

# FLINTSHIRE COUNTY COUNCIL

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## Housing Benefit Overpayments Policy

2015



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### HOUSING BENEFIT OVERPAYMENTS POLICY AND STRATEGY 2015

#### 1. **Introduction**

- 1.1 This document, in conjunction with Flintshire County Council's Strategic Policies sets out the Council's commitment to ensure that every effort is made to recover Housing Benefit Overpayments in accordance with the Housing Benefit Regulations 2006.
- 1.2 An overpayment is an amount of benefit that has been paid to, or in respect of, a claimant to which he/she was not entitled and relates to Housing Benefit.

#### 2. **Overpayments Policy**

- 2.1 The Council will seek to maximise recovery of overpaid Housing Benefit in accordance with the authority's legal responsibilities with respect to the decision-making process and its duty to protect public funds. At the same time, account will also be taken of the authority's fair debt policy and anti-poverty strategy.
- 2.2 Consideration must always be given to the merits of specific cases and the need to exercise discretion in a fair and reasonable manner. The policy, or any individual aspect of the policy, should not be viewed as a statement of intent in respect to all cases.
- 2.3 The authority takes its role in protecting the public purse very seriously and the overpayment recovery process makes a significant contribution to this. This commitment will be reflected in the firm recovery of any fraudulent overpayments as identified by the Department for Work and Pensions.

#### 3. **Why do we need a Policy?**

- 3.1 It is essential for Flintshire County Council to demonstrate that it carries out administration and recovery of Housing Benefit overpayments efficiently and effectively.
- 3.2 By doing so the Council:
  - a) Reduces losses to public funds.
  - b) Provides revenue for the Council.
  - c) Helps reduce subsidy loss from overpayments.
  - d) Deters fraud and error.
  - e) Demonstrates the Council's commitment to accuracy and provision of a quality service to its customers.

## 4 **Aim of the Policy**

4.1 The aims of this policy are:

- a) To improve debt recovery and help prevent debt occurring.
- b) To collect recoverable overpayments where possible and appropriate.
- c) To set out a clear debt recovery strategy.
- d) To act as a guide to the Council's administration of Housing Benefit overpayment recovery and to set a framework within which recovery decisions can be made.

4.2 The policy will be reviewed annually.

## 5. **Overpayments Strategy**

5.1 An overpayment is defined by Housing Benefits legislation as being any payment by way of benefit to which there was no entitlement.

5.2 Overpayments are caused by a number of factors, including:

- a) Failure to report or delay in reporting a reportable change of circumstances, whether accidental or fraudulent in nature.
- b) Payment of benefit in advance.
- c) Official error on the part of the authority or an agency of the Department for Work and Pensions (DWP), either through mistakes or delays in processing.
- d) Detection of fraudulent claims and payment irregularities.
- e) Delayed receipt of income, such as an award of a state benefit including an initial lump-sum payment of arrears.

## 6. **Strategies for Preventing or Minimising Overpayments**

6.1 Flintshire County Council recognises that its actions can influence the level of overpayments, but accepts that some overpayments will inevitably occur. The authority is committed to seeking ways to prevent overpayments and to keep overpaid amounts to a minimum wherever possible. Current strategies include:

- a) Providing claimants and landlords with clear information regarding their duty to report changes of circumstances as quickly as possible, and the types of changes that must be reported.
- b) Seeking to action all notified changes of circumstances within 14 days of notification.

- c) Seeking to prevent fraud and error entering the benefits scheme at the point of initial application, by utilising the Risk Based Verification software process.
- d) Providing staff with regular training and updates on legislative changes and work procedures, with the aim of increasing skill and knowledge levels and thus reducing local authority official error overpayments.
- e) Undertaking a claim-checking routine to ensure that a selection of claims/assessments processed are analysed for error. The results of this checking will assist in informing the programme of staff training and contribute to continuous improvements.
- f) Using the authority's powers of suspension and termination in cases where doubt exists as to the claimant's benefit entitlement.
- g) Referring suspicions of Fraud to the Department for Work and Pensions.
- h) Promptly identifying all recoverable overpayments.
- i) Using all permitted methods of recovery.
- j) Making payments of Housing Benefit in arrears to enable changes to be actioned before the next payment is sent.

## **7. Identifying Overpayments**

Accurate and prompt identification of overpayments is important to ensure that the incorrect payment of benefit is discontinued, to maximise the chances of successfully recovering the overpayment and reducing the number of complaints and appeals.

