

Dealing with Tax Credit overpayments

How Overpayments Occur

Overpayments of tax credits occur when a client has been paid more than they are entitled to. Awards are made for a year (6th April one year to 5th April the following year) and will only change during the course of that year if a change of circumstances has been notified to HMRC. Actual entitlement for the year is not finalised until after the end of the year when claimants are asked to confirm their income and circumstances.

People claiming tax credits have a responsibility to

- provide accurate, complete and up to information when making or renewing a claim
- notify any changes in circumstance as soon as possible
- check their award notices for accuracy and report any errors within one month
- check that weekly/monthly payments match the award notices
- contact HMRC if they don't understand the award notice.

Overpayments arise for a number of reasons, but the most common are that the person claiming has delayed in notifying a change in circumstances, HMRC have delayed in acting on a notification of a change, or there is a difference between the estimated income notified to HMRC during the payment period and the actual income at the end of the period.

If the client does not understand how the overpayment has arisen, HMRC should provide a written explanation and a copy of the Code of Practice (COP26)

Recovery of Overpayments

By law, all overpayments may be recovered, but not all overpayments must be recovered. HMRC have guidance on how to recover overpayments, will look at all the circumstances and use their discretion whether to recover or not. If the client has done everything required of them to ensure the claim is correct and the overpayment has arisen because HMRC made an error or failed to act on information given to them then they will not make any recovery.

If both parties have failed to meet some of their responsibilities, they may write off part of the overpayment.

Offsetting

In some cases, an overpayment may be offset against actual entitlement. The most common example is where a single person claims tax credit but then becomes part of a couple they should make a new claim. If there is a delay in doing this, HMRC can reduce the overpayment by the amount you would have been entitled to had the change been notified promptly. In these cases, the client or adviser should write or phone the Tax Credits Helpline to ask for the overpayment to be reduced in this way.

Disputing the overpayment

There is a right of appeal against entitlement decisions. Mandatory reconsideration must be requested first, within 30 days of a decision on entitlement. Use this process if you think the overpayment, or amount of award is incorrect. Contact HMRC for a form.

If the decision is not changed there is a right of appeal to the First-tier Tribunal.

Recovery should be suspended during the reconsideration/appeal process.

Disputing recovery

To argue that an overpayment should not be recovered use form TC846 (download from TCO website or phone Helpline) within three months of the final decision.

On the form, explain why it should not be recovered including any errors/failure to act by TCO and any action taken by the client to verify the award. You can also explain any exceptional circumstances that prevented the client from carrying out their responsibility to notify/check awards (such as mental health problems)

The TCO can also write off all or part of the overpayment if the client is unable to repay (see below).

Recovery will not be suspended while these matters are being reconsidered but if they decide to write off the overpayment any money recovered will be refunded.

Recovery

Recovery of overpayments will normally begin immediately unless suspended during a mandatory reconsideration/appeal. This may happen in a number of ways:

- If you have a continuing award, by reducing ongoing payments by 10% if the client receives the maximum award, or by 25% if they receive less than the maximum award.
- Overpayments that occurred in a previous claim can be recovered from a new claim, for example an overpayment of tax credits to someone claiming as a single person can be recovered from a later couple claim.
- Where there is no ongoing award, or the overpayment occurred in a joint claim where the couple have now separated, HMRC ask for repayment within 30 days. If the client is unable to repay the full amount, HMRC can consider repayment over 12 months or where there is very low disposable income, over three years or longer. In these cases you will need to give evidence of the client's disposable income.
- Overpayments on joint claims where the couple have separated will be recovered at 50% from each person, unless the parties can agree a different split.
- .Where the client is working and agrees to the arrangement, overpayments under £3000 can be recovered from PAYE by adjustment of the tax code.
- Where there has been no repayment agreement or contact from the client, HMRC may pass the debt to their own debt collection service who may try to recover the overpayment through telephone contact, letters or visits. If this fails the debt may be transferred to a debt collection agency.

Clients who cannot afford to repay

HMRC are meant to fully investigate the ability of someone who has been overpaid to repay the debt. They should take account of all the circumstances including income, outgoings, unemployment, disability, mental illness, exceptional additional outgoings, the likelihood of future changes in circumstances, and any other relevant information. They should then consider a range of options:

- As a standard, clients should be offered up to 12 months to repay the overpayment.
- If the client cannot repay within 12 months but could repay within three years, this option can also be offered.

- If the circumstances warrant it, arrangements can be made to repay over a period of up to ten years.
- Where clients can only repay in a period of over ten years, HMRC will regularly review payments and may write the remainder of the debt off after ten years.
- If the client can only offer less than £10 per month and this will not clear the overpayment within three years, recovery action should be held completely for 12 months at which time if there is no realistic prospect of their circumstances improving the debt should be written off.
- Clients in receipt of sickness benefits such as ESA who have little prospect of returning to employment, should have outstanding overpayments written off.
- If the client suffers from mental health problems and recovery is likely to have a detrimental effect or cause unreasonable distress HMRC should write off the debt. You will need to provide evidence from a health care professional or mental health social worker explaining the condition.

Where HMRC refuse to consider a dispute, continue to recover an overpayment during mandatory reconsideration or appeal, fail to consider your clients circumstances or refuse to write off an overpayment you can make a written complaint to the TCO, ask for it be looked at again if you are not satisfied with the response, take the matter further with the Adjudicator's Office, and ultimately ask the MP to refer it to the Parliamentary Ombudsman. Occasionally it may be necessary to consider Judicial Review, but this will need to be done by a solicitor.