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Note

**There is no section l) in the contents**

## Who are you going to recover from?

### HB overpayments

- 4.00 A recoverable HB overpayment can be recovered from
- the claimant
  - a person acting on the claimant's behalf and/or
  - the person to whom it was paid
- 4.01 However, the decision of who to recover from differs depending on which regulations were in force at the time of the overpayment decision. The regulations relating to 'person from whom recovery may be sought' were amended with effect from 10 April 2006 and 06 April 2009. This will be explained later in this section.

*HB Reg 101 & (SPC) 82*

4.02-4.09

### Interpretation of the HB Primary Legislation

- 4.10 To determine who to recover an overpayment from apply the legislation in force at the time of the overpayment decision. Section 75(3) of the Social Security Administration Act states
- '(3) An amount recoverable under this section shall be recoverable -
- (a) except in such circumstances as may be prescribed, from the person to whom it was paid; and
  - (b) where regulations so provide from such other person (as well as, or instead of, the person to whom it was paid) as may be prescribed'
- 4.11 Section 75(3) must be read as a whole. Section 75(3)(a) and (b) are linked by the word 'and', therefore you cannot decide who you are going to recover from under (a) without also considering whether (b) is applicable.
- 4.12 Section 75(3)(a) states that an overpayment shall be recoverable from the person to whom it was paid, except in 'such circumstances as may be prescribed'. These circumstances are set out in HB Reg 101(1). They are the
- HB was being paid direct to the landlord, and
  - landlord has notified the LA (or DWP) in writing that they suspect there has been an overpayment, and
  - LA are satisfied that the overpayment was not caused by a change of address, and
  - LA have identified a possible overpayment and there
    - are grounds for instituting proceedings against any person for an offence under section 111A or 112(1) of the Administration Act (b) (dishonest or false representations for obtaining benefit), or

- there has been a deliberate failure to report a relevant change of circumstances contrary to HB Reg 88 (duty to notify a change of circumstances) and the overpayment occurred as a result of that deliberate failure, and
- LA are satisfied that the landlord has not colluded with the claimant so as to cause the overpayment, or acted or neglected to act so as to contribute to the period or amount of the overpayment.

Note: All of the above criteria must have been satisfied for the overpayment not to be recoverable from the landlord.

*HB Reg 101(1) and (SPC) 82(1)*

- 4.13 Section 75(3)(b) states that regulations may prescribe that an overpayment may be recovered from another person, as well as, or instead of, the person to whom it was paid. HB Reg 101(2) & (SPC) 82(2) are the regulations made under this power.

#### **Pre April 2006 – HB Reg 101(2)**

- 4.14 Prior to 10 April 2006 HB Reg 101(2)/(SPC) 82(2) allowed an overpayment to be recovered from
- the person to whom it was paid (unless the criteria listed in HB Reg 101(1)/(SPC) 82(1) were satisfied) and/or
  - a person who misrepresented or failed to disclose information, which could be the claimant, someone acting for the claimant, or the person to whom the HB was paid and/or
  - the claimant's partner, if they were members of the same household both at the time of the overpayment and when it was recovered, and/or
  - the claimant
- 4.15 The decision was discretionary and the LA could decide to recover from any or all of the above. There was no right of appeal against this discretionary decision.

*HB Reg 101(2) & (SPC) 82(2)*

#### **Post April 2006 to pre April 2009 – HB Reg 101(2)**

- 4.16 From 10 April 2006, HB Reg 101(2)/(SPC) 82(2) was made more prescriptive. It stated that if the overpayment was caused by a misrepresentation or failure to disclose information the overpayment must be recovered from the person who actually misrepresented or failed to disclose that information.
- 4.17 If the overpayment was caused by an official error, it must be recovered from the person who at the time of receiving the overpayment or any notices relating to the payments, could reasonably have been expected to realise that it was an overpayment.
- 4.18 If neither of the above applied, the overpayment could be recovered from the
- claimant

- claimant's partner, if they were members of the same household, both at the time of the overpayment and when it is being recovered
- person to whom the overpayment was paid

4.19 A person has a right of appeal against the decision of who to recover from, if they do not feel they

- have misrepresented or failed to disclose information, and the LA has decided to recover the overpayment from them based on this
- could reasonably have been expected to realise that it was an overpayment, when it has been decided to recover an official error overpayment from them
- are a person captured by HB Reg 101/(SPC) 82

*HB Reg 101(2) & (SPC) 82(2)*

#### **Post April 2009 – HB Reg 101(2)**

4.20 From 06 April 2009, HB Reg 101(2)/(SPC) 82(2) was amended to clarify the legislative intent. It states that an overpayment

- which was not caused by a misrepresentation, failure to disclose information or an official error is recoverable from both the claimant and the person to whom it was paid (landlord/agent)
- which was caused by a misrepresentation or a failure to disclose information, is only recoverable from any person who misrepresented or failed to disclose that information. This could be the claimant, a person to whom it was paid (landlord/agent) or both
- which was caused by an official error, is recoverable from any person who could reasonably have been expected, at the time of the payment or any notice relating to the payment, to realise that it was an overpayment. This could be the claimant, person to whom it was paid (landlord/agent) or both

4.21 The word 'recoverable' is used throughout HB Reg 101(2)/(SPC) 82(2) to make it clear that this provision deals with the decision from whom an overpayment is recoverable and not the decision of who to actually recover it from.

*HB Reg 101(2) & (SPC) 82(2)*

4.22 The provisions relating to recovery from a partner's benefits are contained in HB Reg 102/(SPC) 83 (Method of recovery), rather than HB Reg 101/(SPC) 82 (Person from whom recovery may be sought), to make it clear that 'recovery from a partner's benefits' is a method of recovery, rather than a decision on who an overpayment is recoverable from. Please see 'Recovery from ongoing benefit – partner's HB' later in this section.

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

4.23-4.29

### The decision Process

- 4.30 When deciding from whom an LA can recover an overpayment, they must
- decide whether the landlord has reported the overpayment in writing, and if so, whether all the criteria listed in HB Reg 101(1)/(SPC) 82(1) have been satisfied, if they
    - have, the overpayment cannot be recovered from the landlord
    - haven't, the LA must consider whether to seek recovery from the landlord, when considering HB Reg 101(2)/(SPC) 82(2)
  - decide whether the overpayment was caused by an official error if it
    - was, the overpayment is only recoverable from the persons who could reasonably have been expected to realise they were being overpaid. This could be the landlord and claimant
    - wasn't, the LA must consider whether the overpayment was caused by someone who misrepresented or failed to disclose information
  - decide who misrepresented or failed to disclose information, if
    - one person misrepresented or failed to disclose information, the overpayment would be recoverable from them
    - more than one person misrepresented or failed to disclose information, the overpayment could be recovered from both or either, if
      - ~ one person was more at fault, recover from them
      - ~ both people were equally at fault, recover from both
    - no one misrepresented or failed to disclose information, the overpayment would be recoverable from the
      - ~ claimant, and person to whom the overpayment was paid

**Example 1** Mrs A was claiming HB and it was paid direct to her landlord at £50 a week. An overpayment was identified because she failed to notify the LA that her wages had increased. The LA decided to recover the overpayment from Mrs A because she had failed to inform them of her change in circumstance. The overpayment was only recoverable from Mrs A because the landlord could not possibly have known about the change.

**Example 2** Mrs B was claiming HB and it was paid direct to her landlord Mr C, at £60 a week. An overpayment was identified because neither Mrs B nor Mr C had reported that Mrs B had moved out of the property two weeks ago. The overpayment was therefore recoverable from them both, as they had both failed to disclose information. The LA decided to recover the overpayment from the landlord because he continued to receive the payments of HB and did not report that Mrs B had moved out of his property.

**Example 3** Mr D was claiming HB and it was paid direct to his landlord Mr E, at £50 a week. Mr E suspected that Mr D was working whilst claiming benefits, so he wrote to the LA and reported it. The LA identified an overpayment of £200, four weeks HB. The LA could not recover the overpayment from the landlord because he had satisfied all the criteria in HB Reg 101(1)/(SPC) 82(1). They therefore decided to recover the overpayment from Mr D, the claimant, who had misrepresented and failed to disclose the information.

4.31 Once an LA decide who an overpayment could legally be recoverable from (this decision holds a right of appeal) they must then make a further decision on who they are actually going to recover from (this decision does not have a right of appeal). The latter decision should be documented to show the grounds for that discretionary decision in the event of a challenge via judicial review.

4.32 An overpayment decision notice must be issued to anyone who the overpayment is legally recoverable from, even if the LA has decided to recover the overpayment from someone else. See Decision notices later in this guide. Note: LAs should not have a blanket policy when deciding who should repay overpayments.

4.33-4.39

### Methods of recovery

4.40 An LA may recover a recoverable overpayment using various methods as detailed in 4.43.

4.41 Always have regard to the circumstances of the person you are going to recover an overpayment from.

Note: Take into consideration their health and financial circumstances to make sure hardship is not caused to that person or any of their dependants.

4.42 As a matter of good practice suspend recovery if someone challenges the overpayment decision.

### Methods available

4.43 There are several methods of recovery, there is no hierarchy:

- a) from arrears of HB that become payable while there is an outstanding overpayment
- b) by deduction from ongoing HB, which could be paid to the claimant, landlord, appointee or agent (sometimes known as 'claw-back')
- c) by deduction from the partner's ongoing HB, if the claimant and partner were a couple at both the time of the overpayment and when deductions are being made.

