

Gedling Borough Council



Housing & Council Tax Benefit Overpayment Policy

INTRODUCTION

Gedling Borough Council is committed, through sound administration, to the prevention and detection of Housing and Council Tax Benefit overpayments in order to reduce the loss to public funds and in order for the Council to maximise the subsidy income received from Government. We will take firm but fair action when administering overpayments of benefit and it is envisaged that this will encourage claimants and landlords to give correct and timely information regarding benefit claims and help to deter benefit fraud and error.

The aim of this policy is to act as a guide to Gedling Borough Councils administration of Housing Benefit Overpayment recovery and set out a clear Debt Recovery strategy.

Where overpayments do occur Gedling Borough Council is committed to recovering debt in a timely manner, taking into account the circumstances of those from whom recovery is sought. Training and clear procedures will be given to the staff within the Benefit Section to enable them to: -

- Promptly identify overpayments
- Prevent where possible the overpayment occurring
- Decide whether the overpayment is recoverable, and if so from whom
- Notify claimants and other affected persons promptly

- Assess the impact of recovery on vulnerable claimants and take recovery action that is appropriate to their circumstances
- Pursue recovery by the most timely, cost effective and efficient method available in line with legislation
- Correctly classify overpayments and maximise the subsidy available to the Council
- Ensure that there are effective financial monitoring processes in place

WHAT IS AN OVERPAYMENT OF BENEFIT?

An overpayment is any amount of benefit paid to or in respect of a customer to which he/she is not or was not entitled. 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, errors made by the Local Authority or errors made by the Department for Works and Pensions.

PREVENTION OF OVERPAYMENTS

We will ensure that processes are in place to prevent and minimise overpayments. We will do so by ensuring that we employ sound administrative processes. These will include:

- Where the Council receives notice of a change in circumstances, which may lead to an overpayment, prioritising the suspension of the claim (where appropriate) and reassessment of entitlement.
- Encouraging customers to report changes of circumstances.
- Encouraging landlords to report changes of circumstances.
- Reminding the customers and landlords on the notification letters of their duties to notify the council of changes in circumstances.
- Carrying out quality checks on new benefit decisions to ensure the benefit calculation is accurate and where errors are identified taking appropriate action to correct them.
- Complying with Government recommendations on verification and undertaking regular checks of benefit entitlement by visiting and telephoning customers in line with the new Performance Measure 10 requirements.
- Taking action to stop a cheque where it is known to have not been cashed in order to prevent an overpayment occurring or to reduce an overpayment.

CALCULATION OF OVERPAYMENTS

The amount of an overpayment and the period to which it relates will be calculated in accordance with the relevant Housing and Council Tax Benefit Regulations. When calculating the overpayment we will take the following into account: -

- Customers will be invited to provide sufficient information to establish any underlying entitlement to benefit in order to reduce the amount of the overpayment.
- Where sufficient information is available, underlying entitlement will be calculated.
- Consideration will be given to the existence and effect of any uncashed and/or returned cheques, or underpayment of benefit to reduce the overpayment.
- Where there is insufficient information to establish that an overpayment has occurred (for example the case papers for the relevant period have not been retained) no overpayment will be calculated.

CLASSIFICATION OF OVERPAYMENTS

The Council is committed to maximising the subsidy income that is available from Government.

The correct classification of each overpayment is important, in order to ensure that the Council claims the correct level of subsidy.

In order to maximise subsidy the Council will ensure that it has monitoring and quality checking processes in place to ensure that overpayments are accurately classified and recorded.

DECISIONS ON RECOVERABILITY

Recoverable overpayments

The Housing and Council Tax Benefit Regulations provide that all overpayments are recoverable except those that are caused by official error where the claimant or person acting on their behalf or the person who received payment of the benefit did not cause or materially contribute to the mistake, act or omission and the claimant or person acting on their behalf or the person who received payment of the benefit could not reasonably have been expected to realise that it was an overpayment when they received the payment or upon receipt of any notification relating to the payment.

