



High Peak Borough Council

*working for our community*

# **High Peak Borough Council Corporate Recovery Policy**

**2023/2024**

## **PART ONE**

### **1. Purpose**

1.1 This policy sets out the Council's procedures in relation to the recovery of unpaid debt for the income streams listed below:

- Council Tax
- Non Domestic Rates (Business Rates)
- Sundry Debts (Council Services)
- Housing Benefit Overpayments

1.2 The policy contains information about how we deal with customers through each stage of the recovery process and to ensure that we treat all customers fairly and consistently whilst providing a framework for maximising income collection.

1.3 We will ensure that debtors:

- Are given sufficient time and opportunity to contact the Council in cases where they are having difficulty paying
- Are able to receive support should they be considered vulnerable
- Are encouraged to seek independent advice and to apply for relevant reductions /benefits
- Understand the consequences of failing to either make contact or bring their account up to date
- Are only referred to a higher level of enforcement when all alternative arrangements and recovery options have been exhausted

### **2. Vulnerable people**

2.1 There is no national standard or legal definition of vulnerability. However, we recognise that some ways to recover debt may not be appropriate in such cases where the individual may be incapable of understanding or defending themselves properly from any proceedings.

2.2 The Council will be vigilant for the signs and symptoms of vulnerability to safeguard our most vulnerable customers and reassure them.

2.3 When considering if a debt should be repaid by a 'vulnerable' customer, individual circumstances should be considered and greater flexibility be given.

2.4 The following is a list of circumstances and characteristics that may make a person vulnerable for the purposes of this procedure and the cause of vulnerability may be temporary or permanent. The list is not exhaustive, and each case should be considered individually, considering all relevant factors. For the purpose of this procedure, the key factor in determining whether a person should be regarded as vulnerable, will be that the circumstances which give rise to the concern, affect their ability to deal with their financial affairs.

2.4.1 Disabled persons

A physical or a mental impairment can be a disability if it has a substantial long-term adverse effect on someone's ability to carry out normal day-to-day activities. A person with a disability is not necessarily vulnerable however, where the disability affects, or may affect, the person's ability to deal with their financial affairs they should be considered vulnerable. Extra assistance should be given to help such people obtain independent advice and apply for benefits, exemptions, or discounts. Home visits and the provision of information in a more accessible format should also be actively considered.

2.4.2 Persons with a mental Impairment or learning difficulties including dementia and Alzheimer's disease

Where it is evident that the taxpayer has mental impairment or learning difficulties they should be considered to be vulnerable. Such persons may also be disabled.

2.4.3 Persons experiencing serious illness, including mental illness

Where the taxpayer, their partner or any dependents appear to be suffering from any condition which is serious or life threatening they could be considered to be vulnerable. A person with a serious illness may also be disabled. Persons experiencing serious illness, especially mental illness, tend to have higher levels of debt and extra support should be provided by officers of the Council to help such people obtain independent advice and apply for benefits, exemptions, or discounts.

2.4.4 Persons receiving Income Support, Job Seeker's Allowance, Employment and Support Allowance or Pension Credit

Those on these benefits are considered to be vulnerable as they are living on a subsistence level benefit.

2.4.5 Unemployed persons

Unemployment does not automatically mean the taxpayer is vulnerable. However, loss of employment may result in serious financial difficulties if a person is suddenly unable to meet their existing financial commitments.

2.4.6 A person who has become unemployed recently after a long period of employment may be unfamiliar with processes for claiming benefits and may need additional assistance to understand their entitlements.

2.4.7 A person who has difficulty understanding English

Where a person does not understand either spoken or written English they should be considered to be vulnerable. Appropriate translations should be provided as necessary.

2.4.8 Persons Aged Under 18

It is unlikely that a person under 18 years of age will owe any sums to the Council. However, it is possible that a person may assist or care for a parent or other older person and could contact the Council on their behalf. Anyone under 18 years of age should automatically be considered to be vulnerable.

2.4.9 Elderly persons

An elderly person is not necessarily vulnerable. However, an elderly person who appears frail, confused, ill, or is living on a limited income should be considered vulnerable.

2.4.10 A person that has difficulty reading or writing

A person who has difficulty reading or writing should usually be regarded as vulnerable because they will have difficulty in understanding written notices. People who have difficulty reading or writing may be reluctant to reveal their difficulties and where there is concern that a person has such difficulties the issue should be addressed in a sensitive manner. Such persons should be considered vulnerable and extra support provided to them to understand their Council Tax account.

2.4.10 Addiction issues (drugs, alcohol, gambling)

A person battling an addiction may be incapable of dealing with their own financial affairs.

2.4.11 A person who has experienced significant changes in their lifestyle recently

A person may temporarily be unable to deal with their financial affairs (for example, bereavement, fleeing domestic violence, leaving prison, leaving care, pregnant women). Such cases will be reviewed periodically.

2.5 Where a person is or may be vulnerable an officer will consider:

- Allowing longer to pay
- Postponing recovery action
- Assisting the person to claim benefits, discounts or other entitlements

- Referring the person to sources of independent advice
- Providing information in an accessible format
- A temporary payment arrangement with a lower repayment than would normally be agreed, or
- Other action as appropriate to avoid the vulnerable person being at a disadvantage as compared to a non-vulnerable person
- Ensure that we take account of vulnerabilities and that recovery measures are proportionate to a person's circumstances

2.6 It is important to note that being vulnerable does not mean that the person will not be required to pay the Council Tax owed and does not automatically mean that recovery action is not appropriate. We will make individual decisions based upon the individual circumstances of the taxpayer or ratepayer to identify if recovery action is appropriate and, if so, what action to take.

## **1. Equality duties**

- 3.1 The Council has a statutory Equality Duty to eliminate unlawful discrimination, advance equality of opportunity and foster good relations, as set out in Section 149(1) of the Equality Act 2010.
- 3.2 In determining this policy consideration has been given to the Council's statutory equality duty to eliminate unlawful discrimination, advance equality of opportunity and foster good relations.
- 3.3 Acting in accordance with this policy will help to ensure that the collection of sums due is conducted in a consistent and objective manner that will reduce the risk of inadvertent discrimination against persons with protected equality characteristics.
- 3.4 The Council will treat individuals consistently and fairly, regardless of age, gender, disability, race, and sexual orientation.

## **2. Use of data**

- 4.1 The Council will collect and store personal data for the purposes of the effective billing, collection, and recovery of Council Tax. Personal data retained for this purpose will be processed in accordance with the Data Protection Act 1998 and will be stored securely at all times.
- 4.2 Personal data may be shared with agents or contractors appointed by the Council for the recovery of Council Tax or Business Rates. Data may also be shared within the Council or with external organisations where the law allows or requires.

## **5. Advice agencies**

5.1 We recognise that a taxpayer or ratepayer who fails to pay their Council Tax or Business Rates often has wider financial difficulties. We provide information on how to contact a non-profit advice agency, debt advice agencies at each recovery stage in addition to providing information on how to apply for benefits, exemptions and discounts and reliefs.

5.2 The Council also recognises the importance of the work of non-profit advice agencies. Officers will always endeavour to work in partnership with them both in individual cases and on wider issues.

5.3 As the Council does not provide a debt counselling service, it promotes the following:

Citizens Advice 0808 278 7954

National Debtline 0808 808 4000

StepChange Debt Charity website or 0800 138 1111

## **6. Arrangements**

6.1 The Council encourages and gives customers the opportunity to make individual arrangements to pay their debt. Once agreed, an arrangement will always be confirmed in writing to the taxpayer.

