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Classification of overpayments and subsidy

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

Example 1

Claimant overpaid (Claimant error) 3 June 2019 to 30 June 2019

for four weeks @ £50.00 =£200.00

LA claims subsidy of 40% (Claimant error) = £ 80.00

LA recovers = £200.00

LA allowed to keep £280.00

Example 2

Claimant overpaid (Fraud) 5 August 2019 to 18 August 2019

for two weeks @ £40.00 = £80.00

LA claims subsidy of 40% (Fraud) = £32.00

LA recovers = £80.00

LA allowed to keep £112.00

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

Overpayment subsidy Table

2.05

Overpayment Type	Benefit Type	Subsidy rate
1. Eligible Overpayments – Fraud – Claimant Error – Other (All overpayments that do not fall into any of the other categories)	All HB	– 40% – 40% – 40%
2. LA official overpayment and Administrative (Admin) delay overpayments – total level of overpayments is lower than lower threshold – total level of overpayments is greater than lower threshold but does not exceed upper threshold – total level of overpayments exceeds upper threshold	All HB	– 100% – 40% – Nil
3. Departmental official error overpayments not recovered	All HB	– 100%
4. Departmental official error overpayments recovery	All HB	– Nil
5. Technical overpayments (benefit credited in advance of entitlement)	Rent Rebate	– Nil
6. Indicative Rent Level (IRL) overpayments not recovered (overpayments arising because an IRL exceeded the maximum rent payable)	Rent Allowance	– 100%
7. IRL overpayments recovered (overpayments arising because an IRL exceeded the maximum rent payable)	Rent Allowance	– Nil
8 Duplicate Overpayments	Usually Rent Allowance but could be Rent Rebate if actual payment made	– 25%

2.06-2.09 Spare

Explanation of the classifications

2.10 Classifying an overpayment is an essential but basic step in the overpayment process, and should be established at the outset when an overpayment is identified.

Eligible overpayments

Fraud overpayments

40% subsidy

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

- been found guilty of an offence whether under statute or otherwise

- made an admission after caution of deception or fraud for the purpose of obtaining relevant benefit, or
- agreed to pay a penalty under section 115A of the Social Security Administration Act (SSAA) and the agreement has not been withdrawn.

Admission after caution means:

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

HB Reg 102 & (Pension Credit) 83

- 2.12 For subsidy purposes there is no need to record as Fraud, any overpayment that occurs because of a fraudulent claim. This is because they are recorded as an eligible overpayment on the subsidy claim form and receive 40% subsidy. However, for overpayment recovery purposes it is important that each overpayment is classified accordingly, i.e. Fraud, Claimant error or 'Other'.
- 2.13 Any HB overpayment classified as Fraud can be recovered at a higher recovery rate. Also, overpayments classified as Fraud can be treated differently, for recovery purposes, when the claimant is involved in insolvency procedures – see Part 7 *Courts and Civil Proceedings* later in this guide.
- 2.14 It may also be useful for Management Information (MI) purposes to differentiate between Claimant error, Fraud and 'Other' overpayments. LAs should prioritise the recovery of their fraudulent overpayments.

Claimant error overpayments

40% subsidy

- 2.15 **Definition:** Claimant error overpayment means an overpayment which

a is caused by

i the claimant,

ii a person acting on the claimant's behalf, or

iii any other person to whom the payment was made including landlords/agents and

- fails to provide information in accordance with HB Regs 83(1) or 86, PC 64(1) or 67) or CTB Regs 69(1) or 72, PC 53(1) or 57),

- fails to report a change of circumstance in accordance with HB Reg 88, PC 69), CTB Reg 74 or PC 59), and

b is not a fraudulent overpayment.

Example 1

A change occurs in the claimant's earnings on 15 January 2019. The claimant fails to report the change until 29th January 2019. The LA actions the change on 30 January 2019. The overpayment is classified as follows.

21 January 2019 – 3 February 2019: Claimant error

Example 2

The LA receives a Housing Benefit Matching Service (HBMS) scan on 12 February 2019 which says that the claimant's Jobseekers Allowance (JSA) claim ceased on 8 January 2019. On 15 March 2019 the LA suspends the HB and writes to the claimant to ask for details, allowing one month to reply. No reply is received from the claimant, and on 15 April 2019 the LA decides to terminate the HB claim. HB had been paid up to 10 March 2019.

