



Australian Government  
Department of Employment  
and Workplace Relations

# Standard Operating Procedures

Compensation for Detriment caused by Defective  
Administration under section 42AF(2)(d) of the *Social  
Security Administration Act 1999*

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# Compensation for Detriment caused by Defective Administration under section 42AF(2)(d) of the Social Security Administration Act 1999

## 1. Introduction

1. On 4 July 2024, the Secretary of the Department of Employment and Workplace Relations (the Secretary) paused the cancellation of social security payments<sup>1</sup> under section 42AF(2)(d) of the *Social Security (Administration) Act 1999* (the Admin Act). This section of the Admin Act states that the Secretary, or their delegate, **may** impose a penalty for persistent mutual obligation failures without a reasonable excuse. The discretion to apply such a penalty was introduced by the *Social Security Legislation Amendment (Streamlined Participation Requirements and Other Measures) Act 2022* in April 2022. Prior to this amendment, the Admin Act required a penalty to be applied without any discretion.
2. Payment cancellation decisions occur under s 42AF(2)(d) of the Administration Act with determination of persistent non-compliance made under the *Social Security (Administration) (Non-Compliance) Determination 2018* (No. 1).
3. The decision to pause these cancellations was made upon recognising that appropriate discretion may not have been exercised during the decision-making process.
4. The department has identified 964 people who had their social security participation payment cancelled between 8 April 2022 and 4 July 2024 under a s42AF(2)(d) decision.
5. The Secretary has decided to review each cancellation decision under the Compensation for Detriment caused by Defective Administration (CDDA) Scheme. The CDDA Scheme was considered appropriate in these circumstances given that no practical remedy is available under the social security law due to arrears limitation provisions.
6. Guidance on the use of the CDDA Scheme is outlined in the [Scheme for Compensation for Detriment caused by Defective Administration \(RMG 409\) | Department of Finance](#)<sup>2</sup>. Each decision under the CDDA Scheme must be individually assessed, and requires:
  - 1) evidence of defective administration;
  - 2) the person to have suffered detriment as a direct result of the defective administration; and
  - 3) determining the level of compensation payable.

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<sup>1</sup> See Glossary, pg. 18

<sup>2</sup> <https://www.finance.gov.au/publications/resource-management-guides/scheme-compensation-detriment-caused-defective-administration-rmg-409>

## Role of Reviewing Officers

7. These Standard Operating Procedures (SOPs) outline the review and remediation process that will apply in reviewing decisions made to cancel people's social security payments under s42AF(2)(d) of the Admin Act. They provide guidance to Reviewing Officers in the factors that should be considered in the review, and in documenting and providing their recommendation to the Authorised Officer as allowed for in [the D24-011 Authorisation under the Scheme for Compensation for Detriment caused by Defective Administration 2024](#).
8. The question that will be considered is whether on merit of the available information, a different decision may have been taken if a discretion had been applied. The Review Officer's task is to determine whether compensation is payable due to the defective administration (see paragraph 14 for these considerations) that denied a person the opportunity of having a discretion applied before a decision was made.
9. Review Officers will consider whether a person's payment should have been cancelled, focusing on **the discretion** that was required and any factors present in the situation that a decision maker should properly have considered in the context of a decision of this kind. The SOPs outline broad factors that should be considered by the Reviewing Officers in making this determination.
10. A discretionary decision generally refers to a decision-making process in which no one consideration and no combination of considerations is necessarily determinative of the result. Rather, the decision-maker is allowed some latitude as to the choice of the decision to be made. This 'latitude' could be seen as an 'area of decisional freedom' within which different people may reasonably reach different conclusions about the correct or preferable decision, based on the same information
11. Reviewing Officers should make their recommendations taking into account information that has since become available about the person's circumstances in the lead up to, and at the time of, the cancellation decision (not just based on the information that was available at the time the decision was made).
12. If the review determines that in applying a discretionary decision, the **payment should not have been cancelled**, the decision should then be to compensate the person for the direct financial detriment incurred following the application of the original payment cancellation decision. In determining the compensation payable, the Reviewing Officer will make an initial recommendation to the Authorised Officer under D24-011 Authorisation under the Scheme for Compensation for Detriment caused by Defective Administration 2024.
13. If the review determines the **payment should have been cancelled**, the person will not have suffered a detriment and compensation is not payable

