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Welfare Rights Conference 2026

Dealing with UC overpayments

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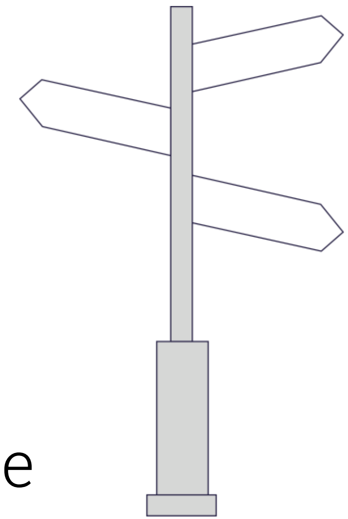
Overview

- A brief reminder of the different rules about when types of benefit overpayments are recoverable
- A suggested process for dealing with UC overpayments:
  - When a UC decision about an overpayment can be challenged
  - How to argue that an overpayment should not be recovered
  - The possibility of a judicial review if recovery is pursued
  - Other helpful tactics
- A brief look at recovery methods for UC overpayments



Feel free to contribute examples from your UC casework!

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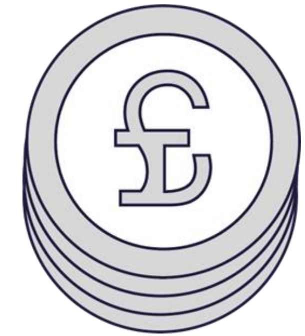
Benefits only recoverable in some situations

- Some benefit overpayments can **only** be recovered if the claimant ‘failed to disclose’ or ‘misrepresented’ something.
- Usually **not** recoverable if entirely due to DWP/HMRC error.
- These rules relate to:
  - ‘legacy’ DWP benefits (replaced by universal credit);
  - DWP disability benefits and carer’s allowance (replaced by Scottish benefits);
  - child benefit and guardian’s allowance;
  - maternity allowance, pension credit, DWP bereavement benefits.
- Can challenge a decision about entitlement, recoverability of an overpayment, or both.
- Separate rules for incorrect payments and late payment of other income.



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Housing benefit and council tax reduction overpayments

- Overpayments are recoverable UNLESS:
  - 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.
- Relevant person is the claimant, appointee, or person to whom the payment was made.
- Both entitlement and overpayment decisions can be challenged (review before appeal for council tax reduction).
- Housing benefit allows for recovery from landlords in some situations.

Scottish benefit overpayments

- Can be recovered if the benefit was paid in error, and either:
  - 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, Social Security Scotland must consider the financial impact of recovery on the claimant.
- For some one-off payments, may be no further entitlement decision to challenge.
- Legislation to introduce ‘decisions’, ‘reviews’ and ‘appeals’ for all overpayments yet to be commenced.

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Universal credit overpayments

As well as universal credit (UC) these rules apply to 'new style' jobseeker's allowance and employment and support allowance.

- UC overpayments are ALWAYS recoverable, but with caveats.
- The previous awarding decision must have been changed.
- The new entitlement decision and/or overpayment decision can be challenged if incorrect.
- The DWP has the discretion not to recover overpayments.
- In some situations, the DWP's actions may create a 'legitimate expectation' that prevents recovery of the overpayment.
- Recovery is often by deduction from the claimant's benefit, but other methods are available.

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Case studies

Jo is a kinship carer of a ‘looked after’ child. UC awarded the child element for the child. Jo queried this and was repeatedly told the child element is correct. The reason given was that Jo gets child benefit for the child.

Jo has just received a letter from DWP Debt Management saying there is an overpayment of UC. A civil penalty has been added to the overpayment as Jo has been ‘negligent’ and did not take ‘reasonable steps’ to correct the error.

Ken moved into a cheaper tenancy three months ago and notified the change of address to UC, asking what else they needed. There was no reply and the UC housing costs element did not change.

Ken has just been informed that the housing costs element has been overpaid, and this is recoverable. Ken’s most recent payment statement includes no housing costs element.

