

Department for Work and Pensions

DECISION MAKING AND APPEALS

Decision Makers Guide

Volume 3

Amendment 54 – October 2017

1. This letter provides details on Amendment 54; the changes have already been incorporated in to the Intranet and Internet versions of the DMG.
2. PDF amendment packages are also available. These can be printed with the amended pages being reproduced in full. Each page will contain the amendment number in the footer

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

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

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

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

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

3. Amendment 54 affects chapters 9, 11, 12 & 13. The changes make amendments to;
 - Para 09266
 - Para 09272 – including addition of examples
 - Para 09442
 - Para 09451
 - Chapter 11 Contents
 - Para 11004
 - Paras 11055 – 11056
 - Paras 11107 – 11108
 - Para 12002
 - Chapter 13 Contents
 - Paras 13890 – 13892
 - Paras 13910 – 13912
 - Paras 13920 – 13930
 - Para 13933
 - Chapter 13 Appendices 6 & 7

4. The last two amendment packages amending Volume 3 were

Amendment 53 [June 2017]

Amendment 52 [February 2017]

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).

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Abbreviations

AA	Attendance Allowance paid under s 64 of the SS (CB) Act 92
"AA"	Attendance Allowance as defined in IS (Gen) Regs, reg 2(1) or JSA, reg 1(3)
ADC	Actual Date of Confinement
ADF	Adviser Discretion Fund
ADI	Adult Dependency Increase
AFIP	Armed Forces Independence Payment
AIP	Assessed Income Period
AMG	Appropriate Minimum Guarantee
AP	Additional Pension
APP	Adoption Pay Period
Art	Article
ASE	Actively seeking employment
AT	Appeal Tribunal
AWT	All Work Test
BA	Bereavement Allowance
BACS	Bankers Automated Clearing System
BB	Bereavement Benefits
BL	Board and Lodging
BP	Basic Pension/Bereavement Premium
BPT	Bereavement Payment
BSP	Bereavement support payments
BTEC	Business and Technology Education Council
BWC	Benefit Week Commencing
BWE	Benefit Week Ending
CA	Carer's Allowance
CAA	Constant Attendance Allowance
Cat	Category
CB	Contributory Benefit
CC	Community Charge
CDI	Child Dependency Increase
CECSC	Council of European Social Charter
CHB	Child Benefit
CHB(LP)	Child Benefit for Lone Parents
CJEU	Court of Justice of the European Union
CMB	Child Maintenance Bonus
CMP	Child Maintenance Premium
CP	Carer Premium
CPen	Civil Penalty
CSM	Child Support Maintenance

CT	Council Tax
CTA	Common Travel Area
CTB	Council Tax Benefit
CTC	Child Tax Credit
CTF	Community Task Force
CTM	Contribution to Maintenance
CWP	Cold Weather Payment
CwP	Community work Placements
DCP	Disabled Child Premium
DCT	Direct Credit Transfer
DH	Department of Health
Dis G	Disablement Gratuity
Dis P	Disablement Pension
DLA	Disability Living Allowance
DM	Decision Maker
DMA	Decision Making and Appeals
DMG	Decision Makers Guide
DO	District Office
DP	Disability premium
DPTC	Disabled Persons Tax Credit
DWA	Disability Working Allowance
DWP	Department for Work and Pensions
EC	European Community
ECHR	European convention for the Protection of Human Rights and Fundamental Freedoms
ECJ	European Court of Justice
ECSMA	European Convention on Social & Medical Assistance
EctHR	European Court of Human Rights
EDP	Enhanced Disability Premium
EEA	European Economic Area
EFC	Earnings factor credits
EFTA	European Free Trade Association
ELDS	Eligible loan deduction scheme
Emp O	Employment Officer
EO	Employment Option of New Deal for young people
EO(E)	Employed Employment Option
EO(S/E)	Self-Employed Employment Option of the New Deal for young people
EPP	Enhanced Pensioner Premium
ERC	Employment Rehabilitation Centre

ERA	Employment Retention and Advancement
ESA	Employment and Support Allowance
ESA(Cont)	Employment and Support Allowance (contributory allowance)
ESA(IR)	Employment and Support Allowance (income-related allowance)
ESA(Y)	Employment and Support Allowance for those with limited capability for work in youth
ESDA	Exceptionally Severe Disablement Allowance
ET	Employment Training
ETFO	Environment Task Force Option of New Deal for young people
EU	European Union
EWC	Expected Week of Confinement
EZ	Employment Zone
FamC	Family Credit
FAS	Financial Assistance Scheme
FND	Flexible New Deal
FP	Family Premium
FP(LP)	Family Premium (Lone Parent Rate)
FRIY	Flat Rate Introduction Year
FRM	Flat Rate Maintenance
F/T	Full-Time
FTE	Full-Time Education
FTET	Full-Time Education and Training Option
FtT	First-tier Tribunal
GA	Guardian's Allowance
GB	Great Britain
GC	Guarantee Credit
GCE	General Certificate of Education
GCSE	General Certificate of Secondary Education
GMP	Guaranteed Minimum Pension
GNVQ	General National Vocational Qualification
GP	General Practitioner
GPoW	Genuine Prospect of Work
GRB	Graduated Retirement Benefit
GRC	Gender Recognition Certificate
GRP	Gender Recognition Panel
HA	Health Authority
HB	Housing Benefit
HBS	Housing Benefit Supplement
HCP	Health care professional
HWC	Health and Work Conversation

Hep C	Hepatitis C
HIV	Human Immunodeficiency Virus
HM	Her Majesty
HMF	Her Majesty's Forces
HMRC	Her Majesty's Revenue and Customs
HO	Home Office
HPP	Higher Pensioner Premium
HRP	Home Responsibilities Protection
IA	Industrial Accident
IAP	Intensive Activity Period for those aged 25 and over and under 50
IAP for 50+	Intensive Activity Period for those aged 50 or over
IB	Incapacity Benefit
IBLT	Long-term Incapacity Benefit
IBS	Infected Blood Schemes
IBST	Short-term Incapacity Benefit
IBST(H)	Higher rate of short-term Incapacity Benefit
IBST(L)	Lower rate of short-term Incapacity Benefit
IB(Y)	Incapacity Benefit for those incapacitated in youth
IC	Intermittent Custody
IDB	Industrial Death Benefit
IFM	Immediate Family Member
IfW	Incapacity for Work
II	Industrial Injury(ies)
IIDB	Industrial Injuries Disablement Benefit
Incs	Increments (of Retirement Pension)
IND	Immigration and Nationality Department
IPC	International Pension Centre
IPPIW	Immediate Past Period of Incapacity for Work
IS	Income Support
IT	Industrial Tribunal (now Employment Tribunal)
IVA	Invalidity Allowance
IVB	Invalidity Benefit
IVP	Invalidity Pension
IVS	Invalid Vehicle Scheme
JSA	Jobseeker's Allowance
JSA 18-21 Pilot Scheme	Jobseeker's Allowance 18-21 Work Skills Pilot Scheme
JSA(Cont)	Contribution based JSA
JSAg	Jobseeker's Agreement
JSA(IB)	Income based JSA
JSD	Jobseeker's Direction

