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## Calculation of overpaid HB

3.00 Overpayments should be calculated accurately and in good time to

- provide a quality service to claimants and landlords
- meet regulatory requirements
- give accurate Management Information (MI) on the value of overpayment debt
- ensure only the correct overpayment amount is recovered from the debtor
- enable the correct calculation of subsidy

3.01 When calculating an overpayment

1) determine the dates between which the claimant has been overpaid benefit

2) calculate the full amount of benefit paid during the relevant period, consider any un-cashed payments

3) consider applying underlying entitlement by determining if the claimant should have been entitled to any benefit during the period overpaid. If so, deduct it from the overpaid benefit at Step 2

*HB Reg 104 & (SPC) 85;*

4) consider reducing the overpayment amount, if it was caused by a change of address and the criteria set out in HB Reg 104A (or (PC) 85A) are satisfied

*HB Reg 104A & (SPC) 85A*

5) consider applying the diminution of capital calculation, if the overpayment was caused by a person's capital

*(HB Reg103 & (SPC) 84*

6) classify the overpayment accordingly, writing off any amount that is non-recoverable, see *Classification and Recoverability* earlier in this guide.

3.02 -3.09

### When to record an overpayment

3.10 To properly calculate an overpayment an LA must always consider underlying entitlement, a reduction due to a change of address and the diminution of capital calculation. Only record the overpayment amount as outstanding for statistical and subsidy purposes after the correct and final calculation has been carried out and the decision notice has been issued.

3.11 LAs who do record the gross overpayment amount as a debt outstanding, before considering underlying entitlement, a reduction due to a change of address, and the diminution of capital calculation, will have a higher amount of overpayment debt than they really do have. This would not be beneficial to an LA.

3.12 -3.19

**HB**

## 3.20 Overpayments should

- be calculated
  - in full weeks (not part weeks) as a rule
  - from the benefit week in which any change in Housing Benefit (HB) should have been actioned to the date entitlement actually reduced or ended
  - from the day the change happened if relating to a change of rent amount or frequency, a change of address within the LAs area or a homeless person being housed by the LA. However, generally, a change of circumstances is considered from the first day of the benefit week after it occurs
- reflect the amount actually overpaid, and
- not be converted to a 52-week figure when, for example benefit is paid on a 48-week basis

**Example**

Mr D is paid £12.00 a week for 2 weeks,

24 February 2014 – 9 March 2014 = Period A

Review determines Mr D has been overpaid for Period A, 2 weeks @ £12.00.

It is subsequently found that Mr D is entitled to HB for period A at £20.00, 2 weeks @ £10.00.

The original overpayment decision is reviewed, and the revised decision reduced the total HB overpaid to £4.00 (the original amount overpaid £24.00, less the new amount of £20.00, equals £4.00)

## 3.21 In rent rebate cases LAs may deduct any payment the claimant makes towards the rent, over the period of the overpayment, which exceeds the amount liable to be paid under the original wrong decision.

**Example**

Mr A receives a full rent rebate on the basis that he gets IS

On 1 April he inherits £20,000.

He tells the DWP office that he has inherited the capital, but the LA does not receive an ETD. Mr A does not tell the LA that he has inherited the capital until 1 May, when he goes to the Housing Department and pays over his gross weekly rent for the entire period since he inherited the capital. The LA may deduct up to the full amount of the payment that Mr A has made to the Housing Department from the HB overpayment which has been made as a result of his inheritance, provided that the period for which he has paid rent and the period for which deductions are made from the overpayment are the same.

- 3.22 If you still pay by cheque it is good practice to use any un-cashed payments (e.g. un-presented cheques) that correspond with the overpayment period to reduce or clear the balance of the overpayment. This can be done at the time of calculation or later. If appropriate, notify the claimant accordingly. However, you are not expected to confirm that all payments have been cashed when calculating an overpayment.
- 3.23 When it is considered cost effective, LAs may take action to stop payments already issued, e.g. when notification of a change in circumstances is received.

3.24-3.29

### **Underlying entitlement**

- 3.30 HB Reg 104 & (SPC) 85 sets out the legislation that covers the underlying entitlement process for HB.
- 3.31 Underlying entitlement must be calculated on all overpayments. There are very few exceptions, although one example might be if the LA is unable to request the information needed to make the calculation, because the claimant's whereabouts are not known.

### **Underlying entitlement process**

- 3.32 When you discover a change of circumstance, that has caused an overpayment
- process the change, stopping the overpayment from continuing
  - decide if you have all the details of the claimant's correct circumstances over the overpayment period. In most cases, you will need to gather that information.
- 3.33 It is the LAs responsibility to request details of the claimant's correct circumstances over the overpayment period, not the claimant's responsibility to apply for underlying entitlement to be considered.

### **Time limits for calculating underlying entitlement**

- 3.34 Request the information you need to calculate underlying entitlement in accordance with the provisions of HB Reg 86 & (SPC) 67. This regulation states that the claimant is given one month to provide any requested information or evidence, 'or such longer period as the relevant authority may consider reasonable'. (Any references to the one-month time limit should include this possible extension period.)

This guidance is in accordance with case law. In Commissioner's decision CH/4943/2001, Commissioner Jacobs states that

- regulation 104 ((SPC) 85) is mandatory, and
- the LA should use its powers under regulation 86 ((SPC) 67) (previously under regulation 73) to seek information from the claimant to calculate the overpayment correctly

- 3.35 If the claimant provides the details within the one-month timescale
- recalculate the overpayment, normally reducing it (applying HB Reg 104 ((SPC) 85), and
  - issue the claimant with their decision notice, giving them the appropriate appeal rights

- 3.36 If, however the claimant does not provide the details within one month
- issue the decision notice for the gross overpayment amount
  - give the claimant the appropriate appeal rights

The claimant has one month in which to appeal. This can be extended up to a maximum of 13 months if there are reasons for the delay. As with any appeal, if the claimant provides new relevant information, the LA or Tribunal can take this into account when making their decision.

