

The Overpayment Recovery Guide (ORG)

Last Review: February 2012

Note: Deleted sections have been removed as they are obsolete or have been updated by specific Process and Procedures Circulars.

The Overpayment Recovery Guide (ORG)

Section One - The Overpayment Process

Introduction

General

Debt Management

Initial Overpayment Awareness

Potential Debt

Overpayment Discovered

Recording the Overpayment

Recovering an Overpayment

1.50 DELETED

Section Two - The Types of Overpayment

General

Recoverable Overpayment

Overprovision

Christmas Bonus

Official Error

Error By Third Party

Overpayment Due To More Than One Cause

Advance Payment Of Benefit

Out Of Hours Payments

Section Three- Decision Making

General

Overpayment Decision Required

Overpayment Decision Not Required

Section Four - Recording Action

General

Recording Action

Special Action

Section Five - Recovery Action

General

Issue Of The Overpayment Notice

Serious Risk to Health

Recoverable Overpayment (Types M & F)

Recording Multiple Debtors

Recovery from Arrears Of Benefit - Schedule 2K - Underpayments of benefit identified on DM overpayment case

Recovery From Third Party Payments (IS/JSA(IB)/ESA(IR))

Full Payment Made / Recovery Closed

Section Six- Repayment By Instalments

General – Off Benefit Instalments

Acceptable Offer

Unacceptable Offer

Full Repayment

Enforcement

Section Seven - Recovery Suspended

General

Qualifying Conditions

Recovery By Deduction Not Available

Decision Disputed

In Prison

Asylum Seeker

Gone Abroad

Compensation order awarded from fraud prosecution.

Section Eight - Recovery by Deduction from Benefit

General

Payment from which no deduction should be made

Voluntary Deductions: Non-Recoverable Overpayments

Voluntary Deductions: Recoverable Overpayments

Compulsory Recovery – General

Compulsory Recovery from Partner's Benefit

Compulsory Recovery Rates – General

When to calculate the compulsory recovery rate using Flowchart 1b(i) - (iii) (Income-Related Benefit Flowchart):

Calculating Compulsory Deductions from Income-Related Benefits (in accordance with paras 8.23 to 8.24)

Circumstances that lead to an 'F' classification

Lower Rate for customers in Residential Care (on a permanent basis)

Customer in Hospital

Third-Party Deductions in Place

Social Fund Deductions

Disregarded Income

The 25% Rule (a different consideration to Third Party Deductions)

Calculating Compulsory Deductions from Non Income-Related Benefits (in accordance with para 8.25)

Establishing Recovery

When both Customer and Partner have Recoverable Overpayments

Award Less than the Rate of Deduction Calculated

Setting deductions

Requesting Deductions by QB30

Recovery from War Pension

Debtor Claims Hardship

Action at Uprating

Deduction Rates Reviewed

Application of SofS discretion not to recover

Recovery Ends

Section Nine - Off Benefit

Section Ten - Compensation Orders and Confiscation Orders

Notification that a Confiscation Order has been made.

Notification that a Compensation Order has been made.

Confiscation Order/Compensation Order has been paid.

Section Eleven - Overpayment Decision Disputed

General

Appeal to the Upper Tribunal

Decision Revised on Appeal

Section Twelve - Secretary Of State's Discretion – Including Waiver

General

The Types of Discretion Applicable

The Delegation of Authority

Abandonment

Section Thirteen - Administrative Penalty

Background

Collusive Employers

Initial Action – all cases

Calculation of the Penalty

Recording Action

Related Overpayment Revised

Action to be taken by CRCs when associated overpayment is revised.

Action to be taken by the Debt Fraud Champion when notification is received.

Section Fourteen - Social Fund Overpayments

Background

General

Social Fund overpayment Action

SofS Discretion/Hardship

Section Fifteen - Recovery After Death

General

The Personal Representative

Initial Action

Outstanding Debt

Irregular Encashment

Section Sixteen - Recovery From Deceased's Estate

Introduction

The Personal Representative

Treasury Solicitor Appointed

Action To Register An Estate In Scotland

Action to Register an Estate in England and Wales

Income Related Benefit in Payment at Date of Death

Initial Contact with the PR (England and Wales)

Checking The Estate

No Claim Required

Outstanding debt(s) transferred to RFE/RFE(S) for recovery

Undeclared Assets Discovered

Information not provided by the PR

Overpayment Calculation

Overpayment Recovery Decision

Benefit abuse by an Appointee or other person (Fraud)

Claim Against the Estate

Dispute by the PR

Estate Distributed – This Question will have already been asked on the breakdown letter.

Time Limits

Late Claim Against the Estate

Claim Paid in Full

Instalment Offer

Enforcement Action

When to consider enforcement

When to Consider Abandonment

Closure Action

Section Seventeen - Mortgage Interest Direct

General

The MID Scheme

Overpayment Directly Attributable to the Lender

Overprovision

Reports to Housing Support Division

Non-Recoverable Overpayments

Section Eighteen - Debtor Insolvent

Section Nineteen - Recovery Of Local Authority Debt

Request for Recovery

Debt Management Action

Method Of Recovery

Rate Of Deduction

Financial Hardship and Application Of Discretion

Recovery By Deduction Actioned

Deductions Cannot Be Made

Deductions made from IS/JSA, ESA or SPC

Priority Of Recovery

Recovery Ends

Excess Payment Made To LA

Section Twenty – Direct Payment

Background

Payment Of Benefit by DP

Payment by Cheque

Overpayment Materially Due To Way In Which Direct Payment System Operates

Small Overpayment limit

Evidence needed to support both the recoverability decision and completion of the

Secretary of State certificate

Overpayment Due to Customer Error

Overpayment due to official error

Nominated Accounts - [Impact of R (IS) 5/03]

Replacement and Original Payment Credited

Section Twenty One - Referral For Guidance

Section Twenty Two - Overpayment Recovery Checks

Section Twenty Three - Management Information

Introduction

Management Information

Appendix 1 – List of Contacts

Appendix 2 - Prescribed SS Benefits/Payments

Appendix 3 - Legislation for the Overpayment Process

Appendix 4 - Priority of Deductions- From Income Related Benefit

Appendix 5 - Rate of Deduction

Appendix 6 - When to Suspend Recovery

Appendix 7 - Secretary of State Discretion, Abandonment and Write Off

Appendix 8 - Criteria for Enforcement

Appendix 9– DELETED

Appendix 10 – DELETED

Appendix 11 – DELETED

Appendix 12 – DELETED

Appendix 13 - Overpayment Interest Indicators

Appendix 14 - Consideration of Hardship

Appendix 15 – When to take account of SF loan recovery

Appendix 16 - Flowcharts

Section One - The Overpayment Process

Introduction

- 1.1** The information contained in this guide provides advice about the overpayment recovery process. Please note that policy requirements are mandatory, and that where specific Secretary of State [SofS] discretion is delegated to local units, only that level of discretion may be applied. The information contained in this section should only be seen as a general overview of the overpayment process.

The guidance for overpayment referrals from the businesses to Debt Management can be found at the following links:

1.2 DELETED

General

- 1.3** To ensure a better understanding of the overpayment process, there follows a general overview from;

- a) initial awareness; to
- b) closure of the debt.

- 1.4** The term 'overpayment' refers to any incorrectly made Social Security (SS) payment, whatever the reason.

Debt Management

- 1.5** Debt Management (DM), have responsibility for, amongst other areas of debt, the process relating to the recording and recovery of:

- a) Overpaid SS payments.
- b) Administrative Penalties (AdPens) agreed during a Fraud investigation.
- c) Administer the Eligible Loan Deduction Scheme (ELS)and Integration Loans Scheme (ILS)
- d) Social Fund loans (off benefit recovery only)

Initial Overpayment Awareness

- 1.6** All staff involved with benefit processing need to be aware of the potential for benefit overpayment, and its variety of causes e.g.;

- a) incorrectly supplied information;
- b) system inputting error;
- c) system software error;
- d) a deliberate alteration to an Instrument of Payment (IoP).

Potential Debt

Where there is evidence to suggest a loss to public funds it should to be investigated.

Where an overpayment has occurred, the award should be reassessed (where appropriate) and the overpayment details submitted to Debt Management in accordance with the appropriate procedure for the benefit unit concerned.

1.7

Certain cases will require clerical evidence to be submitted with the overpayment referral. These include:

- Overpayment due to increase in capital
- Overpayment due to Misrepresentation
- Overpayment due to Cheque Irregularity

See paragraph 59 of P&P 25/07; and P&P 36/07 paragraph 19.

- Clerical evidence is no longer required on IOP overpayments. [P&P 41/08]

1.8 DELETED

1.9 DELETED

1.10 There is an accounting requirement to control the overpayment process until the loss is properly recorded. Any referral received without all the required details must be returned to the processing unit for them to provide the missing evidence/information in line with the relevant Partnership Agreement and related circulars.

Checking

1.11

All processes are subject to accuracy and quality checks.

Returns

1.12

Management Information and statistics are collected through the Debt Manager computer system and Business Objects. Additional information may be collected through clerical/off-line records and counts.

Overpayment Discovered

ROLES AND RESPONSIBILITIES

1.13

Jobcentre Plus are responsible for:

- a) identifying cases where there is a potential overpayment
- b) correcting the current benefit award
- c) re-assessing the award for the period of the potential overpayment
- d) determining what was paid and what should have been paid
- e) notifying customer of all changes in benefit entitlement

- f) referring to DM along with any necessary supporting evidence
- g) identifying vulnerable customers and delivering overpayment notifications to those vulnerable customers
- h) providing a detailed explanation of reason for overpayment when customer signposted from DM to Jobcentre Plus.

DM are responsible for:

- i) Issuing Jobcentre Plus with a weekly schedule of clerical referrals received
- j) calculating and classifying the overpayment
- k) deciding how much is recoverable and from whom it is recoverable
- l) notifying the overpayment, or where requested, providing Jobcentre Plus with an overpayment notification to deliver by hand
- m) taking recovery action.

Where an overpayment is discovered, the SofS directs the action that is required to be taken. This may include;

- a) take no action;
- b) calculate the overpayment;
- c) decide who is responsible for the overpayment and who it should be recovered from, i.e. Decision Making;
- d) the method of recovery;
- e) not recovering the overpayment.

No Overpayment Action Required

1.14 Where the following conditions are met, no overpayment action should be taken:

Advance Payments: (e.g. public holidays, Post Office (PO) closures, or by authority of the department) where the customer did not know of the change in circumstances at the time the payment was made or was cashed.

NOTE: JSA Advance Payments, where a customer subsequently fails to sign, are an exception to this rule and must be referred to Debt Management.

Overpayment action required

1.15

Where none of the above conditions apply, the overpayment must be referred to Debt Management. (See paragraph 1.13 above)

1.16 DELETED

1.17 Overpayment action normally includes more than one of the following processes:

- a) Registration
- b) Classification

- c) Calculation
- d) Decision making
- e) Recovery
- f) Suspension
- g) Write off
- h) Closure

Calculation of the overpayment

1.18 The relevant benefit award should be reassessed where necessary, and details referred to Debt Management by the appropriate benefit unit. Debt Management will then use the revised/superseded award details to calculate the amount of the overpayment.

1.19 DELETED

Third Party Payments

1.20 Where there are deductions from benefit for Third Party Payments (TPP) e.g. fuel direct, the overpayment calculation should normally be based on the gross benefit paid. In specific circumstances reimbursement action may be taken by the TPP section by;

- a) requesting a refund;
- b) adjusting further payments to the Third Party.

Where such recovery action proves effective, it is treated as a repayment (see Section Five - Recovery Action; P&P 13/06; Partnership Agreement - JCP)

Classification

1.21 Once an overpayment is calculated, it is classified by cause e.g. mistake (M) by the customer, fraud (F), official error O/E, etc. This is to provide Management Information (MI).

Decision Making

1.22 Guidance for Decision Making is contained in the Decision Makers Guide

1.23 Not all overpayments require an overpayment decision. However, a decision is normally required where an overpayment has been caused by;

- the customer;
- the failure of the Prevention of Duplication of Payments (PoDoP) process;
- an interim payment;

1.24 Overpayment decisions are recorded on Debt Manager with intervention on appropriate cases from Specialist Decision Makers (SDM)

1.25 The SDM must consider all the facts and apply any appropriate SS legislation and case law to reach a decision.

1.26

The overpayment decision can be produced clerically on form LT54, or more usually by Debt Manager. A copy of the decision is not normally issued to the customer. However, the notification letter does state the outcome of the decision.

NOTE: Potential Prosecution cases require the decision notice to be signed and dated. This action should be taken by the SDM at the adjudication stage. Copies can then be obtained via Business Objects.

Form QB32 - (Offsets Under POR Regulation 13(1)(b))

1.27 If there is a recoverable overpayment of a contributory benefit, the Decision Maker needs to consider whether any additional income related benefit would have been payable to the person overpaid. This is not the same as calculating notional entitlement. There must have been an actual claim to the income related benefit – see paragraph 1.29 below.

1.28 For the purposes of this and subsequent sections income related benefit means Income Support, Jobseeker's Allowance (Income Based), State Pension Credit, and Employment and Support Allowance (ESA(IR)).

1.29 To consider any additional income based benefit a claim for that benefit must have been made and either

- i) Both the contributory benefit and the income related benefit were in payment at the time of the overpayment; or
- ii) The income related benefit was claimed but was not in payment merely because the contributory benefit exceeded entitlement.

Details of any additional income related benefit are obtained by issuing form QB32 to the relevant benefit paying section.

Completion of QB32

1.30 Debt Management complete Part 1 Page 1, Page 2 and Part 2 Page 3 to show details of the income related benefit recipient and the details of the overpayment.

1.31 Notify the income related benefit section of the reason for the overpayment and provide any details so they can correctly reassess the claim.

On Return of QB32

1.32 On return of the completed QB32 the decision maker should reduce the recoverable overpayment by additional amount of income related benefit shown on the QB32 as an offset under Social Security (Payments on account, Overpayments and Recovery) Regulations 1988 Regulation 13 (1) (b).

1.33 Where the overpayment of contributory benefit overpayment is reduced to nil this is known as a technical overpayment. In such cases there is no overpayment and no additional recording action needs to be taken.

1.34 DELETED

Recording the Overpayment

1.35 An overpayment, whatever the cause, is a loss to public funds. It must be accounted for by the Department, and be accurately recorded (brought to account).

1.36 Each debt is recorded under the identity of the customer overpaid, or in specified circumstances under the identity of the person from whom recovery will be sought (e.g. where a stolen giro is cashed fraudulently by another person). Details are normally recorded on Debt Manager, otherwise it is recorded clerically. See P&P 31/08 Clerical Overpayment recording.

1.37 Where an overpayment is not considered for recovery action, it is normally written off at the time it is recorded. However, a voluntary offer to repay is normally accepted and recovery put in to operation.

Management Information

1.38 Details of the recorded overpayments are required regularly for management and accounting purposes

1.39 The information is provided by;

- a) benefit;
- b) classification;
- c) amount.

1.40 In order to provide a more complete picture, additional information is provided about;

- a) the amount repaid;
- b) the amount of outstanding debt;
- c) the amount of debt written off.

The information is mostly from Debt Manager, obtained via Business Objects and supplemented by any additionally required information clerical records.

Recovering an Overpayment

1.41 The SofS has an obligation to ensure that, wherever possible, an overpayment is recovered. This applies to overpayments that are recoverable under Social Security legislation (RUSSL) and those recoverable under Common Law. (non-RUSSL)

1.42 Overpayments recoverable under Common Law (C/L)

Any customer who could reasonably be expected to have known that they have been overpaid, should be asked for repayment.

1.43 Examples of where recovery is normally requested are;

- a) the normal weekly payment was £50, customer was paid £500;
- b) customer was paid twice for the same period

in both cases it is considered reasonable to expect the customer to have known that the wrong amount of benefit had been paid.

Method of Recovery

1.44 There are a variety of methods by which recovery can be achieved. The policy is to use the most cost effective method.

Recovery from benefit

1.45 The SS legislation allows the recovery of a recoverable overpayment of benefit, from that, or another, benefit in 'prescribed' circumstances. It lists the benefits (known as prescribed benefits) this action may be applied to. It also provides rules on how that action can be applied. (see Appendix Two - List of Prescribed Benefits and Appendix Three - Overpayment Legislation).

1.46 An overpayment of a benefit which is not 'prescribed' cannot lawfully be recovered from a 'prescribed' benefit without the customer's consent.

Other methods of recovery

1.47 Where the debtor;

- a) has sufficient money, they are expected to repay the overpayment by a lump sum;
- b) does not have the money, is not in receipt of benefit, and makes a reasonable offer to repay by regular payments, their offer of instalments is normally accepted;

c) refuses to repay, is not in receipt of benefit, and enforcement action is appropriate, the case is considered for enforcement action through the Civil Courts.

Suspension of Recovery

1.48 Where the circumstances of the debtor satisfy specific criteria, recovery action can be suspended until they no longer apply (See Section 7 – Recovery Suspended).

Closure of the Debt

1.49 Apart from full repayment, a debt can be closed for any of the following reasons (although only if the appropriate delegation of authority is given, see Section Twelve - SofS Discretion);

- no voluntary repayment for a non-recoverable debt. Debt is ‘written-off’;
- recovery no longer considered viable, e.g. too small an amount outstanding. Debt is ‘abandoned’;
- Recovery of the debt is ‘waived’ at the discretion of the SofS as advised by Operational Policy, Advice and Correspondence (OPAC);
- where there are ‘special circumstances’ which have led to a direction by the SofS. This can be anything from anticipating revised legislation to a computer system fault.

1.50 DELETED

Section Two - The Types of Overpayment

General

2.1 All overpayments need to be classified according to cause for information purposes. There are six types, or causes, to choose from:

1. Mistake by Customer / Recoverable Overpayment (M).
2. Fraud (F).
3. Overprovision, recoverable under Common Law (C/L).
4. Official Error (O/E).
5. Error by third party (O).
6. Direct Payment after Death (DPAD)

2.2 Each type will now be dealt with in greater detail.

Recoverable Overpayment

2.3 There are several causes for what is classed as a recoverable overpayment, dependant upon the circumstances and the appropriate legislation:

- a) Mistake by the Customer, whether innocent or deliberate.
- b) Fraud, where it is admitted.
- c) Interim Payment, pending a full award.
- d) Prevention of Duplication of Payment (PoDoP) Failure.

2.4 All the overpayments in the above group require a recoverable overpayment decision before recovery action is taken under SS legislation (see Section Three - Decision Making).

Mistake By The Customer

2.5 This is normally caused by the customer, or their representative, filling in their claim form incorrectly or failing to report a change in circumstances on time. It does not matter whether it is an innocent or deliberate mistake.

For recording purposes this type of overpayment is classified: **M**

Fraud

2.6 Where an investigation into fraud proves that it has been committed, the resulting overpayment would be a mistake (M) unless the debtor;

- a) makes an admission after caution of deception or fraud for the purpose of obtaining benefit. (this may be a written admission or an oral admission as part of a taped interview);
- b) agrees to pay an Administrative Penalty and the agreement has not been withdrawn;
- c) is successfully prosecuted for the offence in the criminal court;

in which case the classification changes from M to F.

For recording purposes this type of overpayment is classified: **F**

Interim Payment

2.7 An interim payment is normally only issued where there is a delay in determining a new weekly entitlement to benefit. On applying for the payment the recipient signs an undertaking to repay any amount paid above the amount of the eventual benefit award. Where there is an excess payment, legislation lays down that it is recoverable.

Please note that under the new referral process, Debt Management do not require sight or a copy of the signed customer declaration for overpayments of this type.

For recording purposes this type of overpayment is classified: **M**

Prevention of Duplication of Payment process failure

2.8 Administrative arrangements exist to avoid a customer being paid two benefits which overlap each other. This occurs when there is an entitlement to two benefits for the same period, where one of the benefits is taken into account when calculating the award of the other benefit.

2.9 The process in place to avoid this happening is known as the Prevention of Duplication of Payments (PoDoP) Where the process fails, legislation allows any overpayment caused by the failure to be recovered from the customer. It also applies where any income that is taken into account when calculating the award of a benefit is paid late and we were unable to take the income into account against the benefit for the correct period.

For recording purposes this type of overpayment is classified: **M**

Example 1:

IS is awarded and paid pending a decision on Incapacity Benefit (IB) claimed at the same time;
Once awarded, the IB is taken fully into account by IS;
IB is awarded and arrears are paid to the customer in full without recovery of the IS paid for the same period.

The resulting overpayment would be a failure of the PoDoP process and would be classified as a PoDoP overpayment.

NOTE: the PoDoP process also applies to late payments of certain types of income.

Example 2:

Customer is in receipt of Pension Credit;
The customer receives a late payment of occupational pension, including arrears for a previous period;
Pension Credit has been in payment without the occupational pension being taken into account.

The resulting overpayment would be a failure of the PoDoP process and would be classified as a PoDoP overpayment.

Recoupment failure - recoverable overpayment decision made

2.10 Where an Industrial Tribunal makes an award against an employer for unpaid earnings due to a former employee, the employer is required to pay the award to the employee. Certain benefit awards take final earnings into account as prescribed income. Therefore where benefit is paid and needs to be recovered, the employer must meet the Department's claim before paying the award to the former employee. JCP refer these cases directly to CCCU Washington for recovery.

2.11 Where the claim is not met a recoverable overpayment may be the result.

For recording purposes this type of overpayment is classified: **M**

Overprovision

2.12 SS legislation does not account for instances where a payment is made over and above the amount of the benefit award. Although such an overpayment is not recoverable under benefit legislation, repayment can be considered under Common Law.

For recording purposes this type of overpayment is classified: **C/L**

Example:

- customer awarded IS;
- weekly benefit award £50;
- payment made for £500;
- customer could reasonably be expected to know that too much IS has been paid.

Christmas Bonus

2.13 The SofS can make payments outside of SS legislation. Such payments are termed ex-statutory. An example of this type of payment is:

Christmas Bonus

As this is not a prescribed benefit, benefit legislation does not apply. Where recovery is considered appropriate, it would have to be under common law.

2.14 In the case of Christmas Bonus, it is only paid where there is a qualifying benefit in payment for the appropriate week. Repayment is only requested where there is also an accompanying recoverable overpayment of the qualifying benefit, and there is no other qualifying benefit in payment for the appropriate week.

For recording purposes this type of overpayment is classified: **C/L**

Official Error

2.15 This is an overpayment caused by an error or omission by an officer of the Department, or another Agency or Department. It applies to statutory and ex-statutory payments.

For recording purposes this type of overpayment is classified: **O/E**

Example:

- IS currently in payment;
- customer reports receipt of part time earnings on time;
- change not actioned for four weeks and further payments released;
- overpayment for those four weeks due to an omission by an officer of the Department.

