

HAMBLETON DISTRICT COUNCIL

Report To: Cabinet
11 June 2013

Subject: HOUSING BENEFIT OVERPAYMENT POLICY

All Wards
Portfolio Holder for Support Services and
Economic Development: Councillor P R Wilkinson

1.0 PURPOSE AND BACKGROUND:

- 1.1 The purpose of this report is to present to Cabinet for approval by Council the Housing Benefit Overpayment Policy.
- 1.2 The purpose of this Policy is to ensure that any overpayment of Housing Benefit is recovered from the claimant as quickly as possible. This is of benefit to both the Council, who retain the repayment and the claimant who will have their overpayment dealt with as expeditiously as possible. This will hopefully reduce the number of instances where Court Action is required to recover the debt.

2.0 LINK TO COUNCIL PRIORITIES:

- 2.1 The adoption of this Policy will improve the quality and productivity of the Housing Benefit Service.

3.0 RISK ASSESSMENT:

- 3.1 There are no risks associated with the adoption of this Policy.

4.0 FINANCIAL IMPLICATIONS:

- 4.1 There are no costs associated with the adoption of this Policy. However, by addressing issues of Housing Benefit overpayment early, may increase this income to the Council.

5.0 RECOMMENDATION:

- 5.1 That Council be recommended to approve the Housing Benefit Overpayment Policy in Annex A.

JUSTIN IVES

Background papers: None

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HOUSING / COUNCIL TAX BENEFIT OVERPAYMENT POLICY

1.0 COUNCIL REPSONSIBILITIES

- 1.1 The Council recognises that overpayments (or excess benefit in the case of Council Tax) of benefit do occur. In order to reduce the loss to public funds the Council ensures firm but fair action must be applied in the administration of overpayments. Positive action in the recovery of overpayments has a deterrent effect. However, in the overpayments process and that of recovering any overpayment of benefit the Council has the responsibility to comply with the legislation and:-
- a) to identify the overpayment promptly;
 - b) to stop the overpayment continuing;
 - c) to classify the overpayment correctly;
 - d) to determine if the overpayment is recoverable;
 - e) if recoverable:-
 - Determine from whom recovery should be sought; and
 - Determine the most appropriate method of recovery;
 - f) to notify the claimants and other affected persons of any decision;
 - g) to ensure implementation of effective financial control during the overpayments process

2.0 BEST PRACTICE

- 2.1 This Policy reflects best practice in the procedure for dealing with and the recovery of overpaid Housing and Council Tax Benefit.
- 2.2 The Policy is flexible in its approach to recovery of overpayments. Each case will be considered on its own merits. The Council recognises that a policy which, for example, requires recovery in all cases or where recovery is always made from specific categories of claimants is unlawful.
- 2.3 This Policy has regard for the rights of individuals and obligations of the Council under the provisions of the Human Rights Act 1998.

3.0 APPLICATION OF THE POLICY

- 3.1 The Policy applies to all cases where an overpayment of benefit may occur and all identified recoverable overpayments; that is any amount of Housing and Council Tax Benefit which has been paid, but to which there is no entitlement whether on initial decision or on a subsequent decision revised or superseded decision. In most cases overpayments can arise as a consequence of:-
- a) payments being made or credited in advance;
 - b) late disclosures of changes in circumstances;
 - c) errors made by the claimant in completing the application form;
 - d) claimant fraud;
 - e) official errors made by the Council or other statutory benefit department.

Overpayments in the case of e) above are only recoverable if the claimant or person from whom recovery is sought could reasonably have been aware that the overpayment was occurring at the time when the overpayment occurred.

4.0 IDENTIFICATION OF OVERPAYMENTS

- 4.1 The Council will endeavour to act upon any information received in relation to a claimants change in circumstance within the service plan target days of having sufficient information to identify an actual or potential overpayment occurring.
- 4.2 Such action should in the first instance, include suspending further ongoing payments of incorrect benefit where applicable.

5.0 DECISIONS ON RECOVERABILITY

- 5.1 In all cases consideration of whether an overpayment is recoverable will be made in accordance with the legislation
- 5.2 In doing so the Council will consider whether an official error caused or contributed to the overpayment.
- 5.3 The Council will have regard for legislative requirements in determining recoverability of any overpayment or part thereof, which was caused by official error, or to which an official error materially contributed.
- 5.4 Where an official error caused or contributed to the overpayment a template recording the reason for the official error classification, the period and the amount of the overpayment must be completed and stored on the document management system.
- 5.5 Where the overpayment is greater than £500 authorisation not to recover the overpayment must be sought from a senior officer.

6.0 CLASSIFICATION OF OVERPAYMENTS

- 6.1 All overpayments, whether recoverable or not must be classified by an officer of the Council who is appropriately trained.
- 6.2 Officers responsible for the classification of an overpayment must record the classification and reasons for it.

7.0 WHO SHOULD THE OVERPAYMENT BE RECOVERED FROM

- 7.1 Before recovery action is taken, in each case consideration will be awarded to the relevant facts of the individual case. This means that further specific information will need to be obtained from affected parties prior to a decision being made. Recovery should be made from the most appropriate person who may be:-
 - a) The claimant; or
 - b) The person to whom the payment was made; or
 - c) The person who misrepresented the material fact or failed to disclose the fact; or
 - d) The partner of the claimant. However regulations provide that this can only be the case where the partner was living as a member of the claimant's family at the time of the overpayment and at the time of the decision being made in respect of recovery.
- 7.2 Recovery of fraudulent overpayments will, in the first instance, be sought from the person who misrepresented or failed to disclose the material facts giving rise to the overpayment.