- 3.37 Calculating underlying entitlement is a one-off calculation. Once a request has been made and the details have been supplied or not supplied, the correct and final overpayment amount should be calculated. If information comes to light after this has been completed and outside the time limits, the LA don't need to revisit the overpayment calculation. However, the claimant may ask for a backdated decision to be made, which should be considered following the normal backdating rules. If the claimant provides underlying entitlement information outside of the original one-month time limit, then only if the claimant appeals against the overpayment decision, should that information be considered. This is consistent with Commissioner's decision CH/360/06, which dealt comprehensively with the issue of time limits.

#### **Is a claim form required when calculating underlying entitlement?**

- 3.38 There does not have to be a valid claim form for underlying entitlement to be calculated. There are occasions when there might not be a valid claim form, e.g. when the annual review form was not completed timeously pre April 2004, but there may still be an overpayment. The overpayment may span several years. Calculate underlying entitlement for the whole of the overpayment period, even if there was a break in the claim without a claim form.

#### **Backdating and calculating underlying entitlement**

- 3.39 Always consider a claimant's request for backdating before underlying entitlement. If a claim is backdated, this means that a claimant is entitled to benefit for that past period. If backdated benefit cannot be awarded, and there is an overpayment for that period, you must consider underlying entitlement as part of the overpayment process. The claimant is not actually entitled to benefit for the overpayment period, as they did not report their correct circumstances at the correct time. Calculating underlying entitlement is just part of the process of working out the correct overpayment amount. If an underpayment is calculated, when completing the underlying entitlement process, the LA must not pay out that benefit to the claimant, as they are not entitled to it. The overpayment, however, will be nil.

### The Decision and Appeals rules and underlying entitlement

- 3.40 The HB and CTB (Decision and Appeals) Regulations 2001 state that if a claimant reports a change, outside of the one-month time limit, and it would mean an increase to the amount of HB/CTB they were entitled to (advantageous change) the change should take effect from the start of the next benefit week (Monday) or in certain circumstances, such as a rent increase, from the day the claimant reports the change. If the change that they reported would mean a decrease in the amount of HB/CTB they were entitled to (disadvantageous change) it should be considered from the week it actually occurred.

*HB and CTB (Decisions and Appeals) Regs 2001 Reg 7&8*

- 3.41 This can cause problems if two or more changes of circumstance are reported at the same time

#### Example

A claimant is in receipt of HB and CTB. They write to the LA to notify them that they had an increase in their part time earnings six weeks ago. They also state that the non-dependant that was living with them moved out eight weeks ago.

The increase in the wages is a disadvantageous change, and therefore must be taken into account from when it occurred. This means that there is an overpayment of HB and CTB for the last six weeks.

The non-dependant leaving the household is an advantageous change, because the claimant is entitled to more benefit. As it was not reported within one month of it occurring, only take the change into account from the following benefit week (Monday). However, when calculating the overpayment, due to the disadvantageous change, the underlying entitlement must be taken into account. You must gather details of the claimant's correct circumstances over the overpayment period.

Take account of the advantageous change, i.e. the non-dependant leaving the household. This would be taken into account from the beginning of the overpayment period, if the change occurred before or from that date.

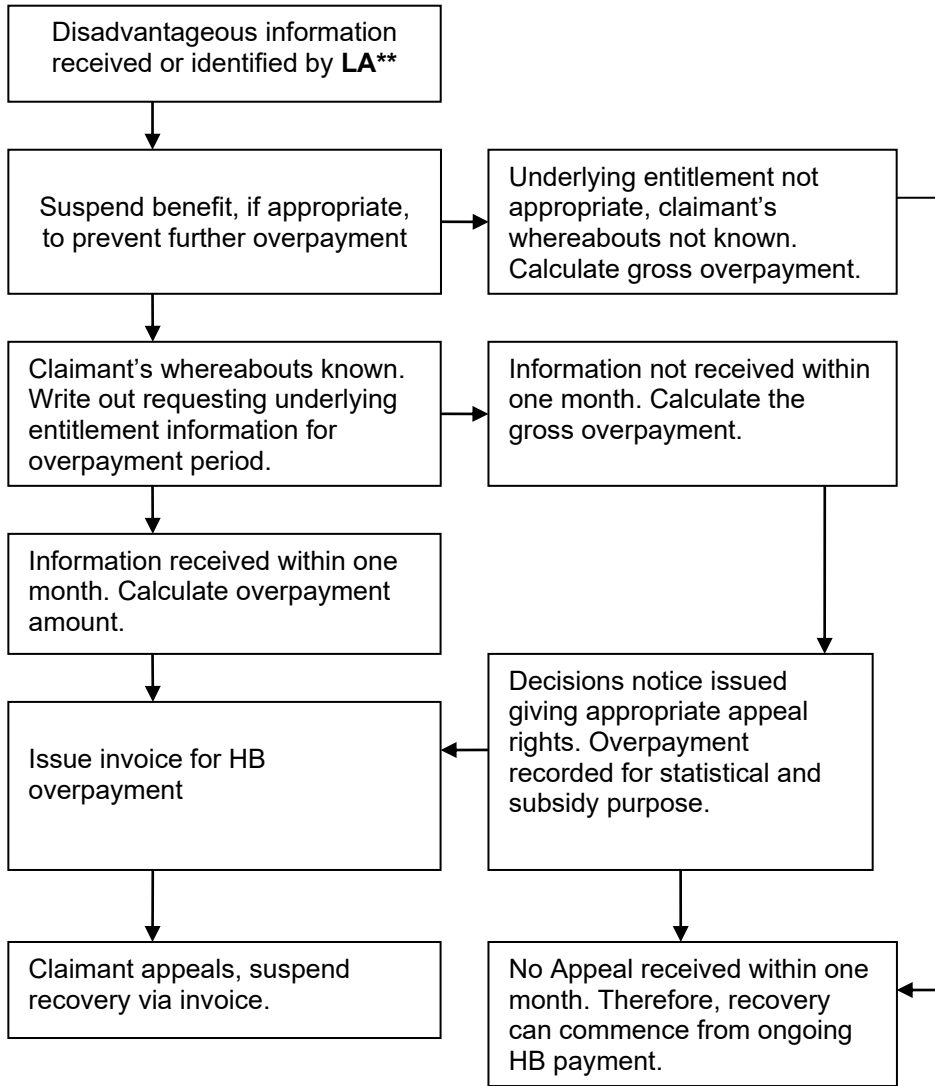
If the claimant was entitled to an underpayment of benefit because the advantageous change was worth more than the disadvantageous change, this should not be paid to them. The claimant is not entitled to that benefit for that period, as they did not report the change at the correct time.

