



Tax & Benefits Service

Housing Benefit and Council Tax Reduction

Overpayment Policy

January 2015

HOUSING BENEFIT OVERPAYMENT POLICY

1. INTRODUCTION

New Forest District Council is committed to providing a high quality benefit service to all its customers through the Housing Benefit and Council Tax Reduction Schemes.

Overpayments are inevitable and occur due to a variety of reasons. We make every effort to minimise the occurrence of overpayments and, where appropriate, to pursue recovery firmly but fairly. The level and method of recovery will be appropriate to the amount of the debt, the means of the debtor and the cost effectiveness of taking enforcement action.

We will monitor, maintain and improve systems and working practices with a view to minimising overpayments caused by official error and the misrepresentation or failure to report changes of circumstances. We will also monitor the success rate for recovering all overpayments including those caused by fraud and will report this information to senior officers.

Senior officers will regularly review this Overpayment policy and its effects. Reviews will take into account the cost of recovery, the income from overpayments reclaimed and subsidies and incentives paid by central government. The policy may also be revised when there are changes in legislation or to improve its effectiveness in preventing and recovering overpayments.

2. PURPOSE

It is essential that New Forest District Council demonstrates that we undertake the administration and recovery of overpayments efficiently and effectively. In doing so we:

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

3. MINIMISING OVERPAYMENTS

We seek to minimise overpayments by:

- evidenced-based verification that secures the gateway and ensures that assessments are correct at the outset,
- regularly reviewing claims where a change in circumstances is likely to occur
- encouraging claimants and landlords to promptly notify the Housing Benefit Office of changes in circumstances,
- quickly reassessing the claim which will reduce any ongoing overpayment and prioritising incoming work that is likely to result in reduced benefit entitlement,
- pursuing the recovery of overpayments where possible, to ensure a deterrent effect.

4. WHAT IS AN OVERPAYMENT?

An overpayment of benefit or reduction is any amount which has been paid but to which there was no entitlement. Overpayments occur when the Council revises or supersedes an award of benefit or reduction.

5. WHAT ARE THE CAUSES OF OVERPAYMENTS?

Overpayments can occur as a result of:

- A change in the claimant's circumstances which means they are no longer entitled to benefit or entitled to less benefit than previously awarded
- A failure by the claimant to notify a change in circumstances, e.g. an increase in earnings, or providing incorrect information, whether deliberately or not, in support of a claim;
- Delays or mistakes by the Council when processing, or failing to process, information provided by the claimant;
- Computer generated errors that work out incorrect awards of benefit
- Errors made by The Pensions Service or DWP

Overpayments may occur when the Council is not notified about changes in circumstances. Claimants, their appointees or landlords receiving Housing Benefit payments directly, must report to the Council all changes in circumstances they could reasonably be expected to know which are likely to affect Housing Benefit entitlement. These people are known as "persons affected".

6. WHO IS RESPONSIBLE FOR RECOVERING THE OVERPAYMENT?

The Council is responsible for recovering all overpayments of benefit and must:

- Establish the cause of the overpayment
- Identify the period and amount of the overpayment
- Decide if the overpayment is recoverable
- Consider whether or not we will recover the overpayment
- Decide who to recover the overpayment from
- Notify any "person affected"
- Classify and record overpayments so we can make the correct rate of recovery

7. IDENTIFYING OVERPAYMENTS AND DECIDING IF THEY ARE RECOVERABLE

The Council will endeavour to accurately and promptly identify overpayments to reduce incorrect payments of benefit.

Where possible, we prioritise incoming mail on a daily basis which advises the Council of a change in circumstances which potentially could cause an overpayment.

Overpayments are identified by trained staff who make the decision as to whether a claimant has been overpaid in accordance with legislation. Decisions as to whether or not the overpayment is recoverable and from whom recovery will be sought will be

made in accordance with the law and guidance from DWP, together with accepted best practice.

Generally, an overpayment is recoverable unless it is due to an official error and the claimant, or someone acting on their behalf, could not reasonably have been expected to realise it was an overpayment.

