

Refusal and failure to apply for or accept employment

Introduction

1. The Jobseeker's Act 1995 section 19 provides that Jobseeker's Allowance (JSA) will not be payable if a claimant has, without good reason:
 - refused to apply for a job;
 - failed to apply for a job; or
 - refused to accept a job which was offered.
2. Therefore, it is **very good practice** to make clear to the claimant, at the time they are informed about a suitable vacancy, that refusal or failure to apply for the position, or subsequent non-acceptance of the job when offered, may result in loss of JSA.
3. This ensures that the claimant can make their decision in the full knowledge of the possible consequences

Notifying the claimant

4. How you will find, notify, follow-up a job and where appropriate refer to a Decision Maker of the claimant has not applied will depend on whether the claimant is using Universal Jobmatch and has given DWP access to their account:
 - Claimant using Universal Jobmatch (DWP has access to their account)
 - Claimant using Universal Jobmatch (No DWP access to their account)
 - Claimant not using Universal Jobmatch

Employment Officer

5. An Employment Officer is an officer of the Secretary of State or such person as may be designated by an order made by the Secretary of State. This includes all Jobcentre Plus staff.

Exempt Vacancies

6. Even when a vacancy has been notified to a claimant by an employment officer, refusal and failure to apply for or accept employment action is not appropriate in all cases:

Trade disputes

7. A claimant cannot be sanctioned just because they refuse a job that is vacant because of a stoppage of work due to a Trade Dispute. Therefore, if a claimant refuses or fails to apply for or accept a job that is vacant due to a Trade Dispute a decision by the Labour Market Decision Maker (LMDM) is **not** required.

Self employed work

8. Employment, for the purposes of RE, only relates to employed earners employment, it excludes self-employed work. Therefore, if a claimant refuses

or fails to apply for or accept a notified self-employed job, a decision by the LMDM is **not** required.

Zero Hours Contract

9. Claimants cannot be mandated to apply for vacancies which include a Zero Hours Contract. Therefore, if a claimant refuses or fails to apply for or accept a notified Zero Hours Contract job, a decision by the LMDM is **not** required.

Restrictions on availability

10. For an RE doubt to be appropriate, any job offered should broadly be in line with the pattern of availability agreed on the claimants Jobseeker's Agreement (JSAg).
11. Therefore, it is essential that any permitted period or other agreed restrictions are taken into account when considering whether RE action is appropriate.

Permitted Period

12. During the claimant's permitted period, RE action should only be taken on vacancies notified by an Employment Officer which are in the claimant's usual occupation and/or offer at least their accustomed rate of pay.
13. When a job is offered to a claimant within their permitted period that pays below their accustomed rate of pay and/or is not in their usual occupation, a decision by the LMDM is not required as the claimant can refuse the employment on these grounds without facing a sanction.

Volunteering and Caring

14. If a claimant is a carer, or is doing voluntary work, they will have good reason for refusal or failure if the job requires them to start within one week.
15. In such cases, consider possible action on the claimant's availability before considering whether they should be referred to the LMDM for RE.

Claimants who have caring responsibilities for a child

16. If a claimant has caring responsibilities for a child and is permitted to take up employment on being given 28 days notice, they will have good reason for refusal or failure if the job requires them to start it within 28 days.
17. In addition, a LMDM must consider caring responsibilities when determining whether a sanction is appropriate. Therefore, claimants with caring responsibilities for a child are not penalised if they fail to take up paid employment because appropriate or affordable childcare is not available.

Claimants who provide a service

18. If a claimant is providing a service they will have good reason for refusal or failure if the job requires them to start within 24 hours.
19. In such cases, consider possible action on the claimant's availability before considering whether they should be referred to the LMDM for RE.

Claimants who work and have to give notice

20. If a claimant works part-time and is required to provide a statutory period of notice to their employer to end their contract of employment, this may prevent them from starting work immediately. The claimant will have good reason for refusal or failure if their reason for doing so was that they would not have been able to work out their notice in the job they did have.
21. In such cases, consider possible action on the claimant's availability before considering whether they should be referred to the LMDM for RE.

