

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF LEGAL GROUP)

Decision Makers Guide

Volume 3 Amendment 52 – February 2017

1. This letter provides details on Amendment 52; the changes have already been incorporated in to the Intranet and Internet versions of the DMG.
2. PDF amendment packages are also available. These can be printed with the amended pages being reproduced in full. Each page will contain the amendment number in the footer

PDF amendment packages can be found on the **Intranet** at:

<http://intranet/1/lg/acileeds/guidance/decision%20makers%20guide/index.asp>

or on the **Internet** at the 'Amdt Packages' tab on the following link:

<http://www.dwp.gov.uk/publications/specialist-guides/decision-makers-guide/>

Note: When printing PDF packages set the print properties to Duplex/Long Edge in order to produce double sided prints.

3. Amendment 52 affects chapters 9 & 15. The changes make amendments to
 - Chapter 9 clarify guidance relating to the imposition of a Civil Penalty.
 - Chapter 15. 15016-17 amend contents to correct NMW para. 15455/ 56 amend footnote placement, This and the spare paras need renumbering.
15682 & 84: Replace references to 'small earnings exception' with 'small profits threshold' where appropriate.
4. The last two amendment packages amending Volume 3 were

Amendment 52 [February 2016]

Amendment 51 [October 2015]
5. If using a PDF amendment package remove the sheets as stated in the left hand column of the Remove and Insert table below and insert the new sheets as stated in the right hand column (note the record of amendments at the back of the Volume).

Remove**Chapter 9**

09420 – 09500 (7 pages)

Chapter 15

Conts 15000 – 15148 (1 page)

Conts 15540 – 15725 (1 page)

15452 – 15469 (2 pages)

15650 – 15689 (2 pages)

Insert**Chapter 9**

09420 – 09500 (7 pages)

Chapter 15

Conts 15000 – 15148 (1 page)

Conts 15540 – 15725 (1 page)

15452 – 15469 (2 pages)

15650 – 15689 (2 pages)

Civil Penalties

Introduction

09420 The guidance in this section relates to the imposition of a CPen. The CPen was introduced on 01.10.12 and is part of the strategy to reduce both fraud and error within the benefit system. A CPen¹ can be imposed in cases where

1. there is **no** benefit fraud involved **and**
2. there is a recoverable overpayment (of any benefit as listed at DMG 09161) amounting to £65.01 or more **and**
3. the overpayment period begins on, or falls wholly after, 01.10.12².

Note 1: CPens cannot be imposed in relation to overpayments arising **solely** from official error.

Note 2: Equivalent guidance for UC, new style ESA and new style JSA can be found in ADM Chapter D1.

1 WR Act 12, s 116; 2 SS (CPen) Regs, reg 1(1)

Prescribed amount of CPen

09421 The prescribed amount of a CPen is £50¹.

1 SS (CPen) Regs, regs 2, 3 & 4

When to impose a CPen

Negligently makes an incorrect statement or representation, or negligently gives incorrect information or evidence

09422 The DM may impose a CPen where they are satisfied that

1. a person has negligently made an incorrect statement or representation, or has negligently given incorrect information or evidence¹
 - 1.1 in, or in connection with a claim for a relevant social security benefit² **or**
 - 1.2 in connection with an award of a relevant social security benefit³ **and**
2. the person does not take reasonable steps to correct the error⁴ **and**
3. the error results in an overpayment⁵ **and**
4. the person has not, in respect of the overpayment, been⁶
 - 4.1 charged with an offence **or**
 - 4.2 cautioned **or**
 - 4.3 given a notice under relevant legislation⁷.

1 SSA Act 92, s 115C(1)(a); 2 s 115C(1)(a)(i); 3 s 115C(1)(a)(ii); 4 s 115C(1)(b); 5 s 115C(1)(c); 6 s 115C(1)(d); 7 s 115A

DM's consideration

09423 Once it is established that the claimant has either

1. made an incorrect statement or representation **or**
2. given incorrect information or evidence

resulting in an overpayment, the DM is required to decide if a CPen should be imposed in accordance with the circumstances described in DMG 09422.

Note: See DMG Chapter 01 for further guidance on the Principles of Decision Making and Evidence.

09424 Before imposing the CPen, the DM must establish that the claimant

1. has acted negligently **and**
2. has failed to take any reasonable steps to correct the error that lead to the overpayment.

Note: It will be useful for the DM to record the factors that have affected their decision on whether or not to impose a CPen.

Meaning of “negligently”

09425 DMs should note that negligently should be taken to mean acting carelessly, not paying sufficient attention to the task in hand, or disregarding the importance of what is required to be done in relation to the claim or an award.

