

Section 4: Overpayments

Overpaid benefit

400 The objective is to encourage LAs to seek to minimise overpayments, as defined by regulation 99 of the HB Regulations 2006, and to recover overpaid benefit wherever appropriate. 'Overpayments' in this context should be taken to include excess CTB.

HB Reg 99, CTB Reg 82

401 The rates of subsidy that apply to overpayments vary according to the circumstances in which they were made.

i Eligible – this category includes Claimant error, Fraud and Other overpayments.

Claimant error – this is an overpayment that has been caused by the claimant or a person acting on the claimant's behalf, failing to provide information or report a change of circumstances, in accordance with the regulations, and is not a fraudulent overpayment.

Fraud – this is an overpayment that has occurred after 31 March 1993, when the claimant has, in respect of the overpayment

- been found guilty of an offence
- admitted an offence in an interview under caution, or
- agreed to pay an administrative penalty.

Other – this is an overpayment, which does not fit into any of the other categories. Examples could be when an LA makes a payment in good faith, but a change, such as an adverse decision in a judicial review, results in an overpayment; or, an award of benefit does not take into account any income subsequently paid as arrears, for instance when a claimant's earnings increase retrospectively and they receive a lump sum payment of arrears or as a result of entitlement to another benefit commencing or increasing.

This category of overpayment attracts subsidy at the rate of 40%. For further information, see HB/CTB Overpayments Guide, Classification and Recoverability chapter.

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- (401) ii LA error – this is an overpayment which has arisen from a mistake being made. This may be in the form of an act or omission made by the LA or someone acting on their behalf, for example when an LA miscalculates the amount of HB or CTB entitlement. This classification is not appropriate if the claimant, their appointee or agent, or the person to whom the benefit was paid, caused or materially contributed to the mistake, act or omission.
- iii Administrative (Admin) delay – this is an overpayment arising when
- the LA is notified of a change of circumstances and has sufficient information and evidence to make a revision or supersession decision, and
 - the LA does not make a decision on that change of circumstances or suspend the benefit before the claimant's next payday, and
 - the delay was not due to a mistake, whether in the form of an act or omission, made by the LA or someone acting on their behalf, and
 - the delay was not caused or contributed to by the claimant, a person acting on the claimant's behalf, or any other person to whom the benefit was paid.

When all of the information needed to process a change of circumstances that would reduce a claimant's HB/CTB entitlement is received, the LA must action it before the claimant's next payday. If it is not actioned before the next payday, any overpayment from the first day of the benefit week following receipt of all of the information should be classified as LA official error or Admin delay (depending on whether the delay was caused by a mistake, in the form of an act or omission).

The subsidy for LA errors and Admin delays are determined by thresholds and may be nil, 40% or 100% subsidy, see *LA error/Admin delay thresholds* later in this section.

- iv Technical overpayment – this type of overpayment arises as a result of
- rent rebate being awarded and the rental liability ceasing or reducing, subsequent to the award, which therefore eliminates or reduces entitlement to that rent rebate. The Technical overpayment begins on the day the rental liability ceases or reduces

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- CTB being awarded and the CT liability ceasing or reducing, subsequent to the award, which therefore eliminates or reduces entitlement to that CTB. The Technical overpayment begins on the day the CT liability ceases or reduces
 - a change of circumstances, which occurs subsequent to the award of CTB, reduces or eliminates entitlement to that CTB. The Technical overpayment begins on the day the CTB is suspended or the day the revision or supersession decision is made on the change of circumstances, whichever is the earlier
 - This category of overpayment is ineligible for subsidy.
- (401) v Payment on Account (PoA) overpayment – this type of overpayment arises because a PoA was made, which the claimant was not entitled to. It is eligible for 100% subsidy, see *paragraph 408*.
- vi Recovered PoA overpayment – this type of overpayment arises because a PoA was made, which the claimant was not entitled to, but it has been recovered. It is ineligible for subsidy.
- vii Duplicate overpayment – this type of overpayment arises from a duplicate payment following alleged non-receipt, loss, theft or destruction in cases where the original payment has been cashed. It is eligible for 25% subsidy. See *Duplicate overpayments* later in this section.
- viii Departmental error – this type of overpayment arises from a mistake, whether in the form of an act or omission, made by an officer of the DWP or Her Majesty's Revenue and Customs (HMRC). This classification is not appropriate if the claimant, their appointee or agent, or the person to whom the benefit was paid, caused or materially contributed to the mistake, act or omission. Such overpayments can occur, for example, on initial processing of claims, eg incorrect local office assessment of Income Support (IS) entitlement or incorrect notice of entitlement to the authority. This category of overpayments is eligible for 100% subsidy, see *paragraph 408*.
- ix Recovered Departmental error – this type of overpayment arises from mistake whether in the form of an act or omission made by an officer of the DWP or HMRC, but it has been recovered. This category of overpayment is ineligible for subsidy.

