



Committee and date

Audit Committee

18 June 2010

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Item No

19

Public

REQUEST FOR APPROVAL OF AN OVERPAYMENT POLICY

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Summary

The Department of Work and Pension's good practice guidance recommends that members approve the Local Authorities Overpayment Policy.

The Benefit Service is keen to minimise overpayments by providing an effective administration process. However, we accept that overpayments are an inevitable part of our service and so we will ensure that we take all reasonable steps to provide an effective recovery procedure.

This policy confirms our objectives in the determination, notification and recovery of overpayments in accordance with legislation and recognised best practice.

The policy is to ensure that: -

- There is full compliance with regulations and good practice.
- We have comprehensive written rules and procedures.
- We respect customers rights.
- The recovery of overpayments are timely and efficient.
- The recovery of overpayments is maximised.

Recommendations

Members are asked to approve the overpayment policy contained within this report.

REPORT

Background

1. The benefit system is complex with many rules and regulations that are constantly changing. Poor administration and monitoring of overpayments can cost the council money through loss of subsidy.

2. The correct calculation of benefit is dependant on the service being informed of changes that occur. Frequently this is not the case and overpayments are created. Although a small percentage will be fraudulent the majority will be through ignorance of the system or because the customer assumes we will be informed by another organisation.
3. As a service we need to ensure that everyone who has been overpaid Housing or Council Tax Benefit is fairly treated whilst maintaining our responsibility to the local taxpayer.
4. Having identified an overpayment we must determine:-
 - The cause of the overpayment.
 - If the overpayment is recoverable.
 - If we should recover the overpayment.
 - Who we should recover from.
 - The method of recovery.

The cause of the overpayment

5. Benefit overpayments can occur for a number of reasons including: -
 - A customer does not tell us about in a change in circumstances.
 - A customer deliberately claims benefit they are not entitled to.
 - We make a mistake.
 - A third party makes a mistake such as the Department for Work and Pensions.

If the overpayment is recoverable

6. When an overpayment occurs, we must then decide if the amount is recoverable or not. Generally most overpayments are recoverable unless they were caused by an official error on our part. However, an overpayment cannot be treated as non recoverable just because it has arisen through official error. We must first confirm that the customer has not contributed to or caused the mistake that resulted in the overpayment.
7. To recover the money from the customer we must be satisfied that they could be reasonably expected to know they were being overpaid at the time. In reaching this decision we must consider: -
 - The customers experience and knowledge of the benefits system
 - The amount of information that has been given to the customer in the past.
 - From the information provided could the customer have known that an overpayment occurred?
 - Do they have difficulty in understanding the information they have been given. For example their first language is not English or they cannot read?
 - Is it reasonable for the customer to expect a change in benefit from a notified change in circumstances?
 - Previous actions or lack of by the customer.

- Intent to defraud the system.
- Complexity of the benefit scheme.

If we should recover the overpayment

8. Overpayments are recoverable at our discretion. The personal circumstances of the customer are always taken into account before we decide to recover any outstanding amounts.
9. If we decide it is not prudent to recover an overpayment, we are under no obligation to chase the debt. However, current subsidy arrangements penalise us not to recover most overpayments and the authority would bear the cost of the overpayment in full.
10. We would not pursue an overpayment where the customers' circumstances are exceptional and they have no funds to repay the outstanding amount. For example the customer is suffering from a terminal illness, the customer has entered a nursing home or the customer is suffering from a mental illness. Medical information should be sort from a professional in support of the recommendation not to recover the debt.
11. In cases where we decide to recover the overpayment and we consider the customer to be vulnerable we will make special arrangements to contact that person to fully explain the overpayment, how it occurred and what recovery avenues are available. In deciding someone is vulnerable we will take into account the person's health, age, mental and physical circumstances.

Who we should recover from

12. Overpayments can be recovered from the customer or from the person to whom it was paid. We are also able to recover from landlords when they have received the money directly.

The method of recovery

13. The main methods of recovery we currently use are as follows: -
 - Deductions from ongoing benefit.
 - Issuing an invoice.
 - Blameless tenant recovery.
 - Deductions from other benefits.
 - Deductions from ongoing benefit at another authority.
 - For Council Tax only – adding the overpaid amount to the customers council tax account.

Recovery amounts

14. The rates set out in the policy are the figures that all staff should use when recovering overpayments. However, where a customer can show us that this instalment amount will cause them financial hardship we will arrange a lower amount that is acceptable to both parties. The customer must have a

minimum entitlement to housing benefit of £1.00 and be left with a minimum of 50p.

15. Deductions from ongoing benefit currently stand at: -
- £13.20 - If the customer has been found guilty of fraud, or admitted fraud after a caution.
 - £9.90 for any other case.
 - Plus 50% of any earned income disregards.
 - Any disregard of regular charitable or voluntary payments.
 - £10 disregard of war disablement or bereavement pension.
16. Should a customer wish to repay an overpayment at a higher rate, we can accept this as long as it does not exceed the customer's ability to make the payments.
17. Where a customer has capital in excess of £6,000 (£10,000 for pensioners) the first recovery action will be to request the overpayment in full. Where the customer can demonstrate that this is not affordable then an additional £5.00 will be added to the standard deductions for each £1000 over the capital excess. For capital over £16,000 we will require repayment in full.

