

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF LEGAL GROUP)

Decision Makers Guide

Volume 9

Amendment 23 – February 2017

1. This letter provides details on Amendment 23; 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:

<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 23 affects abbreviations Chapters 49, 51, 52 & 53. The changes
 - amended rates in appendices 2 & 3: SI 2016/288 in Chapter 49
 - added a legal reference to the Care Act 2014 in DMG para. 51200, added note and legal footnote to Bereavement Support Payment DMG para. 51022, DMG paras. 51254 & 57-58 added reference to Continuing Care - see reg. 8 of SI 2016/732 and added legal reference to the Care Act 2014 in Chapter 51.
 - makes a minor amendment to DMG para. 52495 to clarify guidance in Chapter 51
 - incorporates DMG Memo 15/16 and some other minor amendments to Chapter 53.
4. The last two packages for Volume 9 were
 - Amendment 22 [June 2016]
 - Amendment 21 [February 2016]

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 49**

Appendix 2 – Appendix 3 (2 pages)

Chapter 51

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Insert**Chapter 49**

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Chapter 51

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Chapter 53

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Appendix 2

Maximum weekly amount

Payable under section 227 of the Employment Rights Act 1996.

	£
From 1.2.07	310
From 1.2.08	330
From 1.2.09	350
From 1.10.09	380
From 1.2.11	400
From 1.2.12	430
From 1.2.13	450
From 6.4.14	464
From 6.4.15	475
From 6.4.16	479

Appendix 3

Statutory guarantee payments

Amount payable to employees under section 31 of the Employment Rights Act 1996.

	£
From 1.2.07	19.60 per day
From 1.2.08	20.40 per day
From 1.2.09	21.50 per day
From 1.2.10	21.20 per day
From 1.2.11	22.20 per day
From 1.2.12	23.50 per day
From 1.2.13	24.20 per day
From 6.4.14	25.00 per day
From 6.4.15	26.00 per day
From 6.4.16	26.00 per day

Benefits taken fully into account

Bereavement allowance

51022 BA should be taken into account in full. It is restricted to payment for not more than 52 weeks.

Note 1: WP may continue to be paid to widows whose husband died before 9.4.01.

Note 2: Bereavement Support Allowance will replace Bereavement Allowance for new claims from 3 April 2017¹.

The BSP Regs 2017

Carer's allowance

51023 CA should be taken fully into account. It is payable to people who are unable to work because they are caring for a person receiving AA or DLA.

ESA(Cont)

51024 ESA(Cont) received by a partner should be taken fully into account. Where the claimant's partner's ESA(Cont) has been reduced due to a failure to

1. take part in a WFI or a failure to undertake WRA **or**
2. comply with a work-related requirement

then the amount of ESA(Cont) to take into account is the amount before any reduction¹.

1 ESA Regs, reg 104(10)

51025 Where the claimant is a husband or wife by virtue of a polygamous marriage and the other party to the marriage or any spouse additional to the marriage is in receipt of ESA(Cont) which has been reduced due to a failure to

1. take part in a WFI or a failure to undertake WRA **or**
2. comply with a work-related requirement

then the amount of ESA(Cont) to take into account is the amount before any reduction¹.

1 ESA Regs, reg 104(11)

51026 - 51030

Incapacity benefit

51031 IB should be fully taken into account. IB is paid to people who are incapable of work

1. who are not entitled to SSP **or**
2. whose SSP has ended.

51032

Industrial injuries disablement benefit

51033 IIDB should be taken fully into account. The additional allowances

1. REA **and**
2. US

may also be paid with IIDB. They should be taken fully into account.

Note: US was removed from the scheme on 6.4.87 but may continue in payment to people getting it before that date.

51034 See DMG 51230 for guidance on attendance allowances for the treatment of ESDA and CAA paid with Dis B.

51035 Dis G should be treated as capital. But REA paid with it should be taken fully into account as income.

51036

JSA(Cont)

51037 JSA(Cont) received by a partner should be taken fully into account. It is payable to people who are unemployed and who have paid enough NI contributions¹.

1 JS Act, s 2

Maternity allowance

51038 MA should be taken fully into account. It is payable to women who cannot get SMP.

Retirement pension

51039 RP should be taken fully into account. It is either

1. contributory (Cat A or B) **or**
2. non-contributory (Cat C or D).

