

Guidance

Recovery of benefits, lump sum payments and NHS charges: technical guidance

Guidance for compensators and their representatives on the Compensation Recovery Scheme.

Published 18 December 2013

Last updated 28 May 2019 — [see all updates](#)

From: [Department for Work and Pensions](#)

No further relevant or Covid-related updates

Documents



[Recovery of benefits and lump sum payments and NHS charges: technical guidance](#)

Ref: Z1
HTML

Details

The recovery of benefits and lump sum payments and NHS charges guidance is intended for use by professional and voluntary advisers, and by members of the public who want more information about...

Related content

[Compensation Recovery Unit forms](#)

[Compensation, social security benefits and lump sum payments](#)

[Repaying compensation to DWP: what to do if you think our decision is wrong](#)

[Compensation Recovery Unit](#)

[Compensation and repaying DWP: if you think our decision is wrong](#)

Collection

[Compensation Recovery Unit](#)

4. The law

The law on the Compensation Recovery Scheme is contained in:

- The Social Security (Recovery of Benefits) Act 1997
- The Social Security (Recovery of Benefits) Regulations 1997 as amended by paragraphs 148-152 of Schedule 7 to the Social Security Act 1998
- The Child Maintenance and Other Payments Act 2008
- The Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations 2008
- The Mesothelioma Act 2014
- The Social Security (Recovery of Benefits) (Lump Sum Payments) (Amendment) Regulations 2014
- The Social Security and Child Support (Decision and Appeals) Regulations 1999, regulations 9, 9ZA and 30-58
- The Social Security (Recovery of Benefits) (Northern Ireland) Order 1997
- The Social Security (Recovery of Benefits) (Northern Ireland) Regulations 1997
- The Social Security Act 1998

The Compensation Recovery Unit (CRU), as part of Department for Work and Pensions (DWP), works with insurance companies, solicitors and any DWP customers, to recover:

- amounts of social security benefits paid as a result of an accident, injury or disease, if a compensation payment has been made (the Compensation Recovery Scheme)
- costs incurred by NHS hospitals and Ambulance Trusts for treatment from injuries from road traffic accidents and personal injury claims (Recovery of NHS Charges) (Not the subject of this talk)

The main provisions of the Scheme are that:

- the state doesn't pay for the consequences of D's negligent acts
- a person should not be compensated twice over in respect of the same accident, injury or disease

4.8 How the compensation recovery scheme works

The main processes for compensators are:

1. Compensator receives a claim for compensation.
2. Check the details to be given to CRU (name, address, date of birth, National Insurance number etc).
3. Notify CRU of the claim within 14 days. A form CRU1 is provided for this purpose (also available electronically in the [CRU GB electronic communications](#) section).
4. CRU will automatically issue a Certificate in cases where the required mandatory information has been provided and no recoverable benefits have been identified.
5. Receive acknowledgement of notification (form CRU4) if a Certificate cannot be issued automatically
6. When ready to make an offer of compensation, return form CRU4 to apply for a Certificate.
7. Receive acknowledgement of application, CRU 5 (if not received within 14 days contact CRU immediately).
8. Receive Certificate (if not received by date given on acknowledgement contact CRU immediately). A copy of the Certificate will be sent to the injured person or their representative.
9. Pay compensation and, if any deductions have been made in accordance with either the 1997 Act or the Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations 2008, you must inform the injured person.
10. Notify CRU of the result of the claim, even if it is unsuccessful, by returning the form CRU102 that accompanies the Certificate. Ensure that any changes to your reference number are clearly noted.
11. Notify CRU of the date the compensation payment is made in final discharge of the claim. The date of agreement does not end the relevant recovery period.
12. The compensator becomes liable to pay the total amount of the recoverable benefits and lump sum payments to the CRU immediately before making the compensation payment.
13. Pay the total amount of recoverable benefits and lump sum shown on the Certificate to the CRU. The CRU may enforce this debt through the courts at any point from the 15th day following the date the compensation was paid.

Payment should not be sent to CRU if the injured person has not been paid compensation.

[Home](#) > [Work](#) > [Pensions and ageing society](#)

Form

Compensation Recovery Unit forms

Compensation Recovery Unit forms for use by compensators (eg insurers) and their representatives (eg solicitors).

Published 1 July 2013

Last updated 5 April 2019 — [see all updates](#)

From: [Department for Work and Pensions](#)

Applies to: **England, Scotland, and Wales**

Related content

Collection

[Compensation Recovery Unit](#)

Documents



[Register a claim for compensation: CRU1](#)

Ref: CRU1

MS Word Document, 146KB

This file may not be suitable for users of assistive technology. [Request an accessible format.](#)



[Guernsey: Register a claim for compensation: CRU1G](#)

Ref: CRU1G

MS Word Document, 130KB

This file may not be suitable for users of assistive technology. [Request an accessible format.](#)



[Jersey: Register a claim for compensation: CRU1J](#)

Ref: CRU1J

MS Word Document, 128KB

5.2 Completing form CRU1

You must give CRU the following information on form CRU1 when someone claims compensation from you:

- the injured person's full name and address (if the injured person has previously been known by a different name, for example a maiden name, it would be helpful if you could include this detail)
- their date of birth
- National Insurance number, if known
- the date of the accident, incident or injury
- a full description of the nature of the accident, incident, injury or disease
- whether the accident was a road traffic accident (RTA) which occurred prior to 29 January 2007
- if the person attended an NHS hospital because of the RTA, the injury or the incident on or after 29 January 2007 (at any time for any treatment, examination etc.)
- the full name and address of the hospitals or trusts the injured person attended or was admitted to (in order of attendance)
- if you are claiming an exemption under the Road Traffic Act 1988 (section 144) you must state the category of exemption (See Para. 7.5) for RTA's prior to 29 January 2007
- whether or not the injured person was employed at the date of incident
- where the date of incident is before 6 April 1994, details of the injured person's employment (if known) – this will enable CRU to obtain information about Statutory Sick Pay (SSP) that may have been paid
- the reference number you use to identify the case. If your reference number changes before the claim is settled, you should inform CRU of the new reference number
- to help CRU process the claim, please tell CRU whether the claim is public liability (P), motor (M), employer (E), clinical negligence (C) or other (O)
- if a claim is registered as 'M' liability but the accident occurred during a person's employment you must notify CRU of that fact – this is because the injured person may have claimed Industrial Injuries Disablement Benefit
- in 'E' liability cases if SSP was paid before 6 April 1994 the compensator must provide details of the SSP when applying for a Certificate
- if a solicitor is acting on your behalf you must show their name, address and reference number on form CRU1. This will ensure that correspondence is sent to the correct address

You must notify CRU in writing if you take over a claim from another compensator. You should not complete form CRU1 if that form was submitted by the original compensator.

