

Community  
Legal Service



# COVENTRY LAW CENTRE

## **OVERPAYMENT OF BENEFIT**

Coventry Law Centre  
The Bridge  
Broadgate  
Coventry CV1 1NG

Tel: 024 76223053

Registered with Charity Commission as Coventry Law Centre: 1087312  
Registered as a limited company in England & Wales: 4149673

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## **Overpayment**

An overpayment of benefit may occur for various reasons. You do not always have to repay the benefit which has been overpaid. This may be for example where an overpayment has occurred because of an official error after you have provided all the necessary information. There are different rules for various types of overpayment. It is often worth seeking advice regarding an overpayment if you believe that there are no grounds for the overpayment to be recovered or that the amount of the overpayment has been calculated wrongly.

All social security benefits can be recovered from you this can include one off payments such as cold weather and winter fuel payments and social fund payments such as maternity grants and funeral expenses along with payments from the Discretionary Social Fund.

There are slightly different rules for housing benefit and council tax benefit than for benefits which are not paid by the local authority.

### **Which Overpayments are Recoverable?**

The first stage is that the Decision Maker decides that the previous decision on your claim for benefit must be changed. This would generally be because of a change of circumstances which is relevant to your claim. Examples of this would be if you had started work, received a capital payment such as if a property is sold or if you live with a partner as husband and wife.

Sometimes a decision will simply be made that there has been a change of circumstances before a decision is made regarding any overpayment of benefit. If this is the case you may wish to appeal against this decision.

If an overpayment decision is made at a later stage you will still have the rights of appeal but probably only against the amount of the overpayment and whether it is recoverable. Once a decision has been made altering the previous decision, then a decision should be made on whether the overpayment is recoverable. Overpayments are recoverable as long as one of two conditions applies:

- you fail to disclose a material fact
- you misrepresented a material fact

### **Housing Benefit and Council Tax Benefit Overpayments**

The general rules for these two benefits are different to the other social security benefits.

In general overpayments are not recoverable if:

- the overpayment was caused by official error
- neither you nor somebody acting on your behalf caused the official error to be made
- neither you nor somebody acting on your behalf could reasonably be expected to have realised that an overpayment was being made

In effect this can mean that, even when the housing benefit or council tax benefit sections have made a mistake in calculating your entitlement to benefit, it can still be recovered if it should have been clear to you that a mistake was being made, for example, if you had received notification in writing that your wages or capital were not being taken into account. You should seek advice if you are not sure whether to appeal against an overpayment decision.

### **Duplication of Payment**

This type of overpayment only occurs in relation to income support and income based job seekers allowance. This occurs when you receive arrears of benefit which affects your entitlement to income support or income based job seekers allowance.

If you receive arrears of other social security benefits; arrears of child support maintenance or benefits paid by other European member states you must repay the income support or income based job seekers allowance which you would not have received if the other income had been paid on time. This is to prevent a duplication of payments.

If you do receive an overpayment of benefit for this reason, you can be made to pay back the overpayment. There is no right of appeal against the fact that this is recoverable but you could appeal against the amounts of the alleged duplication of payment. Recovery in these circumstances is discretionary so you could ask that the money is not recovered. This is explained in more detail later.

### **Failure To Disclose**

It is your responsibility to report all relevant facts correctly on your claim form and to inform the appropriate benefit section when there is a relevant change of circumstances.

Failure to disclose some information could occur, for example, if you fail to mention an occupational pension on a claim form or you do not inform the relevant department if you are claiming benefit and somebody leaves you some money in a will.

For this reason, you should always keep a copy of any claim forms you complete, make a sufficient record of any telephone communications with the benefit office and confirm any telephone conversations in writing with the benefit office. If you do not keep a copy of any letters you write to the benefit office it will be more difficult to persuade the Decision Maker or Appeal Tribunal that you actually did write this letter. Other relevant points regarding “failure to disclose” are:

- Generally, you cannot fail to disclose something you did not know but it may be decided that you should have been aware of the material fact or should have made reasonable enquiries to find the information.
- There is a test as to whether a reasonable person would have realised that disclosure was required by the benefit office. You must inform the correct office. There may still be a failure to disclose if you inform a different office which does not pass the message on to the correct office.
- Once you have made a disclosure to the correct office, this should be fatal to recovery.

### **Misrepresentation of a Material Fact**

The benefit office has to demonstrate either failure to disclose or misrepresentation for the benefit to be recoverable. Therefore, even if you can show that you have not failed to disclose a material fact you may have misrepresented a material fact and any overpayment would still be recoverable.

Misrepresentation occurs when you have made a statement which is incorrect or you have given the benefit office information which is inaccurate.

This could simply be where you have put some inaccurate information on your claim form or you, at a later stage notify the benefit office about information which turns out to be incorrect.