- 7.1 In order to help identify overpayments promptly, the Council uses The DWP's Customer Information System (CIS). Details of ending entitlements and changes to DWP benefits and HMRC Tax Credits downloaded on a daily basis.
- 7.2 Incoming work items are categorised and those identified that could potentially be a change of circumstance which could lead to a reduction in benefit and a subsequent overpayment are treated as a priority.
- 7.3 The Assessment Section identifies overpayments and establishes the cause of the overpayment, whether it is recoverable and from whom it should be recovered.
- 7.4 The calculation of a recoverable overpayment is arrived at by deducting the amount of benefit that should have been paid, over the period in question, from the amount of benefit actually paid. Consideration is given to any uncashed or returned benefit payments or underpayment of benefit and customers are given the opportunity to provide evidence of any possible underlying entitlement which may be used to offset against the overpayment.

## **8. Decisions on Recoverability**

- 8.1 The authority must make a number of decisions in the course of calculating overpayments of benefit and undertaking recovery action. In making these decisions the authority will have due regard to the circumstances of each case and will not apply “blanket” policies that may constitute fettering of its discretion. Correct decision making is essential because:
- a) There are consequences and rights for the claimants and other affected persons. The decision can affect the finances of the Authority if it is not recoverable.
  - b) Decisions made, and the reasons for them, can provide an indication of the levels of fraud and error against inefficiency.
- 8.2 In all cases where benefit is overpaid, a decision will be made as to whether the overpayment is recoverable, based on the criteria stated in the Housing Benefit Regulations 2006, 100.
- 8.3 The authority specifically undertakes to ensure that:
- a) No person is required to repay non-recoverable overpayments. A non recoverable overpayment (as defined in the Benefit regulations) is one that has been caused by official error, **and** the claimant or recipient of the benefit could not reasonably have been expected to know that an overpayment was occurring at the time that payment was made or at the time of notification.
  - b) In respect of recoverable overpayments, due consideration will be given to the question of whether or not the authority should exercise its discretion to recover the debt.
  - c) Wherever applicable, underlying entitlement to benefit during the overpayment period will be taken into account and, if the necessary information for calculation of underlying entitlement is not available, claimants will be given at least one opportunity to provide that information.
  - d) No landlord/agent will be required to repay an overpayment where the conditions of regulation 101(1) of the Housing Benefit Regulations 2006 as amended (HBGR) are satisfied.
  - e) All affected persons are sent notification of relevant decisions within 14 days of the decision being made and that these notifications comply with statutory requirements.
  - f) When making decisions on recoverability, Benefit Assessors will consider the facts, any supporting evidence and the Housing Benefit Regulations 2006.
- 8.4 In deciding whether to recover an overpayment, each case will be decided on its own individual merits. The aim of the Council is to effectively and efficiently recover any overpayment without causing unreasonable hardship to the claimant.
- 8.5 Factors that should be taken into account include:
- a) The amount of the overpayment - it may not be economical to pursue recovery of a small overpayment if the claimant has moved out of the area.

b) If the claimant is vulnerable - medical/documentary evidence may be requested before deciding not to recover.

c) Maladministration / delays in processing.

8.6 The process map can be found at Appendix 1 which shows how to decide if an overpayment is recoverable.

## 9. **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 recovery is to be from a landlord, a notification letter must be sent to the claimant and the landlord. A person affected is someone whose rights, duties or obligations are affected by a decision.

9.1 A notification letter will be issued within 14 days of the decision and will comply fully with Schedule 9 of the Housing Benefit Regulations. The letters will include:

a) The fact that there is a recoverable overpayment.

b) The reason for the recoverable overpayment.

c) The amount of the recoverable overpayment.

d) An explanation as to how the overpayment was calculated.

e) The period of the overpayment i.e. which benefit weeks it relates to.

f) The amount of any deduction to be made from ongoing entitlement to benefit and when the deduction will be made.

g) The right to request a detailed statement.

h) The right of appeal and the time and manner in which to do so.

9.2 The notification issued to the landlord should contain all of the above. The landlord should know the reason of the overpayment and given enough information to decide whether or not they agree with the decision. Although this may mean disclosing personal information to the landlord about the claimant, this can be done in broad terms and only expanded upon if the landlord has decided to appeal.

9.3 If an overpayment notification does not comply with the above requirements, the Council will decide if the claimant or landlord has been prejudiced by such a defective notification. The Council will therefore decide if the omission within the notification has meant that the claimant or landlord does not know the level of the overpayment, how it occurred or what their appeal rights are. If this is the case then a new notification will be issued as soon as possible. If the omission is minor, any appeal can proceed.

