



**HEALTH AND WELLBEING
SUPPORT AND SERVICES
FOR SURVIVORS
OF
Mother and Baby Institutions, Magdalene
Laundries and Workhouses**

Debt Recovery & Clawback
GN9/MBMLW

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1. Introduction

- 1.1. This guidance note outlines the Debt Recovery and Clawback Procedures that will be applied, when necessary, to irregular, ineligible, fraudulent or suspected fraudulent expenditure incurred using VSS funding.
- 1.2. This guidance note should be read in conjunction with:
 - The Standard Conditions of Grant Sections 16 “Fraud”, 17 “Withholding of Funds” and 18 “Default”.
- 1.3. The VSS will always pursue recovery of overpayments, irrespective of how they came to be made.
- 1.4. The VSS will treat all funded organisations going through the Debt Recovery or Clawback Procedure equitably. Each case will be dealt with on an individual basis, and the circumstances surrounding the overpayment will be taken into consideration. Therefore, funded organisations are encouraged to engage with the VSS at the earliest opportunity after the overpayment is identified, whether by the VSS or the organisation.

2. How Debts May Arise

- 2.1. Debts may arise due to a number of differing reasons, some of which are detailed below:
 - Inadequate supporting documentation and/or poor audit trail;
 - Ineligible expenditure contrary to letter of offer conditions and VSS Programmes Manual;
 - Non-achievement of work plan activities and agreed targets;
 - Unspent monies paid in advance;
 - Supplier error resulting in an overpayment;
 - Suspected or proven fraud.

This is not an exhaustive list, and as stated above, each case will be treated on an individual basis.

3. Fraud

- 3.1. In instances of pending or complete investigations into suspected or proven fraud (**See VSS Guidance Note G7 - Fraud**) such action will not eliminate the debt which had resulted from the overpayment. The VSS will, therefore, continue to pursue the debt by any means necessary.

4. Good Faith or Bad Faith

- 4.1. Whether the recipient of an overpayment has acted in good or bad faith will, as a matter of policy, influence the process of debt recovery. However, good faith is not a valid defence against recovery.
- 4.2. Lack of good faith can be implied if the funded organisation has wilfully suppressed a material fact or has otherwise failed to give timely, accurate and complete information affecting the amount payable. There may also be cases where the error is clearly identifiable, e.g., where an amount stated is very different from that payable, that no one could claim that they had received the money in good faith.

5. Debt Recovery Process

- 5.1. In the case of debt recovery being pursued the following set of procedures will be followed:
- **Informal** - Prior to commencing formal recovery action, the Compliance Team will try to resolve any issues immediately by liaising directly with the funded organisation. In the event that an agreement to repay is not made within 5 working days, the formal recovery procedure should commence.
 - **Formal** - Where agreement between the VSS and funded organisation is not reached informally, a formal debt recovery procedure will be followed as set out below:
 - a) Step 1: Two **telephone calls** to the Chair of the funded organisation;
 - b) Step 2: A **meeting** with the Chair of the funded organisation in an attempt to resolve the issue directly;

- c) Step 3: A **letter** to the funded organisation requesting a refund of the debt, outlining the reasons for the debt and allowing 14 days to respond.
- d) Step 4: A **2nd Letter** to the funded organisation requesting a refund of the debt reiterating the reasons for the debt and allowing 14 days to respond.
- e) Step 5: A **final letter** will be issued to the funded organisation reiterating the reasons for the debt and allowing 14 days to respond.
- f) Step 6: **Legal action** will be pursued by the VSS if recovery is unsuccessful.

In the final stages of the process, when seeking legal advice, the VSS will continue to contact the funded organisation in an attempt to recover the debt and avoid legal action.

6. Methods of Recovery

6.1. The method of recovery will be agreed between the funded organisation and the VSS. This should be regarded as a business transaction and a full refund of any overpayment will be sought. Recovery can be completed in one of two ways:

- **Repayment** - The funded organisation or individual will repay the VSS directly by cheque, cash or BACS transfer. This can be done as a one off payment or the VSS can agree a repayment plan, if necessary, with the funded organisation or individual. Repayment should be made in a reasonable time period, to the satisfaction of the VSS.
- **Off-Set** - Monies due will be off-set by the VSS against the next claim or payment due to the funded organisation or individual. However, it should be noted that in cases of suspected fraud, all subsequent payments will be suspended pending investigation.

7. Unsuccessful Recovery

7.1. In the event of unsuccessful recovery from the funded organisation individual, the VSS will seek to recover funds through legal action.

8. Conclusion

8.1. Cases of debt recovery due to bad faith or fraudulent or suspected fraudulent activity will affect a funded organisation's ability to access VSS funding streams in the future. Funded organisations are encouraged to maintain open communication with the VSS to ensure that issues arising around overpayments and debt recovery are resolved quickly and to the satisfaction of all parties involved.