## Compensation for Detriment caused by Defective Administration

14. The key document governing the assessment of claims for payment under the Compensation for Detriment caused by Defective Administration (CDDA) scheme is the Department of Finance's [RMG 409](#)<sup>3</sup>.
15. RMG 409 requires that the Authorised Officer must consider:
  - i. whether there was defective administration,
  - ii. whether the person suffered detriment as a direct result of the defective administration, and
  - iii. if the person has suffered detriment as a result of defective administration, what is the amount of compensation that should be paid.

## Process of review and access to procedural fairness

16. Each review will consider holistically a person's circumstances, mutual obligation requirements and their cumulative impact in determining whether there was detriment suffered as a result of defective administration. Any recommendation for compensation will be determined on its own merits.
17. Reviewing Officers will undertake an initial desktop review of the information available in the relevant systems and records (generally recorded in ESSWeb). Where there is evidence that if the appropriate discretion had been even applied, it is probable that the decision to cancel a person's payment would not have been made (ie. defective administration directly caused detriment) – a recommendation for compensation will be made.
18. In instances where the initial review does not determine that compensation is warranted, the affected person will be afforded procedural fairness to provide additional information to support further consideration of whether detriment occurred. This includes:
  - i. providing an opportunity for the person to present any additional information in writing, and
  - ii. making a decision that is free from bias and considers all available information holistically.
19. Providing any additional information will be voluntary. Affected people will be provided with contact details for the department's National Customer Services Line and a dedicated email address ([TCF-Review@dewr.gov.au](mailto:TCF-Review@dewr.gov.au)) to which they can send information or ask questions regarding the process and the range of information that may be relevant.
20. Any information provided by an affected person will be considered alongside information contained in the findings of the initial review. A second decision will be then be made considering all available information to determine whether the person's payment should have been cancelled.

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<sup>3</sup> <https://www.finance.gov.au/publications/resource-management-guides/scheme-compensation-detriment-caused-defective-administration-rmg-409>

21. Where a decision is made that **does not** recommend compensation, the person will still be able afforded to option to submit a claim for compensation under CDDA. See the Additional Compensation section for additional information.

