

Customer Services Directorate

Benefit Service

Overpayment Recovery Policy

2014

Overpayments Recovery Policy

Introduction

Merthyr Tydfil County Borough Council is committed to providing a high quality benefit service to all its customers through the Housing Benefit & Council Tax Reduction schemes. Our vision statement confirms “to provide Merthyr Tydfil with a customer focused, secure and accessible benefits service, which promotes confidence and satisfaction”.

Purpose

To prescribe a comprehensive policy for the methods by which the staff of Merthyr Tydfil County Borough Council will deal with benefit overpayments and their subsequent recovery. By having a policy, the authority;

- Reduces losses to public funds
- Provides additional revenue
- Helps to deter fraud and error
- Demonstrates the authority’s provision of a quality service to its customers

Background

Overpayments can be caused by a failure to report a change in circumstances, delays in processing, incorrect information being supplied, and errors being made by the local authority or by staff in the Departments for Work & Pensions (DWP), Pensions, Disability & Carers Service (PDCS) and Her Majesties Revenue & Customs (HMRC).

The benefit regulations dealing with overpayments are complex and require multiple decisions to be made on the causes of overpayments, recoverability, methods of recovery and from whom the recovery should be made.

Unless they are properly dealt with, overpayment decisions can lead to improper debt creation and financial hardship for claimants. They will also lead to large volumes of debt being written off by the authority, inadequate subsidy claiming arrangements resulting in a shortfall in income to the authority. In addition, they can create a substantial amount of extra work in the format of complaints and queries by confused customers.

What are Overpayments?

Benefit legislation simply describes an overpayment as ‘an amount of benefit paid to which there is no entitlement’. ‘Paid’ means by cheque, BACS transfer or direct credit to a council tax account.

Process

All our customers will be treated with due care and respect when dealing with any overpayments that occur.

We will consider every case individually in accordance with legislative requirements.

We will endeavour to minimise all overpayments by;

- Operating effective quality checking procedures. To ensure the assessment is correct at the outset and throughout the life of the claim by regular activity
- Advise claimants and landlords of their legal duty to notify the authority of any changes in circumstances which may affect their entitlement
- Prompt assessment where changes in circumstances have been notified
- Taking preventative action to minimise overpayment by suspending benefit where evident an overpayment will occur
- Pursuing and publicising fraudulent activity to act as a deterrent to others who may be tempted to withhold information

Trained benefit staff will determine whether an overpayment has been made. These staff will also categorise each part of the overpayment in accordance with legislation so that the appropriate subsidy can be claimed.

When a recoverable overpayment is identified, the customer will be asked to furnish any information needed to apply underlying entitlement.

The final overpayment decision is made and the customer and any other person(s) affected will be issued with formal notification letters detailing the amount and reason of the overpayment. They will also be offered the right to request reconsideration or explanation of the decision which could lead to an appeal hearing before an independent tribunal as prescribed in the regulations.

Any employee of the authority who has an outstanding overpayment will be advised that we will look to recover the funds by direct deduction from their wages.

Recovery Methods

The following methods of recovery will be used in cases of Housing Benefit Overpayments;

- Deduction from ongoing benefit
- Deduction from other prescribed benefit where permitted by law
- Repayment by invoice
- Repayment from the person to whom the benefit was made (e.g. landlord or agent) / Deduction from benefit being paid to landlord or agent for a third party tenant
- Requesting recovery from another authority where debtor has moved
- External collection agencies
- Direct Earnings Attachment Order - this replaces the need to go to Court as we can directly approach the employer to ask them to recover on our behalf
- Registering the debt in the county court

- **Deduction from ongoing benefit**

This is the primary method of recovery and one of the most effective. April 2014/15 recovery rates are £10.85 per week for non-fraud overpayments and £18.25 per week for fraud cases. This amount can be increased by a further 50% of any earned/unearned income disregards that apply on the claim. These amounts are revised annually by the Department for Work & Pension.

In all cases where benefit is resumed, any outstanding overpayment will be recovered in this way. The overpayments officer is empowered to revise the level of ongoing recovery in individual cases where appropriate, and in particular to avoid severe financial hardship.

Initial recovery action is set at the maximum rate pending communication from individual customers.

- **Deduction from other benefit where prescribed by law**

This is a lawful route for recovery, however local authority benefit overpayments fall as low priority. The Department for Work and Pensions (DWP) will seek to recover their own overpayments and any social fund loans first before any overpayment of housing benefit. If the overpayment was caused by fraudulent activity, then this should be communicated to the DWP, as it will then take a higher priority.

