

## Housing Benefit and Council Tax Benefit overpayments guide

The Housing Benefit and Council Tax Benefit overpayments guide has been archived.

The new Housing Benefit overpayments guide is at:

<https://www.gov.uk/government/publications/housing-benefit-overpayments-guide>

*Classification and recoverability*

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# Classification and recoverability

## Classifications of overpayments and subsidy

- 2.00 Local Authorities (LAs) receive subsidy of 100% for the greater part of the qualifying benefit expenditure they incur. However, in areas of expenditure where LAs have the most scope to monitor and control costs, lower rates apply. One area that attracts lower rates of subsidy is overpaid Housing Benefit (HB) and excess Council Tax Benefit (CTB).
- 2.01 It is important that each HB/CTB overpayment identified is classified and a record of it maintained so the correct rate of subsidy can be claimed and informed decisions can be made on recoverability.
- 2.02 The subsidy arrangements also act, at least in part, as an incentive for LAs to classify and recover overpayments correctly. In most cases when overpayments are recoverable an LA may keep both the amount they recover and the subsidy.

**Example 1**

Claimant overpaid (Claimant error) 3 May 2010 to 30 May 2010 for four weeks

@ £50.00	= £200.00
LA claims subsidy of 40% (Claimant error)	= £80.00
LA recovers	= £200.00
<b>LA allowed to keep £280.00</b>	

**Example 2**

Claimant overpaid (Fraud) 5 July 2010 to 18 July 2010 for two weeks

@ £40.00	= £80.00
LA claims subsidy of 40% (Fraud)	= £32.00
LA recovers	= £80.00
<b>LA allowed to keep £112.00</b>	

- 2.03 It is important to remember that most HB/CTB overpayments are areas where LAs do not receive 100% subsidy from the Department for Work and Pensions (DWP). Overpayments can be costly to recover. Money lost through reduced subsidy and the costs of recovering overpayments comes from the LAs overall budget and that means there are fewer funds available for other services.

2.04-2.10

2.04 It is important to ensure that in addition to preventing overpayments occurring every effort is made to recover them.

2.05-2.09

### *Overpayments subsidy table*

2.10	Overpayment type	Benefit type	Subsidy rate
	<b>1. Eligible overpayments</b> <ul style="list-style-type: none"> <li>Fraud</li> <li>Claimant error</li> <li>Other (all overpayments that do not fall into any of the other categories)</li> </ul>	All HB/CTB	<ul style="list-style-type: none"> <li>40%</li> <li>40%</li> <li>40%</li> </ul>
	<b>2. LA official error and Administrative (Admin) delay overpayments</b> <ul style="list-style-type: none"> <li>total level of overpayments does not exceed lower threshold</li> <li>total level of overpayments is greater than lower threshold but does not exceed upper threshold</li> <li>total level of overpayments exceeds upper threshold</li> </ul>	All HB/CTB	<ul style="list-style-type: none"> <li>100%</li> <li>40%</li> <li>Nil</li> </ul>
	<b>3. Departmental official error overpayments not recovered</b>	All HB/CTB	100%
	<b>4. Departmental official error overpayments recovered</b>	All HB/CTB	Nil
	<b>5. Technical overpayments (benefit credited in advance of entitlement)</b>	Rent Rebate and CTB	Nil
	<b>6. Excess Council Tax Benefit arising from the reduction in a claimant's Council Tax liability</b>	CTB	Nil
	<b>7. Indicative Rent Level (IRL) overpayments not recovered (overpayments arising because an IRL exceeded the maximum rent payable)</b>	Rent Allowance	100%
	<b>8. IRL overpayments recovered (overpayments arising because an IRL exceeded the maximum rent payable)</b>	Rent Allowance	Nil

(2.10)	<b>Overpayment type</b>	<b>Benefit type</b>	<b>Subsidy rate</b>
	<b>9. Duplicate overpayments</b>	Usually Rent Allowance, but could be Rent Rebate or CTB if actual payment made	25%

2.11-2.29

## *Explanations of the classifications*

2.30 Classifying an overpayment

- is an essential but basic step in the overpayment process, and
- should be carried out at the outset when an overpayment is identified

### *Eligible overpayments*

#### *Fraud overpayments*

##### **40% subsidy**

2.31 **Definition:** Fraud overpayment means an overpayment in respect of a period falling wholly or partly after 31 March 1993, when the claimant has, in respect of the overpayment

- been found guilty of an offence whether under statute or otherwise
- made an admission after caution of deception or fraud for the purpose of obtaining relevant benefit, or
- agreed to pay a penalty under section 115A of the SSAA and the agreement has not been withdrawn

‘Admission after caution’ means

- (i) in England and Wales, an admission after a caution has been administered in accordance with a Code issued under the Police and Criminal Evidence act 1984
- (ii) in Scotland, an admission after caution has been administered, such admission being duly witnessed by two persons

*HB Reg 102 & (Pension Credit) 83*

2.32 For subsidy purposes there is no need to record as Fraud any overpayment that occurs because of a fraudulent claim. This is because they are recorded as an eligible overpayment on the subsidy claim form and receive 40% subsidy. However, for overpayment recovery purposes it is important that each overpayment is classified accordingly, ie Fraud, Claimant error or ‘Other’.

