Policy Bulletin: Tax credits, December 2015

Introduction to the Early Warning System

The Early Warning System (EWS) is a framework which has been developed by Child Poverty Action Group (CPAG) in Scotland to collect and analyse case evidence about how changes to the social security system are affecting the wellbeing of children, their families and the communities and services that support them. The cases are enabling us to develop an in-depth understanding of the impact of welfare reform and to identify how policies and services in Scotland can continue to contribute to delivery of better outcomes for children.

CPAG in Scotland acknowledge the support of the Scottish Government through the Third Sector Early Intervention Fund, managed on behalf of the Scottish Government by the Big Lottery Fund in Scotland.

Introduction to CPAG in Scotland's Tax Credits and Early Years Project

CPAG in Scotland's Tax Credits and Early Years Project aims to increase the capacity of frontline agencies in health, education, childcare and the public and voluntary sector to provide accurate, high quality and effective information on financial support for families with children, from pregnancy to school years.

What are tax credits?

Tax credits are a source of means-tested financial support, administered by HMRC. They were designed as part of a wider government policy to provide support to parents returning to work, reduce child poverty and increase financial support to all families. According to the most recent statistics available, there were 302,000 families in Scotland (195,000 in work) receiving tax credits in 2013-14, responsible for 526,000 children, with an estimated take-up rate of 85 per cent.[1] Working tax credit (WTC) can help to ensure households are better off in work and provide a means of escaping poverty. Child tax credit (CTC) provides basic subsistence support for children. For families in receipt of means-tested benefits, CTC represents 70% of the total available to meet the basic needs of their children.

HMRC's role and responsibility for delivering support for children is a reserved matter, but its actions have unavoidable implications for policy makers and service providers in Scotland who are engaged in the protection and promotion of child wellbeing. HMRC's failure to provide financial support for some families has left them facing income crisis.

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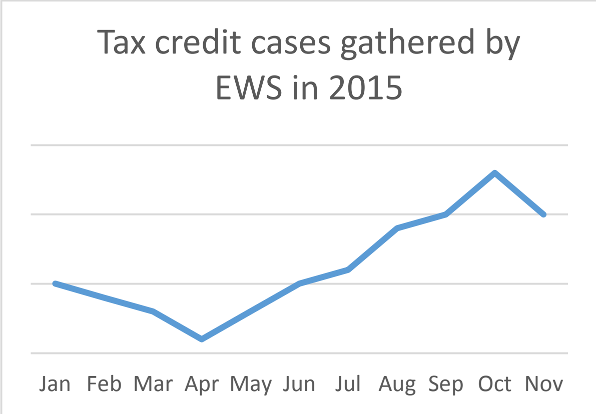
[1] https://www.gov.uk/government/statistics/child-and-working-tax-credits-statistics-finalised-annual-awards-2013-to-2014 & https://www.gov.uk/government/statistics/child-benefit-child-tax-credit-ctc-and-working-tax-credit-wtc-take-up-rates-2012-to-2013

Concerns raised through the Early Warning System



Cases gathered through the Early Warning System highlight that changes to the way tax credits are administered, delays and error are having a direct impact on family incomes. We have seen a dramatic increase in the number of cases regarding tax credits in 2015.

Recovery of in year overpayments

From April 2015, HMRC changed its policy on recovering in-year overpayments. Previously the amount that could be deducted from a claimant's ongoing award was limited to 10% for those on the lowest incomes and 25% for those with income over the thresholds.[2] However, since April 2015, the policy has been to reduce payments or stop them altogether to avoid an overpayment building up.[3] In reality this means that families may be left with little or no additional income to support a child for the remainder of the tax year.

The client was getting child tax credit for three children. The two eldest moved out before April. Client didn't inform HMRC and continued to be paid for all three into 2015/16 tax year. HMRC have now reduced the award from £63.63 to £6.21 a week for the remaining child to live on for the rest of the tax year. #5967

A lone parent's working hours were cut from 16 to 8 which meant that she was no longer entitled to WTC. HMRC notified that instead of paying her £63 a week CTC, they would reduce this to £27 a week for the remainder of the tax year in order to avoid an overpayment. Having had her income from employment drop, she also saw her CTC reduce considerably too. #2480

Worryingly, three of the cases collected by the EWS occurred before the policy had officially come into effect.

