

BRIEFING NOTE

To: Budget and Performance Panel

From: Accountancy Services Manager

Subject: Housing Benefit Overpayments and Debt Recovery

Introduction

This briefing note sets out the current level of Housing Benefit Overpayment debt and factors affecting recovery together with a paper setting out the debt recovery process (**Appendix A**).

Background Information

Firstly, it is important to put in context the level of overpayment debt outstanding compared to the actual level of benefit payments made. In 2011/12 a total of £40.573 million was paid out in benefits of which £1 million were overpayments which equates to 2.5%.

Overpayments occur when benefit claimants fail to notify the Council of changes in their circumstances either fraudulently or non-fraudulently. Once an overpayment has been identified the recovery process will start, however depending on the claimants circumstance and the amount of overpayment the recovery process can vary and may take in excess of a year.

Current HB Overpayment Debt

The following table shows the level of debt outstanding at the end of March 2012 compared to March 2011.

	31 March 2011		31 March 2012	
<28 Days	35,296.80	3.3%	73,068.78	6.3%
28-59 Days	39,851.73	3.7%	81,765.25	7.0%
60-91 Days	55,780.13	5.2%	48,531.02	4.2%
92-183 Days	137,166.65	12.8%	102,564.07	8.8%
184-364 Days	154,937.67	14.5%	211,547.61	18.2%
365+ Days	647,036.73	60.5%	642,703.45	55.5%
Total	1,070,069.71		1,160,180.18	

The total of overpayments recovered in 2011/12 was over £1.25 million (compared to £1.12 million in 2010/11), however the actual level of debt as shown above has risen by £90K from £1.07 million to £1.16 million.

There are several reasons for the increase in total debt outstanding, not least the current economic climate. It is felt that there has been an increase in the number of people failing to notify the Benefits Service of changes in circumstances and claimants taking longer to give notification (despite the fact that all correspondence sent by Benefits advertise the fact that any change of circumstances should be notified immediately). Because of this the level of debt that needs to be recovered per customer is higher. As a result of the current climate, although the amounts that can be collected per week have increased to £10.65 for non-fraudulent overpayments and £17.75 for

fraudulent overpayments the reality is that because of the current financial position of many customers a lower figure is having to be accepted in order to reach agreement on recovery.

Going forward, although there are robust systems in place for recovery it is felt that there are a few things that may well help to increase the amount of debt recovered. Since October 2011 new Debt Collectors have been used and there will be a review in June as to the effectiveness. The Benefits team are looking at reducing the length of time taken during the reminder process (in line with Preston CC). There is also the possibility of looking at both Lancaster and Preston recovery teams working together in order to try to increase recovery. Overall, however, it is thought that the Benefits recovery system is working well and compared to some other Authorities is managing to keep the total level of debt down.

Debt Recovery Process

Attached is a copy of the Housing Benefit Recovery Process currently in place for Lancaster. This lists the detailed procedures and all the relevant processes currently available to the Benefits service in order to recover any Housing Benefit overpayments.

The Housing Benefit Recovery Process

Introduction

All Housing Benefit overpayments are raised through the Academy Benefits (AB) system.

Once an overpayment has been identified in the AB system and notification letter(s) and invoice(s) are produced and have been issued, the recovery process commences and is made up of 10 recovery stages beginning with -

1. First Reminder

When an agreement to repay the overpayment has not been made and a balance is still outstanding after 28 days, a weekly programme is run on the debt management system and moves the invoice to First Reminder recovery stage and produces the first invoice reminder.

First reminders are produced on a Monday ready for issuing by the Control Section (CS).

Before the first reminder is issued the CS will check for the following: -

- relevant appeal received
- new claim received
- backdate request

Checks are also carried out on the following systems to establish residency and to provide assurance that the recovery documents are sent to the correct address: -

- AB system to confirm that the debtor appears on a claim at the address
- Anite system for any changes of address
- Experian for addresses linked to debtor's last known address

Where a decision to issue the first reminder is made it is issued as soon as possible and within 7 days of being produced and a note is made on the system.

2. Second Reminder

Following the first reminder being produced, where an agreement to repay the overpayment has not been made and a balance is still outstanding after a further 14 days, the weekly programme is run on the debt management system and moves the invoice to Second Reminder recovery stage and produces the second reminder.

The second reminder should only be produced where a first reminder was issued over 7 days ago.

Before a second reminder is issued the same checks are carried out at First Reminder recovery stage.

Where a decision to issue the second reminder is made it is issued as soon as possible and within 7 days of being produced and a note is made on the system.

3. Stage 4

Once a second reminder has been produced the weekly programme is run and moves the invoice to Stage 4 Recovery stage, which is also known as inactive debt.

At this stage the same checks are carried out as at first and second reminder stages. The CS will then establish which is the most appropriate recovery action to take.

The invoice must be moved into one of the following appropriate recovery events:-

- Appeals
- Claim Pending
- HBEN Recovery
- Department for Work and Pensions Recovery
- Blameless Tenant Recovery (Landlords only)
- Debt Collection Agents
- County Court action

4. Appeals

Where an appeal against an overpayment has been received, recovery action is halted and the CS move the invoice to the Appeals recovery stage. A diary date for 3 months is set on the system using the diary code to monitor the progress of the appeal.

Once the appeal has been dealt with by the Appeals Service the Senior Appeals Officer notifies the CS to recommence the recovery process if the appeal has been unsuccessful or cease recovery if the appeal has been successful.

5. Claim Pending

When a new claim is received but not yet determined, the CS move the overpayment to Claim Pending recovery stage until the claim has been processed.

Once a claim has been determined and results in the claimant qualifying for HB, weekly deductions (in line with DWP guidance) are made from the claimant's HB to clear the overpayment.

