Welfare Rights Conference 2026

Dealing with UC overpayments

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Introduction

This workshop will look at how to deal with overpayments of universal credit (UC). It begins with a reminder of the different rules about when benefit overpayments are recoverable. We will then look at the steps to take when a client has a UC overpayment, including when it may be arguable that DWP cannot lawfully recover the overpayment - even if it is calculated correctly. Finally, we will briefly consider the methods by which UC overpayments can be recovered.

When different benefit overpayments are recoverable

Broadly, it is possible to divide benefit overpayment rules into three groups by the benefits they apply to:

- those that are only recoverable if certain conditions are met;
- those that are recoverable except if certain conditions are met; *and*
- those that are always recoverable if correctly calculated.

As our focus is on UC overpayments, which fall within the third group, the first two groups above are only briefly discussed as an outline of the main rules. More detail can be found in Chapters 46 and 67 of the *Welfare Benefits Handbook 2026-27.*

Overpayments that are *only* recoverable if certain conditions are met

Most of the benefits to which these rules apply no longer exist in Scotland. The rules apply to:

- 'legacy' DWP benefits (those replaced by UC and 'old-style' contributory benefits);
- disability living allowance, attendance allowance, personal independence payment and carer's allowance (all now replaced in Scotland);
- child benefit and guardian's allowance;
- maternity allowance;
- pension credit and state pensions; *and*
- DWP bereavement benefits.

Overpayments of these benefits are only recoverable if the claimant has misrepresented something or failed to disclose a material fact, and this has caused the overpayment.[1] It follows from this that overpayments solely resulting from an 'official error' by the DWP or HMRC will not normally be recoverable.

It is possible to request a mandatory reconsideration and then appeal of the recoverability decision, as well as the new entitlement decision that resulted in the overpayment.

At present, disclosure is required to the correct office administering the benefit, unless it can be shown that the relevant office knew of something but failed to act on it.[2]

[1] s71 Social Security Administration Act 1992 c.5 ('SSAA 1992' below)
[2] For further details of the rules for these overpayments, see Ch 46 section 3 of the *Welfare Benefits Handbook 2026/27* ('WBH' below, links accessible to online subscribers)

Overpayments that are recoverable *unless* certain conditions are met

These fall into two groups, with different rules. They are firstly housing benefit (HB) and council tax reduction (CTR), and secondly most benefits delivered by Social Security Scotland (SSS) - those that come under the Scottish social security system ('Scottish benefits').

HB and CTR overpayments

The rules are similar in spite of CTR being devolved. Overpayments are recoverable unless:[3]

- they arose due to official error; *and*
- no 'relevant person' contributed to the official error; *and*
- no relevant person could reasonably have realised that there was an overpayment being made.

A relevant person is the claimant, another formally acting for them (eg an appointee) or the person to whom payment was made.

Again, recoverability can be challenged in addition to the amount of the overpayment - by requesting a CTR review or appealing the HB decision.[4]

Scottish benefit overpayments

These can be recovered if the benefit was paid in error, and either:[5]

- the claimant provided false or misleading information, failed to report a change or caused someone else to do so; *or*
- the error was one that the claimant could reasonably have been expected to notice.

When deciding whether to recover an overpayment, SSS must consider the financial impact of recovery on the claimant.

Whilst a further determination of entitlement is not currently required to create a liability to repay assistance in all cases, the rules will change to require a 'decision' in all cases, with a right of review and then appeal.[6]

Overpayments that are always recoverable

Most importantly, this group includes UC, as well as 'new-style' jobseeker's allowance and employment and support allowance (as it they are called after the abolition of 'legacy' benefits, potentially paid alongside UC). It also included tax credits. Overpayments of tax credits can now be treated as if they were overpayments of UC, and recovered accordingly.

[3] For further details see Ch 46 section 5 WBH (covering HB only)
[4] The requirement to request a review before appealing is a significant difference between the HB and CTR rules.
[5] Part 2 Ch 5 Social Security (Scotland) Act 2018 asp 9 ('SS(S)A 2018' below). For further details see Ch 67 section 3 WBH.
[6] Changes will be made to SS(S)A 2018 by Part 4 Social Security (Amendment) (Scotland) Act 2025 asp 2

Overpayments of other DWP 'legacy' benefits can be recovered from UC, but this does not affect the law about when they are legally recoverable. The exception is if the legacy benefit wrongly continued in payment after entitlement ended due to a UC claim. In this situation, the legacy benefit is instead treated as unearned income for UC, which effectively recovers the overpayment.[7]

Dealing with universal credit overpayments

Whilst UC overpayments are always recoverable if calculated correctly, there are still steps that must be followed before the DWP can recover them.

Has the awarding decision been changed?

Firstly, the DWP must have changed the decision awarding UC. In terms of the law, the relevant UC awarding decision must have been revised or superseded before the overpayment can be recoverable,[8] so that an amount in excess of the correct entitlement has been paid. In practice this is most likely to be communicated to a client via an amended UC payment statement. But any sufficiently clear written decision can meet this requirement. Such decisions **must** be communicated to the claimant before they are effective.