Regulation 100 Housing Benefit (General) Regulations 2006
Regulation 81 Housing Benefit (SPC) Regulations 2006
Regulation 83 Council Tax Benefit (General) Regulations 2006
Regulation 68 Council Tax Benefit (SPC) Regulations 2006

AUTHORISATION FOR NON-RECOVERY OF DEBTS

Prior to any benefit overpayment being recorded as “non recoverable” the member of the Benefit section dealing with the matter must complete a Write Off Review of Decision form. This requires written confirmation of the reason(s) for the request not to recover. This is normally where a Local Authority error overpayment has occurred and it is felt that the customer could not have been expected to know that they were being overpaid during that period. When this occurs the overpayment would not be considered recoverable from the customer. The completed form is forwarded to either the Benefit Manager or a Team Leader who reviews the case and makes a written determination as to whether the overpayment is or is not recoverable.

The Team Leaders are authorised to make a determination on debts up to £2,000.00.

The Benefit Manager is authorised to make determinations on debt up to £10,000.00.

For cases where the debts exceed £10,000.00 the Head of Corporate Services must make the determination.

The above levels of authorization have been set by the Head of corporate Services and will be reviewed periodically.

Where the overpayment is considered non recoverable a member of the Benefit section will be required to update the claim to ensure no recovery documentation is issued to the customer in error. Once this has been correctly actioned the authorised Write Off Review of Decision form is then scanned into the document management system and stored on the claim for auditing purposes.

WHO TO RECOVER FROM

A recoverable overpayment may be recovered from the claimant, their partner (proving they lived at the property at the time the overpayment occurred), the person to whom the payment was made (including the claimant's landlord), or a person who misrepresented or failed to disclose a material fact that led to the overpayment.

The overpayment will not be recovered from a landlord, when the overpayment of Housing Benefit has arisen due to misrepresentation or failure to disclose a relevant fact by the claimant or someone acting on their behalf such as an appointee or agent.

The overpayment will not be recovered from a landlord where they have notified Gedling Borough Council of a possible fraudulent claim.

Where there is more than one party from whom the overpayment may be recovered the Council will take all relevant circumstances into consideration, these include:

- Who caused the overpayment

For example, the overpayment may have come about through a claimant's failure to declare their earnings promptly.

- Each party's knowledge of the overpayment

For example a landlord may suspect a property is unoccupied but fail to take action to notify the Council.

- Whether each party could reasonably have expected to take action to prevent the overpayment.

For example, a landlord may continue to cash payments after a claimant has quit his property.

- The likelihood of recovering the overpayment.

For example, if the claimant's whereabouts are unknown the only option available to the Council is to recover the overpayment from the landlord.

Deceased Persons

Where it has been established that the debtor has passed away, all invoices raised will be issued to the executors of that debtor. Overpayments of Housing Benefit may be recovered from the estate of a deceased person. Where recovery action is taken in the above circumstances the Council will deal with the matter with sensitivity.

Equal Opportunity/Human Rights Issues

In reaching its decisions, the Council will act with impartiality and apply this policy equitably and consistently.

DECISION NOTICES

When the Council decides to recover a recoverable overpayment a decision notice will be sent to the person from whom recovery is sought and any other person affected by the decision.

For example, if the Council decides to recover from the landlord a decision notice will be issued to both the claimant and the landlord.

The decision notice will be sent within 2 days of the decision being made or as soon as reasonably practicable thereafter.

Decision notices will comply with the Housing and Council statutory requirements providing the person affected with sufficient information to

understand the basis of the decision and to decide whether they want to request a review or appeal the decision.

If the Council decides to recover from a third party, for example a landlord, it will only disclose sufficient information (in accordance with Data Protection legislation) to the third party to enable them to understand the basis of the decision.

If and when the Council decides to use 'blameless tenant recovery' which seeks to recover an overpayment from a landlord, by recovering from another tenant's direct payments, the decision notice to that landlord will need to identify both the original claimant, whose benefit was overpaid, and the tenant, from whose benefit, recovery is going to be made.

APPEALS

Right of Appeal

In accordance with the relevant statutory legislation, the Council will notify all people affected by an overpayment decision of their right of appeal.

Appeals and recovery

Overpayment recovery will be suspended where an appeal is lodged with the Appeals Service or where the customer has requested that recovery be suspended until the matter has been concluded.

METHODS OF RECOVERY

An overpayment of Housing Benefit may be recovered in one or a combination of the following ways (the information detailed below is intended as guidance only, each decision as to the method and rate of recovery and from whom recovery is to be made will be decided on the individual circumstances of the case).

The Council will accept full repayment of the overpaid Housing Benefit if offered.

