

# End of Employment Action

## Initial action

1. Any questions arising on a claim to Jobseekers Allowance (JSA) following the termination of employment are usually identified from the Customer Statement or claim form.
2. Claims where it is identified that the claimant has either left employment or been dismissed must be considered for further action.
3. During the New Jobseeker Interview (NJI) the Personal Adviser (PA) will identify which form, if any needs to be issued.
4. The forms will be dispatched from the Jobcentre, with the Jobcentre's correspondence address so it can be returned to the correct Jobcentre. Whenever possible the form should be despatched on the day of the NJI or as soon as possible afterwards.
5. Refer to the Jobcentre Job Role catalogue for information of who undertakes this action.

## Claimant finishes part-time work while claiming JSA

6. If a claimant finishes part-time work during the life of their JSA claim, the reason why the employment terminated should be established.
7. Where it is identified that the claimant has either left employment or been dismissed, this must be considered for further action, in the same way as a claimant who finished employment prior to making their JSA Claim.
8. To ensure that this risk based approach is implemented successfully; any claimant who finished part-time work while claiming JSA must be referred to an appropriate member of staff within the Jobcentre for consideration.

## Which form to send

9. If the claimant indicates that they have left employment voluntarily and no other doubt exists an ES84 can be issued to the claimant for them to give their reasons for leaving. If there is the possibility that Employment on Trial (EOT) may apply, it will be necessary to confirm details with the employer.
10. If the claimant indicates they have left employment for some other reason an ES85 may be appropriate depending on the reason.
11. The table in Appendix 1 should be used to question the claimant so that the correct form is issued.
12. JSAPS should no longer be requested to issue an ES85 automatically. ES85s must be sent clerically and noted as issued on form ES85AS.
13. An Excel version of the ES85 is available for use, and can be accessed here: Clerical ES85/ES85AS
14. Other forms in the ES85 series may be more appropriate in some specific circumstances. These are

Circumstances	Form to be issued
Bulk discharges	ES85A
Seafarers	ES85M
Share fishermen	ES85SF
Work Based Training for Young People	ES85Y
Ex members of HM Forces	HM Forces Stencil

15. Form ES85 can be issued to any employer in Great Britain, Northern Ireland and the Isle of Man but not the Channel Islands.

### **Special procedures for some employers**

16. Some employers may have agreed special arrangements with Jobcentre Plus for dealing with form ES85. These procedures should be followed to avoid any delays or complaints.
17. A local list of employers and the appropriate action should be established and maintained. The list should also include any employers that, having followed a risk based approach; do not need to be sent an ES85.
18. A national list of employers has also been established to detail the employers who must NOT be sent an ES85. See Appendix 4 for further details.
19. If it is decided that an ES85 is not to be issued a note MUST be made on LMS to indicate why an ES85 has not been issued. This will avoid errors being raised.
20. Form ES85 can be issued to any employer in Great Britain, Northern Ireland and the Isle of Man but not the Channel Islands.

### **Remploy**

21. Due to restructuring, a number of Remploy employees are to be made redundant. Where the claimant presents a letter confirming that their job ended because of redundancy, no further action is required. If no letter is produced or the claimant suggests that the job ended for other reasons the table in Appendix 1 should be used to question the claimant.

### **Tesco**

22. All ES85 for Tesco MUST be sent to a central point of contact using the following address:
- Tesco Stores Ltd, FORMS, PO Box 4273, Maes-y-coed Road, Cardiff, CF14 8FZ.

### **Circumstances in which an ES85 action is not required**

23. To minimise the number of ES85s issued the circumstances in which employment ended must be examined closely and the claimant questioned carefully.
24. The information in Appendix 1 should be used to assess the need for an ES85 or ES84.
25. An ES85 should NEVER be sent in the following circumstances
- ES84 action is appropriate; see Appendix 1
  - one was sent to the same employer for the same period of employment on an earlier claim;
  - the claimant was employed outside Great Britain;
  - the claimant was self-employed;
  - the claimant was employed by an Employment Agency on a temporary basis and the contract has been terminated and they produce evidence showing the end date of the contract or employment;

- the claimant was discharged from a holiday camp or centre at the end of the season or was employed as a Royal Mail Christmas temporary employee;
- the claimant last worked as a variety artiste, actor or dancer for:
  - only one particular programme or series run by a TV company;
  - a fixed duration run of a theatrical production and has brought in a contract confirming the terms of the agreement and giving the dates of the work. However ES85 must be sent if there is any doubt;
- there is an oil rig worker's contract of employment in the labour market unit;
- the claimant is covered by an employer's redundancy list;
- the claimant has provided a termination notice stating dates of employment and the reason for the termination;
- the employer is known to be insolvent;
- the employer is known not to return ES85s (These will be detailed on either a local list or on the National List);
- over 27 weeks has elapsed since the last employment.

**Note:** Remember ES85 should only be issued to the last employer.

26. If it is decided that an ES85 is not to be issued a note **MUST** be made on LMS to indicate why an ES85 has not been issued. This will avoid errors being raised.