6.2 The Council will expect an arrangement that clears the debt within the current financial year, which runs 01 April to 31 March. If this is not possible, we will seek to reach an agreement that allows, as a minimum, the payment of the continuing liability plus an affordable amount off any arrears. Arrangements will be assessed based upon the affordability and sustainability for payment and seek to ensure that the debt is paid off within a reasonable period.

6.3 Arrangements will also be assessed on affordability and sustainability. To make this assessment the Council may require taxpayers to provide full details of their income, means and expenditure including evidence to support these details.

6.4 It is the responsibility of the debtor to ensure that their arrangement payments reach the Council on time. If any arrangement payments are missed or late the Council may proceed with further recovery action immediately and with no notice. A debtor should contact the Council immediately if they have difficulty keeping to an arrangement to discuss the matter.

## **7. Joint and several liability**

- 7.1 Joint and several liability in law means that all, or both, the jointly liable parties are each responsible for the whole liability. The billing authority can recover the whole amount due from any one of them and they are then left to sort out their respective contributions between themselves.

When Council Tax is not being paid, we will take action for recovery of the debt against any or all liable parties.

## 8. **Write Offs**

- 8.1 Whilst the Council will make every effort to pursue outstanding debts, it is recognised that in some circumstances debts are not recoverable. Good practice dictates that where they are irrecoverable, prompt, and regular write-off should be undertaken. The write-off of any debt is governed by the Council's Financial Procedure Rules, which form part of the constitution. To request a write-off, services must demonstrate that debt management procedures have been followed, and that one or more of the following conditions have been met:

- legal action is unlikely to be successful
- the debt is not recoverable for legal reasons for example, statute barred debt
- the customer is deceased
- there is no trace of the customer and legal recovery would cost more than the outstanding debt
- the customer is insolvent and there is little likelihood of a dividend
- the circumstances of a particular case makes recovery from an infirm or elderly debtor unreasonable, or
- the debt has been remitted by a court

- 8.2 The Council reserves the right to reinstate, within statutory deadlines, any debt where it becomes apparent the circumstances for write-off are no longer applicable, for example the customer is traced or funds become available.

- 8.3 Every effort is made to ensure that all amounts due to the Council are pursued rigorously and at the end of each financial year a provision for bad debt is established. Write off of bad debt will be in line with the provisions of the Financial Procedure Rules.

- 8.4 Bad debts can be written off by the following:

Under £100 – Head of Finance

Over £100 & under £2,000 – Chief Finance Officer

Over £2,000 - £5,000 – Portfolio Holder

Over £5,000 – Cabinet/Executive Approval

8.5 The reasons for write off are:

- The debtor is deceased and left no will or traceable executors
- The debtor is formally insolvent
- The debtor has absconded and cannot be traced
- It is uneconomical to take action to enforce the debt
- The debtor is living outside the UK and unlikely to return
- The debtor is sectioned under the Mental Health Act
- It is the interests of the Council or wider community to write off the debt
- The age of the debt precludes recovery, or the debt is Statute Barred
- The debtor is serving a prison sentence of sufficient length to make the recovery unlikely
- The credit has remained unclaimed for a period of 6 months or more and the customer cannot be located
- The debtor is living in Scotland or Northern Ireland, and it is uneconomical to transfer proceedings to the appropriate court



## **PART TWO**

### **1. Council Tax (Pre-summons)**

- 1.1 Annual bills are issued in March each year with instalments starting in April. Instalment can be paid over 10 or 12 months. Instalment due dates vary depending on the payment type and what the customer has requested. The different payment types are shown on the reverse of the Council Tax bill. During the year if circumstances change, amended bills are issued and instalments revised. New occupiers are issued with bills as soon as possible and instalments are given for the remaining months in the year.

### **2.0 Council Tax Reminders and Final Notices**

- 2.1 The recovery of Council Tax is governed by legislation and reminders and final notices are issued in accordance with statutory timescales. The legal framework for the enforcement of Council Tax is provided by Schedule 2 and Schedule 4 of the Local Government Finance Act 1992 and the Council Tax (Administration and Enforcement) Regulations 1992 (SI.1992/613).
- 2.2 A reminder notice will be issued when the instalment has not been paid by the due date.
- 2.3 If the missed instalment is received within seven days, no further action will be taken. If it is not paid, then the right to pay by instalments is lost after a further seven days and the remaining Council Tax for the entire year becomes due and a summons to appear at the Magistrates Court is issued.
- 2.4 If the instalment is paid and received within seven days, but then a further instalment is not paid, a second reminder notice will be issued. If the missed instalment is paid and received within seven days, no further action will be taken. If it is not paid, then the right to pay by instalments is lost after a further seven days and the remaining Council Tax for the entire year becomes due and a summons to appear at the Magistrates Court will be issued.
- 2.5 If the account is brought up to date but falls behind for a third time, a final notice is issued for the full outstanding amount for the tax year, as the right to instalments is lost. If this is not paid in full within seven days, then a summons to appear at the Magistrates' court will be issued. A final notice will also be issued if the account is a closed account, or the balance is from a previous financial year.

### **3. Business Rate (Pre-summons)**

- 3.1 Annual bills are issued in March each year with instalments starting in April. Instalments can be paid over 10 or 12 months. Instalment due dates vary depending on the payment type and what the customer has requested. Different payment types are shown on the reverse of the bill. During the year, if circumstances change amended bills are issued and instalments revised. New occupiers of business premises are issued with bills as soon as possible and instalments are given for the remaining months in the year.

### **4. Business Rates Reminder and Final Notice**

- 4.1 The recovery of Business Rates is governed by the Local Government Finance Act (1988), The Non-Domestic Rates (Collection & Enforcement) Regulations, SI 1989/1058 and the Tribunal, Courts and Enforcement Act (2007).
- 4.2 If an instalment is not paid by the due date, a reminder notice (further notice) will be issued. This gives seven days to bring the account up to date by paying the overdue instalment.
- 4.3 If the overdue instalment is not paid, then after a further seven days the charge for the whole year becomes due and a summons to appear at the Magistrates Court is issued.
- 4.4 If the instalment is paid and received within seven days, but a further instalment is not paid, a reminder notice (further notice) will be issued. If the missed instalment is received within seven days no further action will be taken. If it is not paid, then the right to pay by instalments is lost and after a further seven days the remaining Business Rates for the entire year becomes due and a summons to appear in the Magistrates Court is issued.
- 4.5 If the account is brought up to date but falls behind for a third time, we will send a final notice for the full outstanding amount for the tax year, as the right to instalments is lost. If this is not paid in full within seven days then a summons to appear at the Magistrates' court will be issued. A final notice will be issued for closed accounts, or where the balance is from a previous financial year.

### **5. Summons - Council Tax and Business Rates**

- 5.1 Where a taxpayer or ratepayer fails to respond to any reminder notice, final notice, or defaults on an arrangement to pay, the Council will issue a summons.

- 5.2 A summons to appear at a liability order hearing at the Magistrates' Court will be issued and summons costs applied as follows:

Council Tax £60

Business Rates £65

- 5.3 A summons will always be issued with at least 14 days between issue and the court hearing date. The summons will state the amount due and the time and place of the court hearing.
- 5.4 If the amount of the summons including the costs are paid in full prior to the court hearing, then the application will not proceed, and a liability order will not be obtained. If the amount is not paid we will ask the Magistrates to grant a liability order plus additional costs.
- 5.5 Any time after a summons is issued the Council will still consider making an arrangement to pay the amount due on the summons including costs. If an arrangement is made at this stage, a liability order will still be obtained to secure the debt should the arrangement fail. If payments are received as per the arrangement to clear the full balance outstanding, no further action will be taken.
- 5.6 If the Council decides that a summons has been issued incorrectly then it will be withdrawn, and no costs will be charged.

