

Woking Borough Council - Housing Benefit Overpayment Policy (updated 2023)

1. AIMS OF THE POLICY

To correctly identify, administer and account for overpayments of Benefit, ensuring compliance with regulations, respect for customers' rights, sensitivities and circumstances, whilst making all reasonable efforts to maximise the Authority's recovery income.

- 1.1. Having a policy:** The Authority must be committed to operating a written strategic framework with a mechanism to review the policy terms and objectives and ensure its equitable, fair application, legal compliance and financial soundness.
- 1.2. Complying with Regulations:** The Policy will ensure we meet all statutory requirements and fully comply with benefit regulations and proven best practice in the determination, notification, re-determination and recovery of overpayments. Decisions will be made on the merits of each individual case and not by the use of blanket policies.
- 1.3. Protecting Customer Rights:** The Policy will ensure full promotion and protection of customer rights, the operation of a fair, equitable and effective decision-making process and appeals procedure.
- 1.4. Giving Customer Service:** The Policy will adhere to the customer care policy.
- 1.5. Avoiding causing Hardship:** The Policy will ensure that decisions on overpayments maintain a balance between effective recovery of the debt and avoiding the causing of financial hardship to those on a low income.
- 1.6. Maximising recovery/subsidy where possible:** The Policy will ensure that recovery/subsidy is maximised as far as possible through efficient administration, the use of legal sanction for wilful non-payers and defaulters, and that payments and subsidy are properly accounted for.
- 1.7. Having proper rules and procedures:** The Policy will ensure that proper written rules, controls and procedures operate, including sound quality control check mechanisms that operate to approved internal audit standards.
- 1.8. Ensuring Performance Review:** The Policy will ensure that the Authority will undertake a regular review of the policy and performance against objectives through an annual service plan.

2. DEFINITION OF AN OVERPAYMENT

- 2.1** An overpayment is an amount of Housing Benefit received by a Claimant or landlord to which that person is not entitled under the Regulations.

3. FROM WHOM TO RECOVER

- 3.1** If monies have been paid to the Claimant directly, the Overpayment can only be recovered from:-
 - 3.1.1** The Claimant, or
 - 3.1.2** If the Claimant or their partner are overpaid and they were a couple at the time of the overpayment, it may be recovered from either partner as long as they still remain a couple.
- 3.2** If monies have been paid direct to the Landlord or the Landlord's agent, the overpayment can be recovered from this party if, for example, the Landlord could be reasonably expected to know when a Claimant had moved out or if a partner had moved out (eg with a resident Landlord).
- 3.3** If the Landlord is not culpable in the cause of the overpayment, the Claimant will be pursued for the overpayment.
- 3.4** Each of the above decisions should be made on its own circumstances and the reasoning recorded on the system.

4. THE CURRENT SITUATION

- 4.1** At the moment, the overpayments are recovered in one of the following ways:
 - 4.1.1** By deduction from ongoing benefit for Private tenants and Council tenants. The claimant then has to find the shortfall in rent to pay his/her landlord. Maximum deductions are recommended to ensure hardship not endured.
 - 4.1.2.** Where no benefit is in payment an invoice is issued to either the tenant or landlord and then the Authority considers its recovery procedures.
- 4.2** Some older Private Tenant and Council tenant overpayments continue to be recovered by sundry debtors.
- 4.3** The Authority should also promote recovery from other on-going Social Security Benefits.
- 4.4** We refer to HBDS to acquire employment information and attempt recovery from earnings, prior to referral to Legal

5. BACKGROUND TO OVERPAYMENTS

- 5.1.** The rules and regulations governing Housing Benefit and especially overpayments are widely known to be complex. They often cause deep concern for claimants who are often in financial hardship. Poor administration of overpayments costs the Council money in subsidy loss.

