

DERBY CITY COUNCIL

HOUSING BENEFIT OVERPAYMENT RECOVERY POLICY

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01/12/2016	2.0	Draft	Tidied and marked up for EIA
02/12/2016	3.0	Draft	Additions to section 13
03/12/2016	4.0	Draft	Further additions to section 13 and formatting
14/12/2016	5.0	Draft	Further updates and clarifications; EIA actions added
14/12/2016	6.0	Draft	Correction to section 11
04/01/2017	7.0	Final	Additions following legal feedback

Equality impact assessment record	
Date of assessment	7 December 2016
Summary of actions from EIA	<ul style="list-style-type: none">(a) The Council's Fair Repayment Promise will be reviewed(b) The Council's website to be updated with money advice service information(c) Money advice service information will be promoted in the annual Council Tax booklet(d) The same criteria to identify vulnerable people will be used in this Policy to align with the Council Tax Recovery, Business Rates Recovery and Sundry Debt Recovery Policies(e) Where possible, the Council may use debt profiling information to target communications and promotional work about the importance of reporting changes in circumstances.(f) Awareness training will be conducted by Derby Advice for the Diversity Forum and other advisory groups as required.

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1. Introduction

1.1 This document sets out the processes the Council will follow when recovering overpaid Housing Benefit. It supports the Council's overarching principles for the collection of debt which are set out in the Collection Strategy.

2. Aims of the Policy

2.1 To ensure we minimise overpayments and reduce them as much as is possible when raised;

2.2 To take timely recovery action when necessary and where appropriate;

2.3 To ensure we meet all statutory requirements;

2.4 To ensure we maintain a balance between effective recovery of debt and avoiding the causing of financial hardship, especially in light of the changes to welfare benefits;