51040 RP may be made up of the following elements

1. a BP
2. an increase of BP for dependant spouses or civil partners, dependant children or women looking after children (but see DMG 51240 if the dependant is not a member of the claimant's family)
3. an AP for people who were in non-contracted out employment
4. GRB earned between 1961 and 1975 under the graduated pension scheme
5. Incs for deferred retirement
6. invalidity and age additions.

Payments for care home, Abbeyfield Home or independent hospital charges

Introduction

51190 DMG 51191 - 51202 gives guidance on the treatment of payments of income towards accommodation charges for

1. a care home **or**
2. an Abbeyfield Home **or**
3. an independent hospital.

51191 The treatment of the income depends on

1. the type of payment
2. whether the LA has sponsored the claimant in their accommodation.

Care homes and independent hospitals

51192 In England and Wales a care home means¹ a home, other than a hospital, an independent clinic or children's home, which provides accommodation along with nursing or personal care for persons who

1. are or have been ill including mental illness **or**
2. are disabled or infirm **or**
3. are or have been dependent on alcohol and drugs.

1 ESA Regs, reg 2(1); Care Standards Act 2000, s 3

51193 In Scotland a care home means¹ a home care service which provides accommodation along with nursing, personal care or personal support but does not include

1. hospitals
2. schools
3. independent health care services.

1 ESA Regs, reg 2(1); Public Services Reform (Scotland) Act 2010, Sch 12, para 2

51194 An independent hospital means¹ in

1. England, a hospital that is not a health service hospital as defined in legislation² **or**
2. Wales, a hospital which is not a health service hospital as defined in legislation³ **or**
3. Scotland, an independent healthcare service as defined in legislation⁴.

*1 ESA Regs, reg 2(1); 2 National Health Service Act 2006, s 275; 3 Care Standards Act 2000, s 2;
4 NHS (Scot) Act 78, s 10F(1)(a) & (b)*

Types of payment

- 51195 The payments for accommodation may be
1. charitable or voluntary (see DMG 51390 et seq) **or**
 2. other payments.

The DM should decide what type of payment is being made.

51196 - 51199

Payments to claimants not in Local Authority sponsored accommodation

- 51200 This disregard applies where a claimant is residing in
1. a care home, Abbeyfield Home, or independent hospital **and**
 2. accommodation that has not been provided by an LA under certain legislation¹.

Note: This disregard does not apply to charitable or voluntary payments which are fully disregarded - see DMG 51416.

1 NA Act 48, s 26; SW (Scot) Act 68, s 59; The Care Act 2014, s 18 -19

- 51201 The DM should disregard from any payment intended and used for accommodation charges the difference between the
1. claimant's applicable amount **and**
 2. actual charge made by the home or hospital¹.

1 ESA Regs, Sch 8, para 34

Example

Andrew receives ESA(IR). He lives in an independent hospital which provides treatment for drug and alcohol dependency. The LA are not sponsoring Andrew under National Assistance legislation. The weekly charge for the hospital is £300. Andrew receives a payment of £250 a week from a Trust Fund towards his accommodation charges.

The DM calculated Andrew's applicable amount as follows

personal allowance	£54.65
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The difference between £54.65 and the charge by the hospital is the amount of the disregard.

actual charge	£300.00
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less	£54.65
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The disregard is	£245.35
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Payments for children and people living temporarily with the claimant

Foster children

- 51254 The DM should fully disregard payments¹ made by or on behalf of
1. a LA under its duty to provide
 - 1.1 accommodation **and**
 - 1.2 maintenancefor a child it is looking after (including under Continuing care arrangements)²
or
 2. a voluntary organization under certain legislation³ **or**
 3. a LA⁴

for children who are living with claimants under fostering arrangements.

Note: These allowances should not be treated as earnings.

*1 ESA Regs, Sch 8, para 28; 2 Children Act 89, s 23(2)(a); Children (Scotland) Act 95, s 26 or 26A;
3 Children Act 89, s 59(1)(a); 4 Looked After Children (Scotland) Regulations 2009, regs 33 or 51*

Kinship care

- 51255 In Scotland an LA may place a child with another person in an arrangement often referred to “Kinship care”¹. Any payment made by the LA to the person providing care should be fully disregarded².

