

Policy on the recovery of overpaid Housing Benefit and Council Tax Benefit

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Overpayments Charter

North Ayrshire Council's Benefit Services undertakes to conform to the following principles in the calculation and recovery of overpaid Housing and Council Tax Benefits.

Good Quality Decision Making

- Decisions on overpayments will be made as quickly as practicably possible and will fully conform to the requirements of the law.
- A degree of fairness will always be maintained in the decision making process.
- Requests for re-considerations or appeals will be dealt with as promptly as practicably possible and undertaken by a different officer to the one that made the original decision.

Customer Focused Service

- Claimants and Landlords will be treated with courtesy and respect, and all aspects of their enquiry will be dealt with in confidence.
- Information supplied to Claimants and Landlords will be as clear as possible and requests for further information and clarification will be dealt with as soon as possible.
- Information will be properly made available to all affected persons, stakeholders and claimant's representatives when appropriate.
- Claimants will be offered a flexible and structured means of recovery and efforts will be made to reach mutually acceptable recovery levels and methods.
- Early contact will be encouraged when the Claimant is finding difficulty in making payment.

Efficient Recovery

- Benefits Services will make every reasonable effort to recover overpayments in accordance with the law, and shall reserve the right to enforce debts through the Sheriff's Officer where appropriate and necessary.
- The best possible performance in the recovery of overpayments will be striven for, and the success of the Benefits Services' efforts will be measured in accordance with the Department for Work and Pension's Performance Standards.
- The Council's Overpayment Team will conduct quality checks and have targets for performance.
- Debts which are decided to be impossible to recover, or which would not be in the public interest to recover, shall be written off in accordance with this policy and the Councils' corporate write-off policy.
- All debts will be under proper financial control, and will be properly monitored.

Introduction

Overpayments of Housing Benefit (HB), or “excess payments of Council Tax Benefit” (CTB) are the result of a claimant being paid more than they are entitled to. The calculation and recovery of these sums is of fundamental importance for the following reasons:

- To ensure the claimant receives their correct entitlement.
- To protect the “public purse” – the funds of North Ayrshire Council.
- To secure subsidy from Central Government, because subsidy is usually only payable for overpayments when recovery has been attempted.
- As deterrence to fraud: fraudsters are increasing their risk if they know that overpayments will be recovered.
- To underpin the quality of the service as a whole.

The Assessment of the Overpayment

The initial calculation of the overpayment is undertaken at the time a claim is re-assessed due to a change of circumstances, or when new information comes to light. The Benefit Service’s policy is to act in accordance with the following steps:

- To process the change as soon as possible, and to minimise the overpayment.
- To ensure that the change is processed on the most accurate information and from the correct effective date, including the calculation of underlying entitlement where appropriate.
- That, where appropriate, new details are invited in order to calculate any subsequent entitlement that may be used to reduce the overpayment.
- To ensure that when an assessment is being made in respect of a new or change of address claim, that any existing overpayment in respect of the customer’s previous address is acted upon.
- That the issues of recoverability are considered at the point of assessment.

The Notification of the Overpayment

The notification of the overpayment is one of the most important aspects of the process. A proper notification is to be made to each “person affected” before recovery can be made. A person affected is the Claimant in every case, and the Landlord when recovery is being made from them.

The Recoverability of Overpayments

In law, all overpayments are recoverable unless they are “non-recoverable”. Non recoverable overpayments occur when an official body such as the Council, DWP or Inland Revenue causes an overpayment by making an error, or failing to act, and the customer did not contribute to the error, and could not reasonably have been expected to know they were being overpaid.

Consequently most overpayments *can* be recovered but they do not *have* to be recovered, and there may be mitigating circumstances when recovery is deemed inappropriate.

Also, there maybe cases in which one overpayment will be classified into two separate categories – part recoverable and part non-recoverable.

In determining the recovery of overpayments the Council’s policy is to take into consideration following points:

- Whether or not the overpayment is recoverable. Any decision not to recover will require the approval of a Team Leader or other Senior Officer.
- If the overpayment is recoverable is it appropriate to recover it? There will only be a small minority of cases when recovery will not be appropriate. This decision will require the approval of a Senior Officer.
- From which party should recovery be sought?
- Which will be the most appropriate method of recovery?

