

# Refusal of Employment

## Guidance Queries and Help

1. If you are unable to find an answer to a particular question regarding policy within this guide you must contact the Jobcentre Plus Live Support Advice Line. Do not give the Advice Line number to claimants or outside bodies under any circumstances, it is for the use of Jobcentre Plus staff only. Details of how to contact them can be found by clicking on the following hyperlink, Advice Line Home Page.
2. Please do not use the 'E-mail page owner' and 'Page information' links at the bottom of each page of guidance to raise policy queries. These should only be used to report broken hyperlinks.

## Introduction

3. The Jobseekers Act 1995 says that Jobseeker's Allowance (JSA) is not 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.
4. This is provided that:
  - the job was notified to the claimant by an Employment Officer;
  - the job was notified to the claimant personally when attending the Jobcentre Plus office (or elsewhere), or by letter or by telephone; and
  - the job was not self-employment.
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. All Jobcentre Plus staff are Employment Officers.
6. The claimant must understand that the job they are being notified is one that **they must apply for**. The adviser must make clear to the claimant, at the time they are notified to apply for the vacancy, that refusal or failure to apply for the job or non-acceptance of the job when offered without good reason will result in a sanction.
7. The Welfare Reform and Pensions Act 1999 (Section 72) (Relevant Authority) Designation Order 2013 came into effect on 17 July 2013. From this date, where a person in receipt of JSA has been notified about a job by an Employment Officer, that employer is designated as a relevant authority. This means that that employer, or the employees of that organisation, can share with DWP information regarding whether or not a JSA claimant applied for the job in question.

## Restrictions on Availability

8. Any job which a claimant is notified to apply for must fit within the pattern of availability agreed on the claimant's Jobseeker's Agreement (JSAg).

9. Any Permitted Period or other agreed restrictions must also be taken into account when considering whether it is appropriate to mandate a claimant to a particular vacancy.

## **Notifying the claimant**

10. How jobs are identified, notified to the claimant, followed-up and (where appropriate) referred to a Decision Maker will depend on whether the claimant is using Universal Jobmatch and whether they have given DWP access to their account.

11. Details can all be found in the Universal Jobmatch Toolkit.

## **Allowing claimant time to apply**

12. The introduction of Universal Jobmatch brought in a default vacancy closing date of 60 days (although employers can increase or decrease this if they wish when placing the vacancy).

13. 12. As this default period is too long for Refusing Employment purposes, when requiring a claimant to apply for any particular vacancy, the adviser should allow a **maximum** period of four weeks for the claimant to apply. In setting this date, advisers should use their discretion and take into account:

- whether the vacancy has an actual closing date of less than four weeks (in which case, the earlier date should be the one set);
- the complexity of the application process (if known);
- the steps already set out in their JSAg or JSA Claimant Commitment which, if undertaken, may make it difficult for the claimant to apply in time;
- the individual circumstances of the claimant.

14. In all cases the claimant **must** always be clearly informed of what is expected of them and when (or by when) they have to do it..

15. 14. If the claimant fails to apply for the vacancy by the end of the set period, Refusing Employment action should be considered.

16. If referring such a case of RE to the LMDM, please enter the date you have set in the 'Final date they could apply' field in DART and provide a brief covering note in the 'Reasons...' field to let the LMDM know that this is a date you have set rather than the employer.

## **Vacancy is still open**

17. A referral to the LMDM can still be made even if the vacancy is still open.

18. If the vacancy is still open, the claimant may change their mind and subsequently apply.

19. In these cases, if the claim has already been sanctioned for their initial refusal, the case will need to be referred back to the LMDM on form DR7 for the decision to be reconsidered and revised. Confirmation from the employer that the claimant has applied will need to be obtained and included on the DR7. JSA will be reinstated from the first date of the sanction period. If no decision has been made, the LMDM team should be contacted urgently so that the referral can be cancelled.

20. Please also see para 59 for discretions that can be applied if the claimant fails to apply or attend an interview when the vacancy is still open.

## **Contacting employers**

21. The Welfare Reform and Pensions Act 1999 (Section 72) (Relevant Authority) Designation Order 2013 came into effect on 17 July 2013. From this date, where a person in receipt of JSA has been notified about a job by an Employment Officer, that employer is designated as a relevant authority under this Act.