## Quantum of compensation payments

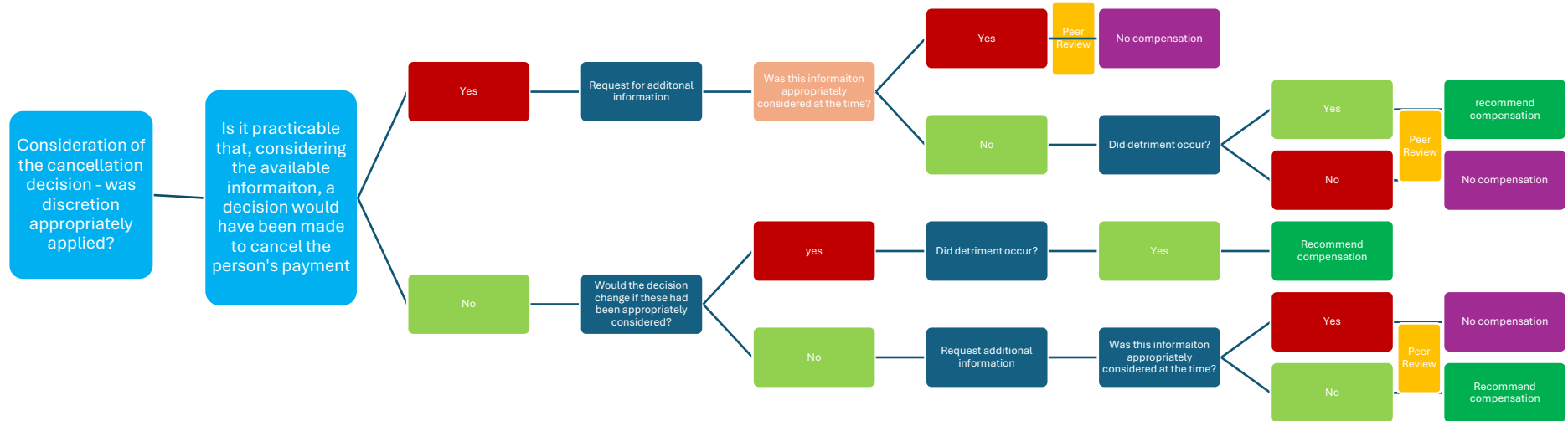
22. Under the CDDA Scheme, the principle used to determine an appropriate amount of compensation is to place the person in the position they would have been in if the defective administration had not occurred.
23. Where the review process, either in the initial review or after consideration of additional information finds that detriment has occurred, affected people will be compensated the amount they would have otherwise received had their payment not been cancelled at the time and a different decision made. The amount the person otherwise would have received will be calculated based on an assumption that, but for the cancellation decision, an affected person would have continued to receive their payment at the same rate they had received immediately prior to their payment was cancelled, based on 4 weeks paid at the person's calculated daily rate (as shown in Services Australia's records). All affected people will be offered the opportunity to submit a separate claim for compensation under the CDDA scheme. These claims for additional compensation will be considered separately to this review process and any compensation paid will be made through a separate payment. See Additional Compensation below for further information.
24. Where a recommendation to compensate is made, these decisions will be communicated to the affected individual and paid through Services Australia on behalf of the department.

## Additional compensation

25. Regardless of the outcome of the review process, all affected people will be offered the opportunity to make an additional claim for compensation under the CDDA Scheme for any further detriment experienced as a result of the defective decision.
26. Any claim for additional compensation will be a separate claim and decision-making process to this review process.
27. RMG 409 makes it clear that compensation is only available under the CDDA Scheme where the detriment found to have been suffered by a claimant has arisen as a **direct** result of the defective administration.
28. In some cases, it may be clear the additional detriment is the "direct" result of the defective administration, for example where a person incurred defaults, interest or additional costs on bill payments or finance agreements with regular payments being made through Centrepay, the Services Australia linked direct deduction scheme.
29. Each claim for additional compensation will be assessed on a case-by-case basis, and there are no set categories of additional detriment that are considered as directly caused by the defective administration.

30. Communications materials advising affected people of the process and the outcomes of the reviews will set out how to make an additional CDDA claim, and the information that could be used to support such a claim.

## Overview - Review of Cancellation Decisions under S42AF(2)(d) of the Social Security (Administration) Act 1999



**NOTE:** Each decision should be made at your discretion and based on your judgement of the available information. Decisions should be made holistically, considering the cumulative impact of circumstances and then deciding whether a reasonable person would have applied the cancellation decision based on your consideration of the available information.



# Consideration of cancellation decisions under 42AF(2)(d)

## Step 1: Determining Defective Administration

31. For the purpose of this review, defective administration **is taken to have occurred** as the relevant administrative processes did not allow for appropriate discretion to be applied in making a decision to apply the penalty.
32. Accordingly, Reviewing Officers do not need to consider this factor. The decision-maker will accept that this first step under the CDDA Scheme is satisfied.