At present, there is no option to recover direct from tax credits with HMRC.

- **Repayment by invoice**

In the absence of any current benefit entitlement and in cases where third party or another recovery method is inappropriate, then an invoice will be issued to the debtor. The Northgate systems allows for daily production of invoices along with the required reminders and final notices.

The overpayment staff will consider any reasonable request to pay by instalments. Instalment arrangements must take into consideration the ability to pay as well as the extent of the overpayment.

An advice leaflet is included in all invoices.

- **Repayment from the person to whom the benefit was made (e.g. landlord or agent)**

Blameless tenant recovery was introduced under the Fraud Act in 1997. This allows the authority to reduce the amount of housing benefit payable to the same landlord for another tenant who was not responsible for the original overpayment. To avoid the landlord taking recovery action for unpaid rent against the 'blameless' tenant, the rules require that the landlord is made fully aware of the legal position regarding treatment of the benefit payment for the tenant whose payment was reduced.

- **Requesting recovery from another authority where debtor has moved**

Where tenants move outside of the area, recovery of the debt can be problematic. Councils can lawfully enter into arrangements with each other to recover overpayments from the current award being paid by the other. Not all authorities are prepared to do this however MTCBC appreciate it is safeguarding public finance and will undertake any requests received from others.

- **Using External Collection Agencies**

Legislation permits the Authority to send outstanding overpayment debt to an external collection agency for recovery. This method has been used with varying levels of success in the past and is usually considered as a last resort

- **Direct Earnings Attachment Order**

From April 2013 Merthyr Tydfil County Borough Council is able to recover overpaid housing benefit by asking an employer to make deductions directly from an employee's earnings, the amount that will be deducted is taken as a per cent of the total net earnings (over £100 per week/or £430 per month) Recovery by this method prevents any court entry fees to the Local Authority.

We have 2 new documents also created for employers and employee's setting out the per cent that should be deducted and instructions on how to pay us each month/week .

- **Registering the debt in the county court**

The authority has previously used the legal section to attempt to recover debts through this channel although it has not proven to be successful. We are not currently using this function due to the cost to the debtor however we will be looking into procedures of registering the debt ourselves with the County Court, which would mean a reduced cost to be passed to the debtor. A further report will follow in this area when complete.

Council Tax Benefit / Council Tax Reduction

Overpayments of retrospective Council Tax Benefit and excess awards of Council Tax Reduction will be recovered directly debiting the council tax account as per legislation.

Unrecoverable Overpayments

The Authority must decide if an overpayment is recoverable or not.

An overpayment is not recoverable if it was caused by official error and the claimant, claimant's appointee or the payee could not reasonably be expected to be aware that they were being overpaid at the time. If this is the case the overpayment will be deemed to be unrecoverable and no recovery will be sought by the Local Authority. This is legislative requirement (HB regulation 100, CTB regulation 83) and is, therefore, not a "Write Off" under normal authority procedures.

The decision on whether or not an overpayment is recoverable is an appealable decision.

Discretion not to recover a recoverable Overpayment

Once it is decided that an overpayment is recoverable, there is provision within legislation for the authority to use its discretion not to seek recovery of the overpayment.

When an affected person request that the authority uses it's discretion not to recover a recoverable overpayment, the authority will make it's decision based on the individual circumstances of the person and the individual circumstances in which the overpayment arose.

Once the authority has considered the individual facts of the case, its decision is not appealable.

Write-Offs

It is recognised that in certain circumstances it may not be practical or appropriate to recover an overpayment. Overpayments are put forward for write off where;

- Recovery action has failed to discharge the debt, or
- The HB overpayment cannot be proven in Court, or
- The debtor cannot be traced, or
- The debt is barred from recovery by the law, or
- Further recovery action is not cost-effective, or
- The debt becomes unrecoverable due to the Limitations Acts

Consequently in those cases, consideration will be given to write off the debt in accordance with the authority's provision.

The age and level of debts will be monitored on an ongoing basis by the Overpayments Officer and will be reported to the Benefits Manager on a monthly basis. This will be reported to the Head of Service on a quarterly basis.

This policy will be revised as and when there are any relevant changes in legislation and as systems and working practices are enhanced to improve effectiveness in preventing and recovering overpayments.

Lisa Hayward
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