

# POLICY BULLETIN 67

## OVERPAYMENTS

### 1. SCOPE AND PURPOSE

- 1.1 This document outlines the policy for dealing with cases where asylum support has been overpaid. This includes subsistence only support and accommodation and subsistence support.
- 1.2 Application of this instruction in respect of children and those with children: Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the UK Border Agency to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It does not impose any new functions, or override existing functions.

Officers must not apply the actions set out in this instruction either to children or to those with children without having due regard to Section 55. The UK Border Agency instruction 'Arrangements to Safeguard and Promote Children's Welfare in the United Kingdom Border Agency' sets out the key principles to take into account in all Agency activities.

Our statutory duty to children includes the need to demonstrate:

- Fair treatment which meets the same standard a British child would receive;
- The child's interests being made a primary, although not the only consideration;
- No discrimination of any kind;
- Asylum applications are dealt with in a timely fashion;
- Identification of those that might be at risk from harm.

- 1.3 Overpayments made as a result of an error by the Secretary of State are reclaimed under the provisions of Section 114 of the Immigration and Asylum Act 1999, Part VI and Paragraph 18 of the Asylum Support Regulations 2000 (SI 704).
- 1.4 All other overpayment cases are recoverable under Section 112 of the Immigration and Asylum Act 1999, (Part VI) through the County Court (or Sheriff's Court in Scotland). Paragraph 4 of the Asylum Support (Amendment) Regulations 2005 (SI 11) – which came into effect on 5<sup>th</sup> February 2005 - inserted paragraph 17A into the Asylum Support Regulations 2000. This provides that the Secretary of State may request a person in receipt of asylum support, to refund support if it transpires that he was not destitute. The same requirement can be applied in cases where the dependants of the supported person were not destitute, at a time when he or they were being provided with asylum support. If

this refund is not paid within a reasonable period, it can be enforced as if it were a debt due to the Secretary of State.

- 1.5 This Policy Bulletin does not give comprehensive guidance on the recovery of overpayments. This can be found in the Process Manual on Overpayments.
- 1.6 Overpayments may occur as a result of:
- a failure to review and update UK Border Agency records;
  - supported persons or accommodation providers failing to notify changes of circumstances, or providing incorrect information in support of the claim;
  - delays or mistakes by the UK Border Agency when processing information provided by the supported person or others;
  - computer-generated errors that calculate the wrong entitlement to asylum support; or
  - failure to adhere to published policies.
- 1.7 The UK Border Agency must rigorously manage the linked problems of notification of change of circumstances and overpayments in order to reduce the loss to public funds. Firm and fair action taken by the UK Border Agency in administering overpayments will have the effect of encouraging supported persons and their representatives to give correct and timely information regarding their claim and deter asylum support fraud.
- 1.8 The UK Border Agency should therefore make stringent attempts to prevent overpayments occurring in the first place. When overpayments occur, the UK Border Agency's policy is to:
- identify overpayments promptly;
  - stop overpayments continuing;
  - decide whether they are recoverable, and if so, from whom and whether to recover;
  - notify supported persons and other affected persons quickly;
  - pursue recovery by the most speedy, cost effective and efficient methods available in line with legislation, whilst taking account of the wider consequences of recovery action;
  - ensure that there is effective financial control during the entire process.

## **2. EXAMPLES OF CIRCUMSTANCES LEADING TO OVERPAYMENT**

- 2.1 The circumstances which led to the overpayment should be considered first.

### **Examples**

Examples a) and b) below relate to recovery of overpayments as a result of a UK Border Agency error. Those at c) and d) deal with cases where a supported person has misrepresented or failed to disclose a material fact (whether

fraudulently or otherwise) and as a consequence of the misrepresentation or failure, support has been provided under section 95 or 98 (whether or not to the supported person).

#### UK Border Agency error

- a) The UK Border Agency or an agent acting on its behalf has overpaid asylum support to a supported person because of an error in calculating or changing the amount of asylum support to which the person was entitled. This includes subsistence payments (cash) and any related accommodation costs. The nature and cause of the error should be examined and any necessary action taken.
- b) The supported person's claim for asylum has been fully determined, but the UK Border Agency has not discontinued its asylum support after an appropriate time has passed, resulting in an overpayment. This can occur when the automatic updating link between CID and ASYS does not work when a decision has been made on an asylum claim or alternatively where a caseworker fails to discontinue support because they make a mistake. Depending on the circumstances of each individual case we might want to instigate recovery or we might decide to write-off the amount instead. The test to be applied is normally whether the applicant would have been aware that support should have stopped.