## Step 2: Determining detriment

33. At this step Reviewing Officers need to determine if there was detriment caused as a direct result of defective administration. In determining detriment, Reviewing Officers should consider whether it was **probable that if the discretion was properly applied at the time, the decision to cancel a person's payment would not have been made.**
34. Reviewing Officers should take a range of factors into account in making this determination. This includes a consideration of the person's circumstances, their cumulative impact on the person's ability to meeting their mutual obligation requirements (both in the lead up and at the time the final penalty was applied), and any new information that has become available regarding the person's circumstances leading up to, and at the time of, the cancellation decision. This includes information that may not have been available to the original decision-maker.

## Factors to be considered in determining whether discretion was properly applied

35. A discretionary decision refers to a decision-making process in which no singular consideration is **necessarily** what determines a particular result. Rather, the decision-maker is allowed some broader consideration beyond the narrow confines of the requirements of the Targeted Compliance Framework (TCF) and can holistically look at how applying a payment cancellation might impact on the person. In applying a discretionary decision, the reviewing officer is free to consider the unique circumstances of each case.
36. The guiding principle whether it is probable that a decision-maker would have decided not to cancel the person's payment if they had applied the appropriate discretion at that time (even in situations where the person was not determined to have a reasonable excuse). If discretion was not appropriately applied then the person will have suffered detriment as a direct result of defective administration.
37. If, on the basis of the information available, it is probable that the same decision would have been made, then the person will not be considered to have suffered any direct detriment as a result of defective administration.

38. If the following factors were present at the time of the decision, the Reviewing Officers should consider that the cumulative impact of these factors in the lead up to and immediately after the payment cancellation, and whether they were appropriately considered at the time the payment cancellation was applied. If a discretion was appropriately exercised at the time of the payment cancellation, would a reasonable person have cancelled the person payment based on the impact of any of these factors on the person. If you consider that discretion was not properly applied and the original decision to cancel the payment would probably not have been made, then you should recommend compensation. The factors are<sup>4</sup>:

- The person did not have access to safe, secure and adequate housing, or was using emergency accommodation or a refuge, at the time of the mutual obligation failure.
- Information to suggest poor literacy and numeracy – including digital literacy – and/or an inability to understand their requirements, including PBAS targets and job search, and whether they have the skills and IT equipment to report them using the relevant systems.
- Illness, injury, impairment or disability of the person – including whether exemptions for temporary incapacity were granted prior to or following the application of the penalty
- A cognitive, neurological, psychiatric or psychological impairment or mental illness.
- Unforeseen family or caring responsibilities.
- The person was subjected to criminal violence (including domestic violence and/or sexual assault).
- The person was adversely affected by the death of an immediate family member or close relative.
- The person was undertaking paid work at the time of the failure.
- The person was attending a job interview at the time of the failure.
- Drug or alcohol dependency, taking onto consideration whether this has been previously given as a reasonable excuse and/or the person has undertaken rehabilitation. Note: drug or alcohol dependency **cannot** be used as a reasonable excuse if the person has previously used drug or alcohol dependency as a reasonable excuse and has refused or failed to participate in available treatment.

39. Reviewing Officers should consider other relevant information in determining whether discretion was appropriately applied, including:

- Caring responsibilities for children or other caring (including parents/family).
- Court action, or court-imposed requirements that could impact a person's ability to meet requirements

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<sup>4</sup> [Social Security \(Administration\) \(Reasonable Excuse – Participation Payments\) Determination 2018](#)

- Grief (separate to the reasonable excuse of being adversely affected by the death of an immediate family member or close relative)
- the person was undertaking paid work and whether this was considered when setting the requirement or applying the failure. And/or
- Any other relevant factors that may impede a person's ability to meet their mutual obligation requirements.

