



Department  
for Work &  
Pensions

# Benefit overpayment recovery guide

A reference guide to the recovery of overpaid DWP administered Social Security benefits and penalties, including recovery of advances and hardship payments

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# Introduction

Welcome to the Benefit Overpayment Recovery Guide.

This guide has been produced by the Department for Work and Pensions to provide an overview to staff regarding overpayment policy. Its contents may also be shared with external advisors whose clients include those who have either received notice of a benefit overpayment, or who are repaying a benefit overpayment.

The Benefit Overpayment Recovery Guide provides a comprehensive overview of the overpayment recovery policy that applies to overpaid Social Security benefit payments, including any associated Civil Penalties or Administrative Penalties. It is not intended however to provide a definitive statement of law and thus should not be seen to replace formal legal advice where appropriate.

The guide does not include information about the recovery of discretionary Social Fund payments, Housing Benefit and Council Tax Benefit overpayments or recoveries made under the Compensation Recovery scheme. Advice regarding these can be found on [GOV.UK](https://www.gov.uk) or are available from the department upon request.

## Policy Statement

The Secretary of State has an obligation to protect public funds and to ensure that, wherever possible, overpayment and penalty debt is recovered.

Overpayment recovery is subject to various legislative limitations and safeguards.

It is the Department's policy to recover all debt where it is reasonable and cost effective to do so. Debts should be recovered as quickly and cost effectively as possible without causing undue financial hardship to debtors.

# Chapter 1 – How overpayments arise

## How do overpayments arise?

**1.1** In simple terms an overpayment is benefit that the claimant has received but is not entitled to.

**1.2** Overpayments of benefit can occur in a number of ways. In the main they are due to claimant, system or official error. They fall into two groups:

- those where recovery is specifically provided for under Social Security legislation
- those where recovery is not specifically provided for under Social Security legislation but the Secretary of State may in some cases seek recovery under Common Law principles.

## Recovery under Social Security Legislation

**1.3** There are several causes for overpayments that fall under this heading:

- Mistake by the claimant (non-disclosure of circumstances or incomplete form)
- Deliberate fraud by the claimant (failing to disclose a material fact or deliberate misrepresentation)
- Interim and advance payments including Short Term Benefit Advance (payments “on account”) that could not be recovered from the benefit for which they were paid
- Universal Credit Recoverable Hardship Payments (classed as an overpayment for recovery purposes if recovery can no longer be taken from the benefit award in place at the time of payment)
- Overpayment due to late award of other benefit /income
- Overpayments due to the way in which the Direct Payment banking system operates
- Official error – only applies to Universal Credit and contributory Jobseeker’s Allowance and Employment and Support Allowance claims (hereafter referred to as “New Style JSA and ESA”) made on or after 29 April 2013.

**1.4** All of these overpayments require an overpayment decision by a Decision Maker before recovery action is taken with the exception of Recoverable Hardship Payments - where the decision to make payments will include the recoverability.

## **Mistake by the Claimant**

**1.5** The claimant, or their representative complete their claim form incorrectly or fail to report a change in circumstances. In such instances there would be either a “misrepresentation” or “failure to disclose” by the claimant. Overpayments caused by the misrepresentation of, or failure to disclose, a material fact are recoverable whether the misrepresentation or failure to disclose was innocent or deliberate.

## **Fraud by the Claimant**

**1.6** The claimant deliberately misrepresents their circumstances or fails to disclose material facts in order to obtain benefit to which they are not entitled. The Department only classifies an overpayment as fraud where there is either admission by the claimant after “caution”, upon conviction in court or acceptance of an Administrative Penalty.

## **Short Term Benefit Advance - Legacy**

**1.7** A Short Term Benefit Advance is an advance of some or all of a claimant’s benefit (other than Universal Credit) where there is a financial need which may result in a serious risk to their health and/or welfare of the claimant or their family. These may be payable at the start of a new claim, when or after a claimant reports a change of circumstances which significantly increases the amount of benefit they may be entitled to, or where the claimant’s first benefit payment is a part week payment and insufficient to meet their immediate needs. Advances are normally recovered by making deductions from the claimant’s future benefit payments.

