

Covid-19 Business Grant Funding Schemes

Debt Recovery, Returning Reclaimed Grants and Referring Outstanding Debts to the Department: Guidance for Local Authorities

### Small Business Grant Fund

### Retail, Hospitality and Leisure Grant Fund Local Authority Discretionary Grant Fund Local Restrictions Support Grant (Open) Local Restrictions Support Grant (Closed) Local Restrictions Support Grant (Sector)

### Local Restrictions Support Grant (Closed) Addendum

### Local Restrictions Support Grant (Closed) Addendum: Tier 4 Local Restrictions Support Grant (Open) Version 2

### Local Restrictions Support Grant (Closed) Version 2

### Local Restrictions Support Grant (Closed) Addendum: 5 January onwards Christmas Support Payment for Wet Led Pubs (CSP)

### Closed Businesses Lockdown Payment Restart Grants

### Additional Restrictions Grant Fund Omicron Hospitality and Leisure Grant



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Contents

[Notes 4](#_bookmark0)

[Introduction 4](#_bookmark1)

[About this Guidance 4](#_bookmark2)

[Background 5](#_bookmark5)

[Identifying Ineligible / Erroneous Payments 5](#_bookmark6)

[Referring Outstanding Debts to DBT 6](#_bookmark7)

[Reasonable and Practicable Processes in Awarding Grants 6](#_bookmark8)

[Reasonable and Practicable Steps Regarding Obtaining Repayments 7](#_bookmark10)

[Returning Funding to DBT 8](#_bookmark11)

[Referral of Debts to DBT 8](#_bookmark12)

[Assignment of Debts 8](#_bookmark13)

[Triage](#_bookmark15) 8

[Referring Debts to Third Party Debt Recovery Agency 9](#_bookmark16)

[Data Protection](#_bookmark18) 9

[Annex A Funds to be Returned to DBT 10](#_bookmark19)

[Annex B Local Authority Debt to be Referred to DBT 1](#_bookmark20)1

**Notes:**

1. An irregular payment is any grant payment that was made by a Local Authority that has been identified post payment as incorrect due to error, non-compliance or fraud.
2. Any grant payment that a business voluntarily asks to repay must also be treated as an irregular payment and handled in line with this Guidance Note.
3. The process outlined in this Guidance Note should only be followed where a Local Authority has been reimbursed for an irregular payment by the Department for Business and Trade (DBT) through the reconciliation process.
4. A Local Authority must attempt recovery for any irregular payment which it has been reimbursed for by DBT. A Local Authority cannot choose to not attempt recovery.
5. If a Local Authority is identified as not having attempted recovery on an irregular payment in line with the Guidance, then it may be required to repay the funds back to DBT.
6. If a Local Authority has funded an irregular payment from its own resources and has not been reimbursed by DBT, the Local Authority does not need to follow the process outlined in this Guidance Note – the Local Authority is therefore not required to repay any recovered funds back to DBT, and DBT will not take on liability for any such debt.

## **Introduction**

1. In response to the Coronavirus, Covid-19, the Government announced there would be support for businesses. Part of this support has been grants available in financial years 20/21 and 21/22, paid through Local Authorities.
2. Guidance documents[1](#_bookmark4) were published to support Local Authorities in administering the grant schemes which include eligibility requirements for each scheme.
3. Local Authorities are required to complete assurance activity on all Covid-19 business grants awarded to check that the recipient was eligible to receive the funds and that the funds were paid correctly.
4. Where a Local Authority identifies an irregular payment then it must attempt recovery. This document provides guidance to Local Authorities on the debt recovery processes to be followed for all schemes, including the minimum debt recovery requirements, and the process for referring outstanding debts to DBT.

