



Test Valley Borough Council

Revenues Service

Overpayments of Housing Benefit

Policy Statement

June 2019

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HOUSING BENEFIT OVERPAYMENTS POLICY

1. INTRODUCTION

Overpayments are established through the review of the entitlement to Benefit or in some instances the correction of an error or set aside of an original determination.

An overpayment can be described as an amount of benefit which has been paid but to which there was no entitlement under the regulations. They can occur for various reasons including claimants or landlords not giving the correct notification of change of circumstances or providing incorrect information to support a claim and delays or mistakes by the Council.

The Council receives subsidy from the Government in respect of certain types of overpayment and, therefore, it is important that overpayments are correctly classified.

2. PURPOSE

It is essential that Test Valley Borough Council demonstrates that we undertake the administration and recovery of Housing Benefit overpayments efficiently and effectively as by doing so we:-

- Reduce the losses to public funds
- Provide revenue for the Council and help reduce the loss from overpayments
- Deter fraud and error
- Demonstrate the Council's commitment to accuracy and provision of a quality service to customers

The aims of this policy are:-

- To be a guide to all staff involved
- To set out a clear debt recovery strategy
- To take into account corporate policies
- To reflect any debt management guidance available from the Department for Work and Pensions

3. SCOPE

This policy applies to all Council staff involved in administering the Housing Benefit scheme.

4. STAFFING

The Council has a Revenues & Welfare Team responsible for the administration of Housing Benefit and Council Tax Support.

The recovery of all overpayments of Housing Benefit including making repayment arrangements is dealt with by the Revenues & Welfare Officers. Training and guidance is provided by the Revenues & Welfare Team Leaders.

5. WHAT IS AN OVERPAYMENT?

An overpayment of Housing Benefit is any amount which has been paid but to which there was no entitlement. This includes

- any amount of rent allowance paid on account, which is in excess of entitlement to Housing Benefit (Regulation 93 HBR)
- overpaid rebates credited to accounts in advance of entitlement (Regulation 99 HBR).

An overpayment occurs through a revision of benefit entitlement or incorrect information being received on initial claim. An overpayment is an amount of benefit that has been paid but to which there is no entitlement under the regulations.

Please note that the provisions apply equally to rent allowance and rent rebate, though there are differences in the rules as to recoverability and the subsidy rates that a Council can claim.

6. WHO IS RESPONSIBLE FOR TAKING RECOVERY ACTION?

The Council has prime responsibility for all the action on Housing Benefit overpayments and must:

- establish the cause of each overpayment;
- decide whether or not the overpayment is recoverable;
- identify the period and calculate the amount of the overpayment;
- consider whether or not recovery should be sought;
- decide from whom the recovery should be sought;
- notify any 'person affected';
- classify and record overpayments so the correct rate of recovery can be made.

7. CAUSES OF OVERPAYMENTS

The main causes of overpayments are as follows:

- a failure, by the claimant, to notify a changes of circumstance(s), or providing incorrect information, whether deliberately or not, in support of the claim;
- delays or mistakes by the Council when processing information provided by the claimant;
- computer-generated errors that calculate wrong entitlement to Housing Benefit ;
- a Departmental official error e.g. a mistake made by the Department for Work and Pension staff when processing an award,
- payment irregularity,

Other reasons, such as no-ones fault e.g. a backdated pay award and this affects the entitlement to housing benefit in the past.

- claimant error or fraud, when;
 - making a claim, or
 - the claimant fails to inform the Council that a non-dependant moved into their property;

It is important that the cause of an overpayment is established as soon as possible, as this information must be included in the overpayment decision notice and is taken into account when deciding if the overpayment is recoverable and from whom the overpayment is recoverable from.

Please note that a decision notice must be issued within 14 days of making the decision.

8. REPORTING CHANGES IN CIRCUMSTANCES

Overpayments may occur when the Council is not notified about a relevant change in circumstances. Claimants, their appointees or agents, or landlords to whom a direct payment is being made, must report in writing, by email or using the Council's online eforms all relevant changes in circumstances that they could reasonably be expected to know may affect their entitlement to Housing Benefit, such people are known as a 'person affected'.

(Reg 88 Housing Benefit Regulations 2006 Reg 3 (Decisions and Appeals Regs))

A 'person affected' must be informed by the Council about the:

- kind of changes likely to affect Housing Benefit entitlement, and
- the need to report the changes when they occur.