Error By Third Party

2.16 This is an overpayment caused by an error or omission by a third party, not acting on behalf of the customer.

For recording purposes this type of overpayment is classified: **O**

Example;

- customer awarded and paid IS. The award included a mortgage payment, with an interest rate of 6.5%, paid direct to the customer
- mortgage provider notifies the Department that the interest rate has increased to 6.75%;
- IS award reviewed and paid at the new rate;
- five months later the mortgage provider verifies that the rate of interest had only increased to 6.6%, not 6.75%;
- the overpayment is due to the incorrect information from the mortgage provider.

Overpayment Due To More Than One Cause

2.17 Where an overpayment contains periods which have to be classified under different types, each type has to be shown separately in the overpayment calculation.

Example:

- customer reports change four weeks late (M overpayment);
- change not actioned for a further two weeks (O/E overpayment);
- overpayment recorded as M for four weeks and O/E for two weeks.

Advance Payment Of Benefit

2.18 In certain circumstances it can prove helpful to pay benefit in advance of the due payday. For example;

- a) to avoid delay in postal delivery over the Christmas period;
- b) planned computer system shutdowns.

2.19 Where benefit is paid in advance, the benefit paying office will decide whether there has been an overpayment and refer cases to Debt Management where appropriate. It will then be for Debt Management to determine whether there has been a recoverable overpayment according to normal principles of failure to disclose / misrepresentation. See P&P circular 18/08 Clarification of causal link.

2.20 Where the customer is aware of the change before they received, or cashed their benefit payment, and they;

- a) fail to report the change; or
- b) report it late;

any benefit overpaid due to that change should be classed as a mistake by the customer, and must be actioned as such.

Example:

- jobseeker successful in job interview, job to start in ten days;
- does not report change until after the start date;
- receives two weeks payment in advance due to holiday period, one week after the interview, payment period extends after start date;
- jobseeker cashes the payment without enquiring whether it is still payable;
- resulting overpayment was caused by a mistake on the customer's part.

Out Of Hours Payments

2.21 An Out of Hours Payment (OOHP) is normally;

- a) an Interim Payment; or
- b) a Social Fund (SF) Crisis Loan.

2.22 As such an OOHP is not a type of overpayment. However, there could be an overpayment of the subsequent award following an interim payment, which must be actioned according to the guidance appropriate to those payments.

2.23 Please note that where incorrect action is taken when paying an OOHP, any resulting overpayment may not be recoverable.

Section Three- Decision Making

General

- 3.1** This guidance provides only a general outline of the decision making process. The guidance provided by Decision Making and Appeals Leeds (DMA Leeds) part of Legal Group is contained in the Decision Makers Guide(DMG) and must be followed.
- 3.2** Decision making applies only to those benefits prescribed under SS legislation. These are listed at Appendix Two - List of Prescribed Benefits, together with details of payments which are not prescribed and redundant benefits.

Overpayment Decision Required

- 3.3** Not all overpayments require an overpayment decision. Only those overpayments caused by;
- a) a mistake by the customer, their representative, or another person (including fraudulently obtaining payment) (classified M or F);
 - b) the failure of the Prevention of Duplication of Payments (PoDoP) process;
 - c) an interim payment;

would normally require an overpayment decision.

- 3.4** A decision could include some or all of the following aspects;
- a) whether there is an overpayment;
 - b) what the cause is and who is responsible;
 - c) the period overpaid;
 - d) the amount of the overpayment;
 - e) whether it can be offset against an underpayment, for the same period, of another benefit;
 - f) whether it is recoverable;
 - g) who it can be recovered from.
- 3.5** There is no legislative requirement for a particular format or content for a decision, although it must contain sufficient detail to satisfy the decision making guidance. Unfortunately this does not provide sufficient detail where there is a need to prove a debt in Court. Therefore the administrative requirement for all recoverable overpayment decisions is that they must be;
- a) fully legible; and
 - b) refer to the relevant legislation

NOTE: there is an additional requirement for decisions in potential prosecution cases to be signed and dated. This action should be taken by the Specialist Decision Maker.

3.6 The decision can be produced clerically, on form LT54, or by Debt Manager. A copy of the decision is not normally issued to the customer. The notification does however state the outcome of the decision.

Who to make the overpayment recoverable from

3.7 In normal circumstances it will be the customer who makes the mistake, so any recoverable overpayment would be made recoverable from them.

3.8 Where the customer has died, any recoverability decision, made after the date of death, should be made recoverable from the person responsible for the estate of the deceased customer. This can only be done once probate, letters of administration or confirmation have been sought by the legal representative.

3.9 Where the fault lies with a third party (e.g. appointee), the decision may make the overpayment recoverable from them, the customer, or both of them. Guidance in the Decision Makers Guide must be followed.

3.10 DELETED

PoDoP failure

3.11 A PoDoP failure also needs an overpayment decision. These are recoverable under legislation. The DM needs to decide;

- a) whether there is an overpayment;
- b) the cause;
- c) the period overpaid;
- d) the amount of the overpayment;
- e) who it can be recovered from.

3.12 DELETED

3.13 DELETED

3.14 DELETED

Appointees and Power of Attorney

3.15 Where an appointee (or person holding Power of Attorney in certain circumstances) fails to act properly on behalf of the customer, i.e. they are the person who made the misrepresentation or failed to disclose a change in circumstances, then they could be held responsible for the overpayment and be named in the decision. A person with Power of Attorney is only liable to disclose

on behalf of the customer where they have been appointed as the Personal Acting Body by the Secretary Of State. The guidance contained in the DMG should be followed for such cases. See DWP - Advisers - Agents, Appointees, Attorneys and Deputies Guide.

If a customer has died with an outstanding overpayment at death, and there is an appointee, the appointee will only remain responsible for the overpayment after the death of the customer, **if** they were named in the decision, **and** the overpayment is recoverable from them as well as the customer, **then** we can contact the appointee for repayment.

Children

3.16 There is legally no reason why a recoverability decision cannot be made against a person under 16 years of age where they have failed to disclose or misrepresented a material fact.

3.17 This does not apply to situations such as DLA paid for a child, as in these cases a person is appointed to act and they would be responsible for any overpayment (see paragraph 3.15 above (Appointees and Power of Attorney)). Where paragraph 3.16 (Children) applies, the person from whom the overpayment is recoverable is under 16 years of age special action needs to be taken as follows:

- Where the child is below the age of 14 do not notify the debtor. Refer the case to DM Operational Policy, Advice and Correspondence (OPAC) for advice.
- Where the child is aged 14 or over, issue the notification to the debtor and take normal recovery action, if no repayment is made await child reaching 16 before pursuing recovery.
- Any offer to repay received from the parents or guardian should be accepted. However, the parents or guardians should not be notified of the overpayment due to Data Protection issues.

Adjudication Officers and their decisions

3.18 Prior to the introduction of decision making in 1999, claims were decided by Adjudication Officers (AO) who were independent of the SofS. Their decisions are still valid under current legislation. Any reference to a DM (Decision Maker) and their decision also applies to an AO and their decision.

Overpayment Decision Not Required

3.19 Certain types of overpayment should not be referred to the Decision Maker. Where they;

- a) are not recoverable under current policy guidance;
 - Small Recoverable Overpayment; (SMOPs)

- Error by the Post Office;
 - Irregular Encashment, where the culprit can not be identified;
- b) cannot be recovered under legislation;
- Official Error;
 - Overprovision;
- c) do not relate to a prescribed benefit, e.g. Christmas Bonus.

The Small (Recoverable) Overpayment Limit

3.20 Every action the department takes involves a resource cost. In view of this there is a level below which it is not considered cost effective to apply the full overpayment process, including recovery. For overpayments this level is known as the 'small overpayment limit'.

3.21 DELETED.

3.22 DELETED.

3.23 DELETED.

NOTE: the following paragraphs refer to overpayments involving clerical instruments of payment. While the majority of customers are now paid by Direct Payment, clerical payments are still issued in certain circumstances and the following guidance therefore still applies.

Error by the Post Office

3.24 Occasionally Post Office Counters Limited (POCL) make errors when cashing an IoP. Some past instances are;

- a) unauthorised advance encashment of a payable order;
- b) encashment of an obviously altered IoP;
- c) an IoP encashed, despite a 'stop' notice to cancel the payment having been received by that PO.

3.25 There is an agreement in place between the department and POCL, whereby they reimburse the department for such errors. Guidance on such occurrences should be available locally.

Irregular Encashment

3.26 This is where someone cashes an IoP to which they are not entitled. For example;

- a) IoP reported as lost, stolen, or destroyed, but is later found cashed and the customer has received a replacement payment as well as this payment ;
- b) details on the IoP are altered and the customer receives more than the original amount on the IoP;

c) an IoP is cashed by a person other than the payee without the due authority having been given;

3.27 In appropriate cases, the Fraud Investigation Service refer the overpayment to Debt Management. The recoverability decision will normally be on the grounds that the person misrepresented their entitlement to that payment. If the person disputes their involvement, the Decision Maker should take this into account before making the decision.

3.28 Should a recoverable decision be given, follow the normal recovery process based on that decision.

3.29 Overprovision/Official Error

3.30 An overpayment decision cannot be given for such an overpayment. However, it is established under common law that the SofS has the right to request repayment in such circumstances.

Section Four - Recording Action

General

4.1 All overpayments, whether recoverable or not, and Administrative Penalties (AdPens) need to be recorded for accounting and management purposes. They should be recorded by;

- a) inputting the required information onto Debt Manager; or
- b) clerically in the approved manner.

4.2 Debt Manager should always be used to record an overpayment unless it cannot accept that overpayment, due to system limitations; e.g. no NINO.

Nationally sensitive cases are recorded on Debt Manager and recovery dealt with at Contact Centre Trafford.

Recording Action

4.3 DELETED.

4.4 DELETED

4.5 DELETED

4.6 DELETED

Recovery Action To Be Taken

4.7 DELETED
4.8 DELETED
4.9 DELETED
4.10 DELETED
4.11 DELETED

Special Action

4.12 Special action may be required in specified circumstances. The instructions and recording requirements for such action will be notified by separate circular or bulletin.

Where an exercise covers more than one area of operation, two or more circulars may be issued.

Section Five - Recovery Action

General

5.1 Whatever the type of overpayment, where recovery action is considered appropriate a letter must be issued to notify the customer of the;

- a) benefit overpaid;
- b) period overpaid
- c) amount overpaid
- d) reason for the overpayment;
- e) whether seeking voluntary recovery or otherwise;
- f) whether there is the right of appeal;
- g) how to pay

Issue Of The Overpayment Notice

5.2 The letter notifying the details of the overpayment should normally be issued by post.

Recoverable overpayment – Home Visits – Issue of Overpayment Notification by Hand

5.3

Many customers will understandably find the receipt of an overpayment notification worrying. The issue of overpayment notifications by visit is however intended for exceptional cases. This procedure is used when it is known that the customer is vulnerable.

a) When a home visit [HV] is required this will be indicated on the overpayment 'e-referral'. Recovery Agents **must not, under any circumstances**, override the decision for a HV unless there is agreement from the referring business.

5.4 The object of issuing the letter by this method is to ensure that;

- a) the debtor is made aware of the overpayment in a sensitive manner;
- b) they will not be alone when learning of the overpayment;
- c) the subject of the expected repayment can be discussed;

with the intention of effectively delivering the overpayment notice without unduly distressing the debtor, leading to the successful recovery of the debt.

5.5 Where the case is referred for a visit a schedule of the overpayment calculation should be provided for the interviewer, together with a copy of any other relevant document(s), in order that they have enough information to answer any basic questions about the overpayment and its recovery. Any details relating to the customer's health or circumstances, including details relating to family members, should also be provided.

Non-recoverable overpayment – vulnerable customers

5.6 Notification must not be made where the debtor's circumstances fall within the above conditions. In these cases, we should write off the debt rather than attempting recovery.

Serious Risk to Health

5.7 Where the interviewer identifies that there is a serious health risk to the customer if the decision letter is issued (e.g. the customer appears so ill that they might have a stroke, heart or serious panic attack if the letter is issued), they should not issue it on that occasion.

5.8 If the risk to health is considered so great that the decision letter should not be issued, even on a later occasion, then a full report should be submitted to Debt Management CRC who will forward details to OPAC to consider the next course of action (see Section Twenty-one - Referral for Guidance).

- 5.9 DELETED**
- 5.10 DELETED**
- 5.11 DELETED**
- 5.12 DELETED**
- 5.13 DELETED**
- 5.14 DELETED**
- 5.15 DELETED**
- 5.16 DELETED**
- 5.17 DELETED**

Recoverable Overpayment (Types M & F)

5.18 Where a Decision Maker makes an overpayment recoverable, they also decide the person(s) from whom the SofS may seek recovery. Should the SofS consider recovery action is to be taken, a notice letter should then be issued to advise the debtor(s) about the overpayment, how recovery will be effected, and notify them of their statutory rights (reconsideration/appeal).

Single debtor

5.19 Where the overpayment decision only names one person, then any recovery action will be taken against them.

Multiple debtors

5.20 Should more than one person be named in the overpayment decision, the SofS then has to decide how recovery action should continue. This would depend on the circumstances of the overpayment and the method(s) of recovery available.

5.21 Where the customer awarded the benefit gained a financial advantage from the overpayment even though the decision may name someone else (e.g. the appointee), recovery should first be considered from the customer. This normally applies even where all those named may have benefited to a lesser or greater degree. Where recovery from the customer proves ineffective, recovery action may then be considered against anyone else named in the decision.

5.22 Where all those named in the decision benefited equally, or to a lesser or greater degree, the SofS may consider that recovery action should be for a pro-rata amount against each debtor e.g. 50/50; 60/40. Should recovery from one of them prove ineffective, then recovery action may be taken for any outstanding portion of the debt against the other(s). It is important in such cases that each person is notified of their potential liability to repay the whole amount and although we are currently only seeking a proportion of the total debt from them we reserve the right to request repayment of the outstanding balance for the whole overpayment at a later date.

5.23 Another deciding factor could be the ease of recovery;

- a) available capital;
- b) disposable assets;
- c) in receipt of benefit.

However this criteria should normally only be considered where recovery action against one or more of the debtors proves ineffective, and one or more of the remaining debtors satisfy the above.

5.24 It should be noted that a debtor may benefit from an overpayment in other ways than by the receipt of money, for example;

- a) free rent or lodgings;
- b) provided with goods, TV, video, etc;
- c) taken on trips, holiday.

5.25 Even where recovery action may not be taken against all those named in the decision, all of them have to be sent a notice letter. Those debtors not selected for recovery action should be advised that recovery is suspended pending the outcome of recovery action against the other debtor(s). This then leaves the Department with the option of recovery from them at a later date, should initial recovery action prove ineffective.

Recording Multiple Debtors

5.26 Where the recording system cannot be used to record all the debtors, use the Debt Manager Diary facility to record others named in the decision but are not yet subject to recovery action.

5.27 DELETED

5.28 DELETED

5.29 DELETED

5.30 In most cases Debt Manager will automatically issue the notice letter. If a clerical notice letter is needed, the agreed templates should be used.

5.31 DELETED

5.32 DELETED

5.33 DELETED

5.34 DELETED

5.35 DELETED

5.36 DELETED

5.37 DELETED

5.38 DELETED

5.39 DELETED

5.40 DELETED

5.41 DELETED

5.42 DELETED

5.43 DELETED

5.44 DELETED

5.45 DELETED;

5.46 DELETED .

Recovery from Arrears Of Benefit - Schedule 2K - Underpayments of benefit identified on DM overpayment case

5.47 Current legislation allows the SofS to recover any recoverable overpayment for a prescribed benefit from any arrears of that or any other prescribed benefit.

Exceptions

5.48 Do not recover from arrears when they are for;

a) the full weekly benefit entitlement for the start of a claim, where the award is delayed for administrative purposes (e.g. benefit claimed, award delayed pending verification of details, award made, arrears paid up to date usually for the first few weeks of the award);

b) arrears that have accrued as a result of benefit being suspended.

Notification to the debtor

5.49 When arrears have been recovered and deducted from the total amount of the overpayment, the customer must be notified.

5.50 Where the debtor replies stating that the withholding of the arrears would cause financial hardship, consider the case on the facts presented. You need to be able to answer the following questions:

a) Was the customer aware that these arrears would be payable? If not, do not consider their request further. If yes, consider the following;

b) Has the customer provided reasonable evidence that the arrears are to be used for something essential, or, has the customer borrowed money or entered into a credit agreement, to purchase something essential, in anticipation of receiving the arrears? If so, consider refunding a sufficient amount of the arrears for the essential expense.

It should be noted that there is no right of appeal against a lawful decision not to pay arrears that have been/are to be recovered.

5.51 DELETED

Recovery From Third Party Payments (IS/JSA(IB)/ESA(IR))

5.52 Where the benefit overpaid included third party payments (TPP) in specific circumstances recovery may be made from a third party by;

a) adjustment to ongoing payments e.g. direct payment to a fuel board; or

b) request for repayment;

by the local TPP section.

5.53 DELETED

5.54 DELETED

Full Payment Made / Recovery Closed

5.55 Where the debtor has repaid the full amount, any amount recovered from the third party should be set against the overpayment. Any excess amount paid by the debtor should be refunded to them. Where recovery has been made by deduction from benefit the excess recovery may be used against any other recoverable debts outstanding.

5.56 DELETED

Multiple Debtors

5.57 Where the overpayment is recoverable from more than one person, all those named should be informed when a debt is closed.

5. 58 Taxable benefits – Special Action Required

Certain Social Security benefits are taxable, namely Incapacity Benefit and State Pension, also contribution based Jobseeker's Allowance and Employment Support Allowance. For overpayment purposes no special action is required for State Pension.

5.59 Incapacity Benefit is actually paid net of any tax; tax is deducted from the gross award and paid over to the Inland Revenue. Where there has been an overpayment of taxable benefit the taxable element is determined at the calculation stage and a refund of the overpaid tax is requested from Inland Revenue.

5.60 Where an Incapacity Benefit payment is being closed following full or partial recovery the taxable element the DWP has paid over to the tax office will have to be amended to take account of the repaid debt.

5.61 The action to take is:

- a) complete form IB101 (part a may already have been completed by the IB section)
- b) attach a copy of the overpayment calculation
- c) refer the document to the Incapacity Benefit processing unit.

5.62 Jobseeker's Allowance/ESA (both income based and contributory based) are also taxable benefits, however tax is not deducted from the payments. The taxable element of the benefit is merely considered as taxable income received by the customer in that particular tax year and may impact the amount of tax they pay.

5.63 Where a Jobseeker's Allowance/ESA overpayment is being closed following full or partial recovery the taxable income received by the customer will have to be amended to take account of the repaid debt.

5.64 The action to take is

- a) complete form QB33 to show the amount recovered by tax year;
- b) attach a copy of the overpayment calculation;
- c) refer the documents to the Jobseeker's Allowance/ESA processing unit.

Recovery against Special Payments

5.65 Special Payments also referred to as ex-statutory or ex-gratia payments, are payments made to customers or third parties where there has been clear and unambiguous maladministration by the Department. **Recovery must not be made from these payments.**

5.66 DELETED

5.67 DELETED

5.68 DELETED

Section Six- Repayment By Instalments

General – Off Benefit Instalments

6.1 An instalment offer should only be considered where;

- a) there is no benefit in payment from which to consider deductions; and
- b) the debtor is not able to repay the whole of the debt immediately;
- c) the amount offered is considered reasonable, after taking into account the debtor's financial circumstances; [See Hardship 8.105 and Appendix 14].
- d) the method of repayment is considered cost effective.

6.2 Wherever possible recovery should be monthly, and by Direct Debit (DD).

6.3 Where the debtor is unable to pay by DD, any available recovery method except Transcash or credit card (which is only acceptable for a one-off lump sum payment to clear the whole debt) may be considered. However,

the final decision should take into account the resource costs to administer recovery by that method. Where the resource costs are unacceptable, an alternative method should be discussed with the debtor. For customers who are not in receipt of benefit and cannot repay by lump sum, see the Off Benefit Recovery User Guide.

6.4 DELETED.

Details of the offer

6.5 Wherever possible the details of the offer should be discussed by telephone. This is preferable to a complicated exchange of correspondence and will also ensure that the customer receives a full explanation of the agreement.

Acceptable Offer

6.6 Where the offer is considered acceptable:

- a) Record details of the agreement on Debt Manager
- b) Set up an instalment plan;
- c) Control dates will usually be set automatically, although some will need manual intervention

Unacceptable Offer

6.7 If, following any Hardship considerations [see Appendix 14] advise the customer as soon as possible why their offer is not acceptable;

- a) update Debt Manager with details of the offer
- b) Debt Manager will issue notification
- c) if an acceptable offer is still not received within 2 weeks, the case will progress to consider enforcement action

Full Repayment

6.8 Where full repayment is offered either immediately or from a future date, record details on Debt Manager
Debt Manager will automatically issue a notification to the customer.

Changes once recovery has **started**

6.9 See the Off Benefit User Guide for action to take when changes occur after a recovery plan has been set.

Renewed offer

6.10 DELETED

No new offer

6.11 DELETED

6.12 DELETED

Enforcement

6.13 Where the customer does not:

- a) repay the debt; or
- b) make an acceptable offer to repay;
- c) the case is referred, if suitable, by Debt Manager for consideration of enforcement action.

Debt not suitable for enforcement

6.14 Where the debt is not suitable for enforcement action;

- a) suspend recovery until benefit becomes payable (see Section Seven - Recovery Suspended); or if appropriate
- b) consider abandoning the debt (see Section Twelve - SofS Discretion).

Section Seven - Recovery Suspended

General

7.1 There may arise a need to suspend the recovery process. This could be due to;

- a) the circumstances of the customer, where recovery would cause undue hardship to the debtor or their family;
- b) administrative requirements;
- c) policy requirements;
- d) legislative requirements.

Qualifying Conditions

7.2 Overpayment recovery action should normally be suspended where the following conditions are met:

- recovery by deduction appropriate, but cannot be implemented due to other deductions being made from the debtor's benefit e.g. a fuel debt, or SF loan being recovered.
- overpayment decision disputed;
- in prison, no benefit payable; [see ORG 12.6]
- asylum seekers, no benefit payable;
- gone abroad;
- successful criminal prosecution for benefit fraud and a compensation order is being recovered by the court;

7.3 Suspension for any of the above reasons may be considered at any time during the recovery process. The period of suspension will depend on the circumstances at that time.

Recovery By Deduction Not Available

7.4 Although recovery by deduction from benefit may be appropriate, it may not be available due to;

- a) other deductions are in place which leave no available balance for recovery;
- or
- b) insufficient benefit in payment

Decision Disputed

7.5 Where the customer has disputed the overpayment decision by:

- a) requesting revision; or
- b) making an appeal;

and recovery by deduction from benefit (RxD) has not started;

- c) suspend recovery action until the dispute is dealt with (see Section eleven - Decision Disputed).

In Prison

7.6. Where the debtor is sent to Prison and their sentence relates to a benefit fraud debt, suspend recovery until their release. Where the debtor is sent to Prison, and their sentence does not relate to a benefit fraud debt (and Appendix 7 [Abandonment and Write Off] does not apply), then:

- Where they have served 6 months or less, suspend recovery until their release.
- Where they have served over 6 months in prison, suspend recovery until six months after their release date.