09426 In some cases, the DM may decide that the claimant has made a simple mistake. In these circumstances it will not be appropriate to impose a CPen. However, much will depend on the individual circumstances of the case.

09427 In deciding whether the claimant has acted negligently, the need for further enquiries (either by telephone or letter) or the precise nature of those enquiries will depend on the circumstances of the case. Where further evidence is required, it will usually be sufficient to simply ask the claimant to explain why they acted as they did. It may be useful to preface the question with a description of the claimant's actions that have resulted in the overpayment.

Meaning of “reasonable steps”

09428 DMs should note that taking reasonable steps means taking sensible or practicable actions or interventions to correct an error.

09429 In deciding whether the claimant took any reasonable steps to correct the error, the need for further enquiries (either by telephone or letter) or the precise nature of those enquiries will depend on the circumstances of the case. However, it will usually be sufficient to simply ask the claimant to describe what, if any, steps they took. If it has not already been done, again it may be useful to preface the question

with a description of the error that has resulted in the overpayment. It should be noted that if the claimant can show that they took reasonable steps, then they will avoid the imposition of a CPen even if they acted negligently in the first instance.

Claimant alleges reasonable steps were taken

- 09430 Sometimes a claimant will say that steps were taken. However, if there is no previous evidence of this, the DM will need to investigate further and consider the reasonableness of those steps before deciding whether it is appropriate to impose a CPen.

No response to written enquiries

- 09431 Sometimes no response will be received to written enquiries made to the claimant as described in DMG 09427 and DMG 09429. In such cases, DMs should note that the mere fact that there is no response may not be sufficient reason to impose a CPen. The DM should consider what evidence they do have before them before deciding whether it is appropriate to impose a CPen.

Note: DMs should refer to operational guidance for information relating to time limits for responding to enquiries.

Meaning of “overpayment”

- 09432 Overpayment¹ is defined in specified legislation².

1 SSA Act 92, s 115C(6); 2 s 115A(8)

Meaning of “relevant social security benefit”

- 09433 Relevant social security benefit¹ is defined in specified legislation².

1 SSA Act 92, s 115C(6); 2 s 121DA(7)

Example 1

Sam has been receiving JSA(IB) since November 2012. After a short period of receiving benefit, she returns to full time employment. The Benefit Centre receives information that Sam has income which came into her possession in January 2012. A check of Sam’s claim form shows that she did not declare that she held this income. Had she done so, she would have been entitled to less JSA(IB) than she actually received. Sam is shown a copy of her claim form and asked why she did not declare the income when making her claim and to describe what steps she has taken to correct this error. Sam explained that she was in a rush when she filled the claim form in and didn’t realise she had made the error, so she didn’t take any steps to correct it. The DM decides that the overpayment has arisen due to Sam’s negligence at the time of making her claim and that she has not taken any reasonable steps to correct the error. A CPen is imposed on Sam.

Example 2

Tom was awarded ESA(IR) from 30.11.12. He stated on form ESA1 that he was not receiving a pension from a previous employer. Information came to light that Tom was in fact receiving a pension from a previous employer. Further enquiries revealed that the pension had been in payment since 02.04.12 and that the amount he was receiving affected Tom's entitlement to ESA(IR). Consequently, an overpayment of ESA(IR) has arisen. Tom was sent a copy of the ESA1 he had completed and it was pointed out to him that he had not declared that he was receiving the pension. Tom does not respond to the DM's enquiry asking him to explain his actions and what steps he took to correct the error. The DM has no other relevant evidence and decides that the overpayment has arisen due to Tom's negligence at the time of making his claim and that he has not taken any reasonable steps to correct the error. A CPen is imposed on Tom.

Example 3

Teresa claimed SPC on 30.11.12 and stated on form PC1 that she was not receiving a pension from a previous employer. Information came to light that Teresa was in fact receiving a pension from a previous employer. Further enquiries revealed that the pension had been in payment since 02.04.12 and that the amount she was receiving affected Teresa's entitlement to SPC, resulting in an overpayment. Teresa was shown a copy of the PC1 she had completed and it was pointed out to her that she had not declared that she was receiving the pension. Teresa produced a copy of a letter dated 07.12.12 that she had sent to the Pension Centre explaining that after reviewing some paperwork, including her own copy of her PC1, she realised that she had made a mistake on her claim form. Teresa also included details of her pension in the letter. Investigations revealed that Teresa's original letter was held in her file but no action had been taken on it. The DM decides that although the overpayment has arisen due to Teresa acting negligently at the time of making her claim, she has taken reasonable steps to correct the error. A CPen is not imposed on Teresa.