- d) by transferring a Rent Rebate overpayment to the tenant's Rent Account, but you must keep the HB overpayment separate from any rent arrears (the overpayment is not recovered just because it has been transferred to the Rent Account)
- e) by deduction from certain DWP benefits
- f) by deduction from certain DWP benefits payable to the partner, if the claimant and partner were a couple at both the time of the overpayment and when deductions are being made
- g) by applying to another LA to ask them to deduct the overpayment from the claimant's ongoing HB entitlement in their area
- h) by recovery from HB paid to a landlord/agent for another tenant, i.e. when the landlord has been classed as responsible for repayment of a debt (sometimes known as 'Blameless Tenant' recovery)
- i) by 'invoicing' the affected person for the amount outstanding
- j) by civil proceedings
- k) from the estate of a deceased person who had an overpayment prior to death
- l) by Direct Earnings Attachment (DEA)

Note: This is not an exhaustive list

4.44-4.49

**a) By arrears of HB**

- 4.50 An LA may recover a recoverable overpayment from arrears of HB. *HB Reg 102 & (SPC) 83*
- 4.51 Arrears means any entitlement which is payable after an LA has revised or superseded a decision and concluded that, for whatever reason, it has underpaid the claimant. Arrears does not include any payment owing due to a delay in processing a new claim or change of address.
- 4.52 The full amount of the arrears/underpayment may be used to recover the overpayment. This method is not subject to the maximum recovery rates.

**Example**

Mr W is entitled to HB of £70.00 per week, he informs the LA that his wages decreased on 4 August 2014. The LA fails to action this change until 15 September 2014.

The resulting assessment means Mr W is now entitled to £80.00 per week (arrears due 6 weeks x £10.00 = £60.00).

As Mr W has an ongoing £120.00 overpayment being deducted from his HB at £11.25 per wk, it is possible to use all the £60.00 arrears to recover part of the overpayment.

**Delays in processing a new claim or change of address**

- 4.53 A delay in processing a new claim or a change of address, and the resulting payment due to the claimant, does not constitute arrears in the sense that an LA can use all this money to recover any overpayment that the claimant may have. An overpayment can be recovered from arrears of HB, but only from the increased amount of HB due to a revision or supersession.
- 4.54 Although recovery can be made from the HB owing from the date of the new claim/date the claimant moved, any recovery is subject to the maximum recovery rates. You can only take a maximum of £11.55/£19.25, and up to half of any appropriate disregards, for each week of the payment due, see 'Recovery Rates' later in this section. *HB Reg 102(2) & (3) & (SPC) 83(2) & (3)*

**Example**

Miss Y has an overpayment of £300 from a previous claim which the LA has been unsuccessful in recovering. She applies for HB at a new address on 9 September 2014. The LA fail to process the claim until 14 October 2014 when they decide she is entitled to £80.00 per week.

She is due to be paid for 15 September to 19 October, i.e. five weeks @ £80.00 per week = £400.00.

As the original overpayment was not fraudulent, recovery is at the standard rate of £11.55. The LA can deduct five weeks at £11.55 from the first payment of £400.00 due to Miss Y.

4.55-4.59

**b) By making deductions from ongoing HB**

- 4.60 Recovery may be made direct from the claimant's HB by a series of weekly deductions (depending on the amount of the overpayment and the recovery rate being used).
- 4.61 There are maximum recovery rates which must be adhered to when recovering from ongoing HB entitlement. These can be increased by half of certain disregards. See 'Recovery Rates' later in this section.
- 4.62 It is good practice for an LA to allow one month from the date the claimant was notified of the overpayment to the date recovery starts. This is to allow the claimant to arrange their finances to make provision for the shortfall, see '*When should recovery commence?*' later in this section. It also allows the claimant time to formulate any appeal if they are appealing.

**Recovery from ongoing benefit – Rent Rebate**

- 4.63 In Rent Rebate cases, because the HB is paid/credited direct to the claimant (usually to their rent account), any overpayment can only be recovered from the claimant. You cannot recover from the Housing section or any department within the LA because they are not a person to whom the benefit was paid. You can however recover an overpayment from HB paid direct to a council tenant's rent account. An LA can either choose to



- reduce the weekly HB entitlement prior to it being paid to the rent account
  - transfer the overpaid HB to the rent account, where the overpayment will be reduced as HB is credited each week
- 4.64 However, LAs must ensure that any overpayment transferred to the rent account is distinguishable from any rent arrears. See 'By transferring a rent rebate overpayment to the rent account' later in this section.
- 4.65 When notifying the claimant of overpayment recovery from their Rent Rebate, the LA should make it clear the payments being sought to make up the 'shortfall' in rent, are for overpaid HB.

#### Example

Miss X is a council tenant and her HB is paid direct into her rent account. Her weekly rental liability is £50 per week. Miss X works part-time and receives £30 HB a week.

Miss X has a recoverable overpayment of £100 and the LA decides to recover this overpayment by deductions of £11.25 per week from the HB paid into the rent account.

Miss X should be notified of

- the deduction being made from her weekly Rent Rebate to clear her HB overpayment
- how she should pay the shortfall

Note: As the LA is the landlord, there is no need to notify the landlord that these deductions will be made. However, it may be appropriate, if HB is administered in a different department to the housing department to notify them. This is at the discretion of the LA.

#### Recovery from ongoing benefit – Rent Allowance

- 4.66 Overpaid HB may be recovered from Rent Allowance (RA) paid direct to the claimant or landlord.
- 4.67 When an LA has decided to recover an overpayment from the claimant, but the HB is being paid direct to the landlord, the LA can make deductions from the ongoing benefit paid direct to the landlord. This is not recovery from the landlord; the overpayment is being recovered from the claimant.
- 4.68 If the claimant has moved or changed landlord, you can still recover the overpayment from HB to which the claimant is entitled.
- 4.69 The shortfall in the HB paid must be made up by the claimant to avoid falling into arrears. Any such arrears are rent arrears and the landlord should pursue them as such.

Note: The landlord does not have any right of appeal against an overpayment that is recoverable from the claimant, even if the HB is being paid direct to the landlord.

When the landlord is being paid HB direct, they should be notified of the intention to recover an overpayment from the ongoing entitlement even though they do not have a right of appeal against this decision.

**Example 1 – HB paid direct to claimant**

Miss X lives in rented accommodation and has a private landlord. Her weekly rental liability is £50 per week. Miss X works part-time and receives £30 HB paid direct to her.

Miss X has a recoverable overpayment of £100 and the LA decide to recover the overpayment from Miss X by making a deduction of £11.25 a week from her HB. To avoid accruing rent arrears Miss X must make up £11.25 every week. If Miss X fails to pay this extra amount, although she is paying off the overpayment of HB, she will be building up a separate debt of rent arrears that the landlord will seek to recover.

Rental liability	£50
RA entitlement	£30
Shortfall	£20
RA entitlement is reduced by	£11.25 to recover o/p
Benefit now paid	£18.75
Miss X must still pay her landlord	£50.00

**Example 2 – HB paid direct to landlord**

Miss X lives in privately rented accommodation. Her weekly rental liability is £50 per week. Miss X works part-time and receives £30 HB paid direct to her landlord, Mr Y

Miss X has a recoverable overpayment of £100 and the LA decides to recover the overpayment by making a deduction of £11.25 a week from the HB payable to the landlord.

An overpayment decision notice should be issued to Miss X and a notification that there will be a reduction in the amount of HB issued to the landlord. Mr Y does not need to know the reason for the overpayment (he is not a person affected and has no right of appeal), but he should be notified that an amount will be deducted from his tenant's rent allowance paid direct to him. This allows him to make arrangements for collection of the shortfall in HB

Rental liability	£50
RA entitlement	£30
Shortfall	£20
RA entitlement is reduced by	£11.25 to recover o/p
Benefit now paid	£18.75

Miss X must now pay landlord £31.25 to avoid falling into arrears.

4.71-7.79

**c) Recovery from ongoing benefit – partner's HB**

4.80 If HB has been overpaid to a claimant who has a partner and they switch who is claiming the HB, the overpayment can be recovered by making deductions from the partner's HB, if the claimant and partner were a couple both at the time

- the overpayment occurred, and
- when it is being recovered

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

#### Example 1

Claimant, Mr X, has an overpayment of £50.00. His HB has ended and his partner, Mrs Z, is claiming HB. Mr X is now the partner on her claim. They were a couple at the time of the overpayment. Recovery can be made from Mrs Z's HB, as they were a couple both when the overpayment occurred and when it is being recovered

#### Example 2

Claimant, Miss R, has an overpayment of £70.00 that occurred when she was living with her partner, Mr S. Mr S is now claiming HB as a single person. Recovery cannot be made from Mr S's HB because Miss R and Mr S are no longer a couple. The overpayment can only therefore be recovered from Miss R

#### Example 3

Claimant, Ms J, has an overpayment of £100 that occurred when she was claiming HB as a single person. Ms J is now resident with Mr H, who is claiming HB. Ms J is the partner on Mr H's claim. Recovery cannot be made from Mr H's HB, as they were not a couple when the overpayment occurred.

#### Example 4

Claimant, Miss F, has an overpayment of £400, as her partner, Mr H, joined the household two months previously and she continued to claim as a single person. Mr H is now claiming HB, with Miss F as his partner. Recovery can be made from Mr H's HB, as they were a couple both when the overpayment occurred and when it is being recovered.