Asylum Seeker

7.7. Where an Asylum Seeker's status is decided and they are not allowed to stay in the country, they may be able to stay in the country pending the result of an appeal.

7.8 Any action to recover an outstanding overpayment should be suspended where benefit is no longer payable. Continue to suspend recovery action until;

- a) benefit is awarded from which recovery can be considered; or
- b) they are deported (see Gone Abroad below); or

c) their status changes and they are granted asylum or allowed to find work, then off-benefit recovery action can be considered; whichever occurs first.

Gone Abroad

7.9 Where the debtor leaves the country, the action to take would depend on;

- a) whether their address abroad was known.
- b) the debtor's intention to return to the UK;
- c) any UK benefit entitlement abroad;
- d) any benefit entitlement abroad from which recovery is permitted.

Refer to the Off Benefit User Guide for action to take in these circumstances.

7.10 DELETED

7.11 DELETED

7.12 DELETED

7.13 DELETED

7.14 DELETED

7.15 DELETED

7.16 DELETED

Compensation order awarded from fraud prosecution.

7.17 The sentence of the Court in a criminal prosecution may include an order for compensation. Where notice is received that such an order is made in respect of a Fraud overpayment, recovery action should be suspended. This applies to the recovery of all Departmental overpayments until the compensation order is fully paid, or the Court ceases their action;

- a) make a note in diary on Debt Manager;
- b) suspend recovery action until notified otherwise by the Court Collection Unit [CC Bradford]

Section Eight - Recovery by Deduction from Benefit

8.1 This guidance should be applied each time a deduction rate is being considered. This will apply on new cases and cases on review.

General

8.2 Subject to specific limitations, legislation allows the SofS to consider recovering recoverable overpayments of prescribed benefits and Administrative Penalties from any prescribed benefit. A list of prescribed benefits/payments is provided at [Appendix Two - List of Prescribed Benefits](#).

8.3 In general terms, an overpayment of a prescribed benefit or payment can be recovered from that benefit or any other prescribed benefit in payment. An Administrative Penalty (AdPen) can be recovered from any prescribed benefit.

8.4 The rate of deduction is determined by legislative rules and policy guidelines depending on the benefit in payment ([Appendix Two - List of Prescribed Benefits.](#)).

Dispute against deductions

8.5 There is no right of appeal against the decision by the SofS to take compulsory deductions from a prescribed benefit to recover a prescribed debt, but a customer can request the rate is reviewed (see paras 8.105 - 8.116 for hardship).

Payment from which no deduction should be made

8.6 Compulsory deductions for a recoverable overpayment cannot be considered from any of the following:

- Training Allowances.
- Widow's lump sum payment.
- Disablement Gratuity.
- Christmas bonus.
- Tax Credits.
- LA Benefits.
- New Deal

8.7 Even a voluntary offer of repayment by deduction from the above should be declined, and another method of recovery sought.

Voluntary Deductions: Non-Recoverable Overpayments

(See [Appendix 16](#), Flowchart 1a)

8.8 Deductions from prescribed benefits may also be made with the customer's agreement (verbal or written) in cases where compulsory deductions cannot be taken e.g. for non-recoverable overpayments (classified as CL or O), or, for Court Costs.

[NOTE: DM would not accept voluntary offers of repayment for debts classified as Official Error as these are not currently notified to customers and should always be written off.

8.9 Writing out unsolicited to customers asking them to sign an agreement to repay would not be considered a voluntary offer.

8.10 Recovery is not restricted to the debtor's benefit. It can be made from any customer's benefit, where permission is given by that customer. This offer can be withdrawn at any time by either side.

8.11 There are no legislative limits on the rate of voluntary deductions but as a matter of policy the appropriate compulsory rate would be used as a guide. However, deductions can only be taken with the customer's permission, so within

reason any offer should be accepted. However, customers should be reminded that their offer is voluntary and can be withdrawn at any time.

[NOTE: There would be no decision to make on the overpayment or the rate of deduction]

Voluntary Deductions: Recoverable Overpayments

8.12 Where the decision maker decides that the overpayment is recoverable (classified M or F), only consider a voluntary offer where:

a) the rate of recovery will be greater than the rate that can be imposed, i.e:

- recovery would otherwise have to be suspended; or
- recovery rate offered is greater than that allowed by legislation; or
- recovery rate offered is greater than a balance available after other deductions with priority have been taken into account;

b) Compulsory deductions from the customer or partner are not possible, voluntary recovery is agreed by the partner and the rate of recovery is considered reasonable in the circumstances.

[NOTE: Voluntary deductions for a recoverable overpayment will be for the customer to offer. Operations should not be advising customers that they could pay more than the legislative maximum as this could unfairly impact upon vulnerable customers]

8.13 A voluntary agreement can be cancelled at any time, by either side.

Example:

- Debtor's partner agrees to repay JSA(IB) overpayment;
 - overpayment actioned and decision issued;
 - voluntary deductions from partner's benefit higher than the standard rate;
 - offer accepted and recovery implemented.
- Partner leaves debtor;
 - withdraws agreement;
 - compulsory deductions made from debtor's income-related benefit at the standard rate.

Compulsory Recovery – General

8.14 Compulsory deductions can be taken from prescribed benefits to recover overpayments that are recoverable under Sections 71 or 74 of the Social Security Administration Act 1992 (i.e. a recoverable overpayment) and any related Administrative Penalties.

[NOTE: Compulsory deductions can also be taken to recover Housing Benefit and Social Fund overpayments and these are recoverable under section 75 and section 71ZA of the Social Security Administration Act 1992 respectively]

8.15 Compulsory deductions can be taken from the benefit of the person/s named in the overpayment decision, and in some cases the partner of that person.

Compulsory Recovery from Partner's Benefit

8.16 Where there is an outstanding recoverable overpayment of an income-related benefit (IS/JSA(IB)/PC/ESA(IR)), **and**

- a) the debtor is no longer in receipt of benefit; but
- b) their partner is in receipt of an income-related benefit;

compulsory recovery should be considered from the partner's income-related benefit where;

- c) the benefit overpayment was for a period where they were a couple; and
- d) benefit is now in payment to them, as the same couple.

8.17 Where all the above conditions are met, compulsory deductions should be made from the partner's benefit to recover the outstanding recoverable overpayment.

Compulsory Recovery Rates – General

8.18 When recovering a recoverable overpayment from ongoing benefit, legislation and policy impose maximum amounts of weekly deduction that can be taken. They also define the priority order ([see Appendix 4](#)) for the different types of deduction (e.g. Social Fund Loans, Fines Direct, Child Support Maintenance, Overpayments, etc)

8.19 The maximum rates are set to ensure that customers are not caused undue hardship whilst repaying the debt. This is particularly important for recipients of income-related benefits.

[NOTE: A compulsory deduction being made at a reduced rate after a customer claims hardship (see paras 8.105 - 8.116) is not classed as a voluntary deduction (see paras 8.8 - 8.13 for voluntary deductions)]

8.20 The maximum rate at which compulsory deductions can be taken is determined by a number of factors and is dependent upon the benefit from which deductions are to be made.

8.22 In all cases, regardless of the benefit being deducted from, deductions cannot be made that reduce the amount of benefit in payment to less than 10p per week.

When to calculate the compulsory recovery rate using Flowchart 1b(i) - (iii) (Income-Related Benefit Flowchart):

8.23 When calculating, reviewing (see para 8.121) (including uprating - see para 8.117) a recovery rate, check the benefit in payment to both the customer and any partner. If the customer is in receipt of an income-related benefit then the appropriate recovery rate should be calculated by following Flowchart 1b(i) - (iii) (at [Appendix 16](#)), using the customer's income-related benefit as the starting point. Any benefit paid to the customer's partner is not relevant in this scenario. This policy should be applied whether benefits are combined for payment or paid separately (see paras 8.26 to 8.71 for the explanatory paragraphs on calculating the deduction rate from income-related benefits (IRBs)).

8.24 If the customer is in receipt of non income-related benefits only but they have a partner who receives an income-related benefit, the recovery rate should be calculated by following Flowchart 1b(i) - (iii) (at [Appendix 16](#)), using the partner's income-related benefit as the starting point and going on to take account of any other deductions (third-party, Social Fund) or applicable disregards, etc the partner has (see paras 8.26 to 8.71 for the explanatory paragraphs on calculating the deduction rate from income-related benefits (IRBs)).

[NOTE 1: If there is an SF deduction from the non income-related benefit of the debtor, treat it as if it were being taken from the income-related benefit of the partner. In the event that both customer and partner have SF then overpayment recovery should be suspended until at least one of the SF debts has been repaid.

[NOTE 2: In the scenario at para 8.24, operations should establish recovery from the customer's main non income-related benefit (see para 8.25 for the explanation of 'main') at the income-related benefit rate calculated]

When to calculate the compulsory recovery rate using Flowchart 1c (Non Income-Related Benefit Flowchart)

8.25 When calculating, reviewing (see para 8.121) (including uprating - see para 8.117) a recovery rate, check the benefit in payment to both the customer and any partner. If the customer is in receipt of non income-related benefits only and does not have a partner who receives an income-related benefit then the recovery rate should be calculated by following Flowchart 1c (at [Appendix 16](#)), using the customer's main non income-related benefit as the starting point. In the first instance the main NIRB would be either State Pension (SP), Jobseeker's Allowance (Contributions based) (JSA(C)), Employment Support Allowance (Contributions based) (ESA(C)) or Incapacity Benefit (IB). If none of these are in payment then any of the other non income-related benefits in payment can be used as the starting point for calculating the recovery rate (in accordance with usual guidelines e.g. where DLA mobility component is paid to the Motability scheme. See paras 8.72 to 8.84 for the explanatory paragraphs on calculating the deduction rate from non income-related benefits (NIRBs)

Calculating Compulsory Deductions from Income-Related Benefits (in accordance with paras 8.23 to 8.24)

(See [Appendix 16](#), Flowchart 1b(i) - (iii))

General

8.26 There are maximum rates for compulsory deductions from income-related benefits that are defined by Regulation 16 of Social Security (Payments on account, Overpayments and Recovery) Regulations 1988. These maximum rates are derived from the Income Support scale rate for a person aged not less than 25 and this rate changes each year at uprating.

8.27 The above legislation defines two rates of deduction, a standard rate and a fraud rate.

Standard rate

The standard rate is 3 x 5% of the personal allowance for a single claimant aged 25 years or over and this rate is to be used in the deduction rate calculation where an overpayment has been classified as M (Mistake) (see [Section Two - Types of Overpayments](#)).

Fraud rate

The fraud rate is 4 x 5% of the personal allowance for a single claimant aged 25 years or over and this rate is to be used in the deduction rate calculation where an overpayment has been classified as F (Fraud) (see [Section Two - Types of Overpayments](#)).

Circumstances that lead to an 'F' classification

8.28 Overpayments should only be classified as 'F' where the debtor;

a) makes an admission after caution of deception or fraud for the purpose of obtaining benefit. (this may be a written admission or an oral admission as part of a taped interview under caution);

[NOTE: If a customer has accepted a formal caution this will also denote that (a) is satisfied because a formal caution can only be applied where a customer has made an admission after caution of deception or fraud for the purpose of obtaining benefit.]

b) agrees to pay an Administrative Penalty and the agreement has not been withdrawn;

c) is successfully prosecuted for the offence in the criminal court;

8.29 Policy defines two additional rates, one for a lower amount (termed 'Lower Rate') to be applied for welfare reasons where a customer resides permanently in residential care (see paras 8.32 - 8.34 and 8.38 - 8.39), and another to be applied in specific circumstances where Social Fund deductions are also in place (see paras 8.49 to 8.60)

[NOTE: A reduction for hardship reasons (see paras 8.105 - 8.116) may be applied to all rates of deduction]

8.30 Regulation 16 of the Social Security (Payments on account, Overpayments and Recovery) Regulations 1988 also sets out the reduction to be applied if there are third party deductions (see paras 8.40 to 8.48) in place for things such as fuel costs, water charges, etc. and allows an increase on account of certain disregarded income (see paras 8.61 to 8.66).

8.31 There is also an over-riding limit laid down in paragraph 8 of Schedule 9 of the Claims and Payments Regulations 1987. This states that the total of certain deductions cannot exceed 25% of the applicable amount in respect of the customer without the customer's consent (see paras 8.67 to 8.71).

Lower Rate for customers in Residential Care (on a permanent basis)

8.32 Residential care is defined as a care home (whether nursing or residential), an Abbeyfield Home or an independent hospital.

8.33 Where a customer makes a permanent move into residential care (not including short-term stays for respite care), deductions should be set automatically at the lower rate (1 x 5% of the personal allowance for a single claimant aged 25 years or over) regardless of their actual income (no partially disregarded income can be used to increase the lower rate recovery). The customer can claim hardship (see paras 8.105 - 8.116) in the usual way.

8.34 If a customer qualifies for the lower rate but they have one or more third party deductions (see paras 8.40 to 8.48), or any Social Fund loan recovery (see paras 8.49 to 8.60), in place then recovery should not be initiated. The case should be suspended until such a time as the lower rate no longer applies, or until any third-party deductions or Social Fund recovery has ceased.

Customer in Hospital

8.35 Hospital is defined as a place where someone undergoes medical or other treatment as an in-patient

8.36 Where a deduction plan is already in place and a customer is admitted to hospital, deductions should continue as normal and we will consider any hardship request (see paras 8.105 - 8.116) in the normal way. If any ongoing plan is interrupted (e.g. benefit amount is reduced or suspended) or requires a review then any new plan/recovery rate can be implemented in the usual way.

8.37 Where there is no deduction plan in place and the customer is in a hospital, deductions should not be started unless the customer has an appointee/Power of Attorney (POA). If the customer does have an appointee/POA then the deduction rate and recovery should be established, reviewed, etc, in the usual way as appropriate.

Determining if the customer resides in Residential Care or a Hospital

8.38 The only way operations will be able to identify from our systems that a customer is residing in residential care or a hospital is if their address explicitly contains variants of "residential care home" or "hospital" respectively, or if there are notes on Legacy or Debt Manager to this effect. Operations must also rely on Legacy/Debt Manager notes to determine the permanency of the stay for customers in residential care.

8.39 If we cannot identify from our systems that the customer resides in a hospital or in Residential Care (on a permanent basis) then normal recovery action should be taken. If we are notified, either by the customer or their representative, that the customer resides in a hospital or residential care (on a permanent basis) then we should accept this, update/note the system in the usual way and set recovery accordingly as above (see paras 8.32 to 8.37).

Third-Party Deductions in Place

8.40 The action to take in determining the effect of third-party deductions (TPDs) on the rate of overpayment recovery depends on the type of the TPDs (also [see Appendix 4](#) for the rates of relevant TPDs).

8.41 Where TPDs are in place, the maximum amount of overpayment deduction is reduced as shown in the table below.

Third-Party Deduction Type	Does Deduction effect overpayment deduction?	Reduce overpayment deduction by
Arrears of Mortgage Interest	YES	Total amount
Gas	YES	Amount of arrears only
Electricity	YES	Amount of arrears only
Water	YES	Amount of arrears only
Housing Costs/Rent Arrears	YES	Amount of arrears only
Arrears of Council Tax	YES	Total amount
Mortgage	NO	-----
Child Support Maintenance (pre 03/03/03)	YES	Total amount
Fines Direct	YES	Total amount
Community Charge	NO	-----
Child Support Maintenance (post 03/03/03)	NO	-----
Integration Loan Scheme (ILS)	YES	Total amount

8.42 Child Support Maintenance **pre** 03/03/03 is a deduction from personal benefit of a standard amount made only in certain circumstances. The standard

amount is normally 2 x 5% of the personal allowance for a single person aged 25 or over. This amount may be reduced by 1 x 5% where there are other TPDs in place.

8.43 Child Support Maintenance **post** 03/03/03 (known as Flat Rate Maintenance) is an amount assessed by the Child Maintenance Enforcement Commission and this is usually a flat rate of £5.00. If in doubt about whether Child Support Maintenance pre 03/03/03 or Child Support Maintenance post 03/03/03 is being deducted, contact JCP to confirm this. Which CSM is being deducted dictates how we treat it (see above table at para 8.41).

8.44 For **some** applicable TPDs the amount deducted is split into two parts; one to cover the current consumption and one to help clear arrears. **Where this is so**, only the arrears amount affects the overpayment deduction (see above table at para 8.41).

8.45 Where TPDs are in place which do not take up the maximum amount allowed, the balance may be used for overpayment recovery.

Example (using 2011/12 rates):

- IS award includes TPDs for arrears of fuel costs amounting to £3.40 per week
- Outstanding overpayment recoverable at the standard rate of £10.20
- Maximum deduction rate from benefit is £10.20
- Balance available for overpayment recovery = £10.20 - £3.40 = £6.80

8.46 Where there is more than one of the above relevant TPDs in place, each reduction should be applied to determine the maximum overpayment deduction rate allowable. If this means that 3 x 5% (of the personal allowance for a single claimant aged 25 years or over) is 'used up' then no overpayment deductions can be implemented unless the customer is in receipt of an applicable partially disregarded income (see paras 8.61 to 8.66).

[Note: When the recovery limit is taken up by other deductions of a higher priority and there is no applicable partial disregard to add to the recovery rate, then recovery should be suspended.

8.47 However, with overpayments classified as fraud, if the TPD maximum of 3 x 5% is 'used up' by relevant TPDs (as listed in the table above at para 8.41) then we are still able to deduct 1 x 5% for the overpayment recovery because Fraud classifications allow recovery at 4 x 5% (the fraud rate). Of course, any hardship request would be considered in the normal way.

8.48 Where there are both Social Fund and one (or more) of the above relevant TPDs in place, see the section on Social Fund deductions below (paras 8.49 to 8.60)

Social Fund Deductions

8.49 There is no legal requirement to reduce the overpayment recovery rate where Social Fund (SF) deductions are in place. However, this is considered as a matter of policy.

8.50 Policy have established a table of overpayment recovery rates to be applied in certain circumstances where Social Fund loan recovery is in place.

8.51 These rates are based on the percentage repayment rates of the SF deduction and are reviewed every uprating (see current uprating circular for the appropriate rates). The general principle is that the greater the proportion of benefit being repaid to the SF, the smaller the overpayment deduction should be.

8.52 In order to determine whether or not the relevant overpayment recovery rate from the SF table should be used in the overpayment recovery rate calculation, the following question should be considered:

Was the SF loan recovery in place prior to the overpayment recovery?

8.53 Where no SF loan recovery is in place at the time of calculating the overpayment recovery rate, or where SF loan recovery is in place, but the current loan recovery was implemented after the overpayment deduction, then operations **should not** take account of the SF loan recovery rate from the SF table.

8.54 Where SF loan recovery is in place at the time of calculating/reviewing the overpayment recovery rate and the SF loan recovery was initiated prior to the overpayment deduction then the appropriate rate from the SF table (see current uprating circular) should be used. Please see [Appendix 15](#) for guidance on establishing which deduction was implemented first.

8.55 Where there are both SF deductions to take account of and relevant third-party deductions (see paras 8.40 to 8.48) in place, the overpayment deduction rate calculation should take the appropriate SF table rate or the rate obtained using paras 8.40 to 8.48, whichever is lower.

8.56 Where SF loans exist but are **all** deferred (not in active recovery) at the time of calculating the overpayment deduction rate, they will have no impact on the overpayment recovery rate calculation.

8.57 Where a customer's overpayment deduction rate is not adjusted in response to SF loan deductions being in place, the customer can claim hardship (see paras 8.105 - 8.116) in the usual way

8.58 If a SF loan is rescheduled (SF change the loan recovery rate), the overpayment recovery rate can be altered as appropriate when the case is next

reviewed. Where a SF loan is rescheduled upwards the Department would not be in breach of any legislation if a change to the Social Fund loan recovery rate is not immediately reflected in the overpayment recovery rate. Again, the customer can claim hardship (see paras 8.105 - 8.116) in the usual way at any time.

[NOTE: If operations anticipate that a SF loan recovery rate has been rescheduled downwards as a result of a hardship claim while our current overpayment recovery rate was in place, then operations should not increase the overpayment recovery rate on review. For example, while a SF recovery rate of less than 5% would certainly indicate a reduction in response to hardship, if the recovery rate has gone down, then operations should consider that the Social Fund rate has been reduced as a result of hardship. To check this, look in SF740 as a reduction resulting from a hardship claim should be noted there.]

8.59 If a customer claims hardship this should not automatically result in suspension of recovery or referral of the customer to SF for rescheduling of their loan. Follow normal procedures set out in paras 8.105 - 8.116).

8.60 Set a review date for when the current SF loan repayment ends so that the overpayment deduction can be reviewed

Disregarded Income

8.61 There are some types of income which are partially disregarded for benefit award purposes. For example, a person receiving Income Support or other income-based benefit may be allowed earnings of up to £20 per week without it affecting their benefit, i.e. the income is disregarded in part.

8.62 Where there is a partial disregard given to an income or earnings, up to half the disregarded amount can be added to the recovery rate. This only applies to the deduction rate from income-related benefits.

8.63 There are only certain partially disregarded incomes that can be used to increase the level of overpayment deductions. For example; earnings, war pensions, voluntary and charitable payments. Social Security (Payments on Account, Overpayments and Recovery) Regulations 1988 Regulation 16 (6) refers.

8.64 Deleted.

8.65 In cases where consideration is given to increasing the rate of deduction by half of the disregarded income, any hardship claim made by the customer must consider any work related expenses e.g. fares to work, child-minding. Policy is that the customer should not be worse off by application of this provision in terms of 'cash in the hand' than they would be if they were not working.

8.66 It should be noted that for these purposes wholly disregarded SS benefits are not treated as disregarded income e.g. AA or DLA.

[NOTE: If operations are in any doubt about whether or not an income is wholly or partially disregarded then they should contact their LAT in the first instance.]

The 25% Rule (a different consideration to Third Party Deductions)

8.67 There is an over-riding limit laid down in paragraph 8 of Schedule 9 of the Claims and Payments Regulations 1987 that states that the total of certain deductions cannot exceed 25% of the applicable amount (see paras 8.68 to 8.69) in respect of the customer without the customer's consent.

Applicable Amount

8.68 The customer's applicable amount (found in legacy screens) is the amount of benefit assessed as payable to that customer at the time of calculating the overpayment deduction, regardless of what legislation has led to the applicable amount in question (for example, if a customer has received a benefit sanction then the sanctioned benefit rate paid to the customer is taken to be the applicable amount in respect of that customer and not the amount the customer would receive if the benefit was not sanctioned).

8.69 The applicable amount in respect of the customer will also include the couple rate where applicable and any premiums plus any amounts for children either paid through Child Tax Credit and Child Benefit or within the benefit award. Any amounts for housing should not be included in the applicable amount for the purpose of calculating the 25%.

8.70 The following list contains the deductions that cannot exceed 25% of the applicable amount (see paras 8.68 to 8.69) when added together. The list is a combination of legislation and policy and is not exhaustive, however, it does cover the most relevant and common ones.

