

Housing Benefit and Council Tax Benefit Circular

Department for Work and Pensions

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HB/CTB A11/2009

ADJUDICATION AND OPERATIONS CIRCULAR

WHO SHOULD READ	All Housing Benefit (HB) and Council Tax Benefit (CTB) staff
ACTION	For information
SUBJECT	Dealing with changes in circumstances

Guidance Manual

The information in this circular does not affect the content of the HB/CTB Guidance Manual.

Queries

If you

- want **extra copies of this circular/copies of previous circulars**, they can be found on the website at www.dwp.gov.uk/housingbenefit/user-communications/circulars
- have any queries about the
 - **technical content of this circular**, contact Carol Foster-Middleton
Email: carol.foster-middleton@dwp.gsi.gov.uk
 - **distribution of this circular**, contact Corporate Document Services Ltd Orderline
Email: orderline@cds.co.uk

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Dealing with changes in circumstances

Introduction

- 1 Due to a recent increase in the number of local authorities (LAs) asking for clarification on the rules and procedures relating to change events, this circular sets out to remind Housing Benefit (HB) and Council Tax Benefit (CTB) staff about
 - when changes notified by telephone should be confirmed in writing
 - the provision to allow customers at least one month to provide information or evidence before making a decision on their award, and how this affects performance times
 - how to classify an overpayment following a change of circumstances

Reporting changes

- 2 HB/CTB legislation requires that customers should advise the LA's designated office about any relevant change of circumstances. A relevant change is generally one that could affect
 - entitlement to HB/CTB
 - the amount of HB/CTB, or
 - the method of payment

Note: The designated office is the office or offices chosen by the relevant LA for receiving claims to Housing or Council Tax Benefit. Unless a claim is made wholly by telephone or internet or via the Department for Work and Pensions (DWP), it must be made to the LA's designated office. HB/CTB forms should include the postal address of the LA's designated office(s).

- 3 Generally, a customer is required to report a change in writing. However, since December 2006, some customers have been allowed to use the telephone to
 - make a claim, and
 - report any changes

Notifying changes by telephone

- 4 *HB/CTB Circular A18/2006* gave details about how claims and change notifications could be submitted by telephone. LAs who want to offer a tele-claim service must provide and publish a telephone number for this purpose.

- 5 Where LAs have arrangements to accept claims by telephone, they can also receive notification of any changes of circumstances by the same route, if they wish. The law then allows them to accept changes notified by telephone without the automatic need for written confirmation. LAs still have the right to ask individual customers to confirm a change in writing, if they think it is appropriate.

Note: Where an LA does not provide a tele-claim service, customers may still telephone to notify an intention to claim.

Processing times for changes reported by telephone where tele-claiming is offered

- 6 If an LA provides a tele-claim service, the processing time for any change notified by telephone starts from the day the change is reported.

Example 1

The customer telephones the LA on February 6 to report the departure of a non dependent from their household. The LA takes details of the change and reviews the award. A decision to supersede the award is made on February 7, amending the amount of benefit.

Processing time: Two days. Count starts on February 6 and ends on February 7, the date of the decision to supersede the award.

Processing times for changes reported by telephone where no tele-claim service is offered

- 7 If an LA does not accept claims by telephone, customers must usually report any changes in writing. In these circumstances, the processing time starts from the day written notification is received.
- 8 Some customers will inevitably use the telephone to report a change, even though they should do so in writing. If this happens, ask the customer to confirm the details in writing and, if appropriate, request any further information or evidence needed. Where a customer fails to confirm details of a relevant change in writing despite having been asked to do so, their award can be suspended pending further enquiries. But see *para 11* about overpayments for more advice.

Example 2

The customer telephones the LA on February 6 to report a small increase in earnings. The LA asks the customer to confirm this in writing as change notifications cannot be made by telephone. At the same time, the LA also requests evidence of the new earnings. As the reported change is small, and to avoid hardship to the customer, benefit is not suspended. The customer provides the wage slip on February 16. A decision to supersede the award is made on February 19, amending the award.

