

**DUNDEE CITY COUNCIL**

**REPORT TO: FINANCE COMMITTEE – 9 MAY 2005**

**REPORT ON: HOUSING BENEFIT OVERPAYMENT RECOVERY POLICY UPDATE**

**REPORT BY: DEPUTE CHIEF EXECUTIVE (FINANCE)**

**REPORT NO: 286-2005**

**1.0 PURPOSE OF REPORT**

To update the previously approved Dundee City Council Housing Benefit Overpayment Recovery policy.

**2.0 RECOMMENDATION**

It is recommended that the Committee approve the updated Housing Benefit Overpayment Recovery policy attached.

**3.0 FINANCIAL IMPLICATIONS**

None

**4.0 LOCAL AGENDA 21 IMPLICATIONS**

None

**5.0 EQUAL OPPORTUNITIES IMPLICATIONS**

None

**6.0 BACKGROUND**

**6.1** Reference is made to Article I of minute of meeting of this Committee of 30 June 2003 where the Committee approved the Housing Benefit Overpayment Recovery policy.

**6.2** The updated policy appended hereto sets out Dundee City Council's commitment to the recovery of Housing Benefit Overpayments as laid down by the Housing Benefit (General) Regulations 1987.

**6.3** The Council aims to comply wherever possible with Performance Standards guidance and will look to revising this policy document as and when necessary.

**7.0 CONSULTATION**

The Chief Executive, Depute Chief Executive (Support Services) and Assistant Chief Executive (Management) have been consulted on the content of this report.

**8.0 BACKGROUND PAPERS**

None

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**DATE** 28 April 2005

## **DUNDEE CITY COUNCIL**

### **HOUSING BENEFIT OVERPAYMENT RECOVERY POLICY**

This policy document sets out Dundee City Council's commitment to the recovery of Housing Benefit Overpayments as laid down by the Housing Benefit (General) Regulations 1987.

The Council aims to comply wherever possible with Performance Standards guidance and undertakes to review this policy as and when necessary.

#### **INTRODUCTION**

##### **1 Why do we need a policy?**

It is essential for Dundee City Council to demonstrate that it carries out administration and recovery of Housing Benefit overpayments efficiently and effectively.

By doing so the Council: -

- reduces losses to Public Funds
- provides revenue for the Council
- helps reduce the loss from overpayments
- deters fraud and error
- demonstrates commitment to accuracy and provision of a quality service to customers

##### **2 Aim of the policy**

The aim of this policy is to act as a guide to the Council's Administration of Housing Benefit Overpayment recovery and to set out a clear Debt Recovery strategy

##### **3 Staffing**

The recovery of Housing Benefit overpayments is undertaken by the Overpayments Team, which consists of one Senior Administrative Assistant and five Recovery Officers.

#### **CUSTOMER CHARTER**

- Debtors will be given clear and prompt information about any Housing Benefit overpayment.
- Debtors will be treated courteously, efficiently and with empathy.
- Any information given by the debtor will be treated as confidential.
- If required by the debtor, a private interview can be arranged so that a member of the Overpayments Team can explain Dundee City Council's debt recovery procedures.
- When dealing with collection of Housing Benefit overpayments staff must follow clear written procedures and they will receive adequate training on debt collection.

In accordance with Dundee City Council's "Anti-Poverty Strategy": -

- Any payment arrangement made will be realistic.
- Staff will be sensitive to debtor's individual circumstances. If money is owed to other creditors the debtor is likely to be under stress. This will be taken into account.
- Flexible and convenient methods of payment will be provided.
- Staff will help debtors towards attaining financial independence.
- No debtor will be subject to discrimination.
- The Overpayments Team will work with recognised advice agencies, while acknowledging their independence. Where it is felt appropriate debtors will be directed to a relevant advice agency (such as Welfare Rights or Citizen's Advice Bureau)

Debtors who are unhappy with the service or treatment they have received will be advised on the Council's Complaints procedure

## **HOUSING BENEFIT OVERPAYMENTS**

### **1 What is a Housing Benefit Overpayment?**

A Housing Benefit overpayment is any amount of Housing Benefit paid to or in respect of a claimant to which he/she is not or was not entitled.

### **2 What causes a Housing Benefit Overpayment?**

Overpayments can be caused by a failure to report a change in circumstances, late notification of a change in circumstances, delays in processing a change in circumstances, incorrect information being supplied, errors made by the Local Authority or errors made by the Department for Work and Pensions.

### **3 What is a recoverable Housing Benefit Overpayment?**

A recoverable Housing Benefit overpayment is generally any overpayment unless it is due to an official error and the claimant, someone acting on their behalf, or the person to whom the payment was made could not 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.