## **About this Guidance**

1. This Guidance sets out the criteria which Local Authorities must consider as they manage debt recovery processes. This guidance replaces Version 6 of the Debt Recovery Guidance issued in January 2023 and applies to England only.
2. This Guidance sets out the reasonable and practicable steps Local Authorities must undertake to reclaim grants paid in error, non-compliantly or to someone who made a fraudulent claim. It also provides guidance to Local Authorities on the processes to follow should the reclaim be unsuccessful.
3. The Business Grant Assurance Guidance[2](#_bookmark4) sets out the framework within which Local Authorities must carry out pre- or post-payment assurance checks, based on project risk assessments and post assurance plans. To avoid duplication, this Guidance does not cover these areas.
4. Local Authority enquiries should be addressed to BusinessGrantsAssurance@businessandtrade.gov.uk.

1 [Covid 19 Grant Scheme Guidance](https://www.gov.uk/government/publications/local-restrictions-support-grants-lrsg-and-additional-restrictions-grant-arg-guidance-for-local-authorities) 2 [Assurance Guidance for LAs](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1038282/business-grant-funding-schemes-assurance-guidance.pdf)

## **Background**

1. Local Authorities have a responsibility to provide assurance to both themselves and the Department to minimise the risk of errors/fraud and over-payments.
2. The Secretary of State confirmed that the Department will stand behind any erroneous payments, subject to Local Authorities:
	* taking all reasonable and practicable measures as set out in the Assurance Guidance to avoid making payment to ineligible businesses or fraudulent applications; and
	* then having exhausted all reasonable and practicable steps as set out in this Guidance to recover any ineligible, fraudulent or incorrect payments.
3. Where a Local Authority can evidence that it took all reasonable and practicable steps in line with the published Guidance, the Department will be accountable for any sums not recovered.

## **Identifying Ineligible / Erroneous Payments**

1. Where a Local Authority identifies through assurance activity that a grant payment was ineligible it must determine whether the payment was made because of (i) error, (ii) non- compliance or (iii) fraud.
2. Error

Where a Local Authority identifies that it made a payment in error, (for example, where payment has been made to an incorrect bank account or a duplicate payment was made) it must determine whether this was an isolated incident and ensure that checks have been undertaken to make sure this risk was not repeated or if it was, that appropriate action was taken.

A Local Authority must instigate recovery on all grants paid in error, and reasonable and practicable steps as detailed at paragraphs 21-27 below must be followed by a Local Authority to attempt to recover a grant awarded in error.

If a grant paid in error is not recovered it can be referred to DBT if the Local Authority follows the minimum recovery process set out in this Guidance. The Local Authority must complete Annex B for any debt referred and set out clearly in that document why the referral sits under error.

1. Non-Compliance

Where a Local Authority identifies that an award of grant was non-compliant (for example where the business receiving the grant did not satisfy the scheme eligibility criteria) they must determine whether it was intentional on the part of the business or a misunderstanding or misinterpretation of guidance. If the non-compliance is considered intentional then this must be treated as fraud.

A Local Authority must instigate recovery on all grants judged to be non-compliant, and reasonable and practicable steps as detailed at paragraphs 21-27 below must be followed by a Local Authority to attempt to recover a non-compliant grant.

If a grant paid and identified as being non-compliant is not recovered, it can be referred to DBT if the Local Authority follows the minimum recovery process set out in this Guidance. The Local Authority must complete Annex B for any debt referred and set out clearly in that document why the referral sits under non-compliance.

1. Fraud

Where a Local Authority identifies actual or suspected fraud related to the award or payment of a Covid-19 Business Grant, it must follow the following minimum steps:

* + It must investigate the fraud in line with its own anti-fraud procedures and may wish to pursue referral of the case to local police, however such referral is at the Local Authority’s discretion.
	+ It must instigate recovery of any grant paid in line with the Debt Recovery process outlined in this Guidance.

If the Local Authority is unable to recover a debt related to actual or suspected fraud, then this can be referred to DBT if the Local Authority follows the minimum recovery process set out in this Guidance. The Local Authority must complete Annex B for any debt referred and set out clearly in that document why the referral sits under Fraud and the outcome of its own investigation.

