

London Borough of Harrow Housing Benefits Service

HB OVERPAYMENTS POLICY 2010 onwards

Although this policy deals with the collection of overpaid Housing Benefit it should be noted that Harrow has an efficient service for calculating benefit entitlement which makes every effort to pay the correct amount first time. Our objective is not to overpay people by ensuring we proactively identify changes in circumstance and respond quickly to any notified changes so limiting and minimising any potential overpayments. However we do accept that sometimes this is unavoidable.

POLICY OBJECTIVES

- 1 To ensure
 - compliance with The HB/CTB (General) Regulations And The CTB (General) Regulations (HB/CTB Regns) and best practice in the decision, notification and recovery of overpayments
 - that the recovery of overpayments is maximised
 - that discretionary decisions re recoverability and recovery rates are reasonably made
 - that effective recovery methods are used
 - that claimants are notified about overpayment decisions in the prescribed manner
 - that claimants know their rights to request a review or appeal against overpayment decisions
 - that operational procedures satisfy internal and external audit considerations, and are being followed accurately
 - that performance targets seek continuous improvement
 - support for the Council's Vision and Corporate Strategic Priorities

POLICY STATEMENT

- 2.1 The Council is committed to operating a policy for the decision, notification and recovery of overpayments which is fair and equitable, and which complies with the HB/CTB Regulations and best practice. The Council recognises that effective recovery of overpayments is not achieved if debtors do not believe that operational procedures have been accurately followed, and they have been given the opportunity to make representations about their circumstances.
- 2.2 The Council takes account of all relevant information when making discretionary decisions about overpayments relating to recoverability and rate of recovery. The Council does not operate blanket procedures that would result in their discretion being fettered; nor does it ignore relevant information that would assist making good quality discretionary decisions.
- 2.3 The Council ensures that claimants and landlords know their rights to request a review or appeal against decisions relating to overpayments, within the HB and CTB (Decision-Making and Appeals) Regulations 2001 (DMA Regns). Where review and appeal rights are

available to debtors the Council actively promotes their use as a speedy and effective way to resolve disputes.

- 2.4 The Council provides for internal checks and quality control mechanisms to ensure the correct application of this policy. The Council also ensures that counter fraud operational procedures satisfy internal and external audit considerations. Policies and strategies are adopted by the Council, who require their decisions to be applied consistently on behalf of the community.
- 2.5 The Council takes in to account Department of Work and Pensions guidance regarding all aspects of overpayments in the Housing Benefit/Council Tax Benefit overpayment Guide. The guide is available to all staff.
- 2.6 The Council seeks maximum recovery of overpayments, while giving consideration to Department for Work and Pensions (DWP) guidance, relating to the rate of recovery for different claimant circumstances. Attempting to recover overpayments at inappropriate rates promotes resistance to the debt, resulting in costly administrative procedures and avoidable anxieties amongst already vulnerable members of the community.
- 2.7 All targets are reviewed every year with a view to improving performance across the Benefits Service. The Council is committed to achieving top quartile performance across all HB/CTB Performance Indicators.
- 2.8 The Council will seek to reduce the amount of overpayments created by processing at least 95% of notified change of circumstances before the first pay-day following the date that information was received. The Council will also utilise all methods to remind claimants and stakeholders of their obligations to keep us informed of changes of circumstances. The Council will also ensure effective allocation of resource to identify change events at the earliest point resulting in a reduction to potential overpayments.
- 2.9 The Council reviews this policy every year.

STRATEGY

3 Background to overpayments

- 3.1 HB/CTB Regulations are complex and those governing benefits overpayments are even more so. They cause deep concern for claimants who are often in financial hardship; and the poor administration of overpayments costs the Council in subsidy loss.
- 3.2 The correct maintenance of a benefit claim depends on claimants keeping the Council up-to-date about changes to their income, savings and household circumstances, at the time changes occur. This is frequently not the case, thus overpayments occur. In many cases the claimant assumes that the change has already been notified by other agencies such as the DWP, or may not be aware that the change affects their benefit entitlement. A small number of high value overpayments are caused by fraudulent claims.

- 3.3 Because overpayments occur where claimants receive low income, the potential for successful recovery is low, and many repayment agreements are long term at low recovery rates. The sooner overpayments are dealt with the more successful recovery can be. The council aims to reduce overpayments created as the most successful method of reducing the outstanding debt.
- 3.4 Consideration is also given to the corporate impact of recovery of overpayments. If a claimant has debts with other Services they are likely to also be receiving support from other Council Services. Inter departmental working will enable informed decisions to be made with respect to how and if an overpayment should be recovered.