We will issue a certificate by post to the address we hold for the compensator within 28 days of receiving the request.

5.5 The Certificate

A Certificate cannot be treated as being valid prior to the date of the request and will remain in force until the date specified on the Certificate for that purpose (s4 (4)). The Certificate will include:

- details of the injured person's identity and where appropriate the date of the incident which gave rise to the compensation claim
- the total of each recoverable benefit paid up to a specified date
- the total amount of each recoverable lump sum payment paid
- the rate expected to be paid for a short future period if benefit is still in payment
- a note to say whether any of the above amounts or dates have been estimated
- the date the Certificate ceases to be valid
- the total amount to be repaid to the Secretary of State for Work and Pensions



Department
for Work &
Pensions

RECEIVED

Compensation Recovery Unit
Post Handling Site B
Wolverhampton
WV99 2FR

Opening Hours Mon-Fri 08:00 – 17:00
Telephone 0191-2252576
Text relay 1800101912252576
Fax 0191-2252590

Our Ref

Your Ref

Date

Please note: This is for information only – no payment is required from you.

Enclosed is a copy of the information sent to [redacted], which shows the amount of recoverable benefit(s) / lump sum(s) paid to your client [redacted]

Help and advice

If you want further information about the Certificate please visit our website (address shown below), or contact us on the number at the top of this letter.

If you do not agree with the information on the Certificate you can ask us to look at the decision again. Our address is shown at the top of this letter.

Further information about the Compensation Recovery Scheme can be found on our website:
www.gov.uk/government/collections/cru

Certificate

Date of Issue: [redacted]

Your Ref: [redacted]

Our Ref: [redacted]

Injured Person: [redacted]

This Certificate shows the amount due to the Department for Work and Pensions (DWP), as a result of the alleged clinical negligence which occurred on [redacted] to the person named above and is issued in response to your request for a Certificate which was received on [redacted]

The amount due is NIL. No recoverable benefit(s) / lump sum(s) have been paid.

This Certificate is valid until 09/10/2019.

Authorised by Compensation Recovery Unit
on behalf of the Secretary of State

The law provides that a compensator must apply for a Certificate prior to making a compensation payment. If the compensator settles a compensation claim without a Certificate that covers the actual date of settlement, CRU will issue a one day Certificate valid only for the date of settlement. The one day Certificate may include benefits that have not been taken into account during the negotiation process but will be recoverable. It is therefore important that you request a Certificate prior to making a compensation payment.

5.13 Penalty for default

DWP may take action against you to secure payment of the recoverable amount if you:

- make a compensation payment but do not apply for a Certificate
- fail to repay the specified amount

5.10 Having the Certificate renewed

The compensator should **only request renewal Certificates when they are ready to settle the claim.** Persistent requests for renewal Certificates when the claim is not ready to be settled generates extra work and expense for everyone and may cause delays.

CRU **cannot normally issue a new Certificate until the one currently in issue expires.** If, however, a compensation claim is close to being settled and the Certificate in issue will expire before the settlement takes place, a request for a renewal Certificate will be considered.

5.8 Increase of recoverable benefits included on Certificates

CRU may become aware that further recoverable benefits should have been included on that Certificate that is currently in issue.

During the validity period of a Certificate the amount of recoverable benefit shown cannot be increased, except where the compensator has provided CRU with incorrect or insufficient information.

However, if recoverable benefits are inappropriately omitted from a Certificate, and a compensation payment is not made during the period of validity of that Certificate, the additional recoverable benefits will be listed on any further Certificates issued.

CRU will notify you in writing as soon as possible if a future Certificate will be affected as explained above.

4.7 DWP right to inspect records

The Social Security Administration Act 1992 Section 110 gives DWP inspectors the right to examine the records of compensators and employers to verify that they are complying fully with the provisions of the Social Security (Recovery of Benefits) Act 1997.

by the amount of recoverable benefits listed in the certificate. However, there are limits imposed on this process, as deduction should only take place on a *like-for-like* basis. In *Lowther v Chatwin*¹, Hale LJ summed up the purpose of the legislation as follows:

'Under the 1997 Act, the sums paid to the state to recoup certain benefits can only be deducted from the equivalent head of damages awarded. The object is to "ring fence" the general damages for pain, suffering, loss of amenity, or for loss of congenial employment, or the like, while enabling the state to recoup its expenditure on benefits paid in respect of loss of earnings, the cost of care and loss of mobility. Another important qualification is that the state can only recover benefits paid, and accordingly such benefits can only be deducted from the damages, for the "relevant period", which is a maximum of five years.'

Compensation in respect of cost of **care** may be reduced where the following benefits have been paid during the relevant period:

- Attendance Allowance
- **care component** of **Disability Living Allowance** (DLA Care)
- Disablement Pension increase for Constant Attendance Allowance
- Exceptionally Severe Disablement Allowance
- living component of **Personal Independence Payment** (PIP L)

Nursing care and attendance (including holiday or respite care) and the inability to cook may fall within Schedule 2.

