



## **HOUSING AND COUNCIL TAX BENEFIT OVERPAYMENTS POLICY**

### **1.0 Council Responsibilities**

- 1.1 The Council recognises that overpayments of benefit will inevitably occur. The reasons may range from inadvertent error on the part of a benefit claimant in completing a claim form or in forgetting to report a relevant change in circumstances through to deliberate fraud. Overpayments can arise through the action of claimants, landlords and sometimes through official error or delay. In order to reduce the loss to public funds the policy of the Council is to ensure that firm but fair action is applied in the administration of overpayments. Positive action in the recovery of overpayments has a deterrent effect.
- 1.2 When making decisions about recovering any overpayment of benefit the Council has the responsibility to:
- a) Act in accordance with housing and council tax benefit law and guidance.
  - b) Stop the overpayment continuing.
  - c) Identify the amounts overpaid promptly
  - d) Classify the overpayment correctly.
  - e) Decide whether the overpayment is recoverable.
  - f) If recoverable, decide who should repay the overpayment and the most appropriate method of recovery.
  - g) Tell claimants and other affected persons of any decision.
  - h) Ensure that effective financial control is in place during the process.

### **2.0 Best Practice**

- 2.1 This policy reflects best practice in the procedure for dealing with and recovery of overpaid housing benefit and council tax benefit.
- 2.2 The Council will always be flexible in its approach to recovery of overpayments. Each case will be considered on its own merits. The Council recognises that a policy, which, for example, requires recovery in all cases or where recovery is always made from specific categories of people, is unlawful.

- 2.3 This policy has regard for the rights of individuals and obligations of the Council under the provisions of the Human Rights Act 1998. Everyone must be treated in a fair and consistent way, taking into account the Council's customer care and anti poverty strategies and having regard to any issues concerning diversity and equalities.

### **3.0 Application of the Policy**

- 3.1 An overpayment is defined as being any amount of Housing or Council Tax benefit which has been paid, but to which there was no entitlement whether on the initial decision or on a subsequently revised or superseded decision. The policy is to be applied to all cases where an overpayment of benefit may occur and to all identified recoverable overpayments.
- 3.2 The law says that all overpayments are recoverable with the sole exception of an overpayment that was caused entirely by official error and where the claimant or person receiving the benefit could not reasonably have been aware that the overpayment was occurring at the time it was paid or when notice of payment was sent. Both conditions must apply for an overpayment not to be recoverable.

### **4.0 Identification of Overpayments**

- 4.1 The Council will try to act on any information received in relation to a claimant's change of circumstances where possible within seven days where there is sufficient information to identify that an actual or potential overpayment has or may be occurring.
- 4.2 This will include stopping further ongoing payments of incorrect benefit.
- 4.3 The Council will take steps to identify incoming post, including notifications from Job Centre Plus and the Pensions Service where these indicate that action is needed to prevent an overpayment occurring so that the information may be processed promptly.

### **5.0 Decisions on Recoverability**

- 5.1 The Council will take steps to ensure that officers making decisions in relation to overpayment classification and recovery are properly trained to do so. Guidance notes will be issued to officers to assist them in making such decisions.
- 5.2 In deciding whether to recover an overpayment, the Council will consider in each case whether any element of official error was involved. Notwithstanding that an overpayment may legally be recoverable, it may use its discretion not to recover it or alternatively to recover only part of the money taking account of all the circumstances, including the personal circumstances of the person liable for repayment.
- 5.3 In the case of Council Tax benefit, any excess payment of rebate that had been awarded for the future period starting from the date that the award is corrected and ending with the end of the financial year will be recovered by adjustment to the

claimant's Council Tax account. This period is not to be treated as an overpayment but is a consequence of the way that Council Tax benefit is paid and excess benefit for this period is therefore always recoverable.

## **6.0 Classification of Overpayments**

6.1 All overpayments, whether recoverable or not, must be classified by appropriately trained officers. The classification must be recorded on the benefits computer system.

## **7.0 From Whom Should the Overpayment be Recovered?**

7.1 The Council will consider each case individually. This may mean that further information might need to be obtained from affected parties prior to a decision being made. Recovery should be made from the most appropriate person who may be:

- a) The claimant, or
- b) The person to whom the payment was made, or
- c) The person who misrepresented the material fact or failed to disclose the fact, or
- d) The partner of the claimant. However regulations provide that overpayments can only be recovered from a partner where the partner was living as a member of the claimant's family both at the time the overpayment occurred and at the time of the decision being made in respect of recovery.

7.2 Recovery of overpayments that have arisen as a result of fraud should, in the first instance, be sought from the person who misrepresented or failed to disclose the material facts giving rise to the overpayment.

7.3 There is a special case where payment has been made direct to a landlord. If the landlord tells the Council promptly about any fraudulent activity by a tenant and this prevents further overpayment occurring or enables investigations to be made, then any resulting future overpayment will normally be recovered only from the claimant or the person committing or aiding the fraud. In making such a decision, the Council will have full regard to the promptness with which the information was reported.

