

## **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 Regulations 2006.

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 Corporate Debt Team.

##### **4 Customer Charter**

When recovering a Housing Benefit Overpayment Dundee City Council will:

- Be open and honest and explain our decisions.
- Deal with your enquiry promptly and explain reasons for any delay.
- Provide choices around how you access our services.
- Give you the information you need about our services.
- Listen to what you have to say.
- Treat you with respect and courtesy.
- Aim to get things right first time.
- Apologise to you when we get things wrong and then put things right.

In accordance with The Dundee Partnership Fairness Strategy, Dundee City Council will ensure:

- 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 Corporate Debt 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 of 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 that 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, official error made by the Local Authority or official error 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 that 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 liaises with the Corporate Debt Team directly in these cases.

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

Where a fraudulent overpayment has been identified the debtor can, in some cases, be offered the chance to pay an "administrative penalty" as an alternative to prosecution.

Recovery of the overpayment takes priority over the administrative penalty so should be paid first.

## **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.

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 in our benefit administration.

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?**

If the overpayment was caused by misrepresentation or failure to disclose information then it must be recovered from the person who actually misrepresented or failed to disclose that information.

If the overpayment was caused by an official error it must be recovered from the person who at the time of receiving the overpayment or any notices relating to the payment, could reasonably have been expected to realise that it was an overpayment.

If neither of the above applies, the overpayment can be recovered from:

- The claimant.
- Housing Benefit payable to the claimant's partner, if they were members of the same household both at the time of the overpayment and when it is being recovered.
- The person to whom the overpayment was paid.

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 who benefit was paid.

If a deceased person has an outstanding overpayment 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 of Housing Benefit overpayments**

A Housing Benefit overpayment is a high priority debt and Dundee City Council has a duty to recover any outstanding amount as quickly as possible.

## **8 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, Job Seekers Allowance (Income Based), Employment Support Allowance (Income Related) or Pension Credit - £4.25 per week.
- Claimant not in receipt of Income Support, Job Seekers Allowance (Income Based), Employment Support Allowance (Income Related) or Pension Credit - £12.75 per week.
- Fraudulent overpayment – £21.25 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.

The fraudulent deduction amount can be levied where the debtor:

- has 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

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.

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.

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. Completion of an income and expenditure form allows maximum recovery whilst taking essential expenditure into account. Debtors are expected to review their outgoings to make additional income available and to reduce non priority expenses.

All reduced deduction cases are reviewed on an annual basis by means of completion of an Income and Expenditure form.

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.

## 9 **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 4-week period has lapsed. This period allows for a revision, appeal or new claim being received.

The invoice will request payment within 14 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.

## 10 **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:

- **Via the Internet (using debit or credit card)**  
Go to [www.dundee.gov.uk/payments](http://www.dundee.gov.uk/payments) and choose "Housing Benefit Overpayments". You will need your invoice number.
- **By telephone (using debit or credit card)**  
A 24-hour automated payment line is available by dialling 0845 602 6943 (local rate). You will need your invoice number.
- **By Standing Order**  
Call (01382) 431202 to set up a Standing Order.
- **At a PayPoint outlet (cash only)**  
Take your bar-coded invoice along to any PayPoint outlet.
- **By Post (Cheque or Postal Order)**  
Please write your invoice number, name and address on the reverse of your cheque or postal order and send it to Dundee City Council, Corporate Debt, 50 North Lindsay Street, Dundee, DD1 1NN.

## 11 **Non-payment**

If payment/an arrangement for payment is not made a final demand will follow the invoice. This requests payment within 7 days.

## 12 **Arrangements**

If the debtor cannot pay the overpayment invoice in full then the Council encourages them to make contact immediately, as it may be possible to make a payment arrangement. In addition to this, debtors can seek advice as to where they can go for independent advice.

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 act as a basis for reaching a mutually acceptable instalment plan. Completion of an income and expenditure form allows maximum recovery whilst taking essential expenditure into account. Debtors are expected to review their outgoings to make additional income available and to reduce non priority expenses.

Once the arrangement is agreed, a letter confirming the details is issued along with a payment card or Standing Order to facilitate payment.

A payment arrangement may be reviewed at a future date.

## 13 **Monitoring Arrangements**

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

## 14 **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 Universal Credit, 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 payments**

Where an overpayment is recoverable from the landlord and payment is not made by the invoice due date, the debt can be deducted from their next Housing Benefit payment.

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 payment 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 via Direct Earnings Attachment**

The Council can ask an employer to deduct any Housing Benefit overpayment an employee owes direct from their earnings.

### **Recovery by Diligence**

Where the Council has been unable to recover the overpayment diligence action such as a charge for payment, bank or earnings arrestment may be taken. This might mean the debtor incurs additional costs.

Outstanding Housing Benefit overpayments may be passed to Scott & Co Sheriff Officers for collection and enforcement.

### **Sequestration**

In cases where the amount owed is £5,000 or greater Dundee City Council can apply to have the debtor sequestrated.

It should be noted (per Section 75 of the Social Security Administration Act 1992):

“As Housing Benefit is always recoverable from prescribed benefits, and benefits cannot be transferred to new ownership, the power to recover from such benefits is outside the laws of insolvency. As a result of this, a Local Authority may recover the overpayment by making deductions from any ongoing Housing Benefit entitlement or certain prescribed DWP (Department for Work and Pensions) benefits”.

This is due to fact a claimant is entitled to benefit net of deductions.

There are three categories into which an overpayment can fall when an individual is sequestrated:

- a) the overpayment period and overpayment recoverability decision are both prior to the date of sequestration
- b) the overpayment period is wholly prior to the date of bankruptcy but the overpayment recoverability decision is made after the date of sequestration
- c) the overpayment period is not wholly prior to the date of bankruptcy and the overpayment recoverability decision is made after the date of sequestration

Overpayments which fall into category a) or b) are recoverable from ongoing Housing Benefit entitlement and prescribed benefits until the date of discharge.

Overpayments which fall into category **c)** are not affected by sequestration and are recoverable.

For sequestration purposes, a fraudulent overpayment which fits into one of the categories listed below falls out-with the laws of sequestration and can continue to be collected after the date of discharge. The claimant must have:

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

Administrative Penalties do not fall within the judgement, as discharge does not release the bankrupt from any liability in respect of a fine imposed for an offence.

## 15 **Simple Procedure**

If the debt owed is less than £3,000, Dundee City Council may consider raising a claim using the court's Simple Procedure.

## 16 **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.

## 17 **Debts not recovered**

In certain circumstances Dundee City Council can decide not to recover an overpayment. Examples include:

- 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 has been sequestrated
- In certain circumstances where a deminimis level is set
- Where it is uneconomical to pursue the debt any further
- Any exceptions to the above which under review are deemed suitable for non-recovery

### **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 an 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 £5,000 or relates to a sequestration the Supervisor makes the final determination on whether the overpayment should be recorded as "not to be recovered". If the overpayment amount is over £5,000 the Supervisor will consult their Line Manager for authorisation.

Cases that are recorded as "not to be recovered" may be reviewed at a future date and reinstated wherever possible.