

ABERDEEN CITY COUNCIL

COMMITTEE	Anti-Poverty and Inequality Committee
DATE	11 January 2023
EXEMPT	No
CONFIDENTIAL	No
REPORT TITLE	Clawback of benefits payments by the Council and the Department for Work and Pensions
REPORT NUMBER	CUS/23/016
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TERMS OF REFERENCE	1.1, 1.6

1. PURPOSE OF REPORT

- 1.1 To provide a report giving further information on the clawback of benefit payments by the Council and the Department for Work and Pensions, as instructed at the Anti-Poverty and Inequality Committee on the 23rd November 2022.

2. RECOMMENDATION(S)

That the Committee:-

- 2.1 Note the information provided in the report regarding the clawback of benefit payments by the Council and the Department for Work and Pensions.

3. CURRENT SITUATION

Background

- 3.1 Local Authorities and the Department for Work and Pensions have an obligation to protect public funds and to ensure that, wherever possible, overpayments are recovered. In certain circumstances, when a claimant is struggling to pay certain household bills, the Department for Works & Pensions can deduct money from their benefits and should only be used when other avenues have been exhausted to protect the welfare of the customer.
- 3.2 A wide variety of deductions may be made from Universal Credit/Legacy Benefits. The most commonly encountered are deductions to the Department for Work and Pensions to repay advance payments and overpayments, and 'third-party' deductions to cover eligible housing costs (i.e., service charges), rent arrears, fuel, and water.
- 3.3 Since 2019, the Department for Work and Pensions has been using a deduction policy which provides a limit on deductions overall, so that total

deductions should not exceed a limit. The limit is set at the amount of the applicable amount of the Universal Credit Standard Amount/Legacy Benefits Personal Allowance. The limit may be exceeded to ensure payment of a “last resort” deduction, is one which helps to prevent a claimant from being evicted or having their utilities cut off.

- 3.4 The current rate as amended in April 2021, provides that the total deductions do not usually exceed 25 per cent of the claimant’s personal allowance, instead of the previous 30 per cent.

Clawback of benefits payments by the Council

- 3.5 Local Authorities administer Housing Benefit on behalf of the Department for Work and Pensions. Customers apply to Local Authorities via an application process. The Local Authority makes a decision based on Housing Benefit legislation and makes payment to the customer or direct to the landlord.

- 3.6 The Local Authority will then make a claim to the Department for Work and Pensions to recover the amount of Housing Benefit awarded. This is through a Subsidy Claim process. Local Authorities recover most but not all their Housing Benefit Expenditure in this way. There are some areas where the Local Authority does not get “full” subsidy. One of these areas is where a Housing Benefit overpayment has been made.

- 3.7 An overpayment of Housing Benefit occurs when a claimant receives more Housing Benefit than they are entitled to, e.g., a delay in reporting a change of circumstances, which means the claimant:

- is no longer entitled to Housing Benefit, or
- is entitled to less Housing Benefit than originally awarded

This is the case whether the Housing Benefit is:

- paid to the claimant or someone acting on their behalf; or
- paid to a landlord or their agent; or
- credited to their Aberdeen City Council rent account (if they are a council tenant).

- 3.8 Section 75 of the Social Security Administration Act 1992 allows for overpayments of housing benefit to be recovered either by the Secretary of State or by the authority which paid the benefit.

- 3.9 Local Authorities must:

- establish that there has been an overpayment
- establish the cause of the overpayment
- identify the period and calculate the amount of the overpayment
- classify and record overpayments so the correct rate of recovery can be made
- decide whether or not the overpayment is recoverable