From Whom Recovery will be Sought

An overpayment of CTB can be recovered from the taxpayer, or their partner if the claimant and partner were partners at the time the overpayment was created and at the time it is recovered.

However, for HB, there is a wider choice of “targets” for recovery. These are as follows:

- The Claimant
- The Claimant’s partner (but only by deductions to benefit when the Claimant and partner were partners at both the time the overpayment was created and the time the overpayment is being recovered) or from their IS/JSA (IB) SPC or (IR) ESA
- The person to whom the HB was paid (an Agent or Landlord)
- In the case of an overpayment being caused by a misrepresentation or failure to disclose a material fact; the person that made the misrepresentation or failed to disclose a material fact. When an overpayment has been caused by an official error it will be recovered from the person who could reasonably be expected to know they were being overpaid. When neither of the above apply, it can be recovered from the claimant or the payee.
- The estate of a deceased person

The policy of North Ayrshire Council is to recover overpayments along the following guidelines. *It should be noted however that these guidelines are not a blanket policy and are merely a policy guideline. All decisions are to be made on the individual facts of the particular case.*

- When the overpayment has been paid to the claimant it will normally be recovered from the claimant, unless there was a misrepresentation/failure to disclose from a third party, in which case recovery will be considered from that person.

Recovery of overpayments from a Landlord

When HB has been paid to the Landlord the Benefits Service may recover the overpayment from the Landlord when –

- The overpayment was caused by misrepresentation or a failure to declare a material fact and the Landlord is a person that made the misrepresentation, or failed to declare the material fact, or
- In the case of an overpayment caused by an “official error”, the Landlord is a person that could reasonably have been expected to know there was an overpayment.
- When neither of the two points apply, the Benefits Service can recover from either the claimant or the Landlord

However, there are restrictions on when the Benefits Service can recover an overpayment from a Landlord;

- In the case of an LHA award, the Benefit Service cannot recover more from the Landlord than the Landlord has received. (for example, if the tenant has received the extra £15, this cannot be recovered from the Landlord.
- An overpayment cannot be recovered from a Landlord when the following circumstances exist:
 1. The Landlord has notified the Benefits Service or the DWP in writing that he suspects there has been an overpayment, and
 2. The Benefits Service is satisfied the overpayment did not occur through a change of address, and
 3. The Benefits Service is satisfied that the overpayment was caused fraudulently or dishonestly, and
 4. The Benefits Service is satisfied that the Landlord did not collude or act to cause the overpayment

Recovery of overpayments from a Third Party

- Recovery will only be made from the Claimant's partner when the Claimant and partner were partners at the time the overpayment was created and at the time it is recovered.
- Recovery will be sought from the estate of a deceased person when an overpayment has been made to a Claimant that has passed away. A specially designed letter is to be used to inform the Executor of the overpayment and to invite re-payment unless no funds are available in the estate, in which case a write-off will be considered.

Method of Recovery

In the case of excess payments of CTB, recovery will usually be sought by adjustments to the Claimant's Council Tax Bill, however there is an option to recover from other Social Security Benefits. There are various options to recover overpayments of HB, including:

- Deductions to HB entitlement
- Recovery made from the payments made to a Landlord
- From arrears of HB entitlement payable
- Deductions to other Social Security Payments
- By means of an invoice
- Through a Council Tenant's rent account

It is the Benefit Service's Policy to consider the most appropriate method and rate of recovery in respect of an individual case, but the following guidelines are to be noted:

Deductions to HB entitlement

Deductions to HB entitlement will usually be the preferred method of recovery where the Claimant has a continuing entitlement, and the overpayment is to be recovered from him. This is so because it is a simpler method than paying the Claimant a greater sum, and then seeking repayment from him.

