

# Chapter 09 - Overpayments, Recoverability, Adjustments, Civil Penalties and Recoupments

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# Chapter 09 - Overpayments, Recoverability, Adjustments, Civil Penalties and Recoupments

## Introduction

09001 This Chapter gives guidance on

1. **Overpayments** - including revision and supersession and the calculation of overpayments
2. **Recoverability** - including misrepresentation, failure to disclose and causation
3. **Adjustments** - including recovery of POAOB, offsets and abatements
4. **Civil Penalties**
5. **Recoupments** - payments under the Employment Protection Acts

and relates to periods of overpayments of those benefits listed at DMG 09161 beginning **on** or **after** 6.4.87.

**Note 1:** ADM Chapter D1 contains guidance on the above topics for UC, new style JSA and new style ESA. ADM Chapter M1 contains guidance on the meaning of new style JSA and new style ESA.

**Note 2:** If DMs require guidance on periods of overpayments ending **before** 6.4.87, please contact DMA Leeds.

09002 - 09009



# Action by the DM

## General

09010 When the DM is considering an overpayment question involving any of the benefits listed at DMG 09161 they must

1. except where DMG 09026 applies, give a new entitlement decision by revising or superseding all relevant awarding decisions<sup>1</sup> **and**
2. where appropriate, offset the benefit paid against the new amount awarded<sup>2</sup> **and**
3. determine the period of any overpayment **and**
4. calculate the total overpayment, that is, the difference between the amount to which there is entitlement or which is properly payable and the amount which has been paid **and**
5. calculate the amount of the recoverable overpayment<sup>3</sup> **and**
6. give a decision on the overpayment question, stating
  - 6.1 the amount that is recoverable<sup>4</sup> **and**
  - 6.2 the period during which the amount was paid<sup>5</sup> **and**
  - 6.3 the person from whom it is recoverable<sup>6</sup> **and**
7. give a decision on whether and on whom to apply a CPen<sup>7</sup>.

*1 SS A Act 92, s 71(5A); 2 s 71(6); SS (POR) Regs, reg 5; 3 SS A Act 92, s 71(2)(a);  
4 s 71(2)(a); 5 s 71(2)(b); 6 s 71(3); 7 WR Act 12, s 116*

09011 - 09022





# The requirement for revision or supersession

## General

09023 The following guidance deals with the requirement for a valid revision or supersession decision to be made before, or at the same time that an overpayment recoverability decision is made.

**Note:** Further guidance on revision is in DMG Chapter 03. Further guidance on supersession is in DMG Chapter 04.

09024 Overpayments involving the benefits listed at DMG 09161 are only recoverable when the DM has made

1. a new entitlement decision<sup>1</sup> (see DMG 09025) **and**
2. an overpayment recoverability decision<sup>2</sup> (see DMG 09029).

*1 R(SB) 7/91; SS A Act 92, s 71(5A); 2 s 71(2)*

## The new entitlement decision

09025 Except where DMG 09026 applies, the DM must ensure that the new entitlement decision revises or supersedes all the awarding decisions which operated during the period of the overpayment or were varied or reversed on appeal<sup>1</sup>. There must be proper decisions altering entitlement for all parts of the period of the alleged overpayment

1. before the date on which the overpayment recoverability decision is made **or**
2. at the same time as the overpayment recoverability decision is made.

*1 R(SB) 7/91; SS A Act 92, s 71(5A)*

## Exceptions

09026 There are exceptions to the general rule at DMG 09025. These are

1. where the facts and circumstances of the misrepresentation or the failure to disclose do not provide a basis for revising or superseding the decision<sup>1</sup> (see DMG 09032) **or**
2. certain JSA overpayments to 16/17 year olds<sup>2</sup> (see DMG 09295 - 09300).

*1 SS (POR) Regs, reg 12; 2 SS A Act, s 71A*

## Evidence that revision or supersession has taken place

### General

09027 Evidence must be provided to show that revision or supersession has taken place, otherwise the DM will have failed to meet the burden of proof required in

overpayment cases<sup>1</sup>. If that evidence is unclear to anyone who may read it, for example, when included as evidence in an appeal submission to a FtT, and fails to illustrate that a valid revision or supersession has taken place, then there must be some explanation of what is set out in it<sup>2</sup>.

*1 R(IS) 2/96; 2 R(IB) 2/04*

## **Types of evidence**

- 09028 Computer print-outs are commonly presented as evidence that revision or supersession has taken place and these will usually require such an explanation. If available, a copy of the letter notifying the claimant of the decision will be useful, additional evidence. However, this too will usually require explanation of its contents.

## **The overpayment recoverability decision**

- 09029 The DM must make an overpayment recoverability decision at the same time as, or after the new entitlement decision. The decision must state

1. the amount that is recoverable<sup>1</sup> **and**
2. the period during which the amount was paid<sup>2</sup> **and**
3. the person from whom it is recoverable<sup>3</sup>.

*1 SS A Act 92, s 71(2)(a); 2 s 71(2)(b); 3 s 71(3)*

## **Revision or supersession decision not properly made**

- 09030 If it is realized after an overpayment recoverability decision has been made that there has been no proper alteration of entitlement for all or some part of the period of the alleged overpayment, the recoverability decision in relation to the period not covered is of no force or effect. The DM must ensure that the awarding decisions for the entire period of the alleged overpayment are revised or superseded and a further recoverability decision made.

## **Revising or superseding recoverability decisions**

- 09031 Overpayment recoverability decisions can be revised or superseded in the same way as any other decision. It is reasonable to revise or supersede a decision that the overpayment was not recoverable where new evidence comes to light that the claimant had previously concealed. However, if evidence was overlooked by the DM in the original decision, revision or supersession may not be appropriate. This is because the claimant may have destroyed evidence which was favourable to them on being told that the overpayment was not recoverable.

## Recovery not dependent on revision or supersession

09032 Recovery is not dependent on revision or supersession where the misrepresentation or non-disclosure does not support revising the original decision<sup>1</sup>. The DM may still consider recovery but in relation to the payment of benefit and not its award.

### Cases covered

- **RP-incomplete decisions**

Decisions awarding Category A RP made before 1.10.86 are incomplete because they were subject to the earnings rule<sup>2</sup>. It is not possible to revise or supersede these awards on account of the claimant's personal earnings. Past and current awards of an increase for a child<sup>3</sup> are also incomplete and cannot be revised or superseded on account of earnings.

- **Correction of accidental errors**

Where an accidental error in a decision can be corrected there should be no revision or supersession. Examples of accidental errors are given in DMG Chapter 03<sup>4</sup>.

- **Irregular encashments**

See DMG 09224 - 09228. The regulations cannot be used to avoid a revision or supersession which could properly be made<sup>5</sup>. The DM should first see whether the revision or superseding provisions apply<sup>6</sup>.

*1 SS A Act 92, s 71(5A); SS (POR) Regs, reg 12; 2 R(P) 3/84; 3 SS CB Act 92, s 80(1);*

*4 SS CS (D&A) Regs, reg 9A; 5 SS (POR) Regs, reg 12; 6 SS Act 98, s 9, s 10*

09033 - 09039



# Calculation of the overpayment - period of the overpayment

## Introduction

09040 Guidance on deciding overpayment periods is given at DMG 09041 - 09045. There must be sufficient evidence of an overpayment to support the decision for the whole period concerned. Otherwise, the DM may be unable to prove that an overpayment is recoverable.

## Start of the overpayment

09041 Where the DM has evidence that a change of circumstances occurred but the exact date is not known, the claimant should be asked to state the exact date. If

1. after making reasonable efforts, the claimant cannot provide the information, the DM should take the date as the last day of the month involved or
2. the claimant refuses to provide the information, the DM should take the date as the first day of the month involved.

The DM may use an earlier or later date if it is unlikely that the change could have occurred on the date fixed as above.

### Example

An income is normally payable on a Thursday and the last day of the month is a Sunday. The date of change of circumstances should be taken as the Thursday before the last day of the month.

## Start of the recoverable overpayment

### Failure to disclose

09042 The DM should note the following

1. the period of a recoverable<sup>1</sup> overpayment starts on the day the claimant's benefit entitlement or payability would have altered had the material fact been disclosed when it occurred<sup>2</sup>. This is because a DM can only decide that an overpayment is recoverable from the date the award would have been revised or superseded had the material fact been notified on time
2. where earnings affect the payability of benefit the claimant or dependant must have received the earnings in question
3. where payment of benefit is affected for a period before the date of receipt, for example where a retrospective pay award is made, any overpayment before that date is not recoverable

4. if earnings cannot immediately be found out in SS benefit cases, the material fact, as at DMG 09042 1., is the starting of work itself
5. in IS, SPC, JSA(IB) and ESA(IR) cases, late payments of income can be recovered<sup>3</sup> (see DMG 09370 and for SPC see also DMG 85063 - 85065).

#### **Example**

A claimant receiving JSA(IB) starts P/T work on 4 August and is first paid on 15 August. The claimant signs at the Jobcentre on 12 August and on 14 August receives a payment of JSA(IB) only for the fortnight ending 12 August. The claimant discloses working on 27 October. The period of the recoverable overpayment starts on 13 August.

The material fact is the receipt of wages and not the P/T work. Had the 1st wage been disclosed on 15 August it would have affected the amount payable on 26 August.

*1 SS A Act 92, s 71; 2 R(SB) 12/84; 3 SS A Act 92, s 74*

#### **Misrepresentation**

- 09043 The recoverable overpayment starts on the day on which the correct decision would have taken effect, had the claimant not misrepresented. If a misrepresentation occurs on an initial claim for a daily or weekly benefit, the overpayment is recoverable from the beginning of the award.

#### **End of the recoverable overpayment**

##### **Failure to disclose**

- 09044 Where a claimant has failed to disclose, the recoverable overpayment stops at the end of the period covered by the payment issued immediately before

1. the claimant discloses the material fact(s) as instructed to the office administering their benefit (see DMG 09236) or
2. a third party makes sufficient disclosure (see DMG 09258).

##### **Misrepresentation**

- 09045 Where a claimant has misrepresented, the recoverable overpayment stops at the end of the period covered by the payment issued immediately before the claimant contacts the office administering their benefit and corrects the misrepresentation.

09046 - 09059



# Calculation of the overpayment - principles affecting particular benefits

## Effect of earnings on increases of SS benefits

- 09060 The instructions in the INF4 leaflet (or benefit specific equivalent) require a claimant to disclose a dependant's work.

### Pay awards

- 09061 The effect of a pay award on earnings can be calculated at the time the pay award is settled. Although the dependant may not receive the increase until a later date the claimant will know the new amount being earned. Disclosure of the settled award can reasonably be expected.

### Fluctuating earnings

- 09062 In the case of fluctuating earnings the claimant is also bound by the instructions in the INF4 leaflet (or benefit specific equivalent).

#### Example

A claimant was in receipt of RP and increase of RP for a dependant payable on Thursday. He had received a copy of leaflet BR2215 which instructs claimants to report changes in a spouse's earnings. His wife's earnings fluctuated above and below the limit and the 'all or nothing' rule applied. She was paid at 12 noon on Thursdays and told the claimant on Thursday evening of her wages. He disclosed the material fact on Fridays. The claimant's wife worked Monday to Friday, 5 days per week and the earnings for the Monday to Friday period were payable on the following Thursday. The Department was aware that the claimant's wife had fluctuating earnings. The question of an overpayment was referred to the DM and the following schedule drawn up

Calendar week commencing	Retirement Pension payday affected	Earnings payday	Period earnings paid for ("pay weeks")	Earnings received
18 May	29 May	29 May	19 May - 23 May	£30
25 May	5 June	5 June	26 May - 30 May	£40
1 June	12 June	12 June	2 June - 6 June	£70
8 June	19 June	19 June	9 June - 13 June	£60
15 June	26 June	26 June	16 June - 20 June	£35

The earnings limit was £60.50 per week and the earnings earned in one calendar week affected the increase of RP for a dependant due on the pay day immediately following that week as follows

	25 May Sun - Sat	1 June Sun - Sat	8 June Sun - Sat	15 June Sun - Sat	22 June Sun - Sat
Earnings paydays	29 May	5 June	12 June	19 June	26 June
Retirement Pension paydays	29 May	5 June	12 June	19 June	26 June
Amount paid	£30	£40	£70	£60	£35

**Note:** The earnings pay days are irrelevant to the calculation of the amount of the increase of RP for a dependant payable but are shown because they are relevant to the recoverability of the overpayment.

The result of the above was as follows

Pension payable 29 May, earnings £30, no effect.

Pension payable 5 June, earnings £40, no effect.

Pension payable 12 June, earnings £70, no increase of RP for a dependant payable.

Pension payable 19 June, earnings £60, no effect.

Pension payable 26 June, earnings £35, no effect.

In this case the DM decided that it was reasonable for the claimant to make disclosure of earnings on Fridays. His payment was available to him from Thursday mornings, so even a disclosure on Thursday afternoon (the earliest possible time) would not have prevented the overpayment. The DM therefore decided that none of the overpayment was recoverable.

09063 If the Department was not aware that

1. the claimants dependant had earnings at all or
2. the claimants fluctuating earnings had substantially changed for example because of a change of job or taking on an additional job

there may be a small initial non-recoverable overpayment because of the delay in receiving first or increased earnings. But the rest of the overpayment is recoverable because of the claimant's failure to disclose earnings or change in level of earnings. This applies even in odd weeks in which there is no overpayment<sup>1</sup>.

*1 R(SB) 11/86*

09064 - 09065



## Earnings not immediately ascertainable

09066 Where the claimant or dependant has earnings which are not immediately ascertainable and the claimant fails to disclose the starting of work the material fact is the starting of work itself. This applies where the earnings affect

1. personal RP or
2. an increase for an adult dependant of IB, SDA, RP or DP with US.

This is because had the starting of work been disclosed the Secretary of State would have

1. suspended benefit until information from HMRC was available
2. referred the case to the DM to decide the amount of benefit payable during the period of suspension.

### Example

A man in receipt of an increase of IB for his wife fails to disclose that his wife has bought a hairdressing salon which she is operating as a business. She is not a director of the business as it is not a limited company. The claimant is aware of what his wife has done but does not realise he has to disclose it.

When the Department discovers that the claimant's wife was working the Secretary of State suspends payment of the increase of IB, obtains accounts and refers the matter to the DM.

The DM supersedes the decision on the increase of IB for a change of circumstances from the date of the change and decides that the whole of the overpayment is recoverable. This is because had the claimant disclosed that his wife had a business at the time it started the Secretary of State would have suspended payment, superseded the award of benefit and no overpayment would have occurred.

09067 In the case of all SS benefits other than those in DMG 09066 the material fact is still the starting of work where

1. a claimant or dependant has earnings that are not immediately ascertainable **and**
2. the claimant fails to disclose starting work **and**
3. earnings affect benefits other than personal RP and increases for adult dependants of IB, SDA, RP or DisP with US.

This is because had the claimant declared the starting of work the DM would have estimated the claimant's likely earnings and that estimate would become the fact of

earnings. This would apply even if the eventual earnings received were less than the estimate.

**Note:** There is no need for the DM to estimate in overpayment cases based on the information which **might** have been available at the time. The earnings as eventually revealed when disclosure was made should be taken as the same as the estimate which would have been made.

**Example**

A man in receipt of IB increase for his wife fails to report that she has set up as a S/E market trader and wholesale vegetable supplier. She owns the business but it is not a limited company.

When the Department discovers that the claimant's wife is working the claimant submits her accounts which show a profit of £50 per week. The claimant states that he did not disclose her business earlier because she did not know whether the profits would be high enough to affect his increase for her.