2.5 To maximise revenue through effective recovery of overpayments.

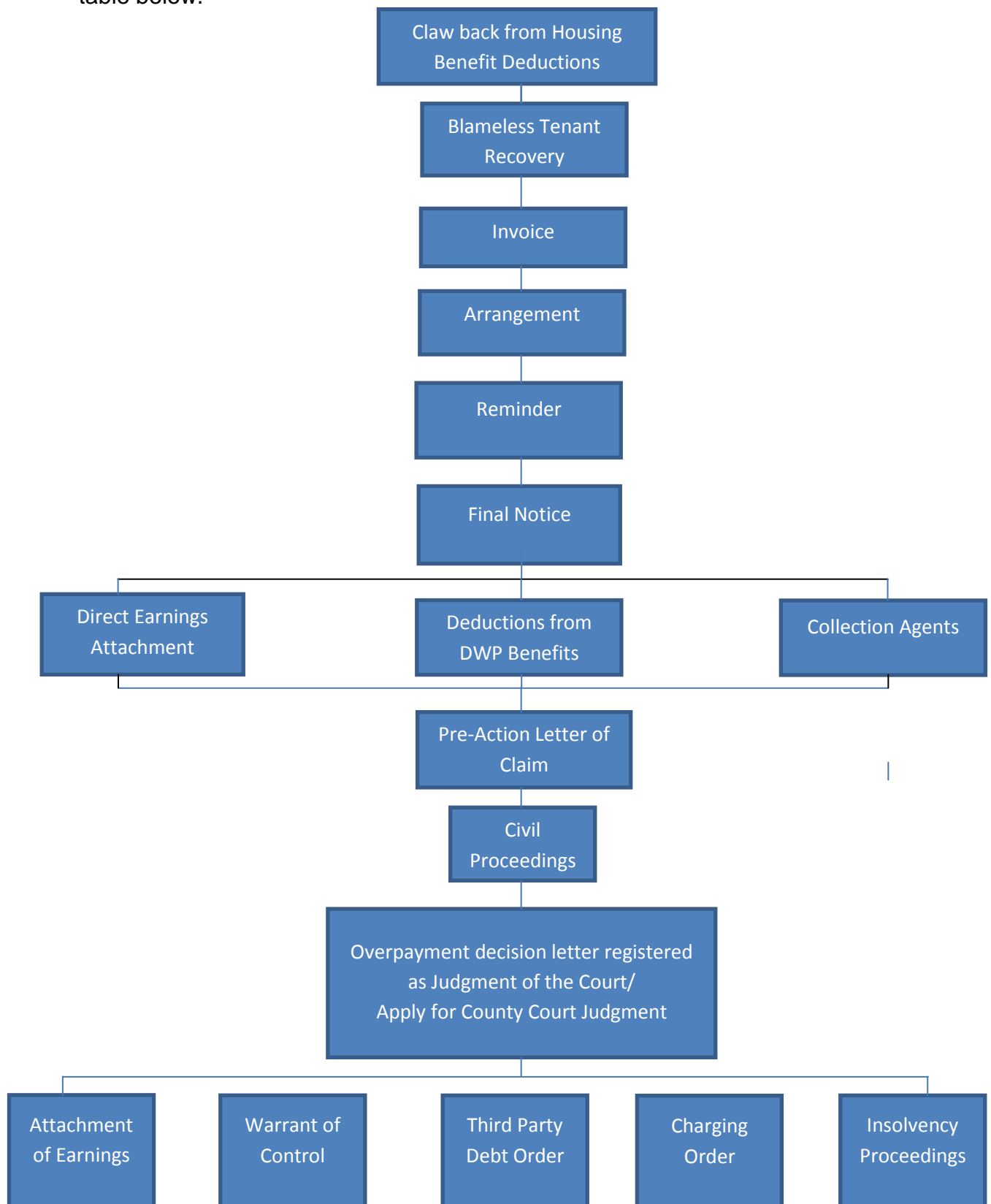
3. Legal Framework

3.1 The regulations governing overpayments of Housing Benefit are set out in statute, case law and Commissioners' decisions.

3.2 The main Regulations relating to Housing Benefit Overpayments are listed here:

- Social Security Administration Act 1992
- Housing Benefit (General) Regulations 1987
- Housing Benefit (Recovery of Overpayments) Regulations 1997 – Statutory Instrument 1997 No 2435
- Housing Benefit (General) Amendment (No 2) Regulations 2001 – Statutory Instrument 2001 No 1190
- Housing Benefit (General) Regulations 2006
- The Social Security (Civil Penalties) Regulations 2012
- The Social Security (Overpayments and Recovery) Regulations 2013

3.3 The collection process and recovery options open to the Council are shown in the table below.



4. Definition of an Overpayment

- 4.1 An overpayment is an amount of Housing Benefit received by a claimant, a person acting on their behalf, a landlord or a landlord's agent, which that person is not entitled to under the Housing Benefit regulations.

5. Methods of Payment

- 5.1 Housing Benefit overpayments can be repaid by Pay Point, over the telephone, at self-service cash kiosks at the Council House, and over the internet.

6. Obligation to Minimise and Reduce Overpayments

- 6.1 The Council will take steps to reduce the amount of any overpayment by granting underlying entitlement where possible, or offsetting any uncashed cheques from the outstanding balance.

- 6.2 The Council will take steps to minimise the incidence of overpayments by:

- Suspending the payment of Housing Benefit immediately on receipt of information that seems likely to lead to an overpayment;
- Paying Housing Benefit in arrears, apart from Derby Homes tenants;
- Encouraging claimants and landlords to report changes in good time;
- Undertaking regular quality checks to check that the correct amount of Housing Benefit is being paid;
- Regular monitoring and reporting of "Local Authority Error" overpayments to the Housing Benefit service management so that corrective action can be taken.

7. Recoverable or Non-Recoverable Overpayments

- 7.1 Most overpayments are legally recoverable. The exception to this is where an overpayment is caused by official error and the claimant, a person acting on their behalf, or the person receiving the payment could not, at the time of receiving the payment or any notice relating to it, reasonably have been expected to know that they were being overpaid. If this is the case then the overpayment cannot be recovered from that person. But it can be recovered from any party who could reasonably have been expected to know it was an overpayment at the time of the payment or any notice relating to it.