If the claimant does not qualify for HB, the CS will take the next course of appropriate recovery action based on information available at the time.

6. HBEN Recovery

Where a claim is in payment after an overpayment has been identified, one month from the date of the notification must be given before commencing recovery from HB.

The overpayment notification, must be altered online by the Benefits Assistant (BA) (Assessments) and should state:-

'An invoice for repayment of this overpayment is attached for your records. I will start to make deductions from your benefit to recover this amount in **one month**. I will write to you about this nearer the time'.

Once HB recovery commences either for an existing claim in payment or a new claim, DWP guidance states deductions should be made at the following current rates: -

Non-fraudulent overpayment

- In receipt of Income Support/Job Seekers Allowance £10.65 per week (April 12/13)
- Standard claims £10.65 per week plus half of prescribed disregards (April 12/13)

Fraudulent Overpayments

- In receipt of IS/JSA (IB) £17.75 per week (April 12/13)
- Standard claims £17.75 per week plus half of described disregards (April 12/13)

HB must remain in payment at a minimum amount of 50 pence per week, the Academy Benefits system validates the level of deductions to comply with the 50p rule.

No further action to recover the outstanding invoice will take place, whilst the deductions from HB are being made.

In instances where a large overpayment of Housing Benefit has been raised and deductions from HB are at a low rate, which result in the overpayment not clearing within 12 months. A letter will be issued to the debtor informing him/her of the overpayment and a paragraph will be included stating:-

“As you owe a large amount of Housing Benefit to repay, we suggest that you contact the Control Section telephone (01524) 582799 to discuss increasing the weekly deduction. Alternatively, you could arrange to make separate additional payments by a method of your choice. By doing either of these, your overpayment will be cleared more quickly.

If you would like further independent advice on debt recovery proceedings or help with managing debt, you should contact the Citizens Advice Bureau. On 0870 126 4035”

7. Blameless Tenant Recovery (BT)

Where a landlord is deemed liable for repayment of an overpayment recovery can be made from any HB paid directly to him/her.

Where recovery from direct payment is possible, ‘Blameless Tenant’ (BT) recovery is implemented so as to recover the overpayment as fast as possible. The tenant with the highest amount of benefit is selected with the full amount of HB being recovered.

Due regard is made to the health and financial circumstances of the landlord.

At the time direct payment commences, claimants and landlords must be informed of this method of recovering overpayments and that the (BT) rental liability will be protected.

When it is no longer possible to make deductions from a particular BT because HB has ceased, the CS will select another BT from any other tenants that the Landlord is being paid direct for.

8. Recovery from Department for Work and Pensions (DWP)

A request can be made to the DWP to make deductions from a claimant’s Prescribed Benefits (PB) for recovery of a HB overpayment where:-

- An overpayment has been caused by a misrepresentation or failure to declare a change in circumstances by the debtors; and
- Recovery cannot be made by deduction from housing benefit entitlement.

Prior to making a request the CS carry out a check to ensure the debtor is not in receipt of HB and that there is no claim pending.

A CIS check is carried out to establish if any PB's are in payment.

Benefits that are under the Social Security Act as prescribed by Regulation 105 of the Housing Benefit (General) Regulations 1987 (amended) are as follows:-

- Income Support
- Job Seekers Allowance
- Attendance Allowance
- Disability Living Allowance (care components)
- Incapacity Benefit
- Industrial Death Benefit
- Industrial Injuries Benefit
- Carers Allowance
- Maternity Allowance
- Retirement Pension
- Pension Credit
- Severe Disablement Allowance
- Widows Parents Allowance
- Widows Pension
- Widows Benefit
- Employment Support Allowance

Where a PB is in payment and recovery is possible a formal request letter is sent to the DWP.

On receipt of the formal request the DWP confirm recovery is possible by completing and returning the reply slip attached to the formal request letter stating the rate of recovery and the date it will commence.

Each month the DWP send the payments they have deducted from the debtors' PB's to the Local Authority, along with a payment schedule. Finance (Exchequer) allocate the money to the individual invoices.

If the DWP confirm deductions are not possible, the overpayment will be considered for Civil Proceedings, Debt Collection Agency or Write Off recovery action.

9. Debt Collection Agents

A case can be referred to a debt collection agency where it has not been previously referred to the County Court and court costs raised.

10. County Court Action

Recovery via the County Court is considered, when a debtor has not repaid an overpayment of HB and should always be used as a last resort..

A case is considered suitable for County Court action where:-

- the debt is more than £50
- the address of the debtor is known and there is reasonable evidence that they live there
- all other avenues of recovery ie, recovery from HB, recovery via the DWP and BT recovery (landlords only) have been attempted where possible and failed.

- all recovery documentation ie, the invoice, reminder, second reminder have been issued to the debtor at the correct address.
- the debtor is thought either to be in employment or have some form of assets.

If a case for County Court action is suitable, a Civil Proceedings Checklist is completed for every debt over £50, to establish if it appears worthwhile to pursue the debt through court.

Once a Court Order has been obtained and if no payment is received, and all other avenues of recovery have been attempted where possible and failed, a request for further action by the court is attempted.

Attachment of Earnings (AOE)

An AOE cannot be made where the debtor is:-

- unemployed or self employed
- a firm or limited company
- in the Army, Navy, Airforce or a merchant Seaman (special rules apply)

Warrant of Execution (WOE)

A WOE is only considered if the defendant has:-

- enough goods at the address given the money raised, the money needed; or
- all the money being claimed for

The County Court Bailiff can only be asked to recover amounts up to £5,000. For amounts above this figure the case must be transferred to the High Court.