Agreed pattern of availability of 24 hours or more per week

22. Where a claimant has agreed a pattern of availability on their JSAG of 24 hours per week or more and refuses or fails to apply for a job which is clearly less than 24 hours per week, a decision by the LMDM is **not** required.
23. However, if there is any doubt at all about whether the job was less than 24 hours, for example, there are shifts or rotas and the hours vary, the case must be referred to the LMDM in the normal way.

Agreed pattern of availability of less than 24 hours per week

24. Where a claimant has agreed on their JSAG to be available for less than 24 hours per week and refuses or fails to apply for a job which is clearly less than 16 hours per week, a decision by the LMDM is **not** required.
25. However, where a claimant has agreed a pattern of availability of less than 24 hours per week and they refuse or fail to apply for a job which is 16 hours or more per week but less than 24 hours per week, they cannot be regarded as having good reason for the RE. The case must be referred to the LMDM in the normal way.

Refusal of Employment Discretions

26. Certain types of RE cases can be treated as straightforward (TaS) without a formal referral to the LMDM being necessary.
27. These are known as RE Discretions and are listed as Case Types A to G as follows:

Case type	Scenario
A	New claim following employment
B	At least 26 weeks elapsed between claims
C	Claimant attended the interview or applied for the job
D	Within 4 weeks following the end of vocational training
E	Credits only
F	Vacancy still open, claimant resubmitted

28. Consideration of TaS must be made by the team leader or other designated officer. The designated officer should be Band B or above and adjudged by the Manager to be competent and experienced enough to make the determination

29. Only cases where the reason for RE falls clearly within the criteria of the RE Discretions can be TaS.
30. If there is any doubt at all about whether one of the Discretions applies, the case must be referred to a LMDM in the usual way.

Case types

Type A - When a claimant makes a new claim following the end of their employment, RE action may not need to be taken on jobs refused in any previous claims.

31. If the claimant makes a new claim following a period of employment, there is no need to track through job submissions on their previous claims to see if RE applies.
32. If, however there has been no employment between claims, and less than 26 weeks has elapsed since the previous claim RE action should be taken. This is to prevent claimants signing off and on again just to avoid RE action.
33. There is no need to enter a note on LMS in this circumstance, as no action would be taken to look for previous RE cases.
34. The only exceptions to this rule are:
- if the RE case raised in the previous claim had been referred to the LMDM and the only reason a decision had not been given was because the claimant was no longer signing; or
 - where the LMDM asks for the case to be re-referred if the claimant re-claims before a certain date.

Type B - At least 26 weeks has elapsed since the end of the last claim.

35. Where the claimant:
- makes a new claim that does not follow a period of employment; and
 - they have not claimed for at least 26 weeks;
- there is no need to track through job submissions on their previous claims to see if RE applies.
36. There is no need to enter a note on LMS in this circumstance, as no action would be taken to look for previous RE cases.
37. Exceptions to this rule:
- if the RE case identified in the previous claim had been referred to the LMDM and the only reason a decision had not been given was because the claimant was no longer signing, RE action should continue; or
 - where the LMDM asks for the case to be re-referred if the claimant re-claims before a certain date.

Type C - The claimant has evidence that they attended the interview or applied for the job.

38. If the claimant has evidence that they did attend/apply, such as a letter telling them that they had been unsuccessful, there is no need to refer on RE.
39. If the Jobcentre sent the application form on the claimant's behalf and the employer maintains it was not received, RE action is not required.

40. If the claimant maintains that they did attend the interview/apply for the job, but has no proof, contact the employer to check. If the employer agrees, RE action is not necessary and LMS should be noted.

Note: On no account should the claimant be instructed to approach the employer.