DBT will not accept a referral related to Fraud without all of these criteria being met.

1. A Local Authority must attempt recovery on any grant identified as being ineligible regardless of the reason.

## **Referring Outstanding Debts to DBT**

1. The Secretary of State confirmed (on 23 July 2020) that the Department will stand behind any erroneous payments, subject to Local Authorities taking all reasonable and practicable measures to avoid making payments to ineligible businesses, and then having exhausted all reasonable and practicable steps to recover any ineligible or over- payments. The Department will be accountable for any sums not recovered.
2. Where a Local Authority can demonstrate that a grant was awarded in a reasonable and practicable manner and has undertaken the minimum recovery options outlined within this Guidance, the Department will stand behind any erroneous payments.
3. If a Local Authority fails to award grants in a reasonable and practicable manner or does not undertake reasonable and practicable recovery action, the Local Authority will be held financially accountable and may need to repay the relevant grant amount to the Department.

## **Reasonable and Practicable Processes in Awarding Grants**

1. Local Authorities are required to retain appropriate evidence to demonstrate that all reasonable and practicable steps were followed in the award of a Covid-19 Business Support Grant.
2. DBT has issued Assurance Guidance[3](#_bookmark9) to support Local Authorities to determine what actions are reasonable and practicable in reviewing the allocation and payment of grant awards.

This Assurance Guidance sets out the minimum level of checks that Local Authorities must complete to provide assurance to both themselves and DBT that they have addressed the risk of error, non-compliance and/or fraud. DBT has confirmed that for all schemes except Restart, the Omicron Hospitality and Leisure Grant and the ARG top-up announced in December 2021, these checks can be completed pre- or post-payment of the grant. For Restart, the Omicron Hospitality and Leisure Grant and the ARG top -up announced December 2021 Grant checks must be completed pre-payment.

3 Assurance Guidance Version 5 issued 12/01/2022 [(Assurance Guidance for local authorities](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1038282/business-grant-funding-schemes-assurance-guidance.pdf))

1. The Assurance Guidance requires Local Authorities to retain evidence for a minimum of 10 years from the date of award of grant, to demonstrate that the minimum checks have been followed.

## **Reasonable and Practicable Steps Regarding Obtaining Repayments**

1. Local Authorities are required to demonstrate they have undertaken all reasonable and practicable steps to reclaim incorrectly paid grant funds.
2. To meet this requirement, Local Authorities must make **one attempt** to try and recover any erroneous / ineligible business grants.
3. This consists of raising an invoice to create the debt. The invoice should clearly set out the reason why the grant is to be repaid, referring to the relevant grant scheme(s) and which scheme eligibility criteria it failed, and giving a deadline for repayment.
4. For best practice Local Authorities should also include:
* Signposting to a source of free independent debt advice services, such as the Citizens Advice, Stepchange the National Debtline, and Business Debtline.
* Details of the escalation route that might be taken (e.g., local civil recovery, passing recovery back to Central Government for debt recovery action to be considered).
* Point of contact details for discussion.
1. This is the minimum DBT would expect a Local Authority to follow to meet the reasonable and practicable criteria. Local Authorities are welcome to take additional steps in line with their own debt recovery process, this would not prejudice later referral to DBT if the debt could not be recovered.
2. Local Authorities are required to keep a record of all communications in relation to the debt recovery, including any response from the Grant Recipient, together with evidence which validates the reasons why the Local Authority deemed the Grant Recipient was not entitled to the grant.
3. Local Authorities must be flexible and have a repayment system which would offer Grant Recipients the opportunity to pay back in instalments if required. Repayment should be secured as soon as possible, and where possible within one year of the original invoice being raised, but a period no later than the 31 December 2025 can be agreed without reference back to DBT. Any proposed repayment term outside of this will have to be agreed in writing[4](#_bookmark14) with DBT before it can be finalised with a business.

