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**Report to**

Cabinet Member Finance Procurement and Value for Money

28 November 2007

**Report of**

Director of Finance and Legal Services

**Title**

Housing Benefits – Overpayment recovery

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**1 Purpose of the Report**

- 1.1 To inform the cabinet member of the disparity between locally agreed overpayment recovery rates and those specified nationally by the Department of Work and Pensions (DWP) and to recommend that we raise our recovery rates in line with those specified by the DWP.

**2 Recommendations**

Cabinet Member (Finance, Procurement and Value for Money) is asked to:

- 2.1 Agree the increase in maximum weekly deduction amounts from housing benefit to the specified Department of Work and Pensions (DWP) maximum weekly amounts:

£ 12.00 per week if the claimant has been found guilty of fraud plus 50% of any disposable income.

£ 9.00 per week in any other case plus 50% of any disposable income.

To agree to the implementation of these revised rates effective from 1<sup>st</sup> February 2008.

- 2.2 Agree to increase in line with DWP rates as varied each year.

**3 Information/Background**

- 3.1 Housing Benefit overpayments are created when an award of benefit is subsequently superseded by a decision which reduces entitlement to benefit for a period for which payment has already been made. Overpayments are most commonly created following a change in customers' circumstances. In the majority of cases these overpayment amounts are recoverable from the customer

- 3.2 The Council's current practice of recovery from an on-going benefit entitlement is to recover at a maximum rate of £4.00 per week. Consideration is given to increase this if the

customer has disposable income. If the customer states that such a deduction would place them in undue financial hardship, or would jeopardise their tenancy then we would assess their ability to pay on a case-by-case basis, using our discretion to set a lower rate where appropriate.

3.3 Housing Benefit regulations state that the amount of overpayment recovery should be:

5% of the customer's personal allowance x 3 plus 50% of any disposable income.

Disposable income is any earned income disregard, any disregard of any charitable or voluntary payment or the £10 disregard of war disablement or bereavement pension.

3.4 In 2006 the authority was criticised by the Benefit Fraud Inspectorate (BFI) as part of its CPA inspection for not adhering to the maximum DWP guidelines in respect of overpayment recovery. The BFI noted that the overall performance of the authority in respect of overpayments would be vastly improved by recovering overpayments at the maximum rate as specified in regulations.

3.5 A new performance measure (Performance Measure 10) has been implemented in 2007/2008 which measures how many reductions in benefit the authority identifies during a financial year. Recovering overpayments at the reduced rates fosters a lack of urgency on the part of the customer to report changes in circumstances promptly. The DWP specified recovery rates, as set out in housing benefit regulations, provide a greater incentive for customers to notify changes in a timely manner, therefore reducing administration costs to the authority and improving overall service performance.

3.6 In addition to Performance measure 10, there are three further performance measures and best value performance indicators relating specifically to overpayment administration:

- BVPI 79b (i) – The amount of Housing Benefit overpayments (HB) recovered during the period being reported on as a percentage of HB deemed recoverable during that period
- BVPI 79b (ii) – HB overpayments recovered during the period as a percentage of the total amount of HB overpayments debt outstanding at the start of the period plus amount of HB overpayments identified during the period
- BVPI 79b(iii) – HB overpayments written off during the period as a percentage of the total debt outstanding plus identified during the period

These measures constitute a key indication as to how effectively the authority administers public funds.

3.7 Research undertaken with 12 other authorities including the West Midland metropolitan authorities, Warwickshire authorities and Tamworth and Hinckley and Bosworth, shows all the authorities use the DWP specified amounts.

3.7 Consideration is always given to the customer's ability to pay, and if the customer states they cannot pay the amount specified in their decision letter then each case is looked to individually to establish the financial circumstances of the customer and hence whether recovery at the specified amount would place them in undue financial hardship or jeopardise their tenancy. Such determinations will now be centralised with overpayment officers making recommendations to the overpayments manager for a final decision. This will ensure the financial assessment process is standardised and fair. The overpayments manager will then decide whether deductions can be set below the maximum weekly amount.

#### 4 Proposal and Other Option(s) to be considered

4.1 That the authority implements the new rates of recovery and that Cabinet member receive a further report in March 2008 to give details of how many cases are in recovery and at what rates.