- 5.2.** The correct calculation of benefit is dependent on claimants keeping the Council informed about their income, savings and household circumstances. Claimants are also expected to tell the Council about every change of circumstance that occurs at the time it occurs. Whilst the Benefit Section frequently reinforces this, this is frequently not the case, so overpayments occur. The Benefit section also complies with the Verification Framework scheme.
- 5.3.** Overpayments of benefit regularly occur in respect of claimants who still remain on a low income. The potential for successful recovery is very low and any repayments are often long term arrangements at low payment rates. The sooner overpayments are dealt with, then the more successful recovery can be. In addition, the proper and timely administration of Benefit claims can reduce the level of overpayment debt.
- 5.4.** The Benefit System is designed to support people on low incomes. A delicate balance has to be struck between deciding whether it is reasonable to recover an overpayment and the need to maximise recovery. This policy document therefore determines the service standards the Council expects in the administration of Benefit Overpayments.
- 5.5.** Staff must understand and apply all appropriate Regulations and classify individual benefit payments and overpayments for subsidy purposes. The complexities of the Regulations and the potential financial implications emphasise the importance of on-going training for all staff and for the effective management arrangements in respect of quality control, monitoring of overpayments and the maximisation of recovery income.

6. LEGAL RESPONSIBILITIES

- 6.1** Various legal/statutory duties, outlined in Regulations, specify how Local Authorities must deal with overpayments of Housing Benefit. Most importantly, these prescribe that decisions must be made on the merits of every individual case and therefore preclude the operation of blanket policies for the determination and recovery of overpayments.
- 6.2** The Policy must ensure full compliance with benefit regulations and proven best practice in the determination, notification and recovery of overpayments. These are summarised as:
- 6.3** Local Authorities administering and paying housing benefit are under a legal duty to:
- 6.3.1** make determinations (i.e. make individual decisions) on all relevant changes of circumstance
 - 6.3.2** make separate legal determinations on whether individual overpayments are recoverable
 - 6.3.3** exercise discretion in deciding whether to recover recoverable overpayments

- 6.3.4** exercise further discretion who to recover from, by which method and at what rate
- 6.3.5** send specified notifications to claimants/landlords informing them of the determinations made
- 6.3.6** give all persons affected a right a appeal against any or all of the above determinations and
- 6.3.7** make re-determinations on internal review.

7. FINANCIAL RESPONSIBILITIES

- 7.1** Statutory Benefit Subsidy Orders specify that overpayments, subsequently not recovered, have to be mostly paid for by the Council through loss in Central Government subsidy. Most Housing Benefit paid out under the General Fund is claimed back from the DWP through the annual subsidy claims. The subsidy rules are designed to act as an incentive for authorities to minimise error and overpayments and to maximise recovery of recoverable overpayments. It is therefore financially prudent for Local Authorities both to minimise the incidence of overpayments and to seek to maximise recovery of overpayments.
- 7.2** The standard rate of reimbursement for Housing Benefit paid is up to 100%, reducing to 40% for identified overpayments caused by claimant error and right down to 0% for those caused by Authority error (above a threshold figure). Overpayments caused by fraud are reimbursed at 40% and given the cause of such overpayments, there is an expectation that the overwhelming majority of cases should be considered recoverable from the persons who have either committed or significantly contributed to the fraud. The Council is entitled to keep 100% of the income collected from overpayments recovery in addition to any subsidy claimed.

8. PREVENTION AND IDENTIFICATION

- 8.1** Benefits staff will need to be made aware of the causes, existence and implications of overpayments through a range of training and feedback mechanisms as well as a comprehensive and continuously updated Procedures Manual. Feedback will include the information provided by Overpayment Officers on both a general and individual basis and the causes and amounts of Local Authority errors. For assessment officers whose decisions or omissions may cause overpayments, this feedback will be incorporated in their individual One to Ones and appraisals.
- 8.2** Overpayment awareness and refresher training opportunities will be offered and reinforced through these.
- 8.3** Overpayments will be identified for action through daily computer generated letters highlighting all assessment decisions resulting in overpayments.

9. DETERMINATION AND DECISION

- 9.1** The Benefit Regulations relating to overpayments are written to ensure that:
- 9.1.1** overpayments must be firmly established with clear reasons and evidence before recovery can be considered and a notification in writing,
 - 9.1.2** most overpayments are treated as recoverable unless they are caused by an error or delay by the Local Authority which the claimant could not have been aware of,
 - 9.1.3.** Local Authorities themselves have a wide discretion whether to recover overpayments, including all recoverable ones, taking into account the circumstances of the person who has been overpaid. Such factors to be considered are reason for the overpayment, age, infirmity and the hardship caused as a result of the recovery.
- 9.2** Guidance contained in the DWP Manual states that *"Local Authorities should always have regard to the circumstances of the person from whom they are seeking recovery. Authorities should take account of the health and financial circumstances of the person before deductions or recoveries are implemented to ensure hardship is not caused either directly to that person or any of their dependants"*.
- 9.3** Decisions who to recover from will in most cases be taken against the tenant or the person who claimed the benefit. In occasional cases, the Landlord or letting agent will be asked to repay overpayments. This is where s/he is deemed to have acted irresponsibly or fraudulently by continuing to accept payments in the full knowledge that there was no entitlement.

