

Report to: **West Devon Audit Committee**
Date: **7 July 2015**
Title: **Housing Benefit Overpayment process and Recovery**
Hub Committee: **Customer First: Cllr J Moody**
Wards Affected: **All**
Relevant Scrutiny Committee: **External Scrutiny Committee**

Key Decision:	N	Approval and clearance obtained:	Y
Urgent Decision:	N	Date next steps can be taken:	N/A

Author: **Gill Bray** Role: **Benefit Team Manager**
Contact: gill.bray@swdevon.gov.uk **01803 861163**

Recommendations:

- 1. That the contents of the report be noted.**

1. Executive summary

This report explains how Housing Benefit Overpayments arise and the processes the Council goes through to recover the debts before they are presented for write off.

The Authority has the power to recover overpayments of Housing Benefit under the Housing Benefit Regulations 2006 and the Housing Benefit (Persons who have attained the age for state pension credit) Regulations 2006.

Financial Implications

The total Housing Benefit overpayments created in West Devon in the last financial year is £1,219,242.13

The total amount recovered was £1,065,461.77

Total amount written off was £47,706.29

The amounts recovered and written off do not necessarily apply to the last financial year, but to put this into perspective the total benefit paid in 2014/15 was £14,187,654.38 and the percentage of write off compared to the amount of benefit awarded/paid is approximately 0.33%

2. Background

A report on Housing Benefit Overpayment process and the recovery procedure was requested by a meeting of the West Devon Audit Committee in April 2015.

Dealing with overpayments, their identification, calculation and recovery, is one of the most complex and important areas of Housing Benefit decision making.

Important, because of the detailed financial arrangements surrounding overpayments, the increasing priority given to identifying overpayments and preventing fraud and error, and the resulting effects on subsidy income to the LA.

Complex, because of the detailed regulations which apply to the decision making process. The sequence in which those regulations must be considered and the number of decisions of the Courts and The Appeals Service. These define the approach to the interpretation and application of those regulations.

An overpayment of housing benefit is defined as 'any amount paid to which there is no entitlement under the regulations' and can occur as a result of:

- claimant error or fraud when making a claim
- landlord/agent error or fraud

- a delay in reporting a change of circumstances
- a Departmental official error
- an LA official error, i.e. a mistake made by LA staff such as an input error
- an administrative delay, e.g. a delay by the LA in processing a change of circumstances
- payment irregularity, e.g. fraudulent encashment of a cheque

Housing benefit then continues to be paid using the incorrect information. Once the Council has the correct information, the claim is updated and this will generate an overpayment on our systems.

In all cases if officers believe that the customer would have been aware that the change would impact their benefit, the overpaid money can be recovered, so if their wages increase or they move house and don't notify us, this would be classed as customer (claimant) error and would therefore be recoverable.

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If the overpayment was created as the result of an error by the Council, either a processing error or a delay due to a backlog, then the overpayment can still be recovered depending on the circumstances. If it is considered that it is not in the Council's interests or is unfair to the customer to pursue then it is passed for write off.

When the overpayment is calculated, the assessor would look at ways to reduce the amount of the overpayment by using circumstances such as underlying entitlement to Benefit.

Examples where the Council would recover the overpayment are:

DWP benefits end and we do not get notification from DWP until after the change and the customer also fails to tell us.

Customer moves house and doesn't tell us. This would create an overpayment because the benefit is assessed not only on the customer's income but also on the property they live in.

Change in wages and not notifying us.

Examples where the Council would not recover and therefore pass for write off are:

If the overpayment is created as a result of the LA's error and it was considered unfair or not in the interests of the Council to pursue.

If the overpayment is created as a result of an error by the DWP.

If the debt is over 6 years old and has had no recovery action made on it during that time we would look to write off the debt. We would only do this once all other avenues have been exhausted – this is in line with the Council's policy and guidelines.

Customers have the right of appeal and all requests are considered and any information looked at that is subsequently provided. The whole claim would be reviewed again to double check the overpayment was correct and take into account any extenuating circumstances that may have contributed to the overpayment.

For example:

If they failed to tell us of an increase in income and their reason was because they didn't know they had to, we would look at their claim history and see how long they had been claiming benefit and if that seemed reasonable. If they had been claiming for a considerable length of time it would normally be assumed that they would have sufficient knowledge of the benefits system to know they needed to notify us.

A recent example of where the overpayment was customer error and the Council decided to write it off was a lady whose husband had died suddenly in May. She was awarded bereavement allowance (a DWP benefit) in July, backdated to May and failed to tell us because she had assumed that the DWP would. Her husband had always dealt with the family paperwork, she was new to the benefit system and we considered that under those circumstances it was reasonable for us not to recover the overpayment but to write it off.

Each case is considered on its merits and we would always take into consideration a customer's circumstances and look at issues such as vulnerability and the customer's ability to afford the repayments and make adjustments accordingly.

The Recovery Process

If an overpayment is deemed recoverable an invoice is raised and sent to the customer. The customer is given the option of paying by website, internet or telephone banking, debit or credit cards and the Council offer to make arrangements to pay weekly or monthly to clear the outstanding balance depending on the customer's circumstances.