- decide from whom the recovery should be sought
 - consider whether or not recovery should be sought
 - notify any 'person affected'.
- 3.10 Each decision to recover an overpayment is made on its own merit. Most overpayments are recoverable, but in certain circumstances, overpayments caused by official error are not recoverable. Claimants who have received an overpayment decision have a right of appeal against some relevant decisions that the Local Authority makes on a claim, or on an award of Housing Benefit.
- 3.11 Overpayments do not receive full subsidy and are therefore at a cost to the Local Authority.
- 3.12 In terms of recovery of overpayments there are several methods available (This is not an exhaustive list):
- from arrears of Housing Benefit that become payable while there is an outstanding overpayment
 - by deduction from ongoing Housing Benefit, which could be paid to the claimant, landlord, appointee, or agent (sometimes known as 'claw-back')
 - by deduction from the partner's ongoing Housing Benefit, as long as the claimant and partner were a couple at both the time of the overpayment and when deductions are being made.
 - by transferring a Rent Rebate overpayment to the tenant's Aberdeen City Council Rent account, but you must keep the Housing Benefit overpayment separate from any rent arrears (the overpayment is not recovered just because it has been transferred to the Aberdeen City Council Rent account)
 - by deduction from certain Department for Work and Pensions benefits paid to the claimant
 - by deduction from certain Department for Work and Pensions benefits payable to the partner, as long as the claimant and partner were a couple at both the time of the overpayment and when deductions are being made
 - by applying to another Local Authority to ask them to deduct the overpayment from the claimant's ongoing Housing Benefit entitlement in their area
 - by recovery from Housing Benefit paid to a landlord/agent for another tenant, i.e. when the landlord has been classed as responsible for repayment of a debt (sometimes known as 'Blameless Tenant' recovery)
 - by 'invoicing' the affected person for the amount outstanding
 - by civil proceedings
 - from the estate of a deceased person who had an overpayment prior to death
 - by Direct Earnings Attachment.
- 3.13 In terms of Housing Benefit recovery by the means of deductions from ongoing Housing Benefit (claw-back) the Department for Work and Pensions set maximum weekly deductions on an annual basis. In 2022/23 these are:
- £19.25 per week if found guilty of fraud, or admitted fraud after caution, or agreed to pay an administrative penalty
 - £11.55 per week in all other cases.

- 3.14 Aberdeen City Council Housing Benefits Section decided to have 3 rates of Housing Benefit deductions from ongoing Housing Benefit (clawback):
- £19.25 per week if found guilty of fraud, or admitted fraud after caution, or agreed to pay an administrative penalty
 - £3.85 per week will be taken if the claimant is in receipt of a passported benefit i.e. Employment and Support Allowance (Income Related), Job Seekers Allowance (Income Based)
 - £9.00 per week for all other cases. This amount can be reduced if a claimant is experiencing financial hardship.
- 3.15 In determining the maximum amount to be deducted, the award of Housing Benefit must not be reduced below £0.50 per week.
- 3.16 As at October 2022 Aberdeen City Council has 8,379 claimants receiving Housing Benefit. Of these claims there are 376 where there are deductions from ongoing Housing Benefit (clawback). This equates to 4% of claimants who are currently having deductions taken from their ongoing benefit entitlement. 64% of the deductions are being taken at rate of £3.85 per week or less.

Clawback of benefits payments by Department for Work and Pensions

Legacy Benefit Deductions

- 3.17 The Department for Work and Pensions customers in receipt of certain benefits may have deductions taken from their benefit and paid direct to a creditor/supplier under the Third-Party Deduction Scheme. Third party deductions will only be made when it is considered to be in the interest of the customer or the customer's family.
- 3.18 The Third-Party Deductions Scheme is operated in accordance with Regulation 35(1) and Schedule 9 of the Social Security (Claims and Payments) Regulations 1987 and Regulation 60 and Schedule 6 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013.
- 3.19 The Third-Party Deduction Scheme should only be used when all other avenues of recovery have been exhausted.

Deductible benefits are:

- Income Support
- Pension Credit
- Jobseeker's Allowance
- Employment Support Allowance

3.20 Types of arrears recovered from benefit

Arrears that can be recovered under the scheme include:

- Rent Arrears (for customer's current address)
- Fuel costs (for customer's current provider) arrears
- Council Tax Arrears
- Unpaid fines or compensation orders
- Child Maintenance

3.21 A maximum of 3 third party deductions are taken from each payment of benefit.

Rent Arrears

3.22 If a landlord informs the Department for Work and Pensions that a claimant has rent/service charges arrears, then 5% of their personal allowance can be deducted from their ongoing legacy benefits until the balance is cleared. This is to prevent eviction.

	Amount per week
Single, under 25	£3.05
Single, 25 and over	£3.85
Couple, both under 18	£4.61
Couple, one or both 18 or over	£6.05

Council Tax Arrears

3.23 If the Local Authority informs the Department for Work and Pensions that a claimant has defaulted on their Council Tax bill and has arrears, the Department for Work and Pensions can recover 5% of their personal allowance for this debt.

	Amount per week
Single, under 25	£3.05
Single, 25 and over	£3.85
Couple, both under 18	£4.61
Couple, one or both 18 or over	£6.05

Gas, electric and water arrears

3.24 If a claimant owes money to their current utility supplier, they can request that an amount is deducted off their ongoing legacy benefit payments for normal usage amount and arrears. This is to prevent disconnection of service.

The amount allocated for normal usage is set by their supplier and cannot be more than 25% of their personal allowance. A payment for arrears is set at 5% of a claimant's Personal Allowance.