**1.8** Overpayments only arise if there is no subsequent entitlement to benefit or if a claimant stops getting benefit before the advance is repaid. In the first of these two circumstances, the case is referred to a Decision Maker for a decision on the overpayment. The Advance is treated as an overpayment once the legacy claim ends. See Para 5.41-5.45.

## **Universal Credit New Claim Advance**

**1.9** A Universal Credit (UC) New Claim Advance can be paid where a claimant has made a new claim to Universal Credit and a decision on the claim is pending, or where there is a change in circumstances that affects the claim. A Universal Credit Advance is only paid where the claimant can show they would suffer hardship without payment. The Advance is treated as an overpayment once the UC claim ends. See [Para 5.41-5.45](#)

## **Universal Credit Benefit Transfer Advance**

**1.10** A Universal Credit (Benefit Transfer) Advance can be paid where a claimant has moved from another weekly or fortnightly paid benefit onto Universal Credit which is paid monthly. A Universal Credit Advance is only paid where the claimant can show they would suffer hardship without payment. The Advance treated as an overpayment once the UC claim ends. See [Para 5.41-5.45](#)

## **Universal Credit Budgeting Advance**

**1.11** A Universal Credit Budgeting Advance is an advance payment of Universal Credit and is treated as a loan. Budgeting Advances replace Social Fund payments for Universal Credit claimants and are paid to cover irregular expenses e.g. a one off item or an unforeseen expense. The Advance is treated as overpayment once the UC claim ends. See [Para 5.41-5.45](#)

## **Universal Credit Recoverable Hardship Payments**

**1.12** This is an additional payment of Universal Credit that provides financial protection for a household where the amount of the claimant's award is reduced because of either a sanction or a fraud loss of benefit penalty and where the claimant/couple is experiencing hardship because of the reduction.

**1.13** When recoverable hardship payments cease and sanctions no longer apply to the claim, the total amount paid to the claimant or joint-claim couple is recoverable.

**1.14** Recovery of hardship payments is suspended where the claimant(s) fall out of labour market conditionality because their individual or combined earnings take them above their earnings threshold.

**1.15** Where the earnings of the claimant(s) means they have been out of labour market conditionality for a single period of, or periods that total, at least six assessment periods over a five year period, any remaining unrecovered balance of hardship is written off.

## **Overpayment due to late award of other benefit/income**

**1.16** A claimant can be entitled to two benefits for the same period, where one of the benefits is taken into account when calculating the award of the other benefit. Administrative arrangements exist to avoid a claimant being paid arrears of the benefit that has to be taken into account.

**1.17** Where the process fails, legislation allows any overpayment caused by the failure to be recovered from the claimant. It also applies where any income that is taken into account when calculating the award of a benefit is paid late and we were unable to take the income into account against the benefit for the correct period.

## **Overpayments due to the way in which the Direct Payment banking system operates**

**1.18** Social Security legislation permits the recovery of overpayments that are materially due to the arrangements for payments made by Direct Payment and are *system* caused overpayments. These overpayments can occur either due to a system error (e.g. system issues 2 payments rather than 1), or when a claimant notifies a change in their circumstances but it is too late to recall a payment that has been sent to a claimant's bank or building society account.

**1.19** Overpayments arising as a consequence of the method of payment being direct credit transfer can only be recovered from the person who received the benefit, namely the account holder(s).

## Official Error

**1.20** For Universal Credit, and New Style JSA and ESA, **any** payments made in excess of entitlement is treated as recoverable overpayments – see [Para 1.3](#). This includes those arising from official error. For other benefits see [Para 1.24](#) for details.

## Overpayments not covered under Social Security legislation

**1.21** There are several causes for these types of overpayment which are detailed in [Para 1.16 - 1.35](#). Although these overpayments are not recoverable under Social Security legislation the Secretary of State may consider recovery under Common Law principles in some cases. Common Law principles are based on legal judgments and on custom rather than statute.