Information is used to calculate the correct overpayment amount. The overpayment would be nil.

#### Good practice

- 3.42 If a claimant reports a change over the phone or in the office, try to obtain
- details of the correct circumstances over the overpayment period, or
  - a statement from the claimant regarding their other circumstances during the overpayment period, i.e. as to whether or not they have also changed

- 3.43 This should reduce processing times and encourage claimants to claim underlying entitlement.
- 3.44 When the information has been requested, make a record in order to satisfy legislative requirements.
- 3.45 **Underlying entitlement flowchart**



\*\*Try to obtain details of the claimant's correct circumstances for the overpayment period and how the change was reported in the office or over the phone.

3.46-3.49

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**Calculating change of address overpayments**

- 3.50 The HB regulations have been amended from 1 April 2010, with regards to calculating overpayments when a claimant has changed address within the same LAs area. Apply the legislation that is in force at the date of the overpayment decision. The new legislation means that there are differences in the amount of subsidy that can be claimed pre and post April 2010.
- 3.51 Section 130(1) of the Social Security Contributions and Benefits Act 1992 sets out the basic conditions of entitlement to HB. The main condition is
- (1) (a) a person is entitled to HB if – they are liable to make payments in respect of a dwelling in Great Britain which they occupy as their home.
- (b) there is an appropriate maximum HB in their case: and
- (c) either
- (i) they have no income or their income does not exceed the applicable amount in which case the amount shall be the amount which is the appropriate maximum HB in his case
- (ii) their income exceeds the applicable amount; the amount of HB shall be what remains after the deduction of the excess over the applicable amount.
- 3.52 This means that a claimant is entitled to HB if resident in a particular property and liable to make payments of rent for it. Therefore, if HB continues to be paid for an address in which the claimant is no longer residing, the HB will have been overpaid.
- 3.53 If the claimant moves to another property within the same LAs area and continues to claim HB, the move is treated as a change of circumstances on the existing claim. Even though the claimant may have delayed reporting the change of address, they will be entitled to HB for the new tenancy for the same period they were overpaid at the previous property.

**HB paid to different people at the old and new addresses****Change reported within one month**

- 3.54 When the claimant changes address from Property A to Property B and reports the move within one month of it occurring, any HB paid for Property A, for the period the claimant was not living there, is an overpayment. The HB payable for Property B is payable from the date the claimant moved. It does not matter if the HB entitlement is more or less than the entitlement at Property A. The new entitlement is payable from when the claimant moved.



**Example**

Mr O lives at Property A and his landlord (landlord X) is paid £60.00 HB a week for him. Mr O moves to Property B, where his landlord (landlord Y) is charging rent of £80.00 a week. Mr O informs the LA that he has changed address three weeks after he has moved. He requests that the HB for Property B is paid direct to landlord Y.

There is an overpayment of £180.00 for Property A, which the LA decides to recover from landlord X. This is because the landlord was paid the benefit direct and he has a responsibility, along with Mr O, to report that his tenant was no longer residing in his property. Landlord Y is owed three weeks rent. The LA pays £240.00 HB direct to landlord Y, for the three weeks Mr O has been living at Property B.

**Subsidy**

Property A 40% subsidy for £180.00 overpayment

Property B 100% subsidy for £240.00 correct entitlement

**Change reported after one month**

- 3.55 When the claimant changes address from property A to property B and reports the move after one month of it occurring, any HB paid for property A, for the period the claimant was not living there, is an overpayment.
- 3.56 If the HB payable for Property B is more than that at Property A, this is an advantageous change. Therefore, the amount of HB that was payable for Property A is paid for Property B up until the claimant notified the change of address. From that date the new, higher amount of HB is paid for Property B.
- 3.57 If the HB payable for Property B is less than that at Property A, this is a disadvantageous change. The amount of HB that is payable for Property B is paid from the date the claimant moved into Property B.

**Example**

Mr P lives at Property A and his landlord (landlord X) is paid £60.00 HB a week for him. Mr P moves into Property B, where the rent is £80.00 a week. Mr P informs the LA that he has changed address five weeks after he has moved. Mr P requests that the HB for Property B is paid direct to him.

There is an overpayment of £300.00 for Property A, which the LA decides to recover from landlord X. This is because the landlord was paid the HB direct and he has a responsibility, along with Mr P, to report that his tenant was no longer residing in his property. Mr P is owed five weeks HB for Property B. However, as the change of address was reported after one month of it occurring, the higher rate of HB is only payable from the Monday after the change was notified. The LA therefore pays Mr P £300.00 for Property B for the past period.