Compensation in respect of loss of mobility may be reduced where the following benefits have been paid during the relevant period:

- Mobility Allowance
- mobility component of Disability Living Allowance (DLA mobility)
- mobility component of Personal Independence Payment (PIP M)

Compensation in respect of loss of earnings during the relevant period may be reduced where the following benefits have been paid to meet the same need:

- Disablement Pension payable under section 103 of the 1992 Act (also known as Industrial Injuries Disablement Benefit)
- Employment and Support Allowance
- Incapacity Benefit
- Income Support
- Invalidity Pension
- Invalidity Allowance
- Jobseeker's Allowance
- Reduced Earnings Allowance
- Severe Disablement Allowance
- Sickness Benefit
- Statutory Sick Pay paid before 6 April 1994
- Unemployability Supplement
- Unemployment Benefit
- Universal Credit

13. Universal Credit is being introduced in a phased approach from 29 April 2013 under the Welfare Reform Act 2012.

Of the six benefits being subsumed into the Universal Credit (UC) payment, there are currently three benefits - which can be recovered by the CRU specifically against loss of earnings claims:

1. Income Support
2. Employment and Support Allowance ("ESA")
3. Jobseeker's Allowance ("JSA")

The remaining three benefits to be integrated into Universal Credit are not recoverable against any head of loss:

1. Housing Benefit
2. Working Tax Credit
3. Child Tax Credit

Given that the position of the CRU is that they have no method of breaking the UC payments down, the onus potentially now lies with insurers and their legal representatives to access the claimant's benefit records for the purpose of a CRU appeal.

Damages not within Schedule 2

- Actuarial evidence and related matters
- Breakdown of marriage
- Investment or management advice
- Cost of future care
- Court protection fees
- Guide dog
- Hospital visits other than for treatment
- Loss of amenities of life
- Loss of benefits associated with injured person's work
- Loss of carrying out DIY
- Loss of congenial employment
- Loss of expectation of life and bereavement
- Loss of financial interest
- Loss of future earnings
- Loss of future mobility
- Loss of housekeeping capacity
- Loss of leisure
- Loss of marriage prospects
- Loss of pension rights
- Loss of privacy
- Loss of society
- Loss of specific enjoyment
- Loss of use of motor car
- Loss on the labour market
- Loss of future earnings
- Medical expenses (not included in cost of respite or nursing care and attendance)
- Paid help, gardener or cleaner
- Pain and suffering
- Second home on breakdown of marriage
- (Smith v Manchester)
- Special appliances (except as mentioned in loss of mobility)
- Special diet
- Special accommodation

The above list is not definitive, nor is it an interpretation of the law. It is for general guidance only, and should be treated as such.

Worked Example: Stuart

- Stuart settles his claim for £100,000 which is agreed to be broken down as follows:
 - PSLA: £40,000
 - LOE: £30,000
 - Care: £30,000
- CRU Certificate:
 - Incapacity Benefit: £5,000
 - Income Support: £10,000
 - DLA (care): £10,000
- What does Stuart actually receive in his hand?



Worked Example: Stuart

- PSLA: **£40,000** = Untouchable
- LOE: £30,000 - Incapacity Benefit (£5,000) - Income Support (£10,000) = **£15,000**
- Care: £30,000 – DLA (£10,000) = **£20,000**
- Therefore, Stuart receives:
 - **£75,000** in damages (net of CRU)
 - In addition to the £25,000 he has already received from the State in benefits
 - I.e. £100,000 in total.
- D pays:
 - To Stuart: £75,000 in damages
 - To CRU: £25,000 of deductible benefits
 - I.e. £100,000 in total.



Where the amount of compensation in respect of a particular head of compensation is less than the amount of a listed benefit to be recovered, **the compensator is liable to pay the difference.** They may not reduce payment against any other head of compensation to take account of the recovery of a listed benefit.

Worked Example: Kathryn



- Kathryn settles her claim for £100,000 which is agreed to be broken down as follows:
 - PSLA: £40,000
 - LOE: £30,000
 - Care: £30,000
- CRU Certificate:
 - Incapacity Benefit: £20,000
 - Income Support: £50,000
 - DLA (care): £30,000
- Note: Kathryn has received much higher benefits than Stuart in Example 1.
- What does Kathryn actually receive in her hand?

Worked Example: Kathryn

- PSLA: **£40,000** = Untouchable
- LOE: £30,000 - Incapacity Benefit (£20,000) - Income Support (£50,000) = **Nil**
- Care: £30,000 – DLA (£30,000) = **Nil**
- Therefore, Kathryn receives:
 - **£40,000** in damages (net of CRU)
 - In addition to the £100,000 she has already received from the State in benefits
 - I.e. £140,000 in total.
- D pays :
 - To Kathryn: £40,000 in damages
 - To CRU: £60,000 of deductible benefits PLUS £40,000 of remaining Incapacity Benefit / Income Support on the CRU Certificate.
 - I.e. £140,000 in total



If the claim is settled for general damages only, the compensator is still liable to repay the full amount of listed benefits and lump sum payments shown on the Certificate (s6 of the Social Security (Recovery of Benefits) Act 1997).

If no claim is made for a specific head of loss in Sch 2, the defendant is still obliged to repay the listed benefit if such a claim should have been made. In these circumstances, the defendant may not deduct the listed benefit in question from any other head of loss¹.

Interest is payable on the full amount of special damages before allowing for recoupment. As a general principle, therefore, benefits do not reduce the interest payable.² However recoverable benefits can be recouped against the interest element of an award. Contributory negligence is ignored when offsetting the recoverable benefits.

4.1 The relevant recovery period

The period in respect of which benefits, listed in Schedule 2 to the 1997 Act, may be recovered by DWP begins on:

- the day following an accident or injury or
- in disease cases, the date that a listed benefit as shown in Schedule 2, is first claimed in consequence of the disease

The period ends on:

- the day a compensation payment is made in final discharge of a claim, or
- the date an agreement is made between the compensator and injured person under which an earlier compensation payment is treated as having been made in final discharge of any claim, or
- the date 5 years after the relevant period begins, whichever comes first

This is state-sanctioned double recovery...

