

*An Executive Agency of
the Department of Social Security*

Recovery of benefits

*Procedures for liaison with the
Compensation Recovery Unit*

A guide for companies and solicitors



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Terms and abbreviations

Certificate of Recoverable Benefits	Issued by CRU and tells the compensator which recoverable benefits have been or are likely to be paid, and the total amount to be repaid.
Compensation payment	Any payment made by way of compensation for a personal injury or a disease (whether in money or in money's worth).
Compensator	The person, company or agent paying compensation.
CRU	Compensation Recovery Unit.
DHSS	Department of Health and Social Services (in Northern Ireland).
DSS	Department of Social Security (in Great Britain).
Exempt payment	A payment specifically excluded from the provisions of the Act.
Injured person	The person claiming compensation.
MAT	Medical Appeal Tribunal.
Recoverable benefits	Social security benefits (and Statutory Sick Pay paid before 6 April 1994) listed in Schedule 2 of the Act and paid in the relevant period.
Relevant period	The period in respect of which benefits may be recovered.
SSP	Statutory Sick Pay.
The Act	The Social Security (Recovery of Benefits) Act 1997. In Northern Ireland the corresponding provisions can be found in The Social Security (Recovery of Benefits) (Northern Ireland) Order 1997.

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Introduction and general information

The Compensation Recovery Unit (CRU) is part of the Benefits Agency, which is an executive agency of the DSS. In Northern Ireland it is part of the Social Security Agency, which is an executive agency of the DHSS.

In 1997 legislation was passed which introduced a new recovery scheme with effect from 6 October 1997. Part IV of the Social Security Administration Act 1992, Part IV of the Social Security Administration (Northern Ireland) Act 1992 and Sections 2(1)(1A)(3) and (6) of the Law Reform (Personal Injuries) Act 1948 are repealed. The repeals only apply in respect of claims settled or awarded on or after 6 October 1997.

The Social Security Act 1998 introduces changes to the Social Security (Recovery of Benefits Act) 1997 which provide clearer grounds for review, 2 new grounds for appeal and for appeals to be heard by appeal tribunals instead of MATs. These provisions are effective from 29 November 1999 and introduce the first steps towards streamlining and modernising the decision making and appeals system.

This guide explains the recovery scheme in more detail and provides details on the review and appeals procedures.

Our aim is to provide a friendly, efficient and economic service which meets legal and customer requirements.

The law allows us 4 weeks to issue Certificates of Recoverable Benefits but our aim is to issue them as soon as possible. We continually review our procedures with a view to improving response times further.

We will acknowledge all claim notifications made on form CRU1 within 12 working days and general correspondence within 10 working days.

We are very interested to hear your views about this guide. Your suggestions for improvement are most welcome. There is a feedback sheet at the back. Please complete and return it to us.

If you feel that we have not handled your enquiries properly or are unhappy about our procedures, you should contact the person who dealt with your enquiry. If you are still unhappy you can contact the supervisor of the section. Alternatively, contact Customer Services.

Customer Services Great Britain

Tel: 0191 22 51057
Fax: 0191 22 51249

Customer Services Northern Ireland

Tel: 01232 545 890
Fax: 01232 545 889

For general enquiries and those about specific cases please contact our Service Delivery Area. Most pre-printed forms contain a direct line telephone number. For information the telephone numbers of the assessment sections are as follows:

Section 1	A – BURLINF	0191 22 58511
Section 2	BURLING – DOWELK	0191 22 58113
Section 3	DOWELL – HAMMONC	0191 22 58543
Section 4	HAMMOND – KEOGG	0191 22 58030
Section 5	KEOGH – MONKR	0191 22 58560
Section 6	MONKS – RHYS-DAVIER	0191 22 58598
Section 7	RHYS-DAVIES – TAYLOQ	0191 22 58169
Section 8	TAYLOR – Z	0191 22 58187

Please tell us the CRU reference number if you know it. It consists of 3 letters followed by 3 numbers, eg ABC-123. If you do so it will help us to deal with your enquiry more quickly.

