Corby Borough Council

Housing Benefit & Council Tax Support Overpayment Policy
SECTION 1: OBJECTIVES

1.1 Background and Aims of the Policy

This document sets out the Council’s policy with regard to overpaid Housing Benefit and Council Tax Support.

Our aim is to ‘pay the right people, the right amount at the right time’, and as a consequence to minimise the number of overpayments generated, by;

- Ensuring we follow effective procedures to verify claims;
- Prioritising and taking prompt action to process changes of circumstances and cancellations;
- Avoiding backlogs of work but where backlogs arise, prioritising cancellations, change of circumstances and other items that give cause to overpayments;
- Making use of the suspension provisions in Housing Benefit legislation in accordance with this Policy;
- Using clear forms and leaflets to prevent misinterpretation and misunderstanding;
- Employing well trained staff with access to comprehensive procedures and an awareness of problems relating to debt;
- Evolving our processes and procedures as legislation changes eg Universal Credit;
- Working with partners to provide digital and budgetary support to assist claimants to avoid debt;
- Maximising claimant awareness of the need to promptly report changes and providing easy means to do so;
- Promptly reporting suspected frauds to the DWP FES;
- Maintaining a Quality Control regime to check the accuracy of claims.

1.2 How Overpayments Occur

The policy aims to ensure that we understand how overpayments occur and simply put overpayments occur when the Council has paid more Housing Benefit or Council Tax Support than the claimant has an entitlement to.

The main reasons for benefit/support overpayments are:-

- The claimant/appointee/landlord fails to notify changes in circumstances;
- The claimant/appointee/landlord advised us of a change in the benefit recipient's circumstances but after the date the change occurred and a payment has already been made;
- We make a mistake;
- The Department for Work and Pensions (DWP) makes a mistake.
1.3 How we recover benefit overpayments

Once and overpayment has been identified, providing it is recoverable from the claimant or landlord, it is in the authority’s interest to maximise recovery, as non-payment is a cost to the taxpayers of the Borough. The intention of this document is to formalise the procedures that are currently in use into an approved policy.

Where overpayments do arise each will be considered on an individual basis, although in all cases the following will apply:

- A professional, consistent and timely approach to recovery action
- That debtors circumstances and their ability to pay are considered in order to distinguish between those who can’t pay and those who simply won’t
- The promotion of a co-ordinated and compliant approach to the sharing of debtor information
- The maximisation of income due to the
- That debt is managed in accordance with legislative provisions/best practice

That all activity complies with equalities, human rights and data protection legislation

1.4 Legislative Background

Regulation 99 of the Housing Benefit (General) Regulations 2006, which defines an overpayment as “any amount which was paid by way of housing benefit and to which there was no entitlement … “. Regulation 80 for Persons who attained the age for state pension credit.

S13A and Schedule 1a Local Government Finance Act 1992 relate to reductions in Council Tax (Council Tax Support) to which there was no entitlement.

SECTION 2: Identifying overpayments

2.1 Identifying overpayments

CBC will apply Regulation 99 of the Housing Benefit (General) Regulations 2006, which defines an overpayment as “any amount which was paid by way of housing benefit and to which there was no entitlement … “. Regulation 80 will apply for state pension credit cases. Similar provisions exist within the S13A and Schedule 1a Local Government Finance Act 1992 for the purpose of Council Tax Support.
It is important that over payments are correctly categorised as all benefit overpayments have an impact on the Benefit Subsidy payments received from the DWP.

CBC will correctly code the cause of the overpayment for subsidy purposes using the following criteria:

- D  Dept. for Work & Pensions error
- L  Local Authority Error
- AD Administration Delay
- C  Claimant Error
- FR Fraud
- F  Future
- O  Other error (see below)
- P  Paper (see below)

At this stage all recovery action is suspended.

Looking at each in turn: -

**Department for Work & Pensions Error**
This is where the Department for Work & Pensions have made a mistake themselves, causing CBC to overpay. Subsidy is, in this case alone, only paid on overpayments that are not recovered. Such cases are very rare and not normally recoverable. This requires confirmation from the DWP that an official error has been made.

**Claimant Error**
The Department for Work & Pensions Housing Benefit Guidance Manual defines this as 'non-fraudulent error or non-fraudulent non-disclosure of information by the claimant'. Essentially, if it is not Fraud or Local Authority Error, then it is Claimant Error.

Particular care is needed where direct payment to the Landlord occurs – did the claimant know that Benefit continued? Was there collusion?

**Local Authority Error/Administrative Delay**
This is normally where the Council (CBC) have failed to act promptly on information received, causing an overpayment to arise. However, Local Authority error can also arise where benefit was calculated incorrectly.

