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Department of Social Security

Research Report No 119

# Local Authorities and Benefit Overpayments

Roy Sainsbury

A report of research carried out by the Social Policy Research Unit on behalf of  
the Department of Social Security

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## SUMMARY

- Introduction (Chapter 1)** In March 1999 the Department of Social Security (DSS) commissioned the Social Policy Research Unit at the University of York to carry out research into local authorities' policies, procedures and practices in relation to Housing Benefit and Council Tax Benefit overpayments.
- Policy background (Section 1.1)* Local authorities have a statutory duty to classify benefit overpayments according to their cause. The principal causes are local authority error, claimant error and fraud. Local authorities receive a 95 per cent subsidy from the DSS on correct claims, 80 per cent on fraud overpayments, 25 per cent on overpayments due to claimant error, and zero per cent on local authority errors. These rates are intended to encourage local authorities to reduce the incidence of overpayments.
- Local authorities are expected to make efforts to recover overpaid benefits. They can retain any monies recovered. This is intended to act as a financial incentive to encourage the vigorous pursuit of overpayments.
- The Social Security Administration (Fraud) Act 1997 (the 'Fraud Act') extended the powers of local authorities to recover overpayments from landlords, and introduced new procedures for the recovery of overpayments through the civil courts. The Act also introduced new administrative penalties for use against fraudulent claimants.
- Research aims and questions (Section 1.2)* The objective of the research was to explore and analyse the decisions, experiences and suggestions of local authorities regarding (a) their policies on overpayments, (b) the classification of overpayments, (c) the recovery of overpayments and (d) the 1997 Fraud Act.
- Research design and methods (Section 1.3)* The research methods used were primarily qualitative. Interviews were conducted with 82 local authority staff in 18 local authorities in Great Britain in the early summer of 1999. In addition, the published reports of the Benefit Fraud Inspectorate (BFI) were analysed.
- Local authority policies on overpayments (Chapter 2)** None of the authorities in the study had a formal written policy in relation to overpayments in the sense of a document setting out the principles, aims and objectives that informed their overpayment work and strategies for achieving those ends.
- 'Policy' content and documentation (Sections 2.1-2.4)* Instead, local authorities had well-established structures and procedures for dealing with overpayments. Some had developed procedure manuals while others relied on the guidance circulars from DSS to equip staff to carry out overpayment work.

<i>Aims underlying overpayment 'policy' (Section 2.5)</i>	The principal aims behind the organisation of overpayment work were the pursuit of good administration and to keep administrative costs low. No authority had adopted a policy of treating overpayments caused by fraud differently compared with overpayments caused by error.
<i>Influences of overpayment 'policy' (Section 2.6)</i>	Importantly, it was found that the current financial subsidy and incentive measures did not affect local authorities' approaches to overpayment classification or recovery.
<i>Classification of overpayments (Chapter 3)</i>	In some authorities the reports of the BFI had been influential in recent thinking about overpayments work. Some managers are having to manage a potential tension between overpayment policy and their other authority's policies, such as anti-poverty strategies.
<i>Data on the amount and the causes of overpayments (Sections 3.1-3.3)</i>	Analysis of local authority subsidy data showed that in 1997/98 the value of identified overpayments was £ 440 million of which £ 358 million were in relation to Housing Benefit. DSS subsidy data indicated that the majority of overpayments (71 per cent) were the result of claimant error. Just over a fifth (21 per cent) were caused by fraud. The National Housing Benefit Accuracy Review for the same year analysed a sample of cases to estimate the amount of confirmed and strongly suspected fraud. It concluded that £ 840 million was lost in incorrect payments of Housing Benefit alone. Although these sources of data are not directly comparable, the size of the difference suggests the need for further investigation.
<i>How classifications are carried out (Section 3.4)</i>	Classification of overpayments caused by error was largely a routine administrative task carried out by staff on benefit assessment teams. It is a process which is automated to varying degrees depending on the specification of an authority's computer system. Classification of overpayments caused by fraud was, in contrast, carried out manually.
<i>BFI evaluations of overpayment classifications (Section 3.5)</i>	There was no evidence that authorities deliberately classified overpayments wrongly, either as fraud or as claimant error, in order to increase subsidy payments obtained from central government. Nor was there any evidence that authority staff were failing to identify and record overpayments in order to increase subsidy payments.
<i>BFI evaluations of overpayment classifications (Section 3.5)</i>	The published reports of the BFI reveal a picture of widely varying standards in the classification of overpayments by local authorities. Some authorities inspected by BFI appeared to have low standards of performance in relation to overpayment classification. However, the reports do not conclude that the classification system is being abused in order to avoid a subsidy penalty.
<i>Information of overpayment classification (Section 3.6)</i>	Little use is being made by local authorities of information about overpayment classifications as a management tool to identify problems and inform improvements in practice.

<p>Recoverability and recovery of overpayments (Chapter 4)</p> <p style="padding-left: 20px;"><i>Data on the recovery of overpayments (Sections 4.1-4.3)</i></p>	<p>Very little is known about how much overpaid Housing Benefit and Council Tax Benefit is actually recovered by local authorities. Neither the DSS nor local authorities collect data on overpayment recoveries routinely or systematically. BFI inspection reports suggest that local authorities' performance on the recovery of overpayments varies widely and that many authorities do not have the technical capacity to produce robust and complete information about recoveries.</p>
<p><i>Recoverability (Section 4.4)</i></p>	<p>Local authorities have a statutory duty to decide if an overpayment is recoverable in law. In practice, the large majority of overpayments identified are deemed recoverable. The research showed that some authorities do not routinely make decisions about the recoverability of overpayments caused by official error, even though they are required to by law.</p>
<p><i>Deciding whether to recover (Section 4.5)</i></p>	<p>Local authorities are under no legal obligation to recover an overpayment of benefit. However, they are expected by central government to make serious attempts to recover all recoverable overpayments. In practice, it was found that recovery action is taken in most cases. There was no evidence that in the authorities visited during the research project, Housing Benefit or other authority staff ignored or avoided their responsibility to seek recovery.</p>
<p><i>Principal methods of recovery (Section 4.6)</i></p>	<p>In most cases the method of recovery is an automatic choice determined by the type of benefit overpaid and the current status of the claimant. All authorities used a standard range of recovery methods - deduction from ongoing Housing Benefit, posting to a rent or Council Tax account, and sundry debtor invoices - which accounted for the majority of their recovery actions. All authorities pursued recovery through the civil courts as a method of last resort when other recovery attempts had not succeeded.</p>
<p><i>Alternative means of recovering overpayments (Section 4.7)</i></p>	<p>The extent to which other methods of recovery were used varied considerably between the authorities visited. Most authorities rarely, if at all, sought repayment from other social security benefits administered by the Benefits Agency, from other local authorities, or used debt collection agencies.</p>
<p><i>Appeals (Section 4.8)</i></p>	<p>Authorities had very varied experiences of handling appeals against overpayment decisions, but appeals appeared to have little impact on the administration of overpayments, or of benefits more widely.</p>
<p><i>Recovery issues relevant to overpayment policy (Section 4.9)</i></p>	<p>Overpayment recovery was not the responsibility of a single local authority department or official. No department or individual officer had ownership of overpayments. Recovery work was usually distributed between at least five local authority departments (Housing Benefit, Council Tax, Housing, Finance and Legal).</p>

The gap in the information collected by local authorities about the amounts and the types of overpayments recovered has important implications for any attempts to measure and compare the recovery performance of different local authorities.

The impact of the Social Security Administration (Fraud) Act 1997 (Chapter 5)  
*Introduction (Section 5.1)*

The 1997 Fraud Act included a number of measures relevant to overpayments:

- the extension of local authorities' powers to recover overpayments from landlords;
- the introduction of new civil court procedures to simplify and speed up the process of obtaining a court judgment against debtors;
- the introduction of a system of administrative penalties for fraudulent claimants.

*Extended powers to recover overpayments from landlords (Section 5.2)*

The new powers in relation to recovery from landlords were being used occasionally in appropriate cases by some authorities and not at all in others. They were viewed mainly positively as a useful addition to a local authority's ability to recover overpayments.

*New civil court procedures (Section 5.3)*

The new civil court procedures were only just beginning to be used in a few authorities, where they were viewed positively as a welcome replacement for the previous costly and time-consuming procedures. Awareness and knowledge of the new powers, however, were not high.

*Administrative penalties (Section 5.4)*

The new system of administrative penalties had been used on only a few occasions. Its use was seen as very limited. To impose an administrative penalty local authorities are required to gather sufficient supporting evidence to justify prosecution. There was a feeling that when such a stage had been reached on a case of suspected fraud, prosecution was the preferred course of action rather than offering the choice of an administrative penalty to the claimant.

Conclusion and issues for policy development (Chapter 6)

In developing future policy on overpayments, options lie not only in improving local authorities' performance in relation to overpayments, but also in possible changes to the benefit schemes themselves and in the behaviour and actions of claimants, landlords and other third parties. A range of policy ideas were discussed with the respondents interviewed. Many ideas emerged as their own suggestions, others were prompted by the reports of the BFI, whilst some were formulated by the research team from their reflections on the interviews and analysis of the data.

Overpayment work is currently spread among a number of departments in many local authorities. However, some Housing Benefit managers suggested that there may be advantages in bringing responsibility for overpayment administration and performance under a single management command. It was thought that there is merit in exploring this option in some detail with local authorities and their organisations.

The finding that the current subsidy and financial incentives arrangements for overpayments have little influence on the activities of local authorities raises a number of questions:

- Are financial incentives and subsidies the right policy instruments for encouraging local authorities to reduce the number of overpayments and to increase the amount of overpaid benefit recovered?
- Are subsidies ineffective because they are not set at the right levels? Would changes in the levels restore the effectiveness of subsidies?
- Would the financial incentives be more effective if there was ownership of overpayment work in local authorities?

Overpayment incentives were found to be ineffective at present. An alternative to incentive payments is to use performance measurement as the basis for motivating local authorities to reduce overpayments and increase recoveries. Establishing ownership of overpayments work would also create the opportunity of linking the current incentive arrangements to performance.

Information on the incidence, value and causes of overpayments is already collected by local authorities. This is a rich source of data from which to develop performance indicators and targets. In contrast many authorities are not well placed to collect recovery data. There is a case for developing a comprehensive set of indicators which will allow a balanced assessment of an authority's performance and provide authority managers with information that they can use to monitor recovery performance in detail.

The prospects for preventing overpayments will be improved by implementation of the Housing Benefit Verification Framework which requires local authorities to verify information in relation to new and repeat claims and to introduce rigorous systems of claims monitoring and reviews. Other ideas for reducing overpayments included increasing administrative resources for Housing Benefit departments, better education of claimants and landlords so that changes in circumstances were reported timeously, a better service from the Benefits Agency and the Employment Service, more frequent reviews of claims in payment, and shorter award periods so that overpayments did not continue for long periods of time. Simplification of the rules of Housing Benefit and Council Tax Benefit was also discussed as a possible way of reducing the incidence of overpayments.

The dominant view among the Housing Benefit staff interviewed is that there is no compelling need to extend the current range of methods for the recovery of overpayments. However, in its reports the BFI has criticised some authorities for not recovering more overpayments from benefits paid by the Benefits Agency. An option for consideration raised by local authority staff in the study is to allow local authority staff access to claimants' Benefits Agency records so that deductions for overpayments can be made directly.

Models of funding based on counter-fraud initiatives might provide ideas for the future funding of overpayment work. Consideration could also be given to extending the roles of the DSS and BFI in relation to overpayments, to encourage more local authorities to make better use of the range of powers and provisions already at their disposal, and to take advantage of new opportunities to prevent and recover overpayments.

## 1 INTRODUCTION

In March 1999 the Department of Social Security (DSS) commissioned the Social Policy Research Unit to carry out research into local authorities' policies, procedures and practices in relation to Housing Benefit and Council Tax Benefit overpayments.

Housing Benefit is a national, means-tested, social security benefit that can be claimed by anyone on a low income who pays rent. Housing Benefit is paid in the form of a *rent rebate* to tenants of local authorities, or as a *rent allowance* to tenants in private sector accommodation or social housing (such as that run by Housing Associations). Council Tax Benefit can be claimed by any Council Tax payer on a low income. It is paid in the form of a rebate on a person's Council Tax bill. Both benefits are administered by local authorities on behalf of central government.

The rules setting out the eligibility criteria for Housing Benefit and Council Tax Benefit and the rules for calculating entitlement are contained in legislation. However, local authorities have considerable autonomy in the way they organise the administration of benefits.

Overpayments of benefit occur when a claimant is paid an amount of benefit to which he or she is not entitled under the regulations. They may be the result of one of a number of causes, including:

- official error, by local authorities, or by government departments such as DSS, the Benefits Agency (BA) and the Department for Education and Employment (DfEE);
- claimant error;
- fraud;
- other causes, such as an overpayment following the death of a claimant, or a backdated benefit increase.

### 1.1 Policy background

Overpayments are a problem for the social security system. According to the National Housing Benefit Accuracy Review for 1997/98 the amount of Housing Benefit lost to error and fraud was in the order of £ 840 million in the year (Government Statistical Service, 1998).<sup>1</sup> Overpayments not only represent a drain on public resources, they also create difficulties for claimants and the benefit authorities alike. The government has expressed a commitment to reducing the problem of overpayments through its programmes to modernise the welfare system and by its

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<sup>1</sup> From data supplied to DSS by local authorities for the purposes of claiming government subsidy, the amount of overpaid Housing Benefit in 1997/98 was £ 232 million, and £ 323 million when Council Tax Benefit overpayments are added. This apparent discrepancy in the size of the overpayment problem is discussed further in Chapter 3.

counter-fraud strategies. In the welfare reform Green Paper *New Ambitions for Our Country* (DSS, 1997), two of the measures of success set out by the government are:

- a reduction in the amount of money lost in fraudulent payments; and
- a reduction in the number of incorrect payments (p.84).

The later Green Paper on social security fraud (DSS, 1998) presents recovery of overpayments as part of a framework of sanctions that prevents claimants from gaining from fraud and sends a powerful deterrent message to potential fraudsters. The government's fraud strategy paper *Safeguarding Social Security*, published in March 1999 (DSS, 1999), acknowledges that debt recovery 'is a neglected area' (para. 4.10) and that the 'record on the recovery of overpayments must be improved' (para. 4.23). Reducing programme loss and, consequently the cost to the taxpayer, are clearly set out as objectives for future policy and practice (para. 4.3 and 4.23). The paper also places the recovery of overpayments in the wider context of a regime of sanctions and deterrence (para. 4.14).

Central government has built incentives into the mechanisms for subsidising local authorities for Housing Benefit administration to encourage them to detect and recover overpayments. There is evidence, however, that levels of overpayments remain high and that there are considerable variations among local authorities in the value of overpayments, in the relative number of overpayments caused by fraud and error, and in the percentage of overpaid benefit they recover from claimants and landlords. The National Audit Office has drawn attention to what it calls shortcomings in the way in which subsidies are paid in relation to overpayments which leave the subsidy arrangements 'open to abuse', by, for example, encouraging local authorities to classify overpayments as due to fraud in order to generate maximum income (NAO, 1997, p.51).

### *1.1.1 Classification and subsidy*

Local authorities administer and pay Housing Benefit and Council Tax Benefit on behalf of the DSS. Rent allowances, non-Housing Revenue Account (HRA) rent rebates, rent rebates in Scotland and Council Tax Benefits that are correctly paid by authorities are reimbursed at the rate of 95 per cent of expenditure.<sup>2</sup> However, this rate of subsidy is lower for most overpaid benefit. The policy intention here is that the lower rates of subsidy will encourage authorities to administer the Housing Benefit scheme efficiently and securely.

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<sup>2</sup> The Department for the Environment, Transport and the Regions (DETR) and the National Assembly for Wales are responsible for paying subsidy for HRA rent rebate expenditure in England and Wales.

The subsidy arrangements as they relate to overpayments are complicated. However, the principal rates of subsidy paid by DSS are as follows:

- 95 per cent subsidy on overpayments caused by official error in the DSS or DfEE;
- 80 per cent subsidy on overpayments caused by fraud (before April 1998 the rate was 95 per cent);
- 25 per cent subsidy on overpayments caused by claimant error or other causes;
- zero per cent subsidy on overpayments caused by local authority error.

The differential rates of subsidy are intended to provide an incentive for local authorities to prevent overpayments from occurring. Local authorities have a responsibility to identify, record and classify each overpayment according to its cause in order to be able to claim the correct rate of subsidy from central government.

### *1.1.2 Recovery of overpayments*

When an overpayment has been identified by a local authority, a decision must be made as to whether it is *recoverable* in law. This is a statutory decision governed by regulations. All overpayments caused by claimant error or fraud are recoverable. However, overpayments caused by local authority error are only recoverable if the recipient of the benefit could reasonably be expected to have known that they were being overpaid.

Once an overpayment has been deemed recoverable the local authority is under no statutory obligation to recover the overpaid amount. It can exercise its own discretion in deciding whether or not to recover. However, it is expected that an authority, while having due regard to an individual claimant's circumstances, will nevertheless make a serious attempt to recoup the overpaid benefit.

Local authorities have a variety of means at their disposal for attempting recovery, including:

- recovery from ongoing Housing Benefit payments to a claimant, a landlord or the person to whom the benefit was paid;
- recovery from a council tenant's rent account;
- recovery through a Council Tax account;
- issuing a sundry debtor invoice;
- deductions from other social security benefits paid to the claimant;
- employing a commercial debt recovery agency;
- recovery through the civil courts.

An important feature of the overpayment arrangements is that local authorities can keep the full amount of any monies recovered. This is intended to act as a strong incentive to local authorities to pursue the recovery of overpayments.

The Social Security Administration (Fraud) Act 1997 (usually referred to as the '1997 Fraud Act') included a number of measures relevant to overpayments. These were:

- the extension of local authorities' powers to recover overpayments from landlords;
- the introduction of new civil court procedures to simplify and speed up the process of obtaining a court judgment against debtors;
- the introduction of a system of administrative penalties for fraudulent claimants as an alternative to prosecution.