Section 17 of the Social Security (Recovery of Benefits) Act 1997 states that: 'In assessing damages in respect of any accident, injury or disease, the amount of any listed benefits paid or likely to be paid is to be disregarded.' In *Eagle v Chambers* [2004] EWCA (Civ) 1033, [2005] 1 All ER 136, [2004] 1 WLR 3081 the Court of Appeal held that a narrow construction of this section was not permissible. The court had to ignore any listed benefits likely to be paid in the future after the date of trial, approval or settlement. This contrasts with non-listed benefits which, as seen at para 18.1 above, have to be taken into account fully in relation to future losses.

If C continues to receive benefits after 5 years, or after the case concludes, they are not offset against damages = double recovery

Bear in mind that this is very much the exception to the rule...

we are here considering state benefits. Benefits provided by charity, out of kindness or by insurance taken out by the claimant are considered in CHAPTER 17. If a claimant, *as a result of the injuries*, receives state benefits which are not subject to the recoupment provisions discussed in detail below, then these may be taken into account in full and set off against the damages that the defendant is liable to pay. In *Hodgson v Trapp* [1989] AC 807, [1988] 3 All ER 870, the House of Lords stressed that the aim of damages is to compensate and the courts must be wary of exceptions which allow double recovery. Lord Bridge stated, at 819E:

D won't have to reimburse the state and can set them off against damages

There is no 5-yr cut-off and no restriction against set-off against future loss

E.g. some housing benefit, child benefit

You'll be asked to make payments to the DWP CRU once the claim is settled.

7. Complex cases

7.1 Interim payments

If a compensator makes an interim compensation payment, they are liable to pay DWP:

- all recoverable benefits paid up to the date of the interim payment
- any lump sum payments paid up to the date of the interim payment

If a further compensation payment is subsequently made in final discharge of the claim, or an agreement is made under which an earlier compensation payment is treated as having been made in final discharge of the claim, the relevant recovery period will end at that time, if it has not already done so. The compensator will also be liable for the repayment of any additional benefits paid during this period.

7.2 Multiple compensators (multi-comps)

A multi-comp case is where there is one incident but more than one compensator or insurer involved.

In multi-comp cases the Certificate belongs to the case, not the individual compensator or insurer.

Once a compensation payment is made the compensator or insurer is liable to pay the Secretary of State an amount equal to the amount shown on the Certificate.

Each compensator who makes a payment to the injured person is liable to repay the amount shown on the Certificate at the date of their settlement.

If the settlement date is the same for all compensators involved in the claim they should work together to apportion their individual liability to ensure CRU receives the total amount on the Certificate.

7.7 Clinical negligence

Clinical negligence cases are treated as multiple claims as more than one incident would have occurred. I.e. the 'negligence' and the unrelated condition that initially warranted treatment.

CRU has a small team of specialists who deal with clinical negligence cases. This is because consideration must be given to causation and prolongation to determine how much of the benefit was paid as a result of the actual negligence, and how much was paid for the original incident.

It is important that the form CRU1 is submitted as soon as possible after you have been notified of the clinical negligence claim. This will help CRU to provide you with a prompt and accurate service.

You should [contact CRU's Clinical Negligence Team](#) if you want any further information about clinical negligence cases.

7.8 Goodwill payments

A goodwill payment, usually in the form of gift vouchers or the like, is sometimes made in response to a complaint about a product or incident. For example, if someone slips in a retailer's premises and only suffers a minor injury, inconvenience or embarrassment or if the consumption of foodstuffs is alleged to have caused a stomach complaint.

If such a payment is made at the time of the complaint or incident, CRU does not need to be informed.

However, if such a payment is made at a later date, benefits or NHS treatment may have been received. In these cases, a form CRU1 must be submitted, especially compensation is being sought in respect of:

- loss of earnings
- cost of care
- loss of mobility

For NHS charges, where incidents or injuries were caused on or after 29 January 2007, liability to pay NHS charges arises where a compensation payment is made in respect of an allegation of liability for injuries suffered and NHS treatment was received.

'Compensation payment' includes not just payments of money but payment in kind, which might include, for example, provision of free rehabilitation services. If such a payment is made, it does not matter if it was made as a goodwill payment as liability to pay NHS charges would still be incurred. Please see [the law – NHS charges](#) for further information.

6.2 Compensation for criminal injuries

The Compensation Recovery Scheme **does not apply to criminal injuries cases**. If details of social security benefits are required they should be obtained from the relevant DWP benefit paying office.

You can get more information from the [Criminal Injuries Compensation Scheme website](#).

6.3 Requests for details of benefits paid prior to the date of accident, injury or disease

CRU cannot provide details of benefits paid before the date of incident, or give any estimate of which benefits might have been payable had the incident not occurred.

CRU **can only provide details of benefits paid as a result of an accident, injury or disease for which compensation has been claimed.**

WHEN WOULD I BOTHER CHALLENGING A CERTIFICATE?

In order to be classified as 'in respect of' there must be a clear link between the accident, injury or disease and the payment of benefit. However, the accident, injury or disease need not be the sole cause of the payment of benefit. By way of example, if the claimant is rendered permanently incapable of employment as a result of the accident and then suffers from an unrelated condition that would render him/her incapable in any event, the benefits are still deemed 'in respect of' the accident¹. Equally, if the injuries sustained in an accident and unrelated condition do not individually render the claimant incapable of work (thereby leading to benefits in relation to loss of earnings) but cumulatively do so, these benefits are still recoverable². Subject to the **CRU** demonstrating a prima facie case the burden of proof in demonstrating that the benefit was not paid 'in respect of' the injury or disease rests on the party challenging the decision.

¹ See decision of the Social Security Commissioners CCR/5336/1995.

² See decision of the Social Security Commissioners CCR/5336/1995 and CSCR/1/1995.

[1900]

Finally, in an acceleration of exacerbation case, where the medical evidence confirms that the accident caused or contributed to symptoms for a limited period of time, then only the benefits paid during that limited period of time will be deemed 'in respect of' the accident¹.

¹ See decision of the Social Security Commissioners R(CR) 1/01.

