Appendix 4

Housing Benefit and Council Tax Reduction Overpayments

# Legislation and Guidance

Regulations 2006 (Working Age) (as amended), and Regulation 88 of the Housing Benefit Regulations 2006 (Pension Age) (as amended).

In addition there are Debt Recovery Procedures are in place where Housing Benefit has been overpaid and is no longer in payment in accordance with the Social Security (Overpayments and Recovery) Amendment Regulations 2015, The Council Tax Benefit Regulations 2006 and the Council Tax (Administration and Enforcement) Regulations 1992, as amended.

The Council will also take into account good practice in accordance with the Department for Work and Pensions Good Practice Guide.

The administration, collection and recovery of Housing Benefit and Council Tax Reduction overpayments rests with the S151 Officer. Council Tax benefit overpayments are always added back to the Council Tax account and are therefore recovered in accordance with Council Tax regulations. Any overpaid amounts of Council Tax reduction will be recovered through an adjustment to the customer’s Council Tax account, with recovery governed through Council Tax legislation (see appendix 2). Housing Benefit overpayments are recovered as detailed in Part 4 of the DWP Housing Benefit Overpayment Good Practice Guide.

# What is an overpayment?

Where a claimant has received more Housing Benefit than they were entitled to receive, this is classed as an overpayment. The Council has an objective to prevent overpayments from happening. Where an overpayment is identified, the Council will provide the claimant with details of:

* The reason for the overpayment
* The amount of the overpayment
* The benefit period covered
* The method of recovery
* Their rights of appeal

The Council will aim to calculate overpayments promptly and accurately and provide accurate information to the persons affected to ensure we recover the correct amount. The Council will do this by using the following process:

* Customers will be invited to apply for underlying entitlement to Housing Benefit which may offset the amount of the overpayment.
* Calculate the overpaid housing benefit within 28 days of the Council receiving information advising of a change in the claimant’s circumstances.
* Use the correct date of change in circumstances to revise the overpayment period
* To adjust the overpayment to reflect cheques which have not been cashed or have been returned un-presented.

Invoices for the recovery of Housing Benefit overpayments will only be raised where the customer has no ongoing entitlement to any Housing Benefit and therefore the Council would be unable to recover through ongoing benefits.

The Housing Benefit (Recovery of Overpayments) Regulations 1997 allow us to recover overpayments from landlords for their current tenants’ claim. The Council will take this action where the original tenant has no ongoing entitlement to Housing Benefit and when there was a misrepresentation or failure to disclose a material fact (blameless tenant deductions).

# Prevention of Housing Benefit Overpayments

The Council believes that the prevention of overpayments arising is more important than seeking to recover overpayments of benefit where there was no entitlement to receive Housing Benefit.

The Council will seek to prevent Housing Benefit overpayments from occurring through:

* Supporting customers through their application process to ensure that the correct amount of benefit is paid.
* Notifying the customer of the information used in the calculation of their entitlement, to enable the customer to check this against their circumstances.
* Notifying and reminding customers of their responsibility to notify us immediately of any changes to their circumstances which may affect their entitlement to Housing Benefit, e.g. working more hours.
* The use of benefit notifications, leaflets, websites and forms to reinforce the customer’s duty to notify the Council of changes to circumstances.
* Prompt and accurate processing of changes to the customer’s circumstances.
* Where the Council has been made aware of a change to the customer’s entitlement that could occur in an overpayment, the Council may suspend Housing Benefit payments to prevent (further) overpayments from occurring whilst the Council awaits further information.
* Ensuring that all staff who have contact with Housing Benefit customers have full training on the principles of overpayment prevention, overpayment recovery, fraud prevention and fraud detection.
* Participation in data matching exercises, with internal databases and external agencies, to identify potential discrepancies in Housing Benefit entitlement.

# Recovery of Housing Benefit Overpayments

## Is the overpayment recoverable?

There is a class of Housing Benefit payments which are not deemed to be recoverable

* Overpayments that are caused by an act or omission by the Council; and
* Where the customer cannot reasonably be expected to know they have been overpaid.

An example of the above may be the misapplication of a specific method of earnings calculation used in an award – a customer cannot be reasonably be expected to know that this could lead to an overpayment. However, if the award notifications stated that a customer’s earnings had been missed from their calculation entirely, the customer has a duty to review their notifications and advise the Council of any omissions – such an overpayment would be recoverable.

Payments made to landlords/agents are recoverable where they could have reasonably been expected to know about the change of circumstances which lead to the overpayment.

## Whether to recover

Where an overpayment has been deemed as recoverable, then a separate decision must be made by the Benefit Officer assessing the claim as to whether it should be recovered. This should include consideration of the circumstances which created the overpayment, the physical and mental health of the customer and, whether the recovery of the overpayment would create evidenced financial hardship for the person or their household. Where the circumstances are unclear then the customer should be contacted for clarification.

# Methods of recovery

### Recovery from ongoing entitlement

Where an overpayment has occurred and Housing Benefit entitlement continues to be paid, the Council will seek to recover the overpayment from ongoing benefit entitlement. The recovery rates are set by Department for Work and Pensions (DWP) and, initially, we will always apply the maximum recovery rate permissible. Officers are empowered to consider applications from customers, which are evidenced by the completion of a means enquiry form, to reduce the recovery rate.

Staff have the discretion to reduce the recovery rate or suspend deductions if the customer can evidence that this would cause financial hardship, for example, where a customer is unable to pay their rent or is on a Suspended Possession Order, or where there is evidenced vulnerability within the household, for example, supported by a letter from a doctor or social worker.