(Schedule 9 Part 2, para 9(g) and Part 3, para 10 (Housing Benefit Regulations))

Customers or 'persons affected' are notified about these obligations in the declaration part of the Housing Benefit application form.

They are also notified about these obligations on the reverse of every change in entitlement decision notice.

Examples of a relevant change in circumstance are as follows:

- a change of address;
- changes in rent paid to a private landlord;
- changes in the family income;
- changes in the number and status of dependants, e.g. leaving school or the birth of a baby;
- changes in the number of non-dependants or non-dependant's income;
- IS, JSA (IB) or Pension Credit guarantee credit ends.

(Reg 88(3) Housing Benefit Regulations)

Claimants do not have to report changes in:

- rent payable to a housing authority;
- their age, or the age of any member of the claimant's family or of any non-dependants. Claimants must, however, report to the Council when:
 - a member of their family ceases to be a child, or
 - a young person leaves school, or
 - Child's Tax Credit ceases;

changes in the Housing Benefit regulations;

- circumstance's which affect the amount of Income Support, Job Seekers Allowance (Income Based), Employment and Support Allowance; Universal Credit or Pension Credit payable, but do not affect Housing Benefit/Council Tax Support. But claimants must report to the Council the end of entitlement to Income Support, Job Seekers Allowance or Employment and Support Allowance.

9. HOW TO NOTIFY CHANGES.

You must notify changes to the Council. Changes can be notified by in writing, via email or using the Council's online eforms. If you telephone to report a change you may be asked to follow this up in writing or via email.

10. TIME LIMITS.

There is a one Calendar month time limit for notifying a relevant change in circumstances. This can be extended to 13 months in special circumstances.

11. IDENTIFICATION OF OVERPAYMENTS AND DECISIONS ON RECOVERABILITY

Accurate and prompt identification of an overpayment is important in order to ensure that an incorrect payment of Benefit is discontinued and the Council can maximise the chances of the successful recovery of the overpayment. This also helps to reduce the number of complaints and appeals.

In order to more promptly identify overpayments the Department uses a Customer Information System linked to the Department for Work and Pensions. Details of changes to a number of welfare benefits and tax credit awards are transferred daily and imported into the Northgate i-world system for processing. (Automated Transfer for Local Authority Systems)

Where possible, incoming mail which advises of a change in circumstances is identified and prioritised, with the aim to action it (or suspend payments) within 7 days (see APPENDIX A on Targets). It is important to establish the correct effective date of the change. If the date is not included in the original notification an attempt to contact the customer by phone will be made. If this is not successful the change in circumstances is cancelled from the date the notification is received. A letter is then sent to the customer requesting the correct date and any necessary amendments will be made when this is received.

Overpayments are identified by Revenues & Welfare Officers and they will establish the cause of the overpayment, whether it is recoverable and from whom it should be recovered. Correct decision-making on whether or not there is an overpayment and whether it is recoverable is essential because:

- there are consequences for the rights of claimants and other affected persons;
- there could be current overpayment recovery in operation;
- the decision can affect the finances of the Council if it is not recoverable;
- decisions made and the reasons for them can provide an indication of the levels of fraud and error against inefficiency;
- payments made under the Verify Earnings & Pensions (VEP) can be affected.

Broadly speaking an overpayment is recoverable unless it is due to an official error. However, in circumstances such as those outlined below even an overpayment arising from official error is recoverable:

- Where the claimant or someone acting on their behalf, or the person to whom the payment was made, could reasonably have been expected to realise that an overpayment was taking place at the time of payment or upon receipt of any notification relating to the payment; or
- It is an amount of Housing Benefit that has been overpaid in respect of a period following the date of the review that identified the overpayment.

An official error does not include circumstances where the claimant, or someone acting on their behalf, or the person to whom the payment was made, caused or materially contributed to the error. These are claimant or 3rd party error and are recoverable.

Whether a recoverable overpayment is actually recovered is at the discretion of the Council and regard should be given to the individual circumstances when deciding whether recovery is appropriate.

If a Revenues & Welfare Officer is in any doubt as to whether an overpayment is recoverable such cases should be referred to a Manager.

When the overpayment is calculated on the Benefits System it is automatically noted as to whether it arose as a result of an error by the customer or the Council. If there is any fraud involved then the system must be manually updated to indicate this.