## **6. Liability order hearings**

- 6.1 A liability order is an order of the Magistrate's Court that gives certain powers to the Council to collect the debt that it is owed. The order is for a fixed amount of money, plus additional costs as below:

Council Tax £35

Business Rates £35

- 6.2 The liability order gives us the power to recover the debt using any of the following methods set out below. The Council will decide which method is most appropriate to follow depending on the information available on the customer at the time.
- 6.3 A taxpayer or ratepayer has a right to attend a hearing and a right to give evidence as to why a liability order should not be granted. If they do not attend, the hearing will still proceed in their absence.
- 6.4 If the Magistrates are satisfied that the Council Tax or Business Rates is payable and remains unpaid, then they are required to issue a liability order.

6.5 If a debtor wishes to defend an application for a liability order, they must offer a valid defence against it.

Valid defences include:

- the Council has not demanded Council Tax or Business Rates in accordance with the regulations
- the amount has been paid in full with costs
- the person/company named on the summons is not the liable person
- the Council has already commenced bankruptcy or winding up proceedings which include the unpaid Council Tax concerned.

It is not a valid defence if the taxpayer or ratepayer:

- is unable to pay
- has recently applied for Council Tax Reduction
- has recently applied for Business Rates Relief
- has applied to the Valuation Office Agency against their Council Tax band or rateable value
- has appealed their liability to the Valuation Tribunal

## **7. Costs for Council Tax and Business Rates**

7.1 Summons and liability order costs will be added to a debtor's account and will be included as part of their debt.

7.2 Costs reflect both the administrative cost to the Council and the court fees incurred. Therefore, costs will only be removed from an account in exceptional circumstances including, for example, where a summons or liability order was issued incorrectly.

7.3 Where a summons was issued because a debtor did not provide necessary information to the Council in a timely manner, they will still be expected to pay costs. Also, where a debtor pays the unpaid Council Tax due or Business Rates, but does not pay the costs owed these will still be pursued as a debt using the actions in the sections below.

7.4 Summons and liability order costs are reviewed annually.

## **8. Withdrawing Costs**

8.1 In the most instances payment of the total balance including costs will be pursued. However, on occasions, it may be appropriate to consider withdrawing costs where:

- full payment has crossed in the post with the summons
- the debt outstanding is less than the costs due to entitlement to benefit or adjustment to liability
- pursuing payment of costs causes severe financial hardship
- payment history shows that payments are usually made on time, but personal circumstances have resulted in late payment i.e. illness, disability, bereavement etc.
- the customer has passed away
- Where recovery activity has reached the Enforcement stage and/or beyond to committal proceedings, the Council will ensure that costs are not withdrawn except where the following exceptional circumstances exist:
  - the defaulter absconds and tracing enquiries are unsuccessful;
  - information is received which, had it been received earlier, would have prevented recovery proceedings from being taken
  - liability is cancelled

## **9. Recovery procedure after a liability order is granted for Council Tax and Business Rates**

9.1 A liability order gives the Council certain powers to enforce unpaid Council Tax and Business Rates.

9.2 Once a liability order is granted for Council Tax we can:

- ask for financial information, including employment and employer details
- take money directly from wages using an Attachment of Earnings Order
- take money directly from benefits including Universal Credit, Income Support, Jobseekers Allowance, Pension Credit or Employment Support Allowance
- take money directly from a Councillor's allowances using an attachment of member's allowances order

For Council Tax and Business Rates we can:

- instruct civil enforcement agents to collect the debt on our behalf
- seek a charging order against property
- start bankruptcy proceedings for individuals
- commence winding up procedures for limited companies
- start committal proceedings for imprisonment of up to three months.

## **10. Attachment of earnings (Council Tax only)**

10.1 We may request the following information:

- the name and address of an employer
- earnings or expected earnings
- deductions and expected deductions from such earnings in respect of income tax, class 1 contributions under the Social Security Contributions and Benefits Act 1992 and amounts deductible for the purposes of a superannuation scheme and under certain attachments of earnings orders
- any work or identity number in an employment, or such other information as will enable an employer to identify the debtor
- sources of income of the debtor other than an employer  
whether another person is jointly and severally liable with the debtor for the whole or any part of the amount in respect of which the order was made

10.2 Where the Council has been given a debtor's employment details we may issue an order to the debtor's employers to make deductions from their earnings. Employers are legally required to comply with the order.

10.3 The amount that can be deducted is prescribed by law and depends on the debtor's earnings. A letter confirming the amount to be deducted will be sent to the debtor and to the employer when the order is issued. Each attachment is for one liability order, with a maximum of two attachments at any given time. Where we are considering issuing more than one order, the most recent debt takes first priority. A maximum of two attachments of earnings can be applied at any time.

10.4 The Council will usually attach to earnings where it will clear the debt in the current tax year. Attachments that will not clear the debt in the current tax year will be decided on a case-by-case basis, considering the total amount of debt and time it will take to clear the debt. If an attachment will not clear the debt in a reasonable time or if it is otherwise considered inappropriate, then the Council will consider another recovery action.

10.5 An attachment to earnings will only be cancelled in exceptional circumstances. In cases where a debtor claims they will suffer hardship because of an attachment, the individual circumstances will be considered in deciding whether to cancel the attachment. The Council will require evidence of any claimed hardship. This will usually include evidence that they cannot afford to pay for essential expenses such as their housing costs, utilities, or food.

## **11. Attachment to members' allowances (Council Tax only)**

11.1 Where the debtor is an elected member of any local authority (with the exception of the City of London and the Metropolitan Police), the Council may ask that deductions be made from their allowances for the payment of the debt.

## **12. Deduction from benefits (Council Tax only)**

- 12.1 Deductions can be made from Universal Credit, Job Seekers Allowance, Pension Credit, Income Support and Employment Support Allowance to pay liability orders for unpaid Council Tax.
- 12.2 If a debtor is receiving one of these benefits, the Council may ask the Department for Work and Pensions to make regular deductions from the benefit and make payments to the Council. Only one deduction can be applied at any one time.
- 12.3 The Council will usually take this action where we have details of the debtor's benefit and where the deduction will clear the debt in the current tax year. Deductions that will not clear the debt in the current tax year will be decided on a case by case basis, considering the total amount of debt and time it will take to clear the debt. If a deduction will not clear the debt in a reasonable time or if it is otherwise considered inappropriate, then the Council will consider another recovery action.
- 12.4 A deduction from benefits will only be cancelled in exceptional circumstances. In cases where a debtor claims they will suffer hardship because of a deduction, the individual circumstances will be considered in deciding whether to cancel it. The Council will require proof of any claimed hardship. This will usually include proof that they cannot afford to pay for essential expenses such as their housing costs, utilities or food.

## **13. Civil Enforcement Agents**

- 13.1 The enforcement agents are certificated through the County Court and abide by a Code of Practice (see Appendix 1).
- 13.2 If there has been no contact from the debtor, if no payment arrangement has been agreed or if the debtor has not provided us with employer or benefit details then the debt will usually be passed to the Council's external civil enforcement agents.
- 13.3 Civil enforcement agents may make an acceptable arrangement with the debtor to repay the sums due or levy distress on goods owned by the debtor to satisfy the amount outstanding.
- 13.4 Enforcement agents at the request of High Peak Borough Council issue pre-compliance letters for Council Tax. This is no longer a legal requirement but gives the debtor one last opportunity to make an arrangement prior to enforcement action.

