Fairness in welfare benefits – 22nd May 2024

**Universal Credit: Sanctions and claimant commitments**

This paper will provide a short overview of conditionality in Universal Credit, including a summary of some recent changes and appeals.

Conditionality

1. Universal Credit claimants will fall into one of the following categories of conditionality:[[1]](#footnote-1)
2. no work-related requirements
3. work-focused interview requirement only
4. work-focused interview and work preparation requirements only
5. all work-related requirements.
6. Under s.13(2) WRA 2012, a ‘work-related requirement’ means:[[2]](#footnote-2)
7. a work-focused interview requirement
8. a work preparation requirement
9. a work search requirement
10. a work availability requirement

‘Way to Work’ policy

1. In force from 8th February 2022, the Universal Credit and Jobseeker’s Allowance (Work Search and Work Availability Requirements - limitations) (Amendment) Regulations 2022 (SI.No.108/2022) amend the Universal Credit Regulations 2013 and the Jobseeker’s Allowance Regulations 2013 to require jobseekers who are capable of work to search more widely for available jobs beyond those of a similar nature or level of remuneration to that of their previous work following the fourth week of their claim, rather than the thirteenth week as is currently the case - this is known as the ‘permitted period’.[[3]](#footnote-3) [[4]](#footnote-4)

Claimant commitment

1. The basic conditions for Universal Credit are that a person must[[5]](#footnote-5):

(1) be at least 18 years old

(2) not have reached the qualifying age for state pension credit

(3) be in Great Britain

(4) not be receiving education; and

(5) have accepted a claimant commitment.[[6]](#footnote-6)

1. A ‘claimant commitment’ is a record of a claimant's responsibilities in relation to an award of Universal Credit.[[7]](#footnote-7) The claimant commitment is generated as a result of a conversation between the claimant and a Jobcentre work coach, and must include a record of all the requirements that the claimant must comply with. It can be amended as the work coach thinks fit. The claimant commitment can be negotiated to take into account limitations on claimants’ ability to search for work, for reasons including caring responsibilities, disability and other circumstances.[[8]](#footnote-8)

PLP’s claimant commitment leaflets and microsite

1. To assist claimants and advisers in negotiating appropriate claimant commitments, Public Law Project developed a series of leaflets[[9]](#footnote-9) and a microsite[[10]](#footnote-10) with information and references to the relevant guidance and law as may be applicable for certain types of claimants.

Caring responsibilities

1. Deductions can be made to the expected hours of work search in order to take into account caring responsibilities. The deductions should reflect the number of hours the work coach thinks is compatible with the claimant’s caring responsibilities. A carer of a child under 13 (who does not have to be the parent) can restrict their hours to those compatible with normal school hours plus travel.
2. Temporary deductions can also be made for temporary childcare responsibilities and domestic emergencies.

Physical or mental health condition

1. A claimant’s expected hours of work search can be limited in order to take into account a physical or mental impairment. The limitations must be ‘reasonable’, and must be directly connected to the health condition. Claimants who can show that their physical or mental health condition adversely affects their ability to carry out work of a particular nature or location, must not have a work search requirement related to work of that nature or location.

Victims of domestic violence

1. Where a claimant has recently (within 6 months of the incident) been a victim of domestic violence, a work-related requirement imposed on that claimant ceases to have effect for a period of 13 consecutive weeks (starting from the date that the DWP was notified) and the Secretary of State must not impose any other work-related requirement on that claimant during that period.[[11]](#footnote-11) The exemption can be extended to 26 weeks if the claimant is the main carer of a child up to 16 years old, and potentially extended beyond that at the work coach’s discretion.[[12]](#footnote-12)
2. Claimants can only use the domestic violence exemption once in a 12-month period.[[13]](#footnote-13)

Homelessness

1. Work search requirements can be suspended due to a ‘domestic emergency’. This can include circumstances in which a claimant becomes homeless. DWP guidance states that where it would be unreasonable for a claimant to comply with a work search requirement, a work search requirement cannot be imposed.[[14]](#footnote-14)
2. An example given in the guidance includes a scenario where a claimant becomes homeless and is sleeping in a temporary place in a hostel. While the claimant is in this ‘temporary’ scenario, no work search requirement should be imposed. The guidance goes on to say that if the claimant is unable to find more long-term accommodation, consideration should be given to extending the period of time that the claimant is not required to conduct work search. It also states: “A temporary circumstance, such as sudden homelessness, is not always a one-off event and the fact that a person has gone from rough sleeping to staying in a hostel does not mean that their temporary circumstances have come to an end.”[[15]](#footnote-15)

Drug and alcohol treatment

1. Claimants who are participating in a “structured recovery orientated course of alcohol or drug addiction treatment” cannot have a work search requirement imposed on them for a period of up to six months, nor do they have to be able and willing to immediately take up work or attend an interview.

