

1. Decision Makers (DMs) must follow the principles of natural justice. This means that decisions must be reasonable and supportable in every day terms as well as in legal ones.

2. The principles of natural justice are not defined in law; it is simply an assumption that a department, or other body, should treat an individual in a way that would appear fair and reasonable to anyone.

3. The following case is an example where the principles of natural justice were not followed:

- a customer's earnings had originally been averaged and were under the Carer's Allowance (CA) earnings limit, but an RD23 was received a couple of years later, showing some earnings were over the limit (as was to be expected)
- when averaged annually, the customer's earnings continued to be under the CA limit, but the DM chose to treat the case as an irregular earner from the start of the claim, and a recoverable overpayment of about £4000 was raised
- the customer requested a reconsideration and a different DM looked at the earnings again, averaged them and the overpayment ceased to exist
- later, outside the one month time limit for reconsideration, another DM looked at the case and decided that the decision to average was wrong on the basis that the customer's earnings were 'not suitable for averaging'
- the decision was changed and the overpayment was again raised
- the message to the Administrative Officer (AO) was to "tell the customer the overpayment is back"
- the customer requested a further reconsideration and at this stage the section referred the case to the [Customer Focus Group \(link is external\)](#) (CFG) to consider treating the customer as a nuisance caller
- the case was referred to [Advice Monitoring and Appeals Team \(link is external\)](#) (AMAT) who advised that, for several reasons, there should be no overpayment, but that, at the least, the overpayment should be made non-recoverable
- however this advice was not followed, a 249NC decision was given and the customer appealed
- the Appeal Writer consulted AMAT and CFG, revised all but the original decision and gave entitlement back for the whole period.

4. It was not natural justice to:

- change the method of calculation without reason
- create a substantial overpayment and make it recoverable from the customer when the cause of the overpayment was the change in calculation by the Carer's Allowance Unit (CAU). The customer had neither failed to disclose nor misrepresented their earnings
- change the averaging decision on the basis that it was 'wrong' to average. The conditions in reg 8(3) of the Computation of Earnings regulations were met, so averaging was not wrong
- notify the customer that they had to repay a substantial amount, then tell them it had been written off, then change our minds again and tell them they would have to repay it after all.

Note: The one month dispute period on both the 'averaging' decisions had passed when they were revised. There were no grounds for revision - an "any time" revision can only be made where the original decision is wrong; it cannot be used simply because another DM disagrees with the method of calculation. Both the decisions which treated the customer as an irregular earner were therefore in fact wrong in law as well as not conforming to natural justice.

5. The problems with this case appeared to stem from a disagreement between DMs as to how the customer's earnings should be calculated. Legally, DMs have a choice between averaging or treating the customer as an irregular earner and either would have been equally valid methods of calculation in this case. However, once the first Decision Maker had decided to average, natural justice dictated that the later decisions should use the same method. Not doing so created an overpayment for which the customer could not be held responsible. It was not natural justice to put the customer through the stress of conflicting decisions and a large recoverable overpayment which appeared, disappeared and then re-appeared through no action or inaction of theirs. They should not have been in danger of being treated as a nuisance caller and should not have had to appeal in order to get fair treatment.

6. Use your own experience, knowledge and common sense where appropriate.

Example

- in the days before final earnings could be disregarded, a customer who had worked for a few weeks about a month before the date from which she claimed CA was asked to provide evidence of her earnings
- she sent in one payslip but hadn't kept the others
- she had worked part-time as a cleaner for 2 or 3 evenings a week for about 6 weeks
- the employer was unable to provide any details but confirmed that she had only worked for a few weeks and had then simply stopped turning up for work.

7. The DM disallowed the claim for a period of about 4 months on the basis that, as the customer could not prove what her earnings had been, the DM was entitled to assume that she had received virtually every payment that could be made in a final payment. It was assumed that the customer's last pay had been over the CA limit, and that she had received holiday pay, Pay In Lieu Of Notice (PILON) and compensation, all of which were over the limit and which were allocated on a monthly basis.

8. The customer was told that if she could produce evidence of her pay the decision would be looked at again.

9. The evidence and information available to the DM in this case was:

- the customer left the employment without giving her employer any notice
- she had worked for the employer for about 6 weeks only
- she was working part-time (2 or 3 evenings a week) as a cleaner
- the payslip produced by the customer showed earnings within the CA limit
- she had already told the Carer's Allowance Unit (CAU) that she hadn't kept her other payslips, and the employer had told us they couldn't provide any evidence of her earnings.

10. There was not much evidence in this case, but all the evidence that was available had been obtained. That evidence, along with their own knowledge of employment, should have led the DM to reason that:

- given the type of job and the number of hours worked, it was more likely than not that the customer's earnings were under the CA limit, and it was unlikely that they were paid on a monthly basis
- the customer terminated the employment and so was not entitled to notice from her employer and could not therefore be entitled to Pay in Lieu Of Notice (PILON) or compensation
- having worked for the employer for only 6 weeks, the customer could not have accrued much holiday pay, if any.

11. Although the onus of proof is on the customer at claims stage to show that it is more likely than not that they are entitled to CA, the DM must still weigh the evidence and consider the decision on the balance of probability.

12. In this case the question was whether it was more likely than not that the customer's earnings were under the limit. The customer had provided what evidence she had, which showed her earnings were under the limit for at least part of the period. Given the reasoning above, it was highly unlikely that the rest of her earnings exceeded the limit.

13. The DM's decision did not conform to 'Natural Justice' because:

- the customer had said her earnings were under the limit; there was no conflicting evidence and no reason to doubt her statement
- the payslip received supported her statement
- the DM's own knowledge and experience should have told her that the assumptions she was making were extremely unlikely, and in some cases wrong
- the level of proof required from the customer is on the 'balance of probability' which is less stringent than 'beyond reasonable doubt'
- it is unreasonable to expect further evidence when we have been told that none is available.

14. This is also an example of a risk-based decision. Although there is little documentary evidence available, common sense, the available evidence and the balance of probability tell us that it is unlikely that the customer's earnings were over the limit.