The overpayment is classified as follows

14 January 2019 – 10 March 2019: Claimant error

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

2.16-2.19 Spare

Reporting changes of circumstance to different departments in the LA**No details provided of where to report changes of circumstance**

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

Details provided of where to report changes of circumstance

2.22 If an LA makes it clear in its communications that a specific department/address is the 'designated office' to which a claimant must report changes of circumstance, then the claimant must report changes to that department in order to satisfy the regulations. If the claimant reports a change of circumstance to a different department, any overpayment would be classified as Claimant error up until the:

- claimant notifies the designated office of the change, or
- LA stops the overpayment from continuing (suspends the claim or processes the change).

HB Reg 88 & (Pension Credit) 69

'Other' overpayment'**40% subsidy**

2.23 Definition: 'Other' overpayment means any overpayments which do not fit in any of the other categories. Examples could be when an:

- LA makes a payment in good faith, but a change, such as an adverse decision in a judicial review, results in an overpayment
- award of benefit does not take into account any income subsequently paid as arrears, for instance when a claimant's earnings increase retrospectively and they receive a lump sum payment of arrears, or as a result of entitlement to another benefit commencing or increasing

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

Example

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

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

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

LA official error and Admin delay overpayments**100% Subsidy (less than or equal to the lower threshold)****40% Subsidy (more than the lower, up to and including the upper threshold)****Nil subsidy (more than the upper threshold)**

2.24 Definition: LA official error overpayment means an overpayment caused by a mistake, whether in the form of an act or omission, made by the LA or someone acting on their behalf. The claimant, a person acting on the claimant's behalf, or the person to whom the benefit was paid, did not cause or materially contribute to that mistake, act or omission.

2.25 An LA official error overpayment is only recoverable when the person affected could, at the time of receipt of the payment, or any notice relating to that payment, reasonably have been expected to realise that it was an overpayment.

HB Reg 100 & (Pension Credit) 81

2.26 Definition: Admin delay overpayment means an overpayment arising when:

- A** the LA is notified of a change of circumstance and has sufficient information and evidence to make a revision or supersession decision, and
- B** the LA does not make the decision before the claimant's next payday, and
- C** the delay was not caused by a mistake, whether in the form of an act or omission, made by the LA, and
- D** the delay was not caused or materially contributed to by the claimant, a person acting on the claimant's behalf, or any other person to whom the benefit was paid.

2.27-2.29 Spare

Which classification is appropriate?

2.30 When all the information to process a change of circumstance, that would reduce a claimant's HB entitlement is received, the LA must action it before the claimant's next payday. If it is not actioned before the next payday, any overpayment from the first day of the benefit week following receipt of all of the information should be classified as a LA official error or an Admin delay.

2.31 If the delay in processing the change of circumstance was caused by a mistake, for example the LA put the change of circumstance information to one side and forgot to process it, the overpayment should be classified as an LA official error.

2.32 If the delay in processing the change of circumstance was due to something out of the LAs control, for example staff shortages due to sickness, or if they had prioritised their workload, but they were unable to process it because of a backlog, the LA may decide that the overpayment should be classified as an Admin delay.