Fails to provide information

09434 A CPen¹ may be imposed on a person by the DM where²

1. the person, without reasonable excuse, fails to provide information or evidence in accordance with requirements imposed on the person by the appropriate authority in connection with a claim for, or an award of, a relevant social security benefit³ **and**
2. the failure results in the making of an overpayment⁴ **and**
3. the person has not, in respect of the overpayment, been⁵
 - 3.1 charged with an offence **or**

3.2 cautioned or

3.3 given a notice under relevant legislation⁶.

*1 SS (CPen) Regs, reg 3; 2 SSA Act 92, s 115D(1); 3 s 115D(1)(a); 4 s 115D(1)(b);
5 s 115D(1)(c); 6 s 115A*

DM's consideration

09435 Once it has been established that a claimant has failed to provide information or evidence, the DM is required to decide whether there is a reasonable excuse for that failure and if not, they may impose a CPen because the circumstances described in DMG 09434 are met. It will be useful for the DM to record the factors that have affected their decision on whether or not to impose a CPen.

Note: See DMG Chapter 01 for further guidance on the Principles of Decision Making and Evidence.

Meaning of “reasonable excuse”

09436 DMs should note that having a reasonable excuse means where there is a credible reason or justification for the person failing to do what was required of them, or for doing it late.

09437 In deciding whether the claimant has a reasonable excuse, the need for further enquiries (either by telephone or letter) or the precise nature of those enquiries will depend on the circumstances of the case. However, it will usually be sufficient to simply ask the claimant to describe why they failed to provide the required information or evidence or, if applicable, why they provided it late. It may be useful to preface the question with a description of the failure that has resulted in the overpayment.

No response to written enquiries

09438 Sometimes no response will be received to written enquiries made to the claimant as described in DMG 09437. In such cases, DMs should note that the mere fact that there is no response may not be sufficient reason to impose a CPen. The DM should consider what evidence they do have before them before deciding whether it is appropriate to impose a CPen.

Note: DMs should refer to operational guidance for information relating to time limits for responding to enquiries.

Meaning of “appropriate authority”

09439 Appropriate authority means the Secretary of State¹.

1 SSA Act 92, s 115C(6)

Example 1

Mustafa makes a claim for JSA. He declares that he receives a private pension and explains that he expects to receive an increase in the amount of that pension in the near future. Mustafa is awarded JSA(C) taking into account his current rate of pension. Mustafa is issued with leaflet INF4 informing him of the need to disclose changes in his circumstances and told to advise the Benefit Centre when the pension increase comes into effect. Three months later, a routine check is performed and a member of staff notices Mustafa's statement about the expected pension increase. The DM writes to Mustafa to ask for details of the pension increase. Mustafa reveals that the pension did in fact increase and this has resulted in an overpayment of JSA(C). When reminded of his obligation to disclose changes and asked why he didn't provide the relevant information at the right time, Mustafa explained that he had simply forgotten. The DM decides that, without reasonable excuse, Mustafa failed to provide information in connection with the award of JSA(C). A CPen is imposed on Mustafa.

Example 2

Liz makes a claim for SPC and declares that she receives a private pension. She provides further information that she expects to receive an increase in the amount of her private pension in the near future. Liz is awarded SPC taking account of her current rate of pension. Liz is told to send in evidence of her new rate of pension when received. However, when the increase came into effect, she couldn't get the evidence because it was at her former marital home. Liz had fled from her marital home and it was unsafe for her to return to get the evidence. As a result, Liz had to write to the pension company for copies of papers and this took longer than expected. By the time Liz sent the evidence to the Pension Centre, she had been overpaid SPC. The DM determined that Liz had a reasonable excuse for the delay in notifying the pension increase. A CPen is not imposed on Liz.

Example 3

Will makes a claim for SPC and declares that he receives a private pension. He is issued with leaflet INF4(PC) informing him of the need to disclose changes in his circumstances. He provides further information that he expects to receive an increase in the amount of his private pension in the near future. Will is awarded SPC taking account of his current rate of pension. Will is told to send evidence of his new rate of pension to the Pension Centre when received. A routine check conducted later results in the Pension Centre writing to Will to ask if the increase has come into effect and from what date. Will replies explaining that an increase came into effect four months ago. This results in an overpayment of SPC. Will is reminded of his obligation to disclose changes and asked to explain why he didn't declare the increase at the time. He explains that he did declare the increase during a phone conversation with a Pension Centre staff member. Will is asked if he can provide the name of the office that he rang and the name of the person he spoke to and on what

date he made the call. Will cannot provide this information and there is no evidence of the call being received in the appropriate Pension Centre. The DM determines that, on balance of probabilities, Will did not make the call and does not have a reasonable excuse for failing to provide details of the pension increase. A CPen is imposed on Will.