If you are unable to provide the reference number please tell us the National Insurance (NI) number, or full name and date of birth.

Our full postal address is:

Compensation Recovery Unit
Benefits Agency
Reyrolle Building
Hebburn
Tyne & Wear
NE31 1XB

Document Exchange (DX) members can write to CRU at:

Compensation Recovery Unit
DX68560
Hebburn 2

If you are in Northern Ireland you should contact:

Compensation Recovery Unit
Social Security Agency
Magnet House
81-93 York Street
Belfast
BT15 1SS

Document Exchange (DX) users in Northern Ireland can write to CRU at:

Compensation Recovery Unit
DX3950NR
Belfast 22

A separate Scheme exists for residents of the Isle of Man. Any enquiries should be addressed to:

DSS General Benefits Section
Markwell House
Market Street
Douglas
Isle of Man

Tel: 01624 685102

NB If the case is being handled by CRU Northern Ireland please read all references to DSS in this guide as DHSS.

Important note:

This guide gives general guidance only and should not be treated as a full and authoritative statement of the law.

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The law

The law on the recovery scheme is contained in:

- The Social Security (Recovery of Benefits) Act 1997 and
The Social Security (Recovery of Benefits) Regulations 1997 as
amended by paragraphs 148-152 of Schedule 7 of the Social Security
Act 1998
- 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 Social Security and Child Support (Decisions and Appeals)
Regulations 1999, regulations 9 and 30-58

The main provisions of the law are that:

- the scheme applies where recoverable benefits have been paid (or are likely to be paid) to, or for, the injured person in respect of an accident, injury or disease; and
- a compensator who is, or is alleged to be, liable to any extent for the accident, injury or disease makes a compensation payment which is agreed on or after 6 October 1997

However where a payment is made on or after 6 October 1997 in accordance with a Court Order or agreement made before that date, the provisions of the Social Security Administration Act 1992 and the Social Security (Recoupment) Regulations will continue to apply

- no person shall make a compensation payment (other than an exempt payment) without first applying to CRU for a certificate of recoverable benefits. The compensator will be liable to pay DSS an amount equal to the total amount of the recoverable benefits
- CRU must issue the certificate within four weeks of receiving a request which contains all the information on which one can be issued
- where an amount has been paid to DSS in accordance with the certificate a compensator may be able to recover the amount paid, by reducing certain heads of a compensation award. This will only apply in cases where compensation has been awarded in respect of: loss of earnings, cost of care or loss of mobility; and corresponding benefits have been paid

- where the amount of compensation relating to a particular head is less than the amount of the corresponding benefit, the compensator is still liable to repay the full amount shown on the certificate of recoverable benefits
- after making a deduction the compensator must inform the injured person that this has been done
- the compensator, the injured person or their representative can ask, at any time, for the Certificate of Recoverable Benefits to be reviewed. It can only be changed if:
 - a mistake occurred in the preparation of the certificate
 - the amount of recoverable benefit on the certificate is more than the amount due to the Secretary of State
 - incorrect or insufficient information was provided by the person who applied for the certificate and as a consequence the amount on the certificate is less than the amount due to the Secretary of State.

If after we have looked at the certificate again we find that there is no recoverable benefit due to the Secretary of State then the certificate can be revoked.

- A compensator has the right of appeal against the Certificate of Recoverable Benefits. An injured person has a similar right but only where their compensation payment has been reduced to take account of benefit recovery
- an appeal may be made on the grounds that:
 - any amount rate or period specified in the certificate is incorrect; or
 - benefits listed in the certificate have been paid other than because of the accident, injury or disease in question, and should not have been included; or
 - benefits listed which have not and are not likely to be paid to the injured person have been brought in to account; or
 - the compensation payment made was not as a consequence of the accident, injury or disease.

2.1. The relevant period

The period in respect of which listed benefits may be recovered by DSS begins on:

- the day following an accident or injury; or
- in disease cases, the date that a recoverable benefit is first claimed in consequence of the disease.

