

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The Housing Benefit and Council Tax Benefit overpayments guide has been archived.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

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Case law and regulations

Housing Benefit – Overpayments Regulations 99 – 107/(SPC) 80 – 88

Council Tax Benefit –Excess Benefit Regulations 82 – 90/(SPC) 67 - 75

- 8.00 This chapter has a list of case law relating to the Housing Benefit (HB) overpayment and excess Council Tax Benefit (CTB) regulations. A brief summary of selected cases precedes the list. Each decision is binding in its interpretation of the regulations. However, as they provide an interpretation of the HB/CTB regulations in relation to individual cases, and the facts in each case differ, the Local Authority (LA) must decide how to interpret the decisions and assess the influence they have. There are a number of key decisions that have had a significant impact on the administration of HB/CTB overpayments and these cases are included in the summaries. Whilst these summaries are not exhaustive, they provide a sample of some of the issues that LAs must consider in the calculation, classification and recovery of overpaid HB/CTB.
- 8.01 Following the implementation of the Tribunals, Courts and Enforcement Act 2007, Commissioners were renamed Upper Tribunal Judges and therefore any reference to Commissioners should be taken as now referring to Upper Tribunal Judges.
- 8.02 Some HB/CTB case law can be found on the Tribunals Service website <http://www.osspsc.gov.uk>.
- 8.03 **Note:** From the outset of the Tribunals, Courts and Enforcement Act 2007 (3 November 2008) neutral citation numbers are being used by the Ministry of Justice. See Practice Direction <http://www.tribunals.gov.uk/Tribunals/Documents/Rules/Formofdecisionsandneutralcitation.pdf>. We can however continue to use the traditional notation, which still appears as part of the decision title. We think it would be sensible to include both the neutral citation, where it is relevant, as well as the traditional citation number. The Practice Direction also reiterates that where anonymity was previously given to a party in a tribunal case, it must continue to be respected.

8.04 – 8.05

Summaries

HB Regulation (Reg) 99/(SPC) 80 - Meaning of overpayment

CTB Reg 82/(SPC) 67 - Meaning of excess benefit

CH/269/2006

- 8.06 A claim for HB/CTB was submitted and the claim was refused as the claimant did not qualify for benefit. As a result of a subsequent change of circumstances HB/CTB was awarded, but it was later found to have been overpaid. The Commissioner ruled that the LA had no authority to supersede a 'nil' decision and that the money paid was therefore not overpaid HB/CTB and not recoverable under the HB/CTB provisions.

R(H) 2/08 (CH/3629/2006)

- 8.07 The LA was making payments of HB directly to the landlord. In January 2006 the claimant requested that their HB be paid directly into their friend's bank account. The LA amended the claim in line with the claimant's request, but did not notify the landlord. In April 2006 the landlord contacted the LA and advised them that the claimant was in arrears of more than eight weeks. The LA amended the claim to ensure that future payments were made directly to the landlord.
- 8.08 The landlord appealed against the decision made by the LA in January 2006, to pay the HB direct to the claimant. The tribunal dismissed the appeal, holding that there was no power to order a second payment of HB to the landlord.
- 8.09 The landlord appealed to the Commissioner. The Commissioner upheld the decision, stating that even if the decision to pay the claimant was revised, regulation 98 would prevent a further payment being made. This case was heard with R(H) 1/08 (CH/1821/2006), which dealt with the same legal issues.

CH/3076/2006

- 8.10 The claimant appealed against an overpayment of CTB in respect of the period 30 May 2005 to 31 May 2006. The claim had been suspended on 1 June 2005.
- 8.11 The Commissioner decided that the overpayment in respect of the period 5 June 2005 to 31 March 2006 was not a recoverable overpayment, but an adjustment of the Council Tax account.

8.12 Commissioner Rowland stated,

'In my judgment, the credit should be treated as a credit of council tax benefit only as each week of entitlement under the award passes. If there is a suspension, the credit in respect of the weeks covered by the suspension should not be treated as a credit of council tax benefit for as long as the suspension remains in force and payments are not reinstated for that period. If an award is terminated retrospectively, excess benefit credited between the date from which entitlement to benefit is terminated and the date of the termination decision (or the date of any suspension) will be recoverable under regulation 84 of the 1992 Regulations (regulation 83 of the 2006 Regulations). It will also be possible for the local authority to adjust the account so as to demand full payments of council tax from the date of the termination decision (or the date of any suspension). But, insofar as it relates to the period after the termination decision (or the date of any suspension), that reinstatement of liability is not a recovery of excess benefit.'