The first two of these are primarily intended to improve the recovery of overpayments from claimants and landlords, and thereby act as a deterrent to potential fraudsters. The administrative penalty provisions allow local authorities to offer a claimant the opportunity of paying a penalty equivalent to 30 per cent of the overpayment obtained by fraud as an alternative to criminal prosecution. The penalty is added to the amount that the authority can recover from the claimant. The penalty does not directly affect recovery but is an addition to the sanctions that local authorities can apply to fraudulent claimants. It acts as a punishment but is also intended to serve as a deterrent.

### *1.1.3 Official criticism of overpayment policy and performance*

In recent years overpayments have come under the scrutiny of a number of public bodies including the National Audit Office (NAO), the Audit Commission, the Commons Select Committee on Social Security and the Committee for Public Accounts, mainly in the context of the major policy and public interest in social security fraud.

Official reports by, for example, the Committee for Public Accounts (1998), and the NAO (1999), have contained a number of criticisms of overpayment policy and practice in local authorities, the main thrust of which are that:

- local authorities do not make sufficient effort to seek repayments from people who have obtained Housing Benefit fraudulently;
- perverse incentives are created by a combination of the subsidies paid on overpaid benefit, the system of rewards for identifying and stopping fraud (known as weekly benefit savings), and the rules that allow authorities to keep any recoveries of overpayments;
- local authority performance in recovering overpayments is not as good as it should be.

In its responses to such criticisms, the DSS cites recent developments that should promote the improvement of local authority performance, such as the work of the Benefit Fraud Inspectorate (BFI), and the new provisions in the 1997 Fraud Act to increase local authorities' powers to recover overpaid benefit. The Department has also confirmed its view that sufficient financial incentives are already in place to encourage local authorities to pursue overpayment recovery (NAO, 1999).

The BFI was set up under the provisions of the 1997 Fraud Act to inspect local authority and DSS agency practices and performance in relation to reducing fraud in the social security system. It publishes detailed inspection reports on individual authorities which include an assessment of their work on overpayments. By the end of August 1999, 23 local authority reports had been published by the BFI, and had been analysed for the purposes of this research report. Criticisms frequently made in the BFI reports included:

- a lack of management responsibility for overpayment work;
- a lack of management systems and information for controlling and monitoring overpayment work;
- a failure to recover overpayments from other social security benefits received by claimants;
- a failure to use the new powers to recover overpayments from landlords.

## 1.2 Research aims and questions

The central objective of this research was to explore and analyse the decisions, experiences and suggestions of local authorities regarding the recording, classification and recovery of Housing Benefit and Council Tax Benefit overpayments. Our enquiries therefore covered local authority *policies, administrative procedures and practices*, and the *perceptions and beliefs* of local authority staff which informed policy and practice.

The detailed research questions, summarised below, fell into four broad categories relating to (a) local authority policies on overpayments, (b) the classification of overpayments, (c) the recovery of overpayments and (d) the provisions of the 1997 Fraud Act as they affect overpayments.

### **Local authority policies on overpayments**

- What is each authority's policy on the classification and recovery of overpayments?
- Who is responsible for drawing up the policy?
- What objectives underlie the authority's policy?
- What have been the principal influences on policy (including the impact of DSS subsidy arrangements and incentive measures)?
- Are there differences in policy for rent rebates, rent allowances, or Council Tax Benefit?
- Are there differences in policy for overpayments resulting from fraud compared with claimant or official errors?
- Are there differences in policy for claimants and landlords?

### **Classification of overpayments**

- Who is responsible for classifying overpayments?
- How do staff classify overpayments in practice?
- What influences their decisions?
- What information do local authorities collect on the classification of overpayments?

### Recovery of overpayments

- Who decides whether an overpayment is recoverable?
- How are the regulations on recoverability interpreted and actioned?
- Who is responsible for recovering overpayments?
- How are decisions *not* to recover made?
- What methods of recovery are used?
- Who makes decisions about the recovery method to use in each case?
- What influences decisions about the method of recovery?
- What information do local authorities collect on the recovery of overpayments?
- How successful are authorities in recovering overpayments?
- How are relations with claimants and landlords handled (including in the event of an appeal)?

### The 1997 Fraud Act

- How frequently have the new overpayment provisions been used?
- Why have some authorities apparently not made use of their new powers?
- How useful and effective have the new provisions been so far?
- How do local authorities view their use of the new powers now and in the future?

#### 1.3 Research design and methods

The main element of the research design was qualitative fieldwork in 18 local authorities in Great Britain, comprising interviews with staff engaged in some way in work on overpayments. After the fieldwork had been completed, a workshop for Housing Benefit managers was held in order to discuss emerging findings and to explore some of the options for policy development. The preparation for the fieldwork and the later analysis of fieldwork data were informed by a study of published BFI local authority reports.

In each local authority interviews were held with members of the authority staff who had been identified as key respondents in earlier preparatory telephone interviews with Housing Benefit managers. The type and number of staff interviewed varied between the authorities visited but included the following:

- Housing Benefit managers;
- team leaders and supervisors;
- processing and assessment staff;
- overpayment recovery staff;
- fraud officers;
- legal officers.

In total, 82 staff were interviewed, usually singly but occasionally in pairs. The interviews were taped and transcribed for analysis. Fieldwork took place in May and June 1999. The topic guides used in the interviews are included in this report at Appendix A.

The 18 local authorities were selected on the basis of a range of criteria considered to have a possible influence on a local authority's policy and practice regarding overpayments, or to be a reflection of their performance:

- *Type of authority* - i.e. London Borough, Metropolitan authority, District or Unitary authority, Scottish authority, Welsh authority.
- *Size of authority* - defined by Housing Benefit caseload.
- *Level of overpayments* - defined using subsidy data supplied by DSS.
- *Overpayment recovery rates* - using data from a DSS exercise on overpayment recovery that took place in 1998.
- *Political control* - before the local government elections in May 1999.
- *Size of private rented sector* - based on the number of private sector tenants.
- *Privatisation* - defined by the existence of a contract with a private sector company to provide benefit administration services to the authority.
- *Contact with BFI* - defined as authorities who had been visited by the BFI before 31 December 1998.

Twenty-three local authorities were approached in order for the target sample to be reached. The achieved sample comprised three London Boroughs, three Metropolitan authorities, eight District and Unitary authorities, two Scottish authorities, and two Welsh authorities. Further details of the characteristics of the achieved sample are presented in Appendix B.

#### 1.4 Structure of the report

Chapters 2 to 5 reflect the main information needs of the Department as set out in its research specification. Hence, they deal respectively with local authority policies regarding overpayments, the classification of overpayments, recovery methods and performance, and the impact of the 1997 Fraud Act. Each chapter presents the research findings and concludes with a discussion of the policy issues raised.

Chapter 2 presents the findings on local authority policies regarding overpayments. It provides a description of the types of documentation used to inform overpayment work in the 18 local authorities visited, and an analysis of the approaches taken to decision making regarding classifying overpayments, recoverability, and recovery. The aims and objectives that underlie local authority policies and the principal influences on local authority thinking are examined. Chapter 3 deals with the classification of overpayments. It begins with a description of the main causes of overpayments and presents background statistical data based on an analysis

of the 1997/98 Housing Benefit subsidy returns to the DSS. The chapter also describes how classifications are made in practice by Housing Benefit staff and discusses the use of information on classification by local authority managers.

Chapter 4 presents the research findings on the recovery of overpayments. There is a brief review of the extent of current knowledge about the recovery of overpayments drawn from available sources. Decision making on whether overpayments are recoverable and whether recovery action should be attempted are then explored. The chapter examines in detail the principal and the less frequently used methods of recovery utilised by local authorities. There follows a discussion of a number of issues relating to the recovery of overpayments that are relevant for thinking about the future direction of policy, including the 'ownership' of recovery work, measuring recovery performance and the link between recovery and the deterrence of fraud. Chapter 5 is concerned with the impact of the 1997 Fraud Act and examines the use of the extension of local authorities' powers to recover overpayments from landlords, the introduction of new civil court procedures, and the introduction of a system of administrative penalties for fraudulent claimants.

In the final chapter we draw on the full range of other research findings and insights from local authority staff to present a discussion of a range of options for overpayments policy.

## 2 LOCAL AUTHORITY POLICIES ON OVERPAYMENTS

2.1 Introduction One of the key aims of the research was to explore local authorities' policies on Housing Benefit and Council Tax Benefit overpayments. As explained in Chapter 1, the principal research questions we set out to address were as follows:

- What is each authority's policy on the classification and recovery of overpayments?
- Who is responsible for drawing up the policy?
- What objectives underlie the authority's policy?
- What have been the principal influences on policy?
- Are there differences in policy for rent rebates, rent allowances, or Council Tax Benefit?
- Are there differences in policy for overpayments resulting from fraud compared with claimant or official errors?
- Are there differences in policy for claimants and landlords?

In constructing these research questions we were intending to unpick policy in terms of the principles, aims and objectives that informed each local authority's overpayment work and its strategy for achieving those ends. There was an expectation that the formation of *policy* (rather than administrative procedures) would ultimately be the responsibility of the elected members of the authority and possibly senior officials at, for example, Chief Executive or Director level.

During the early preparatory stages of the project, however, it became clear that we would have to revise these assumptions. It was apparent that we were unlikely to find many authorities with a clear, written statement of its overpayment policy to which elected members or senior officials had contributed. This expectation was confirmed in preliminary interviews with Housing Benefit managers and later in the fieldwork visits: not one of the 18 authorities in the study had a written policy document on overpayments. In addition, we were unable to identify any authority in which either elected members or senior officials made identifiable contributions to the way in which overpayments were dealt with in the authority (although some did intervene in individual cases on behalf of claimants).

Consequently, our discussions during fieldwork regarding 'policy' were restricted to Housing Benefit staff at management level and often began with descriptions of current procedures and practices for the *recovery* of overpayments. From there it was possible to engage in a discussion about the reasons why particular practices were adopted. In this way, we were able to piece together some understanding of the approach to overpayment

recovery in each authority and how that approach was operationalised. The notion of a 'policy' towards the *classification* of overpayments was more difficult for local authority staff to grasp.

In reading this chapter, therefore, it should be remembered that the idea of a policy towards overpayments did not have an immediate resonance with most of the local authority staff interviewed. The question of whether this implies that there is a gap here that needs to be filled or leads to the conclusion that a formal policy is largely irrelevant will be returned to at the end of the chapter.

## 2.2 Structure of the chapter

This chapter begins with a description of the types of documentation used to inform overpayment work that we found in the 18 fieldwork local authorities. The next section presents an analysis of the approaches taken to decision making regarding classifying overpayments, recoverability, and recovery. We identify some differences in the treatment of particular overpayment cases. The following section attempts to summarise the aims and objectives that lie behind existing overpayment 'policies'. The next section explores the main influences on overpayment work, including the impacts of subsidy arrangements, the 1997 Fraud Act, and external scrutiny by organisations such as the Benefit Fraud Inspectorate (BFI) and the Audit Commission. In the penultimate section, the relationship between overpayments and other local authority policies is considered. The final section draws out the main policy issues of the research findings.

## 2.3 'Policy' documentation

As mentioned above, we found no examples among the 18 fieldwork authorities of a specific written policy document or statement on overpayments.

The majority of authorities did have some form of procedural instructions, for example, in a separate overpayment manual or as part of a wider Housing Benefit procedure manual. Most of these were essentially technical manuals, explaining the sequence of operations for processing overpayments, usually through the authority's computer system. A few procedure documents also included explanations of the legislative base for the procedures and advice and guidance on making decisions in cases which might require the exercise of judgment or discretion. There were also a few authorities in our fieldwork sample that operated without specific overpayment instructions or manuals. In these authorities, it was explained that the primary legislation, statutory instruments and, most importantly, DSS guidance circulars were sufficient for the staff to deal with overpayment work.

Some management staff said that their manuals were not up to date and either needed revision or were in the process of being revised. As an illustration of the diversity identified during fieldwork, one authority was preparing a procedure manual for the first time, while another was

converting its procedures and guidance into a Windows-based, on-line form for incorporation within its Housing Benefit software.

One of the reasons why written procedures and manuals appeared not to be routinely amended and updated is that in practice they were not widely consulted. The task of maintaining them was therefore usually not a priority. Once procedures were learned and staff were used to carrying out what were mostly routine operations on the computer system, then the need to refer to procedural manuals or DSS circulars was much reduced. Most of the assessment staff we interviewed rarely felt it necessary to consult any written sources to deal with even problem cases. The normal course of action was to consult fellow assessors or supervisory staff.

Among the authorities in this study, we found wide variations in the type of documentation used to support overpayment work. However, as explained above, a number of authorities were moving towards more or improved documentation. Two managers said they would welcome a formal authority policy on overpayments, to set out the goals of policy and the administrative arrangements for achieving them. This, it was suggested, would increase the clarity of what the authority was trying to achieve and would convey the message to all staff that overpayments were treated seriously by the authority.

## 2.4 The content of overpayment 'policies'

Because we found no written policies, this section describes the 'approaches' to overpayment work as they were explained to us principally by Housing Benefit managerial staff. We do this in relation to classification, recoverability and recovery.

### 2.4.1 Classification

The notion that a local authority might have a policy on the classification of overpayments was not recognised by the Housing Benefit managers we interviewed. It was explained that classification of overpayments was a statutory requirement governed by relatively clear and straightforward guidelines. Classification was a routine administrative task undertaken by staff on assessment teams. The ways in which classifications are carried out and the issues that arise from that are analysed in Chapter 3.

We found no evidence to suggest that any local authority in our sample had adopted a policy of deliberately misclassifying cases as fraud solely in order to gain the higher rate of subsidy.

### 2.4.2 Recoverability

All Housing Benefit and Council Tax Benefit overpayments are recoverable except for those caused by local authority error where the claimant (or someone acting for them) or the person receiving the payment (for example, a landlord) could not reasonably be expected to have known that they were being overpaid. The test of recoverability is therefore a legal test and the decision to recover an overpayment caused by official error should be supported by evidence to show that the recipient of the

benefit should have known they were receiving the wrong amount of benefit.

In all cases of official error the local authority should apply the test of recoverability before embarking on any recovery action. For overpayments caused by claimant error or fraud the full amount of the overpayment is always recoverable in law.

We identified two distinct approaches among our fieldwork authorities to making decisions regarding recoverability. The first might be described as the 'correct' approach, i.e. it was recognised that the test of recoverability had to be applied in cases of official error and, where appropriate, recovery should not be attempted. Within this approach there were indications that different standards were being applied in different authorities regarding the interpretation of the 'could reasonably be expected to know' test. In some authorities the argument was put that Housing Benefit recipients have the responsibility of knowing about their benefits and should in all or most cases know when their payment is wrong and that therefore recovery was justifiable in most cases. In other authorities, the test of recoverability was applied more rigorously, taking into account the amount of the overpayment, the circumstances of the claimant and in some cases the accounting systems of landlords (such as Housing Associations). These two positions represent the ends of a continuum rather than distinct categories. However, the interviews with Housing Benefit managers suggest that there was more of a bias towards recovering overpayments rather than defining them as non-recoverable.

The second approach (evident in only a small minority of the sample authorities) was to deem all overpayments as recoverable without applying the test of recoverability. This 'blanket policy', the term used by one Housing Benefit Manager, is essentially unlawful. The authority's decision might be revised on appeal but the initial decision was always that the overpayment was recoverable.

*2.4.3 Recovery* Unlike classification decisions and decisions about recoverability, decisions about recovery are not based in legislation but are discretionary. Even if an overpayment is recoverable in law the local authority can decide not to pursue recovery.

The dominant approach taken in the authorities visited, however, was to pursue all recoverable overpayments in the first instance. In the case of some small overpayments where recovery would not be cost-effective, an early decision not to recover might be taken. Otherwise only in rare circumstances would recovery not be sought at all.

Recovery of overpayments from benefit recipients was described by the Housing Benefit managers interviewed as largely a technical task rather than a matter of policy. There were a number of recovery methods

available to them in each case and the choice was usually automatic and determined by the type of benefit involved. Chapter 4 analyses fully the recovery procedures and practices adopted by local authorities.

The choice of recovery method, the level of repayments, and the vigour used to clear the overpayment were generally not influenced by the cause of the overpayment. In no authority was there a distinct policy of treating fraudsters more harshly than other claimants. Hence, in most cases, fraud overpayments were treated no differently from other overpayments.

In contrast, there were differences in approach to the way in which recovery from private sector landlords was sought. As explained in Chapter 1, recovery can be sought from any party to whom the benefit is paid. Hence local authorities have always had the ability to recover from landlords paid direct by the authority. Furthermore, this power has now been extended by the provisions of the 1997 Fraud Act to allow local authorities to recover overpayments from the benefit of other tenants of a landlord.

The effectiveness of these recovery powers depends partly on a local authority's willingness to use them. We identified two distinct attitudes towards private sector landlords which appeared to influence different authorities' use of their recovery powers. These attitudes are not necessarily mutually exclusive although they can be thought of as competitive in that one tends to dominate in any one authority. The first type of attitude was based on a view that landlords are business people and should be treated as such. Any overpayments that could lawfully be recovered from them should therefore be pursued vigorously. Sometimes linked to this view was the feeling that some landlords were protected by the system of direct payments which allowed them to receive rental payments without managing their properties to acceptable standards. Authorities taking this position sometimes required new landlords to sign an undertaking that, as a condition of receiving direct payment of benefit, they would accept and meet demands for repayment of overpaid benefit.