#### 5 Other specific implications

5.1

	Implications (See below)	No Implications
Best Value	√	
Children and Young People		√
Comparable Benchmark Data	√	
Corporate Parenting		√
Coventry Community Plan		√
Crime and Disorder		√
Equal Opportunities	√	
Finance	√	
Health and Safety		√
Human Resources		√
Human Rights Act		√
Impact on Partner Organisations	√	
Information and Communications Technology		√
Legal Implications		√
Neighbourhood Management		√
Property Implications		√
Race Equality Scheme		√
Risk Management		√
Sustainable Development		√
Trade Union Consultation		√
Voluntary Sector – The Coventry Compact		√

5.2 **Best Value** –

5.3 **Comparable Benchmarking Data** – Practice in line with other West Midland authorities and authorities countrywide

5.4 **Equal Opportunities** – Review mechanism in place to look at individual circumstances and apply fair and equitable repayment plan, if causing hardship

**5.5 Finance** – The number of overpaid claims that are being recovered at £4.00 per week is currently around 1,750. An increase in the recovery rate to £9.00 per week would result in additional cash collection per full year of over £450k. This will improve the Council's ability to recover overpayments and reduce write-offs in future years. This will also reduce the Council's monthly costs in the provision for bad debts. Additionally, the interest costs to the Council of financing the outstanding balances will reduce based on the above case numbers by at least £10k per year.

**5.6 Impact on partner organisations** – Other welfare agencies will be briefed on change in practice and advice given on how to get review of decision

**6 Monitoring**

**7 Timescale and expected outcomes**

7.1 The next progress report will be due in March 2008.

	Yes	No
<b>Key Decision</b>		✓
<b>Scrutiny Consideration (if yes, which Scrutiny meeting and date)</b>		✓
<b>Council Consideration (if yes, date of Council meeting)</b>		✓

List of background papers

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Papers open to Public Inspection

<b>Description of paper</b>	<b>Location</b>
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## Appendix 1.

### Creating, notifying and recovering an overpayment (extracted from Coventry benefits service procedures manual)

The following information has been extracted from the benefits procedures manual and provides more detailed information on the overpayment recovery process.

The overpayment process can be summarised briefly as follows:

- An overpayment is created
- Affected parties are notified in writing of the overpayment
- A decision is made as to whether the overpayment is recoverable
- If it is recoverable a further decision is made as to whom the overpayment should be recovered from – notification letters are issued at this stage with appeal rights
- A letter is also issued giving details of how the overpayment will be recovered – at this point the customer can request an adjustment to the recovery rate/method on the basis that it may cause them undue financial hardship or jeopardise their tenancy. At this stage the customer would be asked to complete a financial statement (detailed below) to give a detailed illustration of their financial circumstances and therefore their ability to repay.

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## OVERPAYMENT NOTIFICATIONS

Under Regulation 77, the Authority is required to notify **any person affected**, in writing within 14 days of that decision, or as soon as possible after that date.

### WHO ARE AFFECTED PERSONS?

- The claimant
- The person from whom recovery is sought – eg the landlord
- An appointee – appointed by the Courts, the Secretary of State or the Local Authority. This would apply where the claimant is unable to act for himself – maybe as a consequence of mental or physical disablement.

### WHAT MUST THE NOTIFICATION INCLUDE?

The overpayments notification must include:

- The affected person's right to request a **written statement** of reasons, and manner and time limit for doing so.
- The affected person's right to **appeal** against the decision and manner and time limit for doing so.
- Where a review decision has been made – whether the **original decision has been confirmed or revised**, and the reasons why.
- If revised the **right to request a further revision** and the manner and time limit for doing so
- If revised – **details of the matters revised**.

Where there is a recoverable overpayment, the notification must include

- The fact that there is a **recoverable** overpayment
- The **reasons** why there is a recoverable overpayment

- The **amount** of the recoverable overpayment
- How the amount of the overpayment was **calculated**
- The **period** to which the recoverable overpayment relates to
- The method of **recovery**

## RECOVERABLE OVERPAYMENTS

Regulation 99 states "*any overpayment of benefit is recoverable, except an overpayment caused by an Official Error*" (an error by the LA, DWP or Inland Revenue) and even then, only **where the claimant, or person receiving the payment, could not reasonably have been expected to know that it was an overpayment.**

When considering whether an overpayment should be non-recoverable, the first step is to establish whether an official error has occurred. Once an official error has been identified, the LA must consider whether the claimant, or person to whom the payments are made could have reasonably been expected to realise that they were being overpaid when they received the payment or the notification letter.

**It is a test of reasonableness**, i.e. would another person given the same circumstances have reasonably been expected to realise they were being overpaid.

The DWP recommend that we should consider the following in deciding whether the claimant could have known they were being overpaid:

- Claimant now lives in a nursing home
- Claimant has a severe medical condition
- Senility / Learning Disability
- Claimant is in prison

### POSSIBLE METHODS OF RECOVERY

There are several methods of recovering an overpayment available to the LA, depending on the type of claim, and how and to whom benefit was paid.

- Deductions from the claimant's ongoing benefit (scheduled recoveries)
- Reducing payments to the landlord. (BACs recoveries)
- Deducting the overpayment from arrears of entitlement (offsetting through *arrears*)
- Issuing an account or invoice (after transfer to the Debtors section)

In all cases the method of recovery chosen should be appropriate, and must comply with all legislation, policies and procedures. **The ability of the debtor to pay should always be a consideration – sometimes it may be necessary to negotiate a recovery rate with the debtor in order to reach an agreement.** Currently, there is no right of appeal on who we choose to recover from, although the affected person may ask us to reconsider our decision



# Financial Statement (Overpayments Department)

NAME.....ADDRESS.....  
TELEPHONE NUMBER.....HB REF.....