Hardship payments

1. The qualifying criteria for getting a hardship payment are as follows:

* Where applicable, compliance conditions have been met;[[16]](#footnote-16)
* Application made in approved manner or other such form as deemed sufficient, with evidence requested by the DWP provided;[[17]](#footnote-17)
* Acceptance that hardship payments are recoverable;[[18]](#footnote-18)
* DWP is satisfied that you have complied with all the work-related requirements that you were required to comply with in the 7 days preceding the day on which you submitted an application;[[19]](#footnote-19) and
* DWP is satisfied that you are experiencing hardship.[[20]](#footnote-20)

1. ‘Hardship’ means that because your Universal Credit has been reduced as a result of a sanction or benefit offence, you cannot meet your immediate and most basic and essential needs, or those of a child for whom you are responsible.[[21]](#footnote-21) ‘Needs’ means accommodation, heating, food and hygiene.[[22]](#footnote-22)
2. You should also have made every effort to get alternative sources of support,[[23]](#footnote-23) and to stop incurring any expenditure not relating to basic and essential needs.[[24]](#footnote-24)

Recovery of hardship payments

1. Hardship payments are normally recoverable.[[25]](#footnote-25) Following judicial review proceedings brought by PLP, the DWP amended their published policies on recovery of hardship payments, acknowledging that it has a discretion as to whether or not to recover hardship payments.[[26]](#footnote-26)
2. Hardship payments are not recoverable during any assessment period (i.e. any month) in which you have sufficient monthly earnings (i.e. earnings above your monthly threshold).[[27]](#footnote-27)
3. Hardship payments are written off if, for at least six months since the last day on which your Universal Credit was paid at a reduced rate (or for two or more periods that total at least six months), you have had sufficient monthly earnings.[[28]](#footnote-28)
4. If your application for a hardship payment is refused, you can request a reconsideration and then appeal to the First-Tier Tribunal. Ask for a written decision letter if you haven’t already received one. Seek advice from a welfare rights adviser or a solicitor if your application has been refused. You may need to consider if the normal appeal route is a suitable or effective remedy for your client; if not then the claimant should seek advice on bringing a judicial review. The underlying sanction decision should also be challenged.

How to challenge sanctions decisions

1. Claimants are required to ask for the DWP for a revision before they can lodge an appeal against a sanction. Because these revisions are compulsory, they are usually referred to as ‘mandatory reconsiderations’ (or ‘MRs’).
2. For Universal Credit, there is no time limit to seek a mandatory reconsideration in sanctions cases.[[29]](#footnote-29) Likewise there is no time limit for the DWP to reconsider. Delays may be challenged by judicial review.[[30]](#footnote-30)
3. If a mandatory reconsideration letter does not produce the outcome that your client wants, the next stage is to lodge an appeal with the First-Tier Tribunal by completing the applicable form and enclosing the requested documents.
4. It is always worth challenging a sanction decision. This is particularly so where the claimant has had more than one sanction imposed, because past sanctions can affect the length of subsequent ones. If a previous sanction is removed, the sanction period for a later sanction should be reduced.[[31]](#footnote-31)
5. Grounds for challenging a sanction decision include:

* Whether you failed to do something
* Whether you were properly notified of any requirements
* Whether you have a good reason for what you did or did not do

Some tactics on sanctions appeals

1. While the claimant commitment is the record of what is expected, it is not the source of the requirements in itself. This means easements, or accounting for domestic emergencies, may not necessarily appear on the commitment.
2. Sanctions are most commonly imposed for failing to attend a Work-Focused Interview. ‘Good reason’ for not attending will need to be shown in most cases. Consider, for example (there may be more examples):

* Whether the client received notice of the appointment (by letter, text, entry on journal)
* Whether the notice was itself clear
* Any health reasons that prevented attendance
* Childcare reasons or other caring responsibilities
* Domestic emergencies
* Problems with paying travel costs
* A clash with another appointment

