

NORTHUMBERLAND

Northumberland County Council

REVENUES AND BENEFITS SERVICE

HOUSING BENEFIT

OVERPAYMENT POLICY

Introduction

1. Overpayments of Housing Benefit are established through a change in benefit entitlement. They are described as an amount of benefit that has been awarded but to which there is no entitlement under the regulations.
2. Accurate and prompt identification of overpayments is important to ensure that the incorrect payment of benefit is discontinued and to maximise the chances of successful recovery.
3. The Council recognises that to ensure there is minimal loss to public funds firm but fair action must be undertaken in the administration of Housing Benefit overpayments.
4. Proactive action in the recovery of overpayments has a deterrent effect. However, the Council has a responsibility to act in accordance with all relevant legislation and regulations. Housing Benefit overpayments under legislation cannot be subject to collection by a bailiff, however, they can be referred to a debt collector. In all cases due regard will be given to the health and individual circumstances of the claimant to avoid causing unnecessary hardship.

Policy Aims

5. The policy will reflect best practice in the procedure for dealing with the administration and recovery of Housing Benefit overpayments.
6. The policy will be flexible in its approach to the recovery of overpayments with each case treated on its own merits. The Council recognises that a policy which, for example, requires recovery in all cases or recovery is always made from specific categories of claimants is unlawful.
7. The policy has regard to the rights of individuals and the obligations of the Council under the provision of the Human Rights Act 1998.
8. The Council will:
 - take steps to minimise and prevent overpayments from occurring
 - identify the overpayment promptly
 - stop the overpayment from continuing
 - classify the overpayment correctly
 - determine if the overpayment is recoverable and if recoverable
 - determine from whom to recover
 - determine the most appropriate method of recovery
 - notify the claimant and other affected persons of the decision
 - implement effective financial control of the recovery process

The Policy

9. The policy will be applied in all cases where an overpayment of benefit has occurred, that is, any amount of Housing Benefit which has been paid but to which there was no entitlement whether on initial decision or on a subsequent revised or superseded decision.
10. In most cases overpayments can arise as a consequence of:
 - payments made in advance

- late disclosure of a change in circumstances
- errors made by the claimant when completing an application form or review form
- claimant error
- official errors made by the Council or the Department for Work and Pensions
- deliberate fraud

11. Official error overpayments are only recoverable if the claimant or the person from whom recovery of the overpayment is sought could reasonably have known that an overpayment was occurring at the time the overpayment occurred.

Prevention of Overpayments

12. Overpayments are often difficult and time consuming to administer. They can cause difficulties for claimants and their families as they try to manage on limited incomes. They are to be avoided where possible. This will be achieved by:

- telling claimants how to avoid overpayments, with letters, in leaflets and during verbal communications
- encouraging claimants to maintain contact with us
- processing information quickly and accurately to minimise overpayments
- offsetting any new or underlying entitlement

Identifying Overpayments

13. The Council will endeavour to act on any information received in relation to a claimant's change in circumstances within seven days of having received sufficient information to identify that an overpayment has or will be occurring.

14. This action will in the first instance include the suspension of further ongoing payments of incorrect benefit.

15. The Council will endeavour to identify and change in circumstances that would result in an overpayment still outstanding after seven days by:

- undertaking a check of the Department for Work and Pensions records held on the Customer Information System (CIS) to identify whether entitlement to Income Support, Jobseekers Allowance (Income Based) has ceased and if this information is not readily available on CIS by the sending of a benefits enquiry information letter
- referring potential fraudulent overpayments to the Benefit Fraud team
- ensuring that any post relating to the change in circumstances is collated and acted upon

Classification of Overpayments

16. The correct classification of overpayments is essential as, depending on the type of overpayment, the authority will receive a percentage of the overpayment back from the government by way of subsidy. A summary of the types of overpayments and percentage of subsidy allowed is shown at the end of this policy.

17. All overpayments must be correctly classified by an officer of the Council who has had training to a sufficient standard to allow them to make decisions, which ensure the correct application of the law in the decision making process.

18. All officers with responsibility for classifying an overpayment must record both the classification and their reasons for it on the benefit file.

Decisions on Recoverability

19. In all cases where an overpayment has arisen the Council should consider whether an official error has caused or contributed towards the overpayment.
20. Where the Council has identified an overpayment, which was caused or contributed to by an official error it should decide whether recovery of the overpayment is appropriate under the guidance issued by the Department for Work and Pensions.

Who Should the Overpayment be Recovered From

21. Before recovery action begins consideration will be given as to whom is the most appropriate person to recover the overpayment from. This may in certain cases mean that further information is required from the affected parties.
22. Recovery should then be made from the most appropriate persons who may be:
 - the claimant
 - the person to whom the payment of benefit was made
 - the person who misrepresented or failed to disclose the material fact
 - the partner of the claimant if the partner was living with the claimant at the time of the overpayment and at the time the decision to recover was made
23. In all cases where the overpayment was the result of proven fraud the overpayment should, in the first instance, be sought to be recovered from the person who misrepresented or failed to disclose a material fact.