27. Any evidence supplied by the claimant should be copied and held in the LMU.

## Completion of ES85

28. Complete the form with as much detail as possible, noting the details on the blank side of ES85AS. Always:

- Use the employer's full name and address;
- Address the form to a person, for example, The Manager or Personnel Manager, or by name if known;
- Include the claimant's full name and National Insurance number;
- If the claimant is known by an alternative name for professional reason, e.g. they are an entertainer, include the alternative name;
- Include the address where the claimant actually worked if different from the address the form is being sent.

29. The ES85 should always have the Jobcentre's correspondence address for return.

30. An Excel version of the ES85 and the ES85AS is available for use, and can be accessed here: [Clerical ES85/ES85AS](#)

## System Action

### CMS

31. Within CMS, a user is required to indicate whether an ES85 is required, by selecting 'Y' or 'N' in the "JS85 required?" field. The response to this question determines what information is pushed to JSAPS:

- If the 'N' option is selected, CMS automatically sets the "JS85 required?" field in JSAPS to 'N'.

- If the 'Y' option is selected, CMS automatically sets the "JS85 required?" field in JSAPS to 'C'.

## JSAPS

32. Within JSAPS, a user is required to indicate whether an ES85 has been issued by selecting one of the following options in the "JS85 required?" field:
- The 'Y' option should not be used;
  - The 'N' option is selected when as ES85 has not been issued; or
  - The 'C' option is selected when the ES85 has been sent clerically;
33. The ES85 Issued field defaults to 'N', however failure to input the required information can have implications upon JSAPS functionality, for example, users are unable to input LMDM sanctions without completing this field.
34. **Users should mark the 'JS85 Issued' field as 'C'** when an ES85 has been/is to be issued in respect of a claimant's previous work.

## Completion of ES84

35. In the majority of cases form ES85 will be sent to the claimant's former employer but, when the doubt is Leaving Voluntarily (LV) and the Employment On Trial (EOT) concession does not apply, the provision exists to issue form ES84 to the claimant instead.
36. If a claimant's answer on the Customer Statement or form JSA1 suggests that the only doubt is LV:

Step	Action
1	confirm the last day of employment with the claimant;
2	record the claim details on a clerical ES85AS, using the information on the Customer Statement/form JSA1, in the 'Notes' space. You <b>must</b> copy word for word the reason the claimant gave for leaving their employment;
3	copy the claimant's reply from the Customer Statement/JSA1 as to why the employment ended on to form ES84 by ticking the first box
4	explain the importance of completing and returning form ES84 within 7 calendar days;
5	record the doubt on LMS;
6	issue ES48S/ESL48 to the claimant;
7	note the issue of form ES84 on form ES80B, the Customer Statement/JSA1 and on ES85AS.

## Action on return of form ES84

37. When form ES84 is returned:

Step	Action
1	note form ES84 with the date received;
2	ES80B and ES85AS and LMS Conversations must also be noted;
3	If form ES84 has not been signed, arrange for the claimant to do so within 7 calendar days; as speed of submission to the Labour Market Decision Maker (LMDM) is the main consideration. It may be quicker

	to post form ES84 to the claimant for signing rather than wait for the next attendance day;
4	If it is not possible to obtain the claimant's signature, submit the case, with the unsigned form ES84, to the LMDM;
5	make a note in 'notes screen' on LMS to accompany the submission, explaining what attempts have been made to have the form signed by the claimant;
6	produce a DMA Referral Form ES567 from LMS;
7	attach the ES85AS to the referral form before submitting to the LMDM and record the reference on ES66:
8	if form ES84 contains a Defamatory Statement, note form ES567 'DEFAM STATEMENT'. Do not interview the claimant.

## Form ES85AS

38. Offices should complete ES85AS for all cases where an ES85 or ES84 is issued.
39. The ES85AS should be completed on the printed side using the information provided in either the Customer Statement or claim form. Always include;
  - The claimant's personal details,
  - Employer's details
  - Employment details including dates
  - Claim details, including date of claim, any backdating action, and last effective date of any previous claim.
  - Details of any forms issued to the claimant and any follow-up action taken.
  - The reason the claimant gave for the employment ending on the Customer Statement or claim form, copied exactly- this should be entered in the Notes space.
40. File ES5AS in daily batches by local arrangements.
41. If any other form in the ES85 series has been issued note this on ES85AS.
42. Note the ES85AS of whether EOT is to be considered.
43. An Excel version of the ES85AS is available for use, and can be accessed here: Clerical ES85/ES85AS

## ES85 Follow-up Action

### ES85 not returned within 10 working days

44. Check the ES85AS file daily for outstanding cases. If form ES85 has not been returned within 10 working days of being issued, check to see if any of the special circumstances apply where an ES85 is not required.
45. Also, check before taking any further action:
  - that the original form ES85 was issued;
  - that it was sent to the appropriate department/personnel section and the correct address.
46. If none of the special circumstances apply and the original form ES85 was sent to the correct address, telephone the relevant employer to check if they received the form and, if they have, whether they intend to return it.

