

The following notes provide an overview of how Housing Benefit Overpayment may occur and recognises that there is detailed legislation and case law concerning administration of the Benefits System.

Details of Good Practise have also been included which is designed to provide guidance about how the Authority will recover an overpayment.

Pursuing Housing Benefit overpayment

Debt recovery should at all times be proportionate and always take account of the debtors personal circumstances. We should always treat each case individually and ensure we adhere to related council policies, e.g. Supporting vulnerable customers etc. We should always consider any informal reasonable offer for repayment before taking any formal act.

Requirements

Procedures are in place to prevent overpayments occurring, but when they do occur there are overpayment procedures, readily available to all relevant employees (Knowledge Hub) **X:\Revenues\BENEFITS KNOWLEDGE HUB\Overpayments & Underlying Entitlement**

Which allow them to:

- identify overpayments promptly
- stop the overpayment continuing
- calculate the overpayment correctly, considering underlying entitlement
- Correctly classify overpayments and decide whether they are recoverable, and if so, from whom and whether to recover
- notify customers and other affected persons quickly
- pursue recovery by the most speedy, cost effective and efficient methods available in line with legislation, having regard to policy issues such as the wider consequences of recovery action

Firm and fair action taken by the LA in administering overpayments will have the effect of encouraging customers or their representatives to give correct and timely information regarding their claim and deter benefit fraud.

What causes Housing Benefit Overpayments?

Benefit overpayments can occur for a number of reasons:

- Local Authority Error
- DWP Error
- Claimant Error
- Third Party Error
- It is no one's fault
- Other

Which Overpayments are Recoverable

An overpayment is recoverable if

- It arose because of 'official error' and the claimant or someone acting on their behalf could reasonably have been expected to realise it was an overpayment
- It is due to an error (or fraud) of the claimant or third party
- It is no one's fault

How we decide if we should recover the Overpayment

The Council has a degree of discretion whether to recover an overpayment. Personal circumstances are always considered before deciding to recover any outstanding amounts

- The Council may decide not to recover an overpayment where the claimant circumstances are exceptional, or where the Council considers the claimant to be a vulnerable person.
- Current subsidy arrangements penalise the Council financially if we decide not to recover the majority of overpayments. Consequently, the Council must carefully consider any decision to attempt to recover an overpayment (or not), bearing in mind the wider and potentially significant financial implications for the Council.

Notification of Overpayments

Any claimant asked to repay an overpayment must receive notification. This notification must confirm:

That an overpayment has occurred and whether it is recoverable

- The reason for the overpayment
- The amount of the overpayment
- How the overpayment was calculated
- The dates the overpayment covers
- The amount of the deduction from ongoing benefit (if appropriate)
- How the overpayment will be recovered if deductions are not being made from ongoing benefit
- The right of appeal

Who we should recover from?

Overpayments can be recovered from the claimant, the person acting on the claimant's behalf and/or from the person to whom it was paid. We are also able to recover from landlords when they have received the money directly.

Methods of Recovery

There are several methods of recovery for overpaid Housing Benefit.

- From arrears of Housing Benefit that become payable while there is an outstanding overpayment
- By deduction from ongoing Housing Benefit
- By deduction from the partner's ongoing Housing Benefit, as long as the claimant and partner were a couple at both the time of the overpayment and when deductions are being made
- By deduction from certain DWP benefits
- By recovering from Housing Benefit paid to a landlord/agent for another tenant. i.e. when the landlord has been classed as responsible for the overpayment
- By invoicing the affected person for the amount outstanding
- By Direct Earnings Attachment
- By civil proceedings
- From the estate of a deceased person who has an overpayment

Deductions from Ongoing Benefit

- We will usually deduct a recoverable overpayment of Housing Benefit from ongoing Housing Benefit which could be paid to the claimant, landlord, appointee or agent. The maximum rates of recovery are set out by the Government each year
- In order to recover from ongoing Housing Benefit entitlement, the claimant must have a minimum entitlement to Housing Benefit of £1.00 and be left with a minimum of 50p per week.
- Where a claimant contacts the Council and states that the level of recovery is causing financial hardship, they will be asked to complete an income and expenditure form. The Debt Recovery Team will then decide based on this information whether to arrange for a lower amount to be recovered.
- Should a claimant wish to repay an overpayment at a higher rate, we can accept this as long as it does not exceed the customer's ability to make the payments.