The importance of this is of course that the claimant can challenge this decision if they disagree with the existence or amount of the overpayment. As this is a question of the amount of UC that should be awarded for a period, a claimant can request a revision/mandatory reconsideration, and then appeal if they are still unhappy.[9] Even if the entitlement decision that created the overpayment was made over 13 months ago, it is still possible to request a revision and then appeal if the new entitlement decision involved an 'official error' to which the claimant did not contribute. References below to a right of appeal are to an appeal following a request for mandatory reconsideration.

As such, the first step will always be to check that the overpayment has been calculated correctly, and consider challenging the entitlement decision if it has not.

The amount of the overpayment

Once it has been established that the new decision resulting in the overpayment is correct, the next step is to check if any amounts can be offset against the overpayment. As these affect the recoverable amount, they can also be appealed if they are incorrect.[10]

Similarly, it is possible to appeal against the decision imposing a £50 civil penalty on a client, due to their 'negligence' or failure to act with 'reasonable care' having resulted in the overpayment - even if the overpayment amount is correct.[11] It is important to distinguish civil penalties from administrative penalties as an alternative to prosecution, which are beyond the scope of this workshop.

[7] Reg 14 Universal Credit (Transitional Provisions) Regulations 2014 No.1230
[8] s71ZB(3) SSAA 1992
[9] Sch 3 para 6B Social Security Act 1998 c.14 ('SSA 1998' below)
[10] As Sch 3 para 6B SSA 1998 refers to a right of appeal against the 'amount recoverable' under s71ZB
[11] *VT v SSWP (IS)* [2016] UKUT 178 (AAC); [2016] AACR 42 ('*VT v SSWP*'' below). For further details of civil penalties see ss115C and 115D SSAA 1992 and Ch 47 section 1 WBH.

Overpayments due to capital

An overpayment of UC lasting three months or more due to having too much capital is calculated using the 'diminishing capital' rule. This rule takes into account the fact that, had there not been an overpayment, the capital would have been used for everyday expenses. For each three-month period, the DWP assumes that the claimant's capital is reduced by the amount of overpaid benefit.[12]

Overpayments of the housing costs element

An overpayment of the housing costs element due to moving home can (at the decision maker's discretion) be reduced by the amount of the housing costs element that would have been paid for the new home. This reduction can only be made if the payments for both homes were made to the same person. If the amount to be recovered is reduced in this way, the reduction is treated as if it was paid for the new home.[13]

Whilst this may be helpful in historic cases where UC were not told about a change of address, it will always be important to correct the amount of the housing costs element from the date of the move if this is still possible.

The discretion to recover overpayments

Once it has been established that the amount of an overpayment is correct, it will be the case that this money is recoverable from the client. The Upper Tribunal has held that there is no right of appeal against the decision to actually recover the overpayment.[14]

'Waiver' is the term given by the DWP to exercise its discretion and decide not to recover all or some of a recoverable overpayment. Claimants who do not think an overpayment should be recovered should be encouraged to request a waiver. As recovery is a matter of discretion, that discretion must be exercised lawfully.

The DWP has published its internal guidance on waiver on GOV.UK, where it forms part of Chapter 8 of the Benefit Overpayment Recovery Guide (BORG). This is clear on the overall approach that the public purse needs protection, and that waiver will be applied only in exceptional circumstances.

It is best to request a waiver in writing (to DWP Debt Management), and provide supporting evidence. SPAG's judicial review project has produced some template letters that may be useful for framing waiver requests (in addiction to when claimants are considering a judicial review, of course).[15] The BORG contains extensive guidance on the situations in which wavier may be appropriate (which can be referred to by paragraph number). It is suggested that

[12] Reg 7 Social Security (Overpayments and Recovery) Regulations 2013 No.384 ('SS(OR) Regs' below)
[13] Reg 9 SS(OR) Regs
[14] *SSWP v IL (ESA)* [2025] UKUT 200 (AAC) ('*IL v SSWP*' below). This case followed a previous Upper Tribunal decision about UC to the same effect, and also considered whether the *K* and *Čakarević* cases discussed in the 'Legitimate expectation and legal challenge' section make any difference to the position. See that section for the potential for a future challenge to the correctness of *IL v SSWP*.
[15] The Judicial review pre-action template letters: universal credit and migration to universal credit page on the CPAG website has a section about UC overpayments

advisers will benefit from familiarising themselves with the whole of chapter 8, but to summarise, relevant factors listed at para 8.6 include:

- the debtor's financial circumstances and those of their household;
- whether recovery is impacting the debtor's/family's health;
- whether there are any 'particularly distressing or emotive' circumstances around the overpayment;
- the DWP's own conduct (including statements made to the claimant);
- the debtors conduct (including steps to mitigate any overpayment, contact or notify DWP);
- whether the Department intended the claimant to have the money (perhaps via a different benefit);
- whether the debtor has relied on the overpayment to their detriment (eg, made financial commitments);
- whether the debtor can demonstrate that they did not benefit from the money that was paid; *and*
- any other factor which appears relevant to the decision maker, or which indicates recovery would not be in the public interest.