41. If there are any doubts, the case must be referred to the LMDM in the normal way.

42. Exceptions to this rule:

- the employer offered the claimant the job at the interview and they refused it. In these cases, even though it is accepted that the claimant attended the interview, refusal of employment has still occurred;
- the application form was sent too late by the claimant to be received within the closing date set by the employer;
- the employer agrees that the claimant attended the interview but the claimant's behaviour deterred the employer from offering them the job.

Type D - A claimant has been on vocational training for 2 months

43. If a claimant has been on training for a particular employment for a period of not less than 2 months they have good reason for refusing any other kind of employment for 4 weeks beginning on the day the training ends.

44. This does not include further or higher education.

Type E - The claimant is entitled to credits only.

45. Credit regulations do not support the disallowance of credits solely because a claimant refuses 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.

46. A submission to a LMDM for a decision must not be made for 'credits only' claimants who refuse employment.

Type F - the vacancy is still open.

47. Rather than take RE action immediately following a job submission, check to see if the job is still available and the employer is still willing to see the claimant.

48. In effect this gives claimant a 2nd chance and would be especially effective if the claimant did not attend due to:

- Sickness;
- domestic emergency; or
- travel problems.

49. However, the claimant should only be given one second chance per vacancy to avoid creating problems with the employer.

50. To record a resubmission:

Step	Action
1	amend the original submission using the 'amsub' button;
2	enter in remarks 'resubmitted on (date)';
3	leave the original RE referral in place until the outcome of the 2 nd submission to the job is known;
4	if an RE referral is required on the 2 nd job, include the papers from the first refusal in the DMA evidence to the LMDM.

51. Exceptions to this rule:

- if the claimant cannot be resubmitted because the vacancy has been filled, take normal RE action;
- if the claimant refuses to be resubmitted, take normal RE action;
- if the employer refuses to accept the claimant being resubmitted a 2nd time, take normal RE action.

Claimant's behaviour

52. A sanction may be appropriate for RE even if a claimant did not actually refuse or fail to apply for or accept the job.

53. Claimants may behave in such a way that they lose the chance of employment, for example they may:

- arrive late for an interview or go to the wrong place through their own negligence;
- impose unreasonable conditions on acceptance of the job so that the employer withdraws the offer;
- behave in such a manner at an interview that the employer decides not to offer them the job; or
- refuse to give references or allow references to be taken up.

54. If a prospective employer makes it known that such conduct has occurred, the claimants behaviour may amount to refusal or failure to apply.

55. If you identify that a claimant has avoided the chance of a job, for example, on receipt of information from an employer or at an intervention interview, a referral to the LMDM is required.

Claimant Refuses or Fails to apply for employment

56. If a claimant refuses or fails to apply for employment, the case must be referred to a LMDM for a good reason decision, unless the original vacancy submission was inappropriate or one of the RE Discretions apply.

57. On the LMS 'View referral/decision details' screen create a new referral using the appropriate AR code (JSA 710)

58. The following action is required on LMS:

Step	Action
1	Click the [Dec] or [NoDec] button in the Client Details window. Note: 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
3	Click the [Question] hotspot and select 'Avail/RE/ASW' then 'RE' from the drop down menu
4	Record the Source as appropriate
5	Record the Ref to as 'LM DMA Office'
6	Click [Save]
7	<p>Check the suitability of the vacancy:</p> <ul style="list-style-type: none"> • Ensure the vacancy is in line with any agreed restrictions on the claimants availability; • Ensure the vacancy reflects the claimants agreed hours of availability; and • Ensure the vacancy is not exempt from RE action, such as self employment. <p>If the original vacancy was not suitable then a referral to the LMDM is not appropriate. Take the following action: on the LMS 'View referral/decision details' screen amend the 'Ref To' field to [N/A – Straightforward] and in 'Notes' enter the reason why RE action is not appropriate.</p>
8	<p>Check whether any of the RE Discretions apply.</p> <p>If any of the RE Discretions apply, the case can be treated as straightforward without a formal referral to the LMDM being necessary. If so take the following action: On the LMS 'View referral/decision details' screen amend the 'Ref To' field to [N/A – Straightforward] and in 'Notes' enter the reason why RE action is not appropriate.</p>
9	If the vacancy was suitable and none of the RE Discretions apply, contact the claimant to determine their reasons for refusing or failing to apply for employment. It is preferable that the contact is face to face or by telephone, however the claimant can also be contacted in writing.