Subsidy Property A 40% subsidy for £300.00 overpayment  
Property B 100% subsidy for £300.00 correct entitlement

Note: If HB is paid to the claimant at Property A and to the landlord at Property B and there is a recoverable overpayment, recovery must be made from the claimant. The overpayment cannot be recovered in one lump sum. It must be recovered from ongoing entitlement and the maximum recovery rates must be applied. The landlord should be notified of the recovery from the claimant's ongoing HB entitlement, so that he can arrange to collect the shortfall.

### HB paid to claimant at the old and new addresses

#### Change reported within one month

- 3.58 When the claimant changes address from Property A to Property B and reports the move within one month of it occurring, any HB paid for property A for the period the claimant was not living there, is an overpayment. If the HB was payable to the claimant, it is only recoverable from the claimant.
- 3.59 If the HB is also paid direct to the claimant at Property B, the overpayment can be recovered in one lump sum from the HB owing for Property B. The amount of HB payable for Property B is payable from the date the claimant moved (as they reported the move within one month).
- 3.60 If the weekly amount is less than the HB at Property A, after the overpayment is recovered from the HB owing for Property B, any remaining overpayment can be recovered weekly from the claimant's ongoing benefit entitlement.

#### Example

Ms F receives HB for Property A at £80.00 a week. Ms F moves into Property B, for which she is entitled to £70.00 HB a week. Ms F informs the LA that she has changed address three weeks after she has moved. Ms F requests that the HB for Property B continues to be paid to her.

There is an overpayment of £240.00 for Property A, as Ms F has not been residing in the property. Ms F is entitled to £210.00 HB for Property B.

The LA recovers £210.00 of the overpayment for Property A from HB owing for Property B. The remaining £30.00 overpayment is recovered weekly from Ms F's ongoing HB entitlement.

#### Subsidy

Property A 40% subsidy for £240.00 overpayment

Property B 100% subsidy for £210.00 correct entitlement (irrespective of the fact that it has been used to recover some of the overpayment)

- 3.61 If the weekly amount is more than the HB at Property A, the full overpayment is recovered from the HB owing for Property B. Pay any HB still owing for Property B to the claimant.

**Example**

Mr Y receives HB for Property A at 60.00 a week. Mr Y moves into Property B, for which he is entitled to £75.00 HB a week. Mr Y informs the LA that he has changed address two weeks after he has moved. Mr Y requests that the HB for Property B continues to be paid to him.

There is an overpayment of £120.00 for Property A, as Mr Y has not been residing in the property. Mr Y is entitled to £150.00 HB for Property B.

The LA recovers the overpayment of £120.00 for Property A from the HB owing for Property B. The LA pays the remaining £30.00 to Mr Y.

**Subsidy**

Property A 40% subsidy for £120.00 overpayment

Property B 100% subsidy for £150.00 correct entitlement (irrespective of the fact that £120.00 has been used to recover the overpayment)

**Change reported after one month**

- 3.62 When the claimant changes address from Property A to Property B and reports the move after one month of it occurring, any HB paid for property A for the period the claimant was not living there, is an overpayment. If the HB was payable to the claimant, it is only recoverable from the claimant.
- 3.63 If the HB is also paid direct to the claimant at Property B, the overpayment can be recovered in one lump sum from the HB owing for Property B. If the amount of HB payable for Property B is more than the amount payable for Property A, the new rate of HB is only payable from the date the claimant reported the change of address (advantageous change). The weekly amount of HB owing for Property B is the same as was paid for Property A, so the full overpayment for Property A can be recovered from the HB owing for Property B. There would be nothing left to recover, and nothing owing to the claimant.

**Example**

Ms F receives HB for Property A at £60.00 a week. Ms F moves into Property B, for which she is entitled to £75.00 HB a week. Ms F informs the LA that she has changed address six weeks after she has moved. Ms F requests that the HB for Property B continues to be paid to her.

There is an overpayment of £360.00 for Property A, as Ms F has not been residing in the property. Ms F is only entitled to £75.00 a week from when she reported the change of address to the LA. She is therefore only entitled to £360.00 HB for Property B. As Ms F is £90.00 light in her rental liability, this will have to be found from another source of income.

The LA recovers the overpayment of £360.00 for Property A from the £360.00 HB owing for Property B. The full overpayment is recovered and there isn't any HB owing to Ms F.

## Subsidy

Property A 40% subsidy for £360.00 overpayment

Property B 100% subsidy for £360.00 correct entitlement (irrespective of the fact that it has been used to recover all of the overpayment)

- 3.64 If the amount of HB payable for Property B is less than for Property A, the new rate is payable from the date the claimant moved (disadvantageous change). The weekly amount of HB owing for Property B is less than was paid for Property A, so the full overpayment for Property A is not recovered from the HB owing for Property B. The remainder of the overpayment can be recovered from the claimant's ongoing benefit entitlement.

## Example

Mrs L receives HB for Property A at £80.00 a week. Mrs L moves into Property B, for which she is entitled to £70.00 HB a week. Mrs L informs the LA that she has changed address six weeks after she has moved. Mrs L requests that the HB for Property B continues to be paid to her.

There is an overpayment of £480.00 for Property A, as Mrs L has not been residing in the property. Mrs L is only entitled to £420.00 HB for Property B.

The LA can recover £420.00 of the overpayment for Property A from the HB owing for Property B. The remaining £60.00 overpayment is recovered weekly from Mrs L's ongoing HB entitlement.