Fails to notify a change of circumstances to the appropriate authority

09440 A CPen¹ may be imposed on a person by the DM where²

1. the person, without reasonable excuse, fails to notify the appropriate authority of a relevant change of circumstances in accordance with requirements imposed on the person under relevant legislation³ **and**
2. the failure results in the making of an overpayment⁴ **and**
3. the person has not, in respect of the overpayment, been⁵
 - 3.1 charged with an offence **or**
 - 3.2 cautioned **or**
 - 3.3 given a notice under relevant legislation⁶.

1 SS (CPen) Regs, reg 4; 2 SS A Act 92, s 115D(2); 3 s 115D(2)(a); SS (C&P) Regs, reg 32; JSA Regs, regs 24 & 24A; 4 SS A Act 92, s 115D(2)(b); 5 s 115D(2)(c); 6 s 115A

DM's consideration

09441 If a CPen is to be imposed in the circumstances described in DMG 09440 the DM must first be satisfied that the claimant has been made aware of their obligation to report a relevant change of circumstances. In doing so, it may also be necessary, particularly in the event of an appeal to the FtT, to identify when the claimant was made aware and how they were made aware, i.e. by the issue of an information leaflet such as the INF4, on a certain date.

09442 Once the DM is satisfied that the claimant is under an obligation to report a relevant change of circumstances, they must then consider their reasons for failing to report the change promptly, as required. The need for further enquiries (either by telephone or letter) or the precise nature of those enquiries will depend on the circumstances of the case. However, it will usually be sufficient to simply ask the claimant to explain why they have failed to report the change as required. It may be useful to preface the question with a description of the requirement to notify that has been placed on the claimant and how and when it was placed. It will be useful for the DM to record the factors that have affected their decision on whether or not to impose a CPen.

Note: See DMG Chapter 01 for further guidance on the Principles of Decision Making and Evidence.

Claimant denies being under an obligation to report or maintains that they have reported as required

09443 Where a claimant denies being under an obligation to notify or maintains that they have notified the relevant change of circumstances as required, the DM will need to investigate the circumstances further before deciding whether it is appropriate to impose a CPen.

No response to written enquiries

09444 Sometimes no response will be received to written enquiries made to the claimant as described in DMG 09442. In such cases, DMs should note that the mere fact that there is no response may not be sufficient reason to impose a CPen. The DM should consider what evidence they do have before them before deciding whether it is appropriate to impose a CPen.

Note: DMs should refer to operational guidance for information relating to time limits for responding to enquiries

Meaning of “relevant change of circumstances”

09445 Relevant change of circumstances¹ means a change of circumstances which affects entitlement to any benefit, other payment or advantage under relevant social security legislation².

1 SSA Act 92, s 115D(6); 2 s 121DA(7)

Example 1

Kate was awarded ESA(C) from 29.10.12. She was given an INF4 leaflet describing the sorts of changes of circumstances that must be reported, advising that the Contact Centre must be told straightaway if a change occurs. One of the changes listed refers to starting work. Kate starts full time work on 14.01.13 but the job comes to an end on 22.02.13. She doesn't inform the Contact Centre before starting work. Kate phones the Contact Centre on 25.02.13 and discloses details of the work. The work does not fall within the PWK rules and therefore an overpayment of ESA(C) arises. The DM writes to Kate, pointing out the requirement to notify the Contact Centre about starting work and asking her to explain why she didn't report this beforehand. Kate explains that because the work was outside her local area she had to make accommodation arrangements and simply forgot to tell the Contact Centre. The DM decides that this is not a reasonable excuse for not reporting the work beforehand. A CPen is imposed on Kate.

Example 2

Pete receives ESA(IR) and has a bank account holding £3,200. Pete has severe learning difficulties and his brother, Joe, is his appointee. Joe has been informed by the INF4 leaflet of the need to report any changes affecting Pete, immediately to the

Contact Centre. Pete has a lottery win of £20,000. Joe is under a duty to report the lottery win on Pete's behalf. Joe doesn't report the win until a month later and this results in an overpayment of ESA(IR). When asked to explain the reason for the delay, Joe says that he did not think it was an urgent matter. The DM determines that Joe doesn't have a reasonable excuse for the late notification of Pete's lottery win. A CPen is imposed on Joe.

