

Subject:	Housing Benefit Overpayment Policy	Status:	For Publication
Report to:	Cabinet	Date:	15 th March 2023
Report of:	Head of Customer Services & I.C.T.	Lead Member:	Housing and Customer Services
Key Decision:	<input type="checkbox"/> Forward Plan <input checked="" type="checkbox"/>	General Exception	<input type="checkbox"/> Special Urgency <input type="checkbox"/>
Equality Impact Assessment:	Required: No	Attached:	No
Biodiversity Impact Assessment:	Required: No	Attached:	No
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1. RECOMMENDATION

- 1.1 That Cabinet consider the recommendations from Overview and Scrutiny Committee and approve the Housing Benefit Overpayment Policy. Overview and Scrutiny occurs following the publication of these Cabinet Papers, recommendations will therefore be provided verbally at the Cabinet meeting.
- 1.2 That Cabinet delegate any minor amendments to the policy to the Head of Customer Services and ICT in consultation with the Lead Member.

2. EXECUTIVE SUMMARY

- This policy document sets out Rossendale Borough Council's commitment to the recovery of Housing Benefit overpayments as laid down by The Housing Benefit Regulations 2006.
- 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.
- Recovery of Housing Benefit overpayments is a potential source of income for the Authority.

3. BACKGROUND

- 3.1 It is essential for Rossendale Borough Council to demonstrate that it carries out administration and recovery of Housing Benefit overpayments efficiently and effectively. A light touch review has been regularly undertaken however the current policy has not been updated since 2011. There are no fundamental changes to the existing policy other than format and presentation.
- 3.2 DWP data sharing arrangements have improved over recent years which means that overpayments are identified sooner, and are usually lower amounts. However, Universal Credit migration is eroding the Housing Benefit caseload reducing the opportunity to recover overpayments from ongoing benefit entitlement, which is the easiest and most cost effective method. Recovery via sundry debtor invoice can be protracted depending on the debtors' circumstances and the recovery options available to us.
- 3.3 Housing Benefit debt stands at £880k having fallen by £320k over the past five years. This trend is expected to continue as the Housing Benefit caseload declines and DWP data sharing arrangements reduce the value of overpayments raised. Rossendale Borough Council are proactive in preventing and/or reducing the value of overpayments created in the first instance.

In recent years the levels of overpayments raised have fallen sharply, whilst collection rates have increased. In 2017/18 £675k of overpayments were raised in-year, with £399k collected, a rate of 59.7%. In 2021/22 £313k of overpayments were raised with £280k collected, at a rate of 89.3%. Overpayment recovery rates are a performance indicator and are reported to Overview & Scrutiny quarterly.

- 3.4 Overpayments created are classified for subsidy purposes and levels of Local Authority error are monitored by the DWP. Error level thresholds are between 0.48% - 0.54% of the total Housing Benefit spend. 2022/23 Housing Benefit expenditure is £10.4m to date, so the lower threshold is currently £50k. We are well below the threshold with a £10k error rate. Processing accuracy is a performance indicator which is reported to Overview & Scrutiny.
- 3.5 Subsidy arrangements mean that Housing Benefit overpayments can generate income for the Council. Rossendale Borough Council receive 100% subsidy on all qualifying Housing Benefit expenditure. This means there is no cost to the authority. However, when an overpayment is identified subsidy is reduced to 40%, as a result there is a 60% cost to the Council. To provide an incentive for Local Authorities to recover overpayments, the DWP allow them to retain all monies recovered from the debtor.

4. DETAILS

- 4.1 This policy will act as a guide for staff. Recovery procedures need to be documented, effective and time managed to maximise the Council's performance.
- 4.2 Having a current and relevant policy ensures the Council;
- Helps reduce the loss from overpayments
 - Mitigate the risk of loss to public funds
 - Provides revenue for the Council
 - Deters fraud and error
 - Demonstrates commitment to accuracy and provision of a quality service to customers

5. RISK

There are no specific risk issues for members to consider arising from this report.