### Other Relevant information in determining if discretion was appropriately applied:

40. Reviewing Officers should consider the person's circumstances at the time of, and in the lead up to, the cancellation. This includes:

- the person's profile including:
  - work capacity
  - caring responsibilities
  - Capability Interview responses and subsequent provider actions
  - Capability Assessment responses and subsequent provider actions
  - Job Seeker Classification Instrument (JSCI); and
  - Employment Services Assessment (ESAt), if relevant.
- the person's barriers and vulnerabilities as mentioned in the JSCI or Vulnerability Indicator screens.
- the person's **Job Plan**<sup>5</sup>, including any modification/additional assistance/special requirements for the individual. In particular, Reviewing Officers should consider where the Personal Responsibility job plan code (PA03) has been removed or retained, or to see if additional assistance codes (for DES and jobactive job plans) had been added. Removal of PA03 is generally appropriate where the person has low levels of digital literacy, lack of access to technology or other barriers that may hinder their ability to record attendance or self-report evidence of meeting their requirements.
- details of barriers and provider actions to address barriers in the Capability Management Tool.
- Points Based Activation System (PBAS) targets and job search requirements for people serviced through Workforce Australia and job search requirements for people serviced through jobactive and DES.
- compliance history in the lead up to the penalty and cancellation being applied – considering what reasons were offered.

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<sup>5</sup> A Job Plan as required under Div 2A of the Admin Act

41. Reviewing Officers should consider whether the person's mutual obligation requirements were appropriate and achievable, based on their personal circumstances, including whether:

- Requirements were unsuitable based on their personal circumstances (for example: scheduling a mandatory online course for a person with low digital literacy OR an activity that requires physical ability (such as lift and carrying goods in a retail setting) beyond the person's physical capacity).
- Requirements were cumulatively too difficult, even if the particular requirement for which a penalty applied was achievable.
- Servicing arrangements created an unreasonable barrier to meeting requirements (for example: the provider only offering face to face appointments for a person that lives a considerable distance (yet within reasonable travel times) from the services site OR public transport is not easily accessible or available at times of appointments).
- Complying with requirements would mean that the person could not reasonably meet another obligation (e.g. caring for a child/relative, court ordered participation etc.) and there is evidence that this has not been taken into account in setting requirements.
- You have any doubt that the person understood their requirements (including consideration of language barriers or being unable to access notifications sent electronically).
- You have any doubt that the person understood how to report compliance with their requirements (such as requiring a person with low digital literacy to use a QR Code to sign in for an activity without assistance).
- You have any doubt that the person understood the consequences of not meeting their requirements (including consideration of language barriers or cognitive impairment that led to an inability to understand that payment may be suspended, reduced or cancelled for not complying with requirements).

### Step 3: Determining loss and level of compensation

42. If review found that the person suffered detriment because it is probable that a decision to cancel payment would not have been made, a recommendation for compensation should be made.

43. In determining the compensation payable, the overarching principle is to restore the person to the position they would have been in had defective administration not occurred<sup>6</sup>. The amount payable relates to quantifiable financial loss as a direct result of the defective administration, and calculated on the basis of what the decision-maker considers fair and reasonable. The CDDA Scheme and related guidance outline what compensation can and

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<sup>6</sup> See RMG 409, paragraph 68.

cannot be considered in calculating the offer of compensation. Reviewing Officers should have regard to [RMG 409 guidance](#) when making a recommendation for compensation.

44. At a minimum, a recommendation for compensation should include the amount of social security payment that would have otherwise been paid if the cancellation decision had not been taken. This should include the type and amount of payment the affected individual was receiving at the time of the cancellation decision.
45. If the review found that a person did not suffer any detriment because the original decision to cancel payment was correct and discretion appropriately applied would not have changed that decision, the person will be provided an opportunity to provide additional information that should have been taken into account at the time of the original decision.

