

# BATH AND NORTH EAST SOMERSET COUNCIL

## DRAFT POLICY – Housing Benefit Overpayments

### Introduction

Part 13 of the Housing Benefit Regulations 2006 (“The Regulations”) contain the details relating to overpayments of Housing Benefit. Within this section, Regulation 100 states that overpayments of Housing Benefit are recoverable, unless they arose as a result of an official error, where the claimant or the person acting on his behalf or payment was made, could not have reasonably been expected at the time of receipt of payment or of any notice of payment realise that it was an overpayment.

An overpayment occurs when the Council has paid more Housing Benefit than the customer is actually entitled to. The correct calculation of benefit is dependent on claimants keeping the Council informed about their income, savings and household circumstances. Under the regulation 88 claimants are under a duty to tell the Council immediately about changes in their circumstances. This is frequently not the case, so overpayments occur. In some cases the claimant assumes that the change has already been notified by other agencies such as the Department for Work and Pensions (DWP), or may not be aware that they have an obligation to tell the Council about the change or that the changes will affect their Benefit entitlement. A small number of overpayments are caused by fraudulent claims.

The Regulations do not prescribe that overpayments of Housing Benefit must be recovered and therefore the Council is able to exercise its discretion whether or not to recover overpayments of Housing Benefit. It is in the authority's interest to maximise recovery of overpayments, as non-payment is a cost to the Council. Where overpayments do arise each case will be considered on its merits taking account of all the circumstances.

Part 13 of the Regulations also details the various methods of recovery available to the Council. The Regulations do not specify the order or priority of recovery methods to be used.

This document sets out the Council's policy with regard to recovering overpaid Housing Benefit. The key principles behind this policy are to recover overpayments of Housing Benefit quickly and efficiently.

### Factors in the exercise of the discretion to recover

Factors that will be considered when deciding whether to recover a recoverable overpayment include whether the claimant is vulnerable, is experiencing hardship, or if there is evidence that they have difficulty dealing with their financial affairs. Vulnerability will be considered on a case by case basis and relevant factors that may be taken into account include but are not limited to the following;

- Medical Condition affecting mental or physical health

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- Illiteracy or learning difficulties
- Dealing with an addiction
- Domestic violence
- Homelessness
- Young Adults and Teenage Parents
- Older people with support needs
- People with Chronic illnesses
- Leaving prison
- Third party support

A decision not to recover a recoverable overpayment will only be made in exceptional circumstances, where it can be demonstrated that the customer is vulnerable, and recovering the overpayment would cause extreme hardship to the customer. Any decision to write off the debt on the grounds of vulnerability will be recorded as a discretionary write off and is detailed later in this policy document. In any event, and having had regard to the above factors, the hardship caused to a customer by recovery must outweigh the financial gain by the customer and costs incurred by the Council in recovery before an overpayment is written off.

### Recovery Methods

Where the customer caused or materially contributed to the overpayment of Housing Benefit we will use the method of recovery which will ensure that the overpayment is recovered as quickly and efficiently as possible. In most cases, this will mean that we will seek to recover the amount outstanding from ongoing entitlement of Housing Benefit. The weekly rate of recovery that will apply in all cases will be determined by The Regulations. In exceptional circumstances, the Council may decide to reduce the recovery rate if the standard rates of recovery would cause severe hardship.

The Council may recover overpayments using any of the methods outlined below under the section titled Recovery procedures, notwithstanding whether the Customer continues to receive Housing Benefit or any of the benefits prescribed in Regulation 105 of The Regulations. The overriding factors in deciding which method of recovery to use will be based on ensuring the overpayment is recovered as quickly and efficiently as possible.

If the customer ceases to be eligible for Housing Benefit the Council will consider recovering the debt direct from the customer via a Sundry Debtor Invoice.

Where an overpayment of Housing Benefit is due to the death of the customer the Council will look to the estate for settlement of the debt.

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Where the debtor is unable to settle the debt in full, requests for payment by instalments will be considered. Such requests will be subject to a full financial assessment of the debtor's means, and in most cases the Council will expect all debts to be settled in full within six months of notifying the debtor of the amount outstanding. Should the debtor default on the instalment agreement the Council will seek to recover the debt outstanding in full.

If recovery of overpaid Housing Benefit is to be sought from the landlord, the Council may consider making a deduction from any future payments due to them in respect of their other tenants receiving Housing Benefit.

Recovery may be sought from another Council where the customer has left the Bath and North East Somerset area and is claiming Housing Benefit in another area.

### Recovery Arrangements whilst the overpayment decision is under appeal

All 'persons affected' will receive appropriate notifications explaining clearly their rights of Appeal. Recovery will not normally take place whilst an Appeal has been received and has not been determined. It should be noted that under the Housing and Council Tax Benefit (Decisions and Appeals) regulations 2001, decisions on the method of recovery, or whether the Council should exercise its discretion to write off a recoverable overpayment are not matters giving rise to the a right of appeal to the First Tier Tribunal.

### Recovery procedures

The Housing Benefit Recovery process may include one or more of the following methods:

- Deductions from weekly on-going Housing benefit.
- From an underpayment of benefit for a period that has already been paid.
- From a Sundry Debtor Invoice where an arrangement has been made.
- By Sundry debtor invoice even when benefit is in payment; if the entitlement does not meet the legislated recovery level.
- By Sundry debtor invoice when Savings permit full settlement of the overpayment
- By deductions from prescribed Social Security Benefits
- By deductions from Housing Benefit awarded by another Local Authority
- By a Direct Earnings Attachment
- Through a Civil Court Order

### Writing off Recoverable and Non-recoverable overpayments

There are three categories of 'write off' –

- A) 'Non-recoverable' Write Offs** – where an overpayment has been caused by official error, and it has been established that the recipient of payments could not reasonably have expected to realise that they were being overpaid. In

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these circumstances, the debt cannot legally be recovered and will therefore be written off.

### **B) Standard Write Offs**

- I) Where all recovery options have been exhausted
- II) Where the debt is below £50 and the customer is not entitled to Housing Benefit or a prescribed Social Security benefit
- III) Where the debtor is deceased and there is insufficient funds in the estate
- IV) Where the debtor is no longer living in the UK
- V) Where the debtor has become insolvent and the debt is included in the order if appropriate.

In such cases the Authority will keep overpayments under review and may revisit the decision not to recover an overpayment. This will be appropriate where a debtor's circumstances have changed for example where they begin to receive a prescribed Social Security benefit which can be used to recover an overpayment.

- C) 'Discretionary' Write Offs** – where the authority exercises its discretion in exceptional circumstances not to recover an overpayment. This type of write off will normally only be appropriate where the customer is vulnerable and recovering the overpayment would cause the customer severe financial hardship. In these circumstances, each case will be considered on its own merits and customers must provide full details of their financial means with supporting evidence as required by the Council requires. As stated above the hardship caused to a customer by recovery must outweigh the financial gain by the customer and costs incurred by the Council in recovery before an overpayment is written off.

Although there are no formal rights of appeal against discretionary decisions not to write off recoverable overpayments, or the method of recovery, Customers may request that a discretionary decision be reconsidered at Senior Officer level. There will be no further right of review from the Senior Officer's decision.

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