The DM decides that the whole of the overpayment is recoverable because had the business been disclosed at the time the DM would have estimated earnings to be £100 per week.

09068 - 09078

# Calculation of the overpayment - deductions

## Introduction

- 09079 When calculating the amount of a recoverable overpayment, the DM must deduct
1. any amount that has been offset<sup>1</sup> (see DMG 09340 et seq for further guidance on offsetting) and
  2. certain underpayments of IS, JSA(IB), SPC, ESA(IR) or UC<sup>2</sup>.

*1 SSA Act 92, s 71(6); SS (POR) Regs, reg 13(1)(a); 2 reg 13(1)(b)*

## Effect of offsets on overpayments

- 09080 Where an amount has been offset the DM should deduct that amount from the gross amount calculated as overpaid<sup>1</sup>.

**Note:** A recoverable overpayment cannot be offset<sup>2</sup>.

*1 SSA Act 92, s 71(6); SS (POR) Regs, reg 13(1)(a); 2 reg 6*

### Example 1

The DM supersedes an award of JSA(IB) and decides that it is not payable. ESA(IR) is awarded for the same period. Arrears of ESA(IR) are due under this decision but the JSA(IB) already paid is not offset against and treated as paid on account and the ESA(IR) arrears are paid in full.

There is no offset amount to be deducted when calculating any recoverable JSA(IB) overpayment<sup>1</sup>.

### Example 2

ESA(IR) is awarded and paid for a period of ten weeks. The DM supersedes this award and decides that ESA(IR) is not payable. JSA(IB) is subsequently awarded for the entire period for which ESA(IR) has been paid and for a further two weeks. Twelve weeks JSA(IB) arrears are due under the subsequent award. The DM revises the award of ESA(IR). The DM is not restricted to offsetting for the common period and the ESA(IR) paid is offset against the whole of the arrears of JSA(IB)<sup>2</sup>.

The DM later notices that a balance of overpaid ESA(IR) remained after offset and the overpayment question is considered. The DM finds that the whole of the ESA(IR) paid is recoverable and reduces the recoverable overpayment by the amount of ESA(IR) which was offset against the JSA(IB)<sup>3</sup>.

Apart from the examples in this paragraph and in DMG 09340 et seq no other offsets can be made against any overpayments.

*1 SSA Act 92, s 71(6); SS (POR) Regs, reg 6; 2 reg 5(1) & 5(2), Case 2; 3 reg 13(1)(a)*

## **Effect of certain underpayments of IS, JSA(IB), SPC, ESA(IR) or UC on recoverable overpayments**

09081 Subject to DMG 09082, when calculating a recoverable amount under specified legislation<sup>1</sup>, the DM must deduct<sup>2</sup>

1. any amount which has been offset under specified legislation<sup>3</sup>;
2. any additional amount of a specified benefit which was not payable under the original, or any other, determination but which should have been determined to be payable in respect of all or part of the overpayment period to the claimant or their partner
  - 2.1 on the basis of the claim as presented to the DM or
  - 2.2 on the basis that any misrepresentation or failure to disclose a material fact had been remedied prior to the award being made.

*1 SS A Act 92, s 71(1); SS (POR) Regs, reg 11; 2 reg 13(1); 3 reg 5*

### **Other deductions**

09082 No other deduction is to be made in respect of any other entitlement to benefit which may be, or might have been, determined to exist<sup>1</sup>.

*1 SS (POR) Regs, reg 13(1)(1C)*

### **Meaning of “specified benefit”**

09083 Specified benefits are<sup>1</sup>

1. UC
2. IS
3. SPC
4. JSA(IB)
5. ESA(IR).

*1 SS (POR) Regs, reg 13(1)(1A)*

### **Meaning of “overpayment period”**

09084 Overpayment period means the period over which the overpayment accrued<sup>1</sup>.

*1 SS (POR) Regs, reg 13(1)(1B)*

### **Underpayment identification**

09085 DMs do not have to show that there is no relevant underpayment<sup>1</sup>. If claimants want to rely on an additional entitlement reducing the overpayment it is for them to show on a balance of probabilities there is an underpayment.

*1 R(IS) 1/05*

09086 - 09095

## **Deduction of additional SPC, IS, JSA(IB) or ESA(IR) from SS benefit overpayments**

09096 This section gives guidance on deductions of additional SPC, IS, JSA(IB) or ESA(IR) from SS benefit overpayments, where decisions on both SS benefit and SPC, IS, JSA(IB) or ESA(IR) claims were made before the overpayment arose. It explains how the DM should calculate the

1. SPC, IS, JSA(IB) or ESA(IR) overpayment or additional entitlement **and**
2. SS benefit overpayment.

**Note 1:** "Additional" may mean additional to nil.

**Note 2:** see ADM Chapter D1 for equivalent guidance for UC.

09097 SS benefits and SPC, IS, JSA(IB) or ESA(IR) normally affect each other in one of the following ways

### **Case 1**

SS benefit paid on time and taken into account as a resource in determining SPC, IS, JSA(IB) or ESA(IR). No arrears of SS benefit and therefore no question of abatement or

### **Case 2**

SS benefit not paid on time and arrears abated by the amount of SPC, IS, JSA(IB) or ESA(IR) which would not have been paid had the SS benefit been paid on time<sup>1</sup> or

### **Case 3**

SS benefit not paid on time but reduction of arrears not made. The SPC, IS, JSA(IB) or ESA(IR) which would not have been paid had the SS benefit been paid on time is recovered later<sup>2</sup>.

*1 SSA Act 92, s 74 & Sch 10; SS CB Act 92, s 122; SS (POR) Regs, reg 8  
2 SSA Act 92, s 74, 71(8) & Sch 10; SS CB Act 92, s 122; SS (POR) Regs, reg 7*

Detailed guidance on abatement is contained in DMG 09370 et seq.

### **Case 1 - SS benefit paid on time, reduction unnecessary**

09098 If SPC, IS, JSA(IB) or ESA(IR) has been paid to supplement SS benefit, the circumstances which caused the overpayment of SPC, IS, JSA(IB) or ESA(IR) may also have caused an overpayment of the SS benefit. The DM must base recalculation of SPC, IS, JSA(IB) or ESA(IR) on the revised or superseded entitlement to the SS benefit. The result may be an additional entitlement to SPC,

IS, JSA(IB) or ESA(IR), rather than an overpayment. This additional entitlement to SPC, IS, JSA(IB) or ESA(IR) may affect the overpayment of SS benefit. The DM should deal with these cases as follows

1. SPC, IS, JSA(IB) and ESA(IR), calculate the difference between the SPC, IS, JSA(IB) or ESA(IR) overpaid and the amount of SPC, IS, JSA(IB) or ESA(IR) payable had the true position been known and the correct entitlement to SS benefit been paid. The result may be an overpayment or an additional entitlement
2. SS benefit, calculate the difference between the SS benefit actually paid and the correct amount of SS benefit payable
3. where the SPC, IS, JSA(IB) or ESA(IR) calculation under the first point results in an additional entitlement to SPC, IS, JSA(IB) or ESA(IR), that additional amount should be deducted from the SS benefit overpayment calculated as in the second point (see Example where the correct SS benefit entitlement is NIL).

#### **Example**

A claimant received WMA of £58.85 and IS of £37.65 weekly. It was later discovered that she had married and was living with her new husband who did not work.

Because she was no longer a widow, she was no longer entitled to WMA.

1. The IS calculation is
  - 1.1 IS actually paid £37.65
  - 1.2 amount payable if correct WMA had been known £123.00
  - 1.3 result, an additional IS entitlement £85.35
2. The first WMA calculation is
  - 2.1 WMA paid £58.85
  - 2.2 correct WMA entitlement Nil
3. The final WMA overpayment is the difference between 2.1 and 2.2 less the IS additional entitlement at 1.3. The WMA overpayment is Nil.

#### **Case 2 - SS benefit arrears abated by SPC, IS, JSA(IB) or ESA(IR)**

09099 If during the period of an overpayment

1. SPC, IS, JSA(IB) or ESA(IR) is paid pending payment of an SS benefit, or increase of SS benefit **and**



2. the arrears of the SS benefit, when due, are reduced by the amount of SPC, IS, JSA(IB) or ESA(IR) which would not have been paid had the SS benefit been paid on time the amount of the reduction is recoverable as SPC, IS, JSA(IB) or ESA(IR). There is no statutory provision to convert it into the SS benefit.

### **No entitlement to SPC, IS, JSA(IB), ESA(IR) or SS benefit**

09100 Where the withdrawal of SS benefit would not produce entitlement to SPC, IS, JSA(IB) or ESA(IR), and the arrears of SS benefit were previously reduced by SPC, IS, JSA(IB) or ESA(IR) then

1. the SPC, IS, JSA(IB) or ESA(IR) overpayment is the total amount of SPC, IS, JSA(IB) or ESA(IR) actually paid, even though part of the total amount was recovered by reduction of the SS benefit arrears **and**
2. the SS benefit overpayment is the amount of SS benefit actually paid, that is the total payable less any amount by which arrears were reduced.

#### **Example**

IS and WMA are claimed at the same time and IS is awarded at £40 per week pending a decision on WMA. WMA is later awarded at £54.20 per week and IS ceases. The WMA arrears are reduced by IS previously paid, to only £14.20 per week for that period.

It is later discovered that the claimant had misrepresented the material fact that throughout her claim she was LTAHAW with a man who was in F/T work.

The DM decides that there was no entitlement to either IS or WMA and revises both decisions.

The IS overpayment is £40 x the number of weeks paid, during the period of reduction.

The WMA overpayment is £14.20 x number of weeks for which arrears were reduced + £54.20 x number of weeks paid, following reduction.

### **No entitlement to SPC, IS, JSA(IB) or ESA(IR) only**

09101 The principles as in DMG 09100 apply where there is no entitlement to SPC, IS, JSA(IB) or ESA(IR) but

1. the SS benefit is unaffected, for instance capital exceeds the prescribed limit **and**
2. SS benefit was previously reduced by SPC, IS, JSA(IB) or ESA(IR).

But the overall result is different because there is no overpayment of SS benefit.

### **Example**

A woman claims IS and MA at the same time and IS is awarded at a £40 per week pending a decision on MA. MA is later awarded at £29.45 per week and IS reduced. The arrears of MA are reduced in full. It is later discovered that the woman had misrepresented the material fact that she had capital of £8000. This did not affect entitlement to MA but removed entitlement to IS.

The IS overpayment is £40 x the number of weeks paid (including the period of reduction) + £10.55 x the number of weeks IS paid in addition to MA.

There is no MA overpayment. The Secretary of State could waive recovery of the amount recovered from the arrears of MA so that the claimant would not be in a worse position than a claimant whose MA was paid on time. But this should not affect the DM's decision in any way.

### **No entitlement to SS benefit only**

- 09102 Where the material fact affects only the entitlement to the SS benefit and the SS benefit was previously reduced by SPC, IS, JSA(IB) or ESA(IR) the SS benefit overpayment is reduced by the amount of additional SPC, IS, JSA(IB) or ESA(IR) now due.

### **Example**

IS and WMA are claimed at the same time and IS awarded at £40 per week pending a decision on WMA. WMA is later awarded at £54.20 per week and the DM decides on revision that there is no entitlement to IS. The WMA arrears are reduced by the IS previously paid so that WMA of £14.20 per week was paid for that period. It is later discovered that the claimant had misrepresented the material fact that her 'husband' had been married before and that their 'marriage' was invalid. The DM decides that there was no entitlement to WMA.

There is no IS overpayment.

The WMA overpayment is

- £14.20 x number of weeks paid (period of reduction) **plus**
- £14.20 per week for the period after the DM's decision on reduction

The additional IS of £40 a week payable had there been no misrepresentation has been deducted from the overpayment of WMA. (Compare with DMG 09098

**Example).**



## **SS benefit and SPC, IS, JSA(IB) or ESA(IR) remain payable**

- 09103 Where both SS benefit and SPC, IS, JSA(IB) or ESA(IR) continue to be payable the effect of the reduction is to substitute for an overpayment of SS benefit an overpayment of SPC, IS, JSA(IB) or ESA(IR) during the period of the overpayment.

## **Deduction of additional SPC, IS, JSA(IB) or ESA(IR) from SS benefit overpayments**

- 09104 When SPC, IS, JSA(IB) or ESA(IR) and an SS benefit are claimed at the same time and SPC, IS, JSA(IB) or ESA(IR) is awarded pending a decision on the SS benefit, the arrears of the SS benefit when it is awarded will be abated. If subsequently it is found that the correct entitlement to the SS benefit is less than that originally awarded, the overpayment is calculated as in the following example.

### **Example**

SPC and RP are claimed at the same time and SPC is awarded at £123.00 per week pending a decision on RP. RP is later awarded at £94.10 per week and SPC reduced to £28.90. The award of RP makes no practical difference to the claimant since SPC and RP are paid together at a combined rate of £123.00 a week and all the RP arrears are abated. It is later discovered that the claimant had failed to disclose the fact that his wife had died. The RP properly payable was £58.85.

Adopting the same approach as in DMG 09098 the result is as follows

### **Period before the award of RP**

1. the SPC calculation is
  - 1.1 SPC actually paid £123.00
  - 1.2 amount payable had the true facts been known £96.50
  - 1.3 result, an SPC overpayment £26.50.

### **Period after the RP award**

1. the SPC calculation is
  - 1.1 SPC actually paid £28.90
  - 1.2 SPC payable if correct RP payable £37.65
  - 1.3 result, an additional SPC entitlement £8.75
2. the first RP calculation is
  - 2.1 RP paid £94.10

- 2.2 correct RP entitlement £58.85
- 2.3 RP overpayment is the difference between £94.10 and £58.85 less the additional SPC entitlement £26.50

Where the weekly SPC overpayment during the period of reduction as calculated above is **greater** than the SS benefit overpayment after the period of reduction the same consideration as in DMG 09101 applies.

### Case 3 - Reduction of arrears not made

09105 If during the period of an overpayment

- 1. SPC, IS, JSA(IB) or ESA(IR) was paid pending payment of an SS benefit **and**
- 2. the arrears of SS benefit were not reduced

the rate and payability of the SS benefit paid in error is irrelevant when calculating the recoverable SPC, IS, JSA(IB) or ESA(IR) overpayment for the period the SS benefit was not taken into account.

#### Example

A claimant is paid JSA(IB) of £40 per week for ten weeks. The claimant then receives SS benefit arrears of £200 (10 x £20 a week) due to failure of reduction procedures and JSA(IB) is reduced to £20 a week. At that time it is also discovered that the claimant had earnings after disregard of £30 per week.

If the claimant declared the earnings at the start, JSA(IB) would have been paid at £10 per week for the first ten weeks. As a result the JSA(IB) overpayment is  $10 \times (40-10) = £300$ . The balance of £10 for ten weeks which should have been recovered from the arrears of the SS benefit, but was not, is not a recoverable overpayment. This is because it was not the consequence of a misrepresentation or failure to disclose. But it is recoverable by other means (see DMG 09393)<sup>1</sup>.

*1 SS A Act 92, s 74 & para 2, Sch 10; SS (POR) Regs, reg 7 & 8*

09106 If the earnings also affect the SS benefit

- 1. a separate calculation should be carried out for that benefit **and**
- 2. the recoverable overpayment of SS benefit should be reduced by the amount recoverable to avoid the same amount being recovered<sup>1</sup> twice.