JSP	Jobseeking Period
LA	Local Authority
LCW	Limited capability for work
LCWA	Limited capability for work assessment
LCWRA	Limited capability for work related activity
LEA	Local Education Authority
LEC	Local Enterprise Council
LEL	Lower Earnings Limit
LETS	Local Exchange Trading System
LPP	Lone Parent Premium
LPRO	Lone Parent run-on
LQPM	Legally Qualified Panel Member
LRP	Liable Relative Payment
LSC	Learning and Skills Council
LT	Linking Term
LTACP	Living Together as Civil Partners
LTAMC	Living Together as Married Couple
LTAHAW	Living Together as Husband And Wife
MA	Maternity Allowance
MAP	Maternity Allowance Period
MB	Maternity Benefit
MG	Maternity Grant
MID	Mortgage Interest Direct
MIRO	Mortgage Interest run-on
MP	Member of Parliament
MPP	Maternity Pay Period
MSC	Maximum Savings Credit
MSP	Member of the Scottish Parliament
NASS	National Asylum Support Service
NCET	National Council for Education and Training
NCIP	Non-Contributory Invalidity Pension
ND	New Deal
NDLP	New Deal for Lone Parents
NDP	New Deal for Partners
NDYP	New Deal for Young People
ND18-24	New Deal for 18-24 year olds
ND25+	New Deal for claimants aged 25 years and over
NHS	National Health Service
NI	National Insurance
NINO	National Insurance Number

NMW	National Minimum Wage
NRP	Non-Resident Parent
NVQ	National Vocational Qualification
OOT	Own Occupation Test
OPB	One Parent Benefit
PA	Personal Adviser
PAYE	Pay As You Earn
PB and MDB	Pneumoconiosis, Byssinosis and Miscellaneous Diseases Benefits scheme
PCA	Personal Capability Assessment
PD	Prescribed Disease
PETA	Personal Expenses Transitional Addition
PFA	Person(s) From Abroad
PIE	Period of Interruption of Employment
PILON	Pay In Lieu Of Notice
PILOR	Pay In Lieu Of Remuneration
PIP	Personal Independence Payment
PIW	Period of Incapacity for Work
PLCW	Period of limited capability for work
PLCWA	Period of limited capability for work assessment
PO	Post Office
POAOB	Payment on Account of Benefit
POA	Power of Attorney
PP	Pensioner Premium
PR	Preserved Right
PSIC	Person Subject to Immigration Control
P/T	Part-Time
PW	Pay-Week
“PW”	Permitted work as defined in ESA Regs, reg 45(4)
PWC	Person With Care
PWHL	Permitted Work Higher Limit
PWHLs	Permitted Work Higher Limit subsequent period
PWK	Permitted Work
PWLL	Permitted Work Lower Limit
PWP	Permitted Work Period
QB	Qualifying Benefit
QBP	Qualifying Benefit or Pension
QD	Qualifying Days
QEF	Qualifying earnings factor
QI	Qualifying Income

QP	Qualifying Period
QRW	Qualifying remunerative work
QW	Qualifying Week
QWfl	Quarterly Work-focused interview
RA	Retirement Allowance
RBD	Reduced Benefit Direction
RCH	Residential Care Home
REA	Reduced Earnings Allowance
Reg(s)	Regulation(s)
Res A	Residential Allowance
RISWR	Redundant Iron and Steel Employees re-adaptation scheme
RMPS	Redundant Mineworkers Payment scheme
RP	Retirement Pension
RQC	Relevant Qualifying Condition
RVU	Relationship Validation Unit
S	Section (of an Act)
S2P	State Second Pension
SAP	Shared Additional Pension
SAYE	Save As You Earn
SB	Sickness Benefit
SC	Savings Credit
Sch	Schedule (as in an Act)
SCT	Savings Credit Threshold
SDA	Severe Disablement Allowance
SDM	Sector Decision Maker
SDP	Severe Disability Premium
S/E	Self-Employed
Sec	Section (of an Act)
SED	Scottish Education Department
SERPS	State Earnings Related Pension Scheme
Sev DP	Severely Disabled Person
SF	Social Fund
SFFP	Social Fund Funeral Payment(s)
SFO	Social Fund Officer
SHA	Special Hardship Allowance
SI	Statutory Instrument
SIR	Standard Interest Rate
SJP	Supervised Jobsearch Pilot Scheme
SMG	Standard Minimum Guarantee
SMP	Statutory Maternity Pay
SP	State Pensions

SPC	State Pension Credit
SpTA	Special Transitional Addition
SPW	Supported Permitted Work
SRPS	Shipbuilding Redundancy Payment Scheme
SS	Social Security
SS benefits	Benefits payable under SS(CB) Act 92
SSMG	Sure Start Maternity Grant
SSP	Statutory Sick Pay
STCP	Skills Training Conditionality Pilot
Supp B	Supplementary Benefit
SVQ	Scottish Vocational Qualification
TA	Transitional Addition
TAW	Temporary Allowance for Widow(ers)
TBI	Total Benefit Income
TD	Trade Dispute
TE	Transitional Element
TEC	Training and Enterprise Council
TFEU	Treaty on the Functioning of the European Union
TS	Tribunals Service
TT	Thalidomide Trust
TU	Trade Union
UB	Unemployment Benefit
UC	Universal Credit
UCP	Urgent Case Payment
UEL	Upper Earnings Limit
UK	United Kingdom
US	Unemployability Supplement
UT	Upper Tribunal
VAT	Value Added Tax
VSO	Voluntary Sector Option of New Deal for young people
WA	Widow's Allowance
WB	Widow's Benefit
WBLA	Work Based Learning for Adults
WBLfYP	Work Based Learning for Young People
WBTfA	Work Based Training for Adults
WBTfYP	Work Based Training for Young People
WC	Workmen's Compensation
WC(S)	The Workmen's Compensation (Supplementation) Scheme
WC (Supp)	Workmen's Compensation (supplementation) scheme

WCA	Work capability assessment
WDisP	War Disablement Pension
WFHRA	Work focused health related assessment
Wfl	Work-focused Interview
WFP	Winter Fuel Payment
WFTC	Working Families Tax Credit
WMA	Widowed Mother's Allowance
WMA(C)	WMA payable where late husband entitled to Cat C retirement pension
WP	Widow's Pension
Wp	Work programme
WPA	Widowed Parent's Allowance
WP(C)	Widow's Pension payable where late husband entitled to Cat C retirement Pension
WPT	Widow's Payment
WRAC	Work-related activity component
WRAG	Work-related activity group
WTB	Work and training beneficiary(ies)
WTC	Working Tax Credit
WtWB	Welfare to Work Beneficiary
WWP	War Widow's Pension/War Widower's Pension
YT	Youth Training

Recoverability - other considerations

Causation

General

09266 For an overpayment to be recoverable¹, other than as at DMG 09168, the DM must establish whether the overpayment has been caused by a failure to disclose or a misrepresentation of a material fact. If it has, then the necessary causal link has been established and the Secretary of State is entitled to recover the overpayment. Only the benefit paid that would not have been paid but for the failure to disclose or misrepresentation is recoverable.

1 SSA Act 92, s 71(1); R(SB) 3/81; R(SB) 21/82; R(SB) 15/87

Causation and failure to disclose

09267 To determine whether an overpayment has been caused by a claimant's failure to disclose a material fact, it is necessary to consider whether the overpayment would still have occurred if there had been proper disclosure of that fact. The DM should note that:

1. if the overpayment **would not** have occurred, **if** there had been proper disclosure of the material fact, a failure to make that disclosure **is** a cause of the overpayment: whereas
2. if the overpayment **would have** occurred, **even if** there had been proper disclosure of the material fact, a failure to make that disclosure **is not** a cause of the overpayment.