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Overpayment decision making

- UC overpayments are only recoverable if the awarding decision has been revised or superseded.
- Look for an updated payment statement for the assessment period(s) in question, or detail in other written decision(s).
- Caselaw holds that an entitlement decision and overpayment decision **can** be notified together.
- But to be effective, a decision that carries a right of appeal (after mandatory reconsideration) **must** be notified to the claimant.
- **Note:** even if a challenge on these grounds succeeds, the DWP can then follow the process correctly.
- Should also ensure that any ongoing UC award is correct, of course.

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Is the overpayment amount correct?

- Total overpayment is the difference between previous payment and correct UC payment.
- If overpaid UC due to capital, **must** offset for amount of capital that would have been spent but for the overpaid amount (calculated three-monthly).
- If overpaid housing costs element after moving, **discretion** to offset against amounts would have received for new home.
- Reminder: can request an MR and appeal if the overpayment amount is incorrect (Sch 3 para 6B SSA 1998) and/or the new entitlement decision is incorrect.
- **Note:** can also appeal the decision to impose a £50 civil penalty, even if the overpayment amount is correct (*VT v SSWP (IS)* [2016] UKUT 178 (AAC); [2016] AACR 42).

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The discretion to recover

- DWP 'may' (not 'must') recover overpayments.
- How this discretion is to be exercised is set out in the 'Benefits Overpayment Recovery Guide' (BORG).
- Discretion should not be applied inflexibly.
- Can request a waiver from DWP Debt Management.
- Best to make a waiver request in writing and providing supporting evidence.
- CPAG templates can help to frame requests.
- Chapter 8 of the BORG covers waiving recovery (in addition to cost-effectiveness, abandonment and suspension).
- Worth studying the BORG in detail...

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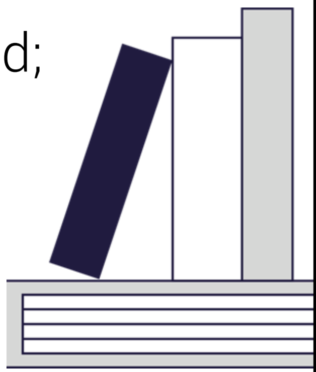
Factors that may result in a waiver

BORG (para 8.6) says relevant factors **include**:

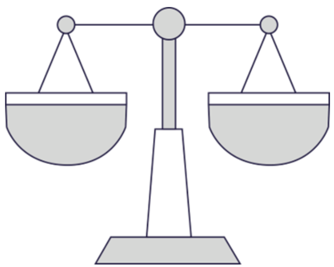


- the debtor's financial circumstances and those of their household;
- whether recovery is impacting the debtor's/family's health;
- whether there are any 'particularly distressing or emotive' circumstances around the overpayment;
- DWP's own conduct (including statements made);
- the debtors conduct (including steps to mitigate any overpayment, contact or notify DWP);
- whether the Department intended the claimant to have the money;
- 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

This principle was established by caselaw: *R (K) v SSWP* [2023] EWHC 233 (Admin)

- K continued having a child element included in her UC after her son stopped being eligible
- At least three times, K asked DWP if this was right - told it was.
- UC then there was an overpayment (almost £9k). K brought a judicial review on the basis that the DWP had given her a 'legitimate expectation'. She won, DWP did not appeal.
- The legitimate expectation did not stop it being an overpayment, but **on these facts** did stop it being lawfully recoverable



- See also *Čakarević v Croatia* – Application No.48921/13 (ECtHR, 26 April 2018) and *Welfare Rights Bulletin* articles

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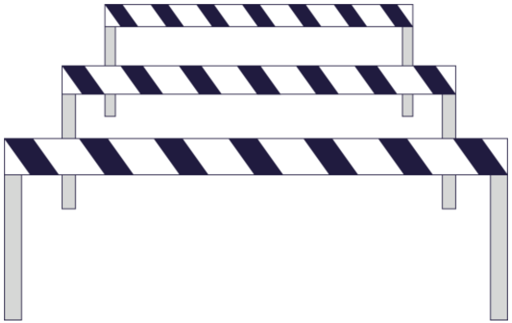
When may there be a legitimate expectation?