1 Looked After Children (Scotland) Regulations 2009, reg 10; 2 ESA Regs, Sch 8, para 28

Payments for the welfare of children

- 51256 Certain legislation¹ concerning the welfare of children applies in England, Wales¹ and Scotland². This applies to certain children who are being looked after by a LA.

*1 CLC Act 2000; Children (Leaving Care) SS Benefit Regs, reg 1(1);
2 Children (Leaving Care) SS Benefits (Scotland) Regs, reg 1*

- 51257 The DM should fully disregard¹ payments made by LAs under child-care law²
1. to promote the welfare of children **and**
 2. to prevent people being taken into care.

*1 ESA Regs, Sch 8, para 30(1); 2 CLC Act 2000 (Comm No. 2 & Cons Prov) Order, Sch 1, para (c) & Sch 4, para (c); Children Act 1989, s 17, 23B, 23C or 24A;
SW (Scot) Act 68, s 12; Children (Scotland) Act 95, s 22, 26A, 29 or 30*

- 51258 Where
1. a former child (aged over 18) who was in the claimant’s care still lives with the claimant **and**
 2. the LA makes payments under certain child care law¹ to the former child in care **and**

3. the former child in care passes the payments on to the claimant
those payments received by the claimant are fully disregarded².

1 Children Act 1989, s 23C; Children (Scotland) Act 95, s 22, 26A or 29; 2 ESA Regs, Sch 8, para 30(2) & (3)

Payments for people temporarily in the claimant's care

51259 The DM should fully disregard payments to a claimant or partner for a person who

1. is not normally a member of the claimant's household **and**
2. is temporarily in the claimant's care¹

when payments are made by a LA, HA, a voluntary organization, a clinical commissioning group, the NHS Commissioning Board or the person concerned under specified legislation².

Note 1: This could include payments to a claimant under the Adult Placement or Shared Lives Scheme from a LAs own resources.

Note 2: Payments made by a LA do not include payments of HB made in respect of the person concerned.

1 ESA Regs, Sch 8, para 29; 2 NA Act 48, s 26(3A)

51260 This type of payment is often made to people providing "respite care". This is short-term care provided to give a disabled person's usual carer a break from their caring responsibilities. People providing respite care should not be treated as

1. engaged in remunerative work **or**
2. receiving earnings from S/E¹.

1 ESA Regs, reg 97(2)

51261

2. cannot be transferred to the UK

for as long as it is frozen abroad¹. Income will usually be frozen when the foreign country does not allow its currency to be transferred to the UK.

1 ESA Regs, Sch 8, para 24

Income in kind

51298 The DM should fully disregard any income in kind except

1. support provided to a claimant under specific immigration and asylum law
and
2. notional income¹ **and**
3. payments made to a third party in respect of the claimant which are used by the third party to provide benefits in kind to the claimant².

Note 1: Credits received from participating in a LETS scheme (see DMG Chapter 50) are not income in kind. Credits should be taken into account in the appropriate way.

Note 2: See DMG 51397 for the treatment of concessionary coal.

1 ESA Regs, Sch 8, para 22(1); 2 Sch 8, para 22(4)

Example 1

Karen is entitled to ESA(IR). Her mother works in a shop and the shop owner gives the mother £10 of groceries each week for Karen.

The DM decides the £10 a week is income in kind and should be fully disregarded.

Example 2

The shop owner (in example 1 above) then changes the arrangement and gives Karen's mother £10 a week to buy groceries for Karen.

Karen's mother uses the £10 to buy food each week for Karen.

The DM decides the £10 a week cannot be disregarded as income in kind and it should be taken fully into account as notional income.

51299 The exceptions at DMG 51298 do not apply¹ when the income in kind comes from

1. the Macfarlane Trust
2. the Macfarlane (Special Payments) Trust
3. the Macfarlane (Special Payments) (No. 2) Trust
4. the Fund
5. the Eileen Trust
6. the Independent Living Fund (2006) – see **note** below
7. MFET Limited
8. the Skipton Fund
9. the Caxton Foundation **or**

10. the partner who is subject to immigration control and is receiving support under specific immigration and asylum law and the income in kind is support provided in respect of the essential living needs of the partner of the claimant and his dependants (if any).