## **8.0 Methods of Recovery**

8.1 Recovery of Housing Benefit will be made by the most appropriate means in all cases. This will normally be by one of the methods below, applied generally in the following order of priority:

- a) By offsetting the debt against other benefit that has since become due.
- b) By periodic instalments from ongoing housing benefit.
- c) In the case of landlords, and where appropriate, by making deductions from their bulk Housing Benefit cheque/BACs payment in respect of other claimants as allowed by law.
- d) By issuing an invoice.
- e) By requesting deductions to be made from other Social Security benefits;

- f) By asking the Local Authority in whose area the debtor is currently claiming Housing Benefit to make deductions from the benefit they are paying the person.
- g) By referring the debt to a specialist debt collection agency.
- h) By asking an internal bailiff to visit.
- i) By action through the Courts including applying for bankruptcy where appropriate.

8.2 A period of not less than one month from the date of the overpayment decision being issued should normally elapse before recovery action is implemented. This time is to allow the claimant to make any reapplication for housing benefit and to allow the statutory time for any person affected by the decision to make an appeal. It will also allow time for a mutually acceptable arrangement for recovery of the overpayment to be made. However, the Council may send an invoice to accompany the notice of overpayment provided that it is also accompanied by a note making clear that the demand for repayment is provisional.

8.3 In respect of ongoing housing benefit deductions, the standard rate of recovery prescribed by regulations should be applied unless having regard to the health, financial circumstances, housing risk or need of the person from whom recovery is sought a lesser rate of repayment appears appropriate. Regulations provide that in all cases a minimum of 50p per week housing benefit must remain in payment. Where the person is a Council tenant, the Housing Department must be told in writing of the deductions to be made and they will also then issue the tenant with an appropriate notice of the fact.

8.4 The Council has decided that, in the case of its own tenants, overpayments must not be debited to the rent account unless the it is in credit. In deciding whether an account is in credit, the officer must have regard to the normal frequency of payments made and due.

8.5 Where recovery is sought from a bankrupt, recovery should be sought via ongoing benefit entitlement or from other prescribed benefits before considering any court action.

8.6 Where the case involves the death of a claimant, the deceased's representative or executor should be approached to seek recovery from the estate. However, the overpayment should not be recovered from ongoing benefit deductions from the surviving spouse.

8.6 In deciding the rate of recovery, officers must have regard to all the circumstances. The objective should be to recover overpayments within a reasonable period of time.

8.7 In the case of Council Tax benefit, any overpayment or excess benefit will be recovered by adjustment to the claimant's Council Tax account.

## **9.0 Calculation of Overpayments**

9.1 Where an overpayment is identified the Council will invite claimants to provide sufficient information to establish any underlying benefit entitlement.

- 9.2 The Council will try to carry out the calculation of the overpayment within 14 days where this is practicable.

## **10.0 Decision Notices**

- 10.1 All decision notices must be dated and issued to all the “affected persons” as prescribed by regulations as soon as practicable after the decision has been made.
- 10.2 All decision notices must fully comply with legislative requirements, and include the reasons for the decision, the right to request a statement of reasons and the right of reconsideration and appeal. The time limits for doing so must be clearly show on the notice.
- 10.3 Copies of the actual decision notice must be retained on the Council’s document imaging system for a period of not less than two years in order that they can be produced in the event of a future review/appeal/complaint or civil proceedings.

## **11.0 Recovery of Outstanding Overpayment Debts**

- 11.1 The Council has a statutory duty to minimise any loss to public funds. In seeking to recover overpayments of benefit, it will have regard to:
- a) The period of time that the debt may take to be recovered.
  - b) The effect of recovery on the affected person from whom recovery is sought.
  - c) The ability to repay of the affected person from whom recovery is sought.
  - d) The practicality of recovery of the debt and the cost of doing so.
- 11.2 All methods of recovery may be considered at any time, having regard for the circumstances of any individual case.
- 11.3 Sundry debt invoices are to be issued daily asking for payment in 14 days, followed by a reminder notice within 14 days of the payment due date and if necessary a final notice within a further 17 days. Throughout this period, recovery may be temporarily suspended because of outstanding correspondence. However, these cases should be in the minority. The use of these recovery stops should be monitored by the Recovery Team Manager to ensure they remain appropriate.
- 11.3 The Council may reconsider the methods used to recover overpayments at the end of each financial year for effectiveness and efficiency.

## **12.0 Debt Collection Agencies**

- 12.1 The Council recognises that there will always be cases where people will not pay until positive external action is taken.
- 12.2 Before an agency takes action to collect a debt the person will have received an invoice, a reminder and final notice and a notification of referral to the agency. At every opportunity, payers should have been actively encouraged to contact the Council for advice and assistance.

12.3 The following sets out the guidance and expectations for collection agencies:

- It is recognised that the debt collector has to use a degree of discretion. They are employed to do a specific job and anything that hinders their work affects value for money.
- At any time the debt collector will be prepared to enter into a payment arrangement if the debtor cannot pay in full.
- The debt collector should also be aware of any other sensitive issues such as recent family bereavements. If there is any doubt regarding the action to be taken in a particular case it should be referred back to the Recovery Team Manager.
- The debt collector must be able to verify the amount outstanding, explain fully the opportunity for making payment, make clear that full payment will stop further proceedings and explain what will happen in the case of non-payment.
- Debt collectors should report back where the person alleges that payment has been made. The debt collector must also report back if it is suspected that a hardship case has inadvertently been referred, or in suspected cases of error or difference of information.
- The Debt Collection agencies should remit payment to the council for monies collected at agreed intervals normally on a monthly cycle.