- Housing costs arrears (not covered by the mortgage interest direct scheme - arrears of service charges for fuel and water are included)
- Rent arrears
- Service charges for fuel and water
- Fuel costs (including arrears)
- Water charges (including arrears)
- Child Support Maintenance (pre & post 03/03/03 - see paras 8.42 and 8.43 respectively)
- Integration Loans (ILS)
- Overpayment deductions

[NOTE 1: Fines Direct and Council Tax (current and arrears) should **not** be taken account of in the 25% calculation]

[NOTE 2: Legislation does include ELDS in the 25% rule, however these are a lower priority than overpayment deductions and as such are transacted off Debt Manager wherever an overpayment is loaded. Therefore, no ELDS deductions should ever be in place at the time of calculating the overpayment recovery rate]

8.71 Overpayment deductions should not be made at an amount that would exceed 25% of the customer's applicable amount (see paras 8.68 and 8.69) when added to any existing deductions from the above list.

Calculating Compulsory Deductions from Non Income-Related Benefits (in accordance with para 8.25)

(See [Appendix 16](#), Flowchart 1c)

8.72 With the exception of JSA(C), legislation does not prescribe a maximum amount of deduction for non income-related benefits.

8.73 For JSA(C) the maximum rate of deduction is set legislatively at one third of the personal allowance. Policy sets the maximum rate of deduction for all remaining prescribed non income-related benefits at one third of the personal allowance for that benefit. The customer can claim hardship in the usual way (see paras 8.105 - 8.115)

Personal Allowance

8.74 Personal allowance is defined as the basic allowance, plus any additional components, awarded solely for the debtor and not necessarily the amount actually in payment. Any component awarded for a partner or dependant, or any combined payment, e.g. Attendance Allowance, or any other deductions such as an occupational pension, should be disregarded for the calculation. The result should be rounded down to the nearest whole penny.

Underlying Entitlement

8.75 Where JSA(IB) (or ESA(IR)) would be in payment at the same rate but for the payment of JSA(C) (or ESA(C)) then the rate of deduction should be set as if the benefit in payment was JSA (IB) (or ESA(IR)). This is known as underlying entitlement.

8.76 Underlying entitlement to JSA(IB) or ESA(IR) can be determined by viewing Legacy screen JA504 (JA504611) and checking that a claim date **and** an amount greater than £0.00 is listed under the income-related element of the benefit.

Other Deductions

8.77 The overpayment deduction amount of one third of the personal rate of entitlement is not reduced by any other deductions (e.g. third party, Social Fund) which may also be in place. Such things would be taken into account in any hardship request (see paras 8.105 - 8.116).

Customer in Residential Care (on a permanent basis)

8.78 In certain circumstances we would set recovery at the lower rate (1x5% of the personal allowance for a single claimant aged 25 years or over) where a customer resides permanently in residential care. Please see paras 8.32 - 8.34 and 8.38 - 8.39 for guidance on the definition of 'residential care', how to establish that a customer resides permanently in residential care and the circumstances that determine the application of the lower rate.

[NOTE: When the lower rate is applied in the calculation of the appropriate deduction rate from a non income-related benefit, operations **should not** go on to consider a better-off calculation. The only other thing to consider would be the 10p rule (see para 8.22). The customer could however make a hardship request (see paras 8.105 - 8.116) in the usual way]

Customer in Hospital

8.79 In certain circumstances we would not make deductions from a customer's non income-related benefit where it was discovered that they were in a hospital. Please see paras 8.35 to 8.39 for guidance on the definition of 'hospital', how to establish that a customer is in a hospital and the circumstances under which recovery should and should not continue/be initiated.

Better-Off Calculations

8.80 If appropriate, a 'better-off calculation' should be undertaken to ensure that a customer in receipt of a non income-related benefit is no worse off (post deduction) than an income-related benefit customer (post deduction)

8.81 A better-off calculation should always be considered where a customer was in receipt of any income-related benefit in the 6 months preceding any non income-related benefit award date **and** only ceased receiving the income-related benefit because the non income-related benefit in payment exceeded the income-related entitlement.

Example (includes 2011/12 rates)

Customer is in receipt of IS @ £67.50 per week.

Deduction rate would be £10.20 (standard rate).

Net income would be £57.30 (£67.50 - £10.20).

Customer reaches retirement age and State Pension of £82.20 per week becomes payable.

Deduction rate of £27.40 per week (one third x £82.20) applies.

Net income is £54.80 per week (£82.20 - £27.40)

Deduction should be restricted to £24.90 (£82.20 - £57.30) to ensure the customer's net income is not less than £57.30

8.82 Legacy and CIS show the dates of any claims to benefit, along with the amount awarded, and the individual benefit system notepad will show why the income-related benefit award ceased.

8.83 Where a better-off calculation has been applied and a deduction rate reduced accordingly, Debt Manager notes should be updated to this effect.

8.84 A better-off calculation should continue to be carried out if, on review (see para 8.121 – 8.125), it is found that the customer would still be likely to receive an income-related benefit if the non income-related benefit were not in payment. Such a decision should only be made on the facts presented - it is not anticipated that additional enquiry should be made to the customer to establish this. If there has been no change to the customer's circumstances since the original better-off calculation was carried out then it is not envisaged that the recovery rate should be increased to one third.

[NOTE: It is acceptable to review the better-off calculation rate at six monthly intervals, but it would be preferable for any review to take place after a year or more]

8.85 Customers that do not satisfy the better-off calculations criteria can apply for a reduction in the rate of recovery via normal hardship procedures (see paras 8.105 - 8.116)

Establishing Recovery

When both Customer and Partner have Recoverable Overpayments

8.86 If either partner is in receipt of an income-related benefit then we should recover one overpayment at a time (not simultaneously from both).

Take the following action:

- a) Link the couple on Debt Manager and note both accounts accordingly
- b) Select which debt to recover first in accordance with current policy on debt priority/Debt Manager functionality, and set recovery
- c) Suspend recovery on the other customer and make notes accordingly
- d) When first debt recovered, select which debt to recover next, in accordance with current debt priority policy/Debt Manager functionality, and continue as before.

- e) When the debts of one member of the partnership are fully recovered, separate the partnership on Debt Manager and pursue recovery from the remaining member of the partnership in the usual way.

[NOTE: Where we were recovering one debt from a partnership with multi-debts, we would not abandon a debt belonging to one member of the partnership if the only reason we were not recovering from this partner was because we were recovering the other partner's debt. We would deem that recovery on one member of the partnership would be classed as effective recovery on the collective debts of the partnership]

8.87 If neither partner is in receipt of an income-related benefit, recover from both simultaneously and consider hardship (see paras 8.105 - 8.116) if requested.

Example - Where a customer receives a non income-related benefit and has a partner who receives a non-benefit income (full-time work for example), we would recover at a rate of 1/3 from the customer's non income-related benefit whilst pursuing off benefit recovery action on the partner that could include civil litigation or referral to the private sector. If the couple claimed hardship (see paras 8.105 - 8.116) then this would be considered in the normal way.

Award Less than the Rate of Deduction Calculated

8.88 In some instances the rate of benefit in payment is less than the deduction rate allowable under legislation or policy. Where there is only one benefit in payment, and the weekly rate;

- a) is in excess of 50p, make deductions at a rate which will leave 10p in payment.
b) is 50p or less, make no deduction and suspend recovery until the debtor's circumstances change. Where benefit is paid quarterly, deductions may be considered leaving an equivalent of 10p a week in payment.

Example:

- Preferred rate = £10.20
- IS weekly rate = £6.45
- Deduction rate = £6.35

Example:

- Preferred rate = £10.20
- IS weekly rate = £0.45 paid quarterly
- Deduction rate = £0.35, £4.55 per quarter

Example:

- Preferred rate = £28.05 (1/3rd of personal rate)
- IB payable weekly = £10.20 (reduced by occ pen of £73)
- Deduction rate = £10.10

PC/IS/JSA(IB)/ESA(IR) and another benefit in payment

8.89 Where there is an award of PC/IS/JSA(IB)/ESA(IR) and another benefit in payment, and the payments are not combined there may not be sufficient PC/IS/JSA(IB)/ESA(IR) available to make the maximum deduction for an PC/IS/JSA(IB)/ESA(IR) overpayment. Recovery at the maximum PC/IS/JSA(IB)/ESA(IR) should be considered from the other benefit.

Example (using 2011/12 rates):

- IS overpaid, remains in payment at £6.23 per wk
- Maximum deduction rate for IS is £10.20 per wk
- State Pension in payment at £102.15 per.wk.
- Recover the IS overpayment at £10.20 per wk from current State Pension award

Setting deductions

8.90 Debt Manager will automatically issue a notification once a repayment plan is set. Deductions should not commence until the formal dispute period has ended. This is currently one calendar month from the day following the issue of the notice of the overpayment decision.

[NOTE: Remember, with Home Visit cases, notification delivery dates on Debt Manager may not reflect the actual delivery date. Debt Manager notes should be checked for clarification]

8.91 The action required to set up the actual deductions from benefit will depend on;

- a) from which benefit deductions are to be made; and
- b) who administers that benefit.

- Enquiries And Deductions For DLA/AA
- Enquiries And Deductions For PSCS IB
- Enquiries And Deductions For PSCS SP WB BB
- Enquiries And Deductions From JSAPS JSA ESA
- Enquiries And Deductions From the ISCS

8.92 Where the recovery unit has the relevant system access, they may be able to set up deductions on the appropriate system themselves. Where the recovery unit does not have the relevant access or the benefit is being paid clerically, deductions will need to be requested using form QB30.

Requesting Deductions by QB30

8.93 To set up deductions where direct system access is not available, form QB30 is normally generated by Debt Manager. In clerical cases form QB30 should be completed and issued. Ensure that the issuing office's details have been entered on all three pages of the form.

- a) The rate of deduction and earliest start date for deductions should be entered by the Contact Centre [CC] before issue.
- b) The customer must be informed in advance of the rate and commencement of deductions by issue of the appropriate notification at least 14 days in advance.

Deductions cannot be made

8.94 Where deductions cannot be made for any reason, the benefit unit will;

- a) complete part three of form QB30, including the reason why deductions cannot be set up; and
- b) return the form to the CC.

8.95 If the reason is that benefit is no longer in payment, check to see whether a new benefit claim has been made. If so, input deductions directly or issue a new QB30. If not, take normal off benefit recovery action.

Deductions can be Made

8.96 Where deductions can be made, the receiving office should;

- a) complete part two of the form, advising the start date and confirming the rate of deduction;
- b) return the form to the issuing unit;
- c) retain part three until the debt is recovered, or recovery ceases for some other reason.

8.97 On receiving part two, the CC should;

- a) note their records;
- b) set a control date for 13 weeks.

8.98 At the control date;

- a) check that deductions have been made;
- b) for what period;
- c) at what rate.

Deductions cease

8.99 Where full recovery is made, or deductions cease, the benefit unit should;

- a) complete page three of form QB30, to advise when and why recovery action has stopped or been completed;
- b) return the form to the relevant CC.

Recovery from War Pension

8.100 Recovery may be requested from The Service Personnel and Veterans Agency but only where there is a recoverable overpayment. Only overpayments which satisfy all the following criteria may be referred for recovery;

- a) the overpayment is for a prescribed benefit, and has a recoverable overpayment decision by a DM;
- b) the overpayment or balance is above the small overpayment limit;
- c) there is no other benefit in payment from which recovery can be considered;

Request for recovery

8.101 Where all the criteria are satisfied issue a written request for recovery to The Service Personnel and Veterans Agency. The request should provide details of the pension recipient;

- a) full name;
- b) NINo;
- c) address;
- d) War Pension number (where known).

and should ask them to;

- e) confirm whether a War or Disability Pension was in payment;
- f) consider recovery of the outstanding overpayment.

Deductions possible

8.102 Where they confirm that deductions are possible, issue form QB30, then action the same as a normal recovery by deduction case. The Service Personnel and Veterans Agency will set the rate of deduction according to their own guidance.

Benefit becomes payable

8.103 If another benefit becomes payable from which recovery could be made, consider if recovery can be made from that benefit and if so cancel QB30 and institute deductions from the other benefit.

Deductions not possible

8.104 Take normal off-benefit recovery action.

Debtor Claims Hardship

8.105 A customer can claim hardship at any time and consideration should be given to reducing the rate of deduction where appropriate.

8.106 Where a debtor, or their representative, contacts the CC stating that the rate of recovery will cause them, or their family, hardship, consider all the evidence provided.

8.107 The debtor should provide reasonable evidence to support their request. Where health is the issue, some form of medical evidence from an informed source is required. If grounds claimed are financial reasons, details of income and expenditure are required.

8.108 Should there be insufficient information to support their request then the customer should be asked to provide more details.

Details not provided

8.109 If no satisfactory reply is received then customers should be advised that their request for hardship has not been successful.

Capital available to pay debt

8.110 Where the debtor is in receipt of a benefit from which recovery by deduction can be made, and has assets worth £500 or over i.e.

- capital of £500 or over;
- disposable assets (e.g. shares) worth £500 or over;

- capital and disposable assets worth £500 or over.
- then any hardship application should only be considered on health grounds.
[NOTE: Where legacy screens claim a customer has notional capital and the customer's benefit is reduced because of this notional capital, then Debt Management would view this in the same way as 'capital' in terms of its impact on any hardship claim]

Hardship accepted

8.111 Where the debtor provides reasonable evidence to support their Hardship request, and their circumstances warrant it, a reduced rate of recovery will be established and the customer will be notified.

Review of Hardship

8.112 The Hardship rate will be reviewed by checking the debtor's circumstances against the circumstances that led to the hardship rate in the first instance.

8.113 Where the debtor replies and the reduced rate of deduction is still appropriate then the hardship rate will remain in place until the next review.

8.114 Where the debtor replies and the rate requires changing, or the debtor does not reply, the rate of deduction in place will have to be amended and the customer will have to be notified of the new recovery rate before deductions are implemented. The deduction rate will again be reviewed at a future date.

Financial commitment for a known period

8.115 Where the decision is based on a financial commitment which will only last for a known period, the reduced recovery rate should be reviewed at the end of that period. Any new financial commitment made during this period should only be considered where it relates to an unforeseen expense e.g. to replace an irreparable cooker.

8.116 Occasionally the circumstances of the debtor may be such that recovery should be suspended until a particular financial commitment ends. In such cases the customer would be notified and the case should be reviewed once the financial commitment ends.

Action at Uprating

8.117 Deductions should not normally be increased at annual uprating or increased on review (see para 8.121) purely on account of the uprated rates of deduction. This is because the amount of increase is minimal and it is not cost effective to take this action.

8.118 However where a case has been in recovery for a long time we may be recovering at a very old rate. In these cases it is suggested that the deductions should be increased on review to reflect uprated deduction rates.

8.119 When a recovery rate is being reviewed as a result of uprating, a full deduction rate calculation should be carried out (see paras 8.26 to 8.71 for IRBs and paras 8.72 to 8.85 for NIRBs) and any applicable benefits paid to any partner should be considered accordingly (see paras 8.23 to 8.25).

8.120 The deduction rate calculated on review should be applied.

Deduction Rates Reviewed

8.121 The deduction rate may be amended either due to relevant changes in the debtor's circumstances or on a case review.

8.122 When a recovery rate is being reviewed, a full deduction rate calculation should be carried out (see paras 8.26 to 8.71 for IRBs and paras 8.72 to 8.85 for NIRBs) and any applicable benefits paid to any partner should be considered accordingly (see paras 8.23 to 8.25).

8.123 The deduction rate calculated on review should be applied.

8.124 Where the customer receives more than one benefit, it is sensible (though not essential) to establish recovery of the reviewed deduction rate from the benefit from which it has been calculated.

8.125 Whenever a change to the rate of the deduction is considered it is important that the debtor is informed of the increase at least 14 days prior to its implementation. This should be done by issue of a DL/ORG 35, which should state the new rate of deductions and an earliest start date. Recovery Units should not rely on other notifications which may be issued (i.e. those produced by heritage systems, or relating to the method of payment) to inform customers of deduction increases.

Application of SofS discretion not to recover

Recovery Ends

Full recovery

8.126 Where deductions end and full recovery is made the case moves to exit on Debt Manager.

Balance outstanding

8.127 Where recovery ceases before full recovery is made, and the debtor is not in receipt of benefit take normal off-benefit recovery action.

(see [Section Five - Recovery Action](#)).

8.128 Should the debtor remain on benefit, but deductions can no longer be made, recovery may have to be suspended (see [Section Seven - Suspend Recovery](#)).

Section Nine - Off Benefit

Section Ten - Compensation Orders and Confiscation Orders

Confiscation/Compensation Orders and Overpayment Recovery:

The Proceeds of Crime Act 2002 allows Departmental financial investigators to carry out investigations into the financial affairs of customers who have defrauded the Department. If these investigations reveal substantial assets, the Department can apply to the courts for a Confiscation Hearing, which means requesting that the judge imposes a Confiscation Order or a Compensation Order against the customer.

Confiscation Orders normally require the customer to repay a lump sum to the courts by a specific date. Failure to comply with the order usually results in a

prison sentence, whether the customer has already served a separate sentence for the offence or not.

Compensation Orders require the customer to pay an amount to the Department via the courts by means of instalments. Money received from a Compensation Order is paid to the Department and not to the Treasury.

Although Confiscation and Compensation Order payments are made to the courts rather than the Department, an abatement should be made to the overpayment balance in respect of these payments. It is Departmental policy that payment of either a Confiscation or Compensation Order should be treated as payment of the associated debt. The Department does not seek to gain financial reward from seeking or receiving such an order.

NB: The term ‘Compensation Order’ used here relates to an order made by the courts following a criminal conviction. It must not be confused with compensation recovery which is dealt with by the Compensation Recovery Unit in CRC Washington.

Notification that a Confiscation Order has been made.

When a Confiscation Order has been made, the Financial Investigation Unit (FIU) sends a notification to Operational Policy, Advice and Correspondence (OPAC).

OPAC will update ‘Names Details’ – ‘Additional Details’ – Panel 6 ‘Special Interest Details – FIU Confiscation.Ord?’ on Debt Manager to confirm a Confiscation Order has been made. This action will suspend recovery on Debt Manager for 91 days.

OPAC will input an appropriate diary note on Debt Manager advising recoveries staff that if the order is not paid by the end of the 91 day period (or the date stipulated by the courts, whichever is the later) OPAC must be notified in order for them to contact the FIU to take follow up action. Recovery will remain suspended and the debt balance of each overpayment will be removed from the VRA which will be placed in Park (PKV).

If the case is being recovered by deductions from benefit, recovery must be suspended on Legacy. OPAC will e-mail the relevant LAT team to request them to suspend recovery and end deductions on Legacy, as the customer has a Confiscation Order to pay.

Notification that a Compensation Order has been made.

On receipt of confirmation that a Compensation Order has been made, OPAC notifies the court collections team at Contact Centre (CC) Bradford. The CC will suspend recovery and end deductions on Debt Manager and Legacy systems pending payment of the order.

On receipt of any payments from the court, Central Finance in CC Trafford must notify the court collections team in CC Bradford. Once the court collections team have updated their records, they must request that the appropriate transaction type is posted on Debt Management.

Confiscation Order/Compensation Order has been paid.

When either a Confiscation Order or a Compensation Order has been paid, the overpayments to which they relate, are treated as being either part repaid, or repaid in full, dependent on the value of the order that was made.

When a Confiscation Order has been paid, the FIU notifies Finance. Finance will then update Debt Manager by posting an abatement transaction type.

When a Compensation Order has been paid, the court collections team in CC Bradford must notify Finance for the appropriate transaction type to be posted on Debt Manager.

If, after the appropriate transaction types have been posted, there is a recoverable balance outstanding on any remaining overpayment, normal recovery must be reinstated.

Central Finance must ensure that recoveries from either Compensation or Confiscation Orders are only recorded against the overpayment to which the order relates, and not to any other overpayments that the customer may have. Debt Manager cannot make this distinction due to payment allocation rules. Where the order is greater than the overpayment or balance of the overpayment, only the amount required to clear the relevant overpayment will be recorded.

Refunds must not be made on any cases without first confirming with Finance.

Section Eleven - Overpayment Decision Disputed

General

11.1 The outcome of an overpayment decision made by a Decision Maker (DM), should be notified to the customer(s) or appropriate appointee. They then have the opportunity to question (dispute) it. They should normally question a decision within the applicable dispute period by;

- a) asking for the decision to be reconsidered, or
- b) appealing against it;

However there is no right of appeal against a refusal to reconsider a decision. The guidance on decision making can be found in the Decision Makers Guide (DMG).

The dispute period

11.2 The request for reconsideration or appeal would normally have to be made within a period defined by legislation, referred to as the 'dispute period'. This is currently one calendar month from the day following the issue of the notice of the overpayment decision.

11.3 DELETED

11.4 DELETED

11.5 DELETED

11.6 DELETED

11.7 DELETED

11.8 DELETED

11.9 DELETED

11.10 DELETED

11.11 DELETED

11.12 DELETED

Appeal to the Upper Tribunal

11.13 There is a right of appeal against the decision of an appeal tribunal, by both the customer and the Department, on a point of law.

11.14 Where leave to appeal is requested,

- a) set a reasonable review date for a decision on acceptance;
- b) if deductions have not yet commenced – do not start recovery
- c) if deductions are already in place, e.g. because of a late appeal; continue normal recovery action (see Section Five - Recovery Action).

11.15 If leave to appeal is allowed;

- a) record the information on Debt Manager;
- b) suspend recovery in all cases.
- c) set a review date for six months, to check on progress.

11.16 Where the appeal is not yet heard;

- a) note Debt Manager;
- b) set a review for a further three months to check again;
- c) then continue to review the position every three months until the outcome of the appeal is known.

11.17 If the Upper Tribunal refers the case to a new tribunal;

- a) continue to suspend recovery (see Section Seven - Suspend Recovery); and

- b) set an appropriate review date for the result.

Decision Revised on Appeal

11.18 Any revised decision, whether by TTS or the Upper Tribunal, should be implemented without delay unless it is the intention to seek leave to appeal to a higher level, to the Commissioner or High Court;

- a) note Debt Manager diary of the outcome;
- b) take the appropriate action to implement that decision or appeal;
- c) notify the customer of the outcome;
- d) take the appropriate action to continue recovery or close the debt (see Section Five - Recovery Action).

11.19 DELETED

11.20 DELETED

Section Twelve - Secretary Of State's Discretion – Including Waiver

General

12.1 A recoverable overpayment determined under Section 71 or 74 of the SS Administration Act 1992, or an Administrative Penalty, may have discretion applied to its recovery at any time during the overpayment process. There is no legal requirement for discretion to be applied at any time, however once the general principle of discretion is applied, it must be seen to be applied consistently.