*1 SS A Act 92, s 74*

09107 - 09122

## Recovery of overpayments attributable to the method of payment

- 09123 The guidance in this section explains the recoverability of overpayments<sup>1</sup> of those benefits<sup>2</sup> listed at DMG 09161 which are attributable to the method of payment, i.e. direct payment<sup>3</sup> (see DMG 08006 for further information about direct payments).

*1 SS (POR) Regs, reg 11(1); 2 reg 11(A1); 3 SS (C&P) Regs, reg 21*

- 09124 In all cases the DM decides the amount and recoverability of the overpayment<sup>1</sup> but if

1. both conditions in DMG 09125 are satisfied the overpayment is recoverable whether or not the claimant has misrepresented or failed to disclose a material fact **or**
2. both conditions in DMG 09125 are not satisfied the overpayment is only recoverable if the claimant has misrepresented or failed to disclose a material fact.

In cases where the conditions in DMG 09125 are **not satisfied** the DM should apply the guidance contained in the rest of this Chapter.

*1 SS (POR) Regs, reg 11(1)*

### Conditions 1 and 2

- 09125 The conditions referred to in DMG 09124 are<sup>1</sup>

#### Condition 1

The Secretary of State has certified that the overpayment, or a specified part of it, is materially due to the arrangement for payments to be made by direct payment.

#### Condition 2

Notice of what would happen, if there was any overpayment, was given to the claimant, or to a person acting for the claimant, before the arrangement came into effect

1. in writing, where the claim was made in writing **or**
2. orally or in writing, where the claim was made by telephone.

*1 SS A Act 92, s 71(4); SS (POR) Regs, reg 11(2)*

- 09126 In deciding whether the Secretary of State is entitled to recover benefit under DMG 09124 and 09125 the DM should under

- **Condition 1**, require a certificate signed by the Secretary of State in the terms described
- **Condition 2**, find as fact that notice was given as required (see DMG 09131 et seq)

09127 Where the arrangement was agreed to before 6.4.87, DMG 09125 **Condition 2** need not be satisfied if claimants, or persons acting for them, completed a statement at the time direct payment was arranged, that

1. they had read and understood the conditions applying at that time to credit transfer payments **and**
2. they understood that they would have to repay any overpayment, if the decision awarding benefit was reviewed, or varied on appeal<sup>1</sup>.

**Note:** Before deciding that the benefit is recoverable under this provision the DM will need evidence that such a statement was made (see DMG 09132 and DMG 09134).

*1 SS (POR) Regs, reg 11(3)*

## **BACS processing period and cut off period**

09128 The BACS processing period is a 3 day cycle as follows:

Day 1 – the input day

Day 2 – the processing day

Day 3 – the crediting day.

09129 The cut off period is the period beginning on input day and ending when the time limit for recalling payments expires.

### **Example**

Assuming the supersession of the award takes effect from either the date of change or the first day of the benefit week:

1. if the change takes place before the cut off period and the claimant discloses during the cut off period there is a system caused overpayment;
2. if the change takes place during the cut off period and the claimant discloses after that period there is a system caused overpayment;
3. if the change takes place during the cut off period but the claimant discloses in advance there is not a system caused overpayment;
4. if the change took place before the cut off period and the claimant disclosed on their crediting day but after the account had been credited, that is not a system caused overpayment;
5. if the change takes place on the crediting day but after the account has been credited, that is not a system caused overpayment.

**Note 1:** It is possible to have a system caused overpayment followed by a non-recoverable overpayment where a further payment is credited to the claimant's account following their notification of a change of circumstances.

**Note 2:** Where it is established that the overpayment is **not** materially due to the system for payments, the DM should consider whether claimant error has caused the overpayment.

09130 Where all or part of the overpayment is not covered by a certificate (see DMG 09125 **Condition 1**), or notice was not issued or signed (see DMG 09125 **Condition 2**, or DMG 09127), the overpayment, or the overpayment not covered by the certificate, is only recoverable if the claimant has misrepresented or failed to disclose a material fact.



## **Evidence that notice was given or signed**

### **Strongest evidence**

- 09131 Where the Secretary of State is required to give notice as in DMG 09126 the strongest evidence that the notice was given is
1. where the direct payment form which the claimant completed contains the notice - the completed form **or**
  2. where the direct payment form has a "tear-off" to be retained by the claimant - the form completed by the claimant and a specimen uncompleted form showing that the tear off would have been attached **or**
  3. where a separate form gives notice to be retained by the claimant - a record on the claimant's papers showing that such a form was issued **or**
  4. where the claimant has retained the notice and options two and three do not apply - a copy of the notice as retained by the claimant.

If the Secretary of State supplies none of the above DMG 09133 should be considered.

- 09132 Where the claimant had to sign a declaration that he had read and understood the conditions relating to direct payment, the best evidence of this is
1. the form the claimant signed **or**
  2. a record on the claimant's papers that such a form had been signed, together with a specimen form

If the Secretary of State supplies neither of the above, DMG 09134 should be considered.

### **Secondary evidence**

- 09133 Where the Secretary of State is required to give notice and none of the evidence as in DMG 09131 is available
1. the Secretary of State may provide a general statement by an officer who administers the benefit paid by direct payment **and**
  2. if the general statement states that the benefit branch's procedural arrangements would have prevented the operation of direct payment arrangements unless notice of the conditions had been issued, the decision maker should accept that notice was given **and**
  3. if an appeal is made on this point, the Secretary of State's officer may have to be called to give evidence to the tribunal

- 09134 Where claimants had to sign that they had read and understood the conditions relating to direct payment and evidence as in DMG 09132 is not available
1. the Secretary of State may provide a general statement by an officer who administers the benefit paid by direct transfer **and**
  2. if the general statement states that the procedural arrangements would have prevented the operation of direct credit transfer arrangements unless the claimant had signed that he had read and understood its conditions, the DM should accept that this was done **and**
  3. if an appeal is made on this point, the DM should consider calling the officer to give evidence to the tribunal.

09135 - 09142



# Child Maintenance collected by the Department

## IS, JSA(IB) and ESA(IR)

- 09143 When the DM is calculating an overpayment of IS, JSA(IB) or ESA(IR) involving a case where CSM payments are being collected by the Secretary of State for the whole or part of the overpayment period, the amount of CSM collected is to be disregarded in the calculation of the overpayment<sup>1</sup>.

*ISSAAAct92, s74A*

### Example

John is entitled to CSM of £60 per week. This is collected by DWP. He is entitled to JSA(IB) of £143.40 per week because the CSM is not treated as relevant income. It is discovered that John has been overpaid and for the period of the overpayment his entitlement to JSA(IB) is nil. There is no provision for reducing the amount of the overpayment on account of the CSM collected by DWP. Therefore, the overpayment is the full amount of John's entitlement to JSA(IB). However, although John would be liable to repay the full amount of overpaid JSA(IB), the Secretary of State cannot recover the overpayment twice. John is required to repay the gross amount of the JSA(IB) overpayment **less** the amount of any CSM that has been collected.



# The diminishing capital calculation

## Misrepresentation or failure to disclose capital

- 09144 If an overpayment occurs because a claimant has misrepresented or failed to disclose an amount of capital that they have, it should be noted that
1. the DM should treat that capital as having been reduced at the end of each quarter from the start of the overpayment period by the amount of SPC, IS, JSA(IB) or ESA(IR) overpaid in that quarter<sup>1</sup>. These reductions are cumulative and a quarter means a period of 13 weeks starting with the first day on which the overpayment period began and ending on the 90th day thereafter<sup>2</sup>. This calculation is only valid when deciding the amount recoverable. In cases involving SPC, increases of actual capital within the AIP should be ignored in the application of the diminishing capital calculation
  2. if a repeat claim is made after the period of the overpayment, the DM should decide any entitlement to SPC, IS, JSA(IB) or ESA(IR) by reference to the claimant's actual capital
  3. the DM cannot treat the capital as having been reduced over any period other than a quarter or in any other circumstances<sup>3</sup>. Applying this does not prevent the normal disregards from being allowed, such as expenses in connection with the sale of a house<sup>4</sup>
  4. the DM does not have to guess what a claimant might have done had they been informed by the Department that capital was over the capital limit.

**Note:** The capital a claimant possesses includes cases where the capital concerned is possessed by a child or young person who is a member of the family of the claimant and is part of their applicable amount<sup>5</sup>.

*1 SS A Act 92, s 71(1); SS (POR) Regs, reg 14(1); 2 reg 14(3); 3 reg 14(2); 4 IS (Gen) Regs, reg 49(a) & 50; 5 R(IS) 10/08*

### Example

A claimant states that had the capital limit been known the capital would have been used to buy a larger house to avoid it being taken into account as a resource. The DM does not accept this speculation which is entirely different in principle from diminishing capital calculation.

- 09145 The DM should not apply the diminishing capital calculation if
1. it is clear that a diminishing capital calculation does not affect the amount recoverable. For example, the amount of undeclared or under declared capital above the cut off point is considerably greater than the actual amount of "wrongly" paid benefit. But see DMG Chapter 29 for IS and JSA, DMG

Chapter 52 for ESA and DMG Chapter 84 for SPC where the undisclosed capital resource is property or

2. the overpayment is not caused by undeclared or under declared capital.

## Evidence

09146 It should be noted that

1. the DM needs evidence of all capital changes during the period of the overpayment. This is because the onus is upon the DM to show that tariff income was at a particular level or that capital was over the limit throughout that period
2. in cases where the claimant has failed to make reasonable efforts to provide requested information, the DM may make assumptions about the capital held and in doing so, discharge the burden of proof<sup>1</sup>
3. the DM should consider the question with reference to the regulations and case law relevant at the time<sup>2</sup> if there is any dispute as to whether the capital was available or was income rather than capital.
  - where the capital is in the form of unit trusts, stocks or shares, monthly valuations can be obtained from Benefit Delivery Specialist Operations
  - in the case of stocks, the enquiry should quote the redemption date. Also the exact figure for one particular day of each month is provided as this is the only information held by Benefit Delivery Specialist Operations. The DM should assume a value on the working day after the date of valuation most beneficial to the claimant
  - for unit trusts the valuation provided by Benefit Delivery Specialist Operations is a monthly average figure which should be used for all paydays which fall within the quoted month.

*1 R(SB) 34/83; 2 R(SB) 2/83; R(SB) 35/83*

### Example

Friday 14 August total share value £1,500

Monday 28 September total share value £1,200

Here the DM assumes that the share value dropped to £1,200 on Monday 17 August. The DM should accept alternative evidence unless it can be refuted or is inherently improbable.

## Calculating the overpayment

- 09147 As explained at DMG 09144 there is no diminishing capital calculation until the end of the first quarter of the overpayment<sup>1</sup>. If the overpayment is for less than a quarter any overpayment should be calculated on the basis of the claimant's actual capital.

*1 SS (POR) Regs, reg 14*

### Example

A claimant fails to disclose receipt of capital of £16,050 and JSA(IB) remains in payment at £100 per week for 10 weeks following the receipt of capital. The claimant has been overpaid £100 x 10 = £1,000 despite the fact that capital was only £50 over the limit.

- 09148 At the end of the first quarter following the start of the overpayment (that is 89 days after the first day of the overpayment period) the DM should deduct from the actual capital held on that date the amount of SPC, IS, JSA(IB) or ESA(IR) **overpaid** in the quarter.

**Note:** This amount is not necessarily the same as the SPC, IS, JSA(IB) or ESA(IR) entitlement during the quarter. For example, payment may have been delayed. It is the Secretary of State responsibility to provide evidence of the amount of SPC, IS, JSA(IB) or ESA(IR) actually paid in the quarter.

- 09149 At the end of the second quarter the DM should deduct from the actual capital held on that date the amount of **overpaid** SPC, IS, JSA(IB) or ESA(IR) in that quarter plus the amount **overpaid** in the first quarter and so on for each successive quarter.
- 09150 The period of the recoverable overpayment should be decided as in DMG 09041 - 09044 even though for part of that period there may be no **recoverable** overpayment because of the diminishing capital calculation. For the purposes of the diminishing capital calculation the start of the overpayment period is the start of the recoverable overpayment period.

09151 - 09160



# Recoverability - principles governing benefits

## Benefits covered

09161 [\[See Memo DMG 11/16\]](#) This guidance applies to the following benefits<sup>1</sup>

1. benefits under the Acts<sup>2</sup>
2. CHB<sup>3</sup>
3. IS<sup>4</sup>
4. SF payments<sup>5</sup>
5. benefits under repealed Acts<sup>6</sup>
6. Supp B (including HB Supplement and single payments)<sup>7</sup>
7. JSA<sup>8</sup> (but see DMG 09295 - 09300 for certain overpayments of JSA to 16/17 year olds)
8. SPC<sup>9</sup>
9. ESA<sup>10</sup>
10. PIP<sup>11</sup>
11. health in pregnancy grant<sup>12</sup>.

*1 SSA Act 92, s 71(11); 2 SS CB Act 92, s 122; SS A Act 92, s 71(11)(a); 3 s 71(11)(f); 4 s 71(11)(b);  
5 s 71(11)(e), s 71 ZA; SS CB Act 92, s 138; 6 s 186, Sch 10; 7 s 186, Sch 10; 8 s 71(11)(aa);  
9 s 71(11)(ab); 10 s 71(11)(ac); 11 s 71(11)(ad); 12 s 71(11)(ea)*

## Benefits not covered

09162 The following payments are not recoverable

1. refunds of NHS charges for prescriptions, dentures, dental treatment, glasses, wigs and fabric supports claimed on or after 1.11.74
2. travelling expenses of patients attending hospital
3. payments for welfare foods
4. travelling expenses for prison visits etc.
5. third party deductions for housing costs, water charges, community charge arrears or fuel made in error to third party after termination of a Supp B/IS award
6. fares to a DWP office
7. Christmas bonus payments
8. HB/CTB
9. any extra-statutory payments
10. interim payments of Supp B made under provisions in being before 6.4.87

11. SSP and statutory paternity pay
12. WC (Supp) and allowances under the PB and MDB.

## General principles

- 09163 Misrepresentation and failure to disclose have different meanings in law. The DM should decide at the outset, under DMG 09196 et seq and DMG 09234 et seq, which ground is appropriate bearing in mind that
1. both grounds can occur during the period of an overpayment for the same or different parts of that period
  2. the DM should identify each misrepresentation or failure to disclose
  3. the misrepresentation and failure to disclose may be wholly innocent.
- 09164 When considering the recoverability of an overpayment, the law<sup>1</sup> says that
1. where any person
  2. whether fraudulently or otherwise<sup>2</sup>
  3. misrepresents, or
  4. fails to disclose
  5. a material fact, and
  6. this results in an overpayment of benefit for any period
- the amount of the overpayment is recoverable from the person misrepresenting or failing to disclose that material fact.

*1 SS A Act 92, s 71(1); 2 R(SB) 21/82; R(SB) 2/92 Appendix*

- 09165 This guidance also applies to the recovery of JSA overpaid to 16/17 year olds in severe hardship cases where the Secretary of State certificate has been revoked<sup>1</sup>.

*1 SS A Act 92, s 71A*

## The material fact

- 09166 Material fact means any fact which had it been known about and properly acted upon by the DM would have prevented all or part of the overpayment in question. It is a fact which is objectively material to the decision of the Secretary of State to make an award of benefit. A fact is material where, on disclosure, it would prompt further enquiries or investigations by the DM in order to decide whether an existing entitlement continued or required some change. Whether the particular person considers it material is of no relevance<sup>1</sup>.

*1 R(IS) 7/94*

### Example 1

The disclosure of widowhood is not disclosure of an income from WMA.



## **Example 2**

An overpayment of an increase of IB in respect of a dependant occurred where the claimant had failed to disclose that his wife was in receipt of RP. The overpayment was recoverable from the claimant and the 'material fact' in relation to the overpayment was the payment of RP to the claimant's wife.