8.13 Another case that supports this interpretation of the CTB regulations is CH/2203/2008.

8.14-8.19

***HB Reg 100/ (SPC) 81 - Recoverable Overpayments
CTB Reg 83/ (SPC) 68 - Recoverable Excess Benefit***

R (Sier) v Cambridge CC HBRB [2001] EWCA Civ 1523

8.20 The Department for Work and Pensions (DWP) failed to send form NHB8 to Cambridge City Council, which would have highlighted that the claimant was no longer claiming Income Support (IS) from the local DWP office. The claimant was claiming HB/CTB for a second property, in another LA's area, but he had not informed Cambridge City Council about this. The Court of Appeal considered who was at fault and therefore who had caused the overpayment.

8.21 Lord Justice Latham wrote,

'Bearing that in mind, I consider that Richards J was correct in concluding that the failure to send form NHB8 to Cambridge City Council had not 'caused' the overpayment even if that failure did amount to an official error. The overpayment occurred because the appellant continued to claim Housing Benefit for the Cambridge property and failed, in breach of his duty under Regulation 75 of the 1987 Regulations, to notify the Cambridge City Council of what in my judgment was clearly a relevant change in his circumstances and one which he would have appreciated. The administrative failure, if that is the appropriate way of describing it, to send form NHB8 to Cambridge City Council did not cause any payments to be made. The most that could be said is that as a result of that failure Cambridge City Council was not alerted to the fact that the appellant was no longer entitled to the relevant payments. But it seems to me that the answer to the question posed by the Regulation is clear: this was not an overpayment caused by official error and accordingly the Regulations do not relieve the appellant of the obligation to repay the overpayment, which is the primary rule in such circumstances.'

8.22-8.28

- 8.22 Even though the failure of the DWP to send the NHB8 to the LA was considered to be an error, it was decided that the customer's failure to report the change of circumstances actually caused the overpayment and therefore the overpayment was not an official error and it was recoverable.

CH/2780/2009

- 8.23 The claimant was in receipt of Jobseeker's Allowance (income-based) (JSA(IB)) and advised Jobcentre Plus that he was starting work. The claimant was advised by Jobcentre Plus that he was entitled to an extended payment of four weeks HB/CTB and that the Jobcentre Plus office would inform the LA that his JSA had ended. The claimant therefore did not pay his rent for four weeks under the assumption that it was being met by HB. After the four weeks had elapsed, he started to meet his rent in full. The LA was not informed that the claimant had started work and continued to pay HB direct to the landlord.

- 8.24 The judge decided that the overpayment was not recoverable as the overpayment was caused by an official error (the claimant had been advised that he did not need to inform the LA of the change) and the claimant could not reasonably have been expected to realise that he was being overpaid. He had not received any HB notifications or seen a rent account statement throughout the period of the overpayment.

R(IS) 7/05 (Hinchy v Secretary of State for Work and Pensions [2005] UKHL 16)

- 8.25 The claimant was in receipt of Income Support (IS) and Disability Living Allowance (DLA). Her entitlement to DLA ceased, which meant she should have no longer received a disability premium and her IS entitlement should have reduced. Even though DLA and IS are both administered by the DWP, DLA is administered nationally and IS is administered locally. There was a procedure in place for information regarding changes to DLA entitlement to be communicated to the local IS office, but this procedure was not followed. The claimant did not inform her local IS office that her DLA had ceased.

- 8.26 The Judges decided that the claimant had not complied with the instructions in her order book, which stated that she must notify the local IS office of any changes to her income, including when any benefit income went up or down.

- 8.27 Lord Hoffmann stated,

'the claimant is not concerned or entitled to make any assumptions about the internal administrative arrangements of the department. In particular, she is not entitled to assume the existence of infallible channels of communication between one office and another. Her duty is to comply with what the Tribunal called the 'simple instruction' in the order book.'

- 8.28 The appeal was refused, which meant that the overpayment was recoverable.

CH/2567/2007

8.29 The claimant's daughter wrote to the LA's Housing Department, notifying them that she was moving in with her father. However, the claimant did not inform the Benefit Service of this. The Housing Department failed to pass on the information to the Benefit Service. The LA's communications did not make it clear where changes of circumstances should be reported to.