The period ends on:

- the day a compensation payment in final discharge of a claim is made; or
- the date an agreement is made under which an earlier compensation payment is treated as having been made in final discharge of any claim; or
- the date five years after the relevant period begins;

whichever comes first.

2.2 Benefits covered by the scheme

Compensation in respect of Loss of Earnings during the relevant period can be reduced where the following benefits are recovered:

- Disability Working Allowance
- Industrial Injuries Disablement Benefit
- 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

Compensation in respect of Cost of Care during the relevant period can be reduced where the following benefits are recovered:

- Attendance Allowance
- Care Component of Disability Living Allowance
- Disablement Pension increase for Constant Attendance Allowance/
- Exceptionally Severe Disablement Allowance

Compensation in respect of Loss of Mobility during the relevant period can be reduced where the following benefits are recovered:

- Mobility Allowance
- Mobility Component of Disability Living Allowance

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

Example:

Compensation Award:		Listed Benefits:	
Loss of earnings	£12,000	Incapacity Benefit	£15,000
Pain and Suffering	£10,000	DLA (Care)	£ 5,000
	<hr/>		<hr/>
	£22,000		£20,000

The compensation for loss of earnings can be reduced to NIL because Incapacity Benefit is shown as a benefit against which that head of compensation can be reduced. Neither the balance of £3,000 Incapacity Benefit nor the £5,000 DLA (Care) can be deducted from the compensation award by the compensator.

The injured person will therefore receive the full amount of the £10,000 compensation awarded for pain and suffering. **The compensator is liable to pay £20,000 to the DSS.**

NOTES

- 1 The compensator **cannot** deduct any amount from the compensation awarded for pain and suffering
- 2 If the claim is settled for general damages only, the compensator is still liable to repay the full amount of benefits as shown on the certificate.
- 3 Mobility Allowance ceased on 6 April 1992.
- 4 Unemployment Benefit and Income Support for unemployed people was replaced by Jobseeker's Allowance on 7 October 1996.
- 5 Incapacity Benefit replaced Sickness and Invalidity Benefit from 13 April 1995.
- 6 Statutory Sick Pay – 100 per cent of SSP paid before 6 April 1991 and 80 per cent of SSP paid from 6 April 1991 to 5 April 1994 is recoverable. Payments made after 6 April 1994 are no longer subject to recovery.
- 7 Retirement Pension is not a recoverable benefit. Any of the above listed benefits which continued to be paid after retirement age, however, will be subject to recovery.

2.3 Exempt payments

Benefits will not be recovered by CRU from the following types of payments. Where it is clear that the claim falls into one of these categories, you do not need to send form CRU1 to us.

If there is any doubt about whether an individual payment is, or should be, exempt from the scheme, please contact CRU for advice.

- 1 Any payment made to or for the injured person under Section 35 of the Powers of Criminal Courts Act 1973 or Section 249 of the Criminal Procedure (Scotland) Act 1995 (compensation orders against convicted persons).
- 2 Any payment made in the exercise of a discretion out of property held subject to a trust in a case where no more than 50 per cent by value of the capital contributed to the trust was directly or indirectly provided by persons who are, or are alleged to be, liable in respect of:
 - a) the accident, injury or disease suffered by the injured person; or