22. This means that the employer, or the employees of that organisation, can share with DWP information regarding whether or not a JSA claimant applied for the job in question.

## **Exempt Vacancies**

### **Work Trials**

23. It is fundamental to the concept of Work Trials that they offer 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, RE action cannot be taken.

### **RE and credits only claimants**

24. Credit regulations do not support the disallowance of credits solely because a claimant refused employment. See Discretion Type D for further details.

### **Zero Hours Contract**

25. 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.

### **Employee Shareholder Contracts**

26. Employee Shareholder Contract jobs are entirely voluntary and JSA claimants must **never** be required to apply for such vacancies.

27. It may not be obvious from the details available whether the vacancy is actually an Employee Shareholder job or not. It will be dependent on the employer stating this when they advertise the vacancy, so may only become apparent during the interview stage, or when the individual and employer are discussing the terms and conditions of the job. If it later becomes apparent that the vacancy is an Employee Shareholder job, and the claimant no longer wishes to pursue the vacancy, then Refusal of Employment sanction action **must not** be taken.

### **Apprenticeships**

28. A legacy JSA claimant must not be mandated to apply for a government-funded apprenticeship vacancy where that vacancy has been advertised by the National Apprenticeship Service in England, by Careers Wales in Wales or is a

Modern Apprenticeship in Scotland. Consequently, no RE or Neglect to Avail action can be taken if a claimant declines to apply for or pursue such a vacancy. 29. Claimants can still be mandated to apply for other non government-funded apprenticeship vacancies which are **not** advertised by the above named organisations with a sanction doubt being raised if the claimant fails to apply.

### **Incorrect Submissions**

30. RE action is not to be taken in situations where a claimant has been incorrectly submitted to a vacancy. That is, where the number of hours advertised on the vacancy exceed those agreed on the JSAg (for example, the number of hours advertised are 40 but the maximum number of hours the claimant is available to work is 30) or where the claimant has agreed a pattern of availability on their JSAg of:

- 24 hours or more per week and the hours recorded on the job are less than 24 hours per week; or
- 24 hours or more per week and there are no hours recorded on the job but the vacancy is shown as part time; or
- less than 24 hours per week and the hours recorded on the job are less than 16 hours per week; or
- less than 24 hours per week and there are no hours recorded on the job but the vacancy is shown as full time.

### **Trade disputes**

31. A claimant cannot be sanctioned if they refuse a job that is vacant because of a stoppage of work due to a Trade Dispute. Therefore, a decision by the Labour Market Decision Maker (LMDM) is **not** required in this situation.

### **Self employed work**

32. For the purposes of RE, employment relates to employed earners employment (i.e. paid work). It excludes self-employed work. Therefore, a decision by the LMDM is **not** required where a job was available on a self employed basis.

### **Identifying potential Refusal of Employment cases**

33. Refusal of Employment must be identified by following-up the outcome of the submission with the claimant. This could be during adviser interviews or Jobsearch Reviews, or by 'phone or by email or by accessing their UJ account if permission has been granted for example.

34. The considerations to be given can be found in the Universal Jobmatch Toolkit guidance.

### **Other doubts - Availability and Actively Seeking Employment Doubt**

35. 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, in addition to

the RE referral. See the Availability and Actively Seeking Employment and the Treated as Available and Actively Seeking Employment chapters for further information.

## Joint Claims

36. 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.

37. One or both claimants in a joint claim can be sanctioned for RE.

## Claimant's behaviour

38. Claimants may behave in such a way that they lose the chance of employment. In such cases, a claimant may be sanctioned for RE even though they did apply for the job.

39. 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.

40. If a prospective employer makes it known that such conduct has occurred, the claimant's behaviour may amount to refusal or failure to apply.

41. If it is identified that a claimant has avoided the chance of a job, a referral to the LMDM is required. This may be on receipt of information from an employer, or at an intervention interview.

## Refusal of Employment Discretions

42. Certain types of RE cases can be Treated as Straightforward (TaS) without a formal referral to the LMDM being necessary.