### 2.33-2.35

- 2.33 Any HB overpayment classified as Fraud can be recovered at a higher recovery rate. Also, overpayments classified as Fraud can be treated differently, for recovery purposes, when the claimant is involved in insolvency procedures – see *Courts and civil proceedings* later in this guide.
- 2.34 It may also be useful for Management Information (MI) purposes to differentiate between Claimant error, Fraud and 'Other' overpayments. LAs should prioritise the recovery of their fraudulent overpayments.

### ***Claimant error overpayments***

#### **40% subsidy**

- 2.35 **Definition:** Claimant error overpayment means an overpayment which
- a is caused by
    - i the claimant, or
    - ii a person acting on the claimant's behalf
      - failing to provide information in accordance with HB Regs 83(1) or 86 ((Pension Credit) 64(1) or 67) or CTB Regs 69(1) or 72 ((Pension Credit) 53(1) or 57), or
      - failing to report a change of circumstances in accordance with HB Reg 88 ((Pension Credit) 69) or CTB Reg 74 ((Pension Credit) 59), and
  - b is not a fraudulent overpayment

#### **Example 1**

A change occurs in the claimant's earnings on 19 January 2010. The claimant fails to report the change until 9 February 2010. The LA actions the change on 10 February 2010. The overpayment is classified as follows

25 January 2010 – 14 February 2010: **Claimant error**

#### **Example 2**

The LA receives an HBMS scan on 16 February 2010 which says that the claimant's JSA claim ceased on 12 January 2010. On 19 March 2010 the LA suspends the HB and writes to the claimant to ask for details, allowing one month to reply. No reply is received from the claimant, and on 19 April 2010 the LA decides to terminate the HB claim. HB had been paid up to 14 March 2010. The overpayment is classified as follows

18 January 2010 – 14 March 2010: **Claimant error**

Although the LA knew about the change from the HBMS scan, the claimant still has a duty under HB Reg 88 to notify the LA of the change. Because the claimant did not notify the LA of this change, the claimant has contributed to the overpayment, and therefore it would be classified as **Claimant error**.

### ***Reporting change of circumstances to different departments in the LA***

#### ***No details provided of where to report change of circumstances***

- 2.36 If an LA does not give details of where a claimant must report changes of circumstances to (designated office), and just uses terms such as 'us', 'council' or 'local authority' in its communications, a claimant may report a change of circumstances to any department in the LA. They will have satisfied their duty to report changes of circumstances as prescribed by the regulations.
- 2.37 Any overpayment from when the claimant reports the change to the LA (irrespective of which department the claimant reports the change to) up to when the change of circumstances is processed, would be classified as LA official error or Admin delay (depending on whether the overpayment was caused by a delay and whether that delay was caused by a mistake). See *LA official error and Admin delay overpayments* later in this section

#### ***Details provided of where to report change of circumstances***

- 2.38 If an LA makes it clear in its communications that a specific department/address is the 'designated office' to which a claimant must report changes of circumstances, then the claimant must report changes to that department in order to satisfy the regulations. If the claimant reports a change of circumstances to a different department, any overpayment would be classified as Claimant error up until the
- claimant notifies the designated office of the change, or
  - LA stops the overpayment from continuing (suspends the claim or processes the change)
- HB Reg 88 & (Pension Credit) 69; CTB Reg 74 & (Pension Credit) 59*

### ***'Other' overpayments***

#### **40% subsidy**

- 2.39 **Definition:** 'Other' overpayment means any overpayments which do not fit in 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
  - 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

### 2.40-2.51

- 2.40 Classify overpayments of HB/CTB caused as a result of backdated income as 'Other', as no official error has been made. However, if there has been a delay in processing a benefit and it is due to a mistake made by the DWP, the overpayment can be classified as Departmental official error. You would need to liaise with the DWP to establish whether the delay was due to a mistake.

#### **Example 1**

An employed earner who is paid monthly is entitled to a pay increase from April, but the arrears are not paid until November.

As there was entitlement to the pay increase from April, take the arrears of pay into account for the period over which they would have been taken into account if the increase in pay had been paid on time.

Calculate the overpayment in the normal way. This should be classified as 'Other'.

#### **Example 2**

Mrs A is awarded IS from Monday 8 February 2010 and is granted maximum HB as a result. On Monday 22 March 2010 Mrs A receives an award of Carers Allowance (CA), which is backdated to Monday 25 January 2010 and the overall effect exceeds her IS entitlement.

The DWP terminate her IS from 8 February 2010 and notify the LA of this on the same day.

The LA process the change of circumstances and calculate an overpayment from 8 February 2010 to 28 March 2010. Classify this as 'Other'.

### 2.41-2.49

## ***LA official error and Admin delay overpayments***

**100% Subsidy (less than or equal to the lower threshold)**

**40% Subsidy (more than the lower and up to and including the upper threshold)**

**Nil subsidy (more than the upper threshold)**

- 2.50 **Definition:** LA official error overpayment means an overpayment caused by a mistake, whether in the form of an act or omission, made by the LA or someone acting on their behalf. The claimant, a person acting on the claimant's behalf, or the person to whom the benefit was paid, did not cause or materially contribute to that mistake, act or omission.
- 2.51 An LA official error overpayment is only recoverable when the person affected could, at the time of receipt of the payment, or any notice relating to that payment, reasonably have been expected to realise that it was an overpayment.

