

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF STRATEGIC COMMUNICATIONS)

Decision Makers Guide

Volume 1

Amendment 53 – February 2017

1. This letter provides details on Amendment 53; 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/lq/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 53 affects Chapters 1, 4 & 6
 - Chapter 1 minor amends.
 - Chapter 4 minor amends.
 - Chapter 6 use of anonymous witness statements and redacted documents
4. The last two amendment packages amending Volume 1 were

Amendment 52 [October 2016]

Amendment 51 [June 2016]
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 1

01441 – 01474 (1 page)

Chapter 4

04687 - 04694 (1 page)

Chapter 6

06305 – 06314 (1 page)

Insert

Chapter 1

01441 – 01474 (1 page)

Chapter 4

04687 - 04646 (1 page)

Chapter 6

06305 – 06314 (1 page)

01441 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

01442 All information obtained in the course of deciding a claim or application 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 or application of another claimant.** An exception would arise if a claimant claims to have responsibility for a child or children included on another person's claim.

01443 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

should not be available to the DM when making the decision.

01444 All information obtained in the course of deciding an application should be regarded as confidential.

01445 All the evidence that is put to the DM must be put to the FtT if a claimant appeals. This includes confidential evidence. See DMG Chapter 06 for details.

01446 - 01449

Appeals: Address of partner from whom claimant is separated

01450 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

01451 To ensure that DMs act independently and fairly officers involved in fraud work do not make decisions with regard to payment of benefit. Cases of suspected fraud which need a decision must be referred to an officer who is not a fraud specialist. See Appendix 1.

01452 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.

01453 - 01459

Advice on the law

01460 Advice produced for the purposes 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 need 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

01461 - 01469

Decisions given by other courts

01470 In making decisions, DMs should take account of

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

01471 The DM is bound by decisions of the appellate authorities (see DMG 01475) on questions which are identical to those they have to decide.

01472 - 01473

Appellate Authorities

01474 The appellate authorities are

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

Special rules - ESA, IS, JSA and SPC

Special rules for housing costs - service charge adjustments

04687 Some leaseholders are liable to pay service charges. See DMG Chapter 44 on guidance for housing costs for ESA, Chapter 23 for IS and JSA and Chapter 78 for SPC. These service charges are sometimes adjusted during or after the relevant financial year. Guidance in DMG 04688 - 04695 applies only to ESA, IS, JSA and SPC

04688 Housing costs should be calculated and awarded when the claimant becomes liable to pay on receipt of an invoice of estimated costs. The same principle applies when an invoice for the difference between the estimated and actual service charges is issued to the claimant. In each case, the amount of the invoice should be converted to give a weekly amount of housing costs from the date the liability arose¹.

1 JSA Regs, Sch 2, para 16(1); IS (Gen) Regs, Sch 3, para 17(1); SPC regs, Sch II, para 13(1)

04689 The liability for service charges arises in accordance with the terms of the lease. This will usually be

1. in the case of estimated charges, the first day of the relevant financial year **or**
2. in the case of finalised charges, the date the invoice is issued

04690 The finalisation of service charges is a separate liability from the estimated charges. A decision awarding housing costs on the basis of estimated service charges is therefore not made in ignorance of or mistake as to some material fact, nor can it be revised either during the application period (DMG 03063) nor for official error, when those charges are finalised at a later date.

04691 A notification to DWP of a new liability for estimated or finalised service charges is treated as an application for supersession. In order to include such housing costs in an award of ESA(IR), IS, JSA(IB) or SPC, the previous awarding decision should be superseded on the grounds that

1. there has been a relevant change of circumstances¹ **or**
2. it is anticipated that there will be a relevant change of circumstances (in the case of estimated charges where the supersession is carried out before the period of liability has begun)².

The effect of the supersession is to award service charges for a fixed 52 week period from the date the liability arose. At any one time, a claimant's award of housing costs for service charges may therefore be made up of housing costs arising from different liabilities notified at different times.

1 SS CS (D&A) Regs, reg 6(2)(a)(i); 2 reg 6(2)(a)(ii)

04692 Where the claimant sends invoices to DWP promptly, the supersession decision is normally effective

1. for ESA(IR), IS and JSA(IB), from the first day of the benefit week in which the change occurs¹ **or**
2. for SPC paid in advance, from the date of the change where that is the first day of the benefit week, or otherwise the first day of the benefit week following the date of change² **or**
3. for SPC paid in arrears, from the first day of the benefit week in which that change occurs³

1 SS CS (D&A) Regs, Sch 3A, para 1(a) & 7 & Sch C, para 1; 2 Sch 3B, para 1(b)(i); 3 Sch 3B, para 1(b)(ii)

04693 The change occurs on the date the liability begins as in DMG 04692. This is the date the claimant is notified of the service charges by the landlord, or in the case of estimated charges the beginning of the financial year if later.