No Subsidy is paid, but in some circumstances the overpayment may still be recoverable.

A delay in assessing a change of circumstances can lead to a portion of any overpayment becoming Administrative Delay error. An overpayment may have been caused by claimant error, and increased in length by CBC's failure to act promptly on information – only the 'increase in length' would be coded 'AD'.
Any LA or AD overpayments can have a disproportionate effect on Subsidy if the relevant LA error thresholds are exceeded.

**Future**
This applies to Council Tax Support and Housing Benefit paid on LAHRA claims and relates to the fact that Support is awarded for the period up to the end of the financial year in question for Council Tax and 1 week in advance for LAHRA cases. This is, in effect, an accounting adjustment and not a real overpayment.

**Other**
This coding is applied by the processing systems to overpayments (or parts of overpayments) that do not fit into any other category. Normally to allow for payments made in advance.

**Paper**
Paper overpayments arise where there is more than one award for the same period. They can be created on the same day, or at a later date. Again, these are not real overpayments but accounting adjustments.

**Fraud**
An overpayment may only be classified as Fraud if:

- DWP SFIS notifies the Council that they have classified a benefit claim as Fraudulent; or
- Where the customer has openly admitted a fraud.

**SECTION 3: RECOVERY**

**3.1 Deciding if an Overpayment can be recovered**

CBC will apply Regulation 100 of the Housing Benefit (General) Regulations 2006 which defines a recoverable overpayment as “Any overpayment, except an overpayment caused by official error where the claimant … or any … person to whom the payment is made could not, at the time of receipt of the payment, … have been expected to realise it was an overpayment”.

“Overpayment caused by Official Error” is then defined as “… an overpayment caused by a mistake made whether in the form of an act or omission by –

a) the relevant authority;
b) an officer or person acting for that authority;
c) an officer of
   (i) the Department for Work & Pensions
   (ii) the Commissioners of the Inland Revenue
acting as such; or
d) a person providing services to either department or commissioners referred to in (c),
where the claimant, a person acting on his behalf or any other person
to whom the payment is made, did not cause or materially contribute to
that mistake, act or omission.”

Similar provisions exist within the S13A and Schedule 1a Local Government
Finance Act 1992 for the purpose of Council Tax Support and similarly for
Persons who have attained the age for state pension credit.

3.2 Deciding whether to recover a recoverable overpayment.

The Council has a discretionary power under Paragraph 75(2) (for Housing
Benefit) of The Social Security Administration Act 1992 as to whether to
recover any recoverable overpayment. Similar provisions exist within the
S13A and Schedule 1a Local Government Finance Act 1992 for the purpose
of Council Tax Support and similarly for persons who have attained the age
for state pension credit.

This power has been delegated to the Benefits Manager and each case is
considered on its merits within the following criteria:

- Any overpayment of Housing Benefit under £20.00, however
  caused, which can only be dealt with by debtor’s invoice, shall not
  be recovered as it is not cost effective to recover such small sums
  in this way;

- Any overpayment, howsoever caused, of Housing Benefit under
  £10 shall not be recovered as it is not cost effective to issue the
  letters, carry out the computer work and deal with the resultant
  enquiries;

- Then, the circumstances as outlined in the Housing Benefit and/or
  Council Tax Support file must be examined. No hard and fast ruling
  can be given but good examples are cases involving bereavement,
  serious illness, vacation due to fire or flood or neighbour
  harassment. In addition, the financial circumstances of the claimant
  will be taken in to account. There is little economic sense in
  invoicing a person who would be placed further into extreme debt or
  who clearly does not have the means to pay. Each case should be
  considered carefully by the Benefit Manager and a decision made.

3.3 Avoiding the need to seek recovery of Overpayments.

CBC will, where a recoverable Housing Benefit or Council Tax Support
overpayment arises that is to be recovered, take action to avoid raising a
debt, or reduce any debt raised, by:

a) Deducting outstanding overpaid sums from credits due wherever
possible and in compliance with this Policy;

b) Applying the rules surrounding underlying entitlement wherever
possible. This includes seeking to obtain the necessary evidence in
appropriate cases even if such evidence is not initially volunteered.
3.4 Overpaid Council Tax Support recovery

Overpaid Council Tax Support, of any amount, which is recoverable and is to be recovered, will be recovered by adding the debt to the Council Tax Bill of the recipient of the relevant Council Tax Support. Recovery is then pursued by the Recovery Team as for any other Council Tax debt. In all other respects the decisions and procedures are as for Housing Benefit overpayments.