47. If they did not receive the original, arrange for a duplicate to be issued immediately clerically.
48. Advise the employer to return the completed form to the Jobcentre's correspondence address, within 5 working days.
49. Note form ES85AS in red, [D] and the date the duplicate was sent. File it as per local instructions.

### **Employer declines to complete form ES85**

50. If an employer declines to complete form ES85 because of possible libel action or inquires about this risk, give information or send the appropriate letter.
51. If the employer is still unwilling to complete form ES85 but is willing to make a verbal statement, make a record of the conversation on form ES85AS. Also include the name and position of the person you talked to. Ask if they will be willing to complete ES85s in the future. If their reply indicates that they will not add their details to the list of employers who do not return ES85s.
52. Contact the LMDM for advice on what course of action to take.

### **Form ES85 not returned**

53. If form ES85 is not returned after follow-up action and there is a labour market (LM) doubt on the claim due to Leaving Voluntarily/Misconduct, refer the case to the Team Leader.
54. Once they are satisfied that all efforts to obtain an answer have been exhausted the Team Leader must pass the case to the Jobcentre Manager (JCM).
55. The JCM must sign and date form ES85AS, and note it as follows: 'Follow-up unsuccessful - no further action'.
56. JCMs can delegate the required action to a Team Leader provided that they have not taken part in the follow-up process.
57. File form ES85AS in the ineffective ES85 file as per local instructions. LMS must also be noted that the ES85 has been treated as ineffective.
58. If the original form ES85 is received after all the above action has been taken, normal decision making action will apply.

### **Action on receipt of form ES85**

#### **Initial action**

59. On receiving form ES85:

Step	Action
1	link form ES85 with form ES85AS;
2	enter the date of receipt on form ES85AS;
3	check form ES85 ensuring all relevant questions have been answered;
4	pass all forms with labour market unit to the Team Leader..

## Unanswered questions or incomplete responses

60. If any relevant questions are incomplete and, after consideration by the Team Leader, the answers given indicate the case will be treated as 'effective or not fully effective':

Step	Action
1	return form ES85 to the employer with form ES95, asking them to complete the unanswered questions;
2	Note form ES85AS for reminder action after 5 working days, and re-file form ES85AS;
3	If no reply is received 5 days after reminder action, pass to the JCM.

61. If any relevant questions are incomplete and, after consideration by the Team Leader, the answers given indicate the case will be treated as 'ineffective':

Step	Action
1	Telephone the employer to gain the information needed.
2	Record the information received either within the notes box of forms ES85AS or on form ES589, and pass to the Team Leader for consideration.

## Confidential Statements

62. If an employer indicates that the information they give is to be treated as confidential, send form ES541 with a Business Reply envelope.

63. If, following issue of form ES541, the employer:

- agrees that their statement may be used for decision making purposes and shown to the claimant as necessary, continue normal action;
- refuses to allow the statement to be used for decision making purposes, any information given cannot be used, and form ES85 must be treated as ineffective unless further information is available.

## Defamatory Statement

64. A defamatory statement has been defined or described as one which has a tendency to injure the reputation of the person to whom it refers and, in general, lowering them in the estimations of right thinking members of society.

65. In particular, it may cause them to be regarded with feelings of hatred, contempt, ridicule, fear, dislike or disesteem.

66. If form ES85 contains a defamatory statement do not send form ES541, pass the ES85 to the Team Leader for consideration.

## Other questions/Date discrepancies

67. Replies on form ES85 may raise doubts other than labour market questions, for example, engaged in remunerative work. The questions must be referred to the Benefit Expert in the BDC.

68. Check that employment dates given on the ES85 do not differ from those provided by the claimant or overlap with periods of JSA claims shown in dialogue JA507. If a discrepancy is identified, notify the BC by HOTT

handoff, clearly marking the referral "ES85 Payment Discrepancy". The ES85 should be scanned and attached to the HOTT referral.

69. On form ES85AS tick 'Yes' against 'Date discrepancies' field in the 'Doubts' box and enter in the 'Cleared' field date and initial the entry.

### **Ambiguous replies on form ES85**

70. Further information will need to be obtained, where the employer's statements on form ES85 are ambiguous or the 'Dismissed for other reasons' box has been ticked but the details box indicates a possibility of LV or Misconduct, for example:
- No longer wanted the job or
  - Unsatisfactory conduct; or
  - too slow;
71. The Team Leader may need to telephone the employer, to get more details about the circumstances in which the employment ended. Take care to avoid the suggestion that there are any doubts about their statement. Explain that any interest is concerned solely with the payability of JSA.
72. Record the additional information on forms ES85AS or ES589. Do not, under any circumstances, make an entry in any of the reply spaces on form ES85.
73. If, after making further enquiries, there are no LM doubts, make a suitable note on form ES85AS, treat form ES85 as ineffective and note LMS.
74. If, from the employer's statement, it is apparent that LV or misconduct is appropriate, ask the employer if they are willing to confirm the further information in writing or to clarify their statement on form ES85 if it is returned to them.
75. If so, return form ES85 with a suitable covering letter. Make a note on form ES589 of the conversation and attach to form ES85AS to await the employer's reply. If the employer is not willing to give more details refer to the LM Decision Maker in the normal way.

