

# Housing Benefit and Council Tax Benefit Circular

Department for Work and Pensions

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## HB/CTB A15/2009

### ADJUDICATION AND OPERATIONS CIRCULAR

<b>WHO SHOULD READ</b>	All Housing Benefit (HB) and Council Tax Benefit (CTB) staff. All staff who deal with overpayments
<b>ACTION</b>	For information
<b>SUBJECT</b>	HB overpayments and excess CTB issues <ul style="list-style-type: none"><li>• Debt Relief Orders (DROs)</li><li>• CTB 'non-residency'</li><li>• Administrative delay</li><li>• Reporting change of circumstances to different departments in the LA</li><li>• Classification of overpayments</li></ul>

### Guidance Manuals

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

The information in this circular **does affect** the content of the **HB/CTB Overpayments Guide**. Please annotate this circular number against *paras 1.30, 2.10, 2.35 to 2.43, 2.46, 2.55, 2.73, 2.74, 3.40, 7.180 to 7.226, 7.300- 7.304*.

The information in this circular **also affects** the content of the **HB/CTB Subsidy Guidance Manual**. Please annotate this circular number against *Section 4: Overpayments*.

## Queries

If you

- want **extra copies of this circular/copies of previous circulars**, they can be found on the website at <http://www.dwp.gov.uk/local-authority-staff/housing-benefit/user-communications/hbctb-circulars/>
- have any queries about the
  - **technical content of this circular**, contact Jane Autherson  
Email: [Jane.Autherson@dwp.gsi.gov.uk](mailto:Jane.Autherson@dwp.gsi.gov.uk)
  - **distribution of this circular**, contact Corporate Document Services Ltd Orderline  
Email: [orderline@cds.co.uk](mailto:orderline@cds.co.uk)

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## Debt Relief Orders

### General information

- 1 Debt Relief Orders (DROs) were introduced by the Tribunals, Courts and Enforcement Act 2007 and appear at section 108 of, and schedules 17, 18 and 20 to, that Act. The secondary legislation, which is SI 2009/457 – ‘The Debt Relief Orders (Designation of Competent Authorities) Regulations 2009’ and SI 2009/642 – ‘The Insolvency (Amendment) Rules 2009’ were laid before Parliament in March 2009 and came into force on 6 April 2009.
- 2 DROs are suitable for people with relatively low liabilities, little or no surplus income and no realisable assets with which to make contributions to creditors. If people do have assets or there is a possibility of an improvement in their financial circumstances, a DRO may not be appropriate.
- 3 In contrast to other forms of debt relief, DROs are delivered in partnership with debt advisors, primarily from the advice sector, eg Citizens Advice Bureau. Representatives from the advice sector act as ‘approved intermediaries’ and assist debtors in making their application for a DRO to The Insolvency Service, via an online application form. For an advisor to become an approved intermediary they must apply to a ‘competent authority’ to act as such.
- 4 A ‘competent authority’ is a body designated by the Secretary of State for the purpose of granting approvals to individuals to act as intermediaries. It is the competent authority, not the Insolvency Service, who will then decide whether to grant an individual the authorisation to act as an intermediary.
- 5 There are certain requirements, which must be satisfied for the debtor to be able to apply for a DRO. These are
  - the debtor must be unable to pay his/her debts
  - the debtor’s total liabilities must not exceed £15,000 (not including unliquidated or excluded debts)
  - the debtor’s total gross assets must not exceed £300 (however, there are certain items that are disregarded, such as a car up to the value of £1000)
  - the debtor’s disposable income, following deduction of normal household expenses, must not exceed £50 per month
  - the debtor must live in England and Wales, or in the last three years have been resident or carrying on business in England and Wales
  - the debtor must not have been subject to a DRO within the last six years, and
  - the debtor must not be involved in any other formal insolvency procedure at the time of application for a DRO, such as
    - an undischarged bankruptcy order
    - a current Individual Voluntary Arrangement
    - a current Bankruptcy Restrictions Order or Undertaking
    - an interim order
    - a current Debt Relief Restrictions Order or Undertaking

- 6 If there is a pending debtor's bankruptcy petition, but the debtor has not been referred to the DRO procedure by the court as a more suitable method of debt relief, the debtor will not be eligible for a DRO.
- 7 If there is a pending creditor's bankruptcy petition against the debtor, but the debtor has not obtained the creditor's permission for entry into the DRO process, the debtor will not be eligible for a DRO.
- 8 If a creditor has information to indicate that the debtor does not meet the criteria, they can provide this information to the Official Receiver, who may then after consideration of the objection, revoke the DRO if it is appropriate to do so.