Contrasting with this business-oriented approach, was an approach that viewed private sector landlords more as social partners providing a much needed service that benefited not only the landlord, but also people on low incomes requiring accommodation and the local authority itself whose ability to provide rented housing was limited. Hence there is advantage in establishing co-operative relations with landlords which extends to the treatment of overpayments. So, for example, if an overpayment had been caused by fraud, repayment would be sought from the claimant because the landlord could not be expected to have any responsibility for the overpayment even though the benefit was actually paid to them. Effectively the local authority assumed responsibility for recovering the debt and bore the financial consequences if recovery was not made. It

was an approach which put good relations with landlords above the need to recover overpaid benefit.

#### 2.4.4 Differences between rent rebates, rent allowances, and Council Tax Benefit

There were no differences in approach to the classification and recovery of rent rebate, rent allowance, and Council Tax Benefit overpayments. In some authorities there were variations in practice which effectively meant that private tenants were treated differently to council tenants (i.e. the latter were subject to more lenient payment regimes) but it is not possible from this research to attribute this to any conscious 'policy' decision. Some BFI reports contain a similar observation.

#### 2.5 Aims underlying overpayment 'policy'

Questions to Housing Benefit managers about the aims of overpayment policy were difficult to pursue when the notion of 'policy' was somewhat alien to them in the context of overpayments. However, we were able to explore the reasons behind the administrative arrangements for handling overpayment work.

The main aim behind the arrangements for classifying overpayments was to be able to complete the requirements of the subsidy claim form. Each overpayment had to be classified and procedures were in place to ensure that this was done as accurately as possible.

The main purpose behind the more diffuse arrangements for recovering overpayments (described in Chapter 4) was simply to recover as much as possible by the simplest and cheapest means. In the discussions with managers, the potential for making money for the authority was only mentioned in one authority. (This authority had been subject to an inspection by the BFI who make a consistent point in their reports that authorities are failing to generate income through overpayment recovery.)

Common to discussions about classification and recovery were discourses of *good administration*, and of *cost minimisation*. Good administration was referred to in terms of wanting to do the job of administering benefits well and effectively, including complying with statutory requirements, Council standing orders and departmental guidance, and ensuring subsidy claims were completed fully and accurately. *Cost minimisation* was explained in terms of not using a disproportionate amount of administrative resources on overpayment work.

#### 2.6 Influences on overpayment 'policy'

As with the aims of policy, it is problematic to report on the influences affecting the overpayment policies of local authorities when there is little evidence that 'policies' exist in any formal sense. However, it was possible in the interviews with Housing Benefit managers to talk about the factors that influenced the way in which they organised and carried out overpayment work. In particular it was possible to come to some firm conclusions about the impact of (a) the subsidy arrangements for reimbursing local authorities for overpaid benefit, including the recent change to the subsidy for fraudulent overpayments, and (b) the incentive

effect on local authorities of being able to retain 100 per cent of any recovered overpayment.

#### *2.6.1 The impact of subsidy*

As explained in Chapter 1, local authorities are reimbursed by the DSS for 95 per cent of correctly paid benefit, 80 per cent of overpayments caused by fraud, 25 per cent of overpayments due to claimant error and zero per cent of overpayments caused by local authority error. Until April 1998 the subsidy in fraud overpayments was 95 per cent.

The clear message from the Housing Benefit managers we interviewed was that the differential subsidy rates for overpayments had no effect on the way in which overpayments were classified. It was recognised that mistakes in classification would always occur but there was no systematic and deliberate misclassification in order to gain the higher subsidy attached to fraud overpayments. Nor was there any evidence of deliberate misclassification of local authority errors as claimant errors in order to obtain the 25 per cent subsidy rate.

In support of this assessment, managers cited the following:

- initial classification was often system-generated;
- the stringent definition of fraudulent cases associated with claiming weekly benefit savings (WBS) ensured proper scrutiny of potential fraud overpayments;
- classifications were checked and audited.

Managers were also clear that the reduction in the subsidy for fraud overpayments from 95 per cent to 80 per cent had had no effect on any aspect of overpayment work.

#### *2.6.2 The impact of retaining recovered overpayments*

Local authorities have a financial incentive to recover overpayments because they can retain in full any monies recovered. Some managers referred to the opportunity created by the regulations to make a profit for their authority from the recovery of overpayments. It was explained that if an authority recovers more than 20 per cent of a fraud overpayment it begins to make a profit, and can make up to 80 per cent of the value of overpayment if it recovers in full. For an overpayment caused by claimant error the authority must recoup 75 per cent of the overpayment before it is in profit, and for overpayments due to official error the authority can only hope to break even if it recovers in full. There is, at least theoretically, a strong financial incentive for local authorities to pursue recovery vigorously.

However, the evidence from the research is that this financial incentive had virtually no effect on the approach to and methods adopted for the recovery of overpayments. On the face of it, this is a surprising and counter-intuitive finding. The evidence from the introduction of WBS is that most authorities are very keen and quick to make the most of

opportunities for earning additional income. Why this appears not to be the case for overpayments needs careful examination.

The first observation to make is that the large majority of local authorities did not collect consolidated information on the amount of overpayments recovered. The principal explanation for this was that since such information was not required for subsidy purposes it was not collected. It was not possible, therefore, for Housing Benefit managers or anyone else in the authority to know how much income was being generated through recovery procedures. There was, therefore, no one in a local authority who had a grasp of the amount of money that could potentially be made for the authority and how much was actually made. To echo a comment made in several BFI reports, there was no evidence that there was *ownership* of the overpayments issue. We will return to this point later in the report.

Although an authority stands to gain if overpayments are recovered, it appeared that Housing Benefit managers did not have an incentive for themselves and their departments. In only one of the authorities visited in this project were recovered overpayments paid back to the benefit expenditure account. And in none was the benefit administration budget credited with recoveries. For all the Housing Benefit managers in this study therefore, overpayment recovery was an administrative expense only. Their task, as they saw it, was to balance the resources spent on overpayment work (work which was integral to good administration) against resources spent on processing claims and other administrative tasks.

*2.6.3 The impact of Benefit Fraud  
Inspectorate and other external  
reports*

It was apparent from our fieldwork visits that overpayments was growing in importance as a policy issue in many authorities. In contrast, there were also authorities where overpayments did not appear to be of major concern or interest.

Where it existed, much of the current interest had been generated by the inspections and reports of the BFI. Local authorities who had received a visit were clearly aware of the BFI's concerns around overpayments and were usually actively engaged in responding to its recommendations. Other authorities had, to varying degrees, taken note of report findings and were at least reviewing their own procedures and practices. The reports of the National Audit Office and the Audit Commission were read in relatively few authorities, and investigations by Parliamentary Select Committees largely did not filter down to the level of the Housing Benefit department.

The recent announcement by the Audit Commission that it will be requiring local authorities to produce performance data on overpayment

recovery from October 1999 was also alerting authorities to the need to establish methods of calculating and reconciling overpayment recoveries.<sup>3</sup>

#### *2.6.4 The impact of the provisions of the 1997 Fraud Act*

As mentioned in Chapter 1, three of the provisions of the 1997 Fraud Act have a bearing on the overpayment work of local authorities:

- the extension of the powers to recover overpayments from landlords;
- the introduction of new civil court procedures;
- the introduction of administrative penalties for fraudsters.

We shall examine the implementation of these new measures in Chapter 5. Some authorities had incorporated the measures into their overpayment procedures and were using them to varying degrees, others were still at the stage of considering how they might be operationalised. However, there were also authorities who had either chosen not to use one or more of the new powers or who appeared to have taken little note of them at all. Some authorities had been motivated by the provisions of the Act to begin drawing up prosecution policies which would include the authority's thinking about administrative penalties and civil court procedures. A few authorities also mentioned that audit reports of Housing Benefit administration and the reports of the BFI had also been influential in prompting them into action.

#### *2.6.5 Influence of other local authority policies*

A further general finding of some importance is that the pursuit of overpayments can potentially come into tension with other aims and objectives of a Housing Benefit department or the local authority more widely. Managers in many authorities expressed the view that the quick delivery of benefits was their primary objective. This not only fitted with their authority's general ethos of service to the community but was reinforced by government performance targets. Housing Benefit managers felt under strong pressure therefore to give a higher priority to benefit processing than to overpayment recovery.

The pursuit of overpayments from people who are by definition likely to be on a low income may also be influenced by an authority's anti-poverty strategy. One manager speculated that the imminent adoption of such a strategy in her authority would lead to the introduction of new, lower levels of weekly repayments being sought from overpaid claimants. Another reported that his authority's anti-poverty stance had led the Housing Benefit department to soften its otherwise tough approach to recovering overpayments from claimants on Income Support by imposing less onerous repayment regimes.

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<sup>3</sup> Since the research for this project was completed, the Department for the Environment, Transport and the Regions has published a consultation document on performance indicators and the Best Value initiative which suggests amendments to the Audit Commission's original ideas for assessing overpayment work (DETR, 1999).

The implication of these findings is that any policy drive to increase the levels of overpayment recovery must take into account the potential tensions that this may cause for authorities with other policies, such as explicit anti-poverty strategies, affecting the same group of claimants.

## 2.7 Summary and discussion

One of the main aims of this research project was to explore the policies of local authorities in relation to overpayments. The key findings from the research are as follows:

- none of the authorities in the study had a formal written policy in relation to overpayments;
- instead, local authorities had well-established structures and procedures for carrying out overpayment work;
- the principal aims behind the administrative arrangements for overpayment work were the pursuit of good administration and of cost minimisation;
- the current subsidy and incentive measures did not affect local authorities' approaches to overpayment classification or recovery;
- discussions with managers revealed no evidence that they were pursuing a policy of biasing classifications towards those generating higher levels of subsidy;
- recovery of overpayments was viewed as a technical task rather than a matter of policy;
- the dominant approach to recovery was to pursue all recoverable overpayments in the first instance;
- there was not a consistent approach to the recovery of overpayments from landlords;
- in some authorities the reports of the BFI had been influential in recent thinking about overpayments work;
- some managers are having to manage a potential tension between overpayment policy and other of their authority's policies, such as anti-poverty strategies.

It is clear that local authorities do not have distinct policies towards overpayments in the sense of a formal statement of the principles and objectives behind their administrative arrangements for dealing with overpayments, and a strategy for achieving the authority's objectives. Authorities have clearly been carrying out overpayment work without such documents for many years. However, there is evidence that a growing number of Housing Benefit managers (and possibly other local authority officers) are recognising that the policy environment is changing, that overpayments is increasing in importance as a policy issue and that consequently there is a need for them to review their current procedures and practices. As mentioned earlier, some managers said they would welcome a formal authority policy on overpayments, to clarify the goals of policy and the administrative arrangements for achieving them. There is apparently a changing climate within some Housing Benefit departments

that recognises that policy formulation on more and more aspects of administration is likely to be an increasingly important element of their work in the near future.



### 3 CLASSIFICATION OF OVERPAYMENTS

**3.1 Introduction** Local authorities must classify all overpayments by their cause in order to comply with the requirements of the subsidy regulations. The financial implications of an incorrect classification can be substantial. Overpayments wrongly classified as local authority error will lose the authority subsidy (a considerable amount if the overpayment is caused by fraud). Overpayments wrongly classified as fraud will attract subsidy to which the authority is not entitled. Wrong classifications of claimant error may lose or gain subsidy depending on the true cause of the overpayment.

Local authorities also have scope for manipulation in order to increase their subsidy payments, for example by deliberately misclassifying overpayments as claimant error or fraud. There is also a perverse incentive *not* to identify an overpayment in the first place in order to claim the maximum 95 per cent subsidy that is paid on correct payments of benefit. The recent report by the National Audit Office on Housing Benefit fraud concluded that ‘... the current overpayment subsidy arrangements are open to abuse’ (NAO, 1997, p.51) and that this pointed ‘... to a need for reform or abolition of the system’ (p.51).

The importance of local authorities classifying overpayments correctly is clear. Hence in this research project we set out to provide a fuller understanding of the procedures and practices used by authorities in fulfilling their responsibility to classify the causes of Housing Benefit and Council Tax Benefit overpayments.

The principal research questions that we addressed were as follows:

- Who is responsible for *classifying* overpayments?
- How do staff classify overpayments in practice?
- What influences their decisions?
- What information do local authorities collect on the classification of overpayments?

The principal data used in this chapter are drawn from interviews with Housing Benefit managers and with staff who played some hands-on role in the classification of overpayments.

**3.2 Structure of the chapter** In order to put the interview data into context this chapter begins with a description of the principal causes of overpayments and presents some background statistical information based on government subsidy data for 1997/98 and on the National Housing Benefit Accuracy Review for the same year. The next section describes how classifications are actually carried out in local authorities. This is followed by a summary of Benefit

Fraud Inspectorate (BFI) assessments of standards of classification. The penultimate section briefly discusses the use of information on classification by local authorities. The main policy issues of the research findings are drawn out in the final section.

### 3.3 Data on the amount and the causes of overpayments

#### 3.3.1 Explanation of data sources

Information about the amount of money lost to overpayments each year is located in two sources. First, annual local authority subsidy returns to DSS record the value of overpayments and their causes for rent allowances and Council Tax Benefit in England, Wales and Scotland, and for rent rebates in Scotland only. Secondly, the Department of the Environment, Transport and the Regions (DETR) and the National Assembly for Wales hold subsidy data for English and Welsh authorities respectively in relation to rent rebates only. A complementary source of data is the National Housing Benefit Accuracy Review carried out for the year 1997/98 which used sampling techniques to estimate the extent of benefit losses due to fraud and error (Government Statistical Service, 1998).

The subsidy data are not directly comparable with the Accuracy Review due to the different methods used to collect and analyse the data. The subsidy returns to DSS, DETR, and the Welsh Assembly include cases of *identified overpayments* only. In contrast, the Housing Benefit Accuracy Review identifies, from a large sample of cases, where fraud has been confirmed or where there is a strong suspicion of fraud. The Accuracy Review, therefore, gives an estimate of the total amount of benefit lost to fraud. The subsidy data record the actual amounts of benefit overpaid on those cases where an overpayment has been identified.

In this section we examine the results of an analysis of the local authority subsidy data for 1997/98, and the accuracy review findings for the same year.

#### 3.3.2 Local authority subsidy data

An overpayment can be generated any time an ongoing claim is reassessed and an existing payment is amended. Overpayments are essentially a by-product of a Housing Benefit department's routine administration or fraud investigation work. As mentioned earlier, the principal causes of overpayments are local authority error, claimant error or fraud.

A claimant error is essentially one of the following:

- the failure to report a relevant piece of information in relation to a new or renewal claim;
- the provision of wrong information in relation to a new or renewal claim;
- the late or wrong reporting of a relevant change in circumstances.

If the error comes to light at some point, perhaps when a claim is reviewed or renewed or as the result of an investigation by fraud staff, an overpayment of benefit is likely to be the result. Overpayments attributed to local authority error can be caused by the late processing of information

as well as mistakes in, for example, inputting claim data or in making award calculations. Overpayments caused by fraud occur when claimants deliberately misrepresent information given to a benefit authority or fail to declare relevant changes in circumstances with the intent of obtaining benefit to which they are not entitled.

An understanding of the distribution of overpayments by their cause is important for informing thinking about the future direction of policy. For the purposes of this research project, the DSS supplied the research team with the returns from all authorities for the financial year 1997/98. An analysis of the data is presented in Table 3.1. It should be remembered that the rent rebate data are for Scotland only. Rent rebate data for England and Wales are presented later in Table 3.2.

**Table 3.1 Losses through overpayments compared with benefit expenditure, 1997/98, using DSS subsidy data**

	Percentage of losses due to different causes			Total OP losses (£m)	Total expenditure (£m)	OP losses as % of expenditure
	Authority error	Fraud	Claimant error (and other causes)			
Rent rebates <sup>1</sup>	7	9	84	19.6	736.5	2.7
Rent allowances <sup>2</sup>	9	24	67	220.6	5657.9	3.9
Council Tax Benefit <sup>2</sup>	8	15	77	82.7	2804.6	3.0
All benefits	9	21	71	322.6	9199.0	3.5

Source: Analysis of 1997/98 DSS subsidy returns from local authorities

<sup>1</sup> Data are for Scottish local authorities only

<sup>2</sup> Data are for all local authorities in Great Britain

Table 3.1 shows that across all three benefits the principal cause of identified overpayments is claimant error rather than official error or fraud. Overall losses to fraud are only 21 per cent of all known overpayments, although nearly a quarter of the losses on rent allowances are due to fraud.

Overpayments due to claimant errors most commonly arise, according to the assessment staff interviewed for this project, when a claimant reports a change in circumstances late or when new information comes to light that reveals that the information originally provided by the claimant was incomplete or wrong. In both circumstances a re-assessment of the benefit is carried out and the existence and value of any overpayment is identified.

Overpayments due to local authority error are mainly caused by late processing of information. This is not an uncommon experience in local authorities. Departments which run on tight staffing complements are vulnerable at times of staff absence (through leave or sickness) and backlogs of work can quickly accumulate.<sup>4</sup> Computer problems or upgrades also

<sup>4</sup> Taper *et al.* (1999) found that in 1998, 28 per cent of authorities in their telephone survey reported current backlogs of rent allowance cases and 30 per cent reported backlogs in rent rebate cases. Over 40 per cent of local authorities without a current backlog reported that they had experienced a backlog at some point in the previous year.

reduce the ability of a department to process claims quickly. Overpayments caused by genuine mistakes by staff were thought to be comparatively few.

Data supplied by DSS in relation to rent rebates in England and Wales are shown in Table 3.2.

**Table 3.2 Losses through rent rebate overpayments for England and Wales, 1997/98**

	<i>Total rent rebate overpayments (£m)</i>	<i>Fraudulent overpayments (£m)</i>	<i>Fraud overpayments as % of all overpayments (£m)</i>
England	111.6	20.8	19
Wales	5.9	0.9	15
England and Wales	117.5	21.7	18

Source: DETR and Welsh Assembly local authority subsidy returns

The data in Tables 3.1 and 3.2 allow us to calculate that the aggregate figure for all Housing Benefit and Council Tax Benefit expenditure lost to identified overpayments in 1997/98 was £ 440.1 million (£ 322.6m plus £ 117.5m). Losses of £ 440 million represent a large potential loss of public funds but a proportion of this amount will eventually be recovered making the net loss lower (though as we shall see in Chapter 4, there are no systematic data available to allow us to estimate how much is actually recovered by local authorities).