## Subsidy

Property A 40% subsidy for £480.00 overpayment

Property B 100% subsidy for £420.00 correct entitlement (irrespective of the fact that it has been used to recover some of the overpayment)

**Post-April 2010**

- 3.65 New Regs were introduced from 1 April 2010, which allow an LA, when calculating a change of address overpayment, to 'offset' the HB entitlement at the new address against the overpayment from the previous property, thereby reducing the overpayment to nil in the majority of cases. However, the HB must have been payable to the same person (claimant, claimant's representative or landlord/agent), in respect of both dwellings, for the provisions to be applied.
- 3.66 The overpayment should be reduced by the HB entitlement at the new address in every case when the criteria listed in HB Reg 104A ((SPC) Reg 85A) are satisfied. However, if it is decided that it would not be in the claimant's best interests to apply the 'offset', for example because it would cause severe hardship for the claimant, HB could be paid again for the same period. A record of the decision to pay HB when the 'offset' could have been applied, would need to be kept for audit purposes.

*HB Reg 104A & (SPC) 85A*

3.67 An LA can no longer recover a change of address overpayment, from the HB entitlement owing for the new property. The provisions that allowed recovery of a change of address overpayment in one lump sum are no longer needed, as an 'offset' would now be appropriate. They have therefore been removed.

*HB Reg 102(1A) & (SPC) 83(1A)*

3.68 An 'offset' cannot be applied to cases when the HB is paid to different people at the old and new addresses, for example when it is paid direct to the landlord at the previous property and is then paid to a different landlord at the new address, or when it is paid to the landlord at the previous property and is then paid to the claimant at the new address. This is to ensure that the claimant is not put into rent arrears at their new address.

3.69 An 'offset' cannot be applied to cases when the claimant and partner swap who is claiming the HB, when they have changed address. This is because the claimant and partner's HB claims are two different claims for benefit. HB from one claim cannot be 'offset' against an overpayment from another claim. The overpayment would have to be recovered by making weekly deductions from ongoing HB entitlement.

3.70 An 'offset' cannot be applied when the previous property was being paid as a rent rebate, as the claimant cannot use the benefit credited to the rent account to pay their rent at the new address. The same applies to Council Tax Reduction, as excess from one Council Tax (CT) account cannot be 'offset' against a credit to another CT account.

### **HB paid to different people at the old and new addresses**

#### **Change reported within one month**

3.71 When the claimant changes address from Property A to Property B and reports the move within one month of it occurring, any HB paid for Property A, for the period the claimant was not living there, is an overpayment. The HB payable for Property B is payable from the date the claimant moved. It does not matter if the HB entitlement is more or less than the entitlement at Property A. The new entitlement is payable from when the claimant moved.

3.72 If the HB is paid to different payees at the old and new addresses, the overpayment cannot be reduced by the entitlement at the new property. It does not matter whether the HB was payable direct to the landlord at Property A and then to the claimant at Property B, to the claimant at Property A and direct to the landlord at Property B or to different landlords at Properties A and B. The 'offset' can only be applied when the HB is payable to the same person at both addresses.

#### **Example**

Mr O lives at Property A and his landlord (landlord X) is paid £60.00 HB a week for him. Mr O moves to Property B, where his landlord (landlord Y) is charging rent of £80.00 a week. Mr O informs the LA that he has changed address three weeks after he has moved. He requests that the HB for Property B is paid direct to landlord Y.

There is an overpayment of £180.00 for Property A, which the LA decides to recover from landlord X. This is because the landlord was paid the benefit direct and he has a responsibility, along with Mr O, to report that his tenant was no longer residing in his property. Landlord Y is owed three weeks rent. The LA pays £240.00 HB direct to landlord Y, for the three weeks Mr O has been living at Property B.

Subsidy

Property A 40% subsidy for £180.00 overpayment

Property B 100% subsidy for £240.00 correct entitlement

#### Change reported after one month

- 3.73 When the claimant changes address from Property A to Property B and reports the move after one month of it occurring, any HB paid for Property A, for the period the claimant was not living there, is an overpayment.
- 3.74 If the HB payable for Property B is more than that at Property A, this is an advantageous change. Therefore, the amount of HB that was payable at Property A is paid for Property B up until the claimant notified the change of address. From that date the new, higher amount of HB is paid for Property B.
- 3.75 If the HB payable for Property B is less than that at Property A, this is a disadvantageous change. The amount of HB that is payable for Property B is paid from the date the claimant moved into Property B.
- 3.76 If the HB is paid to different payees at the old and new addresses, the overpayment cannot be reduced by the entitlement at the new property. It does not matter whether the HB was payable direct to the landlord at Property A and then to the claimant at Property B; or to the claimant at Property A and direct to the landlord at Property B or to different landlords at Properties A and B. The 'offset' can only be applied when the HB is payable to the same person at both addresses.

#### Example

Mr P lives at Property A and his landlord (landlord X) is paid £60.00 HB a week for him. Mr P moves into Property B, where the rent is £80.00 a week. Mr P informs the LA that he has changed address five weeks after he has moved. He requests that the HB for Property B is paid direct to him.

There is an overpayment of £300.00 for Property A, which the LA decides to recover from landlord X. This is because the landlord was paid the HB direct and he has a responsibility, along with Mr P, to report that his tenant was no longer residing in his property. Mr P is owed five weeks HB for Property B. However, as the change of address was reported after one month of it occurring, the higher rate of HB is only payable from the Monday after the change was notified. The LA therefore pays Mr P £300.00 for Property B for the past period.

Subsidy

Property A 40% subsidy for £300.00 overpayment

Property B 100% subsidy for £300.00 correct entitlement

### HB paid to the same person at the old and new addresses

#### Change reported within one month

- 3.77 When the claimant changes address from Property A to Property B and reports the move within one month of it occurring, any HB paid for Property A, for the period the claimant was not living there, is an overpayment.
- 3.78 If the HB is payable to the same person at the old and new addresses, as part of the overpayment calculation, the overpayment can be reduced by the entitlement owing for Property B, as long as the entitlement covers the same period as the overpayment. This can be done as a simple 'offset'.
- 3.79 If the weekly entitlement at Property B is less than the entitlement at Property A, there will still be an overpayment for Property A, after the 'offset' has been applied. The remaining overpayment can be recovered weekly from the claimant's ongoing benefit entitlement.