10. DISCRETION TO RECOVER

- 10.1** Local Authorities have the power to recover overpayments but that power is discretionary. The decision to recover should be arrived at by careful consideration of the facts and circumstances of each case and each debtor.
- 10.2** The Authority will generally seek to recover overpayments unless it is clearly not reasonable to do so.
- 10.3** There are eight specific categories where it may be deemed not reasonable to recover the overpayment. These categories are set out below together with an explanation of each and the necessary level of supporting evidence required to substantiate this.
- 10.3.1. **Appeal:**** This is where an appeal is outstanding against either the decision that a recoverable overpayment has occurred

and/or the decision to seek recovery of that overpayment, whether an internal officer appeal or an appeal to the DWP Tribunal. This will be a temporary position in that no recovery action will be considered until such time as a decision has been made, the appellant notified of this and given a further appropriate time period to respond. For those appeals adjudicated upon by The Appeals Service, a formal notification from the appeals section/body of an appeal pending will be required.

- 10.3.2. Authority Error:** This is where the Local Authority has accepted that it has made a mistake, or has failed to undertake a proper assessment, or has excessively delayed in dealing with the change of circumstances that resulted in the overpayment, and the claimant could not have known s/he was being overpaid at the time it occurred. This also applies where the Local Authority is unable to substantiate the overpayment with the appropriate documentary evidence of the relevant claim and/or change in circumstances. A formal written declaration by a specified Authority Benefit Officer of the error will be required to substantiate this.
- 10.3.3. Hardship:** This is where a person's financial circumstances are such that recovery of the overpayment would be considered to cause undue financial hardship. This will be established and substantiated by the completion of a standard, detailed income/expenditure form accompanied by evidence of all relevant, stated income, debts and expenditures. Expenditures will be judged against weekly levels specified in accordance with national debt and money management good practice procedures. Expenditure levels which exceed this reasonable/acceptable level will need to be substantiated in the form of documentary evidence of payments due/made or accepted signed statements to this effect. Hardship is also accepted where the person for whom recovery is sought has been declared bankrupt with priority creditors and this has been supported by evidence of order of the court.
- 10.3.4. Ill Health and Age:** This is where a person's mental state or health is such that the recovery action would be unreasonable and potentially cause further ill health, coupled with a continuing, and likely to be persistent, low level of income. This will be substantiated in the form of a letter from a General Practitioner or other professional confirming the severity of the condition, the likely length of time that it will affect that person and negative effects recovery would have.
- 10.3.5. Unable to Locate:** This is where the person who is being asked to repay the overpayment has moved away from the property for which they were claiming and were subsequently overpaid. In these circumstances the case will be checked against the DWP benefit system, and other Council records and then, where relevant, referred to an external tracing agency. If we are not able to locate within 6 months for debts

under £1,000 and 12 months for over £1,000 these can be passed for write off as absconded.

10.3.6. Deceased/No Funds: This is where the person who was overpaid has died and the executors or next of kin have confirmed, by filling in and returning a standard notification, that there are no funds in available funds in the estate.

10.3.7. Underlying Entitlement and Limited Means: This is where, were it not for the Regulations preventing the Local Authority from determining that entitlement, the Claimant's underlying entitlement for all or part of the period of the overpayment has otherwise been substantiated as reducing the value of the overpayment. This must be coupled with a continuing, and likely to be persistent, low level of income and will need to be evidenced by the production of relevant proofs and an income expenditure breakdown.

10.3.8. Not Cost Effective: This is where it is not cost effective to pursue legal or court action to recover the overpayment (as the value of the debt is less than the administrative and other costs of such recovery action). Any overpayment under £250 will not be referred for legal or Court action.