Deductions to entitlement can be used as a method of recovery when an overpayment is decided to be recoverable from a tenant or from a Landlord, but unless the Benefits Service decides otherwise, recovery by this method is to be treated as made from the tenant. The HB Regulations state that the Claimant must be left with a payment of at least 50p per week after deductions have been made. They further state maximum amounts, which can be taken in respect of any "benefit week" (these amounts are £8.70 and £11.60 for fraud cases in the 2006/2007 year but are reviewed annually by the DWP)

The Benefits Service will have regard to the Claimant's health and financial circumstances when deciding the appropriate level of deduction in order to

avoid causing undue hardship, but if no special circumstances are made known then the level of deduction will be made along the following lines:

Customers receiving IS, JSA(IB), ESA (IR) or Guarantee Credit	£3.30 per week
Customers receiving state benefits other than those above (e.g. Incapacity Benefit, Savings Credit etc.)	£6.60 per week
Customers in remunerative work (i.e. over 16 hours per week)	£9.90 per week
Customers found guilty of committing a fraud*	£13.20 per week

**Fraud Cases are only those where a Claimant has been found guilty in Court, or has admitted fraud after an Interview under Caution, and has accepted an Administration Penalty or Administrative Caution.*

In addition to the sums outlined above, the regulations permit additional recovery to be made of up to 50% of the following:

- The Standard Earnings Disregard (£5, £10, £20 or £25)
- Any disregarded charitable or voluntary income
- The standard disregard applied to War Widows or War Disablement Pension (£10)

The Benefits Service will only consider using these additional amounts when there is a reasonable belief that to do so would be in the interests of efficient HB administration and they would not cause any undue hardship to the Claimant. The authorisation for a decision to use the additional amounts will require the approval of a Team Leader, or other Senior Officer.

From 10 April 2006 there is an exception to the above guidelines where a claimant has been overpaid for his previous address due to moving to the new address. The authority can deduct the full amount of the entitlement for the new property for the number of weeks that the claimant was overpaid at his previous address.

Although the Claimant does not enjoy a formal right of appeal in respect of the level of deductions made, the Benefits Service undertakes to consider any request made by a person subject to deductions to review the level when difficulties are claimed. The decision to reduce a deduction will be authorised by a Team Leader or other Senior Officer.

The Benefits Service will be happy to accept higher levels of deduction than those prescribed in the regulations when the Claimant volunteers these.

Although the HB Regulations allow Local Authorities to recover overpaid HB on behalf of one another by deductions to entitlement, the practicalities of doing this, and of transferring the resultant payments means that this is not a preferred policy of North Ayrshire Council.

Recovery made from the payments made to a Landlord

- Deductions from any benefit the Landlord is entitled to
- Deductions made to the tenant's entitlement can be used to recover a Landlord's overpayment when the Benefits Service have decided that the overpayment is not to be recovered from the tenant
- Recovery can be made from a Landlord's Schedule of Payments including third party debts under the blameless tenant provisions
- The Regulations also allow recovery to be made from "prescribed" DWP benefits paid to the Landlord

The practicalities of the methods above mean that the most usual way in which Landlord overpayments will be recovered is by deduction to the payment schedule. The Benefits Service adopted this method in 2000 and it remains the preferred recovery option providing that the following consideration has been satisfied –

That to recover a specific debt by deductions to a schedule payment would not cause undue hardship to the Landlord.

Blameless Tenant

A person is known as a blameless tenant when an overpayment is recoverable from a landlord, and it has been recovered from the HB of a tenant other than the tenant to whom the overpayment relates.

In these cases the Landlord has to treat the "Blameless" tenant as having received the full amount of HB, and not a reduced amount. As the blameless tenant is not a "person affected" by the recovery action taken they have no right to apply for a revision of the decision or appeal against it.

In addition to the consideration of Landlord hardship outlined above the Benefits Service will also adhere to the following procedures when enacting recovery from Landlords-

- Six weeks will be allowed between the overpayment decision notice being sent and the deduction being made from the Landlord Schedule. This is so that recovery is not attempted during the "dispute period" (The calendar month during which time an appeal can be made)
- If an overpayment is queried or appealed before the deduction is made to the schedule, the deduction will be postponed until the issue is resolved.
- Maximum deductions in respect of individual debts will only be made by the Overpayments Team Leader, or an equivalent Officer.

- Standard Maximum deductions as policy issues, will be negotiated with Landlords only with the consent of the Benefit Manager or Deputy Manager, and these agreements will be re-negotiated annually.

