

Chapter A1: Principles of decision making and Evidence

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	Appendix 1

Chapter A1: Principles of Decision Making and Evidence

Introduction

A1001 This chapter is about applying the principles of decision making and evidence in relation to

1. UC
2. PIP
3. new style JSA (hereafter referred to as JSA)
4. new style ESA (hereafter referred to as ESA).

Note 1: ADM Chapter M1 contains guidance on the meaning of new style JSA and new style ESA.

Note 2: Guidance on decision making and evidence for benefits not listed above is in DMG Chapter 01.

Note 3: The guidance comes into effect¹ from 8.4.13 for PIP and from 29.4.13 for UC, JSA and ESA.

1 UC, PIP, JSA & ESA (C&P) Regs, reg 1(2) & 1(3)

Who decides claims and applications

A1002 Decisions on claims and applications are made by the Secretary of State. In practice the Secretary of State does not make decisions personally. Instead, under the Carltona principle officials act on the Secretary of State's behalf, provided that he is satisfied that they are suitably trained and experienced to do so. Throughout this guide these officials are called decision makers (DMs).

Note: Application means an application for a revision or supersession.

A1003 The Carltona principle dates from a judgment of the Court of Appeal in October 1943¹. The judgment said that the Secretary of State could not possibly make every decision for which he is constitutionally responsible and accountable to Parliament. The Secretary of State is therefore entitled to authorise a person of suitable authority to exercise these functions on his behalf.

1 Carltona Ltd v. Commissioners of Works and others

A1004 The Secretary of State provides training and approved guidance to DMs on how to make decisions on his behalf. The ADM itself is one such form of guidance, advising DMs how to apply SS law. DMs should note that approved guidance **must** be followed when applying the law to the facts of the case. However, DMs may request advice from DMA Leeds on the application or clarification of the ADM in cases of doubt.

Note: See A1460 for guidance about legal advice as evidence.

- A1005 The DM takes all necessary actions on behalf of the Secretary of State, including
1. gathering information
 2. making decisions on claims and applications
 3. dealing with administrative matters such as suspension of payment.

Note: The DM is **not** an independent officer.

A1006 Although a DM may undertake all these functions, in some circumstances it may be appropriate to divide functions between different members of staff. However, there are some areas in which functions must always be undertaken separately for business and/or system security. See Appendix 1 for details.

A1007 The DM must make a decision by considering all the evidence and applying the law, including any relevant case law, to the facts of each case. Where the legislation specifies or implies discretion, the DM's judgement must be reasonable and made with unbiased discretion.

A1008 - A1009

Making decisions

A1010 Generally, each decision must be given on the facts as they exist at the date of the decision and not in anticipation of a future state of facts¹. But there are variations and exceptions, for example where entitlement begins after the date of the claim. Entitlement can be established from a date after the date of the claim under

1. the advance claim provisions² **or**
2. the principle that the DM must consider the claimant's circumstances down to the date on which the claim is decided.

Note: See ADM Chapter A2 for further guidance on deciding claims.

1 R(G) 2/53; 2 UC, PIP, JSA & ESA (C&P) Regs, reg 32 - 34

A1011 A decision may be revised or superseded for past periods when facts relating to the period were not known at the time. For further guidance on revision and supersession, see ADM Chapters A3 and A4.

Example

Following an investigation, a JSA claimant is found to have been outside GB over a year ago for a period of one month. The effect of this is that there is no entitlement to JSA for that one month period. The decision awarding JSA is superseded to disallow JSA for the period outside GB only. Entitlement after the period outside GB is unaffected.

A1012 A fact is either a relevant circumstance or an occurrence which

1. exists at the time the decision is given **and**
2. is known, accepted or proved to be true.

A1013 The DM may use the help of an expert in cases where a question of fact needs special expertise¹. An expert is a person who appears to the DM to have knowledge or experience in determining a particular question of fact².

1 SS Act 98, s 11(2); 2 s 11(3)

Example

Norman claims PIP. A report is obtained from a HP. The DM then considers all the evidence to decide whether Norman is entitled to PIP.

A1014 If the decision is found later to be inaccurate it can be altered by

1. revision¹
2. supersession²
3. appeal³.

1 SS Act 98, s 9; 2 s 10; 3 s 12

When decisions become valid

A1015 A decision is valid as soon as it is properly recorded by the DM. If a decision is not acted upon or not communicated to the relevant parties, this does not invalidate the decision¹. However a decision is not fully effective unless, and until it is notified². See A1116 - A1118 for guidance on how and when decisions are notified and for failure to notify the decision see A1119.

1 R(P) 1/85; 2 R(U) 7/81; R (Anufrijeva) v Secretary of State for the Home Department & Another [2003] UK HL 36

A1016 - A1029

What decisions are made by DMs

A1030 The DM

1. decides any claim for a relevant benefit
2. makes contribution decisions on credits (see A1050)
3. makes any decision that is made under, or by virtue of, a relevant enactment (see A1031).

These decisions are called outcome decisions. It is important that DMs distinguish between outcome decisions and other decisions and determinations. This is because only outcome decisions carry the right of appeal to the FtT¹. See A1100 - A1102 for further guidance on outcome decisions.

1 R(IB) 2/04

A1031 A relevant enactment¹ is any enactment in

1. the JS Act 95
2. Part 1 of the WR Act 07

3. Part 1 of the WR Act 12

4. Part 4 of the WR Act 12

1 SS Act 98, s 8(4); SS Act 98; SS A Act 92

A1032 - A1039

Other decisions and determinations

A1040 There are other decisions made by DMs which are not outcome decisions. These are

1. the decisions in ADM Annex E, which are generally determinations made as part of an outcome decision
2. determinations or findings of fact.

A1041 Determinations and findings of fact are not outcome decisions, but part of the process which goes towards making the outcome decision¹. The DM should ensure that a determination is not notified as an outcome decision with appeal rights. Such a decision would be defective, and may be set aside as invalid on appeal to the FtT².

1 R(IB) 2/04; 2 R(IS) 13/05

Example

Sandy claims UC as a single person. It is later established that she is living with a partner who is in full time work. The DM determines that they are LTAHAW. As a consequence of this determination the award of UC is terminated. Any subsequent appeal would be against the decision to terminate the award of UC and not the LTAHAW determination.

A1042 The DM can not make a decision on issues in respect of NI Contributions, SSP, SMP, statutory adoption pay or statutory paternity pay which are decided by HMRC¹ (see ADM Annex C).

1 SSC (ToF) Act 99, s 8(1)

A1043 - A1044

Reference to HM Revenue and Customs

A1045 Entitlement to ESA and JSA depends on the contribution conditions being satisfied. In practice the NI contribution record is usually obtained and any decision is based on the assumption that the record is factually correct. However, where there is a dispute about the record, the matter must be referred by the Secretary of State to HMRC for a formal decision¹. See ADM Chapters A3, A4 and A5 for guidance on how decisions and appeals are handled after a reference to HMRC.

Note: See A1050 - A1053 where the dispute is about whether credits should be awarded.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 42 - 43

A1046 The Secretary of State remains responsible for deciding whether the contribution conditions are satisfied in relation to ESA and JSA including

1. the earnings factor derived from them
2. which are the relevant income tax years
3. the years in which the contributions must have been paid or credited
4. the commencement of a PLCW
5. the start of the relevant benefit year.

A1047

A1048 DMs should note that appeals against decisions about contributions matters made by HMRC are heard by the FtT (Tax Chamber)¹.

1 SSC (ToF) Act 99, s 11; R(IB) 1/09

A1049

Credits

A1050 The Secretary of State remains responsible for deciding credits questions¹. In practice some credits decisions are taken on the Secretary of State's behalf by HMRC².