- 13.5 The fees charged by civil enforcement agents are prescribed by law. Details of these are in Appendix 2. Payments will be split between fees and charge in accordance with the regulations. The first £75 does go straight to fees, but if other fees have been incurred payments are split pro-rata.  
Once a debt is referred to civil enforcement agents, any payments made either to them or directly to the Council will be applied to the agent's fees first before paying the Council's debt. If a debt has been passed to civil enforcement agents and payment is made directly to the Council without including the civil enforcement agent's fees, then the civil enforcement agent will continue the enforcement process for their fees incurred.
- 13.6 If civil enforcement agents cannot identify sufficient goods to clear the debt or cannot gain lawful entry to the property then they will send a certificate to the Council to confirm that no or insufficient goods could be found. Other actions in this procedure will then be considered.
- 13.7 The Council will ensure as far as possible that the information the civil enforcement agent holds is up to date and accurate. Civil enforcement agents are expected to operate in a fair and consistent manner and any complaints we receive are treated seriously and investigated thoroughly. Civil enforcement agents engaged by the Council are subject to regular review based on collection performance and conduct.
- 13.8 The Council will consider withdrawing a debt from civil enforcement agents in exceptional circumstances, for example when a person is or may be vulnerable. However, the Council has determined that vulnerability itself does not stop use of civil enforcement agents, although an identified vulnerability will be taken into consideration when making any contact or agreement with the customer. Requests for withdrawal are judged on a case-by-case basis and the decision made will be based on individual circumstances.
- 13.9 Any cases that are identified as vulnerable will be dealt with by the enforcement agent's specialist vulnerability/welfare team.

#### **14. Further Recovery Action**

- 14.1 The Council may pursue other recovery options that may have more serious implications for the taxpayer and ratepayer if they remain unable to collect the debt.
- 14.2 These actions are:
- Charging Order
  - Bankruptcy (Individual)
  - Winding up (Limited Company)
  - Committal



14.3 Debtors will receive notice in writing sent to their last known address when the Council is considering further legal action. These warning letters will include:

- clear warning of the actions being considered, their likely cost and the seriousness of their consequences
- a request that the debtor contact the Council to try and make an arrangement to pay the debt and information as to the consequences of failing to respond
- the date by which they must respond
- a recommendation that they seek debt advice from a local non-profit advice agency and details of how they can be contacted.

## **15. Factors to take into consideration**

15.1 When deciding to proceed with a further recovery action, a Senior Officer will always investigate the circumstances of the debtor and then consider:

- the implications for overall payment levels if people come to believe that Council Tax debts will not be collected
- impact of non-payment on revenues and the need to deliver services to the community
- equality between those who do pay and those who do not
- why other recovery methods are not appropriate
- whether action is likely to be effective
- the potential debt that may be recovered by the action and whether the likely costs of the action are proportionate to it
- whether the debtor's failure to pay may result from a vulnerability or disability and, if so, what action is appropriate as a result
- the potential effect of the action on any known dependants, especially children
- the need to prevent homelessness and whether the action may cause it
- any other circumstances which may warrant protection from the consequences of the action.

15.2 An investigation into a debtor's circumstances will include:

- an attempt to contact the debtor in person, including a home visit if necessary
- data about the debtor shared by other areas of the Council including but not limited to Benefits, Rents and Electoral Registration
- data about the debtor shared by other public bodies as permitted by the Data Protection Act 1998.

15.3 A Senior Officer will always keep a written record of the above together with:

- details of attempts to contact the debtor
- the information gathered, consideration of whether the action is proportionate to the likely debt to be recovered and the reasons for proceeding with the action.

## **16. Charging Orders for Council Tax and Business Rates**

- 16.1 The Council may apply to the County Court or High Court for a charge to be put on a property owned by the debtor where a Council Tax debt of more than £1,000.00 is owed.
- 16.2 The Council is more likely to apply for a charging order against a property that is either fully or jointly owned by a debtor where:
- the debtor has previously broken agreed payment arrangements
  - the debtor has failed to provide employment or benefit details
  - no contact can be made with the debtor
  - the debtor is vulnerable or has a vulnerable person in their household.
- 16.3 Where a decision is made to proceed with an application for a charging order, the account will be referred to the Council's Legal Services team. Once a debt has been referred to the Legal Services team, they should normally be the only team to communicate with the debtor about that debt.
- 16.4 After referral, the Legal Services team will usually contact the debtor again to try and settle the matter without the need for legal proceedings. They will then commence legal proceedings if no agreement is reached.
- 16.5 Where new information is received by the Legal Services team which suggests that the taxpayer or other members of the household may be vulnerable, the information will be referred to a Senior Officer to consider whether this action is still appropriate.
- 16.6 The costs associated with this type of action are high, from £253.00 and upwards, and will be added to the amount of the order.
- 16.7 Where a charging order is granted, other methods of recovery may continue to be used to collect the debt (with the exception of committal to prison).
- 16.8 The Council may also apply to the court for an order for sale, which may result in the property being sold and the amount subject to the charging order, including costs, being paid from the proceeds of sale. The Council is more likely to apply for an order for sale where the debtor owns more than one property, there is likely sufficient

equity in the property to pay the debt and costs and the likely costs are proportionate to the debt owed.

## **17. Bankruptcy for Council Tax and Business Rates**

- 17.1 Where the debtor is an individual the Council can apply to the County Court or High Court for them to be made bankrupt if they have liability orders for a debt of more than £5,000.
- 17.2 This course of action is costly and can have a considerable impact on debtors and members of their household. Before taking this action, the Council will therefore make reasonable attempts to investigate the taxpayer's personal and financial circumstances to determine whether bankruptcy action is appropriate.
- 17.3 The Council is more likely to pursue this action where:
- the debtor has previously broken agreed payment arrangements
  - from the information the Council holds they appear to likely have sufficient realisable assets to pay the debt and likely costs
  - the likely costs are proportionate to the debt to be recovered
  - the taxpayer and members of their household are not vulnerable
  - all other enforcement remedies have been exhausted.
- 17.4 While the Council considers potential vulnerability at all stages of recovery, particular regard to these will be made when considering bankruptcy action.
- 17.5 Once a decision is made to make a debtor bankrupt, the account will be referred to the Council's Legal Services team. Once a debt has been referred to the Legal Services team, they should normally be the only team to communicate with the debtor about that debt.
- 17.6 After referral, the Legal Services team will usually contact the debtor try and settle the matter without the need for legal proceedings. If no agreement is reached, legal action will commence.
- 17.7 A statutory demand will first be served on the taxpayer setting out the debt outstanding, and the options available to them to prevent further action, the time scales in which they need to respond and direct contact details of officers dealing with the case. A guide to the potential bankruptcy costs is included with the statutory

demand. No additional costs are incurred at this stage, and the Council may still agree a payment arrangement with the taxpayer at this stage.

- 17.8 Where the taxpayer has not responded to the statutory demand within 21 days or where the Council is unable to agree arrangements that will discharge the debt, the Council will consider whether a petition for the taxpayer to be made bankrupt should be made to a court.
- 17.9 Where new information is received by the Legal Services team which suggests that the taxpayer or other members of the household may be vulnerable as per section 2.2, the information will be referred to a Senior Officer to consider whether this action is still appropriate.
- 17.10 Where a bankruptcy order is made, and a debtor has assets that might be sold to settle a debt, a licensed insolvency practitioner will be appointed as a trustee to safeguard and secure the assets of the debtor.
- 7.11 The costs associated with this type of action are high, typically running into several thousand pound, which are paid by the debtor.