Recommendations for HMRC

- Reinstate limits of 10% or 25% on in-year recovery from ongoing awards in all cases involving children;
- Take into account the customer's circumstances and ability to comply with responsibilities, and be mindful of the direct impact their actions can have on customers, particularly vulnerable ones – as recommended by Adjudicator's office annual report;
- Follow HMRC guidance on recovery in cases involving mental health issues and consider waiving recovery to prevent distress to claimant[4].

Alleged undisclosed partner investigations

Tax credits must be claimed either as a single person or as a couple. Once HMRC has decided to award tax credits to a single claimant, it must have reasonable grounds to believe the award is wrong (and the claimant is not, in fact single) before the decision can be revised.[5] HMRC has contracted a

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[2] Tax Credits (Payment by the Commissioners) Regulations 2003, Reg 12A
[3] Autumn statement 2014, paragraph 2.167
[4] http://www.hmrc.gov.uk/manuals/dmbmanual/DMBM555610.htm
[5] Section 16, Tax Credits Act 2002

private company, Concentrix, to carry out checks that tax credit awards are correct, amongst other duties. Concentrix use automatic systems to carry out searches of financial records which has led to several lone parents having their tax credits stopped as they are wrongly alleged to be living with a partner. This practice has been strongly criticised in a series of Upper Tribunal decisions, but there has been no change in HMRC or Concentrix's approach.[6]

Lone parent of two small children received a letter requesting information from Concentrix but did not respond because she though it was a scam (there are concerns circulating on social media about phishing emails that appear to be from Concentrix). Despite finally complying the client's tax credits were stopped because the evidence was not provided within 30 days. It was first alleged that she was cohabiting with a woman she had never heard of and then that she was cohabiting with her partner who lives in his own home on the other side of the country. The client has had no CTC for seven weeks and urgently needs money. She has been awarded two crisis grants from the Scottish Welfare Fund but has been told that she will have to wait two weeks before she can get another one. #6457

A lone parent lost her two children's nursery places, because she was unable to pay the nursery bills after HMRC stopped her tax credits for five months, believing she was living with a partner. She nearly lost her job because she had difficulty arranging childcare and one of the children had to start school a year earlier than intended. The client won her tribunal, but there was a further delay, due to HMRC error, in paying the tax credits she was owed. In the meantime the client had to make payments towards the £4K arears she had accrued at the nursery. #3804

Recommendations for HMRC

- Stop relying solely on information from credit reference agencies and make all evidence available to the claimant before making decision;
- Do not request information about former partners from lone parents in cases where there has been domestic abuse; do not suspend payments for failure to provide information in these cases;
- Ensure payments are only stopped where there is sufficient evidence and reasonable grounds for a decision to be made, following liaison with DWP and local authority if claimant is in receipt of other benefits as a lone parent;
- Issue guidance memos available to the public on implications of Upper Tribunal decisions;
- Ensure Concentrix follow HMRC guidance and monitor their conduct.

Offsetting notional entitlement

A tax credit claim legally ends when there is a change of single or couple status, and a new claim must be made in the correct capacity. When this change is reported late, it often results in an overpayment which legally may be recovered. However, in some cases, if they had claimed in the correct capacity, they would still have been entitled to the same amount. A policy of reducing the overpayment by the amount they would have been entitled to (known as 'offsetting notional entitlement') was introduced in clear acknowledgement that punishing people for late notification of a change, when there was no

[6] See NI v HMRC [2015] UKUT 160 AAC , JH v HMRC [2015] UKUT 397 (AAC) , SW v HMRC [2015] UKUT 394 (AAC) , CS v HMRC [2015] UKUT 407 (AAC)

loss to the public purse, was unreasonable.[7] However, this policy is not being consistently applied, causing severe hardship and long-term debt.

The client has been informed by HMRC that he has a CTC overpayment of around £14,000 that has arisen because he failed to notify them of a change of circumstances in time. There were two changes - his wife left him, and then some time later his new partner moved in. The client has severe mental health problems, doesn't answer phone or open any letters. Neither the wife nor the new partner have any income other than means-tested benefits. There appears to have been no offsetting. If there had been, the amount he could have been paid would be virtually the same as the amount he received, vastly reducing the overpayment. Instead his award for CTC has been reduced to a minimal amount and he is struggling to feed himself and his family. #3364

Recommendations for HMRC

- Apply offsetting notional entitlement to reflect actual loss to public purse:
- Continue paying basic amount of child tax credit following a change in household composition, with adjustments being made later if necessary, as recommended by UK Food poverty inquiry here
- Stop imposing penalties in these cases, when there has been no loss to the public purse. HMRC's own factsheet states penalties should be limited to a percentage of the amount 'over-claimed'.[8]

Administrative error

One of the surprising findings from the Early Warning System has been the consistency of the high number of cases which include clients whose benefits or tax credit claims have been processed incorrectly. For HMRC issues include:

- Delays processing claims (in one case a client has been waiting for payment for two years)
- Failure to act on information provided by clients and update awards accordingly
- Providing inadequate, misleading and inconsistent information to claimants and their intermediaries.