- 2.33 If the overpayment is classified as an LA official error, the LA must then make a decision on whether it is recoverable. Could the claimant reasonably have been expected to realise they were being overpaid at the time of the overpayment or any notices relating to the payments of benefit that were overpaid? If the claimant couldn't, the overpayment is not recoverable
- 2.34 If the overpayment is classified as an Admin delay, the overpayment is recoverable. This is because all overpayments of HB are recoverable except certain official errors. As the LA has made a decision that the overpayment was not caused by a mistake and is therefore not an LA official error, the overpayment is recoverable.
- 2.35 An LA might decide an overpayment that was caused by a delay in processing should be classified part as Admin delay and part as LA official error. This might be, for example, because they decide that they could not have processed the change of circumstance within a certain period, for example within two weeks of receiving all of the information, given the workloads on their benefit processing teams and therefore those two weeks of the overpayment should be classified as Admin delay.
- 2.36 Then if the overpayment continued beyond those two weeks they might decide that from that point onwards the delay was due to a mistake, that is, there was an error in that they omitted to process the change when in fact they could have. The overpayment should therefore be classified as an LA official error from that point.
- 2.37 The decision as to whether the overpayment is an LA official error or Admin delay must be made by the LA based on the individual circumstances of each case. If the claimant appeals against the overpayment decision, for example the LA has classified the overpayment as an Admin delay and the claimant thinks that it was caused by an official error, the LA must be able to justify their decision. It should also be noted that if the LAs decision is that the overpayment is recoverable because it is not an official error, a tribunal or a court might take a different view. There should therefore be a record of the decision, outlining why the delay in processing the change of circumstance was not caused by a mistake made by the LA.

Example 1

On 19 February 2019 the claimant informs the LA that their contracted hours have increased, which will take effect from 11 February 2019. Full evidence is provided.

The claimant's next pay day is 4 March 2019, in respect of the period 4 Feb 2019 to 10 Mar 2019.

As the LA has a backlog, due to staff sickness, the change is not processed until 7 March 2019 causing an overpayment for the period 11 February 2019 to 10 March 2019.

The LA classifies the overpayment as follows: 11 February 2019 to 3 March 2019 Claimant error
4 March 2019 to 10 March 2019 Admin delay

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

Example 2

Whilst reviewing a case on 23 October 2019 the LA notices that the wages have been incorrectly assessed since the claim was awarded from 11 February 2019. The reason for this is that the LA has incorrectly calculated the wages. The claimant has not contributed to the error in any way.

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

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

2.38-2.39 Spare

Suspension when further information is needed

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

2.41 The LA will have to decide the classification of the overpayment based on the individual circumstances of each case. The deciding factors are

- has the LA made a mistake, whether in the form of an act or omission?
- has the claimant, person acting on their behalf or the person to whom the benefit was paid, caused or contributed to that mistake, act or omission?

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

Example

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

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

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

- 2.43 The overpayment in the example above would be classified as Claimant error for the first month and then LA official error for the second month. The LA could justify their decision to continue paying benefit for the first month, for hardship not to be caused. Also, it could be argued that the claimant did not provide sufficient information for the LA to be able to process the change of circumstances, so it would be acceptable to classify the first month of the overpayment as Claimant error.
- 2.44 However, after the claimant did not respond to the first request for information and evidence, the LA should have suspended benefit as they knew the claimant had started work and there were issues around conditions of entitlement. They did not know whether the claimant wanted to continue claiming HB. The second month's' overpayment should therefore be classified as LA official error. (If the overpayment was caused by a delay in processing, which the LA decided was not caused by a mistake, whether in the form of an act or omission, some of the overpayment could have been classified as Administrative delay.)
- 2.45 You must apply the normal rules on classifying overpayments, i.e. when an overpayment changes from one classification to another, the subsequent classification will start from the Monday following the reason the classification is being changed.

Example

The LA receives an ATLAS notification from DWP stating that a claimant has ceased receiving JSA(IB) because they have started work. The claimant does not contact the LA. The LA considers an Extended Payment but, as the claimant has not been in receipt of a qualifying benefit for 26 weeks, they are not eligible. The LA decides to continue paying HB whilst they gather further information, because they decide, based on the circumstances of this particular case, that the claimant may face hardship. They write out to the claimant, requesting information and evidence of their new circumstances, including details of their earnings, to calculate in-work HB. They give the claimant one month in which to respond.

At the end of the month the claimant has not replied. The LA does not suspend benefit and writes out to the claimant again, giving them a further month.

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

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

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

2.48-2.49 Spare

Sufficient information provided by a third party

2.50 If the LA has sufficient information for them to be able to process a change of circumstances, irrespective of where that information has come from, any overpayment from the Monday following receipt of that information would be classified as LA official error or Admin delay, depending on whether the delay in processing was caused by a mistake. From the point that the LA has sufficient information, the claimant is no longer contributing to the mistake. This is because nothing further is needed from the claimant.