## **18. Winding up procedures for limited companies**

- 18.1 Where the ratepayer is a limited company the same criteria as for determining whether bankruptcy action is appropriate will be undertaken.
- 18.2 In appropriate cases, a formal request for payment will be sent to the ratepayer advising them of the impending action and the consequences of this action being successful.
- 18.3 No additional costs are incurred at this stage, and we may agree a payment arrangement with the ratepayer.
- 18.4 Where, after 14 days, the ratepayer has not responded to the formal request or the Council is unable to agree arrangements that will discharge the debt; the Council will consider whether a petition for the winding up of the company should be issued.
- 18.5 Where a petition is served on the ratepayer this will notify them of a date and time of the hearing in the High Court. The serving of a petition will result in significant costs being incurred.
- 18.6 For limited companies, a notice of winding up proceedings will be advertised in the London Gazette.

## **19. Committal proceedings for Council Tax and Business Rates**

- 19.1 If enforcement agents have been unable to find any or sufficient goods to pay the debt, or we think that other options are inappropriate the Council may take committal proceedings via the Magistrates Court.
- 19.2 Committal proceedings are usually the recovery action of last resort when all other actions have either failed or are not appropriate. Committal proceedings may be taken if a debt is not paid due to wilful refusal or culpable neglect. If proven, the court can issue a committal order sentencing the debtor to a prison sentence.
- 19.3 The Council is more likely to take committal action against a debtor when:
- civil enforcement agents have not been able to recover all the debt
  - the debtor has no property or assets
  - the debtor has previously broken agreed payment arrangements
  - the debtor has failed to provide employment or benefit details
  - the debtor is not considered vulnerable
  - the debtor has no dependants
  - it appears that the failure to pay may be the result of wilful refusal or culpable neglect
  - no other recovery action is appropriate.
- 19.4 Where committal action may be appropriate, the Council will write to the taxpayer inviting them to attend an informal interview with Council Officers to discuss their financial and personal circumstances to attempt to resolve the matter without the need to commence committal proceedings.
- 19.5 Where the debtor fails to respond or where an agreement is not reached, the Council will then apply for a summons for the debtor to appear at a hearing before the Magistrate's court.
- 19.6 At the hearing the Magistrates will usually conduct a means enquiry to determine whether the failure to pay Council Tax or Business Rates was due to 'wilful refusal' or 'culpable neglect'. The Magistrates may make the following decisions:
- 19.6.1 *Commit to prison:* The Magistrates can decide to send the debtor to prison for up to three months.

- 19.6.2 *Fix a term of imprisonment and postpone on conditions:* The debtor is usually ordered to pay in instalments as determined by the Magistrates. If payments are made as ordered then no further action is taken. If payments are missed, then the prison sentence will come into force and the debtor can be sent to prison for up to three months.
- 19.6.3 *Adjourn:* A hearing may be postponed to a later date if, for example, more information or evidence is needed before a decision can be made.
- 19.6.4 *Dismiss (take no action):* The Magistrates may decide that no further action is appropriate.
- 19.6.5 *Remit some or all the debt:* The Magistrates can remit (write off) some or all the Council Tax or Business Rates owed. If only some of the debt is remitted, the Magistrates may make a court order for the rest.
- 19.7 Where the debtor does not attend the hearing as required, the Council will ask for a warrant of arrest with bail to be issued for a further hearing at the Magistrate's Court. A warrant of arrest without bail may be applied for in some circumstances, for example where a debtor has not complied with a warrant with bail previously.
- 19.8 If a term of imprisonment is served, the relevant amount of Council Tax or Business Rates will usually be written off as irrecoverable. A part payment will also reduce the term of imprisonment by the ratio of payment to the total amount of the debt.
- 19.9 The costs of committal proceedings are high and can add hundreds or thousands of pounds to an existing council tax debt.

## **SECTION THREE - SUNDRY DEBT**

### **1. Introduction**

1.1 This sets out the process for the collection and recovery of Sundry Debt.

Sundry debts are non-statutory charges for goods and services, where the customer chooses to request the provision of goods or services from the Council, and are invoiced through the Council's financial system.

Examples of such services are:

- Trade Waste
- Industrial site rents
- Commercial shop rents
- Market stall rents
- Leisure Activities
- Parks Services
- Cemetery
- Allotments
- Hire of Rooms
- Carelink
- Environmental Health charges (e.g. Water testing/ Vet fees)
- Regulatory licences
- Property licences
- Planning service agreements
- Leaseholder recharges
- Ground rents
- Insurances
- Tenant recharges
- Car Parks
- Personnel
- Legal Agreements

1.3 It is the policy of the Council to recover all collectable debt owed to it.

With this objective in mind this policy aims to:

- ensure that sundry debts are managed in accordance with legislative provisions and good practice

- ensure a professional, consistent, cost-effective, and timely approach to recovery action across all the Council's services
- Maximise the Council's income
- Reduce the time taken to collect charges
- Reduce the level of debt owed to them
- Irrecoverable debts are written off in accordance with the Council's financial procedure rules

1.4 This policy supports these aims by:

- Ensuring wherever possible that collection of the fee or charge involved takes place prior to the service being provided, so that sundry debtor invoice is only issued when it is impractical for the payment to be made in advance and it is therefore essential to do so
- Ensuring invoicing procedures are carried out in an accurate and timely manner
- Requiring evidence to support the issue of the invoice
- Requiring invoices to quote sufficient detail to support clarity for the customer and monitoring of the debt/ income
- Requiring services to obtain a Purchase Order (PO) number from the customer wherever required to be quoted on the invoice to allow for swift processing by the customer
- Encourage debtors to pay promptly
- Making collection and enforcement activity more efficient

1.5 This policy is intended to ensure that all debtors are treated in a fair and consistent way. We will be sensitive to the needs of debtors who may have difficulty in reading or understanding information, may be considered vulnerable and need additional support, we will consider whether any issues arise under the Equalities Act 2010 and we will advise a debtor to seek advice from the CAB and debt advice agencies or other appropriate agencies if it is apparent that they may have a general debt problem.

1.6 The Council ensures that prompt, firm but fair action is taken to ensure the efficient and cost-effective collection of Sundry Debts.



## **2. Exclusions**

2.1 The following areas are not included in this section of the policy.

Council Tax

National Non Domestic Rates

Housing Benefit Overpayments

Council Tax Reduction Overpayment

HRA (Housing Revenue Account) Rents

## **3. Key Objectives of Fees and Charges**

3.1 The fee or charge imposed by each Council should be fair in relation to the goods and/or service provided and in accordance with the relevant fees and charging policy.

3.2 The charge should, wherever possible, be obtained in advance of the goods and/or service being provided.

3.3 The charge should be collectable.

3.4 There should be a clear and prompt billing and collection process.

## **4. Invoicing**

4.1 Individual service areas are responsible for raising invoices in respect of the goods and/or services they provide

4.2 An invoice should be raised within 10 working days of the goods and/or service being supplied.

The invoice will include clear, relevant, and full information regarding:

- what the invoice is for, including date or period of service covered, and amount
- name, address, and tax point
- the date payment is due
- how to pay, and
- how to contact the Council if there is a query in relation to the invoice or to making payment.

4.3 An invoice should not be raised:

- Where possible for less than £10 unless it is a statutory charge (fees and charges below this level should be paid in advance)
- When it cannot be proven that the goods and/or service has been provided

4.4 For regular periodic charges, direct debit should be promoted as the primary method of payment and set up in advance of the service being provided.

