Housing Benefit and Council Tax Benefit Circular
Department for Work and Pensions
The Adelphi, 1 - 11 John Adam Street, London WC2N 6HT

HB/CTB A49/2001

ADJUDICATION AND OPERATIONS CIRCULAR

<table>
<thead>
<tr>
<th>WHO SHOULD READ</th>
<th>All HB and CTB staff, including staff preparing subsidy claims</th>
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</thead>
<tbody>
<tr>
<td>ACTION</td>
<td>For information</td>
</tr>
<tr>
<td>SUBJECT</td>
<td>Benefit decisions (determinations) by agency staff and staff who work for contractors</td>
</tr>
</tbody>
</table>

1. Malcolm Wicks, the Minister for HB and CTB, announced on 9 October that Ministers have agreed in principle that an Order should be made to allow local authorities to authorise staff who work for contractors, and agency staff not directly employed by the local authority, to make decisions (previously known as determinations) on housing benefit (HB) and council tax benefit (CTB) cases. As part of this announcement Malcolm Wicks said that it will be vitally important that local authorities that authorise contractors or agency staff to make these decisions should put in place effective monitoring and checking systems. So we are now discussing with a number of authorities how we can we best achieve the desired outcome - accurate, secure decisions and efficient processes.

2. We also propose to allow other functions - for instance, referral to rent officers - to be undertaken by staff who are not directly employed by the local authority. But it is likely that there will be some functions - for example a decision about whether to recover a recoverable overpayment - that will remain reserved to the local authority.

3. But any change is unlikely to take place before May/June 2002 at the earliest. This is because of the need to consult, and the required Parliamentary procedures (which in themselves may take 3-4 months). Once the Order is made, a local authority wishing to authorise a contractor or agency staff will have to make the necessary contractual arrangements. Until then, you should continue to follow existing legislation, guidance on which is set out below. We will keep you informed of developments.
Current position

Relevant legislation: Regulation 76(1) of the HB (General) Regulations; and regulation 66(1) of the CTB (General) Regulations


4. The decision on a HB or CTB claim which actually releases the money (or decides that benefit is not payable if that is the case) can only be made by a person who is employed by the Local Authority. Decisions made by anyone else are ultra vires.

The position where a LA contracts-out aspects of the administration of HB/CTB

5. Where aspects of the administration of HB and CTB have been contracted-out then decisions on benefit entitlement cannot be undertaken by staff employed by the contractor. These decisions must be made by the local authority.

The position on agency staff

6. Whether staff obtained via an agency can make decisions on claims depends on whether they are staff of the local authority.

7. If staff from an agency are employed by a local authority (even if this is on a temporary basis) then those staff would be able to make decisions on HB and CTB claims on the authority’s behalf in accordance with the regulations. The essential point is that those staff would be employees of the authority and under its direction and control. They would not be employees of the agency.

8. However, the position on staff employed by an agency and working for the authority under a contract between the authority and the agency (which we understand is the most likely arrangement) is the same as staff working for a contractor. They cannot make the decision on benefit entitlement.

Subsidy claims

9. If the “decision” made by a person other than a local authority employee relates to a new claim it will be as if no decision has been made and the monies paid cannot be regarded as Housing Benefit and will not be eligible for subsidy.
10. However, where authorities subsequently properly make decisions on the new claims they may be able to offset the payments already made against any housing benefit properly decided as due. In such cases the amounts of housing benefit correctly decided may be included within the authority’s expenditure on housing benefit in its claim for subsidy.

11. If the “decision” relates to a renewal claim the payments are Housing Benefit (assuming the decision on the claim in the previous benefit period was made by the local authority). The monies paid will be eligible for subsidy but a benefit period overrun will arise for the period from the end of the last correctly decided benefit period until the renewal claim is subsequently decided correctly. Where the last correctly decided benefit period is less than 60 weeks the benefit period overrun will not commence until the end of the 60th week.

12. The subsidy claim, including any claim for subsidy on expenditure set off against housing benefit properly due or a claim involving a benefit period overrun, would, of course, be subject to the usual audit requirements. Authorities should keep records and information sufficient to enable the auditor to be satisfied that the final subsidy claim, including this aspect of it, has been properly calculated.

Contact points

13. Enquiries about the use of agency and contractor staff should be made by e-mail to Andy.Carter@dwp.gsi.gov.uk or by telephone to Andy Carter on 020 7962 8313. Enquiries about subsidy issues should be made to Dave Marley on 020 7962 8393 or by email to Dave.Marley@dwp.gsi.gov.uk. Enquiries about completion of subsidy claims and payments of subsidy should be made to Michael Mina on 01253 333864 or by email to Michael.Mina@dwp.gsi.gov.uk.

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