Is there a causal link between the failure to disclose and the overpayment

09268 Where there has been a failure to disclose a material fact, the DM should consider whether the necessary causal link with the overpayment exists by establishing the following:

1. when, and what, if any, information about the material fact was received by the Secretary of State **and**,
2. what, if anything, happened to that information after it was received by the Secretary of State in the office where proper disclosure should have been made, **and**
3. what, if any, action was taken by the Secretary of State in response to receiving that information

09269 If the material fact which the claimant should have provided has, in fact, been provided by someone else, that does not **necessarily** mean that the claimant's failure to disclose is not a cause of the overpayment. The DM should still establish

whether, at any of the stages at DMG 09268 **1., 2. and 3.**, disclosure from the claimant would have prompted the office to which disclosure should have been made, to take action that would have brought the overpayment to an end sooner than was the case.

09270 If, at any stage, it can be shown that the overpayment would have continued regardless of the disclosure of the material fact, then the causal link is broken. The recoverable amount should not therefore include any amount overpaid after the date on which that link is broken.

Example

Office A administers ongoing awards for CA. Office B administers ongoing awards for RP. Jack has been caring for his wife for a number of years and receives CA. On reaching his 65th birthday, Jack claims and is awarded RP. He does not tell office A about this. However, office B sends a note to office A to advise that RP has been awarded. Julie, the officer in office A that handles Jack's CA award, receives the note but is unaware that RP and CA overlap and she takes no action to adjust Jack's CA. There is no causal link between Jack's failure to disclose to office A and the overpayment of CA. Had Jack told office A about his RP, Julie would still not have adjusted the CA. The overpayment would have happened anyway.

Had Julie been aware of the overlapping rules, then she would have taken action to adjust Jack's CA and the overpayment would have come to an end at the time of the adjustment. The whole amount of the overpaid CA would have been recoverable from Jack.

Burden of proof

09271 It is for the DM to show that the claimant's failure to disclose was a cause of the overpayment. The DM should have regard to all available records and any background knowledge about office procedures and practices that the DM or other officers hold. If it is not possible to determine what would probably have happened if the claimant had made the required disclosure (e.g. because the DM cannot establish what happened to a letter from a third party that contained the required information), the overpayment will not be recoverable.

Number of causes for an overpayment

09272 It is possible for there to be more than one cause for an overpayment. For example, the claimant may have failed to disclose a material fact but argues that the Department failed to take reasonable steps on its own initiative that would have brought the material fact that had to be disclosed, to the Department's attention. Both failures helped bring about the overpayment. However, providing that one of the causes was the claimant's failure to disclose, then the causal link is not broken¹.

The DM must consider if payments of benefit have been made that would not have been made but for the failure to disclose or misrepresentation. If payments would have been made even if correct and timeous disclosure had been made, the overpayment will not be recoverable.

1 Duggan v CAO; R(SB) 13/89

Example 1

Ollie was in receipt of SPC including an EASD that was payable as he also received AA. He had been issued an INF4(PC) that instructed him to tell the SPC office if he stopped receiving any benefits. His AA stopped, but he failed to disclose the stop in his AA to the SPC office. The computer systems produced a print-out to inform the SPC office about the stop in AA, but the SPC office did not address the print-out as due to the volume of work the SPC office had, they were not immediately responding to computer print-outs. The SPC office were still taking necessary action on claimant disclosure. An overpayment of SPC accrued. The overpayment only stopped when the SPC office became aware of the stop in Ollie's AA via the computer print-out, some weeks after it was sent to the office, and took action to reduce SPC accordingly. For the overpayment to be recoverable it had to have occurred because of the failure to disclose the stop in AA. The DM considers that as the SPC office were not responding to computer print-outs but were taking action on disclosure from a claimant, the overpayment would not have occurred if Ollie had disclosed the stop in his AA as prescribed. The DM also considered that a greater amount of SPC was paid than would ordinarily have been paid if the SPC office had been aware of the stop in Ollie's AA. The SPC that was paid that would not have been paid but for the failure to disclose the stop in AA was recoverable from Ollie.

Example 2

Heather was in receipt of SPC with an EASD as she received AA. She had an instruction on an INF4(PC) to disclose to the SPC office if she stopped receiving any benefits. Her AA stopped, but she did not disclose the stop in her AA to the SPC office. The computer system sent a print-out to the SPC office to inform them that Heather was no longer in receipt of AA. The SPC office were very busy and taking a number of weeks to respond to print-outs and claimant disclosure. An overpayment of SPC occurred. The overpayment stopped when the SPC office became aware of the stop in Heather's AA via the print-out. The DM considered the overpayment to not be recoverable, as no payments had been made that would not have been made but for the failure to disclose. This is as the SPC office were not responding to disclosure from claimants, so the SPC would still have been overpaid if Heather had made correct disclosure of the stop in her AA.

When is the causal link not broken

09273 Examples of when the causal link is not broken include:

1. wrong assumptions are made about a claimant's circumstances which give rise to an overpayment **or**
2. administrative duties are performed negligently in some way, eg. a failure to link two cases in the same household **or**
3. the discovery of the material fact by an office other than the one to which disclosure must be made¹ **or**
4. receipt by the office to which disclosure must be made, of information that does not allow a revision or supersession to be done, eg. receipt of a letter alleging fraud, but which does not contain sufficient detail to identify the relevant claimant **or**
5. the discovery of information that might allow revision or supersession but the details of which must be put to the claimant first, eg. the receipt of a General Matching Service (GMS) printout.

1 Morrell v Secretary of State for Work and Pensions; R(IS) 6/03

Causation and misrepresentation

09274 To determine whether an overpayment has been caused by a claimant's misrepresentation, it is necessary to consider whether a correction of that misrepresentation, by the claimant, would have made any difference to the overpayment.

As is the case with failure to disclose, when the DM is considering whether the necessary causal link exists, it is useful to establish the following:

1. when, and what, if any, information was received by the Secretary of State **and,**
2. what, if anything, happened to that information after it was received by the Secretary of State in the office where disclosure should have been made **and,**
3. what, if any, action was taken by the Secretary of State in response to receiving that information

The DM should establish whether, at any of the stages above, correcting the misrepresentation would have prompted the office responsible for the payment of benefit, to take action that would have brought the overpayment to an end sooner than was the case.

Example 1

Stanislav's IS claim form was completed by his wife because of his illiteracy. Stanislav's wife receives a pension, but the questions on the IS claim form relating to pension payments were left unanswered. The DM did not seek to obtain answers

to the questions at issue and an award of IS was made regardless. Here it may be argued that the claim form was incomplete rather than inconsistent and ambiguous and that it contained sufficient information to enable the DM to make an award of IS. Realising his error, Stanislav signed a letter written by his wife giving full details of her pension payments and this was sent to the IS office. On receipt of this letter, action was taken to revise the award of IS and an overpayment calculated. Here the causal link was broken on receipt of Stanislav's letter. The whole amount of IS overpaid is recoverable from Stanislav up to the point of his disclosure.

Example 2

Mohammed claimed IB and IS and answered 'no' to the question on the respective claim forms about whether he receives a pension payment from a former employment. Awards of IB and IS are made on the basis of the information Mohammed has given in his claim forms. Mohammed realises his error and sends a letter to the IB office giving sufficient information to allow a revision of the IB award. However he makes no mention of the fact that he also receives IS. His IB award is adjusted and Mohammed is liable to repay the overpaid IB up to the point of his disclosure. The IB office takes no action to inform the IS office of the pension details. Payment of IS continues unadjusted and because Mohammed has taken no steps to correct the misrepresentation in respect of the IS award, the causal link in respect of the IS overpayment is not broken. Mohammed would be liable to repay all the IS overpaid until such time as the misrepresentation is corrected.