Underlying Entitlement

- The amount of a recoverable overpayment that is to be recovered should have 'Underlying Entitlement' deducted from it.
- The reason for underlying entitlement is to enable proper calculation of an overpayment.
- Underlying Entitlement is the notional amount of Housing Benefit that is calculated on a claimant's actual details, had they been known at the correct time.
- Underlying entitlement can only be used to reduce an overpayment and not paid out to the claimant.

Blameless Tenant Recovery

- If a recoverable overpayment of Housing Benefit was paid to a landlord/agent, and was due to a tenant vacating a property, the tenant has passed away, or any 'other' reason, the overpayment can be deducted from future payments to landlords/agents in respect of another 'blameless' tenant's Housing Benefit
- If the Council decides to utilise this method, we will notify the landlord/agent which tenant's Housing Benefit was overpaid and who is the blameless tenant. The blameless tenant will not be notified.

Raising a Sundry Debt for claimants no longer in receipt of Housing Benefit

- Where the claimant is no longer in receipt of Housing Benefit an invoice will be raised and sent for the full balance outstanding, to be paid within 14 days.
- If the Invoice remains unpaid or the claimant has failed to make contact and agree a payment arrangement a reminder notice will be issued within 14 days
- If the Invoice remains unpaid or the claimant has failed to make contact and agree a payment arrangement the debt will be managed by the Debt Recovery Team to contact the debtor and agree a repayment plan.

Monitoring debt by the Debt Recovery Team

The Benefit Debt Recovery Team will consider the most effective recovery methods to recover an outstanding overpayment. The following recovery methods can be considered.

Contacting the debtor Direct

Contact the Debtor by Phone, text, Email, letter, to agree a payment arrangement.

Deductions from DWP Benefits

A recoverable overpayment of Housing Benefit may be deducted from the claimant's or partner's DWP benefits, but only if the overpayment was due to misrepresentation of, or failure to disclose, a material fact, and only if the authority is unable to recover overpaid Housing Benefit from future awards of Housing Benefit.

The authority can forward an electronic request to recover from the following DWP benefits

- Attendance Allowance (AA)
- Bereavement Allowance (BA)
- Carer's Allowance (CA)
- Disability Living Allowance (DLA)
- Employment Support Allowance (contributory) (ESA(C))
- Employment Support Allowance (income-related) (ESA (IR))
- Incapacity Benefit (IB)
- Industrial Death Benefit (IDB)
- Industrial Injuries Disablement Benefit (IIDB)
- Income Support (IS)
- Jobseeker's Allowance (contribution based) (JSA (C))
- Jobseeker's Allowance (income based) (JSA (IB))
- Maternity Allowance (MA)
- Personal Independence Payments (PIP)
- Severe Disablement Allowance (SDA)
- State Pension Credit (SPC)
- State Pension (SP)/Retirement Pension (RP)
- Universal Credit (UC)
- War Disablement Pension (WDP)
- War Pension (WP)
- Widowed Parents Allowance (WPA)

Direct Earnings Attachment

- The Welfare Reform Act 2012 supported by the Social Security (Overpayments and Recovery) Regulations 2013 introduced Direct Earnings Attachments (DEA) from April 2013.
- A DEA allows for recovery of overpaid benefit directly from a debtor's earnings without having to apply via the court system. The regulations also allow Local Authorities to recover overpayments of Housing Benefit using a DEA. Where the Council becomes aware of a debtors employment the Council will consider a DEA as a means to recover the outstanding money.
- In order to make the debtor aware that a DEA is being considered the Council will always issue a Letter before Action to the debtor. The purpose of the Letter before Action is to prompt the debtor to contact the Council in an attempt to seek a voluntary repayment from them without the need for a DEA. If there is no contact from the debtor, the DEA is implemented after 7 days.
- Since 2018 the Council has accessed the Housing Benefit Debt Service (HBDS) which provides Local Authorities with access to real time employment and income information to help with the recovery of Housing Benefit debt.