Errors can have devastating impacts on families' incomes and consequently their wellbeing.

A lone parent of two teenagers had her tax credits reduced from £117 to £59 a week. The tax credits helpline said this was because of an overpayment that had accrued three years previously, where in fact the CAB adviser later identified that it was because the eldest child had been mistakenly removed from the claim. HMRC apologised for providing misleading information attributing it to a trainee adviser. However, in the meantime the client sold her car to reduce her outgoings and cannot afford to buy another one. She has been off sick with anxiety and depression due to financial hardship and now relies on public transport which is inflexible and causing stress for the family. # Mii101

A lone parent notified HMRC that her child had stopped receiving DLA, but they continued to pay the disabled child element. The client was eventually notified of an overpayment which was deducted from her in year award. The client stopped claiming tax credits the following year, but HMRC continued to pursue the outstanding overpayment, though it did not confirm how much this was. The client won her appeal and was repaid the £4980 that HMRC had deducted from her ongoing award. She had, however, suffered financial hardship while deductions had been ongoing. #Mii103

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[7] pre-Budget report 2009 5.22 HMRC will also improve its service to people who start living together, or who separate. Where customers report these changes late, this results in an overpayment on their previous tax credits award. In January 2010, HMRC will reduce this overpayment by the amount customers would have been entitled to receive had they reported the change promptly

[8] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/419583/WTC7.pdf

Implications for child wellbeing:

Threats to and impacts on child wellbeing (as defined using the Scottish Government's indicators of Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible and Included) were demonstrated in many EWS cases. Examples include parents struggling to feed their children, children losing their places at nursery and extreme stress within the household. Wider evidence has established the extent to which poverty and income crisis can undermine the health and wellbeing of children and families.

Client was alleged by HMRC to be living with a partner and was notified of an overpayment of £7K. The decision was overturned at mandatory reconsideration but until then the thought of having to pay back £7K led to increased anxiety for the client who had a new baby, resulting in additional visits from the health visitor. #Mii69

Policy and practice implications for Scottish and local government.

Problems with tax credits are having a major impact on local authorities in Scotland, as families are having to be supported by Scottish Welfare Fund crisis grants, social work payments, foodbanks and charities. The Scottish Government and local authorities may wish to consider:

- Ensure that passported benefits such as free school meals are not affected by delays and administrative errors in relation to tax credits.
- Monitoring the level of SWF crisis grants and Social Work payments for children linked to tax credit problems and liaise/provide evidence to HMRC. Research conducted in 2014 suggested that a significant number of those accessing foodbanks did so as a result of problems with their tax credits[9].
- Ensuring that families with little or no money can access advice and information in relation to their tax credits claim. Referrals to welfare rights advice could be offered to families at the point of having a child (by the midwife or family nurse) and again at the point of registration for nursery and primary school.

Policy and practice implications for services

As tax credit problems impact on families' wellbeing, it is inevitable that this will have a knock on effect on the services that support them.

- **Services should consider the impact that delays and suspension of tax credits might have on their service users and whether there are steps they can take to limit the impact this will have on children and families. Child care providers and local authorities, for instance, might consider whether there are ways to guarantee that families whose income is reduced as result of delays and suspensions do not lose their places at nursery.**
- Local and national services should consider whether there is a role they can play in gathering evidence of the impact of delays and suspension on children and families. The NHS, for instance, could consider monitoring the impact on diet, health and stress due to loss of tax credits and developing referral pathways to sources of advice and emergency financial support
- All public facing services should put referral pathways in place to ensure families can get immediate access to requisite information and advice.

[9] http://www.trusselltrust.org/resources/documents/press/foodbank-report.pdf

- Non-specialist advice services should ensure staff and volunteers have a good understanding of tax credits and the issues raised in this briefing.

If you have any queries regarding this bulletin, please contact

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