## **5. Payment Methods**

5.1 Invoices should be paid by the following methods:

Direct Debit

On the Council's website using a Credit or Debit card

By telephone using a Credit or Debit card

All Pay Card

Bacs quoting the invoice number and/or emailing a remittance advice

Standing order

Cheques by post

## **6. Payment Terms**

6.1 The Council aims to collect monies owing to it fully and promptly.

6.2 Payment arrangements should only be accepted where the debtor is unable to settle the debt in full in one payment.

6.3 Payment arrangements can be made to settle payment by weekly, fortnightly, or monthly instalments.

## **7. Collection and recovery**

In recovering debts due the Council will follow the principles outlined in the 'Enforcement Concordat: Good practice guide for England and Wales'. In summary this means that they will be proportionate in their actions, consistent in approach and transparent in their dealings with all customers

7.1 A reminder notice shall be sent in respect of all unpaid invoices after 28 days.

7.2 If after a further 14 days the account remains unpaid a final reminder notice will be issued.

7.3 If after a further 14 days the account is still unpaid it will then be reported to the Service Area as a debt on the monthly report requesting further instructions.

- 7.4 The Council employs two debt collection agencies for recovery of sundry debt invoices
- 7.5 Once a case has been referred to the debt collection agency any payment arrangement must be made directly with the agency.
- 7.6 Recovery action can be withdrawn during any part of the process if the debtor enters into a payment arrangement to clear the debt by instalments.
- 7.7 Recovery action can be withdrawn if the originating department decides not to pursue recovery of the goods and/or service.
- 7.8 In the event of failure to pay in some circumstances, legal action can be taken in the County Court which can result in the following action being ordered:
- 7.9 At this stage the debt could become the subject of a county court action, with the Council obtaining a County Court Judgement against the customer. Once a judgement is obtained the Council can enforce the judgement by applying for:
- an Attachment of Earnings Order
  - a Warrant of Execution against the customers goods
  - third Party Debt Order, or
  - any of the other enforcement processes available
  - any of the other enforcement processes available through the County Court.
- 7.10 Where the Council incurs additional costs as a result of non-payment, for example, court costs, these will be added to the outstanding debt and (where allowed under statute) recovered from customers. Section 69 of the County Courts Act 1984 allows interest to be claimed from the date of invoice to the date of issue of court proceedings and will be added to any debts that are recovered in this manner. Where third party collection agencies are employed, these agencies may apply their own costs to the amount to be recovered.
- 7.10.1 County Court Judgement (CCJ) – this will appear on the credit record of an individual and can make it difficult for the person to obtain hire purchase (HP), credit card, mobile phone contract, mortgage, or loan.
- 7.10.2 Warrant of execution – a court bailiff will enforce a warrant and attempt to remove goods to the value of the debt.

7.10.3 Charging order on a property – a charge is placed on an individual’s property which if, when sold, there is sufficient equity available after all other charges have been settled will be used as security for the debt.

7.10.4 Insolvency proceedings – this is expensive and gives no guarantee of securing the debt

## **8. Queries and Disputes**

If there is a dispute the Service that raised the invoice must attempt to resolve the matter within 14 days of the query being raised.

## **9. Credit Notes**

9.1 In conjunction with financial regulations there must be a clear distinction between raising a credit note and writing off a debt.

9.2 A credit note to cancel or reduce a debt must only be issued to:

- Correct a factual inaccuracy
- Correct an administrative error
- Process a discount agreed by the service

9.3 All requests must include a reason for the issue of a credit note.

9.4 All credit note requests should be approved by an authorised signatory.

9.5 Once authorised, staff should issue credit notes in a timely manner.

## **11. Refunds**

The Council will adopt a ‘corporate approach’ to refunding credit balances. This means that wherever possible, checks will be made for other outstanding sundry debts to the Council held by the customer, prior to a refund being made, and arrangements may be made with the customer to allocate the refund to offset another sundry debt.

## **12. Debt Management**

- 12.1 All Service Managers are provided with an aged debtor report which shows the amount in value and the debts due on a monthly basis to enable all service debts to be considered.
- 12.2 Finance Business Partners/ Technical Officers should be copied into the outstanding reports to facilitate discussions with Service Managers during the year to assess how collection of their particular service sundry debt accounts is progressing.

## **SECTION FOUR– HOUSING BENEFIT OVERPAYMENT**

### **What is an overpayment?**

An overpayment is an amount of housing benefit that has been paid but to which the claimant is not entitled.

The amount of the overpayment is the difference between the amount actually paid and the amount that should have been paid for that period.

## **1 Identification and Prevention of overpayments**

### **1.1 Advice to customers regarding reporting change of circumstances**

To prevent overpayments, the documents listed below all advise the customer of the type of change to report and when to report the change. They also advise that failure to report changes may result in an overpayment occurring.

- Application form
- Change of circumstances form
- Decision letter

This information is also publicised on our website.

### **1.2 Actions taken by Benefits Office to identify and prevent overpayments**

1.2.1 The workflow system prioritises post and it is ensured that the assessment team work on cases that are likely to cause overpayments first.

1.2.2 Prioritised post includes:

- All changes of circumstance that are likely to create an overpayment.
- All ATLAS notifications that may result in benefit being cancelled.

1.2.3 The general post is usually processed within 14 days. This prevents any other overpayments being overlooked.

- 1.2.4 If it is apparent that a change has occurred that may cause an overpayment and we do not have all the information necessary to recalculate the claim, the claim will be suspended to prevent a further overpayment occurring.
- 1.2.5 The Benefits Service works closely with the Department of Works and Pensions' (DWP) Serious Fraud investigation Team (SFIS) and claims are suspended promptly if a fraudulent claim has been identified.
- 1.2.6 Any errors found are recorded and used to analyse training need and fed into the training plan.

### **3. Calculating the overpayment**

3.1 The Assessor may create overpayments when reassessing Benefit entitlement. When calculating the overpayment, the Assessor must:

- Determine the dates between which the claimant has been overpaid.
- Consider any underlying entitlement to benefit for the period of the overpayment (see Underlying Entitlement procedure).
- Check for returned BACS payments or un-presented cheques which could be offset against the overpayment.
- Consider applying the diminution of capital calculation if the overpayment was caused by a person's capital.
- Classify the overpayment and consider its recoverability.

### **4. Classification and Subsidy**

#### **4.1 Who decides the error and classification of overpayments?**

- 4.1.1 Most decisions regarding the type of error and classification of an overpayment are made by the Assessor. This is with the exception of 'fraud' overpayments.
- 4.1.2 Fraud overpayments are calculated and classified by the Benefits Officer responsible for fraud recalculations.

#### **4.2 Classifying the overpayment**

- 4.2.1 The Assessor will be asked to enter an overpayment classification code as part of the assessment. It is important that the correct code is used as this affects the subsidy claim.
- 4.2.2 A classification code can be amended if it has been entered incorrectly or if it needs to be changed, for example, when fraud is proven.

### 4.3 Fraud overpayments

- 4.3.1 Fraud investigations are now carried out by the Department for Work and Pensions Single Fraud Investigation Service' (SFIS)
- 4.3.2 Details of any changes identified by SFIS are emailed to the Benefits Service using the secure email address.
- 4.3.3 The Benefits Officer is responsible for recalculating the customer's benefit based on this information and will classify the overpayment error type. Details of the overpayment are emailed back to SFIS to be recorded on their system. A separate record of the overpayment is kept by the Benefits Officer.
- 4.3.4 Overpayments can only be classified as fraud if the customer has been found guilty of an offence in court or have accepted an Administrative Penalty.