8.30 Commissioner Levenson stated,

'I note that there is no reference on this page to any particular department, office, address or telephone number, but only to 'us' and 'the council'..... The front page of the form contains a reference to the name of the authority and also the authority's logo, which includes the name of the authority's area. Thus, on the face of it, it is reasonable to assume that 'us' refers to the authority as a whole.'

8.31 It was decided that the overpayment was caused by an official error and that it was non-recoverable because, in the circumstances of the case, the claimant could not reasonably have been expected to realise he was being overpaid.

8.32 R(H) 10/08 (CH/3586/2007) also looks at the meaning of 'relevant authority' within the context of HB Reg 88/(SPC)69 & CTB Reg 74/(SPC) 59.

CH/1602/2007

8.33 The claimant's IS ended, as he had a partner who was in full time work. However, it took the LA over a year to act on the information. Overpayments of HB and CTB were calculated. The Deputy Commissioner decided that the overpayments were fully recoverable; both before and after the LA were made aware of the change. Even though the LA had delayed processing the information, the claimant had contributed to the overpayment.

8.34 Deputy Commissioner Ramsay stated,

'Although the local authority was in error in failing to act more promptly when it received the relevant information in November 2004, the claimant caused and materially contributed to this error. There can be no reasonable doubt that the overpayment would have ceased at a far earlier date had the claimant produced evidence of his cessation of income support entitlement, his partner's earnings, and the various awards of tax credits. Accordingly, the events in question do not fall within the strict meaning of 'official error' as this excludes the situation where the claimant has contributed to the mistake or omission.'

CH/69/2003

8.35 The claimant was in receipt of disablement benefit and DLA, which he had not declared on his applications for HB and CTB. However, in the appeal the claimant stated he had provided a bank statement, which showed regular credits and the LA should have asked him to explain them.

8.36-8.42

8.36 Commissioner Rowland stated,

'There was no duty on the local authority to analyse the payments into the account in case they revealed undisclosed income. Furthermore, even if there were such a duty, and even if such an analysis were possible, and even if the local authority erred in awarding housing benefit and council tax benefit before the claimant had been asked to explain the credits to his account, there would still not have been an 'official error', because the claimant would have contributed to the error by failing to disclose his receipt of disablement benefit when expressly asked to do so on the claim form he had completed.'

8.37 The appeal was dismissed and therefore the overpayments were recoverable.

CH/3925/2006

8.38 The claimant was paying child care costs, but when they stopped she did not report it to the LA. However, she did omit the child care details from application forms completed by officers at the LA, in addition to providing tax credit award letters that confirmed that child care was no longer being paid.

8.39 In the appeal, the LA tried to rely on CH/69/2003, in that the failure of the LA to pick up from the tax credit award notices, that child care costs had ceased, did not amount to an official error. However, Commissioner Mesher decided that the facts in this case differed from CH/69/2003 and that the overpayments were due to official error.

8.40 Commissioner Mesher stated,

'Mr Commissioner Rowland's remarks are not to be taken as supporting any sort of general rule that a local authority does not make a mistake by failing to notice in a document produced for one purpose (such as verifying the amount of a claimant's capital) evidence relevant to something else (such as the amount of a claimant's income). The true answer is that it all depends on the particular circumstances. Sometimes such a failure amounts to an official error, sometimes it does not.'

CH/2558/2007

8.41 The claimant notified the LA that her income had changed because her son had left school and she had ceased to receive child benefit for him. The LA wrote to the claimant, asking if the son had started work. The claimant provided details of her son's earnings 'reasonably promptly' and an overpayment for a short period was created.

8.42 Direct payments were being made to the landlord. The LA decided to recover from the landlord who appealed against the overpayment, arguing that the LA should have suspended the claim when it became aware that the non-dependant had started work and therefore that the overpayment was due to official error.

- 8.43 Deputy Commissioner Mark upheld the tribunal's decision that the overpayment was not caused by official error. He stated,

'the tribunal was fully entitled to conclude that the council was entitled to investigate the position further without suspending benefit, and that there was no mistake in its doing so'.

CH/3309/2006

- 8.44 The claimant notified the LA that she had started work, however the LA continued to credit CTB to her Council Tax account. Commissioner Howell decided that because the claimant had repeatedly informed the LA and also attempted to make Council Tax payments, she could reasonably have been expected to realise that she was being overpaid. The excess CTB was therefore recoverable.