Whether a recoverable overpayment is actually recovered is at the discretion of the Council. In making this decision we consider the individual circumstances. Where there is any doubt staff will discuss cases with their Manager.

When working out the amount of an overpayment the Council must consider underlying entitlement. This is any amount which would have been awarded if the Council had known the true facts of claim throughout the period of the overpayment, and all changes in circumstances notified on time. The Council also considers any uncashed cheques or BACS payments made but not received (it takes two to three days following a BACS payment to be in the recipients account).

The Council recognises that the nature of Housing Benefit overpayments is such that this affects the poorest members of the community. Whilst an overpayment may be recoverable, in law it is a separate decision as to whether or not the Council should recover the amount. This may mean that the Council may write-off some recoverable overpayments due to considering,

- if the debtor has no means to repay,
- the health and financial considerations
- if it is not in the Council's interests to pursue payment,
- the debtor has died, is bankrupt or has absconded without trace,
- if recovery action is not cost-effective in relation to the size of the debt,
- that the debt is time barred.

If the Council considers that an overpayment is not recoverable an officer will make a write-off application. If in agreement, a Manager will authorise the application which will then pass to the Head of Service for authorisation.

8. WHO TO RECOVER THE OVERPAYMENT FROM?

A recoverable overpayment can be recovered from the claimant or from the person who received the payment, e.g. the landlord. In making a decision on who to recover the overpayment from, the Council will consider all relevant factors in accordance with regulations.

- Recovery from ongoing benefit – where there is still an entitlement to benefit the Council will recover the overpayment by making a weekly deduction. These amounts are set each year but the Council can increase deductions by using 50% of any earnings disregard or 100% of any voluntary payments disregard. In all cases, the amounts are subject to an overall total, which does not reduce the amount of weekly benefit payable to less than 50p and the Council will give consideration to the financial circumstances of the claimant.

Where the debtor is experiencing hardship, the Council will give consideration to reducing the rate of recovery of a Housing Benefit overpayment. The Council will

allow reducing the rate of recovery where the debtor is at risk of being made homeless, is experiencing severe financial hardship, there are multiple debts to the authority, or because of health problems, a debtor has additional expenditure. The Council will request the debtor to fill in and return an Income and Expenditure form. The council will review the decision to reduce recovery after an agreed time and notify the debtor accordingly.

- Where there is no ongoing benefit – officers will decide who to recover the debt from and send an invoice after one month has lapsed from making our decision. This is to give time for any appeal to be made. Where the debt is less than £5.00 the Council will not issue an invoice and the debt will be put for write-off.
- Recovery from partners – whenever a recoverable overpayment of Housing Benefit can be recovered from the claimant, it can also be recovered from their partner. This can only be done where they were a couple both at the time of then overpayment and at the time of its recovery. Where the Council recovers an overpayment from a partner notification will be sent.
- Recovery from landlords – the Council can recover an overpayment from a landlord if the Housing Benefit was paid to the landlord and either the landlord caused the overpayment; could have reasonably been expected to realise there was an overpayment or that he overpayments was no ones fault.
- Direct recovery from landlords – also known as “Blameless tenant”, under regulations the Council can recover overpayments of Housing Benefit made to a third party, usually landlords, from Housing Benefit paid to that third party of other tenant’s Housing Benefit. The Council will send a decision notice confirming the decision to recover an overpayment by this means.

9. NOTIFICAITON OF AN OVERPAYEMNT

The Council must notify, in writing, any “person affected” by a decision it makes. This includes not only the claimant, but also any person from whom the Council seeks to recover an overpayment from. Regulations state that every decision notice must contain specific information, which includes:

- The date of the decision
- The period of the overpayment
- The amount of the recoverable overpayment
- The reason for the overpayment
- That the overpayment is recoverable
- How the amount was calculated
- If overpaid Housing Benefit is to be deducted from future Housing Benefit, the amount of the deduction
- The person’s right to request a written statement of reasons, to request the Council to reconsider its decision, and to appeal to a tribunal, and the manner and time limits to make the appeal.

