Fair & reasonable

Collecting debt promptly

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Introduction

In November 2005 the Council replaced its in-house mainframe revenues and benefits systems with a software package from IBS Open Revenues Systems.

The new system has many advantages over the legacy mainframe system and will help the division to achieve efficiency savings in the coming years.

The IBS Open Revenues System provides us with a number of options to streamline recovery and improve cash flow thereby maximising the financial resources of the Council.

This factor together with the Division’s desire to continuously improve:

- the service to our customers;
- our collection rate and best value performance indicator;
- our efficiency

is the reason we have reviewed the Housing Benefit and Council Tax Benefit Overpayments Recovery code of practice.

The recovery process should be fair and reasonable to customers whilst seeking to collect debts due to the Council as promptly as possible.

Aims of the Code

This code has been developed to promote a better understanding of Trafford MBC’s approach to benefit overpayments and overpayment recovery. It forms the basis of the Council’s policy. Policy and procedures reflect the Department of Work and Pensions (DWP) Corporate Debt Standards. The code provides guidelines concerning all aspects of the administration and recovery of Housing Benefit and Council Tax Benefit overpayments. It takes into account our legal responsibilities in respect to the decision making process, and our duty to protect public funds and hence maximise overpayment recovery.

The code, or any individual aspect of the code, should not be viewed as a statement of intent for all cases. The merits of specific cases and the need to administer overpayments in a fair and reasonable manner must always be taken into account.

We take our role in protecting the public purse very seriously and the overpayment recovery process makes a significant contribution to this. This commitment will be reflected in the firm recovery of overpayments and any relevant sanctions that are applied to the case as detailed in our Fraud Service.
Plan and Exchequer Service Plan. We will seek to maximise recovery of all overpayments, in a fair and equitable manner.

Legislation

The Social Security Administration Act 1992 and the Social Security Contributions and Benefits Act comprise the primary legislation that governs Housing Benefit and Council Tax Benefit. There is a vast amount of secondary legislation in the form of statutory instruments, the most relevant being the Housing Benefit Regulations 2006 and the Council Tax Benefit Regulations 2006. These regulations lay down the statutory framework for administering the Benefit schemes, including overpayment recovery.

Practitioners are expected to have an awareness of the contents of the Acts and the relevant regulations and to keep themselves informed of any amendments. Copies of the legislation are available to view online at www.opsi.gov.uk/legislation/

The most important document we will issue is the notification of overpaid benefit. This will comply with legislative requirements and be sent in all cases where recovery is sought. It will be issued at the earliest possible opportunity to enable recovery action to commence promptly, and will include a clear explanation of why the overpayment of benefit occurred.

When an overpayment is disputed, we will suspend recovery action until the dispute rights have lapsed or an independent Tribunal has considered the case.

Causes of Overpayments

Benefits legislation defines an overpayment as ‘any payment by way of benefit to which there was no entitlement’.

Overpayments have many causes, including:

- failure to report or delay in reporting a change of circumstances;
- official error on the part of the Authority or an agency of the DWP;
- detection of fraudulent claims and payment irregularities;
- delayed receipt of income, such as an award of a State benefit.
Preventing/Minimising overpayments

To help prevent and reduce overpayments we will:

- tell claimants and landlords about their duty to report changes in all of our benefit award letters
- include information on the Council’s website
- deal with notified changes of circumstances promptly.
- check the accuracy and validity of all information received to the standard set out in the Verification Framework
- train our staff to deal with legislative changes and changes in working procedures
- check at least 4% of all assessments to make sure that they are correct
- suspend or end benefit payments where we have a serious doubt about entitlement to that benefit
- investigate allegations and suspicions of fraud and abuse

Decision making issues

A number of decisions are made in the course of calculating overpayments of benefit and starting recovery action. When making these decisions we will take into account the circumstances of each case and will not apply ‘blanket’ policies or fetter our discretion.

We will specifically ensure that:

- no person is required to repay non-recoverable overpayments.
- where applicable, underlying entitlement to benefit during the overpayment period is taken into account to reduce the overpayment.
- no landlord/agent is asked to repay a fraudulent overpayment that they helped us to detect.
- we send notification letters promptly after the relevant decision has been made.

Rights of Dispute

We will notify all affected persons of their dispute rights (the right to request a revision of the decision and the right to appeal to the independent Tribunal) in their overpayment notifications.
The formal right of dispute only applies to decisions that are defined in the relevant legislation as carrying a right of appeal. However, in all cases an affected person will have the right to a full written statement of reasons for any decision and the right to such reasonable explanation as they require.

When an overpayment is disputed, we will suspend recovery action until the dispute rights have lapsed or the independent Tribunal has considered the case.

Recovery of Overpayments

We will recover Housing Benefit and Council Tax Benefit overpayments as quickly as is practicable. In doing so we will:

- Make every effort to agree a payment plan which the debtor can afford if they are having difficulty repaying an overpayment;
- Recover excess Council Tax Benefits by adding them to the debtor’s Council Tax account.

There are a number of different methods of recovering overpaid Housing Benefit. The most appropriate method of recovery will depend on the circumstances of the debtor, so the following list does not signify any order of preference.

**Recovery from ongoing benefit.** Where the debtor has continuing entitlement to Housing Benefit, a portion of the weekly entitlement is withheld and offset from the outstanding debt until it has been fully recovered. The Department for Work and Pensions set the weekly amounts, which vary depending on whether the debtor is working or receiving benefits.