We also will not refer any overpayments to DMS via PDP if under £100 due to the time to recover on the administration trying to chase recovery, when payments have not been received and not cessation report has been entered through.

Overpayments with a balance under £69 not in receipt of Housing Benefit and standard requests for repayment up to Notice of County Court have elicited no response or payment, to be written off. (The £69 is the costs incurred if an Invoice is referred to the County Court)

10.4 All decisions 'not to recover' an overpayment, will be made in accordance with the policy framework, and will be agreed and properly evidenced for audit purposes and subject to an annual compliance audit where considered appropriate. This audit, authorisation policy framework as follows:

10.4.1. Overpayments under £5,000 are referred for write off to the Benefits Team Manager

10.4.2. Overpayments over £5,000 to £10,000 are referred for write off to the Revenues, Benefits & Customer Services Business Manager

10.4.3. Overpayments over £10,000 are referred for write off to the Executive Council Meetings in March of each year for Authorisation by members to be recommended to write off by Section 151 Officer Interim Finance Director

10.5 When making a decision not to recover the overpayment, the Council reserves its right to collect the overpayment at a later date, particularly where misleading information has led to the decision not to recover, or

where a decision not to recover has been made to prevent undue hardship, and the claimants circumstances may have changed.

11. NOTIFICATION

11.1 All Claimants and persons affected who are to be asked to repay overpayments will be sent a legal notification letter, which complies with the format as prescribed in the Regulations. This letter will give a range of information about cause, value and recoverability of the overpayment. The Regulations specify that this notification should be sent within 14 days of the determination being made.

12. FACILITATING PAYMENT

12.1 The Council will seek to facilitate easy and mutually satisfactory repayment levels, offering instalment arrangements where appropriate. Persons who are still in receipt of Housing Benefit will be offered an option to have part or all of their ongoing entitlement withheld until the debt is repaid. Persons who are not in receipt of ongoing benefit will be supplied with an invoice and/or a payment booklet.

12.2 In cases where the debtor appears to be in a position to pay the overpayment at once without causing hardship, then this would initially be requested. However, in the majority of cases, it will not be possible for the debtor to repay the debt in full and in such cases repayment will be agreed at a rate that does not cause undue hardship. In all cases where a subsequent underpayment is for the same period as the overpayment, the overpayment will be recovered in one instalment.

13. LOCATING DEBTORS

13.1 Persons, who have moved from the address for which they were overpaid, or from their last known address, will need to be located. Attempts to locate these people will be made through a series of traces beginning with the Authority's own Benefits and Council Tax records, those of the DWP and liaison with the former landlord. Where all such avenues have been unsuccessful and, where the value of the overpayment is cost effective to pursue, it will be referred to external private tracing agents. (The use of external private tracing agents will be subject to contract and to clear, agreed codes of practice that meet both data protection and human rights principles.)

14. DEFAULT AND REMINDERS

14.1 Good practice and recent legislative reforms place great emphasis on maximum efforts on both parties to reach agreement through conciliation before any legal action is considered.

14.2 Persons who fail to make a repayment arrangement following notification of an overpayment will be sent a reminder 32 days after the initial notification.

14.3 Persons who fail to make a repayment arrangement following the reminder notification will be sent a pre-solicitors letter of the reminder.

14.4 Persons who fail to make a repayment arrangement following a Pre-Solicitors letter within 14 days will have their case looked at for DWP recovery, if live DWP benefits in payment will refer to DMS for recovery, if no benefit in payment the case referred to Civil Enforcement Agents, if this recovery action is not successful,

then the case will be finally passed to Legal for recovery action. A HBDS check will be done prior to referral to legal to try to obtain employers details.

14.5 Persons who default on an existing payment arrangement will be sent a reminder within 14 days of this coming to light via the debtors collection system. Persons who fail to reinstate a satisfactory payment arrangement following a reminder will follow the sequence as above.

14.6 Persons who have a history of regular default and reminders will be considered for fast track to Legal Recovery Stage.

15. WRITE OFF

15.1 The Authority recognises that some proven, recoverable overpayments will be raised as debts but subsequently will not be able to be recovered and will need to be written off. All avenues of effective recovery must be pursued but at if at any time the costs of pursuing appear to be out of proportion to the debt and the probability of collecting, the cost effective solution must be considered in terms of writing the debt off.

