



# HOUSING BENEFIT OVERPAYMENT POLICY

**Responsible Director:** Director of Homes and Wellbeing

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## D5 Housing Benefit Overpayments

### The Regulations

#### 1. What is an Overpayment?

- 1.1 An overpayment is any amount of Housing Benefit that has been paid but to which there was no entitlement.
- 1.2 It includes any amount paid on account (i.e. interim payments) which is in excess of the actual entitlement as subsequently determined.

#### 2. How do Overpayments Arise?

##### 2.1 Claimant error or misrepresentation.

*e.g.*

- Incorrect information on Housing Benefit form.
- Failure to notify Local Authority of change in circumstances.

##### 2.2 Local Authority error.

*e.g.*

- Failure to act on notification from customer or NCHA of change in circumstances. Housing Benefit may continue to be paid after a tenancy has ended, despite this information having been given to the Local Authority.
- Miscalculation of benefit.

##### 2.3 Benefit Agency's error.

*e.g.*

- Incorrect award of Income Support (**n.b.** this does not include failure to notify Local Authority of ending of entitlement to Income Support).

##### 2.4 Third party error.

*e.g.*

- NCHA gives Local Authority incorrect information on rent.
- Customer's employer gives Local Authority incorrect information on income.

## 2.5 Payments on Account

*e.g.*

- When a customer has received interim payments of Housing Benefit which are subsequently found to exceed their actual entitlement.

## 2.6 Other causes.

*e.g.*

- Customer receives backdated pay increase or social security benefit.
- A change of circumstances is reported on the day it occurs, but Housing Benefit has already been paid in advance.

## 3. What Overpayments can be Recovered?

3.1 Any overpayment can be recovered by the Local Authority except some which are due to official errors i.e. where the customer or a person acting on their behalf or any other person to whom the payment was made (including a landlord) could not reasonably have been expected to realise that an overpayment was being made either at the time of notification or at the time of payment.

3.2 So, for instance, if the Local Authority calculated the Housing Benefit incorrectly and neither the customer nor NCHA could reasonably have known payments were incorrect there is no **entitlement** to recovery.

**n.b.** Regulation 100 merely sets out which overpayments are **recoverable** - not those which **must be recovered**. Local Authorities are under no obligation to recover overpayments, although they are encouraged to do so by their subsidy arrangements. Local Authorities must consider each overpayment case on its own merits, and they should not operate a blanket recovery policy (such a blanket policy is outside the scope of the Authority's powers, and can be challenged by judicial review).

## 4. From whom can Overpayments be Recovered?

4.1 A Local Authority can recover an overpayment from the customer, or from the landlord where Housing Benefit has been paid direct, or from any other person who has acted on behalf and misrepresented or failed to disclose relevant information - even if they have not received the Housing Benefit themselves.

## 5. How should Overpayments be Recovered?

### Notification

- 5.1 If a Local Authority decides to recover an overpayment, it must notify the person from whom they are seeking recovery of:
- a) The fact that there is a recoverable overpayment;
  - b) The reason why the overpayment arose;
  - c) The amount of the overpayment;
  - d) How the overpayment was calculated;
  - e) The benefit weeks to which the overpayment relates;
  - f) If recovery is to be made by deduction from ongoing benefit, that fact and the amount of the deduction
  - g) The right of the person from whom recovery is being sought to request a written statement as to the reasons behind the decision to recover the overpayment and the time and manner in which they may do so;
  - h) The right of the person from whom recovery is being sought to appeal against the decision to recover, and the time and manner in which they may do so.
- 5.2 Any request to repay an overpayment which does not include **ALL** of the above is invalid.

(The principal importance of this is that the time limit within which an appeal can be lodged cannot be enforced).

## 6. Methods of recovery by the Local Authority.

### 6.1 Deduction from composite payment (such as a schedule of payments).

#### LAWFUL

The effect is to pay less than the full entitlement to the customers covered by the composite payment. Section 16 of the Social Security Administration Act (Fraud) 1997.

## 6.2 From backdated Housing Benefit.

### LAWFUL

Backdated Housing Benefit may be withheld to recover all or part of an overpayment.

(e.g. Local Authority becomes aware of a change in circumstances and stops payment. The claim is re-assessed after six weeks and £100 overpayment is identified. Meanwhile, six weeks ongoing Housing Benefit of £20 a week is due (total £120). The overpayment can be recovered from the backdated Housing Benefit leaving £20 backdated benefit to be paid.

