THCAN Tower Hamlets Community Advice Network

Adviser Checklist - Tax Credit Overpayments

How overpayments occur

Tax Credits are worked out on a yearly basis in line with the tax year (6th April to 5th April). Initial claims are based on the income in the previous tax year. At the end of the year, when all the information about the claimant's income and circumstances are available, HMRC compare the actual entitlement with what was pad and if they think they have paid more than the claimant was actually entitled to this is called an overpayment and they expect it to be paid back.

Common reasons for Tax Credit overpayment are

- Delays in notifying a change in circumstances
- Delays by HMRC in recording a change in circumstances
- Income over £5000 more than in the previous year.

If there is an ongoing award the overpayment will normally be recovered by reducing the award the following year. If there is no ongoing entitlement they may ask for a lump sum and will use normal debt recovery procedures to get the money back. Sometimes an award will be reduced during the year if HMRC believe they have paid too much.

Checklist for Advisers

1. Check the overpayment decision

- Is it clear how the overpayment arose? If not, ask HMRC for a written explanation
- What is the date of the overpayment decision? If the time limit for disputes (30 days) has passed, the decision can still be challenged within a year if there is some reason why it was acted on earlier.
- Does the client have an ongoing award of Tax Credits from which recovery can be made?
- Has recovery already begun?

2. Is the overpayment recoverable?

- Did the overpayment occur because of HMRC's error or failure to act on information provided by the client? If so a mandatory reconsideration should be requested. You can use HMRC's own reconsideration form for this.

- If HMRC acted correctly, did the client contribute to the overpayment by not notifying a change in circumstances or an obvious error on the award notice? If so, the overpayment may be recoverable but you should go on to consider whether it should be recovered and from whom.

3. <u>Can the overpayment be wholly or partially written off?</u>

- A common cause of Tax Credit overpayments is where someone has made a single claim that should have been a couple claim or vice versa, or the claimant has failed to notify a change from single to couple status (or vice versa). In these cases, provided a proper claim has subsequently been made the HMRC should apply 'notional entitlement' to the old award which can reduce or clear the overpayment. Advisers should always request this in these situations.
- HMRC should write off the overpayment if
- ❖ Client has mental health problems and recovery would cause deterioration or undue distress
- ❖ Client receives a sickness benefit such as ESA and has little prospect of returning to paid work
- ❖ Client can only offer less than £10 per month to repay and this will not clear the debt within three years – recovery should be held for 12 months then considered for write-off
- ❖ The overpayment was caused by their own mistake or failure to act

4. <u>If the overpayment is recoverable and client wishes to repay it</u>

- Check whether the client is liable for the whole of the debt – if it arose on a joint claim and the couple are now separated, no more than 50% should be recovered from each claimant
- Help the client to prepare a financial statement to show how much disposable income is reasonably available. If the client has other debts, include these and consider referring the client for debt advice.
- Consider whether recovery should be held for 12 months to allow the client's circumstances to improve
- Consider whether the client can repay the debt over 12 months
- If the debt cannot be reasonably repaid within 12 months, consider a repayment period over three years.
- **If the rate of repayment possible will still not clear the debt in ten years, advise the client that after ten years any remaining debt should be written off.**