Recovery from arrears of HB entitlement

An overpayment may also be recovered from arrears of outstanding entitlement. "Arrears" in this case refers to additional HB that is to be paid for benefit weeks that the Claimant has already been paid HB for. Because the weeks in question are not "new" weeks, they are not subject to the maximum weekly deductions, and the full amount payable in respect of any particular week may be taken, subject to leaving a minimum entitlement of 50p.

The Benefits Service will always attempt recovery in this manner when it is most appropriate.

Recovery by deductions to other Social Security Benefits

An overpayment can be recovered from a Claimant (or Landlord) by the DWP through their Debt Management Service by making deductions to a Claimant's Social Security Benefits when that Claimant is no longer receiving HB, or in the case of CTB, no longer paying Council Tax in the area. The overpayment to be recovered in this manner must have arisen as a consequence of the Claimant making a misrepresentation, or failing to disclose a material fact.

It is the Benefit Service's policy to affect recovery by this method, whenever an invoice has been issued but remains unpaid after the reminder stage. At this point the Overpayments Team will use the Remote Access Terminal (RAT) to determine if a "prescribed benefit" is in payment, and if it is, further recovery by billing will be suspended in favour of referring the debt to the DWP Debt Management Service.

The prescribed benefits from which the DWP may recover overpaid HB/CTB are:

- Income Support
- Job Seekers Allowance
- Disability Living Allowance
- Incapacity Benefit
- Industrial Death Benefit
- Industrial Injuries Disablement Benefit
- Carer's Allowance
- Maternity Allowance
- Retirement Pension
- State Pension Credit
- Severe Disablement Allowance
- Widowed Mothers Allowance

- Widows Pension
- Attendance Allowance
- Employment and Support Allowance

The Overpayments Team will refer debts to the Debt Management Service by completing a standard proforma.

Recovery of overpaid HB by means of an invoice

Recovery by means of an invoice will be the preferred method of recovery in the following cases:

- Council Tenants with no continuing HB entitlement.
- Rent Allowance Tenants where the decision is made to recover from the Tenant, and they have no further entitlement.
- Landlord Overpayments where the decision is made to recover from the Landlord, and they have no other tenants in their payment.

Invoices will not be raised where the outstanding debt amounts to less than £10.

The invoicing procedure will have three distinct stages:

1. The invoice
2. A reminder
3. A final reminder

If no payment is made after the final reminder stage, then the debt will be passed to the Sheriff Officers for enforcement.

Invoice

An invoice will pass through the stages listed below:

When an overpayment is created it will be standard policy to hold the overpayment in the Benefit system for a period of **10 days** before transferring the debt to the Debtors Module to allow an invoice to be raised. The transfer will only occur if no other recovery methods have been preferred, and the debtor has not requested a review or appeal of the decision.

Under certain circumstances it will not be necessary or appropriate to delay the production of an invoice and an invoice will be created immediately by forwarding the debt straight to the Debtor's Module.

Such circumstances include:

- The Debtor is deceased and recovery is to be attempted from their estate.
- The Debtor has no wish to appeal and has requested an invoice be sent in order to settle the account promptly.

When an invoice is sent out the debtor has **7 days** in which to make a payment

Arrangements for the settlement of the debt by instalments will be accepted at this stage.

Reminder

If a payment is not forthcoming then a further **14 days** grace will be given before a Reminder invoice will be sent.

The debtor is then required to make a payment within **7 days** of the Reminder being issued.

Again, arrangements for the settlement of the debt by instalments will be accepted at this stage.

Final Demand

If a full payment is not made (or an arrangement for payment) then a further **14 days** grace will be given before a Final Demand will be issued. If the debtor is believed to be in receipt of prescribed benefits then the debt will be referred to DWP Debt Management instead.

The debtor is then required to make a payment within **7 days** of the Final Demand.

If the debt is not settled within a further **7 days** then it will be considered for referral to the Sheriff Officers for collection and enforcement if required.

Any debt to be recovered from a Claimant will be passed back into the Benefits System for recovery by deductions to on-going entitlement if the Claimant becomes re-entitled to HB.

Payment of an invoice by instalments

Arrangements for repayment by instalments will be accepted at any stage in the recovery process. An arrangement for payment by instalments will be considered at the debtor's request, and the Overpayment Team will have due regard to the following factors:

- The total amount of debt outstanding.
- If the overpayment is historic and the period involved.
- The financial circumstances of the debtor, being their income, capital, and other financial commitments and debts.
- Any other specific, particular or exceptional circumstances relating to the debtor's case.
- The cost effective and efficient recovery of the debt.