Face to face contact

59. If the claimant is present when the doubt is identified, take the following action:

Step	Action
1	take a statement from the claimant, using DART, of their reasons for refusing or failing to apply for employment. Ensure the claimant's reasons are fully covered.
2	check the statement does not indicate there are any other doubts, such as availability or actively seeking employment (ASE). If there are, refer to Other Doubts for further information.
3	to ensure that details of the referral are maintained for reconsideration or appeal purposes, copy the information from DART into the LMS

	notes box for the relevant decision
4	send the submission to the LMDM using DART for a good reason decision.

Telephone contact

60. If the claimant is not present when the doubt is identified, they should be contacted by telephone.

61. If the claimant can be contacted by telephone take the following action:

Step	Action
1	confirm the claimant's identity.
2	take a statement from the claimant, using DART, of their reasons for refusing or failing to apply for employment. Ensure the claimant's reasons are fully covered.
3	check the statement does not indicate there are any other doubts, such as availability or ASE. If there are, refer to Other Doubts for further information
4	to ensure that details of the referral are maintained for reconsideration or appeal purposes, copy the information from DART into the LMS notes box for the relevant decision
5	send the submission to the LMDM, using DART, for a good reason decision.

Note: When contacting a claimant by telephone consider using #1470 so that the call details do not display as a private number.

62. To ensure a reasonable chance of acquiring the necessary information, two attempts should be made to contact the claimant by telephone.

63. However, if the claimant does not have a telephone number or despite the two attempts they cannot be contacted, the claimant should be contacted in writing to establish their reasons.

Written contact

64. It is preferable that claimants who refuse or fail to apply for employment are contacted either face to face or by telephone, however if the claimant is not present when the doubt arises or cannot be contacted by telephone, the claimant should be contacted in writing:

Step	Action
1	Complete form ES195RE
2	print Referral Notification Letter (ES48S) from LMS;
3	post the ES195RE together with leaflet ESL48JP and the ES48S to the claimant and ask them to provide a statement of the reasons why they refused or failed to apply for the employment
4	on the appropriate LMS 'View referral/decision details' screen, record the date of issue of the ES195RE in the Notes and initial and date the entry.

5	input an LMS Workflow for 7 calendar 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 ES195RE or in 7 calendar days, whichever is earlier.

Action on return of the claimant statement

65. Claimants are allowed, by law, 7 calendar days to return the completed ES195RE. On its return take the following action:

Step	Action
1	select the appropriate LMS 'View referral/decision details' screen and record receipt of the ES195RE in the Notes.
2	enter the reason provided by the claimant for refusing or failing to apply for employment into DART. It is essential that the information provided on the ES195RE is copied word for word.
3	check the statement does not indicate there are any other doubts, such as availability or ASE. If there are, refer to Other Doubts for further information
4	to ensure that details of the referral are maintained for reconsideration or appeal purposes, copy the information from DART into the LMS notes box for the relevant decision
5	send the submission to the LMDM, using DART, for a good reason decision.

Claimant statement not received within 7 days

66. If the claimant has not returned the ES195RE within 7 calendar days, and they are still claiming JSA, take the following action:

Step	Action
1	select the appropriate LMS 'View referral/decision details' screen and record non receipt of the ES195RE in the Notes.
2	record on DART that the claimant has not returned the completed ES195RE after 7 calendar days.
3	to ensure that details of the referral are maintained for reconsideration or appeal purposes, copy the information from DART into the LMS notes box for the relevant decision
4	send the submission to the LMDM, using DART, for a good reason decision.