CH/240/09

- 8.45 The LA had incorrectly calculated the claimant's child care costs, when assessing her total weekly income, which led to an official error overpayment. The claimant appealed against the decision that the overpayment was recoverable, which the tribunal allowed, on the basis that the notifications were complex. Judge May rejected this argument and decided that claimants can reasonably be expected to read their notifications and the notices in this particular case were 'quite clear in their terms'.

CH/38/2008

- 8.46 The overpayment was created because Incapacity Benefit (IB) had ended and subsequently reinstated upon appeal. The tribunal concluded that the full overpayment was due to official error. However, the Judge ruled that the part of the overpayment resulting from the reinstatement of IB was not due to a mistake and therefore was not official error. He agreed with the tribunal, that the remainder of the overpayment, which was due to the LA repeatedly failing to reassess the case (after receiving notification that IB had been reinstated) was official error.

- 8.47 The Judge then went on to rule that all of the overpayment was recoverable. The period covered by the retrospective reinstatement of IB was not official error and therefore was automatically recoverable. The period after the LA had been notified of the reinstatement was official error, but it was recoverable because the claimant had not demonstrated that he could not reasonably have been expected to realise he was being overpaid.

CH/2713/2006

- 8.48 The claimant was claiming JSA, which ceased when she started work. The LA was then notified that her JSA had been reinstated, however she was still in work. It was accepted therefore that the overpayments of HB and CTB were due to official error.

8.49-8.53

- 8.49 The claimant argued that she had not checked her 'accounts with a fine toothcomb' and therefore she did not know she was being overpaid. The overpayments should therefore be non-recoverable. Commissioner Jupp stated, *'if the claimant and her partner choose not to check their bank statements that is of course a matter for them, as are the consequences'*. She decided therefore that the overpayments were recoverable.

CH/4062/2007

- 8.50 The LA miscalculated HB and CTB, as they failed to take proper account of the claimant's declared earnings. On receiving the notification of entitlement, the claimant telephoned the LA to check how much rent she had to pay. She had found the benefit notifications confusing. She was told that the amounts quoted were correct.
- 8.51 Deputy Commissioner Gamble decided that the claimant, having queried her entitlement, could not reasonably have been expected to realise that she was receiving overpayments of HB and CTB and therefore the overpayments were not recoverable.

CH/1909/2008 - [2008] UKUT 6 (AAC)

- 8.52 The LA incorrectly amended the claimant's rental liability from 50% to 100%, therefore causing an overpayment. The claimant queried the entitlement with the LA and was assured that the entitlement was correct. However, she did not mention that her rental liability was 50%, rather than the 100% they were paying her. The LA decided the overpayment was recoverable because even though it was caused by an official error, the claimant could reasonably have been expected to realise she was being overpaid. The claimant appealed, but the tribunal disallowed the appeal and Deputy Judge Parker upheld the decision.
- 8.53 In doing so she noted,
- 'However, there are instances, as here, where a claimant's failure to draw relevant information to the attention of the local authority is evidentially relevant to whether or not she could reasonably rely on its answer. Usually, a clear statement by a local authority that a claimant's HB has been correctly calculated is enough to mean that a claimant thereafter reasonably forms the view that there has been no overpayment. But all is crucially dependent on the facts of the individual case. The tribunal found that the claimant knew that her own liability for rent was about £65 per week but that she had been told she was to receive £96 per week in HB. In that context, it was not enough simply to ask the officer in the local authority whether or not her HB had been correctly calculated and to confirm that her own circumstances had not altered; the situation additionally required that she drew these facts to the specific attention of the officer to whom she spoke. This is because any reasonable person in the claimant's circumstances, and having regard to her benefit history, would know that, where the other joint tenant was also responsible for half of the rent charged, it was highly unlikely that she could receive in HB a sum almost equivalent to the rent on the whole house.'*

- (8.53) *Looking at the whole picture, it was not an error of law for the tribunal to conclude that, in the unusual circumstances of the amount of the payment made to her, it was unreasonable of the claimant to rely, without more, on the first reaction of the local authority; this was made by an officer in response to the claimant's telephone query, which query omitted highly relevant facts which would have appeared as such to any reasonable person.'*

8.54-8.59

Cases relating to administrative delay

CH/858/2006

- 8.60 The claimant notified an increase in earnings on 19 April, but the LA did not take it into account until 13 May. Commissioner Jacobs decided that the delay in processing the change was not due to an official error and therefore was recoverable. He stated,

'That was less than a month. Delay can be an official error. However, Ms Jackson argued that the local authority had taken a reasonable time to amend the claimant's award. I accept that submission.'