- 9.4 All notification letters are checked by the Benefits Assessors to ensure that they are accurate prior to them being issued. Production of all system-generated letters creates a diary entry on the notepad confirming the letter has been created, which cannot be removed.
- 9.5 In the event of a request for a review or appeal, legal challenge, complaint or civil proceedings, it is possible for a copy of the original notification to be obtained from within the computer system.

## 10. **Principles of Overpayment Recovery**

- 10.1 Overpaid Housing Benefit may be recovered by several different methods.
- 10.2 The authority will seek to recover overpaid Housing Benefit in the most efficient and cost-effective manner, having regard to its statutory obligation to protect public funds.
- 10.3 The authority will have regard to the circumstances of the individual from whom recovery is sought. The person from whom recovery is sought shall have the right to request a revised repayment arrangement based on his financial circumstances.
- 10.4 A recoverable overpayment can be recovered from the claimant or from the person who received the payment – e.g. a landlord who has been paid in respect of a tenant. In coming to a decision as to from whom recovery will be sought, due consideration will be given to HB Regulation 101 (2)
- 10.5 In the case of direct payments to a landlord or third party, consideration is given to whether the payee could have reasonably known they were being overpaid at the time of the payment.
- 10.6 In cases where the claimant caused the overpayment as a result of a fraudulent act, recovery should usually be sought from the claimant, even in cases where the payments were made to the landlord. If the landlord/agent is directly connected to the fraud then recovery should be sought from the person to whom benefit was paid.
- 10.7 Where an overpayment was the result of a fraudulent act by the claimant, and the landlord reported the fraud to the Council, the overpayment should always be recovered from the claimant, even though the landlord may have received payments.

## 11. **Specific Methods of Recovery**

- 11.1 Instalment recovery / Recovery from ongoing benefit entitlement
- 11.1.a Instalment recovery or recovery from ongoing benefit entitlement may be used by the authority where the debtor has continuing entitlement to Housing Benefit. A portion of the weekly entitlement is withheld and offset from the outstanding debt until it has been fully recovered.

- 11.1.b The provisions of regulation 102 of the HB Regulations limit the maximum amount that may be recovered each week and the authority will not exceed these maximum amounts without express written agreement from the debtor. In any case, the authority will not reduce a person's minimum weekly payable benefit below 50 pence. Recovery at a higher rate than those prescribed in the Regulations can only be done with the debtors consent and is voluntary.
- 11.1.c At the outset of instalment recovery, the authority will decide on the level of deduction to be made on the basis of the information available. The claimant will be notified of the commencement of instalment recovery and informed of their opportunity to request a revised repayment arrangement based on their financial circumstances. The authority may request such reasonable information as is necessary to decide on an amended level of recovery.
- 11.1.d In cases where payment is being made direct to a third party, the authority will inform that third party of any change to benefit payments as a result of instalment recovery but will not divulge the reason for the reduction.
- 11.1.e In cases where recovery of the overpayment causes severe hardship, an arrangement will be made to reduce the weekly recovery rate. Risk of being made homeless, multiple debts to the Authority and health problems are examples of why a reduction in recovery may be considered. In such instances it should be made clear that this decision will be reviewed and possibly revised in the future.
- 11.2 Offset of Entitlement (netting off)
- 11.2.a The authority may offset some or all of any amount of benefit owed to the claimant to recover an overpayment in part or full (regulation 102(1) HB Regulations).
- 11.2.b When considering how much of any owed sum should be offset against overpaid benefit, the authority will take due consideration of the claimant's circumstances. Recovery by offset must not place the claimant's tenancy in jeopardy by creating or aggravating an existing situation of high rent arrears.
- 11.2.c In cases where there is an existing overpayment from an earlier period, it is possible that there may be a substantial initial payment due in respect of the start date of a new claim. In such cases, and depending on the size of the outstanding overpayment, the authority will initiate instalment recovery from ongoing entitlement and may offset an appropriate number of weekly instalments from the initial payment.
- 11.2 Recovery from "Blameless Tenants"
- 11.3.a Where an overpayment is recoverable from a third party, such as a landlord or agent, and Housing Benefit continues to be paid to that third party, the authority may recover the overpayment by deducting some or all of any due payments to the third party. Recovery may be made in this manner even if the third party is no longer receiving payment of benefit direct for the person



in respect of whom the overpayment was made, in which case recovery is said to be being made from the entitlement of the third party's "blameless tenants".