4.81-4.89

### **d) By transferring a Rent Rebate overpayment to the rent account**

- 4.90 You may decide to control recovery of HB overpayments through rent accounts in Rent Rebate cases. Although you can utilise this method, you should note that overpaid HB
- does not constitute rent arrears
  - must be distinguished from any such arrears
- 4.91 An overpayment is benefit the claimant was not entitled to under Social Security benefit rules, and falls to be recovered
- under the SSAA and the HB Regulations
  - as a civil debt

- 4.92 Rent arrears are a debt owed by the tenant to the LA and are subject to the LAs own recovery requirements.
- 4.93 A claim for recovery of overpaid HB should be sought as a separate course of action by proceedings that are independent of any concurrent possession action for rent arrears.
- 4.94 Under common law, a debtor who owes several separate debts to the same creditor has the right, when making a payment, to allocate the money paid, to a particular debt. If the creditor accepts the payment so allocated, the creditor must accept it in the manner directed by the debtor.
- 4.95 It is therefore possible, though unlikely, that a council tenant repaying an HB overpayment by deductions from ongoing HB might make additional payments to repay the overpayment in preference to reducing any rent arrears owed to the LA.
- 4.96 However, an arrangement such as this is unlikely to be in the claimant's best interest because by not paying off rent arrears they are risking possession proceedings and ultimately eviction, whereas the overpayment is an entirely separate debt and cannot be recovered this way.
- 4.97 If HB is paid to a rent account after the liability to pay rent at that property has ended, it can be taken back from the rent account. The reason for this is that it is not legally paid HB. Rent Rebate is normally paid by reducing the rental liability on the council property, as defined by Section 134(2) of SSAA1992. If the rental liability has ceased, there is nothing to reduce and therefore any HB credited to the rent account is not legally paid.
- 4.98 The process of 'recovery' in this circumstance is therefore that of a simple accounting procedure. Because there is no liability for the claimant to pay rent, the payments of HB cannot be classed as overpayments under Regulation 99 of the HB Regs 2006/(SPC) 80. Therefore, recovery does not fall within the provisions of HB Regs 2006/(SPC) Regs 2006.
- 4.99 LAs have their own internal accounting procedures to deal with these situations where a simple case of correcting the books is all that is needed and overpayment classification is not appropriate. However, if this overpayment must be recorded, classify it as a technical overpayment; see 'Technical Overpayments' earlier in this guide.

#### **Recovery from rent accounts when ALMOs are responsible for the management of LA housing**

- 4.100 Many LAs have companies who they pay to manage their housing stock. These companies are known as Arms Length Management Organisations (ALMOs). The housing stock is still owned by the LA, and for HB purposes the ALMO is not treated as a landlord.
- 4.101 Rent Rebate is still paid into the claimant's rent account. It is not paid to the ALMO. Any overpayments that occur are only recoverable from the claimant.
- 4.102 When the LA employs an ALMO, we recommend the Service Level Agreement (SLA) between the ALMO and the HB section includes provision for communication of known changes when it is believed they might affect the claimant's entitlement to benefit. An example of this may be when a claimant hands in the keys to their property to the ALMO, and this information does not filter through to the HB section.

- 4.103 The ALMO are classed as being part of the LA, therefore any information that the claimant discloses to them that may affect their HB entitlement can, in certain circumstances, be classed as disclosure to the LA, see Classification and Recoverability section, Reporting change of circumstances to different departments in the LA earlier in this guide.
- 4.104 If a recoverable overpayment does occur, recover it in the normal way by making deductions from the rent account as referred to earlier in this guide.

#### **Recovery from a credit on a rent account**

- 4.105 An LA may not use a credit on a rent account to recover overpaid HB unless the credit on the rent account was for the same period as the HB overpayment.

4.106-4.109

#### **e) By deduction from certain DWP Benefits**

- 4.110 LA may ask the DWP (Debt Management) to recover an HB overpayment or excess CTB/Council Tax Reduction by deduction from certain DWP benefits, as prescribed by HB Reg 105/(SPC) 86 or CTB Reg 90/(SPC) 75. These are

- Income Support (IS)
- Universal Credit (UC)
- Attendance Allowance (AA)
- Jobseeker's Allowance (income based) (JSA(IB))
- Jobseeker's Allowance (contribution based) (JSA (C))
- Disability Living Allowance (DLA)
- Personal Independence Payments (PIP)
- Employment Support Allowance (income-related) (ESA(IR))
- Employment Support Allowance (contributory) (ESA(C))
- Incapacity Benefit (IB)
- Industrial Death Benefit (IDB)
- Industrial Injuries Disablement Benefit (IIDB)
- Carers Allowance (CA)
- Maternity Allowance (MA)
- State Pension (SP)/Retirement Pension (RP)
- State Pension Credit (SPC)

- Severe Disablement Allowance (SDA)
- Widowed Parents Allowance (WPA)
- War Pension (WP)
- War Disablement Pension (WDP)
- Bereavement Allowance (BA)

*SSAA 1992 sections 75(4) & 76(2); HB Reg 102 & 105 & (SPC) 83 & 86*

*CTB Reg 86 & 90 & (SPC) 71 & 75*

4.111 An LA may not recover from the following benefits

- Child Benefit (CHB)
- Guardians Allowance (GA)
- Working Tax Credit (WTC)
- Child Tax Credit (CTC)

4.112 Use "Searchlight" to obtain details of whether DWP benefits are in payment, and if so, where they are in payment, see 'Customer Information System' later in this section.

4.113 You can ask Debt Management to recover an overpayment by making deductions from a DWP benefit, if

- the overpayment was caused by a misrepresentation of, or a failure to disclose a material fact, whether innocently or deliberately, by the person who was overpaid, and
- the LA who made the overpayment is unable to recover the HB overpayment by deduction from ongoing HB or excess CTR by transferring it to the Council Tax (CT) account. If however HB is now being paid by another LA, you can request the other LA to make deductions, or ask Debt Management to recover the overpayment from any qualifying benefit in payment.

4.114 You cannot recover overpaid HB from CTR or vice versa.

#### **Payment Deductions Programme – Replacement system for Debt Referral to DWP**

4.115 The Payment Deductions Project (PDP) is part of the Fraud, Error and Debt (FED) Programme.

4.116 The PDP Local Authority (LA) Interface is the technical solution for the recovery of Housing Benefit (HB) debt from Universal Credit and non-Universal Credit Benefits (See Annex 1) was commissioned by the Department for Work and Pensions (DWP) to provide a mechanism for the referral and management of HB debt only. The interface went live on 1 August 2016 after which clerical processes ceased to exist and both LAs and DWP Debt Management (DM) now use the interface. LAs should be aware that the interface will not accept debts relating to Local Council Tax schemes or rent arrears. The interface has the following functionality: • LAs will be able to refer outstanding HB debt (Referrals) • LA notifications of revised debt balance to DM (Revisions) • the return of debts by DM to LAs where appropriate

(Cessations) • the recall of debts by the LAs (Recalls) • automated issue of the payment schedule of HB debt deductions from DM to LAs

- 4.117 The introduction of the PDP interface replaces the MGP1 (UC413) clerical transaction of debt information.
- 4.118 For DWP non-Universal Credit benefits; under the old arrangements LAs referred debt to be recovered by email. With the introduction of PDP, the interface replaces this clerical transaction of debt information.
- 4.119 Technical guidance providing instructions on how to use the PDP interface has been issued separately to LAs by their IT suppliers.
- 4.120 LAs will continue to retain ownership of the debt and the DWP Debt Manager System (DMS) will manage recovery of the debt and forward any deductions from benefit to LAs. HB Circular A6/2016 Adjudication and Operations circular 13 July 2016 Local authority debt referrals.
- 4.121 If the LA uses a third-party debt management system, they may be required to move the HB debt back into their live system to enable the referral to interact with the PDP interface. The LA IT suppliers will provide further guidance on this.
- 4.122 – 4.123
- 4.124 Referral data is sent to DMS as a batch file once a day.
- DM will accept up to five HB debt balances at any one time for Universal Credit claimants
  - DM will continue to only accept one HB debt balance at a time for non-Universal Credit benefit claimants
  - Debt balances must be classified as either fraud or non-fraud and should be sent as single debts, not rolled up into one amount, even if the classification is the same.
  - Recovery of HB fraud debts will take priority over HB non-fraud debts. These will be held in DMS and recovered in chronological order according to the date DM received the debt.
- 4.125 Before making a referral LAs should check Searchlight to ensure that a DWP benefit is in payment. For Universal Credit, LAs should ensure that an award with a start date (and no end date) has been recorded in the award screen to avoid referrals being returned unnecessarily.
- 4.126 At the point of referral LAs will not receive confirmation that the debt has been accepted by DWP DM. LAs should therefore assume that the debt has been accepted unless they receive a return notification for one of the reasons listed in the return of debts (Cessation) section.
- 4.127 At any point the LA can revise the balance or classification of a debt via the interface if appropriate.
- 4.128 If a claimant makes direct contact with an LA to make a payment against an outstanding HB debt after a referral has been made via the interface, the claimant should be advised to contact DM. However, in exceptional cases should the LA accept the payment, a revision must be made via the interface as soon as possible to ensure accurate accounting. Should an LA accept a payment and it is likely to clear the debt in full, then they should contact DM to obtain the most up to date debt balance, to avoid potential over recovery and the subsequent action by DM having to refund the claimant.

4.129 Where an HB debt balance becomes overpaid the following action should be taken:

Example 1 Where an LA accepts a payment from a claimant and the HB debt has already been recovered in full, it will be the LAs' responsibility to provide a refund to the claimant.

Example 2 Where an LA accepts a payment from the claimant prior to DM having made the final payment to the LA and no other debt is held, the LA should refer the payment as a revision to DM who will manage any refund to the claimant.

Example 3 Where an LA accepts a payment from the claimant prior to DM having made final payment to the LA and there are other outstanding debt(s), DM will apply the revision to the HB debt and manage any balance adjustments required.

