



backlogs in processing that may mean that information from claimants is not processed as swiftly as we would wish. This latter point has clearly been a factor in recent years as the department has struggled to overcome such a backlog that has been exaggerated by continual changes in the legislative regime. In 2003/2004 overpayment levels were as follows:

- Council Tax Benefit     £ 0.378 million\*     - recovered all
- Rent allowances         £ 1.724 million         - recovered £1.117 million
- Rent rebate             £ 0.139 million         - recovered £0.106 million

\* excludes technical and reduced liability overpayments totalling £2.378 million which would have also been recovered in full.

Recovery of debt is, of course, not restricted to the year in which it occurs and the balance of debt is pursued in accordance with the policy.

4.3 Overpayment recovery, in terms of the cost to the council, is not represented solely by the cash collected from claimants or landlords. The Department for Work and Pensions (DWP) also allows categories of overpayment for subsidy purposes at varying degrees from 0% to 100% e.g. overpayments as a result of claimant error are reimbursed at 40% in addition to any claimant recovery. It is therefore theoretically possible to make a 'profit' from an overpayment.

4.4 The relationships between overpayments raised, subsidy, recovery and the changes in workload and legislation are not simple and warrant a more detailed overview than is possible from a report of this nature. Accordingly it is suggested that members of the sub committee be briefed on the detail outside of the committee domain.

## **5. FINANCIAL AND LEGAL IMPLICATIONS**

5.1 The financial implications are contained in the body of the report and attached appendix.

5.2 The legal basis for recovery of overpayments is set out in respect of housing benefit in the Housing Benefit (General) Regulations 1987 and in the case of Council Tax Benefit in the Council Tax Benefit (General) Regulations 1992. Appeals against the Council's decisions can be made under the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 to the Appeals Service.

## **6. BACKGROUND PAPERS**

6.1 None

**MEDWAY COUNCIL**

**HOUSING BENEFIT OVERPAYMENT RECOVERY POLICY**

The Housing Benefit Overpayment Policy is designed to show Medway Council's commitment to the recovery of Housing Benefit Overpayments as laid down by the Housing Benefit (General) Regulations 1987 and to set out guidelines for Medway Council staff when dealing with overpayments.

It is recognised that each case should be reviewed on its merits and that the appropriate action should be taken only after considering all the facts. However this guidance is intended to set a framework within which recovery decisions can be made.

The Council aims to comply wherever possible with Performance Standards guidance and the Department of Works and Pension's (DWP) Guide to Overpayments. The Council also undertakes to review this policy as and when necessary.

**1. INTRODUCTION**

**1.1 Why we need a policy**

It is essential for Medway 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 the Council's commitment to accuracy and provision of a quality service to its customers as outlined in its Benefits Statement of Intent.

**1.2 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 ensure that:-

- Debtors will be given clear and prompt information about any Housing Benefit overpayment;
- Flexible and convenient methods of payment will be provided;
- Debtors will be treated with courtesy, empathy and in absolute confidence;
- Staff will be sensitive to debtor's individual circumstances;

- Debts will be collected efficiently;
- Any information given by the debtor will be treated as confidential unless the Council is under a statutory obligation to supply information;
- Staff dealing with the collection of Housing Benefit overpayments must follow clear written procedures and will receive training on debt collection;
- If required by the debtor, a private interview can be arranged so a member of the Housing Benefits;
- Customer Services staff and Housing Benefit overpayment staff can explain Medway Council's debt recovery procedures;
- The Housing Benefits Overpayment staff will work with recognised advice agencies, whilst acknowledging their independence.

## **2. HOUSING BENEFIT OVERPAYMENTS**

### **2.1 What is a Housing Benefit Overpayment**

A Housing Benefit overpayment is any amount of Housing Benefit paid to or in respect of a claimant to which he/she is not or was not entitled.

### **2.2 What causes a Housing Benefit Overpayment**

Benefit overpayments arise for a number of reasons such as:-

- A claimant does not inform the authority of a change of circumstances until after the event or not at all - claimant error. (Note - there is a legal requirement for claimants and landlords to provide information on changes in circumstance. Failure can result in a fine);
- A claimant or landlord has knowingly claimed benefit or falsified a claim to obtain benefit to which they are not entitled - fraudulent error;
- A mistake has been made by the Local Authority, the DWP, Pension Service, Inland Revenue or the Employment Service - official error.