#### Example

Ms F receives HB for Property A at £80.00 a week. Ms F moves into Property B, for which she is entitled to £70.00 HB a week. Ms F notifies the LA that she has changed address three weeks after she has moved. She requests that the HB for Property B continues to be paid to her.

There is an overpayment of £240.00 for Property A, as Ms F has not been residing in the property. However, as part of the overpayment calculation, this is reduced by the entitlement owing for Property B of £210.00. This is done as a simple 'offset'.

There is therefore an overpayment of £30.00. This is recovered weekly from Ms F's ongoing HB entitlement.

Subsidy      Property A 40% subsidy for £30.00 overpayment

Property B 100% subsidy for £210.00 correct entitlement

- 3.80 If the weekly entitlement at Property B is more than the entitlement at Property A, the overpayment will be reduced to nil. Pay any HB still owing for Property B to the claimant.

#### Example

Mr Y receives HB for Property A at £60.00 a week. Mr Y moves into Property B, for which he is entitled to £75.00 HB a week. Mr Y informs the LA that he has changed address two weeks after he has moved. He requests that the HB for Property B continues to be paid to him.

There is an overpayment of £120.00 for Property A, as Mr Y has not been residing in the property. However, as part of the overpayment calculation, this is reduced by the entitlement owing for Property B of £150.00. This is done as a simple 'offset'.

The overpayment is therefore reduced to nil. The LA pays the remaining £30.00 to Mr Y.

Subsidy      Property A no overpayment to be recorded for subsidy purposes

Property B 100% subsidy for £150.00 correct entitlement

#### Change reported after one month

- 3.81 When the claimant moves from Property A to Property B and reports the move after one month of it occurring, any HB paid for Property A for the period the claimant was not living there, is an overpayment.
- 3.82 If the HB is payable to the same person at the old and new addresses, as part of the overpayment calculation, the overpayment can be reduced by the entitlement owing for Property B, as long as the entitlement covers the same period as the overpayment. This can be done as a simple 'offset'.
- 3.83 If the amount of HB payable for Property B is more than the amount payable for Property A, the new rate of HB would only be considered for Property B from the date the claimant reported the change of address (advantageous change). The weekly amount of HB for Property B, which would be used to reduce the overpayment, would be the same amount that was paid for Property A, therefore reducing the overpayment to nil. There would be nothing left to recover and nothing owing to the claimant.

#### Example

Ms F receives HB for Property A at £60.00 a week. Ms F moves into Property B, for which she is entitled to £75.00 HB a week. Ms F informs the LA that she has changed address six weeks after she has moved. She requests that the HB for Property B continues to be paid to her.

There is an overpayment of £360.00 for Property A, as Ms F has not been residing in the property. However, as part of the overpayment calculation, this is reduced by the entitlement owing for Property B of £360.00. This is done as a simple 'offset'. Ms F is only entitled to £75.00 HB a week from when she reported the change of address to the LA.

The overpayment is therefore reduced to nil. The claimant is not owed any HB for the past period.

Subsidy      Property A no overpayment to be recorded for subsidy purposes

Property B 100% subsidy for £360.00 correct entitlement

- 3.84 If the amount of HB payable for Property B is less than the amount payable for Property A, the new rate of HB would be taken into account for Property B from the date the claimant moved (disadvantageous change). The weekly amount of HB for Property B, which would be used to reduce the overpayment, would therefore be less than the amount overpaid for Property A. There



will therefore still be an overpayment for Property A, after the 'offset' has been applied. The remaining overpayment can be recovered weekly from the claimant's ongoing benefit entitlement.

#### Example

Mrs L receives HB for Property A at £80.00 a week. Mrs L moves into Property B, for which she is entitled to £70.00 HB a week. Mrs L informs the LA that she has changed address six weeks after she has moved. She requests that the HB for Property B continues to be paid to her.

There is an overpayment of £480.00 for Property A, as Mrs L has not been residing in the property. However, as part of the overpayment calculation, this is reduced by the entitlement owing for Property B of £420.00. This is done as a simple 'offset'.

There is therefore an overpayment of £60.00. This is recovered weekly from Mrs L's ongoing HB entitlement.

Subsidy            Property A 40% subsidy for £60.00 overpayment

Property B 100% subsidy for £420.00 correct entitlement

3.85 – 3.89

### Diminution of capital on overpayments

3.90 Following on from the underlying entitlement and change of address calculations, if an overpayment of more than 13 benefit weeks has been caused by the non-declaration or under-declaration of capital or by any other error relating to a person's capital (except official errors that are non-recoverable), LAs should calculate the overpayment by means of 'diminution of capital'.

*HB Reg 103 & (SPC) 84;*

3.91 The principle of 'diminution of capital' on overpayments assumes that if a claimant had declared all their assets, the consequent reduction in, or non-payment of HB would have caused them to draw on their capital. This would have eventually reduced the claimant's capital to

- below the cut-off point of £16,000, or
- a lower level of capital, if capital is between £6,000 (£10,000 for pension age claimants) and £16,000, thus reducing the amount of tariff income taken into account when calculating the claimant's applicable amount, or
- less than £6,000 (£10,000 for pension age claimants), thus removing the amount of tariff income taken into account when calculating the claimant's applicable amount

Note: For some claimants in residential care the lower level of disregarded capital is also £10,000.

3.92 As a result, the overpayment of HB will be less than it would have been had it been based on the full amount of the claimant's capital throughout the overpayment period.

Note: The diminution of capital calculation applies to all people whose capital affects the benefit entitlement and not just the claimant, e.g. the partner's capital.