1 SS Act 98, Sch 3, paras 16 & 17; 2 SSC (ToF) Act 99, s 17

Credits awarded by HM Revenue and Customs

A1051 HMRC considers whether to award credits for

1. SSP
2. SMP
3. Statutory adoption pay
4. jury service
5. periods of wrongful imprisonment or detention in legal custody
6. auto credits for
 - 6.1 16-18 year olds
 - 6.2 men born before 6th October 1953
7. approved training where not awarded by DWP
8. Gulf crisis credits.

Credits awarded by DWP

A1052 DWP considers whether to award credits for

1. LCW

2. unemployment
3. approved training.

For further guidance on awarding credits, see The Credit Title Guide.

A1053 Where

1. a claim is disallowed because the contributions conditions are not satisfied **and**
2. the claimant alleges that they should be awarded credits for a past period

the DM should decide the credits issue before dealing with the dispute about the contributions conditions. This may mean referring the credits claim to HMRC for a decision where appropriate.

Example

A claim for ESA is disallowed because the claimant failed the second contribution condition in one of the relevant years. In that year the claimant had been awarded 48 unemployment credits through two awards of JSA. In the remaining period he had been on holiday. The claimant argues that he should be awarded credits for the missing weeks. The DM awards two unemployment credits, and revises the ESA disallowance to award benefit.

A1054 - A1059

Determinations on incomplete evidence

A1060 The DM can make assumptions about certain matters where the evidence required to make a determination for the purposes of an outcome decision is incomplete¹. This enables an outcome decision to be made without waiting for information. A further determination can be made and the decision revised or superseded as appropriate when the evidence is received. See ADM Chapters A3 and A4 for guidance on revision and supersession.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 39

A1061 – A1063

JSA determinations

A1064 Where a determination falls to be made on whether a person is treated as receiving relevant education¹ and there is not enough evidence to make that determination the DM makes the determination on the basis that the missing evidence is adverse to the claimant².

1 JSA Regs 13, reg 45; 2 UC, PIP, JSA & ESA (D&A) Regs, reg 39(3)

A1065 - A1079

Referring a claimant for a medical examination/consultation

Reference by the DM

PIP

A1080 Before making a decision on a claim for, or entitlement to PIP the claimant may be referred to a HP approved by the Secretary of State for a consultation¹. The referral can be made at the initial, revision or supersession stage of a claim. The HP will decide which form the consultation will take (face to face, telephone, paper based or fast track for the terminally ill). See ADM Chapter P2.

Note: Telephone consultations are likely to be used to gather information and it is unlikely for an assessment to be conducted on the basis of a telephone consultation only.

1 WR Act 12, s 80(4); SS (PIP) Regs, reg 8 & 9

Reference by First-tier Tribunal

A1081 The FtT may refer a claimant for a medical consultation or assessment where information is needed to determine an appeal¹ and an issue raised by the appeal²

1. is whether the claimant satisfies the disability conditions for PIP³
2. relates to the period for which the disability conditions for PIP is likely to be satisfied
3. is the rate of an award of PIP

1 SS Act 98, s 20(2); 2 TP (FtT) (SEC) Rules, rule 25; 3 WR Act 12, s 78 & 79

Limited capability for work and limited capability for work-related activity

A1082 Where a DM is determining LCW or LCWRA whether on a claim for benefit or credits, the claimant can be referred for an examination¹ by a HCP approved by the Secretary of State.

1 ESA Regs 13, reg 19 & 35; UC Regs, reg 44

A1083

Meaning of health care professional (ESA and UC)

A1084 A HCP is¹

1. a registered medical practitioner **or**
2. a registered nurse **or**
3. a registered occupational therapist or physiotherapist²

1 UC Regs, reg 2; ESA Regs 13, reg 2; 2 Health Act 99, s 60

Meaning of medical practitioner

A1085 A medical practitioner is defined in the UK as a registered medical practitioner. This definition includes a person outside the UK who has the equivalent qualifications as those of a registered medical practitioner¹.

1 SS A Act 92, s 191

Meaning of Health Professional (PIP)

A1086 A Health Professional has to be approved by the Secretary of State¹. There is no definition of what type of Health Professional may be approved². Examples of a Health Professional are

1. Occupational therapist
2. Nurse (Level 1)
3. Physiotherapist
4. Doctor
5. Paramedic.

1 WR Act 12, s 80(4)(c); 2 PIP Regs, reg 9(5)

Failure to attend for a medical examination/consultation

A1087 In PIP cases if the claimant fails, without good reason, to attend or submit to a consultation¹ the DM will make a “negative determination”. If good reason is shown the claimant will be referred for another consultation. In ESA or UC cases where an LCW or LCWRA determination is required, and the person fails, without good cause (ESA) or good reason (UC), to attend or submit to a medical examination, the DM should follow the guidance in ADM Chapters F5 and V. See also A1092.

1 WR Act 12, s 80(5); PIP Regs, reg 9

A1088 Generally, in the case of

1. a claim, the DM should disallow
2. an application for revision, the DM should notify that the decision is not revised (see ADM Chapter A3)
3. an application for supersession, the DM should make a decision not to supersede (see ADM Chapter A4).

Note: When the DM makes a “negative determination” in PIP cases then the claim will be disallowed. In cases where the claimant is in receipt of an award of PIP and a “negative determination” is made the award will be superseded to terminate entitlement.

A1089 There may be some cases where it is not appropriate to give a decision as in ADM. This is where the DM was able to award benefit on the existing evidence, and the

examination was required in order to establish whether a higher rate of benefit should be awarded. This does not apply to PIP.

A1090

Has the appointment been cancelled

A1091 Claimants cannot fail to attend the medical examination/consultation if the appointment has already been cancelled¹. The DM should investigate any indications that the claimant had made contact with the issuing office before the time of the examination. This is so that they can satisfy themselves that the appointment has been left open for the claimant.

1 R(IB) 1/01

Good cause (ESA)

A1092 Good cause is not defined in legislation but a number of UT Judges' decisions deal with it. It includes any facts which would probably have caused a reasonable person to act as the claimant acted¹, for example

1. the claimant's health at the time
2. the nature of the claimant's illness
3. the information that the claimant received
4. whether the claimant was outside GB at the time
5. whether there was any postal delay.

Note: See DMG Chapter 02.

1 R(SB) 6/83

Good reason (PIP & UC)

A1093 See ADM Chapters P2 and G1 for guidance on good reason for PIP and UC.

A1094 For details on how to obtain and weigh up the medical evidence see A1520 - A1599.

A1095 - A1099

Outcome decisions

A1100 The most important issue for a claimant who makes

1. a claim **or**
2. an application for
 - 2.1 revision **or**
 - 2.2 supersession

is the outcome of that claim or application. For a claim, the claimant wants to know whether the claim has been successful, and if so, how much benefit will be paid and from when. See Chapters A3 & A4 for guidance on revision and supersession.

A1101 The decision on a claim or application is called an outcome decision because it tells the claimant the outcome of the claim. An outcome decision incorporates all subsidiary determinations such as the separate elements of entitlement to benefit and the day that benefit will be paid.

A1102 The claimant has a right of appeal against outcome decisions only¹ as listed in ADM Annex D. An outcome decision on a claim, for example, is whether or not the claimant is entitled to benefit. As part of the process of making that decision, the DM makes determinations or findings of fact which lead to the outcome. These determinations generally do not have the right of appeal - see Annex E². Although an appeal is against the outcome decision, in practice the claimant may wish to focus on a component part of the decision. For further details on appeals see ADM Chapter A5.

1 SS Act 98, s 12 & Sch 3; 2 s 12 & Sch 2

Example 1

A woman is receiving UC and has three children. Following investigation, the DM determines that she has been LTAHAW with the father of her children since before the date of claim. The awarding decision is revised for ignorance of a material fact. The outcome decision is that she is not entitled to UC from the date of claim due to the earned income of her partner. The claimant has the right of appeal against that decision, although the issue under appeal is the question of LTAHAW.

Example 2

A man who works P/T makes a claim for JSA. The DM makes determinations about treatment of earnings and availability. The outcome decision is that he is entitled to JSA.