12.2 The SofS has the authority to apply discretion, and can and does delegate that authority to various levels depending on the specific discretion to be applied. He also has a duty to protect public funds, so the request for the repayment of an overpayment should be made wherever possible, and recovery effected, as long as any action taken is;

- a) cost effective;
- b) would not cause undue hardship to the customer, or their family;
- c) therefore, discretion can be applied for cost and/or welfare grounds, subject to the guidance given in HM Treasury publication: Managing Public Money.

The Types of Discretion Applicable

12.3 There are five main types of discretion applicable to overpayment calculation and debt recovery, some of which may be applied at any stage throughout the overpayment process:

- a) Where the SofS does not consider;
 - i) that an overpayment has occurred e.g. advance payment correctly cashed; or
 - ii) warrant further action on cost grounds e.g. small overpayment; See P&P Circular - Small Overpayment limit also covered in Section One - The Overpayment Process.
- b) Abandonment of recovery action, by writing off the amount outstanding.
- c) Waiver of the recovery of the debt in exceptional cases, (which includes by reason of notional entitlement since 2003), by writing off all or part of the amount outstanding;
- d) Reduction of a recoverable amount on account of Child Support Maintenance due to be paid directly to the Department
- e) Reduction of a recoverable amount to take account of late (or no) declaration of Permitted Work (formerly known as Therapeutic Earnings) which if approval had been sought at the outset would have been allowed.

12.4 There is no right of dispute against a decision not to apply discretion, or where the debtor disagrees with the discretion applied. However once it is applied in the debtor's favour it is not normally reviewed. Where discretion is not applied consistently this may result in a Judicial Review.

The Delegation of Authority

12.5 Each type of discretion is delegated to an appropriate level of authority, to act on behalf of the SofS. Some minor applications are delegated throughout the recovery process to an unspecified level, covered in earlier sections. The following major types are specifically delegated to;

TYPE OF DISCRETION:	DELEGATED TO:
Abandonment	Recovery Unit EO. or above
Abatement prior to November 2004	Recovery Unit EO, or above
Abatement post November 2004	OPAC only
Waiver	OPAC only

No discretion may be applied locally where it is not specifically delegated.

Abandonment

12.6 This may be applied for various reasons, from cost effectiveness to welfare considerations.

Conditions for Abandonment

12.7 Where any of the following conditions apply, any balance of the overpayment outstanding may be considered for abandonment.

- a) The outstanding balance of the debt is below £25; and
- i) a final demand is issued; and
 - ii) no further recovery action can be taken; and
 - iii) it is not the subject of criminal proceedings.
- b) The outstanding debt exceeds £25, and
- a defined period has elapsed in which there has been no effective recovery. See Appendix Seven - S of S Discretion, Abandonment and Write Off for the current conditions.
- c) The debtor is sent to prison. See Appendix Seven - S of S Discretion, Abandonment and Write Off for the current conditions.
- d) The debtor has been deported or gone abroad, and there is no likelihood of recovery. See Appendix Seven - S of S Discretion, Abandonment and Write Off for the current conditions.

Authorisation and action

12.8 See Debt Manager User Guide – after authorisation Debt Manager will automatically write off the balance of the particular debt.

Background

12.9 The policy on abatement was that where requested, the SofS might decide only to seek recovery of the net loss to Public Funds.

12.10 With the introduction of Tax Credits and a judicial review supporting non-consideration of abatement on account of notional tax credit the policy was reviewed.

12.11 Abatement on account of notional entitlement can now only be considered on cases where the abatement was requested prior to November 2003. Where the customer or their representative requests abatement after November 2003, the case should be referred to OPAC for consideration under the waiver criteria.

12.12 DELETED

12.13 DELETED

12.14 DELETED

12.15 DELETED

12.16 DELETED

12.17 DELETED

12.18 DELETED

12.19 DELETED

12.20 DELETED

12.21 DELETED
12.22 DELETED
12.23 DELETED
12.24 DELETED
12.25 DELETED
12.26 DELETED
12.27 DELETED
12.28 DELETED
12.29 DELETED
12.30 DELETED
12.31 DELETED
12.32 DELETED
12.33 DELETED
12.34 DELETED
12.35 DELETED
12.36 DELETED
12.37 DELETED
12.38 DELETED
12.39 DELETED

Section Thirteen - Administrative Penalty

Background

- 13.1** From the 18 December 1997 legislation introduced the option of offering a Fraud debtor a financial penalty as an alternative to criminal prosecution. This Administrative Penalty (AdPen) is administered by the Fraud Investigation Service (FIS) as part of the fraud process.
- 13.2** There is no right of appeal, however there is a cooling off period of 28 days in which the debtor may reconsider their position. The recovery process for AdPens is the same as overpayment recovery, AdPens being a prescribed debt.

Collusive Employers

- 13.3** AdPens against collusive employers were introduced by the SS Fraud Act 2001, Section 15, for offences committed after 30 April 2002.
- 13.4** These AdPens will be offered to individuals, who should be treated the same as any other debtor. Due to there being no actual overpayment the amount of the AdPen will be for a rate laid down in the Act and dependent on the type of offence.

Initial Action – all cases

- 13.5** Where a case has been considered suitable for the offer of a penalty, Fraud will issue an Adpen request to the CRC. The action on these cases should therefore be given the same priority as fraud prosecution cases.

13.6 On receipt of an Adpen request;

a) complete;

- overpayment calculation;
- penalty calculation; (see paragraph 13.8 below)

b) return this information to FIS with a copy of the overpayment decision;

13.7 The overpayment notice letter should be issued at this time, if not already issued, to ensure that the debtor is advised of their appeal rights before the penalty interview. This may involve liaison with Fraud to ensure that the process runs smoothly. If the customer disputes the decision notify FIS.

Calculation of the Penalty

13.8 Legislation lays down that the amount for the penalty is 30% of the gross overpayment figure, rounded down to the nearest whole penny. No account should be taken of any recovery, including recovery from arrears or abatement, when calculating the penalty.

More than one period or benefit overpaid

13.9 Legislation requires that a separate penalty calculation should be made for each benefit overpayment decision. This would also apply to separate overpayments of the same benefit, but only where they have separate overpayment decisions. They must not be added together for the purpose of calculating each penalty.

Example: Multiple overpayments

Component/action	Amount
Overpayment of IB	£234.98
Penalty £234.98 x 30%	£70.494
Penalty rounded down to nearest penny	£70.49
Overpayment of IS	£398.54
Penalty £398.54 x 30%	£119.562
Penalty rounded down to nearest penny	£119.56
Loss to public funds (IB+IS)	£633.52
Total Penalty	£190.05

13.10 Once the debtor has agreed to a penalty, the agreement cannot be revised. However, should the overpayment decision be revised for any reason, the Adpen agreement related to that overpayment ends.

Part of the Overpayment Period Prior to 18 December 1997

13.11 Where part of the overpayment period extends back before the 18 December 1997, only that part of the overpayment period from and including 18 December 1997 can be considered for an Administrative Penalty.

13.12 DELETED

Administrative Penalty Accepted

13.13

Where a penalty is offered and accepted, the customer has 28 days to reconsider their position. After that period FIS will notify the CRC and provide a signed copy of the customer's written agreement.

Recording Action

13.14 These are recorded on Debt Manager.

13.15 This follows exactly the same process as overpayment recording, see the guidance in Section Five - Recovery Action.

Multiple debts

13.16 DELETED See paragraph 13.9

13.17 DELETED

Off-benefit cases

13.18 Action an Adpen recovery in the same way as a benefit overpayment.

Referral to Off – Benefit Recovery

13.19 The debt should be referred for action under the same grounds as an overpayment. The penalty agreement would also have to be certified for debtors living in Scotland.

Scottish Certificate

"I (insert name of certifying officer), hereby certify that this is a true copy of the administrative penalty agreement dated (insert date of agreement)."

(signed by certifying officer)

(date of certificate)

Related Overpayment Revised

13.20 Where the related overpayment decision is revised, whether up or down, the penalty agreement will lapse. The reason for the revision would not be relevant.

Action to be taken by CRCs when associated overpayment is revised.

13.21 The following steps should be taken by the CRCs to ensure the case is handled correctly.

- Note Debt Manager that the AdPen has been returned to FIS to notify them of the outcome.
- Notify FIS immediately of the revision outcome by completing the Adrev1 form. A copy of the ORG7, QB16 and Adrev2 (with the customer's Name and Nino completed) should also be sent to the FIS officer, via the print at site function. If no up to date printer details are held, a hard copy should be issued.
- Email the Debt Fraud Champion at CC Bradford to notify the revision outcome and attach a copy of the Adrev1 and Adrev2 forms issued to the FIS officer.

Action to be taken by the Debt Fraud Champion when notification is received.

The Debt Fraud Champion arranges for the following steps to be taken to ensure the case is handled correctly.

- Suspend any recovery action currently being taken on the penalty.
- Re-classify the overpayment from 'F' to 'M'.
- Set a review date of three months to check for the outcome of the FIS action.
- If a revised penalty decision is not received from FIS, form Adrev3 should be issued to the FIS officer.

New Penalty Agreement

13.21 Where a new penalty agreement is made, FIS will notify Debt Management

13.22 Where a new penalty agreement is made, this should be recorded using the normal process, as detailed in Section 2 of the **Debt Manager On-Benefit User Guide**.

Input

Previous recovery made by compulsory deductions from benefit.

Any recovery made on the previous agreement should be allocated to the new agreement. If after this allocation there is an amount remaining, this can be

allocated to any recoverable overpayment held. If no recoverable overpayment is held, the amount remaining should be refunded to the customer.

Previous recovery made by any other method.

Any recovery made on the previous agreement should be allocated to the new agreement. If after this allocation, there is an amount outstanding, the customer's permission should be sought before allocating to any recoverable overpayment held. If the customer does not give their permission or no recoverable overpayment is held, the amount remaining should be refunded to the customer.

No New Agreement

13.24 In receipt of notification from FIS, stating that a new penalty has not been offered, or not been accepted;

- a) note Debt Manager;
- b) refund any AdPen recovery to the debtor except where there are other recoverable debts outstanding and the AdPen was recovered by deductions from benefit. In these cases the amount recovered by deductions in respect of the AdPen can be allocated to any outstanding recoverable overpayment. AdPens recovered by off benefit methods cannot be allocated to another debt and must be refunded;

In certain circumstances recovery made on the previous agreement may be allocated to any recoverable overpayment. If no recoverable overpayment is held, the full amount recovered should be refunded to the customer.

Previous recovery made by compulsory deductions from benefit.

Any recovery made on the previous agreement should be allocated to any recoverable overpayment. If after this allocation there is an amount remaining, this should be refunded to the customer.

Previous recovery made by any other method.

The customer's permission should be sought before allocating to any recoverable overpayment held. If the customer does not give their permission, any amount recovered should be refunded to the customer.

Section Fourteen - Social Fund Overpayments

Background

14.1 The legislation introducing Social Fund only made provision for the recovery of overpayments of payments made from the Regulated Fund in the form of grants, loans being made from the Discretionary Fund. SF

legislation has since been amended to allow the recovery of overpayments from either fund, effective from 5 October 1998.

General

14.2 All SF overpayments can now be recovered, regardless of the fund they have been paid from (in fact some may now be paid from either fund);

- a) Regulated Fund
 - i) Funeral Grant
 - ii) Maternity Grant
 - iii) Cold Weather Payment
 - iv) Winter Fuel Payment
- b) Discretionary Fund
 - i) Crisis Loan
 - ii) Budgeting Loan
 - iii) Community Care Grant

Social Fund overpayment Action

14.3 Where there has been an overpayment of a SF payment the SF section, or locally nominated section(s), are responsible for;

- a) the calculation of the overpayment;
- b) the overpayment decision;
- c) issuing the overpayment notice to the debtor;
- d) referring the recoverable overpayment to the recovery unit after the dispute period of one month;
- e) accounting for non-recoverable debt.

SF Discretionary Award - Overpaid pre 5 October 1998

14.4 Any overpayment of Crisis Loan/Budgeting Loan/Community Care Grant made prior to 5 October 1998 should be administered and accounted for by SF. Any agreement to repay would only be voluntary, so could not be enforced.

Decision Disputed

14.5 Any dispute or enquiry concerning the overpayment decision should be referred to SF, or nominated section, to deal with.

Referral of the debt for recovery action

14.6 At the end of the dispute period the debt should be referred for recovery.

Recovery Action

14.7 On receipt of the SF overpayment decision;

- a) record the overpayment (see Section Four - Recording Action);
- b) take normal recovery action (see Section Five - Recovery Action);

SofS Discretion/Hardship

- 14.8** This type of debt should be treated the same as any other overpayment when applying discretion (see Section Twelve - SofS Discretion and Section Eight - Recovery by Deduction from Benefit).

Social Fund – Loan Recovery

- 14.9** Debt Management only recover Social Fund loans for off-benefit customers on behalf of Jobcentre Plus (JCP). This is recovery of a loan and not an overpayment.
- 14.10** On benefit customers have their SF loans recovered directly by Jobcentre Plus. Any queries from a customer about a SF loan are referred to Jobcentre Plus.
- 14.11** If recovery breaks down, the case must be returned to JCP. Debt Management do not have authority to write off SF loans.

Section Fifteen - Recovery After Death

General

- 15.1** The Department's policy is to recover all debt where it is reasonable and cost effective to do so. Therefore action is taken to try to recover an outstanding recoverable debt from the estate of a deceased debtor. Also, where an overpayment has arisen through Direct Payment After Death (DPAD) voluntary repayment is sought.
- 15.2** In addition, where a customer was in receipt of IS/JSA(IB)/SPC/ESA(IB) prior to their death, a check is made that a full disclosure of capital had been made whilst that benefit had been in payment. This is achieved by comparing their benefit claim information against the assets declared in their estate.
- 15.3** With a view to sensitivity, great care should be taken with all enquiries to relatives and members of the public in order to avoid any unnecessary distress or anxiety.

Registration of death

- 15.4** All deaths in the UK must be registered, a duty normally undertaken by the next of kin or appointee. A death certificate would then be issued at the

time of the registration. The certificate includes a form (BD8) to notify the Department about the death. The form requests details of the person to whom any arrears of benefit should be paid (which could provide a useful contact point).

Scotland

15.5 As well as registering the death, details of the estate are also provided in Scotland. This gives information not readily available in England and Wales, unless the personal representative has applied for Grant of Probate or Letters of Administration (see Section Sixteen - Recovery from the Deceased's Estate for an explanation of these terms).

The Personal Representative

15.6 For the purpose of this guide the personal representative (PR), or legal personal representative (LPR) is anyone responsible for handling the affairs of the deceased, or their solicitor (see Section Sixteen - Recovery from the Deceased's Estate for a fuller explanation of the PR).

Initial Action

15.7 Once the death of a current or past customer becomes known, action should be taken to check whether there are any outstanding debts recoverable from the deceased either

- a) outstanding recoverable overpayment(s);
 - b) outstanding Administrative Penalty (AdPen);
 - c) outstanding SF loan;
 - d) irregular encashment of an instrument of payment (IoP), after the death of the customer, by a third party;
- or a combination of the above.

NB: See paragraphs 15.29 onward for action regarding Direct Payments After Death (DPAD)

Outstanding Debt

15.8 Where an outstanding debt is held it should be urgently transferred to RFE/RGS for recovery action, subject to a minimum limit of £25 on the total amount of debt found (see para 15.10).

15.9 DELETED

The total debt limit

15.10 Where the total amount of any combined debt is;

- a) over £25, all the debts should be transferred to RFE/RGS for recovery action;
- b) £25 or under, all the debts should be written off.

- 15.11 DELETED**
- 15.12 DELETED**
- 15.13 DELETED**

Recoverable overpayment awaiting action or discovered after death

15.14 Where there is a recoverable overpayment awaiting action, or discovered after death for a period prior to death, which did not involve undeclared assets, you should urgently;

- a) register the debt including date of death;
- b) calculate the overpayment;
- c) Debt Manager will transfer the debt to RFE/ RGS

15.15 Overpayments involving undeclared assets should be referred urgently to RFE/RGS, without further action on the overpayment.

- 15.16 DELETED**
- 15.17 DELETED**
- 15.18 DELETED**
- 15.19 DELETED**
- 15.20 DELETED**
- 15.21 DELETED**
- 15.22 DELETED**
- 15.23 DELETED**
- 15.24 DELETED**
- 15.25 DELETED**
- 15.26 DELETED**
- 15.27 DELETED**
- 15.28 DELETED**

General

15.29 Any benefit payment made into an account after the death of the customer would have been made “under a mistake in fact”, that the customer was entitled to that payment, when, in fact their benefit award should have been terminated on their death.

15.30 Once an account provider becomes aware that a customer, holding a sole account, has died they should return any credits received after that date. The account provider can return them without the permission of the person dealing with the deceased’s affairs as the Department is entitled to this money under the common law principle of restitution (returning both parties to the position they were in before the mistake of fact occurred).

Immediate action required

15.31 Immediate action should be taken to contact the account provider for the return of any credits paid into the account after the date of death;

- a) note the records;
- b) issue appropriate letter to the account provider;

15.32 If no payment, or satisfactory reply, is received within 21 days, another letter will only be issued to an LPR or solicitor dealing with the deceased's estate. The case will be automatically routed in Debt Manager and no further user intervention is required unless contact is made.

Sole Account

15.33 Where the account provider has released the funds in the account to the estate, they should be able to provide details of the person handling the deceased's affairs. There is no reason why they cannot do this, because they would not be releasing information about a customer (even if that person had an account with them).

15.34 Once you have the details of the person handling the deceased's affairs you would need to contact them urgently to advise them that they should reimburse the Department before they deal with the estate;

- a) note the records;
- b) issue appropriate letter of notification

15.35 Where there is no satisfactory reply, or repayment no reminder is issued and the case will be automatically routed in Debt Manager.

Joint Account

15.36 Where payment has been made into a joint account, and the surviving account holder's details are not known, try to obtain details of their address.

15.37 The account provider would be under no obligation to provide any details about the surviving account holder. Where their details cannot be traced, the only option available would be to send correspondence care of (c/o) the account provider, asking them to forward it on.

15.38 You should try to obtain repayment by issuing the appropriate notification to the surviving account holder.

15.39 Where there is no satisfactory reply or repayment, a reminder will not be issued. The case will be automatically routed in Debt Manager.

15.40 DELETED

Joint account holder refuses to repay

15.41 Where the surviving account holder refuses to repay the DPAD. Note Debt Manager. The account will be automatically routed appropriately

Irregular Encashment

15.42 Where there is an irregular encashment of an IoP, for benefit payable for a period after the death of the customer, the case should be processed in the same way as any other irregular encashment. However, care should be taken in dealing with a surviving partner or other member of the family, especially where there is entitlement to part of the period of the payment.

Section Sixteen - Recovery From Deceased's Estate

Introduction

- 16.1** Where a debtor dies with an outstanding debt(s) (i.e. recoverable overpayment/ Administrative Penalty/ Social Fund loan), and they leave an estate, the Department becomes a creditor of their estate. As a creditor, the Department normally makes a claim for these debt(s) from their estate.
- 16.2** In addition, a search is made for an estate in respect of all customers who die whilst in receipt of an Income Related benefit. A comparison is then made between the information provided for the benefit claim and the assets declared in their estate. This check is made to ensure that the claim information in respect of savings was complete (many customers are unsure of, or forget, what savings they have). It should be noted that any discrepancy by the customer alone is normally considered as innocent, where another person is involved that assumption does not apply to them.
- 16.3** The following guidance provides detailed information on the recovery of debt from a deceased customer's estate and complements the guidance contained in Section Fifteen - Recovery After Death.

The Personal Representative

- 16.4** When a person makes a will they can appoint someone to handle their estate after death. Should that person decline the appointment, or the will is disputed, or no will was made, then someone has to be found to administer the estate. The person who is appointed to administer the estate may appoint a solicitor to handle it on their behalf, however they remain responsible. More than one person can be appointed to administer an estate, in which case they would be jointly responsible (the legal term is jointly and severally liable) for its administration.
- 16.5** For ease of reference, anyone that is involved with handling the deceased's affairs is referred to throughout this guide as the Personal Representative (PR), a term normally used for the legal PR (LPR) administering an estate.

Treasury Solicitor Appointed

- 16.6** Where no relative or executor is known the Treasury Solicitor (TS), Queens & Lord Treasurers Remembrancer (QLTR) in Scotland or the Duchies of Cornwall or Lancaster if the deceased lived within their area may be appointed to administer the estate. They search for anyone, relatives or persons who are not related, whom the intestate might reasonably have been expected to make provision for (Administration of Estates Act 1925, s46 (vi) Annex 1). Where one of the above has been appointed, the normal recovery and investigation process apply as a relative is often discovered at a later date. If not, the estate passes to the Crown.

Action To Register An Estate In Scotland

- 16.7** In Scotland there is a simple process of the executor registering the assets in the deceased's estate with the Sheriff Court. A confirmation document provides an inventory of the assets. Unlike England and Wales, there is no requirement to advertise for creditors.
- 16.8** Creditors have six months from the date of death to make their claim, or up until the estate is distributed where that is later (this interpretation of the legislation has been provided by the Department's solicitors).
- 16.9** Whenever recovery from, or check of, an estate is required, the confirmation document is obtained from the Commissary Office of the Sheriff's Court.

Action to Register an Estate in England and Wales

- 16.10** In England and Wales there is no similar action on registering a death. However, in certain circumstances, there is a requirement for the PR to apply for a Grant of Probate (GoP) or Letters of Administration (LoA) to the District Probate Registry of the High Court of Justice.

Grant of Probate

- 16.11** In principle, an application for a GoP is only required where the estate exceeds a set amount (at the time of writing £5,000). However, in practice, financial institutions might not release funds until the PR has verified they are entitled to administer the estate, by providing a certified copy of the GoP or LoA.
- 16.12** The PR would be legally known as the Executor(s), where male, Executrix(es) where female. Only four PRs can be named on the GoP. They may now advertise for creditors, although a solicitor may place an advert prior to the GoP.

Letters of Administration

- 16.13** Where there is

- a) no will (known as intestate); or
- b) it has been disputed; or
- c) the named executor(s) declines the appointment
- d) an application may have to be made for Letters of Administration where the estate exceeds a set amount (£5,000)

before someone can administer the estate.

16.14 The PR would be legally known as the Administrator(s), where male, Administratrix(es), where female. Only four PRs can be named on the LoA. They may now advertise for creditors.

Advertising for creditors - legal safeguard for the PR

16.15 To safeguard themselves, the PR(s) would need to satisfy the legal requirements for the administration of an estate. Two important actions would be to;

- a) advertise for creditors;
- b) wait at least two calendar months from the date of the advert before distributing the estate.

16.16 The PR must place an advert in the London Gazette, and where the estate contains property or land, a paper having a local distribution (adverts in the national dailies are valid - Trustee Act 1925 s27), asking for any creditors to contact them.

16.17 Once the advert has been placed, assuming no creditors have come forward within the time limit of two calendar months from the date of the published advert, and that the estate has been finalised, it may now be safely distributed. Where a creditor comes forward before the estate is fully distributed, then the placing of the adverts offers no protection.

