

DECISION NOTICES

Contents

Matters to be included in overpayment decision notices

5.00

Without prejudice

5.20

Matters to be included in overpayment decision notices

- 5.00 When the LA decides that a recoverable HB overpayment has occurred, a decision notice, must be issued to any person the overpayment is legally recoverable from, even if the LA has decided to recover from someone else. For example, if the LA decides to recover from the landlord, but both the landlord and the claimant have misrepresented or failed to disclose information, an identical decision notice must be issued to both the claimant and the landlord.

HB Sch 9 & (SPC) Sch 8

- 5.01 Send decision notices

- within 14 days of the decision being made, or
- as soon as reasonably practicable thereafter

HB Reg 90 & (SPC) 71

- 5.02 A decision notice should provide the person it is issued to with enough

- detail to check the factual basis of the LAs decision
- information to decide if they want to request a revision/appeal of the overpayment decision

For example, it is not sufficient to just say there has been an overpayment because of a change in the claimant's circumstances.

- 5.03 A decision notice should be issued to all interested parties who the LA could legally recover the HB overpayment from. This could be

- the claimant
- a person acting on their behalf, e.g. an appointee
- any other person to whom the overpayment was paid, e.g. a landlord/agent who receives direct payments of HB. Information on the content can be found at paragraph 5.07.

Note: The wording of Section 75(5) and (6) of the SSAA 1992 means that a claimant who is deemed to be a 'blameless tenant' does not have to be issued an overpayment decision notice.

- 5.04 HB Reg 101(2)/(SPC) 82(2) was changed in April 2006, so that it now states an overpayment caused by a misrepresentation or failure to disclose information is recoverable from the person or persons who actually misrepresented or failed to disclose that information. So, in cases when the HB is paid direct to the landlord, the LA would only need to issue a decision notice to the landlord if they had misrepresented or failed to disclose information.

- 5.05 If the overpayment was caused by an official error, the overpayment is recoverable from the person/persons who could reasonably have been expected to realise they were being overpaid. In cases when the HB is paid direct to the landlord, this could be the claimant, landlord or both. A decision notice should only be issued to the person/persons who could reasonably have been expected to realise they were being overpaid.

5.06 If the overpayment was not caused by a misrepresentation, failure to disclose information or an official error, and the HB is paid direct to the landlord, the overpayment is recoverable from the claimant and the landlord. A decision notice should be issued to both the claimant and the landlord.

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

5.07 The following information is the minimum that should be included in a decision notice, as stated in HBR Sch 9/(SPC) Sch 8.

- that there is a recoverable HB overpayment
- the reason there is a recoverable overpayment. It is not sufficient to just say there has been a change in the claimant’s circumstances
- the amount of the recoverable overpayment
- how the amount was calculated
- the period of the overpayment
- who the overpayment is legally recoverable from, and why
- who the LA has decided to recover the overpayment from, and why
- the method of recovery, ongoing HB payments
- when the recovery of an HB overpayment is to be made by deductions from future HB payments, often known as claw-back, the amount of the deduction
- the person’s right to request a written statement setting out the LAs reasons for its decision on any matter stated in the decision notice and the manner and timescale in which to do so
- the person’s right to apply for a revision of the decision or appeal against it and the manner and time in which to do so
- anything else that the LA thinks is appropriate, e.g. matters relating to the person’s health and financial circumstances

5.08 You should also include an invitation to make either a full repayment of the debt or negotiate some other arrangement within one month from when the decision notice was issued. This actually equates to one month and a day, for example if it is issued on the 28 March, they have until the 28 April to respond.

5.09 – 5.19

Without prejudice

5.20 There has been confusion about the wording ‘without prejudice’ and when it should be included in decision notices and invoices.

5.21 When parties are engaged in a dispute, which has resulted in court proceedings, they often want to

negotiate a settlement. They may not, however, want it to be apparent to whoever decides the case at trial, that they do not think their case is as strong as they argue it is in court. They may fear that offering to settle might be a sign of weakness. So if both parties agree, negotiations to settle are conducted in correspondence under the 'without prejudice' banner, i.e. an understanding that the existence of the 'without prejudice' correspondence will not be disclosed to the court unless both parties agree.

- 5.22 Without prejudice used in letters to people who are being investigated for HB/CTB fraud is an indication that offers to repay any overpayment or agreements to do so, will not be taken into account when reaching the decision whether to prosecute, caution or impose an administrative penalty.
- 5.23 LAs may decide not to use 'without prejudice' in their overpayment recovery correspondence because it can cause confusion and many claimants are unlikely to know what it means. It may be more appropriate to insert a paragraph that means the same as 'without prejudice', but is easier to understand, see examples below. The overpayment recovery correspondence should also explain that the decision on whether and how to pursue the overpayment will not be influenced by whether or not there is a prosecution with regard to the fraud committed.

Example 1

Please note that we will accept any payments you may make to discharge your liability, but that such acceptance will not affect any criminal proceedings.

Example 2

In respect of this overpayment any repayment or offer of repayment will not affect any action being considered by the authority regarding offences allegedly committed by you, contrary to the Social Security Administration Act 1992.

5.24-5.999