	Amount per week
Single, under 25	£3.05
Single, 25 and over	£3.85
Couple, both under 18	£4.61
Couple, one or both 18 or over	£6.05

3.25 The Social Security Benefits (Claims and Payments) (Modification) Regulations 2022 temporarily modifies the Social Security (Claims and Payments) Regulations 1987 and the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 so that a new deduction for ongoing consumption of fuel, or an application for an increase to a deduction for ongoing deductions, may only be made further to an application by the claimant. The Social Security Benefits (Claims and Payments) (Modification) Regulations 2022 came into force on 26 April 2022. The changes made by the Social Security Benefits (Claims and Payments) (Modification) Regulations 2022 are temporary and cease to have effect on 6 April 2023.

Court fines

3.26 The court can order that money is deducted off a claimant's legacy benefit payment if they have non-payment of a fine. A payment for fines is set at 5% of a claimants Personal Allowance.

	Amount per week
Single, under 25	£3.05
Single, 25 and over	£3.85
Couple, both under 18	£4.61
Couple, one or both 18 or over	£6.05

Benefit Overpayments

3.27 The standard and higher rates of deduction from income related benefit for overpayment recovery are prescribed in legislation. There is an administrative lower rate that has been introduced for use where directed. e.g. claimants in residential care homes.

From	Standard Rate 15% (Non-fraud)	Maximum Rate 25% (Fraud Debt)	Lower Rate 5% (Nursing Home)
April 2022	£11.55 per week	£30.80 per week	£3.85 per week

Child maintenance

3.28 Child maintenance can be deducted off a claimant's legacy benefit, if they are the non-resident parent and they have no earned income. It can only be taken if Child Maintenance Service request the payment direct from their benefit.

Child maintenance can only be collected at a set rate of £8.40 per week.

Universal Credit Deductions

Deductions for advances

3.29 The maximum that can be collected each month for advances is 25% of a standard allowance. If they are already paying back 25% of standard allowance for advances, then no other debts can be collected - unless for rent arrears or utilities.

	Maximum amount per month
Single, under 25	£66.33
Single, 25 and over	£83.73
Couple, both under 25	£104.11
Couple, one or both 25 or over	£131.43

3.30 An advance can be deferred for either 3 or 6 months due to financial hardship and a claimant should contact Universal Credit to agree this.

3.31 If a claimant has other debts at the Department for Work and Pensions Debt Management, such as a tax credit recovery, they should call Debt Management to ensure they do not increase the amount they recover and may even be able to agree a fixed lower amount.

Deductions for 'ordinary debt'

3.32 If a claimant owes money to the Department for Work and Pensions for an overpayment of Universal Credit, legacy benefit, housing benefit or tax credits then this will be treated as an 'ordinary debt'. An amount can be recovered from their ongoing Universal Credit payment until the balance is cleared.

3.33 If a claimant is paying back any advances on their current claim for Universal Credit, then the advance repayment will take priority, then an amount will be collected for 'ordinary debts' within the allowed limits. Any advances from a previous claim will be treated as an 'ordinary debt'.

3.34 If a claimant has no earnings or earnings below their work allowance, no more than 15% of their standard allowance can be taken for one ordinary debt, but no more than 25% of their standard allowance can be taken for all ordinary debts and advance repayments combined.

3.35 If a claimant has earnings above their work allowance, no more than 25% of their standard allowance can be taken for all ordinary debts and advance repayments combined.

	15% amount per month	25% amount per month
Single, under 25	£39.80	£66.33
Single, 25 and over	£50.24	£83.73
Couple, both under 25	£62.47	£104.11
Couple, one or both 25 or over	£78.86	£131.43

3.36 The Department for Work and Pensions Debt Management are responsible for collecting the money for 'ordinary debts'. They may even be able to agree a fixed lower amount if the amount being deducted is causing a claimant financial hardship.

Third party deductions

3.37 Third party deductions are when money is taken off their Universal Credit for another service and is not money owed to the Department for Work and Pensions. The Department for Work and Pensions have been given responsibly for collecting the money and passing it over. The Third-Party Deductions Scheme is operated in Aberdeen City Council in accordance with Regulation 60 and Schedule 6 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013.

3.38 The Third-Party Deduction Scheme should only be used when all other avenues of recovery have been exhausted.

Rent/service charges arrears

3.39 If a landlord informs Universal Credit that a claimant has rent/service charges arrears, then an amount can be deducted per month from their ongoing Universal Credit payment until the balance is cleared. This is to prevent eviction.

3.40 Universal Credit will always deduct 20% of their standard allowance unless they are already paying back 25% of their standard allowance to advances and 'ordinary debts' or if they inform Universal Credit of financial hardship. The lower amount is 10% of their standard allowance. They will never take lower than this amount.