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- 402 It is not necessarily a Departmental error if the DWP fails to pass information on to LAs regarding changes in the claimant's circumstances. This is because the claimant has a duty to report any changes that may affect their entitlement to HB or CTB to the LA that administers their benefit. Even if a claimant has notified the DWP of a change, they still have a duty to report it to the LA.
- 403 An overpayment arising after the DWP has notified the LA may be classified as LA error or Admin delay, because once the LA is aware of a change they are expected to act on it. However, this will all depend on the information that is sent by the DWP. If further information is still needed from the claimant, they are still contributing to the overpayment and therefore the overpayment would be classified as Claimant error.
- 404 There are however exceptions to the regulations that stipulate that a claimant must notify the LA of a change of circumstances, eg In and Out of Work (IOW) Processes and claimants who are also in receipt of Pension Credit. For further information, see HB/CTB Overpayments Guide, Classification and recoverability chapter.
- 405 Subsidy on overpaid benefit in categories i-ix of paragraph 401 is payable on the total amounts of overpaid benefit identified by the authority within the financial year. Authorities will not be required to deduct from their claim in that year – or refund in subsequent years – any amount of overpaid benefit which is later recovered, with the exception of certain Departmental error overpayments and overpayments arising from making a PoA, see *paragraph 408*.
- 406 It should be noted that subsidy is claimed on netted overpayments calculated in accordance with regulations 104 and 104A of the HB Regulations 2006 and regulation 89 of the CTB Regulations 2006. For further information, see *Underlying Entitlement and Calculating change of address overpayments* later in this section
- 407 In common with LA error overpayments, benefit overpaid as a result of Departmental error is only recoverable when the claimant or person to whom benefit was paid could reasonably have been expected to realise they were being overpaid at the time the overpayment occurred, see *HBCTB Overpayments Guide, Classification & recoverability chapter*.
- 408 Benefit overpaid because a PoA was made, which the claimant was not entitled to attracts 100% subsidy, but is recoverable. In both Departmental error and PoA overpayment cases, 100% subsidy is payable on the amount of overpaid benefit less any amount which is recovered, ie not necessarily on the amount which is originally identified. When an amount is recovered in the current year and the overpayment was identified in an earlier year, the amount recovered in the current year should be deducted from total benefit expenditure in the current year.

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The treatment of overpayments on the subsidy claim form

420 From 2008/09, the subsidy claim form (MPF720A, B or C as appropriate) records overpayments in a new way, ie according to whether the overpayments relate to the current year or prior years.

Current year overpayments

421 Current year overpayments are those identified in the year relating to benefit paid in the year (including benefit paid in the year in respect of an earlier year).

422 They should be recorded in the appropriate total expenditure cells and the following overpayment/excess benefit cells

- 024 to 028 (non HRA rent rebate in England and Wales; all rent rebates in Scotland)
- 062 to 066 (HRA rent rebate in England and Wales)
- 106 to 112 (rent allowance), or
- 145 to 150 (Council Tax Benefit)
- Prior year overpayments

423 Prior year overpayments are those identified in the year relating to benefit paid in an earlier year.

424 They should be recorded in cells

- 029 to 033 (non HRA rent rebate in England and Wales: all rent rebates in Scotland)
- 067 to 071 (HRA rent rebate in England and Wales)
- 113 to 119 (rent allowance), or
- 151 to 156 (Council Tax Benefit)

Prior year overpayments should not be recorded on the total expenditure cells of in the current year's claim.

Example

£100 is paid in an Old Scheme rent allowance case and is recorded in cell 102 (expenditure on that part of the weekly eligible rent at or below the rent officer's determination on a claim) of the previous year's subsidy claim.