- b) the same or any connected accident, injury or disease suffered by another.
- 3** Any payment made to the injured person by an insurance company within the meaning of the Insurance Companies Act 1982 under the terms of any contract of insurance entered into between the injured person and the company before:
- a) the date on which the injured person first claims a listed benefit in consequence of the disease in question; or
 - b) the occurrence of the accident or injury in question.
- 4** Any redundancy payment falling to be taken into account in the assessment of damages in respect of an accident, injury or disease.
- 5** So much of any payment as is referable to costs.
- 6** The following prescribed payments and trusts:
- a) any payment made out of property held for the purpose of the charitable trust called Macfarlane Trust and established partly out of funds provided by the Secretary of State to the Haemophilia Society for the relief of poverty or distress among those suffering from haemophilia;
 - b) any payment made from the Macfarlane (Special Payments) Trust established on 29 January 1990 partly out of funds provided by the Secretary of State for the benefit of certain persons suffering from haemophilia;
 - c) any payment made from the Macfarlane (Special Payments) (No 2) Trust established on 3 May 1991 partly out of funds provided by the Secretary of State for the benefit of certain persons suffering from haemophilia and other beneficiaries;
 - d) any payment made from the Eileen Trust established on 29 March 1993 out of funds provided by the Secretary of State for the benefit of persons eligible for payment in accordance with its provisions;
 - e) any payment to the extent that it is made:
 - i) in consequence of an action under the Fatal Accidents Act 1976; or
 - ii) in circumstances where, had an action been brought, it would have been brought under the Act;

NB If any of the action is being brought under the Law Reform (Miscellaneous Provisions) Act 1934, a CRU1 needs to be completed.
 - f) any payment to the extent that it is made in respect of a liability arising by virtue of Section 1 of the Damages (Scotland) Act 1976;

- g) without prejudice to Section 6(4) of the Vaccine Damage Payments Act 1979 (which provides for the deduction of any payment in the assessment of any award of damages) any payment made under that Act to or in respect of the injured person;
- h) any award of compensation made to or in respect of the injured person under the Criminal Injuries Compensation Act 1995;
- i) any compensation payment made by British Coal in accordance with the NCB Pneumoconiosis Compensation Scheme set out in the schedule to an agreement made on 13 September 1974 between the National Coal Board, The National Union of Mineworkers, the National Association of Colliery Overmen, Deputies and Shotfirers, and the British Association of Colliery Management;
- j) any payment made to the injured person in respect of sensorineural hearing loss where the loss is less than 50 db in one or both ears;
- k) any contractual amount paid to an employee by an employer of his or hers in respect of a day of incapacity for work;
- l) any payment made under the National Health Service (Injury Benefits) Regulations 1995, the National Health Service (Scotland) (Injury Benefits) Regulations 1974 or the Health and Social Services (Injury Benefits) Regulations (Northern Ireland) 1975;
- m) any payment made by or on behalf of the Secretary of State for the benefit of persons eligible for payment in accordance with the provisions of a scheme established by him on 24 April 1992 or, in Scotland, on 10 April 1992.
- n) for Northern Ireland only: any payment made to or for the injured person under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (compensation orders against convicted persons).

2.4 **DSS right to inspect records**

The law gives DSS inspectors the right to examine the records of compensators and employers to ensure the Scheme is being operated properly.

2.5 How the recovery scheme works

The main procedures for compensators

- 1 compensation claim received;
- 2 check the details to be given to CRU (name, address, date of birth, National Insurance number);
- 3 notify CRU of the claim within 14 days. A form CRU1 is provided for this purpose;
- 4 receive acknowledgement of notification (form CRU4);
- 5 when ready to make an offer of compensation, return form CRU4 to apply for a Certificate of Recoverable Benefits;
- 6 receive acknowledgement of application (if not received within 10 days check with CRU);
- 7 receive Certificate of Recoverable Benefits (if not received by date given on acknowledgement check with CRU). A copy will be sent to the injured person's representative;
- 8 pay compensation and, if any deductions have been made in accordance with the Act, inform the injured person;
- 9 pay the amount shown on the certificate to the DSS within 14 days.

3

Guidance for compensators

3.1 Recovery procedures

When you receive a claim for compensation, send form CRU1 to CRU within 14 days. This does not mean that you have accepted any liability for the accident, injury or disease.

We will send you form CRU4 to acknowledge that we have received the CRU1. You will need to return it to us when applying for a Certificate of Recoverable Benefits.

If, before you are ready to settle the claim, you need an indication of how much benefit has been paid you can return form CRU4 and ask for details of benefits paid.