If no response is received within 28 days, a reminder is sent. After another 28 days a final notice is sent. These are raised automatically by our systems.

At the final notice stage a list is produced which is looked at manually. The officer will make checks on the account and select the best course of action.

These include:

The customer is visited in their own home by a Visiting Officer to discuss their individual case and arrange a payment plan.

An attachment of DWP benefit – This depends on whether the customer is a current claimant and whether or not they already have attachment in force. Officers request the deduction from the DWP and they decide how much to deduct.

An attachment of earnings – This can be effective for those claimants now in paid employment.

The debt is passed to Ross and Roberts, working as Collection Agents.

Ongoing entitlement - If claimant goes back on to Housing Benefit officers can collect the outstanding debt by a deduction from the live benefit claim. If the claimant has moved out of area and is still claiming benefits, officers can request that their Local Authority collect the debt on our behalf.

County Court Judgement. The Council would only consider this if the debt is over £500.00.

High Court Enforcement (debt must be over £600 & have a CCJ). The Council would only consider this if the debt is over £600.

If a customer moves address officers have access to tracing software to help with locating them.

When all avenues are exhausted the Council would consider whether the debt should be written off. Other scenarios when the debt would be written off is when the claimant has gone bankrupt, applied for a debt relief order, has a very small balance which is not cost effective to pursue or where the claimant is considered to be vulnerable.

Even after a debt has been written off, if that customer's circumstances change or new information comes to light, officers are able to write the debt back on to the system and collect the outstanding debt.

On average the team spend 22.5 hours per week (for both authorities combined) attempting to collect the outstanding Housing Benefit Overpayments. Depending on other workloads within the team officers would then carry out a review of debts that need might need putting forward for write off.

3. Outcomes/outputs

- To increase awareness and understanding of the implications of Housing Benefit overpayments to the Authority.
- We will never be able to eradicate overpayments completely so we need to develop strategies for reducing the occurrence of overpayments.

4. Options available and consideration of risk

Loss of income – uncollected Housing Benefit overpayments represent lost income to the Authority. Whilst all attempts are made to recover debts, in a climate of increasing austerity, it is becoming more difficult to do this.

Reputation – Any risk to reputation is managed carefully by prompt recovery of amounts due wherever possible with due regard to an individual’s circumstances.

Write Off – The risk of debtors subsequently being able to pay a debt which has been written off is mitigated by the ability to write debts back on to the system to be recovered if the means to do so is identified ie by the debtor falling back into entitlement to benefit. Individual debts over £5,000 are referred to Members for consideration prior to write off in accordance with Financial Regulations.

5. Proposed Way Forward

A business case is prepared for consideration by the Senior Leadership Team for increasing the level of resource to recover Housing Benefit Overpayments.

6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	The Authority has the power to recover overpayments of Housing Benefit under the Housing Benefit Regulations 2006 and the Housing Benefit (Persons who have attained the age for state pension credit) Regulations 2006. However, the Authority has the power to use its discretion and treat each case individually on its own merits.
Financial	Y	The total Housing Benefit overpayments created in West Devon in the last financial year is £1,219,242.13 The total amount recovered was £1,065,461.77 Total amount written off was £47,706.29 The amounts recovered and written off do not necessarily apply to the last financial year, but to put this into perspective the total benefit paid in 2014/15 was £14,187,654.38 and the percentage of write off compared to the amount of benefit awarded/paid is approximately 0.33%
Risk	Y	Loss of income – uncollected Housing Benefit overpayments represent lost income to the Authority. Whilst all attempts are made to recover debts, in a climate of increasing austerity, it is

		<p>becoming more difficult to do this.</p> <p>Reputation – Any risk to reputation is managed carefully by prompt recovery of amounts due wherever possible with due regard to an individual’s circumstances.</p> <p>Write Off – The risk of debtors subsequently being able to pay a debt which has been written off is mitigated by the ability to write debts back on to the system to be recovered if the means to do so is identified ie by the debtor falling back into entitlement to benefit. Individual debts over £5,000 are referred to Members for consideration prior to write off in accordance with Financial Regulations.</p>
Comprehensive Impact Assessment Implications		
Equality and Diversity		Due consideration needs to be given to each customers individual circumstances to ensure they are not disadvantaged in any way.
Safeguarding		There needs to be regard to the vulnerability of the customers that we deal with as part of the recovery process to ensure that they are protected.
Community Safety, Crime and Disorder		There are no crime and disorder considerations to this report.
Health, Safety and Wellbeing		The health, safety and wellbeing of our officers needs to be monitored as dealing with vulnerable customers at a difficult stage in their lives can have an adverse impact on them.
Other implications		

Supporting Information

Appendices:

None

Background Papers:

None

Process checklist	Completed
Hub Committee Lead	Yes
SLT Rep briefed	Yes
Relevant Exec Director sign off (draft)	Yes
Data protection issues considered	Yes
If exempt information, public (part 1) report also drafted.	N/A