- Did the client provide accurate and timely information (and can you evidence this)?
- Did DWP make a mistake?
- Did the client check their award was correct, and the DWP reassure them it was?
- Did the client spend the money on things they would not otherwise have bought?
- Did the client lose out on alternative or additional income due to the expectation that the award was correct?



The crucial point is having acted in good faith and relied upon the DWP's incorrect statements to the client's detriment.

Remedy: threaten judicial review of failure to waive recovery.

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Other tactics to try to get recovery waived

- Help clients to make a complaint.
- Waiver rates are low, but over half of complaints to the Independent Case Examiner are upheld.
- Consider involving the local MP at an early stage .
- Remember there is no bar to multiple waiver requests – something relevant may have changed.
- Even if waiver is granted, DWP may not refund money already recovered – consider a complaint and request for an ex-gratia payment at this point.

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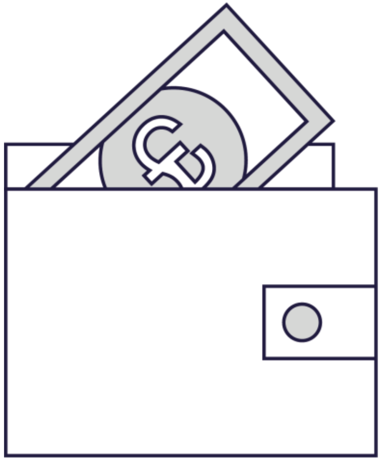
Methods of recovery of UC overpayments

- Note that tax credits overpayments can be treated as overpayments of UC, and recovered as such, and legacy benefit overpayments can be recovered from UC awards.
- Recovery normally from either claimant (or appointee).
- Recovery can be by:
  - deduction from UC (most common);
  - deduction from non-means tested benefits (but **not** Scottish benefits or child benefit);
  - earnings arrestment; *or*
  - court action.
- FUTURE CHANGES: direct deduction orders (taking money from bank accounts), or power to ask a court to disqualify a debtor from driving to be introduced as a last resort.



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Deductions from a UC award

- Deductions from UC to recover an overpayment are usually made at 15 per cent of the appropriate UC standard allowance:
  - £50.79 (single, under 25);
  - £63.74 (single, 25 or over);
  - £79.25 (couple, both under 25);
  - £100.05 (other couple).
- Maximum rate, can be reduced.
- Law sets higher rates if fraud/earnings, current policy limiting to 15 per cent in BORG (para 5.19).
- **No limit** on deductions to recover an overpayment from UC arrears.

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Help for advisers

CPAG Welfare Rights

Advice by telephone:
0141 552 0552

Monday to Thursday, 10am - 4pm,
Friday 10am – 12 noon.

Advice by email:
advice@cpagscotland.org.uk

Free, independent, expert, up-to-date advice and information to frontline advisers and support staff on all aspects of the benefits system. More info here.

More resources for advisers can be found at cpag.org.uk/welfare-rights

Sign up to our email newsletter: what's new for advisers – CPAG welfare rights

New Welfare Benefits Handbook

Our flagship publication, the Welfare Benefits Handbook, is the must-have guide to the social security system. Fully updated for 2026/27, and written by a team of more than 20 experts, this edition covers the latest changes to universal credit elements, work-related requirements and disability and carers' benefits.

It also provides practical guidance on overpayments, deductions from benefits to third parties, how to challenge benefit decisions, and provides the expertise needed to maximise clients' income, carry out comprehensive benefits checks, support claims and deal confidently with problems when they arise.

We've also produced a wall chart (available in A2 and A4) which give quick and handy access to the benefit rates for 2026/27.

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Handbook

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