#### False or misleading statements or suspected fraud

- c) If it appears that the supported person has failed to report a relevant change of circumstances then Asylum Support Investigations should be notified. They will then decide if further investigation and /or prosecution are warranted.
- d) If a change of circumstances has not been advised until some time after the event, the reasons for the late notification should be considered. If it appears likely that there has been deliberate fraud Asylum Support Investigations should be notified.

### **Recovery**

- 2.2 Where support is provided and it later transpires that the supported person and/or his dependants were not destitute during any period for which support was provided the Secretary of State can require the supported person to refund all or some of the asylum support for the relevant period (regulation 17A). If the refund is not made within a reasonable time the sum required may be recovered as if it were a debt owed to the Secretary of State.
- 2.3 There is also provision to recover the value of support from any person who misrepresented or failed to disclose a material fact as a consequence of which support was provided (section 112 of the 1999 Act.) The Secretary of State may make an application to the county court (or in Scotland the sheriff) for recovery of the monetary value of the support provided (whether provided by the Secretary of State or another provider).

### **3. RECOVERING OVERPAYMENTS WHERE SUPPORT CONTINUES TO BE PROVIDED – INITIAL STAGE**

- 3.1 Caseworkers should write to the supported person inviting them to return the amount of asylum support overpaid, with a warning that failure to do so may result in action being taken to recover the overpayment, before any recovery process is implemented.

#### **Straightforward Cases**

- 3.2 Where some entitlement to asylum support remains, caseworkers must calculate an appropriate recovery amount. The normal rate of recovery should be at 15% of the weekly subsistence payment support. This is the same rate as the standard Income Support Overpayments recovery until the debt is recovered or the person leaves the UK. The UK Border Agency should seek to recover the whole debt within a six-month period where possible. Where the level of overpayment is less than 15% recovery rate, the whole debt may be recovered. (For example, the overpayment is calculated at £5 and the 15% recovery rate would have been £6).
- 3.3 The recovery rate should only apply to the individual, or individuals, who have received the overpayments, and not to the household.
- 3.4 Caseworkers should only use the recovery plan given in the Training Manual on Overpayments for straightforward recovery cases at 15%. Adults without minor dependants are an example of such a case.

#### **Special Cases**

- 3.5 Caseworkers must consider the circumstances of the supported person and their dependants (if any) before introducing measures to recover the overpayment. Issues such as the effect on health and welfare of the supported person or their dependants (if any) must be considered. Consideration should be given to contacting the supported person - and in certain circumstances interviewing them to assess their situation. Special flexible arrangements should be considered when there are children, where recovery could be detrimental to the person's health (applicant must provide medical evidence) or where it would severely disadvantage the person. In these cases, caseworkers should consider recovering the debt at a special rate of 5%. The special rate only applies to the person identified as a special case. Other household members who have been overpaid will have the repayment recovered at 15%.
- 3.6 Factors to take into account when considering if there are special circumstances include the following:
- Persons aged under 16;
  - Persons aged 16-17 inclusive, who remain in full-time education;
  - Persons 65 years old or over;

- Persons with special medical diets;
- Persons with chronic medical conditions, or those receiving on-going treatment with the Medical Foundation for the Care of Victims of Torture;
- Need to visit dependants in hospital.

4. **DEALING WITH CASES WHEN IT IS NOT POSSIBLE TO IDENTIFY THE INDIVIDUAL OR INDIVIDUALS WHOSE SUBSISTENCE PAYMENT ALLOCATION HAS BEEN OVERPAID**

- 4.1 When caseworkers are unable to identify the individual or individuals whose asylum support has been overpaid, the debt should be divided equally amongst all the household members and recovered according to each individual circumstance.

5. **MATERNITY PAYMENTS OR OTHER PAYMENTS MADE UNDER SECTION 96(2) OF THE IMMIGRATION AND ASYLUM ACT 1999 (EXCEPTIONAL PAYMENTS)**

- 5.1 Overpayments should not be recovered from Maternity Payments or other payments made under Section 96(2) of the Immigration and Asylum Act 1999 (Exceptional Payments) payable to an eligible supported person on application under Regulation 11 of the Asylum Support Regulations 2000. These payments are additional support and do not form part of the person's support under section 95 of the 1999 Act.

## Document Control

### Change Record

Version	Authors	Date	Change Reference
3.0	BF	26/11/08	Update branding only
4.0	SM	05/10/09	Children's Duty paragraph added.