### **4 What is a "fraudulent" Housing Benefit overpayment?**

A "fraudulent overpayment" is an overpayment that has been designated as fraudulent following investigation and intervention by a designated Fraud Officer. Recovery of such overpayments is given priority.

The Council will seek repayment of all incurred Housing Benefit or Council Tax Benefit overpayment which has arisen as a result of fraudulent activity.

Where an individual has committed a benefit fraud offence, Dundee City Council will actively seek to recover the overpayment in full, prioritising these cases for urgent action taking all legal steps available.

All benefit overpayments resulting from a benefit fraud offence are recorded and taken into consideration if the perpetrator commits any further benefit offence when determining what further action to take.

The Fraud Section liaise with the Overpayments Section directly in these cases.

### **5 What is an "administrative penalty"?**

Where a fraudulent overpayment has been identified the Council has the option in some cases to offer the debtor the chance to pay an "administrative penalty" as an alternative to being prosecuted. This penalty is calculated as 30% of the overpayment amount created since December 1997.

Recovery of the Housing Benefit overpayment takes priority over the Housing Benefit overpayment administrative penalty. However, the debtor can opt to arrange to pay the penalty over and above paying back their overpayment.

## **HOW THE COUNCIL ACTIONS HOUSING BENEFIT OVERPAYMENT RECOVERY**

### **1 Identification/classification of Housing Benefit overpayments and decisions on recoverability**

Accurate and prompt identification of overpayments is important in order to ensure that the incorrect

payment of benefit is discontinued, maximise the chances of the successful recovery of the overpayment and reduce the number of complaints and appeals.

In order to help identify overpayments promptly the Council works closely with the Department for Work and Pensions and shares information in accordance with the legislation regarding the awards of Income Support and Jobseekers Allowance (Income Based).

The Council identifies overpayments and establishes the cause of the overpayment and whether it is recoverable and from whom it should be recovered.

The Council receives subsidies from the Government for certain types of overpayment so it is important that classification is accurate.

## **2 Decision Making**

Correct decision-making regarding whether or not there is an overpayment and whether or not it is recoverable is essential because there are consequences concerning the rights of claimants and other affected persons, the decision can affect the finances of the Council if it is not recoverable and decisions made and the reasons for them can provide an indication of the levels of fraud and error compared with inefficiency.

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

## **3 Claimant or third party error**

An official error does not include circumstances where the claimant, 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 third party errors and are recoverable.

## **4 Calculation of a Housing Benefit Overpayment**

A recoverable overpayment is calculated by deducting the amount of benefit that should have been paid for the period in question from the amount of benefit that was actually paid. Any un-cashed/returned cheques or underpayment of benefit is taken into account.

Claimants are given the opportunity to provide evidence of any possible underlying entitlement, which may reduce the overpayment.

## **5 From whom should the overpayment be recovered?**

A recoverable overpayment may always be recovered from the claimant and/or from the person who received the payment (e.g. landlord who has been paid direct).

Decisions on who to recover from are at the Council's discretion. In coming to a decision all relevant factors will be taken into account and it should be noted that such a decision could be the subject of an appeal.

Dundee City Council will normally only consider recovery from a landlord when an overpayment has arisen due to issues that they could have known about. (For example - a decrease in rent charged, change to the tenancy agreement, the tenant moving from one room/dwelling to another or if the landlord is resident in the property changes such as the customer or partner starting work).

If an overpayment occurs due to a change in the claimant's, or their family's "personal" circumstances it is less likely that a landlord could be expected to know the payments they were receiving were incorrect.

Since October 2001, Housing Benefit overpayments should not be recovered from the landlord, who has received the benefit direct, when: -

- the landlord has notified the Local Authority or Department for Work and Pensions in writing that they suspect there has been an overpayment, and
- it appears to the Local Authority that there
  - are grounds for instituting proceedings against any person for an offence under section 111A or 112A(1) of the Administration Act (dishonest or false representations for obtaining benefit), or
  - there has been a deliberate failure to report a relevant change of circumstance and the overpayment occurred as a result of that deliberate failure, and
- the Local Authority is satisfied that the landlord has not
  - colluded with the claimant so as to cause the overpayment, or
  - acted, or neglected to act, in such a way as to contribute to the period or the overpayment
- the overpayment has arisen due to misrepresentation or failure to disclose a relevant fact by
  - the claimant, or someone acting on his or her behalf, such as an appointee or agent

Overpayments must not be recovered from a joint tenant, unless that joint tenant is also a partner of the claimant and regulation 101(4) applies or they are the person to whom benefit was paid.

Where an overpayment has been made to a claimant who has a partner it may be deducted from Housing Benefit payable to the partner. This may only occur if the claimant and partner are members of the same household both at the date of the overpayment and the date it is recovered.