### 3.3.3 National Housing Benefit Accuracy Review findings

From the local authority subsidy data, the apparent size of the overpayment problem was over £ 440 million in 1997/98, of which £ 358 million was in respect of Housing Benefit. However, the National Housing Benefit Accuracy Review for the same year presents a different picture. Its conclusion was that the estimated annual cost to the taxpayer of incorrect Housing Benefit payments (not including Council Tax Benefit overpayments) was in the region of £ 840 million. Furthermore, cases of confirmed and suspected fraud accounted for the majority of this amount (£ 610 million). There appears to be a considerable discrepancy therefore about the size of the overpayment problem between these two sources of data.

Assuming that the Accuracy Review methodology produces a reliable estimate of benefit losses, there is a clear implication that local authorities are not identifying the majority of overpayments that actually exist, with the result that, in 1997/98 as much as £ 482 million (£ 840m minus £ 358m) worth of Housing Benefit leaked out of the system with no chance of being recovered. This discrepancy in the measures of overpayments suggests the need for further research and investigation beyond the scope of this study.

### 3.4 How classifications are carried out

As mentioned in Chapter 2, no local authority in our fieldwork sample had an identifiable policy on the classification of overpayments. It was recognised that classification was a statutory requirement that was operationalised as a routine administrative task to be undertaken mostly by staff on assessment teams.

In all of the authorities visited, overpayment identification, calculation and classification was to some degree an automated process triggered by an assessment officer accessing a claimant's computer record and amending the data held on the system. We were able to identify three models of classification differentiated by the extent to which the process was automated.

In the most automated systems, the classification of overpayments was based on three key dates input by an assessor: the date of the relevant change in the claimant's circumstances, the date when the change or new information was reported by the claimant to the authority, and the date when the authority processed the information. The system attributed any overpayment between the first two of these dates to claimant error, and between the second two dates to local authority error. If at a later date an overpayment was attributed to fraud, then these default settings could be overridden manually and the correct classification entered.

In other authorities overpayments were identified and calculated when new information was input to a claimant's file, but there was a default setting which classified the overpayment as due to claimant error in the first instance. Classifications of local authority error and fraud had to be entered manually by overwriting the default classification of claimant error.

In the final model, the system identified and calculated the overpayment but required the assessor to input manually an overpayment classification code. There was no default setting.

The research design for this project does not allow us to make assessments about the relative efficiency and effectiveness of these three models, but it is possible to make some comments. The most automated systems appear to maximise the likelihood that overpayments will be correctly attributed between claimant and local authority error. The second two models both rely on assessment staff to identify authority errors thus introducing the risk that some authority errors are either not identified or not entered onto the system. It is possible that authorities with these types of system have the highest rates of misclassifications between claimant and official error. However, at present there is no empirical data to support or refute this hypothesis.

All three models rely on the manual input of a fraud classification code. No one model is therefore more or less prone to overpayments being wrongly classified as fraud.

In our interviews with assessment staff, it was apparent that classifying overpayments was not regarded as a problematic or even onerous part of their activities. There was certainly no evidence to suggest that staff were deliberately misclassifying overpayments nor that they were under any sort of management pressure to classify overpayments in any particular way. Most assessment staff were aware of the different rates of subsidy for the main types of overpayment classification but said that they had no relevance for the way in which they made classifications, especially since for most of them the task was largely automated.

There was no evidence either that benefit staff were failing to identify overpayments in order to claim the maximum amount of subsidy (95 per cent) payable on correct claims. Indeed the way in which benefit assessments are automated would make this very difficult to achieve even if there was an intention to abuse the subsidy arrangements in such a way.

### 3.5 BFI evaluations of overpayment classifications

Our scrutiny of the published reports of the BFI reveals a picture of widely varying standards in the classification of overpayments by local authorities. However, the differences in the way in which BFI reports on its examination of the accuracy in classifying overpayments make it difficult to make direct comparisons between authorities. It appears that each BFI inspection has adopted slightly different methods of examination and analysis in the authorities it has visited so far. For example, the numbers of cases examined varies considerably from below 20 to more than 50.

Results vary from correct classifications in 100 per cent of the cases examined, to 12 out of 17 classifications being wrong. The most common fault, according to the reports, was for authorities to classify overpayments as claimant error instead of local authority error. There were also examples of overpayments being classified as fraud rather than claimant or local authority error. Clearly some authorities inspected by BFI appeared to have worryingly low standards of performance in relation to overpayment classification. However, the reports do not conclude that the classification system is being abused in the way the report by the NAO suggests is possible.

### 3.6 Information on overpayment classification

The computer systems used by local authorities for administering Housing Benefit and Council Tax Benefit have the facility for producing analyses of the causes of overpayments as required by the subsidy regulations. Beyond this essential use, however, we found few attempts to use the information on overpayments for management purposes.

In one authority which had a network of small locally-based offices throughout its area, the Housing Benefit manager produced monthly statistical reports on the number and type of overpayments generated in each office. This information was used to detect any unusual variation

which might warrant managerial investigation. This was an isolated example of the proactive use of overpayment information.

### 3.7 Summary and discussion

The main conclusions that can be drawn from our scrutiny of overpayment classification by the local authorities in our sample are as follows:

- classification is largely a routine administrative task carried out by staff on benefit assessment teams;
- classification is automated to varying degrees;
- all classifications of fraud overpayments must be entered manually onto computer systems;
- there was no evidence of staff deliberately classifying overpayments wrongly in order to increase subsidy payments obtained from central government;
- there was no evidence that authority staff were failing to register overpayments in order to increase subsidy payments;
- the size of the overpayment problem is unclear - the discrepancy between losses calculated from local authority subsidy forms (£ 323 million for Housing Benefit and Council Tax Benefit) and the Accuracy Review estimate of losses (£ 840 million for Housing Benefit alone) requires further investigation and research.

This research was not intended to produce data to allow an evaluation of the accuracy of classification decisions. The BFI carries out that function. However, the published reports of the BFI do not yet provide a coherent picture of either the overall performance of local authorities in classifying overpayments nor a diagnosis of why some authorities appear to perform badly compared with others. We are left therefore with a number of hypotheses that require further investigation, perhaps by the BFI in its future inspections. One hypothesis is that computer systems that default to a classification of claimant error will tend to exaggerate the true level of claimant error in comparison with local authority error. A second hypothesis is that systems which rely on a manual classification are more prone to wrong classifications of claimant and authority error compared with systems which apportion overpayments automatically using the key dates relating to the change, when it is reported and when it is actioned.

Our interviews with Housing Benefit managers strongly suggest that the different rates of subsidy paid on the different types of overpayment have no bearing on the way in which Housing Benefit is administered. For example, the incentive to reduce local authority errors and so avoid a zero rate of subsidy does not appear to motivate Housing Benefit managers to reduce processing times. That is not to say that managers are not concerned to process claims quickly. However, it does not appear that the size of the authority's Housing Benefit bill plays any part in their thinking about how to organise their department's activities.



## 4 RECOVERABILITY AND RECOVERY OF OVERPAYMENTS

**4.1 Introduction** Once an overpayment has been identified, two decisions must be made before recovery measures are put in place. First, the local authority has a statutory responsibility to decide whether an overpayment is recoverable in law, and secondly the authority must exercise its discretion in deciding whether or not to pursue recovery.

If an overpayment is recoverable and the local authority decides to pursue recovery then the process of recovering the overpayment can begin. As mentioned in Chapter 1, the current government sees the recovery of overpayments as serving a number of purposes within its wider counter-fraud strategy. Recovery not only reduces the loss of public funds, but in the case of fraud overpayments can act as a deterrent to potential fraudsters by conveying the message that no financial gain can be made by social security fraud. The BFI has also emphasised this latter point in its published reports.

Up until the last two years or so, little has been known about the policies, procedures and practices of local authorities in relation to the recovery of overpayments. Even now, the DSS does not routinely and systematically collect data from local authorities on the number and amount of overpayments recovered. While local authority subsidy returns to DSS and DETR show how much money leaks out of the benefit system through *identified* overpayments of Housing Benefit and Council Tax Benefit, there is currently no information on how much of this figure is eventually recouped and how much is written off. This is a serious gap in our knowledge and adversely affects our ability to assess the efficiency and effectiveness of local authorities' attempts to recover overpaid benefit.

One of the main aims of this research, therefore, was to increase knowledge about the recovery of Housing Benefit overpayments in order to inform Departmental and local authority thinking about possible policy developments.

The principal research questions that we addressed were as follows:

- Who decides whether an overpayment is recoverable?
- How are the relevant regulations (such as those relating to claimants' knowledge of reporting responsibilities) interpreted and actioned?
- Who is responsible for *recovering* overpayments?
- How are decisions *not* to recover made?
- What methods of recovery are used?
- Who makes decisions about the recovery method to use in each case?

- What influences decisions about the method of recovery?
- What information do local authorities collect on the recovery of overpayments?
- How successful are authorities in recovering overpayments?
- How are relations with claimants and landlords handled (including in the event of an appeal)?

This chapter draws principally upon the interviews with local authority staff in benefit departments and, where appropriate, in finance and legal departments.

#### 4.2 Structure of the chapter

The chapter begins with a brief review of the extent of current knowledge about the recovery of overpayments drawn from information contained in the reports of the BFI, and a telephone survey conducted by MORI in late 1998 into Housing Benefit administrative practices (Taper *et al.*, 1999). The next two sections explore how local authorities make decisions about the recoverability of overpayments and whether or not to recover an overpayment. The following section explains the four principal means by which local authorities attempt to recover overpayments: from ongoing Housing Benefit payments, via a claimant's rent or Council Tax account, or by issuing a sundry debtor invoice. The experience of pursuing recovery from private sector landlords is also analysed. The additional or alternative means of attempting recovery, such as deductions from other social security benefits, through the courts or through the use of debt collection agencies are examined in the next section. The next section describes the experiences of local authorities in handling appeals against overpayment decisions. The penultimate section deals with a number of issues relating to the recovery of overpayments that are relevant for thinking about the future direction of policy, including the 'ownership' of recovery work, measuring recovery performance and the link between recovery and the deterrence of fraud. The main policy issues of the research findings are drawn out in the final section.

#### 4.3 Data on the recovery of overpayments

As mentioned in the introduction to this chapter, there is a serious gap in our knowledge about how much overpaid Housing Benefit and Council Tax Benefit is actually recovered by local authorities.

The evidence on recovery in the inspection reports of the BFI is patchy. In some authorities inspectors were unable to collect any robust data on recoveries. In others the data were partial. It was possible for example, to calculate the amount of overpayments recovered through sundry debtor accounts, but not the amounts recovered from rent or Council Tax accounts. This is not to say that repayments were not being made, rather that the internal accounting and recording systems did not reconcile those repayments with the original overpayment debt. This problem is discussed further in the following section. Another limitation of the BFI reports is that, understandably given the terms of reference of the Inspectorate,

they tend to concentrate on the recovery of fraud overpayments rather than overpayments in general.

Nevertheless, in some inspection reports the BFI does cite a figure for overpayment recovery. These range from 15 per cent to 94 per cent. In other reports, more qualitative or partial assessments are given, such as 'recovery is good', 'recovery through sundry debtors is good' or 'recovery is presumed to be low'. Some BFI reports also include assessments about the priority given to overpayment recovery and the quality of an authority's recovery procedures. There are criticisms of some authorities for giving overpayments a low priority or for having poor procedures, and positive comments where overpayment recovery is taken seriously and where robust procedures are in place.

The overall impression from our examination of BFI reports is that many authorities do not have the technical capacity to produce robust and complete information about overpayment recoveries. This impression is confirmed by the results from a telephone survey of 247 local authorities carried out in late 1998 (Taper *et al.*, 1999). Forty-nine per cent of the Housing Benefit managers interviewed reported that their authority did collect information on either the amount or the number of overpayments recovered.<sup>5</sup> In the survey, Housing Benefit managers were also asked, in relation to rent rebates and rent allowances separately, if they prioritised the recovery of any particular type of overpayment (multiple responses were allowed). Over two-thirds of the managers surveyed said that they did not prioritise overpayment recoveries. However, one in five managers reported that they prioritised the recovery of fraud overpayments (for rebates and allowances), compared with one in ten who prioritised claimant error cases or overpayments with a high value. These findings will be compared later in the chapter with the findings from our interviews with Housing Benefit staff about how overpayment recoveries are dealt with.

#### 4.4 Recoverability

As mentioned in the previous chapter we identified two distinct practices to making decisions regarding recoverability among the authorities in the study: (a) the 'correct' practice where a test of recoverability was routinely applied, as required by law, and (b) the application of a 'blanket policy' where overpayments are deemed recoverable initially unless changed later, for example following an appeal by the claimant. The use of such blanket policies constitutes an illegal practice.

In the authorities adopting the correct practice, decisions about whether an overpayment was recoverable were usually made in the first instance by an assessment officer. If the officer thought that the overpayment was not recoverable because the claimant, or other recipient of the benefit,

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<sup>5</sup> This figure of 49 per cent is difficult to interpret. It is not possible to ascertain from the survey findings, the proportion of these local authorities that collected information on (a) the *amount* of overpayments only, (b) the *number* of overpayments only, or (c) both the amount *and* the number.

could not reasonably have known that they were being overpaid, then the case was passed to a supervisory officer for confirmation and write-off action. In the two authorities in the sample where benefit administration was contracted out, this confirmatory decision was taken by a member of the client side, that is, a local authority official.

The general picture emerging from the interviews with assessment officers was that making such decisions rarely caused them difficulties. Deciding whether a benefit recipient should have known they were being overpaid was described as being 'largely a matter of common sense'. For example, if a claimant had been wrongly awarded a higher pensioner premium instead of the standard pensioner premium, or if a person on a sickness benefit had been wrongly awarded a disability premium, the overpayment was likely to be deemed non-recoverable. In contrast, if a benefit official made an error inputting income data, for example, and an incorrect payment resulted, then the claimant would be expected to know that they had been overpaid because income data appeared on the notification letters sent to claimants. Claimants were expected to look at these and be able to identify and report to the authority when the benefit calculation had been based on erroneous information.

In discussions with assessment officers about recoverability decisions, a common thread appeared to be that claimants were expected to know when information they had supplied themselves had not been used correctly and about the fundamental parts of the Housing Benefit scheme (such as the relevance of earnings or savings). However, they were not expected to have extensive knowledge of the full range of Housing Benefit regulations, such as the rules around premiums.

In most of the authorities visited the outcome of applying these 'common sense' responses to deciding recoverability appeared to be that the majority of overpayments caused by local authority error were treated as recoverable. However, there is at present no readily available information to confirm or contest this impression. It is not clear the extent to which Housing Benefit software systems have the capacity to produce information reports about the number and value of 'non-recoverable' decisions. There is no research evidence to suggest that Housing Benefit managers viewed such information as being particularly important or useful. It is also interesting to note that the reports of the BFI usually make no comment or assessment about local authorities' performance in relation to decisions about recoverability. Our scrutiny of the published reports produced only one (critical) reference to the recoverability decisions made by a local authority.

Closely linked to statutory decisions about the recoverability of overpayments caused by local authority error are the discretionary decisions of the local authority whether or not to pursue recovery. The next sections present an analysis of decision making and administrative practice regarding the recovery of overpayments.

#### 4.5 Deciding whether to recover

In the local authorities taking part in this study it was routine practice to attempt full recovery of the vast majority of overpayments once the decision had been taken that they were recoverable in law. Only in a small number of circumstances would a decision be taken not to attempt recovery. These decisions would normally be taken in the first instance by assessment officers and passed to the appropriate supervisory or managerial officer for ratification and write-off action.

For example, if a small overpayment had been identified (authority staff cited values in the range between £ 5 and £ 25), the cost of recovery might be thought to exceed the cost of recovery action. In such circumstances recovery might not be attempted. Another example was described in the following way: an overpayment might be caused by a clearly identifiable error or series of errors on the part of a member of staff, such as failing to enter income data correctly, the result being a large cumulative overpayment. Because the benefit calculation was set out in the notification letter the claimant might reasonably have been expected to identify the overpayment, but it was also reasonable that they did not spot it (perhaps because of the size of the error, perhaps because of the age or health of the claimant). In such circumstances the claimant could not be blamed for the overpayment and recovery might be waived. Such cases did not occur often, however, and the dominant response in the authorities was, as mentioned above, to invoke recovery procedures as soon as possible.

#### 4.6 Principal methods of recovery

Local authority officials have a choice of methods for recovering overpaid benefit. However, in most cases the choice of method was automatic and determined by the type of benefit overpaid and the current status of the claimant.

Four methods of recovery accounted for the majority of recoveries:

- recovery from ongoing Housing Benefit payments;
- recovery from a council tenant's rent account;
- recovery through a Council Tax account;
- issuing a sundry debtor invoice.

Each of these methods is discussed in turn. Alternative methods of recovery are discussed later in the chapter.

##### 4.6.1 *Recovery from ongoing Housing Benefit payments*

This method was most authorities' first choice for private tenants still in receipt of benefit. Many authorities also made benefit deductions for rent rebate cases (although recovery via the tenant's rent account was also common - see below). Procedures were largely straightforward. The claimant would be notified of the overpayment and in most cases informed that deductions from ongoing benefit would be made from a given date. However, the rate of recovery is a discretionary decision for the authority. DSS guidance suggests that an appropriate rate of repayment

for Income Support recipients is £ 7.80 per week for overpayments caused by errors, and £ 10 per week for overpayments caused by fraud. These rates were widely used in the authorities visited in this study, but we also identified a range of other practices:

- some authorities adopted their own standard rate of repayment for Income Support cases, often at a lower rate than that suggested by the DSS, for example £ 5 per week, but sometimes at a higher rate;
- some authorities attempted to recover at higher rates for rent allowance cases where there was evidence (perhaps of savings) that a higher rate would be affordable;
- some authorities had the aim of recovering the overpayment within a fixed time period (for example, six months or a year) and divided the overpayment into weekly amounts accordingly.