4 Summary of strategic elements

- 4.1 The policy objectives above are potentially conflicting, therefore a balance must be struck between deciding whether it is reasonable to recover an overpayment and the need to maximise recovery. The following sections set out the elements of the strategy to achieve the policy objectives, with their service standards, specifically covering the following issues
- Section 5 – Legal duties – apply the HB/CTB Regns to identify and create overpayments
 - Section 6 – Financial responsibilities – seek to maximise recovery and minimise costs
 - Section 6 – Financial responsibilities – allocate the correct subsidy classification to each overpayment
 - Section 6 – Financial responsibilities – observe proper control of debts to be written-off
 - Section 7 – Recoverability and recovery – decide whether an overpayment is to be recovered
 - Section 7 – Recoverability and recovery – ensure that recovery rate decisions do not cause undue hardship
 - Section 8 – Recovery methods – use effective legal procedures
 - Section 9 – Decision notices – notify claimants within the regulations that an overpayment has occurred, whether it is recoverable, and how recovery is proposed
 - Section 10 – Claimant and landlord rights – make claimants aware of their rights to request a review or appeal against overpayment decisions
 - Section 11 – Quality Control – ensure decision-makers make accurate decisions
 - Section 12 – Policy performance – set challenging and realistic performance targets
 - Policy performance – monitor performance and report to Members

STRATEGIC ELEMENTS

5 Legal duties

- 5.1 The following HB/CTB legislation covers overpayment identification, creation and recovery methods. The Acts and regulations referred to are as follows:

HB/CTB – Housing Benefit & Council Tax Benefit (General) Regulations 2006, The Social Security Administration Act 1992, The Housing Benefits & Council Tax Benefit (Persons who have attained the age for state pension credit) Regulations 2006 and **DMA** - The HB & CTB (Decision Making and Appeals) Regulations 2001

SSA Social Security (Administration) Fraud Act 1997

CS, P & SSA 2000 – Child Support, Pensions and Social Security Act 2000

- **HB/CTB - Duty to notify changes of circumstances**

The duty upon claimants to report changes of circumstances, in writing

- **HB/CTB - Meaning of overpayment**

Overpayment means any amount which has been paid by way of benefit and to which there was no entitlement under these Regulations

- **HB/CTB - Recoverable overpayments**

Any overpayment is recoverable unless it is caused by official error and the claimant or the person to whom the benefit was paid could not reasonably be expected to know they were being overpaid. An official error is a mistake, an act or omission, made by the LA, or Jobcentre Plus.

- **HB/CTB - Person from whom recovery may be sought**

A recoverable overpayment may be recovered from the claimant, the person to whom the benefit was paid and in certain circumstances the claimant's partner.

- **HB/CTB – Method of recovery**

- **HB/CTB – Recovery of overpayments from prescribed benefits**

A recoverable overpayment is recoverable via any lawful method, including using debt recovery agents, the instigation of County Court action or insolvency action as well as through attachments of earnings and via deductions from on-going entitlement to certain state benefits.

- **SSA 1997 – Method of recovery**

Recovery may be made from prescribed benefits including benefit payments to a landlord for tenants that the overpayment does not relate to (blameless tenant legislation)

- **HB/CTB – Diminution of capital**

- **HB/CTB - Sums to be deducted in calculating recoverable overpayments**

How to calculate a net overpayment

- **HB/CTB – Notification of decisions**

Written decision notice where an overpayment has occurred, whether it is recoverable and from whom recovery is sought. The decision notice must also include the right for a 'person affected' to request a written statement setting out the reasons for these decisions, and the matters set out in Schedule 9 to the HB/CTB Regns

- **HB/CTB Schedule 9 – Matters to be included in the decision notice**

Prescribes the legal decision notice to be sent to the person from whom recovery is sought and any other person affected by the decision

- **Rights of appeal and procedure for bringing appeals**

Prescribes which decisions can be appealed; the procedure to be followed by claimants or landlords; the procedure to be followed by LA's; the procedures during The Appeals Service tribunals (TAS)