By deduction from ongoing entitlement to Housing Benefit (also known as 'Weekly Reclaim').

The rate of recovery should be no more than the statutory maximum applicable to the person from whom the overpayment is to be recovered. However this amount can be increased with consent from the debtor.

The maximum rate is tied to a formula based on a single persons personal allowance. As at the 1st April 2007 the regulations have set the following maximum permitted rates of deduction.

- Where the customer has been found guilty of fraud or admitted fraud after a caution, or agreed an administrative penalty the maximum permitted weekly deduction is **£12.00 per week** plus 50% of any earned income disregard, disregarded charitable or voluntary payments, war disablement pension or war widows pension.
- In any other case the maximum permitted weekly deduction is **£9.00 per week** plus 50% of any earned income disregard, disregarded charitable or voluntary payments, war disablement pension or war widows pension.

Where the customer's entitlement is less the weekly statutory maximum rate, all but £0.50 of that entitlement should be withheld under ***Regulation 102(5) Housing Benefit (General) Regulations 2006***.

Alternatively, it may be decided to invoice the customer instead especially where the current Housing Benefit entitlement is low and recovery by weekly reclaim would take a considerable number of weeks/years to recover from ongoing deductions.

Where the legislation permits a higher rate of recovery for fraudulent overpayments this will be applied. A 'fraudulent overpayment' is defined in the guidance note that accompanies this document.

Any request for a reduction in the amount of weekly reclaim made by the customer will be decided on the individual merits of the case. These must be made in writing to the Housing Benefit Support Officer and supported by a financial statement showing the customer's income and expenditure. It should be noted that recovery from ongoing benefit is counted as recovery from the customer and not the landlord. Consequently the landlord is not person affected and cannot apply for a revision of the decision or appeal against it. The customer 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.

Where the decision is made to recover the overpayment from a landlord and the customer is no longer on benefit the method of recovery will be by issuing an invoice asking for payment one month from the date of the invoice.

Gedling Borough Council is not presently using “blameless tenant” recovery but is considering all recovery options available. This method is where the overpayment is recovered from the landlord via another tenants’ entitlement. This is shown on the payment schedule issued to the landlord.

Where the customer is no longer in receipt of benefit a Sundry Debtor account will be raised and an invoice issued which the debtor will be asked to repay within one month from the date of issue. If they are unable to do so they will be advised to contact the Overpayment Recovery Section to arrange recovery by instalments.

All invoices will include: -

- The amount payable and a description of the charge
- The payment options available (on reverse of the invoice)
- A contact number for queries in relation to the accuracy of the account
- A contact number for discussing payment arrangements where the debtor has difficulty in paying the account requested
- A contact number for discussing payment arrangements where the debtor has difficulty in paying the account requested.

In cases where an invoice has been raised to a claimant and the claimant subsequently receives further Housing Benefit, the outstanding debtor will be cancelled and the overpayment recovered from future Housing Benefit by means of a weekly reclaim.

Gedling Borough Council has signed up and has started using the Department for Works and Pensions debt collection agency based at Dearne Valley. The Overpayment Recovery section at Gedling Borough Council makes an application to this agency for a deduction to be made from any eligible Welfare Benefits that customer may still be in receipt of.

For Local Authority tenants by posting the debt to the customers rent account when a credit is held on the rent account, where the claimant has died or for any “technical overpaid period” after the tenancy termination date.

It should be noted that the Council cannot recover an overpayment of Housing Benefit from a payment of Council Tax Benefit (or vice versa.)

Council Tax Benefit overpayments will be added back to the person's Council Tax account and will be subject to normal Council Tax recovery procedures.

All action taken or arrangements made to repay an overpayment will be clearly documented.

METHODS OF PAYMENTS FOR SUNDRY DEBTOR ACCOUNTS

It is essential that Gedling Borough Council provide flexible and convenient methods to customers so that they can make payment.

