

Housing Benefit and Council Tax Benefit

General Information Bulletin

Department for Work and Pensions, 1st Floor, Caxton House, Tothill Street, London, SW1H 9NA
<http://www.dwp.gov.uk/housingbenefit/>

HB/CTB G19/2009

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Contact	Queries about the <ul style="list-style-type: none">• technical content of this bulletin, contact details are given at the end of each article• distribution of this bulletin, contact Corporate Document Services Ltd Orderline<ul style="list-style-type: none">- Email: orderline@cds.co.uk• bulletin in general, contact Kath Murphy<ul style="list-style-type: none">- Email: Kath.Murphy@dwp.gsi.gov.uk
Who should read	All Housing Benefit (HB) and Council Tax Benefit (CTB) staff
Action	For information

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Child Poverty Action Group (CPAG) Court of Appeal decision

- 1 It has been widely reported in the press that CPAG has successfully challenged the Department for Work and Pensions (DWP's) right to recover, under common law, certain types of official error overpayment.
- 2 The Court of Appeal judgement was issued on 14 October 2009 in favour of CPAG, reversing the earlier High Court decision. The Court of Appeal held that the DWP has no right to recover official error overpayments that result from an award of benefit where there has been no misrepresentation or non-disclosure. The DWP are considering the judgement carefully, before deciding how to proceed. One possibility is that the DWP may apply to the Supreme Court seeking permission to appeal the judgement.
- 3 However, the decision does not affect overpayments of Housing Benefit (HB) or Council Tax Benefit (CTB), as the HB and CTB legislation is worded differently. The CPAG decision only affects overpayments of benefits, the recovery of which is governed by section 71 of the Social Security Administration Act 1992 (SSAA 1992). Section 71 states that overpayments of such benefits are only recoverable where there has been a misrepresentation or failure to disclose information.
- 4 Recovery of HB and CTB overpayments is instead governed by sections 75 and 76 of the SSAA 1992. These provisions state that all overpayments of HB and CTB are recoverable, except in the case of overpayments resulting from official error where the customer could not reasonably have been expected to realise they were being overpaid. This means that the customer does not have to have misrepresented or failed to disclose information, for an HB or CTB overpayment to be recoverable from them.
- 5 HB and CTB official error overpayments can therefore still be recovered, except in cases where the customer could not reasonably have been expected to realise they were being overpaid.

Queries

- 6 If you have any queries, please contact: Jane Autherson

Email: Jane.Autherson@dwp.gov.gsi.uk

Tel: 0113 232 7755

Electronic Transfer of HB/CTB Claim Data to LAs Project (e-Transfer Project) National Rollout

- 7 National Rollout of e-Transfer commenced on 28 September 2009 and is scheduled to be completed by the end of November 2009. LAs that are e-enabled now receive electronic LA Input Documents (LAIDs) and LA Claim Information (LACI) in respect of claims to HB/CTB taken by Jobcentre Plus and the Pension, Disability and Carers Service.

- 8 The next phase of the project (Phase 3) introduces the Employment and Support Allowance (ESA) electronic LACI (e-LACI). From Monday 26 October 2009, five LAs (North Lanarkshire, Aberdeenshire, Tameside, Doncaster and Wyre Forest) were e-enabled to receive ESA e-LACIs. All other LAs will initially receive the ESA LACI in a paper format. Once the project is satisfied that the e-LACIs are being transferred successfully to the five sites listed above, we will begin rolling these out to the remaining LAs.
- 9 The e-LAID and e-LACI files will initially be transferred in PDF format, which can be uploaded into a Document Management System or printed off in the LA. In the final phase of the project (Phase 4) we plan to also send the files in XML format allowing the files to be loaded directly into LAs back office processing systems.

Contact

- 10 If you have a query about this subject, please e-mail the project at QH.HBINFLOWSPROGRAMME@DWP.GSI.GOV.UK

Maintaining HB/CTB services during the swine flu pandemic

Background

- 11 During the summer the number of new swine flu infections decreased, and the majority of cases were mild. However, the arrival of autumn has seen an increase in the number of flu-like illnesses, and it is possible that the rate of infection will continue to rise in the coming months. Current advice about the pandemic can be found on the Department of Health's website at <http://www.dh.gov.uk/en/PublicHealth/Flu/Swineflu/index.htm> Further information can also be found on the Health Protection Agency's website at <http://www.hpa.org.uk/>
- 12 Since the pandemic's potential for future disruption is uncertain, LAs will in any case be reviewing their business continuity plans to minimise the risk to services posed by abnormally high levels of staff absence. This note is simply intended to provide additional information to consider when drawing up contingency arrangements for maintaining HB/CTB services in the event of a resurgence in flu infections.

Administering HB/CTB: the legal position

- 13 Arrangements can be flexible because the legal framework is itself flexible. For example, benefits staff will be aware that the principal regulations governing HB and CTB specify that claims must be decided '*within 14 days ... or as soon as reasonably practicable thereafter*'. So LAs affected by a swine flu outbreak to the extent that they could not reasonably be expected to decide claims within 14 days would not of course be in breach of any statutory duty if they took longer to do so.

- 14 The regulations do stipulate that a payment on account must be made to a customer who is a private tenant if the claim cannot be decided within 14 days. While some LAs may have incorporated the use of payments on account into their contingency plans as a way of mitigating a threat to service delivery, we expect the majority will simply carry on organising their work in a way which avoids having to make this type of payment.
- 15 Provisions in the Social Security Administration Act 1992 permit arrangements to be made for one LA to deliver another's functions. However, such arrangements would of course be highly disruptive and would be worth considering only in very extreme circumstances. So such arrangements would probably be unsuitable for the relatively short period of difficulty that a swine flu outbreak would be likely to cause.

Working with Jobcentre Plus and the Pension, Disability and Carers Service

- 16 The majority of HB/CTB claims are made alongside claims for benefits administered by DWP. LAs are thus dependent on Jobcentre Plus and Pension, Disability and Carers Service (PDCS) to have robust business continuity arrangements in place to ensure that HB/CTB claims information continues to be effectively gathered and forwarded to LA benefits teams.
- 17 Both Jobcentre Plus and PDCS have reviewed their contingency plans to ensure that they can deliver key services in the event of a swine flu outbreak among their staff. Depending on the severity or extent of the outbreak, either agency might need to prioritise work, but there should be no serious knock-on effect on LAs' ability to deliver their HB/CTB services unless staff absences significantly exceed current planning assumptions. Nevertheless, good liaison arrangements between HB/CTB services and local Jobcentre Plus and PDCS will be paramount, and it will be important that all parties review their plans to ensure that such arrangements are up to date.

Working with other organisations

- 18 LAs may wish to discuss their contingency measures, and any issues raised in this bulletin, with registered social landlords, other landlord groups and welfare rights organisations. Clearly, the overall objective for both DWP and LAs will be to provide reassurance about what arrangements are in place to avoid unnecessary queries and pressure.
- 19 Those LAs that have contracted their HB/CTB services out will of course be working closely with their contractors on contingency plans and all authorities will want to consider keeping the range of other third parties they deal with fully informed.

Queries

- 20 If you need any further information please contact Richard.Grennan@dwp.gsi.gov.uk