



Housing Benefit Overpayments Policy

December 2013



1. Aims of the Policy

1.1. The aims of this policy are:

- 1.1.1. to ensure we minimise overpayments and reduce them as much as is possible when raised
- 1.1.2. to take timely recovery action when necessary and where appropriate
- 1.1.3. to ensure we meet all statutory requirements
- 1.1.4. to ensure we maintain a balance between effective recovery of debt and avoiding the causing of financial hardship, especially in light of the changes to welfare benefits
- 1.1.5. to ensure that we meet as far as possible the budgetary requirements by maximising collection

2. Legal Framework

- 2.1. The regulations governing overpayments of Housing Benefits are set out in statute.
- 2.2. It is also governed by case law and increasingly by Commissioners' decisions.

3. Definition of an Overpayment

- 3.1. An overpayment is an amount of Housing Benefit received by a claimant or landlord to which that person is not entitled under the regulations.

4. Recoverable or Non-Recoverable

- 4.1. Most overpayments are legally recoverable. The exception to this is in the case of an overpayment caused by an error by Brent, where the person receiving the payment could not, at the time of receiving the payment, reasonably have been expected to have known they were being overpaid.
- 4.2. If, when considering a case, it is decided that the person receiving the payment could not, at the time of receiving the payment, reasonably have been expected to have known they were being overpaid, then that overpayment is non-recoverable.
- 4.3. In coming to a decision consideration must be made as to:

- 4.3.1. The information and advice that has been provided to the claimant

4.3.2. The nature of the overpayment e.g. if someone moves off Job Seekers Allowance into work, it is reasonable to expect that they knew their benefits would reduce or stop

4.3.3. The help and assistance normally available to the claimant (if someone is normally managing their affairs it is reasonable to believe they would have received advice they were being overpaid)

4.4. In coming to a decision that a claimant reasonably knew they were being overpaid, this means that it is recoverable and therefore can be legally recovered, but not necessarily that it should be recovered. See paragraph 6.

5. Obligation to Minimise and Reduce

5.1. We must take steps to reduce the amount payable as far as possible by granting underlying entitlement.

5.2. We must take steps to minimise the incidence of overpayments and these are largely through:

5.2.1. Suspending incoming work if it is felt that it is likely to lead to an overpayment

5.2.2. Payment of Housing Benefit in arrears

5.2.3. Encouraging claimants and landlords to report changes in good time

5.2.4. Attention to quality so that errors are kept to an absolute minimum

5.2.5. Regular monitoring and reporting of Local Authority Error overpayments

6. Discretion to Recover

6.1. Local Authorities have the power to recover overpayments but that power is discretionary. The decision to recover should be arrived at by careful consideration of the facts and circumstances of each case and each debtor.

6.2. In deciding whether to recover, the following factors must be considered:

6.2.1. The claimant's age and state of health

6.2.2. Their vulnerability (see Appendix 1 for the definition)

6.2.3. The claimant's financial position in terms of ability to pay any debts at all

6.2.4. The effect of the welfare changes on the claimant and the claimant's family

6.2.5. The culpability of the debtor

6.2.6. Any risk of a negative impact to the Council by recovering

6.2.7. Is it an overpayment caused by the claimant moving out but still accepting Housing Benefit payments

6.3. If the claimant's personal circumstances lead to a decision to recover, consideration should be given to the best method by which to recover.

7. From Whom to Recover

7.1. The law has changed considerably over the years in this aspect of overpayment recovery.

7.2. If the monies have been paid to the Claimant directly, the Overpayment can only be recovered from:

7.2.1. The Claimant

7.2.2. The partner or former partner of the Claimant (if the partner was the Claimant's partner at the time relevant to the overpayment and are still the Claimant when recovery is made).

7.3. If the monies have been paid direct to a Landlord or Landlord's agent, the overpayment can be recovered from this party if, for example, the landlord could be reasonably expected to know when a Claimant had moved out or if a partner had moved out (e.g. with a resident Landlord).

7.4. If the Landlord is not culpable in the cause of the overpayment, the Claimant will be pursued for the Overpayment.

7.5. There are no prescribed rules for this, and each decision should be made on its own circumstances and the reasoning recorded on the system

7.6. Once the decision process has been followed, where there is doubt as to liability between landlord and tenant, due consideration must be given to the means to pay and the necessity to recover as efficiently as is possible

8. Method of Recovery

8.1. As a general rule, recovery methods should be used in the following order of preference:

8.1.1. Clawback from ongoing entitlement

8.1.2. Invoice (minimum amount is £15.00)

8.1.3. Composite recovery (Often referred to as Blameless Tenant recovery. This is recovery of debt from a landlord from the Housing Benefit of another of that landlord's tenants)

8.1.4. Deduction from other DWP benefits

8.2. This is as a general rule but the decision needs careful thought in the context of individual circumstances and culpability. For example, if a claimant has some culpability in not reporting a change which gives rise to a large overpayment but the claimant is still receiving Housing Benefit, then an invoice with subsequent recovery action might be the correct decision in the interests of the Council's financial position and the taxpayers of the Borough.