1 ESA Regs, Sch 8, para 22(2) & (3)

Note: the Independent Living Fund (2006) closed on 30.6.15 with some funding responsibilities transferring to LA's in England, the Welsh Independent Living Grant in Wales and the Independent Living Fund Scotland for Northern Ireland and Scotland. Please contact DMA Leeds for advice if a claimant receives funding from any of these replacement schemes.

51300 - 51309

Income treated as capital

- 51310 The DM should fully disregard as income any income that is treated as capital¹.

1 ESA Regs, Sch 8, para 36

Jurors or witnesses court attendance allowance

- 51311 The DM should fully disregard any payment to a

1. juror **or**
2. witness

for attending court. But payments for loss of earnings or benefits¹ should not be disregarded.

1 ESA Regs, Sch 8, para 43

Payments in lieu of community care services and payments in lieu of health care

- 51312 The DM should disregard any payments which are made

1. under relevant legislation¹ **and**
2. in lieu of²
 - 2.2 community care services **or**
 - 2.2 health care.

Note: These types of payments are sometimes known as "Direct Payments for Health Care" or "Direct Payments for Community Care".

1 SW (Scot) Act 68, s 12B; Health and Social Care Act 2001, s 57; National Health Service Act 2006, s 12A - 12D; The Care Act 2014, s31-33; 2 ESA Regs, Sch 8, para 53

Third party payments for care homes, Abbeyfield Homes or independent hospitals and National Health maintenance

51604 A payment is disregarded¹ if it is

1. made for
 - 1.1 after-care under specified legislation² **or**
 - 1.2 accommodation or welfare services referred to in specified legislation³
- and**
2. treated as possessed under the notional income rule at DMG 51601⁴.

*1 ESA Regs, Sch 8, para 56; 2 MH Act 83, s 117; MH (C & T) (Scot) Act 03, s 25;
3 NA Act 48, Part III; SW (Scot) Act 68; The Care Act 2014, part 1; 4 ESA Regs, reg 107(6)*

51605 Payments that satisfy DMG 51604 include payments or reimbursements by a LA for

1. persons who because of age, illness, disability or other circumstances are in need of care and attention which is not otherwise available to them **or**
2. expectant and nursing mothers¹.

1 NHS & CC Act 90, s 42; NA Act 48, s 21(4)

Income paid to the claimant or partner for a third party

51606 Take into account in full any income paid to the claimant or claimant's partner for a third party who is not a member of the family if

1. the income is kept by **or**
2. is not paid over to the third party by

the person who received it. Ignore any income that is paid over to the third party¹.

1 ESA Regs, reg 107(4)

51607 Fully disregard any payment from

1. the Macfarlane Trusts
2. the Eileen Trust
3. MFET Limited
4. the Fund
5. the Independent Living Fund (2006) but see **note**
6. the Skipton Fund
7. the Caxton Foundation

regardless of who keeps it or how it is used.

Note: the Independent Living Fund (2006) closed on 30.6.15 with some funding responsibilities transferring to LA's in England, the Welsh Independent Living Grant in Wales and the Independent Living Fund Scotland for Northern Ireland and Scotland. Please contact DMA Leeds for advice if a claimant receives funding from any of these replacement schemes.

51608 The DM should decide using, available evidence

1. whether **and**
2. how much

income has been kept by the claimant or partner.

51609 Treat income as having been kept when

1. there is no intention of
 - 1.1 paying it over to **or**
 - 1.2 using it for the third party **or**
2. if after having the income for a reasonable period of time the claimant or partner has
 - 2.1 not started paying it over **or**
 - 2.2 not started using it for the third party **or**
 - 2.3 has no plans for paying it over or using it for the third party.

51610 The DM should consider

1. the type of income **and**
2. how often the income is paid **and**
3. why the income is paid

when deciding if a reasonable period of time has passed.

Example 1

Rodney receives ESA(IR)

Rodney receives income for his cousin Roland who is a long-term patient in a local hospital.

The income is paid weekly and Rodney has been receiving it for four weeks.

Rodney has no good reason for not having passed the money to Roland.

The DM decides that in the circumstances four weeks was a reasonable period in which to expect that the money would have been handed over to Roland.

Rodney is treated as having the full amount of income.