5.2 In summary, LA's administering and paying benefit are under a legal duty to

- make decisions on all relevant changes of circumstances
- make legal decisions on whether individual overpayments are recoverable
- exercise discretion in deciding whether to recover overpayments
- exercise discretion about from whom to recover, by which method and at what rate
- send prescribed notifications to claimants/landlords informing them of the decisions made
- give claimants and landlords the right to request a review or appeal against overpayment decisions

6 Financial responsibilities

Allocate the correct subsidy classification to each overpayment

- 6.1 To ensure the correct subsidy is claimed the net overpayment must be calculated correctly. The Council offers underlying entitlement when a claim is cancelled to enable the customer to reduce the outstanding overpayment. Checks are also made to stop un-cashed cheques to reduce the outstanding overpayment.
- 6.2 Most benefit paid out from the General Fund is claimed back from the DWP through the annual HB/CTB Subsidy Claim. The HB/CTB Subsidy Regns act as an incentive for LA's to minimise the creation of overpayments and to maximise recovery of overpayments. The standard rate of subsidy for properly paid benefit is 100%.
- 6.3 Overpayments caused by claimant error and claimant fraud attract 40%. If the local authority overpayments created in year are below the threshold then the Council receives 100% subsidy. If they are between the lower and upper threshold then 40% subsidy is awarded, if they are above the upper threshold then no subsidy will be awarded on any of the local authority errors. Overpayments not fully recovered therefore become a direct charge on the General Fund, which is, in part, serviced from Council Tax income. The Council keeps all of the recovered overpaid benefit and offsets it against the reduced subsidy received.
- 6.4 Operational procedures include mechanisms to prevent the creation of overpayments, for example procedures are in place to prevent the creation of future overpayments where changes to claimant circumstances are known in advance. Not creating these overpayments reduces the burden on the General Fund, and ultimately, taxpayers.
- 6.5 Training and quality check procedures identify any errors made when allocating subsidy classifications to overpayments.

Seek to maximise recovery and minimise costs

- 6.6 Operational procedures ensure that total repayment is requested when the overpayment is created, with instructions on how to negotiate an instalment profile if required. The instalment profile proposed is the maximum permitted by law unless the claimant has been prosecuted for fraudulently claiming benefit. In fraud cases a different legal maximum applies. Debtors are encouraged to discuss reduced instalment profiles rather than pay nothing at all. They may also choose to pay higher instalments.
- 6.7 Fraud overpayments are prioritised to ensure debtors make regular repayments at an acceptable rate.

Observe proper control of debts to be written-off

- 6.12 The Council recognises that where a proven, recoverable overpayment debt is deemed to be unrecoverable, regular write-off of debts is good business practice.
- 6.13 The Council seeks to minimise the cost of write-offs to local CT payers by taking all necessary actions to ensure that debts are proven and actively pursued. All proven recoverable debts are subject to the full recovery and legal procedures outlined in this policy.
- 6.14 All proven, recoverable debts which are considered appropriate for write-off are agreed and authorised in accordance with the Council's Corporate Governance rules – **see overpayment write-off procedure** attached

7 Recoverability and recovery

Decide whether an overpayment is to be recovered

- 7.1 The HB/CTB Regns ensure that
- overpayments are identified and created with clear reasons and evidence before recovery can be considered
 - overpayments are treated as recoverable unless they are caused by an error, or delay by the LA or the DWP, which the claimant could not reasonably have been aware of
 - LA's have wide discretion whether or not to recover recoverable overpayments, taking into account the circumstances of the person who the overpayment is to be recovered from.
- 7.2 If an overpayment is unrecoverable under the law or it can not be recovered by the Council it will be considered for write-off. The procedure for writing off of a Housing Benefit/Council Tax Benefit overpayment is available to all staff.
- 7.3 When making a decision not to recover the overpayment, the Council reserves its right to seek recovery at a later date, particularly where misleading information informed the decision not to recover.

Who recovery is to be sought from

- 7.4 In most cases, recovery is sought from the claimant. In occasional cases, recovery is sought from the landlord or letting agent. This is particularly where they continue to accept HB/CTB payments beyond the end of occupation by the claimant.

- 7.5 Recovery will not be sought from the person to whom Housing Benefit was paid if that person reported suspected fraud and subsequent Council action resulted in an overpayment.