Whatever amount was initially set by the authority it was not uncommon for the notification letter to trigger a response from the benefit recipient usually in the form of a request to reduce the level of repayments. Assessment officers then engaged in a negotiation with the claimant to arrive at a mutually acceptable figure. This might involve a detailed examination of the income and outgoings of the claimant (one authority used what it called 'a means-tested form' for this).

In discussions with Housing Benefit managers and assessment staff, it was possible to identify three broad and distinctive styles of recovering overpayments via ongoing benefit which were usually included in the authority's procedure manual for dealing with overpayments:

- the 'tough' style - here the aim of staff was to maximise the amount of weekly repayments made by claimants. This might be attempted by setting high initial rates of recovery or by negotiating hard when the initial amount was challenged;
- the 'utilitarian' style - here the aim was to ensure that repayments were maintained and that the overpayment was recovered in full eventually rather than quickly. The thinking behind this approach was that it is better to receive regular payments than risk a claimant defaulting at some point in the future;
- the 'holistic' style - here there was more recognition that repayments are often hard for people to make if they are on a low income. The aim was still to recover the overpayment but not at the expense of causing the claimant hardship.

These are not intended to present the picture that repayments from ongoing benefit were handled rigidly in any particular authority. Different officers may change their style in individual cases, for example. It was not possible within the scope of this study to make any assessment of whether any of these distinctive styles leads to relatively high or low rates of recovery.

Recovering overpayments through ongoing benefit was generally seen as a simple and effective method. Once a regime of repayments had been agreed, recovery was routine and required no further action by authority staff. It was thus seen as cheap and efficient.

#### *4.6.2 Recovery from a council tenant's rent account*

A council tenant's rent account offers a local authority an alternative method of recovery to deducting repayments from ongoing benefit. For the Housing Benefit department it is a quick and effective means of recovery because it passes the responsibility for collecting repayments to the authority's Housing department. However, a Housing department can be faced with a number of problems, some of which are a product of computer software packages.

We identified two main ways in which this method of recovery was operationalised. First, an overpayment of Housing Benefit was posted directly to a council tenant's rent account. This usually resulted in the debt appearing as an amount of arrears on the tenant's account. This was generally unwelcome for a Housing department for whom one of their key performance indicators was the level of rent arrears it was carrying. Secondly, the overpayment was posted to the rent account but was not subsumed within a tenant's arrears. The software allowed the overpayment to be identified as a separate item on the account and be managed separately. Nevertheless, if the overpayment appeared in the rent account the Housing department would employ its usual range of methods for collection.

Similar to recovering overpayments from ongoing benefit, recovery via a rent account is largely straightforward and cheap to administer. However, there are two issues that have a bearing on the development of overpayment policy. First, there is a problem of tracking repayments in those authorities where an overpayment is simply added to a rent account without appearing as a separate item on the account. For example, a tenant with an overpayment of £ 100 may already have rent arrears of, say, £ 100. When the new debt is posted to the account, the tenant will now have arrears of £ 200. As this debt is repaid there is no automatic way of determining how much of the benefit overpayment has actually been paid in comparison to the rent arrears. Measuring the amount of recovered overpayment achieved is therefore rendered problematic.

Secondly, when an overpayment is posted to a rent account, and particularly if it is translated into an amount of rent arrears, many Housing Benefit departments deem the overpayment of Housing Benefit repaid in full. This is a perverse effect of internal financial management and accounting arrangements and can distort the 'true' picture of the amount of overpayments recovered. It was explained to us by some managers that it was not uncommon for an overpayment of rent rebate to be 'cleared' for the purposes of the Housing Benefit budget but for the debt to be 'sitting' in the tenant's rent account for possibly years.

#### 4.6.3 *Recovery through a Council Tax account*

The recovery of overpaid Council Tax Benefit is largely straightforward. When an overpayment has been identified, the debt is posted back to a claimant's Council Tax account and the collecting department will issue a new bill for the amount of outstanding Council Tax payable plus the overpayment. The Council Tax department then pursues its usual methods for securing payment by the end of the financial year.

While the procedures for overpaid Council Tax Benefit are simple, they generate the same problem of tracking repayments as described above in relation to rent rebates. Also, all authorities deem Council Tax Benefit overpayments repaid in full as soon as they are transferred to the Council Tax account regardless of whether or not the debt is eventually cleared.

#### 4.6.4 *Issuing a sundry debtor invoice*

Each of the methods of recovery described so far is simple and cheap to put in train. However, they can only be used for people who remain on benefit, remain council tenants or remain Council Tax payers. For people who are no longer benefit claimants or Council Tax payers, recovery is usually attempted in the first instance by issuing a sundry debtor invoice.

The processes for issuing invoices are well-established and familiar. In most of the authorities in our sample, details of the overpayment were passed to a section of the Finance Department responsible for issuing all sundry debtor invoices on behalf of the authority. This might be achieved electronically where the authority's computer system allowed or by completing a standard form. The details of the debt were entered on the sundry debtor system from which bills were produced and despatched automatically. Systems all had trigger points at which reminders were sent to debtors according to a prescribed timetable. After a number of reminder letters, debtors were sent warnings that civil court procedures would be invoked if some form of settlement was not arranged.

It was standard practice for local authority invoices to request immediate payment in full but to offer the debtor the opportunity to contact the authority to discuss mutually acceptable repayment terms. Most of the staff interviewed in the course of this research reported that it was not usual for bills to be settled either quickly or in full. A common scenario was that the authority did not have any contact with the debtor until the letter threatening legal action. This was often the impetus for the debtor to begin negotiations about repayment terms.

When a debtor failed to respond to letters about legal action the case was normally passed routinely to the authority's legal department to make a decision about recovering the debt through the courts. Court action is also a possibility in cases where people default on their repayments and subsequent attempts to contact the debtor or re-arrange the repayment schedule have failed.

In effect, when Housing Benefit overpayments are passed to sundry debtor sections they become just another debt to the authority and are treated no differently to, say, a charge for the use of an allotment or a bill for hiring a room in the Town Hall. The issues in securing payment are therefore not particularly related to Housing Benefit but are generic to all local authority debts.

Two main problems affect the likelihood of securing a full repayment of debts. We have discussed one already, the problem of non-payers and defaulters, for whom court proceedings are the response. The other problem is locating the whereabouts of debtors in the first place. This is a common problem in relation to Housing Benefit overpayments because tenant populations, especially in the private sector, tend to be more transient than the population generally.

There are various means at the disposal of local authorities to track missing debtors. In the course of this research we identified a number of these which were being used to varying degrees in the authorities we visited. They can be divided into internal methods and external methods. Internal methods include searches of the computer records held by an authority, such as the electoral roll, Council Tax records, and educational grants records. These searches enable the authority to locate people who are still living within their boundaries. The local Benefits Agency office can also assist in locating locally-based claimants of other benefits, or the local authority might conduct such a search themselves where they have access to a Remote Access Terminal linking them to the Benefits Agency's computer records. When no local trace of the person can be found by these means, an authority might extend its search by using one of the following methods:

- a request to the Benefits Agency to search its wider records, including the Departmental Central Index;
- employing a tracing agency;
- buying in to one of the commercial computerised tracing systems.

From our fieldwork visits we would conclude that many and probably most authorities are not well equipped to use external methods for tracing missing debtors.

#### *4.6.5 Recovery from landlords*

Local authorities have the power to recover overpayments from any person or organisation, such as a Housing Association, to whom the benefit payment was made. This covers claimants, their appointees and landlords paid direct by the authority. Recovery from landlords holds a number of advantages for local authorities. Landlords are not transient like many of their tenants. They can usually be traced easily. They usually have sufficient resources to make repayments of overpaid benefit.

The power to recover overpayments from landlords was used to varying degrees in all the authorities visited in this study. As we have already described in Chapter 2, authorities vary considerably in their general policy towards making deductions from landlords. To recap, some viewed landlords as they would any other commercial enterprise with which the authority conducts business. Hence, any overpayments that could lawfully be recovered from landlords were pursued vigorously. Some authorities widened this business-like stance and required new landlords to sign an undertaking, as a condition of receiving direct payment of benefit, to agree to repay any overpaid benefit. In contrast, other authorities tended to treat landlords more as partners in the maintenance of the private rented sector as a useful social resource. As part of this approach, some authorities worked to establish co-operative relations with landlords which included the treatment of overpayments. In some cases, a local authority might assume responsibility for recovering an overpayment from a claimant, although it was legally entitled to require the landlord to repay.

The use by local authorities of the recent extension of their powers to recover from landlords, described in Chapter 1, is analysed in Chapter 5 which deals more widely with the impact of the changes in the 1997 Fraud Act relevant to overpayments.

#### *4.6.6 Recovering overpayments from fraudsters*

As mentioned earlier in this chapter, the government and the BFI view the recovery of overpayments as playing a key role in the deterrence of Housing Benefit fraud. Many of the BFI reports criticise local authorities for not raising overpayments on cases where weekly benefit savings had been claimed and for not recovering more of the overpaid benefit caused by fraud.

In this research we explored with Housing Benefit managers and staff the extent to which they treated the recovery of fraud overpayments differently to other overpayments. Where recovery was being made from ongoing benefit, most of the authorities visited applied the higher rate (£ 10 per week compared with £ 7.80) recommended in DSS guidance. However, apart from this example of differential treatment, we did not identify other ways in which fraudsters were treated more robustly than other claimants.

Some overpayment recovery staff explained that fraud overpayments were often the most difficult to track down and had a lower probability of being repaid. For example, fraudsters often moved on precisely to avoid detection, and while a fraud may have been identified and stopped, the culprit may have moved before further recovery or investigation work could be carried out. Also, experience showed that determined fraudsters were often likely to resist repayment even if eventually tracked down. Overall, therefore, dealing with fraudulent overpayments represented a source of additional work for the authority with an uncertain result.

Hence, in most authorities we found that fraud overpayments were pursued in the same way as other overpayments. When they become debts to the authority (i.e. an invoice was raised) they were also pursued no differently and decisions about when to stop chasing the debt were not influenced by the fact that the debt originally arose through fraud. Methods of recovery were most often grounded in discussions about administrative ease and efficiency. Managers and staff wanted to achieve recovery by the easiest and most effective means. We found no examples of any form of a moral or punitive stance being taken towards fraudsters.

These results are interesting when set alongside the survey results quoted earlier that suggested one in five authorities prioritised the recovery of fraud overpayments (Taper *et al.*, 1999). In a sense, local authorities in the study reported here did prioritise recovery efforts by imposing higher rates of weekly repayments on suspected fraudsters. However, apart from that distinction, fraudsters were treated no differently to other claimants when repayment arrangements broke down. At this stage, officers in sundry debtor sections or in legal departments treated them in the same way as they would treat any defaulter regardless of the original source of the debt to the authority.

#### 4.7 Alternative means of recovering overpayments

In the view of the Housing Benefit staff interviewed for this project, the four principal means of seeking recovery of overpayments described in the previous section probably accounted for the large majority of recovery actions carried out in their local authorities. Only rarely was it impossible to use one of them.

However, there were other methods available to local authorities:

- recovery from social security benefits administered by the Benefits Agency;
- recovery from Housing Benefit administered by another local authority;
- debt collection agencies;
- obtaining judgments in the civil courts.

Each method is discussed in turn.

##### 4.7.1 Recovery from social security benefits administered by the Benefits Agency

Local authorities can request the Benefits Agency to recover a Housing Benefit or Council Tax Benefit overpayment from payments of other social security benefits. However, the reports of the BFI consistently contain the comment that local authorities rarely avail themselves of this opportunity and thereby deprive themselves of recovering, and retaining, overpaid benefit. This picture is much the same in the 18 authorities visited in this study.

In discussing this form of recovery with Housing Benefit managers and staff we were able to divide authorities into three principal types defined

by their use of, and views about, recovery via the Benefits Agency:

- the ‘never-users’;
- the ‘disappointed users’;
- the ‘satisfied users’.

The never-users included those authorities which not only had never attempted to recover an overpayment via the Benefits Agency, but seemed to have little or no intention of trying in the future. Some of the authorities in this category had little confidence that the effort of recovering from the Benefits Agency would be worthwhile or effective and chose not to invest any time in establishing or investigating procedures for implementation. Some reported relatively poor relations with the local Benefits Agency office.

The disappointed users tended to be those authorities where an attempt or attempts had been made to recover an overpayment from the Agency, but where the experience was not positive. Problems included the following:

- too much work was required in liaising with the Agency;
- the Agency did not action the request in a reasonable time;
- the overpayment recovery could not be actioned because the claimant already had other, higher priority, deductions from their benefit;
- repayments were too low or discontinued for some reason.

Disappointed users tended also to be non-users at the time of the fieldwork interviews, put off from trying again because of their earlier negative experiences.

The satisfied users were a small group. They tended to be local authorities who had established good working relations with the Benefits Agency and who had proactively set up systems of communication and liaison to facilitate joint working across all aspects of benefit administration not only in relation to overpayments.

It might be expected that this rather unpromising picture will improve in the future and that the number of satisfied users will increase. There are two reasons for this assessment. First, the emphasis put on the potential for this method of recovery in BFI reports is likely to encourage authorities to use it, and secondly, the initiatives around closer working can be expected to produce models of good practice that other authorities and Benefits Agency offices could follow.

#### *4.7.2 Recovery from Housing Benefit administered by another local authority*

Local authorities can also request other authorities to recover overpayments from their payments of Housing Benefit. This method of recovery is almost never used. Only one Housing Benefit manager in our sample said that their department was happy to provide this service for other authorities. In contrast, most managers were very reluctant to offer a

service which (a) was not covered in the Housing Benefit administrative subsidy paid by central government, and (b) would only add to their own authority's debt if the deductions were applied to council tenants.

Most managers saw only problems with this method of recovery rather than recognising any potential for increasing their rates of recovery.

#### *4.7.3 Debt collection agencies*

From our scrutiny of the published BFI reports and from our own research it is apparent that the use of debt collection agencies to recover overpayments is not widespread. Their use was usually restricted to a small number of cases either as an alternative to passing the case to the legal section for further action when attempts at recovery through sundry debtors had failed, or when attempts to trace the debtor had failed. Debt collection agencies are usually paid a percentage of the debt successfully recovered. Commission rates in the area of 15 to 20 per cent seemed to be typical. The advantage of using agencies were as follows:

- they were only paid if successful;
- the alternative was usually writing off the debt, so there was nothing to lose;
- debt collection agencies were able to pursue recovery in any part of the country.

One manager explained that the choice of agency was important. It would not reflect well on the authority if an agency employed strong arm tactics to recover debts. Generally, those authorities employing the services of debt collectors saw them as a useful method, usually of last resort, in a small number of appropriate cases, for example when the overpayment was large and where the cause was fraud.

#### *4.7.4 Obtaining judgments in the civil courts*

The final means by which a local authority can attempt to recover an overpayment is by obtaining a civil court judgment against a claimant or landlord. Before the provisions of the 1997 Fraud Act came into force, the procedures for obtaining a court judgment were fairly routine for a local authority legal department although sometimes protracted if the case was defended.

In all of the authorities visited, proceedings against debtors were regularly taken when all other attempts at recovery had proved unsuccessful. However, obtaining a judgment did not ensure recovery of the overpayment. From our interviews with Housing Benefit and legal department staff it was not possible to assess or even estimate the proportion of debts that were eventually recovered following court proceedings.

It is interesting to note that two of the criticisms made by some of the staff interviewed should be addressed by two of the reforms introduced by the 1997 Act, which are examined fully in the next chapter. Some staff were concerned about the amount of authority staff time that was taken up with attending court for hearings and arbitration meetings. The

new fast-track procedures for obtaining a court judgment are intended to remove the need for most court hearings. The second criticism was directed mainly at those landlords who simply refused to repay overpayments and forced the authority eventually to take them to court to recover the debt. The new powers to recover overpayments from benefit payments for a landlord's other tenants provide the opportunity to pre-empt such action in future.

**4.8 Appeals** Claimants, landlords and others affected by a Housing Benefit decision have a right to appeal against those aspects of the decision which have a statutory basis. Hence an appeal can be lodged against a decision by a local authority as to whether an overpayment is recoverable in law, but there is no right of appeal against the authority's decision to recover the overpayment because this is a discretion granted to the authority. Appeals are decided initially by local authority officials (called the 'internal review' stage). The claimant has a further right of appeal to a Housing Benefit Review Board which comprises at least three elected members of the authority.

The local authorities in our sample reported very different experiences of appeals against overpayment decisions. In a few authorities it was reported that there were very few overpayment appeals, while others dealt with a regular flow of appeals of at least one per week. In some authorities overpayment appeals were the most common type of appeal on Housing Benefit cases and took up most of the time of appeals staff. Internal reviews were handled either by specialist appeal teams, team leaders or a member of the managerial staff.

Although the flow of appeals varied widely, it was reported consistently that relatively few cases progressed beyond the internal review to be heard by a Review Board. Some Housing Benefit staff interviewed reported that in their authorities landlords were more likely than claimants to pursue a case to a Review Board, or indeed lodge an appeal in the first place. The view was expressed in a number of authorities that some landlords appeared to pursue appeals as a means of delaying making repayments.

Regardless of the level of appeals activity in an authority, we found no examples of appeals having an impact on either the administration of overpayments in particular or of benefits in general. No authority kept detailed information on the type or outcomes of appeals that might serve as management information to inform the wider administration of Housing Benefit.