## 6.3 From ongoing Housing Benefit.

### LAWFUL

Where benefit is paid direct to NCHA, deductions can only be made if the customer is still entitled to Housing Benefit and lives in accommodation provided by NCHA. Local Authorities will seek to recover overpayments from the customer via deductions if they are still entitled to Housing Benefit. If the customer is claiming Income Support, they will deduct a minimum of payment set by Government, however the claimant can contest this amount and ask for it to be reduced. In cases of fraud the deduction will be higher.

The Local Authority has the power to deduct an ongoing overpayment, even if this is from another address. This would cease if it was another Local Authority the claimant moved to and an invoice would be sent to the customer at their new address. The claimant would then need to set up a payment plan to clear the outstanding amount.

## 6.4 By invoicing customer.

### LAWFUL

Customer can pay in instalments or with a lump-sum.

## 6.5 By invoicing landlord.

### LAWFUL

But only where Housing Benefit was paid direct.

REASONABLE

If the overpayment was official error and NCHA could reasonably have been expected to realise that Housing Benefit was overpaid. e.g. if Housing Benefit direct was paid after a tenancy ended and NCHA had notified the Local Authority of this.

UNREASONABLE

If the overpayment was caused by claimant error e.g. failure to notify change of circumstances of which NCHA had no knowledge.

**6.6 By deduction from Social Security Benefit.**

- a) This can be requested by the Local Authority if it is unable to recover the overpayment by deduction from Housing Benefit (ongoing or arrears)
- b) The overpayment was caused by misrepresentation or failure to disclose a material fact (either innocently or deliberately) by the person from whose benefit recovery is to be sought.
- c) In practice, the Local Authority will always seek to recover overpayments from NCHA if Housing Benefit has been paid direct.

**7. Agreements to Repay**

- 7.1 Where Local Authority will only pay Housing Benefit direct if landlord signs agreement to repay any/all overpayments.

INVALID

Local Authorities are obliged to pay Housing Benefit in some cases (see pages 10-11 of NCHA's Arrears Policy & Procedure - Housing Benefit Direct) These cannot therefore have any strings attached to them; some overpayments are not recoverable - it is unlawful for a Local Authority to demand repayment without testing recoverability first; operating a blanket recovery policy is unlawful - each case must be looked at individually - a blanket policy is fettering the Authority's discretion.

It can be seen as landlords waiving their right of appeal if they agree to repay in advance - (if Local Authorities recognise that landlords may want to appeal against a decision to recover an overpayment, it negates the agreement to repay)

Therefore, even though we would normally sign agreements to repay overpayments in order to receive Housing Benefit, they are not binding and we should investigate every invoice to check whether it should be paid.

## **8. Points To Watch**

### **8.1 Identify areas where the Local Authority is acting UNLAWFULLY:**

- a) Insisting on agreements to repay.
- b) Failing to send proper notification.

### **8.2 Identify areas where Local Authority is acting UNREASONABLY:**

- a) Requesting repayment of overpayments from landlord in every case.
- b) Deducting overpayments from backdated Housing Benefit.

## **9. Ways of Challenging the Local Authority**

### **9.1 Consider using the appeal procedure:**

- a) Appeals Section of Housing Benefit Department.
- b) Overpayments Tribunal.
- c). Legal action via NCHA's Solicitors.

## **Housing Benefit Overpayments and NCHA**

## **10. Overview and Summary**

10.1 Overpayments occur where Housing Benefit has been paid direct to NCHA in excess of the customer's entitlement. The customer's circumstances may have changed or the tenancy has ended and Housing Benefit has continued to be paid.

## **11. Examples of where Housing Benefit Overpayments may occur:**

- a) A customer's Income Support might stop and the customer's new income may preclude any further entitlement to Housing Benefit. If Housing Benefit has continued beyond the customer's legitimate entitlement period, NCHA will have received Housing Benefit which will need to be refunded to the Council.

- b) A customer's circumstances may have changed e.g. they may lose entitlement to Income Support or due to changed income. In these circumstances, a customer's entitlement may continue at a lower rate and the Housing Benefit Department can deduct the overpayment from continuous benefit at an agreed rate. The customer will need to pay this additional contribution towards their rent.
- c) A customer's entitlement to Housing Benefit may cease once their new partner moves in and claims Income Support. The customer may then have been overpaid Housing Benefit. The Treasury can be asked to deduct this as a lump sum from the couple's, now joint, claim, however, this should only be contemplated if it does not cause financial hardship.
- d) An overpayment invoice could be received which might be entirely the result of an official error. If this occurs, the Local Authority should be asked (in writing) to review their decision.