09167

## **Recoverability not dependent on misrepresentation or non-disclosure**

09168 The Secretary of State may sometimes recover overpaid benefit even though there was no misrepresentation or failure to disclose a material fact. Guidance on these cases is given as follows

1. overpayments of IS, JSA(IB), SPC and ESA(IR) caused by late payments of income<sup>1</sup> (see DMG 09370)
2. some overpayments where payment was made by direct payment (see DMG 09123 - 09128).

*1 SSA Act 92, s 74, 71(8) & Sch 10; SS CB Act 92, s 122; SS (POR) Regs, reg 8; IS (Gen) Regs, Part V*

## **Non-recoverable overpayments**

09169 Overpayments may arise in circumstances other than a misrepresentation or failure to disclose, for example arithmetical errors in a claimant's favour. These should normally be excluded from the calculation of the amount of the overpayment that is recoverable.

## **SF payments**

09170 If a claimant misrepresents or fails to disclose in a claim for a SF<sup>1</sup> payment, the amount recoverable<sup>2</sup> is the difference between

1. the amount paid **and**
2. the amount which would have been properly payable had all the relevant facts been known.

*1 SS CB Act 92, s 138; 2 SS A Act 92, s 71 & 71ZA*

09171 - 09174



# Recoverability - evidence

## Consideration of evidence

09175 The onus of proof that overpaid benefit is recoverable initially rests with the DM<sup>1</sup>.

*1 SS A Act 92, s 71(1)*

09176 The DM should

1. examine the evidence and decide whether it is sufficient to determine the overpayment and the recoverability question<sup>1</sup> **and**
2. make further enquiries where evidence is insufficient **and**
3. bear in mind that if statements made by the DM are contested at any appeal hearing, the FtT will look for supporting evidence<sup>2</sup>.

*1 SS A Act 92, s 71; 2 R(SB) 10/86*

09177 When considering the evidence the DM should bear in mind that

1. there is no general rule of law that corroboration of a claimant's own evidence is necessary<sup>1</sup>
2. the strict rules of evidence do not apply to the decision making authorities
3. the standard of proof required in decision making is less stringent than that required in criminal proceedings
4. a case should be decided on the balance of probabilities and not beyond reasonable doubt.

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

09178 The practical effect of DMG 09177 is that the DM should only reject a claimant's evidence when it is self-contradictory, or inherently improbable.

**Note:** Where there is no evidence to support a claimant's statement, the DM should consider all the relevant circumstances before deciding to accept it on the balance of probabilities.

### Example 1

The claimant has in the past failed to report changes in the amount of her P/T earnings. On this occasion she says that she told the office in writing of a change but no record of disclosure can be found. The DM decides, on a balance of probability, that the claimant's evidence is inherently improbable and that she did not disclose the latest change in her earnings.

### Example 2

A claimant interviewed in connection with an overpayment of benefit says that the change in circumstances leading to the overpayment was reported to Jobcentre Plus in a letter. But in a later interview it is alleged that the claimant's partner called into the office and reported the change. No trace of either disclosure can be found.

The DM decides that the two statements are self contradictory and, on a balance of probabilities, no disclosure of the material fact took place.

09179 If a claimant states disclosure has been made to the office orally or in writing, the DM should

1. ensure that all records, both paper and computer-based have been checked including any linked casepaper, associated file or General Benefit Unit in combined payment of benefits cases **and**
2. give a statement that the above action has been taken.

## **Destruction of documents**

09180 Documents relating to benefit claims are routinely destroyed at intervals. Where this has happened there can be no presumption as to the content of the missing documents<sup>1</sup>. DMs can take account of all available evidence, including secondary evidence, and decide on the balance of probabilities what the original documents might have contained.

**Note:** There is special guidance when recoverability is being considered under direct payment arrangements (see DMG 09123).

### **Example 1**

There is an overpayment because of capital which has not been taken into account. The claim form has been destroyed. The DM obtains a copy of the claim form in use at the time to establish what the claimant was asked. Having established there was a question about how much capital the claimant had, it is possible to ask the question whether, on the balance of probabilities, the claimant properly declared the capital amount, entered the wrong amount, or left the question blank.

### **Example 2**

An SPC overpayment was discovered when the claimant completed form PC2 and disclosed that he was in receipt of an occupational pension. The PC1 claim form had been destroyed. The DM applied the principle<sup>2</sup> that the law presumes that where administrative processes are conducted, things are done correctly unless it is proven otherwise i.e. there must have been an PC1 for the award of benefit to have been made. The fact that the overpayment occurred is far stronger than the possibility that the correct information was on the claim form.

The claimant argued he was sure he had put details of the occupational pension on the PC1, asking why would he put it in the PC2 but not the PC1? The DM considered the claimant's assertion and whether there were any other sources of evidence which would, on the balance of probabilities, support or disprove it.

*1 R(IS) 11/92; 2 CS/27/87*

- 09181 There may be cases where it is not possible to reconstruct the contents of the missing documents and DMs cannot show that the claimant misrepresented or failed to disclose. The overpayment is not recoverable unless
1. there is a criminal conviction for an offence which gave rise to the overpayment or
  2. the claimant says there was misrepresentation or failure to disclose or
  3. the claimant has made a later misrepresentation in which case the overpayment may be recoverable from the date of that misrepresentation.

## **Oral admissions**

- 09182 Where documentary evidence to support the overpayment decision cannot be obtained, an oral admission by a claimant may be sufficient evidence for the period to which it relates, if

1. there is a factual record of that admission or
2. the officer to whom the admission was made is available to confirm it in writing or in the event of an appeal be called as a witness.

**Note:** The oral admission by the claimant should contain enough information to support the overpayment decision.

- 09183 To support a decision on the grounds that a claimant was in paid F/T work the admission must

1. cover the whole of the recoverable part of the overpayment and
2. show that the definition of F/T work in the particular benefit regulation is satisfied.

### **Example**

A claimant is in receipt of IS. Sometime after he claims he states that his partner has been working P/T since before his claim.

Enquiries are made of his partner's employer and all the wages details are available.

The DM calculates the overpayment of IS from his date of claim on the basis of the information held by the DWP and decides it is recoverable because of the claimant's admitted innocent misrepresentation.

## **Criminal conviction**

- 09184 A criminal conviction for an offence which caused an overpayment shifts the burden of proof to the claimant for the period of the charges<sup>1</sup>. The DM needs a certificate of conviction stating the charges found guilty of from the appropriate court to show that the conviction is for the benefit and period at issue. Once this has been done the onus shifts to the claimant. This is because the onus of proof on the prosecution in criminal proceedings is a heavier one than on a DM before a tribunal.

*1 R(S) 2/80*

## **Refusal to give evidence**

- 09185 If there is some evidence (for example intermittent observation) of undisclosed work
1. the DM should regard the onus of proof as discharged if the claimant refuses to make a statement, **and**
  2. since the claimant has refused to state when the work started, it is reasonable to decide that the claimant was in work from the date the suspicion arose.

See DMG Chapter 29 for IS and JSA, DMG Chapter 52 for ESA and DMG Chapter 84 for SPC where a legal personal representative refuses to disclose how the capital in a late claimant's estate arose.

## **Direct payments**

- 09186 See DMG 09129 about evidence that the required notice was given.

09187 - 09195

# Recoverability - misrepresentation

## General

09196 Misrepresentation can occur where

1. a written statement made by a claimant in connection with a claim is incorrect or incomplete, even where there has been a full disclosure of the material fact in connection with an earlier claim for benefit<sup>1</sup> or
2. a written statement made by an interviewing officer based on information supplied by the claimant is found to be incorrect or incomplete (see DMG 09197) or
3. part of a claim form is left blank (see DMG 09198) or
4. an oral statement is incorrect or incomplete (see DMG 09199) or
5. an instrument of payment is presented for payment following a relevant change of circumstances (see DMG 09200) or
6. a coupon ES24JP is signed.

*1 R(SB) 3/90*

09197 Where a claimant alleges that disclosure of a material fact was made during an interview, but was not properly recorded by the interviewing officer, the DM should

1. consider the written documents and any evidence from the claimant about how the alleged disclosure took place and
2. decide, on a balance of probabilities whether the written statement was qualified orally at the interview<sup>1</sup>.

**Note:** The claimant is responsible for the correct completion of forms. The fact that a form was completed on the claimant's behalf does not lift this responsibility<sup>2</sup>.

*1 R(SB) 18/85; 2 R(IB) 14/96*

## Incomplete statements

09198 Misrepresentation is a positive act by the claimant<sup>1</sup>. However, it can also be an act of omission. The DM should give particular attention to what a claimant has actually represented on any incomplete statement.



### **Example 1**

Margaret has claimed JSA(Cont) and receives two occupational pensions. At Part 6 of the JSA1 claim form she declares receipt of one pension and is instructed to complete Part 19 of the form if she receives more than one pension. Margaret fails to declare receipt of the second pension. This omission is a misrepresentation.

### **Example 2**

Robert claims an increase of IB for his wife. His wife has boarders and on the claim form he is asked

“Does your spouse or partner have boarders or lodgers? (Yes or No) If yes, please say how much each of them pays”.

Robert makes no entry on this part of the form. The circumstances are such that it is reasonable for the DM to infer that there are no boarders or lodgers. The failure to answer the question is a misrepresentation.

*1 R(SB) 9/85*

## **Oral misrepresentation**

09199 If there is evidence of information provided orally by a claimant, such as a report on form A6 by the interviewing officer, and that information is found to be incorrect, the DM should regard the oral statement as a misrepresentation.

**Note:** It is difficult to prove that an oral statement was made and so difficult to prove the misrepresentation where reliance is placed on an oral statement. If the claimant appeals the written record should be produced as evidence, and the interviewing officer may be called as a witness.

## **Misrepresentation by action**

09200 Most payments are now made by direct payment, but in a few cases payment may be made by cheque. Each cheque contains a declaration to be signed by the claimant. In these cases, the DM should refer to the guidance at DMG 09215. In cases where the declaration has not been signed, then the claimant, when presenting the cheque for encashment, represents that they

1. believe there is currently an award in their favour **and**
2. are the beneficiary or they are acting on behalf of the beneficiary or estate.

If they know this is not so that is a misrepresentation.



## Circumstantial evidence of misrepresentation

09201 If direct evidence of misrepresentation is unavailable the DM may still consider misrepresentation where there is circumstantial evidence to support this. Examples of circumstantial evidence are

1. the claimant does not deny receiving the payments
2. benefit was paid by means of a cheque
3. the casefile holds evidence of the amount awarded.

## Directing further enquiries

09202 The DM

1. should not normally ask for direct evidence to be produced, or for circumstantial evidence to be sought, where it is not already available **and**
2. can usually decide recoverability on the alternative ground of failure to disclose, on the evidence already available (see also DMG 09175 and 09176).

## Knowledge of the material fact

09203 Misrepresentation can occur even though a claimant is not aware of the true position<sup>1</sup>. For example, if a claimant's wife conceals from him the fact that she has earnings of her own, a statement by the claimant that she has none may still be a misrepresentation.

*1 R(SB) 21/82; R(SB) 9/85*

09204 Whether a misrepresentation has occurred when the claimant was not aware of the material fact depends partly upon the wording of the declaration on the form that has been signed.

1. There is no misrepresentation<sup>1</sup> if the declaration on the form is qualified, as on many older postal claim forms, for example  
"Declaration: as far as I know, the information on this form is true and complete" **and** the claimant was not aware of the material fact at the time of signing

In this case the DM may go on to consider whether the claimant failed to disclose a material fact, if there is evidence that the claimant became aware of the fact at a later date (see DMG 09234 et seq).

2. The statement is a misrepresentation if the declaration on the form is not qualified, for example

"Declaration: the information on this form is true and complete".

Whether the claimant knew the material fact is irrelevant. The only exception is where claimants state that they did not know what they were signing (see DMG 09206 and DMG 09207).

*1 Jones & Sharples v. CAO [1994] 1 All ER (CA) 225*

09205 Where the declaration is made as in DMG 09204 1. and the material fact is income which was not entered on the claim form

1. if the income belongs to the claimant, the DM should accept without further enquiry that the claimant knew that it was being received,
2. if the income belongs to a claimant's partner, the claimant should be asked why it was not declared at the time the form was signed. If the claimant did not know of the income there is no misrepresentation. The DM should go on to consider whether the claimant failed to disclose a material fact. It is important to remember that knowledge of the material fact has to be shown in failure to disclose cases.

09206 A claimant or representative may state that an incorrectly completed form with a signed declaration is not a misrepresentation because the claimant completing the form did not know what they were doing<sup>1</sup>. This may happen where someone should have been appointed to run that claimant's affairs, and the claimant completed the forms in question. That claimant may not then be held responsible for the completion.

*1 R(IS) 4/06*

09207 Where it is claimed that a person is not responsible, the DM should consider the following points<sup>1</sup>

1. Non-responsibility is limited to those who are blind, illiterate or do not fully understand a particular form they have signed. This may be caused by poor education, illness or inborn incapacity and can be temporary or permanent.
2. Poor education, illness or inborn incapacity alone is not sufficient to show non-responsibility. People are expected to take reasonable steps to understand what they sign.
3. The burden of proof rests with persons who contend that they are not responsible. Those who are merely content to sign without taking the trouble to find out the general effect of the form cannot claim to be non-responsible.
4. People may contend that they are not responsible because, having signed the form, they believe it had one effect when in fact its effect was quite different. They must show that they had taken steps or been given information which gave grounds for the belief and there was a radical, serious or very substantial difference between what they signed and what they thought they were signing.

5. People are responsible where they were merely mistaken as to the legal effect of the form, whether the mistake was their own or that of an advisor.

**Note:** Non-responsibility may also be referred to as non est factum, which means “it is not his deed”.

*1 Saunders v. Anglia Building Society [1971] AC 1004*

09208 - 09214

## **Declarations on cheques**

09215 When a claimant signs a cheque they sign a declaration which states: “I am entitled to the money on this cheque”. Since no mention is made of reporting of facts which could affect the amount of payments, signing the declaration is normally only a misrepresentation where the award of benefit

1. ceased (see DMG 09032 - irregular encashments) or
2. continues and the claimant reports the cheque as lost, stolen or destroyed and a duplicate has been issued (see DMG 09224 - irregular encashments) or
3. has been corrected (see DMG 09032 - correction of accidental errors) or
4. was revised or superseded before any declaration is signed.

## **Declarations on Jobcentre Plus coupons (ES25JP)**

09216 Where a claimant does not report a relevant change of circumstance the DM should consider the declaration on the signed coupons (form ES25JP) and, if necessary, the JSA1 claim form to decide whether the claimant misrepresented.

09217 Claimants will have misrepresented by signing a coupon if

1. they have failed to report a change in their own or their dependant's circumstances (but see DMG 09221 where the change occurs after signing for an advance period) or
2. they have done any work which has not been declared.

### **Example 1**

A claimant who signs every fortnight on a Wednesday starts F/T work, continues to sign and does not declare the work. Some time later the Secretary of State receives information that the claimant has been working continuously. The claimant misrepresented on each form ES25JP signed during the period of the overpayment.

### **Example 2**

A claimant making a fresh claim for JSA on form JSA1 does not admit to working as a window cleaner. The situation comes to light many months later by which time a substantial overpayment has occurred. The DM decides that the direct cause of the overpayment was the claimant's misrepresentations on the ES25JP, during the overpayment period.