8.3. Where the overpayment is due from a former Council Tenant, the tenant's rent account may be debited for Benefit paid beyond the period of the rental liability. Cases like this must be identified and dealt with in a timely fashion.

8.4. Where the overpayment is as a result of the debtor moving out but they continued to accept payments of HB from Brent, culpability in that overpayment is high. We will invoice in such circumstances and our policy will be to accept nothing less than full payment.

8.5. Where an invoice has been issued and remains unpaid, this should be followed by a Reminder and a Final Notice.

8.6. Where composite recovery does not apply, if the debt remains unpaid, the following choices can be made according to the size of debt and circumstances of the debtor.

8.6.1. Collection Agency

8.6.2. County Court Judgement

8.6.3. Bankruptcy

8.6.4. Charging Order and Order for Sale

8.6.5. Third Party debt Order

8.6.6. Direct Earnings Attachment (Where we are unable to recover an overpayment and the debtor is no longer in receipt of Housing Benefit, we may recover that debt from their earnings. We can approach an employer without need to go to court). See Appendix 2 for more detail.

8.7. In making these decisions, appropriate enquires will be made of online systems that the Council has access to

- 8.8.** Recovery in appropriate cases can proceed to Order for Sale culminating in the sale of any property and the realisation of the Council's debt from the proceeds.
- 8.9.** At any time in the process, we will consider accepting an arrangement for payment and at all times be alert to any indications of financial hardship.

9. Settlements

- 9.1.** Recovering individual overpayments can be expensive depending on how far through recovery a debt may go. When an offer of full and final settlement is proposed by a debtor or a debtor's representative, this must be considered carefully
- 9.2.** The aspects of a case to both consider and to balance in making a decision will include:
- 9.2.1.** The age of the debt
 - 9.2.2.** Its size
 - 9.2.3.** The culpability of the debtor
 - 9.2.4.** The circumstances of the debtor
 - 9.2.5.** An estimation of our possible success, or otherwise, in full recovery
 - 9.2.6.** The possible costs of continuing recovery
 - 9.2.7.** The proportion of the debt being offered
 - 9.2.8.** The risk of negative publicity of either accepting or pursuing
 - 9.2.9.** Setting of precedents
 - 9.2.10.** Who is making the offer e.g. Age Concern, a relative
 - 9.2.11.** Is payment now better for the Council than payment in several years time
- 9.3.** This list is not exclusive and there will be many combined aspects of a case that will influence a decision
- 9.4.** A decision of this nature must always be on the basis of value for money for Brent Council Taxpayers
- 9.5.** In terms of fraud debt, only in the rarest of circumstances can a debt be considered for full and final settlement. There is a duty to the taxpayers of the Borough to ensure that all money fraudulently obtained is returned in full. Furthermore, there can be no perception of leniency, reward, softness or indeed any precedents set in fraud cases.
- 9.6.** In terms of full and final settlement, fraud cases may be considered, if the offer of full and final settlement is estimated to be a better settlement for the Council when comparing future court costs and delayed payment against immediate payment and minimum costs, then consideration must be given. Instances where full and final settlement is accepted will be very rare.
- 9.7.** Any decision on full and final settlement must be made by the Customer Service Resource Manager and / or the Operational Director of Customer

Services. Any decision on a fraud case may only be made by the AD Brent Customer Services. Due regard must be given to the fact that a decision to accept is effectively writing off the balance. As decisions of this nature need to be made quickly, they may be made at OD level.

10. Fraud

10.1. Fraud cases must always be dealt with robustly in terms of the choice or recovery and in the consideration of offers of payment. The Council Taxpayers of the Borough must be considered when deciding on the payment terms.

10.2. Where we have been successful in recovering a large fraud case, we must always seek to publicise the success to deter others. At this stage we would involve the Council's Communications Team.

11. Recovery or Write Off

All avenues of effective recovery must be pursued but at any time, if the costs of pursuing appear to be out of proportion to the debt and the probability of collecting, the cost-effective solution must be considered in terms of writing the debt off.

12.Recovery Rates

- 12.1.** From 2nd October 2000 the DWP introduced new legislation to set a maximum rate of recovery for different types of claims. The maximum rate of recovery is not discretionary but prescribed by the DWP.
- 12.2.** The rate of recovery must always be determined in respect of the individual circumstances of the claim and may be lower but not higher than the rates set by the DWP.
- 12.3.** It is important to reach a balance between maximising recovery against preventing extreme financial hardship. When deciding to lower the rate of recovery, the Council's interest must be considered too in terms of the length of time to recover.
- 12.4.** However, where the overpayment is due to fraud or there is major culpability on the part of the claimant, our policy will be to invoice as first choice where there is still an active claim.
- 12.5.** An example of such a case would be where a claimant has neglected to declare some capital over a number of years giving rise to a large overpayment. It is decided not to pursue a fraud prosecution, and there remains an active claim. In such circumstances it will be in the best interests of the Council's finances to recover quickly through invoice rather than allow a much slower repayment through clawback. Such a decision would also be morally justifiable given our responsibilities to the council taxpayers of the Borough.