*HB Reg 100 & (Pension Credit) 81; CTB Reg 83 & (Pension Credit) 68*

- 2.52 **Definition:** Admin delay overpayment means an overpayment arising when
- a an LA is notified of a change of circumstances and has sufficient information and evidence to make a revision or supersession decision, and
  - b the LA does not make the decision before the claimant's next payday, and
  - c the delay was not caused by a mistake, whether in the form of an act or omission, made by the LA, and
  - d the delay was not caused or materially contributed to by the claimant, a person acting on the claimant's behalf, or any other person to whom the benefit was paid

***Which classification is appropriate?***

- 2.53 When all 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 an LA official error or an Admin delay.
- 2.54 If the delay in processing the change of circumstances was caused by a mistake, for example the LA put the change of circumstances information to one side and forgot to process it, the overpayment should be classified as an LA official error.
- 2.55 If the delay in processing the change of circumstances was due to something out of the LA's control, for example staff shortages due to sickness, or if they had prioritised their workload, but they were unable to process it because of a backlog, the LA may decide that the overpayment should be classified as an Admin delay.
- 2.56 If the overpayment is classified as an LA official error, the LA must then make a decision on whether it is recoverable. Could the claimant reasonably have been expected to realise they were being overpaid at the time of the overpayment or any notices relating to the payments of benefit that were overpaid? If the claimant couldn't, the overpayment is not recoverable.
- 2.57 If the overpayment is classified as an Admin delay, the overpayment is recoverable. This is because all overpayments of HB and CTB are recoverable except certain official errors. As the LA has made a decision that the overpayment was not caused by a mistake and is therefore not an LA official error, the overpayment is automatically recoverable.
- 2.58 An LA might decide an overpayment that was caused by a delay in processing should be classified part as Admin delay and part as LA official error. This might be, for example, because they decide that they could not have processed the change of circumstances within a certain period, for example within two weeks of receiving all of the information, given the workloads on their benefit processing teams and therefore those two weeks of the overpayment should be classified as Admin delay. Then if the overpayment continued beyond those two weeks they might decide that from that point onwards the delay was due to a mistake, that is, there was an error in that they omitted to process the change when in fact they could have. The overpayment should therefore be classified as an LA official error from that point.

### 2.59-2.70

- 2.59 The decision as to whether the overpayment is an LA official error or Admin delay must be made by the LA based on the individual circumstances of each case. If the claimant appeals against the overpayment decision, for example the LA has classified the overpayment as an Admin delay and the claimant thinks that it was caused by an official error, the LA must be able to justify their decision. It should also be noted that if the LA's decision is that the overpayment is recoverable because it is not an official error, a tribunal or a court might take a different view. There should therefore be a record of the decision, outlining why the delay in processing the change of circumstances was not caused by a mistake made by the LA.

#### **Example 1**

Whilst reviewing a case on 20 October 2010 the LA notices that the wages have been incorrectly assessed since the claim was awarded from 8 February 2010. The reason for this is that the LA has incorrectly calculated the wages. The claimant has not contributed to the error in any way.

The LA revises the claim, creating an overpayment of £10 a week.

The LA classifies the overpayment as LA official error because it was caused by a mistake.

#### **Example 2**

On 16 February 2010 the claimant informs the LA that their contracted hours have increased, which will take effect from 8 February 2010. Full evidence is provided.

The claimant's next pay day is 1 March 2010, in respect of the period 1 February 2010 to 28 February 2010.

As the LA has a backlog, due to staff sickness, the change is not processed until 4 March 2010 causing an overpayment for the period 8 February 2010 to 28 February 2010.

The LA classifies the overpayment as follows:

8 February 2010 to 21 February 2010      Claimant error

22 February 2010 to 28 February 2010      Admin delay

The LA classifies part of the overpayment as Admin delay because they do not think the delay in processing the change of circumstances was caused by a mistake.

### 2.60-2.69

#### ***Suspension when further information is needed***

- 2.70 Regulation 11 of the HB and CTB (Decision and Appeals) Regulations 2001 states that an LA may suspend HB or CTB, in whole or in part, if there is an issue regarding the conditions of entitlement on a claim or if the LA suspects an overpayment is occurring. As the word 'may' is used, this means the decision to suspend is discretionary. Therefore if an overpayment occurs, it is not necessarily an LA official if the LA has not suspended benefit. However, this does not mean it is never an LA official error if the LA has not suspended.

- 2.71 The LA will have to decide the classification of the overpayment based on the individual circumstances of each case. The deciding factors are
- has the LA made a mistake, whether in the form of an act or omission?
  - has the claimant, person acting on their behalf or the person to whom the benefit was paid, caused or contributed to that mistake, act or omission?

- 2.72 In a case where the claimant reports a change of circumstances, but does not provide sufficient information and the LA has not suspended benefit, a decision will have to be made on whether the LA were justified in not suspending the benefit and whether the claimant has contributed to the overpayment. The classification of the overpayment will also depend on how long benefit is paid when the LA are aware that there are issues around conditions of entitlement or a suspected overpayment. The LA should not pay benefit indefinitely whilst awaiting further information from the claimant.