These requests will only be considered on an exceptional basis and Local Authorities must provide:

* The amount to be recovered and the proposed term.
* The reason why the Local Authority believes the term is required/appropriate for the business, including an argued reason as to why the business cannot manage a shorter repayment plan.
* A view on affordability and whether it recommends the repayment plan.

DBT will make a final decision based on the above.

4 Email confirmation from DBT to the LA is acceptable

## **Returning Funding to DBT**

1. Where funds have been successfully recovered, the Local Authority must complete the template at Annex A and return to BusinessGrantsAssurance@businessandtrade.gov.uk. The Department will provide a formal request for the funds, along with details of where to send payment and a unique reference number to be used.
2. If a repayment plan is agreed, the first repayment must be paid to DBT via Annex A as soon as possible after the funds are received from the business. After that, Local Authorities can choose the frequency of future repayments until the debt is repaid. The Local Authority must confirm with the first Annex A, the frequency of future repayments.
3. Local Authorities only need to complete and return Annex A when they are in a position to return funding, nil responses are not required.

## **Referral of Debts to DBT**

1. Where a Local Authority has taken all reasonable and practicable steps as outlined above but has been unable to recover the irregular payment, the Local Authority must complete the template at Annex B and return to BusinessGrantsAssurance@businessandtrade.gov.uk for agreement on liability and further recovery activity.
2. The Local Authority must provide all appropriate additional documentation as stated in Annex B. Failure to provide the full detail requested at Annex B will delay DBT confirming liability and next steps for the debt and could result in a Local Authority being considered liable for a debt.

## **Assignment of Debts**

1. For DBT to accept and act on a debt referral, a Precedent Assignment Agreement is required between DBT and the Local Authority, which assigns all causes of action in relation to incorrectly paid Covid-19 Business Support Grants to DBT. This is required as funds were allocated to Local Authorities under Section 31of the Local Government Act 2003 and it was the Local Authority who then administered the Grants to end Grant Recipients, meaning any legal cause of action (in contract or otherwise) sits at the level of Local Authority to Grant Recipient.
2. A Precedent Assignment Agreement will be signed once by each Local Authority to cover all Covid-19 Business Support Grant schemes, setting out a framework for DBT taking formal responsibility for a debt.

## **Triage**

1. DBT will complete an initial triage on all Annex B Debt Referrals received where a Precedent Assignment Agreement has been signed by the Local Authority, and confirm to the Local Authority the next steps.
2. Where DBT accepts a referral and the associated liability for the debt it will formally write to the business to:
* Confirm that it has taken over recovery action from the Local Authority.
* Request that within 10 working days the business either repays the debt in full directly to DBT or agrees a repayment plan.
* Advise that the debt will be referred to a Debt Recovery Agency if no acceptable response is provided within 10 working days.

DBT will pursue recovery in all cases of fraud or suspected fraud.

1. Where DBT accepts liability for the debt but there is no realistic prospect of recovery, this will be recorded as unrecoverable.
2. Where DBT refuses a referral on the basis that the Local Authority has not acted in a “reasonable and practicable” manner in either the award or attempted recovery of the Grant, it will formally write to the Local Authority to confirm, and detail the reason(s) why, confirming the process for challenge of the decision and a 10-working day deadline to lodge any appeal.

When a decision to refuse a referral is confirmed as final, DBT may seek recovery of a debt from the Local Authority.

1. The triage will be based on details provided by the Local Authority through Annex B and the supporting documents requested at Annex B. If further information on a referral is required from a Local Authority, DBT will request this in writing.

# **Referring Debts to Third Party Debt Recovery Agency**

1. Grants that are referred to DBT for further recovery action, and where DBT accepts that referral, will be assessed to determine the possibility of recovery.
2. Where the business continues to trade, the Department will instruct a Third-Party Debt Recovery Agency to undertake further recovery action.
3. DBT will pursue recovery in all cases of fraud or suspected fraud.
4. Where the Debt Recovery Agency reclaims the funding from a business, they will directly return the funding to DBT.
5. If the Debt Recovery Agency is unable to reclaim the funds from a business, this will be referred to DBT to agree appropriate next steps.
6. DBT will not automatically update a Local Authority on progress with debt recovery, following confirmation of assignment of that debt.