Officers undertake accuracy checks on high value overpayments as they occur as part of targeted accuracy checks. Senior Managers check the amounts for subsidy on a four weekly basis to ensure that the threshold is not being exceeded. This information is recorded in Pentana, the Council's Performance Monitoring system and reported at quarterly Corporate Performance Boards.

The calculation of a recoverable overpayment is arrived at by deducting the amount of benefit which should have been paid, over the period in question, from the amount of benefit actually paid. Consideration is given to any underpayment of benefit and customers are given the opportunity to provide evidence of any possible underlying entitlement.

12. WHO TO RECOVER THE OVERPAYMENT FROM

A recoverable overpayment can be recovered from the customer. It can also be recovered from the person who received the payment - e.g. a landlord who has been paid direct (case law has shown that recovery can be sought from the landlord: and one of the following must also apply:

- Either the landlord / agent caused the overpayment;
- Or (in the case of an official error overpayment) the landlord / agent could reasonably have been expected to realise there was an overpayment;
- Or the overpayment was no-one's fault (in which case it is recoverable from the claimant or the landlord / agent; and the mere fact that the landlord / agent knew nothing of the overpayment does not prevent recovery from them.

In such cases, Housing Benefit may be recovered from the landlord if the landlord was paid the Housing Benefit, but from the agent if the agent was paid the Housing Benefit (even if the agent has paid it to the landlord. When recovery is to be made from a landlord / agent they must be separately notified and have the same rights of the appeal as the claimant.

In coming to a decision as to who recovery will be sought from all relevant factors will be taken into account and it should be noted that such a decision can be the subject of an appeal.

13. BLAMELESS TENANTS AND NOTIFICATION OF OVERPAYMENT

Under the Regulations the Council can recover overpayments of Housing Benefit made to a third party, e.g. landlords/agents, from Housing Benefit paid to that third party. This includes recovering Housing Benefit payments paid direct to a landlord in respect of any of their tenants. This method of recovery is often known as 'direct recovery from landlords' or 'blameless tenant' method.

It is up to the Council how they use these powers. It maybe decided to notify the landlord of an overpayment, and after the time limits for their appeal rights have expired, recover from the next payment due to that landlord. The Council may, however decide to give the landlord the option of repaying the overpayment by cash/payment, and only if this method breaks down, consider deducting the outstanding debt from Housing Benefit being paid direct to them.

Decision notices must take in to account the following:

- When a decision has been made to pay a landlord direct payments of Housing Benefit, on behalf on their tenants, it is a legal requirement to include on decision notices to both the claimant and the landlord at the time direct payments commence that if recovery is made from one tenant's benefit for an overpayment made to another tenant, the rental liabilities of the tenant from whom the recovery has been made will be protected. This person is known as the 'blameless tenant'. Both the landlord and tenant have to be notified in writing.
- It is a legal requirement for overpayment decision notices sent by the Council to landlords to specify when recovery is to be made from another tenant's benefit.

- The Council must also specify which benefits recovery may be made from, and the circumstances in which a tenant's rental liability remains discharged (i.e. blameless tenants) when recovery is made in respect of them.

It is also important that if the Council decides that a recoverable overpayment has occurred and exercises its discretion to recover it; we must implement the general notification requirements.

A 'standard paragraph' could be used to inform a claimant that they may be used as a 'blameless tenant' in such a situation; this 'standard paragraph' should be included when notifying a claimant of a decision to pay benefit direct to their landlord. It is not necessary or even feasible to issue a separate individual overpayment letter to a 'blameless tenant', each time recovery is to be made by this method however, a landlord/person affected must be notified of the decision to exercise this method of recovery.

Please see following example of “Standard Paragraph” to customer

Please note that the Council has the power to make deductions from amounts of Housing Benefit paid direct to landlords, in order to recover the landlord's overpayment of Housing Benefit relating to another tenant. In such cases your rental liability will, however have been deemed to be legally discharged to the full value of your Housing Benefit entitlement.

Example 1 (claimant)

We need to advise you as a tenant whose landlord may receive direct payments of Housing Benefit on your behalf of an important aspect of Benefit legislation that may apply regarding the recovery of Housing Benefit overpayments. A Council can recover overpaid Housing Benefit from a landlord by reducing the amount of Housing Benefit paid to that landlord. To do this we may reduce the amount of benefit paid for a tenant who does not have an overpayment. This is in accordance with Section 16 of the Social Security Administration (Fraud) Act 1997.