- 7.2 The Council will consider the following when making a decision about whether an overpayment is recoverable or not:

- The information and advice that has been provided to the claimant, a person acting on their behalf, or the person who received the payment;
- The nature of the overpayment, for example, if someone moves off Job Seekers Allowance into work, it is reasonable to expect that they knew their benefits would reduce or stop;

- The help and assistance normally available to the claimant, a person acting on their behalf or the person who received the payment. If someone is normally capable of managing their affairs it is reasonable to believe they would have known they were being overpaid - unless there are other factors that could have affected this.

8. Discretion Whether to Recover

8.1 Under this Policy the general rule is that the Council will take action to collect all recoverable overpayments. Exceptionally, the Council may decide to use its discretion not to recover an overpayment on a case by case basis.

8.2 In deciding whether to use its discretion not to recover, the following factors may be considered:

- The claimant's age and state of health;
- Their vulnerability (see **Appendix 1** for the definition);
- The claimant's financial position in terms of ability to pay any debts;
- The effect of the welfare changes on the claimant and the claimant's family;
- The culpability of the debtor.

9. From Whom to Recover

9.1 If Housing Benefit has been paid directly to the claimant or a person acting on their behalf, a recoverable overpayment can only be recovered from:

- The claimant or a person acting on their behalf;
- The partner or former partner of the claimant, as long as the partner was the claimant's partner at the time relevant to the overpayment and is still with the claimant when recovery is made.

9.2 If Housing Benefit has been paid direct to a landlord or landlord's agent, in addition to the categories set out in 9.1, the Council can recover a recoverable overpayment from the landlord or landlord's agent, unless 7.1, 9.3 or 9.4 applies.

9.3 If the landlord or landlord's agent has been paid direct but is not culpable in the cause of the overpayment and has reported the suspicion of overpayment to the Council, the claimant will be pursued for the recoverable overpayment. The full details of this are prescribed in Regulation 101 of the Housing Benefit Regulations 2006.

9.4 If the overpayment has occurred due to a misrepresentation of or failure to disclose a material fact, by a claimant, a person acting on their behalf, a landlord or a landlord's agent, the recoverable overpayment can only be recovered from the person who misrepresented or failed to disclose that fact.



9.5 Other than where 7.1, 9.3 or 9.4 applies, each decision about who to recover a recoverable overpayment from must be made based on each claim's circumstances and the reasoning recorded.

9.6 When deciding who to recover from, due consideration must be given to the means to pay and the necessity to recover as efficiently as is possible.

10. Notification of an Overpayment

10.1 There are very specific legal requirements placed on a Local Authority in relation to the content of the notification letter. The notification is a legal pre-requisite to recovery.

The notification must include the following:

- The fact that there has been an overpayment and it is recoverable;
- The reason for the overpayment;
- The amount of the recoverable overpayment;
- How that amount has been calculated;
- The period of the overpayment;
- Where recovery is to be made from future Housing Benefit entitlement the notification must state this and the amount that will be deducted from each payment;
- The person's right to appeal and apply for a revision against the decision or decisions that have been made;
- The person's right to ask for a written statement of reasons.

11. Methods of Recovery

11.1 As a general rule, recovery methods should be used in the following order of preference, depending on who the overpayment is to be recovered from:

- Claw back from ongoing entitlement of Housing Benefit;
- Third Party Recovery (this is often referred to as "Bulk Blameless Tenant Recovery". This is recovery of debt from a landlord from the Housing Benefit of another of that landlord's tenants);
- Invoice (minimum amount is £15.00);
- Deduction from other Department for Work and Pensions (DWP) benefits;
- Direct Earnings Attachment. Where we 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. More information about this is at **Appendix 2**.

11.2 The Council reserves the right to choose any method to recover an overpayment taking into account the individual circumstances of the claimant and the interests of the Council's financial position and the taxpayers of the Authority. The Council's decision on which recovery method to use is final.



11.3 Where the overpayment is due from a former Council Tenant, the tenant's rent account may be debited for Housing Benefit paid beyond the period of the rental liability. Cases like this must be identified and dealt with in a timely fashion.