09275 - 09277

Deciding from whom the overpayment is recoverable

09278 An overpayment is recoverable from any person who caused that overpayment because they misrepresented or failed to disclose a material fact¹. Where a person is acting on the claimant's behalf the overpayment may be recoverable from that person, as well as or instead of the claimant². The DM's decision should cover the liability of

1. the claimant **or**
2. both members of a joint-claim couple, in the case of a joint-claim to JSA(IB)
or
3. any person acting on the claimant's behalf.

1 SSA Act 92, s 71(1) & 71(3); 2 R(SB) 9/84, R(IS) 5/00

09279 “Any person” may mean¹

1. the claimant, or in the case of a joint claim to JSA(IB), both members of the joint-claim couple **or**
2. a person, other than the claimant, whose misrepresentation or failure to disclose caused the overpayment.

1 R(SB) 21/82

09280 A claimant may require someone to collect or receive payments on their behalf. These people are known as “other payees”. They may be

1. appointed by the Secretary of State or by a Court because the claimant is incapable of managing their affairs e.g. appointees, receivers, etc. **or**
2. authorized by the claimant e.g. attorneys, nominated agents.

09281 An appointee (see DMG 09280 1.) is fully responsible for acting on the claimant’s behalf in all of the claimant’s benefit dealings. As such they have a duty to disclose as if they were the claimant. This duty arises

1. for those appointed by the Secretary of State, from the undertaking they make to the Secretary of State and from legislation¹ **or**
2. for those appointed by a Court, from legislation².

1 SS (C&P) Regs, reg 32(1); 2 reg 32(1)

09282 Persons authorized by the claimant (see DMG 09280 2.) **do not** have a duty to disclose but if they do make a disclosure it must be correct and complete. If it is not, a right of recovery exists against them from the date of the disclosure.

09283 Where a person, for example, a partner or appointee, misrepresents or fails to disclose a material fact, a right of recovery exists against the person because they are directly responsible for the misrepresentation/failure to disclose. There may also be a right of recovery against the claimant who has misrepresented or failed to disclose the material fact through them.

Example

Mary is appointee for James who has been in receipt of IS since 1988. In May 1991 Mary completed a form A2 in which she stated that James had savings of £3,200. The award of IS was reviewed on a relevant change of circumstances and adjusted based on this savings figure. In March 1995 it came to light that James’ savings had increased to £5,790. Further enquiries established that the savings had grown between July 1992 and March 1995.

The DM revised the award of IS from July 1992 on a relevant change of circumstances and determined that the overpayment was in consequence of a failure to disclose by Mary, acting as the appointee, and by James, through the appointee. The DM decided that the overpayment is recoverable from both James and Mary.

Note: Appointments end on the death of a claimant but the duty to disclose the death continues.

09284 For the claimant to be liable the DM must establish that the person was authorized by the claimant, or appointed by the Secretary of State, or a court to act for the purposes of the relevant benefit or benefits¹. Where an overpayment occurs on a case where there is an appointee the recoverability decision should cover the liability of both the claimant and the appointee even when only one is found to be liable. The decision should be notified to both parties².

1 R(SB) 9/84; 2 R(IS) 5/03

09285 In most cases where a person appointed by the Secretary of State misrepresents or fails to disclose a material fact the Secretary of State may recover the overpaid benefit from both the appointee and the claimant with two exceptions¹.

1 R(IS) 5/03

09286 The first is where the appointee retained the benefit instead of paying it to, or applying it for, the benefit of the claimant. In this case the overpayment is recoverable only from the appointee unless the claimant is a party to the misrepresentation or failure to disclose. Unless there is evidence to the contrary, DMs can presume that benefit paid to an appointee has been paid to or applied on behalf of the claimant.

09287 The second exception is where the appointee acted with due care and diligence, the overpayment is recoverable only from the claimant. This will occur most often in cases of misrepresentation. It is for the appointee to show that they have exercised due care and diligence. If DMs require guidance on the meaning of due care and diligence, please contact DMA Leeds.

09288 An overpayment is not recoverable from a person, other than those in DMG 09280¹, who assists the claimant by completing a claim form. If the claimant signs that form any misrepresentation or failure to disclose is the claimant's own¹.

1 R(IS) 14/96

09289

Overpayment of personal benefit - ADI in payment

09290 An overpayment of arrears of personal benefit can occur when a dependant misrepresents or fails to disclose that ADI has already been paid for the same period. The overpayment is recoverable from the dependant because

1. there is a causal link between the misrepresentation or failure to disclose and the payment of the arrears of personal benefit **and**
2. the full arrears of personal benefit are not payable to the dependant because the DM would have deducted them from ADI paid had the DM been aware of the true position (see DMG 09350).

Example

A dependant for whom an increase of RP is in payment makes a claim for personal CA on 12 July. Benefit is awarded on 4 October and a payment of arrears from 12 July to 2 October is made to the claimant. When it is found that an ADI was in payment to the claimant's partner the DM revises the CA award for ignorance of a material fact and decides that the CA was not properly payable for the period 12 July to 2 October.

The resulting overpayment is recoverable from the dependant because there was a misrepresentation on the claim for CA. As a result, the payment of arrears was made which would not have otherwise been made.

If the person receiving the ADI fails to report the dependant's receipt of personal CA there may be an overpayment of the increase of RP from 4 October because this should have been adjusted for overlapping benefits. In these circumstances recovery should be considered as in DMG 09234 et seq.

Death of the claimant

- 09291 If the person who misrepresented or failed to disclose dies before a decision is given the executors of the deceased's estate are the duly constituted personal representatives of that estate. The overpayment is recoverable from the executors but limited to the contents of the estate¹.

1 R(SB) 21/82; Secretary of State for Social Services v. Solly

09292 - 09294

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

Fails to notify a change of circumstances to the appropriate authority

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

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

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

DM's consideration

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

09442 Once the DM is satisfied that the claimant is under an obligation to report a relevant change of circumstances, they must then consider their reasons for failing to report the change promptly, as required. The need for further enquiries (either by telephone or letter) or the precise nature of those enquiries will depend on the circumstances of the case. However, it will usually be sufficient to simply ask the claimant to explain why they have failed to report the change as required. It may be useful to preface the question with a description of the requirement to notify that has been placed on the claimant and how and when it was placed. Even if a claimant provides no reasonable excuse for their failure to notify a change in their circumstances the DM must show that they have considered whether it is appropriate to impose a Civil Penalty¹. It will be useful for the DM to record the factors that have affected their decision on whether or not to impose a CPen.

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

1 [2016] ACR 42

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

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

No response to written enquiries

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

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

Meaning of “relevant change of circumstances”

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

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

Example 1

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

Example 2

Pete receives ESA(IR) and has a bank account holding £3,200. Pete has severe learning difficulties and his brother, Joe, is his appointee. Joe has been informed by the INF4 leaflet of the need to report any changes affecting Pete, immediately to the Contact Centre. Pete has a lottery win of £20,000. Joe is under a duty to report the lottery win on Pete's behalf. Joe doesn't report the win until a month later and this results in an overpayment of ESA(IR). When asked to explain the reason for the delay, Joe says that he did not think it was an urgent matter. The DM determines that Joe doesn't have a reasonable excuse for the late notification of Pete's lottery win. A CPen is imposed on Joe.