Example 3

Stan receives SPC and does not require an appointee. He is given information by the INF4(PC) leaflet about the requirement to report changes of circumstances straightaway to the Pension Centre. The Pension Centre conducts a telephone review with him on 04.04.13 reminding him of his obligations to report changes. At this point, Stan mentions that he has been abroad visiting relatives from 17.12.12 to 31.01.13 but that he informed Linda at the Pension Centre on 14.12.12. Linda is identified and a record of her phone conversation with Stan is found. Linda didn't take any action following this conversation and consequently, an overpayment of SPC has occurred.

The DM decides that Stan had reported the change in accordance with instructions. A CPen is not imposed on Stan.

Example 4

Doreen suffers from dementia and receives AA and RP. Her daughter Ann, with whom Doreen lives, is her appointee. Doreen's condition worsens and she is admitted to a care home on 06.02.13. This is initially a respite stay and is funded by the LA. Ann has been informed by the INF4 leaflet of her obligations to report changes of circumstances affecting her mother, to the AA Unit, straightaway. Doreen's placement becomes permanent on 10.04.13 but Ann doesn't report her mother's admission to the care home until 01.07.13. An overpayment of AA occurs. The DM writes to Ann to remind her that changes need to be reported straightaway and to ask why she waited so long to report the change. Ann explained that she had been under stress by having to place her mother into care and had to visit her almost daily until she had settled in. Ann has also had to sort out her mother's financial affairs which have been very involved and time consuming. The DM decides that they need further information and asks Ann to explain what it was that finally prompted her to report the change in her mother's circumstances. Ann explains that after her mother's financial affairs were sorted out at the end of June 2013 she was filing away some paperwork and discovered information from the AA Unit about reporting changes. She contacted the AA Unit the day after. The DM decides that in the circumstances Ann had a reasonable excuse for the delay in reporting the change. A CPen is not imposed on Ann.

Example 5

Johnny receives AA under the Special Rules provision and is paid weekly in advance. His payday is Monday. He does not currently require an appointee. He has been instructed by the INF4 leaflet, to report any changes, including hospital admissions straightaway. He is admitted to hospital on 09.04.13 and discharged on 08.05.13. This means that Johnny has already exceeded the 28 day period for which AA remains payable. No overpayment occurs. However, Johnny is readmitted to hospital on 17.05.13 and notifies the AA Unit of this on 21.05.13. The latest hospital admission period links back to the previous admission and an overpayment of AA for the period from 20.05.13 to 26.05.13 occurs. The DM writes to Johnny to ask why he waited until 21.05.13 to report his admission to hospital. Johnny explains that he had been undergoing tests all day on 20.05.13 which caused him to feel very unwell. He felt much better on the morning of 21.05.13 and at that point rang the AA Unit. The DM decides that Johnny has a reasonable excuse for the delay in reporting the change. A CPen is not imposed on Johnny.

Example 6

Luke has been awarded JSA(C). He works on a part-time basis and gives details of his earnings when he attends the Jobcentre Plus office every fortnight. A routine check by a staff member reveals that Luke's earnings over a 4 week period have not been taken into account and an overpayment of JSA(C) has occurred. It is clear to the DM that Luke has provided all the information that is required of him. A CPen is not imposed on Luke.

Example 7

Rukhsana has been awarded JSA(C). Her benefit week ends on a Tuesday. She works on a part-time basis and her working hours and earnings fluctuate. It has been decided that Rukhsana's earnings may be averaged over the 5 week period from 13.02.13 to 19.03.13. As a result of the averaging, Rukhsana has been advised that her upper earnings limit is £100.00 during this period and that she must advise Jobcentre Plus if her earnings exceed this amount. Later it comes to light that Rukhsana's earnings during the period from 13.02.13 to 26.02.13 were actually £150.00 per week and an overpayment is raised. The DM has received evidence from Rukhsana on 25.02.13 declaring the increase in her earnings. In these circumstances it is not appropriate to impose a CPen on Rukhsana.

Example 8

Amanda receives DLA and her appointee is Ruth. Amanda's mental health condition deteriorates and she is admitted to hospital on 13.02.13. Ruth has been informed by the INF4 leaflet of her obligation to report changes in Amanda's circumstances, straightaway to the DLA Unit. This includes any hospital admissions. On a visit to see Amanda, Ruth speaks to the Welfare Office at the hospital about the fact that Amanda receives DLA and the need to report her admission to the DLA Unit. A staff

member in the Welfare Office tells Ruth that they will report the change on her behalf but they do not do so until 6 weeks later. An overpayment occurs. The DM writes to Ruth to remind her that she is required to report changes to the DLA Unit and asks her to explain why she chose to rely on the Welfare Office staff member reporting the change. Ruth explains that she thought this person could be trusted to do so and that it is not her fault that an overpayment has occurred. There is no established agreement in place for Welfare Office staff members to report changes on behalf of DLA claimants and therefore the DM decides that Ruth has no reasonable excuse for failing to report the change herself. A CPen is imposed on Ruth.