If we reduce your Housing Benefit because we have used this method of recovery you will not have lost your benefit entitlement. The Housing Benefit (recovery of overpayments) Regulations 1997 states that your rent liability will be deemed to be paid to the full value of your Housing Benefit entitlement. This means that your landlord will have to credit your rent account with the same amount of benefit you were entitled to prior to the reduction.

Example 2 (landlord)

We need to advise you as a landlord who may receive direct payments of Housing Benefit on behalf of your tenants of an important aspect of Benefit legislation that may apply regarding the recovery of Housing Benefit overpayments. We can recover overpaid Housing Benefit that has been paid to you by reducing the amount of Housing Benefit paid. To do this we may reduce the amount of benefit paid to you for a tenant who does not have the overpayment. This is in accordance with Section 16 of the Social Security Administration (Fraud) Act 1997.

The Housing Benefit (recovery of overpayments) Regulations 2006 states that the rent liability for the tenant whose benefit has been reduced will be deemed to be paid to the full value of their Housing Benefit entitlement. This means that you must credit the rent account of the affected tenant with the amount of Housing Benefit they were actually entitled to.

If this method of recovery is used you will be issued a letter with your payment schedule which will clearly outline which tenant had the overpayment, which tenant's benefit we have reduced, and how much we have reduced that benefit by.

Note:

The Council is required to inform direct payment landlords of their duty to report changes of circumstances affecting benefit. In these circumstances the landlord is a 'person affected' but the tenant from whose Housing Benefit the deductions are being made is not. Consequently, such tenants should not receive an overpayment notification on this matter. They do not have the right to apply for a revision of the decision or appeal against it.

If an overpayment has occurred due to a misrepresentation or failure to disclose a relevant fact by the customer, someone acting on their behalf or the landlord (or agent) the overpayment can be recovered from that person. If an overpayment has been made to a deceased person recovery can be sought from their estate.

14. LANDLORD INDEMNITY

Direct payment of HB to landlords/agents

For private tenants receiving Housing Benefit under the Local Housing Allowance scheme payments will be made to the tenants unless safeguard arrangements exist.

For other private tenants, including those paying rent to Registered Social Landlords a claimant has the choice of who the Housing Benefit is paid to; this will usually be either to them or to their landlord or agent.

Before accepting direct payments, a landlord should be made aware of their potential liability, and that the LA may decide that an overpayment of HB is recoverable from them.

The Housing Benefit application form includes a landlord indemnity form which the customer and landlord are requested to both read and sign if the customer requests payment be made direct to the landlord.

The declaration states that:

- the landlord will advise the office straight away if they find out about any changes in their tenants circumstances;
- that the Council can stop paying benefit to him or her if they do not report a change in circumstances;
- that they may be prosecuted if they accept Housing Benefit which they know they are not entitled to;
- If they are paid too much Housing Benefit for any tenant they may have repay it and that the Council can take the amount of overpaid benefit from the benefit they get for any other tenants. This will not affect their rent.

15. NOTIFICATION OF AN OVERPAYMENT

The Council must notify, in writing, any "person affected" by a determination it makes under the regulations. This includes not only the claimant, but also any person from whom the Council seeks to recover a recoverable overpayment for example the landlord.

Every notification must include certain specified information as a statutory duty and the following is a list of what should be included:

- the fact that there is a recoverable overpayment and the reason it is recoverable
- the reason it occurred
- the amount
- how it was calculated
- the date informed by the claimant
- the date actioned
- the period of overpayment

- where recovery is to be made by deduction from future Housing Benefit, the amount of the deduction
- the person's right to request a written statement giving the LA's reasons' for its determination
- the right to appeal and time limits involved

It is important for the Council to be aware of the correct information required on a notification of a recoverable overpayment as the Council does not in fact have a recoverable debt until such time as the correct information is issued.

The issuing of the correct notification also has implication for the consideration of appeals, as the time limit for requesting a review runs from the date a correct notification is sent. Therefore, local authorities seeking recovery of overpayments several years old have to demonstrate that the correct notification was issued at the time, otherwise the person from whom recovery is sought can request a correct notification, and then have one calendar month to request reconsideration.

There may be a good reason why the claimant appeal is late, for example, if a claimant was in hospital when the letter was issued.