2.51 If the third party doesn't provide sufficient information, for example when the LA receives an ATLAS notification from DWP stating the claimant has started work, further information would be needed from the claimant and therefore the overpayment would continue to be classified as Claimant error up until the information is received or the claim is suspended.

2.52 This is because the claimant has not:

- satisfied their legal duty to notify changes of circumstances that they might reasonably be expected to know might affect their benefit entitlement

HB Reg 88 & (Pension Credit) 69

- provided the evidence and information needed to process any questions arising out of the claim.

HB Reg 86 & (Pension Credit) 67

The claimant is therefore contributing to the overpayment.

2.53-2.59 Spare

LA official error/Administrative delay subsidy thresholds

2.60 If an LA official error or Admin delay overpayment occurs, there are different rates of subsidy that can be claimed. These rates depend on whether the total amount of LA official error and Admin delay overpayments exceed a certain threshold.

2.61 Currently the thresholds expressed as a percentage of total correct payments are:

- Lower threshold is 0.48%
- Upper threshold is 0.54%.

2.62 Benefit expenditure (known as 'total specified subsidy' in [The Income-related Benefits \(Subsidy to Authorities\) Order 1998](#)) is defined as benefit payments for which subsidy is payable. This includes:

- Rent Rebates
- non-Housing Revenue Account (non-HRA) Rent Rebates
- Rent Allowances and incorporates
- any backdating that has been properly undertaken.

2.63 Where total value of LA official error and Admin delay overpayments:

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

Example

If the LAs total benefit expenditure for the relevant year was £34,475,000 and the total value of LA official error and Admin delay overpayments is:

- less than or equal to £165,480, the LA can claim 100% subsidy on all their LA official error and Admin delay overpayments
- equal to or between £165,481 and £186,165, the LA can claim 40% subsidy on all of their LA official error and Admin delay overpayments
- greater than £186,165, the LA cannot claim any subsidy for their LA official error and Admin delay overpayments.

Subsidy Easement

- 2.64 In accordance with current procedure, where an LA is waiting for further information to process a change, there will usually be no subsidy penalty until the customer responds with sufficient information. However, where an LA is waiting for further information and has reason to believe the claimant is being overpaid, it may consider suspending payment in whole or in part to reduce the risk of a future overpayment occurring. See paragraph 2.70 onwards of this Guide for more information about how an LA may ensure it doesn't contribute to the creation of overpayments.

Example 1

- LA receives a referral with sufficient information to reassess a claim on the 7 October 2019
- Subsidy easement runs until 4 November 2019
- LA processes the referral on the 22 October 2019
- The overpayment is not treated as LA error

Example 2

- LA receives a referral with sufficient information to reassess a claim on the 7 October 2019
- Subsidy easement runs until 4 November 2019
- LA processes the referral on the 27 November 2019
- The overpayment is treated as LA error from the Monday following the 4 November 2019 (i.e. 11 November 2019)

Example 3

- LA receives a referral with insufficient information to reassess a claim on the 7 October 2019
- Subsidy easement runs until 4 November 2019
- LA writes to the customer for further information on 9 October 2019
- Customer responds with all information on 16 October 2019
- LA processes the referral on 22 October 2019
- The overpayment is not treated as LA error

Example 4

- LA receives a referral with insufficient information to reassess a claim on the 7 October 2019
- Subsidy easement runs until 4 November 2019

- It is not clear whether the claimant is being overpaid so the LA writes to the customer for further information on 16 October 2019
- Customer responds with all information on 15 November 2019
- LA processes the referral on 27 November 2019

2.65-2.69

Departmental official error overpayments

100% subsidy

Nil subsidy for recovered Departmental official error overpayments

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

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

HB Reg 100 & (Pension Credit) 81

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

2.72 A Departmental official error overpayment is only recoverable when the person affected could, at the time of receipt of the payment or any notice relating to that payment, reasonably have been expected to realise that it was an overpayment.

2.73 Recovered Departmental official error overpayments, or any part of a Departmental official error overpayment which is recovered, are not eligible for subsidy.

