GUIDANCE ON HIGHER-LEVEL SANCTION FOLLOWING RE-AWARD OF UC

INTRODUCTION

1. This memo is to clarify the guidance on higher-level sanctions following a re-award of UC or other circumstances where a claimant is awarded UC without making a claim.

BACKGROUND

2. ADM Chapter K3 gives guidance on higher-level sanctions in UC and K3024 gives guidance on ‘pre-claim failures’. Legislation\(^1\) provides that a higher-level sanction can be imposed on a claimant for a ‘pre-claim failure’.

\(^1\) WR Act 12, s 26 (4)

CHANGES TO GUIDANCE

3. The guidance in this memo is to advise DMs that the provision in relevant legislation\(^1\) does not allow them to impose a higher-level sanction on someone who

1. has failed to take up an offer of paid work\(^1\) or
2. has lost their job or reduced their hours and earnings voluntarily or because of misconduct unless they have done so before making a claim for UC.

Note: The provisions at 3.1. only apply to claimants in the all work-related requirement group (for guidance on work-related requirements see ADM Chapter J3).

1 WR Act 12, s 26 (4)(a); 2 s 26(4)(b)

4 This means imposing a higher-level sanction on claimants for ‘pre-claim failures’ does not apply to claimants who come back onto UC through the re-award process (see paragraphs 5 and 6). This is because legislation defines this category of sanctionable failure as being where a claimant at any time before making a claim has

1. failed to take up an offer of paid work or
2. ceased work or lost pay without good reason voluntarily or through misconduct.

A claimant can be automatically re-awarded UC without having to make a claim and therefore falls outside the scope of ‘pre-claim failures’.

Note: For definition of ‘sanctionable failure’ see ADM Chapter K1 and for guidance on ‘pre-claim failures’ see ADM Chapter K3.

1 WR Act 12, s 26 (4)(a)& (b); 2 UC C&P Regs, reg 6(1)

Re-award of UC

5 If a former claimant would become re-entitled to UC within six months of the last day of their previous entitlement and they

1. failed to take up an offer of paid work or
2. without good reason voluntarily or through misconduct
   
   2.1 had their hours or wages reduced or
   
   2.2 lost their job

then they have two options for returning to UC. They can either make a fresh claim or they can notify the change in their circumstances and their UC can be re-awarded without them having to make a claim.

1 UC, PIP, JSA & ESA (C&P) Regs, reg 6(1)
Joint claimants

6 Regulations\(^1\) also enable an award of UC to be made in some instances to joint claimants without the need for a claim being made.

**Note:** It is less likely that a pre-claim failure would arise in these cases because where two existing single claims merge (or a joint claim is converted to a single claim(s)) there will be no break in entitlement, but it is possible that in certain cases pre-claim failures may arise, e.g. if one partner did not have a subsisting UC claim (for further guidance on UC claims see ADM Chapter A2).

\(^1\) UC, PIP, JSA & ESA (C&P) Regs, reg 9

Higher-level sanctions where there is a re-award of UC

7 Where a person is re-awarded UC

1. without making a claim **and**

2. a pre-award failure is identified

they will not fall under relevant legislation\(^1\) and so a higher-level sanction cannot be imposed.

\(^1\) WR Act 12, s 26 (4)

Work-related requirements

8 With the exception of powers to impose sanctions for pre-claim failures, claimants should not be referred for a sanction decision for failures committed when the claimant was not in receipt of UC. This is because legislation\(^1\) is limited to imposing work-related requirements upon claimants\(^2\). These powers do not stretch to individuals who have come off benefits even if we anticipate that they may re-claim in the future under the re-award process or otherwise.

\(^1\) WR Act 12, s 13 - 25; UC Regs, reg 95; 2 WR Act 12, s 40

9 Therefore we cannot impose a requirement upon an individual where there is no subsisting claim/award for UC. There is also no power to impose a requirement within an earlier notification that seeks to impose a binding obligation contingent upon the fact a claimant may be re-awarded benefit in the future (for detailed guidance on Work-related requirements in UC see ADM Chapter J3).
ANNOTATIONS
Please annotate the number of this memo (2 /14) against ADM paragraphs:

CONTACTS
If you have any queries about this memo, please write to Decision Making and
Appeals (DMA) Leeds,1S25, Quarry House, Leeds. Existing arrangements for such
referrals should be followed, as set out in Memo DMG 03/13 - Obtaining legal advice
and guidance on the Law.

DMA Leeds: February 2014