Method of Recovery

24. The most appropriate method of recovery should be considered in all cases, including:
 - ongoing deductions from further payments of Housing Benefit
 - deductions from other Department for Works and Pensions benefits
 - sundry debtor invoices
 - debits to the rent account where it is in credit
 - recovery from landlord
 - referral to an external debt collection agency (after all other avenues of recovery are exhausted)
25. A period of at least one calendar month should have elapsed before recovery action begins. This will allow for the claimant to re-apply for benefit, which may identify an underlying entitlement or for the claimant to register any appeal.
26. In cases where recovery from ongoing benefit is sought the standard maximum rate of deduction as laid down by regulation should be applied unless the health or financial circumstances of the claimant suggest a more appropriate rate should be used. In all cases however a minimum amount of fifty pence per week Housing Benefit must remain in payment.
27. In the case of a bankrupt recovery should be sought from ongoing deduction of further payments of Housing Benefit or deductions from other Department for Works and Pensions benefits before court action is considered.
28. Where the claimant is deceased, their representatives or executors should be approached to seek recovery from the estate. Overpayments can be recovered from ongoing deductions from the surviving spouse's benefit, however, this will only be considered on an individual case basis.

Calculation of Overpayments

29. Where an overpayment has occurred the Council must invite claimants to provide sufficient information for any underlying entitlement to benefit for the overpayment period to be assessed.
30. The full amount of the overpayment should be recovered unless the health or financial circumstances of the person from whom recovery is being sought suggest a lesser amount would be appropriate.
31. In all cases the overpayment should be recovered as quickly as possible and normally no later than six years from the date recovery action is commenced.

Notification Letters

32. All notification letters must be dated and issued to all affected persons within fourteen days of the Council having made the decision.
33. The notification must include the reasons for the decision, the right to request a further statement and the time limit for doing so and the claimants appeal rights and the time limit for doing so.
34. Copies of the notification letter must be able to be reproduced in the event of an appeal, complaint or proceedings taken against the Council.

Recovery of Overpayments

35. In all cases where recovery of an overpayment is sought the Council will have regard to its statutory duty to protect the loss from public funds but in doing so will have regard to:
 - the length of time the recovery of the overpayment may take
 - the effect of recovery on the affected person
 - the ability of the affected person to repay the debt
36. The Council may consider the method of recovery of an overpayment at any time for the purpose of effectiveness and efficiency in financial control.
37. Only if it becomes clear after all attempts at recovering the overpayment have become exhausted and there is no hope of recovery, or there are extenuating circumstances, shall the debt be recommended for write-off. In all cases, the Council's Financial Regulations shall be adhered to.
38. Recovery should be suspended if a claimant appeals a decision until the appeal has been resolved.

Monitoring and Reporting Mechanisms

39. Monitoring of overpayments will be carried out in conjunction with the Council's Corporate Performance Management System.

Write Offs

40. Recovery of overpayments will be carried out as diligently as possible and in accordance with the Council's corporate write off policy. However, if it becomes clear that there is no hope of recovery, or that there are extenuating circumstances (absconders, death, bankruptcy) the debt will be recommended for write off. In all cases the Council's Financial Regulations will be adhered to.

Additional Information

- Housing Benefit Overpayment Classification Types
- Extract on Overpayments from 2007/08 DWP Subsidy Claim
- LA Error Subsidy Calculation (all authorities) 2007/08

Housing Benefit Overpayment Classification Types

Type of Overpayment	Description	Subsidy Payable
Local Authority Error	Local Authority (LA) error overpayments are those caused by a mistake, by an act or omission, by a LA when the claimant did not contribute to the mistake. These can result from incorrect information being extracted from a benefit claim, error in data input which result in the incorrect assessment of benefit or failure to act/act promptly on a notification of change in circumstances.	Subject to thresholds. The lower threshold is 0.48% of the total expenditure attracting full subsidy, the upper threshold is 0.54%. 100% subsidy will be payable if the level of error does not exceed the lower threshold. If LA error overpayments are greater than the lower threshold but do not exceed the upper threshold, then 40% subsidy is paid on the total LA error overpayments. If LA error overpayments exceed their upper threshold LA s receive nil subsidy on their LA error overpayments.
Claimant Error	An overpayment caused by the claimant or person acting on the claimants behalf or any person the benefit is paid to, failing to provide information in accordance with Housing Benefit regulations and has not been defined as fraudulent.	40%
Fraud	An overpayment occurring as a result of a payment of HB or CTB arising from a breach of section 111A or 112 of SSAA1992 or a person knowingly failing to report a relevant change of circumstances with intent to obtain or retain HB or CTB either for themselves or someone else.	40%
DWP Errors (Departmental Official Errors)	An overpayment arising from a mistake, whether in the form of an act or omission made by an officer of the DWP, HMRC or a person acting for them.	Nil If recovered 100% if not recovered
Technical HRA	An overpayment when a rent rebate is credited in advance of entitlement for a particular period, where a change of circumstances or a recoverable overpayment causes that entitlement to be removed or reduced.	Nil