Capital disregarded for 52 weeks

Arrears of allowances and benefits

The law

52495 Arrears of certain allowances and benefits are disregarded for 52 weeks from the date the payment of arrears is received¹ (but see DMG 52510 if the arrears and any concessionary payment total £5000 or more). The disregard applies to arrears of

1. AA²
2. CAA which is paid with a disablement pension because disablement has been assessed at 100%³
3. ESDA paid because industrial disablement has been assessed at 100%⁴
4. CAA and ESDA paid because the claimant is entitled to workmen's compensation⁴
5. an attendance allowance paid under the PB and MDB scheme
6. payments for attendance under the Civilian's Personal Injury Scheme⁵ or any similar payment. These payments are made to people who receive a DP because of war injuries suffered as civilians or civil defence volunteers
7. any payment for attendance which is part of a WDisP. This includes severe disablement occupational allowance paid with CAA
8. the care component or the mobility component of DLA
9. the daily living component or the mobility component of PIP
10. Mobility Supplement
11. Mobility Allowance which people could get under repealed social security law⁶
12. CTB
13. DPTC
14. HB
15. WFTC
16. IS, Family Income Supplement and Supp B
17. ESA(IR)
18. JSA(IB)
19. CTC
20. WTC
21. UC.

The disregard also applies to a concessionary payment which is made to compensate for arrears of those benefits or allowances. The disregard applies from the date the concessionary payment is received¹.

1 ESA Regs, Sch 9, para 11(1); 2 SS CB Act 92, s 64; 3 s 104 or 105; 4 Workmen's Compensation Acts 1925 to 1945; 5 Personal Injuries (Civilians) Scheme 1983, Art 14, 15, 16, 43 or 44; 6 Social Security Act 1975, s 37A

Meaning of concessionary payment

52496 Concessionary payment means a payment made under arrangements made by the Secretary of State with the consent of the Treasury which is charged to

1. the NI Fund **or**
2. a Departmental Expenditure Vote to which payments of benefit or tax credits are charged¹.

1 WR Act 07; ESA Regs, reg 2(1)

Arrears of payments to certain war widows or surviving civil partners

52497 Payments to certain war widows and surviving civil partners are disregarded for 52 weeks from the date the payment of arrears is received. The disregard applies to arrears of

1. a special war widow's or surviving civil partner's payment which is made to persons whose husband, wife or civil partner died from
 - 1.1 injuries **or**
 - 1.2 illnesscaused by military service which ended before 31.3.73
2. a supplementary pension paid to a widow or surviving civil partner for
 - 2.1 the disablement **or**
 - 2.2 deathof service personnel before 1973
3. a supplementary pension paid to a widow or surviving civil partner under the Personal Injuries (Civilians) Scheme **and**
4. a supplementary pension paid to the widow or surviving civil partner of a person
 - 4.1 whose death was caused by service similar to being in the armed forces **and**
 - 4.2 that service ended before 31.3.73 **and**
 - 4.3 the payment is equal to the amount in 1. above¹.

1 ESA Reg, Sch 9, para 40

This list is **not** exhaustive, and the DM should consider all the reasons given by the claimant for the failure to undertake WRA.

- 53053 Good cause is not defined in legislation, but has been considered in case law. It includes facts and circumstances which would probably have caused a reasonable person to act as the claimant did¹.

Note 1: The DM should not just consider one factor but should consider the overall picture of the claimant's individual circumstances. The consideration is whether the reasons given for the specific failure to undertake work-related activity contributed to the claimant not complying with what we are expecting them to do and whether that was reasonable in the circumstances. DMs should also note the guidance on good cause in DMG Chapter 42.

Note 2: When considering good cause the DM should also be mindful of the guidance in DMG Chapter 34 on good reason. The principles set out in DMG Chapter 34 apply equally to the consideration of good cause for failures to undertake work-related activity.

1 CS 371/49(KL); R(SB) 6/83

- 53054 A distinction must be drawn between having a good excuse and having good cause **in law** which is not about one moment in time but about a person acting reasonably in the light of all the facts and circumstances. The general rule for taking each incidence on its own merits and considering all the facts and evidence should be applied.

- 53055 Consideration of all the evidence should be made on
1. the balance of probabilities **and**
 2. whether the evidence is inherently improbable, inconsistent and implausible in the circumstances.

Note1: The burden of proof to show good cause is on the claimant.