WHAT IF I THINK THE CERTIFICATE IS WRONG?

I have two (related) options/protections:

1. Get the CRU to change it's mind and alter the certificate
2. Make a protective Part 36 offer (i.e. one that says 'I think the certificate is wrong')

GETTING THE CRU TO CHANGE IT'S MIND:

9.1 Reviews

The compensator, the injured person, or either party's representative may ask CRU to review any aspect of a Certificate at any time. A review request should be made in writing and must give the reasons why it is thought the Certificate is wrong. Any evidence that is thought to be helpful should also be included with the review request.

A review may be made on the following grounds:

- the Certificate was issued in ignorance of, or based on a mistake as to, a material fact
- a mistake was made (whether in computation or otherwise) in the preparation of the Certificate
- incorrect or insufficient information was supplied to the Secretary of State by the person who applied for the Certificate and, as a result, the amount of benefit or lump sum payment specified in the Certificate was less than it would have been had the information supplied been correct or sufficient
- a ground for appeal is satisfied under Section 11 of the 1997 Act

The grounds for appealing a certificate are that¹:

- (i) any amount, rate or period specified in the certificate is incorrect; or ⑫ The maths
- (ii) listed benefits which have been, or are likely to be, paid otherwise than in respect of the accident, injury or disease in question have been brought into account. ⑫ But for causation
- (iii) listed benefits which have not been, and are not likely to be, paid to the injured person during the relevant period have been brought into account ⑫ Compute error.

While head (i) and (iii) mainly turn on arithmetical errors or computing errors resulting in the certificates showing as incorrect head (ii) forms the vast majority of appeals and will often involve a detailed analysis of all of the available information including an analysis of the medical evidence in a given case.

When a Certificate is reviewed, CRU looks at all the:

- benefits and lump sum payments listed as recoverable
- amounts paid
- periods over which they have been or are likely to be paid

Any errors, omissions or other changes, which may affect the outcome of the review, will be taken into account, even if they are unrelated to the reasons for requesting the review.

Once the review is complete, CRU will take one of the following actions:

- confirm in writing that the Certificate is correct
- revoke the Certificate and issue a fresh one
- change the Certificate and issue a fresh one

If a revised Certificate is issued, it will cover the same period as the Certificate it replaces.

So it is easy to see what changes have been made

A fresh Certificate showing an increase in the amount of recoverable benefits will only be issued if the person who applied for the Certificate gave CRU incorrect or insufficient information. If this happens, the compensator will be liable to pay the difference to CRU.

Under s 10 of the SS(RB)A 1997 the DWP may review a certificate and issue a new one¹ provided they are satisfied:

- (a) it was issued in ignorance of, or was based on a mistake as to, a material fact; or
- (b) that a mistake has occurred in its preparation.

A review of a certificate can take place at any time after the issue of the certificate. It is important to be mindful that the DWP can only increase the recoverable benefits repayable on review where it was misled. The tribunal hearing an appeal has a general power to increase the amount repayable and it may therefore often be preferable to proceed by way of review as opposed to appeal.

Reviews = any time, repayable sum only increased if DWP was misled

Appeals = only after conclusion of case, general power to increase

9.2 Mandatory reconsideration

This section deals with the steps to follow if the compensation claim is settled and the Compensator has paid CRU all the monies due as listed on the Certificate.

The Welfare Reform Act 2012 introduced changes from 28 October 2013 to the appeals process so that more disputes against DWP decisions can be resolved without the need for referral to Her Majesty's Courts and Tribunals Service (HMCTS). The key changes to the appeals process from the above date are mandatory reconsideration and direct lodgement.

The CRU must be given the opportunity to formally reconsider its decision before an appeal can be made. This is known as mandatory reconsideration. You should, therefore, ask CRU for a mandatory reconsideration if you want the Certificate to be looked at again. CRU will then look at all of the evidence and decide if the Certificate should be:

- changed and a partial refund issued
- revoked and a full refund issued
- confirmed as correct

You will be given an explanation of the decision in writing. This is known as a mandatory reconsideration notice.

You must ask for a mandatory reconsideration within one month of paying CRU the money due as listed on the Certificate.

3. Mandatory Reconsideration

If you think that the certificate is wrong, you should contact the CRU and ask for a Mandatory Reconsideration.

3.1 The time limit for asking for a Mandatory Reconsideration

You must ask for a Mandatory Reconsideration within 1 month of paying the CRU the money due as listed on the certificate. You may be asked by the CRU to provide an explanation if your request for a Mandatory Reconsideration was late.

3.2 What else should be included with your request for a Mandatory Reconsideration

You should also provide the following:

- All medical reports and any surveillance evidence obtained by both parties during the compensation claim process.
- Copies of any statements and/or other material served on behalf of the claimant.
- Copies of the Particulars of Claim.
- Copies of the documents from both parties which confirm the details of the settlement.

The CRU will look at all of the evidence and decide if the certificate should be:

- changed and a partial refund issued
- revoked and a full refund issued
- confirmed as correct

The CRU will provide a written explanation of its decision. This is known as a Mandatory Reconsideration Notice.

9.3 Appeals

If you still think the Certificate is wrong after you have received your mandatory reconsideration notice, you can make an appeal.

An appeal cannot be made until the compensation claim is settled and all monies due as listed on the Certificate have been paid in full to the CRU.

An appeal may be made by:

- a compensator
- an injured person whose compensation payment was reduced in accordance with section 8 or 8A of the 1997 Act or Regulation 12 or 12A of the Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations 2008

The injured person (or their representative) must provide documentary evidence, such as the Consent Order, to confirm that a section 8 etc. deduction was made on their compensation payment.

Your appeal must be made in writing and sent directly to HMCTS. You will be sent 2 copies of the mandatory reconsideration notice, one to be sent with your appeal and one for you to keep. Your appeal will not go ahead unless you include a copy of this notification with your appeal. The mandatory reconsideration notice will also tell you where to send your appeal form.