Income Related Benefit in Payment at Date of Death

Reg 113/113(S) Action By RFE

16.18 On receipt of form Reg 113/113(S), Recovery from Estates (RFE) sections in Bradford check their appropriate records for details of an estate.

16.19 For Scotland, a check can be readily made of the assets declared in the death registration. For England and Wales the only information readily available is after the award of a GoP or LoA.

Initial case control

16.20 RFE sections should set up a suitable case control system to administer the initial process for tracing an estate. The actual process is left to local requirements, as long as it leaves an audit trail.

Initial Contact with the PR (England and Wales)

16.21 In order to check the accuracy of the deceased's benefit claim, full details of the estate, and any jointly owned assets now passed to the surviving owner, should be requested from the PR. It should be noted that the PR is under no legal obligation to provide details of such jointly owned assets (but the DM may like to refer to Commissioner's decision R(SB) 34/83).

16.22 Where it is established that there is an estate, contact the named PR;

- a) for full details of the estate;
- b) to establish the Department as a potential creditor.

16.23 Initial contact should be made by in writing;

- a) Debt manager will identify cases where there is an estate, and will issue a request for a full inventory of the assets of the estate to the first named personal representative. If a solicitor has been appointed to act for the estate then the initial notification will be sent to the Solicitor.
- b) A review date for 28 days will be automatically set.

16.24 Where there is no satisfactory reply;

- a) A reminder letter will be automatically sent to the PR or the Solicitor.
- b) A review date for 14 days will be automatically set.
- c) If there is still no satisfactory reply, a second reminder should be issued to the PR or the Solicitor.
- d) A review date for a further 14 days will be automatically set.

16.25 If there is still no satisfactory reply;

- a) Debt Manager will automatically check to see if more than one PR has been appointed. If so, the procedure detailed in 16.23 – 16.24 will be repeated with all the named PR's.
- b) If a Solicitor has failed to provide a satisfactory response then initial contact will be made with the first named PR.

16.26 If all the above has failed to result in a satisfactory response, try to confirm the PR's identity details and their address by using;

- a) Directory Enquiries;
- b) Electoral Register;
- c) Any other lawful means available.

16.27 Once their details have been confirmed consider;

- a) Referring the case to the DM to consider Commissioner's decision R(SB)34/83 and assume the assets in the estate equal the net probate figure;
- b) Enforcement action (under SS Admin. Act s126) to force them to provide the required information.

Checking The Estate

16.28 Where details of the estate are provided, check that the total value of the assets is equivalent to the value of the net assets declared for probate. If there is a discrepancy, contact the PR for an explanation. Otherwise check the declared assets to consider whether any further action is necessary. Where the total value of the assets is;

- a) less than the appropriate minimum capital level (£3000, £6000, £10000 or £16000);

Consider taking no further checking action. However action to make a claim for any other outstanding debts should be continued.

16.29 Should the estate details show that there will be insufficient funds remaining to pay any unsecured creditors after meeting the;

- a) funeral and estate administration costs; and
- b) secured and preferential creditors;

take no further action to make a claim. As unsecured creditors there would be no balance left to recover from.

16.30 Where the estate's assets do not appear to agree with those declared for benefit purposes, obtain full details of the benefit claim from the benefit unit by requesting;

- a) claim papers, application forms and change notifications;
- b) details of appointee, Power of Attorney, plus a copy of the relevant document e.g. BF56;
- c) reports, especially details about assets and income;
- d) full Record Print, showing details of awards and payments;
- e) any other details considered relevant, including notepad entries.

16.31 A full comparison should then be made between the details in the claim and in the estate. Where the check reveals that;

- a) any overpayment would be below the small overpayment limit;
- b) the assets in the estate indicate no overpayment may have occurred. Existing Pension Credit regulations enable benefit recipients with an Assessed Income Period (AIP) to acquire capital assets without this having an impact on the amount of benefit they receive. Consequently, customers who have

accurately declared their assets when their claim for Pension Credit was made and, have been awarded an AIP, are not required to report any changes to their assets during the period of the AIP.

Take no further action to make a claim, unless there are outstanding debts to be claimed from the estate.

No Claim Required

16.32 Where no claim is to be made against the estate, take the following action;

- a) Users should select the relevant choice as Debt Manager;
- b) This will annotate the account with relevant reason for not pursuing a claim on the estate and will send a notification to the PR advising him/her of the outcome;
- c) Any documentation received from the benefit paying office will need to be returned;
- d) Close the case.

Outstanding debt(s) transferred to RFE/RFE(S) for recovery

16.33 Outstanding debts (overpayments and Adpens and loans from the Social Fund) will be transferred electronically to RFE/RFE(S) upon the death of the debtor.

- a) set up a subfile (QB99 or substitute), to hold the debt information;
- b) complete and return the form EF413 to the issuing unit;
- c) record the debt for processing.

16.34 Where RFE(S) are still checking the estate, recovery action on these debts should be suspended. Otherwise a claim against the estate should be made.

Claim for outstanding debts only

16.35 Where a claim is for outstanding debts only;

- a) A claim letter will be automatically sent to the PR requesting repayment of the debt from the estate;
- b) A review date for 14 days will be automatically set.

16.36 Where there is no satisfactory reply, or repayment;

- a) A reminder letter will be automatically issued;
- b) A review date for 14 days will be automatically set.

16.37 Where there is still no satisfactory reply, or repayment, take final reminder action;

- a) Check that the PR has been legally appointed and, if so, check to see if there is more than one PR;
- b) If there is more than one PR, repeat the process described in 16.35 – 16.36 with the second and any subsequent PR's;
- c) If there is only one PR and the PR has been legally appointed, issue the final reminder, advising the PR that enforcement action may have to be considered;
- d) Set a control date for 14 days;
- e) If the PR has not been legally appointed, the debt should be held until a legal estate has been identified.

16.38 Deleted

Undeclared Assets Discovered

16.39 Where undeclared assets are discovered, obtain further information from the PR, especially where benefit had been in payment for a number of years. Before taking any further action with the PR, the benefit claim papers should be checked.

Benefit claim check

16.40 To ensure that any further action is cost effective, the claim papers should be checked to ensure that;

- a) there is a signed claim form on which to base a decision of misrepresentation or failure to disclose;
- b) the award decision can be identified for review;
- c) there is evidence of a benefit award(s).

Missing Claim Details

16.41 Where only part(s) of the claim(s) detail(s) are available you may have to limit the period of an overpayment. Where all of the claim documents or award details are unobtainable, no further action is possible under SS legislation.

16.42 The benefit paying office should be asked to take action to trace any missing evidence (see Missing Evidence in Section One - The Overpayment Process). Where no further details can be found, the benefit paying office should send a copy of their report to RFE(S) x 2 for their overpayment records. RFE(S) will then take action using what information is available, or where no details are available, will consider closing the case.

Evidence of assets required

16.43 Normally the value placed on an asset by the PR is acceptable at face value. However, where the deceased has been in receipt of benefit for a number of years, the value over that period may be required (e.g. share values).

16.44 Where the value of the undeclared asset(s) in the estate makes it obvious that there would have been no entitlement to benefit, for all or part of the claim, then there is little point requesting further information from the PR. The overpayment should be referred to the DM for a decision that all the benefit paid over that period is recoverable from the estate.

Further information required from the PR

16.45 Write to the PR for any additional information required. This could include;

- account statements.
- actual investment holding (for valuation during the period of the claim).
- period investment held.
- details of occupational pension.
- details of inherited pension (e.g. deceased partner's occupational pension).
- property valuation.

Account details required

16.46 A request for actual account statements can put the estate to considerable expense. Also it should be noted that the PR is not legally required to provide such information. However the SofS is entitled by legislation to request any reasonable evidence required; in order to substantiate a claim for benefit.

16.47 Where the PR states that the cost of providing statements will be high, it may be possible to work from a limited number of statements. However sufficient information should be obtained to establish;

- a) the start and end date of any overpayment period;
- b) the balances for a Diminution of Capital Calculation [DCC];
- c) whether there has been any undeclared income.

Reimbursement of costs incurred by the PR

16.48 There is no legislation allowing the SofS to recompense the estate for the expense in obtaining information, especially when it should have been provided during the life of that benefit claim.

Checking account details

16.49 Do not forget to go through all the financial documents/statements provided to check for;

- a) any transfers from / or to other accounts;

b) large credits / transactions, which may indicate another asset had been cashed in (e.g. utility shares, investments, property, National Savings Certificate(s));

c) Premium Savings Bond(s) pay out;

d) regular credits indicating income, for example;

- i) pensions;
- ii) annuities;
- iii) trust funds.

e) share dividends, especially a privatised utility or former Building Society, indicating a holding.

16.50 Where the deceased had an account in a former building society, you should consider asking the PR if the deceased held shares. If so, and they are not accounted for, ask what happened to them.

Stocks and Shares

16.51 These are dealt with by obtaining valuations over the period of the overpayment, or ownership if a shorter time. It should be noted that relatives have been known to purchase an ex-utility share issue under the customer's name, probably contrary to the rules for that share issue.

Income

16.52 Any undeclared income discovered should be valued over the period of the benefit claim, or from its payment if later, then be included in the overpayment calculation.

Information not provided by the PR

16.53 Where the PR does not, or refuses to, provide information about the estate, consider whether there is sufficient information for the overpayment to be referred to the DM for an overpayment decision to be made (e.g. by using the net estate figure).

16.53 Although a decision based on such limited information could lead to an inflated claim being made against the estate, the PR still has the opportunity to provide the requested details and the right to dispute the decision. If the required information is provided, the original decision should be revisited.

16.55 There is legislation which allows the PR to be taken to the Civil Court to provide details of the estate (Sect 126 of the Admin. Act). The cost of taking enforcement action to force a PR to provide information is costly in terms of resources and time. Such action could result in the information being provided

just prior to the case hearing, which could result in legal costs, which may not be recoverable. This course of action should only be considered as a last resort.

16.56 Deleted

Overpayment Calculation

16.57 The normal benefit calculation rules should be applied, with the PR inheriting the dispute rights of the deceased.

Overpayment Recovery Decision

16.58 Normal decision making rules apply. However it should be noted that where recovery is required, it should be from the “PR in their capacity as executor of the estate of the late (name of deceased)”. Such a decision can only be made once probate (letters of confirmation in Scotland) has been granted because prior to that the estate is not a legal entity against which a recovery decision can be made.

16.59 Where the PR was personally involved with the benefit claim at the time of the overpayment (e.g. appointee) then they may also be considered for inclusion in the decision in their own right where they have failed to disclose or misrepresented a material fact. The SofS can then decide from whom to seek recovery.

Who to consider for recovery action

16.60 Where there is an appointee involved in the benefit claim, and they personally benefited from an overpayment (e.g. the appointee is a nursing home owner to whom all benefit was paid), then recovery may be considered from them alone, or from both them and the estate of the deceased or from the estate alone.

16.61 It is therefore suggested that anyone who actually benefited from the overpayment should be named, as well as the estate, in the overpayment decision (see the paragraph on Benefit Abuse below).

16.62 Where there is no suggestion of abuse the SofS, as is his lawful right, would then decide who to recover from. The policy is to seek recovery from the estate in all cases where it has benefited from the overpayment i.e. the estate’s value is increased as a result of benefit being overpaid to the deceased. Should recovery prove unsuccessful, the option would then be available to recover from any other named person.

Benefit abuse by an Appointee or other person (Fraud)

16.63 Where an appointee or other person makes a deliberate and fraudulent claim for benefit, the normal fraud guidance should be followed. Recovery should only be considered from those involved in, or benefiting from the fraud. Recovery

from the estate is only considered where the deceased was also involved in, or benefited from, the fraud.

Claim Against the Estate

16.64 Once the overpayment is calculated and a recoverable overpayment decision made, the PR and anyone named in the decision from whom the SofS may seek recovery should be notified of our claim. Outstanding debts should be notified to the PR. This is done by automated process.

- a) record the details of the overpayment;
- b) issue letter DL/ORG 62 to the PR, or their solicitor;
- c) set a control date for three weeks;

16.65 Where there is no satisfactory reply, or repayment;

- a) note the records;
- b) take reminder action;
 - i) by phone; or
 - ii) issue reminder letter DL/ORG 66;
- c) set a control date for one week;

16.66 Where there is still no satisfactory reply, or repayment;

- a) note the records;
- b) issue a final reminder letter DL/ORG66, advising the PR that enforcement action may have to be considered;
- c) set a control date for one week.

Dispute by the PR

16.67 It should be noted that the PR and anyone else named in the decision from whom the SofS may seek to recover has the right to dispute the overpayment decision, as if they were the customer. All disputes should be actioned as normal, with the PR acting for the estate (see Section Eleven - Overpayment Decision Disputed).

Estate Distributed – This Question will have already been asked on the breakdown letter.

16.68 Deleted

16.69 Deleted

16.70 Deleted

16.71 Deleted

16.72 Deleted

Time Limits

16.73. There are few time limits applicable to the administration of an estate, which can take from several months to several years depending on its complexity. A claim against the estate is considered as being made on time where final distribution is not yet made.

16.74 Where the PR has;

- a) correctly advertised for creditors (England & Wales only);
- b) dealt with all known expenses, debts, and creditors;
- c) waited the full two calendar months from the date of the advert(s) before final distribution (6 months in Scotland);

the estate is considered to have been correctly administered, and any claims made outside of that time are too late (unless further assets come to light).

16.75 Where the PR has not complied with the above (e.g. did not advertise for creditors), there is no actual time limit in which to make a claim. However, the PR may go to Court to ask for a debt to be set aside on the grounds that they have acted reasonably.

16.76 Should enforcement action be required, the normal time limits apply;

- a) six years for England and Wales;
- b) five years for Scotland;

from the relevant date (see Appendix Eight - Criteria for Enforcement Action).

Late Claim Against the Estate

Estate correctly administered

16.77 Where the estate has been correctly administered and distributed (see Time Limits above) before the PR received the Department's claim, the PR should be advised that no further action will be taken to pursue the claim (however, should any further asset(s) be disclosed the PR should meet any outstanding claims);

- a) write off the outstanding debt(s);

.Estate Not Correctly Administered

16.78 Where the PR has not administered the estate correctly (see Time Limits above); e.g.

- a) by early distribution; or

b) by paying creditors/beneficiaries in the wrong order;

they become personally liable for unpaid debts. In these circumstances the PR is the actual executor/administrator.

16.79 Any errors made by a solicitor acting for the PR are a matter between them. Do not involve the Department, or offer advice, on this issue regardless of the circumstances. The PR is the person legally responsible for the administration of the estate.

16.80 Deleted

16.81 Deleted

16.82 Deleted

16.83 Deleted

Claim Paid in Full

16.84 Where full payment is received; a receipt will be issued, and records noted by the automated process.

- a) note the records;
- b) issue DL/ORG 65 to the PR;
- c) close the case.

16.85 Deleted

16.86 Deleted

16.87 Deleted

16.88 Deleted

16.89 Where the PR establishes that the estate does not contain sufficient funds to pay all creditors in full, after paying funeral and estate expenses, they should arrange to make payment to creditors in the following order;

- a) secured (e.g. have a documented agreement on a particular asset);
- b) preferential (e.g. Inland Revenue);
- c) un-secured (e.g. anyone else, including DWP);
- d) the surviving legal partner.

16.90 Should there be insufficient funds to pay all the creditors in one group in full, they should pay them on a pro-rata basis. Where this is correctly applied to the Department's claim, the part payment should be accepted in settlement of that claim.

16.91 Where a part payment is correctly paid;

- a) note the records;
- b) issue letter DL/ORG 65 to the PR;
- c) write off any outstanding balance or debt;
- d) close the case.

Allocating a part payment to multiple debts

16.92 Where the claim is made up of multiple debts, the automated allocation rules apply.

16.93 In the unusual event of two or more debts having the same date, the decision on which one should be allocated first should be made locally.

Instalment Offer

16.94 In some instances the PR may not wish to dispose of an asset(s) (e.g. a property considered to be the family home). Should they offer a lump sum part-payment from the estate, plus an instalment agreement that would clear the balance in a reasonable time, then this is normally acceptable.

Interest charges

16.95 The PR should be advised that interest will be charged on any balance outstanding at the end of each calendar year at 1.5% above the Bank Base Rate. Where they are able to take out a loan at a more preferential rate, they may wish to take this course of action and pay our claim in full.

Instalment agreement

16.96 The PR is expected to make their offer in writing. To consider and action an instalment offer follow the guidance contained in Section Six - Repayment by Instalments.

Offer acceptable

16.97 Where the offer is acceptable, the preferred method of repayment would be Direct Debit. Recovery by voluntary deduction from benefit could also be considered, with the written agreement of the customer (see Section Eight - Recovery by Deduction from Benefit).

16.98 Deleted

16.99 Deleted

16.100 Where insufficient funds are available to meet even part of the claim;

- a) set a control for a period not exceeding three calendar months, to check on the disposal of the asset; and

- b) keep the situation under regular review to ensure that all reasonable steps are being taken to dispose of the asset.

16.101 Where it is considered that reasonable steps are not being taken to dispose of an asset(s);

- a) note the records;
- b) an offline letter will be issued
- c) consider taking enforcement action.

Enforcement Action

General

16.102 In general, where a sum is recoverable under a decision of the Statutory Authorities, that decision is sufficient proof of debt for the Court. In England and Wales an enforceable order can usually be obtained from a County Court. In Scotland a Decree is obtained from the Sheriff's Court.

16.103 If the estate has been distributed it will be necessary to prove the debt and obtain a county court judgement.

When to consider enforcement

16.104 Enforcement should be considered in all cases where;

- a) the outstanding debt(s) is £150 or over (England, Wales & Scotland); and
- b) there is no satisfactory response to the final demand; or
- c) an instalment offer has broken down and no new offer is made.

Careful consideration should be given before taking enforcement action, especially where the PR is on benefit, elderly; or in poor health.

16.105 Enforcement could be prejudiced by a long delay in the handling of a case, therefore action should be considered as soon as it is apparent that the debtor will not pay unless they are made to do so. Where there is an outstanding overpayment or loan, undue delay could mean that that part of the debt may become time barred for action (e.g. six years from when it was notified).

When to Consider Abandonment

16.106 The Department's policy is to write off overpayments where it is not considered cost effective to continue recovery. Presently there is a band of debt values and time since last payment on which abandonment is based. Where a debt is under a certain value, reaches a certain age then abandonment action can be taken if recovery cannot be implemented. Where a case comes to light

where recovery could be implemented (e.g. the customer is in receipt of a benefit from which deductions can be taken), then that recovery should be initiated even if the case would have met the abandonment criteria at an earlier date.

Abandonment action

16.107 The reason(s) for abandonment must be recorded in writing and be authorised, signed, and dated, by an officer of at least EO grade. Then:

- a) recorded on DM
- b) file the decision in the sub-file;
- c) The appropriate choice is taken on DM

Do not notify the PR of abandonment, they may eventually respond or pay the debt. The case should then be re-opened.

Closure Action

16.108 On closing a debt, check;

- a) any papers for return to another unit, where appropriate, should be;
 - i) noted in red "**NOT TO BE DESTROYED BEFORE....**", with a date fourteen months from the date of final payment, or closure of the case; and
 - ii) returned to the issuing office;

Section Seventeen - Mortgage Interest Direct

General

17.1 Mortgage Interest is only payable with IS, JSA(IB) and SPC, with most interest payments being made direct to the lender under the Mortgage Interest Direct (MID) scheme.

17.2 This section deals mainly with incorrect payments made to the lender under MID, and reflects the current policy of Housing Benefit Support Division (HBSD). Where interest is paid direct to the customer, any overpayment of that housing cost component should be dealt with as normal.

The MID Scheme

17.3 The MID scheme is provided for under SS legislation, the Social Security (Claims & Payments) Regulations 1987, Schedule 9A. That legislation prescribes the circumstances under which an incorrect payment, made to the lender, may be recovered from the lender. These are where the;

- a) interest rate reduced below the standard rate (or the rate used);

- b) capital amount on the loan used for calculating the interest reduced;

the subsequent adjustment to the MID rate on the system would produce a print-out for reference.

- 17.4** The majority of overpayments arising from MID are dealt with and recovered by the client groups (normally by specialist mortgage sections). The recovery is either made by amendment to ongoing schedule payments to the lender or direct from the lender using form MI125.
- 17.5** Overpayment action and recording by Debt Management is ONLY required in cases that cannot be recovered from ongoing payments of MID or via MI125 action. These cases will be either cases recoverable under Section 71 from the lender or overprovisions.
- 17.6** Overpayments actioned by the client groups are recorded and accounted for by them and should not be entered onto debt management systems.

Overpayment Directly Attributable to the Lender

17.7 This should be rare, however where an overpayment is directly due to;

- a) a failure to disclose; or
- b) misrepresentation;

by the lender, take the following action;

- c) calculate the overpayment;
- d) refer the overpayment to the DM for a decision, including its recoverability from the lender.
- e) issue a request for repayment.

Overprovision

17.8 An overprovision of MID made directly to the lender may be considered for recovery under common law. This type of overpayment may occur in any of the following ways;

- an error occurs in writing the instrument of payment;
- an error occurs when entering payment details for computer generated payment;
- a duplicate IOP is issued;
- mortgage interest is paid to the lender and the customer and the instruments of payments are cashed.

Example 1:

A customer/jobseeker is correctly awarded benefit in respect of mortgage interest of £50.00 a week by a Decision Maker but a MID payment is issued for one week's mortgage interest at the rate of £100.00. Recover £50 from the lender.

Example 2:

Both the customer and the lender receive mortgage interest. The mortgage interest is properly payable direct to the lender under the Claims and Payments Regulations Schedule 9A. Recover the duplicate payment from the customer.

Method of Recovery

17.9 Where there is an overprovision to the lender you should take the following action;

- a) record the overpayment;
- b) issue appropriate letter;
 - i) to request repayment from the lender or;
 - ii) to request repayment from the customer;
- c) set a review date for two weeks;

17.10 Where there is no satisfactory reply, or repayment;

- a) take reminder action;
 - i) issue draft letter DL/ORG 30; or
 - ii) telephone;
- b) set a control date for two weeks for a reply;

17.11 Where there is still no satisfactory reply or repayment;

- a) note the records;
- b) write to the lender concerned and ask them to provide in detail their reasons for refusing to refund.
- c) if on receipt of a reply the lenders reasons are not accepted then a letter explaining why the reasons are not accepted should be sent to the lender
- d) only after all avenues have been exhausted locally should cases be referred to HBSD (Mortgage Policy)
- e) set a control date for four weeks for their reply.

17.12 Again where this action has been taken by a Housing Costs Team there is no necessity to record these on debt systems.

Reports to Housing Support Division

17.13 The format that the report should take is contained in Appendix Ten - MID Referral Form.

Non-Recoverable Overpayments

17.14 This type of overpayment arises when there is an official error;

a) there is a failure to implement a notified change in circumstances and it could not be recovered under Schedule 9A or Section 71;

b) the Decision Maker in full possession of the facts makes an incorrect decision;

These overpayments should be administered in the same way as any other O/E overpayment.

