

The certification of housing and council tax benefit (HB/CTB) subsidy claims is carried out by local authorities' (LAs) external auditors (usually the Audit Commission). The authority to perform this body of work is provided by a distinct and separate clause in the Audit Commission Act of 1998 (ACA98).

Herein lies the potential for conflict, because the certification process is, in effect, an executive role conducted (at arms length) on behalf of the parent department. It can reduce the cash income available to an LA both temporarily and permanently. However, neither the external auditor nor the departmental Secretary of State has responsibility for the authority's finances. This responsibility lies only with the authority's Chief Executive and Section 151 Officer.

EXECUTIVE ROLE

The external auditor's primary role for auditing an LA's accounts is governed by clause five of ACA98. Among other things: this provides for the auditor to ensure that:

- the body whose accounts are being audited has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources; and
- the work is carried out in accordance with the code of practice.

The clause under which certification is carried out is number 28. It provides for a Minister to require that the Commission arranges for the certification of claims and returns in respect of grants or subsidies. Arrangements under this clause are not deemed to be subject to the provisions of clause five.

In the case of the subsidy for HB/CTB, the separate nature of the clause 28 provision is emphasised by the additional authority available to the Secretary of State at the DWP (under clause 140C of the Social Security Administration Act 1992) to withhold or abate the payment of subsidy for either:

- late submission of the audited claim; or
- breaches of the conditions specified in the regulations.

The Secretary of State can apply these provisions in a draconian manner if he or she so chooses. Nevertheless, it is clear from the way that the DWP operates that it employs both a carrot and stick approach. The certification process and the associated financial provisions form the major plank of the stick, but this is balanced by supportive policies (and finance) to help ensure that this primary policy for the implementation of the social security safety net in the UK is effective.

The authority of the Secretary of State at the DWP to require that the Commission

Certificate



Steve Allen discusses some of the potential controversies that could result from the process of certification of housing and council tax benefit subsidy claims

undertake the certification of benefits subsidy separately from the provisions of clause five, together with his potentially draconian powers to reduce subsidy payments, means that this process is a primarily executive rather than auditing role.

AUDIT INDEPENDENCE

It could be argued that the independence of your external auditor is not strictly relevant to the certification process. He is required to undertake the certification in accordance with arrangements agreed with the Minister and that is the end of the matter.

However, this does have an impact for the LA in deciding where it should seek

impartial advice on the operation of the benefits regulations. Normally, if the Section 151 Officer was unsure of the legality of any expenditure, he or she would seek advice from his or her external auditor. The external auditor, however, has a dual role as regards expenditure on benefits:

- auditing the accounts in which benefits expenditure and the associated subsidy are a major component; and
- certifying the subsidy claim.

This judge and jury role for the external auditor means that the Section 151 Officer must apply far greater care in accepting that advice, since it is potentially self-fulfilling. It cannot necessarily be seen as independent.

ed conflict

ROLE OF THE SECTION 151 OFFICER

The Section 151 Officer holds a pivotal role in managing and controlling an LA's finances on behalf of his or her Chief Executive and has responsibilities defined in law including:

- making lawful payments; and
- not taking any action that would result in unlawful payments or unlawful action.

It is also part of the Section 151 Officer's role to ensure that the external auditor has access to the information and records necessary to fulfil all the statutory duties.

The benefits regulations are both detailed and complex. There is extensive opportunity for error and misinterpretation in the making of payments. In the executive role of certifying the subsidy claim, the external auditor is, potentially, also prone to making errors of interpretation even if arithmetic errors are very rare. These errors would be extrapolated across the whole population of each relevant cell in the claim. The possibility that such errors might exist must be taken very seriously by the Section 151 Officer.

In normal circumstances, this is avoided by the Section 151 Officer confirming the factual accuracy of the external auditor's certificate/qualification letter. I do not know of any case where the external auditor has acknowledged that the Section 151 Officer does not agree with the facts in the certificate. The potential for conflict becomes serious where, for any reason, the Section 151

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IMPACT ON RELATIONS BETWEEN EXTERNAL AUDITOR AND LA

It has become clear from our involvement with these appeals that the Audit Commission takes the differentiation

Officer is unhappy about the performance and/or results of the certification process.

This conflict is exacerbated by the absence of any formal appeal route. At present, the LA letter to accompany the certificate/qualification is optional, and does not form part of the qualification. In practice, the DWP regards it as a letter of mitigation and a promise of future improved performance. Serious questions regarding the performance of the certification process can get overlooked.

APPEALING AGAINST QUALIFICATION

Even though it is uncommon, some LAs have appealed successfully against the inference in a letter of qualification that the Secretary of State should withhold or claw back subsidy already paid.

In general, such appeals involve the interpretation of the regulations in very specific but limited circumstances. For example, whether the absence of a tenancy agreement proving the specific start date of a tenancy be regarded as an error in the cell reporting regulated tenancies. Other appeals have also considered the pragmatism of the audit judgement in suggesting the need for extra work or evidence before the value in a cell (or a series of cells) could be validated.

between its standard audit work and the certification of subsidy claims very seriously. The Audit Commission has argued forcefully that the standard conventions applying to risk evaluation, the reporting of errors (including minor errors) and the associated need for additional work or assurance does not apply to certification audits under clause 28. In some cases, qualifications have been submitted to the DWP in the face of clear and cogent disagreement from the LA.

The fact that an appeal has been needed (whether or not successful) suggests that there is a significant breakdown in the normal working relationships between the external auditor and the LA when dealing with certification issues. A more formal appeal route is needed. We believe that where an authority has substantial disagreements with its external auditor, a statement (agreed with or prepared by the LA) outlining the basis and evidence for the disagreement should be included within the qualification letter. ■

FURTHER INFORMATION

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