Example

The claimant's award of IS includes a weekly amount of £8.31 for housing costs arising from estimated service charges of £431.84 for the period 1.4.02 - 31.3.03. The amount for housing costs is due to end on 31.3.03. In February 2003 the claimant sends in an estimate of service charges for the 2003-04 financial year. The awarding decision is superseded on the grounds of an anticipated relevant change of circumstances to include housing costs of £10.87 weekly arising from estimated service charges of £564.94 for the period 1.4.03 - 31.3.04. On 9.9.03 the claimant receives an invoice for £243.85, being the balance of finalised service charges for the 2002-3 year, and sends it to the DWP. The DM supersedes the decision of February 2003 to award housing costs of £10.87 and £4.69 for the period 9.9.03 - 31.3.04, and £4.69 for the period 1.4.04 - 6.9.04, the balance for the 2002-03 year charges being paid over a 52 week period. If a further estimate for charges for the 2003-04 year is received, the September 2003 decision may be superseded accordingly.

04694 If the claimant delays notifying the DWP of a liability to pay service charges, the consequence may be that they do not receive their full allowable housing costs for the relevant period. The DM should consider whether there are special circumstances for the delay in notification¹ (see DMG 04204 - 04211). If the liability is not notified until after the period of 13 months from the date the claimant became liable to pay service charges has ended, no housing costs can be awarded at all in relation to that liability.

1 SS CS (D&A) Regs, reg 7(2)(b) & 8

Presentation of statements

06305 The Department should ensure that

1. written statements are signed with an explanation of why they were made and signed unless the reason is self-evident¹
2. all evidence that is hard to read, especially records of interviews or phone calls, is typed and signed
3. the original documents are available at the hearing where practicable
4. the advice in DMG Chapter 01 about evidence given in confidence is followed where the evidence refers to imprisonment
5. anonymous letters are not included
6. anonymous witness statements are not routinely included. Generally a witness should not be anonymous unless there are special circumstances requiring anonymity and that would be a matter for the tribunal chairman to decide
7. if redacted documents are included the papers, an unredacted copy in a sealed envelope should be made available to the chairman of the FtT.

1 R(G) 1/63

Overpayments

Warning and instructions issued to claimants

06306 If an appeal is made against a recoverable overpayment, the evidence should include

1. the warnings and instructions in a printed form
2. a copy of any leaflet sent to the claimant if the advice in that leaflet is relevant.

If the particular print of a form or leaflet is no longer available, the nearest equivalent should be included. If there have been any changes to the warnings and instructions to the claimant then the DM should include an explanation as to the effect, if any, those changes have on the case.

Disclosure not made to administering office

06307 Where

1. the appeal is against a recoverable overpayment decision **and**
2. the ground of appeal is that disclosure was made to another office or part of another office of the Department

the DM should include evidence of Departmental procedures for links between sections, whether by computer or otherwise, and whether they broke down during the period of the overpayment.

Rehabilitated offenders

- 06308 It is a criminal offence for anyone whose official duties involve access to official records to disclose information about spent convictions of rehabilitated offenders outside the course of those duties. In this connection the response writer should note that
1. evidence referring to a spent conviction should only be included where justice can **only** be done by doing so
 2. if it is essential to refer to a period when the claimant has been in prison but has not been convicted of an offence, for example on remand, this should be made clear in the response.

IfW cases

- 06309 In a case where, following a second or subsequent PCA, the DM determines that the claimant is not incapable of work, the previous PCA may not have been considered¹. However, on appeal the last PCA should be made available to the tribunal.

1 SS CS (D&A) Regs, reg 6(2)(g)

ESA cases

- 06310 Where, following a second or subsequent LCW/LCWRA assessment, the DM determines that the claimant does not have LCW/LCWRA, the previous LCW/LCWRA assessment may not have been considered¹. However on appeal the last LCW/LCWRA assessment should be made available to the FtT.

1 SS CS (D&A) Regs, reg 6(2)(r)

Exchange of medical reports

- 06311 When a claimant disputes or appeals a decision and argues that a medical report produced for another benefit is more favourable to them, the DM should, if possible, obtain a copy of the other report and take it into account when reconsidering the decision. The decision may need to be revised or superseded in the light of the other report. See DMG Chapters 03 and 04 for guidance on revision and supersession.
- 06312 The DM may also use a report produced for another benefit as evidence, for example where it is sent by another part of the Department.
- 06313 If an appeal proceeds, include a copy of the other report in the appeal documents and refer to it in the appeal response.
- 06314 The DM should also ensure that the tribunal is made aware of any decision making and appeals process which may have followed the production of the report. For example, where