Gedling Borough Council recognises the importance of offering customers a variety of payment methods. By offering a wide range of payment options, the Council increases its ability to maximise the income owed to it, whilst also ensuring that customers are not excluded from meeting their liabilities due to restrictions on the type of payment methods accepted by the Council. At present we can accept payment by the following means: -

- Standing Order – The debtor will need to set this up themselves at their bank.
- By post – Cheque payments should be made payable to 'Gedling Borough Council' and sent to the Civic Centre, Arnot Hill Park, Arnold, Nottingham, NG5 6LU.
- At a Post Office – By completing the bank giro slip attached to the debtor and making cheques payable to 'Post Office Counters Limited'.
- Via the Internet – By logging onto www.gedling.gov.uk
- By telephone – Over the telephone by Debit card on 0115 901 3949. (Only be done during normal opening hours).
- At a bank – By completing the bank giro slip along with payment
- At the Council Offices – Payment by either cash, cheque or debit card.

Due to the increasing numbers of requests from debtors and as it is considered by Gedling Borough Council that automated payment methods are the most cost efficient option, it is planned to roll out a direct debit payment scheme by March 2008.

Gedling Borough Council recognises the need to ensure that its services are electronically accessible and will continue to develop strategies to allow for the payments of accounts through internet and associated technology, which will allow customers to pay sums due to the Council outside of normal working hours.

The Council will continue to review the payment methods available to customers in order to ensure that they continue to meet customer preferences and expectations.

NON-PAYMENT

28 days after the issuing of an invoice, where a customer has failed to make a payment or agreed a suitable arrangement to pay then the Overpayment Recovery Section will issue the debtor with a reminder invoice. This states they have 14 days to make payment or set up a suitable arrangement plan.

If payment is still not received after the 14 days then a final reminder will then be issued. This states that the customer has a further 14 days to make payment or set up a suitable arrangement plan.

If no contact has been made at this stage the customer is issued with a Pre-Legal Letter stating that the authority may refer the account to Gedling Borough Council's legal section for civil proceedings. The debtor has 7 days to make payment or set up a suitable arrangement plan.

Once the 7 days have elapsed the Overpayment Recovery Section will either submit an application to the Department for Works and Pension Debt Centre at Dearne Valley for an attachment of benefit, refer the case to Rossendales who are a bailiff company currently used by Gedling Borough Council, refer the matter to legal for civil proceedings or make a proposal to the Client Services Section to write the account off.

VULNERABLE CUSTOMERS

The Council acknowledges that an effective debt recovery function must pursue debts in a timely manner, and that the manner and timetable for the recovery of certain debts is subject to statutory regulation. However, it also recognises that those customers it identifies as vulnerable will require a more sympathetic and sensitive approach to debt recovery and will seek to take account of the needs of its vulnerable customers throughout the debt recovery process.

ARRANGEMENTS

If the debtor is unable to pay the invoice in full then Gedling Borough Council encourages them to contact the Overpayment Recovery Section immediately so that a mutually acceptable repayment arrangement can be made.

Each case is considered on its own merits taking the amount due and the debtor's personal and financial circumstances into account. 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 scale, without the need for more serious recovery action.

However, as a minimum, the rate of recovery should be equivalent to the statutory deduction applicable had the overpayment been recovered from ongoing entitlement.

It may be necessary to issue an Income and Expenditure form in order to obtain a clear picture of the debtor's financial circumstances. This should help in reaching a mutually acceptable instalment plan.

Once the arrangement has been agreed, a letter confirming the details is issued to the debtor.

Gedling Borough Council will periodically review an arrangement where it considers the debtor has had a relevant change in his/her circumstances.

MONITORING ARRANGEMENTS

A report is run on a weekly basis which highlights where a customer has defaulted on their arrangement.

When this happens the Overpayment Recovery section issue a broken arrangement letter, which informs the customer that they must contact the section to discuss their account, otherwise further recovery action will be undertaken.

RETURNED MAIL

If correspondence is returned undelivered and/or marked "gone away" and a forwarding address has subsequently been found then the postal address details are updated and a revised invoice / reminder / final reminder etc will be issued.

If the forwarding address is unknown the Overpayment Recovery Section will make every effort to establish the whereabouts of the debtor.

Gedling Borough Council will make legally allowable checks on different records and systems to trace the individual with the aim of recovering the debt. The main system used will be the Customer Information System (CIS). This is the Department for Works and Pensions (DWP) database. Where a customer has vacated the Gedling Borough area but remains on Welfare benefits, this database will provide a current postal address. This facility will also be used when making an application to the DWP Debt Collection Centre at Dearne Valley, as it will confirm whether there is a benefit that can have an attachment made against it.