11.4 Where an invoice has been issued and remains unpaid, this will be followed by a reminder and a final notice. The final notice will not be issued until at least 21 days after the date of the invoice.

11.5 If, following the issue of an invoice, reminder and final notice payment is not made, the Council will reserve the right to refer any debt of £50 or more to external collection agencies for action. Debts below this value will be considered for other recovery action. If any dispute exists about whether to refer a case to an external collection agent the final decision will rest with the Housing Benefit Service Manager.

The collection agents will adhere to the Council's Vulnerability Criteria set out in **Appendix 1**.

11.6 If, following the issue of an invoice, reminder and final notice payment is not made, the Council will reserve the right to refer any debt of £50 or more for litigation action. Debts below this value will be considered for other recovery action. Prior to commencing civil proceedings, the Council will write a pre-action letter to the debtor, giving a final opportunity to pay.

11.7 At this stage, consideration will be given to any payment arrangement proposed by the debtor.

11.8 If the pre-action correspondence does not result in repayment, the Council will consider applying for the debt to be registered as a judgment of the court or will consider applying for a County Court Judgment (CCJ) as appropriate, with each decision being made on a case by case basis. Once the decision letter has been registered with the court or a CCJ has been obtained, the debtor will generally have 14 days to pay in full, unless the court orders payments by instalments. Both courses of action allow the Council to pursue its enforcement options which are:

- Attachment of Earnings
- Warrant of Control
- Third Party Debt Order
- Charging Order
- Insolvency Proceedings.

11.9 Any action to recover amounts by the methods set out in 11.8 will be considered on its own merits, on an individual case by case basis, having regard to the 'Recovery Checklist'. The recovery checklist is an internal document designed to ensure there is sufficient governance when recommending cases for advanced recovery methods. It can be completed by any member of the Housing Benefit Overpayment team but must be authorised by a Benefit Team Leader or the Housing Benefit Service Manager.

11.10 The Recovery Checklist will include the following information:

- A record of why other methods of recovery are not appropriate, and
- Where little or no personal contact has been made– details of at least one visit to the property, and
- A record of information gathered and the reasons for the proposed action.

11.11 The detailed procedures setting out the process for taking insolvency action (bankruptcy, winding up or charging orders) is contained within the Council's "Using Insolvency Proceedings and Charging Orders for the Collection of Local Taxation, Sundry Debts and Housing Benefit Overpayments" procedures notes. These must be strictly followed in all cases.

11.12 At any time in the process, we will consider accepting an arrangement for payment and at all times be alert to any indications of financial hardship.

12. Civil Penalties

12.1 Housing Benefit regulations allow the Council to impose a Civil Penalty if an overpayment occurs because a claimant:

- Negligently makes incorrect statements or gives incorrect information and fails to take reasonable steps to correct the error, or
- Fails, without reasonable excuse, to provide information or to disclose relevant changes in their circumstances.

12.2 The aim of the Civil Penalty is to deter claimants from negligent behaviour or failing to disclose changes in circumstances in the future and increase their personal responsibility.

12.3 The amount of a Civil Penalty will be that set out in regulations (currently £50).

12.4 Generally Civil Penalties will only be considered if the overpayment is greater than £750. However, the Council reserves the right to impose a civil penalty on any case, irrespective of the amount of the overpayment.

12.5 If a Civil Penalty is imposed that amount will be recoverable in full, in addition to the overpayment.

12.6 The decision to impose a Civil Penalty will be made on a case by case basis. The decision to impose a penalty must be authorised by a Benefit Team Leader or the Housing Benefit Service Manager.

12.7 Where a dispute or an appeal against a Housing Benefit overpayment decision results in there being no overpayment then the associated Civil Penalty will no longer apply and any monies already recovered from the Civil Penalty and overpayment will be repaid.

12.8 Where the dispute or appeal is against the Civil Penalty only, and it is decided no grounds for the Civil Penalty exist, the penalty will no longer apply and any monies already recovered from the Civil Penalty will be repaid.

