



MANCHESTER
CITY COUNCIL

Housing Benefit Overpayments
Revenues and Benefits Unit

Debt Recovery Policy 2021/22

1. Introduction

This policy document explains the Council's policy in respect of the recovery of Housing Benefit overpayments.

This policy complies with the key legislation covering overpayment recovery in the Housing Benefit Regulations.

Almost all overpayments of Housing Benefit are legally recoverable except for those caused by official error. The Council is committed to the recovery of all overpayments where appropriate.

Overpayment types

Overpayments can arise for a number of reasons and for subsidy purposes will fall into the following categories:

- **Claimant responsible.** This includes claimant or responsible person error and those overpayments caused by fraudulent intent.
- **Department for Work and Pensions (DWP) error.** This is for overpayments where the DWP have clearly accepted responsibility. Overpayments caused by migration to Universal Credit also fall within this category.
- **Local Authority error.** This includes overpayments caused by delay in processing claims which are calculated automatically by Council systems during the subsidy claim process.
- **Indicative Rent Level overpayments.** This is where the overpayment is caused by the Rent Service setting a rent for benefit purposes below the indicative rent figure previously used. This can only apply to Rent Allowance claims.
- **Duplicate payments.** This is where Housing Benefit has been paid twice to the same person for the same period.

With the exception of some DWP or local authority (LA) error cases, all overpayments are legally recoverable.

The Council will seek to recover overpayments where appropriate recognising that there will be some circumstances where recovery will not be possible. Details on when overpayments may not be recovered is contained in the Housing Benefit Overpayments Write Off Policy.

The Council wishes to prevent and deter fraud so special arrangements will apply to any fraudulent overpayments.

2. Overpayment decisions

When an overpayment has been identified the Council must make decisions about whether an overpayment is recoverable and from whom it should be recovered in respect of each individual overpayment.

Overpayments are normally recoverable unless caused by DWP or LA error. Benefit Officers will make this decision.

The Council will decide who the overpayment should be recovered from. The law says that an overpayment can be recovered from both the claimant and the person to whom the overpaid benefit was paid, normally a landlord or managing agent.

In practice the Council will normally recover from a landlord or managing agent, where they received the overpaid benefit, in these circumstances:

- Overpayments caused by rent decreases;
- Overpayments caused by a claimant moving out of Manchester; and
- Overpayments following a claimant's death.

This list is not exhaustive and there may be other reasons where recovery from a landlord or managing agent is appropriate. A test of reasonableness and fairness will be applied when deciding who should be asked to repay the overpaid benefit. This decision is recorded in the Council's systems.

Where a landlord or managing agent has been paid direct, but the cause of the overpayment is a change in the claimant's personal circumstances (an increase in income for instance), then it is reasonable to expect that the landlord or managing agent would not have known about the change. In these circumstances, recovery will be sought from the claimant.

3. Recovery methods

The following methods are available to the Council: -

- Deduction from ongoing Housing Benefit;
- Deduction from arrears of Housing Benefit;
- Deduction from Universal Credit and other social security benefits;
- Deduction from ongoing benefit by other local authorities when the debtor has moved away;
- Deduction from other claimant's benefit where it has been paid to the same landlord or managing agent as the overpaid claimant;
- Deduction from rent account credits (Council tenants only);
- Invoicing with the subsequent use of external debt collection agencies;
- County Court action, including the use of bankruptcy proceedings where appropriate;
- Deduction using Direct Earnings Attachments. Information about employers is obtained from HMRC to facilitate these.

The Council will usually choose to recover overpayments from credits on accounts or arrears of benefit and from ongoing benefit as these are the most cost effective and easily administered methods of recovery. However, where the claimant is known to have significant capital or instalments would continue for several years, other approaches may be more appropriate.

In all cases the Council must tell the claimant (and landlord/managing agent if appropriate) in writing how the overpayment will be recovered.

The Council will always consider any alternative proposals to repay an overpayment.

4. Recovery process

Invoices are produced in all cases but not printed where an overpayment is being recovered from ongoing Housing Benefit.

If there is no payment or contact, a reminder is automatically generated 28 days after the invoice.

If there is still no payment or contact, a final reminder is automatically generated 28 days after the reminder.

If there remains no contact, the overpayment is reviewed for further recovery action.

5. Review process

When the automatic recovery process ends and an invoice still remains unpaid, it reaches the review stage. At this stage each overpayment will be reviewed to determine next steps.