#### **4.9 Recovery issues relevant to overpayment policy**

##### **4.9.1 *The 'ownership' of recovery work***

In Chapter 2 we mentioned that one of the reasons for the lack of any comprehensive data on overpayment recoveries was the lack of ownership of the overpayment policy area. The BFI has also suggested that lack of ownership 'compromises recovery efforts' of local authorities. This

chapter's examination of the procedures and practices around recovery shows clearly why such ownership is missing at present. Several local authority departments play a number of diverse roles in relation to overpayment recovery:

- *Benefit departments* arrange recovery from ongoing Housing Benefit payments and may be involved in arranging recovery from other benefits with the Benefits Agency.
- *Housing departments* take on the task of recovering rent rebate overpayments when they are posted to a tenant's rent account.
- *Council Tax departments* take on the task of recovering Council Tax Benefit overpayments when they are posted to a Council Tax payer's account.
- *Finance department* sundry debtor sections distribute and chase invoices raised in respect of overpayments.
- *Legal departments* arrange for civil court judgments to be obtained against overpayment debtors and for collection of the debt.

None of these departments has a direct overall responsibility for the authority's performance in recovering overpayments. The administrative arrangements can be characterised as 'individual case management' with responsibility for each case passing from department to department as appropriate but with no one retaining responsibility for all cases.

It cannot be concluded, however, that this complex set of arrangements is necessarily inefficient. That one authority inspected by the BFI can achieve a recovery rate of 94 per cent suggests that a highly satisfactory performance can be achieved. However, it is also noteworthy that managers interviewed for this research who had established dedicated overpayments sections in their benefit departments tended to be the more confident that all aspects of overpayment work, including recoveries, were being handled effectively.

#### *4.9.2 Measuring recovery performance*

New Audit Commission performance indicators, introduced in respect of the year 1999/2000, for overpayment work includes 'the percentage of recoverable overpayments (excluding Council Tax Benefit) that were recovered in the year'. For an authority to be able to produce an accurate calculation of this figure, it will need to bring together data from Housing Benefit records, Housing department rent accounts, and sundry debtor systems. As we have discussed in this chapter, this task will be difficult for many authorities whose computer systems cannot readily produce such information. It is likely to be some time, therefore, before perhaps even a majority of authorities can supply the Commission with reliable data.

#### *4.9.3 The link between recovery and the deterrence of fraud*

As mentioned earlier, the government and BFI both see the active pursuit of overpayment recovery as having a deterrent effect on potential benefit fraudsters. To explore this notion further, we discussed the link between

recovery and deterrence with the Housing Benefit managers in the study.

The general impression from these discussions was that overpayment recovery was not, at present, seen as having a major part to play in any strategy of deterrence. There was acknowledgement that an individual claimant might be deterred from attempting fraud if they were detected and forced to make repayments and that the grapevine effect might also persuade some other potential fraudsters not to make the attempt. However, overpayment recovery was generally not perceived as an actual or potential sanction. Innocent claimants whose overpayment was caused by their or the authority's error were required to make repayments as much as fraudsters. Topics such as prosecutions, other sanctions and publicity were more likely to occur in discussions about deterrence than overpayment recovery.

#### 4.10 Summary and discussion

The main conclusions that can be drawn from our scrutiny of overpayment recovery by the local authorities in our sample are as follows:

- some authorities do not routinely make decisions about the recoverability of overpayments caused by official error as they are required to by law;
- when recoverability decisions are made the outcome is that most cases are considered recoverable;
- recovery action is taken on nearly all recoverable overpayments;
- in most cases the method of recovery is an automatic choice determined by the type of benefit overpaid and the current status of the claimant;
- although overpayments caused by fraud were not prioritised by local authorities, fraudsters were often required to make higher weekly repayments than other claimants;
- there is no evidence that in the authorities visited benefit or other authority staff ignored or avoided their responsibility to seek recovery of overpaid benefit;
- all authorities used a standard range of recovery methods - deduction from ongoing benefit, posting to a rent or Council Tax account, and sundry debtor invoices - which accounted for the majority of their recovery actions;
- recovery from other social security benefits, from other local authorities or through debt collection agencies was attempted to varying degrees across different authorities - each of these methods had particular problems associated with them;
- authorities varied in their approach to recovering overpayments from landlords and hence in the extent to which they used their powers to do so;
- overpayment recovery was not the responsibility of a single local authority department or official - no individual or department had ownership of overpayment and recovery work was usually distributed between at least five local authority departments;

- the extent to which other methods were used varied considerably between the authorities visited - most authorities rarely, if at all, sought repayment from other social security benefits administered by the Benefits Agency, from other local authorities, or used debt collection agencies;
- all authorities pursued recovery through the civil courts as a last resort when other recovery attempts had not succeeded;
- local authorities had very varied experiences of handling appeals against overpayment decisions, but appeals appeared to have little impact on the administration of overpayments, or of benefits more widely.

Most managers reported that in their authorities there was no straightforward means of knowing how well they were performing in recovering overpayments. The relevant data were either held on different computer systems or not held at all. This lack of comprehensive recovery data is a hindrance to policy development. At present there is no information with which to benchmark existing performance levels, or to construct performance targets. There are also methodological issues to address, such as how to treat overpayments that have been posted to a rent or a Council Tax account. Some managers were also concerned that performance figures produced by different authorities (including those now required by the Audit Commission) would not be comparable because they would be calculated using different methods depending on the availability and accessibility of the necessary data within each authority. The Audit Commission's performance indicator is likely therefore to reflect only partially the performance of local authorities in recovering overpayments.

There is an arguable case therefore for developing methods of collecting and analysing comprehensive and systematic data on the recovery of overpayments. However, even without such comprehensive information, there is evidence to suggest that some authorities perform well using the existing (and expanding) range of recovery methods. The task of developing appropriate performance indicators could, therefore, be undertaken in parallel with a programme of measures designed to encourage local authorities to emulate the activities and achievements of the better performing authorities.



## 5 THE IMPACT OF THE 1997 FRAUD ACT

5.1 Introduction The Social Security Administration (Fraud) Act 1997 included a number of measures relevant to overpayments. These were:

- the extension of local authorities' powers to recover overpayments from landlords and others to whom payment is made (such as letting agencies);
- the introduction of new civil court procedures to simplify and speed up the process of obtaining a court judgment against debtors;
- the introduction of a system of administrative penalties for fraudulent claimants.

The first two of these are primarily intended to improve the recovery of overpayments from claimants and landlords. The administrative penalty does not directly affect recovery but is an addition to the sanctions that local authorities can apply to fraudulent claimants. It is a punishment but also has potential as a deterrent. Part of the terms of reference for this study were to explore whether and how the new provisions have been used by local authorities and to assess, in the view of authority staff, their effectiveness.

The principal research questions that we set out to address were as follows:

- How frequently have the new provisions been used?
- Why have some authorities apparently not made use of their new powers?
- How useful and effective have the new provisions been so far?
- How do local authorities view their use of the new powers in the future?

Our analysis in this chapter draws on the interviews carried out with local authority staff and on the published reports of the BFI.

### 5.2 Extended powers to recover overpayments from landlords

Local authorities have always had the discretion to recover overpayments directly from the benefit paid to a landlord in respect of a current tenant. However, until recently, if the claimant ceased to be a tenant of the landlord and an overpayment was outstanding, recovery could only be sought by other means, such as a sundry debtor invoice. Now, the 1997 Fraud Act has extended local authorities' powers to recover overpayments by allowing deductions from future payments to a landlord in respect of his or her other tenants, regardless of whether the claimant is still a tenant. The new powers came into effect in November 1997.

The new power increases the opportunities for authorities to recover overpayments, serves a preventive function in stopping landlords gaining

from the errors or fraudulent acts of others, and has a potential deterrent effect on landlords.

The general picture to emerge from the interviews with Housing Benefit managers and staff was that while there was a high level of awareness of the extended power to recover overpayments from landlords, levels of use were low, and some authorities had not yet recovered overpayments in this way. There are a number of factors which explain this pattern of activity.

The circumstances in which the new power is appropriate and applicable are not common. It is not surprising therefore that the power had been used in only a small number of cases. Furthermore, even when recovery could theoretically be attempted by direct deduction, local authorities still have the option of seeking recovery via a sundry debtor invoice. Some Housing Benefit managers explained that in their authority, sending an invoice was already an effective means of recovering overpayments. The new power was therefore largely unnecessary.

Some authorities had experienced negative reactions from landlords when they had applied the new provision. Although it might be an effective means of securing a recovery there was a price to be paid in potentially harming existing relations with landlords. Some Housing Benefit managers had made efforts to keep landlords informed of the changes via information leaflets and letters, or through existing networks of landlord forums. They reported that the new measure was generally unpopular with landlords. In one example of good practice, however, a Housing Benefit manager had taken time to reach an understanding with a local hostel that had a highly transient population about the merits of the new provision, and now routinely and unproblematically recovered overpayments in this way.

One manager saw an indirect use of the new power as a bargaining tool in negotiations with landlords who were in some way being obstructive about repaying overpaid benefit. It was thought likely that the threat of imposing a deduction from other tenants' payments could make landlords more amenable to settling outstanding invoices.

In a number of the authorities visited, managers explained that their own, or some large landlords', computer systems acted as a barrier to implementation (Housing Associations were most frequently mentioned). Some systems apparently required substantial modification in order to be able to action deductions from either aggregate cheques or the payments to other tenants.

Overall, the new power was viewed by most managers we interviewed as a useful addition to an authority's capacity to recover overpayments, although some remained to be convinced of its usefulness. However, at

present it is not being used as a method of first choice even though it is a guaranteed means of recovery. Other considerations, some technical and some related to maintaining good working relations with landlords, tend to lead Housing Benefit staff to try alternative methods of recovery in the first instance.

### 5.3 New civil court procedures

Since Housing Benefit was introduced in 1982, the recovery of overpayments can be enforced by a local authority by obtaining a county court order in England and Wales or a Sheriff Court order in Scotland. As we have described in Chapter 4, for many authorities this is often a long, drawn-out process which is time consuming for local authority legal and benefit staff. However, the process for obtaining a court order has been simplified considerably by the provisions of the 1997 Fraud Act.

Local authorities now have the ability to use their own decision that a Housing Benefit overpayment has occurred and is recoverable as proof of debt in the civil courts. In England and Wales, therefore, a Housing Benefit determination can be registered as a judgment of the Court thus allowing any of the Court enforcement procedures to be used for recovery purposes (once the date for review has passed). In Scotland, such a determination is immediately enforceable by the usual methods of diligence.

In practice, a local authority only has to complete and submit an appropriate application to the court to obtain a judgment in their favour. The need for local authority officers to attend court is removed. The cost of submitting an application is low compared with the cost of staff time in preparing for and attending a court hearing. At present, the fee is £ 30.

In contrast to the high level of awareness of the new recovery powers in relation to landlords, our interviews with Housing Benefit staff showed a lower level of knowledge and understanding of the new civil court procedures. One authority had recently developed its own internal procedures for preparing submissions to the courts including the integration of the standard court application form into its computer system. Its first applications had not yet been decided. In another authority difficulties were reported with the local court, whose officials did not appear to be aware of the new procedures or have the requisite forms available. These teething difficulties had been overcome and several cases were now being processed.

Some authorities were aware of the possible deterrent effect of the new procedures. Having a debt registered in the court has possibly serious consequences for a person's creditworthiness. They might, for example, find it difficult to obtain credit or a mortgage. Warning a claimant of these consequences and reminding them of the speed with which a

judgment can be made was expected by some officers to prompt them into settling the debt or arranging to pay by instalments.

The general picture to emerge from our fieldwork visits is that the new civil court procedures are being implemented only very slowly. In some authorities there was little indication that much or any progress had been made at all. However, in those authorities where some progress had been made towards using the new procedures, the overall opinion was that they were potentially very useful for obtaining judgments in their favour even though the task of actually securing repayments afterwards still remained.

#### 5.4 Administrative penalties

The 1997 Fraud Act introduced a system of administrative penalties for claimants who have committed fraud. Briefly, the new powers enable local authorities to offer a claimant the alternative of paying a penalty of 30 per cent of the overpayment obtained by fraud as a way of avoiding criminal prosecution. The penalty is added to the amount that the claimant owes the authority in overpaid benefit. The intention is to introduce a new sanction which will serve as both punishment to a fraudulent claimant and as a deterrent to potential fraudsters. (The new power can only be invoked in respect of overpayments accrued after 15 December 1997.)

At the time the fieldwork was carried out for this research the administrative penalty had been available to local authorities for approximately 18 months. However, we found very few examples of the penalty being used. Managers offered a range of explanations for why it had not been applied in their authorities. Many felt that, as presently constituted, the administrative penalty had a very limited application. For the offer of a penalty to be appropriate in a particular case there should be sufficient evidence to support criminal proceedings. Authorities usually only begin to consider possible prosecution on serious cases of fraud involving large sums of money. Frauds involving small amounts would very rarely be considered for prosecution and therefore would not come within scope of the administrative penalty provisions. In a small number of authorities visited, it was explained that prosecutions were either not made at all or only on rare occasions. It was not possible to trace the root of this stance towards prosecution which was described more in terms of accepted custom and practice rather than by reference to any specific policy source. However, if cases are not developed for possible prosecution then an authority effectively denies itself the opportunity of invoking the administrative penalty.

Most managers felt that by the time a case had been investigated to the point where a prosecution was sustainable (i.e. the supporting evidence was sufficiently robust) then prosecution would be the preferred course of action. This feeling has been strengthened by recent government pressure to increase the number of prosecutions undertaken by local authorities. Many authorities had developed, or were in the course of

developing, prosecution policies. Some managers interviewed mentioned that their authority's policy was likely to cover the use of administrative penalties. Many managers saw little point in adding a penalty to an already high overpayment. It was felt that the chances of recovering the full amount of the new debt to the authority would only be reduced.

The overall reaction to the introduction of administrative penalties was that they were generally misconceived and consequently of very limited use. However, one manager did consider that a penalty might be appropriate for dealing with a limited type of landlord fraud, first because landlords generally had the ability to pay and, secondly because the imposition of the penalty might have a deterrent effect.

## 5.5 Summary and discussion

In designing this research project we were aware of the Department's need for as much information as possible on the use of the new provisions in the 1997 Fraud Act which at the time of fieldwork had been in force for around 18 months.

Our main findings are as follows:

- the new powers in relation to recovery from landlords were being used in appropriate cases occasionally by some authorities and not at all in others - they were viewed mainly positively as a useful addition to a local authority's ability to recover overpayments;
- the new civil court procedures were only just beginning to be used in a few authorities, where they were viewed positively as a welcome replacement for the previous costly and time-consuming procedure: awareness and knowledge of the new powers, however, were not high;
- the new system of administrative penalties had been used on only a few occasions - its use was seen as very limited.

The evidence from our work in the 18 authorities visited is, therefore, that the implementation and use of the new powers has been both slow and patchy. This finding partly reflects the variety in individual authorities' reaction times in responding to new opportunities and responsibilities, and partly the time needed to decide policy, design procedures, amend computer systems, train staff and liaise with appropriate outside organisations. Lead times for implementing change can therefore be considerable. In the case of administrative penalties, however, the principal reason why so few penalties had been imposed was the perceived (lack of) usefulness of the provision.

It must also be remembered that implementing change carries a cost to an authority. This cost will often fall disproportionately on smaller authorities with small complements of staff and small administrative budgets. The time needed to learn about new provisions, and plan and implement the necessary changes, will often present smaller authorities with considerable logistic problems. Taking one member of staff away

from a staff of, say, 15 to carry out the requisite work in, for example, setting up administrative systems to enable the administrative penalty to be used, will have greater repercussions than in an authority with a staff complement of over 100 that included a training and development officer. From the perspective of the external researcher, it is not surprising to find new discretionary powers not acted on quickly or indeed acted on at all.

It is clear that the new powers of recovery discussed in this chapter increase the range of recovery methods available to a local authority. However, they are only ever likely to be applicable in a relatively small proportion of overpayment cases when other, simpler methods of recovery have not been successful. Without any major external stimulus it is likely that those local authorities that have begun to use the powers will increase their use in the future, and other authorities will gradually be added to their number. The question for policy makers is whether this is a satisfactory state of affairs or whether some other action is needed to encourage local authorities to use their discretionary powers more.

The policy questions regarding administrative penalties are different. If the principle of penalties is still perceived as a useful counter-fraud tool then some thought needs to be given to extending their applicability to cases where, in policy terms, such a response is deemed appropriate. There also appears to be a case, however, for reconsidering whether some alternative to administrative penalties is either desirable, feasible or even necessary.

## 6 CONCLUSION AND ISSUES FOR POLICY DEVELOPMENT

**6.1 Introduction** Housing Benefit and Council Tax Benefit overpayments have become an important policy issue in recent years. The fraud strategy paper *Safeguarding Social Security*, sets out the government's objectives to reduce programme loss by improving the recovery of overpayments (DSS, 1999, Chapter 4).

This study set out to improve the DSS's knowledge and understanding of the policies and procedures of local authorities in relation to the classification and recovery of overpayments. The analysis presented in this report is based principally on interviews with 82 benefit, financial and legal staff in 18 local authorities in Great Britain, and on an examination of the published reports of the Benefit Fraud Inspectorate (BFI). The main findings regarding the current policies and practices surrounding overpayments have been presented at the end of each preceding chapter.

This chapter presents, analyses and discusses the views of Housing Benefit and other local authority staff about how improvements in overpayment work could be attempted. These include the problem of the ownership of overpayment work, the role of subsidies and incentives in relation to overpayments, the measurement of overpayment performance, the link between overpayments and the deterrence of fraud, how the prevention and recovery of overpayments could be improved, and the roles of organisations outside local government, such as the DSS and BFI.

Overpayments are identified through the routine administration of benefits and the discovery of fraudulent claims. They are the result of the interaction between the substantive rules of the Housing Benefit and Council Tax Benefit schemes, the procedures and practices of local authorities, the actions of claimants and landlords, and the actions of relevant third parties such as the Benefits Agency. The cause of any individual overpayment can be traced to one or more of these sources. In developing future policy, therefore, DSS should be aware that options lie not only in improving local authorities' performance in relation to overpayments but also in possible changes to the benefit schemes themselves and in the behaviour and actions of claimants, landlords and other third parties.