15.2 Proven recoverable debts will be subject to the full recovery, collection and legal procedures as outlined in this policy. Those subsequently considered appropriate for write off will be agreed and authorised in accordance with the approved procedures.

15.3 All proven, recoverable debts under £5,000, which are considered for write off will be submitted to the Revenues & Benefit Manager.

15.4 All proven, recoverable debts over £5,000, which are considered for write off will be submitted to the Financial Services Manager Action (Chief Finance Officer/S151 Officer).

15.5 All proven, recoverable debts over £10,000, which are considered for write off will be submitted to the Executive Council Meetings in March of each year.

15.5 Write-off categories will be identified to those for non-recovery as set out in paragraph 10 above.

15.6 Although a decision may be made to write off a debt, the Authority will reserve its right to recover any debt, which has been written off, if it is possible and cost effective to collect it in future.

16. FRAMEWORK FOR DECIDING ACTIONS

16.1 Appropriate enforcement action to recover the debt will normally be taken provided that:-

16.1.1 the overpayment has been determined as a proven recoverable overpayment under the benefit regulations with a decision that recovery is fair and reasonable.

16.1.2 the debtor has been formally notified of these decisions under schedule 6 of the benefit regulations and given the right to appeal

16.1.3 there is no outstanding appeal either to officers or to The Appeals Service

16.1.4 there is no other unresolved dispute as to the amount or cause of benefit overpaid

16.1.5 no recovery is being made from ongoing benefit

16.1.6 payments are not being made under a voluntary agreement and all reasonable efforts to secure regular payment have failed.

16.1.7 Overpayments with a balance under £69 that were created over 2 years ago, not in receipt of Housing Benefit and standard requests for repayment up to Notice of County Court have elicited no response or payment, to be written off.

17. RECOVERY FOR FRAUD

17.1 Where the Authority determines that benefit payments have been made as a result of false information included in applications, or deliberately neglected to be given, consideration will be given to taking legal action against any persons knowingly involved in fraudulent activity. This can act as a future deterrent to that person and others in committing such offences.

17.2 Where we have been successful in recovering a fraud case, we must always seek to publicise the success to deter other. At this stage we would involve the Council's Communications Team.

18. OPTIONS/ACTIONS AVAILABLE

18.1 Where the Authority has made all attempts to secure a payment arrangement as outlined under paragraphs 14 (Defaults and Reminders) above, consideration will be given to taking legal action against the person from whom recovery is being sought.

18.2 Good practice and recent legislative reforms place great emphasis on maximum efforts on both parties to reach an agreement through conciliation before legal action is taken. It is in the Claimants best interests to reach an agreement, as the Claimant would be responsible for not only repaying the debt, but also for any costs incurred where the Council's legal action is successful.

18.3 Recovery action through solicitors will not commence without giving the person, from whom payment is being sought, a reasonable opportunity to reach a mutually acceptable agreement, or to request a review. All overpayment notifications will include an invitation to the person in question to either make a full repayment or negotiate an instalment arrangement if they are not going to submit an appeal.

18.4 The Council will take legal action in cases where an agreement cannot be reached, against any wilful non-payer, persistent defaulters and those who have committed fraud.

18.5 Legal action shall be so defined as:

18.5.1 Court action, and

18.5.2 Direct Earnings Attachment (DEA)

19. COURT ACTION

19.1 Once an Order for Recovery of and Award has been obtained from the Court, consideration will be given to the most appropriate next step.

19.2 Identifying the debtor's assets will be a priority and the results of those investigations will influence the decision on the next course of action.

19.3 The Authority will typically pursue the most appropriate of the following legal actions:

19.3.1 for debts over the specified level, the debt may be registered through the courts using the fast track rules in circular HB/CTB A59 / 98

19.3.2 an oral examination as to the means of the debtor which is taken under oath

19.3.3 an Attachment of Earnings Order whereby an employer must deduct regular payments from salary or wages

19.3.4 a Garnishee Order which attaches a debt to money owed to the debtor from a third party – for example where a debtor is awaiting an insurance claim, or damages etc then the Council can recover its debt from the third party

19.3.5 a Charging Order which attaches a legal charge to property or other securities (i.e. Government Stock and Company shares) owned by the Debtor

19.3.6 a Warrant of Execution which authorises a bailiff or High Court Sheriff (if the debt exceeds £600) to seize goods of the debtor and sell them (also known as distraint)

19.3.7 Bankruptcy/liquidation

19.4 Whilst the use of distraint or bankruptcy are options available, officers do not believe that these are generally effective remedies against the majority of people who have been overpaid benefit and who remain on a low income. There may be very rare occasional cases where such actions could be reasonable, particularly for example, where benefit fraud has been committed by people who were actually in a higher income/capital group, or the person's financial position has improved considerably.