A1103 - A1104

First-tier Tribunals and outcome decisions

A1105 The FtT is not required to substitute an outcome decision for the decision under appeal¹. The power enabling them to deal only with the issues raised by the appeal² does not have the effect that they have to make a decision on every issue if there is a more appropriate way of dealing with those issues. Where the FtT decides the issue but does not give a new outcome decision, the case is sent back to the DM. See ADM Chapter A5 for more details about the FtT and outcome decisions.

1 R(IS) 2/08; 2 SS Act 98, s 12(8)(a)

A1106 If the case is remitted to the DM, a new outcome decision should be made incorporating the FtT decision. The FtT decision is binding on the DM, subject to supersession or appeal. See ADM Chapters A4 and A5 for further guidance.

A1107 - A1110

How is the decision recorded

A1111 In most cases the decision is recorded on the Department's computer system. However, where a decision is revised or superseded, departmental procedures may require that it is recorded clerically, e.g. on form LT 54. A revision or supersession must

1. identify the person to whom it relates
2. identify the decision it is changing
3. specify whether it is revising or superseding an earlier decision **and**
4. specify the grounds or authority for doing so.

Example - ESA

In a case where the claimant is in receipt of ESA and has previously passed the WCA, and on a further WCA fails to satisfy the test, the record of the decision should say

"I have superseded the decision dated ...[date] awarding ESA/credits. This is because the Secretary of State has received medical evidence following an examination by a HCP approved by the Secretary of State, since that decision was given.

...[The claimant] does not score 15 points or an aggregate score of 15 points where both physical and mental health descriptors apply. The work capability assessment is not satisfied.

As a result, [the claimant] does not have limited capability for work and is not entitled to employment and support allowance/credits from and including ... [date]."

A1112 Where more than one decision needs changing on revision or replacing on supersession, each decision should be identified where possible. This is particularly important in overpayment cases.

Defective decisions

A1113 Where a decision following revision or supersession is appealed, it is the formal record of the decision which will be considered by the FtT. Failure to set out the basis for the decision in the record may result in the FtT declaring it to be

1. defective **or**
2. unidentifiable as a revised or superseded decision.

DMs should ensure that this is not necessary by following the guidance in A1111.

A1114 In most cases the FtT should perfect or correct such decisions¹. However, where it is not possible to identify whether the decision under appeal is a superseded or revised decision, the FtT may conclude that it is not possible to remedy any defects, for example because there is no effective date, or the decision is in reality a determination of fact. In such cases the DM may need to make a decision which

complies with the requirements for revision or supersession as appropriate². This may have the effect that the decision takes effect from a later date in cases where the effective date is the date of the decision. There may also be an impact on any overpayment decision.

1 R(IB) 2/04; 2 R(IS) 13/05

A1115

How is the decision notified

A1116 The written notification of an outcome decision is issued to the claimant either clerically or by computer¹. The notification contains

1. information which gives the effect of the decision such as whether there is entitlement to benefit and where appropriate the amount payable and when it is payable from **and**
2. a statement to the effect that there is a right of appeal only if the Secretary of State has considered an application for revision² – see ADM Chapter A3
3. information regarding the time limits for making an application for reconsideration³.

Where the claimant has the right of appeal following consideration of an application for revision then the claimant must be given written notice of the decision and the right of appeal⁴.

1 SS Act 98, s 2(1)(a); 2 UC, PIP, JSA & ESA (D&A) Regs, reg 7(1)(b); 3 reg 7(3) (a); 4 reg 51(2)(a)

A1117 The information about revision and appeal rights invites the claimant to ask for an explanation of the decision - see A1120 - A1124. The claimant is also advised that a written statement of reasons can be requested if no reasons for the decision were given in the notification¹ - see A1130 - A1135.

Note: PIP notifications do not advise about a statement of reasons as the notifications contains sufficient information to be treated as such.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 51(2)(b) & reg 7(3)

When is the decision notified

A1118 A decision is notified

1. when it is handed to the claimant or appointee **or**
2. on the day it is sent by post to the person's last known address¹.

Where a decision is posted, DMs should bear in mind that the notification may not leave the office on the day that it is produced². A decision may also be sent by means of an electronic communication³. The time and date of receipt is that recorded on an official computer system⁴.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 3(2); Inte Act 78, s 7; 2 R(IB) 1/00; 3 UC, PIP, JSA & ESA (C&P) Regs, Sch 2, para 1; UC, PIP, JSA & ESA (D&A) Regs, reg 4; 4 UC, PIP, JSA & ESA (C&P) Regs, Sch 2, para 5(3)

Failure to notify the decision

A1119 A decision is not effective unless and until it is notified - see A1015. This can lead to disputes about whether the time for revision or appeal has expired, or whether the condition for making an overpayment decision is satisfied. It is therefore important to ensure that evidence is available to show that a decision has been notified. Evidence of notice can be a clerical or computer record¹.

1 R(CS) 4/07

Explanation

A1120 Where

1. a claimant or their representative queries a decision by
 - 1.1 asking for it to be explained **or**
 - 1.2 requesting a written statement of reasons **or**
 - 1.3 making an application for revision or supersession **or**
 - 1.4 making an appeal **and**
2. the decision is not changed by revision or supersession

the DM or another suitably trained officer should offer the claimant or representative an informal explanation of the decision. The claimant or representative should be contacted by telephone if possible, unless they have specifically requested a response in writing.

A1121 The purpose of the explanation is to help the claimant understand the decision, and to clarify any areas of dispute in the event of an application for revision or appeal.

Note: Although an explanation is preferable, it is not a compulsory step in the revision or appeal process.

A1122 The explanation must

1. be personalised
2. be given in a manner that is clear, understandable and effective
3. explain why the decision was made
4. explain the effects of the law on the facts
5. deal with any further points the claimant or representative may make
6. ensure that the claimant understands the decision even if they do not agree with it
7. ensure that the revision and appeal process including time limits is explained.

A1123 If the claimant

1. cannot be contacted **or**

2. does not want an explanation **or**
3. is not satisfied with the explanation

the action which prompted the offer of an explanation should be continued in the normal way. For applications for revision, see ADM Chapter A3.

A1124 Where

1. the explanation followed an application for revision or an appeal **and**
2. the claimant accepts the explanation

they should be asked whether they wish the application or appeal to go ahead. See ADM Chapter A5 for guidance on withdrawing an appeal.

A1125 - A1129

Request for written statement of reasons

A1130 Where an outcome decision is notified without a statement of the reasons for the decision, the claimant has one month from the day following the date of notification to ask for the written statement¹. Claimants can ask for a written statement of reasons, for example by asking for an explanation of a decision, either orally, by telephone or in person at an appropriate office, or in writing. They **do not** have to use the specific words “request for a written statement of reasons”. Where the application is made orally, the Department must keep a record of the conversation. The DM must supply the statement within 14 days of receiving the request or as soon as practicable afterwards². See ADM Chapters A3 and A5 for guidance on extending the revision and appeal period where a written statement is requested. This does not apply to PIP – see A1117.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 7(3)(b) & 51(2)(b); 2 reg 7(4) & 51(3)

A1131 A written statement of reasons should

1. be personalised
2. give an explanation of why the decision was made
3. provide details of the law used to make the decision, and how it was applied
4. give information about the extended time limit for revision and appeal.

The DM should note when the statement is issued in order to calculate time limits for revision and appeal where appropriate.

Note: This does not apply to PIP – see A1117.

A1132 Where a decision is revised, the claimant can request a written statement of reasons for the decision in its revised form, even if a statement was provided for the original decision. This is because there is a right of appeal against a decision as revised. Rights to request a written statement of reasons should always be notified when a decision has the right of appeal.

A1133 Where a decision is not revised, there is no right to request a statement of reasons for the refusal to revise, as this is not a decision with a right of appeal. The rights to request a statement or appeal the original decision still exist subject to time limits. See A1130 and ADM Chapter A5 for guidance on time limits. See also ADM Chapter A3 for guidance on mandatory reconsideration and the effect on appeal rights when the claimant makes a late application.