You must make your appeal within one month after the date the mandatory reconsideration notice was sent to you. If your appeal is late, HMCTS may ask you to explain why it was not made on time. Your appeal may not be allowed to go ahead if you do not have a good reason why it was late.

CRU will treat a request for an appeal that does not comply with the above grounds as being invalid and refer it back to HMCTS with a request for it to be struck out. A tribunal judge will then decide if the appeal can be accepted as being valid.

3.4 When to appeal and time limits

An appeal cannot be treated as valid and sent to HMCTS until after:

- final settlement of the compensation claim
- payment of recoverable benefits and/or lump sum payments has/have been paid in full to the CRU
- a Mandatory Reconsideration Notice explaining the decision has been sent by the CRU to the appellant

An appeal must be sent to HMCTS within 1 month from the date when the Mandatory Reconsideration Notice was sent to you by the CRU.

3.5 Late appeals

If you do not make your appeal in time, HMCTS will ask you to explain why it was late.

A tribunal judge may be asked to look at the reasons you have given for not appealing in time and decide if your appeal can be accepted. They will look at:

- whether there were special circumstances for the delay
- the length of time since the compensator paid the money to the CRU
- whether it is in the interests of natural justice that your appeal is accepted
- whether your appeal is reasonably likely to succeed

4. Appeal tribunals

Appeals are heard by an independent tribunal and are administered by HMCTS. Tribunals are made up of qualified members who are not from DWP. The tribunal can only look at the:

- evidence
- law
- circumstances at the time the CRU made the decision you are appealing against

The appeal decision will be heard by a tribunal judge and a medically qualified panel member.

4.1 Oral hearings

This is an appeal hearing which you can go to.

The tribunal may ask you questions.

You can ask questions.

If you are the injured person you can take someone with you to represent you.

You can call a witness to give evidence to the tribunal.

A Presenting Officer from the CRU may be at the hearing. They may ask you questions and call witnesses.

Oral hearings are usually open to the public but you could ask to have your appeal heard in private, should you prefer.

You will normally be given a copy of the tribunal's decision shortly after the hearing has finished. The CRU will also be given a copy of the decision.

4.2 Paper hearing

This is an appeal hearing which you or no one else attends. HMCTS will send you the decision in the post.

If you choose a paper hearing but change your mind, you can ask to have an oral hearing instead. You must write to HMCTS straight away if you change your mind.

4.3 The decision

If your appeal is successful, the CRU will revise its decision and issue a fresh certificate.

If your appeal is unsuccessful, you can ask HMCTS for a Statement of Reasons. This gives a full explanation of the tribunal's decision including the:

- facts
- relevant law used to make the decision

You must ask for this within 1 month from the date the decision notice was issued.

You should read the Statement of Reasons carefully. If you still do not agree with the reasons for the tribunal's decision, you can apply for leave to appeal to the Upper Tribunal.

5. Appeals to the Upper Tribunal

Before you can appeal to the Upper Tribunal, you must have:

- received a full Statement of Reasons of the initial tribunal's decision
- applied to the tribunal judge for permission to appeal

The [form needed to appeal to the Upper Tribunal](#) is available on the Justice website.

Members of the Upper Tribunal are lawyers who are not from DWP, Jobcentre Plus or HMCTS.

You can only appeal to the Upper Tribunal on a point of law. You cannot appeal to the Upper Tribunal about:

- questions of fact
- a tribunal's medical findings or conclusions

5.1 How to appeal to the Upper Tribunal

Your decision notice from HMCTS will tell you what to do if you disagree with the tribunal's decision. Read this carefully. It tells you important time limits for your appeal.

5.2 Late Applications

Late applications for a Statement of Reasons, or for leave to appeal to the Upper Tribunal, can only be accepted if there were special reasons for the late application. You will need to show why you were not able to make your request on time.

MAKING A PROTECTIVE PART 36 OFFER: THREE CASES YOU MUST KNOW

1. *Hilton International v Smith*: the default (but easily shifted) position is that C gets the benefit of a successful review/appeal.
2. *Helen Williams v Devon*: when considering whether an offer 'bites' (should have been accepted) the Court asks what C would have been left with in their hand if they'd accepted the offer.
3. *Colin Crooks v Hendricks Lovell*: the Court can adjourn assessment of costs pending the outcome of a CRU appeal in order to see what C is left with in his hand (and therefore whether they have beaten an offer).

1. Hilton International v Smith

It is important for parties to appreciate that, unless there is an agreement to the contrary, any money repaid to the CRU after an appeal have to be repaid to the claimant. The Social Security (Recovery of Benefits) Regulations 1997, SI 1997/2205, reg 11(5) provides that where the amount of compensation paid is recalculated and a fresh certificate of recoverable benefits issued, ~~the compensatory shall pay the difference to whom the compensation payment was made.~~

THE DEFENDANT

THE CLAIMANT

If a defendant seeks to appeal a certificate it is very important that any settlement of the claim incorporates an agreement that any monies repaid by the DWP in consequence to a successful appeal are to be repaid to the defendant and not the claimant.

Because the default position is that they go to the Claimant

Worked Example: Hal

- Following his injuries, Hal received £40,000 in LoE related benefits.
- CRU certificate stood at £40,000.
- D offered £46,000 gross of CRU.
- D's intention was to pay Hal no more than £6,000 for general damages. D contended that Hal's claim for loss of earnings was not related to the accident.
- CRU certificate was appealed and reassessed at Nil. D was repaid £40,000.
- C sought recovery of the £40,000.
- What would the Court do?



Worked Example: Hal

- Held C was entitled to be repaid the £40,000.
- D was fixed with its mistake as it had chosen to express an offer which was unequivocal in its terms. (*Hilton International Hotels Ltd v Smith* [2001] PIQR)
- Led to the amendment of CPR 36 (currently CPR 36.22(6))



That process impacts upon the making of offers and payments into court. Should one party wish to take advantage of the usual costs consequences of failure to beat a payment in or offer to settle, whether, I add in parenthesis, under the new or the old rules, it was necessary for him to be exact in the terms in which he expressed himself. The receiving party must know exactly what is offered before he can make a sensible judgment whether to accept it or to reject it.