11.3.b When using this method of recovery, the authority will:

- Give consideration to the circumstances of the third party when deciding how much of any owed sum should be recovered from future payments to the third party.
- The authority will also undertake to inform the third party of their rights and responsibilities in respect to this recovery action. In particular, the authority will inform the third party of their obligation to credit the rent accounts of the blameless tenants with the full amount of benefit that would have been paid had recovery not been made.

11.4. Recovery from other Social Security Benefits

11.4.a If recovery from ongoing entitlement to Housing Benefit is not available, the authority may seek to recover overpaid benefit from another Social Security benefit (as detailed in regulation 105(1) HB Regulations) in payment to the claimant.

11.4.b The authority will seek to recover overpaid benefit in this manner in cases, which it considers suitable and will fully co-operate with the Debt Management Services of the DWP.

11.5. From a Credit on the Rent Account

11.5.a In the case of Local Authority overpayments, recovery can be made by recovering an amount from the claimant's housing rent account. Overpayments will not be recovered from a Council Tenant's rent account unless the account is in credit; the claimant was paying the correct level of rent at the time of the overpayment; the claimant requests recovery be made using this method; a payment has been made twice for the same period; or the overpayment is due to vacation of property or death of the claimant.

11.6 Recovery from Housing Benefit paid by another Authority

11.6.a This method of recovery may be appropriate where the person has left our authority area and it can be established that they are in receipt of Housing Benefit in another authority's area. The debt may then be recovered by the new authority making deductions from ongoing entitlement on behalf of our Authority.

- 11.6.b Flintshire undertakes to co-operate with all requests from other authorities to recover overpaid benefit on their behalf. Flintshire retains the right to set the level of weekly deduction that it considers appropriate in light of the person's circumstances.
- 11.6.c Flintshire will, however, seek to recover any Housing Benefit debt owed to itself before seeking to recover for another authority.

#### 11.7 Registration of Debts at County Court

- 11.7.a Where recovery by any of the methods outlined above is unavailable or impracticable, the authority may seek to enforce recovery by registering the debt at a County Court. This has the effect of enabling the authority to use recovery methods that are otherwise unavailable without obtaining a County Court Judgment (CCJ).
- 11.7.b When seeking registration of a debt, the authority must provide the Court with a copy of the original overpayment notification letter, which for these purposes constitutes a demand for payment. The authority will ensure that all notifications that are issued are in full compliance with the statutory requirements.
- 11.7.c The authority will not seek to register a debt at County Court before the debtor has had the opportunity to dispute the overpayment decision (i.e. one month), nor will it seek registration where a request for revision or appeal is outstanding.
- 11.7.d The authority will incur costs when registering a debt and these will be added to the total debt owed. In exceptional circumstances consideration may be given to waiving any costs incurred.
- 11.7.e Wherever practicable, the authority will seek to use this method of recovery enforcement in preference to taking a County Court small claims action. This will mean that fewer people experience the negative effect that a CCJ has on their credit record.

#### 11.8 Direct Earnings Attachment

From April 2013 the Department for Work and Pensions introduced a process whereby Local Authorities can apply a Direct Earnings Attachment as an alternative to applying the debt to the County Court.

When this option is used the authority applies to the employer to make a percentage deduction from the employees wages which is then offset against the outstanding debt.

#### 11.9 Sundry Debts

- 11.9.a In all other cases, or where the authority considers it to be most appropriate, recovery will be sought by issuing a sundry debtor invoice. This may lead, ultimately, to County Court action and a CCJ being issued.
- 11.9.b Where a request for revision or an appeal has been received, no invoice will be issued until the dispute has been resolved.
- 11.9.c Where an invoice has already been issued and the debtor disputes the case, recovery action will be suspended until the dispute has been resolved.
- 11.9.d If the debtor fails to make payment in full or an arrangement to pay within 14 days of the invoice being issued, a reminder notice will be sent. If no payment in full or arrangement to pay is then made within a further 14 days, the debtor will be sent a final notice to inform them that full payment or an arrangement to pay must be made within a further 7 days of the date of that notice, failing which the council will commence legal action.
- 11.9.e Flintshire will not issue an invoice for less than £10.00. Where the claimant is unable to repay the debt in full, the overpayment team shall negotiate a suitable instalment arrangement.
- 11.9.f The authority will incur costs when taking County Court small claims action that will be added to the total debt owed. In exceptional circumstances consideration may be given to waiving any costs incurred.
- 11.9.g If the authority obtains a CCJ or registers the debt at County Court (ref. 15), recovery may be enforced by a number of different methods. These include:

*(i) Order to obtain Information* - the debtor may be required to attend Court and give evidence as to their income and expenditure, at which time an arrangement to pay may be obtained.