43. These are known as RE Discretions and are listed as Case Types A to E, 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	Credits only
E	Vacancy still open, claimant resubmitted

44. 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.

45. Only cases where the reason for RE falls clearly within the criteria of the RE Discretions can be TaS.

46. 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.**

47. 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.

48. 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.

49. 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.

50. 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.**

51. There is no need to track through job submissions on their previous claims to see if RE applies where the claimant:

- makes a new claim that does not follow a period of employment; **and**
- has not claimed for at least 26 weeks.

52. 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.

53. 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; and
- 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.**

54. 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.

55. 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.

56. 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 confirms an application was made, RE action is not necessary and LMS should be noted.

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

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

58. 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; and
- the employer agrees that the claimant attended the interview but the claimant's behaviour deterred the employer from offering them the job.

**Type D - The claimant is entitled to credits only.**

59. Credit regulations do not support the disallowance of credits solely because a claimant refuses employment. A claimant can be awarded a National Insurance credit, providing they are:

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

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

**Type E - the vacancy is still open.**

61. If the claimant failed to apply for the vacancy by the date set and the claimant's reasons for the failure are listed in para 65 below, they can be given a second chance to apply if the vacancy is still open.

62. The claimant should be given a new date by which to apply. If they fail to do so a second time, no matter what the reason, an RE referral to the LMDM should be made.

63. If the claimant's reasons for their failure are not known, the matter should be referred to the LMDM with no second chance being offered.

64. If the claimant has applied but failed to attend an interview or otherwise progress their application and the claimant's reasons for the failure are listed in para 63 below, check to see if the job is still available and the employer is still willing to see the claimant. If both apply, no LMDM referral should be made but the matter should be followed up later with the employer. If neither apply, a LMDM referral should be made.

65. The circumstances under which a second chance to apply can be granted are:

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

66. The claimant should only be given one second chance per vacancy to avoid creating problems with the employer. The second chance provision should not be applied automatically in every case and should not enable the claimant to escape a sanction unless one of the criteria above applies.

67. 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 <sup>nd</sup> submission to the job is known;
4	if an RE referral is required on the 2 <sup>nd</sup> job, include the papers from the first refusal in the DMA evidence to the LMDM.

68. 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 2<sup>nd</sup> time, take normal RE action.

### Re-submission Appropriate

69. If a re-submission is appropriate, the claimant should be redirected to the details on their Universal Jobmatch account, or re-issued with the vacancy details, as appropriate.

70. A record of the resubmission is made in LMS Conversations.

71. Exceptions to this rule are:

- if the claimant refuses to be re-submitted; and
- if the employer refuses to accept the claimant being re-submitted a 2<sup>nd</sup> time.

72. If any of these apply, RE action continues with the DMA referral.

73. If the claimant subsequently applies for this vacancy and the original decision was to apply a sanction to the benefit, the LMDM is to be asked to reconsider that decision.

### Claimant Refuses or Fails to apply for employment

74. Once it has been determined that a claimant has refused or failed to apply for employment, having considered how they were notified of the vacancy, exempt vacancies, incorrect submissions and the RE Discretions, the case must be referred to a LMDM for a good reason decision.

75. On the LMS 'View referral/decision details' screen, a new referral is created using the appropriate AR code (JSA 710).

76. The following action is required on LMS:

Step	Action
1	Click the [Dec] or [NoDec] button in the Client Details window. <b>Note:</b> If no previous DMA action has been taken, you will automatically get a New Referral/Decision Details window. If one or more is already held, click [New]
2	Click the [Question] hotspot
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"> <li>• Ensure the vacancy is in line with any agreed restrictions on the claimants availability;</li> <li>• Ensure the vacancy reflects the claimants agreed hours of availability; and</li> <li>• Ensure the vacancy is not exempt from RE action, such as a Work Trial, or an incorrect submission, such as self-employment was not made.</li> </ul> <p>If the original vacancy was not suitable then a referral to the LMDM is not appropriate. The following action is taken: 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>A check as to whether any of the RE Discretions apply is made.</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, the following action is taken: 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, the claimant is contacted, 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

77. If the claimant is present when the doubt is identified, the following action is taken:

Step	Action
1	a statement is taken from the claimant, using DART, of their reasons for refusing or failing to apply for employment. The claimant's reasons must be fully covered.
2	a check is made as to whether the statement indicates that there are any other doubts, such as availability or actively seeking employment (ASE). If there are, Other Doubts should be referred to for further information.
3	the information from DART is copied into the LMS notes box for the relevant decision, to ensure that details of the referral are maintained for reconsideration or appeal purposes.