In the current year it is discovered that £40 of the £100 paid was an eligible overpayment.

£40 should be recorded in cell 116 (eligible overpayments from a prior year) of the current year's claim. This will ensure that the £40 correctly attracts 40% subsidy.

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The calculation at cell 120s ensures the subsidy claimed in the previous year is adjusted.

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LA error/Admin delay thresholds

430 An initiative was introduced from April 2004 to allow LAs to receive subsidy according to the level of their LA error overpayments when compared to the total amount of correct benefit payments they make. This now includes Admin delay overpayments.

431 The level of subsidy that LAs may claim for LA error and Admin delay overpayments is determined by thresholds, expressed as a percentage of total correct payments. The thresholds are

Lower threshold	0.48%
Upper threshold	0.54%

Where the LA error/Admin delay overpayments are...	Subsidy rate for the total LA error/Admin delay overpayments
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...less than or equal to 0.48% of the expenditure attracting 100% subsidy	100%
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...greater than 0.48% but less than or equal to 0.54% of the expenditure attracting 100% subsidy	40%
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...greater than 0.54% of the expenditure attracting 100% subsidy	nil
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432 For the calculation of the percentage LA error/Admin delay, correct payments are defined as payments for which full (100%) subsidy is payable. This includes Rent Rebates, non-HRA Rent Rebates, Rent Allowances and CTB and incorporates any backdating that has been properly undertaken.

433 LA error overpayments are only recoverable if the claimant, or their representative, could reasonably have been expected to realise they were being overpaid. Under these circumstances, LAs entitled to subsidy for LA error overpayments will keep any amount recovered without any loss of subsidy.

HB Reg 100(2), CTB Reg 83(2)

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Backdated payments and overpayments

- 440 Backdated payments are sometimes found subsequently to have been overpayments. From April 2004 all backdated payments which are later found to have been overpayments should be recorded, for subsidy purposes, as the appropriate type of overpayment.
- 441 The mechanics of the claim form will effect the deduction of the full amount of overpaid benefit from the total benefit expenditure figure. In the case of Departmental error overpayments, the figure to be deducted will be the amount of any Departmental error overpayments recovered in the financial year.
- 442 Authorities should include the whole amount of overpaid benefit identified in the current year relating to both the current and any previous year(s) in the figure for total overpaid benefit under the relevant overpayments category, eg LA error, so that the appropriate rate of subsidy can be claimed.
- 443 It will often be the case that a portion of the overpaid benefit identified in the year of the subsidy claim (year A) was in fact paid in a previous financial year (year B) and has already attracted subsidy. Authorities should identify the correct overpayment category and claim the appropriate rate of subsidy for the year in which the subsidy claim is made (year A).
- 444-449

Underlying entitlement

- 450 Regulations state that in calculating the amount of a recoverable overpayment, you must take account of any underlying benefit entitlement that existed throughout the period of the overpayment.
- HB Reg 104, CTB Reg 89*
- 451 When overpayments have occurred, the overpayment equals the difference between the benefit already paid and any underlying entitlement. Subsidy should be claimed on the overpayment at the appropriate rate. In some cases this will be nil. The underlying benefit entitlement will attract subsidy at the rate claimed for correct benefit payments (100%).
- 452 As a general principle, subsidy is not payable twice in respect of the same expenditure over the same period. When an overpayment has arisen and benefit is subsequently awarded for the same period, subsidy in respect of the overpayment should only be claimed on the net overpayment.
- 453 The following examples assume no other relevant factors are involved.

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Example 1

A claimant is in receipt of £100 HB a week. The LA is then informed that the claimant started full-time work two months ago. Underlying entitlement is considered, but the LA establishes that the claimant would not have been entitled to any HB for the period of the overpayment. The overpayment is therefore £100 a week, which has been classified as 'Fraud' error. The subsidy that should be claimed is

	Subsidy
Underlying Entitlement = Nil	Nil
Overpayment Amount = £100	40% of £100 = £40
Total Subsidy =	£40 per week

Example 2

A claimant is in receipt of £100 HB a week. The LA is then informed that the claimant started work two months ago. Underlying entitlement is considered and it is discovered that the claimant would have been entitled to £50 HB a week. There is an overpayment of £50 a week, which has been classified as 'Claimant error'. The subsidy that should be claimed is

	Subsidy
Underlying entitlement = £50	100% of £50 = £50.00
Overpayment amount = £50	40% of £50 = £20.00
Total Subsidy =	£70.00 per week

Note: When completing the final subsidy claim form, fraud and claimant error overpayments are to be entered in the appropriate 'Eligible' overpayment cell.