A notification letter and a covering letter is sent out within 14 days of the decision stating clearly the reasons for the overpayment, why it is recoverable and advises the customer of their revision / appeal rights and what they need to do if they wish to apply for underlying entitlement which may reduce the overpayment if applicable. The letter and invoice also provide telephone contact numbers for claimants who may have difficulty in repaying the overpayment.

If the customer is deceased an invoice will also be included with the notification and a covering letter sent to the executors of the estate.

As an aid to staff when the notification is produced a notebook entry is also made on the Benefit system as to the reasons for the overpayment, the total amount of the overpayment, whether or not it is recoverable and the reason why it is recoverable.

The Revenues & Welfare Officers are also required to complete a worksheet when reassessing a customers benefit and on this they must write the reasons for the overpayment, the total amount, the reason for the recovery or not as the case may be and the period of the overpayment.

In the event of a request for a review or appeal, legal challenge, complaint or civil proceedings it is possible for a copy of the notification to be obtained from the Benefit system.

16. RECOVERY FROM ONGOING BENEFIT

Where there is still entitlement to Housing Benefit the overpayment can be recovered from the ongoing Benefit and this will be arranged by the Revenues & Welfare Officers.

Government circulars state the recovery rates for deductions from on-going Housing Benefit, (please see APPENDIX C which shows the current recovery rates) HBR Reg 102(2) and (3).

As a guide the higher deductions can only be used if a customer has been prosecuted and found guilty of fraud / or admitted fraud after being 'Interviewed under Caution' or agreed to pay an Admin Penalty in respect of the overpayment.

As well as the above mentioned rates of recovery

- the Council can also increase deductions by half (50%) of any of
 - the earnings disregards, if applicable
 - regular charitable income or voluntary payments, if applicable
 - War Disablement Pension or War Widows Pension, if applicable
- in all cases the amounts are subject to an overall maximum deduction, which does not reduce the balance of benefit payable to less than 50 pence
- it is important that the Council does not recover more than these prescribed amounts
- the Council should also have due regard and consideration to a customer's health or financial circumstances, before deciding the level of deduction, or when to commence deductions, to avoid causing undue hardship to the claimant or their dependants

Where the overpayment is to be recovered from ongoing Benefit the recovery rate is detailed in the notification letter sent to the customer. The Council will review all arrangements on a regular basis to ensure the payments are being made as agreed.

If the customer is still in receipt of Housing Benefit but there is not sufficient in payment to enable a maximum recovery rate to be taken the Council will recover all but £0.50 per week and invite the customer to pay an additional amount each week. If the customer decides to pay an additional amount the debt is sent to the debtors system and an invoice is created and sent to the customer detailing the agreed repayment arrangement.

In cases where a fraud has been identified and the customer has, as a result of an investigation, admitted knowing intent the recovery rate will be increased to the current standard maximum recovery amount where appropriate. (See APPENDIX C for recovery rates).

If a customer has moved to another Local Authority area and is in receipt of Housing Benefit there, the Revenues & Welfare Officer will contact that Authority by telephone or email to request that they make deductions from the ongoing Benefit at an appropriate rate and forward the amounts recovered to Test Valley Borough Council. If the other Authority advises that they will make a charge this recovery method will continue providing the charge is equal to no more than 25% of the outstanding balance.

The rate of recovery from ongoing Benefit will take into account individual circumstances.

It should be noted that recovery from ongoing Benefit is counted as recovery from the claimant and not the landlord. Consequently the landlord is not a person affected and cannot apply for a revision of the decision or appeal it. The claimant must make up the shortfall in the Housing Benefit in order to avoid any rent arrears. If a rent arrears situation develops the landlord should pursue recovery on that basis. The Council will review all arrangements where an arrangement has been made to pay less than the agreed amount.

17. WHERE THERE IS NO ONGOING BENEFIT

Where there is no on-going Housing Benefit in payment the Benefit Officers will decide from whom the debt will be recovered. Recovery will be from the landlord in accordance with Regulations and any Service Level Agreements in place. The debt will be referred to the Sundry Debtors system. When a case is referred to Sundry Debtors an account is created for the customer and an invoice is produced.

No matter what the reason for an overpayment is, or from whom it is decided to recover from, it is good practice to start recovery as soon as possible and get a payment arrangement in place. Recovery can be suspended if a customer appeals against the overpayment.

