

# Derbyshire Welfare Rights Service

## I have been overpaid Benefit, what can I do?

You have been overpaid benefit if you have been paid more than your proper entitlement. That seems a very straightforward idea, but it can be a very complex subject: you may have been overpaid by accident or by mistake - and there are different rules about whether or not you have to pay the money back.

There is also a big difference between being simply overpaid and being accused of fraud. Most overpayments occur through mistakes, not deliberate cheating, and some of the mistakes are made by the benefits authorities themselves.

If you are accused of fraud, seek both benefits and legal advice at once - see below.

This is a general guide to the law about benefit overpayments.

If you have been notified of an overpayment we recommend that you seek advice from us on the (Helpline 01629 531535) as soon as possible – you usually have one month to challenge a decision. In the case of Tax Credits, you have 30 days.

### How do I avoid being overpaid?

Always remember that you have a duty to tell the Department for Work and Pensions (DWP), Her Majesty's Revenue and Customs (HMRC) or your Local Authority about any changes in your situation that may affect your benefit claim. Examples of changes are:

- Increased income
- Increased savings
- Someone joining the household (a new partner, a new baby)
- Someone leaving the household (a child moving out or if you no longer live with your partner)

Make sure you that you tell the correct office – the one that handles the benefit you are claiming – about the change.

You mustn't assume that information you have given to one benefits office will necessarily be passed on to another, and you will usually not have discharged your 'duty to disclose' information if you do not tell the correct office.

You are expected to read and understand the letters, and to contact the office that is paying you if you think any of the details are wrong. You should always read through your benefit letters and keep them for reference; if you don't understand the letters - seek help. If you claim Universal Credit, your contact with DWP will be online.

# Derbyshire Welfare Rights Service

If you don't keep the benefits office up to date, you may find that any overpayment that arises becomes your responsibility.

Checking your letters/UC messages and taking advice may also prevent you from being underpaid. Many people are claiming too little benefit, because they do not know their full rights.

## **Do I have to pay back money that has been overpaid?**

It depends.

Overpayments are recoverable from you in all cases if it is found that you failed to give correct and up to date information about your claim or you deliberately misrepresented your circumstances – you should still seek advice about your right to challenge the decision in such cases.

In some cases, you may be asked to pay back an overpayment but it may not be recoverable if you are not at fault and there has been an 'official error' – a mistake made by a benefits office. You will need to challenge the decision to recover the money from you.

In other cases the overpayment will be legally recoverable from you even if the benefits office made a mistake, but a code of practice adopted by Her Majesty's Revenue and Customs (HMRC - for Tax Credits) means that they may agree to reduce the overpayment or not recover it – this will mainly be when they are at fault and you are not, or when taking the money back would cause you hardship.

If you have been overpaid Universal Credit, seek advice as under UC rules all overpayments are repayable no matter how they arose: however, if a mistake by DWP has caused the overpayment you should make a formal complaint.

## **To begin to know your rights about overpayments, you need to check carefully:**

- Which benefit has been overpaid?
- When did you claim the benefit?
- When was the decision made about the overpayment?
- What is the basis of the decision?
- Do you have the decision in writing?

## **Why you should seek advice immediately**

You should seek advice immediately because of the complexity of the subject, and also because of the time limits for disputing any overpayment decisions (usually one month for benefits, 30 days for Tax Credits, though late requests are possible in some circumstances).

# Derbyshire Welfare Rights Service

An adviser can assist you and speak for you, including at an appeal tribunal – s/he can also obtain details of the overpayment and make sure that it is correct in its use of the facts and the law, it has been properly worked out and also if you were entitled to any other benefits that have been missed by the person making the decision about you.

An adviser can also go in to the details to check, even if benefit truly has been overpaid, if the money should be paid back by you or if there is a good reason why it should not be repaid. If you are responsible for paying back an overpayment, an adviser can help you to make sure that you can afford the repayment and that the proper arrangements are made.

## Has there been an 'official error'?

This advice applies to all benefits except Housing Benefit, Working Tax Credit/Child Tax Credit, Universal Credit and Jobseeker's Allowance or Employment and Support Allowance claimed in a Universal Credit area - see below for advice on these.

If you have been overpaid benefit, you may be able to argue that the money is not recoverable if you have not caused the overpayment by failing to give the DWP up to date information that affected your claim and you have not misrepresented your situation – and the overpayment is caused by 'official error'.

You will still be notified of the overpayment and asked to return the money, but you should challenge the decision.

A very simple example of official error would be if you have claimed your benefit correctly and given all the correct details and yet you are still paid too much.

*Even if an overpayment is 'recoverable' from you, it may be possible to ask the DWP or Local Authority to use its discretion not to recover money in certain circumstances, for instance if this would cause you hardship – seek advice.*

## Housing Benefit

It is also possible to argue that a Housing Benefit overpayment should not be claimed back from you if there has been official error, however you must also show that you did not contribute to the official error because of something that you did or didn't do, and also that it was not reasonable to expect you to spot the fact that you were being overpaid yourself.

