

# 1. Overpaid Housing Benefit

## General information

- 1.1. Recovery of overpaid Housing Benefit is carried out with due regard of the Department for Work and Pensions Good Practice Guide.
- 1.2. An overpayment is any amount of Housing Benefit that has been paid but to which there was no entitlement.
- 1.3. When we identify an overpayment, we will write to the benefit claimant and provide the following information:
  - Reason for the overpayment
  - Amount of the overpayment
  - Benefit period covered
  - Method of recovery
  - Rights of appeal
- 1.4. We will calculate overpayments quickly and accurately and to provide quality information to the people affected, ensuring we recover the correct amount. To achieve this we will:
  - Invite claimants to apply for underlying entitlement to benefit
  - Calculate overpaid benefit on average, within 14 days of getting the information we need
  - Use the proper effective date of change to fix the correct overpayment period
  - Consider uncashed or returned cheques or underpayment of benefit.
- 1.5. We will correctly classify overpayments for subsidy purposes to prevent loss of subsidy.
- 1.6. We will only issue invoices when a recoverable overpayment of Housing Benefit exists and we cannot recover automatically through deductions from on-going benefit.
- 1.7. The Housing Benefit (Recovery of Overpayments) Regulations 1997 allow us to recover overpayments from landlords from their current tenants' claim. We will, in appropriate circumstances, reduce payments to landlords for their current tenants to recover overpayments that arose for former tenants. We will take this action when the original tenant has no continuing

Housing Benefit and when there was a misrepresentation or failure to disclose a material fact (blameless tenant deductions).

- 1.8. We will maintain contact with debtors through telephone contact and visits to their properties to encourage repayment.

### **Prevention of overpaid benefit**

- 1.9. Somerset West and Taunton Council believes prevention of overpaid benefit debt is better than cure. Therefore strict measures are to be employed to prevent overpayments occurring. These will include:
  - Using a well laid out application form to collate accurate information which contains an unambiguous statement that failure to provide correct information could lead to overpayments of benefit and to prosecution
  - Ensuring all benefit letters and relevant correspondence inform the people affected of their responsibility to tell the Council of any change of circumstances that may affect their claim
  - Making use of the Verification Framework techniques and procedures for example:
    - Using checks for identity, residency and National Insurance numbers.
    - Tailored reviews for high-risk claimants.
    - Visiting programmes targeting high-risk claimants.
  - Ensuring all staff involved with overpayments receive enough training with comprehensive access to overpayment recovery procedures and an awareness of problems relating to debt
  - Providing regular fraud awareness training for staff who have contact with claimants
  - Using and developing information technology to automate the identification and recovery of overpayments and to reduce error
  - Dealing quickly with reported changes of circumstances
  - Including publicity material, for example posters, guidance pamphlets sent with application forms and landlord undertakings, information on responsibilities for reporting changes of circumstances
  - Ensuring procedures are in place for the prompt ending of benefit where a claimant does not comply with a review of their claim
  - Taking part in various data matching exercises with external agencies and cross matching against internal databases while adhering to principles contained in Data Protection and Human Rights Acts.

## Recovery of overpaid benefit

- 1.10. Generally, all overpayments are recoverable, regardless of the reason they occurred, where the claimant or person to whom the benefit was paid can reasonably have been expected to know they were receiving benefit to which they were not entitled.
- 1.11. When an overpayment is classed as recoverable the Officer dealing with the claim must make a separate decision on whether to recover the overpayment.
- 1.12. Recovery of the overpaid benefit can be sought from the claimant or the person to whom the payment was made. Recovery will only be sought from the landlord or agent where they could be expected to have known about the change in circumstances leading to the overpayment. Recovery can also be sought from their partner, if they were a couple when the overpayment was made and at the time of recovery.
- 1.13. In most cases recovery of a recoverable overpayment will be sought. However, consideration will be given to the personal and financial circumstances of the person from whom recovery would be sought. If the situation is unclear we will contact or visit the claimant for clarification.
- 1.14. Where we decide an overpayment is recoverable, recovery arrangements will proceed in the following hierarchy:
  - From arrears of Housing Benefit. Via lump sum recovery
  - From continuing Housing Benefit. This includes direct payments to a landlord for that claimant even if that claimant has moved or changed landlord. We will base recovery rates on DWP guidelines and will always initially apply the maximum recovery rate permissible. However officers will be empowered to consider applications from debtors to reduce the recovery rate in cases where there is demonstrable hardship. This includes collection from another Authority (see below)
  - We will raise an invoice if there is no continuing Housing Benefit and no likelihood of continuing benefit or reduction through underlying entitlement
  - We will produce all invoices, reminders and final notices using the Civica Debtors (or whatever future revenues system that may be appropriate)
  - At this point we will seek to recover the overpayment in full by a single payment, especially if the overpayment has occurred due to excess capital. However, where this is not possible, due to the debtor's financial circumstances we may agree a payment plan involving instalments (see 2.29 for guidance on maximum repayment periods)

- By deductions from other Social Security Benefits managed by the Department for Work and Pensions. Section 75(1) of the Social Security Administration Act 1992 allows recovery of overpaid Housing Benefit by deduction from prescribed benefits that are defined in Regulation 105 of the Housing Benefit Regulations 1987.

1.15. Where we raise an invoice and do not get payment after issuing a final notice, we will consider implementing a Direct Earnings Attachment (DEA) as provided for under the Social Security (Overpayments and Recovery) Regulations 2013. A DEA gives Somerset West and Taunton Council the power to recover overpaid Housing Benefit by deductions from earnings without applying for a court order. DEAs give us the opportunity to recover these debts from employed people if they:

- refuse to repay
- cannot agree an acceptable repayment plan
- default on a voluntary repayment arrangement.