Recovery methods

- 8.1 Recovery will only be considered once all outstanding disputes and appeals have been resolved.
- 8.2 All Council Tax Benefit overpayments will be added to the council tax account and the tax payer billed for the outstanding sum.
- 8.3 The Council seeks to facilitate easy and mutually satisfactory repayment rates, offering instalment arrangements where appropriate. Overpayments for claimants who still receive benefit are normally recovered from their ongoing entitlement
- 8.4 Otherwise, debtors receive an invoice requesting full settlement. In the majority of cases, it is not possible for the debtor to settle in full and they can request an instalment profile.
- 8.5 Repayment is typically arranged by the following methods
- for claimants still receiving benefit, by deduction from ongoing entitlement each week
 - CTB overpayments are recovered by debiting the CT account, by law
 - by payment in full or monthly or weekly via instalment by cheque or cash at the Civic Centre;
 - via telephone using a debit/credit card
 - via the internet using a debit/credit card
 - Monthly instalments by Direct Debits
- 8.6 Recovery from prescribed benefits is considered as a method of recovery in all cases. This may be:
- From ongoing Housing Benefit in borough
 - From ongoing Housing Benefit entitlement out of borough
 - From other Department of Work and Pensions benefits
 - In the case of a landlord, from other tenant's Housing Benefit
- 8.7 Blameless tenant legislation is implemented as the first option where it can legally be applied. This enables the debt to be recovered from another tenant's Housing Benefit if it is paid to a landlord that was previously overpaid.
- 8.8 Landlords and registered social landlords are supplied with a debt list showing the outstanding Housing Benefit overpayments they have. Any queries can be directed to the benefit team or raised at one of the landlord/housing association forums.
- 8.9 Recovery will be made from the claimant's rent account if a credit is held on the account. Checks are made between the benefit team and Housing to monitor this arrangement.

- 8.10 Debt recovery agencies will be used where it is believed appropriate and all previous attempts at recovery have failed. Debt recovery agencies will be selected using a tender process within corporate policy. Agencies will be considered by matters such as cost and monitored by performance, including assurance that all action is within agreed standards set by the authority.
- 8.11 Housing Benefit overpayments can be taken to county court when all other methods of recovery have failed.
- 8.11 Due to the costs of legal action, it is in the Council and claimant's best interest to reach agreement as the claimant is responsible for repaying the debt and also for any costs incurred where the Council is successful. On the other hand, the Council wishes to avoid excessive and abortive legal costs where an action is likely to fail.
- 8.12 Legal recovery action does not start without giving the debtor an opportunity to reach a mutually acceptable agreement. The Council will take legal action where agreement is not reached, and against wilful non-payers and persistent defaulters.
- 8.13 The Council will typically pursue the most appropriate of the following legal actions once the Court has issued an order:
- an attachment to earnings order where an employer must deduct payments from salary or wages
 - a charging order which attaches a legal charge to the property owned by the debtor – ie when the claimant sells or wills their dwelling the Council is an incumbent on any equity released
 - a warrant of execution which authorises a bailiff to seize goods of the debtor and sell them (also known as distraint)
- 8.14 Whilst distraint is an option available to the Council through the Courts, the Council does not believe that it is an effective remedy against the majority of people who have been overpaid benefit and who receive low income. In such cases distraint is not recommended. However, there are occasions where it is a realistic option, particularly for example, in cases where benefit fraud has been committed by people on high incomes, and the Council considers that distraint is a valid and realistic option.
- 8.15 However, in certain circumstances, the Council can also instigate bankruptcy proceedings if the debt is sufficiently large or the circumstances so decree it. This method will only be instigated as a recovery method of last resort unless the overpayment arose due to fraud and financial checks have confirmed assets exist; in which case insolvency proceedings will always be used to expedite and secure recovery.
- Petition for Bankruptcy – instigated by the issue of a statutory demand asking for full payment within 21 days. This method is only ever used where there are clear assets from which the Council can recover its debt.