### **Considerations on return of ES85 /ES84**

76. The team leaders consideration will fall into three categories:
- Effective
    - an LV doubt exists and the claimant can be asked for comments immediately, or
    - where ES85 returned and the employer's statement indicates Leaving Voluntarily which can be put to the claimant for comment on form ES84 by ticking the second box and adding the employers statement
  - Not Fully Effective
    - All misconduct cases, and
    - cases that arise from answers to ES85 enquiries, where the employer's comments cannot be put to the claimant
  - Ineffective
    - Straightforward, or
    - no doubt



77. Consider the replies to form ES85 and ES84 and note form ES85AS accordingly.

78. If Employment On Trial applies and has been checked, note ES85AS 'EOT applies' and mark as ineffective.

### **Effective cases LV - claimant invited to comment**

79. Where form ES85 is treated as effective on the grounds of LV, the claimant is invited to give their comments on the circumstances of termination before reference to the LMDM.

80. Take the following action:

<b>Step</b>	<b>Action</b>
1	issue ES84 to claimant; by ticking the second box and adding the employer's statement. You may wish to issue the claimant with a blank sheet or paper
2	produce Sector Referral Form ES567 from LMS;
3	record the date of issue on form ES85AS;
4	retain form ES85 in a separate file;
5	the claimant is allowed 7 calendar days in which to give their comments;
6	refer to Team Leader on return of or failure to return the ES84.

### **Claimant's comments received on form ES84**

81. On return of claimant's comments:

<b>Step</b>	<b>Action</b>
1	link with form ES85, and ES85AS;
2	record the date of return on form ES85AS;
3	if the claimant's reply contains a statement which is considered defamatory (ES85), write 'DEFAM STATEMENT' on the DMA Referral Form ES567. Do not interview the claimant;
4	attach any report forms relating to other labour market questions;
5	record the reference on forms ES80B and ES66 and LMS;
6	issue/send form ES48S/ESL48 to the claimant via LMS;
7	pass the report forms, relevant documents and ES84 to the Team Leader for consideration.

### **Claimant does not respond**

82. If the claimant does not reply within 7 days of the date of issue of ES84:

<b>Step</b>	<b>Action</b>
1	enter [NR] in 'ES84 returned' box on form ES85AS;
2	check that all appropriate items on DMA Referral Form ES567 are completed;
3	attach any report forms relating to other labour market questions;
4	record the reference on forms ES80B and ES66 and LMS;
5	issue/send form ES48S/ESL48 to the claimant via LMS;
6	pass the report forms and relevant documents to the Team Leader.

## Not fully effective cases

83. Where form ES85 is treated as not fully effective on the grounds of misconduct take the following action:

Step	Action
1	check that all appropriate items on form ES567 are completed;
2	produce a DMA Referral Form ES567 from LMS;
3	attach the ES85 and ES85AS before submitting to the LM Decision Maker;
4	attach any report forms relating to other labour market questions;
5	record the reference on forms ES80B and ES66;
6	issue/send form ES48S/ESL48 to the claimant via LMS;
7	pass the report forms and relevant documents to the Team Leader.

## ES84 returned after case referred to LMDM

84. If form ES84 is returned after the case has been submitted to the LMDM, note the date of receipt on form ES80B and forward it to the LMDM with a covering note immediately. Note form ES84 with form ES66 invoice number relating to the original submission.

85. If a sanction decision has already been given by the LMDM:

Step	Action
1	if on form ES84 the claimant has indicated they do not wish to comment file with the case papers;
2	if comments are provided on form ES84, refer with the original case papers to the LMDM for a revision;
3	record the submission on form ES66 and LMS;
4	input any revised decision received to JSAPS;

## Employment on Trial

86. The Employment on Trial (EOT) concession is a period during which a claimant can voluntarily leave their job for any reason without the risk of incurring a sanction. **EOT does not apply to claimants losing their employment through misconduct.**

87. Further information regarding the eligibility conditions for EOT can be found in the Get Britain Working Guidance.

88. If the claimant is not eligible for EOT, follow normal leaving voluntarily procedures

89. If it appears that EOT applies, the information needs to be confirmed with the employer. As the leaving voluntarily (LV) doubt remains until the dates of employment are verified the doubt must still be recorded on LMS.

90. If the employer confirms the claimant's period(s) of employment the labour market unit must be passed to the Team Leader who will note that EOT applies on the ES85AS and LMS.

91. If the dates do not match those given by the claimant the doubt must be submitted as normal and form ES48 sent to the claimant.

## Victims of domestic violence

92. If a claimant states that they left their last employment due to being a victim of domestic violence and they otherwise meet the criteria for the award of the full 13 week conditionality easement, they can be treated as having good reason for leaving and no LMDM referral would be required.
93. ES84 should still be completed.
94. If for any reason, the easement is not able to be awarded or there are any other additional reasons for leaving listed on the ES84, the case should be referred to the LMDM for determination.