Where the debt is less than £25.00 an invoice is raised but is not issued. These cases are passed for write-off. Similarly where the overpayment is deemed to be irrecoverable this will be passed for write-off (see later paragraph with regard to Write-offs).

The Invoice is sent with a covering letter if the debt is over £100 and an income and expenditure form. Payment is requested within 21 days. If customers are unable to pay in full it is possible to make alternative arrangements and these are covered in the following paragraphs. On creation of a Housing Benefit overpayment the Revenues & Welfare Officer will be responsible for monitoring the outstanding debt.

A Reminder notice is produced 28 days after invoice

A Final notice is produced 7 days after the reminder (used to be 14 days)

A Letter before Action is produced 14 days after the final notice (used to be 28 days)

The debt reaches Enforcement stage 7 days after Letter before Action (used to be 28 days) at which point the Revenues & Welfare Officer will see if a deduction from DWP benefits or earnings is appropriate. All throughout these stages the Revenues & Welfare Officer will continue to seek repayment by telephoning the customer and or emailing, texting them.

A further option is to check with the Housing Benefit Debt Service (HBDS) who have access to Real Time Employment and income information from HMRC records. This involves adding the debtor's details on to a spreadsheet which is referred monthly to the HBDS. Once any matches have been returned the Revenues and Welfare Officers can contact the debtor's employers as per the Attachment to Earnings procedures. See point 20 below.

18. METHODS OF PAYMENT

It is essential to offer as many options for payment as possible and at present the Council can accept payment of an overpayment by the following:

- Debit Card via website or telephone
- Standing Order
- Cash (Maximum of £3,000 due to money laundering regulations), cheque or debit card via 'Allay' outlet

19. NON-PAYMENT

Where Universal Credit is in payment the debt can be sent across to the Department for Work and Pensions straight away via the Payment Deduction Programme system. The recovery of these debts is monitored by a monthly report by a manager. The person must be receiving a sufficient amount of Universal Credit in order for the deduction to be made.

Final Notices will not be issued for less than £25.00.

The Revenues Service will use any means of recovery open to them including:

- Telephone
- Email
- Letters
- Home visits
- Interviews at the Council Office
- Referring the case to the Department for Work and Pensions
- Contacting the HBDS for Real time Employment and income information.

20. DIRECT EARNINGS ATTACHMENTS (DEA).

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 (LAs) to recover overpayments of Housing Benefit using a DEA.

21. ARRANGEMENTS

If a debt cannot be paid in full, instalments can be arranged.

When making an arrangement for Housing Benefit overpayments any outstanding debts for Council Tax and Non-Domestic Rates should be taken into account.

The overpayments system can only facilitate the set up and monitoring of instalments on a weekly or monthly basis although within these parameters it is possible to arrange fortnightly payments.

In the first instance the minimum repayment that is acceptable is the Income Support rate as shown in APPENDIX C. If the customer is unable to make these payments the income and expenditure form is required in order to consider a different rate of recovery. If a reduced repayment is accepted the arrangement will be reviewed every 3 to 6 months.

If there is a Council Tax debt outstanding for which arrangements have not already been made an arrangement will be made for both debts, but with priority being given to the Council Tax debt largely due to implications regarding Committals.

Ideally attempts are made to recover the debts within a year.

A revised invoice is sent as confirmation of the arrangement, with details of the relevant instalments.

If any offer made is unacceptable a letter is sent advising the customer of the minimum acceptable repayment and giving the opportunity to advise the Revenues & Welfare Officer of any exceptional circumstances. An income and expenditure form is included with this letter if one has not already been completed and returned.

22. MONITORING ARRANGEMENTS

If any arrangement is missed a Reminder is issued requesting that the account is brought up to date within 7 days. If payment is still not made in accordance with the agreed arrangement a Final Notice is issued requesting payment of the full amount within 7 days.

If, after a Reminder is sent, a payment is made but there is a further default another Reminder is not sent.

See paragraph regarding non-payment for further information.

23. FURTHER RECOVERY ACTION

Where payment has not been made in accordance with an arrangement or no payment has been made at all there are various options for recovery. The method chosen will depend on the individual circumstances of each debt. For smaller debts deductions can be requested from Various DWP benefits. (See earlier paragraph regarding when there is no ongoing Benefit)

If the customer is no longer within the Council's area but is in receipt of Housing Benefit at another Authority a request can be made for the debt to be recovered from that Benefit. (See earlier paragraph regarding when there is no ongoing Benefit)

If all other options are exhausted a debt will be held until such time as the customer reclaims relevant welfare benefit to recover from or in some circumstances the debt may be passed for write-off.