On whom to impose a CPen

09446 Unless DMG 09447 applies, a CPen¹ may be imposed by the DM²

1. in any case, on the person³ **or**
2. in a case where person A is making or has made, a claim for the benefit for a period jointly with person B, on B instead of A⁴.

1 SS (CPen) Regs, reg 2; 2 SS A Act 92, s 115C(2); 3 s 115C(2)(a); 4 s 115C(2)(b)

Example

Paul (person A) makes a claim for JSA(IB) for himself and his wife, Linda (person B). Paul declares that they have 3 joint bank accounts with total capital of £6,000. Two months after payment of JSA(IB) starts, a further unused joint bank account surfaces in the house and which wasn't included in the original claim information. This means that an overpayment of JSA(IB) has occurred. Linda notifies the local DWP office of the error. Both Paul and Linda are considered jointly negligent for the wrong information, even though Paul completed the original claim form. The law allows for the CPen to be imposed upon either person A or person B, in joint claim cases. In this case, the DM decides to impose the CPen on Paul as he is the current benefit payee.

Exception

09447 DMG 09446 does not apply if person B was not, and could not reasonably be expected to have been, aware that person A had

1. negligently made the incorrect statement or representation **or**
2. given the incorrect information or evidence¹.

1 SS A Act 92, s 115C(3)

Example

Philip (person A) makes a claim for JSA(IB) for himself and his wife, Ann (person B). Philip declares Ann's part time earnings from the outset of their claim. Although Ann told Philip that her earnings have increased due to a recent pay rise, Philip forgets this and doesn't declare the correct amount, instead declaring the old amount of earnings. Afterwards, Philip realises his error and notifies the local DWP office of his error. Ann was completely unaware that Philip made this error due to him not paying sufficient attention to recording the correct amount. The law allows for a CPen not to be imposed on person B (Ann), if they had not, and could not reasonably be expected to have been, aware that person A (Philip) had been negligent. The DM considers that as Ann could not have reasonably been expected to know that Philip had entered the wrong amount of her earnings, the CPen cannot be imposed on Ann. However, a CPen is imposed on Philip.

Joint-claim couples

09448 Where a person has made a joint-claim for benefit and either one or both of them fails to disclose information¹ or a relevant change of circumstances², only one CPen may be imposed in respect of the same overpayment³.

1 SS A Act 92, s 115D(1); 2 s 115D(2); 3 s 115D(3)

Example 1

George makes a claim for JSA(IB) for himself and his wife, Mavis. He declares that Mavis has part time earnings from the outset of their claim. Two months later, Mavis has an increase in her earnings. Mavis tells George about the increase. Through receipt of the INF4 leaflet, both are aware of the need to notify the local DWP office of this change, but each thought that the other was going to notify. By the time they realised that neither had reported the change, an overpayment of JSA(IB) had arisen. The DM decides that both were aware of the need to notify the change and failed to do so and have no reasonable excuse for not doing so earlier. A CPen is imposed jointly on George and Mavis.

Example 2

Mary makes a claim for JSA(IB) for herself and her partner, June. Leaflet INF4 is issued detailing the need to disclose changes. JSA(IB) is awarded from 23.10.12. June accepts an offer of employment abroad and leaves the country on 18.1.13. Mary doesn't report the change until 20.3.13, explaining that the reason for the delay was her anger at June accepting employment abroad. She also wrongly reports that June left the country on 18.3.13. Although June had left the country on 18.1.13 both members of the joint-claim had a duty to report the change. The DM determines that both are liable and the CPen is imposed jointly on Mary and June.

Appointee cases

- 09449 Where an appointee is in place and that person has acted negligently as in DMG 09422 or failed to disclose information as in DMG 09434 or failed to report a relevant change of circumstances as in DMG 09440 and an overpayment has resulted, the CPen will be imposed on (and recovered from) the appointee. This will be the case, even though the overpayment may be recoverable from the claimant.

Recovery of CPen

- 09450 A CPen imposed under specified legislation¹ is recoverable, under specified legislation², by the appropriate authority, from the person on whom it is imposed³.

1 SS Act 92, s 115C(2); s 115D(1) & (2); 2 s 71(ZB); 3 s 115C(4); s 115D(4)

Right of appeal

- 09451 The decision to impose a CPen will be made at the same time as the overpayment decision. The amount of the CPen will be added to the amount of the recoverable overpayment. This will produce an outcome decision¹ and will give appeal rights to any part of that outcome decision including the overpayment, the CPen or both.