1. In cases where the claimant was late, it may be possible to argue that their lateness did not mean that they failed to attend – although this would need to be argued on a case-by-case basis.[[32]](#footnote-32)
2. Sanctions are also commonly imposed for failures to meet work search requirements. A sanction may be imposed if the claimant has not met their expected hours per week (minus any relevant deductions) of work search, or, where the claimant has spent fewer hours than expected, if the decision-maker is not satisfied that the claimant has taken all reasonable action for the purpose of obtaining paid work.[[33]](#footnote-33)
3. It is worth remembering that the expected hours of work search can be reduced in certain circumstances – for example, due to domestic emergencies, caring responsibilities, or for health reasons.
4. It can be helpful to follow this structure for appeals where the claimant has been sanctioned for not meeting a work search requirement:
5. Can any **deductions** be made from the usual 35 hours a week of work search?[[34]](#footnote-34) (e.g. for those with caring responsibilities or health problems)
6. Are there any ‘**relevant disregards’**?[[35]](#footnote-35) (e.g. for family crises or voluntary work)
7. If the hours have now been reduced as a result of steps 1 and 2, has the claimant met the **reduced hours**?[[36]](#footnote-36)
8. If the claimant has not met the number of expected hours, have they done all they could **reasonably** be expected to do?[[37]](#footnote-37)
9. If not, did the claimant have a **good reason** for not doing so?[[38]](#footnote-38)
10. There has also been some guidance on sanctions appeals from the Upper Tribunal. Judge Wikeley in *RR v SSWP* [2017] UKUT 459 (AAC) gave some general guidance on how tribunals should approach sanctions cases in Universal Credit:

[45] … tribunals must always bear in mind that the UC sanctions regime involves a financial penalty, and so the provisions should be strictly construed (see by analogy *DL v Secretary of State for Work and Pensions (JSA)* [2013] UKUT 295 (AAC) at paragraph 14). Putting the matter another way, I subsequently suggested that “there is an argument in sanctions cases that the claimant should be given the benefit of any doubt that may reasonably arise” (*CS v Secretary of State for Work and Pensions (JSA)* [2015] UKUT 61 (AAC) at paragraph 19)….. However, especially with the increased severity of the UC sanctions regime, as compared with the previous arrangements, tribunals need to scrutinise sanctions decisions with considerable care.

1. In *JB v SSWP* [2018] UKUT 360 (AAC),a case about Universal Credit sanctions, Judge Poole held that tribunals may need to consider validity of conditionality requirements imposed on claimants when deciding sanction cases (at [1]). For a failure to be sanctionable the SSWP must be able to show that there has been proper notification of the requirement and the consequences of non-compliance:

[19] …the SSWP must be able to evidence that a requirement was in fact imposed. The more informal the means of communication to a claimant, the more efficient the SSWP’s recording systems will need to be in recording what has happened. It is expected that the SSWP will produce to the tribunal copies of the claimant commitment and any appointment letters, records of telephone or electronic communications, and internal electronic records, evidencing the imposition of any work-related requirement and consequences of non-compliance to the claimant…**If the SSWP produces only records showing a date of a requirement to attend an appointment, and no documents showing the wording actually used, this may be insufficient to show that a claimant has been required to attend and participate rather than merely requested.**

[20]… **The critical issue is whether the claimant has been notified of the substance of the work-related requirement and consequences of non-compliance. If the claimant disputes adequate notification, unless the SSWP is able to evidence proper notification, the SSWP will not discharge the burden on her to show that the requirement was actually imposed** (*RR v SSWP (UC)* [2017] UKUT 459 paragraph 45). If that burden is not discharged, an appeal against application of a sanction will succeed without the tribunal having to consider good reason.

1. In *MB v Secretary of State for Work and Pensions (PIP)* [2018] UKUT 213 (AAC), a case in which a claimant was determined not to be entitled to Personal Independence Payment on the basis of allegedly failing to attend a medical assessment without good reason, Judge Mesher found that the First-Tier Tribunal had erred in law in confirming the Secretary of State’s decision when the necessary evidence of the appointment was lacking (at [8]). This was so even where it was not in dispute that the claimant was sent a letter (at [4]). Judge Mesher in *MB* cited the JSA case of *DC* [2017] UKUT 464 (AAC), a case about whether a proper notice requiring participation in a scheme under regulation 4(2) of the Jobseeker’s Allowance (Employment, Skills and Enterprise Scheme) Regulations 2011, so as to support a sanction for failing to participate. In *DC*:

…Judge Rowland held that on any appeal a copy of the appointment letter should be provided by the Secretary of State. Otherwise, unless a tribunal was able from its specialist experience to conclude that the appointment letter contained enough information to make it effective (which would have in my judgment to be carefully spelled out and explained in any statement of reasons), the Secretary of State would have failed to come forward with evidence on a matter on which the burden of proof was on him.[[39]](#footnote-39)

1. *JB* was applied by the Upper Tribunal in *KG v Secretary of State for Work and Pensions (UC)* [2020] UKUT 307 (AAC).