3.5 Whom to Recover from

Regulation 101 contains wide powers to recover Housing Benefit from the claimant, landlord or other recipient as follows:

“… a recoverable overpayment shall be recoverable from either –

- where the overpayment was in consequence of a misrepresentation or failure to disclose a material fact (in either case whether fraudulent or otherwise) by or on behalf of the claimant or any other person to whom a payment of housing benefit may be made, the person who misrepresented or failed to disclose that material fact; or
- in any case, the claimant or the person to whom the overpayment was made.”

CBC will seek:

- To recover Housing Benefit overpayments from the Landlord if the Landlord was in receipt of direct payments and could reasonably have known the Housing Benefit was being overpaid. However, if the Landlord reported that the Tenant was committing a fraud and the Landlord was not involved in that fraud, then the overpayment cannot be recovered from the Landlord.

- To recover from whomsoever received the Housing Benefit if that person perpetrated or was party to a fraud.

- To recover from the perpetrator of any fraud, whether or not they actually received the Housing Benefit. i.e. an Employer providing fake payslips or a Landlord not paid direct aiding and abetting fraud.

- To recover from the claimant in any other case.

3.6 Method of Recovery

There are three options to recover Housing Benefit overpayments, and any single overpayment may be split up and recovered accordingly, depending on the circumstances: -
• If the overpayment is recoverable and there is no ongoing Benefit against which it can be recovered from, or recovery is from the Landlord, an invoice is generated via the Debtors System. A leaflet will be enclosed with all Invoices, giving details of how to make arrangements, payment methods etc. along with the 'Overpayment' leaflet.

• If the overpayment is recoverable and the claimant is a CBC tenant, then the overpayment may be recovered from the CBC Rent Account. BUT this will only occur IF:-

  The credit concerned reached the Rent Account after the Tenant vacated the property, whether or not sufficient credit now exists.

  OR

  The credit occurred after the death of the Tenant, whether or not sufficient credit now exists.

  OR

  Where sufficient credit exists and it is clear that the Tenant has increased his payments in anticipation of losing Housing Benefit.

• If the overpayment is recoverable and can be retrieved by deduction from ongoing Benefit, (termed “on-going deduction” or ONG) this will be set up. The amount to deducted should be decided upon having taken the claimant's circumstances in to account. An ongoing deduction is limited to:

  In any case where the claimant or their partner (if any) is in receipt of Income Support, an Income Based Jobseekers Allowance or a Guarantee Pension Credit, the amount as advised by Department of Work and Pension detailed in the Annual up-rating circular, the Statutory maximum limit is three times 5% of the single person’s allowance for over 25s, that 5% being rounded to the nearest 5p - i.e. limit is £11.10 in 2015/16.

  In normal cases, where the claimant or their partner (if any) is not in receipt of Income Support or an Income Based Jobseekers Allowance, the Statutory maximum limit is three times 5% of the single person’s allowance for over 25s, that 5% being rounded to the nearest 5p plus half of any applicable earnings disregard and half of any charitable income disregard and £5 in respect of any War Widows or War Disablement Pension – i.e. limit is £9.90 in 2010/11 plus the additional sums mentioned.

  For cases where Fraud is proven in Court, or Fraud is admitted after a Caution or the claimant has agreed to pay a Penalty, the Statutory maximum limit is four times 5% of the single person’s
allowance for over 25s, that 5% being rounded to the nearest 10p – i.e. limit is £18.50 in 2015/16.

Where claimants migrate to UC and any O/P was created as a result of that migration details will be passed to the DWP who will arrange recovery of said overpayment.

Where there is an existing Housing Benefit O/P which occurred prior to a claimant migrating to UC, if the claimant subsequently migrates to UC, the Authority may pass the outstanding balance to the DWP for them to arrange for recovery. This will be dependent on a number of factors, taking into consideration of the fact that the Authority will only receive 100% of the recovered overpayment (40% subsidy and 60% of the recovered O/P), potentially losing the remaining 40%.

If the overpayment is recoverable and remains outstanding and a credit of Housing Benefit entitlement arises at any time:

  i) Where that credit is for the same period as any outstanding overpaid Housing Benefit, that overpaid Housing Benefit will be deducted from the credit in any case so as to avoid a duplicate payment;
  ii) Where that credit is for a different period to any outstanding overpaid Housing Benefit, that credit will only be utilised to recover all, or part, of the outstanding debt, if:
      - The credit relates to a property no longer occupied by the claimant or former partner of the claimant; or
      - The claimant has specifically requested, in writing, that that overpaid sum is used to reduce or clear that overpayment debt.
  iii) Otherwise, that credit will be released.

