

Report to: **Audit Committee**
Date: **22 March 2018**
Title: **Housing Benefit Overpayment process and Recovery**
Portfolio Area: **Customer First – Cllr Bastone**

Wards Affected: **All**

Relevant Scrutiny Committee: Overview and Scrutiny Panel

Urgent Decision: **N** Approval and clearance obtained: **Y**

Date next steps can be taken:
(e.g. referral on of recommendation or implementation of substantive decision)

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Recommendations:

That the Audit Committee notes

- 1. How a Housing Benefit overpayment arises;**
- 2. Steps taken to recover overpayments; and**
- 3. Current Housing Benefit overpayment recovery performance.**

1. Executive summary

This report explains how Housing Benefit overpayments arise, the processes the Council goes through to recover the debts before they are presented for write off, and the financial impact on the LA. 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 of state pension credit) Regulations 2006.

2. Background

- 2.1 Dealing with overpayments, their identification, calculation and recovery, is a complex and important area of Housing Benefit decision making.
- 2.2 Important, because of the detailed financial arrangements surrounding overpayments, the increasing priority given identifying overpayments and preventing fraud and error, and the resulting effects on subsidy income to the LA.
- 2.3 Complex, because 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.
- 2.4 As a direct result of recent initiative schemes from the Department for Work and Pensions such as the Real Time Information (RTI) the stock of housing benefit debt held by LAs is now over £1.9 billion.
- 2.5 April 16 – April 17 showed £677 million of recoveries (from all recovery methods), the amount of newly identified overpayments in the same period was £960 million.
- 2.6 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:
 - a) Claimant error or fraud when making a new claim;
 - b) Claimant error or fraud because the claimant fails to notify us about a change in their circumstances;
 - c) Local authority error, i.e. a mistake made by LA staff;
 - d) An administrative delay, e.g. a delay by the LA in processing a notified change in circumstances;
 - e) DWP error e.g. the jobcentre plus, pension service, or disability and carers service make a mistaken award of JSA(IB)/ESA(IR), pension credit or income support;
 - f) Third party error, e.g. landlord in receipt of Housing Benefit gives the Local Authority incorrect information about a rent increase or fails to tell us information about their tenant.
- 2.7 Housing benefit then continues to be paid using the incorrect information. Once the Council has been notified with the correct information, the claim is updated, this will generate an overpayment on our systems.
- 2.8 Officers indexing and taking change in circumstances over the phone will suspend claims wherever possible to avoid any unnecessary overpayments being created.
- 2.9 Once an overpayment has been created the officer has to;

- establish the cause;
- determine whether or not the overpayment is recoverable;
- determine who to recover it from;
- provide the affected parties with the required information;
- decide the method of recovery;
- ensure the overpayments has been correctly classified to claim the correct amount of subsidy from central government.

2.10 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, for instance if their wages increase and they don't notify us, this would be classed as claimant error and would therefore be recoverable.

2.11 If the overpayment was created as a result of a delay in processing the change by the LA, this would be classed as Local Authority Error (Admin Delay) but is still recoverable, as the claimant would be aware that the change would impact their entitlement.

2.12 Housing Benefit overpayments are not recoverable if they arose due to an official error by the LA and the claimant could not reasonably have been expected to know that they were being overpaid. In this instance the overpayment would not be pursued it would be passed for write off.

2.13 In certain circumstances official overpayments can still be recoverable, this is where we consider the claimant could reasonably have been aware that they were being overpaid due to a mistake, for example where we input their earned income as a monthly figure rather than weekly.

2.14 When overpayments are created, officers will look for ways to reduce the amount of the overpayment by using circumstances such as underlying entitlement.

2.15 Examples where the Council would recover the overpayment are:

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

2.15.2 Claimants earnings increase and the claimant fails to notify us.

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

2.16.1 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.

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

2.16.3 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.

2.16.4 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.