We will use the following two aims as benchmarks in assessing the policy options discussed later in the chapter:

- a reduction in the number of overpayments, especially those caused by fraud;
- an increase in the amount of overpaid benefit that is recovered.

6.2 Key policy issues In this section we present the key issues that have been identified in the course of the research and discuss their possible implications for policy development. All of the policy ideas were discussed with some, if not all, of the respondents interviewed. Many emerged as their own suggestions, others were prompted by the reports of the BFI, whilst some were formulated by the research team from their reflections on the interviews and analysis of the data.

6.2.1 *The ownership of overpayment work* The evidence from this research project clearly shows that overpayment work is fragmented among a number of different local authority departments. While Housing Benefit managers were able to put forward many practical reasons for dividing aspects of overpayment administration between departments, there was also an acknowledgement that this did not create the best environment for developing overpayment work systematically and coherently.

The BFI has also dealt with this issue in many of its local authority reports and makes the recommendation for some that bringing responsibility for overpayment administration under a single management command would bring improvements in performance. Some authorities in this study did organise overpayments work in ways that approached the model of a single management command.

Establishing a single management command would serve the purpose of creating ownership and thus a clear responsibility for all overpayment work. A single officer would then be held accountable for levels of performance in relation to the classification and recovery of overpayments. In discussions with Housing Benefit managers it was recognised that this proposal would be beneficial. However, for some local authorities it was suggested that there could be considerable administrative and managerial obstacles to overcome if single ownership of overpayments was to become a reality. Some traditional divisions of labour (for example, between benefit administration, income collection, and legal services) would have to be addressed. Nevertheless, it was concluded that there would be some merit in the DSS exploring this option in more detail with local authorities and their organisations.

6.2.2 *Subsidies and incentives* One of the most striking findings from the fieldwork was the almost total absence of any influence on those interviewed of the incentives theoretically contained in the DSS subsidy provisions for reimbursing overpaid benefit, and the rewards available to local authorities who recover overpayments. This finding raises a number of questions:

- Are financial incentives and subsidies the right policy instruments for encouraging local authorities to reduce the number of overpayments and to increase the amount of overpaid benefit recovered?
- Are subsidies ineffective because they are not set at the right levels? Would changes in the levels restore the effectiveness of subsidies?

- Would the financial incentives be more effective if there was ownership of overpayment work in local authorities?

Financial incentives are generally assumed to provide sufficient motivation for local authorities to achieve objectives set by central government. The system of weekly benefit savings (WBS) which rewards authorities for identifying and stopping fraud has certainly increased the amount of counter-fraud activity in most authorities, although the claims made by some authorities for the savings achieved have been called into question by the National Audit Office (NAO, 1997). If the overpayment incentives are currently ineffective then the question arises of what should replace them. A number of possible policy options emerged in the course of the interviews with Housing Benefit managers and staff and were explored with them. One option that generated considerable discussion was the use of performance measurement as the basis for motivating local authorities to reduce overpayments and increase recoveries. This idea is explored fully in the next section. Other possibilities raised in discussions included financial penalties for local authorities performing poorly, changing the rates of overpayment subsidies, and channelling recovered monies back to Housing Benefit departments.

An observation made by a number of Housing Benefit staff interviewed was that financial *penalties* were often an effective means of getting local authorities to change their practices. A penalty in the form of a clearly identifiable *financial loss* was likely to attract the attention of senior officers and elected members alike.<sup>6</sup> Once a policy area attracted this level of interest then, it was suggested, it would be more likely that the necessary resources would be found to prevent such loss in the future.

The current subsidies for overpaid benefit range from 80 per cent (for fraud) to zero (for local authority errors) without there being any discernible effect on local authorities' efforts to reduce the incidence of overpayments. Theoretically, a radical reduction in these levels, to perhaps zero subsidy on all overpayments, could be expected to encourage authorities to reduce overpayments in order to minimise their losses. Alternatively, if the subsidy was high across the board, say 90 per cent, then there would be a greater incentive for authorities to recover overpayments because they would be quickly be able to generate net income. Both these ideas were raised in discussions with some Housing Benefit managers but no conclusive view emerged.

One of the reasons why the current financial incentives appear to be ineffective is that no single department in the authority reaps the rewards

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<sup>6</sup> The weekly benefit savings scheme includes such a penalty. An authority which fails to achieve 75 per cent of its annual savings threshold is subject to a pound for pound penalty for every pound it falls short of the threshold.

from recovering overpayments or suffers any adverse consequences if the incidence of overpayments is high in the first place. Establishing ownership of overpayments work would create the opportunity of linking the current incentive arrangements to performance.

The effectiveness of the existing financial incentives might also be increased if senior officials (such as Chief Executives and Finance Directors) and the elected members of the council were more aware of the possibilities that overpayment recovery presented for generating income for the authority. A campaign to raise awareness of overpayment issues might therefore be a viable policy option.

### *6.2.3 Performance measurement on overpayment recovery*

Information on the incidence, value and causes of overpayments is already collected by local authorities. In stark contrast is the lack of any systematic information on overpayment recovery. The evidence from this research suggests that many authorities are not well placed to collect recovery data in the short term and that this will affect their ability to provide the Audit Commission with performance data by the end of the year 1999/2000.

Although they may change after the consultation by the DETR on Best Value performance measurement, the Audit Commission's three published indicators are currently defined as follows:

- the amount of benefit overpaid as a percentage of total benefits paid in the year 1999/2000;
- the percentage of recoverable overpayments (excluding Council Tax) that were recovered in the year;
- the number of overpayment cases identified in the year per 1000 claimants.

The first and third of these indicators can already be calculated from the data collected by local authorities for subsidy purposes. The recovery indicator is an innovation that has its attractions. A single, simple performance indicator on overpayment recovery is easy to understand and provides a simple means of comparing the performances of different authorities. However, a single indicator for a diffuse activity such as the recovery of overpayments has limitations. A similar argument has been put forward by the Benefit Fraud Inspectorate in relation to the measurement of counter-fraud activity by benefit authorities (BFI, 1998). Their conclusion that a 'scorecard' of indicators is an appropriate response to measuring a complex phenomenon has prompted us to reflect on how overpayment work might be measured effectively.

All performance indicators essentially serve two purposes. The first is to provide an assessment of performance that can be compared with some external standard and with other similar organisations. The second is to act as management information to alert managers to the need for investigation or intervention. Our analysis of the diffuse recovery

operations of local authorities might suggest that the single performance measure required by the Audit Commission is too simplistic or one-dimensional and fails to reflect the different issues involved in pursuing overpayments from, for example, rent rebate and rent allowance recipients, or in respect of overpayments caused by fraud, claimant error or official error.

There might be a case therefore for developing a 'balanced scorecard' of indicators to generate data that would allow the Audit Commission and others to assess the acceptability of an authority's performance but also provide a range of management information that authorities could use to plan and develop strategies for improving performance in all areas of overpayment recovery.

A more comprehensive and complementary set of indicators would allow a more balanced assessment of an authority's performance and provide authority managers with information that they can use to monitor recovery performance in detail. It would appear worthwhile therefore considering the pros and cons of a scorecard of indicators which could include the following:

- percentage of recoverable overpayments that were recovered in the year, broken down by:
  - type of benefit;
  - cause of overpayment;
  - method of recovery;
- number and value of overpayments written-off;
- number and percentage of defaulted payments.

In developing measures, notice would need to be taken of the way in which rent rebate and Council Tax Benefit overpayments are accounted for in some authorities. The current practice of treating benefit overpayments as cleared once they are posted to rent or Council Tax accounts clearly distorts the true picture of the amount of recoveries actually achieved.

The development of a set of performance indicators for overpayment work would fill an important gap in knowledge. Policy thinking about multiple performance indicators would need to take account of the cost of data collection, but without some form of systematic information it is not possible to benchmark current performance or evaluate the effect of policy changes that might be introduced to improve recovery performance.

#### *6.2.4 Overpayments and deterrence*

As we have mentioned at various points in this report, the government views the recovery of overpayments as providing a useful deterrent to the potential fraudster. The thinking is that if fraudsters make no financial gain from their fraudulent acts then they will be persuaded not to try again in the future. The BFI reports carry the same conviction. In each

of its reports it prefaces its analysis of recovering overpayments from fraudsters with the message to the local authority that recovery is a deterrent.

However, there is little evidence that recovery does, in practice, act as much of a deterrent. For example, a study of the role of penalties and social security fraud (Rowlingson *et al.*, 1997) found that few of the claimants interviewed ‘... considered that making people repay the amount of benefit they had obtained fraudulently was an effective deterrent to benefit fraud’ (p.96). Most of the Housing Benefit staff interviewed in this study held the same opinion. In relation to both claimants and landlords, the view was expressed by some that even if full recovery was eventually achieved the culprit had in effect enjoyed an interest-free loan and so had still obtained some advantage from their fraudulent act.

There was a general view that being detected was the best deterrent for someone who had committed fraud and that publicity surrounding detection and subsequent punishments could contribute to deterring potential fraudsters. However, some officers said that in their areas it was difficult to attract much local publicity even for convictions obtained in the criminal courts. No one thought it remotely likely that they would be able to generate publicity for successes in recovering overpayments.

The government and the BFI suggest that overpayment recovery is a deterrent to potential fraudsters. Pursuing a strategy of deterrence is clearly an essential part of a wider counter-fraud strategy but the evidence from this research suggests that recovering overpayments can contribute in only a minor way at best.

#### *6.2.5 The prevention of overpayments*

There was a widespread view among the staff we interviewed that many overpayments were preventable. Many referred to the expected improvement in the quality of decisions that should flow from the implementation of the Housing Benefit Verification Framework. Other ideas for reducing overpayments suggested by Housing Benefit staff in the study included the following:

- more resources for Housing Benefit departments to enable them to process cases more quickly;
- better education of claimants and landlords so that changes in circumstances were reported timeously;
- a better service from the Benefits Agency and the Employment Service in notifying them of changes to claimants’ other benefits;
- more frequent reviews of claims in payment so that changes in circumstances could be identified more quickly;
- shorter award periods so that overpayments did not continue for long periods of time.

Clearly many of these measures would increase the administration costs of Housing Benefit departments, the evaluation of which is outside the scope of this study.

The prevention of overpayments could also be achieved, in the view of some respondents, by changing the benefit structure itself. Many overpayments were felt to be the result of a highly complex benefit that was almost incomprehensible to many recipients. The key to reducing the incidence of overpayments was seen to lie in the simplification of the substantive rules of Housing Benefit and the rules for reporting changes in circumstances.

At present most payments of Housing Benefit are made in arrears, typically two weeks for claimants or four weeks for some of the bigger or corporate landlords. This effectively gives claimants and local authorities a period of grace during which the late reporting of a change in circumstances or the slightly delayed processing of a change does not generate an overpayment. If the period of arrears was increased then even more overpayments would be prevented. While this idea carries risks for tenants and could be expected to be unpopular with landlords, the argument was put that the transition from payment in advance to payment in arrears had been managed effectively and that it could be anticipated that landlords would eventually come to accept and accommodate any new time periods into their financial practices.

#### *6.2.6 The recovery of overpayments*

For many years there has been a wide range of methods available to local authorities to enable them to recover overpayments. As described in Chapter 5, these were enhanced in 1997 by the provisions of the Fraud Act. In our discussions with local authority staff the general feeling was that there was no compelling need for any further powers.

One suggestion that was made however, was for Housing Benefit staff to have the capacity to make deductions for overpayments directly from the benefits administered by the Benefits Agency. The recent introduction of Remote Access Terminals which allowed local authority staff to interrogate the computer records of local Benefits Agency offices suggested that this could be technically feasible. This is an interesting idea given the BFI's conviction that many local authorities are not availing themselves of the power to recover overpayments from other social security benefits.

Not unexpectedly, many Housing Benefit managers suggested that more overpayment recovery work would be possible if they received an increase in their administrative budgets. Without such an increase they were faced with a dilemma: putting more resources into overpayment recovery was desirable, but the cost of administration would rise as a result. From a manager's viewpoint, this outcome is not desirable. One of the issues for Housing Benefit managers in dealing with overpayments is that if they want to attempt to increase their recovery of overpayments they

must find the resources from within their existing administrative budgets to do so. They do not have access to any additional source of funds comparable to Challenge Funding that was set up to enable authorities to increase their counter-fraud work, nor do they gain any direct return from the recovery of overpayments.

However, the experience of funding additional fraud work clearly provides models that could be adapted in relation to overpayment work. Something like a Challenge Fund is possible, although there are problems with this method of funding. Challenge Funds, by definition, are limited and subject to open competition. It is arguably not a very effective means for encouraging less well performing authorities to greater efforts and performance.

Allowing Housing Benefit departments to retain some or all of the recovered overpayments was another possibility discussed with Housing Benefit managers. However, this option is already available to local authorities, although it is rarely put into practice. The point was made that if the DSS wished to develop a policy to ensure that Housing Benefit departments benefited financially from its recovery of overpayments, it might have to deal with potential opposition from local authorities and their associations wishing to preserve local authorities' autonomy in how they use their income.

#### *6.2.7 The DSS and the BFI*

Housing Benefit is administered by local authorities on behalf of central government. Hence it is axiomatic that any objectives that the government has in relation to Housing Benefit can only be achieved through the agency of local authorities. At present, the government is responsible for the legislative substance of the benefit and provides the financial and regulatory frameworks within which authorities can design and implement administrative systems that are appropriate for them. The DSS aims to assist local authorities principally by issuing guidance circulars backed up by the provision of advice for individual authorities on request.

Local authority performance is monitored through the provision of routine and ad hoc administrative and financial information, and by external bodies such as the Audit Commission, National Audit Office and, since 1997, the Benefit Fraud Inspectorate.

Research evidence, and anecdotal evidence, suggests that local authorities vary to an enormous degree in their responsiveness to new responsibilities placed upon them and in their use of discretionary powers (see, for example, Sainsbury, 1999a and 1999b). We have discussed earlier in this report some of the reasons for these variations (such as the perceived utility of new powers, and the problems for some authorities in investing the resources needed for implementation).

One reflection of the research team is that the DSS should perhaps consider ways in which its mainly passive role in policy implementation (issuing guidance and responding to requests for advice) could be made more active.<sup>7</sup> The Department could provide more direct education for authorities, either in groups (using conferences, briefings, or roadshows, for example) or individually by spending time with authorities advising them on implementation. The scope of this individual help could range from short consultancies to more hands-on assistance in, for example, designing the infrastructure of administrative and financial systems needed to effect implementation. Some managers suggested that this kind of direct help would possibly be attractive to their authorities.

There may be opportunities also for building on the influence that the BFI is increasingly having on local authority benefit administration. Though not discussed with respondents in this study, one possibility is that the BFI could take on the roles described above in relation to the DSS. It could also play a different role in dealing with poor performing authorities (identified using the proposed set of performance indicators on overpayments). For example, it could operate 'task forces' which investigate apparent poor performance in respect of the incidence or recovery of overpayments and work with authorities to identify the sources of problems and to make urgent improvements.

These ideas for developing the role of the DSS and BFI are not intended to be comprehensive but to encourage thinking in response to the finding that some authorities appear to be unwilling or unable to take advantage of new opportunities to change and improve their administrative practices and performance.

### 6.3 Final comments

The dominant picture presented in recent reports about Housing Benefit is that overpayments are in something of a crisis, characterised by a subsidy system open to abuse and poor performance by local authorities in the recovery of overpaid benefit. The findings from this research paint a different picture. There are certainly wide variations in the way authorities carry out their overpayment work. That much is expected given the autonomy that they have in administering benefits on behalf of central government. However, we found no evidence that the subsidy arrangements are abused in the way feared by the National Audit Office.

Whether or not local authorities' performance in relation to overpayment recovery is bad, indifferent or good must remain an open question until some robust measures of recovery are established. What evidence we do have again suggests a large degree of variation between individual authorities but we are a long way from knowing the true extent of overpayment recoveries achieved across the country.

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<sup>7</sup> The DSS already carries out such activity, for example, in relation to the introduction of the Housing Benefit Verification Framework.

There are a number of policy options around overpayments raised in the course of this research that are worthy of further thought and analysis by the DSS. Perhaps the main issue to be addressed, however, is how to encourage more local authorities to make better use of the range of powers and provisions already at their disposal.

**TOPIC GUIDE FOR HOUSING BENEFIT MANAGERS****LOCAL AUTHORITY OVERPAYMENT POLICY****Content of policy**

1. What is the authority's general policy on
  - classification
    - are all cases considered recoverable?
    - recovery of overpayments
      - does policy include recovery from landlords (PROBE)?
      - does policy prioritise particular cases (eg fraud)?
  - allocation of resources
2. Is policy:
  - new, i.e. recently changed?
  - in process of change?
  - under review?
  - well-established?

**Objectives of policy**

1. What objectives underlie the authority's policy?
  - financial
  - deterrence
  - meeting statutory duties
  - political

**Distinctions within policy**

1. Are there differences in policy between:
  - rent rebates, rent allowances, Council Tax Benefit cases?
  - overpayments caused by fraud and claimant or official errors?
  - claimants and landlords?
  - vulnerable groups (such as old people, disabled people)?
2. Why are these distinctions made?
3. What is the policy towards ex-claimants (including those who have left the area)?
4. Is overpayment policy linked with prosecution policy? How?

**Responsibility for policy**

1. Who is principally responsible for drawing up the policy?
  - who else is/ was involved?
2. Who is principally responsible for drawing up procedures for day-to-day work?
  - who else is/ was involved?

**Influences on policy**

1. What have been the main influences on the way this authority has decided to deal with overpayments?

PROBE FULLY FOR EACH

2. How has Social Security Administration (Fraud) Act 1997 influenced overpayment policy  
[NB THESE QUESTIONS ARE OF KEY POLICY INTEREST]

EXPLORE

- changes to the subsidy paid to cases classified as fraud
- new powers of recovery
- administrative penalties
- use of civil court procedures

PROBE: How are these powers being used?