### 4.4 Guide to Classification Codes

Description	Reason
Overpayment Local Authority Error	When our error has caused the overpayment.
Overpayment Claimant Error	When the claimant's error caused the overpayment.
Overpayment DWP Error	Only use if the DWP have admitted an error.
Fraud Overpayment	Use only if DWP (SFIS) tell you to do so.
Overpayment from using IRL	Overpayments caused by RO referral input.
Council Tax Liability Change	Overpayments caused from SPDs / other CTAX changes.
Other Overpayment - 40% Subsidy	Use for overpayments that are nobody's fault e.g. deaths.
Other Overpayment - 0% Subsidy	Use for technical overpayments e.g. payments in advance.



Tenancy Termination	For HB claims where there is no rental liability.
---------------------	---

## 4.5 Subsidy

- 4.5.1 Subsidy is claimed on any 'true' overpayment. The overpayment reason type selected by the Assessor when processing the overpayment determines the subsidy claimed.
- 4.5.2 Overpayments that are not treated as 'true' are excluded by selecting the error type Error Correction (nil Subsidy) at the time of calculation. Overpayments that are 'offset', for example when a claim is cancelled and reinstated for the same period are not true overpayments.
- 4.5.3 Overpayment classifications are checked by the Team Leaders as part of the subsidy claim and when performing Pre-Notification checks.

## 5. Deciding whether an overpayment is recoverable and should be recovered

- 5.1 The Assessor will decide if an overpayment is 'recoverable' and whether the overpayment should be recovered. In most cases the overpayment will be caused by customer error and in most instances it will be recoverable.
- 5.2 An overpayment is only 'non-recoverable' if it was caused by Local Authority error (or 'official error') and the person affected could not have reasonably been expected to realise they were being overpaid.
- 5.3 The Council can exercise discretion and decide not to recover a 'recoverable' overpayment, for example if the customer has financial hardship, terminal illness, severe medical conditions, dementia, learnings disabilities etc.
- 5.4 Decisions not to recover a 'recoverable' or 'non-recoverable' overpayment should be agreed by the Technical Officer or Team Leader. In the case of Local Authority error, the error type should be changed for subsidy purposes (see Classification). The reason(s) for the decision should be clearly noted on the Benefit claim / workflow.

## 6. Deciding who to recover from

- 6.1 An overpayment may be recovered from any of the following
- The claimant

- The claimant's partner (but by deductions from benefit only when the claimant and partner were partners both at the time when the overpayment was caused and at the time it is being recovered).
- The person to whom the Housing Benefit was paid (e.g. a Landlord or Agent).
- 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 the fact.
- The estate of a deceased person.
- The claimant's appointee

6.2 The decision about who to recover the overpayment from is made by the Assessor. Each decision should be made on its merits and take into consideration "all relevant factors". In most cases it will be apparent which party it is most appropriate to recover from – for example, overpayments caused by changes in the claimant's income will usually be recovered from the claimant.

6.3 There are prescribed circumstances when we cannot recover from a landlord. These are when:

- a) The Landlord has informed the Local Authority or the Benefits Agency in writing that he suspects there is an overpayment, *and*
- b) It appears to the Authority that the overpayment has been caused by the customer attempting to commit a fraud or by deliberately failing to report a change of circumstances *and*
- c) The Council is satisfied that the Landlord has not colluded with the tenant or acted/failed to act so as to contribute to the period or the amount of the overpayment.

## 7. **Notification**

7.1 Decision letters are produced automatically when an overpayment is created. These are checked and dispatched on the day they are produced.

7.2 A decision letter is issued to anyone who the Council could legally recover the overpayment from, for example, the claimant, a person acting on their behalf (e.g. an appointee) or any other person to whom the overpayment was paid (e.g. a landlord or agent who received the direct payment).

7.3 The decision letters must show:

- that there is a recoverable overpayment
- the reason for the overpayment
- the amount of the overpayment
- how the amount was calculated
- the period of the overpayment

- who the overpayment is recoverable from
- who the local authority has decided to recover the overpayment from
- the method of recovery
- the person's appeal rights

7.4 Where an overpayment is to be recovered from ongoing benefit, the letter will show the amount of the deduction and the date the deductions will start – the first deduction will not normally be made until after the customer's appeal time has lapsed.

7.5 Where an invoice is to be issued for the overpayment, the invoice will normally be included with the decision letter. There will be no recovery action on the invoice until the customer's appeal time has lapsed.

## **8. Recovering the overpayment**

### **8.1 Council Tax Recovery**

Any 'overpaid' Council Tax Reduction is recharged to the Council Tax Account. This is not classified as an overpayment and does not need to be recorded for subsidy purposes.

### **8.2 Housing Benefit Recovery**

8.2.1 The Assessor should choose the most appropriate method of overpayment recovery as part of the assessment process. This ensures that the correct method of recovery is shown in the overpayment decision letter.

8.2.2 Recovery should not commence until the end of the period in which the claimant may ask for a review or appeal the overpayment decision **or** while the decision is subject to review or appeal.

8.2.3 Recovery may be pursued by any of the following methods:

- By deductions made from on-going benefit.
- From arrears of outstanding Housing Benefit
- By recovery from the payments made to the landlord in respect of the tenant or other tenants (Blameless Tenant Recovery)
- By asking another local authority to recover the overpayment from Housing Benefit that they are paying.
- By deduction from Social Security Benefits.
- By debiting the overpayment to the Housing Rent account.

- By deduction from Earnings (Direct Earnings Attachment (DEA))
- By an invoice.

### **8.3 Deductions from ongoing benefit (weekly reclaim)**

8.3.1 This method is most commonly used when we have decided to recover an overpayment from a tenant, and that tenant is still in receipt of Housing Benefit.

8.3.2 Deductions from entitlement where the payments are paid to a Landlord constitute recovery from the tenant, not the Landlord.

8.3.3 There are maximum amounts set by law governing the amounts that may be recovered from a customer's ongoing Housing Benefit entitlement. These are increased each year by the DWP. The amounts for the current financial year are as follows:

- **£12.75 per week** from April 2023
- **£21.25 per week** from April 2023 where fraud has been proven

In addition to the standard deductions, we can also recover additional amounts equal to:

- 50% of the customers standard earnings disregard (i.e. 50% of £5, £10, £20 or £25)
- 50% of the £20 disregard made in respect of Charitable or Voluntary Payments
- 50% of any £10 War Pension Disregard
- 50% of the disregard to maintenance payments

8.3.4 The Local Authority should maximise the rate of recovery but should also consider any financial difficulties the customer may be experiencing. The customer should always be left with a minimum of £0.50 per week as benefit.

8.3.5 If a customer wants to pay more and gives their permission, we can recover a higher amount than the maximum rate.

8.3.6 If a customer has a very low benefit entitlement, we may recover a greater amount by issuing a sundry debtor invoice.

### **8.4 Recovery from arrears of outstanding Housing Benefit**

8.4.1 Where a person is entitled to revised Housing Benefit for the same period as the overpayment, this will be used to reduce the overpayment. This is called "offsetting"

8.4.2 Where a person is entitled to arrears of Housing Benefit for a different period to that of the overpayment, the overpayment can be deducted from any arrears due.

8.4.3 We must consider whether the recovery of the overpayment from the arrears would cause the claimant hardship or financial difficulty. If this is the case then consideration should be given to reducing the amount of recovery from the arrears and making weekly deductions for the balance of the overpayment.

## **8.5 Recovering the overpayment from the landlords schedule of payments**

8.5.1 The Local Authority can recover an overpayment which is recoverable from the landlord directly from their schedule of payments.