2.16.5 Each case is considered on its own 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.

3. How Housing Benefit Overpayment is calculated.

3.1 The total Housing Benefit overpayments created so far this financial year is £926,343

- Claimant error = £840,791 subsidy at 40% (£336,316) has been claimed for this.
- Local Authority and Admin Delay error = £77,686, 100% subsidy claimed. (This is below the Government threshold)
- Department for Work and Pension error = £7,866, 100% subsidy claimed.
- Total amount of subsidy claimed so far this year is £324,227

3.2 For Local Authority and Admin Delay error (LAE) overpayments the LA can claim either 100%, 40% or nil depending on certain thresholds. The amount of subsidy the LA can claim depends on the amount of LAE overpayments as a % of the council's annual expenditure;

- if the overpayment is less than 0.48% of the council's annual expenditure 100% subsidy is paid
- if the amount is more than 0.48% but less than 0.54% 40% is paid
- if the amount is over 0.54% no subsidy is paid on any of the LAE overpayment.

3.3 At this stage in the financial year the position is as follows;

- The Councils overall expenditure is currently £18,670,611
- Lower threshold is £89,619
- Upper threshold is £100,821
- So any overpayment below £89,619 will attract 100% subsidy
- Anything between the £89,619 and £100,821 will attract 40% subsidy

- Anything above £100,821 will attract nil subsidy.

4. How the council recovers Housing benefit overpayment.

- 4.1 If an overpayment is deemed recoverable firstly we would look to recover the overpayment from their ongoing housing benefit entitlement.
- 4.2 The claimants who aren't in employment the current recovery rate are £11.10 or £18.50 if the overpayment is a result of fraud.
- 4.3 For claimants in employment we can increase the above amounts to include ½ of their income disregard, affordability criteria will be taken into account.
- 4.4 If they no longer qualify for housing benefit 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.
- 4.5 If no response is received within 28 days, a reminder is sent. These are raised automatically by our systems.
- 4.6 For overpayments where we seek to recover from the landlord we can either recover from their next housing benefit payment, or if they don't have many tenants or no longer receive enough housing benefit we would invoice them as above.
- 4.7 Following the reminder stage if we still haven't received any repayment the officer will make checks on the account and select the best course of action.
- 4.8 **These include:**
 - An attachment of 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.
 - 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.
- 4.9 If a customer moves address officers have access to tracing software to help with locating them.

- 4.10 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.
- 4.11 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.
- 4.12 On average there are 2 officers who spend 20 hours per week (for both authorities combined) collecting 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.

5. Performance

- 5.1 The total amount of overpayments recovered so far this year is £761,381
- 5.2 Total amount written off so far this year is £185,715. These are reported to the Executive quarterly through the write off reports and any debts over £5,000 are submitted to the Executive for a recommendation to write off.
- 5.3 The amounts recovered and written off do not necessarily apply to the last financial year.
- 5.4 The write off amount is unusually high due to a recent data cleansing exercise.
- 5.5 As at the 1st March 2018 our total outstanding debt is £1,035,243, this time last year (March 2017) the total was £1,016,009 this shows a slight increase of £19,234, however the amount of overpayments created this year is currently £926,343, as opposed to last year where we created £533,076 this shows an increase of £393,267.
- 5.6 The increase in overpayments created is due to the Department for Works and Pensions fraud and error initiative Real Time Information (RTI) that we voluntarily signed up to.
- 5.7 Real Time Information is a data matching service between Her Majesty's Revenue and Customs and the Department for Works and Pension
- 5.8 As part of the continued drive to reduce Housing Benefit fraud and error the Department for Works and Pension provided funding to

incentivise Local Authorities to target the highest fraud and error in Housing Benefit, namely 'earnings'.

- 5.9 The Local Authority receive monthly data matched reports from the Department for Works and Pension highlighting claimants that have failed to notify a significant increase/decrease in their earnings.

6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	<p>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.</p>
Financial	Y	<p>The total Housing Benefit overpayments created in South Hams in the last financial year to date is £926,343</p> <p>The total amount recovered to date is £761,381</p> <p>Total amount written off to date is £185,715</p> <p>The amount of Subsidy claimed to date is £324,227</p> <p>The amounts recovered and written off do not necessarily apply to the last financial year.</p> <p>The write off amount is unusually high this year and that is due to a recent data cleansing exercise.</p>
Risk	Y	<p>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.</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 i.e. 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		There are no direct implications.
Other implications		None

Supporting Information

Appendices:

None

Background Papers:

None