A1134 Where the request for a written statement of reasons is made outside the one month period in A1130, the statement should still be issued so that the claimant can understand why the decision was made. However, the claimant should be advised that the time for applying for revision, or for an appeal, is not extended.

A1135 In exceptional circumstances a further written statement can be provided, for example where the claimant requires further clarification of the decision.

A1136 - A1149

Finality

A1150 A decision made by a DM, the FtT or the UT is final¹ unless it is

1. revised (decisions of DMs only)
2. superseded
3. terminated after an award has been suspended
4. changed or replaced on appeal
5. corrected **or**
6. set aside (decisions of the FtT or the UT only).

Note: See A1180 - A1181 for guidance on finality of determinations.

1 SS Act 98, s 17(1)

A1151 Where a decision is changed or replaced as in A1150, the new or revised decision becomes the final decision on the claim, even where it does not change the outcome¹. But see A1152 - A1153 where an outcome decision is not replaced on appeal.

1 R(I) 9/63

Changing a First-tier Tribunal's decision

A1152 Where the FtT

1. allows an appeal on the issue or issues raised
2. does not give an outcome decision
3. remits the case to the DM

the DM must follow the FtT's decision when dealing with the matters referred back for subsequent decision. See A1105 - A1106 for further guidance.

- A1153 The FtT's decision on the issues it has dealt with is **final** unless
1. there are grounds to supersede the decision (see ADM Chapter A4) **or**
 2. the DM considers it is erroneous in law and applies for permission to appeal (see ADM Chapter A5)¹.

1 SS Act 98, s 17(1)

A1154 - A1159

Claim or award disallowed

- A1160 Where a claim is disallowed or an award is disallowed following supersession, a later claim for the same period cannot be determined. The DM should give a decision on the later claim from the date following the disallowance.

Example

A decision awarding ESA which is superseded and disallowed on 21 July from and including 9 July is effective down to 21 July. Entitlement can only be considered from 22 July if a claim is then made for any period before 22 July.

- A1161 Where a disallowance is given by a DM, the claim is disallowed for the period from the first date covered by the claim to the date of the decision. However, where the disallowance is confirmed on appeal to the FtT or the UT, the period of the disallowance is not extended up to the date of the FtT's decision. This is because the FtT cannot take account of any changes after the date of the DM's decision¹.

1 SS Act 98, s 12(8)(b)

A1162 - A1169

Revision following backdating request

- A1170 The DM should also consider whether a request for backdating, in a case where an award is made following termination of an earlier award for the same benefit, should be treated as an application for revision of the decision which ended that award. This applies where the claimant in the backdating request argues that

1. the decision ending the previous award was incorrect or
2. the new claim should be backdated to the day following the last day of the previous award.

A1171 - A1179

Finality of determinations

- A1180 Normally, determinations embodied within an outcome decision are not conclusive for the purposes of a further claim for the same benefit¹.

1 SS Act 98, s 17(2)

Example

Following a change of address, a claimant is found to be LTAHAW with a partner who is in F/T work. Her award of UC is superseded on a relevant change of circumstances. The DM also decides that the overpayment is recoverable due to the claimant's failure to disclose. On an appeal against the overpayment decision, the DM's findings on LTAHAW in the supersession decision is not binding on the FtT. The finding is also not conclusive on a further claim for UC.

A1181 - A1199

General principles of common law

A1200 The DM must make a decision taking account of common law principles and European law. The common law principles are

1. definitions of words and phrases
2. relevant law
3. estoppel (personal bar in Scotland) and res judicata
4. natural justice.

Definitions

A1201 The DM can find definitions of words and phrases

1. within the Acts
2. at the beginning of each set of regulations
3. in case law (the UT, Court of Appeal, Supreme Court and the ECJ)
4. in the Interpretation Act 1978.

The DM may use a dictionary if none of these sources contains a definition¹.

1 R(SB) 28/84

A1202 Headings and side notes can be helpful in understanding a provision as can the explanatory memorandum attached to a SI. These are not part of the legislation but are permissible aids to construction¹ which can be used to aid understanding.

1 R v. Montila & Ors

A1203 - A1204

Relevant law

A1205 When a DM is determining a claim or application, the relevant law is the law applying at the time the claim or application is made. Where there is a change in a particular legal provision so that it

1. ceases to have effect **or**
2. begins to take effect

during the period of a claim or application, the DM should apply the change in the law only from the date of the change¹ unless the legislation has retrospective effect or there are specific transitional provisions.

1 R(I) 4/84

Uprating

A1206 Legislation provides for benefit rates to be altered in accordance with the Uprating Order without the need for the DM to supersede the previous awarding decision¹.

1 SSA Act 92, s 155(3); s 159A(3); s 159C(2) & 159D(2)

A1207 - A1209

Estoppel (personal bar in Scotland)

A1210 In general law the doctrine of estoppel, known in Scotland as personal bar, has the effect of blocking or preventing a person from alleging or proving in later proceedings, matters which have already been decided in earlier proceedings¹. When this doctrine is applied by DMs it is called *res judicata* (see A1212 - A1213).

1 R(I) 9/63

A1211 The doctrine of estoppel does **not** apply where the claimant

1. on the advice or a promise given by the Secretary of State, has formed a view about future benefit rights **and**
2. has taken a particular course of action.

The DM must decide the matter solely on the basis of the relevant legislation, even though the decision may be contrary to the original advice or promise¹.

1 R(P) 1/80, R(SB) 8/83 & R(SB) 4/91 Appendix

Example

A claimant in receipt of UC is considering extending his mortgage. He rings his local Jobcentre Plus office and is told that the new mortgage would be met as part of his housing costs. He takes out the new mortgage. The DM decides that the loan is not eligible for housing costs. Estoppel does not apply, because the DM is not bound by the advice given by another person in the Department.

Res judicata

A1212 *Res judicata* prevents a judicial authority from deciding a matter that has already been decided by a person of similar status. This principle is given effect for DMs by a provision in legislation¹ and is also known as the principle of finality (see A1150 to A1151).

Note: This does not apply to most determinations and findings of fact - see A1180 to A1181.

1 SSA Act 98, s 17

A1213 Once a DM has made a decision, a further decision cannot be given on the period of that claim, or the outcome of an application for revision or supersession, **except** where the later decision is given by way of

1. revision **or**
2. supersession **or**
3. appeal¹.

1 R(S) 1/83(T), R(SB) 4/85

A1214 - A1219

Natural justice

A1220 There is a common law requirement that DMs should observe the rules of natural justice. The rules are not prescribed collectively but they represent the manner in which justice is expected to be achieved. An unbiased approach is needed, reflecting the principle that impartiality is at the heart of the judicial process.

A1221 - A1259

European Convention on Human Rights

A1260 The ECHR is a treaty of the Council of Europe. The Convention contains Articles which guarantee a number of basic human rights. In addition, Protocols have been signed which are to be regarded as additional articles to the Convention. The main Convention Rights are set out in ADM Annex G.

Note: Please see ADM Chapters C1 to C4 for guidance on EC law.

Human Rights Act 1998

A1261 The Human Rights Act 1998 which gives effect in the UK to the rights and freedoms guaranteed under the European Convention on Human Rights came into force 2.10.00.

A1262 Public authorities, including courts and both the FtT and the UT are under a duty to act compatibly with the Convention rights and all legislation must be read compatibly with the Convention rights as far as it is possible to do so. Also, courts and both the FtT and the UT should have regard to the jurisprudence of the EctHR and decisions and opinions of the Commission and Committee of Ministers.

A1263 DMs applying the normal principles of decision making, which are

1. natural justice
2. consideration of evidence
3. standard of proof **and**
4. application of relevant law

should not find themselves in breach of Article 6 of the Convention. This is because they are already expected to determine questions without bias or discrimination and within a reasonable timescale.