- 3.93 It is not necessary to apply this rule if it is clear that it will not affect the amount of the recoverable overpayment, e.g. if the
- amount of capital above the cut-off point is considerably greater than the actual amount overpaid
  - overpayment would be unaffected by the knowledge of the undisclosed capital
- 3.94 If an overpayment of more than 13 weeks occurs due to the amount of a person's capital, for the purpose of calculating the amount of the overpayment, you should
- (a) at the end of the first 13 weeks of the overpayment period, treat the amount of capital as having reduced by the amount of HB overpaid during those 13 weeks
- (b) at the end of each subsequent period of 13 weeks of the overpayment period, treat the amount of capital as having been further reduced by the amount of HB overpaid during the immediately preceding 13 benefit weeks
- 3.95 This rule only applies to the capital used in the calculation of the overpayment. The actual capital used in the assessment of entitlement to benefit is not reduced.
- 3.96 The reasoning behind this rule is that if the capital had been taken into account so that the benefit was reduced or not awarded, the claimant's capital would have, in all probability, been reduced to meet their day-to-day living expenses.
- 3.97 If the overpayment does not divide equally into 13-week periods, still apply the calculation to the residual weeks. However, the calculation of the final overpayment period should reflect the number of weeks remaining. This is because the 'diminution of capital' regulations state 'treat the amount of that capital as having been reduced'. It is the capital, which is used to calculate the overpayment, which can only be reduced after a 13-week period. It is not the actual overpayment calculation that can only be done in 13-week periods. For clarification, see Example 3 later in this section.
- 3.98 If the capital fluctuates during the overpayment period do not recalculate the overpayment each time the capital changes. Amend the capital amount at each 13-week period. For clarification, see Example 4 later in this section.
- 3.99 To calculate diminution of capital apply the following formula
- i Calculate assumed tariff income for capital exceeding £6,000 (£10,000 for pension age claimant)
  - ii Calculate HB payable using 65% taper
  - iii The difference between the HB paid and the HB payable equals one-week overpayment
  - iv Multiply by 13 to calculate the overpayment for the 13-week period
  - v Reduce the notional capital for the subsequent 13-week period by the value of the overpayment
  - vi Follow steps i to v for each 13-week period (including any residual weeks at the end of the overpayment)

3.100 Tariff income is used when a claimant has capital over £6,000 (£10,000 for pension age claimants), but not more than £16,000. After any disregards have been applied, treat them as having an income from their capital equivalent to £1 per week for each multiple of

- £250 (rounded up to the next £250) between £6,000 and £16,000 for working age claimants, and
- £500 (rounded up to the next £500) between £10,000 and £16,000 for pensioners

Example 1

A working age claimant has total capital of £6,520, £6,000 of which is disregarded. The tariff income is £3 per week.

Example 2

A pension age claimant has total capital of £10,520, £10,000 of which is disregarded. The tariff income is £2 per week.

3.101 When a claimant's net income exceeds the applicable amount, HB entitlement is reduced by a percentage of the difference. This percentage is called the taper and is currently 65% for HB

Example

Mr G aged 45 is the sole tenant of a private rented one-bed self-contained flat, where he lives alone. He has net earnings of £146 per week. The contractual rent is £120 per week. The appropriate local housing allowance is £95.

Eligible Rent	£95.00	<i>reg.12d</i>
Maximum HB is	£95.00	<i>reg.70</i> (the claimant has no non-dependants)
Applicable amount	£74.35	<i>Sch 3 Para 1</i>
Income to be taken into account	£141.00	£5 earnings is disregarded <i>Sch.4 Para.10</i>

The difference between income and applicable amount is £66.65 (£141.00 less £74.35)

65% of £66.65 is £43.32

The claimant is entitled to HB of £51.68 (£95.00 less £43.32)

Note: As HB is the only benefit to which the claimant is entitled, the "benefit cap" does not apply as his income does not exceed the specified amount for a single claimant.

*HB reg.12D, 79, Sch 3 Para 1, Sch.4 Para 10*

3.102 Examples of how to calculate overpayments, taking into account diminution of capital, are provided on the following pages.

**Example 1: Working age claimant**

3.103 Claimant has £7,500 undeclared savings. The amount of capital has remained constant throughout the overpayment period.

HB paid since 4 January 2010

HB paid to 2 January 2011

Claimant has been in receipt of maximum HB per week for this 52-week period

Week	Actual Capital	Notional Capital	Assumed Tariff income	HB paid (PW)	HB payable (PW)	Over payment
1-13 07/01/14- 024/03/14	£7,500		£6	£90	£86.10  (65% taper)	£3.90 x 13 = £50.70
14-26 25/03/14- 23/06/14	£7,500	£749.30 (£7,500 - £50.70)	£6	£90	£86.10	£3.90 x 13 = £50.70
27-39 26/06/14- 22/09/14	£7,500	£7,398.60 (£7449.30- £50.70)	£6	£90	£86.10	£3.90 x 13 = £50.70
40-52 23/09/14- 22/12/14	£7,500	£7,347.90 (£7,398.60- £50.70)	£6	£90	£86.10	£3.90 x 13 = £50.70
<b>When the HB is reassessed the amount of capital that should be taken into account is £7,500.</b>						Total overpayment = £202.80

## Example 2: Pension age claimant

- 3.104 Claimant has £11,500 undeclared savings. The amount of capital has remained constant throughout the overpayment period.