20. LIMITATIONS

20.1 The Council will not take court action for the recovery of benefit overpayments that are statute barred under the Limitation Act 1980.

20.2 Court action may be taken for the recovery of overpayments or enforcement an Order for Recovery of an Award over six years old where the debtor has made payments under a voluntary arrangement but these have stopped.

20.3 Debts caused by benefit overpayments that are statute barred can be chased by the Council without going to court e.g. debt collection agency, recovery from existing benefits.

21. Direct Earnings Attachment (DEA)

21.1 Where the Council are unable to recover an overpayment and the debtor is no longer in receipt of Housing Benefit, we may recover that debt from their earnings. We can approach an employer without the need to go to court and obtain an Order for Recovery of an Award). See Appendix 1 for more detail.

22. PROMOTING RIGHTS

22.1 Notifications of overpayments will clearly state the rights of appeal of the person from whom recovery is sought.

22.2 Appeal decisions are:-

22.2.1 Is the overpayment correct?

22.2.1 Is it recoverable?

22.2.3 Can we legally recover from the person identified as liable?

23. APPEALS

23.1 All decisions to recover overpayments will follow statutory guidance within the regulations promoting rights of appeal to be made within 1 month of the first notification. Any written representations against overpayments received within the 1-month time limit are accepted as appeals. Appeals received will be re-determined and notified to the person who has appealed within a statutory 28-day period.

23.2 Officers will make Claimants and other persons affected who have had their internal appeal turned down fully aware of their rights to ask for a further appeal if they are not satisfied. If a request is received for a hearing by the Appeal Tribunal, the Authority will seek to meet the statutory time limits to set a hearing. Officers will advise Claimants about the operation of the Appeal Tribunal, and provide any assistance, which may reasonably be required.

24. COMPLAINTS

24.1 Complaints are actively welcomed by the Council. All formal complaints in respect of overpayment administration will be recorded, analysed and subject to strict time limits for a response. All formal complaints will be personally dealt with, and responded to, by either a Team Manager or the Revenues & Benefits Manager.

25. PROCEDURES MANUAL

25.1 All processes involved in the administration and recovery of overpayments, and referred to in this Overpayment Policy, will be fully documented.

26. QUALITY CONTROL

26.1 The Authority will ensure that it has in place and operates sound and comprehensive mechanisms to check the quality of overpayments work. A percentage of all cases resulting in overpayments will be quality control checked to ensure compliance with policy, procedures and performance targets, effective financial reconciliation and to identify and provide effective feedback of key issues.

27. PERFORMANCE INDICATORS

27.1 Service and performance issues related to overpayments will be brought to customer/user forums for discussions on key issues for users. Surrey wide benchmarking of performance and results in the area of overpayment will be undertaken through the Surrey Benefits Managers' Group. The annual Benefits Service Plan will include targets for overpayments and performance indicators will be reported on internally monthly. Dedicated budgetary cost centres will allow cost performance comparisons year on year and the performance of external solicitors undertaking legal actions will be actively monitored.

APPENDIX 1

Direct Earnings Attachment (DEA)

Introduction:

New powers have been granted to Local Authorities to increase the recovery of Housing Benefit Overpayments. The new power allows Local Authorities to obtain Attachment of Earnings (DEA) without having to go to Court to get a Court Judgment and subsequent Attachment of Earnings Order.

These regulations are so far only in force in England, Scotland and Wales – and so exclude Northern Ireland, Channel Islands and the Isle of Man.

At present if the overpayment of Housing Benefit is not repaid then the debt is sent to a debt collection agency or court proceedings are instigated which adds costs thereby increasing the outstanding debt owed to the Local Authority. This new DEA process will allow recovery of this money at a lesser cost for both the council and the debtor. It is anticipated that this method of recovery will concentrate on debtor negotiations and encourage an increase in voluntary repayments.