A1264 For further guidance on appeals to the FtT and the UT involving human rights, see ADM Chapter A5.

A1265 - A1299

Evidence

Introduction

A1300 The guidance in the following paragraphs sets out the general principles which the DM should follow regardless of the benefit or business area involved. See A1001 for details of the authorisation of suitable people to exercise the function of DM on behalf of the Secretary of State.

A1301 The DM should approach the determination of claims and applications objectively by always

1. considering the evidence
2. from that evidence, establishing the facts of the case
3. applying the law to those facts.

A1302 Proper consideration and careful recording of evidence when making and recording decisions are essential. It is particularly important that telephone conversations and interviews are accurately recorded. This approach assists DMs dealing with disputes and may avoid appeals. It also helps in any subsequent appeal proceedings.

A1303 The provision of sufficient information or evidence to establish the NINO is a specific requirement for certain benefits. For details see ADM Chapter A2.

A1304 - A1309

Types of evidence

A1310 DMs, like any other statutory authority, must base all decisions on evidence. There are three types of evidence

1. **direct** - for example, a statement by an employer regarding work
2. **indirect** - for example, a statement by someone who did not see the claimant working but saw them leaving and arriving home everyday wearing work clothes
3. **hearsay** - for example, a statement by someone recording what they were told about the claimant's work.

A1311 Each type of evidence may be either

1. **documentary** - for example, certificates or wage slips
2. **oral** - for example, a statement given verbally (such as in a telephone call)
3. **real** - something tangible, for example, a wage packet with the money in it.

A1312 The DM can use all three types of evidence. Some carry more weight than others¹. The weight given should be carefully judged in the circumstances of the particular case. As a general rule, direct evidence is more significant than indirect or hearsay evidence. Also, the closer in time to the event the DM obtains and considers the evidence, the more helpful it is likely to be.

1 R(I) 4/65

A1313 There may be situations where the DM has “secondary” evidence as opposed to “primary” evidence, for example where an ESA medical report refers to a video recording which is unavailable or no longer exists. The lack of the primary evidence does not mean that the secondary evidence is not admissible, and appropriate weight should be given to it.

Example

Joanne, in receipt of enhanced rate mobility and standard rate daily living components of PIP, was videotaped by private investigators in a personal injury claim. The tapes were shown to her consultant and he wrote a report, part of which said “It is clear that she is able to walk and would be able to perform the majority of tasks associated with daily living”. The decision awarding PIP was superseded and the award terminated. Through various delays, by the time the claimant’s appeal is heard by the FtT, the video is no longer available but the report is. The claimant argues that without the tape (primary evidence) the secondary evidence should not be relied upon to end the award of PIP. The FtT has to have regard to all the evidence before it, including the report, and has to weigh all such evidence and reach a conclusion.

A1314 - A1319

Responsibility for collecting evidence

A1320 Evidence on which the DM decides the claim is collected on behalf of the Secretary of State. In some cases this person will also be the DM. Evidence can be collected by telephone, letter or interview. Where evidence is collected by letter, a copy of a letter asking specific questions should always be kept with the reply. Where evidence is collected by telephone, the questions asked should be recorded along with the replies. See A1451 et seq in fraud cases. Documentary evidence carries the most weight and is preferred.

A1321 The circumstances in which statements are obtained - that is, voluntarily or during an interview under caution - can be important. Where the circumstances are not clear, an explanation should be attached to the statement.

Evidence from HM Revenue and Customs

A1330 Any information held by HMRC for the purposes of

1. contributions functions **or**
2. SSP **or**
3. SMP

may (or on request by an officer authorised by the Secretary of State must) be given to an officer of the DWP where the information is required for SS purposes¹. This enables the DM to obtain information about matters such as contribution records and employed earners employment.

1 SS A Act 92, s 121E

A1331 In the same way information held by the DWP for SS purposes may be given to HMRC where necessary for their functions.

1 SS A Act 92, s 121F

Further Information Sharing Provisions

A1332 LAs may provide information to the Secretary of State of the type set out in A1333 in relation to UC¹.

1 WR Act 12, s 130(7)(a)

A1333 The information referred to in A1332 is¹

1. whether a resident is meeting in full the cost of the provision to them of residential care and if so the date this started and the period over which the cost is intended to be met
2. whether the LA is funding or has funded in full or in part the cost of the provision to a resident of residential care and if so
 - 2.1 the date from which the funding started and the period covered or intended to be covered by it
 - 2.2 the date the funding stopped or is intended to stop
 - 2.3 the enactment under which the funding is being or was provided
 - 2.4 whether there exists any agreement enabling the LA to recover the cost of the funding on the sale of the resident's home and if so, whether that recovery has commenced or when it is intended to commence
 - 2.5 whether the LA has entered into a deferred payment agreement with the resident and if so the date this started and the period the agreement is intended to cover

Note: This also includes information about when the provision of the service begins or ends or is likely to do so.

A1334 The Secretary of State may provide information to an LA or an authority which administers HB (or their service providers or persons exercising functions on their behalf) for¹

1. determining a person's eligibility or continued eligibility for a disabled person's badge
2. determining whether to make to any person a disability adaptation grant, a disabled facilities grant or a discretionary housing payment and if so the amount of that grant or payment
3. determining whether a person applying for housing support services, the provision of domiciliary care or the provision of residential care is liable to contribute towards the cost of the service and if so the amount
4. identifying households eligible for support under the troubled families programme and providing appropriate types of advice, support and assistance to members of such households under that programme

Note: 4.4 applies to LAs in England

1 The Social Security (Information-sharing in relation to Welfare Services etc) Regulation 2012, reg 5

A1335 The Secretary of State may supply information confirming that a UC claimant has made a claim or has an award of UC to social landlords to enable them to determine whether the claimant needs help to manage their financial affairs¹.

1 The Social Security (Information –sharing in relation to Welfare Services etc) Regulations 2012, reg 5(1)(g)

A1336 The Secretary of State may supply relevant information where a UC claimant has been identified (either by the Secretary of State or a universal support provider) as requiring help under a universal support initiative. The information can be supplied to those providers so that they can provide help and monitor and evaluate its provision¹.

1 The Social Security (Information –sharing in relation to Welfare Services etc) Regulations 2012, reg 5(1)(h)

A1337 - A1339

Standard of proof - balance of probability

A1340 The DM must decide claims and applications on the balance of probability. This is not the same as "beyond reasonable doubt", the standard test for proof in criminal trials.

A1341 The balance of probability involves the DM deciding whether it is more likely than not that an event occurred, or that an assertion is true¹. It does not mean that the claimant can be given the benefit of the doubt². If the evidence is contradictory the DM should decide whether there is enough evidence in favour of one conclusion or the other to show which is the more likely. The DM may decide on the basis of findings made on the balance of probability or may find that there is not enough evidence to satisfy them about findings one way or the other.

1 R(I) 4/65; 2 R(I) 32/61

A1342 Alternatively the DM may find that there is insufficient evidence to establish the facts one way or the other and ask for more evidence¹. Claimants must supply all information and evidence required in connection with the decision². The DM should do as much as possible to see that all the necessary evidence is brought to light.

1 R v. Secretary of State ex parte CPAG [1990] QB540; 2 UC, PIP, JSA & ESA (C&P) Regs, reg 37- 38, JSA Regs 13, regs 31 - 32

A1343 - A1349

Failure to provide evidence

A1350 If the claimant fails to provide the requested evidence or information a penalty may be imposed e.g. for failure to sign a declaration in claims for JSA.

A1351 Evidence requirements for JSA are in benefit specific guidance.

A1352 When making a decision, the DM should decide the importance of the failure and any reasons given for not providing evidence, as this could cast doubt on the facts previously provided. See A1405 for guidance on the burden of proof.