8.5.2 In these circumstances, if the overpayment has been recovered from the Housing Benefit of a tenant other than the one to whom the overpayment relates, the other tenant will be deemed to have paid his rent to the value of the recovery. This person is known as the 'blameless tenant'.

***Example** If a Landlord is overpaid £50 because his tenant has left the property, we can recover the £50 from the entitlement paid for a new tenant. The Landlord is then obliged to treat the £50 as having been received from the new tenant and cannot take action for arrears of this sum against the new tenant. The landlord would have to try and recover the money from his previous tenant.*

8.5.3 Just as we must consider the financial circumstances of a customer where we are making deductions from entitlement, we should also consider any potential financial difficulties that would be caused to a Landlord when we recover overpayments from their schedule.

## **8.6 Recovering an overpayment of Housing Benefit on behalf of another authority**

8.6.1 The law allows one Local Authority to recover an overpayment for another authority where the claimant is in receipt of Housing Benefit at the Recovering Authority.

8.6.2 The recovery is achieved by deductions from ongoing benefit (weekly reclaim) in accordance with the regulations governing this. The amounts are then passed to the Local Authority that raised the original overpayment to clear their debt.

8.6.3 This method of Recovery is less common due to the complexity of the arrangement.

## **8.7 Recovering an overpayment of Housing Benefit from Social Security Benefits**

8.7.1 It is possible to request the DWP to recover an overpayment of Housing Benefit from any DWP benefits the customer receives. This should only be done if there is no Housing Benefit entitlement, and the customer is in receipt of DWP benefits.

The DWP cannot recover from:

- Child Benefit
- Guardians Allowance
- Working Tax Credit
- Child Tax Credit

8.7.2 Housing Benefit overpayments are not priority debts so the DWP may not be able to start deductions immediately if they are already recovering another debt which takes priority.

8.7.3 Deductions from DWP benefits are requested electronically through the DWP Payment Deduction Programme (PDP).

## **8.8 Recovering an overpayment by Direct Earnings Attachment**

8.8.1 Direct Earnings Attachment (DEA) allows for recovery of overpaid Housing Benefit directly from a debtor's earnings without having to apply via the court system.

8.8.2 Employer information can now be obtained via the Department for Work and Pensions (DWP) Searchlight system and Housing Benefit Debt Service (HBDS).

8.8.3 DWP guidance says that a DEA should only be considered when there is no ongoing Housing Benefit entitlement, and the debtor has failed to make payments or enter into an arrangement.

8.8.4 Debts of £50 or less will not be considered for DEA in accordance with DWP guidance.

8.8.5 A DEA is not available when:

- The debtor is in the Armed Forces
- The debtor is Self Employed
- The debtor is earning less than £100 per week

8.8.6 The overpayment can only be deducted from the debtor's earnings and never the partner's under any circumstances (unlike recovery from a social security benefit).

8.8.7 Regulations provide that a proportion of the employees earnings are protected, this is calculated at 60% of net earnings. An employer may not be able to implement a DEA straight away if deductions are already being taken for a priority debt.

8.8.8 An employer has a legal responsibility to set up deductions (in accordance with regulations) and pay the amounts due to us by the 19<sup>th</sup> of the following month.

### **8.9 Recovering an overpayment from the Housing Rent account**

8.9.1 A Housing Benefit overpayment may be debited to the Rent account. The Council's policy is to debit a maximum of one week's rent (or the equivalent) to the Rent account.

### **8.10 Recovering the Housing Benefit overpayment by sundry debtor invoice**

8.10.1 When an overpayment is created and it cannot be recovered from ongoing benefit, an invoice will usually be issued.

8.10.2 Invoices are not normally raised for balances under £10 (please see section 10 'Recovery of Small Overpayments').

8.10.3 The invoice should be sent with the decision letter so it is clear what the invoice relates to.

8.10.4 There will be no recovery action on the invoice until after the customer's appeal time has lapsed.

### **8.11 Sundry Debtor invoice payment arrangements**

8.11.1 If the customer is unable to pay the balance in full, the Council will accept arrangements to pay the invoice in instalments.

8.11.2 The customer's financial circumstances should be considered and care should be taken not to cause the customer undue hardship.

8.11.3 The Technical Officer will use the 'recovery from ongoing benefit' rates as a guideline to negotiate a payment arrangement.

8.11.4 Lower payments will be accepted if the customer is experiencing financial hardship but offers of under £5 per week must normally be accompanied by a financial statement.

8.11.5 The Technical Officer is responsible for setting up the payment arrangements on the debtors system and monitoring these arrangements.

## **8.12 Recovery of small overpayments**

8.12.1 If the overpayment is less than £10 and the customer is still in receipt of Housing Benefit, we can recover the overpayment from their ongoing Benefit entitlement.

8.12.2 If they are no longer in receipt of Housing Benefit, the following procedure should be followed:

- If they are a Housing Rent customer, the overpayment can be debited to the Rent account and the customer notified of this.
- If they are a Private Tenant, the overpayment should be left outstanding on the claim and written off after 3 months if the customer is still not entitled to Benefit.

## **9. Monitoring the Recovery of overpayments**

9.1 The recovery of overpayments must be monitored to ensure that recovery is being maximised.

9.2 The Technical Officer uses system reports to check that all overpayments have been actioned and that the customer is still receiving benefit where ongoing recovery is in place.

9.3 The Assessor will check for outstanding overpayments when processing new Housing Benefit claims and will affect recovery from ongoing benefit if there is no payment arrangement in place.

9.4 The Technical Officer will issue reminders for unpaid sundry debtor invoices / instalments and will consider alternative methods of recovery if the invoice remains unpaid.

9.5 It is sometimes necessary to inhibit the production of sundry debtor reminder letters in various circumstances (for example, the customer has passed away, is insolvent, has gone away or there are other special circumstances why recovery of the overpayment should not be pursued). The Technical Officer will set an inhibit code on the system for an appropriate length of time, considering the relevant circumstances. The diary notes will be updated to say why the inhibit code has been set. The cases will be reviewed when the inhibit codes expire or every 3 months, whichever is sooner.



9.6 The Technical Officer will monitor outstanding debt regularly and make use of the DWP's systems to check if the customer is receiving any benefits or working for an employer.

## **10. Housing Benefit Write Off Procedure**

10.1 The Technical Officer performs quarterly checks on the outstanding debt to identify any overpayments which could potentially be written off.

10.2 When writing off debt, we will:

- write off debt where there is little prospect of the debt being repaid or it is uneconomical to pursue;
- ensure the debt is only written-off by an authorised officer, in accordance with the corporate write-off policies and after all appropriate avenues of recovery have been considered;
- note the system for audit purposes;
- periodically review debt that has been written off in order to consider recommencing recovery action.

10.3 Before writing off any overpayment we must perform the following checks:

- check if the customer has reclaimed Housing Benefit.
- check the Benefits / Sundry Debtors systems for any contact which may indicate that the customer has or may make an arrangement to pay.
- for Housing Rent cases, check the Rents system for any credits as we may be able to debit the overpayment to the Rent account.
- check the DWP system to confirm if any benefits are in payment.
- check the DWP system for employer details.
- where the debtor has gone away, check the DWP system for a forwarding address. At least 2 checks should be made before considering write off.
- where a person has died, we must establish that there is no estate.
- where a person is in prison, we must consider the length of the sentence and whether the person has funds to repay the debt.

10.4 The Technical Officer will carry out the checks and will make a recommendation for write off to the Team Leader.