Example 3

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

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

Example 4

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

decides that in the circumstances Ann had a reasonable excuse for the delay in reporting the change. A CPen is not imposed on Ann.

Example 5

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

Example 6

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

Example 7

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

Example 8

Amanda receives DLA and her appointee is Ruth. Amanda's mental health condition deteriorates and she is admitted to hospital on 13.02.13. Ruth has been informed by the INF4 leaflet of her obligation to report changes in Amanda's circumstances, straightaway to the DLA Unit. This includes any hospital admissions. On a visit to

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

On whom to impose a CPen

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

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

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

Example

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

Exception

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

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

1 SSA Act 92, s 115C(3)

Example

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

Joint-claim couples

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

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

Example 1

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

Example 2

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

Appointee cases

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

Recovery of CPen

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

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

Right of appeal

- 09451 The decision to impose a CPen will be made at the same time as the overpayment decision. The amount of the CPen will be added to the amount of the recoverable overpayment. This will produce an outcome decision¹ and will give appeal rights to any part of that outcome decision including the overpayment, the CPen or both. There is no right of appeal against the amount of a CPen².

1 SS Act 98 s 8(1); 2 [2016] AACR 42

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Chapter 11 - Living together as a married couple

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Chapter 11 - Living together as a married couple

Introduction

11001 The general principle in SS legislation is that couples, be they married or unmarried, should be treated in a similar way. The guidance in this Chapter is to help DMs determine whether two people who live together but are not

1. married to each other **or**
2. a civil partner of each other

are LTAMC.

11002 “Couple” means¹

1. two people who are married to, or civil partners of, each other **and** are members of the same household **or**
2. two people who are not married to, or civil partners of, each other but are LTAMC.

1 SS CB Act 92, s 137; IS (Gen) Regs, reg 2(1); SS (C&P) Regs, reg 2; SFCWP (Gen) Regs, reg 1(2); SFMFE (Gen) Regs, reg 3(1); SS (IW) (Gen) Regs, reg 2(1); JSA Regs, reg 1(3); SS (CMB) Regs, reg 1(2); SS CS (D&A) Regs, reg 1(3); SFWFP Regs, reg 1(2); SPC Regs, reg 1(2); ESA Regs, reg 2(1)

11003 From 5.12.05, same sex couples could form a civil partnership by registering as civil partners of each other¹. From 29.3.14, in England and Wales, same sex couples could get married².

1 CP Act 04; 2 Marr (SSC) Act 13

11004 From 10.12.14, in and England Wales, a civil partnership may be converted into a marriage¹. When this happens, the marriage is treated as subsisting from the date the civil partnership was formed². From 16.12.14, in Scotland, a civil partnership may be converted into a marriage³. Couples in Scotland also have the option to have a marriage ceremony. In either case, the marriage is treated as subsisting from the date the civil partnership was formed⁴.

1 Marr (SSC) Act 13, s 9; Marriage of Same Sex Couples (Conversion of Civil Partnership) Regulations 2014; 2 Marr (SSC) Act 13, s 9(6); 3 Marr & CP (Scot) Act 14; 4 Marr & CP (Scot) Act 14 (Commencement No. 3 Saving, Transitional Provisions and Revocation) Order 2014, art 3

DM’s consideration

11005 To decide whether the guidance in this chapter is relevant to the case before them, DMs must first consider the following

1. is the benefit one that is affected (See DMG 11021);

2. are the persons concerned members of the same household (See DMG 11051 et seq);
3. would a relationship between the persons concerned be illegal, prohibited, forbidden or a multiple relationship (See DMG 11081 et seq).

11006 If

1. the answer to DMG 11005 1. is 'no' **or**
2. the answer to DMG 11005 2. is 'no' **or**
3. the answer to DMG 11005 3. is 'yes'

then two people cannot be treated as LTAMC.

11007 - 11020

Members of the same household

General

- 11051 Two people who are neither married to each other nor a civil partner of each other **must** be members of the same household if they are to be treated as LTAMC and thus a couple.
- 11052 Household is not defined in legislation. It should be given its normal everyday meaning. It is a domestic establishment containing the essentials of home life. Household and home are not the same¹. Household may refer to people held together by a particular kind of tie, even if temporarily separated².

1 R(SB) 4/83; 2 Santos v Santos [1972] All ER 246

Two people living in one dwelling

- 11053 To be members of the same household means that
1. they live in the same house, flat, apartment, caravan or other dwelling place and neither normally lives in another household **and**
 2. they both live there regularly, apart from absences necessary for employment, to visit relatives, etc.
- 11054 However, examples of two people living in one dwelling but not necessarily living together in the same household include
1. lodgers or students who necessarily share a single gas/electricity supply etc and who may have an arrangement to share costs for items such as food and cleaning materials **or**
 2. two people who are married to each other or who are civil partners of each other who separate but refuse to leave the home.

Common factors associated with the existence of a household

- 11055 The DM must consider all the circumstances of a case in deciding whether two people are members of the same household. In addition to DMG 11053, there are other factors commonly associated with a household which should be explored. These factors have been identified in cases dealing with whether married couples, who claim to be estranged, are still living in the same household, but they may also indicate the existence of a shared household occupied by an unmarried couple. The DM should consider evidence relating to the following when making a finding as to whether a household exists
1. the circumstances in which the two people came to be living in the same house;

2. the arrangements for payment for the accommodation;
3. the arrangements for the storage and cooking of food;
4. the eating arrangements (whether separate or not);
5. the domestic arrangements such as cooking, cleaning, gardening and minor household maintenance;
6. the financial arrangements (who pays which bills? Is there a joint account? whose name is shown on utility bills?);
7. evidence of family life.

Other considerations

11056 The fact that two people, who are not married to each other, are members of the same household does not necessarily mean that they are LTAMC and so a couple. A relationship may resemble LTAMC but consideration of its origins may show it to be something quite different. Additionally, DMs should consider

1. the facts and circumstances that exist while the two people are living together¹
and
2. what their future plans are.

1 R(G) 1/79

Such a relationship may not be classed as LTAMC¹, for example, the need for care or support is the main reason that the two people are living together. It is not only the reason that caused the parties to live together which is important, but the facts and circumstances that apply after they have done so (see DMG 11101 – DMG 11120 for further guidance).

1 R(SB) 35/85

Example

Louise had always lived with her mother, Carol. Andy was the son of Carol's oldest school friend, Maggie and was known to Louise since childhood. Andy had been injured in an accident some years ago and was confined to a wheelchair. Maggie was his carer. Carol went to live abroad and Louise remained in her mother's house alone. When Maggie died, Andy was faced with the need to find another carer. After talking over the situation, Louise agreed to become Andy's carer. As Louise and Andy lived 75 miles away from each other, it was decided that Louise would move into Andy's home which had been specially adapted for his needs. The agreement was that Louise would help Andy with dressing and cook his meals. Andy would pay Louise £100 per week for this but she would not be required to contribute to the cost of the rent. They maintained separate financial arrangements and the LA provided assistance to Andy with cleaning, gardening and household maintenance. Louise would take 3 weeks off during the year to visit her mother, whilst Andy remained at

Meaning of living together as a married couple

General

11101 The term LTAMC is not defined in legislation. It is for DMs to determine whether the whole relationship of two people who are not married to each other, is comparable to that of a couple who are married to each other¹.

1 R(G) 3/71

11102 If two people are members of the same household and their relationship would not be illegal, prohibited, forbidden or a multiple relationship, DMs should consider the guidance in DMG 11103 to DMG 11120 to determine whether they are LTAMC.