Note 2: The DM should also take into consideration that a claimant is expected to take care in matters to do with the claiming of and receiving benefits. Failure to take such care cannot be good cause.

Example

Georgia has been on the Wp for the past 12 months and is in receipt of ESA.

Her incapacity is agoraphobia and she has been placed in the work-related activity group following the WCA.

Georgia has agreed an action plan to engage in work-related activities. She has been made aware and fully understands that her benefit might be affected if she fails to undertake work-related activity when required to do so.

Georgia is issued with an appointment letter to attend a face to face Wp appointment on 18.10.14 as part of her action plan to undertake work-related activity. She does not attend the appointment stating that she did not feel she could leave the house alone and attend the appointment on that day. She has a friend that goes with her to appointments and meetings on most occasions as she has problems leaving the house but on 18.10.14 the friend was unable to go with her to the appointment as she was on holiday. Georgia contacted the provider on the morning of 18.10.14 by telephone to rearrange the appointment. The provider arranged to conduct the interview by phone.

The DM considers Georgia can show good cause for the failure to undertake work-related activity on this occasion.

A letter is issued to attend a face to face interview with the Wp provider on 27.1.15. Georgia does not attend the interview and does not phone the provider to explain why. The DM sends a letter to ask Georgia for her reasons for not attending the appointment. Person A does not reply to the letter. The DM determines Georgia cannot show good cause for the failure and imposes a sanction.

Georgia responds to say she felt that her condition was worse on this particular day and therefore she could not make it to the appointment. She stated that she has discussed with the provider her problems with attending face to face and has at times received telephone interviews but the provider insists on seeing her at face to face interviews as well.

She had attended a face to face appointment in December 2014 accompanied by a friend, which is confirmed on the action plan, but on this occasion she felt too anxious to leave the house.

Georgia confirms that she did not contact the provider on this occasion as she forgot about it because she felt so unwell worrying about leaving the house. As the good cause reason is provided out with the 5 day time limit to provide good cause the decision is not altered and the sanction stands.

A letter is issued to Georgia to attend a face to face interview with the Wp provider on 18.5.15. She does not attend and phones the provider to say she does not feel she could attend the appointment even though her friend is available to go with her. She was all prepared and ready to go to the appointment but at the last minute panicked and did not feel well enough to leave the house. She has had some bad news about a member of her family this week which has made her feel much more anxious than usual. The DM considers Georgia can show good cause for the failure

to undertake work-related activity on this occasion due to her mental health state on the day. It was reasonable in her circumstances and she contacted the provider to let them know she could not attend.

An appointment letter is issued to Georgia to attend a face to face interview with the Wp provider on 8.7.15. She does not attend and provides reasons to say she felt too ill again on this occasion to attend the interview and forgot to contact the provider as she was dealing with another phone call and became distracted and then forgot. The referral from the provider confirms that Person A did not attend the Wp appointment on 8.7.15 and there is no record of any contact regarding the reasons for her failure.

Whilst a pattern of non-compliance is emerging here for Georgia the medical condition is agoraphobia. Past non-compliance is not always an indication that the claimant doesn't have good cause for the failure under consideration.

It is important to bear in mind that people's health conditions may fluctuate frequently and vary significantly for both mental health & physical health conditions so care has to be taken when considering a failure to undertake work-related activity where health conditions are involved and the claimant raises their health condition in their reasons. Georgia may not know until the day of appointment that she cannot leave the house and actually thinking of leaving the house may exacerbate the condition.

However, being housebound does not mean that it is not reasonable to expect Georgia to ring up when she cannot attend an interview. The notification from the provider would have informed her to make contact if for any reason she could not attend, she was fully aware of and understood the consequences of failing to undertake work-related activity.

Therefore whilst it is reasonable to accept Georgia's health condition may have provided good cause for her not to attend the appointment as required on 8.7.15, it is also reasonable to have expected Georgia to inform the provider she could not attend. There is no evidence to suggest she was unable to use her phone on 8.7.15.

The DM considers Georgia cannot show she had good cause for the failure to undertake work-related activity on 8.7.15.

Contracting out

53056 The following functions of the Secretary of State can be carried out by, or by employees of, any person authorised by the Secretary of State¹:

1. requirement to undertake WRA
2. notification of WRA and action plans
3. requirement to undertake WRA not to apply

4. reconsideration of action plans
5. cessation of reduction.