If a debtor defaults on an arrangement, then the debt will start to be recovered again using either a Reminder or a Final Demand.

A second payment arrangement will not be made with a debtor unless there are good reasons for the original arrangement falling and strong grounds for re-instatement.

Debt passed to Sheriff Officers

If the Overpayments Team exhaust all appropriate avenues of recovery, but do not have cause to believe that the debt should be considered for write off then the debt will be passed to the Sheriff Court for collection and enforcement. At this point the debtor may incur additional costs, which they will be liable for.

Methods of repayment

By Post – Cheques and Postal Orders should be made payable to “North Ayrshire Council” and crossed. Please write your name, address and invoice number on the back of the cheque. Payments should be posted to – Chief Financial Officer, Cunninghame House, Irvine, P.O Box 8254, KA12 8DA.

Over the Telephone

- We operate a 24 hour, 7 day a week payment facility by debit or credit card through our Interactive Voice Response system (IVR).
- This is a completely free and convenient way to pay your Invoice.
- Card types accepted are Visa, Mastercard, Switch, Solo and Visa Delta.
- Please phone 0845 603 0593 to make a payment. Please have your Invoice number and your card details ready when you phone; **or**
- Payments can be made by telephoning (01294) 324058 during Office Hours. Please have your invoice number and your card details ready when you phone.

By Internet Payments

- We operate a secure online payment service which you can access Via the 'Online Payment' option on the North Ayrshire Council Website
- This is a completely free and convenient way to pay your Invoice.
- Card types accepted are Visa, Mastercard, Switch, Solo and Visa Delta.
- Please have your Invoice number and your card details ready when you access this service.

In Person – Payment can also be made by cash, cheque or postal order at The Municipal Bank, Cunninghame House, Irvine, or at any Council Office where payments are accepted.

In addition a standing order will be set up for debtors who have agreed to repay their overpayment by instalments through their bank or building society.

When a Debtor has two or more outstanding debts all payments will be credited to the oldest debt first until such times, as the debt is clear, unless the debtor indicates otherwise.

Recovery through a Council Tenant's Rent Account

Legislation permits an overpayment of HB to be recovered from a Council Tenant's Rent Account, providing that the outstanding balance of the HB overpayment is separately accounted from any rent arrears.

It is not the policy of the Benefits Service to affect recovery in this way, unless the prior consent of the Housing Department is obtained.

Although there is no right of appeal against the method of recovery employed by the Benefits Service, the Service does undertake to consider any representations a debtor may make with regard to this issue.

Recovery of a debt owed by a person who has been declared bankrupt

If a Claimant is declared bankrupt the position regarding recovery of an overpayment is dependant on when the overpayment decision was made in relation to the date of the bankruptcy as follows:-

When an overpayment can be recovered from a bankrupt -

- When the overpayment decision was made after the date that bankruptcy was declared.
- When the overpayment was as a result of a fraud

When an overpayment can only be recovered by deductions to entitlement

- During the bankruptcy period, when the overpayment decision was made before the date of bankruptcy.

When an overpayment cannot be recovered at all

- When the overpayment was decided before the period of bankruptcy, is not fraudulent, and is subsequently discharged.

Recovery of a debt owed by a deceased person

If a Claimant (or indeed a Landlord) passes away and incurs, or already had incurred, an overpayment of HB, then the Benefit Service's policy is to attempt to recover the debt by means of an invoice. The invoice will be sent as

promptly as possible in order to attempt recovery before the deceased's estate is fully settled. The Benefits Service undertakes to act with appropriate sensitivity after bereavement and to this end an accompanying "Executors Letter" will be sent at the time the overpayment decision is made.

The Executors Letter will offer the debtor's executor the opportunity to notify the Benefits Service that there are insufficient funds in the estate to settle the account.