SECTION 4: NOTIFICATION OF HOUSING AND COUNCIL TAX SUPPORT OVERPAYMENT

4.1 Decision Notices

CBC will send proper notification as required under Schedule 6 of both the Housing Benefit (General) Regulations 2006 and the S13A and Schedule 1a Local Government Finance Act 1992.

The Notice will set out:-

- That there has been an overpayment;
- The cause of the overpayment;
- Whether the overpayment is recoverable;
- Why the overpayment is recoverable;
- The amount overpaid;
- How that amount is calculated;
- The period of the overpayment
• How recovery (if recoverable and to be recovered) is to be affected and who from;
• The right to request a written explanation of the decisions made;
• The right to request a Revision and/or to Appeal.

4.2 Appeals

Where a Written Explanation, Review or Appeal is requested under the Housing Benefit (Decisions and Appeals) Regulations 2001 and S13A and Schedule 1a Local Government Finance Act 1992, recovery action will be suspended until that process is completed.

SECTION 5: SUNDRY DEBTORS

5.1 Further Recovery Action

The Benefit Team procedures for invoiced debts resulting from overpayment of Housing Benefits are:

5.2 Strategy - Finance

Part of the Council’s Financial Strategy focuses on financial control.
Corby Borough Council is committed to the effective and efficient recovery of monies owed in order to maximise its income and reduce the amount of outstanding debt by taking positive steps in its approach to recovery and enforcement and by taking a tougher stance with those debtors unwilling to pay.

A consistent approach to debt recovery will be taken, this will ensure that all debtors are treated equally, that all debts are considered corporately and that recovery action is proportionate to the amount and source of the outstanding debt.

5.3 Recovery Guidelines

- The opportunity to repay debt by instalments is offered at the point of invoice for all cases where a Housing Benefit overpayment has occurred, including Landlords and Agents where required.
- Arrangements are accepted on the basis that the debt will be repaid within a reasonable period.
- Arrangements are monitored and if not maintained then normal debt recovery procedures will commence.
- Reminders and Final Notices will be sent for all unpaid invoices.

5.4 Recovery actions

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ARRG ———> INVOICE

14 DAYS

ARRG  NO PAYMENT/ARRG

ARRG  REMINDER

7 DAYS
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Recovery action is based upon 4 key factors:-

- Personal Circumstances of the Debtor
- Location of the Debtor
- Value of the Debt
- Whether the Debtor was a Claimant or Landlord/Agent.

SECTION 6: WRITE-OFFS

6.1 Irrecoverable debts

The Council recognises that not all debts are collectible and therefore it will be appropriate in certain circumstances to classify debts as irrecoverable, where determined criteria are met, in which case writing-off the debt should be considered. The council will satisfy that one or more of the following apply before writing off the debts.

- All appropriate recovery methods have been exhausted.
- The debt is uneconomical to pursue
• The amount is uncollectible due to bankruptcy or insolvency (certain rules will apply if the account has been issued to an enforcement agent (bailiff) prior to bankruptcy, checks and authorisation and sign off by Recovery & Customer First Manager to continue are required and noted on account reason for pursuing)
• The debtor has absconded and cannot be traced
• The debtor is deceased and has no estate
• It is not in the best interests of the Authority to pursue.

6.2 All write off cases will be reviewed and actioned by the Benefits Manager, a report will be produced for sign off and authorisation by the Director of Corporate Services, a copy of this will be issued to the Accountancy section for reconciliation.

SECTION 7: EQUALITIES

7.1 All Housing Benefit and Council Tax Benefit recipients will be treated equally under this Policy regardless of:

   a) Tenure – there will be no difference in policies and procedures applied to Council Tenants, Private Tenants, Owner Occupiers or Housing Association Tenants.
   b) Racial origin – as those whose first language is not English have access to the Language Line and other translation services.
   c) Religious belief – which is not recorded in Benefit cases.
   d) Disability – as CBC offers a Home Visit service to those unable to visit the One Stop Shop Facilities, will provide information in large type and has a Hearing Aid Loop system at the Reception.
   e) Sexual orientation – which again is not recorded and not a factor taken in to account.

SECTION 8: TARGET SETTING

8.1 The Benefit Manager and Director of Corporate Services will set targets jointly, through the Financial Services Business Plan process to cover:

   a) The number of days, on average, to process a change of circumstances (the event that normally triggers an overpayment).
   b) BVPI 79b (i),(ii) and (iii), the % of recoverable overpaid Housing Benefit recovered and written off.
   c) Accuracy of Claims

8.2 The Business Plan to be reviewed on an annual basis and targets adjusted accordingly. Monthly Performance Monitoring to take place on targets detailed above.