## **Data Protection**

1. Local Authorities will need to ensure they have appropriate data protection arrangements in line with the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018.
2. Data may be shared with the Department for Business and Trade (DBT). The DBT privacy notice, setting out how DBT will handle personal data can be found on GOV.UK @ <https://www.gov.uk/government/publications/covid-19-grant-schemes-privacy-notice/covid-19-grant-schemes-privacy-notice>
3. Data may be shared with other enforcement agencies for the prevention and detection of crime.



# Annex BLocal Authority Debt to be Referred to DBT

Please complete a new form for each debt to be referred

All fields require an answer, even if N/A

|  |  |  |
| --- | --- | --- |
| 1 | **LOCAL AUTHORITY** |  |
| 2 | **DATE OF REFERRAL** |  |
| 3 | Covid-19 Grant Scheme(see list of grant schemes on next page) |  |
| 4 | Reason for Recovery (delete as appropriate) | Error / Non-Compliance / Fraud |
| 5 | Brief explanation of Recovery Reason(including which eligibility criteria the business did not meet and why) |  |
| 6 | Business Name |  |
| 7 | Primary Contact |  |
| 8 | Primary Business Address |  |
| 9 | Primary Business Town |  |
| 10 | Primary Business County |  |
| 11 | Primary Business Post Code |  |
| 12 | Primary Email Address |  |
| 13 | Primary Telephone Number |  |
| 14 | Secondary Contact |  |
| 15 | Secondary Business Address |  |
| 16 | Secondary Business Town |  |
| 17 | Secondary Business County |  |
| 18 | Secondary Business Post Code |  |
| 19 | Secondary Email Address |  |
| 20 | Secondary Telephone Number |  |
| 21 | Business Website |  |
| 22 | Date of Grant Application |  |
| 23 | Date Grant was Paid to Business |  |
| 24 | Total Grant Awarded |  |
| 25 | Total Grant to be Recovered |  |
| 26 | Date of Invoice |  |
| 27 | Date of Reminder Letter (if sent) |  |
| 28 | Date of Final Opportunities Letter (if sent) |  |
| 39 | Summary of any other recovery action taken |  |
| 30 | Is business still trading / solvent |  |
| 31 | LA view on why recovery action failed |  |

Please forward to BusinessGrantsAssurance@businessandtrade.gov.uk along with any evidence to support DBT in pursuing recovery via potential litigation, including:

* Copy of the application form and grant award letter/terms of offer
* Copy of the invoice (and where applicable, any reminder letters issued)
* Evidence of the pre and post assurance checks undertaken
* Record of any other recovery action undertaken
* Copy of any correspondence received from the grant recipient

If any of the above cannot be provided, please explain in covering email.

**Covid-19 Business Grant Funding Schemes:**

Small Business Grant Fund (SBGF)

Retail, Hospitality and Leisure Grant Fund (RHLGF)

Local Authority Discretionary Grant Fund (LADGF)

Local Restrictions Support Grant (LRSG) – Open

Local Restrictions Support Grant (LRSG) – Sector

Local Restrictions Support Grant (LRSG) – Closed Addendum (November)

Local Restrictions Support Grant (LRSG) – Closed Addendum: Tier 4

Local Restrictions Support Grant (LRSG) – Closed Addendum: 5 January onwards (1st 6 weeks)

Local Restrictions Support Grant (LRSG) – Closed Addendum: 5 January onwards (2nd 6 weeks)

Closed Businesses Lockdown Payment (CBLP)

Christmas Support Payment for Wet Led Pubs (CSP)

Restart Grants

Additional Restrictions Grant Fund (ARG)

Omicron Hospitality and Leisure Grant (OHLG)