If an overpayment has been made to a deceased person recovery can be sought from their estate.

## **6 Notification of an overpayment**

The Housing Benefit regulations state that any person affected by a decision relating to an overpayment must be notified in writing e.g. if the debt is to be recovered from a landlord notification must be sent to the claimant and the landlord. A notification is sent out within 14 days of the decision stating clearly the reasons for the overpayment and advising the debtor of their right of appeal/review.

These letters also provide information as to how payment should be made and who to contact regarding any query.

## **7 Recovery from on-going Benefit**

Where the claimant is still entitled to Housing Benefit the overpayment can be recovered from their on-going benefit entitlement.

The Government sets the weekly rate that Councils can recover; however, this amount can be increased with the consent of the debtor.

Dundee City Council's standard rates of recovery are set as follows: -

- Claimant in receipt of Income Support or Job Seekers Allowance (Income Based) - £2.85 per week
- Claimant not in receipt of Income Support or Job Seekers Allowance (Income Based) - £8.55 per week
- Fraudulent overpayment – £11.20 per week plus 50% of any earned income disregards, disregarded regular charitable or voluntary payments, war disablement pension or war widows pension if they apply to the claim

Where the overpayment is to be recovered from on-going benefit, details of this are shown on the notification letter. If the debtor is still in receipt of Housing Benefit but the amount in payment is not enough to allow the recovery rate to be taken, the Council will recover all but £0.50 per week.

Alternatively, it may be decided to invoice the claimant instead.

In cases where fraud has been identified the recovery rate is increased to the maximum deduction amount allowed.

If a debtor has moved to another Council's area and is in receipt of Housing Benefit there, a letter can be sent to that Council requesting that they make deductions from the claimant's ongoing benefit entitlement at a suitable rate and forward the amounts recovered to Dundee City Council. Similarly, Dundee City Council may make deductions from a claimant's ongoing Housing Benefit entitlement on behalf of another Local Authority.

The rate of recovery from on-going benefit will take into account individual circumstances. In cases where a debtor indicates they are unable to pay the standard deduction amount an Income and Expenditure form will be issued in order to consider reducing the weekly deduction amount.

It should be noted that recovery from on-going benefit is counted as recovery from the claimant, not the landlord. Consequently the landlord is not a person affected and cannot apply for a revision of the decision or appeal against it. The claimant must make up the shortfall in their rent in order to avoid any arrears. If a rent arrears situation does develop then the landlord should pursue recovery accordingly.

## **8 Where there is no on-going benefit entitlement**

If there is no on-going benefit entitlement the debt will be recovered via invoicing after a 6-week period has lapsed. This period allows for a revision, appeal or new claim being received.

The invoice will request payment within 28 days. If the debtor is unable to pay in full it is possible to make alternative arrangements and these are covered in a later paragraph.

## **9 Methods of Payment**

It is essential to provide flexible and convenient methods of payment.

At present the Council can accept payment by the following means: -

- Postal Order
- Cheque
- Cash
- Standing Order
- Telephone payment using credit/debit card
- Internet payment using credit/debit card

Payment can be accepted in person at the City Square Enquiry Office or the following local Housing Offices: -

- Central Housing Office – 22-24 Crichton Street
- Kirkton Area Office – 13-17 Haldane Avenue
- Lochee Area Office – 74 High Street, Lochee
- Whitfield Area Office – 101 Whitfield Drive

## **10 Non-payment**

If payment/an arrangement for payment is not made a reminder will be issued 7 days after the payment due date displayed on the invoice.

If payment/an arrangement for payment is not made within 16/17 days of the reminder being sent a final demand will be issued requesting payment within 7 days.

## **11 Arrangements**

If the debtor cannot pay the overpayment invoice in full then the Council encourages them to make contact immediately so that a mutually acceptable repayment arrangement can be made. In addition to this, debtors can seek advice as to where they can go for independent advice.

In cases where an invoice is being issued for an amount greater than £500 a letter is enclosed inviting the debtor to complete an Income and Expenditure form and, if they require, they can also attend an interview to discuss repaying their Housing Benefit overpayment.

Each case will be considered on its own merits - taking the amount due, personal circumstances and financial circumstances into account. There are no rules limiting the maximum amount that can be asked for. The aim is to agree a realistic arrangement to collect unpaid debts within a reasonable time, without the need for more serious recovery action.

It may be necessary to issue an Income and Expenditure form in order to obtain a clear picture of the person's financial circumstances and thereby to act as a basis for reaching a mutually acceptable instalment plan.