6. FINANCE

The Council only receives a 40% subsidy for Housing Benefit overpayments, with the unfunded 60% being an additional cost to the Council. Therefore it is essential that the Council seeks to recover overpayments where possible. Any recovery over the 60% is retained as additional income for the Council.

7. LEGAL

It is essential for the Council to demonstrate that it carries out the administration and recovery of Housing Benefit overpayments efficiently and effectively to mitigate the risk of legal challenge.

8. POLICY AND EQUALITIES IMPLICATIONS

There has been no significant changes to the policy. Consultation has undertaken with the Capita Governance Board, Corporate Management Team and Lead Member.

9. REASON FOR DECISION

Councils have a duty to protect public funds and recovery Housing Benefit overpayments in a timely and cost effective way. This policy sets out the Councils commitment to this as laid down by The Housing Benefit Regulations 2006.

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Background Papers	
Document	Place of Inspection
Housing & Council Tax Benefit Overpayments Policy, Strategy & Procedures 2011	Financial Services
Housing Benefit Write-Off Policy 2011	Financial Services

Housing Benefit Overpayment Policy 2023

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Responsible Service	SAT and ICT	Version/Status	Final
Responsible Author	Angela Richmond	Date Agreed/ Agreed At	O&S: 13/03/2023 Cabinet: 15/03/2023
Date last Amended	13/02/2023	Due for Review	March 2026

Housing Benefit Overpayment Policy

1. Policy Statement

- 1.1 This policy document sets out Rossendale Borough Council's commitment to the recovery of Housing Benefit overpayments as laid down by The Housing Benefit Regulations 2006.
- 1.2 The Council acknowledges that overpayments of Housing Benefit and Council Tax Reduction will occur. We will aim to minimise overpayments by making accurate and timely payments of benefits. We will also take our duty to recovery overpaid benefits seriously and will seek repayment of monies owed whilst remaining responsive to the needs of individual customers.
- 1.3 Where overpayments do occur we will seek full repayment of monies owed but at the same time will be responsive to the needs of individual customers. This policy is flexible in its approach to the recovery of Housing Benefit overpayments with each case treated on its own merit.
- 1.4 At all times we will act in accordance with Rossendale Borough Council's prevailing Equality Strategy and Equal Opportunities Policy, adhere to the Equality Act 2010 and ensure that in carrying out this policy we will not discriminate against any customer.

2. Introduction

- 2.1 It is essential for Rossendale Borough Council to demonstrate that it carries out administration and recovery of Housing Benefit overpayments efficiently and effectively. By doing so the Council:
 - Helps reduce the loss from overpayments;
 - Mitigate the risk of loss to public funds;
 - Provides revenue for the Council;
 - Deters fraud and error;
 - Demonstrates commitment to accuracy and provision of a quality service to customers.

3. Aims of the Policy

- 3.1 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.

4. Housing Benefit Overpayments

4.1 What is a Housing Benefit Overpayment?

Overpayments of Housing Benefit happen when an amount of benefit is paid to which there is no entitlement under the regulations.

4.2 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.

4.3 **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.

4.4 **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.

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

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

4.7 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.

4.8 **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.

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

5. **Identification/classification of Housing Benefit Overpayments**

5.1 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.

5.2 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.

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

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

6. Decision Making

6.1 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.

6.2 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.

7. Claimant or Third Party error

7.1 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.

8. Calculation of a Housing Benefit Overpayment

8.1 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 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.

9. From whom should the overpayment be recovered?

9.1 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.

9.2 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.

9.3 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.

9.4 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.

9.5 If a deceased person has an outstanding overpayment recovery can be sought from their estate.

10. Notification of an Overpayment

10.1 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.

11. Recovery of Housing Benefit Overpayments

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

12. Recovery from on-going Benefit

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

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

12.3 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.

12.4 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.

12.5 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.