## Employee Shareholder Contracts

95. If a claimant **voluntarily** takes up an Employee Shareholder job on the full understanding and acceptance of the associated terms and conditions, and then leaves voluntarily or is dismissed, Leaving Voluntarily and Misconduct action should be considered in the normal way. As part of this consideration **claimants would have good reason for leaving voluntarily** if:
- they had not fully understood the financial implications associated with an Employee Shareholder contract. Employee Shareholders may be liable for upfront Income Tax and National Insurance Contributions charges on any share value received and these expenses could be a source of financial difficulties; or
  - some aspects of the Employee Shareholder terms and conditions only became apparent after their employment had started.
96. If an existing employee is made redundant – or is forced to leave their job – because they refused to accept a move to an Employee Shareholder contract, then sanction action **must not** be taken.

## Ex-members of HM Forces

97. When an ex-member of HM Forces makes a claim for JSA and they have been discharged in the last 26 weeks, ask the claimant for proof of their release or discharge. This need not be official discharge documents. Temporary release letters or discharge documents are acceptable if signed by the Commanding Officer.
98. If they are in order, note the JSA new claim form/Customer Statement 'verified' in the official use box and initial and date the entry.
99. An 'Enquiry about claimant Discharged from HM Forces' letter and the appropriate reply stencil should be sent to the relevant service, if the release/discharge documents:
- are not produced; or
  - have not been received; or
  - are incomplete; or
  - appear to show the claimant was:
    - discharged for misconduct; or
    - dismissed in consequence of having been convicted under the Naval/Army/Air Force Discipline Act or by any Civil Act or by any Civil Court in the last 26 weeks;
100. The following addresses should be used for the enquiry:
- Army:

- Executive Officer, Army Personnel Centre, Disclosures 1 MP520, Kentigern House, 65 Brown Street, Glasgow G2 8EX.
  - Royal Navy:
    - Disclosure Cell, Room 48, West Battery, MPG2, Whale Island, Portsmouth, PO2 8DX
  - Royal Air Force:
    - RAF Headquarters Strike Command (HQ STC), RAF High Wycombe, Buckinghamshire, HP14 4UE
101. If the reply from HM Forces confirms that the reason for discharge or dismissal creates a misconduct doubt:

Step	Action
1	complete report form ES567 giving the date of termination of service in the forces; and
2	pass to the Team Leader for consideration of referral to the LMDM.

102. If a claim is made by an ex-member of the forces who left voluntarily, for example on completion of service or by buying themselves out, the case must be treated as ineffective.

## Defamatory Statements

103. There are several documents on which defamatory statements may be made in addition to forms in the ES85, ES86 series. For example ES95A and ES95B. The defamatory statement can be made by an employer, the claimant or by some other person or body concerned with the claim.
104. All people who deal with these forms must therefore be alert to questionable statements so that the following action can be taken as soon as possible.
105. The High Court has held that statements made by an employer, although not absolutely privileged, are made on an occasion of qualified privilege. This means that no action for libel based on such statements would succeed, unless the defamatory statement was both untrue and made with malice.
106. However, an employer who successfully defends such an action can incur costs, which they will be unable to recover if the claimant is a person with little or no means.
107. It is extremely important therefore, that statements made in connection with claims for JSA, which might lead to libel action, are recognised as soon as possible and dealt with urgently.
108. This is to protect the maker of the statement, usually the employer, from the possible consequences of unnecessary disclosure of any offensive or defamatory matter. It is important to avoid unnecessarily alienating the co-operation of employers.
109. It is difficult to lay down general rules as to what constitutes a defamatory statement.
110. 'A defamatory statement is one which has a tendency to injure the reputation of a person to whom it refers; which tends, that is to say, to lower them in the estimation of right thinking members of society generally and in particular to cause them to be regarded with feelings of hatred, contempt, ridicule, fear, dislike or disesteem.'

111. Some statements of the circumstances leading to a claimant's dismissal from their employment can be defamatory.
112. However, action must not be taken in every case of leaving voluntarily, misconduct or alleged misconduct.
113. A plain factual statement describing only the incident or incidents which led to the claimant's loss of job must not be regarded for JSA purposes as defamatory and such a case can be dealt with in the normal way.
114. This applies irrespective of the seriousness of the unsatisfactory conduct reported, so long as it is a factual description of what actually occurred unaccompanied by any generalised derogatory observation about the claimant's character. For example: 'He was caught walking out of the works with a roll of copper wire, the property of the company'.
115. Action must always be taken if the statements contain adverse remarks about the claimant's character, which go beyond a factual description of specific instances of alleged misconduct.
116. Such comments will usually be unsuitable and inadequate for decision making purposes in any event and the LMDM will provide a list of points on which they require more information or specific facts.
117. Any allegation made without proof or in unspecific terms that a person has been responsible for any financial irregularity, cash shortage, or dishonesty must be regarded as defamatory and action taken.
118. The following are examples of statements made by employers of the kind on which libel actions have been taken or threatened by claimants:

#### **Example 1**

- 'For being drunk on board ship and not capable of attending to duties entrusted to him';
  - 'being drunk' is an opinion or conclusion as to the degree to which the claimant had been drinking. This statement would have been an example of a plain factual statement adequate for decision making purposes if it had read:
- 'On ..... the claimant was reported to the Master and logged for being the worse for drink and for failing to perform his duties in the galley during the middle watch when he was required .....