24. DWP Shared Services Debt Management

The DWP Shared Services Debt Management currently recovers overpayments of Housing Benefit on behalf of Test Valley. This is required when we are unable to recover the overpayment from the Housing Benefit we have administered and another Social Security Benefit is in payment to the debtor.

Debt Management recovers overpayments and reimburses Test Valley with payments every thirteen weeks and the customer's records are updated.

25. OVERPAYMENTS - CUSTOMER DECEASED

If it is known, when the overpayment is raised and deemed recoverable, that the customer is deceased the Benefit Officer raises a Sundry Debtor account and an invoice is issued in the name of the executors accompanied by the overpayment notification and covering letter. If payment is not made within 14 days and there has been no contact from the executors the Revenues & Welfare Officer will try to make contact via telephone or email if details held asking for confirmation of who is dealing with the estate and when this is likely to be settled. If there is a response to the letter an arrangement will be made if payment in

full is not possible. If there are not sufficient funds available the debt will be passed for write-off providing written confirmation is received.

If the name of the executors is not known a notification is sent to the executors to the deceased person's address. After 28 days, depending on any information received an invoice is sent. Attempts will be made to contact the landlord of the property in order to establish the correct details. Please see above paragraph for further action.

26. CHANGES OF ADDRESS AND "GONE AWAYS"

All correspondence relating to Housing Benefit is sent out of the office in "Do not redirect" envelopes.

If correspondence is returned undelivered and marked "Gone Away", or similar, and a forwarding address is not already known efforts are made to find a new address for the customer. A name search will be made on the Council Tax and Benefit records to ascertain whether a new account has been set up at another address. If necessary the landlord or agent of the property will be contacted or a check via the Department for Work and Pensions CIS system check via the Experian system can also be made to see if there is any up to date information held.

If the debt is below the limit set it will be passed for Write Off.

If a new address is found the record is amended to show the revised details and recovery will recommence at whatever stage it had reached when contact was lost.

27. BANKRUPTCY

The recovery from a person who is declared bankrupt should cease on that person's discharge from bankruptcy provided that the

- overpayment is not classified as fraudulent, and
- overpayment recoverability decision was made before the date of bankruptcy

How to check whether a claim is affected

The three categories into which an overpayment can fall when an individual is made bankrupt and then discharged are

- a** the overpayment period and overpayment recoverability decision are both prior to the date of bankruptcy
- b** the overpayment period is prior to the date of bankruptcy but the overpayment recoverability decision is made after the date of bankruptcy
- c** both the overpayment period and the recoverability decision are after the date of bankruptcy

This decision only applies to category **a** and only when deductions have been made after the date of discharge. It does not apply to cases classified as fraud.

Once you have identified a case affected by this decision you should

- take action to stop recovery with immediate effect
- confirm the date of discharge from bankruptcy, and

- refund any monies recovered after the date of discharge

It is recommended that you write out to the customer asking them to provide evidence of their date of discharge. If they do not know this date, the customer may need to contact the person or organisation that dealt with their bankruptcy.

An overpayment can still be recovered after the date of discharge if it is classified as fraudulent.

The word 'fraud' in section 281 of the Insolvency Act 1986 is not defined in the legislation. However, in the High Court judgement of *Mander v Evans* (3 All ER 811 [2001]), 'fraud', within the context of section 281, was held to mean 'actual fraud' and did not include constructive fraud 'such as undue influence'. It was emphasised that the word has to be given its natural meaning. It follows that there must be clear evidence of dishonesty in a particular case in order to classify an act as 'fraud'. Therefore to be able to recover an overpayment after discharge the customer must have:

- been found guilty of an offence whether under statute or otherwise
- made an admission after caution of deception or fraud for the purpose of obtaining relevant benefit, or
- agreed to pay a penalty under section 115A of the Administration Act and the agreement has not been withdrawn

HB Reg 102(3) & (SCP) 83(3)

The definition of a 'fraudulent' overpayment in the Subsidy Order means that you are able to also classify overpayments as 'fraudulent' if you believe the customer has knowingly failed to report a relevant change of circumstances, with intent to obtain or retain Housing Benefit, either for themselves or someone else. However, as there must be clear evidence of 'actual fraud', such as listed in the three bullet points above, the Subsidy definition of 'fraudulent' would not be sufficient to continue recovering after the date of discharge in bankruptcy cases.

