

Tax credit overpayments



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Child Poverty Action Group works on behalf of the one in four children in Scotland growing up in poverty. It doesn't have to be like this. We use our understanding of what causes poverty and the impact it has on children's lives to campaign for policies that will prevent and solve poverty – for good.

We provide training, advice and information to make sure hard-up families get the financial support they need.

Tax credit overpayments is one of a series of Child Poverty Action Group in Scotland leaflets giving guidance to advisers and those working with families in Scotland about aspects of the tax credit system of particular concern.

Introduction

There are two types of tax credit; *child tax credit* and *working tax credit*. You may get either or both. Tax credits are administered by Her Majesty's Revenue and Customs (HMRC).

Tax credits are being replaced by universal credit. You cannot make a new claim for tax credits. If you are currently getting tax credits, you can continue to get them unless you make a claim for universal credit, and will be able to renew your claim until you are transferred onto universal credit. The process of transferring most people from tax credits to universal credit is expected to happen between 2022 and 2026. See [Tax credits: moving on to universal credit](#) for more information.

This leaflet looks at overpayments of tax credits. An overpayment occurs if you are paid more than you are entitled to.

Why do overpayments happen?

The tax credits system is an annual one and awards are made for a year (6 April to the following 5 April) or from the date of claim to the following 5 April. Your payments may change during the year if you notify HMRC of a change in your circumstances. Your actual entitlement for the year is not finalised by HMRC until after the end of the year, when you will be asked to declare your income and other circumstances. If you were paid more tax credits than you were entitled to for the year, the extra amount is an overpayment which you may have to repay.

Sometimes it becomes clear during the course of the tax year that you have been overpaid. This might happen because your circumstances have changed, or because your tax credits were calculated wrongly from the start of the tax year. This is called an 'in-year' overpayment.

The most common reasons for an overpayment include:

- you delayed telling HMRC about a change of circumstances, or gave it wrong information;
- HMRC delayed acting on a change you told it about, or made an error;
- your income has changed during the year.

The law states that all overpayments of tax credits *may* be recovered from the claimant. However, it does not state that all overpayments *must* be recovered, so this allows HMRC to use discretion in deciding whether to recover an overpayment. HMRC has guidance for exercising its discretion, by first looking at who is responsible for the overpayment.

The balance of responsibilities

You should not have to repay an overpayment if it was caused by a mistake or failure on the part of HMRC, and you have done everything expected of you. HMRC's code of practice on dealing with overpayments, [What happens if we've paid you too much tax credit? \(COP26\)](#), sets out what you are expected to do to make sure that your claim is correct, and what you can expect of HMRC in return.

Your responsibilities include:

- providing accurate, complete and up-to-date information when making or renewing a claim;
- notifying any changes of circumstances as soon as possible – for more information see our leaflet, [Tax credits – reporting changes](#);
- checking award notices in line with the checklist sent by HMRC [TC602\(SN\)](#);
- checking the amount of payments made into your bank account every week or every four weeks matches payments shown on the award notice;
- reporting errors shown on award notices within one month;
- contacting HMRC if you do not understand your award notice.

HMRC's responsibilities include:

- giving correct advice;
- accurately recording information;
- paying the correct amount;
- including information you have provided on award notices;
- putting right errors;
- sending out new award notices within 30 days of you reporting a change of circumstances.

If you have done all that is expected of you to make sure your claim is correct, but the overpayment arose because HMRC failed to meet one of its responsibilities, the overpayment will not be recovered.

Where you and HMRC have both failed to meet one or more responsibilities, HMRC will look at the circumstances and may write off parts of an overpayment. If there are exceptional circumstances which meant that you could not meet your responsibilities at the time, you should notify HMRC as soon as possible. The overpayment will not be recovered if HMRC accepts that you had strong reasons such as serious illness, bereavement, or flooding of your home.

The Adjudicator (see *Complaints* below) has said that when considering responsibilities under COP 26, HMRC ‘*must take into account the customer’s circumstances and ability to comply, and be mindful of the direct impact their actions can have on customers, particularly vulnerable ones*’.