11103 To be treated as LTAMC the relationship has to be the same as that of a married couple. Marriage is where two people join together with the intention of sharing the rest of their lives. There is no single template of what the relationship of a married couple is. It is a stable partnership, not just based on economic dependency but also an emotional relationship of lifetime commitment rather than one of convenience, friendship, companionship or the living together of lovers. If the evidence does not suggest that it is more likely than not that the relationship between two people has the particular emotional quality that characterizes a married couple's partnership, the DM should find that they are not LTAMC.

11104 All factors of their relationship have to be considered. The significance of each factor can only be determined in the context of all of the factors with none being decisive. There is more to the determination than the cold, observable facts. The characteristics of the relationship of husband and wife may include¹

- mutual love
- faithfulness
- public acknowledgement
- sexual relations
- shared surname
- children
- endurance
- stability
- interdependence
- devotion.

1 Fitzpatrick v Sterling Housing Association

11105 Not all of the characteristics in DMG 11104 need be present and a couple may be treated as LTAMC even though the relationship is unsatisfactory or unhappy.

11106 DMs should consider

1. the sexual relationship of the two people¹ **and**
2. the relationship of the two people concerning money² **and**
3. the general relationship of the two people³.

1 R(G) 3/71; R(SB) 17/81; 2 R(G) 3/71; R(SB) 17/81; 3 R(G) 3/71

11107 In considering the points in DMG 11104 and DMG 11106 DMs should be aware that

1. no single point can decide the question of LTAMC¹. It is essential to have as much information as possible on all the points and consider the totality of the evidence²;
2. where they are looking at a past period, the information gathered should relate to the whole period in question;
3. a determination on whether two people are LTAMC must be based on the evidence available;
4. they should obtain further evidence if living together is reported, to determine if two people are LTAMC;
5. they can accept a signed statement or letter from the claimant saying that they are LTAMC, as voluntary evidence of LTAMC;
6. they must obtain further evidence to determine when LTAMC began if a disclosure of LTAMC is given after co-residence has begun and the statement or letter does not cover the whole period of co-residence.

1 R(G) 1/71; 2 [2017] AACR 10

Sexual Orientation and Sexual Relationship

11108 A sexual relationship, and sexual orientation, are factors to consider in determining whether two people are LTAMC, but they are not determinative of LTAMC. Evidence of a sexual relationship, or sexual orientation, does not, on its own, mean that two people should, or should not, be thought of as LTAMC. Similarly two people may be LTAMC¹ without having a sexual relationship, or if they have different sexual orientation². However, if two people have **never** had a sexual relationship, that is often strong evidence that they are not LTAMC.

1 R(G) 2/72; R(G) 3/81; R(SB) 17/81; 2 [2017] AACR 10

The relationship of two people concerning money

11109 In most marriages it would be reasonable to expect financial support of one partner by the other, or the sharing of household costs. DMs should consider the following questions

1. Is one person supported by the other?
2. How is the household income shared or used?

3. Are their resources pooled in a common fund? Is this all their income or only the money, for example, shopping or bills?
4. Is one person bearing the major share of the household expenses, for example mortgage, rent, gas, electricity? Whose name is on the bills?
5. Is there a joint purchase of the property or other mortgage arrangements?
6. Have these financial arrangements always been the same or have they changed? If so how and when?
7. If there are no financial arrangements why not?

If any of the above applies over the long term, it could be an indication of LTAMC. However, two people may be LTAMC even if they keep their finances completely separate. The relationship of two people concerning money has to be looked at in the context of the whole relationship.

- 11110 DMs should find out about payments made for accommodation or board and lodging arrangements. For example, a person may claim to be a lodger but the amount paid may be unrealistic¹. A person who pays less than would be expected under a true commercial board and lodge arrangement should not be regarded as a lodger. Such an arrangement is more like that of a married couple.

1 R(G) 3/71

General relationship

- 11111 The DM should consider why the two people became members of the same household (see DMG 11055), how they share their lives now and their future plans. The stability of the relationship, children and public acknowledgement can help to indicate what their general relationship is particularly in respect of how they share their lives now. Other evidence may include the existence of a degree of mutual interdependence, of the sharing of lives, of caring and love and of commitment and support. Other important factors include a readiness to support each other emotionally and financially, to care for and look after each other in times of need and to provide a companionship in which mutual interests and activities are shared and enjoyed together.

Stability

- 11112 Because marriage is entered into as a stable relationship, DMs should consider the stability of the relationship when determining whether two people are LTAMC.
- 11113 Important signs of the relationship's stability include
1. the way in which two people spend their time together **and**
 2. the way that this has changed while they have been together.

11114 A couple usually do certain activities together or for one another, such as those listed below. DMs could consider two people as LTAMC, if they do these activities together or for one another, however it may not be conclusive.

1. providing meals and shopping;
2. cleaning and laundry;
3. caring for the members of the household during sickness;
4. decorating;
5. gardening;
6. caring for children.

This list is not complete. DMs should also consider the way in which two people spend their leisure time and whether they take their holidays together.

11115 A statement from the two people that they want to marry or register as civil partners can be regarded as proof of a stable relationship. Two people may be LTAMC¹ when they have no intention to marry.

1 R(SB) 17/81

11116 It is for DMs to determine at what point a relationship should be regarded as LTAMC. The length of time two people have been together is not proof of the stability of a relationship. There is no specified time limit in determining the stability of the relationship and DMs should consider the following questions

1. is there strong evidence that they have been LTAMC from the time they began living together, that would enable DMs to determine that LTAMC existed from the outset?
2. are they living together as a temporary arrangement without commitment on either side? If so, DMs might determine they are not LTAMC
3. to what extent do they both take responsibility for the activities listed at DMG 11114? Where there is doubt about the stability, DMs might determine two people were not LTAMC.

11117 DMs should not assume a stable relationship exists just because two people have been LTAMC on a previous occasion.

Children

11118 When two people are caring for a child they have had together, there is strong evidence that they are LTAMC. DMs can also consider

1. a man acting as father to a woman's children **or**
2. the woman acting as mother to the man's children **or**
3. one of two people of the same sex caring for the other person's children **or**

4. two people of the same sex caring for a child(ren) under a court order that gives them parental responsibility

as evidence that they are LTAMC.

Public acknowledgement

11119 If two people have presented themselves openly and unequivocally to others as spouses, this is an indication that they are LTAMC. Examples of where such representation could be made are

1. on the electoral register;
2. in claiming benefits;
3. in obtaining accommodation;
4. if their friends and neighbours accept them as a married couple or civil partners and that the relationship is one of permanent intent;
5. if one person has assumed the other person's surname.

Future plans

11120 Marriage or civil partnership is where two people join together with the intention of sharing the rest of their lives. When considering whether two people are LTAMC their plans for the future can provide important evidence. For example, two friends sharing accommodation will rarely have the intention to share accommodation for the rest of their lives but two people who are LTAMC would be expected to have the intention of sharing their lives together in the long term.

11121 - 11150

Chapter 12 - Imprisonment

Effect of imprisonment on Social Security benefits

12001 [\[See DMG Memo 8/17\]](#) When a person is in prison or detained in legal custody, SS benefits are affected as follows

1. the person is disqualified from receiving any benefit¹ including any dependency increase under specified legislation, but see the exceptions in DMG 12050 - 12079
2. a person receiving benefit will not receive an increase for any dependent spouse, civil partner or person having care of their child who is in prison or detained in legal custody² (see DMG 12110 - 12111).