This review consists of checks for: -

- Other methods of recovery that have become available (for example from ongoing benefit, from Council Housing rent credits etc.) If they have, these will be implemented immediately;
- That the overpayment is still valid. If not, because a subsequent amendment has reduced or removed the overpayment, the invoice should be written off and, if necessary, an amended invoice issued;
- Whether the DWP could deduct the overpayment from payments they are making;
- Whether Direct Earnings Attachments are an option;
- That the current address of the debtor is still known. If the address is not known, then efforts will be made to trace the current address by using all available tracing methods;
- If the debtor has significant assets, principally his/her own home, that may make bankruptcy an option for the Council to consider.

6. Further action

Where no other methods of recovery are available following the non-payment of an invoice and a full review the following action will be taken:

6.1. Landlord/managing agents

If a landlord/managing agent is receiving payments for other tenants, deductions will be taken at the earliest possible time from these payments.

Where possible the overpayment will be recovered in one lump sum. Instalment recovery will only be appropriate when dealing with small landlords or large overpayments.

Landlords will be notified in advance of any such deductions from their payments in order to comply with regulations.

If a landlord is no longer receiving benefit for any tenants, the overpayment will be referred to an external debt collection agency.

All such decisions are recorded in the Council's systems.

6.2. Claimants

After consideration of the range of recovery methods and recognising the debtor's circumstances any suitable method will be implemented. The Council recognises the impact of covid 19 on resident's income and will take this into account when making an arrangement to clear the overpayment over time.

In the absence of any other recovery method outstanding overpayments will be referred to an external debt collection agency.

7. Overpayments returned by external debt collection agencies

Collection agencies will return some overpayments either fully or partially un-recovered, checks will be made to identify if another recovery action has become available since the debt was referred.

If another recovery method is now available, this will be used.

If there are no further recovery options, the Council's systems will be updated so that appropriate action can be taken to recover the overpayment from any future benefit payments.

8. Instalment agreements

If there is a request to repay an overpayment by instalments, this will be considered by the Council.

Any agreements need to take into account the claimant's circumstances, including the impact of covid 19, the offer being made and the Council's need to recover the overpayment promptly and efficiently. Every effort will be made to agree a mutually acceptable and affordable arrangement. These efforts are based on the income expenditure statements that are required as a pre requisite to setting up an arrangement. Proof of income, expenditure, details of other debts and bank statements may also be requested.

As a general rule the Council does not expect that an instalment arrangement should exceed 12 months, but recognises that this cannot be an absolute requirement, especially if the claimant has other debts to the Council.

The Council will not usually allow a landlord or managing agent to defer repayment by an arrangement to pay in instalments but will consider if there are extenuating circumstances.

Where an overpayment has arisen due to fraud, it is expected that the debt will be recovered in the shortest timescale possible. Where deductions from ongoing benefit are used, the instalments should usually be at the maximum levels prescribed for fraud cases.

9. Fraud overpayments

The Council is committed to punishing fraud where it is found. Because of this, different procedures apply to overpayments caused by fraud.

The maximum recovery rate from ongoing benefit as set by the DWP will apply where a court conviction or Administrative Penalty has been obtained. If the claimant or responsible person is not in receipt of Benefit, a payment arrangement will be considered based on ability to pay and the payment plan is recorded in the Council's systems.

Where an Admin Penalty has been agreed between the claimant or responsible person and the DWP as an alternative to being prosecuted, the amount of the overpayment is increased by 50%. These overpayments and penalties are monitored separately.

The DWP will inform the Council when an Admin Penalty can be applied. These cases are recorded in the Council's systems

10. Bankruptcies

The Council recognises the efficacy of the bankruptcy process in some circumstances as a method to recover overpayments and will consider bankruptcy in the following circumstances;

- Where the debt is over £5,000;
- Where the debtor has a significant asset;
- Where the debtor has a large debt and fails to engage, especially if the overpayment was caused by fraud.

The process will be most effective against landlords, and all overpayments over £5,000 that we seek to recover from landlords will be considered for referral for bankruptcy.

Details of all cases of Council Tax arrears that are being referred for Insolvency proceedings will be checked to see if any of the debtors have outstanding overpayments that could be added to the petition for bankruptcy.

11. Review of this policy

This policy will normally be reviewed on an annual basis or sooner should there be any change in legislation affecting its operation.