13. Fraud Overpayments

13.1 Fraud cases will always be dealt with robustly in terms of the choice of recovery and in the consideration of offers of payment. The impact of the overpayment on Council Taxpayers of the Authority must be considered when deciding on the payment terms.

13.2 Fraudulent overpayments will be dealt with and recovered with maximum priority.

13.3 The recovery of a fraudulent overpayment is without prejudice to any action the Department for Work and Pensions may take.

14. Recovery Rates

14.1 From 2nd October 2000 the DWP introduced new legislation to set a maximum rate of recovery for different types of claims. The maximum rate of recovery is not discretionary but prescribed by the DWP.

14.2 Generally, the Council will apply the maximum rate of recovery from on-going benefit as set out in DWP guidance. Where using this rate will result in financial hardship the Council may consider reducing the amount of recovery as set out in 14.4 – 14.6 below.

14.3 When recovering using Direct Earnings Attachment, the Council will use the DWP's standards as set out in **Appendix 2**.

14.4 It is important to reach a balance between maximising recovery against preventing extreme financial hardship as set out in the Council's Fair Repayment Promise. When deciding to lower the rate of recovery, the Council's interest must be considered too in terms of the length of time to recover.

14.5 If a debtor demonstrates that the rate of recovery set would cause financial hardship they can ask the Council to reduce the rate of recovery. In order to do this we require a financial statement to be completed listing all household income and expenditure so that their circumstances can be assessed. The Overpayments Team assess these financial statements (working to allowable expenses guidelines) and make a decision on whether the rate of recovery for the debtor's Housing Benefit overpayment(s) can be reduced, in line with the Council's Fair Repayment Promise. The Council reserves the right to request proof of any income and expenditure listed within the Financial Statement.

14.6 If a debtor disagrees with the decision made by the Overpayments Team – for example where the debtor has missed off expenditure from their original

statement, they can submit a new Financial Statement including any missed expenses and the Overpayments Team can make a new decision about the rate of recovery to be applied.

14.7 Reduced rates of recovery will be reviewed quarterly; at such a time the Council may send a Financial Statement to the customer to check their circumstances; a new decision on the appropriate recovery rate will then be made. Failure to respond to this request may result in the rate of recovery being increased.

14.8 In cases where recovery from the landlord is appropriate the following rules will apply:

- For landlords with less than four properties the maximum deduction per payment run will be £100. This amount will be increased on 1st April of each subsequent financial by the increase in the rate of Consumer Price Inflation as at 31 December in the previous financial year;
- For landlords with four properties or more the maximum deduction per payment run will be the full amount of the overpayment.

15. Recovery and Disputes

15.1 In accordance with DWP guidance recovery action will be suspended should a debtordispute their overpayment decision.

15.2 Such recovery action should remain suspended until the dispute has been decided and the appropriate parties to the dispute have been notified.

15.3Disputable decisions are:

- Is the overpayment correct?
- Is it recoverable?
- Can we legally recover from the person(s) identified as liable?

16. Debt Management, Analysis and Targeting

16.1Our policy will be to recover our largest, oldest debts first.

16.2 Debt profiles will be analysed at least monthly so that the efforts of the Overpayments Team resource can be best directed to give value for money.

16.3 Where possible the Council may use debt profiling information to target communications and promotional work about the importance of reporting changes in circumstances.

17. Write-offs and Write-ons



17.1 Although every effort will be taken to collect every debt it is inevitable that some debts will be uncollectable. The reasons for this include but are not limited to:

- The debtor absconds;
- The debtor dies and has no estate;
- The debtor is declared bankrupt or is subject to other insolvency proceedings;
- A court remits the debt.

17.2 The actions taken before recommending a debt for write-off will depend upon the individual circumstances and are included in the local write-off procedures used by staff.

17.3 All write-offs will be approved by the appropriate officer or Council Cabinet in accordance with the financial levels set out in the Council's Financial Procedure Rules.