HB paid since 4 January 2010

HB paid to 2 January 2011

Claimant has been in receipt of £90 per week for this 52-week period

Week	Actual capital	Notional Capital	Assumed Tariff income	HB paid (PW)	HB payable (PW)	Overpayment
1-13 07/01/14- 024/03/14	£11,500		£3	£90	£88.05 ( 65% taper)	£1.95 x 13 = £25.35
14-26 25/03/14- 23/06/14	£11,500	£11,474.65 (£11,500- £25.35)	£3	£90	£88.05	£1.95 x 13 = £25.35
27-39 26/06/14- 22/09/14	£11,500	£11,449.30 (£11,474.6 5-£25.35)	£3	£90	£88.05	£1.95 x 13 = £25.35
40-52 23/09/14- 22/12/14	£11,500	£11,423.95 (£11,449.3 0-£25.35)	£3	£90	£88.050	£1.95 x 13 = £25.35
<b>When the HB is reassessed the amount of capital that should be taken into account is £11,500</b>						Total overpayment = £101.40

**Example 3: Final period of overpayment calculation is not a full 13 weeks**

3.105 Working age claimant has £7,500 undeclared savings. The amount of capital has remained constant throughout the overpayment period.

HB paid since 23 August 2010

HB paid to 9 January 2011

Claimant has been in receipt of maximum HB of £90 per week for this 20-week period.

Week	Actual capital	Notional Capital	Assumed Tariff income	HB paid (PW)	HB payable (PW)	Overpayment
Week 1-13 23/08/10- 21/11/10	£7,500		£6	£90	£86.10 (65% taper)	<b>£3.90 x 13 =</b> £50.70
Week 14-20 22/11/10- 09/01/11	£7,500	£7,449.30 (£7,500- £50.70)	£6	£90	£86.10	<b>£3.90 x 7 =</b> £27.50
<b>When the HB is reassessed the amount of capital that should be taken into account is £7,500.</b>						Total overpayment = £78.00

**Example 4: Fluctuations in capital**

- 3.106 Working age claimant has £7,500 undeclared savings which is reported to have fluctuated over the overpayment period.

HB paid from 4 January 2010; HB paid to 2 January 2011

Claimant has been in receipt of maximum HB of £90 per week for this 52-week period

Capital fluctuations have occurred as follows (for illustration purposes it is assumed that the claimant is not classed as having deprived themselves of capital where it has reduced)

From 2 February £8,000; from 16 May £8,500; from 15 September £7,000

Week	Actual capital	Notional Capital	Assumed Tariff income	HB paid (PW)	HB payable (PW)	Overpayment
1-13 07/01/14- 024/03/14	£7,500		£6	£90	£86.10 (65% taper)	£3.90 x 13 = £50.70
14-26 25/03/14- 23/06/14	£8,000	£7,949.30 (£8,000.00- £50.70)	£8	£90	£84.80	£5.20 x 13 = £67.60
27-39 26/06/14- 22/09/14	£8,500	£8,381.70 (£7,949.70- £67.6+£50 0 cap. Inc.)	£10	£90	£88.05	£6.50 x 13 = £84.50
40-52 23/09/14- 22/12/14	£7,000	£6,797.20 (£8,381.70- £84.50- £1,500 cap. Dec.)	£4	£90	£88.050	£2.60 x 13 = £33.80
<b>When the HB is reassessed the amount of capital that should be taken into account is £7000</b>						Total overpayment = £101.40

**EXAMPLE 5: Claimant not entitled to HB after the overpayment is calculated**

3.107 Working age claimant has £20,000 undeclared savings. The amount of capital has remained constant throughout the overpayment period.

HB paid since 4 January 2010

HB paid to 2 January 2011

Claimant has been in receipt of maximum HB of £90 per week for this 52-week period, but due to the amount of savings, would not have been entitled to any HB.

Week	Actual capital	Notional Capital	Assumed Tariff income	HB paid (PW)	HB payable (PW)	Overpayment
1-13 07/01/14- 024/03/14	£20,000		n/a	£90	£nil	£90.00x13 = 1,170.00
14-26 25/03/14- 23/06/14	£20,000	£18,830 (£20,000- £1,170)	n/a	£90	£nil	£90.00 x 13 = £1,170.00
27-39 26/06/14- 22/09/14	£20,000	£17,660 (£18,830- £1,170)	n/a	£90	£nil	£90.00 x 13 = £1,170.00
40-52 23/09/14- 22/12/14	£20,000	£16,490 (17,660- £1,170)	n/a	£90	£nil	£90.00 x 13 = £1,170.00
<b>When the HB is reassessed the amount of capital that should be taken into account is £20,000.</b>						Total overpayment = £4,680



### Example 6: Claimant not entitled to HB after the overpayment is calculated but notional capital assumes an entitlement

- 3.108 Working age claimant has £18,000 undeclared savings. The amount of capital has remained constant throughout the overpayment period.

HB paid since 4 January 2010. HB paid to 2 January 2011

Claimant has been in receipt of maximum HB of £90 per week for this 52-week period, but due to the amount of savings, would not have been entitled to any HB. As the Diminution of Capital calculation assumes that the claimant would have used some of their capital to pay for their rent, this calculation shows how the notional capital reduces so that eventually it shows that HB is payable. However, after the overpayment is calculated the reassessment of the claimant's HB with their true capital taken into account, nils their HB entitlement.

Week	Actual capital	Notional Capital	Assumed Tariff income	HB paid (PW)	HB payable (PW)	Overpayment
1-13 07/01/14- 024/03/14	£18,000		n/a	£90	£nil	£90. x 13 = £1,170.00
14-26 25/03/14- 23/06/14	£18,000	£16,830 (£18,000- £1,170)	n/a	£90	£nil	£90. x 13 = £1,170.00
27-39 26/06/14- 22/09/14	£18,000	£15,660 (£16,830- £1,170)	£39	£90	£64.65 (65% taper)	£25.35 x 13 = £329.55
40-52 23/09/14- 22/12/14	£18,000	£15,330.45 (15,660- £329.55)	£38	£90	£65.30	£24.70 x 13 = £321.10
<b>When the HB is reassessed the amount of capital that should be taken into account is £18,000.</b>						Total overpayment = £2,990.65