09218 To rely on misrepresentation on JSA coupons the DM should have

1. all the signed coupons relevant to the overpayment period (but see DMG 09201 and DMG 09219 where only a sample of coupons are available) **or**
2. an admission by the claimant that the misrepresentation had been made, with dates and specific periods covered.

09219 Where

1. only a sample of signed coupons is available for the overpayment period **and**
2. the claimant does not deny receiving the payments

the DM may still consider misrepresentation for those portions of the period for which no coupons are available, on any circumstantial evidence available (see DMG 09201).

09220 Misrepresentation cannot be relied on for any period for which the claimant has been excused signing. Failure to disclose should be considered for that portion of the overpayment period. This is because the payment of benefit was not made in consequence of a declaration.

### **Example**

A claimant does not declare employment which lasts 14 weeks (seven fortnights) and continues to sign for five of the fortnights involved, being excused signing for the remaining two fortnights. The DM decides that the claimant has misrepresented on signing the five coupons and that JSA overpaid in the remaining two fortnights was caused by the claimant's failure to disclose.

09221 If a change of circumstances occurs on a day after the claimant signs for an advance period, there is no misrepresentation on the coupon (see DMG 09222). The DM should consider failure to disclose.

09222 If the claimant is asked whether a specific change is likely to occur in the foreseeable future when signing for an advance period and

1. the reply is recorded **and**
2. there is evidence that the claimant knew of the impending material change when signing the coupon

then the DM may still rely on misrepresentation.

## **Declarations on JSA1 - compensation or occupational pensions**

09223 Claimants will misrepresent if they answer “no” to the relevant question in part six of form JSA1 and they are expecting to receive a compensation or an occupational pension. In order to rely on the claimant’s misrepresentation on form JSA1, where signed coupons are not available

1. there must be evidence, for example from an employer that the claimant knew, when signing form JSA1 that a compensation would be paid, **and**
2. the DM must be able to show that JSA would not have been paid had the question been answered correctly (see DMG 09201 - 09202).

**Note:** If there was a considerable delay before the compensation was received this action may not be possible because, had the correct answer been given, it would have been unreasonable to delay awarding JSA.

## **Irregular encashments**

09224 Irregular encashments arise where money has been obtained by the misuse of instrument of payments or by false representation.

### **Example 1**

Instrument of payment stolen and cashed by a third party.

### **Example 2**

Encashment by another person for a period after the death of the claimant. Where there is an overpayment of benefit as a result of late notification of death, the awarding decision must be superseded before the DM can consider whether the overpayment is recoverable<sup>1</sup>.

### **Example 3**

Duplicate payment obtained by a false declaration that the original instrument of payment was lost, stolen or destroyed when in fact it was cashed.

### **Example 4**

Alteration of the amount on an instrument of payment.

### **Example 5**

Duplicate or multiple claims (see DMG 09225).

*1 SS A Act 92, s 71(5A); SS Act 98, s 10(1)*

09225 Although payments as a result of duplicate or multiple claims are irregular encashments, there are grounds to revise or supersede the awards as there was

1. no entitlement to any of the payments **or**
2. some entitlement under the person’s real identity but not to the amount paid.



### **Example 1**

A claimant receiving JSA(IB) makes duplicate claims under a variety of names at four other Jobcentre Plus offices. There are grounds to revise the awards on the fraudulent claims. The decisions were made in ignorance of the fact that the claimant was already receiving benefit under the proper name and at the correct rate.

### **Example 2**

Someone with no personal entitlement to ESA(Cont) impersonates a relative and makes a claim in that person's name. ESA(Cont) is awarded on the relative's NI contribution record. There are grounds to revise the award as the decision was made in ignorance of a material fact. The claimant was not the person declared on the claim form and was not entitled to benefit under the true identity.

09226 The DM should consider the following evidence

1. the identity of the person alleged to have misrepresented **and**
2. either the certificate of conviction, where that person has been prosecuted in connection with the irregular encashment, or a written admission, or both a certificate of conviction and a written admission.

As fraud investigations will have been made some or all of the relevant instruments of payment should also be available. The DM may therefore decide recoverability on the evidence of the instrument of payment and the above points in this paragraph.

**Note:** Where a written admission by the claimant or a certificate of conviction is not available, the DM should consider other evidence. This may be a record of the interview under caution or in Scotland, a record of an oral admission before two witnesses.

09227 Where no instruments of payment are held for some or all of the overpayment period the DM should decide recoverability on

1. the evidence of the certificate of conviction, **or**
2. the admission, **or**
3. any other evidence that may be available.

09228 Conviction shifts the burden of proof from the DM to the claimant (see DMG 09184). But an admission of misrepresentation on its own does not. If no certificate of conviction or cashed instruments of payment are held and the person denies misrepresenting despite an earlier admission, the DM may only satisfy the burden of proof if

1. the denial is inherently improbable or self-contradictory (see DMG 09179), **or**

2. there is other evidence available, for example the testimony of a handwriting expert or direct evidence from a witness such as a PO® clerk, who saw the act of misrepresentation (see DMG 09201).

09229 - 09233





# Recoverability - failure to disclose

## Secretary of State's instructions

09234 The Secretary of State may require a claimant or beneficiary to provide information or evidence or to notify changes of circumstances that may affect either

1. continuing entitlement to the award of a benefit or
2. the payment of benefit<sup>1</sup>.

*1 SS (C&P) Regs, reg 32(1A); reg 32(1B); JSA Regs, reg 24*

## Knowledge of the material fact

09235 Claimants have a duty to disclose<sup>1</sup>

1. material facts (see DMG 09166) that are known to them **and**
2. material facts which they ought to know by making reasonable enquiries<sup>2</sup>.

**Note:** The burden of enquiry placed upon them, varies from case to case depending on the nature of the material fact and how easily they could have discovered it.

*1 SS (C&P) Regs, reg 32(1); 2 R(SB) 28/83*

### Example 1

David failed to disclose that his wife had earnings even though she was away from home at regular intervals, leaving the children in his care. In this case, it is reasonable to suppose that David ought to have known why she was absent.

### Example 2

Asif's solicitor received £15,000 damages on behalf of his client who did not know that his solicitor had received the money. If Asif is unskilled in business matters it is unreasonable to suppose that he ought to have known about the money unless he

1. had turned a blind eye to whether his solicitor had received the money **or**
2. made enquiries about the receipt of the money.

## Disclosure

09236 In order for the claimant to discharge their duty to disclose, a disclosure must

1. be of the material fact itself **and**
2. be made in relation to the claimant's own claim for benefit **and**
3. be made in the manner and to the place instructed by the Secretary of State<sup>1</sup> (see also DMG 09245).

*1 R(SB) 54/83; R(SB) 15/87; Hinchy v Secretary of State for Work and Pensions; R(IS) 7/05*

- 09237 Except in cases where regulations<sup>1</sup> specifically require the claimant to report changes of circumstances in writing, an oral disclosure will suffice if it meets the above criteria<sup>2</sup>.

*1 SS (C&P) Regs, reg 32; JSA Regs, reg 24; 2 R(SB) 12/84*

- 09238 Disclosure means “to reveal”<sup>1</sup> a material fact which, as far as the claimant (i.e. the discloser) knows, is unknown to the person who is owed the disclosure<sup>2</sup>, (i.e. the DM).

*1 Hinchy v Secretary of State for Work and Pensions EWCA [2003] Civ 138; R(IS) 7/05; 2 R(SB) 15/87*

## **Effect of a failure to disclose**

- 09239 Where the claimant has not complied with issued instructions and therefore fails to disclose information or notify a change of circumstances, known as the ‘material fact’ (see DMG 09166), any resulting overpayment may be recoverable from them<sup>1</sup>. The recoverable amount is limited to the amount of benefit that would not have been paid if the claimant had actually disclosed at the correct time. However, the DM must ensure that the claimant was under a duty to disclose<sup>2</sup>.

*1 SS A Act 92, s 71(1); 2 SS (C&P) Regs, reg 32(1), 32(1A) & 32(1B)*

## **When a failure to disclose arises**

- 09240 A failure to disclose a material fact arises<sup>1</sup>
1. when a change of circumstances occurs between written statements of circumstances, e.g. the claim form and a review form, and the change is not reported or
  2. where a written statement is inaccurate or incomplete.

*1 SS A Act 92, s 71(1); SS (C&P) Regs, reg 32*

### **Example**

Joe claims JSA on form JSA1 dated 1.9.09. At that time he was not receiving an occupational pension. He is awarded JSA(Cont) from 4.9.09. However, he is subsequently awarded a pension and payments begin on 4.1.10. On 25.2.10, the local office conduct a periodical review of Joe’s entitlement to benefit and he completes a review form declaring that he has been in receipt of an occupational pension since 4.1.10. Joe has failed to declare receipt of an occupational pension throughout the period from 4.1.10 to 24.2.10.

## When a failure to disclose does not arise

09241 Disclosure is not expected where the information is within public knowledge and therefore known to the DM.

### Example

Frank is in receipt of RP and SPC. He is not expected to report to the office handling his SPC payments that his RP payments have increased due to annual uprating.

## Duty to disclose other than for JSA

09242 The claimant must disclose a material fact where they

1. have been clearly and unambiguously advised of the need to disclose the fact<sup>1</sup> and
2. were aware of the fact or
3. ought to have been aware of the fact by making reasonable enquiries<sup>2</sup>.

**Note:** The burden of enquiry placed upon the claimant varies from case to case depending on the nature of the material fact and how easily they could have discovered it.

*1 R(IB) 4/07; R(IS) 9/06; 2 R(SB) 28/83*

## Instructions to claimants

09243 [\[See Memo DMG 11/16\]](#) Instructions to claimants about the notification of information are usually given in claim forms, notes that accompany claim forms and leaflets. These can be accepted as sufficient to inform the claimant of their obligation to disclose any change of circumstances as listed therein. However, the instructions must be clear and unambiguous<sup>1</sup>.

*1 R(IS) 9/06; R(IB) 4/07*

09244 The claimant should comply with the instructions given to them. They are not entitled to form views about how the benefit system works or what knowledge the relevant DM might have<sup>1</sup>. As claim forms and leaflets are periodically updated, the DM will need to ensure that they have a copy of the relevant version when looking at what instructions the claimant has been given and when.

*1 Hinchy v Secretary of State for Work and Pensions [2005] 1 WLR 967; R(IS) 7/05*

### Example

Susan was in receipt of DLA and IS with a DP. She received an INF4 leaflet in relation to her IS award which told her to report if her income went up or down. Her award of DLA came to an end. She did not tell the office administering her IS benefit payments. She failed to disclose the material fact that her level of income had changed. The overpayment of the DP was recoverable from her.

## Modification of instructions

09245 Notwithstanding the claimant's instructions regarding their duty to disclose as discussed in DMG 09236 to DMG 09238, it is possible for those instructions to be modified by an officer acting on behalf of the Secretary of State. The effect of this modification is that the claimant no longer has to do all or part of what they were originally required to do<sup>1</sup>. A modification can be done orally or in writing and where a duty to disclose has been modified, the DM should consider what the modified duty was. This should be based on what was said to the claimant. For example

1. if the claimant was, in effect, told that further disclosure was unnecessary, there will be no duty to disclose from that point onwards. It follows that there will be no failure to disclose from then on or
2. if the claimant was not, in effect, told that further disclosure was unnecessary, the DM should consider what the claimant was, in effect, still required to do. The DM should consider which parts of the previous instructions were changed and which were not changed. The DM should then determine what the claimant still had to disclose, and when, how and to whom it had to be disclosed. This will form the claimant's new duty to disclose from the date of modification onwards. There will be a failure to disclose only if the claimant does not comply with the new duty.

*1 R(A) 2/06*

09246

## Additional duty to disclose

09247 In addition to the duty described in DMG 09242, the claimant also has a duty to disclose if

1. they were aware of the material fact **and**
2. the fact represented a change of circumstances **and**
3. it was reasonable to expect the claimant to know that their benefit might be affected by the change in circumstances **and**
4. they did not report the change as soon as reasonably practicable after it occurred<sup>1</sup> by giving notice of the change
  - 4.1 to the appropriate office<sup>2</sup> or postal address
  - 4.2 in writing or by telephone or
  - 4.3 in whatever form specified by the Secretary of State.

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

## Reasonably to be expected

09248 The test is what could reasonably be expected of the claimant concerned, having regard to their circumstances. It is not necessary for the claimant to understand the actual impact of the change. The DM must look at the information given to the claimant about

1. the conditions of entitlement to the benefit **and**
2. why it had been decided that the claimant satisfied those conditions and thus became entitled to the benefit **and**
3. what changes the claimant may have been told to notify.

### Example

Martin was in receipt of the mobility component of DLA at the higher rate. He had a hip replacement operation and after a period of recuperation, his mobility has improved. The "Notes" he was given with his claim form included - "We need to know if anything you told us changes about how your illness or disability affects you. Please tell us if things get easier or more difficult for you. And tell us if you need more or less help". This is sufficient to put him under a duty to disclose the improvement in his condition.

## Timing of the disclosure

09249 Disclosure has to be made as soon as possible to be effective. However, there is no requirement for a claimant who is aware of a change that is about to take place, to notify the relevant office in advance<sup>1</sup>. However, see DMG 09250 - 09252 for JSA claimants.

### Example

Karen is entitled to ESA(Cont) and began PWHL on 5.7.10. The earnings limit for PWHL is £93.00 a week, but Karen currently earns £91.00 a week. Karen's employer has told her that she will receive a wage increase in November 2010. Karen is not required to disclose the increase in her earnings until it comes into effect.

*1 R(SB) 3/81*

## Duty to disclose for JSA

09250 Just as for other benefits, the Secretary of State may give the person instructions to notify specific changes in connection with payment of JSA claimed or awarded<sup>1</sup>. This may be contained in, for example, information leaflets, letters or notes. Provided that the instruction to disclose a particular fact is clear and unambiguous, an omission to do so will be a breach of their duty to disclose<sup>2</sup>.

*1 JSA Regs, reg 24(5); reg 24(5A); 2 R(IB) 4/07; R(IS) 9/06*



09251 In addition to the duty set out in DMG 09250 above the claimant must tell the Secretary of State of any change of circumstances which has occurred or they are aware is likely to occur which they might reasonably be expected to know might affect

1. the continuing entitlement to JSA, or in the case of a joint-claim couple, the entitlement of the couple to a joint-claim for JSA or
2. the payment of JSA or
3. the amount of JSA.

09252 They must notify such changes as soon as reasonably practicable after

1. the change occurs or
2. they become aware of the likely change

by giving notice in writing or by telephone, unless the Secretary of State accepts it in another form, to an office of the DWP specified by the Secretary of State<sup>1</sup>.

*1 JSA Regs, reg 24(7)*

## **Disclosure where one benefit affects another**

09253 A claimant's duty to report changes in circumstances may include reporting the award of, or changes to, other benefits where one benefit affects another. The essential fact which the DM should identify is what the Secretary of State instructed the claimant to do, including whether there has been any modification of those instructions (see DMG 09245). The claimant is not entitled to make any assumptions about the administrative arrangements of the department. In particular they are not entitled to assume the existence of infallible channels of communication between one office and another<sup>1</sup>.

*1 R(IS) 7/05*

### **Example**

Edward is in receipt of RP and SPC on behalf of himself and his wife, Barbara. Local office A administers his payments of SPC. Local office B administers his payments of RP. These offices are not in the same building and there are no channels of communication between them. Edward has received leaflet INF4(PC) which instructs him to telephone or write to the office shown in the letter that advised him of his SPC award if a change of circumstances, such as the death of a spouse or partner occurs. The address and telephone number is that of local office A. Edward has received similar instructions to report changes of circumstances, in respect of his RP award, to local office B. When Barbara dies, Edward reports her death to local office B and assumes that the information will be passed on to the relevant officials at local office A. As there is no process for such an exchange of information between local office A and B, Edward has not discharged his duty to disclose until he reports Barbara's death to local office A.