1 SS CB Act 92, s 113(1)(b); 2 s 113(1)(b)

12002 The SS benefits affected are¹

1. IB
2. MA
3. BPT
4. WMA
5. WP
6. WPA
7. BA
8. RP
9. SAP
10. GRB
11. AA
12. SDA
13. CA
14. DLA
15. IIDB
16. SP²
17. BSP

1 SS CB Act 92, Parts II-V; 2 Pensions Act 14, s 19

12003 Claimants are disqualified from receiving these benefits when they are imprisoned or detained in legal custody following criminal proceedings¹. Disqualification only affects the payability of the benefit not claimants' entitlement to that benefit². This means that when the conditions supporting the disqualification no longer apply, payment of benefit can resume providing all the conditions of entitlement remain satisfied. Unless entitlement has been terminated during the period of imprisonment or detention in legal custody, a claimant should not be required to make a new claim to benefit on release.

1 SS CB Act 92, s 113(1)(b); 2 CDLA/1930/04

12004 - 12014

Effect of imprisonment on JSA, IS, SPC and ESA

12015 For benefit specific guidance on the effect of imprisonment or detention in legal custody on JSA and IS see DMG Chapter 24, on SPC see DMG Chapter 78, on ESA(Cont) see DMG Chapter 53 and on ESA(IR) see DMG Chapter 54.

Effect of imprisonment on UC, PIP, new style JSA and new style ESA

12016 For benefit specific guidance on the effect of imprisonment or detention in legal custody on UC see ADM Chapter E3, on PIP see ADM Chapter P4, on new style JSA see ADM Chapter S1 and on new style ESA see ADM Chapter U6.

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

Effect of imprisonment on SP

Meaning of prisoner

12017 For SP purposes a prisoner is a person, in GB or elsewhere, who is

1. imprisoned or detained in legal custody **or**
2. unlawfully at large¹.

1 Pensions Act 14, s 19(2)

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The work is not exempt. The DM treats her as capable of work from the Sunday after she first works to the Saturday before she last works.

	Su	M	Tu	W	Th	F	Sa
Week 1	i	i	i	x	x	i	i
Week 2	c	c	c	x	x	c	c
Week 3	i	i	i	x	x	i	i

Example 2

Barbara starts work during a period of incapacity on a Monday. She will be working every Monday, Wednesday and Friday indefinitely. The work is not exempt. The DM treats her as capable of work from the Sunday after her first day of work.

	Su	M	Tu	W	Th	F	Sa
Week 1	i	x	i	x	i	x	i
Week 2	c	c	c	c	c	c	c

Example 3

Darren has been working on a full or P/T basis for a past period of incapacity. He did not declare this work, which has now ended and was not exempt. The DM confirms the days that Darren actually worked and that he worked at least one day in every week. In the week Darren starts work he is treated as capable only on the days he worked. He is then treated as capable for each week from the Sunday after he started work until the Saturday before his last day of work. In the week in which he finished work he is treated as capable only on the days he worked.

Example 4

The circumstances are the same as in example 3 above except that Darren had not worked in every week. Each block of weeks of work is treated separately.

	Su	M	Tu	W	Th	F	Sa
Week 1	i	i	i	x	x	x	x
Week 2	c	x	x	c	x	x	x
Week 3	i	x	x	i	i	i	i
Week 4	i	i	i	i	i	i	i
Week 5	i	i	i	i	x	x	x
Week 6	c	x	x	c	x	x	x

Effect on benefit, allowance or advantage

- 13883 When deciding whether people have entitlement to any benefit, allowance or advantage the effect of treating them as capable of work has to be decided using this guidance in conjunction with benefit-specific guidance. In the examples at DMG 13881 and 13882 there may be individual days of incapacity for which there is no entitlement to benefit because they do not form a PIW. The normal rules on PIWs apply (see DMG Chapter 56).
- 13884 Consideration should also be given to any other linking rules relevant to the benefit, allowance or advantage claimed.

13885 - 13889

Categories of exempt work

Summary

- 13890 The categories of exempt work are
1. PWK¹ (see DMG 13891)
 2. work done whilst test trading as a S/E earner² (see DMG 13934)
 3. work as a volunteer³ (see DMG 13931)
 4. duties undertaken on either one full day or two half days a week⁴ as a panel member who is eligible for appointment under specified legislation⁵ to be such a member.

1 SS (IW) (Gen) Regs, reg 17(1)-(4); 2 reg 17(5); 3 reg 17(6); 4 reg 17(7); 5 The Qualifications for Appointments of Members to the First-tier Tribunal and Upper Tribunal Order 2008, art 2(3)

Permitted work

General

- 13891 There are three types of PWK each with its own conditions (see DMG 13892). People can only be in one type of PWK at any one time. They do not need prior medical approval and undertaking PWK will not affect the determination of a person's IfW. If they have two or more jobs the hours and earnings are added together to determine if the work is exempt.

- 13892 The three types of PWK are
1. SPW¹ (see DMG 13896)
 2. PWLL² (see DMG 13905)
 3. PW³ (see DMG 13911).

1 SS (IW) (Gen) Regs, reg 17(3); 2 reg 17(2); 3 reg 17(4)

Calculation of weekly earnings

- 13893 Weekly earnings limits apply in PWK¹ (see Annex 7 to this Chapter). There is no definition of 'earnings' specific to IfW but provision for calculating weekly earnings can be found in other legislation². Guidance on earnings is in DMG Chapter 15.

1 SS (IW) (Gen) Regs, reg 17(1)-(4); 2 SS Ben (C of E) Regs; R(IB) 1/06

- 13894 When a weekly earnings figure has been identified the DM should apply this figure to any week in which the person has worked¹. This figure will apply for as long as the circumstances current within the period used to calculate it remain the same.

1 SS (IW) (Gen) Regs, reg 16

- 13895 If a person earns above the weekly earnings limit that figure is used on a week-by-week basis to determine on which days/weeks they are treated as capable of work¹. The person is not treated as capable of work for an indefinite period from the point when the work activity starts. They continue to be incapable of work during weeks in which they do no work to which the regulation applies.

1 SS (IW) (Gen) Regs, reg 16(1)

- 13896 Where the weekly earnings limit is 16 x NMW, this means the highest rate of NMW as specified in legislation¹ (see Annex 6). Where 16 x NMW includes an amount less than

1. 50p, the amount is rounded up to the nearest 50p, **or**
2. £1, but more than 50p, the amount is rounded up to the nearest £1².

1 The National Minimum Wage Regulations 1999, reg 11; 2 SS (IW) (Gen) Regs, reg 17(10)

Example

Meryl starts work on 1 November for 15 hours weekly. The NMW is 16 x £6.31 = £100.96. As this includes an amount which is more than 50p and less than £1, it is rounded up to £101.00. The DM uses this amount to consider whether Meryl's work is exempt work.

Supported permitted work

13897 SPW is work that is

1. part of a treatment programme done under medical supervision while the person is an in-patient, or is regularly attending as an out-patient of a hospital or similar institution¹ (see DMG Chapter 18 for guidance on 'hospital or similar institution' and DMG 13898 **Example**) **or**
2. supervised by a person employed by
 - 2.1 a public or local authority **or**
 - 2.2 a voluntary organisation (see DMG 13899) **or**
 - 2.3 a Community Interest Company (see DMG 13900)

which provides or finds work for persons with disabilities² (see DMG 13902 **Examples 1 and 2**).