### **How a DRO will be made**

- 9 DROs are applied for online, with an approved intermediary helping to complete the application. Only an intermediary can actually submit the application to The Insolvency Service.
- 10 Upon receipt of the application and payment of the fee (currently £90.00), the Official Receiver is able to make the order, administratively, without the involvement of the court. The Official Receiver is able to refuse to make an Order or can choose to delay the decision pending further information from the applicant.

### **Effects of a DRO**

- 11 During the period that an order is in force, the debtor will
  - be protected from enforcement action by the creditors included in the application
  - be discharged from those debts at the end of the period (normally 12 months from the date of the order)
  - be obliged to provide further information to, and co-operate with the Official Receiver
  - inform the Official Receiver of any improvement in their financial circumstances. Should this be sufficient to allow them to make contributions to their creditors, the Official Receiver will need to consider whether to revoke the DRO
- 12 As with other forms of personal insolvency, a DRO debtor's credit rating will be affected and there will be civil and criminal penalties for those who abuse the system.
- 13 The Official Receiver is able to investigate, either on his own account or as the result of an objection from creditors, whether the debtor has provided a full and accurate account of their financial affairs. The Official Receiver is able to revoke the order, if, for example the debtor has understated their assets or income. Failure to provide an accurate account may result in civil and criminal sanctions.

### **Restrictions that will be placed on a person who has a DRO**

- 14 For the duration of the DRO, the debtor will be subject to similar restrictions as those in bankruptcy, and their details will be on the publicly available Individual Insolvency Register (available at [www.insolvency.gov.uk](http://www.insolvency.gov.uk)).

- 15 The restrictions include the following
- the debtor must not obtain credit of £500 or more, either alone or jointly with another person, without disclosing that they are subject to a DRO to the lender
  - the debtor may not carry on a business (directly or indirectly) in a name that is different from the name under which they were granted a DRO, without telling all those with whom the debtor does business, the name under which they were granted a DRO
  - the debtor may not be involved (directly or indirectly) with the promotion, management or formation of a limited company, and may not act as a company director, without the court's permission (this is a court with insolvency jurisdiction), and
  - the debtor will not be able to apply for a DRO if they have previously been subject to one within six years
- 16 Furthermore, the Official Receiver will be able to apply to the court for a Debt Relief Restrictions Order, similar to the Bankruptcy Restrictions Order, which will, for debtor's who are dishonest or culpable, extend the period of restriction, for up to 15 years.

### **Queries relating to the DRO process**

- 17 If you have any queries on the DRO process, you can contact The Insolvency Service Enquiry line

Tel: 0845 602 9848 (9am – 5pm Monday to Friday)

Email: [insolvency.enquiryline@insolvency.gsi.gov.uk](mailto:insolvency.enquiryline@insolvency.gsi.gov.uk)

### **Queries relating to a specific, issued DRO**

- 18 If you have an enquiry in relation to a specific, issued DRO, please contact the DRO Unit at

The Debt Relief Order Unit  
Insolvency Service  
1<sup>st</sup> Floor, Cobourg House  
Mayflower Street  
Plymouth  
PL1 1DJ

Tel: 01752 635200

Fax: 01752 635222

Email: [DRO.Unit@insolvency.gsi.gov.uk](mailto:DRO.Unit@insolvency.gsi.gov.uk)

