



EAST CAMBRIDGESHIRE
DISTRICT COUNCIL



Forest Heath
District Council

The Anglia Revenues and Benefits Partnership

Overpayments Policy

Benefits Service
Author: Steve Knights

28th February 2008

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DOCUMENT SPONSOR (Client Officers):

Breckland - Paul Calkin

Forest Heath – Andrew Claydon

East Cambridgeshire – Alex Colyer

DOCUMENT AUTHOR:

Steve Knights

Anglia Revenues and Benefits Partnership

DATE DOCUMENT APPROVED AT:- Joint Committee of the ARP:

LAST REVISION DATE: 28th February 2008

NEXT REVISION DATE: 28th February 2009

OVERPAYMENTS POLICY

ANGLIA REVENUES PARTNERSHIP

PRIMARY LEGISLATION

Social Security Administration Act 1992, The Child Support, Pensions and Social Security Act 2000.

SECONDARY LEGISLATION

The Housing Benefit Regulations 2006, The Council Tax Benefit Regulations 2006, The Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001.

INTRODUCTION

Breckland Council, Forest Heath District Council and East Cambridgeshire District Council working together as The Anglia Revenues Partnership (ARP) under authority of Section 101(b) of The Local Government Act 1972, recognise that overpayments of benefit do occur. In order to reduce the loss of public funds the ARP will ensure that firm but fair action is applied in the administration of overpayments. Positive action in the recovery of overpayments has a deterrent effect. However, in the overpayments process and that of recovering any overpayment of benefit the Councils, through the ARP have the responsibility to:

- a) Act in accordance with Primary Legislation (being that of an Act of Parliament, Order or other Statutory Requirement);
- b) Comply with the requirements of Secondary Legislation (being that of the Housing Benefit Regulations, Claims and Payment Regulations, Decision and Appeals Regulations etc);
- c) Comply with any changes to the above stated Primary or Secondary Legislation;
- d) Identify the overpayment promptly;
- e) Stop the overpayment continuing;
- f) Classify the overpayment correctly;
- g) Determine if the overpayment is recoverable;
- h) If recoverable:
 1. Determine from whom recovery should be sought, and
 2. Determine the most appropriate method of recovery;
 3. Notify claimants and other affected persons of any decision;
 4. Ensure implementation of effective financial control during the overpayments process.

POLICY STATEMENT

ARP will deal with overpayment of Housing Benefit, Discretionary Housing Payments and Council Tax in a professional manner that shows respects for customers, members of staff and anyone else involved in the process and will deal with each overpayment as stated in this Policy document.

OBJECTIVE

This policy is provided to ensure that the Local Authorities through the ARP fulfil their statutory requirements. The overpayments policy helps to ensure that the legislation is adhered to and that overpayments are recovered appropriately, in a fair and open manner.

EQUALITY

ARP is committed to equality of opportunity and valuing diversity in both the provision of services and in its role as a major employer. We believe that everyone has the right to be treated with dignity and respect. We are committed to the elimination of unfair and unlawful discrimination in all our policies, procedures and practises. We are determined to ensure that no member of the public, employee or job applicant receives less favourable treatment on the grounds of their age, child care or other caring responsibilities, disability, gender, HIV status, language, marital status, race, religion, sexuality, membership or non-membership of a trade union, or by any requirement which cannot be shown to be justifiable.

DATA PROTECTION

This policy is compatible with Data Protection requirements as the Policy relates to the legal requirement to recover overpayments in accordance with the relevant legislation – as set out above.

CRIME AND DISORDER ACT

This policy is compatible with Section 17 of the above act. All staff are aware of their responsibilities and duty under this, and are mindful of its relevance. It is part of the induction process and training programme.

BEST PRACTICE

This policy reflects best practice in the procedure for dealing with and the recovery of overpaid Housing benefit, Discretionary Housing Payments and Council Tax Benefit.

The policy should be flexible in its approach to recovery of overpayments. Each case will be considered on its own merits. The Councils and the ARP recognise that a policy, which, for example, requires recovery in all cases or where recovery is always made from specific categories of claimants, is unlawful.

This policy has regard for the rights of individuals and obligations of each Councils under the provisions of the Human Rights Act 1998.

APPLICATION OF THE POLICY

The policy should be applied to all cases where an overpayment of benefit may occur and all identified recoverable overpayments; this is any amount of housing benefit which has been paid, but to which there is no entitlement whether on initial decision or on a subsequent revised or suspended decision. In most cases overpayments can arise in consequence of:

- a) Payments being made in advance;
- b) Late disclosures of changes in circumstances;
- c) Errors made by the claimant in completing the application form or subsequent review form;
- d) Claimant fraud;
- e) Official errors made by the ARP, the Local Authority, or other Statutory Benefits Departments;

Overpayments in the case of e) above are only recoverable if the claimant or person from whom recovery is sought could reasonably have been aware that the overpayment was occurring at the time when the overpayment occurred.

IDENTIFICATION OF OVERPAYMENTS

The ARP will endeavour to act on any information received in relation to a claimant's change of circumstances within seven days of having sufficient information to identify an actual or potential overpayment has or may be occurring.

Such action should, in the first instance, include suspending further ongoing payments of incorrect benefit. The ARP will then terminate the benefit entitlement after one calendar month from the date of suspending.

The ARP will endeavour to identify any changes of circumstances, resulting in an overpayment that is outstanding over seven calendar days by:

- a) Identifying communications from the DWP notifying of Income Support or Income Based Jobseekers Allowance having stopped.
- b) Identifying communications from fraud sections requiring action; identifying incoming post that indicates a change of circumstances.