(Separately the claimant had notified the LA in February of an increase in their Tax Credits, which was overlooked by the LA and not revised until 13 May. Commissioner Jacobs decided that that part of the overpayment was an official error and, due to the particular circumstances of the case, was not recoverable because the claimant could not reasonably have been expected to realise they were being overpaid.)

CH/454/2005

- 8.61 *'The sequence of events would appear to be thus:*
- (i) On 11.9.02 the Council is alerted to the fact that Steven prima facie became a non dependant on 9.9.02.*
 - (ii) On 27.11.02 (27) the Council requested information as to, and proof of, Steven's earnings.*
 - (iii) On 29.11.02 the claimant wrote the letter at (28) and on 9.12.02 produced the information at (29) with the payslip at (30).*
 - (iv) On 27.1.03 the Council decided – for the reasons I have noted above – that as from 7.10.03 Steven was to be regarded as a non dependant resident.*
 - (v) On 28.1.03 (31 and 33) the Council revised the entitlement for both benefits and on the same date raised the repayment claim.'*

8.62-8.74

8.62 The tribunal stated,

'I would consider there was official error if the delay was particularly protracted, but taking into account the holiday period, I cannot find that that was the case here.'

Commissioner Henty went on to say,

'What 'particularly protracted' means in any one case depends on the particular facts of that case and has to be argued accordingly, but in this case I do not consider the delay until 19.1.03 was particularly protracted and I accept what the tribunal said.'

8.63 The tribunal decided that the delay was not due to official error and therefore that the overpayments were recoverable. The Commissioner agreed with their decision.

CH/2741/2003

8.64 The claimant notified the LA that she had changed address, as she made a claim for HB for a new property. The LA took two weeks to stop the HB being paid for the original tenancy and therefore an overpayment of £210.00 occurred.

8.65 Commissioner Powell stated,

'In this day and age, cases involving large organisations, such as the Council, and matters involving a number of administrative procedures, such as housing benefit, a period of two weeks is not excessive. It certainly does not amount to an official error.'

CH/2409/2005

8.66 The claimant was in receipt of CTB. He said he notified the LA by phone, on or shortly before his 65 birthday, that he would be receiving Retirement Pension and that he was advised to provide proof of the amounts, once he had received the details. However, the LA were unable to locate any written record of the telephone conversation. Three months elapsed before the claimant notified the LA of the change of circumstances in writing. The LA then failed to act on this information for a further two months.

8.67 Commissioner Levenson decided that all of the overpayment was due to official error, but from the point the claimant reported the change of circumstances in writing, because of the way CTB payments are managed, he could reasonably have been expected to realise he was being overpaid and therefore that part of the overpayment was recoverable.

8.68-8.74

HB Reg 101/(SPC) 82 - Person from whom recovery may be sought
CTB Reg 85/(SPC) 69 - Persons from whom recovery may be sought

R(H) 6/06 (CH/4234/2004)

- 8.75 The overpayment was created as the claimant had not declared that he was a full time student. It was therefore decided that the overpayment was recoverable from him. Subsequently it was found that the landlord had also misrepresented and that a higher amount of HB had been paid due to the misrepresentation. The claimant argued that part of the overpayment resulting from the landlord's incorrect status should be recovered from the landlord.
- 8.76 The Commissioners decided that the overpayment was recoverable from both the claimant and the landlord and that both parties should have received a decision notice regarding the overpayment. They stated,
- 'a single decision as to the recoverability of an overpayment should always be addressed to all those from whom it is recoverable'.*
- 8.77 The LA's decision was set aside to allow the LA to notify both the claimant and the landlord that the overpayment was recoverable from them both (separate to the issue of who the overpayment was to be recovered from).
- 8.78 As a direct result of this decision LAs must issue an identical overpayment decision notice to all parties from whom the overpayment is legally recoverable, giving them the appropriate appeal rights. If any of them appeal, all parties from whom the overpayment is recoverable should be invited to join proceedings.