Note: The statement does not have the same legal status as a Certificate of Recoverable Benefits. We will make every effort to ensure that the information in the statement is as accurate as possible. However, it may be that, for some reason we do not have to hand all the information we would have when we issue a certificate. For that reason, the amount of recoverable benefits in the statement may be different from the amount in the certificate.

When you are ready to settle the claim, apply for a Certificate of Recoverable Benefits by returning form CRU4. We will acknowledge receipt of your request. If you have not received the acknowledgement within 10 working days, please let us know.

We will issue the certificate within 4 weeks of receiving a request (see also 3.8 Having a certificate renewed). The certificate will specify the total amount of recoverable benefits. You must pay the DSS the amount shown on the certificate within 14 days of the day on which the compensation payment was made.

We will send a copy of the certificate to the injured person or his/her representative.

Help us to help you

In order for us to provide a prompt and accurate service it is essential that you tell us about claims as early as possible. If you delay sending us the information on form CRU1 this can cause difficulties when you request a certificate. Unless we tell our district offices about the compensation claim, old records could be sent to remote storage locations. This can delay the retrieval of benefit information and will mean that you have to wait longer for a certificate.

3.2 Completing form CRU1

Please complete the form as fully as possible. It will save further enquiries later on.

You must tell us the following information 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, eg a maiden name, it would be helpful if you could tell us);
- their date of birth (and National Insurance (NI) number if at all possible);
- the date of the accident or injury;
- a full description of the nature of the accident, injury or disease;
- whether or not the injured person was employed at the date of incident;
- details of the injured person's employment if known (only where the date of incident is before 6 April 1994).

In order to help us process the claim please tell us whether the claim is public liability (P), motor (M), employer (E) or other (O) (eg clinical negligence).

If the claim is "P", "M" or "O" and the date of incident is before 6 April 1994 you should give us the name and address of the injured person's employers at the time of the accident, injury or disease. We can then obtain information about Statutory Sick Pay. In "E" liability cases the compensator provides this information when applying for a certificate.

If a solicitor is acting on your behalf you must show their name and address on form CRU1, to ensure that correspondence is sent to the correct location.

If you take over a claim from another compensator, please notify us in writing and complete a new form CRU1.

Additional stocks of form CRU1 can be obtained from CRU at the address shown in Section 1.

Please note: You may use your own computer produced version of form CRU1. However, in order to avoid delays when we process the form, its size and format must be the same as form CRU1. Please ask CRU Customer Services for advice about this.

You must complete form CRU1 whatever the injured person's age, even if they are a child or pensioner.

Most compensators will have standard identification codes previously agreed with CRU. These should be quoted on form CRU1 and other communications to the Unit. If you do not have such a code or have any questions about this matter, please contact our Customer Services for advice.

3.3 Obtaining a Certificate of Recoverable Benefits

When we receive form CRU1 we will send you a form CRU4 which you can use to apply for a Certificate of Recoverable Benefits.

Return form CRU4 to us when you are ready to settle the claim. If you need information about benefits earlier please ask for a statement of benefits (see paragraph 3.1).

Please do not ask for a certificate before you are ready to settle. It makes extra work and expense for everyone, and may cause delay.

Statutory Sick Pay (SSP) employer liability cases only

In all employer liability cases where the date of incident is prior to 6 April 1994 (or in disease cases where SSP may have been paid before that date) you should ask the relevant employer for details of any SSP that the injured person was paid as a direct result of the accident, injury or disease.

Complete form CRU4 to show the gross amount of SSP. Make sure you do not include any Occupational Sick Pay which may have been paid together with the SSP.

The amount shown on the certificate will include 100 per cent of SSP paid before 6 April 1991 and 80 per cent of SSP paid from 6 April 1991 to 5 April 1994.

SSP information for periods on or after 6 April 1994 is not required as the benefit is not recoverable after that date.

For motor (M) or public (P) or other (O) cases CRU will obtain SSP information.