## Step 4: Consideration of additional information

46. If the initial review of the person's record does not give sufficient information to support a recommendation that the has been detriment suffered and a compensation payment be made, the person will be offered the opportunity to supply additional information to support a final assessment.
47. Communications to the person on the outcome of the preliminary assessment will include details on what type of information may be considered. Contact details for the National Customer Service Line will be included and affected people can call the NCSL to discuss how to provide additional information and discuss what information may be relevant.
48. The communication material provided to the person with details of what may be considered is not a definitive list and, as with the preliminary assessment process, should form part of a more holistic consideration of the person's circumstances and the events leading up to the decision to cancel a person's payment.
49. When assessing additional information supplied by the person, the Reviewing Officer must follow the same process of considering personal circumstances as outlined above. Additional information supplied by the person should be considered in addition to information outlined in the initial review. You must consider that, if this additional information had been available at the time of the original decision to cancel a person's payment, whether this could have changed the decision.

## Step 5: Peer review

50. The peer review process will occur where the first stage of the initial review did not recommend that compensation is payable based on the available information and prior to communications to the affected person requesting additional information. This peer review process will compare the findings of the initial review to the information available in the relevant IT systems and consider the initial recommendation with fresh eyes to provide assurance and consistency of recommendations provided to the Authorised Officer.
51. Where a person has provided additional information and a recommendation NOT to pay compensation is made, **a second peer review** will be conducted to check the information provided and form a view based on consideration of the initial review findings and the additional information provided.
52. A peer review is completed by another Reviewing Officer. It considers the recommendation recorded in the Assessment Template and any relevant information on the person's file.
53. The peer review must involve an analysis of the review findings and recommendations against the findings recorded by the reviewer. The peer reviewer will check the information and findings recorded in the Assessment Template against information in the department's IT system to ensure accuracy and completeness of the review findings.
54. Where there are differences in recommendations between the initial reviewer and the peer reviewer, an additional moderation discussion with the Review Team Leader will give both the initial reviewer and peer reviewer an opportunity to explain the reasons behind their recommendation. If consensus cannot be reached at this point, the Review Team Leader and the Director will review the person's record and make a decision on the recommendations.
55. All final assessments will be peer reviewed and will consider any additional information provided alongside the preliminary assessment.

## Step 6: Final recommendation

56. The Reviewing Officers will present review recommendations to the Team Leader. The Team Leader will ensure that all relevant information has been taken into account and that there is consistency in recommendations. Where necessary, the Team Leader can request further information is provided by the Reviewing Officer to support a recommendation.

57. Recommendations for compensation as a result of the review will then be provided to the Authorised Officer (Authorised under D24-011 Authorisation under the Scheme for Compensation for Detriment caused by Defective Administration 2024) to make the final decision on payment under the CDDA scheme.

#### INSTRUCTIONS FOR REVIEWING OFFICERS

When making an assessment of whether or not the person's participation payment should have been cancelled, **YOU MUST** ensure that every circumstance that is relevant to the assessment is recorded in the Assessment Template and your findings and recommendation are supported by the circumstances of the person **at the time the original penalty was applied**.

Your review **WILL BE** peer reviewed and your recommendations **MUST BE** defensible. Following peer review, all outcomes will also be reviewed by Director Compliance and Assurance Review team to help ensure consistency.

#### DOCUMENTATION

Your review **MUST** be recorded in the Review Template. All personal information relating to the person must be correct. The finished initial review **MUST BE** saved in the appropriate folder on Sharepoint ahead of the peer review.

As the outcome of all reviews will be communicated to the affected person, your recommendations **MUST BE** clear and concise and your recommendation must clearly give your reasoning for your decision.