Example 1

A UC claimant states that there is no capital or income from the sale of her business, because the money from the sale was used to clear the business debts. The DM asks for evidence of the transaction. The claimant is unable to produce any. The transfer of the business was within the family. The DM is entitled to take the view that it is more likely that the claimant has not disposed of the assets of the business.

Example 2

A jobseeker states he left his employment because of a grievance with the employer, but on being asked to provide more details, does not reply. The DM can impose a sanction because the jobseeker has not proved good reason for leaving his employment voluntarily.

Example 3

A PIP claimant completes the claim form but does not return the claimant questionnaire ("How Your Disability Affects You"). Despite a reminder the form is never returned. The DM makes a negative determination and disallows the claim for PIP.

A1353 - A1371

Treated as not having LCW

A1372 Where the claimant has not replied to enquiries requesting evidence of LCW¹, there are special rules to treat a person as capable of work. They apply if the claimant fails without good cause to

1. return the questionnaire for the WCA²
2. attend or submit to a medical examination³.

See ADM Chapters F5 and V.

1 ESA Regs 13, reg 33; UC Regs, reg 43; 2 ESA Regs 13, reg 34; UC Regs, reg 43(3);

3 ESA Regs 13, reg 35; UC Regs, reg 44

A1373 See ADM Chapters F1 and V where a claimant fails to provide medical evidence.

A1374 - A1379

Corroboration of evidence

A1380 There is no rule of law that corroboration of the claimant's own evidence is necessary¹. But the DM should not accept evidence, from the claimant or anyone else, uncritically. It needs to be weighed carefully, in the light of the circumstances of the case.

1 R(I) 2/51; R(SB) 33/85

Example

A man claims UC. He states he has capital of £20,000. The DM therefore decides that he is not entitled to UC. Four weeks later the man makes another claim for UC. He states that he has spent all of his capital, but he cannot produce evidence of any expenditure. The DM decides that the man still has capital of £20,000 and that he is not entitled to UC.

A1381 - A1389

Contradictory evidence

A1390 If the evidence is contradictory, the DM should

1. try to resolve the discrepancy **or**
2. decide that there are sufficient grounds to decide the point on balance of probability - see A1340 et seq.

Self-contradictory evidence

A1391 The claimant's own evidence may include statements which conflict with each other. These mutually contradictory statements usually need explaining.

Example

An ESA claimant suffering from low back pain fails to attend for a medical examination. He states that he is unable to travel to the medical centre by public transport due to his disability and cannot afford taxi fares. When asked how he manages for shopping etc he replies that he needs very little because he takes the bus to his parent's house each day and they provide his meals. The distance between the claimant's house and his parent's is similar to that between his house

and the medical centre. The DM decides that the claimant's reason for not attending the medical is not enough on its own to excuse the failure.

Inherently improbable evidence

A1392 The DM may decide that a claimant's statement is inherently improbable. This is where it is very unlikely that what has been asserted can be true.

Example

Following an investigation, the DM finds that a UC claimant has been receiving £1,000 a month occupational pension and disallows the award of UC. The claimant states that he had no idea that this money had been credited to his bank account. The DM decides that this is inherently improbable, and that the overpayment is recoverable.

A1393 In some cases the DM may decide that uncorroborated evidence (that is, evidence not supported by any other evidence) cannot be accepted because it is self-contradictory or improbable. Such evidence may contradict itself, or other evidence before the DM, or the DM may consider that it is unlikely to be true. In such cases the DM may request further evidence. If none is available the DM should decide the claim on the evidence provided already.

A1394 - A1399

Claimant's own evidence

A1400 A claimant's statement, whether oral or in writing, is evidence. It is often the best evidence and sometimes the only evidence available, even after enquiries. In such a case, the DM must decide whether the claimant has discharged the burden of proof. See A1405 et seq.

Example 1

A claimant was overpaid JSA for several years because an increase in the hourly rate for his P/T work was not taken into account. During the investigation he stated that he had declared the increase at an interview at the Jobcentre Plus office. He said he remembered the conversation in detail, including the fact that the interviewer said that she would write down the details and make sure that the increased income was taken into account. The claimant could not remember any other details of the interview or completing the claim form which stated that his P/T earnings had increased. The DM decided that the statement was unlikely to be true. This view was reached after considering the claimant's selective memory of events and was reinforced because he had not disclosed recent changes in his hours and income. The DM decides that the claimant has not discharged the burden of proof.

Example 2

A woman declared maintenance payments at the beginning of her UC claim and regularly reported changes. During an investigation it is found that an increase in

these payments has not been taken into account for three months. There is no record of disclosure of the increase. The claimant states that she declared the additional income in a letter in which she also reported that her son had left the household. The letter cannot be found but the award had been adjusted to remove the child element around the date of the alleged letter. The DM decides that, on the balance of probability, the claimant had reported the change in income and it had been overlooked in dealing with the family circumstances.

A1401 The DM should look at each statement made by the claimant and assess it on its merits. A statement may occasionally be so extraordinary that it casts doubt on the credibility of the person and any other statements they have made. The DM should be careful in assessing these matters on written evidence alone. It may be necessary to interview the claimant to get clarification or further information.

A1402 If it is clear from the case papers that a claimant has previously made statements which have proved to be incorrect, the DM is entitled to regard evidence provided by that claimant critically, regardless of whether these statements were genuine errors or attempts to mislead.

A1403 - A1404

Burden of proof

A1405 A clear understanding of where the burden of proof lies helps the DM to weigh the evidence and decide whether further evidence should be sought. DMs should note that

1. initially the burden lies with the claimant to prove that the conditions for a claim are satisfied¹ but they should do as much as possible to ensure that the claimant has every opportunity to provide all relevant evidence
2. where they wish to show that an exception to a condition of entitlement is not satisfied, the burden of proof rests with them²
3. there is no presumption in favour of the claimant
4. where an allegation is denied by the claimant it is generally for DMs to prove the facts
5. the burden of proving that the conditions for revision or supersession are satisfied lies with the person who applies for revision or supersession
6. in overpayment cases the burden of proof for the purposes of determining the sum to be recovered falls on them³ (see ADM Chapter B3)
7. where a criminal court convicts a person of an offence related to obtaining or receiving benefit, that conviction shifts the burden of proof relating to the same benefit and period at issue from them to the claimant⁴.

Note: Where 5. applies the question of whether the **conditions** for revision or supersession are satisfied must be considered separately from the question of whether the decision should be revised or superseded.

Evidence in certain situations

Destruction of documents

A1420 The Department destroys documents in order to meet the obligations of the Data Protection Act. No one can make any presumptions about what evidence the documents might have contained¹. This means that claimants cannot say that the destroyed documents must have supported their case. This principle does not apply if the claimant can prove that the documents were disposed of with the sole intention of destroying evidence.

1 R(IS) 11/92

A1421 The DM should take account of any available evidence and make a decision on the balance of probabilities. Where it is impossible to reconstruct the document the DM should not assume any fact but decide the question on the basis of any other evidence.

A1422 The DM must consider the burden of proof when looking at evidence. This can rest with either the claimant or the DM.

A1423 - A1429

Evidence of Departmental procedures

A1430 Where a case relies on systems of work or Departmental forms no longer available, the DM should

1. get evidence of the system of work **or**
2. explain why the original form is not available.

The DM could then decide on the balance of probabilities whether the procedures were properly followed.

Example

An overpayment of PIP has been identified. The DM is looking at recoverability. Benefit is paid to the claimant by direct payment. The DM knows the benefit cannot be paid by direct payment unless the claimant signs a declaration of understanding and agreement that overpayments may be recovered¹.

The DM decides that the prescribed conditions for recoverability are satisfied even though the original document has been destroyed under normal destruction procedures.

1 SS (POR) Regs, reg 11(2)(b)

Evidence of a decision

A1431 It may be necessary for the Secretary of State to produce evidence of a decision of a DM, for the purpose of an appeal for example. If so, the evidence of the decision should contain a certificate signed on behalf of the Secretary of State stating that the document is such a record. The certificate must be signed by an officer specifically authorised to do so¹.