## **Claimant alleges that disclosure made**

09254 Where a claimant alleges that the material fact was disclosed orally or in writing, but no trace of the disclosure can be found, the DM should decide whether disclosure was actually made as per DMG 09177 - 09179. If the DM decides that disclosure

1. was not made, they should consider recoverability of the overpayment in the normal way **or**
2. was made, the DM should consider whether the disclosure was sufficient as in DMG 09236.

09255

## **Disclosure by person(s) other than the claimant**

09256 The duty to disclose which is placed on the claimant, also extends to

1. appointees (see DMG 09280)
2. legally appointed representatives
3. both members of a joint-claim couple (see DMG 09250 - 09252)
4. guardians.

Where recovery is sought from one of the people listed above, the DM must be able to show that the person has a legal duty to disclose.

09257 Where an appointee is in place, a disclosure by them is equivalent to a disclosure by the claimant.

09258 Where an appointee is not in place, disclosure by a third party (other than those listed at DMG 09256) is sufficient only if

1. the information is given in connection with the claimant's own benefit and according to the Secretary of State's instructions **and**
2. the claimant is aware that the information had been given in that way **and**
3. in the circumstances it is reasonable for the claimant to believe it is unnecessary to take any personal action<sup>1</sup>.

A casual or incidental disclosure by some other person is not sufficient to satisfy the second or third condition. However, see DMG 09238.

*1 R(SB) 15/87*

## **Alternative methods of notification of a change of circumstances**

09259 DMG 04150 - 04158 gives guidance on notifying changes of circumstances including alternative methods of notifying a death.

## **Effect on overpayment decision making**

09260 A death is a relevant change of circumstances which will affect entitlement to, and payment of, benefit. If the death is notified late, this may result in an overpayment of benefit and the DM may be asked to consider whether any such an overpayment is recoverable on the basis that there has been a failure to disclose<sup>1</sup>. In the case of a death, the duty to disclose may be imposed on another person, i.e. an appointee, a legally appointed representative or both members of a JSA joint-claim couple. If this is the case, the DM will need to establish whether the person concerned has discharged their duty to disclose by notifying the death using use of one of the alternative means described in DMG 04150 - DMG 04158.

*1 SS A Act 92, s 71(1)*

09261 - 09265



# Recoverability - other considerations

## Causation

### General

- 09266 For an overpayment to be recoverable<sup>1</sup>, 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 65<sup>th</sup> 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 broken<sup>1</sup>.

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.

*1DugganvCAO;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 made<sup>1</sup> 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 fact<sup>1</sup>. 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 claimant<sup>2</sup>. 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 mean<sup>1</sup>

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 legislation<sup>1</sup> **or**
2. for those appointed by a Court, from legislation<sup>2</sup>.

*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 benefits<sup>1</sup>. 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 parties<sup>2</sup>.

*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 exceptions<sup>1</sup>.

*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 09280<sup>1</sup>, 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 own<sup>1</sup>.

*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 estate<sup>1</sup>.

*1R(SB)21/82;SecretaryofStateforSocialServicesv.Solly*

09292 - 09294



## Misrepresentation or failure to disclose - 16/17 year olds

09295 Recoverability is decided under special arrangements<sup>1</sup> where misrepresentation or failure to disclose results in overpaid JSA where

1. benefit was awarded to a 16/17 year old following a Secretary of State direction<sup>2</sup> **and**
2. the overpayment arose during the relevant period (see DMG 09297).

*1 SSA Act 92, s 71A(1); 2 JS Act 95, s 16*

09296 The DM should revise or supersede the decision awarding JSA before deciding recoverability.

09297 The **relevant period** for the purposes of DMG 09295 is the

1. date the change of circumstances occurred up to and including the date the Secretary of State<sup>1</sup> revokes his direction as a result of that change of circumstance **or**
2. whole of the period covered by a direction which the Secretary of State has revoked<sup>2</sup> because he is satisfied that he gave it in ignorance of a material fact, or based it on a mistake as to a material fact.

*1 SSA Act 92, s 71A(2)(a); 2 s 71A(2)(b)*

## Secretary of State certificate

09298 Having revoked the direction the Secretary of State may provide a certificate<sup>1</sup> stating

1. that there has been a misrepresentation or failure to disclose **and**
2. the identity of the person responsible for the misrepresentation or failure to disclose **and**
3. that JSA has been paid because of the misrepresentation or failure **and**
4. the period of payment.

*1 SSA Act 92, s 71A(3)-(6)*

09299 The DM should not consider any questions of recoverability unless the certificate as in DMG 09298 is provided.

## The role of the DM

09300 The Secretary of State's certificate is conclusive on all the matters certified<sup>1</sup>. The DM decides that

1. there has been a misrepresentation or failure to disclose by the person certified as responsible **and**
2. the misrepresentation or failure caused an overpayment of JSA for the period certified

the Secretary of State is entitled to recover the amount overpaid.

*1 SSA Act 92, s 71A(6)*

09301 - 09319

# Adjustments - prevention of duplication of payments

## General

09320 This section explains how the DM deals with payments already made when awarding benefit for a past period. Note that a new award can be made on revision or supersession or appeal as well as on an original claim. For benefits other than IS other provisions<sup>1</sup> may apply (see DMG Chapter 17 for further guidance).

*ISS(OB)Regs*

09321 The purpose of the provisions is to prevent double payment for the same period of

1. two awards of the same benefit **or**
2. awards of certain different benefits **or**
3. an award of benefit and some other types of payment.

09322 Double payments may be prevented by

1. taking POAOB into account (see DMG 09323 et seq)
2. offset (see DMG 09340 et seq)
3. abatement (see DMG 09370 et seq)
4. recoupment (see DMG 09501 et seq)

Separate provisions are made for IIDB offsets (see DMG Chapter 69).



# Adjustments - payments on account of benefit

## Introduction

09323 Under certain conditions<sup>1</sup>, payments can be made which are not covered by an award of benefit. These discretionary payments, formerly known as interim payments, are made by the Secretary of State and, with effect from 1.4.13, are known as POAOB.

**Note:** Operational guidance is available for the circumstances when a POAOB can be made and how much may be paid.

*1 SSA Act 92, s 5(1)(r); SS (POAOB) Regs, regs 3 to 9*

## Definition of “benefit”

09324 Benefit means<sup>1</sup>

1. IS
2. SPC
3. benefits under specified legislation<sup>2</sup> (except AA, DLA and GA).

**Note:** DMs should note that this definition also includes UC, new style ESA and new style JSA. A version of this guidance for these benefits is in ADM Chapter D1. ADM Chapter M1 contains guidance on the meaning of new style ESA and new style JSA.

*1 SS (POAOB) Regs, reg 3(1); 2 SS CB Act 92, Parts 2 to 5*

## Bringing payments on account of benefit into account

09325 Where it is practical to do so and where a POAOB was made in anticipation of an award of benefit, it should be brought into account by means of an offset against the sum payable to the claimant under the award<sup>1</sup>.

**Note:** Operational guidance is available for details of repayment schedules.

*1 SSA Act 92, s 71ZG; SS (POAOB) Regs, reg 10(a)*

09326 Where an amount, whether or not made in anticipation of an award of benefit, is not offset as in DMG 09325 above, the DM must deduct a POAOB from

1. the sum payable to the claimant under the award of benefit on account of which it was made or
2. any sum payable under any subsequent award to the claimant of that benefit<sup>1</sup>.

*1 SS (POAOB) Regs, reg 10(b)*

## Savings provision

09327 DMs should note that the previous provisions<sup>1</sup> continue to apply in respect of

1. interim payment applications made before 1.4.13 **and**
2. interim payments made before 1.4.13<sup>2</sup>.

*ISS(POR)Regs,Part2;2SS(POAOB)Regs,reg19*

09328 - 09339

# Adjustments - offsets

## Introduction

09340 Where a claimant is due arrears of benefit and has already received payment of the same or a different benefit under an award, the amount paid under the first award for a period covered by the subsequent award must be<sup>1</sup>

1. offset against the total amount due under the second award **and**
2. treated as properly paid on account of the arrears up to a maximum of the amount previously paid.

Offsetting is usually needed where an award is varied on appeal or revised or superseded. This applies whether or not the amount of benefit payable under the new award is more than the original.

*1 SS (POR) Regs, reg 5(1)*

09341 The period of the arrears may include periods that are not common to the two awards. The only restrictions on offsetting<sup>1</sup> are that

1. there must be a period common to the two awards
2. benefit paid can only be offset against arrears due before the date of the new decision<sup>2</sup> but arrears due for a period of suspension cannot be included in the offset calculation<sup>3</sup>
3. the circumstances set out in regulations must apply<sup>4</sup>. For guidance on the application of the offset rules to each case see DMG 09343
4. any amount which has been determined to be a recoverable overpayment cannot be offset<sup>5</sup>.

*1 SS (POR) Regs, reg 5; 2 reg 5(1); 3 R(DLA) 2/07; 4 reg 5(2), Case 1-5;  
5 SS A Act 92, s 71(1); SS (POR) Regs, reg 6*

09342 The DM should note that

1. the DM can make an offset decision at any time before the arrears are paid
2. whenever possible DMs should include the offset in the new awarding decision.

The DM should ensure that any offset of benefit is dealt with before considering whether any benefit has been overpaid. This is because a recoverable overpayment decision prevents the recoverable amount from being considered for offset later on<sup>1</sup>.

*1 SS (POR) Regs, reg 6*



## **Payment under an award which is varied on appeal, revised or superseded**

09343 Arrears of benefit should be reduced by the amount already paid<sup>1</sup> where

1. a person has been paid benefit or shared additional pension<sup>2</sup> under an award  
and
2. following an appeal, revision or supersession, the same benefit is awarded at  
a different rate

Arrears of benefit means the whole amount awarded for the period. An offset is needed even where the new award is the same or less than the one it replaces.

*1 SS (POR) Regs, reg 5(1), (2) & (6) Case 1; 2 SS CB Act 92, s 55A*

### **Example 1**

A claimant is awarded and paid RP. The contribution record is later revised and the DM revises the decision and awards full rate RP. The revised decision includes an offset of the lower rate RP paid against the arrears of the higher rate now awarded. The amount paid under the first award is treated as properly paid on account of the new award.

### **Example 2**

IS is awarded and paid at the incorrect rates of £40 for seven weeks followed by £20 for ten weeks. On appeal the claimant is found to be entitled to £30 per week for the whole period. The arrears under the new award amount to £510. The FtT is able to offset the whole of the amount paid under the previous award (£480).

### **Example 3**

The claimant is awarded an increase of SAP but later their election is changed to a lump sum. The award is revised and the amount of increase already paid is offset against the amount of lump sum now due.

## **Subsequent award or payment of another benefit in lieu**

09344 Where

1. a person has been paid one benefit and
2. a different benefit becomes payable

the amount already paid should be offset against the new award<sup>1</sup>.

*1 SS (POR) Regs, reg 5(1) & (2), Case 2*

09345 This usually happens when the conditions for the two benefits cannot be satisfied at the same time. For example a condition for the payment of JSA is that the claimant is capable of work and the condition for IB is that the claimant is incapable of work. A list of incompatible benefits is at DMG Chapter 17 Appendix 1.

### Example

A claimant in receipt of JSA suffers a broken leg playing football. JSA is paid for a further three weeks because attendance at the Jobcentre is excused due to the closure of the Jobcentre during a holiday period. A claim for IB is then made from the date of the accident. The DM supersedes and disallows JSA on the ground that the claimant is not capable of work. The DM awards IB instead and offsets the amount of JSA paid, against the arrears of benefit under the new award.

Although JSA was paid at a higher rate than IB for the period in question, there are sufficient arrears of IB to offset the whole of the JSA. This is because the DM did not make the new decision until two weeks after JSA had ceased to be paid and the arrears amounted to five weeks IB.

09346 If a claim is made and the DM knows that another benefit is in payment, the DM should

1. consider the conditions of entitlement for the whole period **and**
2. make a decision including, where necessary, a revision of the original award.

This is very important in the case of a late claim when disqualification may be involved, for example if a woman delays claiming MA and continues to receive JSA into the MAP.

**Note:** The DM should not make an award from a 'safe date' to avoid the need for an offset decision.

09347 If decisions on the two benefits are normally made by DMs in different offices, the DM dealing with the new benefit should take all the action on the claim, including revision or supersession of the original award. Where necessary, a DM considering revision or supersession in these circumstances should liaise with the DM who is responsible for the benefit concerned.

09348 The DM should take similar action when

1. claimants have been paid benefit to which they are **entitled and**
2. it is later found that it should not have been payable because another benefit has priority.

### CHB and SDA, IB(Y) or ESA(Y)

09349 The offset provisions apply where either<sup>1</sup>

1. a person has been awarded and paid CHB for a period in respect of which SDA, IB(Y) or ESA(Y) is subsequently determined to be payable to the child concerned **or**
2. SDA, IB(Y) or ESA(Y) is awarded and paid for a period in respect of which CHB is subsequently awarded to someone else, the child concerned in the subsequent determination being the beneficiary of the original award.

### Example

David becomes entitled to ESA(Y) from 4.8.10. However, his mother has been paid CHB up to and including 15.8.10. The amount of CHB paid to David's mother for the period from 4.8.10 to 15.8.10 should be treated as paid on account of the ESA(Y) now awarded to David for the period from 4.8.10 to 15.8.10.

*1 SS (POR) Regs, reg 5(1) & (2), Case 3*

## Increase of benefit for dependants

09350 When a personal benefit is awarded to someone for whom a dependency increase has been paid, the award of dependency benefit should be revised or superseded<sup>1</sup>. The revised or superseded decision should make the dependency benefit

1. not payable or
2. payable at a reduced rate

*1 SS Act 92, s 25(1)(b)*

09351 The provision also applies when it is decided that another person

1. is entitled to dependency benefit **and**
2. has the right to be paid instead of the person who was originally awarded the dependency increase

09352 In both these situations the amount paid under the first award should be offset and treated as paid on account of the later award<sup>1</sup>.

*1 SS (POR) Regs, reg 5(1) & (2), Case 4*

### Example 1

A man is paid IB with an increase for his wife who later becomes entitled to IB(Y) in her own right. Arrears of IB(Y) are due for part of the period for which IB was paid. The award of IB is superseded from the date IB(Y) is awarded. The overpayment question is not considered by the DM. The amount of increase of IB paid for the period after IB(Y) is awarded is offset and treated as paid on account of arrears of IB(Y) due.

### Example 2

A man who is separated from his wife receives an increase of RP for his child. The child lives with her mother who becomes entitled to IB from a later date. An increase of IB is awarded for the child in priority to the increase of RP. The DM supersedes the award of RP and decides the increase of RP is not payable. The amount of the increase paid to the man from the date IB is awarded is offset and treated as properly paid on account of IB payable to the child's mother.

## **Increase paid for a partner**

09353 The offset provisions also apply where

1. an increase of benefit is in payment to a claimant for a partner **and**
2. that partner is awarded a personal benefit<sup>1</sup>

The DM should offset any amount paid as an increase for the partner and treat it as paid on account of the arrears of personal benefit awarded. "Partner" means the same as it does for IS<sup>2</sup>.