3.4 Urgent requests for Certificates of Recoverable Benefits

If you need a certificate urgently (eg because of an imminent Court date) we will do our best to issue one as soon as possible. You should provide confirmation of the urgency (eg a letter from a Court).

It may not always be possible to issue the certificate immediately but we will send it as quickly as possible.

3.5 The certificate

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 rate expected to be paid for a short future period if benefit continues to be paid;
- the date the certificate ceases to be valid;
- the total amount we require to be repaid;
- a note to say whether any of the above amounts or dates have been estimated.

3.6 Powers to estimate

The law allows us to estimate any amount, date or period specified in the certificate.

3.7 Issue of the certificate

We will send the certificate to you and at the same time we will send a copy to the injured person or their representative.

Write to us if you have any queries about the certificate. We will issue a further certificate if necessary (see also Section 7 Reviews and Appeals).

3.8 Increases in certificates

After a certificate has been issued we may become aware that further recoverable benefits have been paid. These benefits would have been included in the certificate had we been aware of them at the time it was issued.

The amount to be repaid cannot be increased once a certificate has been issued **except where the compensator has provided us with incorrect or insufficient information**. If recoverable benefits are inadvertently omitted from a certificate, and a compensation payment is not made during the period of validity of that certificate, the additional benefits will be shown on any later certificates.

In order to give as much notice as possible of this, we will notify you in writing if we become aware that a future certificate will be affected in this way.

3.9 Having the certificate renewed

When a certificate expires a further certificate should be requested only if the compensation claim is ready to be settled.

We cannot issue a new certificate until the current one expires. Where it is clear that the claim will not be settled before the expiry of the current certificate you may request a fresh certificate. We will issue a new certificate within four weeks after the current certificate expires.

The period of validity of certificates varies according to circumstances. It is important to check each certificate to establish how long it is valid.

3.10 What to do after the certificate is issued

In order to avoid us sending you further enquiries please tell us as soon as possible when you know the outcome of the claim, or when the certificate expires. With every certificate we will send you a form (CRU102) for this purpose.

If no notification has been received about the outcome of a compensation claim after five years, automatic follow up action will be taken to obtain the result of the claim.

When compensation has been paid you must send the amount specified on the certificate to CRU within 14 days of making the compensation payment. Payments should be by crossed cheque, payable to "Department of Social Security only" (in Northern Ireland "Department of Health and Social Services only").

You may send one cheque in respect of any number of payments. Send a schedule with the bulk payment giving details of the amount involved and quoting the CRU reference number for each individual case. If you choose this option you should bear in mind that the liability to pay any individual amount within 14 days of making a compensation payment still applies.

3.11 Penalty for default

The DSS 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; and/or
- you fail to repay us the specified amount.

If you obtain a certificate and make the appropriate compensation payment but fail to pay DSS, action can be taken against you once the statutory 14 days have elapsed.

4

Requests and notifications not appropriate to CRU

4.1 Professional negligence

Form CRU1 need not be submitted for a compensation claim arising from alleged professional negligence. CRU do not however pursue this type of case and cannot issue a Certificate of Recoverable Benefits. If details of benefits paid are required, a request should be made to the relevant DSS benefit paying office. If you have already sent us a CRU1 for such a case please let us know as soon as possible. The claim can be settled without further reference to CRU.

However, if compensation is also to be paid as a result of the original accident, injury or disease, form CRU1 should be submitted by the compensator.

4.2 Compensation for criminal injuries

CRU do not have any involvement in criminal injuries cases. If details of benefit are required they should be obtained from the relevant DSS benefit paying office.

For information about the Criminal Injuries Compensation Scheme contact:

Criminal Injuries Compensation Board
Tay House
300 Bath Street
Glasgow G2 4JR
Tel: 0141 331 2726

The Compensation Agency
Royston House
34 Upper Queen Street
Belfast BT1 6FX
Tel: 01232 249944

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

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

CRU can only provide details of benefits paid as a result of injury or disease for which compensation has been claimed. If details of any earlier benefits are needed they should be requested from the relevant DSS benefit paying office with a signed authority from the claimant.