Processing time: Four days. Count starts on February 16 and ends on February 19.

Request for further information or evidence

- 9 LAs cannot revise, supersede, or terminate a claim unless the LA has sufficient evidence to make a decision.
- 10 Whether the LA accepts notifications of change events by telephone or in writing, the notification may still need following up with a request for further information/evidence. It will not always be possible for the customer to supply this by telephone – for example, where documentary evidence is needed, such as a bank statement or wage slip. The usual time limits for providing such information or evidence apply, and this should be included in the processing.

Example 3

The customer telephones the LA on February 5 to say their savings have increased as a result of receiving money from an inheritance. The LA is not set up to take change notifications by telephone so the customer is asked to confirm the change in writing and submit a bank statement verifying the new amount of capital. The customer confirms the change on February 10 but is unable to get a bank statement immediately. The LA allows one month for the customer to provide this evidence. The customer replies on March 10 and a decision to supersede their award is made immediately.

Processing time: 29 days. Count starts on February 10 – the date written notification was received – and ends on March 10.

Overpayments

- 11 *Regulation 11 of the Housing Benefit (HB) and Council Tax Benefit (CTB) (Decision and Appeals) Regulations 2001* states that an LA **may** suspend HB or CTB, in whole or in part, if there is an issue regarding the conditions of entitlement on a claim or if the LA suspects an overpayment is occurring. As the word ‘may’ is used, this means the decision to suspend is discretionary. Therefore if an overpayment occurs, it is not necessarily an LA official 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.
- 12 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 customer, person acting on their behalf or the person to whom the benefit was paid, caused or contributed to that mistake, act or omission?

- 13 In a case where the customer reports a change of circumstances, but does not provide sufficient information and the LA has not suspended benefit, a decision will have to be made on whether the LA were justified in not suspending the benefit and whether the customer 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 customer.

Example 1

The customer writes to the LA telling them the date they have started work. They do not give the LA any other information and they do not say whether they want to continue claiming HB. The LA considers an Extended Payment but, as the customer 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 customer may face hardship.

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

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

- 14 The overpayment in example 1 would be classified as Claimant error for the first month and then LA official error for the second month. The LA could justify their decision to continue paying benefit for the first month, in order for hardship not to be caused. Also it could be argued that the customer 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.
- 15 However, after the customer did not respond to the first request for information and evidence, the LA should have suspended benefit, as they knew the customer had started work and there were issues around conditions of entitlement. They did not know whether the customer wanted to continue claiming HB. The second months' overpayment should therefore be classified as LA official error. (If the overpayment was caused by a delay in processing, which the LA decided was not caused by a mistake, whether in the form of an act or omission, some of the overpayment could have been classified as Administrative delay.)

- 16 It must be remembered that the normal rules on classifying overpayments must be applied, 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 2

The LA receives an ETD from the DWP stating that a customer has ceased receiving JSA(IB) because they have started work. The customer does not contact the LA. The LA considers an Extended Payment but, as the customer 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 customer may face hardship.

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

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

- 17 The full overpayment in example 2 would be classified as Claimant error because the customer did not inform the LA that they had started work, which they have a duty to do under HB Regulation 88. The customer therefore contributed to the overpayment. An overpayment cannot be classified as an official error if the customer has contributed to it.
- 18 An LA should not have a blanket policy of always suspending or never suspending benefit. Each case should be considered on its own merits and a decision to suspend should be based on the particular circumstances of that case. The LA must consider the welfare of the customer, 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.

Further queries

- 19 For any queries relating to
- **overpayments**, please email
Jane.Autherson@dwp.gsi.gov.uk
 - **telephone claiming**, please email
HB-CTB.claimsandpayments@dwp.gsi.gov.uk
 - **revisions, superseding decisions, suspension and termination of awards**, please email
DMA-Office-Support-L@dwp.gsi.gov.uk
- 20 For further information about **processing times**, there are a number of related Frequently Asked Questions on the DWP website at
<http://www.dwp.gov.uk/housingbenefit/performance-value-for-money/faq-2.asp#change>