## Notifications from the DRO Unit

- 19 The DRO Unit issues all notifications in relation to DROs. This includes notifications to creditor organisations when a DRO is issued or in the instance when it is revoked. If you would like to provide The Insolvency Service with a central email or postal address to take receipt of these notifications, please provide the following information
- a Local Authority name
  - b Handling department name, telephone and fax number
  - c Full postal address
  - d Email address (if applicable)
  - e Named contact(s)
  - f Named contact(s) email addresses
  - g Named contact(s) telephone numbers
- Please email this information to [DRO.Unit@insolvency.gsi.gov.uk](mailto:DRO.Unit@insolvency.gsi.gov.uk) with a covering explanatory note.
- 20 If you would prefer notifications to be sent electronically to an inbox, the notifications will be **sent as a .pdf attachment to an email that will be encrypted**. The debtor in submitting their application to The Insolvency Service agrees for information to be sent in this way. By providing an email address/inbox to the DRO Unit, it is assumed that the preferred method of communication is via email.
- 21 Please note, if you do not provide this information, notifications will be sent by second class post to the address provided by the debtor scheduling the debt.

## Further information about The Insolvency Service

- 22 If you would like to know more of the work that The Insolvency Service is involved in, or require further information, please see below for more helpful contacts and links.

### The Insolvency Service website

<http://www.insolvency.gov.uk/>

<http://www.insolvency.gov.uk/bankruptcy/alternativestobankruptcy.htm>

### Other Insolvency Service Publications

<http://www.insolvency.gov.uk/guidnaceleaflets/Guides.htm>

## Recovery if an overpayment is included in a DRO

- 23 There is nothing in the legislation which prevents an LA from making deductions, to recover an overpayment during the period of a DRO.

- 24 The relevant HB provisions which allow for the making of deductions from the customer's benefit provides for deductions at source and not a 'claw back' (*R v Secretary of State for Social Security Ex parte Taylor and Chapman and Mulvey v Secretary of State for Social Security*). In other words, the debtor has no right to receive by way of benefit more than the net amount and at no time does the deduction become the property of the debtor. However, the cases cited will not apply where the person comes off benefit, given that the effect of a DRO is to prevent an LA, as creditor, from taking any action to enforce its debts.
- 25 LAs should always take into account a customer's health and financial circumstances when deciding whether to commence deductions and the level of deduction, to avoid causing undue hardship to the customer or their dependants. It must be remembered that a debtor, by definition, who has a DRO has very little surplus income.
- 26 No other methods of recovery can be utilised during the period of the DRO. Any of the overpayment that was included in the DRO, which is outstanding when the DRO is discharged, must be written off.

## CTB 'non-residency'

### Relevant legislation

- 27 The Social Security Contributions and Benefits Act 1992, section 131(3)(a) states  
*'The main condition for the purposes of subsection (1) above is that the person concerned –*  
*(a) is for the day liable to pay council tax in respect of a dwelling of which he is resident'*
- 28 The Local Government Finance Act 1992, sections 2(1) and (2) state  
*'Liability to pay council tax shall be determined on a **daily basis**.....it shall be assumed that any state of affairs subsisting at the end of the day had subsisted throughout the day.'*
- 29 Regulation (Reg) 67(2) of the Council Tax Benefit Regs 2006 states  
*'Subject to paragraph (3), where the change of circumstances is a change in the amount of **council tax payable**, it shall take effect from the **day on which it actually occurs**.'*

### How excess CTB due to non-residency should be classified

- 30 CTB is only payable if a customer is liable for Council Tax (CT) in respect of a property in which he is resident. That liability is determined on a daily basis. Any change of circumstances that affects liability to pay CT is taken into account for CTB purposes, from the day the change occurs.