The Council will send it’s notification within 14 days, however, our aim to always send the notice as soon as possible. The notice will contain all the specified information as well as a contact telephone number and the Council’s address.

10. METHODS OF OVERPAYMENT RECOVERY

We will pursue recoverable overpayments firmly but fairly, taking into account the particular circumstances of each case. We are aware that we are custodians of public funds and overpayments that are not recovered impact on taxpayers.

The Council will use the following methods to recover overpayments:

- Deductions from the ongoing Housing Benefit
- Deductions from earnings. This can be done without having to go to court.
- Deductions from state benefits where the law allows
- By offsetting an underpayment of housing benefit, where the law allows
- Agreement with another local authority to recover from ongoing housing benefit entitlement, where the claimant has moved from the area
- Deduction from benefit owed to the landlord or agent for a third party tenant (often referred to as the 'blameless tenant' method)
- Overpayments will not generally be recovered from a council tenant's rent account unless one or more of the following applies
 - the account is in credit,
 - the tenant had paid the correct level of rent at the time of the overpayment,
 - the tenant requests recovery in this manner,
 - the overpayment is due to death or vacation of the property.

The Council will recover any excess Council Tax Reduction by a debit to the relevant Council Tax Account. In doing so the Council will send a revised council tax notice confirming the revised amount due.

11. Methods of Payment

The Council will send an invoice one month after making a decision for the full amount to be paid in one instalment. For any amounts over £2,000 the Council will deliver the invoice by hand with a view to seeking payment or making an arrangement. It is important to offer as many options for payment as possible and currently the Council accepts payment of an overpayment by the following:

- Cash at specified Information Offices
- Debit or Credit Card
- Cheque
- Post Office payment
- Standing Order
- Payment via the internet

12. NON-PAYMENT

If after sending an invoice the overpayment remains unpaid, and the Council receives no contact from the debtor, the Council will send a Reminder Notice requiring payment within 14 days. If the Council still receives no payment, or contact from the debtor to make an arrangement, within 14 days, the Council will send a Final Notice. Where possible the Council will contact the debtor by telephone, however, if there is still no payment or contact from the debtor the Council will pass the debt to a Collection Agency or to court which may result in County Court Judgements.

13. MAKING ARRANGEMENTS

If a debtor cannot repay the overpayment in one instalment, the Council will agree an arrangement to repay the overpayment with an amount on a weekly or monthly basis.

When making arrangements the Council will give consideration to the income and capital of the debtor, the amount of the overpayment and length of time to repay the overpayment. Ideally the Council will attempt to recover the overpayment within one year. On making an arrangement the Council will send a revised invoice confirming the dates and amounts due. If the Council does not accept an offer it notifies the debtor and gives an Income and Expenditure form for completion.

The Council will monitor arrangements to ensure compliance. Where the debtor defaults on the arrangement the Council will contact the debtor by telephone, e-mail or by home visit. If no contact is made the Council will send a Final Notice.

14. CHANGE OF ADDRESS AND ABSCONDS

The Council sends all correspondence in "Do not redirect" envelopes. If correspondence is returned "Gone Away" or is unable to be delivered, the Council will make enquiries to find the correct address. Should these enquiries prove unsuccessful the Council will pass the debt to a Collection Agency.

15. BANKRUPTCY

If a claimant is declared bankrupt and has an overpayment of benefit which is not being classified as fraudulent, recovery depends on whether the Council makes its decision that an overpayment is recoverable before or after the date of bankruptcy.

If the decision is made before being declared bankrupt, the liability to repay the overpayment ends on being discharged from their bankruptcy. If the decision is made after the date of bankruptcy, the overpayments remains payable in full, even after their discharge from bankruptcy.

On being notified of a bankruptcy the Council will diarise the date of discharge.

The Council is still able to recover overpayment after the date of discharge is the overpayment is classified as fraudulent. Fraudulent overpayments include circumstances where the claimant has:

- Been found guilty of an offence under statute or otherwise
- Made an admission after caution of deception or fraud for the purpose of obtaining benefit
- Agreed to pay a penalty, known as an Administrative penalty, under section 115A of the Administration Act and the agreement has not been withdrawn