17.15 DELETED

Section Eighteen - Debtor Insolvent

DELETED

Section Nineteen - Recovery Of Local Authority Debt

19.1 The Local Authority (LA) has primary responsibility for deciding the recoverability of overpayments of the following SS benefits:

a) Housing Benefit (HB) (on or after 1 April 1988).

b) Council Tax Benefit (CTB) (which replaced Community Charge Benefit (CCB)).

19.2 Where a LA is paying benefit from which recovery can be considered, they are responsible for recovering their own overpayment. If they are not, legislation allows them to request the SofS to make recovery from any current award of prescribed benefit. Any amount recovered is then reimbursed to the LA concerned.

19.3 Should the LA again become responsible for the payment of a benefit from which recovery can be considered, they should notify DWP immediately so that transfer of the recovery action can be arranged. The SofS would be acting unlawfully where this transfer was not undertaken.

19.4 Where the LA has a voluntary agreement with another LA, they may recover an overpayment for each other. They are not compelled to seek such an agreement, or to adhere to it.

Request for Recovery

19.5 DELETED

19.6 DELETED

19.7 DELETED

Debt Management Action

19.8 On receipt of the request, check whether there are any prescribed benefits in payment from which recovery could be made.

Where a benefit is in payment, and there is no instalment plan on Debt Manager, CRC Wales will load the HB overpayment on Debt Manager.

If there is an instalment plan more than 28 days in advance, CRC Wales will send a notification to the LA stating that we are unable to recover because we are recovering another debt, and will provide the LA with dates to re refer the OP, (date instalment plan is due to end.)

Once the overpayment is loaded on to Debt Manager, the case will fall into work queue 99 for the Contact Centres to action,

- a) the Contact Centre has the necessary system access to implement deductions
 - check whether deductions could be put in place; if so
 - DL/ORG 35 will be issued to the debtor to notify them of the intended recovery, (This is an automated notification)
 - set up the deductions from the benefit in payment,

- b) the Contact Centre does not have the necessary system access to implement deductions;
 - DL/ORG 35 will be automatically issued to the debtor to notify them of the intended recovery;
 - issue QB30 to the relevant benefit unit.

Method Of Recovery

19.9 The only method of recovery available to the Department for a LA overpayment is by compulsory deduction from benefit. The debtor has no right of appeal against this action.

Rate Of Deduction

19.10 Apply the rate of recovery appropriate for a benefit overpayment from the benefit in payment. Where the LA advise that a fraudulent overpayment is concerned, check with the LA that it conforms to legislative requirements, then make deductions at the appropriate fraud rate (see Section Two - The Types of Overpayment – CRC Wales will input a diary entry if the overpayment is a fraud case).

Financial Hardship and Application Of Discretion

19.11 The guidance on financial hardship applies whatever the debt being recovered. Therefore recovery can be made at a lower rate (see Section Eight - Recovery by Deduction from Benefit).

19.12 Where the debtor requests any other form of discretion, advise them to contact the LA that requested the recovery. The SLA states that Debt Management will decide all hardship cases to ensure consistency for all customers.

Recovery By Deduction Actioned

19.13 Where deductions are set up,

- a) register the debt on Debt Manager;
- b) once instalment plan is set up on Debt Manager, an automated notification is issued to the Local Authority advising them of the start date and amount to be deducted.

Deductions Cannot Be Made

19.14 Where there is no benefit in payment, or deductions cannot be made;

- a) advise the LA – CC will take a choice to return to LA and an automated notification will be issued to the LA.
- b) take no further action.

Deductions made from IS/JSA, ESA or SPC

19.15 Where the deductions are to be made from IS, JSA or SPC the recovery will be handled by the Third Party Payment system. Debt Management staff will only be responsible for commencing, amending and ceasing deductions from benefit.

19.16 Housing Benefit (HB) debts on Debt Manager and payment of recoveries to Local Authorities (LAs)

19.17 DELETED

19.18 DELETED
19.19 DELETED
19.20 DELETED

Priority Of Recovery

19.21 'If a HB debt is loaded onto Debt Manager, there is a test condition in the Acceptance strategy which asks if there is a live instalment plan already in place which is due to end within 4 weeks.

- If the plan is due to end within 4 weeks, the HB debt is loaded.
- If the plan has more than 4 weeks to run, the HB debt will be returned to the Local Authority.
- If there is no live instalment plan, the HB debt will be loaded.

Once the HB debt is loaded, deductions will be allocated against this overpayment.

Recovery Ends

19.22 Recovery may end if;

- a) full recovery made;
- b) benefit award ceases.

Full recovery made

19.23 Where full recovery is made;

- a) note the records; Automated notification sent to LA
- b) issue notification letter to the debtor;

Benefit award ceases

19.24 Recovery should stop whenever the current benefit claim from which deductions are being made ceases. It was decided to return these to the LA, because if there has been a delay in deductions, it is possible that the LA may have looked to recover the debt through another method.

19.25 Where recovery ceases;

- a) note the records; Choice to be taken on Debt Manager and an automated notification will be issued.

Excess Payment Made To LA

19.26 Where it is found that an excess payment has been made to a LA;

a) make a red entry on the next schedule for the amount of the excess payment, this may need to be completed clerically;

b) only pay the revised amount; and

c) include with the schedule full details of the incorrect entry on the earlier schedule;

- i) details of the debtor;
- ii) period(s);
- iii) revised amount(s);
- iv) schedule(s) effected.

19.27 Should a LA question such action, advise them that this is the preferred method of adjustment for incorrect schedule payments, it being the most cost effective method.

Section Twenty – Direct Payment

Background

20.1 The Direct Payment system (DP) is a computerised service operated by the Banker's Automated Clearing Services (BACS). Money transfers are automatically credited to individual accounts.

20.2 Heritage systems generate payments to BACS some days in advance of each payment being due into the customer account. This period is called the 'lead in period'. The lead in period for each benefit differs according to the design of each system.

20.3 Each payment is received by BACS from the Heritage system overnight on the first day of the lead in period. BACS then holds payments in suspense until it is time to commence the BACS payment cycle.

20.4 The BACS payment cycle takes 3 days in every case regardless of which benefit is in payment.

20.5 The BACS cycle is included in the lead in time for each benefit; thus the lead in time of 4 days for a JSA payment includes the 3 days of the BACS cycle.

20.6 The BACS cycle ends on the day that payment is due into the customer account.

20.7 The table below is a general guide to identify when a payment may be credited to a customer's account:

Lead times for individual benefits					BACS cycle		
No. of working days	7	6	5	4	3 INPUT DAY	2* PROCESSING DAY	1 CREDITING DAY
Benefit type	IISB ICA DLA** AA**	RP WB BB IB	Chb IS	JSA	Payment input	Payment information sent to bank or building society	Credit reaches customer's account

Notes:

Excludes weekends and bank holidays

* Payments can be recalled at any time prior to a specified cut-off time on day 2 of the BACS cycle. Para 12041 of the Direct Payment Guide (Paying Benefits and Pensions Direct into Accounts) refers:

** Lead in times for DLA/AA are between 7 and 13 days

Payment Of Benefit by DP

20.8 Where a customer wishes their benefit paid by Direct Credit Transfer, they sign a declaration to repay any overpayment arising from the method of payment, or orally agree to repay any overpayment, providing a suitable audit trail is agreed.

Payment by Cheque

20.9 Direct Payment is the normal method of payment but an alternative method of payment (cheque payment) was made available from October 2004 for those claimants who decline to be paid by Direct Payment, and for urgent payments that cannot be made sufficiently quickly by Direct Payment. This is a cheque based system which will use amended girocheque functionality. It will therefore follow existing girocheque processes for overpayment recovery.

Overpayment Materially Due To Way In Which Direct Payment System Operates

20.10 Changes of circumstances are sometimes notified after payment instructions have been issued.

20.11 Social Security legislation permits the recovery of overpayments that are materially due to the arrangements for payments to be made by Direct Payment (POR reg. 11).

20.12 They can be caused where;

- a) a change in circumstances is notified on time; or
- b) the Secretary of State becomes aware of a material fact not previously known to him; and

- c) a reduction or cessation of the rate of benefit in payment is required; but
- d) it is too late to stop the payment because the recall cut-off time has expired.

20.13 It is possible to make a recall from BACS on any day during the lead in time except on the last day of the BACS cycle: i.e. the last day before the payment is credited into the account.

20.14 Recall cut-off times are as follows:

Benefit	Cut-off Time
IS/JSA/ RP/IB/WB/BB	12 noon on day before crediting/payday
DLA/AA/ CA	14.00 on day before crediting/payday

20.15 Overpayments arising in the following circumstances are also materially due to the method of payment:

- a) the computer system cannot action the amendment for some reason; for example:
 - i) system breakdown; or
 - ii) industrial dispute;
- b) a payment is replaced, with both payments being credited;
- c) the system causes duplicate payments to be made, but not where input error is involved;
- d) recall is not attempted because the unit dealing with recalls has advised:
 - i) that such recall action will fail; or
 - ii) that there are capacity issues around the recall process;
- e) an attempt to recall the system payment fails.

20.16 Generally speaking, where recall is attempted but fails for reasons other than human error, an overpayment can be classified as materially due. Where recall is possible but not attempted then an overpayment cannot be classified as materially due.

20.17 DELETED

20.18 DELETED

Small Overpayment limit

20.19 The Small Overpayment limit should be applied as normal.

Evidence needed to support both the recoverability decision and completion of the Secretary of State certificate

20.20 Overpayments can be recovered provided the Secretary of State certifies that;

- a) the overpayment was materially due to the method of payment;
- b) the claimant agreed to be paid by DP; and
- c) the claimant was told, in writing, that such overpayments would be recoverable.

20.21 If the customer's agreement cannot be located (as the conversion agreements will not be transferred to DWP offices from Customer Conversion Centres) this does not necessarily mean that the overpayment cannot be deemed to be recoverable.

20.22 DMG 09248 et seq provides that, as long as we can refer to procedural instructions proving the claimant must have provided their agreement in order to receive payments by Direct Payment, then a signed statement to this effect by an officer acting on behalf of the Secretary of State should be sufficient.

Overpayment Due to Customer Error

20.23 Where an overpayment cannot be classified as materially due it should be considered for recoverability under s71(1).

20.24 Where an overpayment is due to an error by the customer, i.e. misrepresentation or a failure to disclose, the method of payment is not relevant and the overpayment is to be actioned as normal.

Example:

- IS in payment;
- part time earnings not reported on time;
- the failure to disclose the change of circumstances by the customer would not be classed as system caused.

Overpayment due to official error

20.25 Where a change of circumstances is notified after crediting instructions have been issued, but before the recall cut-off time, then any overpayment occurring as a result of that change of circumstances cannot be classified as system caused unless any of the criteria at paragraph 20.15 are met.

20.26 DELETED

20.27 DELETED

20.28 DELETED

20.29 For recovery of overpayments caused by payments credited into accounts after a person's death see (see Section 15 – Recovery After Death)

Nominated Accounts - [Impact of R (IS) 5/03]

20.30 Overpayments arising as a consequence of the method of payment being direct credit transfer can only be recovered from the person who received the benefit, namely the account holder(s).

Replacement and Original Payment Credited

20.31 Where the customer reports that a payment is not credited to their account, the details should be checked with the account provider. Both the customer and account provider are required to complete form QB42 before a replacement payment can be issued.

20.32 Where the original payment is credited at a later date, despite action being taken to cancel it, the customer will have agreed on the completed form QB42 to repay any excess. The customer should be contacted to repay any excess. If they do not pay, then the overpayment is certified 'system caused' and is recoverable.

Section Twenty One - Referral For Guidance

CONTACT THE RIGHT EXPERT

What is your enquiry about?

Enquiries may be about the following:

- Debt Manager Process
- Debt Manager IT Problem
- Recovery
- Debt Policy
- Decision Making and Appeals
- Civil Compensation Recovery

Debt Manager Process

Check Debt Manager A-Z.

Need further help?

Check the signposting documents.

Need further help?

Contact your Local Assurance Team.

Is it a technical problem?

Contact National Assurance Team or Small Systems Assurance Team.

Additional or case specific guidance still needed?

Contact Expert Domain at Operational Policy, Advice and Correspondence Team.

Debt Manager IT Problem

Contact your local CSO

Recovery

Check overpayment guidance on the intranet i.e. Overpayments Recovery Guide, Procedures and Process circulars.

Need further help?

Check Questions and answers on the Expert Domain site

Still need help?

Contact Local Expert Domain Officer

Still need help?

Contact Expert Domain at Operational Policy, Advice and Correspondence Team.

Debt Policy

Check overpayment guidance on the intranet i.e. Overpayments Recovery Guide, Procedures and Process circulars.

Need further help?

Check Questions and answers on the Expert Domain site

Still need help?

Contact Local Expert Domain Officer

Still need help?

Contact Expert Domain at Operational Policy, Advice and Correspondence Team.

Decision Making and Appeals

Check guidance on the intranet i.e. Decision Makers Guide, Letters, etc.

Need further help?

Is it a general query?

Contact Expert Domain at Operational Policy, Advice and Correspondence Team.

Is it a case specific query?

Refer to Legal Group, DMA Leeds.

Civil Compensation Recovery

Contact Compensation Recovery Unit

- 21.1 DELETED
- 21.2 DELETED
- 21.3 DELETED
- 21.4 DELETED
- 21.5 DELETED
- 21.6 DELETED
- 21.7 DELETED
- 21.8 DELETED
- 21.9 DELETED
- 21.10 DELETED
- 21.11 DELETED
- 21.12 DELETED
- 21.13 DELETED
- 21.14 DELETED
- 21.15 DELETED

Section Twenty Two - Overpayment Recovery Checks

DELETED

Section Twenty Three - Management Information

Introduction

23.1 Under accounting principles, debt that can reasonably be recovered is an asset. Debt appears as the single largest asset item within the Department's accounts, therefore it must be managed and accounted for. Management Information is used to provide the level of information required for these purposes.

23.2 Management information on debt is used by;

- Departmental Board, to assist with strategic planning;
- Departmental Statisticians, to forecast trends;
- Departmental Resources, to allocate funds;
- Departmental Central Services, to evaluate performance;
- Parliament, to answer MP's questions;
- Treasury, to advise them on outstanding debt and its recovery;
- National Audit Office (NAO), to check that accounting requirements are followed;
- Local Management, to monitor performance, identify trends and resource needs.

Recovery target

23.3 Management Information is used each year to inform decisions on the setting of the recovery target. This can also be used to inform the allocation of targets to individual units.

Accuracy

23.4 It is essential that the information provided for such an important asset is reliable and accurate.

Management Information

Level of information required

23.5 To ensure that sufficient information is available for management and accounting purposes, it is recorded by;

- a) benefit/debt type;
- b) overpayment classification;
- c) amount of debt;
- d) method of recovery;
- e) amount recovered;
- f) amount written off;
- g) amount of recoverable debt outstanding.

23.6 This information is collected, on a monthly, quarterly, or annual basis, being collated centrally to show the national picture on debt.

Ad Hoc Reports

23.7 Most returns are produced by Business Objects. However information, which is not part of the standard reporting cycle, may be required. In such circumstances the reporting requirements for ad hoc reports will be notified separately.

Appendix 1 – List of Contacts

The list of contacts is currently being updated.

Appendix 2 - Prescribed SS Benefits/Payments

[Current Benefits](#)

[Limited Prescription](#)

[Prescribed Recovery](#)

[Payments Not Prescribed](#)

[Obsolete Benefits](#)

Current Benefits

(some of the benefits listed can no longer be claimed however they are still in payment)

Payments Prescribed:

- Attendance Allowance
- Bereavement Benefit
- Carer's Allowance
- Disability Living Allowance
- Employment and Support Allowance
- Incapacity Benefit
- Income Support
- Industrial Death Benefit
- Industrial Injuries Disablement Benefit
- Jobseeker's Allowance
- Maternity Allowance
- Pension Credit
- Pneumoconiosis, Byssinosis & Miscellaneous Disease Benefit
- Reduced Earnings Allowance
- Retirement Pension
- Severe Disablement Allowance
- Widows Benefit
- Workers Compensation (Supplementation) Benefit

Limited Prescription

- Back To Work Bonus (treated as the qualifying benefit)
- Council Tax Ben
- Housing Benefit
- Social Fund Payments

- Winter Fuel Payments
- War Pension

Prescribed Recovery

- Administrative Penalty

Payments Not Prescribed

- Training Allowance
- Widow's lump sum payment
- Disablement Gratuity
- Christmas bonus
- Tax Credits
- LA Benefits
- New Deal

Obsolete Benefits

- Community Charge Benefit
- Disablement Benefit
- Disability Working Allowance
- Family Credit
- Family Income Supplement
- Industrial Injury Benefit
- Invalidity Benefit
- Invalid Care Allowance
- Mobility Allowance
- Non-Contributory Invalidity Benefit
- One Parent Benefit
- Sickness Benefit
- Supplementary Benefit
- Unemployment Benefit
- Widowed Mother's Allowance

Appendix 3 - Legislation for the Overpayment Process

Subject	Legislation
Direct Payment (DP)	SS(Payments on Account, Overpayments and Recovery) Regs 1988, Reg 11
Administrative Penalty	SS Administration (Fraud) Act 1997
	SS Administration Act 1992, S115A
Recovery from arrears of benefit	SS (Payments on Account, Overpayments and Recovery) Regs 1988, Reg 16(3)
Couples, recovery from partner	SS (Payments on Account, Overpayments and Recovery) Regs 1988, Reg 17
Diminution of capital (DCC)	SS (Payments on Account, Overpayments and Recovery) Regs 1988, Reg 14

Fraud rate of deduction	SS Payments on Account, Overpayments and Recovery) Regs 1988, Reg 16(5)
Interim payment	SS (Payments on Account, Overpayments and Recovery) Regs 1988, Regs 2-4
Decision making and appeals (DMA)	SS (Decision Making and Appeals) Act 1998
Northern Ireland	SS Administration Act 1992, S79
Offset	SS (Payments on Account, Overpayments and Recovery) Regs 1988, Regs 5-6 and 13
Prevention of duplication of payments (PoDoP)	SS Administration Act 1992, S74
	SS (Payments on Account, Overpayments and Recovery) Regs 1988, Regs 7-9
Priority of Deductions from Benefit	SS (Claims and Payments) Regs 1987, Schedule 9
Recoverable overpayment	SS Administration Act 1992, S71
Recovery from estates	Administration of Estates Act 1925
Recovery by deduction from benefit	SS (Payments on Account, Overpayments and Recovery) Regs 1988, Regs 15-16
Social Fund	SS Act 1998, S75
	SS Administration Act 1992, Ss71ZA & 78
Standard rate of deduction	SS (Payments on Account, Overpayments and Recovery) Regs 1988, Reg 16(4)(b)

Appendix 4 - Priority of Deductions- From Income Related Benefit

The SS (Claims and Payments) Regs 1987, Schedule 9, lays down what deductions may be made from prescribed benefit and what may be paid direct to third parties. It also details the maximum amount deductible and the order of priority.

[Order of Priority - Paragraph 9\(1\)\(B\)](#)
[Maximum Deduction Rate for the Above](#)
[Social Fund Loans and Overpayment Recovery](#)
[Social Fund Repayment](#)
[Overpayment Recovery](#)
[Voluntary Rate](#)
[Other Deductions](#)

Order of Priority - Paragraph 9(1B)

- Arrears of Mortgage interest
- Arrears of Housing Costs
- Arrears of Service Charge for fuel, and rent not included in housing costs
- Arrears of Fuel Costs
- Arrears of Water Charge
- Arrears of Council Tax

- Court Fines
- Child Support Maintenance (pre 03/03/03)
- Integration Loan Scheme (ILS)

Maximum Deduction Rate for the Above

[NOTE: Exceptions are Court Fines that are recovered at a standard weekly rate of £5, and CSM pre 03/03/03 that can be recovered at 2x5% per week]

For a single deduction the rate is 5% of the IS rate for a single person aged 25 or over, rounded up to the nearest 5p.

IS 25 year old personal allowance rate from April 2011 = £67.50

5% of £67.50 = £3.375

Rounded **up** to nearest 5p = £3.40

For multiple deductions the rate is limited to 3 times the single deduction rate.

Example:

Single deduction rate = 3.40

multiple deduction rate = £3.40 x 3 = £ 10.20

These rates also apply to any other benefit combined and paid with IS.

Social Fund Loans and Overpayment Recovery

The recovery of Social Fund loans and Benefit Overpayments are not included within the above legislation. It has been decided under current policy to place these at the end of the above order of priority, in the following order.

- Social Fund Loan repayment
- Overpayment recovery

Social Fund Repayment

Social Fund Loan repayment is subject, by SF legislation, to its own repayment rate. It should take into account the customer's commitments.

Overpayment Recovery

Overpayment recovery is subject, by legislation, to a maximum rate of recovery, and also to a maximum amount of deduction for multiple debts from the priority list.

Example:

IS award has third party deductions for arrears of fuel costs amounting to £6.80 per week

outstanding overpayment recoverable at the standard rate of £10.20

maximum standard deduction rate from benefit is £10.20

balance available for overpayment recovery = £10.20 - £6.80 = £3.40

Voluntary Rate

The maximum rate for any of the above can be increased with the debtor's consent.

Other Deductions

The following deductions may be made over and above any other deduction, and does not effect the amount of recovery determined above:

- Arrears of Community Charge.

- Current costs/usage made from benefit;
- mortgage interest;
- housing costs;
- miscellaneous housing costs;
- service charges for fuel, and rent not included in housing costs;
- fuel costs; and
- water charges.
- Reduced Benefit Direction by the Child Support Agency.
- Flat Rate Maintenance

Appendix 5 - Rate of Deduction

- [Income Related Benefit](#)
- [Standard Deduction Rate](#)

[Fraud Deduction Rate](#)

[Lower Deduction Rate](#)

- [Table of Standard Rates](#)

[Social Fund Rate](#)

[Disregarded Income](#)

- [Jobseeker's Allowance \(Contributory Based\)](#)
- [Other Benefits](#)

[Hardship](#)

Income Related Benefit

The standard and fraud rate of deduction from income related benefit for overpayment recovery is laid down by legislation. An administrative lower rate has been introduced for use where directed. In addition, a special rate has been devised for cases where Social Fund deductions are in place and are to be taken account of. It is also possible to increase a deduction rate in respect of partially disregarded income.

Standard Deduction Rate

The standard deduction rate is 3 x 5% of the personal allowance for a single claimant aged not less than 25. That 5% being, where it is not a multiple of 5p, rounded to the next higher such multiple.

Example:

IS/JSA (IB) 25 year old personal allowance rate from;

April 2011 = £67.50

5% of £67.50 = £3.375

Round up to nearest 5p = £3.40

Standard rate = £3.40 x 3 = £10.20

Fraud Deduction Rate

Is 4 x 5% of the personal allowance for a single claimant aged not less than 25. That 5% being, where it is not a multiple of 10p, rounded to the nearest such multiple or, where it is a multiple of 5p but not of 10p, the next higher multiple of 10p.