Example 4 Where an LA receives payments resulting in a credit balance solely because DWP has recovered too much then it will be DWP's responsibility to manage any refund to the claimant. Return of debts (Cessation)

4.130 Debts can be returned by DM to LAs via the interface for a number of reasons detailed below:

- Searchlight broadcast is received notifying DM that the Universal Credit claim has ceased
- HB debts will be returned to the LA at the end of the Assessment period for Full Service claimants when an award ceases. HB debts will remain with Live Service for 6 months following an ongoing nil award, this is known as the re-award period, during this period the claim remains open
- the claimant dies
- DM receives a recall from the LA
- A claimant becomes insolvent
- 100% benefit sanction is imposed for 13 weeks or more
- The sixth debt of the same classification has been received, or if the sixth debt received is fraud and at least one of the five debts held is non-fraud, the last received non-fraud debt will be returned to the LA DWP Universal Credit benefit claimant
- DM will continue to accept only one HB debt at any one time and will return the HB debt if there is already LA debt held, or other on-going DWP debt recovery is currently in place which is due to last more than 28 days
- There are 3 missed instalments and no other prescribed benefit in payment
- DM determines there is insufficient benefit to make a recovery. This is where the benefit award is small and deductions for HB and DWP debts cannot be set as this would contravene the rules that require a minimum amount of benefit to remain in payment.
- DM determines that maximum deductions are already in place. This is where third party deductions such as court fines, utility arrears, etc. are already in place and any other deduction for HB or DWP debts would exceed the maximum amount that can be recovered from an individual's benefit
- Local Authority recalls debt.

4.131 The LA has the option to recall the HB debt at any time e.g. because the LA has decided to take their own recovery action. For:

- Universal Credit claimants: if at a later date the LA decides to re-refer this debt it could then affect when the debt will go into recovery, this is because recoveries are made in chronological order according to the



date the referral was received by DM. If this becomes the sixth non-fraud debt to be received by DM it would be returned to the LA

- non-Universal Credit claimants: it is also possible that any re-referral will be immediately returned as another HB debt could have been received by DM or other recovery activity could have started

4.132 LA's will receive a notification via the interface of any recalled debts and need to be aware that there is a holding period during which any unallocated monies can be transacted, this is to ensure the accurate debt balance is returned to the LA.

- Universal Credit - up to 5 days
- DWP non-Universal Credit benefits - up to 14 days

#### Recovery of HB debt (Payment Schedule)

4.133 DMS will issue LAs with a schedule of deductions summarising recoveries made on an individual case basis via the automated interface. DM will continue to send monthly payments to LAs via Bankers Automated Clearing Services (BACS).

4.134 For DWP non-Universal Credit benefit deductions DM will set up an instalment plan to take deductions at a set rate and periodicity (according to benefit pay dates).

4.135 For Universal Credit there is no fixed instalment plan, the amount of deduction is determined each month according to existing priority rules. LAs should also be aware of the following:

- Universal Credit is paid monthly in arrears
- Universal Credit is income based so the award can fluctuate each month as earnings/income rise and fall
- deductions will be taken from available Universal Credit up to a maximum 40% of the award, according to the priority order
- Universal Credit will hold up to five HB debts at any time, which will be recovered in order of the date they were referred to DM (HB Circular A6/2016 Adjudication and Operations circular 13 July 2016).
- where there is a partnership and both claimants have their own individual HB debts then recovery is apportioned equally as long as they are both the same classification. If one of the debts is classified as fraud then this would be prioritised and recovered first
- it is possible that the total amount recovered from Universal Credit for HB debts within any given assessment period could be spread over more than one HB debt. This is because the amount available exceeded the balance of the first HB debt allowing recovery to commence on the next. LAs must be aware that there may be instances where small value payments could be made as a result of this scenario
- LAs should not raise queries regarding Universal Credit claimants relating to when deductions will start and the value of the deductions as this is impossible to predict for the reasons listed above.

- 4.136 Where there is sufficient Universal Credit available to recover overpayments in priority order, the amount deducted from Universal Credit will be allocated equally between DWP, tax credits and the HB debt held by DM. Example A £60 monthly deduction would allocate £20 to each of the DWP, HM Revenue & Customs and the LA debts concurrently, to reduce the balance of each by an equal amount if they are all of the same classification.
- 4.137 Due to data protection policy, DM is only able to discuss debt currently in repayment with the LA owning that particular debt.
- 4.138 By exception, DM may override the deduction rate following an affordability request from the claimant. Claimants contacting the LA with an affordability request must be directed to DM who will consider and action the request.

#### Deductions priority order

- 4.139 The existing policy regarding the priority order in which deductions are taken has not changed with the introduction of the PDP interface.
- 4.140 Fraud penalties, conditionality sanctions and payments of benefit on account, continue to be taken before the deduction priority order is applied. Any deductions relating to the claimants living expenses such as housing costs, utilities, child maintenance, etc. will be given priority over DWP, HB and tax credit overpayments. Fraud overpayments will continue to take priority over non-fraud overpayments.
- 4.141 Transfer Your File (TYF) will be used to transfer PDP files to and from the LA to DWP. Five specific file types will be used to manage the recovery of HB debt. These are:
- Referrals, Revisions and Recalls (from the LA to DWP DM)
  - Cessations and monthly schedules (from DWP DM to the LA)
- 4.142 LA IT suppliers have developed solutions that will create the PDP referrals, revisions and recalls individually in xml format. The files will then be compressed into a single .tar file which LAs will upload to TYF once a day as appropriate. Each LAs IT supplier has detailed guidance and instructions on the creation, compression and uploading of the compressed .tar files.
- 4.143 The cessations and monthly schedule is generated by DWP DM in xml format and placed in appropriate LA Message Queues within TYF. These will also be provided as compressed .tar files. LAs must ensure these are downloaded from here daily and processed.

#### **f) By deduction from certain DWP benefits payable to a partner**

- 4.144 An LA may ask Debt Management to recover an HB overpayment (or excess CTB/Council Tax Reduction) by deduction from certain DWP benefits which the claimant's partner is in receipt of, as prescribed by HB Reg 105(1B)/(SPC) 86(1B) and CTB Reg 90(1B)/(SPC) 75(1B). These are
- IS
  - JSA(IB)

- SPC
- ESA(IR)
- PIP
- UC

However, the claimant and partner must have been a couple, both when the overpayment occurred and when it is being recovered.

*HB Reg 102(1ZA) & (SPC) 83(1ZA); CTB Reg 86(3) & (SPC) 71(3)*

4.145 – 4.149

4.150 Follow the same referral process that is used to recover an overpayment from a claimant's DWP benefit, which is set out earlier in this section. Use Annex A: Application for recovery of HB, and Annex B: LA Change of Circumstances Notification, which can be found at the end of this section.

#### **Recovery from War Pension and War Disablement Pension**

4.151 If the claimant is in receipt of War Pension (WP) or War Disablement Pension (WDP) they will usually be in receipt of SP/RP or another benefit. If they are in receipt of another benefit, it is advisable to seek recovery from the other benefit first, due to the political sensitivity surrounding WP and WDP.

4.152 If the claimant is only in receipt of WP or WDP, recovery may be requested.

4.153 Send the normal appendix 6 referral form to Debt Management. They will contact the Veterans Agency (VA) using a standard letter. The VA are responsible for the administration of WP and WDP. Only overpayments which satisfy all the following criteria may be referred to the VA

- the overpayment is for a prescribed benefit, and has a recoverable overpayment decision by a Decision Maker
- the overpayment balance is over £65, and
- there is no other benefit in payment from which recovery can be considered

Note: The VA set the deduction rate according to their guidance.

#### **g) By applying to another LA**

4.154 You can request that an HB overpayment be recovered from continuing HB at another LA.

4.155 Send a request to the relevant LA asking them to consider recovery, see 'Good practices' later in this guide.

4.156 The mechanics of how this is done are entirely up to the two LAs. It is appreciated that this can be complex although this method of recovery should be considered.

4.157 Although it is not stipulated in the regs that one LA must recover for another, it is good practice to utilise this method of recovery, especially if Debt Management are unable to recover the overpayment on your behalf. See 'By deduction from certain DWP benefits' earlier in this section.

4.158 -4.159

## **h) Landlords and overpayment recovery**

### **When can you recover from a landlord?**

4.160 In the majority of cases HB is paid direct to the claimant, so there will be no need to make a decision on who an overpayment is recoverable from (unless the HB is paid to someone acting on the claimant's behalf, such as an appointee). If the HB is paid direct to the claimant, any overpayment will only be recoverable from the claimant.

4.161 However, in some cases the HB is paid direct to the landlord/agent and therefore a decision will have to be made on who the overpayment is recoverable from and then, on who the LA is going to recover the overpayment from.

4.162 If the HB has been paid direct to the landlord, your action depends on whether the overpayment was decided pre April or post April 2006.

### **Pre-April 2006**

4.163 At the discretion of the LA, recovery could be made from landlords in all cases where there has been direct payment. However, if all the criteria listed in HB Reg 101(1)/(SPC) 82(1) were satisfied recovery could not be made from the landlord.

#### **Example**

HB is paid at £50 per week to landlord Mr T for claimant Ms D. Ms D starts work on 2 February 2006, but fails to notify the LA until 21 February 2006. An overpayment is calculated for £150. The LA recovers the overpayment from the landlord because the benefit was paid direct to him

### **Post April 2006**

4.164 Following the April 2006 amendments to the HB Regs, LAs must recover an overpayment caused by a misrepresentation or failure to disclose information from the person or persons who actually misrepresented or failed to disclose that information.

#### **Example 1**

HB is paid at £70 per week to landlord Mrs B for claimant Mr O. Mr O starts work on 10 May 2010, but fails to notify the LA until 21 May 2010. An overpayment is calculated for £140. The LA recovers the overpayment from the claimant because, although the landlord received the payments of HB, it was the claimant who failed to notify the LA of his change of circumstances. The landlord did not know about the change and therefore could not report it.

