

Procedures and Process

November 2003

36/03

Subject	New Guidance on abatement by notional entitlement to benefit, waiver criteria and removal of special age and welfare provisions.
Who should read this & why	Bring to the attention of all people involved in overpayment work.
Action	Apply the guidance immediately on receipt of this circular.
Contact	Expert Domain, DM Norcross,
Destroy date	Until further notice

Withdrawal of Abatement and Special Age and Welfare and Changes to Waiver Criteria

Background

1. Following the introduction of Working Families Tax Credit and the successful defence of a Judicial Review, which challenged the Department's policy not to take a notional entitlement to tax credit into account against an overpayment, the abatement policy and waiver criteria have been reviewed.
2. Ministers have agreed that abatement on account of notional entitlement will no longer be used to reduce recoverable overpayments. The waiver criteria have also been reviewed to allow, in certain exceptional circumstances, full or partial waiver in cases of extreme injustice and hardship, which would previously have been covered by abatement. This action will still be considered centrally by Debt Management Policy & Briefings Section as per ORG 12.23 et seq.
3. In addition a recent case referred to The Parliamentary Commissioner for Administration (The Ombudsman) has highlighted inequalities within the current special age and welfare provisions. These are around the difficulty of applying the criteria equitably due to the reliance on information such as capital and health, which is not readily available in all cases. Further enquiries to ascertain this information (particularly around capital) are likely to create anxiety themselves and are not therefore considered an option. Additionally the use of age as a criterion is open to challenge under Human Rights legislation. Therefore the application of discretion under special age and welfare criteria is to be removed

Issue

4. This circular includes:
 - a) Guidance on applying the new policies;

Debt Management Internal Circular

b) Action to take on cases which may be appropriate for consideration under the revised waiver criteria; and

c) Lines to take with customers or customer's representatives who request abatement by notional entitlement.

Removal of Abatement

5. Sections should cease to undertake abatements from the date of this circular except in the circumstances outlined below in Para. 6. This guidance replaces that given in Chapter 12 of the ORG.
6. Any existing cases where the customer has requested notional entitlement to be considered prior to the date of this circular should be actioned as previously. Any notional entitlement should be calculated and that amount abated against the outstanding overpayment.
7. Counter Fraud Investigation Service [CFIS] will still require notional entitlement calculations to be done in possible prosecution cases.
8. In addition Debt Management Policy & Briefings [P&B] may require notional entitlement calculations to be undertaken in cases where full or partial waiver is appropriate and part of the grounds is the existence of a notional entitlement.
9. From 1st April 2004 as part of the withdrawal of reassessment work within Debt Management, notional entitlement calculations should be undertaken by the relevant benefit-processing unit.
10. In the interim period, pending full transfer of this work, existing local arrangements will apply with regard to the ownership of calculation of notional entitlement.
11. In cases where CFIS or P&B require a notional calculation to Family Credit for a past period, Debt Management will continue to undertake this work using OpCalc.

Removal of Special Age and Welfare Consideration

12. The current ORG guidance (Para 3.22 et seq.) allows application of discretion prior to a recoverable decision being made based on the age and welfare of the customer.
13. This action should be discontinued from the date of this circular and all cases should be sent for decision and recovery action as normal.
14. Consideration, as always, should be given to the circumstances of each cases and notification issued accordingly e.g. by visit if considered appropriate.

Waiver Criteria

15. To capture any cases where it would be clearly unjust to recover the full amount of the overpayment, the waiver criteria have been reviewed so that Secretary of State discretion can be considered on specific cases. These cases will be the exception rather than the rule and will normally involve a degree of hardship as well as injustice.

Debt Management Internal Circular

16. Any requests for notional entitlement to benefit received from the customer or the customer's representatives after the date of this circular should be refused. A letter for notifying this decision is given at Appendix 1. If further representations are made by the customer or their representatives claiming injustice or wishing to take the issue further these should be treated as requests for waiver. Cases should be referred to Policy & Briefing Section as per ORG 12.33 et seq.
17. Due to the changes to the waiver criteria, the information needs of the Policy & Briefing Section have changed. Therefore all waiver requests should be sent with a completed referral form as shown at Appendix 2. This guidance replaces that given at ORG 12.34.

Lines To Take in Fielding Enquiries

- Abatement by Notional Entitlement was a purely administrative process and had no basis in legislation.
- The responsibility to claim benefit at the appropriate time lies ultimately with the claimant or someone who is acting on their behalf. The onus is also on the customer or their representative to ensure they continue to fulfil the conditions for entitlement and notify any changes of circumstance.
- The Department does all it can, through information-providing services, to ensure people are aware of the benefits to which they are entitled and how to claim them.
- If customers remain uncertain which benefit is most applicable to them they should seek further advice from their local benefits office.
- In exceptional circumstances where the customer has clearly claimed the wrong benefit in good faith the Secretary of State would consider full or partial waiver.
- The majority of previous abatements did not fall into this category but were largely where customers had failed to disclose working and claiming a means tested benefit. Notional Abatement was later used as a way of avoiding the consequences of such (often fraudulent) non-disclosure.

Letter to notify request for abatement turned down

(a) wrote to us on (b) with regard to (c) overpayment of (d) amounting to £(e) from (f) to (g).

You asked us to consider reducing the amount of the overpayment on the basis that (h) might have been payable for the period of the overpayment.

[Unfortunately as no claim to (h) was ever made we are unable consider any entitlement to that benefit. The overpayment therefore remains at £(e) and this is the amount you need to repay. Our previous letter explained how you can repay this amount.]

[As (h) is administered by the Inland Revenue we are unable to decide whether you had any entitlement for the period of the overpayment. Although it is unlikely that a claim could now be considered for this period, if you wish to make further enquiries you need to contact Inland Revenue

Notes

- (a) You or the person who wrote on the customer's behalf
- (b) Date of customer's letter
- (c) Your or the debtors name
- (d) Benefit overpaid
- (e) Amount of overpayment
- (f) Start date of overpayment
- (g) End date of overpayment
- (h) Notional benefit requested

REQUEST FOR WAIVER

In respect of: (name and NINO)

Referred from: (name and business unit)

Summary of how the overpayment occurred (please attach copy of decision)

Has the customer or their representative applied (if so please attach correspondence if not give background)

Has the decision been subject of appeal (please attach copy of appeal decision)

Is benefit in payment (if so what benefit and at what rate)

If the reason for application is illness is there evidence to support this (attach)

If the reason for application is financial is there evidence to support this i.e. breakdown of income/expenditure (attach)

Is the customer (debtor) in receipt of DLA (Special Rules) please tick

Yes

No

Is there any additional information to support application (please attach)

Debt Management Internal Circular