PROBE: For views on new powers: usefulness, problems, why not used (if appropriate), comparisons with existing powers

3. FOLLOW UP to explore influences not mentioned so far:

(How, if at all, have the following influenced overpayment policy, or are currently influencing thinking)

- the subsidy arrangements
- WBS
- other financial considerations
- DSS (eg in its guidance and circulars)
- DSS overpayment recovery exercise (NB for relevant LAs only)
- the DETR *Best Value* initiative
- DETR and Welsh Office (for Welsh authorities)
- resources (eg for staff)
- LA elected members/ council committees
- LA fraud strategy
- other LA policies, eg anti-poverty
- LA targets
- other key players (eg landlords and advice agencies)

- Reports from
  - District Audit
  - NAO/ Audit Commission (including new indicators on overpayments)
  - Benefit Fraud Inspectorate
  - Commons Select Committees.

**OVERPAYMENT ADMINISTRATION**

**Classification of overpayments**

1. Check who is involved in *classifying* overpayments?
  - How are they trained?
  - What procedures/ manuals do they work with?
  - How many *designated officers* are there for fraud overpayments?
2. Is performance satisfactory?
  - are overpayments correctly classified?
  - who checks? how is overpayment classification supervised?
  - what is role of LA Audit department?

**Overpayment recovery**

1. Who is involved in *recovering* overpayments?
  - How are they trained?
  - What procedures/ manuals do they work with?

2. What methods of recovery are used in this authority?

e.g. from other LA benefits?

from BA administered benefits?

council tax account?

rent account (for council tenants)?

invoice/ sundry debtors?

is overpaid benefit recovered from landlords?

balance of debt recovery methods?

relevance of *costs* of different methods?

who decides recovery method and rate of recovery in each case?

3. How are claimants notified about overpayment recovery?

computerised output

personal letter

views on notification procedures

#### REPEAT QUESTION IN RELATION TO LANDLORDS

1. How is recovery controlled?

when are debts written-off?

who makes write-off decisions?

2. What percentage of overpaid benefit is recovered?

how is this figure monitored?

3. Is overpayment recovery performance satisfactory?

4. Who gets the recovered overpayment?

- Housing Benefit budget

- general LA budget

- somewhere else (specify)

#### Links with fraud investigation

1. What is the relation between overpayment and the work of fraud/ investigation teams?

#### Role of other LA departments

1. Role of other LA departments in relation to overpayments

Finance

Sundry Debts

Audit

Housing

#### Effect of appeals mechanisms

1. How does *appeals* work affect overpayment administration?

problems?

2. How many overpayments cases generate an appeal?

3. How many are dealt with by HB department internally?

4. What is success rate for claimants?

5. How many Review Board cases result?

6. Views on Review Board decisions?

### **Wider effect of overpayments work**

1. How does overpayment work affect Housing Benefit administration more generally?
  - perceived effect on relations between landlords and tenants
  - on relations between landlords and the authority

### **Management of overpayment work**

1. Who exercises supervisory and managerial control over overpayment work?
  - does a single officer have overall responsibility?
2. What management information is collected?
  - Why?
  - In what form? (eg routine reports/ statistics)
  - How is it produced? (computer/ manually)
  - How is it used? By whom?
3. Are there any problems using IT to provide management information?
  - eg default settings?
4. Are there any problems using IT to provide accurate overpayment data for DSS (or DETR, Welsh Office)?
  - (NB for LAs in recovery data collection exercise only) Any problems supplying data? How actually did they collate the data?
5. Do any performance targets apply to overpayment work
  - what are these?
  - who set them?
  - who has to meet them?

PROBE What has been the effect of these?

6. To what extent is overpayments work automated?
  - recording
  - case management
  - recovery (eg sending out standard letters)
  - production of statistics
7. How is overpayments work co-ordinated with Benefits Agency?
8. How important is overpayment work?
  - compared with claims processing, fraud investigation etc?
  - are staff ever moved off overpayment work to cover other tasks?

### **IMPROVING OVERPAYMENT ADMINISTRATION**

#### **Barriers to better performance**

1. What needs to happen to encourage LAs to attempt more recoveries?
2. How can better recovery rates be achieved?

EXPLORE THE FOLLOWING for Q.32 and Q.33 as appropriate):

- changes to incentive measures? (PROBE FULLY)
  - eg changes to subsidy arrangements. What?
  - eg changes to WBS arrangements. What?
- changes to existing powers of recovery. What?
- changes to IT
- other changes to Housing Benefit legislation.
- changes to appeals procedures.
- changes to related LA policies (Housing? Anti-poverty?)

HB department keeping recovered overpayments

changes to DSS guidance.

software/ automated systems

better co-ordination with:

Housing department

Finance department

Benefits Agency

3. What can the LA do better themselves (i.e. independent of external changes)?
4. Can LA overpayments strategy contribute (more) to deterring fraud?
5. What are your views on how the changing policy environment will affect overpayment work?

e.g DETR *Best Value* initiative

Verification Framework initiative

BFI programme of inspections

## TOPIC GUIDE FOR HOUSING BENEFIT AND COUNCIL TAX BENEFIT OVERPAYMENT WORK

### Personal background

1. How long have you worked on overpayments?
2. Any other relevant experience?
  - on debt recovery?
  - on fraud/ investigation work?
3. What other duties do you have?
  - how does overpayment work fit in with other duties?
  - what priority does it have?

### Classifying overpayments

1. How are possible overpayment cases mostly identified? (Check for relative importance of each source)
  - routine reviews (eg by post or visit)?
  - from regular accuracy checks?
  - from fraud/ investigation teams?
  - from claimants reporting changes in circumstances?
  - from special exercises?

2. What is your role? (CHECK: if respondent says no to any of the following, ask who is responsible for each)

deciding if overpayment exists?

deciding if an overpayment is recoverable or not?

deciding amount of overpayment?

deciding *cause* of overpayment?

deciding whether to recover?

deciding whether a case is a possible fraud?

deciding whether to apply an administrative penalty/prosecute

3. How do you decide if an overpayment exists?

EXPLORE USE OF:

legislation/ regulations

LA policies/ guidance

DSS guidance

other guidance (specify)

own and colleagues' knowledge (explore and specify, probe for examples)

own discretion and judgment (explore and probe for examples)

4. How do you decide if an overpayment is recoverable or not?

EXPLORE USE OF:

legislation/ regulations

LA policies/ guidance

DSS guidance

other guidance (specify)

own and colleagues' knowledge (explore and specify, probe for examples)

own discretion and judgment (explore and probe for examples)

PROBE for interpretation of 'reasonably expected to know' in cases of official error

5. How do you decide the amount of an overpayment?

EXPLORE USE OF:

automated calculations (eg by LA computer systems)

legislation/ regulations

LA policies/ guidance

DSS guidance

other guidance (specify)

own and colleagues' knowledge (explore and specify, probe for examples)

own discretion and judgment (explore and probe for examples)

6. How do you decide whether to recover?

EXPLORE USE OF:

automated calculations (eg by LA computer systems)

legislation/ regulations

LA policies/ guidance

DSS guidance

other guidance (specify)

own and colleagues' knowledge (explore and specify, probe for examples)

own discretion and judgment (explore and probe for examples)

7. How do you decide the cause of an overpayment?

EXPLORE USE OF:

legislation/ regulations

LA policies/ guidance/ instructions

DSS guidance

other guidance (specify)

own and colleagues' knowledge (explore and specify, probe for examples)

own discretion and judgment (explore and probe for examples)

PROBE for influence of subsidy arrangements

8. How do you decide if an overpayment case is possibly fraudulent?

EXPLORE USE OF:

legislation/ regulations

LA policies/ guidance

DSS guidance

other guidance (specify)

own and colleagues' knowledge (explore and specify, probe for examples)

own discretion and judgment (explore and probe for examples)

9. What action is then taken on a fraudulent overpayment?

10. How does a classification of fraud affect overpayment work?

do fraud cases receive priority?

are other types of case prioritised? (eg when resources are limited)

11. How do you *record* the classification?

on casefile

computer system (EXPLORE whether system has defaults/ standard settings, and process of overriding these manually if appropriate)

any problems associated with recording (eg with computer systems)

## Recovering overpayments

1. What is your role in the recovery of overpayments?

deciding the method of recovery

communicating with claimants

dealing with claimants enquiries

dealing with appeals

communicating with landlords

dealing with landlords' enquiries

involvement in prosecutions (specify)

2. How do you decide whether to recover from the claimant or the landlord?

EXPLORE USE OF:

legislation/ regulations

LA policies/ guidance

DSS guidance

other guidance (specify)

own and colleagues' knowledge (explore and specify, probe for examples)

own discretion and judgment (explore and probe for examples)

3. How do you decide the method of recovery for *daimants*?

EXPLORE USE OF:

legislation/ regulations

LA policies/ guidance

DSS guidance

other guidance (specify)

own and colleagues' knowledge (explore and specify, probe for examples)

own discretion and judgment (explore and probe for examples)

PROBE for perceptions of the effectiveness of different methods and effect on decision making, i.e.

- deductions from Housing Benefit
- posting to Council Tax account
- deductions from BA-administered benefits
- posting to housing account
- raising invoice

4. How do you decide the method of recovery for *landlords*?

EXPLORE USE OF:

- legislation/ regulations
- LA policies/ guidance
- DSS guidance

other guidance (specify)

- own and colleagues' knowledge (explore and specify, probe for examples)
- own discretion and judgment (explore and probe for examples)

PROBE for perceptions of the effectiveness of different methods and effect on decision making, i.e.

- deductions from Housing Benefit of overpaid claimant
- deductions from Housing Benefit of other claimants
- raising invoice

PROBE Does cost of recovery have a bearing on decisions? (cf. the amount of the overpayment)

5. What happens when the recovery method is decided?

EXPLORE: liaison with other LA departments

6. How are claimants informed of the requirement to repay an overpayment?

- standard letter?
- personal letter?
- visits?
- how are appeal rights explained?
- views on content/ style of letter?
- any problems with letter?

REPEAT QUESTION IN RELATION TO LANDLORDS

1. To what extent is overpayments recovery automated?

- recording
- case management
- production of standard letters

PROBE for impact of IT on recovery work

2. In general, how do claimants' react to overpayment notifications? What other reactions have you come across?

what role do you have now?

REPEAT QUESTION IN RELATION TO LANDLORDS

3. What are claimants' actions/ responses to repaying overpaid benefit

- e.g. no problems, debt settled without problems
- further contact from claimant (specify/ examples)
- problems (specify/ examples)

REPEAT QUESTION IN RELATION TO LANDLORDS

4. Would you say there is a better chance of getting recovery from a 'fraud' case than an 'error' case?

5. What happens when debt repayment arrangements break down?

who is involved

what options are available

when is action in the civil courts considered

what influences decisions about civil action (EXAMPLES?)

6. Do you have a role in writing-off bad debts?

PROBE FULLY

#### **Distinctions between types of overpayment case**

1. Are the following groups treated differently from each other:

rent rebates, rent allowances, Council Tax Benefit cases?

overpayments caused by fraud and claimant or official errors?

claimants and landlords?

vulnerable groups (such as old people, disabled people)?

2. Why are these distinctions made?

3. How do you deal with ex-claimants (including those who have left the area)?

4. In general, would you say you had a particular view or approach to overpayments work?

How does this influence how you carry out your duties?

#### **Appeals**

1. What happens if a claimant appeals?

EXPLORE own role and links with Appeals section

estimate of how many overpayment cases generate an appeal?

how often do appeals involve landlords?

how are these appeals dealt with?

**Influence on decisions of subsidy and WBS [NB THESE QUESTIONS ARE OF KEY POLICY INTEREST]**

1. Explore knowledge of relationship between overpayments and:

LA subsidy arrangements

WBS

How do they play a part in decisions on individual overpayment cases?

1. Explore knowledge of new powers under Social Security Administration (Fraud) Act 1997, including:

new powers of recovery

administrative penalties

How do they play a part in decisions on individual overpayment cases?

#### **Role of other LA departments**

1. What dealings do you have with other LA departments in relation to overpayments

Finance

Audit

Housing

2. How is overpayments work co-ordinated with Benefits Agency?  
how do you arrange to recover an overpayment from a different benefit?  
any problems?

### **Training**

1. What training have you received on overpayments work?  
When?  
Strengths and weaknesses?  
Training gaps and needs?

PROBE for use of DSS guidance in training, and views on usefulness (if not covered earlier in interview)

### **Management of overpayment work**

1. Who exercises supervisory and managerial control over your overpayment work?
2. Are you responsible for any statistics on overpayments?  
What?  
In what form? (eg routine reports/ statistics)  
How are statistics produced? (computer/ manually)
2. Do you have any performance targets linked to overpayment work  
what are these?  
who set them?  
who has to meet them?  
views?

How do targets play a part in decisions on individual overpayment cases?

1. How important is overpayment work?  
compared with claims processing, fraud investigation etc?  
are you ever moved off overpayment work to cover other tasks?

### **Knowledge of policy environment**

1. Do you get to read, or discuss, any of the following:  
Reports from  
District Audit  
NAO/ Audit Commission (including new indicators on overpayments)  
Benefit Fraud Inspectorate  
Commons Select Committees.

### **IMPROVING OVERPAYMENT ADMINISTRATION**

#### **Barriers to better performance**

1. How could what you do be improved?

2. What are the barriers to better performance/ outcomes? How could things be done better?

EXPLORE THE FOLLOWING:

subsidy arrangements

WBS

existing powers of recovery

Housing Benefit legislation

appeals procedures

related LA policies (Housing? Anti-poverty?)

LA procedures/ guidance

IT systems

DSS guidance

liaison with other LA departments (eg sundry debtors)

co-ordination with:

Housing department

Finance department

Benefits Agency

3. Can LA overpayments strategy contribute (more) to deterring fraud?



## APPENDIX B KEY TO SELECTION CRITERIA

Local authority size ('Size')	<p>'Size' is defined by total expenditure on benefits in 1997/98. For London Boroughs, Metropolitan authorities and English districts and unitary authorities, authorities have been placed into one of three categories:</p> <ul style="list-style-type: none"><li>• Large = top third of expenditure (within local authority type)</li><li>• Medium = middle third</li><li>• Small = lowest third</li></ul> <p>For Scotland and Wales, because only two authorities were needed for the sample, authorities were divided into two groups, defined as either above or below the median value:</p> <ul style="list-style-type: none"><li>• Large = above the median value of total expenditure (within local authority type)</li><li>• Small = below the median</li></ul>
Overpayment level	<p>'Overpayment level' is defined as the total amount of overpayments for all benefits as a percentage of total expenditure on benefits in 1997/98. Categories of 'high', 'medium', and 'low' are defined as for large, medium and small 'Local authority size' above.</p>
Overpayment recovery rate	<p>'OP recovery rate' data are available only for those authorities taking part in a DSS exercise between April and June 1998.</p> <p>For those authorities returning data, the 'OP recovery rate' is defined as the amount of money recovered in the study period (April-June 1998) as a percentage of the amount of overpayments made in the same period. Some authorities therefore record recovery rates of over 100 per cent. The median value was 75 per cent. Local authorities are defined as having either a 'high' recovery rate (i.e. above the median value) or 'low' (below the median).</p>
Political control	<p>This category is self-explanatory. Political control was correct before the local government elections in May 1999.</p> <ul style="list-style-type: none"><li>• Lab = Labour</li><li>• Con = Conservative</li><li>• LD = Liberal Democrat</li><li>• NOC = no overall control.</li></ul>
Size of private rented sector ('Size of PRS')	<p>'Size of PRS' is defined as percentage of caseload receiving rent allowance (excluding Housing Association tenants) as a percentage of total Housing Benefit caseload (using data supplied by DSS for May 1998). Within each authority type, local authorities are defined as having either a 'high' PRS (i.e. above the median value) or 'low' (below the median).</p>

**Benefit Fraud Inspectorate (BFI) report** This category is defined as those authorities whose BFI inspection visit was completed by December 1998. All reports were in the public domain when the project began on 5 April 1999.

**Private contract** This category is defined as those authorities which have contracted out some or all aspects of their Housing Benefit administration according to data supplied by DSS.

**Table B.1 Summary of the achieved sample**

Criterion	Category	Number of local authorities in sample				
		English				
		London Boroughs	English Metropolitan Authorities	English District and Unitary Authorities	Scottish Authorities	Welsh Authorities
Size	Large	1	1	3	1	1
	Medium	1	2	2	N/A	N/A
	Small	1	0	3	1	1
Overpayment level	High	1	1	4	1	1
	Medium	2	1	3	N/A	N/A
	Low	0	1	1	1	1
Overpayment recovery rate <sup>1</sup>	High	0	1	2	1	Not known
	Low	3	1	1	Not known	Not known
Political control	Lab	2	3	2	1	2
	Con	1	0	1	0	0
	LD	0	0	2	0	0
	NOC	0	0	3	1	0
Size of PRS	High	1	1	6	1	1
	Low	2	2	2	1	1
BFI report	Yes	0	1	2	1	0
	No	3	2	6	1	2
Private contract	Yes	1	0	1	0	0
	No	2	3	7	2	2

<sup>1</sup> Data were available for only nine authorities

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## **Benefit Fraud Inspectorate reports analysed for this research**

Blackpool Borough Council

Broxbourne Borough Council

London Borough of Croydon

Dundee City Council

Eastbourne Borough Council

East Devon District Council

East Dunbartonshire Council

East Lothian Council

Elmbridge Borough Council

Gateshead Metropolitan Borough Council

Inverclyde Council

Ipswich Borough Council

Kirklees Metropolitan Borough Council

Leicester City Council

Oldham Metropolitan Borough Council

London Borough of Richmond upon Thames

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Telford and Wrekin Council

Teesdale District Council

Thanet District Council

London Borough of Tower Hamlets

Trafford Metropolitan Borough Council

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