DECISIONS ON RECOVERABILITY

In cases where an overpayment of benefit has occurred the ARP will consider current legislation in deciding whether an overpayment is recoverable.

In doing so the ARP will consider whether an official error caused or contributed to the overpayment.

The ARP will have regard for legislative requirements in deciding whether to recover any overpayment or part thereof, which was caused by official error, or to which an official error materially contributed.

CLASSIFICATION OF OVERPAYMENTS

All overpayments, whether recoverable or not, must be classified by an officer of the ARP who is appropriately trained to sufficient standards that will allow for the correct application of the law in this decision making process.

Officers responsible for the classification of an overpayment must record the classifications and reasons for it on the benefits computer system.

WHO SHOULD THE OVERPAYMENT BE RECOVERED FROM?

Before recovery action is undertaken, in each case consideration should be awarded to the relevant facts of the individual case. This may mean that further specific information will need to be obtained from affected parties prior to a decision being made. Recovery should be made from the most appropriate person who may be:

- a) The claimant, or
- b) The person to whom the payment was made, If this was the Landlord recovery can only be made from them if they could reasonably have known that they were being overpaid, or
- c) The person who misrepresented the material fact or failed to disclose the fact, or
- d) The partner of the claimant. However regulations provide that this can only be the case where the partner was living as a member of the claimant's family at the time of the overpayment and at the time of the decision being made in respect of recovery.

Recovery of fraudulent overpayments, should, in the first instance, be sought to be made from the person who misrepresented or failed to disclose material facts giving rise to the overpayment.

METHOD OF RECOVERY

Appropriate means of recovery should be considered in all cases. Recovery should be by one of the methods below, which in normal circumstances should be in the following priority order:

- a) Arrears of benefit owed by the ARP, but only if the arrears are for same period as the overpayment;
- b) Ongoing housing benefit deductions;
- c) Deductions from other DWP benefits;
- d) Deductions from housing benefit payments made by other local authorities;
- e) Sundry debtor invoices;
- f) Court action.
- g) Debt Collection Agencies

A period of not less than one month from the date of the overpayment decision being issued should elapse before recovery action is implemented. The issue of an invoice is not considered to be recovery action as the ARP has a statutory duty to notify the customer of the details of the overpayment. This will allow for the claimant to notify any circumstances that may affect the level of the overpayment, in addition to allowing time for the affected persons to register any appeal rights that they may wish to enact, or to reach a mutually acceptable arrangement for the recovery of the overpayment.

In respect of ongoing housing benefit deductions, the standard rate should be applied as per the amounts laid down by Regulations, unless having regard to the health and/or financial circumstances and/or housing risk or need of the person from whom recovery is sought a lesser sum is deemed appropriate. Regard must always be made to any regulation that may provide for a minimum amount of housing benefit remaining in payment.

When recovery is sought from a bankrupt, recovery should be sought via ongoing benefit entitlement or from other prescribed benefits before considering any court action. No recovery can be sought on recoverable overpayment decisions made prior to a person being made bankrupt, once they are discharged from bankruptcy.

Where the case involves the death of a claimant, the deceased's representative or executor should be approached to seek recovery from the estate. However, the overpayment should not be recovered from ongoing benefit deductions from the surviving spouse.

PERIOD OF OVERPAYMENT CALCULATION

The period over which the overpayment is calculated should be from the start date of the overpayment or no longer than a six year period, whichever is the later, except in the case of a fraudulent overpayment.

In the case where it is decided that the overpayment was caused with fraudulent intent or knowledge, recovery should be made from the start date of the overpayment.

CALCULATION OF OVERPAYMENTS

Where an overpayment is identified the ARP will invite claimants to provide sufficient evidence to establish any underlying benefit entitlement.

The ARP will endeavour to carry out the calculation of the overpayment within 14 days of its receipt of any written notice of change and any further information that is reasonably required for the correct administration of the overpayments procedure as is required by regulations.

MAXIMUM AMOUNT

The full amount of the overpayment should be recovered, unless after having regard to the health and or financial circumstances and/or housing risk or need of the person from whom recovery is sought, a lesser amount would be more appropriate.

MAXIMUM PERIOD OF RECOVERY

In all cases the overpayment should be recovered as quickly as possible. The maximum period over which a debt is recovered will be considered in each case.

DECISION NOTICES

All decision notices must be dated and issued to all the “affected persons” as prescribed by the regulations within 14 days of the ARP having reached that decision.

All decision notices must fully comply with the requirements of legislation, including the reasons for the decision, the right to request a statement of reasons and time limits for doing so, the affected person’s right of revision/appeal and time limit for doing so.

Copies of the actual decision notice must be retained for a period of not less than 13 months in order that they may be retrieved and produced in the event of a future review/appeal/complaint or civil proceedings.

RECOVERY OF OVERPAYMENT DEBT

The ARP will seek to recover all recoverable overpayments of benefit in its statutory duty to reduce any loss to public funds. In doing so the ARP will have regard to:

The cause of the overpayment;

The period of time that the debt may take to be recovered;

The effect of recovery on the affected person from whom recovery is sought;

The ability to repay the affected person from whom recovery is sought.

All methods of recovery may be considered at any time, having regard for the circumstances of any individual case.

The ARP may reconsider the methods used to recover overpayments at the end of each financial year for effectiveness and efficiency.

The ARP will have regard to the Performance Measures set by the DWP and strive to improve rates of recovery year on year