SECTION 3**To be completed only by DEFENDANTS in PERSONAL INJURY claims****Note:** See rule 36.22

A This offer is made without regard to any liability for recoverable benefits under the Social Security (Recovery of Benefits Act) 1997.

OR

B This offer is intended to include any relevant deductible benefits for which the defendant is liable under the Social Security (Recovery of Benefits Act) 1997.

The amount of £ is offered by way of gross compensation.

If you have ticked **B**, complete this section

The defendant has not yet received a certificate of recoverable benefits.

OR

The following amounts in respect of the following benefits are to be deducted. Please give details below.

Type of benefit	Amount
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>

The net amount offered is therefore

£

2. Helen Williams v Devon CC:

CPR r.36.22

(3) A defendant who makes a Part 36 offer must, where relevant, state either—

(a) that the offer is made without regard to any liability for recoverable amounts; or

(b) that it is intended to include any deductible amounts.

(4) Where paragraph (3)(b) applies, paragraphs (5) to (9) will apply to the Part 36 offer.

(5) Before making the Part 36 offer, the offeror must apply for a certificate.

(6) Subject to paragraph (7), the Part 36 offer must state—

(a) the gross amount of compensation;

(b) the name and amount of any deductible amounts by which the gross amount is reduced;
and

(c) the net amount of compensation.

(7) If at the time the offeror makes the Part 36 offer, the offeror has applied for, but has not received, a certificate, the offeror must clarify the offer by stating the matters referred to in paragraph (6)(b) and (c) not more than 7 days after receipt of the certificate.

(8) For the purposes of rule 36.17(1)(a), a claimant fails to recover more than any sum offered (including a lump sum offered under rule 36.6) if the claimant fails upon judgment being entered to recover a sum, once deductible amounts identified in the judgment have been deducted, greater than the net amount stated under paragraph (6)(c).

Worked Example: Helen

- D offers Helen £26,000 gross, £10,000 net with £16,000 of deductible benefits to CRU (all ESA)
- At trial, the Judge awards Helen:
 - Total damages: £36,000
 - Finding of 1/3 contributory negligence (!!)
 - Result: £24,000 gross of CRU
 - Past LoE: £7,000
- In terms of costs, the Judge found that D had beaten their £26,000 gross offer and awarded D their costs.
- Helen appealed. Is she likely to be successful?



Worked Example: Helen

- D offers Helen £26,000 gross, £10,000 net with £16,000 of deductible benefits to CRU (all ESA)
- At trial, the Judge awards Helen:
 - Total damages: £36,000
 - Finding of 1/3 contributory negligence (!!)
 - Result: £24,000 gross of CRU
 - Past LoE: £7,000
- In terms of costs, the Judge found that D had beaten their £26,000 gross offer and awarded Helen £24,000 gross of CRU, £26,000 gross offer and awarded D their costs.
- Helen appealed. Is she likely to be successful?



Worked Example: Helen

- Helen's ESA (£16,000) could only be deducted from her past LoE claim (£7,000). The effect of which is to reduce it to Nil.
- Therefore, her actual net damages are £24,000 - £7,000 = £17,000.
- In other words, Helen beat D's £10,000 offer. (*Williams V Devon CC [2003] EWCA Civ 365*)
- We MUST compare D's NET offer with what C's NET damages would be
- If D includes the full amount of CRU in their offer, C may want to assess whether the offer actually puts them at risk.
- Instead, for example, D should work out what LoE is worth and offer that sum. Otherwise any offer is unlikely to be protective.



HELEN WILLIAMS v DEVON COUNTY COUNCIL

- D offered £10,000 net: £26,700 gross but £16,700 to CRU (all LoE).
 - Judge awarded £23,000 gross, but only £7,000 for LoE
 - C left with £16,000 once LoE was reduced to zero (the max deduction).
 - On costs, Judge found that D had beaten their offer.
 - On appeal this was overturned : C beat the offer.
 - Question is what C would be left with NET if he accepted the offer.
 - D's offer valued LoE at £16,700 when in fact it was £7,300.
 - D does not have to include the full amount of CRU in their offer.
 - They should instead work out what (e.g.) LoE is 'worth' and offer that sum.
- Handwritten notes:* A blue circle highlights "£10,000 net" in the first bullet and "£16,000" in the third bullet. A blue arrow points from the word "THIS" (written in blue) to the "£16,000" in the third bullet.

HELEN WILLIAMS v DEVON COUNTY COUNCIL

- D offered £10,000 net: £26,700 gross but £16,700 to CRU (all LoE).
- Judge awarded £23,000 gross, but only £7,000 for LoE
- C left with £16,000 once LoE was reduced to zero (the max deduction).
- On costs, Judge found that D had beaten their offer.
- On appeal this was overturned : C beat the offer.
- Question is what C would be left with NET if he accepted the offer.
- D's offer valued LoE at £16,700 when in fact it was £7,300.
- D does not have to include the full amount of CRU in their offer.
- They should instead work out what (e.g.) LoE is 'worth' and offer that sum.

The solution put forward by the Court of Appeal is that the defendant should have read the rules and comply with them. The court stated:¹

"Rule 36.23(3)(b) [CPR 36.23(3)(b)] requires the payment notice to state "the name and amount of any benefit by which that gross amount is reduced in accordance with section 8² and Schedule 2³ to the 1997 Act". It follows that the calculations must be made in accordance with section 8; in other words, the amount by which the sum is reduced must be no more than the amount appropriate for the head of damages against which the benefits can be off-set. If that exercise is carried out properly by a compensator, resulting in the appropriate payment for general damages then the process of calculation of the Part 36⁴ payment equiperates to the way in which damages would be awarded were the matter to go to trial in a way which makes sense of the primary rule as to costs contained in Rule 36.20 [CPR 36.20]. It also enables the claimant to make a properly informed decision on whether or not to accept the payment."