Example 3

A claimant is in receipt of £100 HB a week. The claimant informs the LA that he is starting work the following week. The LA does not action the change of circumstances so there is an overpayment. Underlying entitlement is considered and it is discovered that the claimant would have been entitled to £25 HB a week. The overpayment is £75 per week and is classified as 'LA error'. The subsidy that should be claimed is

	Subsidy
Underlying Entitlement = £25	100% of £25 = £25.00
Overpayment Amount = £75	Nil due to LA error =
Nil *	

Total Subsidy	=	£25.00
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* The LA error overpayment may attract subsidy under the LA error threshold scheme. However, for illustrative purposes this is omitted from this example.

Calculating change of address overpayments

- 454 The HB regulations were amended from 1 April 2010, with regards to calculating overpayments when a claimant has changed address within the same LA's area. An LA should '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.
- 455 The overpayment should be reduced by the entitlement at the new address in every case when the criteria listed in HB Regulation (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 in order for the LA to claim subsidy for both the overpayment and the HB entitlement at the new address, covering the same period.
- 456 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.
- 457 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.

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458 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 CTB, as excess CTB from one Council Tax (CT) account cannot be 'offset' against CTB credited to another CT account. For examples of how the 'offset' should be applied and what subsidy can be claimed, see *HB/CTB Overpayments Guide, Calculation of overpayments* chapter.

Netting spanning two financial years

459 For netting that spans more than one year, it will be necessary to adjust the current subsidy claim to reflect the amount of subsidy already claimed in a previous year. This could occur where an overpayment on review is subsequently found to be

- i correctly paid, or
- ii a backdated payment

460 As correctly paid and backdated payments attract 100% subsidy from April 2004, an overpayment that is subsequently found to be either correctly paid or backdated can be treated, for subsidy purposes, as shown in the example below. In the previous year the reduced rate of subsidy applicable to the category of overpayment will have been claimed. On review in the subsequent year the balance of subsidy up to 100%, will need to be included in the subsidy claim.

461 In the case of *paragraph 459 i* and *ii*, to claim the shortfall in subsidy it will be necessary to reduce the appropriate overpayment cell in the current subsidy claim by the amount that was previously claimed as an overpayment, but which is now found to be correctly paid (or backdated) and eligible for 100% subsidy.

Example

Overpayment of £100 rent allowance identified in a previous year and 40% subsidy claimed.

In the current year £75 of the overpayment is found to be correctly paid (as a normal payment or a backdated payment), and eligible for 100% subsidy. The appropriate overpayment cell is reduced by £75. The mechanics of the claim form are such that this will result in the shortfall in subsidy between the 40% already claimed and 100% being included in the overall subsidy total.

Note: There are unlikely to be instances when an overpayment previously categorised as fraudulent is subsequently found to have been correctly paid, or a backdated payment.

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HB paid to Crown tenants

470 HB should not be awarded in cases when the landlord's interest is held by a Government department. These cases are Crown tenancies and HB is not legally payable. HB paid erroneously to Crown tenants should be classified as an overpayment. The appropriate rate of subsidy depends on the kind of overpayment it is.

471-479

Duplicate payments

480 Duplicate payments attract a lower rate of subsidy in cases when the original instrument has been, or is subsequently, encashed. Duplicate payments can be made following

- i alleged non-receipt
- ii loss
- iii theft
- iv destruction of an instrument of payment

481 In such cases, subsidy on the duplicate payment is payable at 25%, the original payment attracts subsidy at the appropriate rate. There may be cases when a duplicate payment is issued and the original instrument is found to be uncashed. Uncashed payments do not receive subsidy, see *Section 8: Uncashed payments of HB and CTB* later in this manual.

482 LAs should ensure that, when a duplicate payment has been issued and the original is found to be uncashed, subsidy at the appropriate rate is claimed on the amount once only.

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Queries

490 If you have any queries concerning the content of this section, contact

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