4	DART is used to send the submission is sent to the LMDM, for a good reason decision.
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### Telephone contact

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

79. If the claimant can be contacted by telephone, the following action is taken:

Step	Action
1	the claimant's identity is confirmed.
2	a statement is taken from the claimant, using DART, of their reasons for refusing or failing to apply for employment. The claimant's reasons must be fully covered.
3	a check is made as to whether the statement indicates that there are any other doubts, such as availability or actively seeking employment (ASE). If there are, Other Doubts should be referred to for further information.
4	the information from DART is copied into the LMS notes box for the relevant decision, to ensure that details of the referral are maintained for reconsideration or appeal purposes.
5	DART is used to send the submission is sent to the LMDM, for a good reason decision.

**Note:** When contacting a claimant by telephone, using #1470 should be considered, so that the call details do not display as a private number.

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

81. 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

82. 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	Form ES195RE is completed
2	the Referral Notification Letter (ES48S) is printed from LMS;
3	the ES195RE, together with leaflet ESL48JP and the ES48S are posted to the claimant and they are asked to provide a statement of the reasons why they refused or failed to apply for the employment
4	the date of issue of the ES195RE is recorded in the Notes on the appropriate LMS 'View referral/decision details' screen and the entry initialled and dated.

5	an LMS Workflow for 7 calendar days from the date of issue is input.
6	the claimant is advised 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**

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

<b>Step</b>	<b>Action</b>
1	the appropriate LMS 'View referral/decision details' screen is selected and receipt of the ES195RE recorded in the Notes.
2	the reason provided by the claimant for refusing or failing to apply for employment is entered into DART. It is essential that the information provided on the ES195RE is copied word for word.
3	a check is made as to whether the statement indicates that there are any other doubts, such as availability or actively seeking employment (ASE). If there are, Other Doubts should be referred to for further information.
4	the information from DART is copied into the LMS notes box for the relevant decision, to ensure that details of the referral are maintained for reconsideration or appeal purposes.
5	DART is used to send the submission is sent to the LMDM, for a good reason decision.

### **Claimant statement not received within 7 days**

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

<b>Step</b>	<b>Action</b>
1	the appropriate LMS 'View referral/decision details' screen is selected and non-receipt of the ES195RE recorded in the Notes.
2	The fact that the claimant has not returned the completed ES195RE after 7 calendar days is recorded on DART.
3	the information from DART is copied into the LMS notes box for the relevant decision, to ensure that details of the referral are maintained for reconsideration or appeal purposes.
4	DART is used to send the submission is sent to the LMDM, for a good reason decision.

85. 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. The Labour Market Unit (LMU) and LMS Conversations are noted that action remains outstanding if the claimant reclaims.

86. 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.

87. In such cases, the LMDM must be notified of the reason why there was a delay in submission and the reason why the claim was terminated initially.

### **Referral action**

88. LMS is accessed and the 'View Referral / Decision Details' screen checked.

89. To ensure that details of the referral are maintained for reconsideration or appeal purposes, a check is made that all of the information from the DART referral has been copied from DART into the LMS notes box for the relevant decision.

90. The referral is sent to the LMDM using DART, to enable them to make a good reason decision. The DMA Referrals Guide chapter includes more information on what must be included in the referral.

91. It is explained to the claimant that a decision will be made on whether they had sufficiently good reason for refusing or failing to apply for employment. They are also informed 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**

92. The details of the decision are automatically entered into the LMS 'Referral/Decision Details' screen, once the LMDM has input their decision into DMAS.

93. The LMDM emails 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.

94. If a claimant refuses employment without good reason 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**

95. Some claimants may be able to claim JSA Hardship when a sanction has been imposed on their JSA. Further information can be found in JSA Hardship Awards.

### **Reserved Decisions**

96. 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.

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

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

99. 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.

100. 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.