referral is an exact duplicate of one already received
- Case entered on DMAS in error (if a deletion is not appropriate)
- If the referral contains the wrong AR code, the LMDM should not automatically cancel the referral. If it is obvious from the evidence included with the referral what the correct AR code should be, the LMDM should amend the referral accordingly. If it is not obvious, the LMDM should urgently contact the referrer to establish the correct code. Only if this action fails to establish the correct code should the referral be cancelled

JSA only:

- The claimant has left employment voluntarily or through misconduct, but the period of employment in doubt did not immediately precede their JSA claim.
- A period of Self Imposed Deductions (time off benefit) exceeds the length of the applicable sanction. However, before cancelling, the LMDM must check whether there are any previous sanctions of the same level which may give rise to an escalation of the length of that sanction.
- There is no requirement to make an opinion decision on JSA credits only cases. Any such referrals received should be cancelled, annotated accordingly and returned to the provider or to the referring Jobcentre as appropriate.
- A FTA referral is received (attending on right day but wrong time) and no ES19 has been issued.
- It is an LV or misconduct referral and the claimant was employed on a zero hours contract and this fact was available to the Jobcentre at the time the referral was made. ES84/85 have been amended to specifically ask about zero hours contracts. (If it is only established that the claimant was employed on such a contract as a result of the LMDM's enquiries, the case should be allowed). All RE referrals for refusal or failure to apply for a zero hours contract vacancy should also be cancelled.
- The date of transgression occurred during a period of waiting days (although claimant still has to be available for and actively seeking work).

ESA only:

- Where an ESA claimant holds a sanction under the old regime (pre 3 December 2012, 50% or 100% reduction to the WRAC) they cannot be sanctioned for FTA/FTP a mandatory interview, or failing to undertake Work Related Activity (WRA) under the new regime (from 3 December 2012). Do not impose a sanction if a referral is received and there is already an existing sanction under the pre 3 December 2012 regime. The DMAS decision notification must be returned to the Jobcentre/provider annotated "Unable to action - claimant has existing sanction under the pre 3 December 2012 regime", and record the reason for return of the DMAS template in JSAPS JA110 notepad.
- An ESA claimant stops claiming before the decision is made.
- An ESA claimant becomes a voluntary claimant before the decision is made.
- It is no longer possible for an ESA claimant to meet a requirement. For example, they failed to attend a workshop on a specific date to which they were mandated as a Work Related Activity and no subsequent events are being run.
- **only:**

- If the youngest child in the household is under 1.
- If there has been a previous sanction in less than 2 weeks.