Once the arrangement is agreed, an amended invoice, reminder or final demand (depending on the point in the recovery process the arrangement was made) showing the new details is issued. A payment card or Standing Order form is also sent to facilitate payment.

All payment arrangements are reviewed on an annual basis. If agreement is reached without the use of an Income and Expenditure form an initial review is carried out 6 months after the arrangement is made then annually thereafter.

## **12 Monitoring Arrangements**

If the claimant defaults on their arrangement a reminder or final notice, whichever is appropriate, will automatically be issued. When a final notice is issued, the instalment plan/arrangement is cancelled and the debtor is asked to make payment in full.

All arrangements are manually monitored on a monthly basis.

## **13 Further Recovery Action**

Where payment has not been made in accordance with an arrangement or no payment has been made at all a decision on further action will be made based on the circumstances of each case. See below for further information on the type of action that may be taken.

### **Recovery from Department for Work and Pension (DWP) Benefits**

If the debt is not paid and no repayment arrangement is made, deductions from certain prescribed DWP benefits (such as Income Support, Jobseekers Allowance or State Retirement Pension) will be considered.

In these instances, the Council will request that the DWP implement deductions.

The regulations state that the DWP will recover overpayments from social security benefits where: -

- it is requested by the Council to do so
- they are satisfied that the overpayment arose as a result of a misrepresentation or failure to disclose a material fact by, or on behalf of, the claimant; or by some other person to whom payment has been made; and
- that person is receiving sufficient amounts of one or more benefit to enable deductions to be made

### **Recovery from Housing Benefit being paid in another area**

If a debtor has moved to another Council area and is in receipt of Housing Benefit there, a letter can be sent to that Authority requesting that they make deductions from the claimant's ongoing benefit entitlement at a suitable rate and forward the amounts recovered to Dundee City Council.

Similarly, Dundee City Council may make deductions from ongoing Housing Benefit entitlement on behalf of other Councils.



Recovery from landlord cheque(s)

Where an overpayment is recoverable from the landlord and payment has not been made within 4 weeks of the invoice then the debt can be deducted from their next Housing Benefit cheque(s).

The landlord cannot seek to recoup these monies from any tenant other than the tenant under whose tenancy the overpayment arose. The rent liability in respect of all other tenants covered by the Housing Benefit cheque from which has been deducted the overpayment is discharged to the full amount of their Housing benefit.

#### **Recovery from Council Rent Account credit**

Where a Council tenant has an outstanding overpayment and their rent account is in credit the debt can be transferred into the rent account (providing the credit is not the result of prepayment of rent).

#### **Recovery by Sheriff Officer**

Where the Council has been unable to recover the overpayment and the debtor's whereabouts are known the debt can be passed to Sheriff Officers for recovery. This might mean the debtor incurs additional costs.

#### **Sequestration**

In cases where the amount owed is £1,500 or greater Dundee City Council can apply to have the debtor sequestrated.

### **14 Changes of address and "Gone Aways" (DLOS)**

If correspondence is returned undelivered and marked "Gone Away", or similar, and a forwarding address is not already known every effort is made to find a new address for the debtor.

The Council will make all legally allowable checks on different records and systems to trace the individual and so continue to recover the debt.

All cases where an individual has not been traced will be regularly checked with the aim of continuing debt recovery.

### **15 Debts not recovered**

Under Regulation 99 of the Housing Benefit (General) Regulations 1987, the council can determine not to recover the debt. In the following circumstances Dundee City Council will not recover the debt -

- In any instance where the Council cannot prove the debt for legal challenge purposes
- The customer is deceased and has left no estate with which to clear the debt
- The customer has gone away and the Council has been unable to trace them
- The customer is bankrupt
- In certain circumstances where a de minimis level is set
- Where a debt could not be recovered by the Sheriff Officer and it is uneconomical to pursue the debt any further
- Any exceptions to the above which under review are deemed suitable for non-recovery

#### **Recording of overpayments not being recovered**

Cases that are deemed suitable for non-recovery are recorded individually and reviewed quarterly to ensure that debts are reinstated for recovery wherever possible.

### **Authorisation for non-recovery of debts**

Prior to any debt being recorded as “not to be recovered”, the member of staff dealing with the matter must complete a Write-off Authorisation Form. This form requires written confirmation of the reason(s) for the request not to recover along with confirmation of any information or documentary evidence to support the request. The form is then forwarded to the Housing Benefit Overpayment Section Supervisor who reviews the case. Where the debt is less than £1,000 the Supervisor makes the final determination on whether the overpayment should be recorded as “not to be recovered”. If the overpayment amount is between £1,000 and £5,000 the Supervisor will consult their Line Manager for authorisation. For cases where the amount due is over £5,000 the Supervisor will consult the Section Manager for authorisation.