Overpayments can arise even though you and HMRC have both complied fully. For example, HMRC asks you to report certain changes within one month, and then allows itself one month to act on a change. This could lead to an overpayment of two months. This may be recovered, but there is always discretion not to do so. COP26 asks you to contact HMRC again if you have not had a new award notice within one month of reporting a change. However, elsewhere HMRC has clearly stated that if it fails to act within 30 days, any resulting overpayment will not be recovered.

Example

Althea gets child tax credit and notified the birth of her second child, Donna, when she is born in June 2020. The award notice includes a disabled child element for Donna. Althea rings the Tax Credit Helpline straight away to query this, as Donna is not disabled and she did not tick the relevant box on the claim form. The person she speaks to tells her this was a computer error by HMRC and it will be sorted out. Althea also sends a letter to HMRC, confirming the details of the telephone call, and keeps a copy. Althea’s award is not changed and she does not receive any more letters from HMRC until the annual review form in April 2021, which still shows the disabled child element. She rings the Tax Credit Helpline straight away again, and is told that there has been an overpayment of the disabled child element for ten months. Althea explains that she spotted this error and reported it at the time. After some checking, the Tax Credit Helpline confirms they have a record of her first phone call.

Althea fulfilled her responsibilities to claim correctly, check her award and notify any errors. The overpayment arose because HMRC failed in its responsibilities to pay the correct amount, act on information given and correct errors. According to COP26, the overpayment will not be recovered.

Overpayments due to a change in single/couple status

If you claim tax credits as a single person and become part of a couple, you must report this change to HMRC. Your single claim ends and you must make a new claim for UC as a couple. If you report this change late, an overpayment arises and there is a risk of a penalty. However, in many cases the actual amount of tax credits you would have correctly been entitled to may not be much different, for example if you are only getting CTC and your new partner has no income. HMRC can reduce the overpayment by the amount you would have been entitled to if you had reported the change promptly. This process, known as ‘*offsetting notional entitlement*’ is designed to reflect the true loss to the public purse, and also applies if you have been claiming as a couple and become single. HMRC says it will be applied proactively in all cases where an overpayment has occurred due to a change in the adult composition of the household. You should also request offsetting in other situations where an overpayment has arisen because your claim has ended, such as if your partner went abroad for more than the permitted period. If it does not happen automatically, you should write to or phone the Tax Credits Helpline to ask for overpayments to be reduced in this way.

Overpayments due to changes in income

Your tax credit award is initially based on your income in the previous tax year. If your income in the current year goes up or down by more than £2,500, then your tax credit entitlement is based on your current year income after applying a disregard. If HMRC is not aware of an increase of more than £2,500 in your income during the year, it is likely that you will be overpaid. It is important to keep HMRC notified of an accurate, up-to-date estimate of current year income to avoid an overpayment.

Disputing overpayments

If you do not agree that you should have to repay the overpayment, you can dispute recovery on form [TC846](#) (to complete online and print, or download from cpag.org.uk/scotland/welfare-rights/tax-credits-toolkit or request via the Helpline). HMRC asks you to do this within three months of the final decision or any mandatory reconsideration or appeal of the decision which led to the overpayment, and it will only accept a late dispute in exceptional circumstances. The form asks you to explain why you think the overpayment was caused by a mistake or wrong advice on the part of HMRC, and whether you contacted HMRC about any errors. Make sure you explain fully not only why you think HMRC caused the overpayment, but also how you met your responsibilities as set out in COP26, or if there were exceptional reasons why you were unable to meet your responsibilities at the time.

HMRC will not stop recovering the overpayment while it considers your dispute. If the dispute is found in your favour, any amount already recovered should be refunded to you. You can also ask HMRC not to recover some or all of the overpayment on hardship grounds (see below), or to use its discretion in other exceptional circumstances.

There is no right of appeal to an independent tribunal against a decision by HMRC to recover an overpayment from you. Decisions on entitlement do carry the right of appeal, but you must first request a review, referred to as 'mandatory reconsideration'. You may wish to do this if you think that you have not been overpaid, or you think that the amount of the overpayment is incorrect. You can do this by applying for a review of the new decision on your entitlement within 30 days (the time limit can be extended by up to a year). You should use the reconsideration form inside leaflet [WTC/AP 'What to do if you think your child tax credit or working tax credit is wrong'](#) or by contacting HMRC (see below). If you are still unhappy with the outcome, you can then appeal to an independent First-tier Tribunal. Recovery action should be suspended during the mandatory reconsideration and appeal stages. See our leaflet, [Tax credits: challenging decisions](#) for more information.