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**22nd May 2024**

1. Sections 19 to 22, Welfare Reform Act 2012. [↑](#footnote-ref-1)
2. Sections 15 to 18, Welfare Reform Act 2012. [↑](#footnote-ref-2)
3. Reg. 97(5) of the Universal Credit Regulations 2013/376. [↑](#footnote-ref-3)
4. See also new guidance at ADM Memo 2.22: <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1054128/adm-02-22.pdf> [↑](#footnote-ref-4)
5. Section 4, Welfare Reform Act 2012. [↑](#footnote-ref-5)
6. For more detail on some of the issues arising on this, see: <https://askcpag.org.uk/content/200514/lack-of-commitment-> [↑](#footnote-ref-6)
7. Section 14, Welfare Reform Act 2012. [↑](#footnote-ref-7)
8. There is a helpful summary on the gov.uk website: <https://www.gov.uk/government/publications/universal-credit-and-your-claimant-commitment-quick-guide/universal-credit-and-your-claimant-commitment> [↑](#footnote-ref-8)
9. <https://claimantcommitments.org.uk/leaflets/> (printable and mobile-friendly) [↑](#footnote-ref-9)
10. <https://claimantcommitments.org.uk/faq-page/> [↑](#footnote-ref-10)
11. Reg. 98, Universal Credit Regulations 2013/376. [↑](#footnote-ref-11)
12. <https://www.gov.uk/government/publications/domestic-violence-and-abuse-help-from-dwp/help-available-from-the-department-for-work-and-pensions-for-people-who-are-victims-of-domestic-violence-and-abuse#universal-credit> [↑](#footnote-ref-12)
13. Reg. 98(3)(b) Universal Credit Regulations 2013/376. [↑](#footnote-ref-13)
14. Advice for Decision Makers, Chapter J3, para. J3226. [↑](#footnote-ref-14)
15. Advice for Decision Makers, Chapter J3, para. J3072. [↑](#footnote-ref-15)
16. Reg. 116(1)(b) Universal Credit Regulations 2013, SI 2013/376 [↑](#footnote-ref-16)
17. Reg. 116(1)(c) and (d), Universal Credit Regulations 2013, SI 2013/376 [↑](#footnote-ref-17)
18. Reg. 116(1)(e) Universal Credit Regulations 2013, SI 2013/376 [↑](#footnote-ref-18)
19. Reg. 116(1)(f) Universal Credit Regulations 2013, SI 2013/376 [↑](#footnote-ref-19)
20. Reg. 116(1)(g) Universal Credit Regulations 2013, SI 2013/376 [↑](#footnote-ref-20)
21. Reg. 116(2)(a) Universal Credit Regulations 2013, SI 2013/376 [↑](#footnote-ref-21)
22. Reg. 116(3) Universal Credit Regulations 2013, SI 2013/376 [↑](#footnote-ref-22)
23. Reg. 116(2)(b) Universal Credit Regulations 2013, SI 2013/376 [↑](#footnote-ref-23)
24. Reg. 116(2)(c) Universal Credit Regulations 2013, SI 2013/376 [↑](#footnote-ref-24)
25. Reg. 119(1) Universal Credit Regulations 2013, SI 2013/376 [↑](#footnote-ref-25)
26. See summary here: <https://www.gardencourtchambers.co.uk/news/social-welfare-updates/change-to-dwp-guidance-on-recovering-hardship-payments-for-sanctioned-universal-credit-claimants> and here: <https://publiclawproject.org.uk/latest/dwp-changes-guidance-on-recovering-hardship-payment-debt/> [↑](#footnote-ref-26)
27. Reg. 119(2) Universal Credit Regulations 2013, SI 2013/376 [↑](#footnote-ref-27)
28. Reg. 119(3) Universal Credit Regulations 2013, SI 2013/376 [↑](#footnote-ref-28)
29. Reg. 14(1)(a) to (c), Universal Credit (Decisions and Appeals) Regulations 2013/381 [↑](#footnote-ref-29)
30. CPAG has a helpful template PAP letter: <https://cpag.org.uk/welfare-rights/judicial-review/judicial-review-pre-action-letters> [↑](#footnote-ref-30)
31. Reg. 3(6) Social Security and Child Support (Decisions and Appeals) Regulations 1999 [↑](#footnote-ref-31)
32. *SA v Secretary of State for Work and Pensions (JSA) (Jobseekers allowance : other)* [2015] UKUT 454 (AAC) [↑](#footnote-ref-32)
33. Reg. 95(1) Universal Credit Regulations 2013/376 [↑](#footnote-ref-33)
34. Reg. 88, Universal Credit Regulations 2013/376 [↑](#footnote-ref-34)
35. Reg. 95(2) Universal Credit Regulations 2013/376 [↑](#footnote-ref-35)
36. Reg. 95(1)(a)(i) Universal Credit Regulations 2013/376 [↑](#footnote-ref-36)
37. Reg. 95(1)(a)(ii) Universal Credit Regulations 2013/376 [↑](#footnote-ref-37)
38. Section 27(2)(a) Welfare Reform Act 2012 [↑](#footnote-ref-38)
39. *MB v SSWP (PIP)* [2018] UKUT 213 (AAC), at [6]. [↑](#footnote-ref-39)