If a debtor fails to provide information requested to support a DEA, or an employer fails to comply with their duties, they could be subject, on conviction, to a fine of up to £1,000 (Regulation 30 of the Social Security (Overpayments and Recovery) Regulations 2013).

1.16. In some circumstances, we may decide to instruct an external professional debt collection agent and their actions are governed by the Council's Service Level Agreement or contract.

1.17. As an alternative to a DEA, we will consider issuing a claim/judgement against the debtor in the County Court. We will make this decision on the realistic prospect of obtaining payment of the debt by a County Court Judgement (CCJ) and the follow up actions. More often than not these actions are taken when we know the debtor is self-employed, although they have failed to divulge this information. Following on from a CCJ an Order of Questioning would be requested from the County Court to whereupon the debtor is summonsed to appear to explain their finances.

1.18. If a debtor has moved to another Authority's area and is in receipt of Housing Benefit then a letter may be sent to that Authority to request that they make deductions from the ongoing benefit at an appropriate rate. This request is made to the relevant Local Authority by using the letter template "Request other LA recovery from ongoing HB". This letter asks them to consider recovery, although they are not obliged, under statute, to undertake such a recovery. However, if the other Authority agrees to make a charge once this recovery method has been set up it will continue until clear (providing the charge is reasonable in relation to the outstanding balance). The mechanics of how this form of recovery is done are entirely up to the two Authorities although any and all amounts recovered must be

paid to Somerset West and Taunton Council in a timely manner when deductions have ceased. It is good practice for an officer to enter a diary date to contact the Authority in question to chase outstanding funds. It is appreciated that this method can be complex, although recovery this way should always be considered. This method can only be used where the claimant remains entitled to benefit.

## **Debt repayment arrangements**

- 1.19. Officers will encourage people owing money for overpaid Housing Benefit to make contact at an early stage in the recovery process.
- 1.20. When a person makes contact, we aim to agree a realistic payment agreement. If there is any doubt as to whether the agreement is realistic (either because it appears to be too high or too low), officers will ask the individual to complete an income and expenditure form.
- 1.21. Officers will try to get as much detail as possible of a person's circumstances to make the best assessment of their ability to pay. However if a person refuses to divulge any information, this could be considered as a reason to refuse an arrangement.
- 1.22. In some cases it may be necessary to request documentary proof to confirm particular details when arriving at a payment arrangement. Individuals should not however be asked for documentary evidence unless it is absolutely necessary.
- 1.23. If it is necessary the individual should be told of the particular items that require confirmation and be given a specified reasonable time limit within which they are required.
- 1.24. The individual should be advised that if the evidence is not produced within the agreed timescale the offer of payment may be rejected and further action could be taken.
- 1.25. All information collected is governed by the Data Protection Act 1998 and the Revenues and Benefits Service has procedures in place to comply with the Act.
- 1.26. Officers will closely monitor all payment arrangements and will take prompt recovery action for missed payments. Action may be taken, even where payment is received shortly after the due date.
- 1.27. The responsibility for making sure the payment reaches the account by the due date remains with the debtor. The debtor should be reminded the date on which instalments are to be paid is the final date on which money should reach the account.

- 1.28. This means that debtors must allow sufficient time for the payments to reach the Council by the due date.
- 1.29. We will individually consider repayment for every case and, where possible, will seek to recover the debt in full within 12 months. If it is not possible to recover the debt in full within 12 months, in exceptional circumstances, alternative repayments may be offered with an ideal maximum repayment term of five years. Very occasionally arrangements may need to extend beyond five years and in such instances, approval from a Senior Officer (grade H and above) in the Customer functional area must be obtained. No repayments should ever extend beyond 10 years.
- 1.30. It is important to remind the individual to contact the Council if they anticipate problems in meeting any instalment due date. They will be advised not to wait until they have received a written response to their offer of payment, but to start and maintain payments.

### **Monitoring recovery of overpaid Housing Benefit**

- 1.31. The Council will monitor recovery of overpaid Housing Benefit through success in meeting the following Performance Indicators:
- Amount of overpaid Housing Benefit recovered during the period as a percentage of total amount of overpaid Housing Benefit identified during the period
  - Amount of overpaid Housing Benefit recovered during the period as a percentage of the total amount of Housing Benefit overpayment debt outstanding at the start of the period plus amount of overpaid Housing Benefit identified during the period
  - Amount of overpaid Housing Benefit written off during the period as a percentage of total amounts of overpaid Housing Benefit debt outstanding at the start of the period plus amount of overpaid Housing Benefit identified during the period.
- 1.32. From 2016/17, with a view to increase collection and targets, Housing Benefit Overpayment statistics are monitored more frequently. The monitoring includes all overpayments created, the recovery deduction from weekly on-going Housing Benefit (OGB) and recovery through manual invoice along with the total amount outstanding being reported.
- 1.33. Any additional recovery information such as the number of County Court Judgements (CCJ's) and Direct Earning Attachments (DEA's) will also be documented.

### **Write Offs**

- 1.34. The Section 151 Officer is responsible for the arrangements dealing with write off of irrecoverable debts.

- 1.35. Any write off per debtor greater than £25,000 in any year will be reported to the Executive for information.
- 1.36. The Section 151 Officer is responsible for establishing a scheme of delegations for write offs.
- 1.37. Where a debt becomes uncollectable, any debts written off shall be in accordance with the following procedures:

<b>Threshold</b>	<b>Housing Benefits</b>
£0 to £10	Customer Champion
£10-£100	Case Manager
£100-£1,000	Specialist / Senior Case Manager responsible for income activity
£1,000-£5,000	Head of Customer
£5,000 +	Section 151 Officer