1 ESA (WRA) Regs, reg 9

53057 – 53059

Period of the reduction

53073 The period of the reduction is¹

1. one week for each 7 day period during which the claimant fails to meet a compliance condition (see DMG 53070 – 53071) **and**
2. a further fixed period of 1, 2 or 4 weeks (see DMG 53075).

But see DMG 53074 for when 1. does not apply.

1 ESA Regs, reg 63(6)

53074 DMG 53073 1. does **not** apply where

1. a failure determination is made **and**
2. the claimant meets a compliance condition (see DMG 53070 – 53071) within one week after the date of the failure.

The claimant's ESA award is only subject to the fixed period reduction.

Note: Where the claimant recompiles before a sanction determination is made, the open ended period of the sanction has not started so there is nothing to lift and only the fixed period sanction can apply (see example 2).

Example 1

Fadi fails to attend an initial Wfl on 18.1.13. He contacts the DWP on 21.1.13 to say he forgot, and agrees to attend a Wfl on 23.1.13, the next available appointment. Fadi takes part in the Wfl on 23.1.13. ESA has been paid to 24.1.13. The DM determines on 30.1.13 that Fadi had no good cause for his failure to attend on 18.1.13. but as he met the compliance condition within one week after the date of the failure on 18.1.13, his ESA award is reduced only for the one week fixed period from 25.1.13.

Example 2

Kylie fails to attend a Work Programme appointment on 18.7.13. She recompiles and attends a rearranged appointment with her provider on 31.7.13. ESA has been paid to 3.9.13 and the DM is making a sanction determination on 10.9.13. The DM determines Kylie had no good cause for the failure to attend the appointment on 18.7.13 and imposes a one week fixed period sanction from 4.9.13.

Kylie had complied with the requirement on 31.7.13 before the DM made the sanction determination on 10.9.13 so no open ended sanction applies. It cannot be determined that she failed to meet the compliance condition up to the date the DM made the determination.

Length of fixed period

53075 The fixed period is

1. one week, where there has been no failure that falls within DMG 53076¹ **or**
2. two weeks, where there has been one failure that falls within DMG 53076² **or**
3. four weeks, where there have been two or more failures (whether or not they fall within DMG 53076), and the most recent of those failures
 - 3.1 falls within DMG 53076 **and**
 - 3.2 resulted in a reduction for two or four weeks, or would have done but for the maximum reduction rules in DMG 53061³.

Note: The fixed reduction periods that apply are provided for in a table⁴. The circumstances of the failure are described in the first column of each table and has effect for the period in the second column.

1 ESA Regs, reg 63(7)(a); *2* reg 63(7)(b); *3* reg 63(7)(c) & (8)(a) & (b);
4 WR Act 2007 s 11J, 12 & 13, ESA Regs, reg 63(7)

53076 A failure falls within this paragraph if it is a failure¹

1. for which a reduction
 - 1.1 was imposed **or**
 - 1.2 would have been imposed but for the fact that the maximum reduction rules in DMG 53061 apply² **and**
2. which occurred on or after 3.12.12 **and**
3. which is within 52 weeks but not two weeks of the current failure.

1 ESA Regs, reg 63(8); *2* reg 63(3)

Example 1

Jeanette was placed into the ESA WRAG in January 2013. Her ESA award had been subject to a one week reduction in March 2013 for failing to attend an initial Wfl. She fails to attend a further Wfl on 2.5.13, and is notified of this failure by post on the same day. On 14.5.13 the DM determines that Jeanette had no good cause for the failure to attend the Wfl on 2.5.13. Jeanette's last ESA payment was made on 1.5.13. Her award of ESA is reduced from 9.5.13.

Jeanette phones on 20.5.13 to re-arrange her appointment, but cannot be seen until 23.5.13. She attends the Wfl on 23.5.13. The period of reduction includes a two week fixed period reduction, as she has had a previous one week reduction within the last 52 weeks. The reduction ends on 29.5.13.