R(H) 10/07 (CH/2913/2005)

- 8.79 Payments of HB were being made direct to a landlord's agent. The claimant was taken in to legal custody, but the LA was not informed and an overpayment occurred. The LA decided that the overpayment was recoverable from the agent, as the person to whom payments were made. The agent appealed against being a target of recovery and the appeal was allowed. The tribunal stated,
- 'The overpayment was not recoverable from the appellant because they were at all relevant dates agents for another, to whom they had accounted for the monies received'.*
- 8.80 Commissioner Jupp overturned the tribunal's decision referring to section 75(3) of the Social Security Administration Act 1992. She stated,
- 'I conclude that the primary legislation as embodied in section 75(3) of the 1992 Act is wide enough to permit recovery in any event from an agent as the person to whom payment has been made'.*

8.81-8.91

R(H) 3/09 (CH/3160/2007) (Retrospective application of regulations) - AH v Mendip District Council and the Secretary of State for Work and Pensions [2008] UKUT 18 (AAC)

- 8.81 The claimant was awarded HB from November 2000. For part of the time HB was paid direct to the landlord. The LA discovered that the claimant and his wife had capital well over the threshold for an award of either HB or CTB. An overpayment was calculated from November 2000 to June 2005. The overpayment decision was made in May 2006.
- 8.82 There were three different versions of Reg 101 during the period of the overpayment. Up until April 2006, Reg 101 prescribed that, in the circumstances of this particular case, that the overpayment was recoverable from both the claimant and the landlord. However, the version of the Reg that came into force in April 2006 meant that the overpayment was only recoverable from the claimant.
- 8.83 Commissioner Jacobs decided that the version of Reg 101 that was in force at the time the overpayment and liability decisions were made, should be applied to the entire period of the overpayment. This meant that all of the overpayment was recoverable from the claimant, as the decision was made in May 2006.

8.84-8.89

HB Reg 103/(SPC) 84 Diminution Of Capital
CTB Reg 88/(SPC) 73 Diminution of Capital
CH/314/2007

- 8.90 The claimant had been overpaid HB/CTB as he had capital in excess of the prescribed limit. The claimant disputed the method that had been employed by the LA to calculate the overpayment and he appealed to the tribunal on the grounds that the LA's calculation was incorrect. The claimant argued that the capital at the end of each 13 week period should be reduced by the overpaid HB in the previous period or periods in addition to the overpayment in the period under consideration (Method Two). The LA's calculation reduced the amount of capital by the HB overpaid in that period only (Method One). The claimant also argued that the HB and CTB calculations should be combined when applying the diminution of capital rule.
- 8.91 The tribunal rejected the claimant's arguments. However, Deputy Commissioner Humphrey overturned the tribunal's decision with regards to the method of calculating diminution of capital, stating,
- 'The tribunal should have applied Method Two. In applying the provisions of regulations 103 and 89 incorrectly the tribunal made an error of law.'*

- 8.92 He agreed however, with their decision on whether the HB and CTB calculations should be combined, stating,

'Although I have some sympathy with the claimant in his view that the result is otherwise unfair, it seems to me that the regulations simply do not permit the HB and CTB calculations to be combined in the way he seeks.'

8.93-8.99

HB Reg 104/(SPC) 85 - Sums to be deducted in calculating recoverable overpayments

CTB Reg 89/(SPC) 74 - Sums to be deducted in calculating recoverable excess benefit

CH/360/2006

- 8.100 There was a break in the claimant's JSA claim from 4 June to 18 July 2004. The LA requested information from the claimant about his income during the period he was not receiving JSA, but he did not provide it. The tribunal accepted the claimant's appeal on the basis that for the period of the overpayment he had no income and therefore underlying entitlement reduced the overpayment to nil.

- 8.101 The LA appealed against the tribunal's decision, but Commissioner Powell reluctantly dismissed their appeal. In paragraph 11 he sets out the way that HB Reg 104 should be applied. If the claimant appeals against the overpayment, the LA should take any underlying entitlement information that is belatedly provided, into account. He stated,

'It follows that if, prior to the [tribunal] hearing, the claimant's evidence satisfies the local authority that the decision under appeal is wrong, it should accept this and, where appropriate, deal with the matter by way of a further decision.'

When making the decision Commissioner Powell took into account the following decisions, R(H)1/05, R(H)2/03, CH/4008/2002, CH/4688/2003 and R(H)3/05.