#### Example 2

HB is paid at £100 per week to landlord Mrs E for claimant Miss W. Miss W vacates the landlord's property on 6 July 2010, but both Miss W and Mrs E fail to notify the LA. Miss W finally notifies them of her new address on 22 July 2010. An overpayment is calculated for £200. The overpayment is recoverable from both Miss W and Mrs E, as they both failed to disclose information. However, the LA decides to recover the overpayment from the landlord, Mrs E, as she continued to receive HB for the claimant who was no longer living in her property and did not notify the LA of this change.

4.164 Before accepting direct payments, a landlord should be made aware

- of their duty to report any changes of circumstances that they might reasonably be expected to know might affect the claimant's entitlement to benefit
- that the LA may decide an HB overpayment is recoverable from them

*HB Sch 9(11)(b) & (SPC) Sch 8(11)(b)*

#### Landlord recovery options

4.165 There are several methods of recovery from landlords, these include

- deductions from direct payments of HB
- 'blameless tenant' recovery
- invoicing
- civil proceedings

Note: This list is not exhaustive.

#### Deductions from direct payments of HB

4.166 You can recover an overpayment from a landlord by making deductions from the HB paid direct to the landlord on behalf of the claimant to whom the overpayment relates.

4.167 There are no maximum recovery rates when recovering from a landlord. However, you must have due regard to a landlord's health and financial circumstances when requesting repayment of debts

4.168 An LA can recover an overpayment by making deductions from

- a single payment of HB owing to the landlord
- ongoing payments of HB paid direct to the landlord

Note: Both the claimant and landlord must be notified of the overpayment and the recovery method being used

- 4.169 If the claimant ceases to receive HB, the LA must remember that the outstanding overpayment is still recoverable from the landlord and must pursue recovery accordingly

#### **'Blameless tenant' recovery**

- 4.170 You can recover an HB overpayment, which is recoverable from a landlord/agent, from any HB payments paid direct to the landlord/agent in respect of any of their tenants. This method of recovery is often known as the 'blameless tenant' recovery method.
- 4.171 It is up to the individual LA how/if they use these powers, although it is strongly recommended that LAs utilise all methods of recovery available to them, including this one. If you notify the landlord of an overpayment, and the time limits for their appeal rights have expired, you can recover from the next payment due to that landlord. You may, however decide to give the landlord the option of repaying the overpayment by cash/payment, and only if this method breaks down, consider deducting the outstanding debt from HB being paid direct to them.
- 4.172 If a decision has been made on an overpayment that it is recoverable from the landlord and it has been recovered from the HB of a tenant other than the one to whom the overpayment relates, that other tenant will be deemed to have paid his rent to the value of that recovery. This person is known as the 'blameless tenant'.
- 4.173 In these circumstances the landlord is a 'person affected', but the tenant from whose HB the deductions are being made is not. Consequently, such tenants should not receive an overpayment decision notice. They do not have the right to apply for a revision of the decision or appeal against it

#### **Decision notices for 'blameless tenant' recovery**

- 4.174 When a decision is made to pay a landlord direct payments of HB, a decision notice is sent to both the claimant and the landlord at the commencement of direct payments. It is a legal requirement that the decision notices say that if recovery is made from one tenant's benefit for an overpayment made to another tenant, the rental liabilities of the tenant from whom the recovery has been made will be protected ('blameless tenant').
- 4.175 When blameless tenant recovery takes place, HBR Schedule 9/(SPC) Schedule 8 expands the information that must be included in the overpayment decision notice issued to the landlord, to make sure it includes the name of the tenant(s) to whom the overpayment relates and the 'blameless tenant's' name or names. It is probable that LAs are already including this information on such notices, but this must happen once recovery is made from other tenants' benefits. This information is required only on notices sent to direct payment landlords. When an LA sends this notice to a landlord, it must include a reminder that seeking to recover these sums from tenants is in breach of section 75(6) of the SSAA 1992.
- 4.176 If an LA decides a recoverable overpayment has occurred and exercises its discretion to recover it, they must comply with the general notification requirements. See Decision notices later in this guide.

#### **Standard paragraphs**

- 4.177 A standard paragraph

- could be used to inform a claimant that they may be viewed as a blameless tenant in certain situations
- should be included when notifying a claimant of a decision to pay benefit direct to their landlord. It is not necessary or feasible to issue an overpayment letter to a blameless tenant each time recovery is to be made by this method
- could be used to advise blameless tenants that their rental liability is not affected

4.178 Landlord/person affected must be notified of the decision to exercise this method of recovery.

Example 1 (claimant/blameless tenant)

Please note that the Local Authority has the power to make deductions from amounts of Housing Benefit paid direct to landlords, in order to recover the landlord's overpayment of Housing Benefit relating to another tenant. In such cases your rental liability will, however have been deemed to be legally discharged to the full value of your Housing Benefit entitlement.

Example 2 (claimant/blameless tenant)

We need to advise you as a tenant whose landlord may receive direct payments of Housing Benefit on your behalf, of an important aspect of benefit legislation that may apply regarding the recovery of Housing Benefit overpayments.

A Local Authority can recover overpaid Housing Benefit from a landlord by reducing the amount of Housing Benefit paid to that landlord. To do this we may reduce the amount of benefit paid for a tenant who does not have an overpayment. This is in accordance with Section 75 of the Social Security Administration Act 1992.

If we reduce your Housing Benefit because we have used this method of recovery you will not have lost your benefit entitlement. The Housing Benefit Regulations 2006 states that your rent liability will be deemed to be paid to the full value of your Housing Benefit entitlement. This means that your landlord will have to credit your rent account with the same amount of benefit you were entitled to prior to the reduction.

Example 3 (landlord)

We need to advise you as a landlord who may receive direct payments of Housing Benefit on behalf of your tenants, of an important aspect of Benefit legislation that may apply regarding the recovery of Housing Benefit overpayments.

We can recover overpaid Housing Benefit that has been paid to you by reducing the amount of Housing Benefit paid. To do this we may reduce the amount of benefit paid to you for a tenant who does not have the overpayment. This is in accordance with Section 75 of the Social Security Administration Act 1992.

Section 75(6) states that the rent liability for the tenant whose benefit has been reduced will be deemed to be paid to the full value of their Housing Benefit entitlement. This means that you must credit the rent account of the affected tenant with the amount of Housing Benefit they were actually entitled to.

If this method of recovery is used you will be issued a letter with your payment schedule which will clearly outline which tenant had the overpayment, which tenant's benefit we have reduced, and how much we have reduced that benefit by.

- 4.179 LAs are advised to show the amount being recovered from the other tenant(s). This will help ensure that the landlord correctly makes up the rent of the appropriate tenant(s).

Example

The landlord, Mr LL receives £450 a week HB in respect of three tenants

- Mr TW (£125)
- Mr D (£140)
- Mr P (£185)

Mr P moves out. Neither Mr P nor Mr LL tell the LA.

A recoverable overpayment of £370 occurs and the decision is made to recover from the landlord Mr LL.

The LA could recover up to £265 per week from the benefit paid in respect of Mr D and Mr TW, however it should take account of the health and financial circumstances of the person from whom it is making recovery, i.e. the landlord/agent.

The LA would have to inform the landlord Mr LL, either in the normal decision notice or as an additional notice the

- person the overpayment relates to (i.e. Mr P the occupant of Flat 1)
- tenants from whom recovery is being made (i.e. Mr TW and/or Mr D, the occupants of flats 2 and/or 3)

The decision notice should also show the period over which the overpayment will be recovered, e.g. if an LA decided to recover the £370 over four weeks, the decision notice may show

- overpayment in respect of occupant of flat 1 Mr P = £370
- recovery is being made from benefit paid to you in respect of the occupants of flat 2 and flat 3
- amount recovered from benefit paid to the occupant of
  - flat 2 = £45 for four weeks
  - flat 3 = £55 for three weeks and £25 for one week

- 4.180 It is particularly important that full details are given when benefit is paid to an agent on behalf of one or more landlords. LAs must, in all cases, indicate the person to whom the overpayment relates, and tenants from whom recovery is being effected. These details will help prevent any confusion when recovery is made from a number of a landlord's tenants
- 4.181 The provisions give LAs the opportunity to recover large amounts of overpaid HB in one lump sum, particularly from the schedule payments made to Registered Social Landlords.
- 4.182 When deciding the amount to be recovered LAs must fully consider the circumstances of the person they are recovering an overpayment from. They should take into account the health and financial



circumstances of the person, to make sure hardship is not caused to that person or any of their dependants.

#### **Deduction from any benefits the landlord is entitled to**

- 4.183 If it has been decided that an overpayment is recoverable from a landlord, you can recover that overpayment by making deductions from any benefits the landlord is entitled to (HB or any prescribed DWP benefits, e.g. if the landlord is on a low income and claims benefits to make it up or if they cease to be a landlord and claim benefits). See 'By deduction from certain DWP Benefits' earlier in this section.
- 4.184 If it has been decided that an overpayment is recoverable from a claimant, and that claimant becomes a landlord, you cannot recover an overpayment from the HB paid to them as a landlord. This is because the regulations say an overpayment can be recovered 'by deduction from any HB to which that person is entitled'. A landlord is not entitled to the HB paid to them for their tenants. It is the tenant's entitlement.

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

4.185-4.189

#### **i) By invoicing the affected person**

- 4.190 You can pursue recovery of an overpayment by invoicing the person you have decided should repay the overpayment.
- 4.191 The LA may decide to use the facilities of a credit control/sundry debt section or undertake such procedures on the overpayments section.