#### **Example 2**

- Lazy, dirty and, in general, unsatisfactory';
  - an example of the type of statement which is quite inadequate in such general terms for decision making purposes.
- 'Insolence and insubordination and refusal to work when definitely instructed to do so after long spells of self-sought idleness';
  - the words 'Insolence' and 'self-sought' involve derogatory opinions or conclusions. A factual version eliminating these elements, which would still leave adequate grounds for misconduct although the LMDM may require further details, would be: 'Refused in an offensive manner to work when required to do so';

#### **Example 3**

- 'Dismissed because of loss of trade due to lack of civility, in my opinion, since proved by claimants' comments and increase of trade in this department'.

- in this example it is not apparent whether the client would have been dismissed for lack of civility if trade had not been lost. The use of the words 'in my opinion ..... department' raises a doubt as to whether at the time of dismissal it had been proved that the client's lack of civility in handling of claimants amounted to misconduct and the LMDM would require further information for decision making purposes.

119. Where the Team Leader considers that the information provided on form ES85 is defamatory to the claimant, form ES85 should be referred immediately to the LMDM. A note should also be included, advising them that the form contains statements that may be defamatory. Form ES86 should not be issued.
120. The LMDM may be able to allow the LM question, in which case no further action is necessary. If the LMDM cannot allow the question they may either clear the matter with the employer by telephone, or return the form to the Jobcentre for arrangements to be made to interview the employer.

### **Action when the LMDM decides that the employer should be interviewed**

121. If the LMDM considers that it would be preferable for the employer to be interviewed they will send the form to the Team Leader at the Jobcentre for action.
122. Interview the employer in person as soon as possible.
123. During the interview, take the following action:

Step	Action
1	remind the employer that it may be necessary to send copies of the statement to the claimant and to any person acting for them as well as to the decision making authorities;
2	inform the employer that a few cases of libel action have been taken by claimants following statements made by employers in response to enquiries;
3	tell the employer that, while the Courts will not find against them in such an action, unless they decide that a defamatory statement is untrue and has been made with malice, an employer who succeeds can incur costs which cannot be recovered from an employee with little or no means;
4	explain that, in order to decide whether JSA is payable, we need to know only the facts relating to the unsatisfactory conduct which led to the claimant's dismissal and in particular the points on which the LMDM requires further information;
5	ask the employer if they wish to revise their original statement; note details of action taken on form ES589.

124. If an employer wishes to revise a defamatory statement ask them to make a fresh statement on a new form. In no circumstances must the original statement be amended. Once a fresh statement is made, the original statement must be given to them for destruction.

125. When the employer has been given the opportunity to withdraw or re-write the statement, normal DMA action must be taken even if the statement has not been changed, unless its nature raises doubts about the desirability of doing this.
126. If there are doubts, the Team Leader must get legal advice before the case is referred to the LMDM if legal action is threatened by any interested person
127. Where a document which contains a defamatory statement is marked 'Confidential' and the LMDM cannot allow the LM doubt, explain to the employer the importance of the relevant facts being made available to the claimant and to the decision making authorities.
128. If the employer does not want to revise or retract the defamatory statement and if they insist on the information remaining confidential, terminate the interview and treat form ES85 as 'ineffective'.
129. If the employer agrees to revise their statement and to withdraw the confidential label, ask them to make a fresh statement on a new form. In no circumstances must the original statement be amended. Once a fresh statement is made, the original statement must be given to them for destruction.
130. If the employer does not modify their statement but agrees to delete the confidential entry ask them to initial the deletion.
131. If an interview cannot be arranged, for example because the employer is remote from a Jobcentre, send the appropriate letter and enclose a new form with the letter.
132. No other matter should be referred to in the letter; any other questions arising on the claim must be dealt with separately. As it is possible that issuing further correspondence will lead to a misunderstanding or to the refusal to co-operate, the issue of the letter must only be considered where interviewing would cause extreme problems.
133. Where a letter sent brings no response in the following 3 days the Team Leader should take such follow-up action as appears necessary.

### **Claimant's statements**

134. Where form ES84 contains a statement by the claimant that may be defamatory and there appears to be grounds for a sanction to be imposed, the case should be referred to the LMDM.
135. If the LMDM allows the question, no further action is necessary.
136. If the LMDM cannot allow the question, the case should be referred back to the Team Leader who should interview the claimant on their next attendance.
137. Inform the claimant that the statement may have to be shown to the person concerned in the statement and to the decision-making authorities.
138. Explain that disclosure of the statement could lead to a libel action.
139. Take care to make it clear that the information is being given in the claimants own interest.
140. The Team Leader must take action according to the claimants wishes. Record the action taken on form ES589.