8.102-8.129

List of case law relating to the HB overpayment and excess CTB regulations

8.130	HB Reg 99/(SPC) 80 Meaning of overpayment CTB Reg 82/(SPC) 67 Meaning of excess benefit	<ul style="list-style-type: none">• R v Secretary of State for Social Security ex p Golding (1996)• R v South Hams DC ex p Ash (1999)• CH/4943/2001 para 8• CH/1618/2002 para 8• CH/2302/2002 para 13• CH/2349/2002 para 5• CH/5263/2002• CH/216/2003• CH/299/2003• CH/376/2006• CH/1802/2006• CH/1821/2006• CH/3076/2006• CH/3629/2006• CH/1219/2007• CH/2203/2008• CSH/587/2009
	HB Reg 100/(SPC) 81 Recoverable overpayments CTB Reg 83/(SPC) 68 Recoverable excess benefit	<ul style="list-style-type: none">• Saker v Secretary of State for Social Services [1988]• R v Liverpool CC ex p Griffiths (1990)• R v Islington LBC HBRB ex p de Grey (1992)• Warwick DC v Freeman (1994)• Environmental Agency v Empress Cars (Abertillery) Ltd (1999)• R v South Hams DC ex p Ash (1999)• R (Sier) v Cambridge CC HBRB (2001)• R (IS) 9/06 – CIS/4348/2003• Hinchy v Secretary of State for Work and Pensions [2005]• CH/3776/2001 para 6(2) (a), (b)• CH/4065/2001 paras 1.3, 13, 21• CH/2554/2002 paras 9, 13, 15, 18, 20-22, 23• CH/2209/2002• CH/2227/2002• CH/2554/2002• CH/2618/2002

(8.130)	HB Reg 100/(SPC) 81 Recoverable overpayments CTB Reg 83/(SPC) 68 Recoverable excess benefit (cont)	<ul style="list-style-type: none">• CH/2888/2002• CH/3302/2002• CH/3629/2002• CH/4046/2002• CH/4465/2002• CH/4838/2002• CH/4876/2002• CH/5100/2002• CIS/1887/2002• CH/69/2003• CH/325/2003• CH/412/2003• CH/672/2003• CH/943/2003• CH/1176/2003• CH/1466/2003• CH/1823/2003• CH/1997/2003• CH/3918/2003• CH/4075/2003• CH/4217/2003• CH/4354/2003• CH/4424/2003• CH/361/2004• CH/603/2004• CH/609/2004• CH/1108/2004• CH/1129/2004• CH/1230/2004• CH/1336/2004• CH/1497/2004• CH/2071/2004• CH/2592/2004• CH/2645/2004• CH/2794/2004• CH/2903/2004• CH/3100/2004• CH/3107/2004• CH/3439/2004• CH/4227/2004• CH/454/2005• CH/791/2005• CH/843/2005• CH/881/2005• CH/1344/2005
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(8.130)

(8.130) **HB Reg 100/(SPC) 81**
Recoverable overpayments
CTB Reg 83/(SPC) 68
Recoverable excess benefit
(cont)

- CH/1641/2005
- CH/1675/2005
- CH/1780/2005
- CH/2101/2005
- CH/2806/2005
- CH/2935/2005
- CH/3083/2005
- CH/3144/2005
- CH/3680/2005
- CH/4042/2005
- CH/115/2006
- CH/181/2006
- CH/297/2006
- CH/361/2006
- CH/507/2006
- CH/687/2006
- CH/858/2006
- CH/864/2006
- CH/866/2006
- CH/1001/2006
- CH/1263/2006
- CH/1388/2006
- CH/1395/2006
- CH/1626/2006
- CH/1808/2006
- CH/1809/2006
- CH/1820/2006
- CH/2015/2006
- CH/2060/2006
- CH/2290/2006
- CH/2713/2006
- CH/2879/2006
- CH/2899/2006
- CH/3596/2006
- CH/3622/2006
- CH/4000/2006
- CH/761/2007
- CH/784/2007
- CH/1519/2007
- CH/1602/2007
- CH/1967/2007
- CH/2558/2007
- CH/2567/2007