13. Where there is no on-going benefit entitlement

13.1 If there is no on-going benefit entitlement the debt will be recovered via invoicing after a calendar month has lapsed. This period allows for a revision, appeal or new claim being received. The invoice will request payment within 14 days. If there is no response to the invoice a reminder is

automatically issued after 14 days, followed by a final notice 14 days later. Official notices may be supplemented by text or email messages.

14. Non-payment

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

15. Arrangements

- 15.1 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.
- 15.2 Each case will be considered on its own merits - taking the amount due, personal circumstances and financial circumstances into account. Arrangements will be at a level equivalent to the DWP prescribed deduction from ongoing Housing Benefit. 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.
- 15.3 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.
- 15.4 Once the arrangement is agreed, a letter confirming the details is issued along with a Standing Order to facilitate payment. Payments can also be made online. A payment arrangement will be reviewed on an annual basis.

16. Monitoring Arrangements

- 16.1 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.

17. Further Recovery Action

- 17.1 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.
- 17.2 **Recovery from Department for Work and Pensions (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.

17.3 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 and;

- 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.

17.4 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.

17.5 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.

17.6 Recovery via Direct Earnings Attachment

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

17.7 County Court Action

Where appropriate and taking into account the size and reason for the overpayment, we may seek recovery through the County Court. This allows us to enforce recovery of the overpayment in a number of ways including charging orders.

17.8 Decisions to take action through the County Court will be authorised by the Service Assurance Team, taking into account;

- i. The likelihood of successful recovery.
- ii. The level of potential costs to be incurred.
- iii. The circumstances of the customer.

17.9 Debt Collection Agency

We may pass the account to an external Debt Collection Agent and request that they pursue the customer for payment on our behalf.

17.10 Changes of address and returned post

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.

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

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

18. Vulnerable Debtors

18.1 There is no simple definition of vulnerability. The Citizens Advice Bureau suggests that:

‘Generally, a person is considered to be vulnerable if it would be unreasonable to expect them to be able to deal with a problem themselves.’

18.2 Some characteristics which may lead to vulnerability are:

- Persons with a physical and/or sensory disability
- Persons affected by mental illness
- Persons with a learning disability
- Persons suffering a serious illness
- Older People
- Language Difficulties
- Literacy Issues
- Families with Children
- Young People Leaving Care
- Those at risk of homelessness
- People suffering from bereavement
- Fleeing or subject to domestic violence
- Prisoners and detainees
- Pregnancy

18.3 This list is not exhaustive or prescriptive. A person is not automatically vulnerable if they can be identified from the list above. Relevant and appropriate support may be in place. A person may be vulnerable for other reasons not mentioned above.

18.4 It is important that where recovery action is in place, no customer is unfairly discriminated against because they are unable to manage responsibilities or protect their rights in the face of that action. At the same time, potential or actual vulnerability does not mean that an overpayment is rendered irrecoverable provided that appropriate consideration is taken of each customer’s circumstances.

19. Write-Off

19.1 We recognise that in certain circumstances it may not be practical or appropriate to recover an overpayment. In those cases consideration will be given to non-recovery or write off the debt.

19.2 The circumstances in which this will be considered are as follows:

- Where the overpayment was caused as a result of Local Authority error and where the claimant or person receiving the payment could not reasonably have been expected to know the overpayment was occurring.
- Where all recovery processes have been exhausted.
- It is uneconomic to recover where the debt is under £50.
- The overpayment becomes unrecoverable due to the Limitations Act.
- The customer has demonstrated exceptional circumstances or extreme financial hardship.

19.3 In considering a debt for write off the following conditions will apply:

- Each case will be considered on its merits.
- Each request will be supported by relevant documentation.
- Each case will receive authorisation from the appropriate authorised officer and/or Members
- Appropriate records of all authorised write offs will be maintained and reviewed periodically against live caseload.

19.4 A separate, detailed write off policy for Housing Benefit debt sets out in full the conditions for write off.