Complaints

If HMRC refuses to write off an overpayment, you can make a complaint by writing to the Tax Credit Office, and contact your MP for support. If you are unhappy with the response, you should ask for your complaint to be looked at again. If you are still not satisfied, you can ask the Adjudicator's Office to investigate your complaint and finally you can ask your MP to refer your case to the Parliamentary Ombudsman. Please see our factsheet [Tax credits and complaints](#) for further information. In some circumstances, you can challenge a HMRC decision through judicial review. You will need to consult a solicitor about this. Please see our leaflet [Tax credits and judicial review](#) for further information.

HMRC does not commit to suspending recovery of the overpayment while you are pursuing a complaint, but has the discretion to do so.

Recovery

HMRC will ask you to repay the overpayment as soon as you are notified that you have been overpaid. Recovery action is suspended during mandatory reconsideration and appeal but continues during any dispute or complaint. If you are still getting tax credits, HMRC may automatically recover an overpayment from you by reducing your ongoing award.

End-of-year overpayments

There are legal limits to the amount that can be deducted from an ongoing award to recover an overpayment from a previous tax year:

- 10% if you are entitled to the maximum award of tax credits (for example if you are on a qualifying benefit or have income below the relevant threshold);
- 25% if you are entitled to less than maximum tax credits;
- 50% if your current estimated annual income is over £20,000;
- 100% if you receive only the family element of child tax credit.

In-year overpayments

If a deduction is made for an overpayment that occurred during the same tax year, HMRC may reduce or stop your payments altogether. HMRC will only pay your estimated entitlement (if any) for the remainder of the tax year, in order to prevent an overpayment building up. Effectively, this means in-year overpayments can be recovered at 100%. If this leaves you in hardship, especially if you have children and your CTC has been reduced to an amount you cannot live on, you need to request urgent additional payments. HMRC has said that hardship requests should be dealt with within two days. If hardship is accepted, the above limits should apply, but may be further adjusted if this still leaves you in hardship.

Deductions may be made from a couple's ongoing award to recover overpayments that occurred in a previous single claim by either partner, or a previous claim by the same couple. If you cannot afford the reduction in payments from an ongoing award at these maximum limits, you should contact HMRC to work out a reasonable amount.

If you are no longer getting tax credits, or the overpayment arose in a previous joint claim and you are now separated, you will be asked to repay an overpayment directly to HMRC within 30 days. If you need longer, you can ask to pay in instalments. HMRC will usually want you to clear the debt within 12 months but may accept an offer to repay within three years or longer if what you say about your disposable income sounds reasonable. If you are already repaying an overpayment of social security benefits, HMRC has said it will look at suspending recovery in this case.

If you were overpaid when you claimed as a couple and are no longer together, you are both jointly liable to repay the overpayment directly. HMRC will usually ask each person to repay 50% of the overpayment. However, if it was your ex-partner who made an incorrect statement or failed to report a change, and you could not reasonably be expected to have known about it, you can argue that as you are the innocent partner you should not have to repay at all. You can ask to repay different

amounts separately, depending on the circumstances. If you have more than one overpayment from a previous claim as well as on your current claim, you should not have to make direct repayments at the same time as having deductions from your ongoing award.

Hardship

If you have financial difficulties, you can ask HMRC at any time not to recover some or all of the overpayment on the grounds of hardship. You can also ask for a lower rate of deduction, although this will mean it will take you longer to repay the overpayment. You should send in a letter detailing your family circumstances and any extra living costs relating to disabilities or chronic illness. Include a financial statement showing any other debts and how repaying an overpayment is making it difficult for you to pay essential living expenses such as rent, gas or electricity.

Mental health issues

If you have a mental health problem and pursuing recovery of an overpayment is likely to have a detrimental effect or cause you unreasonable distress, HMRC's guidance states that the overpayment may be written off. You will need a letter from a health care professional or mental health social worker explaining your condition. In most cases the evidence provided will be sufficient to relieve you from responsibility for payment.