This makes HB overpayments very complicated, and you should always seek advice on these.

# Derbyshire Welfare Rights Service

## **Universal Credit – or Jobseeker’s Allowance (Contribution-Based, Employment and Support Allowance (Contribution Based) in an area where Universal Credit applies**

Overpayments of these benefits are always recoverable, it does not matter what caused the overpayment.

These rules only apply to JSA and ESA where you have claimed these in an area where Universal Credit applies.

You should seek advice as it may be possible to reduce the amount of money that will be recovered from you, or to appeal against aspects of the benefits decision including whether the amount you are paid is actually correct, or if the overpayment has been wrongly calculated (it is not possible to appeal the fact that the overpayment is recoverable)

It may be possible to request a reduction in the overpayment or for DWP to use its discretion for the overpayment not to be recovered at all, for instance if taking the money back would cause you hardship and/or you are seriously ill or disabled. This is not a right however – seek advice in all cases.

You should also consider making a formal complaint if a DWP error has caused the UC overpayment.

## **Working Tax Credit and Child Tax Credit**

You will always be asked to pay back Tax Credit overpayments, even if you were not at fault, but it may be possible to dispute the case.

Seek advice as soon as possible as the procedures can be complex.

There is a Code of Conduct under which Tax Credits may agree to reduce or write off the overpayment, if you can show that they were at fault and you were not.

You can find the Code of Practice at <https://www.gov.uk/government/publications/tax-credits-what-happens-if-youve-been-paid-too-much-cop26>. If you think that the Tax Credits office is at fault but you are not, it is possible to dispute a Tax Credits overpayment decision – seek advice at once but see also

<http://www.hmrc.gov.uk/taxcredits/things-go-wrong/overpayments/dispute.htm>

You can also appeal against the decision - you must usually do so within 30 days of the decision, and the appeal must not be against the fact that the overpayment is recoverable; other grounds for appeal are needed – an adviser can help you with this.

See also <http://www.hmrc.gov.uk/taxcredits/things-go-wrong/complaints-appeals/appealing.htm>

# Derbyshire Welfare Rights Service

## Civil Penalties

If you fail to report a change of circumstances which changes your benefit entitlements 'without reasonable excuse' or you 'negligently make an incorrect statement or representation, or negligently give incorrect information or evidence'.

- and you fail to take steps to correct any error in the information you have given
- and this creates an recoverable overpayment of at least £65.01

You may incur a civil penalty of £50.00.

The civil penalty cannot be charged to you if other action (e.g. a fraud prosecution) is to be taken.

It is possible to appeal against the imposition of a civil penalty – seek advice.

## If you have been accused of fraud

Fraud affects less than 1% of the social security budget but the DWP and HMRC will take action against instances of fraud including prosecution in the courts.

Remember that although fraud is a criminal offence, the legal system regards you as innocent until proven guilty, and many people who have been taken to court for suspected fraud have been proven innocent.

If you are suspected of fraud, you may find you are asked to attend an 'interview under caution' – an interview with benefits officers - before which you should be formally cautioned about your legal rights and the possibility of prosecution.

You should not ignore any letters you may receive about this. You are not obliged to attend the interview but if you don't, DWP may suspend your benefits if they have grounds to believe you are not entitled to them. You can challenge suspension of benefits, but you will need advice on this.

*Do not attend an interview under caution without taking advice first, including legal advice from a solicitor – find out if you are entitled to free legal help.*

If you attend the interview: do not attend alone (you may want a solicitor with you, or a friend or family member may go with you, but they may not speak for you or advise you like a solicitor can)

You may be offered an alternative to prosecution – an 'administrative penalty' which is an agreement to pay back the overpayment plus 50% of the debt (or a minimum of £350 up to a maximum of £5,000).

# Derbyshire Welfare Rights Service

You should not agree to pay this until you have had full, independent advice.

A solicitor and a benefits adviser working together can ensure that your case is dealt with in the best way, so that you understand the legal situation and your benefit entitlements have been worked out correctly.

## **If you have been the victim of Universal Credit fraud by a third party**

In 2019, thousands of people were tricked by internet fraudsters in to applying for 'government loans' which turned out to be applications for Universal Credit. In some cases, DWP asked claimants to attend 'Interview Under Caution' about this. If this has happened to you, seek advice, even if the fraud occurred some time ago.

Additional information can be found on our website, visit [www.derbyshire.gov.uk/welfarebenefits](http://www.derbyshire.gov.uk/welfarebenefits)

To keep up-to-date with benefit changes in Derbyshire go to  
[www.derbyshire.gov.uk/benefitnews](http://www.derbyshire.gov.uk/benefitnews)

**Benefits Helpline – 01629 531535 or email**  
**[welfarebenefits@derbyshire.gov.uk](mailto:welfarebenefits@derbyshire.gov.uk)**

**Monday, Tuesday, Thursday, Friday**  
**11.00am – 4.00pm**