67. If the claimant has not returned the ES195RE within 7 calendar days, but they are no longer claiming JSA, reference to the LMDM is not appropriate at that stage. Note the Labour Market Unit (LMU) and LMS Conversations that action remains outstanding if the claimant reclaims.

68. The case must be referred to the LMDM if the claimant reclaims within 26 weeks of the last day paid and they have refused or failed to apply for employment, unless any of the RE Discretions apply.

69. 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

- 70. Access LMS and check the 'View Referral / Decision Details' screen.
- 71. To ensure that details of the referral are maintained for reconsideration or appeal purposes, check that all of the information from the DART referral has been copied from DART into the LMS notes box for the relevant decision.
- 72. Send the submission to the LMDM using DART 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.
- 73. Explain to the claimant that a decision will be made on whether they had sufficiently good reason for refusing or failing to apply for employment. Inform them that if it is decided that they did not have good reason, their JSA will be affected.

Decision made by the Labour Market Decision Maker

- 74. 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.
 - 75. 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.
- 76. If a claimant refuses 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.
 - 77. However, if a claimant refuses employment 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

- 78. Some claimants may be able to claim JSA Hardship when a Sanction has been imposed on their JSA. See JSA Hardship Awards for further information.

Reserved Decisions

- 79. 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.
- 80. 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.
- 81. There is no input to JSAPS for reserved decisions.
- 82. 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.
83. 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

Temporary jobs

84. A claimant may be sanctioned if they refuse or fail to apply for a temporary job notified by an Employment Officer.
85. If a claimant refuses or fails to apply for a temporary job they will receive a higher level sanction regardless of the duration of the vacancy.

Work Trials

86. It is fundamental to the concept of Work Trial that it offers the claimant the opportunity to test the suitability of a job, as well as for the employer to test the suitability of the claimant. Therefore, if a claimant is offered a Work Trial but decides not to accept it, action on RE is not appropriate and a decision by the LMDM is **not** required.
87. However, the claimant's reasons for refusal must be determined, and any availability or actively seeking employment doubts that arise must be referred to the LMDM.

Refusal of Employment action for jobs that have not been notified to Jobcentre Plus

88. Vacancies may occasionally be identified and discussed with claimants which have not been notified to Jobcentre Plus by an employer, for example, a job from a newspaper.
89. When discussing such vacancies with the claimant, establish the same amount of information you would have obtained had the job been advertised by Jobcentre Plus. Also, during discussions determine the claimant's suitability for the job.
90. Where the claimant then refuses or fails to apply, input the doubt to LMS by selecting the Refusal of Employment option and recording the following information on ES195E:
- name and address of a contact in the company to whom enquiries may be despatched;
 - details of the terms and conditions of the job offered, for example the hours, salary, job title and location;
 - date the claimant was made aware of the opportunity;
 - if the job is not permanent, when would it end;
 - reasons the claimant gave for their refusal or failure;

- training opportunities the claimant may have undertaken recently. Such training must have lasted for 2 months or more, be for a particular type of employment and have ceased in the 4 weeks prior to the claimant's refusal or failure; and
- evidence, comments and/or cross references to any simultaneous LMDM referrals to back up statements made on ES195RE.

RE and credits only claimants

91. Credit regulations do not support the disallowance of credits solely because a claimant refused employment.
92. A submission to a LMDM for an opinion decision must not be made for 'credits only' claimants who refuse employment. However, the reasons claimants give for RE should be checked 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.

Other doubts - Availability and Actively Seeking Employment Doubt

93. If the reason given by the claimant for refusing or failing to apply for or accept employment raises a doubt on their availability or ASE, a referral to the LMDM must be made, unless they can be treated as available and/or ASE. See the Availability and Actively Seeking Employment and the Treated as Available and Actively Seeking Employment chapters for further information.

Joint Claims

94. In a joint claim both claimants are subject to the same JSA entitlement conditions, unless one of them falls within one of the exemption categories.
95. One or both claimants in a joint claim can be sanctioned for RE.