## Submission to the Labour Market Decision Maker

141. 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

142. A submission to the LMDM for an opinion decision must not be made for 'credits only' claimants who leave employment voluntarily or through misconduct. However, Jobcentres should check the reasons claimants give for their employment ending 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.
143. 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 LV or Misconduct 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

144. If a claimant Left Employment Voluntarily or through Misconduct, the case must be referred to a Labour Market Decision Maker (LMDM) for a good reason decision.
145. There is no facility for the doubt to be treated as straightforward.
146. Ensure the following steps are taken when making the submission:
- all relevant information is gathered for the submission (ES84JP, ES85JP);
  - the Referral Form (ES567) is prepared on LMS and clerical entries are made where appropriate;
  - the claimant's details are entered on ES66;
147. Record referral to the LMDM on forms ES80B, ES66 and also on LMS and pass form ES66 and all relevant documents for submission to the Team Leader for consideration. It is important that all employer details required by the LMDM are included.

### Team Leaders action

148. The Team Leader must:

Step	Action
1	check each case to determine whether a LMDM or Team Leader decision is appropriate;
2	check to ensure that Employment on Trial (EOT) provision does not apply;
3	check that the report form has been completed correctly and all supporting documents are attached and cross referenced.
4	check JSAPS to see if JSA has been awarded and if so, from which date and if any compensatory payment doubts exist;



5	If they do record full details of the doubt and any dates affected along with the date JSA awarded from on the LMS notes screen;
6	treat the case as straightforward, EOT cases only, or send the submission to your appropriate LMDM to enable them to make a good reason decision

## Medical Evidence provided

149. If the claimant produces evidence that the work was beyond their physical or mental capacity, or was so harmful to their health it was unreasonable to expect them to remain in it, the doubt should still be submitted to the LMDM for a decision. There is no facility for the doubt to be treated as straightforward.

## Entitlement ceases

### Entitlement ceases after sanction decision made

150. If a claim ends **after** the DM decides a sanction is applicable, the decision is still valid and the sanction can be applied if JSA is subsequently reclaimed anytime within the sanction period, even if the claimant was not notified of the sanction.

### Entitlement ceases before sanction decision made

151. If the claim ends **before** the DM determines the case, no sanction can be imposed.

152. In cases where a sanction determination has not been made but the JSA award has come to an end, a sanction can only be imposed on a subsequent claim if there has not been a further period of employment. This is because a sanction cannot be applied for leaving voluntarily or misconduct except in respect of employment immediately preceding that claim.

### Example 4

- Ann leaves her job on 23.3.09 and makes a claim to JSA on 25.3.09.
- On 27.4.09 she starts a new job and her award of JSA comes to an end.
- This is only a temporary job and it ends on 8.5.09 so Ann makes a new claim to JSA on 11.5.09.

As a sanction had not been imposed on the earlier claim a sanction cannot be imposed on the new claim for the loss of her first employment.

### Example 5

- Stuart is dismissed from his job on 27.2.09 and makes a claim to JSA on 2.3.09.
- On 20.4.09 he goes abroad and entitlement to JSA ceases.
- Stuart makes a new claim to JSA on his return from abroad on 7.5.09.

A sanction had not been imposed on the earlier claim to JSA but as there has been no further period of employment a sanction can be imposed on the new claim for the loss of his first employment.

153. If a sanction has been imposed it will continue to apply through any subsequent awards until the expiry of the sanction period.

### **Example 6**

- Jake is sanctioned for leaving his employment voluntarily for the period 23.2.09 to 3.7.09.
- On 27.4.09 he starts a temporary job and his JSA award comes to an end.
- The temporary job ends and Jake makes a new claim to JSA on 1.6.09.

As a sanction decision has been made and this is still within the sanction period, JSA is not payable until 4.7.09.

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

154. 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.

155. 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.

156. If a claimant leaves employment voluntarily or through misconduct 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.

157. However, if a claimant leaves employment voluntarily or through misconduct 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**

158. 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**

159. 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.

160. 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.

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

162. 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.

163. 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.

## **Cancelled Decisions**

164. Where there is a break in the award of JSA, and that break is related to a person returning to employment, then any sanction for LV or misconduct relating to the previous award can still be applied.
165. However, where a claimant goes off JSA by finding work then any outstanding referrals for LV or Misconduct will be cancelled by the LMDM.

## **Additional Information**

### **Credits only claimants who leave employment voluntarily or through misconduct**

166. Credit regulations do not support the disallowance of credits solely because a claimant left employment voluntarily or through misconduct. 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.
167. Therefore, a submission to the LMDM for an opinion decision must not be made for 'credits only' claimants who leave employment voluntarily or through misconduct.
168. However, Jobcentres should check the reasons claimants give for their employment ending 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.