### **2.3 What is a recoverable Housing Benefit Overpayment**

Generally, all overpayments are recoverable except where they are due to official error. These are also recoverable if the claimant, someone acting on the claimants behalf, or the person to whom the payment was made could reasonably have been expected to realise that an overpayment was taking place at the time of the payment or upon receipt of any notification relating to the payment.

## **2.4 Deciding if Recovery is appropriate**

An overpayment may be recovered at the authority's discretion. Regard should be given to individual circumstances when deciding if recovery is appropriate.

There is no obligation for the Council to recover all recoverable overpayments. However, subsidy arrangements penalise us if we do not recover most recoverable overpayments, and we would bear the cost of the overpayment in full.

## **2.5 From whom recovery should be sought**

An overpayment may be recovered from the claimant or the person to whom it has been paid. Overpayments may be recovered from a landlord where Housing Benefit has been paid direct. Guidelines also state that the authority must act reasonably in recovering the amount due.

## **3. PREVENTION AND IDENTIFICATION OF HOUSING BENEFIT OVERPAYMENTS**

### **3.1 Minimising overpayments**

Benefits staff will be made aware of the causes, existence and implications of overpayments through a range of training and feedback mechanisms as well as a comprehensive and continuously updated Procedures Manual. Feedback will include the information provided by Overpayment Officers on both a general and individual basis on the causes and amounts of Local Authority errors. For Benefit Assessors whose decisions or omissions may cause overpayments, this feedback will be incorporated in their individual annual staff appraisals. Overpayments awareness and refresher training opportunities will be offered and reinforced through these annual staff appraisals.

### **3.2 Identifying the overpayments**

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 regarding the awards of Income Support and Jobseekers Allowance (Income Based).

Accurate and prompt identification of overpayments is important because it ensures that the incorrect payment can be stopped and increases the chances of successfully recovering the overpayment. It will also reduce the number of complaints and appeals.

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

#### **4. CALCULATION OF OVERPAYMENTS**

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 uncashed/returned cheques or underpayment of benefit is taken into account.

Claimants are also given the opportunity to provide evidence of any possible underlying entitlement, which can also reduce the overpayment.

#### **5. NOTIFICATION OF OVERPAYMENTS**

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.

#### **6. METHODS OF RECOVERING OVERPAYMENTS**

##### **6.1 Recovery from on-going Benefit**

Where the claimant is still entitled to Housing Benefit the overpayment can be recovered from their ongoing benefit entitlement. Where the overpayment is to be recovered from on-going benefit, details of this are shown on the notification letter. With effect from 1<sup>st</sup> April 2004 the maximum recovery rate, which is set each year by the Department of Works and Pensions, has been set at £8.40 a week unless the overpayment has arisen as a result of fraud as defined in Regulation 102(3) of the Housing Benefit (General) Regulations. In these cases the maximum rate of recovery is £11.20 a week. Additional sums can be recovered if the debtor agrees. Where deduction at the maximum rate would lead to hardship on the part of the debtor, a reduced amount may be agreed.

For any Income Support or Job Seekers Allowance (Income Based) cases the recovery level can be amended using the standard recovery level plus 50% of the claimants specified disregards.

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.

The rate of recovery from on-going benefit will take into account individual circumstances and in whatever circumstances outlined above the Council must continue to pay £0.50 minimum ongoing benefit entitlement..

Recovery from on-going benefit is counted as recovery from the claimant, not

the landlord. As such 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 against the tenant accordingly.

## **6.2 Issue of an Invoice**

Where there is no on-going benefit entitlement the debt will be recovered via invoicing after a 6 week period has lapsed. This period allows for a revision, appeal or new claim being received. Dependant on the circumstances causing the overpayment, the invoice could be issued to either the claimant (for example change of circumstance) or the landlord (for example vacation of the tenant).

The invoice will request payment within 28 days. If the debtor is unable to pay in full it is possible to make alternative arrangements (these are covered in at paragraph 7).

If payment/an arrangement for payment is not made a reminder will be issued 7 days after the payment due date displayed on the invoice.

If payment/an arrangement for payment is not made within 16/17 days of the reminder being sent a final demand will be issued requesting payment within 7 days.

## **6.3 From ongoing benefit paid by another authority**

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 Medway Council. However, the administration costs in monitoring such arrangements generally exceed the amount being recovered and as such this is an option that Medway Council has yet to exercise.