5

Complex cases

5.1 Interim payments

When a compensator makes an interim compensation payment they will be liable to repay to DSS any recoverable benefits in the relevant period up to the date of the interim payment. If the compensator makes any further payments, or an agreement that a previous payment was in final settlement of the claim, they will be liable to repay any further benefits paid in the relevant period which have not already been repaid.

However, before making any further payment, or an agreement that a previous payment was in final settlement of the claim, the compensator:

- will be liable to repay any further benefits paid in the relevant period; and
- should apply for a fresh Certificate of Recoverable Benefits. This certificate will show details of all recoverable benefits and the balance to be paid by the compensator.

In cases where a further compensation payment is made, the compensator:

- may aggregate the payments already made with the payments about to be made to CRU and the injured person; and
- use these aggregate amounts when calculating the reductions that can be made under Section 8 of the Act.

5.2 Multiple compensators

Normally when there is more than one compensator involved in a claim for compensation they will act together so that only one compensation payment is made to the injured person and DSS.

However, where this does not happen compensators will be liable to repay any benefits which have not already been repaid, in the relevant period up to the time they make a compensation payment.

Each compensator may make only those reductions in the injured person's compensation allowed by Section 8 of the Act in relation to the compensation they are paying and the benefits they are repaying to DSS.

5.3 **Payments into court (England, Wales and Northern Ireland)**

Where compensation is paid into court the compensator remains liable to repay any recoverable benefits to the DSS.

The compensator must obtain a Certificate of Recoverable Benefits and lodge it with the payment into court. The payment in should be net of any recoverable benefits and net of any allowable deductions specified in Schedule 2 of the Act (see Section 2.2 Benefits covered by the scheme).

The relevant period for recovery of benefits ends on:

- the day the payment into court is made – but only where the payment in is accepted within 21 days after the injured person is notified that the payment in has been made; or
- in cases where the payment is made in accordance with an order of the court, the date of that order; or
- the date that the payment in is accepted by consent between the parties.

The compensator must repay any recoverable benefits to DSS within 14 days of being notified that the payment into court, or any part of it, has been paid out to the other party.

5.4 **Insurer's liability**

Further information about cases where the amount of benefits to be repaid and the amount of the compensation exceed the insurer's maximum liability can be obtained from CRU.

5.5 **Clinical negligence**

Claims involving clinical negligence can be particularly difficult. We therefore have a small team of specialists who deal with these cases. This is because they need to decide how much of the benefit was paid as a result of the negligence.

It is important that form CRU1 is submitted in clinical negligence claims as soon as you have been notified of the claim. This will enable us to provide a prompt and accurate service.

Please contact our Clinical Negligence Team if you have any queries about this complex area of work.

5.6 **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 suffers only 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 know about it.

However, if such a payment is made at a later date, benefits may have been claimed in the meantime. In these cases, a form CRU1 **must** be submitted.

5.7 **Property damage only claims**

Do not notify a claim for **property damage only** to CRU. It is unlikely there will be any claim to benefits.

However, if a claim for property damage includes a claim for loss of earnings, loss of mobility, cost of care or any other element of compensation, a form CRU1 **must** be submitted.

6

Guidance for injured person's representatives

The compensator will give us your details when they notify us of the compensation claim.

You should always give the compensator your client's full name, address, date of birth, if known, and his or her National Insurance number. You should also provide as much information as possible about the injured person's injuries or nature of the disease. If you give incorrect or incomplete details it may cause delay or inaccuracies in calculating the amount of recoverable benefit. If the injured person has also been known by any other name, eg maiden name, please give details.

The compensator must request a Certificate of Recoverable Benefits before they pay compensation. You will be sent a copy of the certificate.

If you disagree with the amount of benefit specified on the certificate, you may ask for it to be reviewed (see Section 7 Reviews and Appeals). If necessary we may then issue a fresh certificate.