2.74 It is not necessarily a Departmental official error if DWP fails to pass information on to LAs regarding changes in the claimant's circumstances. This is because the claimant has a duty to report any changes that may affect their entitlement to HB to the LA that administers their benefit. Even if a claimant has notified DWP of a change, they still have a duty to report it to the LA. An overpayment arising after DWP has notified the LA may be classified as LA official error or Admin delay, because once the LA is aware of a change they are expected to act on it. However, this will all depend on the information that is sent by DWP. If further information is still needed from the claimant, they are still contributing to the overpayment and therefore the overpayment would be classified as Claimant error.

2.75 There are however exceptions to the regulations that stipulate that a claimant must notify the LA of a change of circumstances, e.g. In and Out of Work (IOW) Processes and claimants in receipt of Pension Credit (PC).

2.76-2.79

In and Out of Work Processes

2.80 The HB regulations have been amended, so that in certain circumstances, claimants can discharge their duty of reporting they have started work to the LA by reporting it to the appropriate DWP office, (if a telephone number has been provided for that purpose).

HB Reg 88 & (Pension Credit) 69

2.81 When the claimant telephones DWP to notify a move into work, DWP will conduct an interview and simultaneously complete an into work statement (IWK4). DWP will advise the claimant about the evidence they need to send to the LA and confirm the request for evidence has been made on the IWK4. Once the telephone call is completed the IWK4 is sent immediately to the LA by secure email.

2.82 If the IWK4 doesn't arrive, or there is a delay in the IWK4 arriving at the LA, but there is a record of the claimant reporting that they have started work using the IOW process and the claimant has provided sufficient information to enable the LA to process the change, any overpayment would be classified as Departmental official error from the Monday following the claimant notifying DWP. This is because the claimant has satisfied their legal duty of reporting the change of circumstance to the appropriate office and providing sufficient information and evidence.

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

Example

Claimant receiving JSA telephones the number published by DWP to report they have started work.

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

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

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

2.84-2.89

Claimants in receipt of Pension Credit

2.90 There are certain changes of circumstances that a claimant who is also in receipt of Pension Credit (PC) can report to DWP and by doing so, have satisfied their duty of reporting the change to the LA. In these cases, the LA is reliant on receiving the information from DWP.

- 2.91 If a pensioner reports a change of circumstances on time to DWP, and that change reduces their PC, which then reduces their entitlement to HB, the LA would only take the change into account from the Monday following receipt of the information from DWP (normally receipt of an ATLAS notification or the date the PC reduces, whichever is the later).
- 2.92 If a pensioner delays in reporting a change of circumstances to DWP, and that change reduces their entitlement to PC, which then reduces their entitlement to HB, the LA would take the change into account from the Monday of the benefit week from which the PC reduced. The overpayment would be classified as Claimant error from the date of change to the end of the benefit week in which the change was notified to DWP. It would then be classified as Departmental official error from the following Monday until the end of the benefit week in which DWP sends the information to the LA.
- 2.93 If a pensioner has a change of circumstance that increases entitlement to PC, which then reduces their entitlement to HB, the LA would take the change into account from the Monday following receipt of the information from DWP (normally receipt of an ATLAS notification) or the date PC increases, whichever is the later. It does not matter if the pensioner delayed in reporting the change to DWP.

HB (Pension Credit) Reg 60

Example

A claimant in receipt of PC has an increase to their occupational pension on 1 January 2019.

They report it to DWP on 23 January 2019.

DWP recalculates the PC and sends an ATLAS notification to the LA on 6 February 2019, showing that PC decreased from 7 January 2019.

The LA calculates an overpayment, which is classified as Claimant error from 7 January 2019 to 27 January 2019.

It is then classified as Departmental official error from 28 January 2019 to 10 February 2019.

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

2.95-2.99

Technical overpayments

Nil subsidy

- 2.100 Definition: Technical overpayment means an overpayment when rent rebate is credited in advance of entitlement for a particular period, where a change of circumstance or a recoverable overpayment causes that entitlement to be removed or reduced.