## Recovery where Housing Benefit is no longer in payment

Where there is no ongoing Housing Benefit entitlement, or a reduction through an underlying entitlement, we will issue an invoice for payment. A customer has one month to pay before further recovery action is taken. This allows the person who owes the overpayment the opportunity to seek an explanation as to how the overpayment arose, or to submit an appeal against the decision.

To prevent further recovery action the Council will:

* Offer a choice of payment options.
* Encourage and support customers to make an affordable repayment plan.
* Provide signposting to debt advice on our website and on our communications.

The Council will not refuse any payment which reduces the value of the debt. However, the Council may still take further action on any remaining debt.

### Debt Repayment Arrangements

When an overpayment is identified customers will be encouraged at the earliest opportunity to make a repayment plan. Where a repayment plan is being considered the customer should commence their payments immediately.

The Council may reject the customer’s initial repayment plan for the following reasons:

* The rate of repayment means that the debt will not be repaid within 12 months;
* The rate of repayment is deemed to be unrealistically low based upon the Council’s knowledge of the customer’s circumstances; or
* The rate of repayment is deemed to be unrealistically high based upon the Council’s knowledge of the customer’s circumstances, which may place the customer at risk of further financial hardship.

In situations where the customer’s initial repayment plan is rejected by the Council, a Means Enquiry Form will be issued to identify the customer’s household income and expenditure.

* The Council will request 3 months bank statements and may request other required information, such as payslips, to support the Means Enquiry Form.

The Council will use the information on the Means Enquiry Form to set a reasonable repayment plan. Where plans exceed 12 months, the customer will be required to complete an updated Means Enquiry Form after month 11 to enable the repayment rate to be reviewed.

Repayment plans which exceed 3 years will require authorisation from the Head of Customer Services, Revenue and Benefits.

Repayment arrangements will be monitored by the Council and further recovery action will be taken where payments fail to be paid.

### Final Reminder

If the invoice remains unpaid and no satisfactory payment arrangement is in plan, the Council may issue a Final Reminder. No other reminder notices will be issued.

The Final Reminder provides the customer with seven days to pay, or enter into a satisfactory payment arrangement, from the date of the notice.

If payment is not received at the end of this 7 day period, the Council will seek to recover through the most appropriate method from the list below.

### Direct Earnings Attachment

The Council will use the Department for Work and Pensions (DWP) Housing Benefit Debt Service, to establish whether the customer is employed or in receipt of any other benefits.

Where it is established that the customer in employed, the Council will instruct the customer’s employment to implement a Direct Earnings Attachment (DEA) in accordance with the Social Security (Overpayments and Recovery) Regulations 2013. The levels of deduction is determined by the regulations and is linked to the customer’s level of earnings. Neither the Council nor the employer have any discretion regarding the level deductions applied to a customer’s earnings.

The Council will issue a DEA where the customer has:

* Refused to engage with the Council in relation to their;
* Refused to agree an acceptable repayment plan; or
* Has defaulted on a previously agreed repayment plan.

The Council will only withdraw a DEA if:

* The document has been served in error (e.g. to the wrong employer); or
* The customer provides evidence that the DEA would cause severe financial hardship or would put them at risk of losing their home.

Where the customer or their employer fails to meet their duties in relation to a DEA, then they may potentially be subject to a fine of up to £1000, as prescribed by Regulation 30 of the Social Security (Overpayments and Recovery) Regulations 2013.

### Deductions from DWP Benefits

If the Council receives information which suggests that the customer is entitled to DWP benefits, it will seek to make deductions from prescribed DWP benefits in accordance with Section 75(1) of the Social Security Administration Act 1992 and Regulation 105 of the Housing Benefit Regulations 1987. The Council may also make an application to recover the debt from Universal Credit entitlement.

## Other methods of recovery

The Council will consider a range of methods of recovery, based upon a number of factors, including the value and age of the debt and known information relating to the customer’s circumstances. These include:

* Where an overpayment is recoverable from a landlord, through deductions applied to payments made to them for current tenants in receipt of Housing Benefit. This is known as ‘Blameless Tenant Recovery”.
* Through an application to another Local Authority to make deductions from ongoing benefit on Torbay Council’s behalf.
* Through the use of Collection Agents, appointed to through a procurement process to recover debts on behalf of the Council in accordance with agreed contractual or Service Level Agreements.
* By making a claim in the County Court where there is a realistic prospect of obtaining payment of the debt under a County Court Judgement (CCJ) and the use of the County Court recovery processes. The decision to apply for a CCJ needs to be cost effective due to the prescribed fees for taking action in the County Court.
* Use of the High Court Sheriff Service where the debt exceeds £600 and the Council is aware that the customer has assets or an income stream.
* In circumstances where the value of the debt is over £5000, and where other methods of recovery have been exhausted, the Council may consider instigating insolvency proceedings against a debtor. More detail relating to considerations regarding insolvency proceeding can be found in the Fair Debt Policy.

# Monitoring recovery of overpaid Housing Benefit

The recovery of Housing Benefit Overpayments will be monitored by the Council on a quarterly basis through the following performance indicators:

* The amount of overpaid Housing Benefit which has been recovered during the period 1st April to 31st March hereinafter referred to as “the Period” as a percentage of total amount of overpaid Housing Benefit identified during the Period.
* Amount of overpaid Housing Benefit recovered during the Period as a percentage of the total amount of Housing Benefit overpayment debt outstanding at the start of the Period **plus** amount of overpaid Housing Benefit identified during the Period.
* Amount of overpaid Housing Benefit written off during the Period as a percentage of total amount of overpaid Housing Benefit debt outstanding at the start of the Period

Other statistical and relevant management reports will be run by the Revenue and Benefits Systems team on a weekly, monthly and quarterly basis to assist with monitoring of the effectiveness of the recovery of overpaid Housing Benefit.