<p>(8.130) HB Reg 100/(SPC) 81 Recoverable overpayments CTB Reg 83/(SPC) 68 Recoverable excess benefit (cont)</p>	<ul style="list-style-type: none"> • CH/2582/2007 • CH/2943/2007 • CH/3240/2007 • CH/3586/2007 • CH/3995/2007 • CH/4005/2007 • CH/4066/2007 • CH/3/2008 • CH/38/2008 • CH/42/2008 • CH/559/2008 • CH/858/2008 • CH/2353/2008 • CH/2412/2008 • CH/3208/2008 • CH/3625/2008 • CSH/429/2008 • CH/10/2009 • CH/240/2009 • CH/250/2009 • CH/448/2009 • CH/1088/2009 • CH/1903/2009 • CH/2297/2009 • CH/2780/2009
<p>CTB Reg 84/(SPC) 69 - Authority by which recovery may be made</p>	
<p>HB Reg 101/(SPC) 82 - Person from whom recovery may be sought CTB Reg 85/(SPC) 70 - Persons from whom recovery may be sought</p>	<ul style="list-style-type: none"> • Duggan v Chief Adjudication Officer (1988) • Saker v Secretary of State for Social Security (1988) • R v Secretary of State for Social Security ex p Britnell (1989) • Page v Chief Adjudication Officer (1991) • Jones v Chief Adjudication Officer (1994) • Franklin v Chief Adjudication Officer (1995) • Plewa v Chief Adjudication Officer (1995) • R (Sier) v Cambridge CC HBRB (2001) • R (Nicholson) v Leeds CC HBRB (2002) • CIS/1769/1999 para 20 • CIS/2178/2001 paras 57- 59, 61 • CH/1931/2002 • CH/2969/2002

(8.130)

(8.130)	<p>HB Reg 101/(SPC) 82 - Person from whom recovery may be sought CTB Reg 85/(SPC) 70 - Persons from whom recovery may be sought (cont)</p>	<ul style="list-style-type: none"> • CH/2741/2003 • CH/2742/2003 • CH/2791/2003 • CH/2903/2003 • CH/3821/2004 • CH/4234/2004 • CH/2638/2005 • CH/2913/2005 • CH/3622/2005 • CH/4056/2005 • CH/4058/2005 • CH/4059/2005 • CH/4061/2005 • CH/4062/2005 • CH/1001/2006 • CH/1504/2007 • CH/2298/2007 • Ch/3160/2007
	<p>HB Reg 102/(SPC) 83 Method of recovery CTB Reg 86/(SPC) 71 Methods of recovery</p>	<ul style="list-style-type: none"> • R v Secretary of State for Social Security ex p Britnell (1989) • R v Haringey LBC ex p Ayub (1992) • CIS/683/1994 para 5 • R v Kensington and Chelsea RBC ex p Brandt (1995) • R v Secretary of State for Social Security ex p Taylor and Champman (1996) • Mulvey v Secretary of State for Social Security (1997) • Plymouth CC v Gigg (1997) • Haringey LBC v Awaritefe (1999)
	<p>CTB Reg 87/ (SPC) 72 Further provision as to recovery of excess benefit</p>	
	<p>HB Reg 103/(SPC) 84 Diminution of capital CTB Reg 88/(SPC) 73 Diminution of capital</p>	<ul style="list-style-type: none"> • CIS/5825/1999 para 15 • CH/314/2007

<p>(8.130) HB Reg 104/(SPC) 85 Sums to be deducted in calculating recoverable overpayments</p> <p>CTB Reg 89/(SPC) 74 Sums to be deducted in calculating recoverable excess benefit</p>	<ul style="list-style-type: none"> • CIS/621/1991 para 10 • CIS/522/1992 para10 • R v Wyre BC ex p Lord (1997) • CH/4943/2001 paras 65-70 • CH/4943/2001 • CH/2349/2002 para 11 • CH/4817/2002 • CH/2588/2003 • CH/2815/2003 • CH/2653/2004 • CH/1416/2005 • CH/47/2006 • CH/360/2006 • CH/381/2006 • CH/412/2006 • CH/3424/2006 • CH/2280/2007
<p>HB Reg 105/(SPC) 86 Recovery of overpayments from prescribed benefits</p> <p>CTB Reg 90/(SPC) 75 Recovery of excess benefit from prescribed benefits</p>	<p>(See Reg 102)</p>
<p>HB Reg 106/(SPC) 87 Prescribed benefits</p>	
<p>HB Reg 107/(SPC) 88 Restrictions on recovery of rent and consequent notifications</p>	
<p>HB Sch 9/(SPC) Sch 8 Notice where recoverable overpayment</p>	<ul style="list-style-type: none"> • CH/3801/2008
<p>CTB Sch 8/(SPC) Sch 7 Notice where there is recoverable excess benefit</p>	

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