1 SS (IW) (Gen) Regs, reg 17(3)(a); 2 reg 17(3)(b)

13898 SPW is work that is appropriate for people whose disability has stable and established effects with a significant impact on their ability to learn or sustain a traditional job which will always, or for a number of years, prevent them from working more than a few hours each week. However, earnings from SPW must be no more than 16 x NMW¹. There is no limit to the period during which SPW can be done.

1 SS (IW) (Gen) Regs, reg 17(3)

Example

Jennifer is receiving treatment for cancer as an out-patient at the local hospital. Her oncologist is overseeing a treatment programme which aims to discover the beneficial effects of cancer patients attending painting classes. Jennifer enjoys painting as a hobby and agrees to teach the class for 4 hours a week, earning £50.00 a week. The DM accepts that Jennifer is doing SPW.

Voluntary organisation

13899 A voluntary organisation¹ is one that carries out activities otherwise than for profit. It does not include public or local authorities.

1 SS (IW) (Gen) Regs, reg 17(8)

Community Interest Companies

13900 A CIC, as established under relevant legislation¹, is a profit making organisation. However, it is restricted to using its assets and profits for the benefit of the community rather than for the benefit of the owners of the company.

1 The Companies (Audit, Investigations and Community Enterprise) Act 2004

The support worker

- 13901 The support worker must direct and oversee the performance of the worker regularly although the frequency of contact is not laid down. Some workers may require daily contact, with others it may be as infrequent as, for example, monthly. The extent and the frequency of the support will vary according to the progress each person is making towards a return to full time employment.

The level of supervision

- 13902 The supervision must be more than the normal supports put in place by employers. The support worker will, at least initially, have close involvement in the day to day routine of the worker and, by implication, with the employer. This involvement will be ongoing at regular intervals according to each person's circumstances.

Example 1

Peter's appointee returns from PW1. Peter wants to work in a local market garden for four hours on a Friday afternoon, earning £17 a week. Part 3 of the form PW1 has been completed by Peter's caseworker who works for Kaleidoscope NSF. It is a charitable organisation that supports disabled people in work.

Peter's caseworker will visit him regularly and this support will continue. The DM determines that even though the work is for less than £20 a week and could be PWLL, it should be SPW because the work is supported. He can do this work without it affecting his IfW for as long as his earnings are no more than the set weekly limit and the support continues.

Example 2

Sarah's appointee returns from PW1. It states that Sarah, who has Down's Syndrome, will start work in a supermarket collecting trolleys from the car park and stacking shelves. She will be working for four hours a day each Wednesday and Thursday earning £50 a week. Sarah's work has been arranged by Bexley Twofold, an organisation funded by Bexley Council and Mencap to arrange work for people with disabilities. Sarah's support worker will visit regularly and this support will continue. The DM determines that the work she is doing is SPW. She can do this work without it affecting her IfW for as long as the earnings remain no more than the set weekly limit and the support continues.

13903 - 13904

Permitted work lower limit

13905 PWLL is work done in any week for which the earnings do not exceed £20¹. There is no limit to the period during which PWLL can be undertaken. A person will move out of this type of PWK if their earnings in any week are more than £20. They may move into another category of PWK if the relevant conditions are met. Alternatively, they may be treated as capable of work if the relevant conditions are not met².

1 SS (IW) (Gen) Regs, reg 17(2); 2 reg 16

13906 - 13909

Permitted work

13910 Permitted work is work done for less than 16 hours, or an average of less than 16 hours (see DMG 13912) in any week, for which the earnings do not exceed 16 x NMW¹.

1 SS (IW) (Gen) Regs, reg 17(4)

13911

16 hour limit

13912 PW is limited to work of less than 16 hours in a week. This means¹

1. a combined total of less than 16 hours in a week **or**
2. where the hours fluctuate, an average of less than 16 hours a week in the period of

- 2.1. the cycle in which that week falls, where there is a recognized cycle of work (see example 1) **or**
- 2.2. that week and the four weeks before it if there is no recognized cycle (see examples 2 & 3).

Note: When calculating the number of hours worked in a week, only the time spent engaged in actual working activities falls to be counted, e.g. paid or unpaid travelling time or meal/refreshment breaks are excluded from the calculation.

1 SS (IW) (Gen) Regs, reg 17(8)

Example 1

A person who has an established four week cycle of 0, 8, 8 and 20 hours, has an average of a nine hour week (36 divided by 4) for the period of the cycle. This average is applied to the week in which the 20 hours are worked so that the person is not disallowed for that week.

Example 2

A person with no established cycle who has worked 8, 11, 9, 0 and 17 hours has an average of nine hours (45 hours divided by 5.) This average is applied to the week in which the 17 hours are worked so that the person is not disallowed for that week.

Example 3

A person who works 20 hours on the first week of work but expects to work an average of less than 16 hours in future has an average of four hours a week over the preceding four weeks and the first week of work (20 divided by 5). The person is not disallowed for the week in which the 20 hours are worked.

13913 - 13929

Other categories of exempt work

- 13930 There are three other groups of people who can undertake work which can be exempt work. These are
1. volunteers¹ (see DMG 13931) **and**
 2. panel members who are eligible for appointment under specified legislation² to be such members who do not attend the tribunal on more than one full day or two half days a week³ (see DMG 13932) **and**
 3. S/E earners whilst test trading⁴ (see DMG 13934).

1 SS (IW) (Gen) Regs, reg 17(6); 2 The Qualifications for Appointments of Members to the First-tier Tribunal and Upper Tribunal Order 2008, art 2(3); 3 SS (IW) (Gen) Regs, reg 17(7); 4 reg 17(5)

- 13931 A volunteer is a person who

1. is engaged in voluntary work other than for a close relative (see DMG 13853)
and
2. the only payment received or due to be paid is expenses reasonably incurred in connection with the work¹.

1 SS (IW) (Gen) Regs, reg 2

13932 A person who is working but does not accept a wage is not necessarily a volunteer. It may be helpful to consider the definition of employment for a person claiming IB and IS¹. This includes any trade, business, profession, office or vocation.

1 SS CB Act 92, s 122(1); IS Gen Regs, reg 2(1)

13933 Work as a panel member who is eligible for appointment under specified legislation¹ to be such a member is subject to the condition that the work is not done for more than one full day or two half days a week². 'Week' is the seven days starting on Sunday³. This category of exempt work is not affected by the prescribed earnings and hour limits. A person who works more than one full day or two half days a week is treated as capable of work for the whole week.

1 The Qualifications for Appointments of Members to the First-tier Tribunal or Upper Tribunal Order 2008, art 2(3); 2 SS (IW) (Gen) Regs, reg 17(7); 3 reg 16(6)

Annex 6

NMW rates since 1.10.10

(See DMG 13896)

From	Hourly rate
1.10.10	£5.93
1.10.11	£6.08
1.10.12	£6.19
1.10.13	£6.31
1.10.14	£6.50
1.10.15	£6.70
1.4.16	£7.20
1.4.17	£7.50

Annex 7

Exempt work – weekly earnings limits since 13.4.95

(See DMG 13893)

From	Weekly earnings limit
13.4.95	£44.00
8.4.96	£45.50
7.4.97	£46.50
6.4.98	£48.00
12.4.99	£49.50
10.4.00	£58.50
2.10.00	£59.50
9.4.01	£60.50
1.10.01	£66.00
1.10.02	£67.50
1.10.03	£72.00
1.10.04	£78.00
1.10.05	£81.00
1.10.06	£86.00
1.10.07	£88.50
1.10.08	£92.00
1.10.09	£93.00

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