13.Notification

- 13.1.** There are very specific legal requirements placed on a Local Authority in relation to the content of the notification letter. Details must include the following:
- 13.1.1.** The fact there is a recoverable overpayment
 - 13.1.2.** The reason for the overpayment
 - 13.1.3.** The amount of the recoverable overpayment
 - 13.1.4.** How that amount has been calculated
 - 13.1.5.** The period of the overpayment
 - 13.1.6.** Where recovery is to be made from future entitlement the notification must state this and the amount that will be deducted from each payment

13.1.7. The person's right to appeal against the decision or decisions that have been made

13.1.8. The person's right to ask for a written statement of reasons

13.2. The notification is a legal pre-requisite to recovery

13.3. When possible we will seek to enclose the invoice with the overpayment notification letter but emphasise that this does not affect the claimant / landlord's right to appeal.

14. Appeal

14.1. It is good practice and complies with DWP guidance that recovery action be suspended should a debtor appeal.

14.2. Such recovery action should remain suspended until the appeal has been decided and the appropriate parties to the appeal have been notified

14.3. Appealable decisions are:

14.3.1. Is the overpayment correct?

14.3.2. Is it recoverable?

14.3.3. Can we legally recover from the person identified as liable?

15. Fraud Overpayments

15.1. Fraudulent overpayments will be dealt with and recovered with maximum priority

16. Debt Management, Analysis and Targeting

16.1. This area is dealt with in more detail in the Overpayments Strategy but our policy will be to recover our largest, newest debts first

16.2. Debt profile will be analysed at least monthly so that the efforts of the Overpayments Team resource can be best directed to give value for money

17. Court

- 17.1. In order to enable further proceedings to be taken, and to act as a deterrent to other claimants and landlords, , cases will be brought to Court on a regular basis.
- 17.2. Once an award has been gained from the Court, consideration will be given to the most appropriate next step
- 17.3. Identifying the debtor's assets will be a priority and the results of those investigations will influence the decision on the next course of action

18. Bankruptcy and Charging Orders

- 18.1. These steps can be expensive to the Council so they must be decided upon with best information in terms of assets and ability to pay to hand
- 18.2. They are also very effective and should be used whenever appropriate

19. Write Offs

- 19.1. A financial write off of a debt should be considered in the following situations:
 - 19.1.1. The debtor is deceased
 - 19.1.2. The debtor is vulnerable
 - 19.1.3. The debtor has no clear means to pay and to press for payment would cause hardship
 - 19.1.4. Where all reasonable attempts to recover have failed
 - 19.1.5. Where the debtor has absconded
 - 19.1.6. Where the debt is more than six years old
 - 19.1.7. Any other circumstances where the Overpayment Manager agrees a write off to be the only course of action left to take
- 19.2. All write offs must comply with this policy and also the Corporate Write-Off policy, regulations and guidelines.
- 19.3. Any proposed write off of a sum of £1000.00 or more must be given to the Chief Finance Officer for approval. Any below that amount may be approved by the Overpayments Manager

20. Bad Debt Management

- 20.1.** It will be our policy to assess levels of bad debt each year and take necessary steps and decisions to manage that debt appropriately.
- 20.2.** Any write offs will be in accordance with this policy and with the Corporate Write Off Policy

Appendix 1

Extract From the Housing Benefit Policy – Identifying Vulnerable Claimants

There is no set definition of Vulnerable in the HB/CTB regulations. The individual circumstances of each claimant have to be considered and a decision made on each individual case. Examples of circumstances where a person may be considered vulnerable are as follows:

(Please note: This is not an exhaustive list, and each Claimants circumstances will be different.)

- Old Age (in particular customers who are over 80 years old).
- Physical Disability which impairs his or her mobility.
- Customer suffering from mental health problems which inhibit their ability to manage their own affairs (they may have a care worker).
- Customer suffering from learning difficulties or who have difficulty reading or writing – English may not be the Claimant's first language, and forms and letters may be particularly daunting and difficult to follow.
- Customers living in fear of domestic violence and/or harassment.
- Customers with sensory impairments affecting their sight or hearing.

Appendix 2

Direct Earnings Attachment (DEA)

New powers have been granted to Local Authorities to maximise the recovery of Housing Benefit Overpayments. This allows Local Authorities to obtain an Attachment of Earnings without having to go to Court to get a County Court Judgment first.

At present if the overpaid benefit is not repaid then a case is often the subject of court proceedings which add costs to the outstanding debt. This new process will allow recovery at less cost for both the council and the debtor.

A notice will be sent to the debtor requesting details of their employer or employers if more than one; to ignore the letter is a criminal offence and the debtor will end up with a criminal record and a £1000 fine.

DEAs give us the opportunity to recover overpaid housing benefit from people who are employed but refuse to repay, are unable to agree an acceptable repayment plan or who have defaulted on a voluntary arrangement.

This is not our preferred method of recovery; full payment or a voluntary but reasonable repayment plan, which is paid on time every week or month, is the best and most cost effective solution.