Recovery of overpayments for former customers

18. In the first instance an invoice should be issued for the full amount of the overpayment. Where the customer can show that it is unaffordable then instalments can be negotiated.
19. If the customer is in receipt of Income Support or Job Seekers Allowance then the recovery rate can be set at the standard amounts of £9.90 and £13.20.
20. Where a customer is no longer entitled to benefit because their income is too high to qualify, the following instalment amounts will apply after confirming the customer's income compared to the relevant applicable amount.

Above applicable amount	Amount of deduction
Up to £20.00	£9.90
£20.01 to £39.99	£12.00
£40.00 to £59.99	£16.00
£60.00 or over	£20.00

21. Where the customer has not repaid an invoiced amount and is now claiming benefit at another authority the above deductions will be requested from that organisation.
22. Where the customer has not repaid an invoiced amount and is in receipt of DWP benefits, deductions will be requested at the above rates.

Financial Hardship

23. Customers who request a revision of the weekly/monthly deductions or instalments will be required to complete an income and expenditure form.

Once received the form will be used to reconsider the circumstances of the case.

24. In order to decide whether the customer will experience financial hardship due to the level of deduction or instalment we will take the following into account: -
- Non priority debts.
 - Non essential expenses for example subscriptions to satellite TV.
 - Unreasonably high expenses for food, fuel and other households costs (unless the customer has a medical condition that warrants the amount).
25. When a customer has any changes in circumstances that may affect the deduction or instalment the amount will be reviewed.
26. It is our aim to recover the maximum amount of recoverable overpayments possible. However, we will decide whether to recover an overpayment and the rate of the overpayment with reference to the individual circumstances of the case. If we decide there are exceptional circumstances, where the customer is vulnerable or experiencing financial hardship and that deductions/instalments will cause undue hardship, we will reduce the rate or decide not to recover at all.

Write offs

27. The Benefits Service will ensure that we minimise the cost of write offs to the local tax payers by taking all necessary action to ensure the debt is actively pursued and recovered.
28. Write offs would be considered for the following reasons: -
- The debt is uneconomic to pursue.
 - There is no trace of the debtor.
 - There is insufficient information to pursue the debt.
 - The customer has died and there is no funds from the estate.
 - The customer is bankrupt and the overpayment was not a result of fraud.
 - The customer is suffering severe hardship and there is little or no chance of recovery.
 - The customer has severe health problems.
29. All the above reasons would require evidence to support the decision.
30. All claims that are recommended for write off should be referred to the Benefit Manager for a decision to be confirmed. The overpayment should be pended on Northgate with a full information note put on Civica detailing the amount of the overpayment, the dates the overpayment covers and the reason for the write off request.
- Under £200 should be authorised by the Benefit Manager.
 - Over £200 but under £5000 should be authorised by the Head of Service.

- Over £5,000 should be authorised by the Director of Resources.

Classification of overpayments

31. Each overpayment should be correctly classified to ensure that we claim the correct amount of subsidy as follows: -
- **Administrative delay** – should be used if an overpayment occurred because we have delayed in processing a change. However, the delay is due to something outside of our control, for example staff shortages, sickness or backlogs.
 - **Local Authority error** – should be used if we have incorrectly assessed someone's benefit due to a system problem, accidental error, or changes to the law are not actioned.
 - **DWP (DSS) error** – should be used when an overpayment arises due to a mistake or omission by the Department for Work and Pensions.
 - **Fraud** – should be used where an overpayment has occurred and the customer has been found guilty of an offence under statute, or has admitted an offence and been cautioned or agreed to pay an administrative penalty.
 - **Claimant error** - should be used when the overpayment has arisen due to an omission by the customer. For example they have failed or delayed in telling us about a change in circumstances.
 - **Indicative rent level overpayment** - should be used when the claim has been assessed using a payment on account awaiting a rent officer decision, which when received results in a lower amount of benefit being paid
 - **Technical overpayment** – should be used when rent rebates or council tax benefits are credited in advance and a change in circumstances reduces entitlement to nil.
 - **Liability reduction** – should be used when the Council tax liability is reduced due to transitional relief being applied or a band being reduced.
 - **Other overpayments** – should be used if the overpayment does not fall into one of the above classifications

Notification of overpayments

32. Any customer asked to repay an overpayment must receive notification. This notification must confirm:-
- That an overpayment has occurred and whether it is recoverable.
 - The reason for the overpayment.
 - The amount of the overpayment.

- How the overpayment was calculated.
- The dates the overpayment covers.
- The amount of the deduction from ongoing benefit (if any).
- The right of appeal.

Appeals

33. All customers have the right of appeal against our decision to recover an overpayment. However, there is no such right of appeal against the rate at which we decide to recover the overpayment.
34. When we receive the appeal we will review the claim and send the customer a written explanation of the outcome, explaining how that decision has been reached. If we alter the decision, the claim will be reassessed; the customer will be notified and be given new rights of appeal against this decision.
35. If the original decision is upheld after the review we will advise the customer and send the details to the Tribunal Service.

<p>List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)</p>
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<p>DWP Good Practice Guide Checklist 6</p>
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<p>Human Rights Act Appraisal</p>
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<p>Environmental Appraisal</p>

<p>Risk Management Appraisal</p>

<p>The presence of an Overpayment Policy enables the Council to take reasonable steps to provide an effective recovery procedure whilst respecting customer rights.</p>

<p>Community / Consultations Appraisal</p>

<p>Cabinet Member</p>

<p>Keith Barrow, Leader of the Council and Brian Williams, Chairman of Audit Committee</p>
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<p>Local Member</p>

<p>Appendices</p>

<p>None</p>