If the LA overpayments team pursue the invoice themselves this should be actively followed up with a letter or phone call to ask how the customer intends to repay the debt i.e. by Direct Debit, Standing Order, one-off payment by direct transfer or cheque etc. If any agreed payment breaks down you should consider other recovery avenues e.g. Direct Earnings Attachment.

- 4.192 Due regard should be given to make sure procedures are in place to comply with HBR Schedule 9/(SPC) Schedule 8, CTB Schedule 8/(SPC) Schedule 7 and other relevant sections of the HB and CTB regulations.

4.193-4.199

#### **j) By civil proceedings**

- 4.200 For recovery by Civil Proceedings, see 'Courts and civil proceedings' later in this guide.

*SSAA 1992 S75 (subsection 7)*

*SSAA 1992 S76 (subsection 6)*

4.201-4.209

#### **k) Death of a claimant**

##### **Rent Rebate overpayments**

- 4.210 Overpayments may occur when HB is credited in error to an LA tenant's rent account after the claimant's death.
- 4.211 If the HB was credited for the period after the rent account was closed, there is no overpayment as there was no rental liability. See 'By transferring a rent rebate overpayment to the rent account' earlier in this section and 'Recovery of overpayments from surviving partner' later in this section.
- 4.212 If the HB was credited for the period after the claimant's death, but the rent account was not closed because there was still a rental liability (e.g. the deceased claimant's belongings were still in the property), the LA should pursue recovery of the overpayment by contacting the deceased person's personal representative. See 'Deceased person's personal representative' later in this section.

**Payments made into a bank account**

- 4.213 Any amount paid into a bank account after the claimant has died is made under a mistake of fact. The mistake being that the claimant was not entitled to that payment, because their HB should have terminated on their death.
- 4.214 Once an account provider becomes aware that a claimant, holding a sole account, has died they should return any credits received after that date.
- 4.215 LAs should take immediate action to contact the account provider for the return of any credits paid into the account after the date of death.

**Payments made to the landlord**

- 4.216 Consider whether the landlord could have been expected to know about the claimant's death. For example, in the case of some larger Housing Associations, they may not be in regular contact with their tenants and so would not be aware, unless notified.
- 4.217 However, in some cases it may be reasonable to expect the landlord to be aware, particularly where the claimant is resident with the landlord.
- 4.218 If the LA decides that no one has misrepresented or failed to disclose information and there wasn't an official error, recovery could be pursued from the landlord or the deceased person's personal representative.

**Claimant had undisclosed capital**

- 4.219 If an overpayment is discovered after the claimant's death because you become aware the claimant had undisclosed capital, calculate the overpayment as normal by applying diminution of capital. See 'Diminution of capital' earlier in this guide.

**Deceased person's personal representative**

- 4.220 The decision of how far to pursue recovery of an overpayment following the death of a claimant is entirely up to the LA, subject to general administrative law requirements. Any action should be taken swiftly both to alert the Executor dealing with the Estate prior to distribution of the Estate and to ensure that the chance of the Estate being distributed before the LA has time to calculate the overpayment is lessened.

- 4.221 An LA may decide not to pursue such debts at all or they may decide to contact the deceased person's personal representative or the Executor of the estate, to make arrangements for the debt to be repaid from any estate the deceased may have had.
- 4.222 The LA should make sure overpayment decision notices are issued to the personal representative, in order to allow for appeal rights, before seeking recovery.
- 4.223 The deceased person may have assets in their estate at the time of their death that require a Grant of Probate (England & Wales) or Letters of Administration (Scotland). The personal representative is then advised not to distribute the estate for at least two months to allow creditors to come forward.
- 4.224 The LA will have to make a search for an estate of the deceased and find out who the personal representative is. The LA should then register as a creditor in the estate to make a claim for the debt.

#### **Recovery of overpayments from surviving partner**

- 4.225 If the claimant dies and an overpayment occurs, LAs cannot recover the overpayment from ongoing HB paid to the surviving partner. This is due to Reg 102(1ZA)/(SPC) 83(1ZA), which requires that the claimant and the partner were a couple both when the overpayment occurred and when it is being recovered. As the claimant has died they are no longer a couple and therefore recovery cannot be made from the partner.
- 4.226 When a partner of a deceased claimant continues to occupy a council property, they are usually eligible to claim HB and CTB in their own right, and their claim is often taken from when the claimant died. This can cause an overlap of benefit when the deceased claimant has continued to be paid past the date they died.
- 4.227 However, if the partner has taken over the tenancy, the HB paid for the deceased claimant, from the date the partner took over the tenancy, is not legally paid HB, because they no longer had a rental liability. This could be classified as a Technical overpayment, see 'Classification and recoverability', earlier in this guide. There is nothing to recover from the deceased person's estate from the point that the partner took over the tenancy.
- 4.228 When a partner claims benefit in their own right and is eligible from when the claimant died, the LA are legally obliged to pay the partner from this date, although HB may already have been paid on the deceased claimant's claim. Payments cannot be offset, as it is two different claims for benefit and the regulations do not allow this.
- 4.229 Spare

#### **m) Recovery using a Direct Earnings Attachment (DEA)**

- 4.230 The Welfare Reform Act 2012 supported by the Social Security (Overpayments and Recovery) Regulations 2013 introduced Direct Earnings Attachments (DEAs). A DEA allows for recovery of overpaid benefit directly from a debtor's earnings without having to apply via the court system. The Regulations also allow Local Authorities to recover overpayments of Housing Benefit and Council Tax Benefit/Council Tax Reduction using a DEA.

*Social Security (Overpayments & Recovery Regs. 2013 Part 6*

*SSAA 71ZD*

*HB Regs 2006 Para.106A*

*HB (SPC) Regs Para. 87°*

- 4.231 DWP can provide, on request, a package of draft letter templates that can be used by LAs, subject to them amending for their own purposes and making it clear that payment is to be made to the LA and not to DWP. Send requests for the pack and any other policy queries to: [DEBTPOLICY.FOCALPOINT@DWP.GOV.UK](mailto:DEBTPOLICY.FOCALPOINT@DWP.GOV.UK)
- 4.232 It is good practice to send an initial “Letter Before Action” to the debtor prior to any action being taken to initiate a DEA. This gives the debtor the opportunity to make payment arrangements outside of a DEA before the DEA is started.
- 4.233 A DEA cannot be requested against a partner’s earnings, this is in contrast to the recovery of HB from a partner’s benefit in certain circumstances.
- 4.234 You cannot recover a Discretionary Housing Payment (DHP) using a DEA.
- 4.235 The policy intent of DEAs is that they are a “last resort” recovery option and this should be borne in mind.

#### **When should recovery commence?**

4.236 – 4.239

- 4.240 The decisions made on an overpayment’s recoverability can be appealed, so when recovery is to be made from an ongoing benefit, it is good practice that it should not commence until the one-month appeal rights’ period has expired.
- 4.241 When an appeal is brought before recovery has begun, or during recovery, it is good practice to suspend action until the appeal has been decided. This policy is consistent with that of other benefits, such as IS and JSA.
- 4.242 There are various reasons why it is considered good practice to adopt this approach
- it allows the claimant time to organise their finances in order for the recovery to commence. They may wish to make a full repayment, rather than having a weekly deduction
  - it gives the claimant time to query the overpayment, possibly exercising their right to ask for a full written statement/explanation of how it was calculated
  - the claimant may want to come to some agreement, asking for a different method or recovery rate to be used
  - it allows the claimant time to seek advice with regards to requesting a revision or appealing against the overpayment decision
  - other debt recovery bodies follow these guidelines
  - it is a person’s right to be able to query a debt or organise their finances before recovery commences

4.243-4.249

#### **Recovery via invoice**

- 4.250 There is no reason why invoices should not be issued during the one-month appeal rights’ period. LAs will not actually be taking any money, and so therefore cannot cause any undue hardship. First and second reminders can also be issued, as the claimant is not being made to pay anything without their knowledge or consent. Issuing invoices acts as a reminder about the claimant’s appeal rights, and the timescales in which to do it.

4.251 The claimant will usually be asked to contact the LA if they cannot afford to pay back the overpayment in one lump sum. They can then arrange how they are going to repay it and at what rate. Note: No court action should be taken prior to the appeal rights period ending.

4.252-4.259

### Recovery rates

4.260 When considering rates of recovery of HB overpayments by deductions from ongoing HB and certain prescribed benefits an LA should be aware that the

- standard maximum rate of recovery from continuing benefit is £11.25 a week with effect from April 2021

*HB Reg 102(2)*

- maximum rate of recovery from continuing benefit, when the overpayment has arisen as a result of fraud is £18.75 a week with effect from April 2021, see 'Classifications of overpayments' and 'Subsidy' earlier in this guide

Note: The higher deduction rate can only be used if a claimant has

- been found guilty of an offence
- made an admission in an Interview Under Caution, or
- agreed to pay an AdPen as an alternative to prosecution

*HB Reg 102(3) & (SPC) 83(3)*

Note: These recovery rates are updated annually in April.

4.261 As well as the above rates of recovery, an LA can also increase deductions by half (50%) of certain disregards that are included in HB Schedule 4, paragraphs 3 to 10 and HB Schedule 5, paragraphs 14 and 15/(SPC) Schedule 4, paragraphs 2 to 5 and 7 and Schedule 5, paragraph 1, for

- earnings
- regular charitable income
- voluntary payments
- War Disablement Pension or War Widows Pension

"Note for information - there is no standard recovery rate for UC because the rate of personal allowance in the benefit is/may be different, the rounding rules are different (to the nearest 1p). The percentage that is applied is to the standard allowance for that claim (e.g. Couple) whereas under legacy the percentage is applied to the personal allowance for a single person over 25 in all cases and the maximum amount of deductions is greater."