## **6.4 By recovering overpayments from a landlord through a third party benefit for an overpayment in respect of another claimant**

Where an overpayment is recoverable from the landlord and payment has not been made within 4 weeks of the invoice then the debt can be deducted from their next Housing Benefit cheque(s).

## **6.5 Deductions from other benefits paid by the Benefits Agency**

If the debt is not paid and no repayment arrangement is made, deductions from Income Support, Jobseekers Allowance or State Retirement Pension will be considered.

In these instances, the Council requests that deductions are implemented by the Department for Work and Pensions . The person must be receiving a sufficient amount of one or more DWP benefit in order for the deductions to be made.

## **6.6 From the rent account if they are a Council tenant**

Where a Council tenant has an outstanding overpayment and their rent account is in credit the debt can be transferred into their rent account (providing the credit is not the result of prepayment of rent).

## **7. PAYMENT BY ARRANGEMENT**

### **7.1 Making of arrangements**

If the debtor cannot pay the overpayment invoice in full then the Council encourages them to make contact immediately so that a mutually acceptable repayment arrangement can be made. 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. The aim is to agree a realistic arrangement to collect unpaid debts within a reasonable time, without the need for more serious recovery action.

If an agreement cannot be made in the first instance then 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 to act as a basis for reaching a mutually acceptable instalment plan.

Once the arrangement is agreed, an amended invoice, reminder or final demand, depending at what point in the recovery process the arrangement was made, showing the agreement is sent. Payment slips or a Standing Order form is also sent to facilitate payment if requested.

### **7.2 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: -

- Postal Order
- Cheque
- Cash
- Standing Order
- Debit/Credit cards

Payment can be accepted in person at the Civic Centre, Municipal Buildings and Local Office.

## **8. FURTHER RECOVERY ACTION**

### **8.1 Recovery through the County Court**

The Council will take legal action in cases where agreement cannot be reached, against any wilful non-payers and/or persistent defaulters. Legal action includes:-

The Authority will typically pursue the most appropriate of the following legal actions:-

- for debts over the specified level the debt may be registered through the Courts using the fast track rules in Circular HB / CTB A59 / 98;
- an oral examination as to the means of the debtor which is taken under oath;
- an attachment of earnings order whereby an employer must deduct regular payments from salary or wages;
- a Third Party Debt Order (formerly known as a Garnishee Order) which attaches a debt to money owed to the debtor by a third party - for example where the debtor is awaiting an insurance claim, or damages etc. then the Council can recover its debt from the third party;
- a charging order which attaches a legal charge to property or other securities ( i.e. Government Stock and Company shares ) owned by the Debtor;
- a warrant of execution which authorises a bailiff to seize goods of the debtor and sell them ( also known as distraint );
- bankruptcy/liquidation.

Whilst the use of distraint or bankruptcy are options available, officers does not believe that these are generally effective remedies against the majority of people who have been overpaid Benefit and who remain on low income. There may be very rare occasional cases where such actions could be reasonable, particularly for example, where benefit fraud has been committed by people who were actually in a higher income/capital group, or the person's financial position has improved considerably.

### **8.2 Recovery for fraud**

Where the Authority determines that benefit payments have been made as a result of false information included in applications, or deliberately neglected to be given, consideration will be given to taking legal action against any persons knowingly involved in fraudulent activity. This can act as a future deterrent to that person and others in committing such offences. The decision making framework where fraud is involved is outlined in the Authority's Anti-Fraud Policy

## **9. DEBTS NOT RECOVERABLE**

The Authority will generally seek to recover overpayments unless it is clearly not reasonable to do so. There are eight specific categories where it may be deemed not reasonable to recover the overpayment. These categories are set out below together with an explanation of each and the necessary level of supporting evidence required to substantiate this.

## **9.1 Outstanding Appeals**

This is where an appeal is outstanding against either the decision that a recoverable overpayment has occurred and/or the decision to seek recovery of that overpayment, whether an internal officer appeal or an appeal to the Appeals Service. This will be a temporary position in that no recovery action will be considered until such time as a decision has been made, the appellant notified of this and given a further appropriate time period to respond. For those appeals adjudicated upon by the Appeals Service, a formal notification from them of an appeal pending will be required.