17.4 Should a debt be written off and then subsequently the reason for the write off is not appropriate – for example a debtor that has absconded is traced – the debt will be written back on and pursued.

18. Bad Debt Management

18.1 It will be our policy to assess levels of bad debt each year and take necessary steps and decisions to manage that debt appropriately.

18.2 Any write-offs will be in accordance with this policy and with the Corporate Write-Off Policy

19. Customer Feedback and Disputes

19.1 The Council will endeavour to resolve any disputes in relation to debt collection informally and at the earliest possible opportunity and will ensure that debtors are fully aware of the ways in which they can contact the Council in order to discuss any dispute they may have.

19.2 Where part of a debt is disputed, the Council will endeavour to collect the undisputed amount at the earliest possible stage whilst also dealing with the disputed debt.

19.3 If a customer wishes to make a complaint regarding the way in which the Council has undertaken to recover a debt, they will be advised of the Customer Feedback procedure and will be given assistance in registering a complaint.

19.4 If the complaint is about the actions of the Council's Collection Agents the Council will ensure that the Collection Agents conduct a thorough internal



investigation and report their findings and what action will be taken as a result of their investigation.

20. Policy Review, Monitoring and Governance

The Head of Revenues, Benefits and Exchequer Services (HRBES) will monitor the effectiveness of this Policy. The HRBES will bring any issues with its operation to the section 151 officer for consideration.

This Policy will be reviewed regularly to ensure it is kept relevant and takes account and advantage of changes in legislation, new approaches and new ways of working.

Appendix 1

Vulnerability Criteria

The Council's current definition of "vulnerable person" includes, but is not limited to:

- Any debtor over the state pension age
- Any debtor who is disabled, whether or not in receipt of disability benefits
- Any debtor who is a single parent
- Any debtor who has or appears to have mental health problems
- Any debtor who is pregnant
- Any debtor who has difficulty speaking or understanding English

The Council expects its Collection Agents to be able to identify where it feels a debtor is vulnerable but does not necessarily come under any of these categories.

Appendix 2

Direct Earnings Attachment (DEA)

From April 2013, local authorities have been given the power to recover overpaid Housing Benefit by deductions from earnings without the need to apply for a court order. This is done by using Direct Earnings Attachments or DEA.

Local authorities were given this power by The Social Security (Overpayments and Recovery) Regulations 2013. The full regulations can be found on this website - www.legislation.gov.uk.

At present if the overpaid benefit is not repaid then a case is often the subject of court proceedings which add costs to the outstanding debt. This new process will allow more cost effective recovery for both the council and the debtor.

DEAs give us the opportunity to recover overpaid housing benefit from people who are employed but refuse to repay, are unable to agree an acceptable repayment plan or who have defaulted on a voluntary arrangement.

Before DEA commences a DEA letter is sent to the debtor advising of the Authorities intention to recover the debt via DEA. This gives the debtor the opportunity to contact the Authority and make arrangements to repay outside of a DEA before the DEA commences. Should the debtor fail to make the scheduled repayments the DEA will then be implemented. If the debtor does not respond or refuses to make an acceptable offer to repay, the DEA process will commence.

This is not our preferred method of recovery; full payment or a voluntary but reasonable repayment plan, which is paid on time every week or month, is the best and most cost effective solution.

Amounts to be deducted by employers

Table A: Where earnings are paid weekly

Amount of net earnings	Deduction (% of net earnings)
Less than £100	Nil
Exceeding £100 but not exceeding £160	3
Exceeding £160 but not exceeding £220	5
Exceeding £220 but not exceeding £270	7
Exceeding £270 but not exceeding £375	11
Exceeding £375 but not exceeding £520	15
Exceeding £520	20



Table B: Where earnings are paid monthly

Amount of net earnings	Deduction (% of net earnings)
Less than £430	Nil
Exceeding £430 but not exceeding £690	3
Exceeding £690 but not exceeding £950	5
Exceeding £950 but not exceeding £1,160	7
Exceeding £1,160 but not exceeding £1,615	11
Exceeding £1,615 but not exceeding £2,240	15
Exceeding £2,240	20