Effect of overpayments on housing benefit (HB) and council tax reduction (CTR)

Tax credits count as income for HB and CTR purposes. It is the actual amount of tax credits received which should be taken into account – this means that if you have a deduction for an overpayment it should be the amount you are receiving, after the deduction, which is taken into account. You should make sure you keep your local authority HB and CTR office informed about changes to your tax credits payments.

Tax credit overpayments and universal credit

If you still have an outstanding tax credit overpayment when your tax credit award ends and you claim universal credit, it can be recovered from your ongoing payments of universal credit. The government has said that debts will only be transferred when they are not subject to ongoing disputes or appeals. If you have an outstanding tax credit overpayment at the point of transfer you should ensure that you dispute recovery to HMRC as soon as possible (guidance says within three months), or request a mandatory reconsideration/appeal against the entitlement decision within one month, or if late give reasons. These should continue to be dealt with by HMRC, and the debt should not be recovered from UC while the dispute or appeal is ongoing.

Tactics

- Whenever you call the Tax Credit Helpline to report a change or mistake, make a note of the date, time and name of the person you speak to. If possible, you should also confirm the details in a letter, keeping a copy. You may need this later to prove that you met your responsibilities.
- You are expected to check your award notices for any errors and tell HMRC. You can use the checklist TC602 (SN) which is sent with award notices, to check that the details on the notice are correct. The front page of the award notice gives a summary of your award and income.
- Do not throw away your award notices. You may need them to dispute an overpayment.
- If you cannot understand why you have been overpaid, ask for a written explanation.
- If you request a mandatory reconsideration, you should make it clear on the WTC/AP form that you disagree with the decision on your entitlement and not about the recovery of the overpayment. If HMRC revises its decision, get advice to make sure you are happy with the outcome. If it goes to appeal, you should consider getting advice and representation.
- If you think that an overpayment has arisen because of a mistake or failure on HMRC's part, you should send in form TC846 within three months, clearly explaining why you think the overpayment was HMRC's fault **and** what you did to meet your responsibilities.
- HMRC does not write off many overpayments and if you are unhappy with its decision, you should consider making a complaint and if necessary, taking your case to the Adjudicator's Office and if you are still not satisfied, to the Parliamentary Ombudsman.
- If you were overpaid due to a change in single/couple status, request offsetting of your notional entitlement to reflect the actual loss to the public purse. Explain any exceptional circumstances why you were unable to deal with your claim correctly at the time.
- If your payments have stopped or been reduced during the year to prevent an overpayment building up and HMRC say this means there is no overpayment, so no recovery and no dispute process, you should still send a TC846 and argue that clearly there has been an in-year overpayment at that point in the year, i.e. if your award ended at that date there would be an overpayment.
- If recovery causes hardship and leaves you without enough money for your children to live on, request urgent additional payments or a reduction in the amount being recovered. If this is refused, make a formal complaint and involve your MP straight away. You can also apply to your local authority for a Scottish Welfare Fund crisis grant for living expenses or social work payments for children in need.
- Remember recovery of overpayments is always discretionary, so any blanket policy is likely to be unlawful fettering of discretion.

Further information and advice

Child Poverty Action Group in Scotland

0141 552 0552 advice line for advisers on benefits and tax credits,
Monday to Thursday 10am to 4pm, Friday 10am to 12 noon

Email: advice@cpagscotland.org.uk

email advice for advisers on benefits and tax credits

cpag.org.uk/scotland/welfare-rights/tax-credits

for more tax credit leaflets from CPAG in Scotland

CPAG publishes the *Welfare Benefits and Tax Credits Handbook*, a comprehensive guide to benefits and tax credits for claimants and advisers.

CPAG in Scotland's advice line is only for advisers. If you are having problems with your own tax credit or benefit claim and are in need of advice you should contact your citizens advice bureau or other local welfare rights service.

HM Revenue and Customs

Tax Credit Helpline 0345 300 3900
(textphone 0345 300 3909)

gov.uk/topic/benefits-credits/tax-credits

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