Example 2

Jules was placed in the WRAG in February 2013. He fails to attend an initial Wfl on 20.2.13, and on 25.2.13 makes an appointment for another Wfl to take place on 28.2.13. Jules fails to attend the Wfl on 28.2.13. He contacts the DWP and arranges a further appointment for 5.3.13, which he attends. His next ESA payment is due on 8.3.13. The DM determines on 15.3.13 that Jules had no good cause for either failure.

Jules's award of ESA is reduced for the period 9.3.13 – 15.3. Both failures are for a one week fixed period reduction, as the second failure was within two weeks of the first. As the reductions begin on the same date, they run concurrently.

Example 3

Agyness is entitled to ESA including the WRAC. She has had a sanction imposed including a one week fixed period for a failure to attend a Wfl in January 2013, and a further sanction including a two weeks fixed period for a failure to undertake WRA in May 2013. On 2.8.13 she fails without good cause to attend a follow-up Wfl. The period of reduction for the latest failure will include a four week fixed period, as the latest failure was within 52 weeks of a previous two week fixed period reduction.

Example 4

Ethan is entitled to ESA including the WRAC. He fails to attend a Wfl on 2.1.13. Ethan phones on 8.1.13 to say that he forgot the appointment, and a further Wfl is arranged for 14.1.13. Ethan again fails to attend. He calls the Jobcentre on 22.1.13 and arranges a further appointment for 24.1.13 which he attends. A one week fixed period sanction is imposed for the first failure, and a two week period sanction is imposed for the second failure. This includes a one week fixed period, as the second failure is within two weeks of the first.

Following the Wfl on 24.1.13, Ethan is required to undertake WRA. The provider arranges a follow-up appointment to check progress on 6.1.14, which Ethan fails without good cause to attend. When considering what fixed period reduction to apply after Ethan complies, the DM has regard to the previous failure on 14.1.13, and adds a two weeks fixed period to the period of reduction.

Example 5

Julie is entitled to ESA including the WRAC. She fails without good cause to take part in an initial Wfl on 11.12.12, and the DM imposes a one week fixed period reduction after Julie phones on 13.12.12 to arrange a further Wfl. The next appointment is made for 3.1.13, and Julie again fails to attend. The DM determines that Julie had good cause for this failure, and makes another appointment for 8.1.13 which Julie attends. Julie is referred to the Work Programme and required to undertake WRA.

On 21.3.13 Julie fails without good cause to attend an interview with the provider where she was required to produce her CV, and the DM imposes a two week fixed period reduction after Julie agrees on 26.3.13 to attend a further appointment.

On 28.1.14 Julie fails without good cause to attend a further meeting with the provider. Since Julie's entitlement to ESA began, she has had two failures for which a reduction was imposed. The most recent of those failures resulted in a two week fixed period reduction and took place within the previous 52 weeks, so the DM determines that a four week fixed period reduction will apply once Julie has complied with the WRA requirement.

53077 - 53079

When the reduction begins

53080 A decision awarding ESA may be superseded where there has been a failure determination¹. A failure determination is a determination by the DM that the claimant has failed without good cause to satisfy a requirement to take part in a Wfl or undertake WRA². The supersession (see DMG 53081) begins the period of reduction in DMG 53072.

1 SS CS (D&A) Regs, reg 6(2)(p); 2 ESA Regs, reg 63(1)

53081 The effective date of the supersession is¹

1. the first day of the benefit week in which the failure determination is made where, on the date of the determination, the claimant has not been paid ESA since the failure to which that determination relates **or**
2. the first day of the benefit week after the end of the benefit week in respect of which the claimant was last paid ESA.

See DMG Chapter 04 for further guidance on supersession.

1 SS CS (D&A) Regs, reg 7(36)

53082 - 53084

Cessation of reduction

53085 Any reduction of ESA imposed as a result of a failure determination which resulted from a failure to take part in a Wfl or to undertake WRA ceases to have effect if¹

1. the claimant subsequently ceases to meet the requirements in DMG 53014 **or**
2. the claimant subsequently ceases to be subject to a requirement to undertake WRA **or**
3. the Secretary of State decides that it is no longer appropriate to require the claimant to undertake WRA².

See DMG 53091 and Chapter 04 for guidance on supersession where a reduction ends.

1 ESA Regs, reg 64(1) & (2)

53086 A decision as in DMG 53085 **3.** must be notified to the claimant in writing¹.

1 ESA Regs, reg 64(1A)(b)

53087 – 53089