## Appendix 1 - Reasons given for employment ending by claimant

Customer Statement or claim form states	Ask further questions	ES85 required if	ES84 required if	ES85/84 not required if
Job ended	What was the reason?	Reply indicates they were dismissed for reasons other than redundancy	Reply indicates the claimant left the job	Reply shows job no longer available/end of contract
Mutual agreement	Who initiated the job ending? Did you have a choice whether to accept?	Reply indicates the employer initiated the agreement	Reply indicates claimant initiated the agreement	Reply indicates it was genuinely mutual
I wasn't suitable	Who said you weren't suitable? Could you have stayed on? Were you on a trial? Why were you not suitable?	Reply indicates it was the employer who thought the claimant wasn't suitable	Reply indicates it was the claimant who thought they weren't suitable	Reply indicates there was a trial period or similar during which the claimant proved to be unsuitable
I was sacked	Did the employer give you a reason? Have you got a letter saying you have been dismissed?	Reply indicates the claimant's actions caused the dismissal	Reply indicates that he was not dismissed	

I handed my notice in but they finished me before I had worked it	Did you do anything to give them reason to finish you when they did? Has the employer given you a dismissal letter/	Reply indicates that the claimant was dismissed before working their notice due to some action on their part.	Reply indicates the claimant has left but employer didn't want them to work their notice.	
I was redundant	Have you got a letter confirming this?  (Claimant should produce a letter confirming they were made redundant.)	Reply indicates there is no confirmation of redundancy, it is not a known redundancy situation, or if the claimant is unable to produce a confirmation letter	Reply indicates that it wasn't really a redundancy situation or the claimant left because there were going to be redundancies	Reply indicates or it is known to be a genuine redundancy situation and the claimant produces a confirmation letter
I took voluntary redundancy	As above Did you volunteer after redundancies were announced	No evidence is produced and the redundancy is not known locally	As above	As above providing there was a need to reduce the workforce
I didn't like the job	Does that mean you left it? What was wrong with the job?		Reply indicates the claimant left their job.	
The boss didn't like me	Does that mean you left or were you dismissed/	Reply indicates dismissal.	Reply indicates claimant left.	

My husband/wife /partner got a job somewhere else so I had to leave.	Has the claimant moved out of the area they were working in beyond daily travelling?		Reply indicates left employment	
Constructive dismissal	Have you taken a case to an Employment Tribunal? Has the case been heard/	Reply indicates they were actually dismissed	Reply indicates they left the employment.	
Insolvency of employer	Is the Insolvency generally known?			If know Insolvency

## **Appendix 2 - Letter to employer about defamatory statements on ES85**

Office address

Jobseeker's Allowance Reference

Date

Dear

Thank you for your statement on form ..... about ..... who has made a claim for Jobseeker's Allowance (JSA). The administration of JSA depends to a considerable extent on the assistance given by employers in matters of this kind and I am very grateful to you for your co-operation.

Where an employer's statement raises doubt about whether a claimant should be paid JSA, it is only fair they should be told why there is such a doubt and that they should be invited to give their version of the circumstances. It is, therefore, our practice to send a copy of the employer's statement to the claimant, and where necessary to their association, as well as to the person(s) deciding the claim. (You will see that this procedure is mentioned on the form itself).

As I am unable to get in touch with you personally I am writing to let you know there is a possibility that if your statement is sent to the claimant in its present form it might expose you to the risk of a civil action by the claimant. In a few isolated instances libel actions have been brought by claimants upon statements made by employers on forms such as ES85.

The courts will not find against an employer in such an action, unless they decide that a defamatory statement is untrue and has been made with malice. An employer who successfully defends such an action may nevertheless incur costs, which they will be unable to recover if the claimant is a person with little or no means.

I think it is right to draw your attention to this possibility and I am returning the form to you so that you can, if you wish, reconsider the wording of your statement in your own interests

Should you wish to revise your statement will you please complete and sign the new form enclosed and return it to me. The original form can then be destroyed. If, however, you wish your statement on the original form to stand, please let me have it back. A reply envelope or label is enclosed.

If I can be of any further help, please telephone or write to me.

Yours sincerely

Business Manager

### **Appendix 3 - Letter to an employer who declines to complete form ES85 or inquires as to their legal position**

Office address

Jobseeker's Allowance Reference

Date

Dear

I am replying to your letter of ..... about form ES85 on which you were asked to state why ..... ceased to be employed by you.

Payment of Jobseeker's Allowance (JSA) depends on the claimant fulfilling entitlement and other conditions; for example not losing their previous employment through misconduct or giving up their employment without good reason. If an employer does not supply the information asked for on form ES85, JSA could be paid to someone who should not receive it.

The Courts of Law have decided that statements made by an employer in a written reply to questions submitted to them on form ES85, although not absolutely privileged, are made on an occasion of qualified privilege. No action for libel based on such statements would, therefore, succeed except on proof that they were untrue and made with malice.

A procedure of this kind has been in operation for many years and it has been found that so long as the employer's statement is confined to the true facts of the case there is very little risk of action by the employee.

Yours sincerely

Business Manager

### **Appendix 4 – National List of Employers**

The following list details the Employers who MUST NOT be sent ES85s. This is because they either do not complete the forms or have specifically asked not to receive such correspondence from Jobcentre Plus:

- Accenture
- Angard Staffing (for Royal Mail Christmas Casual staff)
- City Facilities Management
- ESSO Petroleum
- ROC UK LTD
- Royal Mail
- Virgin Media