4.262 The following benefits could have a disregard, but they are not included in HB Schedules 4 and 5 (SPC). Schedules 4 and 5, and therefore any disregards relating to these benefits cannot be used to increase the recovery rate each week

- Child Benefit
- Guardians Allowance

- Working Tax Credit

4.263 The weekly recovery rate may be increased by up to half of the permitted work earnings disregard, where that disregard is the lower rate of £20.00. However, where the permitted work earnings disregard is the higher rate, you cannot increase the normal weekly deductions.

4.264 In all cases

- the amounts are subject to an overall maximum deduction, which does not reduce the balance of benefit payable to less than 50 pence
- it is important LAs do not recover more than these prescribed amounts
- LAs should consider a claimant's health and financial circumstances, before deciding the level of deduction or when to commence deductions, to avoid causing undue hardship to the claimant or their dependants.

#### Example

Claimant is a single person in employment.

A recoverable non-fraudulent overpayment has occurred which the LA has decided to recover.

Claimant receives continuing HB.

The claimant has earnings that are subject to a £5.00 disregard.\*

The amount that may be deducted from the claimant's continuing HB is £14.05 (£11.55 plus £2.50, i.e. half the earnings disregard).

*\*HB Regs 2006 Sch 4 Para 10*

Note: If the claimant wants to pay more and gives their permission you can recover a higher amount than the maximum recovery rate. Keep a record of their agreement to the higher rate. If this is the case you must make sure the claimant understands the higher payment is entirely voluntary.

4.265-4.269

#### **What happens if the claimant has different types of overpayments?**

4.270 When a claimant has an overpayment made up of two classifications, for example part due to fraud and part that attracts the standard rate of recovery, apply the appropriate deduction rate to each part of the overpayment. However, you can only apply one recovery rate in any benefit week. This means, for example that you would recover the fraud part of the overpayment at the higher rate until it has been fully recovered and then the remaining part of the overpayment at the standard rate.

#### **Recovery rates other than recovery from prescribed benefits**

4.271 There are no rules limiting the maximum amount that can be requested. However, a claimant can argue that the rate of recovery should be reasonable. Again, an LA should have due regard to a claimant's health and financial circumstances when requesting repayments of overpayments of benefits.

#### **Reduction of recovery rate**

4.272 Consider lowering the overpayment recovery rate when a claimant is suffering hardship. It may be necessary to ask the claimant for details of their income and expenditure in order to make the decision. You may wish to develop a locally used proforma for this purpose.

4.273 It may also be necessary to reduce the recovery rate when a claimant is having deductions made from their benefit for more than one overpayment, e.g. an HB overpayment being recovered from HB entitlement and an IS overpayment being recovered from IS entitlement.

4.274 It is good practice for the LA to reduce the recovery rate so as not to cause hardship to the claimant or their family. When looking at reducing the recovery rate, consider each overpayment individually taking into consideration the outstanding balance and the timescale involved in the recovery. LAs have a responsibility to protect public funds and therefore should not allow an unrealistic period for repayment recovery by an enforcement agency.

If the LA decides to reduce the deductions, these decisions should be regularly reviewed to see if the deduction rate remains applicable.

#### **Breathing Space**

4.275 **The Breathing Space Policy came into effect from 4<sup>th</sup> May 2021 via** The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020. **This is Government wide as well as debts owing to companies in the private sector e.g. credit cards and anyone who deals with customers with debts will be affected if the customer applies for "Breathing Space".**

4.276 The breathing space period will provide those with problem debt the right to legal protections from creditor action for a specified period of time, in order to enable them to receive debt advice and enter into an appropriate debt solution. The breathing space period will normally be for 60 days.

4.277 The Insolvency Service will administer the scheme via an on-line portal. It is intended that creditors will be informed of the debtor's admittance into Breathing Space via the portal.

4.278 For Government debts included in the protections of the policy we will cease any recovery activity for the period of the moratorium, and in the vast majority of cases the customer will see an increase in the amount of benefit they receive during that period.

4.279 HB debts that are being recovered through DWP Debt Management

4.280 Recovery of these debts will need to cease during the moratorium:

As the LA is the creditor for the HB debt the LA will receive a notification from the Insolvency Service portal. When this happens the LA will instigate the return of the HB debt from DWP via the recall facility through the PDP interface. If the debt has already been returned by DWP then this action won't be necessary.

4.281 Where the customer with a HB debt being recovered via PDP also has DWP debt, DWP will receive a breathing space notification via the interface with the Insolvency Service portal. DWP debt systems will automatically stop recovery of all applicable debts held by debt management and this will include HB debt where it is held. The debt will be returned via the PDP interface using the return code, 'return to LA'.

4.281 At the end of the moratorium period, if required, the debt can be resubmitted to DWP for recovery once again using the business as usual process of referring a new HB debt via the PDP interface.

Work is ongoing to assess the feasibility/cost of introducing a specific return code for breathing space – the necessity of this will be reviewed once volumes are better understood

Where the debt is defined as fraud we can continue to recover this throughout the moratoriums. These debts will not be returned by DWP unless recalled by the LA



PDP referral

breathing space.ods

You will need to complete the attached form to send through the PDP interface

This is the link to the legislation on Gov.uk

[Debt Respite Scheme \(Breathing Space\) guidance for creditors - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/debt-respite-scheme-breathing-space-guidance-for-creditors)

Further information can also be found in the LAWD Bulletins 04/21 and in LAWD Lite 07/21

### Sale of Debt

4.282 LAs sometimes sell claimants' debts to Enforcement Agencies who then pursue recovery of the debt.

4.283 There is no restriction on this within the HB Regs 2006/(SPC) Regs 2006. When debts are sold they are often sold for less than they are worth. But when recovery is proving to be extremely difficult, such as when a debtor cannot be traced, it may be an option whereby partial recovery can be achieved

4.284 Some debt collection agencies buy the debt outright and give the LA the money straight away. Other companies, employed by the LA to take recovery action on their behalf, send the money to the LA as they recover it and issue an invoice to the LA for commission on the funds recovered.

4.285 For statistical purposes you can only record the amount they give you as the amount recovered.

#### Example

Grassley Borough Council have a claimant with a debt outstanding of £5,000 for almost four years. The LA has been unable to trace the claimant but have found an enforcement agency who is willing to buy the debt from them. However, the enforcement agency will only buy the debt for half of what it is worth i.e. £2,500.

The LA agree to sell the debt for £2,500.

For statistical purposes the £2,500 can be classed as recovered once the transaction has been completed.

There is no need to wait for the agency to actually collect anything, as they have already given you £2,500 for it. The remaining debt will have to be written off.



**Tracing people**

4.286 Potentially one of the most difficult areas of overpayment recovery is actually finding out the debtor's current address so you can instigate recovery proceedings.

4.287 If a person makes another claim for HB in your area you are able to recover from their continuing HB and therefore recovery is not a problem.

*HB Reg 102 & (SPC) 83*

4.288 If someone is no longer in receipt of HB, or the debtor is a landlord or agent, tracing the whereabouts of that person becomes a little more difficult.

4.289 However there are various ways to track down where that person is living, so recovery can commence/continue

4.290 When tracing a person it is essential to keep records of the sources you have tried, this adds weight when considering writing off a debt should no forwarding address be found.

**Sources used for tracing**

4.291 **Searchlight** - Searchlight is extremely useful for tracing purposes because it gives information on benefits the claimant is receiving and may give an up-to-date address. See 'Searchlight' later in this section.

4.292 The Housing Benefit Debt Service is a facility to trace whether a customer is working or receiving a pension via PAYE records. LAs submit information to HMRC via DWP to check if a customer is in employment. This information could also provide an up to date address. PAYE information would allow a DEA to be enacted.

4.293 Electoral Register - the Electoral Register is a list of everyone who is registered to vote. It is arranged in order of polling districts and within each polling district, in order of streets. It may therefore be useful for confirming if a person is at an address you think they are at.

4.294 Telephone directories - telephone directories can be useful for tracing people, especially if they have an unusual name. There are also internet services that provide free directory enquiries information, provided you know the name of the person and the area or postcode where they reside.

4.295 Tracing agencies - tracing agencies are private companies and will charge for their services. However, some agencies only charge if they are successful.

4.296 Internet - internet search engines and social networking sites may be useful in providing information regarding a person's whereabouts. The internet has sites for tracing people, however there is normally a fee attached.

4.297 Credit Reference Agencies - Other information sources such as Experian, Equifax, TransUnion and Crediva. These are the four main UK credit reference agencies.

**Other possible searches**

4.298 Some other ways to locate people

- landlords may hold information as to where their previous tenant now lives
- present resident at last known address may have a forwarding address, or may be able to direct you to an agent, relative, estate agent or solicitor who acted for the person being traced

- neighbours past and present, use the current electoral register to note the names of neighbours at the last known address. Neighbours or friends in the area may be able to give new information or confirm the whereabouts of the person you are trying to trace
- if the debtor concerned has an unusual surname check the telephone directories and try the number, the person who answers may be a relative willing to disclose the person's whereabouts.
- application forms, check the HB application form for previous addresses. If the debtor previously lived with parents/relatives contact them for the debtor's whereabouts
- business and leisure associates, consider any clubs, professional bodies, school/colleges, voluntary groups, present/previous employers or trade unions the person may belong to, they might have an up-to-date address. Such organisations while unwilling to divulge personal details, may be prepared to forward correspondence, or to tell the person you are looking for them, without compromising the person's privacy. If sending correspondence via that organisation, you must mark it private and confidential

### **Searchlight (formerly LAs used CIS)**

4.299 Searchlight is an information system provided by the DWP to enable the LA to access certain viewable information about customers to help in

- the administration of HB
- the recovery of overpayments
- fraud investigations

Note: Searchlight is extremely useful for overpayment work to check if a person is in receipt of a DWP prescribed benefit, to enable an LA to send off a request for deductions, and for tracing customers.