**Example**

The claimant writes to the LA telling them the date they have started work. They do not give the LA any other information and they do not say whether they want to continue claiming HB. The LA considers an Extended Payment but, as the claimant has not been in receipt of a qualifying benefit for 26 weeks, they are not eligible. The LA decides to continue paying HB whilst they gather further information, because they decide, based on the circumstances of this particular case, that the claimant may face hardship.

They write out to the claimant, requesting information and evidence of their new circumstances, including details of their earnings, in order to calculate in-work HB. They give the claimant one month in which to respond. At the end of the month the claimant has not replied.

The LA does not suspend benefit and writes out to the claimant again, giving them a further month. Again the claimant does not reply. At this point the LA suspends the claim, writes out to the claimant again, telling them that if they do not respond within one month, their claim for benefit will be terminated. The claimant does not respond, so the claim is terminated from the Monday following the date the claimant stated they had started work. In the LA's view, the claimant has (or could acquire) the information requested, but withholds it. The LA, therefore, draws an adverse inference from the claimant's failure to respond and holds that the work is such, as to end entitlement to HB from the date the claimant stated they had started work. The award is superseded on this basis.

- 2.73 The overpayment in the example above would be classified as Claimant error for the first month and then LA official error for the second month. The LA could justify their decision to continue paying benefit for the first month, in order for hardship not to be caused. Also it could be argued that the claimant did not provide sufficient information for the LA to be able to process the change of circumstances, so it would be acceptable to classify the first month of the overpayment as Claimant error.

### 2.74-2.89

2.74 However, after the claimant did not respond to the first request for information and evidence, the LA should have suspended benefit as they knew the claimant had started work and there were issues around conditions of entitlement. They did not know whether the claimant wanted to continue claiming HB. The second months' overpayment should therefore be classified as LA official error. (If the overpayment was caused by a delay in processing, which the LA decided was not caused by a mistake, whether in the form of an act or omission, some of the overpayment could have been classified as Administrative delay.)

2.75 Remember that you must apply the normal rules on classifying overpayments, ie when an overpayment changes from one classification to another, the subsequent classification will start from the Monday following the reason the classification is being changed.

#### **Example**

The LA receives an ETD from the DWP stating that a claimant has ceased receiving JSA(IB) because they have started work. The claimant does not contact the LA. The LA considers an Extended Payment but, as the claimant has not been in receipt of a qualifying benefit for 26 weeks, they are not eligible. The LA decides to continue paying HB whilst they gather further information, because they decide, based on the circumstances of this particular case, that the claimant may face hardship.

They write out to the claimant, requesting information and evidence of their new circumstances, including details of their earnings, in order to calculate in-work HB. They give the claimant one month in which to respond. At the end of the month the claimant has not replied.

The LA does not suspend benefit and writes out to the claimant again, giving them a further month. Again the claimant does not reply. At this point the LA suspends the claim, writes out to the claimant again, telling them that if they do not respond within one month, their claim for benefit will be terminated. The claimant does not respond, so the claim is terminated from the date JSA(IB) ceased. In the LA's view, the claimant has (or could acquire) the information requested, but withholds it. The LA, therefore, draws an adverse inference from the claimant's failure to respond and holds that the work is such as to end entitlement to HB from the date JSA(IB) ceased. The award is superseded on this basis.

2.76 The full overpayment in the example above would be classified as Claimant error because the claimant did not inform the LA that they had started work, which they have a duty to do under HB Regulation 88. The claimant therefore contributed to the overpayment. An overpayment cannot be classified as an official error if the claimant has contributed to it.

2.77 An LA should not have a blanket policy of always suspending or never suspending benefit. Each case should be considered on its own merits and a decision to suspend should be based on the particular circumstances of that case. The LA must consider the welfare of the claimant, for example whether they will face hardship if their benefit is suspended. However the LA must also manage their overpayment debt, and do everything they can to keep it to a minimum.

### 2.78-2.89

***Sufficient information provided by a third party***

- 2.90 If the LA has sufficient information for them to be able to process a change of circumstances, irrespective of where that information has come from, any overpayment from the Monday following receipt of that information would be classified as LA official error or Admin delay, depending on whether the delay in processing was caused by a mistake. From the point that the LA has sufficient information, the claimant is no longer contributing to the mistake. This is because nothing further is needed from the claimant.
- 2.91 If the third party doesn't provide sufficient information, for example when the LA receives an ETD from the DWP stating the claimant has started work, further information would be needed from the claimant and therefore the overpayment would continue to be classified as Claimant error up until the information is received or the claim is suspended.
- 2.92 This is because the claimant has not
- satisfied their legal duty to notify changes of circumstances that they might reasonably be expected to know might affect their benefit entitlement  
*HB Reg 88 & (Pension Credit) 69; CTB Reg 74 & (Pension Credit) 59*
  - provided the evidence and information needed to process any questions arising out of the claim  
*HB Reg 86 & (Pension Credit) 67; CTB Reg 72 & (Pension Credit) 57*

The claimant is therefore contributing to the overpayment.

