



**Tax & Benefits Service**

# Housing Benefit and Council Tax Benefit Overpayment Policy

**January 2009**

# **HOUSING BENEFIT OVERPAYMENT POLICY**

## **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 Benefit Schemes.

Overpayments are inevitable. Every effort will be made 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.

## **THE POLICY - GENERAL**

We will seek to minimise overpayments by

- evidenced-based verification that secures the gateway and ensures that assessments are correct at the outset,
- 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.

The decision as to whether a benefit claimant has been overpaid will be made by trained staff in accordance with legislation. Decisions as to whether or not the overpayment is recoverable and from whom recovery should be sought will be made in accordance with the law and guidance from DWP, together with accepted best practice.

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.

Overpayments will be reduced by any 'underlying entitlement' and/or any uncashed cheques.

Officers will take care to record the correct reason for an overpayment, so that the appropriate level of DWP subsidy is claimed.

When an overpayment decision is made, the benefit claimant will be offered the right to request a 'reconsideration' and an explanation of the decision, as well as the right to appeal to an independent tribunal according to regulations. Once these rights have expired they will only be granted again where the law allows.

## **METHODS OF OVERPAYMENT RECOVERY**

The following methods will be used to recover overpayments:

- Deduction from the ongoing Housing Benefit
- By offsetting an underpayment of housing benefit, where the law allows
- Deductions from other Social Security Benefits, where the law allows
- Repayment by the debtor in instalments, if necessary
- Repayment from the person to whom the benefit was paid, if not the claimant (such as a landlord or agent)
- Deduction from benefit owed to the landlord or agent for a third party tenant (often referred to as the 'blameless tenant' method)
- Agreement with another local authority to recover from ongoing housing benefit entitlement, where the claimant has moved from the area
- Registering the debt in the County Court followed where appropriate by enforcement action.

Registration of the debt with the County Court will enable enforcement action through the County Court which can include

- instruction of the County Court Bailiff to seize goods; (or instruction of the Sheriff of the High Court to do the same)
- attachment of earnings (instructing employers to make deductions from wages)
- charging orders
- third party debt orders.

Overpayments from ongoing benefit will be recovered at a rate prescribed by regulations. Recovery at a higher rate will only be at the debtor's request.

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.

Excess Council Tax Benefit will be recovered by a re-debit to the relevant Council Tax Account.

An underpayment of Housing Benefit may be offset against an overpayment of Housing Benefit.

Where the debtor is experiencing hardship, consideration will be given to reducing the rate of recovery of a Housing Benefit overpayment. A reduced rate of recovery may be allowed where

- the debtor is at risk of being made homeless,

- there are multiple debts to the authority, or
- because of health problems, a debtor has additional expenditure.

Where a Member wishes to advocate on behalf of a constituent with a view to varying the rate of recovery or suggesting that a debt be written off, this should always be in writing to enable transparency.

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 amount should be recovered. This may mean that some recoverable debts will be written off because, for example,

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

The order of priority for recovery of an overpayment debt will be:

- Fraud Overpayment
- Older Overpayments.