The misrepresentation can be completely innocent with no intention to mislead. If, for example, one partner completes the claim form and misses out a benefit which their partner receives because they do not know about this benefit then this may still well be a misrepresentation and lead to a recoverable overpayment.

It is important to be aware of everything which you sign when claiming benefit. Most claims forms end with the statement, “I declare that the information I have given is correct and complete.” Therefore, if you have made any mistakes or have missed out some information, the benefit office will claim that you have misrepresented a material fact and may well seek recovery of benefit from the date of your claim.

Every time you cash a giro or an order book you sign a declaration that you have reported any facts which could affect the amount of your benefit. The benefit office will claim that you have misrepresented a material fact if you have either innocently or intentionally not informed the correct office.

### **What Caused the Overpayment?**

The overpayment may still not be recoverable if you accept that you have either failed to disclose or misrepresented a material fact if you can argue that something else was the cause of the overpayment. This could be the case if, for example, the benefit office had been given the relevant information by someone else but had failed to act on this information. This could occur if you do not inform a benefit office about another benefit which you are receiving if that office is linked to the office which is paying the other benefit by computer.

If you have made a very obvious error on your claim form it could be argued that the benefit office should have made further enquiries and that any overpayment should not be recoverable from you.

Generally, you should always seek advice regarding a decision which states that benefit is recoverable. Your adviser will be able to inform you whether you have prospects of success in making an appeal.

### **How Much is the Overpayment?**

The overpayment section at the benefit office will have to firstly decide when the overpayment began and when it finished. It will then have to work out the difference between how much benefit you were actually paid over the period and how much you should have been paid over the period.

You may wish to check how the overpayment has been calculated by asking the benefit office to give you a full explanation of the calculation. You should remember that this will lead to a second look at the overpayment and can lead to an increase in the amount of the overpayment on recalculation.

It is possible that the Decision Maker will be able to offset an underpayment of benefit against the recoverable overpayment.

Sometimes, this does not come within any benefit regulations laid down by parliament and you would have to ask the benefit office to consider offsetting another benefit or tax credit against the overpayment. This would not be subject to appeal. If this was refused your only remedy would be through judicial review in the High Court. You could contact the Law Centre for advice on this. You could also ask your MP to act on your behalf regarding this matter if judicial review is impractical.

### **Waiving of Overpayment**

If all else fails, you could simply ask the benefit office to use their discretion not to recover the overpayment. In practice, this is only likely to happen if you can show you are in severe financial difficulties and literally could not afford to repay any money. The DSS may waive the requirement to repay for a period of, say, six months.

The DSS may also waive the recovery of overpayment if you can provide medical evidence that your health will deteriorate if you have to repay benefit to the DSS. For example, where your psychological state may be worsened through the stress of having a low income reduced further.

### **How Is Recovery Made?**

Unless the overpayment is for a relatively small amount, it is unlikely that you will be able to repay the whole amount in one lump sum. However, you may be asked to do this but will not have to do so unless you prefer to clear the whole sum immediately. Deductions may be made from your payments of benefit. There is a maximum amount which can be deducted. Although the benefit office may ask for the maximum amount you can ask for this to be reduced if it would cause hardship.

Benefit may also be recovered by proceedings in the County Court or by voluntary repayments negotiated between yourself and the office.

You should not repay any alleged overpayment if the matter is still proceeding to an appeal or a Commissioner's appeal.

### **Fraud and Penalties**

As well as the question of an overpayment of benefit, there may also be a question of fraud. This would only happen if the benefit office believed that you dishonestly or knowingly made a false statement or provided a false document or information in order to get benefit or more benefits.

If the offices considering whether fraud is involved, you will probably be asked to attend an interview with an Investigation Officer. You may wish to take a friend with you to this interview. You can always ask for the interview to stop if you wish to seek legal advice. You could then either ask for general advice from an advice centre or see a private solicitor.

If the benefit office or local authority believe they have enough evidence to prosecute, they may give you the option of paying a fixed penalty as an alternative. You may wish to ask for this to prevent prosecution. You would then have to repay the overpayment plus a fixed 30% extra. You would have 28 days to change your mind if you have agreed to the penalty.

### **Appeals**

You have the right of appeal against any decision relating to a recoverable overpayment apart from duplication of payments mentioned above and the Secretary of State's decision whether to recover the overpayment.

You have one month to appeal from the date of the decision. You can also ask for a full written explanation of the decision and receive two extra weeks to consider whether to appeal.

You need to remember that, if you do appeal, there is some possibility that the amount of the overpayment may increase. The appeal section may simply recalculate the overpayment at a higher level or discover further information which leads to a larger overpayment.

If the overpayment total is reduced when the appeals section reconsider the decision you then have the choice of whether to appeal again within the one month time limit or whether to make a further appeal against the revised decision. If the amount of the overpayment is increased on revision by the appeals section then your appeal will simply proceed to a hearing. Coventry Law Centre can advise you and may be able to represent at your hearing. The Law Centre offers free legal advice and representation.