

# **Benefit overpayment policy**

## **Background**

Overpayments are amounts of benefit that have been paid to a claimant or landlord and a subsequent entitlement review establishes that the amount paid was in excess of the claimant's entitlement. The council has a responsibility to collect as much of this money as possible where it is deemed appropriate. Before any recovery action can commence the cause of the overpayment must first be established. Causes of overpayment can be:

- Local Authority error, e.g. the council failing to act upon a notification
- Benefit Agency error, e.g. Benefit Agency mistake in income support or JSA award.
- Claimant error or fraud, e.g. the claimant having failed to notify change in circumstances.
- Generally all 'recoverable overpayments' fall into the last classification of 'claimant error or fraud'

## **Council Tax Benefit**

Overpaid council tax benefit is recovered from your council tax account. We will add the overpaid amount to your account and you will be sent a new council tax bill.

## **Policy Aim**

It is the aim of The Revenues and Benefits to collect recoverable overpayments where possible and appropriate.

This document outlines the procedures and criteria by which this aim may be achieved.

## **Procedural Framework**

- All overpayments must be correctly advised
- An appeal period of 1 month is provided in the procedure
- All overpayments must be correctly invoiced
- Where payment or a payment arrangement is not forthcoming two reminders will be issued
- Further failure to establish contact will result in a Final Notice being issued
- Claims through County Court action will be considered as an option having regard to the criteria for prosecution. Once a County Court Order has been granted the normal methods of enforcement are then available to the authority, i.e. attachment to earnings order, garnishee order, charging order or a distress warrant executed through the county court bailiffs.

## **From whom may recovery be sought?**

A recoverable overpayment may always be recovered from either;

- The claimant; or

- The person to whom the benefit was paid.

Where an overpayment has arisen due to misrepresentation or failure to disclose relevant facts, the overpayment may be recovered from either:

- The claimant
- Someone on his/her behalf such as an appointee or agent
- The person to whom a payment may be made such as a landlord

A fraudulent overpayment may occur when a person has deliberately provided a false statement or document, or has deliberately failed to report a change of circumstances with the intention of obtaining or retaining Benefit.

### **Criteria for Recovery action**

The following considerations will be made when determining whether or not to pursue recovery action:

- Is it legally a 'recoverable' debt?
- Is it in the public interest to pursue the debt?
- The magnitude of the debt
- Are there other similar debts?
- The history of previous recovery action
- Mitigating circumstances?
- Other factors apparent, e.g. illness, age, severe financial hardship, drug/alcohol abuse, etc

### **Recovery from the tenant?**

If the tenant is currently receiving housing benefit, the overpayment will be recovered from future benefit payments by a weekly deduction known as a 'claw-back'.

If payments are made direct to the landlord, the tenant's reduced entitlement will be reflected by the amount of the benefit payment that is issued every 4 weeks.

The tenant is responsible for paying any rent arrears that occur as a result of the reduced amount paid to the landlord.

If the tenant is not currently receiving housing benefit, the overpayment may be recovered from other benefits or an invoice for payment may be issued.

Recovery of an overpayment will not prejudice any criminal proceedings that may be taken by the Council in respect of fraudulent overpayments.

### **Recovery from the landlord?**

If the Council has decided to recover an overpayment from a landlord it will issue an invoice or make deductions from other tenants' benefit paid to that landlord via Blameless Tenant Recovery. The amount of these deductions should not be treated as rent arrears for those tenants, and the landlord must not try to recover the shortfall from them.

Recovery of an overpayment will not prejudice any criminal proceedings that may be taken by the Council in respect of fraudulent overpayments.

### **Is there a right of appeal?**

For further information on reviews and the Appeals process see 'Housing Benefit Reviews and Appeals'.

The claimant can ask for a review of a decision to calculate an overpayment. Any such request should be made within 1 month of the decision notice.

A landlord can request a review where recovery is being sought from him personally; that is, where an invoice for payment has been issued to him, or a deduction is being made from the benefit he receives for one of his tenants in order to recover an overpayment owed by the landlord in respect of another tenant.

Where the landlord owes the overpayment personally, he will be notified in writing of a decision to recover from him. Any request for a review should be made within 1 month of the decision notice.

A landlord can write to the Council at any time requesting a written statement of reasons for the recovery of an overpayment from him.

### **Important notes**

A landlord can only request a review where recovery is being sought from him personally; that is, where an invoice for payment has been issued to him, or a deduction is being made from the benefit he receives for one of his tenants in order to recover an overpayment owed by the landlord.

If a landlord habitually fails to repay overpayments that are recoverable from him, the Council can decide that the landlord is not a 'fit and proper person' under Benefit Regulations, and can refuse to make direct benefit payments to that landlord.