	Lower amount per month	Higher amount per month
Single, under 25	£26.53	£53.06
Single, 25 and over	£33.49	£66.98
Couple, both under 25	£41.65	£83.29
Couple, one or both 25 or over	£52.57	£105.14

Council tax arrears

3.41 If the Local Authority informs Universal Credit that a claimant has defaulted their Aberdeen City Council account and has arrears, Universal Credit can recover 5% of their standard allowance for this debt.

	Amount per month
Single, under 25	£13.27
Single, 25 and over	£16.75
Couple, both under 25	£20.82
Couple, one or both 25 or over	£26.29

- 3.42 Council tax arrears cannot be deducted if they are already having 25% of their standard allowance deducted for advances and 'ordinary debts' as these have a higher priority.

Court fines

- 3.43 A Fines Enforcement Officer at the Scottish Courts and Tribunals Service can apply for a Deduction from Benefit Order. The court can order that money is deducted off a claimant's Universal Credit payment if they have non-payment of a fine.

	Amount per month
Single, under 25	£13.27
Single, 25 and over	£16.75
Couple, both under 25	£20.82
Couple, one or both 25 or over	£26.29

- 3.44 Court fines cannot be deducted if a claimant already has 25% of their standard allowance deducted for advances and 'ordinary debts' as these have a higher priority.

Gas, electric and water arrears

- 3.45 If a claimant owes money to their current utility supplier, they can request that an amount is deducted off their ongoing Universal Credit payments for normal usage amount and arrears. This is to prevent disconnection of service.
- 3.46 The amount allocated for normal usage is set by their supplier and cannot be more than 25% of their standard allowance and child element unless they agree in advance. A payment for arrears is set at 5% of a claimant's Standard Allowance.

	Amount per month
Single, under 25	£13.27
Single, 25 and over	£16.75
Couple, both under 25	£20.82
Couple, one or both 25 or over	£26.29

- 3.47 The Social Security Benefits (Claims and Payments) (Modification) Regulations 2022 temporarily modifies the Social Security (Claims and Payments) Regulations 1987 and the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 so that a new deduction for ongoing consumption of fuel, or an application for an increase to a deduction for ongoing deductions, may only be made further to an application by the claimant. The Social Security Benefits (Claims and Payments) (Modification) Regulations 2022 came into force on 26 April 2022. The changes made by the Social Security Benefits (Claims and Payments) (Modification) Regulations 2022 are temporary and cease to have effect on 6 April 2023.

Child maintenance

- 3.48 Child maintenance can be deducted off a claimant's Universal Credit payment if they are the non-resident parent and they have no earned income. It can only be taken if the Child Maintenance Service request the payment direct from their benefit.
- 3.49 Child maintenance cannot be deducted if they are already having 25% of their standard allowance deducted for advances and 'ordinary debts' as these have a higher priority
- 3.50 Child maintenance can only be collected at a set rate of £36.40 per month.
- 3.51 The Department for Work and Pensions have an information on where they have discretion, the deduction can be reduced if a claimant is struggling to repay her/his debt. Below is taken at gov.uk

'If you're struggling, you can ask for a financial hardship decision to reduce the amount of benefit debt you pay. You may be considered for this if you have money taken from your universal credit for:

- *benefit debt;*
- *budgeting loan and crisis loan repayment;*
- *advances;*
- *rent arrears (if they're taken at a rate greater than 10% of the standard allowance)*

4. FINANCIAL IMPLICATIONS

- 4.1 There are no direct financial implications arising from the recommendations of this report.

5. LEGAL IMPLICATIONS

- 5.1 Local Authorities have an obligation to protect public funds and to ensure that, wherever possible, overpayments of housing benefits are recovered. Local Authorities have powers under legislation to recover overpayments of housing benefits in certain circumstances.

6. ENVIRONMENTAL IMPLICATIONS

- 6.1 There are no direct environmental implications arising from the recommendations of this report.

7. RISK

Category	Risks	Primary Controls/Control Actions to achieve Target Risk Level	*Target Risk Level (L, M or H) *taking into account controls/control actions	*Does Target Risk Level Match Appetite Set?
Strategic Risk	No significant risks identified			
Compliance	No significant risks identified			
Operational	No significant risks identified			
Financial	No significant risks identified			
Reputational	No significant risks identified			
Environment / Climate	No significant risks identified			

8. OUTCOMES

8.1 The proposals in this report have no impact on the Council Delivery Plan.

9. IMPACT ASSESSMENTS

Assessment	Outcome
Integrated Impact Assessment	Full impact assessment not required
Data Protection Impact Assessment	Not required

10. BACKGROUND PAPERS

10.1 None

11. APPENDICES

11.1 None

12. REPORT AUTHOR CONTACT DETAILS

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