2.93-2.99

***LA official error/Admin delay subsidy thresholds***

- 2.100 If an LA official error or Admin delay overpayment occurs, there are different rates of subsidy that can be claimed. These rates depend on whether the total amount of LA official error and Admin delay overpayments exceed a certain threshold.
- 2.101 Currently the thresholds expressed as a percentage of total correct payments are
- Lower threshold 0.48%
  - Upper threshold 0.54%
- 2.102 Correct payments (known as 'total specified payments' in the Subsidy Order) 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

2.103-2.111

- 2.103 If the total value of LA official error and Admin delay overpayments
- do not exceed the lower threshold, 100% subsidy is payable for all of the LA official error and Admin delay overpayments
  - are greater than the lower threshold, but do not exceed the upper threshold, 40% subsidy is payable for all of the LA official error and Admin delay overpayments
  - exceed the upper threshold, LAs receive nil subsidy for their LA official error and Admin delay overpayments

### Example

The LA's total correct payments for the financial year is £34,475,000.

- If the total value of LA official error and Admin delay overpayments is below £165,480 the LA can claim 100% subsidy on all of their LA official error and Admin delay overpayments.
- If the total value of LA official error and Admin delay overpayments is between £165,481 and £186,165 inclusively, the LA can claim 40% subsidy on all of their LA official error and Admin delay overpayments.
- If the total value of LA official error and Admin delay overpayments exceeds £186,165 the LA cannot claim any subsidy for their LA official error and Admin delay overpayments.

- 2.104 These thresholds could be reduced in subsequent years in order to gradually provide further incentives for LAs to tackle levels of LA official error and Admin delay overpayments.

2.105-2.109

## ***Departmental official error overpayments***

### **100% subsidy**

### **Nil subsidy for recovered Departmental official error overpayments**

- 2.110 **Definition:** Departmental official error means an overpayment which arises from a mistake, whether in the form of an act or omission, made by an officer of

- the DWP
- the Commissioners of Her Majesty's Revenue and Customs (HMRC)
- a person acting for any of the above

*HB Reg 100 & (Pension Credit) 81; CTB Reg 83 & (Pension Credit) 68*

- 2.111 This classification is not appropriate when the person affected caused or materially contributed to the mistake, act or omission.

- 2.112 A Departmental official error overpayment is only recoverable when the person affected could, at the time of receipt of the payment or any notice relating to that payment, reasonably have been expected to realise that it was an overpayment.
- 2.113 Recovered Departmental official error overpayments, or any part of a Departmental official error overpayment which is recovered, are not eligible for subsidy.
- 2.114 It is not necessarily a Departmental official 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. An overpayment arising after the DWP has notified the LA may be classified as LA official 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.
- 2.115 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 in receipt of Pension Credit.

### ***IOW Processes***

- 2.116 The HB and CTB regulations have been amended, so that in certain circumstances, claimants can discharge their duty of reporting they have started work to the LA by reporting it to the appropriate DWP office, (if a telephone number has been provided for that purpose).  
*HB Reg 88 & (Pension Credit) 69; CTB Reg 74 & (Pension Credit) 59*
- 2.117 When the claimant telephones the DWP to notify a move into work, the DWP will conduct an interview and simultaneously complete an into work statement, form IWK4. The DWP will advise the claimant about the evidence they need to send to the LA and confirm the request for evidence has been made on the IWK4. Once the telephone call is completed the IWK4 is sent immediately to the LA by secure email.
- 2.118 If the IWK4 doesn't arrive at the LA or there is a delay in the IWK4 arriving at the LA, but there is a record of the claimant reporting they have started work using the IOW processes and the claimant has provided sufficient information to enable the LA to process the change, any overpayment would be classified as Departmental official error from the Monday following the claimant notifying the DWP. This is because the claimant has satisfied their legal duty of reporting the change of circumstances to the appropriate office and providing sufficient information and evidence.

### 2.119-2.133

- 2.119 If however, the claimant has not provided sufficient information, the overpayment would continue to be classified as Claimant error until the claimant has provided the information and evidence. This is because the claimant is contributing to the overpayment by not providing sufficient information and evidence and an overpayment cannot be classified as official error if the claimant has contributed to it.

#### **Example**

Claimant receiving Jobseeker's Allowance (JSA) telephones the number published by the DWP to report they have started work.

They confirm they no longer wish to claim HB and CTB because the amount of their earnings is too high.

The DWP fails to send the IWK4 to the LA and the LA therefore continues to pay HB and CTB for a further three weeks.

The overpayment should be classified as Departmental official error because it was caused by a mistake made by the DWP, which the claimant did not contribute to.

### 2.120-2.129

#### ***Claimants in receipt of Pension Credit***

- 2.130 There are certain changes of circumstances that a claimant who is also in receipt of Pension Credit can report to the DWP and by doing so, have satisfied their duty of reporting the change to the LA. In these cases, the LA is reliant on receiving the information from the DWP.
- 2.131 If a pensioner reports a change of circumstances on time to the DWP, and that change reduces their Pension Credit, which then reduces their entitlement to HB and/or CTB, the LA would only take the change into account from the Monday following receipt of the information from the DWP (normally receipt of an Electronic Transfer of Data (ETD)) or the date the Pension Credit reduces, whichever is the later.
- 2.132 If a pensioner delays in reporting a change of circumstances to the DWP, and that change reduces their entitlement to Pension Credit, which then reduces their entitlement to HB and/or CTB, the LA would take the change into account from the Monday of the benefit week from which the Pension Credit reduced. The overpayment would be classified as Claimant error from the date of change to the end of the benefit week in which the change was notified to the DWP. It would then be classified as Departmental official error from the following Monday until the end of the benefit week in which the DWP sends the information to the LA.
- 2.133 If a pensioner has a change of circumstances that increases entitlement to Pension Credit, which then reduces their entitlement to HB or CTB, the LA would take the change into account from the Monday following receipt of the information from the DWP (normally receipt of an ETD) or the date Pension Credit increases, whichever is the later. It does not matter if the pensioner delayed in reporting the change to the DWP.