Legitimate expectation and legal challenge

If the DWP refuse to waive recovery of an overpayment, then it may be possible to challenge this via a judicial review. That there are situations in which the DWP cannot lawfully recover an overpayment of UC was confirmed in the case of *R (K) v SSWP* [2023] EWHC 233 (Admin). That case is the subject of the article *Overpayments and 'legitimate expectation'*.[16]

In short, there may be a legitimate expectation created that prevents a UC overpayment from being recovered if:

- the claimant explains their situation accurately and fully;
- the DWP provides assurances that the award is correct and continues overpaying UC; *and*
- The claimant relies on this advice to their detriment.

It is arguable, but untested in the UK courts, that there may be cases in which querying the correctness of an award is not actually necessary. This was the decision of the European Court of Human Rights in *Čakarević v Croatia* – Application No.48921/13 (ECtHR, 26 April 2018). This case is discussed in detail in the article *Overpayments: legitimate expectation, human rights*.[17]

It is suggested that in most cases a waiver request is the first step to take, as this will allow evidence of the factors that give rise to an arguable legitimate expectation to be provided to the DWP. However, claimants with access to a lawyer could consider an immediate threat of judicial review of the decision that an overpayment is recoverable.

[16] *Welfare Rights Bulletin 293*, April 2023
[17] *Welfare Rights Bulletin 294*, June 2023

It is possible that there may be future attempts to argue that where there is a legitimate expectation it **is** possible to appeal against the decision that there is a recoverable overpayment. However, *IL v SSWP* (referenced above) held that this is **not** possible, and remains the authoritative decision on the point at the time of writing.[18]

In principle, any other failure to properly exercise discretion in the application of the wavier policy set out in the BORG can be challenged via judicial review. However, it is suggested that unless there is a clear legitimate expectation argument legal advice should be sought at an early stage, and only in the most egregious cases are such challenges likely to succeed.[19]

Other tactics if a waiver is refused

The alternative to a threatening a judicial review, in cases where waiver is refused, is to make a complaint. DWP suggests starting a complaint by phoning Debt Management on 0800 916 0647.[20] It is likely to be a good idea to attempt to involve the local MP's office at an early stage.

Once the DWP's internal complaints procedure has been exhausted,[21] a complaint can be taken to the Independent Case Examiner (ICE). Whilst it may take some time and persistence to get to this stage, it is worth noting that over half of complaints to ICE against the DWP are upheld, although that does not necessarily mean that an overpayment will be written off as a result.

Recovery of UC overpayments

Where a claimant is entitled to an ongoing award of UC, the DWP's preferred method of recovering a UC overpayment appears to be a deduction from the UC award. However, other methods of recovery are also available.

Recovery can be pursued from either claimant in a couple, or the claimant's appointee. There are limited exceptions to recoverability from the claimant(s) if someone else misrepresented or failed to disclose a material fact leading to the overpayment, or if a payment in excess of the correct amount of UC was made to a third party.[22]

The DWP can also recover an overpayment by:[23]

- deduction from non-means tested benefits (but **not** Scottish benefits);
- 'attachment' of a claimant's earnings; *or*

[18] In briefest outline, such a case succeeding in overturning *IL v SSWP* might depend on either recoverability decisions under s71ZB SSAA 1992 being held to be made in relation to an 'award of benefit' (see s12(1)(a) SSA 1998, and potentially useful comments at para 19 of *VT v SSWP*); or s71ZB being capable of being read as giving a right of appeal against recoverability to avoid breaching claimants' human rights. As the second argument was explicitly rejected in *IL v SSWP*, it would probably also be necessary to show that judicial review is an inadequate remedy to resist recovery.
[19] For more on judicial review, including the potential to face costs, see Ch 52 WBH
[20] See the DWP Complaints Procedure on GOV.UK, where accessible contact methods are also listed.
[21] See Ch 54 section 3 WBH
[22] Reg 4 SS(OR) Regs; Ch 2 of the BORG
[23] See Ch 5 of the BORG and Ch 46 section 4 WBH

- pursuing court action to recover the debt.

It is expected that later in 2026 two new methods of last resort will be introduced. These are recovery directly from the claimant's bank account, and the power to ask a Court to disqualify a debtor from driving if no satisfactory repayment arrangement can be reached.[24]

Deductions from an award of UC

Whilst the law allows for recovery of up to 40 per cent of the UC standard allowance in some situations, the current DWP policy (as set out in the BORG) is to cap recovery at 15 per cent. As such, the maximum monthly recovery rates are currently as follows.

- £50.79 (single, under 25);
- £63.74 (single, 25 or over);
- £79.25 (couple, both under 25);
- £100.05 (other couple).

These are the maximum rates and can be reduced in appropriate cases. However, the rate of recovery cannot be appealed. Recovery rates must leave a payment of at least 1p UC for each assessment period.

If the claimant also has 'third party deductions' from their UC payment, their award may prove insufficient to recover an overpayment in this way, depending on the nature of those deductions.[25]

[24] These powers are in the Public Authorities (Fraud, Error and Recovery) Act 2025 c.28. See future editions of the *Welfare Rights Bulletin* or the online WBH for details of their introduction.
[25] For the priority rules, see Ch 44 section 9 WBH