1 SS Act 98, s 39ZA

A1432 A certificate should **not** be produced where there is no evidence that a decision was made or recorded, or that the decision was different from that provided in any explanation or recorded in a response to the FtT.

A1433 Where A1432 applies, the DM should not use the certification process to construct a record of what ought to have been decided. DMs should be aware that it is a false statement which could lead to criminal sanctions¹.

1 Perjury Act 1911, s 5

A1434 Where the decision was made electronically, the DM should

1. produce a computer printout showing the decision history **and**
2. provide an explanation of codes used in the computer record.

See A1111 - A1112 for guidance on recording decisions.

A1435 - A1439

Evidence given in confidence

A1440 If evidence raises any question of confidentiality, the matter must be resolved before it is put to the DM. If any confidential evidence is disclosed to the DM, that evidence must be disclosed to the FtT. However, the FtT may make an order prohibiting the disclosure or publication of confidential evidence¹.

1 TP (FtT) (SEC) Rules, rule 14

A1441 All evidence available to the DM should be available to the FtT¹ and disclosed to the claimant or representative² except medical evidence that is harmful to the claimant's health.

1 TP (FtT) (SEC) Rules, rule 24(4)(b); 2 R(S) 1/58

A1442 All information obtained in the course of deciding a claim is confidential between the claimant and the statutory authorities. **It follows that personal details of one claimant should not be put to the DM as evidence for the claim of another claimant.** An exception would arise if a claimant alleges to have responsibility for a child or children included on another person's claim.

A1443 Information given in confidence from a third party, such as

1. social workers **or**
2. doctors **or**

3. letters containing allegations where the writer has not given written permission for the contents to be disclosed **or**
4. verbal allegations where permission has not been given should not be available to the DM when making the decision.

A1444 All information obtained in the course of deciding a claim should be regarded as confidential.

A1445 All the evidence that is put to the DM must be put to the FtT if a claimant appeals. This includes confidential evidence. See ADM Chapter A5 for details.

A1446 - A1449

Appeals: Address of partner from whom claimant is separated

A1450 Where a document shows any details which could lead to the location of the claimant being discovered by the other party, these details must not be made known to the FtT if the separated partner has asked for their whereabouts not to be divulged. If this information is not to be released the DM should

1. prepare a note to the Presenting Officer to explain the omission to the FtT **and**
2. make sure that all copies of the document have the information blanked out.

Fraud

A1451 To ensure that DMs act independently and fairly officers involved in fraud work do not make decisions with regard to payment of, or entitlement to, benefit. Cases of suspected fraud which need a decision must be referred to an officer who is not a fraud specialist. See Appendix 1.

A1452 Full-time fraud specialists temporarily engaged on other duties and staff who are employed part-time on fraud work may make decisions while they are carrying out duties unrelated to fraud work. They must not give a decision on any case

1. which is the subject of current fraud action **or**
2. in which they have been engaged in investigating fraud.

A1453 - A1459

Advice on the law

A1460 Advice produced for the purpose of litigation e.g. advice on a particular case or advice on potential legal challenges, for example from DWP Legal Services or DMA Leeds, does not to be disclosed to the claimant, the claimant's representative or the FtT. This type of information is covered by legal professional privilege. There is also no obligation to supply the advice where there is a request to disclose it under the Data Protection Act 1998¹. However, if a request to disclose is made under the

Freedom of Information Act 2000² the information may be disclosable if it is in the public interest to do so. Advice provided outside of a litigation context will be disclosable unless it comes from a solicitor or barrister.

1 Data Protection Act 98, Sch 7, para 10; 2 Freedom of Information Act 2000, ss 2 and 42

A1461 - A1469

Decisions given by other courts

A1470 In making decisions, DMs should take account of

1. their own independent conclusions **and**
2. decisions of appellate authorities including reported UT decisions.

A1471 The DM is bound by decisions of the appellate authorities (see A1474) on questions which are identical to those they have to decide.

A1472 - A1473

Appellate Authorities

A1474 The appellate authorities are

1. the UT **and**
2. the higher courts.

Upper Tribunal decisions

A1475 Reported decisions are those of general importance. They

1. deal with points of construction on statutes and regulations
2. add to the consistent and orderly development of the law
3. have the agreement of at least the majority of the UT judges
4. often deal with important questions of interpretation of provisions in the Acts and regulations
5. have been selected for reporting by the editorial board of the UT.

A1476 Reported decisions are now numbered using neutral citation, - see Annex K - an example of which is *KS v Secretary of State for Work and Pensions (JSA)* [2009] UKUT 122 (AAC); [2010] AACR 3. To explain the composition of the citation, it is broken down below into its component parts

1. *KS v Secretary of State for Work and Pensions (JSA)* refers to the parties to the appeal and the benefit involved;
2. [2009] UKUT 122 (AAC) refers to the year the decision was made, United Kingdom Upper Tribunal and the neutral citation number; i.e. the consecutive number of the case within the year's series and the name of the chamber making the decision, in this case The Administrative Appeals Chamber;

3. [2010] AACR 3 refers to the year the decision was reported, the name of the publication it is reported in and the consecutive reporting number within that year's series.

A1477 At the head of each reported decision is printed

1. a brief note of the facts of the particular case **and**
2. the substance of the decision.

This headnote is not part of the decision and carries no authority. A guide to reported decisions can be found in Reported Decisions Digest/Neligan¹. Annex L contains an explanation of the previous reported decision serial numbers and the benefits to which they relate.

1 Neligan - Social Security Case Law, Digest of Commissioners' Decisions

A1478 Copies of all reported decisions are held by

1. the President of the TS
2. TS regional offices.

DMs in all offices of the DWP should have access to all reported decisions.

A1479 Reported decisions have the support of the majority of the UT and contain points of general importance about the interpretation of the law. Both reported and unreported decisions are sources on the interpretation of legislation. The DM should rely primarily on reported decisions. Many unreported decisions do not deal with matters of general importance and are specific only to the facts of a particular case.

A1480 Great care is needed before using an unreported decision as the basis for general application in similar cases. If decisions of the UT conflict, then a reported decision has more weight than an unreported one¹. A decision of the UT consisting of 2 or 3 Judges should be preferred to that of a single UT Judge². Where a claimant or a representative produces a decision without warning at a tribunal, the presenting officer can seek an adjournment so that a copy of the decision can be obtained and made available to all parties.

1 R(IS) 9/08; 2 R(I) 12/75

A1481 - A1489

Court of law

A1490 The conviction of a claimant in a court of law for falsely obtaining benefit should not be ignored and should have a bearing on the case relating to benefit¹. When a prosecution has taken place the DM should try to obtain

1. all the evidence that was available for the criminal proceedings **and**
2. evidence of the conviction itself

before giving a decision on benefit, or revising a decision which has already been given.

1 R(S) 2/80

A1491 The initial responsibility of showing that the conviction relates to the benefit and period at issue rests on the DM. A conviction for an offence relating to the same benefit and period at issue before the decision making authorities has the effect, on reconsideration, of shifting the burden of proof on to the claimant who has been convicted. The claimant must show, on the balance of probability, that there is entitlement to the benefit at issue.

Rehabilitated offenders

A1492 It is a criminal offence for anyone whose official duties involve access to official records to disclose information about spent convictions of rehabilitated offenders other than in the course of those duties¹. See A1493 et seq.

1 ROO Act 74, s 9

A1493 An offender who has been sentenced on conviction to

1. a term of imprisonment **or**
2. detention in legal custody

of not more than 2½ years can be rehabilitated by avoiding re-conviction for a serious offence within a specified period beginning with the date of conviction¹.

1 ROO Act 74, s 1 & s 5

A1494 When an offender has completed the rehabilitation, the conviction becomes spent and evidence relating to it is only admissible in proceedings before a judicial authority¹. DMs are judicial authorities within the meaning of the Act².