*1 SS (POR) Regs, reg 5(1) & (2), Case 5; 2 IS (Gen) Regs, reg 2*

### **Example**

A man and woman, each receiving JSA(IB), go to live at the same address. The DM determines that they are LTAHAW. The woman's JSA(IB) is superseded and disallowed and the man is paid the rate for a couple. On appeal the tribunal decide that the man and woman are not, and have never been, LTAHAW. The difference between the JSA(IB) payable to the man as one of a couple, and the JSA(IB) payable to him as a single person, is offset and treated as paid on account of the arrears of JSA(IB) due to the woman.

## **SPC, IS, JSA(IB), ESA(IR) and UC - effects of deductions from overpayments on subsequent benefit awards**

09354 Where

1. the DM decides that there is a recoverable overpayment from a person or their partner **and**
2. that overpayment has been reduced by an additional entitlement to SPC, IS<sup>1</sup>, JSA(IB), ESA(IR) or UC (see DMG 09081 et seq) **and**
3. it is then decided that the person or their partner with the additional entitlement is due arrears for the period for which the additional entitlement is also due

the DM should offset the additional entitlement against the arrears due for that period<sup>2</sup>.

*1 SS (POR) Regs, reg 13(1)(b); 2 reg 5(3)*

### **Example**

A recoverable overpayment is caused because an IS claimant represents on his claim form that he does no work, when in fact he is receiving earnings from P/T work. In calculating the overpayment the DM discovers that the claimant has been paid for three children instead of four. The arrears due are deducted from the recoverable overpayment.

Later it is established that the claimant was entitled to DP. The amount due for the fourth child which had been deducted from the overpayment is offset against the arrears of the DP. The offset is limited to the period for which the increase for the fourth child and of DP are both awarded.

- 09355 If there are still some arrears of benefit which have not been paid, after offsetting as in DMG 09354, the DM cannot offset any additional amount of the recoverable overpayment. Recovery of the overpayment from the remaining arrears may be considered in the normal way.

09356 - 09369

# Adjustments - abatements

## Introduction

09370 SPC, IS, JSA(IB) or ESA(IR) may be recovered if it would not have been paid if another income had been paid at the correct time<sup>1</sup>. There are three methods of recovery<sup>2</sup>. These are

1. abatement of arrears of UK benefits or
2. receipt from arrears of EC benefits or
3. deductions from benefit or direct from the claimant where neither of the above applies.

*1 SSA Act 92, s 74(1)(b) & (2)(b); 2 SS (POR) Regs, reg 7-11*

09371

## Abatements of United Kingdom benefits

09372 The amount of a prescribed payment of a UK benefit is reduced by the amount calculated as in DMG 09375<sup>1</sup> where

1. the prescribed payment (see DMG 09373) is not made on or before the prescribed date (see DMG 09374) for that payment **and**
2. it is decided that an amount of SPC, IS, JSA(IB) or ESA(IR) has been paid that would not have been paid if the prescribed payment had been made at the correct time.

**Note:** DMs should note that, with the exception of joint-claim cases, a deduction cannot be made in relation to the claimant who is a member of a couple when the prescribed payment arrears are paid to the other member of that couple.

*1 SSA Act 92, s 74(2)*

## Prescribed payments

09373 [\[See Memo DMG 11/16\]](#) A prescribed payment can be

1. any benefit under the Act<sup>1</sup>, except a gratuity or WPT<sup>2</sup>
2. CHB (including OPB<sup>3</sup>)
3. WDP or WWP which is not a gratuity and any payment which the Secretary of State accepts as similar to such a pension<sup>4</sup>
4. an allowance paid under the Job Release Act<sup>5</sup>
5. training allowance<sup>6</sup>
6. Child maintenance for the initial period<sup>7</sup> (see DMG 09378)
7. WPA<sup>8</sup>
8. receipts from EC benefits<sup>9</sup>



9. JSA(Cont)<sup>10</sup>

10. Financial Assistance Scheme payments<sup>11</sup>

11. ESA(Cont)<sup>12</sup>

12. PIP<sup>13</sup>.

*1 SS CB Act 92; 2 R(SB) 28/85; 3 SS (POR) Regs, reg 8(1)(b); 4 reg 8(1)(d); 5 reg 8(1)(e); 6 reg 8(1)(f); 7 reg 7(1)(b); 8 reg 8(1)(i); 9 reg 8(1)(j); 10 reg 8(1); 11 reg 8(1)(k); 12 reg 8(1)(l); 13 reg 8(1)(aa)*

## **Prescribed date**

09374 The prescribed date is the date the receipt of, or entitlement to the benefit, would have to be notified to the Secretary of State in time for it to be taken into account in the SPC, IS, JSA(IB) or ESA(IR) assessment<sup>1</sup>. This means that an amount can be recovered if the

1. prescribed payment has not been made **and**
2. Secretary of State was notified of entitlement to the payment and the SPC, IS, JSA(IB) or ESA(IR) award could not be revised or superseded.

*1 SS (POR) Regs, reg 8(2); R(SB) 28/85*

## **Calculation of amount to be recovered**

09375 The amount to be recovered should be worked out (see Annex 2) by comparing the amount of

1. SPC, IS, JSA(IB) or ESA(IR) paid **and**
2. SPC, IS, JSA(IB) or ESA(IR) which would have been paid if the prescribed payment had been made at the correct time.

**Note:** The amount to be recovered in any week cannot be more than the amount of prescribed benefit which should have been taken into account in that week.

09376

## **SF payments**

09377 SF payments are not part of the SPC, IS, JSA(IB) or ESA(IR) schemes and should not be taken into account for recovery.

## **Child maintenance**

09378 Recovery of IS, JSA(IB) or ESA(IR) from arrears of child maintenance is limited to the amount paid in each week of the initial payment period<sup>1</sup>. This is the period between the date on which liability to pay maintenance begins and the date on which regular payments of child maintenance are to start.

*1 SSA Act 92, s 74(1)*



09379 The initial payment period is made up of maintenance periods of seven days<sup>1</sup>. The prescribed date for each payment due within the period is the last day of the

1. seven day maintenance period<sup>2</sup> or
2. initial payment period if that is not a complete seven days<sup>3</sup>.

*1 CS (MAP) Regs, reg 33; 2 SS (POR) Regs, reg 7(3); 3 reg 7(4)*

09380 The Child Maintenance and Enforcement Commission will notify the DM of the

1. dates of the initial payment period **and**
2. prescribed dates of each weekly maintenance period during the initial payment period.

09381 The DM should

1. calculate the amount of IS, JSA(IB) or ESA(IR) which would not have been paid if the child maintenance had been paid at the correct time **and**
2. decide the amount of IS, JSA(IB) or ESA(IR) which is recoverable

The Secretary of State will then consider recovery.

## **Receipts from European Community benefits**

09382 From 1.1.94 the guidance in DMG 09383 - 09388 applies to payments of benefits from the EEA<sup>1</sup>. This includes EC benefits and those from certain EFTA countries (see DMG Volume 2). For ease of reference these benefits are all referred to as EC benefits in the following paragraphs.

*1 EEA Agreement; European Economic Area Act 1993*

09383 Where

1. a payment of EC benefit is not made on or before the prescribed date for the payment (see DMG 09385) **and**
2. an amount of SPC, IS, JSA(IB) or ESA(IR) has been paid that would not have been paid if the prescribed payment had been made on the prescribed date

the Secretary of State is entitled to receive from the EC benefit the amount calculated in the latter point<sup>1</sup>.

**Note:** DMs should note that, with the exception of joint-claim cases, a deduction cannot be made in relation to the claimant who is a member of a couple when the prescribed payment arrears are paid to the other member of that couple.

*1 SSA Act 92, s 74(2)*

## **European Community benefits**

09384 In DMG 09382, an EC benefit is any payment of benefit under the legislation of any EEA country other than the UK<sup>1</sup>. But see DMG Volume 2 - International Subjects -

where benefit is payable under a member state's legislation before the member state joined the EC or for reciprocal agreements with non EC countries.

*1 SS (POR) Regs, reg 8(1)(g)*

### **Prescribed date**

09385 In DMG 09383 the prescribed date is the date by which receipt of, or entitlement to the EC benefit would have to be notified to the Secretary of State for it to be taken into account in the assessment<sup>1</sup>. This means that receipt from an EC benefit is possible only where

1. the EC benefit has not been paid **and**
2. if it were to be paid the SPC, IS, JSA(IB) or ESA(IR) decision would not be revised or superseded

to take it into account.

*1 SS (POR) Regs, reg 8(2)*

### **Calculation of amount to be recovered**

09386 Where IPC is aware that SPC, IS, JSA(IB) or ESA(IR) is in payment to the claimant, they ask for payments of arrears of benefit made by EC countries to be paid direct to the Department's account at the Bank of England. The bank deduct charges and commission before notifying the Secretary of State of the

1. net sterling amount due to the claimant **and**
2. period for which it is payable.

When IPC receive this information, the SPC, IS, JSA(IB) or ESA(IR) DM will be asked to determine the amount of EC benefit the Secretary of State is entitled to receive from the sum due to the claimant.

09387 Continuing payments of benefit by EC countries are usually made monthly direct to the claimant. Recovery is not appropriate in these cases as the prescribed payments are made to the claimant (see DMG 09373). See DMG 09406 et seq for further guidance on these cases.

09388 In working out the amount the Secretary of State is entitled to receive, the DM should

1. use the sterling figure obtained when the EC benefit was converted<sup>1</sup> (there is no need to make independent valuations because of the arrangements the Secretary of State has adopted for conversion) **and**
2. allow any banking charges or commission (if not already deducted)<sup>2</sup>.

*1 SS (POR) Regs, reg 11; 2 reg 11*

## Abatements - maintenance cases

- 09389 The Secretary of State is able to abate<sup>1</sup> prescribed benefits<sup>2</sup> (see DMG 09391) which are paid for someone for whom the person receiving the benefit is not paying maintenance.

*1 SS A Act 92, s 74(3)(c) & Sch 10, para 4(2); 2 SS (POR) Regs, reg 9*

- 09390 This only applies if

1. the prescribed benefit is payable for someone who is in receipt of IS, JSA(IB) or ESA(IR) or for whom a third person is receiving IS, JSA(IB) or ESA(IR) **and**
2. entitlement to IS, JSA(IB) or ESA(IR) had been determined on the basis that maintenance payments had not been made by the person in receipt of the prescribed benefit up to at least the rate of that benefit.

### Prescribed benefits

- 09391 The prescribed benefits are

1. CHB including OPB<sup>1</sup>
2. a CDI or ADI payable with any Act benefit<sup>2</sup>
3. GA<sup>3</sup>
4. Child's Special Allowance<sup>4</sup>.

*1 SS (POR) Regs, reg 9a; 2 reg 9b; 3 reg 9d; 4 reg 9e; SS CB Act 92, s 56*

- 09392 There is no prescribed date for the payment of the prescribed benefit. Once the DM has determined the amount to be recovered, benefit may be withheld and recovered weekly.

### Recovery when abatement or receipt procedure not applied or not applicable

- 09393 The Secretary of State is still entitled to recover an amount of SPC, IS, JSA(IB) or ESA(IR) where

1. abatement or receipt procedures could have been applied but were not **or**
2. abatement or receipt procedures could not have been applied because the income is not covered by DMG 09373, DMG 09382 or DMG 09389 and falls within the regulations<sup>1</sup>.

*1 IS (Gen) Regs, Part V; SS (POR) Regs, reg 7(1); JSA Regs, Part VIII; SS (POR) Regs, reg. 8(1)*

- 09394 Where DMG 09393 2. applies the Secretary of State is entitled to recover the amount of benefit that would not have been paid if the income payment (see DMG 09395) had been made on the prescribed date<sup>1</sup> (see DMG 09396).

*1 SS A Act 92, s 74(1)*

## **Prescribed income**

09395 Prescribed income<sup>1</sup> is

1. any income to be taken into account under the regulations<sup>2</sup> **and**
2. any income which, if it were actually paid, would be taken into account under the regulations but only that relating to the initial payment period<sup>3</sup>.

*1 SS A Act 92, s 74(1); SS (POR) Regs, reg 7(1) & 7(1)(a); 2 reg 7(1)(a) & 7(1)(b); IS (Gen) Regs Part V; JSA Regs, Part VIII; SPC Regs, Part III; 3 SS (POR) Regs, 7(1)(b); IS (Gen) Regs Part V Chapter VII A; JSA Regs, Part VIII Chapter VIII*

## **Prescribed date**

09396 The prescribed date is<sup>1</sup> if

1. the income is for a period - the first day of that period **or**
2. the income is for a specific day - that day **or**
3. neither of the above apply - the day or period for which it is fair to take the income into account.

*1 SS (POR) Regs, reg 7*

## **Calculation**

09397 The DM should work out the amount the Secretary of State is entitled to recover by comparing

1. the amount of benefit actually paid **and**
2. the amount of benefit which would have been paid if the prescribed income had been paid on time (for SPC see also DMG 85063 - 85065).

The maximum recovery for any one week should not exceed the prescribed income payable for that week (see DMG 09377 for guidance on SF payments).

## **Abatement or receipt procedures not applied**

09398 Abatement or receipt procedures may not have been applied (see DMG 09393 1.) where a person

1. claims or is in receipt of SPC, IS, JSA(IB) or ESA(IR) **and**
2. informs the Department that a claim has been made for another SS benefit **and**
3. either there is a delay in notifying those administering the SS benefit or the CHB, SPC, IS, JSA(IB) or ESA(IR) award, or those administering the SS benefit or CHB fail to act on the notification that SPC, IS, JSA(IB) or ESA(IR) is in payment.

The Secretary of State is entitled to recover the amount of SPC, IS, JSA(IB) or ESA(IR) which would not have been paid if the SS benefit had been paid on time<sup>1</sup>.

*1 SS A Act 92, s 74(4)*

- 09399 The Secretary of State is also entitled to make a recovery if the arrears of SS benefit or CHB are not abated because the claimant did not declare that a claim for that benefit had been made.

**Note:** In this case there may also be a further overpayment if the claimant fails to declare receipt of the SS benefit or CHB<sup>1</sup>. The DM should consider the guidance in DMG 09234 et seq.

*1 SS A Act 92, s 71(1)*

### **Conversion of foreign currency**

- 09400 Where

1. receipt procedures were not or could not be applied **and**
2. payment is made to the claimant in a currency other than sterling

the DM should decide the value of the payment **for the purposes of the recovery** calculation as being the net amount in sterling the claimant actually received from a bank<sup>1</sup>, that is after the deduction of any bank charges or commission.

*1 SS (POR) Regs, reg 10*

- 09401 The term bank means<sup>1</sup>

1. the Bank of England **or**
2. a bank recognised by the Bank of England<sup>2</sup>.

*1 SS (POR) Regs, reg 11; 2 Banking Act 79, s 3-5*

- 09402 The claimant may convert foreign currency to sterling at an institution whose main place of business is outside the UK, if so, that institution may still be treated as a recognised bank by the Bank of England<sup>1</sup> and should then be treated as a bank for the purposes of the recovery calculation.

*1 Banking Act 79, s 3(5)*

- 09403 The DM should ask Benefit Delivery Specialist Operations for advice if there is reason to doubt whether

1. a UK bank is a recognised bank **or**
2. a bank whose main place of business is outside the UK is treated as a recognised bank.

- 09404 Where the claimant has converted foreign currency at a bank not recognised or treated as recognised by the Bank of England or through an informal dealing (for example relatives) the DM should note that



1. the sterling value to be used is the value the claimant would have got had the currency exchange taken place through the Bank of England on the date the exchange actually took place
2. IPC can provide the exchange rate applying from the Monday of any week
3. in the absence of any more detailed information the DM should use the exchange rate at the beginning or end of any week which is most favourable to the claimant.