**Recovery from arrears of benefit.** Where an amount of benefit is owed to the claimant, this can be offset to recover an overpayment in part or full. This may occur, for example, where an amount of benefit is owed due to a backdated award.

**Recovery from ‘blameless tenants’.** Where an overpayment is recoverable from a landlord (or other third party) and Housing Benefit continues to be paid to that landlord, we can recover the overpayment by deducting some or all of any payments made to the landlord. Recovery may be made in this way even if the landlord is no longer receiving payment of benefit direct for the person in respect of whom the overpayment was made.

**Recovery from other Social Security benefits.** If recovery from ongoing entitlement to Housing Benefit is not available, we can recover overpaid benefit from another Social Security benefit in payment to the claimant.

**Recovery from Housing Benefit paid by another authority.** This method of recovery may be appropriate where the debtor has left the Trafford area and it can be established that they are in receipt of Housing Benefit in another authority’s area. The debt may then be recovered by the new authority, which will make deductions from ongoing entitlement on behalf of Trafford MBC.

**Registration of debts at County Court.** For any recoverable overpayment, we can enforce recovery by registering the debt at County Court. This enables us to use recovery methods that would be unavailable without a County Court Order (CCO).

**Sundry debts.** In all other cases, or where we consider it to be most appropriate (for example, where the debtor has capital and can repay the debt in full) recovery will be sought by issuing a sundry debtor invoice. This may lead, ultimately, to County Court action and a CCJ against the debtor.
Financial hardship

There may well be cases where the customer is unable to meet repayments due to severe financial hardship. We will offer a “benefits check” to attempt to ensure that all customers are receiving their maximum benefit entitlements.

We send a leaflet with notifications, which advises the customer what to do if the instalments are too high to manage. Customers have the opportunity to provide details of their income and expenditure, after which we will re-consider the level of instalments (subject to a minimum of £5 a week).

Where specialist advice or debt counselling is required, referrals will be made to the Citizens Advice Bureaux (which is a registered charity and provides free advice) or the Council’s in-house Benefits Advice Service.

We will seek to adopt a holistic approach where the customer owes monies to the Council for a number of debt types e.g. Council Tax, Overpaid Housing Benefit, Business Rates, Ground Rent etc.
Irrecoverable Debts

There will be occasions where debt due to the Authority is irrecoverable for a variety of reasons. For example:

- Unable to trace the debtor
- Uneconomical to collect
- Deceased (no estate)
- No further legal remedy
- Not in the public interest

Unable to trace the debtor

Where a customer has left their last known address an attempt will be made to trace them. Initially this will be from available records (Council Tax, Housing Benefit, NNDR, LOCTA and Accounts Receivable).

If this is unsuccessful and the debt exceeds £250.00 the case should be referred to a tracing agency for further enquiry. Should the debtor remain untraceable the account will be submitted for write off.

Uneconomical to collect

If the cost of pursuing the debt is likely to exceed the value of the debt outstanding (for example, the debtor has moved abroad and is unlikely to return) then the debt may be submitted for write off.

Deceased (no estate)

This will apply where the debtor has died and there is no, or insufficient estate to satisfy the debt.

No further legal remedy

There may be instances where all avenues of enforcement have been exhausted. This will include where a debt is statute barred (over six years since the last action).

Service Targets

We aim to provide a first-class service to our customers. Our target is to achieve the following standards of service.

- To be polite when we deal with an enquiry;
- To answer phone calls within 20 seconds between 8.30 am to 5.00 pm Monday to Friday;
- To answer all letters within 10 days;
- To use plain English and avoid jargon when we deal with customers;
• To make every effort to agree a payment plan which the customer can afford;
• To investigate any complaints thoroughly and reply to them within 7 days.
• To treat all cases fairly and individually.

Summary

To conclude, it is worth stressing again that the policies provided in this document are to be used for general guidance. The policy quoted must not be taken as though laid in ‘tablets of stone’ and discretion should be used as appropriate.

At all times attempt to achieve a balance between recovering debt as quickly as possible, whilst being fair and reasonable to the customer.

Remember, that courtesy costs nothing and a good polite telephone manner goes a long way!
Overpayment

Is the overpayment recoverable?

No

Assessor will categorise the irrecoverable overpayment and write off if appropriate.

Yes

Issue Notification.

Is housing benefit currently in payment?

No

Update system. Check that offset has been completed.

Yes

Can the overpayment be offset?

No

Can the overpayment be offset?

Yes

Update system. Check that offset has been completed.

Was housing benefit paid directly to?

No

Raise Sundry Debtor Invoice for Claimant.

No

Raise Sundry Debtor Invoice for Landlord.

Yes

Was the overpayment due to a change in financial circumstances or classified as fraud?

No

Was the overpayment due to a change in financial circumstances or classified as fraud?

Yes

Recover from ongoing housing benefit (After 4 weeks)

If entitlement to housing benefit ceases and no subsequent entitlement then another recovery remedy will be taken.

* Appeals:
Recovery action will be suspended if an appeal is received within one month.
If the appeal is successful revised notifications will be issued.
If unsuccessful the recovery of the overpayment will recommence.
Start

Invoice Issued

Has invoice been paid?

Bailiff action

Attachment to Benefits

HAS invoice been paid?

Attachment of Earnings

YES

NO

Final notice issued

CONSIDER ‘WRITE OFF’

Has invoice been paid?

Pre action letter issued

NO