1 ROO Act 74, s 7(3); 2 s 4(6)

A1495 The DM should only consider evidence relating to spent convictions when that evidence is essential to the determination of the claim. The DM is then acting within official duties for the purposes of the Act.

A1496 - A1499

Employment tribunals

A1500 Decisions of FtTs are not binding on Employment Tribunals or vice versa. Although the issues before the tribunals have much in common, they are not identical¹. The DM should consider any relevant evidence given to an Employment Tribunal, but does not have to take the same view of its credibility or draw the same inferences.

1 R(U) 2/74; R(U) 4/78

A1501 - A1509

Coroner's court

A1510 A Commissioner declined to follow the decision of a Coroner's jury, declaring that it was the duty of Commissioners to determine the probabilities, having regard to the evidence before them¹. DMs have the same duty.

1 R(I) 25/60

Medical evidence

A1520 In general, medical evidence should be treated in the same way as any other evidence. Medical training is not required, but there are additional considerations for DMs.

A1521 Medical evidence is often given as a medical opinion and is not conclusive. See ADM Chapter A4.

A1522 The DM is entitled to reject an opinion¹ where there is direct or circumstantial evidence which raises a strong inference against the opinion. Where doctors or HCPs or Health Professionals (PIP) disagree, the DM has to decide, on the balance of probabilities, which of the contrasting opinions is more likely to be correct. The view of the claimant's own doctor is not conclusive².

1 R(S) 4/60; 2 R(S) 4/56

A1523 Where a decision hinges on a medical issue the DM must seek advice from Medical Services or the Health Professional if they have any doubt about

1. whether the evidence is sufficient to make a decision, **or**
2. how it should be interpreted.

A1524 It should be remembered that the onus is on the claimant to provide evidence in support of their claim. The DM may consider that additional evidence will help Medical Services give better advice. If this can be obtained quickly, either from the claimant or elsewhere, it should be requested. However, if the information is then delayed, the claim form should be sent to Medical Services who should be told that further evidence has been sought but not received. It will be for Medical Services to decide how then to proceed. For PIP evidence gathering is the responsibility of the Health Professional. On receipt of the Health Professional's assessment the DM may, in consultation with the Health Professional discuss the need for further evidence.

A1525 The DM may refer any question of special difficulty to one or more experts for examination or report¹. An expert in this context may include, for example,

1. a registered medical practitioner
2. a physiotherapist
3. a nurse.

Examination includes a physical examination if the claimant agrees². Referral to an expert may be made through Medical Services. See benefit specific guidance for more details.

Note: For PIP it will fall to the Health Professional to determine what, if any, further evidence is required.

A1526 The DM should decide the claim in the light of all the evidence including the HCP or HP's report.

A1527 For PIP the assessor reports are advice following a consultation and are not considered "medical".

A1528 – A1539

The Role of Assessment Providers

PIP

A1540 Following an initial claim for PIP, the claimant will complete a claimant questionnaire ("how your disability affects you"). This will ask for details about their ability to carry out the daily living and mobility activities. This will be sent to the Assessment Provider. The Assessment Provider is a Health Professional who will undertake the consultation.

A1541 The Health Professional will decide what additional evidence, if any, is required. Prior to the Health Professional giving an opinion the claimant will, in the majority of cases, be called for face to face consultation. The subsequent report will be sent to the DM. Where the DM is not content with the assessment report the DM will discuss with the DWP advisor who will liaise with the appropriate Health Professional to resolve the matter.

A1542 – A1550

ESA and credits

A1551 To be entitled to ESA a claimant must have LCW¹. Claimants who are not treated as having LCW have to answer a questionnaire. The questionnaire is designed for the claimant to give as much information as possible about their condition and how it affects them in their daily functioning and how they manage their condition. Medical Services are responsible for gathering the information required. This includes sending the questionnaire.

1 WR Act 07, s 1(3)(a)

A1552 Medical Services will also provide an independent medical opinion on the claimant's condition, functionality and their ability to perform activities related to work. They do not provide a diagnostic examination.

A1553 The questionnaire and the medical opinion are referred to the DM to consider whether the claimant has LCW. See ADM Chapter F5 for full guidance.

UC

A1554 UC claimants can receive¹ an LCW or an LCWRA element if they have, or can be treated as having LCW or LCWRA. See Chapter F1.

1 UC Regs, reg 39(1), 27(1)(a), reg 40(1)(a), reg 27(1)(b)

Exchange of medical reports

- A1570 A claimant may argue that a medical report produced for another benefit should be used to decide a claim or dispute. The DM should, if possible, obtain a copy of the report and take it into account when making the decision.
- A1571 The same applies when a DM is sent a medical report by another officer of the Department. For example, an officer dealing with a claim for ESA may be sent medical reports obtained for the purpose of a compensation recovery case.
- A1572 DMs should bear in mind that medical reports are produced in order to determine whether the person satisfies the conditions of entitlement for a particular benefit and that some of the findings might not be relevant to another benefit. If reports appear to conflict, DMs must take into account the level of expertise of the HCPs concerned. For example, a HP is specially trained to assess disability in the context of a claim for PIP and their evidence may therefore be preferable to that of another HCP when deciding a claim for that benefit. DMs should consult Medical Services or the Health Professional if they have difficulty interpreting the medical advice.
- A1573 The DM also needs to be aware of other factors which may affect the weight to be given to the report as evidence. For example, where a WCA report is used as evidence to disallow an award of ESA or credits, and the decision is overturned on appeal, the WCA report may not be a useful source of evidence when deciding a claim for PIP.

Note: For the purposes of PIP medical reports are referred to as “assessment reports”.

Consent and medical evidence

- A1590 Claims for ESA and PIP which include consent to collect medical evidence include consent to the information being made available to the decision making authorities. The whole report should be disclosed to the claimant or representative unless A1591 applies.
- A1591 Medical evidence should not be disclosed to the person to whom it relates if disclosure would be harmful to the health of that person. If a report from a GP or consultant is signed to indicate that no information need be withheld, the report can be disclosed on request as normal. In PIP cases the Health Provider will indicate on the report that the assessment does not contain harmful information. Where the GP states that information in the report is harmful, the DM should consider whether it should be disclosed, asking Medical Services for advice in cases of doubt. In PIP cases a form is completed where the report contains harmful information that is not to be copied to the claimant. The DM should take account of the evidence where it is relevant.

A1592 Where the DM considers that disclosure of medical evidence would be harmful, the evidence should not be disclosed to anyone acting for the person concerned unless the DM is satisfied that it is in the interest of the person to do so. If the evidence is disclosed it should be on the understanding that it will not be disclosed to the person to whom it relates.

A1593 - A1594

Appeals

A1595 Where

1. medical evidence used to make a decision is considered by the DM to be potentially harmful **and**
2. an appeal is made against the decision

the appeals officer should prepare two sets of documents including the response.

A1596 The first set should have all evidence including that considered to be potentially harmful medical evidence, with a form explaining what evidence is considered to be potentially harmful medical evidence and why. The form will ask the FtT for a ruling on disclosure¹.

1 TP (FtT) (SEC) Rules, rule 14

A1597 The other set should have the potentially harmful medical evidence obliterated. The response should not be sent to the appellant.

A1598 On receipt of the FtT's ruling, the clerk will

1. send the appropriate response as directed together with the pre-hearing form to the appellant and representative **and**
2. send a copy of the ruling to the Department.

A1599 The Department's file should be noted to ensure that the ruling is followed in any contact with the appellant or representative. The appropriate response should be issued to the presenting officer if there is to be one.

A1600 - A1999

Appendix 1

Areas where information gathering and decision making functions must always be undertaken by separate members of staff

1. Allocation of NI numbers
2. Determinations about LTAHAW and LTACP
3. Fraud investigation
4. Instrument of payment replacement
5. Dealing with claims and applications from relatives.

The content of the examples in this document (including use of imagery) is for illustrative purposes only