8.0 METHOD OF RECOVERY

8.1 Appropriate means of recovery should be considered in all cases. Recovery should be by one of the methods below which in normal circumstances should be in the following priority order; (see also the Debt Recovery Strategy):-

- a) Arrears of benefit owed by the Council;
- b) Ongoing Housing Benefit deductions;
- c) Deductions from Housing Benefit payments made to landlords;
- d) Deductions from other DWP benefits;
- e) Deductions from Housing Benefit payments made by other local authorities;
- f) Directly to the Council Tax account (Council Tax Benefit only);
- g) Sundry debtor invoice; and
- h) Court action.

8.2 In respect of ongoing Housing Benefit deductions, the standard rates should be applied as per the amounts laid down by regulations, unless having regard to the health and/or financial circumstances and/or housing risk or need of the person from whom recovery is sought a lesser sum is deemed appropriate. Regulations provide that in all cases a minimum of 50p per week housing benefit must remain in payment.

Passported benefit deduction rates should start at £5.00 per week.

8.4 Where the case involves the death of a claimant, the deceased representative or executor should be approached to seek recovery from the estate. However the overpayment should not be recovered from ongoing benefit deductions from the surviving spouse.

9.0 PERIOD OF OVERPAYMENT CALCULATION

9.1 The period over which the overpayment is calculated should be from the start date of the change to entitlement or the date from which records are maintained, whichever is the later except in the case of a fraudulent overpayment.

9.2 In the case where it is decided that the overpayment was caused with fraudulent intent or knowledge, recovery should be made from the start date of the change to entitlement.

10.0 CALCULATION OF THE OVERPAYMENT

10.1 Where an overpayment is identified the Council will invite claimants to provide sufficient information to establish any underlying benefit entitlement.

10.2 The Council will endeavour to carry out the calculation of the overpayment within 10 days of its receipt of any written notice of change and any further information that is reasonably required for the correct administration of the overpayment procedure as is required by regulations.

11.0 MAXIMUM AMOUNT

11.1 The full amount of the overpayment should be recovered, unless after having regard to the health and or financial circumstances and/or housing risk or need of the person from whom recovery is sought, a lesser amount would be more appropriate.

12.0 MAXIMUM PERIOD OF RECOVERY

- 12.1 In all cases the overpayment should be recovered as quickly as possible. However the maximum period over which the debtor should be allowed to repay the overpayment is that of 6 years.

13.0 DECISION NOTICES

- 13.1 All decisions must be dated and issued to all “affected persons” as prescribed by regulations within 14 days of the Council having reached that decision.
- 13.2 All decision notices must fully comply with the requirements of legislation, including the reasons for the decision, the right to request a statement of reasons and time limits for doing so, the affected person’s rights of revision/appeal and time limits for doing so.
- 13.3 Copies of the actual decision notice must be retained for a period of not less than 13 months in order that they may be retrieved and produced in the event of a future review/appeal/complaint or civil proceedings.

14.0 RECOVERY OF OVERPAYMENT DEBT

- 14.1 The council will seek to recover all recoverable overpayments of benefit in its statutory duty to reduce any loss to public funds. In doing so the Council will have regard for:-
- a) The period of time that the debt may take to be recovered;
 - b) The effect of recovery on the affected person from whom recovery is sought;
 - c) The ability to repay of the affected person from whom recovery is sought.
- 14.2 All methods of recovery may be considered at any time, having regard for the circumstances of any individual case.
- 14.3 The Council may re-consider the methods used to recover the overpayments at the end of each financial year for effectiveness and efficiency.

Our aim is to recover the maximum amount of recoverable overpayments possible. However consideration should be given whether to recover an overpayment and the rate of recovery, with reference to the individual circumstances of the case.

15.0 HARDSHIP

- 15.1 This is where a person’s financial circumstances are such that recovery of the overpayment would be considered to cause undue financial hardship.

Examples of this are:-

- An overpayment has previously been written-off on the grounds of hardship within the last 6 months.
- The claimant has been declared bankrupt/in liquidation. (Please note that overpayments which are classified as fraud are still recoverable but refer to legislation for guidance)
- The claimant has been served with notice to quit or has been served with notice of seeking possession and eviction action is being taken.
- The claimant has completed an income and expenditure form and proven that they are in financial difficulties.

- The claimant is in receipt of Discretionary Housing Payments and it is proven from the income and expenditure form completed that they are in financial difficulties.

Where it is satisfied that the recovery rate will cause undue hardship, recovery at a lower rate may be agreed.

Claimants in receipt of ongoing entitlement to benefit who request a revision of the weekly recovery level should be asked to complete an Income, Expenditure and Capital Form, and their case should be reconsidered once the completed form has been returned.

Where there is a change in the claimant's circumstances the recovery rate should be reviewed.

If there are exceptional circumstances, where the person is vulnerable or experiencing financial hardship and recovery of the overpayment may cause undue hardship, you may decide to reduce the rate of recovery or decide not to recover an overpayment at all