Example:

IS/JSA(IB) 25 year old personal allowance rate from;

April 2011 = £67.50

5% of £67.50 = £3.375

Rounded to nearest multiple of 10p = £3.40

Fraud rate = £3.40 x 4 = £13.60

Lower Deduction Rate

This is set at one third of the standard rate

Table of Standard, Fraud and Lower Rates since 1999

From	Standard Rate £	Fraud Rate £	Lower Rate £
April 1999	7.80	10.40	2.60
April 2000	7.95	10.40	2.65
April 2001	8.10	10.80	2.70
April 2002	8.10	10.80	2.70
April 2003	8.25	10.80	2.75
April 2004	8.40	11.20	2.80
April 2005	8.55	11.20	2.85
April 2006	8.70	11.60	2.90
April 2007	9.00	12.00	3.00
April 2008	9.15	12.00	3.05
April 2009	9.75	12.80	3.25
April 2010	9.90	13.20	3.30
April 2011	10.20	13.60	3.40

Social Fund Rate

There is a special rate for cases where repayment of a Social Fund loan is ongoing and is to be taken account of. In these cases deductions should be set at the lower of the standard rate applicable to the case (taking into account other deductions) or the rate in the table below (based on the level of SF repayment)

SF loan repayment deduction rate	Maximum standard OP deduction rate (from 11 April 2011)	Maximum fraud OP deduction rate
5-9%	£6.45	£9.95
10-11%	£5.35	£8.90
12-14%	£4.20	£7.75
15% and over	£3.05	£6.60
Less than 5% (where rescheduled loan or lower deduction rate in place)	£1.95	£5.50

Disregarded Income

Where the customer has partially disregarded income such as some benefits or part time earnings legislation allows us to increase the deduction rate by an amount equal to half of the applicable disregard. This does not include wholly disregarded benefits such as Attendance Allowance (AA) or DLA.

Where the disregard is applicable to part time earnings and the customer claims hardship it is essential that work related expenses such as fares and child minding are considered. It is important that the wider Government agenda on welfare to work is not undermined by someone being worse off in terms of total money they receive by working.

Jobseeker's Allowance (Contributory Based)

The rate of recovery for JSA (C) is legislatively set as one third of the age-related amount applicable to the claimant. Where this includes a fraction of a penny the amount should be rounded down to the nearest whole penny.

Other Prescribed Benefits (except Income-Related Benefits)

The rate of recovery is unspecified in legislation, which leaves the rate of recovery to be decided by the SofS. This has been set at 1/3 of the debtor's personal benefit.

This is the rate of benefit applicable to the customer themselves without inclusion of any increases for dependants. Where this includes a fraction of a penny the amount should be rounded down to the nearest whole penny.

Any income being taken into account against the benefit does not effect this calculation; the deduction rate would still be one third of the personal rate.

Example:

Customer entitled to Incapacity Benefit e.g. gross award of £80.15 pwk

Customer has occupational pension in payment which reduces the amount of the actual award received, eg. IB is paid at only £40.00 per wk

Deduction rate is $£80.15 \div 3 = £26.71$

Where this calculation results in a deduction rate greater than the amount of benefit in payment then the deduction rate should be set so as to leave 10p per week benefit in payment.

Hardship

The calculation of rates of deduction outlined above is a means of calculating the legislative or policy maxima. Consideration should always be given to reduction of deduction rates where the customer claims hardship

Appendix 6 - When to Suspend Recovery

Where no recovery can be made the recovery of a debt should be suspended. The period of suspension should be reviewed at least every twelve months. Below is a list of situations in which suspension is likely to be appropriate.

- **Repaying another overpayment** and/or sanction, suspend recovery until that debt is cleared. Debts should be recovered in date order, unless recovery is already in place.
- **Other deductions** with a higher priority are already in place up to the legislative maximum, suspend recovery until deductions are possible or benefit ceases.
- **Debtor admitted to hospital**, and no appointee or Power of Attorney in place, and no plan in place prior to the customer entering hospital. Suspend until customer no longer in hospital, or until an appointee or Power of Attorney is in place.
- **Debtor sent to Prison and sentence relates to benefit fraud debt:** Suspend recovery until their release.
- **Debtor sent to Prison**, and sentence **does not** relate to a benefit fraud debt (and Appendix 7 [Abandonment and Write Off] does not apply);
 - Where they have served 6 months or less, suspend recovery until their release.
 - Where they have served over 6 months in prison, suspend recovery until six months after their release date.
- **Debtor Insolvent**
- **Unable to effect recovery** e.g. moved without trace, and the debt cannot be abandoned.
- **Debtor has left the country**, unable to make recovery, but they will probably return, or qualify for UK benefit abroad
- **Debtor off benefit**, but debt can not be referred to Off-benefit recovery. Suspend recovery until they return to benefit or debt can be abandoned.

Situations where recovery could be made but suspension is likely to be appropriate are listed below:

- **Overpayment decision disputed** (e.g. appeal made against the overpayment decision) and recovery not yet in place, suspend recovery until the dispute has been dealt with.
- **Appeal to the Upper Tribunal (formerly SS Commissioners) accepted**, suspend recovery until the dispute has been dealt with.
- **Debtor is unable to repay**, but a **future change** will improve their circumstances e.g. currently repaying another debt (e.g. credit agreement, clothing club) which will be cleared in a specified time. Suspend recovery until that time.

- **Compensation order** awarded by the court in a criminal prosecution, suspend recovery until the order is fully recovered or recovery action is no longer appropriate (e.g. abandonment criteria applies).

Appendix 7 - Secretary of State Discretion, Abandonment and Write Off

1 Abandonment

Where any of the following criteria apply, or by direction of the SofS, the recovery of a debt **may** be abandoned and the balance written off.

Debtor sent to Prison, and the sentence does not relate to a benefit offence, the debt may be written off **where the length of sentence**, classification and balance outstanding satisfy the following criteria:

Sentence	Overpayment Classification	Amount of Debt
3 to 10 Years	M	Less than £500
5 to 10 Years	F	Less than £500
10 Years or more	M or F	Any amount
Life sentence	M or F	Any amount

Please note: It is the length of sentence given by the court which should be taken into account and not the actual time served.

2 Unable to effect recovery and the outstanding balance is:

- Under £25;
- Under £100, and at least 6 years have elapsed since the last effective recovery;
- Under £300, and at least 10 years have elapsed since the last effective recovery;
- Over £300, and at least 20 years have elapsed since the last effective recovery.

3 Debtor has been deported or gone abroad; and

- UK benefit is not payable abroad; and/or
- not aware of reciprocal benefit paid abroad; and
- there is no probability of their return to the UK.

4 Abatement

- reduces the outstanding debt by the value of any notional entitlement to benefit for all or part of the overpayment period. This is only applicable to applications made before November 2003, after that date abatement can only be considered as part of the Secretary Of State discretionary waiver. [See P&P circular 32/08]. Notional calculations may still be required for Fraud prosecution cases but these amounts should not be used to reduce the overpayment.

5 Waiver

- a request has been referred to OPAC and they agree that recovery would be detrimental to the health or welfare of the debtor or their family or that recovery of some or all of the debt is not judicious or in the public interest, the SofS waives their right to recover some or all of the debt and the balance outstanding is reduced or written-off in its entirety. [See P&P circular 32/08].

6 Write off action

Where recovery has not been requested or achieved, and any of the following criteria apply, the balance of the debt outstanding should be written off;

- a) overpayment caused by official error;
- b) overpayment caused by third person;
- c) overprovision;
- d) MID debt where Housing Support Division advise no further action can be taken to recover the debt.

7 Recovery after debtor's death

Where recovery cannot be achieved after the debtor's death, and any of the following criteria apply, the balance of the debt outstanding should be written off;

- a) outstanding debt(s) £25 or under;
- b) PR/Estate cannot be traced;
- c) insufficient funds in the estate to pay unsecured creditors;
- d) insufficient funds in the estate to pay unsecured creditors in full;
- e) not suitable for enforcement action and no further action can be taken

8 Direct Payment After Death

Where a Direct Payment has been credited after the date of death of the debtor, and either of the following criteria apply, the balance of the debt outstanding should be written off;

- a) funds released by the account provider and PR/estate cannot be traced;
- b) payment into joint account, surviving account holder does not repay and/or repay.

9 Recovery From Deceased's Estate

Where recovery is due from the deceased's estate, and any of the following criteria apply, the balance of the debt outstanding should be written off;

- a) potential debt(s) is £25 or under;
- b) there are insufficient funds in the estate to pay any amount to unsecured creditors;

- c) a visit to the PR is required but the outstanding debt is £100.00 or less;
- d) the estate was correctly distributed before the claim could be made;
- e) not suitable for enforcement;
- f) no further action possible e.g. PR dies leaving no estate.

10 No overpayment action required

As directed by the SofS, no overpayment action is required for the following criteria;

- a) advance payment where customer unaware of the change in circumstances at time of encashment;
- b) encashment after death, and the benefit would have been payable to the estate;

Where recovery would be from the deceased debtor's estate, and;

- c) insufficient claim details available to establish benefit payment; or
- d) value of assets in the estate are less than £3,250.00;

no overpayment action is required.

Appendix 8 - Criteria for Enforcement

Legislation imposes a finite time to enforce the recovery of a debt through the civil courts. There are different limitations affecting debtors living in;

- England and Wales;
- Scotland.

The cost of taking enforcement action is higher than that for recovery from benefit. An administrative limit has been set for the minimum amount of debt to be recovered by such action. There are different limits affecting debtors living in;

- England and Wales;
- Scotland.

England And Wales

Time limit

There would be an overriding time limit of six years from;

- the date of the overpayment decision;
 - the date of the overpayment notice letter, where a decision was not appropriate;
 - any written acknowledgement of the debt by the debtor;
 - the date of any voluntary repayment;
- whichever were the later.

A compulsory deduction or recovery from arrears of benefit would not be accepted as a voluntary payment.

Amount of debt

- £150 or over

Scotland

Time limit

There is an overriding time limit of

- twenty years from the date of the overpayment decision;
- or where there is no decision;
- five years from the date of;
- the overpayment notice; or
- an acknowledgement of liability;

whichever were the later.

Amount of debt

£50 or over

Appendix 9– DELETED

Appendix 10 – DELETED

Appendix 11 – DELETED

Appendix 12 – DELETED

Appendix 13 - Overpayment Interest Indicators

1. The overpayment indicator has an important role to play in overpayment work, in particular it is used to alert other sections (in particular benefit paying sections) to the fact that an overpayment exists and enables more effective recovery,
2. By inserting the overpayment indicator, deductions can be inserted from the outset of any new award to benefit, or if any arrears become payable the processor is alerted to the fact that an overpayment exists and consideration can be given to withholding them to recover the overpayment.
3. It can help prevent the archiving/deletion of data until the overpayment has been fully recovered.
4. Overpayment indicators are inserted via CIS.
5. The table below provides a list of systems that have overpayment indicators, how to check whether one has been inserted, and how to insert them.

System	Indicator	Checking for Indicator	Inserting Indicator	Further Information
ISCS	F	Access Screen IS500 - Evidence Enquiry Picklist. Insert Y in 'About You'	(i)Access dialogue IS091 - Change of Circumstance. In screen IS091 181	Guidance & Procedures (GAP) Volume 3

		field. Press Enter. Screen IS500 506 will now be displayed - If inserted, the F indicator will be displayed in the Notes box.	insert; Y in 'About You' field; F in Notes box; Press F20/Shift F10.	
JSAPS	Y	Access dialogue JA504 - screen JA504 611 will be displayed. If inserted the Y indicator will be displayed in the O/P field.	Access dialogue JA091- 'Maintain Claim Details' screen JA091 004, or dialogue JA094, 'Claim Administration' screen JA094 004. Insert Y in the 'Overpayment Interest' field. Press End.	System Reference Guide Vols 1 and 2.
PSCS	Overpayment	Check for note in dialogue RP801.	Access dialogue RP801- insert note '231 - Overpayment'.	Short Term Benefits Guide. Pensions Procedural Guide.
DLA/AA	P	Access screen DA / AA500 - 'Picklist'. Press Enter. Screen DA/AA500 006 will be displayed. If inserted, the P flag will show in 'Flags'.	System inserts P flag when 'Insert to ORS' field is completed in DA/AA330. It can also be manually set in DA/AA091	Team Members Guide - Overpayments

Appendix 14 - Consideration of Hardship

- [Acceptable Expenses](#)
- [Unacceptable Expenses](#)
- [The Household](#)

The guidance which follows is only intended to be helpful, not prescriptive or comprehensive in its content. The overall test is what is considered reasonable taking into account the current circumstances of the debtor, their dependants, and all other members of their household. Not what the debtor considers reasonable.

Where there is an outstanding overpayment to be paid back, it is considered reasonable to expect repayment rather than accept hardship to provide for non-essential expense.

Please note: that where the debtor has assets worth £500 or over then any hardship should only be considered on health grounds (see para. 8.110).

Acceptable Expenses

- Food, including milk deliveries (only where the cost seems reasonable for the circumstances of the unit).

- Daily newspaper or alternative TV guide, not magazines.
- Pocket money for children, of a reasonable amount.
- Fuel bills.
- Unmet housing costs, including related endowment policy.
- Life insurance (excluding endowment/investment policy).
- House insurance (building and contents).
- Repayment of loan or HP (including interest free loans) for essential items purchased before they were aware of the overpayment (e.g. bed, cooker, washing machine). Some items bought on HP which may be non essential but nonetheless considered everyday items which the person would be expected to have (e.g. carpets or a TV) Do not allow if considered excessive, but consider if the customer has a contractual agreement that they are under obligation to comply with, the customer should be given time to make alternative arrangements, 2 months should be adequate.
- Home improvement loan, not included in the benefit award and not secured on the property, used for legitimate purposes and not for example holidays or a new car.
- Any loan where the property lived in is security for it.
- Repayment of arrears for fuel and water.
- Catalogue and clothing club repayments for essential items e.g. school clothing, bedding, pots and pans. Not car CD player, exercise equipment, jewellery.
- Cost of running a motor vehicle, if the use is essential on health grounds. Where the vehicle has been obtained on a Motability lease, the DLA mobility component covers the full cost of the vehicle apart from petrol, and oil between services. The disabled person is usually exempt from paying road fund licence. Also some receive a balance of their mobility component.
- Telephone rental where there is no one else in the household apart from the debtor and any dependants, partner or children, they receive benefit for.
- TV rental where there is no one else in the household apart from the debtor and any dependants, partner or children, they receive benefit for.
- Cultural or religious costs e.g. Sunday school or religious study.
- Reasonable IT/Internet connection expenses (including basic broadband)

Unacceptable Expenses (also see note below)

- Anything not acceptable above.
- Satellite or cable T.V.
- Dishwasher.
- A second phone, whether mobile or landline.
- Cost of running a non-essential motor vehicle.
- Endowment policy or savings scheme, except for house purchase.
- Paying for holidays.
- Festivities e.g. Christmas drink.

[NOTE: Where a customer has contractual obligations regarding the above Unacceptable Expenses, operations should make allowances for these expenses

until such a time as the contract expires. In some instances where customers have contracts that combine acceptable and unacceptable expenses, these may have to be allowed as it could be more economical for these services to be combined than to be paid separately]

The Household

Account should be taken of the circumstances of all members of the customer's household. This includes everyone living in the customer's accommodation.

Where the debtor is in shared accommodation e.g. rents a room in a shared property on a commercial basis, the debtor's share of household expenses have to be established e.g. three sharing the bills on an equal share basis, debtor is responsible for paying one third. Sight of the rental agreement may help.

Where the debtor is a member of somebody else's household, a reasonable contribution to the household expenses needs to be assumed. What is reasonable will depend on the circumstances of the household.

The income of all members of the debtor's household should be taken into account when considering hardship, not just the debtor's family. This is to ensure that non-dependants are paying a fair share towards the household expenses e.g. food, fuel, telephone calls. Also to check that the debtor has not included an expense that the non-dependant should be responsible for.

Appendix 15 – When to take account of SF loan recovery

In order to determine if the overpayment deduction rate was input prior to the Social Fund loan deductions, see below:

In the first Screenshot 1 (below) the deduction rate for the customer's overpayment was reduced from £9.00 p.w. to £4.10 p.w. on 20/07/2010.

Screenshot 1

```

Service name: LOA1 - Income Support :89362405:104662 - Manchester Debt Centre - Style:Legacy
Services Styles Screen Size Screen Print Options Options Help

IS505553          ENQUIRY - DEDUCTION DETAILS          LIVE - IN PAYMENT M

Ded Type: Overpayment          Cust Ref:
Cred-Name: Over-Payments          Creditor Ref: 00002
Arrears-Date: 08/05/07          Amt:          Net Amt O/S: 0.00          Clrng:03/07/07
Adjustment From:          Amt:          OD/UD: Rsn: Ln No          SF Off

Arrears  Current  Total  From Date  To Date  For  Type  Opyt  Type  Notified
0.00     3.90     3.90  19/10/10  19/10/10  01  M    18   06/07/10
0.00     4.10     4.10  20/07/10  12/10/10  01  M    18   06/07/10
0.00     9.00     9.00  08/05/07  13/07/10  01  M    18   23/04/07

Fl=Picklist F4=Creditor Details
NEXT ITEM: [          ] NEXT DIALOGUE: [          ]          ONLY
Type

```

This was because there were deductions for a Social Fund loan at the time of calculating - see Screenshot 2

Screenshot 2

```

Service name: LOA1 - Income Support :89362405:104662 - Manchester Debt Centre - Style:Legacy
Services Styles Screen Size Screen Print Options Options Help

IS300302          DEDUCTIONS - DETAILS          LIVE - IN PAYMENT M

Deduction Type: Social Fund          SF Loan Tp BL Office ID:
Period strt IS Amt  Oth.Ben  MID          Loan Number: 007C
02/06/10    41.60    0.00     N            PAG Notified to 05/10/10
Customer Paid to 05/10/10
Current BWE TUE

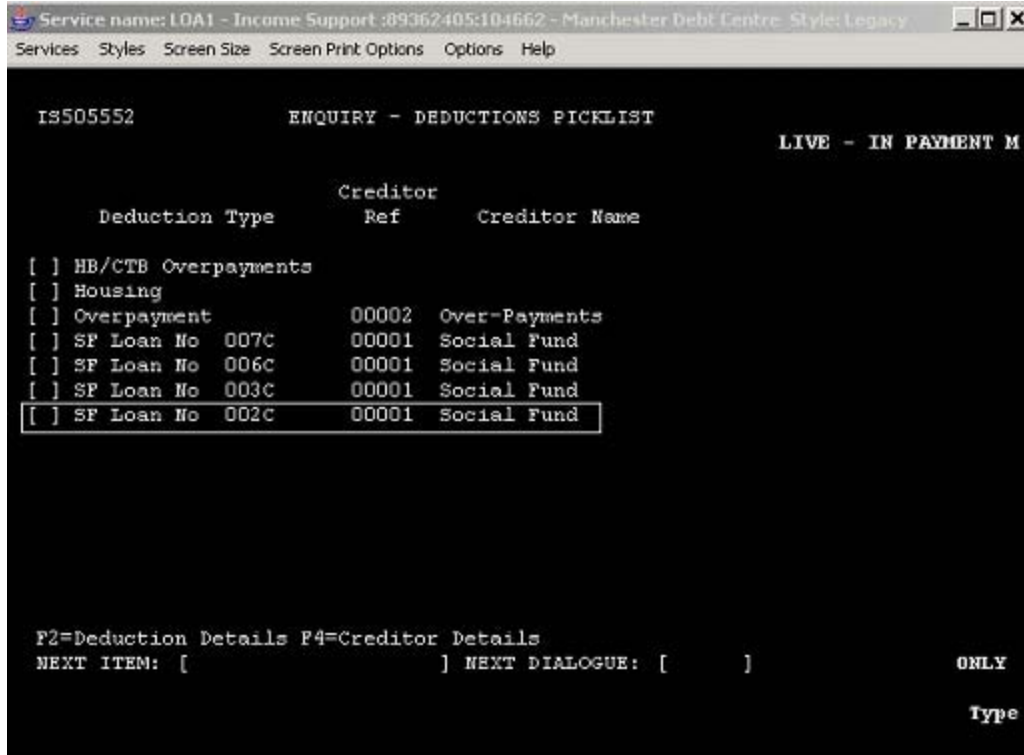
Adjustment Details - From Date: [ / / ] Amount: [          ] OD/UD: [ ] Reason: [ ]
Arrears  Current  Total  From Date  To Date  For  Type  Notified
15.91     15.91    15.91  15/06/10  [23/11/10]  C    AR    10/06/10
[ 15.75]  15.75  [30/11/10] [30/11/10]  C    AR
[          ] [ / / ] [ / / ] [ ] [ ]
[          ] [ / / ] [ / / ] [ ] [ ]
[          ] [ / / ] [ / / ] [ ] [ ]

Termination Reason Code [9]
Arrears - Date 10/06/10 Amt 397.59 Net O/S Amt 143.03 Clrng 30/11/10
Creditor Reference 00001          Customer Reference [          ]
Social Fund
Fl-Picklist F2-Payment F4-Mortgage F5-D2 Summ F6-Recalc F9-Download
NEXT ITEM: [          ] NEXT DIALOGUE: [          ]
Type

```

To determine if the deductions for Social Fund started before the overpayment deduction, go into IS505. Look for the earliest Social Fund loan by checking the SF with the lowest number (highlighted by the white box on Screenshot 3).

Screenshot 3



By accessing SF Loan No 002C we can see that deductions started on 25/03/2008. However, if you look at Screenshot 1 you will see deductions for the customer's overpayment started on 08/05/2007. This means the overpayment deduction rate should have stayed at £9.00 p.w under the new guidance rather than be reduced.

Screenshot 4

```

Service name: LOA1 - Income Support :89362405:104662 - Manchester Debt Centre - Style:Legacy
Services Styles Screen Size Screen Print Options Options Help

I8505553          ENQUIRY - DEDUCTION DETAILS          LIVE - IN PAYMENT M

Ded Type: Social Fund          Cust Ref:
Cred-Name: Social Fund          Creditor Ref: 00001
Arrears-Date: 28/02/08          Amt:          Net Amt O/S: 0.00 Cirng:30/09/08
Adjustment Prom:                Amt:          OD/UD: Rsn: Ln No 002C SF Off

Arrears Current Total From Date To Date For Type Opyt Type Notified
0.00 7.52 7.52 30/09/08 30/09/08 c AR 19/03/08
0.00 13.68 13.68 25/03/08 23/09/08 c AR 19/03/08

F1=Picklist F4=Creditor Details
NEXT ITEM: [ ] NEXT DIALOGUE: [ ] ONLY
Type

```

If the SF loan deductions from Screenshot 4 started before 08/05/2007 then overpayment deductions should be reduced - otherwise they should remain the same.

Appendix 16 - Flowcharts

View the following [flowcharts](#)