1 SS Act 98 s8(1)

09452 – 09500

Chapter 15 - Earnings for non-income-related benefits

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Averaging of amounts

15452 The weekly amount of a person's income from earnings may be averaged¹ if the income varies or the regular pattern of work means that the claimant does not work every week. The DM should average over

1. a complete cycle if there is a recognisable cycle of work **or**
2. five weeks **or**
3. another period if this means a more accurate weekly amount can be calculated.

1 SS Ben (C of E) Regs, reg 8(3)

15453 The averaging of the weekly amount does not change the other rules on the treatment of earnings such as the date that they are treated as paid. This means that earnings should only be averaged where the claimant is actually in receipt of a payment.

Example 1

John works two weeks on and one week off.

In the two weeks John actually works he works 12 hours a week and receives earnings of £80 a week.

In the third week, he receives a retainer of £20.

The DM decides that the earnings should be averaged over a period of three weeks because that is the period of the recognisable cycle of work.

The DM calculates that John's average weekly earnings is £60, that is

$$\frac{80 + 80 + 20}{3}$$

This average amount is taken into account from the fourth week. For the first three weeks, the DM used the actual amounts of earnings paid to John before an average figure could be calculated.

Example 2

Maggie works at a school term-time only as a classroom assistant. During the school holidays she doesn't work and receives no earnings.

The DM can only average Maggie's earnings during term-time when she is actually in receipt of an income. During the school holidays Maggie receives no earnings so there is no income to take into account.

Identifying a recognisable cycle

- 15454 The DM should see whether there is a pattern, or whether a pattern emerges from the fluctuating earnings over a period of time.

Example 1

Week 1 £40

Week 2 £45

Week 3 £40

Week 4 £40

Week 5 £45

Week 6 £40

There is a regular cycle of 3 weeks (weeks 1 to 3 repeated in weeks 4 to 6). The average weekly earnings are £41.67.

Example 2

Month 1 £180

Month 2 £200

Month 3 £180

Month 4 £200

There is a regular cycle of 2 months. The average monthly earnings are £190.

No recognisable cycle

- 15455 Where there is no pattern the DM should average earnings over 5 weeks or some other period where this would prove more accurate¹.

1 NS v SSWP (IS) [2015] UKUT 423 (AAC).

Example 1

Week 1 £40

Week 2 £40

Week 3 £45

Week 4 £47

Week 5 £43

There is no recognisable cycle. The average weekly earnings are £43.

- 15456 When one week contains unusually high earnings it may be inappropriate to include that week when averaging earnings¹.

1 NS v SSWP (IS) [2015] UKUT 423 (AAC).

Example

Week 1 £140

Week 2 £40

Week 3 £50

Week 4 £47

Week 5 £43

In this case the DM may choose to disregard week 1 and average earnings over weeks 2 to 5. By doing so, average earnings will be £45.

15457 - 15469

Calculation of income tax, Social Security contributions and qualifying premium

Introduction

15650 Having calculated the gross receipts and expenses from self-employment on a cash flow basis, the DM should consider deductions for¹

1. income tax (see DMG 15654 et seq) **and**
2. Class 2 SS contributions (see DMG 15685 at seq) **and**
3. Class 4 SS contributions (see DMG 15690 et seq) **and**
4. half of any premium for a personal pension scheme (see DMG 15694) or retirement annuity contract (see DMG 15696).

1 SS Ben (C of E) Regs, reg 13(4)(b) & (c)

15651 The DM should base deductions for income tax and class 2 and class 4 SS contributions (see DMG 15650) on the chargeable income for the assessment period.

Chargeable income

15652 The chargeable income¹, that is, the income chargeable for tax, for the assessment period is the amount of earnings

1. in the case of a S/E child minder, one third of the gross receipts of that employment² **or**
2. in the case of a partnership, the person's share of
 - 2.1 the gross receipts of the employment less
 - 2.2 any allowable business expenses³ **or**
3. in any other case, the person's
 - 3.1 gross receipts of the employment less
 - 3.2 any allowable expenses⁴.

1 SS Ben (C of E) Regs, reg 14(3); 2 reg 14(3)(b); 3 reg 13(5); 4 reg 13(4)(a)

15653 The calculation at DMG 15652 should not include any deductions for

1. notional income tax **or**
2. SS contributions **or**
3. premiums for a personal pension scheme or retirement annuity contract.