- 2.101 Any rent rebate or overpayment that starts or continues from the benefit week following the week in which the change is disclosed to the LA or in which the LA identifies the change, is a Technical overpayment.
- 2.102 However, the classifications of LA official error and Admin delay take priority over the Technical overpayment classification. This is because LA official errors and Admin delays are genuine overpayments on which a decision on recoverability is required, whereas Technical overpayments are just adjustments to the rent account. The benefit credited for the period of the Technical overpayment can be taken back out of the rent account. For example, if a claimant reports a change and the LA makes a mistake or delays in processing the change, which results in rent rebate being credited against the claimant's account for a longer period than should have been, this would be an LA official error or Admin delay overpayment and not a Technical overpayment.
- 2.103 The Technical overpayment classification should also be used for a rent rebate case. This is because rent rebate is paid by reducing the rental liability. If the rental liability has ceased, there is nothing to reduce and therefore there is nothing to recover from the customer. The rent rebate that has been credited after the liability ceased can be taken back out of the rent accounts. Subsidy is not payable for rent rebate credited after liability has ceased.

Section 134 and Section 138 SSAA1992

2.104-2.109

Rent Rebate

Rental liability ceases

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

Example

Mrs C claimed HB on 31 December 2018

Mrs C vacates her council property and moves out of the LAs area on 8 August 2019

The housing Department closes her rent account and therefore ceases her rental liability from 19 August 2019.

Mrs C notifies the benefit section of the change on 22 August 2019, and they reassess the claim from 26 August 2019

There is an overpayment of HB from 12 August 2019 to 25 August 2019

The HB overpayment is classified as follows

12 August 2019 to 18 August 2019 = Claimant error overpayment

19 August 2019 to 25 August 2019 = Technical overpayment

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

Example

Mr B dies on 3 July 2019 and the HB section is informed on 25 July 2019.

The HB claim is terminated from 8 July 2019, which leads to an overpayment of HB from 8 July 2019 to 28 July 2019, which they classify as Other.

Mrs B later applies for and is given the tenancy for the property back to the 15 July 2019. She claims HB and it is backdated to the beginning of the tenancy (15 July 2019).

As Mrs B took over the tenancy from the 15 July 2019, the housing department terminates Mr B's tenancy from 15 July 2019.

HB section can therefore take the rent rebate credited to Mr B's rent account back out of the account from the 15 July 2019.

The overpayment is classified as follows

8 July 2019 to 14 July 2019 = Other/Claimant error

15 July 2019 to 21 July 2019 = Technical overpayment

2.112-2.119

Indicative Rent Level overpayments

100% subsidy

Nil subsidy for recovered Indicative Rent Level (IRL) overpayments

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

2.123-2.129

Duplicate overpayments

25% Subsidy

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

More than one overpayment classification

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

Is an overpayment recoverable?

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

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

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

Was the overpayment caused by a mistake?

- 2.133 Was the overpayment caused by a mistake, whether in the form of an act or omission, by the LA, DWP, HMRC or a person acting on their behalf?

- 2.134 If the answer to this question is no, then the HB or CTB (Council Tax Benefit) overpayment is legally recoverable. The overpayment should not be classified as an official error. However, just because an overpayment is recoverable does not mean that it must be recovered.

- 2.135 If the answer to this question is yes, you must go on to consider the next question at para. 2.136.

Did anyone contribute to the mistake?

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

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

2.138 If the answer to this question is no, the HB or CTB overpayment should be classified as an official error. You must go on to consider the next question at paragraph 2.139

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

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

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

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

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

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

2.140 Also, could the people affected reasonably have:

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

2.141 'Reasonably have been expected to realise' can be interpreted in the persons affected favour, if:

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

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

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

When should a recoverable overpayment be recovered?

- 2.144 Any recoverable overpayment may be recovered at the LAs discretion. If you establish an overpayment is recoverable, it does not mean you must recover it.
- 2.145 The decision that an overpayment is recoverable must be separate from the decision to recover it. Due regard should be given to the circumstances relating to individual cases, when deciding whether or not recovery is appropriate.
- 2.146 An LA is not obliged to make recoveries. Each individual case should be decided on its own merits, i.e. a blanket policy for recovery must not be applied. An LA that acted unreasonably or irrationally could be subject to judicial review.
- 2.147 An LA must satisfy itself that it is reasonable to make recovery in every individual case.
- 2.148-2.999