## **9.2 Local Authority Errors**

This is where the Authority has accepted that it has made a mistake, or has failed to undertake a proper assessment, or has excessively delayed in dealing with the change of circumstances that resulted in the overpayment, and the claimant could not have known s/he was being overpaid at the time it occurred. This also applies where the Authority is unable to substantiate the overpayment with appropriate documentary evidence of the relevant claim and/or change in circumstances. A formal written declaration authorised by the Revenues & Benefits Contract Manager of the error will be required to substantiate this.

## **9.3 Hardship**

This is where a person's financial circumstances are such that recovery of the overpayment would be considered to cause undue financial hardship. This will be established and substantiated by the completion of a standard, detailed income/expenditure form accompanied by evidence of all relevant, stated income, debts and expenditures. Expenditures will be judged against weekly levels specified in accordance with national debt and money management good practice procedures. Expenditure levels which exceed this reasonable/acceptable level will need to be substantiated in the form of documentary evidence of payments due/made or accepted signed statements to this effect. Hardship is also accepted where the person for whom recovery is sought has been declared bankrupt with priority creditors and this has been supported by evidence of order of the Court.

## **9.4 Ill health and limited means**

This is where a person's mental state or health is such that the recovery action would be unreasonable and potentially cause further ill health, coupled with a continuing, and likely to be persistent, low level of income. This will be substantiated in the form of a letter from a General Practitioner or other professional confirming the severity of the condition, the likely length of time that it will affect that person and the negative effects recovery would have.

## **9.5 Gone away no trace**

This is where the person who is being asked to repay the overpayment has moved away from the property for which they were claiming and were subsequently overpaid. In these circumstances the case will be checked against Department of Social Security records and then, where relevant, passed to the Council's Recovery

Assistants who will visit the debtor's premises with a view to obtaining sufficient details to lead to a trace. Where the value of overpayments exceeds a specified sum and the initial tracing is unsuccessful, the case will be referred to an external tracing agency.

#### **9.6 Deceased – No funds**

This is where the person who was overpaid has died and the executors or next of kin have confirmed that there are no available funds in the estate.

#### **9.7 Underlying entitlement and limited funds**

This is where, were it not for the regulations preventing the Authority from determining that entitlement, the claimant's underlying entitlement for the all or part of the period of the overpayment has otherwise been substantiated as reducing the value of the overpayment. This must be coupled with a continuing, and likely to be persistent, low level of income and will need to be evidenced by the production of relevant proofs and an income expenditure breakdown.

#### **9.8 Not Cost Effective**

Where the recovery of the overpayment is not cost effective to pursue to legal or Court sanction as the value of the debt is less than administrative and other costs of recovery action.

### **10. WRITING OFF DEBTS NOT RECOVERABLE**

All decisions 'Not to recover' an overpayment, will be made in accordance with the policy framework, and will be agreed and properly evidenced for audit purposes and subject to an annual compliance audit where considered appropriate. This audit, authorisation policy framework is as follows:-

- a. De-minimus. In the case of invoiced debts under £5 recommendation will be made by a Recovery Assistants and authorised by the Senior Recovery and Business Rates Manager. Where the write-off relates to a debt being deducted from ongoing benefit, recommendation will be by a benefit assessor and authorised by a Senior Benefit Officer;
- b. overpayments from £5.00 to £499.99 will be recommended by the Recovery Assistants or Appeals officer, verified by the Senior Recovery and Business Rates Officer and authorised by the Processing Manager in the case of invoiced debts. Where the write off for this amount is being deducted from ongoing benefit, the recommendation will be by a benefit assessor, verified by a Senior Benefit Officer and authorised by the Processing Manager;
- c. overpayments between £ 500 and £ 3,999.99 will follow the procedures outlined above in 'b.' but will also be authorised by the Revenues and Benefits Contract Manager accompanied by a full report of cause of the overpayments and outlining the specific reasons for 'Non recovery' recommendations;

- d. overpayments of £4,000 and over will follow the procedures outlined above in both 'b' and 'c.' but will also be authorised by the Assistant Director (Financial Management). Where hardship or vulnerability are the major factor the case will be referred to a Welfare Adviser's and their report must be included as evidence.

When making a decision not to recover the overpayment, the Council reserves its right to collect the overpayment at a later date, particularly where misleading information has led to the decision not to recover, or where a decision not to recover has been made to prevent undue hardship, and the claimants circumstances may change.