Deduction for notional income tax

15654 The DM should calculate the deduction for notional income tax using the tax allowance and tax rates for the tax assessment year (6 April to 5 April) appropriate to the assessment period which is being used to calculate the earnings.

Tax allowances.

15655 A tax allowance is an amount of income a person can earn or receive in a tax year without paying tax. There are a number of tax allowances, but for the purposes of calculating the earnings of a S/E earner, DMs should have regard to the personal allowance only.

The rates of the income tax allowances are in Appendix 1.

Personal allowance

15656 All earners whether married or single get a personal allowance. There are three age-related levels of personal allowance (Appendix 1), but for benefit purposes only the personal allowance for a person aged under 65 is deducted - even if another personal allowance appears to apply.

Tax rates

15657 The tax rate is the percentage of taxable income payable to HMRC. Taxable income is the amount of income remaining after deducting tax allowances. The rate is in Appendix 1.

Note: from April 2016 the Scottish Government can set its own rate of income tax¹

¹The SS (Scottish Rate of Income Tax etc.) Amendment Regs 2016

15668 - 15679

Calculation of deduction

15680 To decide the notional amount of income tax to be deducted from a S/E earner's chargeable income the DM should¹

1. establish the chargeable income
2. establish the personal allowance appropriate to the S/E earner. If it
 - 2.1 is equal to or greater than the chargeable income there will be no notional income tax to deduct **or**
 - 2.2 is less than the chargeable income, go to 3.
3. deduct the personal allowance (Appendix 1)
 - 3.1 in full if the assessment period is a year **or**
 - 3.2 on a pro rata basis if the assessment period is less than a year

4. multiply the first £37,400 (09/10 rates) of the remainder (or, if the assessment period is less than a year, a pro rata amount) by the basic rate of tax (Appendix 1)
5. round up where necessary.

1 SS Ben (C of E) Regs, reg 14(1)

Deduction for notional Class 2 Social Security contributions

15681 A Class 2 contribution is a flat rate contribution.

Liability for a Class 2 contribution

15682 The same amount of Class 2 contribution is paid by men and women, although a higher rate is paid by share fishermen. A S/E earner is not liable for Class 2 contributions if they are

1. of pension age (see DMG 15683) **or**
2. a married woman with a non-paying election (see DMG 15688) **or**
3. a person whose profits are below a minimum amount or the small profits thresholds (see DMG 15686).

The Class 2 rates are in Appendix 2.

15683 Pension age is

1. 65 years for a man **or**
2. 60 years for a woman born before 6.4.50 **or**
3. the date in Appendix 3 for a woman born between 6.4.50 and 5.4.55 **or**
4. 65 years for a woman born on or after 6.4.55¹.

1 SS CB Act 92, s 122(1); Pensions Act 95, Sch 4

15684 A S/E person is liable to pay Class 2 contributions for each week or part-week of self employment unless, for a complete contribution week, the person

1. **has** earnings below the small profits threshold **or**
2. receives IB/ESA or is incapable of work **or**
3. receives MA **or**
4. is a prisoner **or**
5. receives US or CA **or**
6. is a married woman or widow who has a valid election not to pay Class 2 contributions (see DMG 15688).

Note: A contribution week is a period of seven days beginning at midnight between Saturday and Sunday.

Calculation of the Class 2 contribution

15685 The deduction for the notional SS contributions should be based on the rate of Class 2 contributions current at the time the DM determines the claim or review. To calculate the amount the DM should

1. establish the chargeable income **and**
2. decide if a deduction should not be made on the grounds of small earnings **and**
3. decide the number of weeks that there is a liability **and**
4. multiply the weekly rate (Appendix 2 to this Volume) by the number of weeks that there is a liability.

Small profits threshold

15686 The DM should make a deduction for a notional Class 2 contribution in **all** cases unless the chargeable income is below the small profits threshold (formerly the small earnings exception level). See Appendix 2 for the applicable rates.

15687 If the S/E person has chargeable income below the small profits threshold no contribution should be deducted even if contributions are being made¹.

1 SS Ben (C of E) Regs, reg 14(2)(a)

Married woman's election

15688 If the S/E person is a married woman or widow who has a valid non-paying election at the effective date, there is no liability to pay Class 2 contributions¹ and no deduction should be made from the chargeable income.

1 SS CB Act 92, s 19(4)(b); SS (Conts) Regs, reg 100 & 101

15689 A S/E woman married before 6.4.77 had the right until 11.5.77 to elect not to pay Class 2 contributions. A woman who made an election was given a certificate of election (CF 383) to show that there was no liability. The election will end if

1. it is cancelled by the woman **or**