CIVIL PROCEEDINGS

In the event that an invoice has been raised for an overpayment and the debtor has not made a repayment arrangement, or subsequently defaults on an arrangement, or where the debt is returned from an outside agency as unpaid over £50.00 this will be referred to the Gedling Borough Council's Legal Section in order that civil proceedings to recover the debt can be instigated.

FRAUD OVERPAYMENTS

In all cases where a fraud has led to the overpayment of Housing and/or Council Tax Benefit the Council will prioritise the recovery of the overpayment. See the guidance notes that accompany this document for more details.

Administrative Penalties

Where an overpayment has been classified as fraudulent and an administrative penalty applied the Council will monitor the recovery of the administrative penalty.

An administrative penalty will be recovered by producing and issuing a Sundry Debtor account.

An administrative penalty must be recovered after the fraudulent Housing Benefit overpayment has been recovered.

WRITE OFFS

Where it is considered that all lines of recovery action have been exhausted, the Overpayment Recovery Section will collate evidence to support its proposal to the Client Services Section that the overpayment should be written off.

The Client Services Section will perform an independent check of the proposal and either recommend to the Head of Corporate Services that the debt should be written off or refer back to the Overpayment Recovery Section for further recovery action.

Where the Head of Corporate Services agrees that the debt should be written off, he will sign a statement to that effect and the Client Services Section will make the appropriate arrangements to update the account and ensure the debt is correctly written off.

FINANCIAL CONTROL

Clear performance measures and targets will be set .The Council will monitor and maintain information regarding the value, the number and classification of the overpayments created, the level of debt, the amounts made non-recoverable, the amounts written-off and the bad debt provision associated with Housing Benefit overpayments.

The Council will ensure that systems are in place to provide the information required by Government agencies and other external bodies (for example the Department for Work and Pensions, the Office of the Deputy Prime Minister and the Audit Commission).

Overpayment performance will be reported to The Head of Corporate Services on a quarterly basis

All reporting and monitoring arrangements will be reviewed annually to consider their effectiveness and relevance following any changes in policy or legislation.

PUBLICITY

The Council will publicise this Overpayments Policy on the Council's web site. We will look to design leaflets and posters to further promote Gedling Borough Council's commitment to recovering outstanding overpayments of Housing Benefit.

This overpayment information will be made available in appropriate locations such as the Gedling One-stop reception area and the Carlton Enquiry Office located at the Cemetery Lodge

TRAINING AND AWARENESS

All staff directly involved in the overpayments process will be properly trained to carry out their duties in accordance with this Overpayments Policy.

Additionally, where appropriate, overpayment awareness training will be provided to staff not directly involved in the overpayment process such as One-stop customer advisors, Visiting officers and Fraud Investigation officers.

Refresher overpayment training will be undertaken to all relevant parties on an annual basis.

This policy will form part of the training package already in operation for all new employees who will deal with overpayments of benefit.

MAXIMISING CUSTOMERS ABILITY TO MEET THEIR LIABILITIES

In order to facilitate this, the Council will, where appropriate to the debt being pursued, or the overall financial circumstances of the debtor, notify its customers of the availability of any appropriate benefits, exemptions, discounts or relief which may either reduce the level of liability for the debt or increase the income of the customer, thus increasing their ability to meet their liability.

Such benefits, exemptions, relief and discounts include: -

Housing and Council Tax Benefits;

Council Tax Discounts, Relief and Exemptions

Business Rates Relief and Exemptions

Working Tax Credit

Pension Credit

Income Support & Job Seekers Allowance

Disability Benefits and

Discretionary Housing Payments

The Council will ensure that publicity relating to schemes that will enable customers to reduce their liability is included in regular mail shots and billing documentation, is available at Gedling Onestop and Carlton Cemetery Lodge receptions, on the Council's website and is regularly distributed in appropriate formats to those stakeholders who are unable to access the Council's website.

COMPLAINTS AND DISPUTES

The Council will endeavour to resolve any disputes in relation to debt collection at the earliest possible opportunity and will ensure that debtors are fully aware of the ways in which they can contact the Council in order to discuss any dispute they may have.

Where part of a debt is disputed, the Council will endeavour to collect the undisputed amount at the earliest possible stage whilst also dealing with the disputed debt.

If a customer wishes to make a complaint regarding the way in which the Council has undertaken to recover a debt, they will be advised of the corporate Complaints Procedure and will be given every assistance in registering a complaint.