28. TRACING

If it is decided worthwhile to attempt to trace an absconder, relevant details will be passed to the Tracing Agents being used and a notebook entry will be made on the account.

29. WRITE OFFS

There are various reasons for a debt being passed for write-off and several are listed below:

- the overpayment is not recoverable;
- the amount outstanding is de minimis e.g. £25.00 at invoice stage;
- the customer is deceased and there are insufficient funds with which to discharge the debt;
- the customer is "gone away" or there is no trace before they can be passed for write-off);

- the customer is bankrupt (a claim in bankruptcy is submitted but the debt written off for administration purposes - if payments are received from the receiver the debt is written on to the account accordingly);
- it is uneconomical to pursue the debt;
- health and financial considerations;
- where the overpayment has arisen as a result of an official error and the customer could not have been reasonably expected to realise the overpayment was occurring.

If an overpayment is deemed non recoverable and is to be written off a write-off authorisation sheet must be completed and passed to a manager who will check the case and authorise the write-off if appropriate.

30. CLASSIFICATION OF OVERPAYMENTS

The correct classification of overpayments is essential as, depending on the type of overpayment, the Council will receive a percentage of the overpayment back from the Government by way of subsidy as shown below.

Summary of Benefit Subsidy Arrangements

Subsidy Category	Benefit Type	Subsidy rate
Overpayments		
LA error	All Housing Benefit	100% Total under lower Threshold 40% Total between lower and upper Threshold 0% Total over upper threshold
Claimant Fraud	All Housing Benefit	40%
Rebate credited in advance	All Housing Benefit	0%
DWP error	All Housing Benefit	100%
Claimant error / other	All Housing Benefit	40%
Duplicate payments for uncashed lost/stolen	Rent Allowance	25%

TARGETS

APPENDIX A

Reference	Indicator	Achieved 2018 / 2019	Target 2019 / 2020
REV007	Total value of benefit overpayments in respect of Local Authority error.	£70.8k	Under £100k
REVC04	Speed of processing - changes of circumstances claims (calendar days)	2.56 Days	4 Days
ATLAS	To load amended Tax Credit and Welfare Benefit changes (ATLAS) into the Northgate database	Daily	Daily

During the transition from Housing Benefit to Universal Credit the Council will monitor the overall Housing Benefit overpayment debt on a monthly basis to enable accurate forecasting and budgeting

RECOVERY RATES

APPENDIX B

Recovery rates of overpayments / excess benefits by deduction from certain social security benefits, including ongoing housing benefit.

From 1 April 2019– Standard maximum rate of recovery from continuing benefit is **£11.10 per week**.

From 1 April 2019– Standard maximum rate of recovery where overpayment has arisen due to fraud is **£18.50 per week**.

As well as the above mentioned recovery rates the Council can also increase deductions by half (50%) of any of

- the earned income disregards, if applicable
- regular charitable income or voluntary payments, if applicable
- War Disablement Pension or War Widows Pension, if applicable

In all cases the amounts are subject to an overall maximum deduction, which does not reduce the balance of benefit payable to less than £0.50 pence.

It is important that the Council does not recover more than the prescribed amounts.

The Council should also have due regard and consideration to a customer's health and financial circumstances, before deciding the level of deduction, or when to commence deductions, to avoid causing undue hardship to the claimant or their dependants.

If the claimant wants to pay and gives their written permission the Council can recover a higher amount than the maximum rate. If this is the case we must ensure that the claimant understands the higher payment is entirely voluntary.

RESPONSIBILITY FOR REPAYMENT**APPENDIX C**

The following table can be used as a guideline, but each overpayment should be examined individually before deciding appropriate recovery method.

Reason for cancellation	Payment to Claimant	Payment to Landlord	Recovery action against Claimant	Recovery action against Landlord
Claimant request	x		x	
		x		x
Moved	x		x	
		x		x
Post returned	x		x	
		x		x
Income change	x		x	
		x	x	
DWP cancellation	x		x	
		x	x	
COC relating to customer	x		x	
		x	x	
Customer deceased	x		x	
		x		x
O/P re rent change	x		x	
		x		x