*HB (Pension Credit) Reg 60; CTB (Pension Credit) Reg 51*

(2.133)

**Example**

A claimant in receipt of Pension Credit has an increase to their occupational pension on 5 January 2010.

They report it to the DWP on 27 January 2010.

The DWP recalculates the Pension Credit and sends an ETD to the LA on 10 February 2010, showing that Pension Credit decreased from 11 January 2010.

The LA calculates an overpayment, which is classified as Claimant error from 11 January 2010 to 31 January 2010.

It is then classified as Departmental official error from 1 February 2010 to 14 February 2010.

- 2.134 In cases of doubt, liaise with the relevant DWP office to establish if the DWP has made a mistake and therefore caused the overpayment. If you identify an error caused by the DWP, tell the appropriate DWP office as soon as possible. It is still the LA's responsibility to take action on any HB/CTB overpayment classified as a Departmental official error.

2.135-2.139

## *Technical overpayments*

### **Nil subsidy**

- 2.140 **Definition:** Technical overpayment means an overpayment when rent rebate or CTB is credited in advance of entitlement for a particular period, where a change of circumstances or a recoverable overpayment causes that entitlement to be removed or reduced.
- 2.141 Any rent rebate or CTB overpayment that starts or continues from the benefit week following the week in which the change is disclosed to the LA or in which the LA identifies the change, is a Technical overpayment.
- 2.142 However, the classifications of LA official error and Admin delay take priority over the Technical overpayment classification. This is because LA official errors and Admin delays are genuine overpayments on which a decision on recoverability is required, whereas Technical overpayments are just adjustments to the rent or Council Tax (CT) account. The benefit credited for the period of the Technical overpayment can be taken back out of the rent or CT account. For example, if a claimant reports a change and the LA makes a mistake or delays in processing the change, which results in CTB or rent rebate being credited against the claimant's account for a longer period than should have been, this would be an LA official error or Admin delay overpayment and not a Technical overpayment.

### 2.143-2.145

- 2.143 An example of a Technical overpayment is when CTB is calculated for the full financial year and is credited to the CT account. If a change of circumstances occurs that affects the amount of CTB the claimant is entitled to, a Technical overpayment would have occurred for the future period that has already been credited. As CTB is a daily benefit, calculate a Technical overpayment from the day the change is processed by the LA, to the end of the financial year. There will not actually have been any benefit paid out; it will just have been a credit to the CT account. There will not be any money to recover from the claimant from the day the LA processes the change and therefore stops the overpayment from continuing. It is purely a paper exercise that is dealt with by the CT accounts system.

#### Example

Mr X claimed CTB on 5 April 2010 and is credited with a full rebate through to the end of the following March.

His income increases, and he is no longer entitled to CTB from 21 June 2010.

He notifies the change to the LA on 6 July 2010, and they reassess his claim from 22 July 2010, when the CTB is terminated.

There is an overpayment of CTB from 21 June 2010 to 31 March 2011.

They classify the excess CTB as follows

21 June 2010 to 11 July 2010	=	Claimant error overpayment
12 July 2010 to 21 July 2010	=	LA official error/Admin delay overpayment
22 July 2010 to 31 March 2011	=	Technical overpayment

- 2.144 The Technical overpayment classification should also be used when either CT liability ceases in a CTB case or the rental liability ceases in a rent rebate case. This is because CTB is paid by reducing the CT liability and rent rebate is paid by reducing the rental liability. If the CT and rental liability have ceased, there is nothing to reduce and therefore there is nothing to recover from the customer. The CTB and rent rebate that has been credited after the liability ceased can be taken back out of the CT and rent accounts. Subsidy is not payable for CTB or rent rebate credited after liability has ceased.

*Section 134 and Section 138 SSAA1992*

### ***CTB – CT liability ceases***

- 2.145 CTB Technical overpayments can occur when council tax liability has ended, but benefit has been posted to the account for a period after the end of liability. This could be because the claimant has

- moved, or
- died

**Note:** Excess CTB caused by the claimant's CT liability ceasing should always be classified as a Technical overpayment. For the period there wasn't a CT liability, there isn't anything to recover from the claimant. The CTB credited to the CT account for the period after the liability ceased can be taken back out of the CT account. There isn't any subsidy payable for this period.

(2.145)

**Example**

Mr X claimed CTB on 5 April 2010 and is credited with a full rebate through to the end of the following March.

Mr X vacates the property and his liability to pay Council Tax comes to an end on Tuesday 13 July 2010.

He notifies the change to the LA on Friday 23 July 2010 and the LA processes the change on Friday 6 August 2010.

There can be no overpayment of CTB as the claimant was no longer liable to pay Council Tax.

For recording purposes the excess CTB is classified as follows

13 July 2010 to 31 March 2011	=	Technical Overpayment
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***Rent Rebate – rental liability ceases***

- 2.146 HB technical overpayments can only occur in rent rebate cases. As with CTB technical overpayments this is due to liability ending and benefit being posted to the terminated rent account. This is often due to both the claimant and housing department failing to notify the benefit section.

