

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 customers 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 customers and other affected persons promptly
* Assess the impact of recovery on vulnerable customers and take recovery action that is appropriate to their circumstances.
* Pursue recovery by the timeliest, 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

The council will ensure that processes are in place to prevent and minimise overpayments. The council 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 verifying claims and proactively undertaking regular checks of benefit entitlement by writing to, visiting and telephoning customers with the aim of ensuring claims are calculated using the most accurate information available. Also by liaising with other Government organisations when necessary.
* 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 customer 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 customer 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**

This is normally where a local authority error has occurred and it is felt that the customer could not have been expected to know that they were being overpaid during that period. Where this occurs the overpayment might not be considered recoverable from the customer. The decision not to recover an overpayment is made by either the Benefit Manager or a Benefit Team Leader. They are responsible for reviewing the case and making a written determination as to whether the overpayment is or is not recoverable and giving their reasons for their decision.

Where it is deemed that an overpayment is not recoverable then the overpayment will be written off. However, where it is deemed that an overpayment is still recoverable, the customer will be given the right to seek a review or appeal against that decision.

* The Benefit 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 Corporate Director – Section 151 Officer must make the determination.

The above levels of authorisation have been set by the Corporate Director – Section 151 Officer and will be reviewed periodically.

**WHO TO RECOVER FROM**

A recoverable overpayment may be recovered from the customer, their partner (proving they lived at the property at the time the overpayment occurred), the person to whom the payment was made (including the customer’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 customer 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 customer’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 customer has quit his property.**

* The likelihood of recovering the overpayment.

**For example, if the customer’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 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 RIGHT ISSUES**

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

# DECISION NOTICES

When the Council decides that an overpayment is recoverable, 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 boththe customer 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 Tax Benefit 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 a Housing Benefit overpayment from a landlord by recovering from another of their tenant's direct payments, the decision notice to that landlord will need to identify both the original customer whose benefit was overpaid and the tenant from whose benefit recovery is going to be made.

**DISPUTES AND APPEALS**

Whenever it makes an appealable decision the authority must notify each person affected of their:

* Right to a written statement of reasons for that decision;
* Right to ask the authority to reconsider its decision; and
* Right to appeal to an independent tribunal (unless the decision is one which cannot be appealed)

**Written statement of reasons**

A person affected may request a statement of reasons about anything that was not explained in the notice of Housing and/or Council Tax Benefit decision. Requests must be made in writing and signed by the person affected. This must be done within one month of the notification date of decision. The authority should provide a statement within 14 days so far as this is practicable.

**Reconsideration or Appeal?**

A person affected who disagrees with an appealable decision made by the authority has two options. They can:

* Ask the authority to reconsider (i.e. revise) the original decision; or
* Appeal against the decision to an independent tribunal.

## APPEALS AND RECOVERY

# Overpayment recovery will normally 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. This will be considered on a case to case basis depending on the circumstances of the claim at that time.

**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 where offered.

**Weekly Reclaim**

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 person personal allowance. As at the 1st April 2016 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 **£18.50 per week** plus 50% of any earned income disregard, disregarded charitable or voluntary payments, war disablement pension or war widow’s pension.
* In any other case the maximum permitted weekly deduction is **£11.10 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.

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 Department 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.

**Blameless Tenant Recovery**

Where necessary, Gedling Borough Council will consider using “blameless tenant” recovery as a method to recover an overpayment of Housing Benefit. This is where a recoverable overpayment of Housing Benefit was paid to a landlord or agent is now recovered by deducting a payment(s) from that landlord or agent from another of their tenants Housing Benefit entitlement. It is called blameless tenant recovery as the other tenant had nothing to do with the overpayment.

Any recovery action taken is clearly shown on the payment schedule issued to that landlord.

**Sundry Debtor Account**

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 most cases where an invoice has been raised to a customer and the customer 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.

However, where an attachment to DWP benefits has been arranged or a higher recovery plan is already in operation, the authority may decide not to cancel the existing sundry debtor account and seek recovery by means of weekly reclaim.

Gedling Borough Council has signed up and has started using the Department for Works and Pensions debt collection agency. 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.

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

An overpayment of Council Tax Benefit may be recovered in one or a combination of the following ways:-

* Normally 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 or
* 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: -

* **Direct Debit** – The debtor can set up a direct debit over the phone or by completing a paper mandate form. The debtor has a choice of 4 separate payment dates, these being the 1st, 7th, 15th and 28th of the month. This allows more flexibility for the debtor to set up and maintain a payment schedule.
* **Pay online** – By logging onto [**www.gedling.gov.uk**](http://www.gedling.gov.uk) and using your debit card through our payment portal.
* **By telephone** – Pay over the phone by calling **0115 901 3949** (only available during office opening hours), This telephone number is for payment’s only, enquires cannot be taken on this line

Payments by Debit Card can be processed over the phone by contacting our 24-hour automated telephone payment service on **0161 627 9907**.

**Note:** You will need your account reference and debit card details

* At the Council Offices – Payment by cash, cheque or debit card at the Payment Kiosk.
* Pay Using Your Own Bank

If you wish to make payment via your own bank, either by making a lump sum payment or by setting up your own standing order you will need the following details:

**HSBC plc  
 104 Front Street  
 Arnold  
 Nottingham  
 NG5 7EG.**

**Sort Code: 40-08-46  
 Account Number: 51474146**  
  
 **You must** make sure that the bank quotes your account number when sending the payment. Please note that by using this method it can take up to six days for your payment to reach your account. All payments must arrive at the council by the due date of payment.

* 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.

Please ensure you include your reference number, name and address on the reverse of the cheque, as well as your Demand Notice if you require a receipt. Please note that we cannot accept postdated cheques.

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 for an attachment of benefit, refer the case to a bailiff company, 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.

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.

For Housing Benefit overpayments a minimum rate of recovery should be sort, wherever possible. This is equivalent to the statutory weekly reclaim deduction had the overpayment been recovered from ongoing entitlement.

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

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

**MONITORING ARRANGEMENTS**

A report is run 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 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, 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 the overpayment/s of Housing and/or Council Tax Benefit has occurred due to fraudulent activity, the Council will prioritise the recovery of that overpayment/s.

**ADMINISTRATIVE PENALTY**

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 only be recovered after the fraudulent overpayment has been recovered in full.

**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 that the overpayment should be written off.

This evidence will be submitted the Corporate Director – Section 151 Officer recommending that the debt should be written off. He will decide which debts will be written off and which need referring back to the Overpayment Recovery Section for further recovery action to be taken.

Where the Corporate Director – Section 151 Officer agrees that the debt should be written off, he will sign a statement to that affect. The appropriate arrangements will then be made to update the account and ensure the debt is correctly written off.

Where an overpayment is written off as irrecoverable but the debtor subsequently makes a new claim for Housing Benefit in the future, the council will seek to reinstate the written off debt and recommence recovery action by withholding a weekly statutory amount of entitlement off the new Housing Benefit entitlement until the outstanding balance is cleared in full. All affected customers will be written to, to explain the matter to avoid any confusion or uncertainty.

# 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 such as the Department for Work and Pensions and the Office of the Deputy Prime Minister.

Overpayment performance will be reported to the Corporate Director – Section 151 Officer 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 its website and review it annually.

**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.

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 Benefit

**Council Tax Discounts (including the Council Tax Reduction Scheme), Relief and Exemptions**

Business Rates Relief and Exemptions

Working Tax Credit

Pension Credit

Income Support & Job Seekers Allowance

Disability Benefits and

**Discretionary Housing and Hardship 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 the Civic Centre, 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 assistance in registering a complaint.

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