Relevant Legislation:

The following legislation allows Local Authorities to request DEA's:

The Social Security (overpayments and recovery) Regulations 2013 (SI2013 No. 384) Part 6 allows for the use of Direct Earnings Attachments.

Part 6 Regulation 17(1)(b) – Allows for the recovery by deduction from earnings by an authority administering housing benefit, if the amount is recoverable under section 115 of the act and where a notice has been issued.

Part 6 Regulation 23 (1) – requires the debtor to inform us of when they leave this employment and details of any new employer.

Part 6 Regulation 23 (2) – requires the debtor to supply the following details in writing within 7 days of the request:

- Name and address of their employer or employers if more than one;
- The amount of their earnings or expected earnings; and
- The place of work, nature of their work and any staff or payroll number or similar.

Part 6 Regulation 20(2) – requires the employer to make deductions in accordance to the order from the net earnings which they would otherwise pay to the debtor.

Part 6 Regulation 22(1) – amounts deducted by an employer must be paid by the employer to the Local Authority by the 19th day of the month following the month in which the deduction was made.

Part 6 Regulation 22(2) – such payment made by made by –

- (a) cheque;
- (b) direct credit transfer;
- (c) such other method as the appropriate authority may permit.

Part 6 Regulation 22(3) – the employer must keep a record of every amount paid to the Local Authority.

Part 6 Regulation 30 – A person who fails to comply with any of the following provisions of Part 6 is guilty of an offence punishable on summary conviction by a fine not exceeding level 3 (£1,000) on the standard scale-

- (a) Regulation 20(2)
- (b) Regulation 22(1)
- (c) Regulation 22(3)
- (d) Regulation 23

Schedule 2 – Amounts to be deducted by employers.

Why use a DEA?

Not all debtors repay or enter into a voluntary repayment agreement. DEA's give Local Authorities the opportunity to recover overpaid Housing Benefit from debtors who are employed if they refuse to repay, are unable to agree an acceptable repayment plan or who have defaulted on a voluntary arrangement.

A voluntary repayment plan is our preferred method of recovery which if paid on time (weekly or monthly) is the most cost effective solution.

A DEA is a way of avoiding court fees and solicitors costs which are incurred as part of the court recovery process of which the debtor is ultimately liable for, thereby increasing the debt owed.

A request will be sent to the debtor requesting details of all their employer or employers if more than one. It is a criminal offence to fail to respond to the request which may result in the debtor receiving a criminal record and a maximum fine of £1,000.

The HBDS service allows us to make enquiries for the current employer to acquire employment information and attempt recovery from earnings

What Woking Borough Council will do:

- (i) Make sure the overpayment is correct and where possible the overpayment is offset against any benefit due;
- (ii) Send notification of the overpayment to the benefit claimant;
- (iii) If Housing Benefit is no longer payable an invoice will be sent within 5 working days of the overpayment being sent to the Debtors system

- (iv) A reminder letter will be issued to the debtor if no payment is received 32 days after the date of the invoice;
- (v) A letter is sent to the debtor 14 days after the reminder letter referred to at (iv) above to say we are proceeding with legal action;
- (vi) If the debtor is in receipt of DWP benefits we will seek to recover the overpayment from these payments;
- (vii) If the debtor, is not in receipt of DWP benefits and no response or payment has been received then a letter will be sent to the debtor demanding employment details under Part 6 Regulation 23(2);
- (viii) If a debtor was repaying the debt by instalments and missed an instalment, a reminder letter will be sent. If the payments do not recommence then a letter will be sent demanding employment details under Part 6 Regulation 23 (2). An example Notice is shown at Appendix 1(C);
- (viii) If the debtor fails to provide the requested information within 7 days of the request a reminder will be sent;
- (ix) If the debtor still fails to provide the requested information under Part 6 Regulation 23 (2) the Council's Legal Team will consider making an application to the Magistrates Court under Part 6 Regulation 30 to impose the level 3 fine which is currently set at a maximum of £1,000 as set out at Part III 37(2) of the Criminal Justice Act 1982.
- (x) If payments are still not made but the requested information has been supplied, then Woking Borough Council will write to the debtors employer instructing them to make deductions from the debtors net salary. An employers guide will also be included with the letter. The rates of the deductions to be made by the employer are shown in Appendix 1(A). A copy of the letter to the employer will also be sent to the debtor.
- (xi) An employer is exempt from the DEA order if they are:
 - a new business
 - an existing micro-business (fewer than 10 employees) during the exemption period
- (xii) A DEA is not an available option when:-
 - the Debtor is in the Armed Forces
 - the Debtor is Self Employed
 - the Debtor earns less than £100 per week