### **Contracted-out benefit services**

4.300 When LAs have contracted out the delivery or any aspect of the delivery of HB, the LAs should read the Memorandum of Understanding (MoU) for the security requirements, which must be in place and followed to allow the third party access to Searchlight.

4.301 Although it is not appropriate for a Contracted Service Provider (CPS) to "sign" the MOU, if a CSP is engaged, the LA is responsible for ensuring that any part of its service sub-contracted to another third party organisation is fully compliant with the required standards.

### **Security requirements**

4.302 The LA must ensure all staff are aware of the Searchlight security requirements.

4.303 In particular

- only authorised staff may access the system

- only staff who have worked through the security and Searchlight user self-instructional training material may use the system
- Searchlight access is only allowed for the purpose of administering HB, HB overpayment or fraud investigation

4.304 These guidelines provide the necessary assurances and safeguards for staff.

4.305-4.309

### **Searchlight forms you may need to use**

4.310

#### **LAST 1**

Complete the LAST 1 whenever the Searchlight system advises that a test check is being performed. The system is subject to a random 1% check of all access to the system.

Details of how to complete a LAST 1 can be found on the back of the form.

Once completed pass the form, together with a copy of the supporting evidence, to the Checking Officer.

#### **LAST 3**

Complete the LAST 3 whenever Searchlight is accessed and there are no supporting documents.

#### **LAST 2**

Complete the LAST 2 when either

- a keying error is made, i.e. the details entered on Searchlight do not allow you access to the relevant claim
- LA staff receive a system generated check as a result of a telephone call or reception call

Once completed pass the form, together with a copy of the supporting evidence, to the Checking Officer.

#### **LAST 5a**

Complete the LAST 5a, when reporting a system fault. However, it should only be completed when the Employee Authentication Service user is confident that there is not a local or user error.

#### **LAST 5b**

Complete the LAST 5b to query a system data error when

- there is a discrepancy identified with the data held on Searchlight, that has been confirmed by the DWP
- LAs have a particular query on the data shown that the DWP local office is unable to assist with

### **Overpayments and Fraud**

4.320 HB fraud investigation is now dealt with by DWP fraud officers.

4.330 – 4.339

### **Discretionary Housing Payments**

- 4.340 Discretionary Housing Payments (DHPs) provide claimants with further financial assistance when an LA considers help with housing costs is needed. They are not payments of HB/CTB so normal appeal procedures do not apply. They are free-standing payments made at the LAs discretion, subject to an annual cash limit.
- 4.341 Housing cost means rent or CT liability. It is not possible for a person to receive DHPs if they are not entitled to HB and/or Council Tax Reduction. A DHP cannot be paid to make up for the shortfall caused by recovery of a HB or CTB overpayment.
- 4.342 The regulations covering the award of DHPs are The Discretionary Financial Assistance Regulations 2001 [SI 2001/1167].
- 4.343 The relevant guidance is The Discretionary Housing Payment Guidance Manual for Local Authorities on the Operation of Discretionary Housing Payments and the latest version was issued to LAs. This guide can be found by typing “DHP Guide” in the search box on GOV.UK

Scotland and the Scottish Government have additional [guidance](#)

### **Recovery of DHPs**

- 4.344 An LA can recover DHPs if they decide that payment has been made as a result of misrepresentation or failure to disclose a material fact, either fraudulently or otherwise. You may also recover DHPs if you decide they have been paid as a result of an error made when the application was determined.
- 4.345 LAs may not recover DHPs from ongoing HB/Council Tax Reduction or any other prescribed benefit including UC. This is unlike HB overpayments where there is a regulatory provision to allow recovery from ongoing HB.
- 4.346 Therefore the only method of recovery if a DHP is overpaid is to request repayment of the debt from the claimant. This may be in the form of an invoice or however the LA chooses to do so, for example using debt collection agencies or via the courts.

4.347-4.349

### **Write-offs**

#### **Deciding whether to recover an overpayment**

- 4.350 Just because an overpayment is recoverable, does not necessarily mean that it must be recovered. The law actually states that all overpayments are recoverable (except certain official errors), but it does not state that they must be recovered.
- 4.351 A recoverable overpayment may be recovered at the LAs discretion. If an LA has a blanket policy of recovering all recoverable overpayments, the policy would be open to legal challenge.
- 4.352 Write-offs generally fall into three categories

- non-recoverable write-offs

- discretionary write-offs
- standard write-offs

**Non-recoverable write-offs**

- 4.353 These are overpayments caused by an official error, LA or Departmental, when the claimant could not reasonably have been expected to know that they were being overpaid. They are therefore legally non-recoverable.
- 4.354 In this circumstance, the LA may notify the claimant of the overpayment and the fact that they are not going to pursue its recovery. However, the regs only state that an LA must notify claimants of recoverable overpayments. It is therefore up to the LA if they issue a decision notice.

*HB Sch 9 & (SPC) Sch 8;*

- 4355 Once these overpayments are written off they can never be resurrected.

**Discretionary write-offs**

- 4.356 A recoverable overpayment can be considered for write-off if the LA uses its discretion at the outset and decides not to recover it. These types of write-offs are often called discretionary write-offs.
- 4.357 It is not advisable to consider fraudulent overpayments for a discretionary write-off.
- 4.358 The usual scenarios for considering an overpayment for a discretionary write-off will be on financial or hardship grounds. However, the medical condition of the claimant or family may be relevant and should always be recorded to assist such a decision being made.
- 4.359 The LA may also decide to write-off an overpayment that they consider to be uneconomical to recover. For example, recovery of an overpayment of £5 could cost the LA £10. This would not be cost effective.
- 4.360 Discretion cannot be prescriptive and there are no rules or examples that can be given. Each case must be decided on its merits.
- 4.361 However the following situations may be relevant when considering write-off
- financial hardship
  - terminal illness
  - senility or learning disabilities
  - severe medical conditions
  - health and welfare
  - all other relevant factors

**Financial hardship**

- 4.362 In order to establish if the claimant is suffering financial hardship it is advisable to do an income and expenditure comparison and possibly interview the claimant. You may have a locally produced proforma for this purpose.

- 4.363 Hardship is proven when the income, minus priority debts, gives a figure more than £11.25 below the applicable amount. This figure is annually updated and is based on the maximum that the DWP recovers from IS or JSA(IB) in non-Fraud cases.
- 4.364 Priority debts include
- rent, CT, utilities, e.g. gas, electric, water – ongoing weekly amount to pay, plus any arranged weekly repayment of arrears
  - fines – any weekly amounts
  - medical expenses - although these are not priority debts as such, if it can be shown that the claimant has high prescription charges/travel costs to hospital, or high diet costs, which must be maintained for health reasons, all relating to a long term illness, then they may be considered priority debts
- 4.365 Other factors you may wish to consider in such a scenario might be
- the health of the claimant and members of the household
  - any savings the claimant has
  - the level of disposable income in comparison to people receiving IS, see above
  - whether they have tried to make an arrangement for minimum repayments
  - whether they have any priority debts, see above
  - whether a non-dependant can contribute to other household expenses
  - whether it would be feasible to postpone repayment of the debt rather than write it off or writing off part of the overpayment rather than all of it
  - whether the claimant has contacted their other creditors to reduce repayments to repay this debt
- Note: This list is not prescriptive or exhaustive.
- 4.366 The decision not to recover an overpayment is an exceptional step and needs the claimant's co-operation to prove hardship, e.g. providing copies of utility bills, rent statements, etc. If the claimant is not prepared to provide such details an LA may decide to pursue recovery of the debt.
- 4.367 If hardship can be proven an LA may consider the overpayment for a discretionary write-off and the claimant should be notified of the decision.
- 4.368 In cases of possible hardship it may be prudent to advise the claimant to contact their local Citizens Advice Bureau (CAB) for financial advice.
- 4.369 It is not advisable to continuously write-off overpayments as it removes the incentive for the claimant to report future changes of circumstances, which may cause overpayments. This is because if it is decided that a claimant does not have sufficient resources to repay one overpayment, then it is hard to make a case to say that they are able to repay a subsequent overpayment at a later date, unless of course their circumstances have improved considerably. Note: Because the person affected has no right of appeal against a decision to

recover an overpayment, this also means there is no right of appeal against a refusal to write-off an overpayment.

- 4.370 Once these types of overpayments are written off, and claimants notified of the decision, they can never be resurrected.

**Standard write-offs**

- 4.371 An LA may, within its Bad Debts Provision, hold some money back for writing off debts, where all recovery methods have been exhausted. This could be because the claimant cannot be traced or all methods of recovery have been tried and have been unsuccessful. These overpayments should only be considered for write off if there are no further methods that can be pursued.
- 4.372 Examples of such overpayments are
- a debtor cannot be traced
  - debts which could become non-recoverable through the courts, due to the Limitations Act
  - debts when all action has been considered/taken and it is decided not to pursue any further
  - the debt cannot be substantiated
- 4.373 Even though an overpayment is written off, if the claimant has not been notified of the write-off, it can be resurrected and recovered at a later date. For example, if a claimant cannot be traced, the overpayment can be written off. The claimant will not be notified of the write-off as their whereabouts are not known. If they apply for HB/CTB at a later date, the overpayment can be resurrected and recovered. The overpayment can only be resurrected if the claimant has not been notified of the 'write-off'.