**INCOME EACH WEEK**

Wages (net).....  
Partner's wages(net).....  
Family Credit.....  
Child Benefit.....  
Job Seekers Allowance.....  
Sickness/Incapacity.....  
Retirement/Widows Pension.....  
Maternity Benefit.....  
Works/Private pension.....  
Maintenance.....  
Income Support.....  
Board from other adults/Children.....  
Other Income.....  
**TOTAL** \_\_\_\_\_  
Disability Living Allowance.....  
Attendance Allowance.....  
Capital (Savings etc.).....

**EXPENDITURE EACH WEEK**

Rent.....  
Mortgage (if applicable).....  
Second Mortgage (if applicable).....  
Water Rates.....  
Electricity.....  
Gas.....  
TV Rental/Licence.....  
Travel/Fares/Passes.....  
Car/Petrol/Insurance/Tax.....  
Insurance policies.....  
Telephone.....  
Food/Housekeeping.....  
Fines/Maintenance.....  
Catalogues.....  
Loans/Credit.....  
Other Regular Expenditure.....  
**TOTAL** \_\_\_\_\_

**FAMILY DETAILS**  
Age.....  
Age of Partner.....  
Ages of children.....  
Any family health problem.....  
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**EMPLOYMENT DETAILS**  
Name and address of employer  
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Name and address of partner's employer  
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**For further advice on welfare benefits and financial problems phone the Benefits Advice Line on 76832000**

**LOANS AND CREDIT AGREEMENTS**  
Please tell us to whom you owe money,how much is outstanding and when it will be paid in full  
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.....  
.....

**Please state the amount you are prepared to offer in terms of weekly repayments**  
  
**Amount : £**

DATA PROTECTION ACT 1984.We must protect the public funds we handle and so may use the information you have provided on this form to prevent and detect fraud. We may also share the information,for the same purposes,with other organisations that handle public funds.  
DATA PROTECTION ACT 1984 . We will use the information you have given us to deal with your account and to see whether you are entitled to any other benefits. This information is held on computer under the Data Protection Act 1984. We may check it against other information we hold about you.

## Appendix 2.

The maximum deduction that can be made from ongoing HB entitlement is prescribed by formula. Where the HB overpayment is classified as -

- Claimant Error, Other Error, POA HB or non-HRA Technical Rent Rebate -
  - round 5% of the Personal Allowance for a single claimant aged 25 years or more up to the next 5p, then
  - multiply by 3, then
  - add 50% of the value of any disregarded income, or
- Claimant Fraud due to an offence committed, an admission after caution or an agreement to pay a penalty made before 2nd October 2000 -
  - round 5% of the Personal Allowance for a single claimant aged 25 years or more up to the next 5p, then
  - multiply by 3, then
  - add 50% of the value of any disregarded income, or
- Claimant Fraud due to an offence committed, an admission after caution or an agreement to pay a penalty made on or after 2nd October 2000 -
  - round 5% of the Personal Allowance for a single claimant aged 25 years or more to the nearest lower or higher 10p, then
  - multiply by 4, then
  - add 50% of the value of any disregarded income received

Disregarded income for the purposes of this calculation is -

- the £5, £10, £20 and £25 disregard from earned income, and
- any regular payments derived from a Personal Injury Payment, and
- War Disablement Pension, and
- War Widows' or Widowers' Pension, and
- Guaranteed Income Payment, and
- any pension paid to victims of National Socialist persecution

As much of the prescribed weekly maximum deduction is applied that leaves a minimum payment of 50p per benefit week

Where a debtor requests a higher deduction, it may be accepted where the -

- LA explains in writing that their request is accepted, but
- that amounts deducted above the formula value are voluntary repayments, and
- the debtor may request a reduction back to the formula value at any time



Where a debtor requests a lower deduction -

- their expenditure is reviewed to disregard any luxury or unreasonably expensive items from decisions about their disposable income, and
- any less than maximum weekly deduction is discussed with the debtor

**Relevant legislation**

Housing Benefit Regulation 102 (2)

Amended by Statutory Instrument 2005/2904 with effect 10/04/2006.

"Subject to paragraphs (1A), (4) and (5), where a relevant authority makes deductions permitted by paragraph (1) from the Housing Benefit it is paying to a claimant (other than deductions from arrears of entitlement), the deduction in respect of a benefit week shall be -

(a) in a case to which paragraph (3) applies, not more than the amount there specified; and

(b) in any other case, not more than three times five per cent of the personal allowance for a single claimant aged not less than 25, that five per cent being, where it is not a multiple of five pence, rounded to the next higher such multiple."