## Schedule A: Guiding questions for Reviewing Officers

- Job Plan
  - PA03 – Has the personal responsibility code been removed, OR should it have been removed based on your consideration of the person’s circumstances?
- PBAS targets –
  - If a Capability Interview identified that a person had *technology access issues that impact their ability to obtain information about their requirements*, and PA03 was not removed from the Job Plan **AND/OR** there were no provider appointments scheduled to coincide the end of the PBAS reporting period – then your assessment should consider whether the person had the ability to report activities to meet their PBAS target.
  - If a Capability Interview result was *Not Capable – Errors in compellable requirements*, and the PBAS targets were not tailored to be achievable based on the person’s circumstances, then the decision must be to compensate the person.
  - Whether the person had the digital literacy skills (or literacy skills in general) to understand their PBAS requirements and how to report. If the PBAS and job search questions in the Capability Interview state the person did not fully understand their requirements, this should be considered in your assessment.
- Activity requirements
  - If a person was referred into a mandatory activity, was the referral appropriate – for example, were they aged over 60? If so, they should not have been required to participate in Work for the Dole.
  - Did they report paid work, and did they have a part rate of income support? If so, they should not have been required to participate in Work for the Dole.
  - Did they have access to transportation and was the activity location within reasonable travel times?
  - Was there a reduced work capacity or other evidence of illness or injury that may have impacted a person’s ability to participate in a mandatory activity?
- Was the person reporting paid work?
  - If the person was working at the time of the requirement – did the provider adequately take this into account? People should never be required to give up paid work to attend requirements. If the provider has recorded a reason of *prior notice not given and reasonable to expect working on day of requirement*, there



are reported earnings or PBAS paid work submissions, this should be taken into consideration.

- Did the provider offer flexible servicing including appointments by phone?
- Access to transport and travel times –
  - Did the person have access to transport (that they had ability to use), including public transport?
  - Were the travel times reasonable? (60 minutes for principal carers and those with an assessed partial capacity to work or 90 minutes for others, with regard to the specific requirement).
  - If the person travelled relatively longer distances or relied on public transport, did the provider offer flexible servicing including appointments by phone?
- Caring responsibilities
  - Did the person have caring responsibilities? You should look at both formal (Principal Carer Parent status) as well as informal caring arrangements that were in place (i.e. if the person was not a principal carer but still provided care to children or family etc.).
  - Were appointments booked at times that could have interfered with school or daycare drop off or pick-up?
  - If appointments were scheduled during school holidays, was advice in the WFA or DES guidelines adhered to on flexible setting of appointments?
  - Was a reasonable excuse stated but not accepted that a child or dependant/ person in care was ill or injured and had this been used frequently previously.
- Illness or injury
  - Did the person have a reduced work capacity? Depending on what the ESAt identified, and how this could have impacted a person's ability to meet their requirements, this should be considered in your assessment.
  - Did the person use illness or injury or have a Temporary Medical Incapacity Exemption prior to or soon after the penalty was applied? Could this have been a factor that impacted their ability to meet requirements?
- Personal Crisis
- Was Personal Crisis provided as a reasonable excuse but not accepted by the provider? Was there previous Major Personal Crisis Exemptions and did the evidence in ESSWeb indicate that the person may have ongoing issues?
- Are there any other factors that might be relevant?

## Glossary

| <b>Term</b>   | <b>Definition</b>   |
|---|---|
| <b>Review Officer</b>   | Departmental officer tasked with undertaking reviews to consider Compensation for Detriment caused by Defective Administration under section 42AF(2)(d) of the Social Security Administration Act 1999  |
| <b>Authorised Officer</b>   | The departmental officer authorised to make decisions under D24-011 Authorisation under the Scheme for Compensation for Detriment caused by Defective Administration 2024   |
| <b>Payment cancellation under s42AF(2)(d)</b>                               | A decision made under s 42AF(2)(d) of the Social Security (Administration) Act (1999) to cancel a person's payment and apply a 4 week preclusion period before that person can re-claim payment.  |
| <b>Compensation for Detriment caused by Defective Administration (CDDA)</b> | A scheme that allows non-corporate Commonwealth entities (in this case the department) to pay compensation when a person or organisation has suffered detriment as a result of the entity's defective administration, when there is no legal requirement to make a payment. |
| <b>Detriment</b>  | Harm or damage arising from an action. In the context of this review process, it is adverse impact on the person arising from the decision to cancel the person's payment.  |