**Example**

Mrs C claimed HB on 4 January 2010.

Mrs C vacates her council property and moves out of the LA's area on 12 August 2010.

The housing department closes her rent account and therefore ceases her rental liability from 23 August 2010.

Mrs C notifies the benefit section of the change on 26 August 2010, and they reassess the claim from 30 August 2010.

There is an overpayment of HB from 16 August 2010 to 29 August 2010

The HB overpayment is classified as follows

16 August 2010 to 22 August 2010	=	Claimant error overpayment
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23 August 2010 to 29 August 2010	=	Technical overpayment
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### 2.147-2.152

- 2.147 The Technical overpayment classification can be applied retrospectively if the rental liability is terminated retrospectively. The most common reason for this is when a claimant dies or moves out of a council property and a close relative takes over the tenancy.

#### **Example**

Mr B dies on 7 July 2010 and the HB section is informed on 29 July 2010.

The HB claim is terminated from 12 July 2010, which leads to an overpayment of HB from 12 July 2010 to 1 August 2010, which they classify as Other.

Mrs B later applies for and is given the tenancy for the property back to the 19 July 2010. She claims HB and it is backdated to the beginning of the tenancy (19 July 2010).

As Mrs B took over the tenancy from the 19 July 2010, the housing department terminates Mr B's tenancy from 19 July 2010.

The HB section can therefore take the rent rebate credited to Mr B's rent account back out of the account from the 19 July 2010.

The overpayment is classified as follows

12 July 2010 to 18 July 2010	=	Other/Claimant error
19 July 2010 to 1 August 2010	=	Technical overpayment

### ***Overpayments arising following the suspension of CTB***

- 2.148 Consider suspending CTB if a
- doubt about a person's CTB entitlement arises, or
  - claimant fails to provide necessary information that you have requested
- 2.149 As with all cases of possible benefit suspension, such action is not mandatory as it has always been an important principle that Decision Makers consider each case on its merits.
- 2.150 If you decide to suspend CTB in a given case, the immediate impact of this differs from suspensions in other benefits (including HB) given CTB works by rebating the relevant annual amount of Council Tax due from the claimant at the start of their award. Because payments of CTB are not physically ongoing during the year they are not suspended in the sense of payments being actually stopped.
- 2.151 Therefore, suspension of CTB has no material impact on either the authority or the claimant during the suspension period, other than issue and receipt of the notification letter.
- 2.152 Suspension is a transitory event designed to
- encourage the claimant to co-operate, or
  - enable the award to be terminated

- 2.153 If the suspension is due to a failure to supply information, it ends when
- the information is provided, or
  - CTB is terminated under the provisions in the HB and CTB (Decisions and Appeals) Regulations 2001, Regulation 14
- 2.154 If the suspension is due to a doubt about entitlement, it ends with either
- continuation of the decision
  - revision of the decision
  - supersession of the decision
- Note:** Suspension is never an end in itself.
- 2.155 From the date that CTB is suspended, benefit is not overpaid. However, as CTB is credited up to the end of the financial year, calculate any overpayment up until the end of the year. From the date of suspension, any overpayment is classified as a Technical overpayment. This means there hasn't actually been any benefit overpaid – it is merely an accounting matter. Some LAs refer to these as 'paper' overpayments.

**Example**

A claimant has been entitled to full CTB from 1 April 2010, worth £1,200 (or £100 per month). This full amount is rebated at the start of the financial year.

On Tuesday 3 August 2010, the LA learns that the claimant has started a higher paid job. They suspend CTB by simply noting their system and writing to the claimant

- advising them of the suspension
- telling them a revised Council Tax bill will not be issued during the duration of the suspension
- requesting details of their new employment and earnings

The claimant replies on 1 September 2010 to the effect that their new job began on Wednesday, 30 June 2010. It is clear that their new earnings are sufficient to nil their CTB entitlement and the original decision is superseded.

In this case, CTB entitlement ended on Sunday, 4 July 2010 – just over a month before the suspension. The LA writes to the claimant to advise them of this and that a revised Council Tax bill will be issued. The LA issues a Council Tax demand for £900 for the period 5 July 2010 to 31 March 2011.

continued

(2.155)-2.180

(2.155)

The overpayment is classified as follows

5 July 2010 to 2 August 2010 = Claimant error

3 August 2010 to 31 March 2011 = Technical overpayment

The LA notifies the claimant of the Claimant error part of the overpayment, satisfying Schedule 8 requirements and giving the appropriate appeal rights.

2.156-2.169

### ***Excess CTB arising from a reduction in CT liability***

#### **Nil subsidy**

- 2.170 **Definition:** Excess CTB means an overpayment that arises from the reduction in a claimant's CT liability, eg a delayed award of transitional relief, a reduction in a property's banding following an appeal or a late award of discount. Subsidy cannot be claimed for reductions in CT liability. There isn't anything to recover from the claimant. It is just an adjustment to the CT account.