- 31 If a customer dies they are no longer liable for CT. If a customer moves out of a property they are normally no longer liable for CT (there are exceptions to this, please see *para 33*). The CT liability will cease on the date of death or the date the customer moved out of the property and as the legislation states that the state of affairs at the end of the day is assumed to have lasted all that day, there will be no liability for the full day. The last day of CTB entitlement will therefore be the day before the customer died or moved out of the property.
- 32 As CTB is credited to the CT account for the full financial year, from the date of death or date the customer moved out of the property, to the end of the financial year, there will be a Technical overpayment. This is not a "real" overpayment. The CTB credited to the CT account from the date of death or date the customer moved out, up until the end of the financial year, can be taken back out of the CT account. There is nothing to recover from the customer. The LA does not get any subsidy for Technical overpayments.
- 33 There are instances when a customer is not resident in a dwelling, but they can still be liable for CT, for example the owner of an unoccupied dwelling, which is substantially furnished. If the property is substantially unfurnished it could be exempt from CT for a period of up to six months. However, in the first case the customer would not be entitled to CTB for the property because they are not resident in it, and in the second case there is no entitlement to CTB because the property is exempt from CT.
- 34 If CTB continues to be paid when the customer is not resident in the property, but the customer is still liable for CT, there will be a 'real' overpayment, which will normally be recoverable. If the customer has not reported the change of circumstances to the LA, the overpayment will be classified as Claimant error or possibly Fraud. However from the date the CT liability ceases, the overpayment will become a Technical overpayment.
- 35 Even though a customer may delay in reporting they have moved out of a property, if they are no longer liable for the CT, there isn't a 'real' overpayment from the date the CT liability ceased. There will be a Technical overpayment from that date to the end of the financial year. There is nothing to recover from the customer because the CTB credited to the CT account can be taken back out of the CT account from the date CT liability ceased. The LA cannot claim any subsidy for the CTB taken back out of the CT account (it is a Technical overpayment).

## **Administrative delay**

### **Background**

- 36 From 1 April 2009 a new subsidy overpayment classification was introduced called Administrative (Admin) delay. We issued guidance in *HB/CTB Circular A24/2008*, on when this classification should be used. Since publishing that guidance we have received queries on various issues. We hope this further clarification will therefore be helpful.

- 37 The definition of an Admin delay is
- 'An overpayment which has been caused by the LA continuing to pay incorrect benefit, when they are in receipt of sufficient information to enable them to process the change of circumstances. The delay in processing the change of circumstances was not due to a mistake, whether in the form of an act or omission, made by the LA or an officer acting on their behalf.'*
- 38 So, once an LA receives sufficient information for them to be able to process a change of circumstances, if they do not process that change of circumstances before the customer's next payday, they will have to make a decision on whether the overpayment, **from the Monday following receipt of all the information**, should be classified as LA official error or Admin delay.
- 39 If the LA decides that the delay in processing the change of circumstances was caused by a mistake, for example they feel they had sufficient time to process the change, but didn't, or they put the change of circumstances information to one side and then forgot to process it, then the overpayment should be classified as LA official error.
- 40 If however, the delay in processing the change of circumstances was due to something out of the LA's 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 to classify the overpayment as Admin delay.

## Further clarification

### Recoverability

- 41 The decision of whether a customer could reasonably have been expected to realise they were being overpaid **only** needs to be made on overpayments that have been classified **as official error**. If an overpayment or part of an overpayment is classified as Admin delay, it will be automatically recoverable, even if the customer could not reasonably have been expected to realise they were being overpaid.

### Financial implications

- 42 LAs will not gain additional subsidy by classifying overpayments caused by a delay in processing as Admin delay, rather than LA official error. This is because Admin delays will be treated the same as LA official errors for subsidy purposes. LA official errors and Admin delays will be added together and the subsidy thresholds applied.

- 43 Pre April 2009, overpayments that were caused by a delay in processing would have been classified as LA official error. In the cases where the customer reported a change and provided the relevant information and evidence, the LA could argue that the customer could reasonably have been expected to realise they were being overpaid. This is because the customer's benefit did not change after they had provided the information. The majority of these overpayments would therefore, have been recoverable.
- 44 An LA needs to consider *paras 42 and 43* when deciding which cases should be classified as Admin delay. If all overpayments that have been caused by a delay in processing are classified as Admin delay, irrespective of how long the delay has been, the LA may see an increase in the number of appeals it receives. Regardless of how long the delay in processing has been, customers may still argue that these overpayments were caused by LA official error. As the LA is unlikely to get any extra revenue from these overpayments, they may have to find the money from elsewhere to cover the costs of dealing with the increased appeals.