09405 If an award of a foreign income allowance includes arrears, the DM should convert the value of the foreign currency to sterling before calculating the recoverable amount<sup>1</sup>.

*1 SS A Act 92, s 74(1); SS (POR) Regs, reg 11*

09406 When deciding continuing entitlement the DM should

1. calculate the sterling equivalent of a foreign resource on the exchange rate at the Bank of England on the date each periodical payment of the resource is due
2. take no account of banking charges and commission<sup>1</sup>. For example, if the converted amount is £20 and the claimant pays charges of £3 leaving a net amount of £17, the amount to be abated is £20.

*1 R(SB) 28/85*

09407 - 09410

## **Who recovery can be made from**

### **Abatement permitted**

09411 Where abatement procedures were not or could not be applied as in

1. DMG 09372 - 09381 - recovery can be made only from the person who received the prescribed payment<sup>1</sup>.
2. DMG 09389 - 09392 - recovery can be made only from the person who was paid the prescribed benefit<sup>2</sup>.

### **Example**

Mary has been receiving IS for herself and her husband for some years. Her husband then separately claims and is awarded IB. He receives arrears that take no account of the IS already paid to Mary. The IS overpayment that results is recoverable from the husband.

*1 SS A Act 92, s 74(4)(a); 2 s 74(4)(b)*

## **Receipt permitted or receipt or abatement not permitted**

09412 Where

1. receipt is permitted but not applied **or**
2. neither receipt nor abatement is permitted

recovery can only be made from the person who would have received less SPC, IS, JSA(IB) or ESA(IR) had the benefit or income been paid on time<sup>1</sup>.

*ISSAAct92,s74(1)*

09413 - 09419





# Civil Penalties

## Introduction

09420 The guidance in this section relates to the imposition of a CPen. The CPen was introduced on 01.10.12 and is part of the strategy to reduce both fraud and error within the benefit system. A CPen<sup>1</sup> can be imposed in cases where

1. there is **no** benefit fraud involved **and**
2. there is a recoverable overpayment (of any benefit as listed at DMG 09161) amounting to £65.01 or more **and**
3. the overpayment period begins on, or falls wholly after, 01.10.12<sup>2</sup>.

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

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

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

## Prescribed amount of CPen

09421 The prescribed amount of a CPen is £50<sup>1</sup>.

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

## When to impose a CPen

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

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

1. a person has negligently made an incorrect statement or representation, or has negligently given incorrect information or evidence<sup>1</sup>
  - 1.1 in, or in connection with a claim for a relevant social security benefit<sup>2</sup> **or**
  - 1.2 in connection with an award of a relevant social security benefit<sup>3</sup> **and**
2. the person does not take reasonable steps to correct the error<sup>4</sup> **and**
3. the error results in an overpayment<sup>5</sup> **and**
4. the person has not, in respect of the overpayment, been<sup>6</sup>
  - 4.1 charged with an offence **or**
  - 4.2 cautioned **or**
  - 4.3 given a notice under relevant legislation<sup>7</sup>.

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

## **DM's consideration**

09423 Once it is established that the claimant has either

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

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

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

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

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

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

### **Meaning of “negligently”**

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

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

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

### **Meaning of “reasonable steps”**

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

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

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

### **Claimant alleges reasonable steps were taken**

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

### **No response to written enquiries**

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

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

### **Meaning of “overpayment”**

- 09432 Overpayment<sup>1</sup> is defined in specified legislation<sup>2</sup>.

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

### **Meaning of “relevant social security benefit”**

- 09433 Relevant social security benefit<sup>1</sup> is defined in specified legislation<sup>2</sup>.

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

### **Example 1**

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

### **Example 2**

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

### **Example 3**

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

### **Fails to provide information**

09434 A CPen<sup>1</sup> may be imposed on a person by the DM where<sup>2</sup>

1. the person, without reasonable excuse, fails to provide information or evidence in accordance with requirements imposed on the person by the appropriate authority in connection with a claim for, or an award of, a relevant social security benefit<sup>3</sup> **and**
2. the failure results in the making of an overpayment<sup>4</sup> **and**
3. the person has not, in respect of the overpayment, been<sup>5</sup>
  - 3.1 charged with an offence **or**

**3.2 cautioned or**

**3.3 given a notice under relevant legislation<sup>6</sup>.**

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

## **DM's consideration**

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

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

### **Meaning of “reasonable excuse”**

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

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

### **No response to written enquiries**

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

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

### **Meaning of “appropriate authority”**

09439 Appropriate authority means the Secretary of State<sup>1</sup>.

*1 SSA Act 92, s 115C(6)*



### **Example 1**

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

### **Example 2**

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

### **Example 3**

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



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

### **Fails to notify a change of circumstances to the appropriate authority**

09440 A CPen<sup>1</sup> may be imposed on a person by the DM where<sup>2</sup>

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 legislation<sup>3</sup> **and**
2. the failure results in the making of an overpayment<sup>4</sup> **and**
3. the person has not, in respect of the overpayment, been<sup>5</sup>
  - 3.1 charged with an offence **or**
  - 3.2 cautioned **or**
  - 3.3 given a notice under relevant legislation<sup>6</sup>.

*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 Penalty<sup>1</sup>. 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] AACR 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 circumstances<sup>1</sup> means a change of circumstances which affects entitlement to any benefit, other payment or advantage under relevant social security legislation<sup>2</sup>.

*1 SS A 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 CPen<sup>1</sup> may be imposed by the DM<sup>2</sup>

1. in any case, on the person<sup>3</sup> 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 A<sup>4</sup>.

*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 evidence<sup>1</sup>.

*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 information<sup>1</sup> or a relevant change of circumstances<sup>2</sup>, only one CPen may be imposed in respect of the same overpayment<sup>3</sup>.

*ISSAAct92,s115D(1);2s115D(2);3s115D(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 legislation<sup>1</sup> is recoverable, under specified legislation<sup>2</sup>, by the appropriate authority, from the person on whom it is imposed<sup>3</sup>.

*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 decision<sup>1</sup> 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 CPen<sup>2</sup>.

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

09452 – 09500





# Recoupments - payments under the Employment Protection Acts

## Introduction

09501 The Secretary of State can recover JSA, IS and ESA(IR) from certain Employment Tribunal awards<sup>1</sup>. Recovery is made from the claimant's employer who deducts it from the amount awarded by the Employment Tribunal before payment. This is called recoupment.

*1 Employment Tribunals Act 96; EP (Recoupment of Benefits) Regs*

09502 The recoverable amounts are those which are determined not to be payable<sup>1</sup> following an award by an Employment Tribunal.

*1 IS (Gen) Regs, reg 35(g), JSA Regs, reg 98(f)*

## Recoverable awards

09503 Recovery can be made from the following Employment Tribunal awards

1. guarantee payments<sup>1</sup>
2. guarantee payments under a collective agreement or wages order for which an exemption order has been made<sup>2</sup>
3. remuneration on suspension on medical grounds<sup>3</sup>
4. unfair dismissal payments under an order for reinstatement or re-engagement, or an award of compensation<sup>4</sup>
5. unfair dismissal payments under an interim order for reinstatement or re-engagement, or an order for the continuation of the contract of employment or for compensation<sup>5</sup>
6. remuneration in pursuance of a protective award<sup>6</sup>
7. payments under an order made following the employer's failure to pay remuneration due to the employee under a protective award<sup>7</sup>.

*1 ER Act 96, s 28; 2 s 35; 3 s 64; 4 s 112, 113 & 124; 5 s 128 & 132;*

*6 TULR (C) Act 92, s 189; 7 s 192*

09504 The Secretary of State issues a notice to the employer stating the amount to be recouped<sup>1</sup>. A copy of the notice is also sent to the claimant<sup>2</sup>. The amount shown on the notice may be overestimated because the Secretary of State rounds up part week payments<sup>3</sup>.

*1 EP (Recoupment of Benefits) Regs, reg 8 & 9; 2 reg 8(4); 3 reg 8(2) & (3)*

## Action by the DM

09505 The case is referred to the DM if

1. the claimant disagrees with the amount of the recovery<sup>1</sup> or

2. recoupment has been made and the award of JSA, IS or ESA(IR) is revised or superseded

In these cases the DM needs to calculate the exact amount of benefit paid in the period of the award. Any amount recovered in excess of the DM calculation is refunded to the claimant<sup>2</sup>.

*1 EP (Recoupment of Benefits) Regs, reg 10(1); 2 reg 8*

## **Claimant does not accept amount notified**

- 09506 If the claimant does not accept the amount shown on the recoupment notice the DM is asked to decide the amount of benefit paid<sup>1</sup>. The DM should calculate the exact amount of JSA, IS or ESA(IR) paid to the claimant in the prescribed period.

*1 EP (Recoupment of Benefits) Regs, reg 10*

- 09507 The prescribed period is for awards listed at

1. DMG 09503 1. to 5. - the period of the award<sup>1</sup> or
2. DMG 09503 6. to 7. - the part of the protected period which falls before the date of termination of employment or the date on which the Secretary of State receives details of the employees affected by the award from the employer whichever results in the lower amount being recouped<sup>2</sup>.

*1 EP (Recoupment of Benefits) Regs, reg 2(3); 2 reg 8(3)*

- 09508 The prescribed period ends when the decision of the Employment Tribunal is given verbally at the hearing or afterwards in writing<sup>1</sup>.

*1 EP (Recoupment of Benefits) Regs, reg 2(3)*

## **Claimant raises other questions on recoupment**

- 09509 An award of JSA, IS or ESA(IR) can be revised or superseded if the claimant raises any question affecting the amount to be recouped<sup>1</sup>. The DM should revise or supersede the awarding decision as if

1. the employer had paid the Employment Tribunal award for the prescribed period **and**
2. any JSA, IS or ESA(IR) which is to be recouped had not been paid and was not payable.

*1 EP (Recoupment of Benefits) Regs, reg 10(1)*

## **Revision or supersession after recoupment action completed**

09510 Recoupment action ends when the

1. amount of benefit paid in the prescribed period has been recovered or
2. time limit<sup>1</sup> has ended and the Secretary of State has not issued a recoupment notice.

*1 EP (Recoupment of Benefits) Regs, reg 8(5)*

09511 The DM should revise or supersede the awards of JSA, IS or ESA(IR) and take into account the effect of the Employment Tribunal award on entitlement to benefit<sup>1</sup>. Any overpayment which has not been recouped should be considered as in DMG 09079 et seq. The Secretary of State will repay to the claimant any amount which has been recovered in excess of the amount recoupable<sup>2</sup>.

*1 IS (Gen) Regs, reg 35, JSA Regs, reg 98*

*2 EP (Recoupment of Benefits) Regs, reg 10(3)*

## **Partner or dependant entitled to Employment Tribunal award**

09512 JSA, IS and ESA(IR) cannot be recouped from an Employment Tribunal award payable to a claimant's dependant or partner<sup>1</sup>.

*1 EP (Recoupment of Benefits) Regs, reg 8(2)*

## **Employment Tribunal decision varied**

09513 The DM may need to give a further decision if the Employment Tribunal award is revised by the Employment Tribunal.

09514 - 09999



# Annex 1

## Prevention of duplication of payment - particular payment schemes

### Introduction

In addition to abatement (see DMG 09370 et seq) and recoupment (see DMG 09501 et seq), there are provisions for recovery from particular payment schemes. These are

1. RMPS benefit<sup>1</sup>
2. RISWR benefit scheme<sup>2</sup>
3. SRPS benefit<sup>3</sup>

*1 Redundant Mineworkers & Concessionary Coal (Payments Schemes) Order;*

*2 EC (Iron & Steel Employees Re-adaptation Benefits Scheme) (GB) Regs;*

*3 Shipbuilding (Redundancy Payments Scheme) (GB) Order*

### The redundant mineworkers payments scheme

The Secretary of State is entitled to deduct IS and JSA from RMPS.

The RMPS is an occupational pension<sup>1</sup>. See benefit specific guidance.

*1 SS CB Act 92, s 122(1)*

Occupational pensions cannot be taken into account until they are paid. The DM should

1. award the increase of SS benefit taking no account of any RMPS due but unpaid **and**
2. revise/supersede the award when RMPS benefit is paid.

### Overpayments

Where late payment of RMPS benefit causes an overpayment of SS benefit or IS or JSA the overpayment is not due to misrepresentation or failure to disclose<sup>1</sup>. IS or JSA recovery may be considered (see DMG 09373 - 09406)<sup>2</sup>.

*1 SSA Act 92, s 71(1); 2 s 74(1)*

### The redundant iron and steel employees re-adaptation benefits scheme

The following paragraphs explain the effect on an award of RISWR benefit scheme benefit where

1. RISWR benefit scheme benefit has been claimed but not paid, **and**
2. SS benefit or IS or JSA has been paid in the meantime.

## IS cases

When RISWR benefit scheme benefit is awarded, it is reduced by the amount of IS or JSA which the DM decides would not have been paid had the payments of RISWR benefit scheme benefit been made before the IS or JSA claim was decided<sup>1</sup>. Normal appeal rights apply.

*IEC(Iron&SteelEmployeesRe-adaption)BenefitsScheme(GB)Regsasamendedart4(7),  
5(9)&13(1)(iii)*

## Social Security benefit cases

The RISWR Benefit Scheme is an occupational pension<sup>1</sup>. See Benefit Specific Guidance. Unlike RMPS and SRPS it can

1. be earnings for the purpose of dependant's increases **and**
2. cause Unemployment Benefit to be abated

There are provisions allowing RISWR Benefit Scheme benefit to be abated by an amount of SS benefit. But the RISWR Benefit Scheme may only be abated by the amount of SS benefit paid and not by the amount of SS benefit which would not have been paid had RISWR Benefit Scheme benefit been paid before the SS benefit decision.

*ISSCBAct92,s122(1)&175(1);JSARegsreg103*

## Overpayments

The guidance on RMPS benefit also applies to RISWR Benefit Scheme benefit. In considering the amount of any overpayment in SS benefit cases, the DM should bear in mind that abatement may reduce the amount of the overpayment

## The shipbuilding redundancy payments scheme

SRPS benefit is paid to shipbuilders made redundant on or before 31 December 86<sup>1</sup>.

*1Shipbuilding(RedundancyPaymentsScheme)(GB)Order;AmendmentOrder82*



## **IS cases**

Where IS has been paid pending an award of SRPS benefit the later award of SRPS benefit is reduced by an amount of IS decided by British Shipbuilders<sup>1</sup>. In making this decision British Shipbuilders take account of

1. the amount of IS actually paid<sup>2</sup> (the Secretary of State provides this information) **and**
2. the amount of IS which the DM decides would have been paid had the DM known of the claimant's entitlement to SRPS benefit<sup>3</sup> at the time of the original decision

Appeal rights are limited to decisions under the latter point.

*1 Shipbuilding (Redundancy Payments Scheme) (GB) Order, art 9; 2 art 9(2); 3 art 9(2)*

## **Social Security benefit cases**

The guidance on RMPS benefit also applies to SRPS benefit

## **Overpayments**

The guidance on RMPS benefit also applies to SRPS benefit.



## Annex 2

### Calculation of amount to be abated - see DMG 09375

#### Schedule of abatement

CHB				IS		Abatement			
(1) Period to which payment relates	(2) Date payment would be properly payable	(3) Amount payable	(4) Benefit week to which CHB attribut- able	(5) Amount of IS paid	(6) Date IS paid	(7) Amount of CHB to be regarded as a resource	(8) Amount of abate- ment	(9) Prescrib- ed date	(10) Date notification of CHB award received by Secretary of State
				Total abatement					

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