Writing off debts

The decision to approve the write off shall be taken in accordance with North Ayrshire Councils' Corporate Write Off Policy. This states at paragraph 8.1 and 8.2:

“Services shall regularly review the sums due to them and shall identify those accounts where avenues for recovery have been exhausted and which are subsequently deemed to be un-collectable. Services shall maintain full records of such transactions and shall submit details to the Assistant Chief Executive (Finance) requesting approval for write-off.

Sums due to the Council shall not be written off except as follows:

- *Sums in excess of £1,000: subject to the approval of the Corporate Services Committee.*
- *Sums greater than £500 but not exceeding £1000: subject to the written approval of the Assistant Chief Executive (Finance) after consultation with the Chief Executive.*
- *Sums not exceeding £500: subject to the written approval of the Assistant Chief Executive (Finance).”*

Some overpayments cannot be recovered in law (non-recoverable overpayments) and some can be recovered but aren't for example, when the Council exercises it's discretion not to recover.

There are other overpayments that are recoverable but where recovery proves impossible or inadvisable. Such debts will be recommended for Write Off by the Senior Recovery Officer and recorded on the standard form for this purpose.

The Benefits Service shall consider each case for Write Off on the individual merits of that case, but typically such cases will include:

- Current whereabouts of debtor unknown after exhausting all legal methods of detecting them
- Debtor is in prison or abroad
- Debtor is underage
- Due to the amount outstanding, further recovery action is uneconomical
- The debt is too old to be recovered and barred by statute (i.e. 5 years have elapsed with no recovery action been taken)
- Debtor is in liquidation or declared bankrupt
- An invoice was disputed but never resolved, or the debt cannot be proven (“substantiated”)
- Debtor is a company that has ceased trading
- Debtor is deceased and has left no estate, or an inadequate estate
- The age and health of the debtor including severe medical conditions
- The debtor has a terminal illness

- Financial hardship
- Senility or low intelligence
- Because the circumstances of the case indicate that to continue recovery would not be in the public interest

The Benefits Service does however reserve the right to recover “written-off” sums in the case of the first three points above, when there are developments in the debtor’s circumstances that mean that recovery becomes possible.

The write off of debts will take place annually between the months of February to March. The Senior Recovery officer will prepare the write off lists and pass the details to the Benefits Manager for verification. The verified lists will then be passed to the Chief Revenues and Benefits Officer who will arrange for the Chief Financial Officer and the Chief Executive to approve the write off of debts below £1,000. A separate report will be submitted to the Council to inform them of debts below £1,000 that were written off and to seek their approval to write off debts over £1,000.

The Recovery of Excess Council Tax Benefits

Recovery of Excess CTB will be made through the Claimant’s Council Tax Account, but Benefit Services may request the DWP Debt Management Service to enact recovery when the debtor is in receipt of a prescribed benefit and is no longer liable for Council Tax in the area.

Appeals

The Appeals Officer will be responsible for any appeals received with regard to overpayments.

The grounds on which an affected person can appeal an overpayment decision are limited, but include the following points:

- Whether or not an overpayment is recoverable
- The facts and calculation used in the determination of the overpayment

The following areas are not open to appeal, but the Benefits Service undertakes to consider them outside of the appeals procedure when raised:

- The use of the discretion not to recover a debt
- The method of recovery
- The rate at which recovery is made (within the prescribed amounts of the regulations)
- The party from whom an overpayment is recovered *unless* that decision was reached unlawfully or “perversely”.

It should be noted that recovery by weekly deductions to a tenant’s entitlement is a decision to recover from the tenant, unless the Benefits Service explicitly choose to recover from a Landlord in this manner. Therefore

the Landlord has no rights of appeal with regard to the recovery in these cases.

The Strategy for the collection of Historic Debts

The Overpayments Team were tasked with recovering the historic debt accrued by North Ayrshire Council at the Teams' inception in January 2005.

The strategy for the recovery of historic debts is to ensure they don't fall beyond prescription.

The methods of recovery to be used are as outlined in the main policy. However, due to the advancing age of these overpayments, the Overpayments Team will substantiate each debt individually in order to confirm that it is correct and will issue an explanatory letter to the debtor explaining the debt and the method by which recovery will be made.

This letter will in effect be a duplication of the initial overpayment notification and will not consequently carry appeal rights.

Should the debt prove to be incorrectly calculated, or unable to be substantiated, then the overpayment will be recommended for write-off.