9 Decision notices

Notify claimants that an overpayment has occurred, whether it is recoverable, and how recovery is proposed

- 9.1 Claimants and 'persons affected' who are asked to repay overpayments must receive the prescribed Decision Notice set out in Schedule 9 of the HB/CTB Regns . The HB/CTB Regns also specify that this decision notice be sent within 14 days of the decision being made. The Council issues decision notices within 2 days of the decision being made.
- 9.2 Sch 9 prescribes the following information be included in all decision notices. Operational procedures ensure that the Council includes this information in its decision notices.
- the fact that there is a recoverable overpayment
 - the reason why there is a recoverable overpayment
 - the amount of the recoverable overpayment
 - how the amount was calculated
 - the benefit periods to which the recoverable overpayment relates
 - the amount of deduction from ongoing entitlement to benefit, if recovery is proposed by this method
 - the method of recovery for any Council Tax Benefit overpayment
 - the person's right to request a written statement setting out the LA's reasons for its decision on any matter relating to the overpayment, and the manner of its delivery and time scale prescribed
 - the person's right to ask for an explanation, or to request a review of or appeal against the decision, the manner in which they must be made and time scale prescribed
 - if the overpayment is recoverable from a landlord, and recovery is to be made from a different claimant's Housing Benefit then the landlord must be informed of this
 - any other appropriate matter
- 9.3 Where recovery is not proposed from ongoing entitlement to benefit an invoice is issued to the person from whom recovery is sought - see **8 Recovery methods** above.

10 Claimant and landlord rights

Make claimants and landlords aware of their rights to request a review and appeal of overpayment decisions

- 10.1 When deciding and seeking recovery overpayment, decision-makers do this with sensitivity and respect for claimant rights.
- 10.2 Operational procedures ensure that the Council
- examines the circumstances of each case and makes decisions in accordance with the HB/CTB Regns
 - advises claimants and landlords of their rights – See **9 Notification of an overpayment** above
 - applies reasonable discretion in deciding whether an overpayment is recoverable in accordance with this policy and best practice

- 10.3 DWP guidance states that “it is important to recognise that there is a right under the law to appeal and LA’s should not filter or obstruct the process in any way”.
- 10.4 Operational procedures make claimants and other persons affected aware of their rights to request a review or appeal against overpayment decisions. These rights are contained in all decision notices relating to overpayment decisions. Operational procedures provide for requests for a review or appeal to be actioned according to the DMA Regns.
- 10.5 Operational procedures aim to reply to requests for an explanation, review or appeal against overpayment decisions within 10 days. As well as the appropriate response depending on the request, all replies contain the following information
- the right to appeal further, how and when to do this
 - a simple and clear form for submitting a further appeal
 - direct telephone numbers to contact the Overpayments team
- 10.6 Claimants and persons affected may appeal outright when receiving a decision. If the Council does not revise or supersede its original decision in favour of the claimant or landlord the appeal is automatically submitted, by law, to TAS for a Tribunal hearing.
- 10.7 Tribunal hearings are judicial, though less formal than court hearings. A legally qualified Chairman hears the appeal. The Tribunal may exceptionally comprise a Member with financial expertise. All tribunal Chairmen and Members are independent of the Council.
- 10.8 Operational procedures ensure that any decision by TAS is actioned on the same or following working day, unless the Council intends to appeal against the TAS decision. If the Council intends to appeal against the TAS decision the prescribed procedures and time-limits are strictly observed.

11 Quality Control and Internal Check

Ensure the Council makes accurate decisions

- 11.1 The Council has sound and comprehensive mechanisms to ensure the quality of overpayments work through regular training of staff, and through the Quality Checking Procedure.
- 11.2 Decision makers receive training and refresher training throughout the year in response to Circulars issued by the DWP, best practice guidance issued by any government department, benchmarking intelligence that suggests good practice, responding to complaints, errors found through the Quality Checking Procedure and changes in the HB/CTB Regns .
- 11.3 Training is provided via dedicated subject training courses, and during fortnightly Benefits Team Meetings.
- 11.4 Operational procedures provide for a daily check of 4% of work done within the Benefits Section. Errors made by decision makers are brought to their attention, and amendments are made to their decisions when the reason for the error has been understood. Decision

makers are provided with the opportunity to discuss any error identified to reinforce their knowledge.

- 11.5 The overall work of the Benefits Section is independently monitored by Internal Audit to provide assurance to the Council that procedures are adequate, appropriate and can be audited for financial probity.
- 11.6 Internal Audit has an annual plan to monitor the work of the Benefits Section. Any recommendations made in their reports are actioned within timetables accepted by them.

12 Policy performance

Set challenging and realistic performance targets

- 12.1 The Council calculates all overpayments within 7 days of receiving written notification of the change that results in the reduction of benefit.
- 12.2 The Local Authority is required to set targets for overpayment recovery performance, and make annual returns for publication nationally.

Harrow HB
2010