It is for the defendant, therefore, to state precisely what benefits are being deemed to be recouped when it makes a Part 36 offer. This has to be clearly stated on the Part 36 offer c. If the defendant does not do this then the CPR Pt 36 is not proper and effective.

SECTION 3

To be completed only by DEFENDANTS in PERSONAL INJURY claims

Note: See rule 36.22

A This offer is made without regard to any liability for recoverable benefits under the Social Security (Recovery of Benefits Act) 1997.

OR

B This offer is intended to include any relevant deductible benefits for which the defendant is liable under the Social Security (Recovery of Benefits Act) 1997.

The amount of is offered by way of gross compensation.

D OFFERED THIS ...

If you have ticked **B**, complete this section

The defendant has not yet received a certificate of recoverable benefits.

OR

The following amounts in respect of the following benefits are to be deducted. Please give details below.

Type of benefit	Amount
EMPLOYMENT SUPPORT ALLOWANCE	17,000

The net amount offered is therefore £ 10,000

SECTION 3

To be completed only by DEFENDANTS in PERSONAL INJURY claims

Note: See rule 36.22

A This offer is made without regard to any liability for recoverable benefits under the Social Security (Recovery of Benefits Act) 1997.

OR

B This offer is intended to include any relevant deductible benefits for which the defendant is liable under the Social Security (Recovery of Benefits Act) 1997.

The amount of is offered by way of gross compensation.

If you have ticked **B**, complete this section

The defendant has not yet received a certificate of recoverable benefits.

OR

The following amounts in respect of the following benefits are to be deducted. Please give details below.

Type of benefit	Amount
ESA	7,000

The net amount offered is therefore £ 16,000

A PROTECTIVE
OFFER WOULD
HAVE LOOKED
LIKE THIS...

3. COLIN CROOKS v HENDRICKS LOVELL LTD

- D offered £18,500 *net of CRU* (i.e. did not specify what reduction)
- CRU certificate was £16,000 (all for LoE-type benefits).
- Judgment entered for £30,000 inc £26,000 for LoE.
Because of disagreement about CRU, it was not clear C would be left with.
- Case adjourned while CRU certificate was reviewed.
- CRU reduced on review to circa £7,000.
- After deduction C left with circa £23,000 in hand.
- Had certificate remained as-before, C would have had just £14,000
- D argued their offer meant '£18,500 plus CRU of £16,000'
- It did not: it meant what it said.
- D must state the *gross offer*, what *deductions* they make, and the *net offer*.

SECTION 3

To be completed only by DEFENDANTS in PERSONAL INJURY claims

Note: See rule 36.22

A This offer is made without regard to any liability for recoverable benefits under the Social Security (Recovery of Benefits Act) 1997.

OR

B This offer is intended to include any relevant deductible benefits for which the defendant is liable under the Social Security (Recovery of Benefits Act) 1997.

The amount of is offered by way of gross compensation.

*D THOUGHT
THEY HAD
OFFERED THIS...*

If you have ticked **B**, complete this section

The defendant has not yet received a certificate of recoverable benefits.

OR

The following amounts in respect of the following benefits are to be deducted. Please give details below.

Type of benefit	Amount
ESA	16,000

The net amount offered is therefore £ 18,500

SECTION 3**To be completed only by DEFENDANTS in PERSONAL INJURY claims****Note:** See rule 36.22

A This offer is made without regard to any liability for recoverable benefits under the Social Security (Recovery of Benefits Act) 1997.

OR

B This offer is intended to include any relevant deductible benefits for which the defendant is liable under the Social Security (Recovery of Benefits Act) 1997.

The amount of is offered by way of gross compensation.

If you have ticked **B**, complete this section

The defendant has not yet received a certificate of recoverable benefits.

OR

The following amounts in respect of the following benefits are to be deducted. Please give details below.

Type of benefit	Amount
ESA	7,000

The net amount offered is therefore

£ 23,000

A PROTECTIVE
OFFER WOULD
HAVE LOOKED
LIKE THIS...

Worked Example: Colin

- Colin is injured and stops working.
- PSLA is £25,000.
- Makes a claim for LoE for £10,000.
- Receives benefits while he is out of work - Universal Credit, but entirely comprised of LoE type benefits (ESA, Jobseekers Allowance).
- In fact, in the same period Colin gets more in benefits (£12,000) than he was earning pre-accident, so if it's deductible then it will completely extinguish the LoE claim.
- But the CRU has produced a nil certificate on the basis that they do not consider that Colin's benefits are accident-related.



Worked Example: Colin

- D thinks that's wrong.
- Colin takes the position that as the certificate of recoverable benefits is nil then D cannot offset anything against LoE and C is entitled to the lot.
- If Colin is right then he will get £10,000 in LoE as well as the £12,000 he has had in benefits.
- D is concerned about double-recovery and thinks the CRU have got it wrong.
- What do the parties need to consider?



Worked Example: Colin

- **Consider:** *Crooks v Hendricks Lovell Ltd* [2016] EWCA Civ 8
- Let's imagine D:
 - Makes a Part 36 offer of £35,000 gross
 - Specifies that the entire £10,000 claimed for LoE is being deducted for recoverable benefits
 - States that this offer leaves Colin with £25,000 net in his hand
 - Colin does not accept the offer
- Let's assume at trial the Court:
 - Agrees with the parties that PSLA is £25,000
 - Awards Colin his loss of earnings of £10,000
 - Therefore, the gross award is £35,000
- But is Colin better off than he would have been if he had accepted D's offer?



Worked Example: Colin

- That depends on the outcome of a CRU appeal. In *Crooks*, the case was adjourned while the CRU certificate was reviewed.
- Let's imagine, D (having set out their position clearly in writing earlier in the case) asks that costs be adjourned until the certificate has been appealed.
- If on appeal the CRU agrees with D and produces a certificate for £12,000, then £10,000 of that can be offset against the LoE claim and Colin is in fact left with £25,000 in his hand - D's offer of £25,000 net bites.
- If CRU stand by their original decision, Colin is left with more than £25,000 and has beaten D's offer.