### ***Indicative Rent Level overpayments***

#### **100% subsidy**

#### **Nil subsidy for recovered Indicative Rent Level overpayments**

- 2.171 **Definition:** Indicative Rent Level (IRL) overpayment means an overpayment which arises as a result of benefit being paid using IRL figures, which exceeds the maximum rent payable.
- 2.172 If an IRL figure is used when deciding the amount of payment on account, and a rent officer's decision results in less eligible rent than the IRL, LAs should recover the excess payment on account from ongoing benefit.
- 2.173 Recovered IRL overpayments or any part of an IRL overpayment, which is recovered, are not eligible for subsidy.

2.174-2.179

### ***Duplicate overpayments***

#### **25% Subsidy**

- 2.180 **Definition:** Duplicate overpayment means any overpayment arising from a duplicate payment following alleged non-receipt, loss, theft, or destruction in cases where the original payment has been cashed.

### ***More than one overpayment classification***

- 2.181 An overpayment may have more than one classification. For example, an overpayment caused initially by a claimant failing to report a change of circumstances may be prolonged if there is a delay by the LA in actioning the change once it is finally reported. The part of the overpayment attributable to the claimant failing to report a change should be classified as Claimant error and the remaining part of the overpayment should be LA official error or Admin delay.

2.182 - 2.189

### ***Is an overpayment recoverable?***

- 2.190 There are three questions, which must be considered in order to decide whether an overpayment is recoverable. They are

- Was the overpayment caused by a mistake, whether in the form of an act or omission, by the LA, DWP, HMRC or a person acting on their behalf?
- Did the claimant, a person acting on their behalf or the person to whom the benefit was paid, cause or materially contribute to the mistake, act or omission?
- Could the claimant, a person acting on their behalf or the person to whom the benefit was paid, reasonably have been expected to realise they were being overpaid, either at the time of the official error overpayment or any notice relating to the payments that were made?

*HB Reg 100 & (Pension Credit) 81; CTB Reg 83 & (Pension Credit) 68*

**Note:** The question of whether an overpayment is recoverable is separate from the question of whether to recover it.

### ***Was the overpayment caused by a mistake?***

- 2.191 Was the overpayment caused by a mistake, whether in the form of an act or omission, by the LA, DWP, HMRC or a person acting on their behalf?
- 2.192 If the answer to this question is no, then the HB or CTB overpayment is legally recoverable. The overpayment should not be classified as an official error. However, just because an overpayment is recoverable does not mean that it must be recovered.
- 2.193 If the answer to this question is yes, you must go on to consider the next question.

### ***Did anyone contribute to the mistake?***

- 2.194 Did the claimant, a person acting on their behalf or the person to whom the benefit was paid, cause or materially contribute to the mistake, act or omission?

### 2.195-2.215

2.195 If the answer to this question is yes, then the HB or CTB overpayment is legally recoverable. The overpayment should not be classified as an official error. However, just because an overpayment is recoverable does not mean that it must be recovered.

2.196 If the answer to this question is no, the HB or CTB overpayment should be classified as an official error. You must go on to consider the next question.

### 2.197-2.209

#### ***Could anyone reasonably have been expected to realise they were being overpaid?***

2.210 Could the claimant, a person acting on their behalf or the person to whom the benefit was paid, reasonably have been expected to realise they were being overpaid, either at the time of the official error overpayment or any notice relating to the payments that were made?

2.211 If the answer to this question is yes, then the HB or CTB overpayment is legally recoverable.

2.212 If the answer to this question is no, then the overpayment is non-recoverable. It must be written off.

2.213 However, this can be a difficult decision to make. There are a number of further issues that must be considered, such as, did the people affected

- receive the decision notices?
- read the decision notices?
- know which changes of circumstances must be reported to the LA?

2.214 Also, could the people affected reasonably have

- known an overpayment had occurred, from the information provided by the LA?
- expected a change in the amount of benefit they receive, having notified the LA of a change of circumstances?
- expected an overpayment to occur if they had previously had a similar change, which caused a change in the amount of benefit they received?

2.215 'Reasonably have been expected to realise' can be interpreted in the person affected's favour, if

- you consider, because of their age, intelligence (eg can they read) or mental condition, that they genuinely were unaware of the official error overpayment
- they state they were wrongly advised by an official source; however the onus of proof will be on the person affected. In such cases, a statement should be taken from all parties concerned and a decision made on the balance of probabilities.

2.216 In some cases, an overpayment may need to be split into different classifications, ie part attributable to official error and part Claimant error. In these circumstances, determine at what date the error transferred from being the responsibility of one party to the other.

2.217 If, after all these factors have been considered, you are satisfied the overpayment occurred due to official error and the person affected could not reasonably have been expected to realise they were being overpaid, then the overpayment should be categorised as non-recoverable.

2.218-2.229

### ***When should a recoverable overpayment be recovered?***

2.230 Any recoverable overpayment may be recovered at the LA's discretion. If you establish an overpayment is recoverable, it does not mean you must recover it.

2.231 The decision that an overpayment is recoverable must be separate from the decision to recover it. Due regard should be given to the circumstances relating to individual cases, when deciding whether or not recovery is appropriate.

2.232 An LA is not obliged to make recoveries. Each individual case should be decided on its own merits, ie a blanket policy for recovery must not be applied. An LA that acted unreasonably or irrationally could be subject to judicial review.

2.233 An LA must satisfy itself that it is reasonable to make recovery in every individual case, see *Recovery of overpayments, Write-offs* later in this guide for details of recoverable overpayments when a decision is made not to recover.

2.234-2.999