*(ii) Court Enforcement Agent action* - the authority may apply for the Court bailiff to enforce the CCJ by distraining against the goods of the debtor.

*(iii) Charging order* - an application to the Land Registry for registration of a charge on property or land owned by the debtor, the debt thus to be paid on sale of the property or land.

*(iv) Attachment of earnings* - where the debtor is known to be in work and the authority is able to obtain details of their employment, the debtor's employer may be required to make statutory deductions from their employee's pay and forward these deducted amounts to the authority.

*(v) Third Party Debtor order* - where the authority is able to obtain details of the debtor's bank account(s), application may be made for such an order. This will have the effect of freezing the debtor's access to his account and the redirection of funds to the authority.

Any costs incurred by the authority in pursuing any of these enforcement methods will be added to the total debt owed. In exceptional circumstances consideration may be given to waiving any costs incurred.

## 12. **Debt Management**

12.1 Flintshire County Council Housing Benefit Overpayment Section undertakes to:

- a) Monitor the level and age of debt regularly.
- b) Prioritise recovery of overpayments caused by fraud.
- c) Set relevant targets for the recovery and management of overpayments, working towards improvements on current performance
- d) Produce relevant, accurate performance management information
- e) Monitor and record the success of different recovery methods and review working practices regularly to ensure continued efficiency.

## 13. **Write Offs**

13.1 In accordance with current Financial Regulations, all debt deemed bad and irrecoverable must be reported to the Corporate Finance Manager.

13.2 Overpayments are only written off by an authorised officer in accordance with Flintshire's Corporate Debt Policy after all avenues of recovery which Flintshire considers appropriate have been considered.

13.3 If an overpayment is deemed irrecoverable it will be written off, as this is a legal requirement within the Regulation, this is not required to be authorised as above as it is not legally allowed to recover debts which are classified as irrecoverable.

13.4 Individual write off requests in excess of £5000 must be authorised by the Executive Member for Finance.

13.5 The Council recognises that with recovery of Housing Benefit overpayments it is dealing with potentially some of the most financially vulnerable members of the community and while an overpayment might be recoverable under the law, there is always the separate decision as to whether recovery should be sought. This means that some debts will have to be written off because, for example, the debtor has no means to repay; it is not in the Council's interests to request repayment; the debtor has died; become bankrupt or absconded; recovery action is not cost effective or the debt is time barred.

13.6 The decision to write off a debt as uneconomic or inappropriate to recover will not be made without full consideration of available methods of recovery.

13.7 Team Leader reviews outstanding debtor overpayments to identify and record any debts that should be considered for write off. Any debts subsequently identified will be dealt with in accordance with the Council's Corporate Debt Policy

13.8 Where an overpayment is classed as irrecoverable the claim details will be recorded to reflect this.

#### **14. Roles and Responsibilities**

14.1 All staff should be aware of the overall aim of preventing overpayments occurring, keeping overpayments to a minimum once identified and ensuring efficient and effective recovery without causing undue hardship.

14.2 Staff are trained to identify work items that may cause an overpayment and be able to prioritise this work so it can be actioned immediately.

14.3 Staff responsible for creating new claims are responsible for identifying cases where an overpayment exists on a previous claim or address and ensuring that recovery action is reinstated or transferred.

14.4 Staff responsible for creating the overpayment will decide whether or not it is recoverable and if it is they will issue the first invoice.

14.5 The Benefits Team Leader monitors and amends recovery of overpayments recovering from ongoing benefit and the assessment team amends accordingly.

14.6 The Benefits Officer will recommend whether a local authority error overpayment is recoverable. This is passed to the Benefits Team Leader to make the final decision.

#### **15. Additional Information / Summary**

15.1 The policy will be revised when there are changes to legislation and to improve its effectiveness in preventing and recovering overpaid Housing Benefit.

15.2 The Council will not operate blanket recovery policies, with each case being considered on its own individual merits.

15.3 All customers will be treated in a fair and equitable manner.

15.4 The Council will monitor, maintain and improve systems that seek to prevent overpayments caused by official error and minimise overpayments caused by misrepresentation or failure to report changes of circumstances. It will also monitor the success rate for recovering all overpayments.

15.5 All staff should refer to the Department for Work and Pensions Housing Benefit Overpayments Guidance Manual for greater detail in deciding discretionary issues and the correct course of action.

### **Overpayment Recoverability Process Map**