### **13.0 Internal Bailiffs**

13.1 The Council's internal bailiffs are also used when deemed appropriate. A bailiff will visit the debtor and attempt to agree a suitable payment arrangement with them and explain the enforcement process if agreement cannot be reached.

### **14.0 Legal Action**

14.1 If the debt remains unpaid it is normally passed to the Council's Legal Department if it economically viable to do so.

14.2 A letter will then be sent requesting payment in full or by reasonable instalments.

14.3 If no response is received a County Court Claim Form may be issued with costs. Further costs are added if judgement is obtained and enforcement action taken. The court costs may be cancelled in exceptional circumstances depending on the particular case.

14.4 The above action provides the Council with the a warrant of execution which is the preferred cost effective remedy, an order to obtain further information, an attachment of earnings order and a charging order as enforcement powers.

14.5 Proceedings will normally be consolidated with the recovery of outstanding Council Tax and/or Non-Domestic Rates.

## **15.0 Bankruptcy Proceedings**

- 15.1 The Council can apply to have the debtor made bankrupt (or, if the debtor is a limited company, put into liquidation). The debt must be at least £750. The Council recognises that such proceedings are very serious and if a bankruptcy order is made the person could lose their assets and home. Other recovery options should therefore be considered before commencing bankruptcy or liquidation proceedings.
- 15.2 The initial stage will be to serve a statutory demand notice. At that stage, officers should still enter into an arrangement with the person provided a substantial part of the debt is initially cleared with a lump sum and then instalment payments made thereafter.
- 15.3 If the person does not then contact the Council or make sufficient payments, a petition for their bankruptcy may be issued. As with other debts, officers will not, at this stage, normally enter into a financial arrangement with the debtor as the Council will not be a preferential creditor for the purposes of bankruptcy. This means that if the person were to be made bankrupt, there would be no guarantee that the Council would receive any dividends.

## **16.0 Customer Care**

- 16.1 Officers should aim to raise the awareness of recovery procedures and available assistance by:
- Actively encouraging people with problems to contact the Council early in the recovery process.
  - Providing information, help and advice, including benefits.
  - Readily accepting alternative payment arrangements including consolidating other arrears.
  - Acknowledging and respecting the person's obligations to their dependants.
  - Aiming to achieve a fair balance between the claims of competing creditors and recognising that customers need to maintain an acceptable standard of living.
- 16.2 Providing and making widely available clear and concise information about the statutory sanctions which the authority will use in the recovery process and what these mean to the person in terms of costs etc.

## **17.0 Cases for Write-Off**

- 17.1 Under the law, there is an obligation to take reasonable steps to collect debts. There are however many situations where there is justification for writing off debts provided reasonable steps have been taken regarding each individual case.
- 17.2 If the overpayment is less than £2500 and is considered for write off because of one of the circumstances below, then the debts are submitted to the Head of Revenues and Customer Services and Head of Financial Services for approval. Both of the above have to sign an authorisation to write off the debt(s). The write offs are presented on a schedule for this purpose. Write off schedules are

presented on a monthly basis wherever possible. Once debts have been authorised by the above they are actioned on the computerised accounts system.

- 17.3 If the debt is greater than £2500 and it needs to be authorised for write off because of one of the circumstances below, then the debts are submitted for formal consultation to the Cabinet Member Resources. These are presented when they occur. Once the debts are approved for write off they are actioned on the computerised account system. Under the Councils call-in procedure the schedule of debts for write off is circulated to all elected Members, which enables them to identify any cases where they may have personal knowledge of the whereabouts of a debtor.
- 17.4 Listed below are the main circumstances where an unrecoverable overpayment will be considered for write off:
- (1) Where the debtor is made insolvent (bankruptcies, insolvencies and administration orders).
  - (2) The debtor dies and there are no funds within the estate to pay the debt.
  - (3) The debtor has left the Borough and we are unable to trace their whereabouts.
  - (4) Where the cost of collection will be greater than the amount of the debt (i.e. recommendations from legal section).
  - (5) Where other information obtained makes it clear that it is uneconomical or impractical to recover the debt.
  - (6) Hardship cases where the individual circumstances of the debtor may lead to a decision to write off a debt.
  - (7) Where the debt is time barred.
- 17.5 The appropriate records including recommendations must be kept to show that reasonable steps have been taken before write off is considered. This will involve notation on the debtors notes screen (using the reasons above) giving the reason for write off and action taken. The exception to this will be where legal/bailiff recommend a write off and in this instance the paper record will be kept with the schedule. Spot checks will be made on a quarterly basis to ensure that debts are written off appropriately. Papers will be kept where any spot check throws up an error in the above guidance.

Reviewed and minor changes agreed.

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Head of Revenues and Customer Services  
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