Recovery through the County Court

- The Council may commence proceedings against the debtor in the County Court and obtain a County Court judgement. This request will be forwarded to our Legal Team. If the Council obtains a County Court judgement significant costs and interest charges of 8 % may be incurred payable by the debtor.
- A County Court Judgement will usually be entered on the register of County Court Judgements. Most entries stay on the register for six years. Organisations such as banks, building societies and credit agencies use information on the register when someone applies for credit such as a loan or overdraft and use this information to help them decide whether or not that person would be able to pay off the credit
- The Council will send due notification to the debtor if is considering proceedings against the debtor in the County Court.

Effective debt recovery

Good practice includes:

Setting out a recovery plan for each case prior to taking any action, as there is little point in pursuing a debt:

- if there is no prospect of recovering it
- by a recovery method that will not succeed
- ensuring that administration processes fully support the effective recovery of any subsequent overpayment by:
 - Capturing telephone numbers (land and mobile) and email addresses so that contact can be made with debtors by phoning, text messaging and email, as required, throughout the recovery process. Text messaging and emails appear to be far more effective than contact through phoning, as debtors find this less intrusive and can respond at a convenient time to them
 - Ensuring that an income and expenditure form is completed if a debtor claims hardship.
 - making use of the DEA powers (without the need for County Court action) It is good practice to send an initial DEA before action letter to the debtor prior to any action being taken to initiate a DEA. This gives the debtor the opportunity to make payment arrangements outside of a DEA before the DEA is started. However, when accepting a recovery rate from a debtor the Benefit Debt Recovery Team should have reference to the amount they could recover through a DEA and take this into account in its decision making process, and so that DEA can be used in appropriate circumstances. You can use a DEA in preference to recovery from benefit if the debtor is in receipt of another benefit but not in receipt of HB. However, a DEAs are only used if the debtor fails to engage with the LA and make a reasonable repayment offer or defaults on an agreed arrangement
 - make use of employer details gathered as part of the Real Time Information
 - Use of social media sites to obtain employer information
 - The income and expenditure form captures the employer details
 - Overpayment benefit memo's capture full details of employer
 - Debt Recovery Officers use 'employer' tracing methods where the employer is unknown (Housing Benefit Debt Service)

- Debt Recovery Officers reviewing existing recovery rates regularly (re completing income and expenditure forms to debtors that have previously agreed reduced repayments to ensure that the recovery rate remains appropriate)
- ensuring that processes are in place to identify any breakdown in instalment repayments immediately
- ensuring that where the debt is sufficiently large, County Court procedures are used (but only if you have a realistic prospect of recovery)
- keeping in view the largest debts to ensure all appropriate action is taken
- use of social media sites to provide an indication as to a debtors potential means of repayment/life style
- using credit reference agency information to support the recovery process

Breathing Space

- Breathing Space was introduced with effect from 4 May 2021. The Breathing Space Regulations give someone in problem debt the right to legal protection from their creditors for a period of time in order to put their financial affairs in order.
- Standard Breathing Space last for 60 days and must be initiated by a debt advice provider
- Mental Health Breathing Space lasts as long as a debtor is receiving mental health crisis treatment plus 30 days.
- Cannock Chase and Stafford Borough Council receive Breathing Space notifications and takes appropriate action to stop enforcement action while a debtor is in Breathing Space

Writing off debt Good practice includes:

- Writing off debt where there is little prospect of the debt being repaid
- ensuring debt is only written-off, after all avenues of recovery that the LA considers appropriate have been considered
- notating system/system flagging of outstanding overpayments when benefit is no longer in payment, in the event of future benefit award, or other change of circumstances, to enable recovery in the future
- Regularly reviewing debt that has been written off in order to consider recommencing recovery action (particularly larger debts).

Housing Benefit Overpayment Recovery flow chart