### **Decision notices**

- 45 An overpayment decision notice must include certain information, for example whether an overpayment is recoverable or not and why there has been an overpayment. If the overpayment is classified as an official error, the decision notice will have to include information about the fact that there has been a 'mistake'. The decision of whether the customer could reasonably have been expected to realise they were being overpaid only needs to be made on official error overpayments and therefore should only be included in decision notices relating to official errors.
- 46 The only overpayment classification that a customer should be told about is 'official error'. Terms such as 'Claimant error' and 'Admin delay' are used in the Subsidy Order, not in the Overpayment Regulations. Telling the customer that an overpayment has been classified as 'Claimant error' or 'Admin delay', could again, lead to increased appeals.

## **Reporting change of circumstances to different departments in the LA**

### **Request for clarification**

- 47 We have been asked to clarify how overpayments should be classified if a customer reports a change of circumstances to a department in the LA, other than the HB and CTB department. We have had caselaw on this matter, which supports our interpretation of the regulations.
- 48 The classification of the overpayment will all depend on the LA's communications. Do the LA's claim forms, letters, leaflets and posters make it clear that claim forms and change of circumstances must be sent to, or reported to, a specific department or address in the LA?

## Legislation

49 HB Reg 88 and CTB Reg 74 state

*'that person shall be under a duty to notify that change of circumstances by giving notice to the **designated office**.'*

HB Reg 2(1) and CTB Reg 2(1) state

*'**designated office** means the office designated by the relevant authority for the receipt of claims to housing benefit (council tax benefit)'*

50 The LA must therefore make their 'designated office' clear to the public. If the LA's communications just state that claim forms and change of circumstances must be reported to the 'council' or the 'local authority', then customers may send claim forms and report change of circumstances to any department in the LA.

## Caselaw

51 In CH/2567/2007, Commissioner Levenson (as he was then referred to) stated

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

## Overpayment classification

52 If an LA does not give details of the 'designated office' and just uses terms such as 'us', 'council' or 'local authority' in its communications, a customer may report a change of circumstances to any department in the LA. They will, however, have satisfied their duty as prescribed by *HB Reg 88* and *CTB Reg 74*. Any overpayment from when the customer reports the change to the LA (irrespective of which department the customer reports the change to), to when the change of circumstances 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).

53 If an LA makes it clear in its communications that a specific department/address is the 'designated office', a customer must report changes of circumstances to that department in order to satisfy *HB Reg 88* or *CTB Reg 74*. If the customer reports a change of circumstances to a different department, any overpayment would be classified as Claimant error up until either the

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

## Classification of overpayments

### Sufficient information provided by a third party

- 54 Guidance was issued in *HB/CTB Circular A11/2009* on dealing with changes of circumstances. This included examples of how overpayments should be classified when a customer and a third party (for example Department for Work and Pensions (DWP)) have reported changes, but sufficient information is not provided.
- 55 We have, however, been asked for clarification of how an overpayment should be classified if a third party has reported a change of circumstances and provided sufficient information for the LA to be able to process the change, but the customer has not been in contact with the LA.

### Caselaw

- 56 In CH/1602/2007, Deputy Commissioner Ramsay (as she was then referred to) stated

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

### Classification of the overpayment

- 57 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 customer is no longer contributing to the mistake. This is because nothing further is needed from the customer.
- 58 If sufficient information is not provided by the third party, for example when the LA receives an Electronic Transfer of Data (ETD) from the DWP stating the customer has started work, further information would be needed from the customer and therefore the overpayment would continue to be classified as Claimant error up until the information is received or the claim is suspended.

- 59 This is because the customer 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* and *CTB Reg 74*), or
  - provided the evidence and information needed to process *'any question arising out of the claim'* (*HB Reg 86* and *CTB Reg 72*).
- The customer is therefore contributing to the overpayment.