APPENDIX 1 (A)

Table of amounts to be deducted by the employer

TABLE A: DEDUCTIONS FROM EARNINGS RATE			
AMOUNT OF NET EARNINGS (Net earnings are gross pay, less income tax, Class 1 National Insurance and superannuation contributions)		DEDUCTION RATE TO APPLY (Percentage of net earnings)	
Daily Earnings		Weekly Earnings	Monthly Earnings
< £15	< £100	< £430	Nil
£15 ≥ £23	£100 ≥ £160	£430 ≥ £690	3
£23 ≥ £32	£160 ≥ £220	£690 ≥ £950	5
£32 ≥ £39	£220 ≥ £270	£950 ≥ £1,160	7
£39 ≥ £54	£270 ≥ £375	£1,160 ≥ £1,615	11
£54 ≥ £75	£375 ≥ £520	£1,615 ≥ £2,240	15
> £75	> £520	> £2,240	20

APPENDIX 1(B)

The definition of earnings for DEAs

What counts as 'earnings' for DEAs	What does <u>not</u> count as 'earnings' for DEA
Wages	Statutory Maternity Pay
Salary	Statutory Adoption Pay
Fees	Ordinary Statutory Paternity Pay
Bonuses	Additional Statutory Paternity Pay
Commission	Any pension, benefit, allowance or credit paid by DWP, a local authority or HMRC
Overtime Pay	A guaranteed minimum pension under the Social Security Act Pensions Act
Most other payments on top of wages	Amounts paid by a public department of the Government of Northern Ireland or anywhere outside the United Kingdom.
Occupational Pensions, if paid with wages or salary	Sums paid to reimburse expenses wholly & necessarily in the course of the employment.
Compensation Payments	Pay or allowances as a member of Her Majesty's forces, other than pay or allowances paid to them by you as a special member of a reserve force.
Statutory Sick Pay	Redundancy payments or pay in lieu of notice.
Payment in lieu of notice	
Most other payments on top of wages	

APPENDIX 1(C)

SAMPLE NOTICE

Our reference: [reference]

[name of debtor]
[address line 1]
[address line 2]
[address line 3]
[post code]

Dear [name]

Do not ignore this letter. If you ignore this notice or take no action, on conviction you could face a fine of up to £1,000 and a criminal record.

I have tried to contact you about your outstanding Housing Benefit overpayment of [amount] but without success. I have decided to request direct payments from your employer starting on [dd/mm/yyyy].

Please complete and return the attached slip in the envelope provided. You are required by law to do this within 7 days.

The Council is entitled to do this under the Social Security (overpayments and recovery) Regulations 2013. Kindly note that the legislation does not require the Council to obtain a Court Order and that it is a **criminal offence** for you and your employer not to comply with this notice.

I have attached a copy of the Council's policy to help you understand why we have decided to take this action. It also contains more information on the law.

The Council has taken this action as a ***last resort***. It may still be possible for you to make an arrangement with me to repay this debt without the need for us to contact your employer but ***you must act within 14 days to avoid this***.

Yours sincerely

Amanda J Francis
Legal Officer

To Woking Borough Council
Civic Offices
Gloucester Square
Woking
Surrey
GU21 6YL

Name: [complete name]
Claim ref [reference]

Name of Employer	
Address of workplace	
Amount of net earnings	£ weekly / 4 weekly / monthly
Payroll or staff number	
Job title	

If you have more than one employer:

Name of Employer	
Address of workplace	
Amount of net earnings	£ weekly / 4 weekly / monthly
Payroll or staff number	
Job title	

Name of Employer	
Address of workplace	
Amount of net earnings	£ weekly / 4 weekly / monthly
Payroll or staff number	
Job title	

Signed _____ Date _____