You may also appeal against a Certificate of Recoverable Benefits. An appeal cannot be made until after final settlement of the claim and the compensator has paid recoverable benefits to the Secretary of State. An injured person may only appeal if the amount of compensation he or she receives has been reduced by the compensator to take account of benefit recovery.

The law only allows the compensator to apply for a Certificate of Recoverable Benefits. If you need to know the amount of benefits your client has received you may ask us for a statement of benefits (see Paragraph 3.1).

If you are pursuing a claim for professional negligence or criminal injuries compensation, or need benefit details outside the five-year statutory period on behalf of your client please see Paragraph 4.1.

7

Reviews and Appeals

7.1 Reviews

The compensator, the injured person, or either party's representative can ask CRU to review any aspect of a certificate at any time. Please put your request in writing giving the reasons why you think the certificate is wrong.

A review can be made on the following grounds where:

- a mistake has occurred in the preparation of the certificate
- the amount of recoverable benefit on the certificate is more than the amount due to the Secretary of State
- incorrect or insufficient information was provided by the person who applied for the certificate and as a consequence the amount on the certificate is less than the amount due to the Secretary of State.

When we review a certificate we look at all the benefits we have listed as recoverable, the amounts paid, and the period 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 unrelated to your reasons for requesting the review.

Once the review is complete, we will either confirm in writing that the certificate is correct or issue a fresh one or revoke the certificate. If a revised certificate is issued it will cover the same period as the certificate it replaces.

We will issue a fresh certificate showing an increase in the amount of recoverable benefits only where the variation is required as a result of incorrect or insufficient information supplied by the person who applied for the certificate. Where this happens the compensator will be liable to pay the difference to CRU. The compensator will be able to ask the injured person to pay this amount only where the injured person knowingly gave him incorrect or insufficient information with the intention of increasing the amount of the net compensation payment and the compensator did not know it was incorrect or insufficient.

NB If you have any queries about the payment of benefits, you should contact the office which pays the benefit, not the CRU.

7.2 Appeals

Leaflet Z2 explains how to appeal against a certificate. It also contains the form which must be used.

An appeal against a Certificate of Recoverable Benefits may be made on the ground that either:

- any amount, rate or period specified in the certificate is incorrect; or
- we have specified benefits that were not paid as a result of the accident, injury or disease in respect of which compensation was paid; or
- benefits listed which have not and are not likely to be paid to the injured person have been brought into account; or
- the compensation payment made was not as a consequence of the accident, injury or disease.

An appeal can only be made after final settlement of the compensation claim and payment of recoverable benefits has been made. An appeal must be made within one month of the date on which the compensator makes the full payment of recoverable benefits to the Secretary of State.

For appeal purposes an award of provisional damages is treated as a final settlement.

Late appeals may be accepted but only where there are special circumstances for the delay. No appeal can be accepted if it is made 13 months or more after the date the right to appeal arises.

An appeal may be made by a compensator or by a injured person whose compensation payment has been reduced by the compensator to take account of benefit recovery.

Appeals are heard by an independent tribunal administered by The Appeals Service.

The tribunal can decide that the amount on a certificate is correct or it can either increase it or decrease it.

Following the decision CRU will either confirm the certificate, issue a fresh one, or revoke the certificate.

Where the amount on a certificate is increased following an appeal the compensator will be liable to pay the balance of recoverable benefits to DSS.

Where the amount on a certificate is reduced, the balance will be refunded to the compensator.

An appeal to the Social Security Commissioners, against the decision of an appeal tribunal, can be made by any party on the grounds that the decision was erroneous in law. Such an appeal may only be brought with leave of the AT Chair or the Commissioners. Application for leave to appeal to the Commissioners should be made to The Appeals Service. Details of how to appeal and time limits will be sent to you by The Appeals Service when your appeal has been heard.



Comments about this guide

Please feel free to let us know any comments, observations or queries you have about this guide. We will consider your observations and (where possible) incorporate them when we next reprint the guide.

Comments

Name

Organisation

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Please return to:

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