## Overprovision

**1.22** Where the claimant has been paid more than the actual award made by the Decision Maker, an overprovision of benefit has occurred, e.g. two payments made for the same period, or the wrong amount paid although the amount awarded was correct, recovery can be considered under the common law principle of restitution, as the claimant has received money to which they are not entitled.

**1.23** For Universal Credit and New Style JSA & ESA, any overprovision can be recovered under Social Security Legislation.

## Official Error

**1.24** This is usually an overpayment caused by an error or omission by an officer of the Department for Work and Pensions, or another government agency or department. However, these overpayments (or part of them), that fall to be determined under S71 of the Social Security Administration Act 1992, are routinely classified as Official Error, where the overpayment (or part of it) is not as a result of a failure to disclose or misrepresentation by the claimant but is as a result of an error arising under an award of benefit. Such overpayments are not recoverable under social security legislation. In December 2010 the Supreme Court<sup>1</sup> held that for any payments made as part of an award of benefit, the social security framework provided the only powers of recovery and these official error overpayments where the error arose under an award of benefit are therefore written off without any recovery action being taken as they cannot be recovered by common law principles as the payment is made within a valid benefit award.

**1.25** For Universal Credit and New Style JSA & ESA claims, any overprovision, including Official Error overpayments, can be recovered under Social Security Legislation.

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<sup>1</sup> (The Child Poverty Action Group v Secretary of State for Work and Pensions (2010) UKSC 54)

## **Error by Third Party**

**1.26** This is an overpayment caused by an error or omission by a third party acting on behalf of the claimant. e.g. employer.

## **Ex-Statutory Payments (Non-prescribed payments)**

**1.27** The Secretary of State can make payments outside of Social Security legislation or under provisions that are not covered by Social Security legislation on recovery. Such payments are termed ex-statutory or non-prescribed. Payments included under this are, or have been:

- Christmas Bonus
- Jobcentre Plus Allowances, e.g. training allowances, New Deal etc.

**1.28** Overpayments of these benefits/allowances can arise due to either claimant or departmental error. As these payments are not prescribed benefits, benefit legislation does not apply to them. Where a request for repayment is considered appropriate, it is made on the basis of common law principles.

## **Benefit paid before due payday**

**1.29** In certain circumstances it can prove helpful to pay benefit before the due payday, for example at Bank Holidays when payments are advanced to ensure that claimants receive their benefit on time.

**1.30** Where benefit is paid (other than Universal Credit, New Style JSA or ESA) before the due date, and it comes to light (whether by notification or otherwise) that a change in the claimant's circumstances has occurred that leads to a reduced award, there will have been an overpayment. However, this would only be recoverable under Social Security legislation if the change occurred before the advanced payment was made and the claimant had not informed the Department. If the change happened after the advanced payment was made the claimant could not have informed the Department before the payment was made and that payment cannot therefore have been made as a result of any failure to disclose.

## **Direct payment made after death (DPAD)**

**1.31** An overpayment can occur if notification of a person's death did not arrive in time to stop a payment going into their account.

**1.32** For DPADs, initial recovery may be sought from the bank to which the payment was made or from the deceased's representative or next of kin. This action is on the basis that the payment should not have been made, that there was no entitlement to it and the payment does not form part of the deceased's estate.

**1.33** Once an account provider (Bank, Building Society etc.) becomes aware that a claimant, holding a sole account, has died they would normally return any credits received after that date. Any payments credited, but not returned are classed as overpayments and are recoverable under common law.

**1.34** For Universal Credit claims and New Style JSA and ESA, where a payment is made to a single person claiming benefit which should not have been paid due to the death of the claimant, although the payment is automatically classed as an overpayment, no overpayment decision is required. In this case the overpayment should be referred to Debt Management.

**1.35** Where the overpayment arose because

- one of a couple dies (UC) or,
- partner dies (other benefits) and there has been a failure to disclose or misrepresentation

then an overpayment decision should be made as usual, with the overpayment being recoverable from the surviving partner.

# Chapter 2 – When and from whom do we seek recovery?

## General

**2.1** The Secretary of State has an obligation to protect public funds and to ensure that, wherever possible, an overpayment is recovered.

**2.2** It is the Department's policy to recover all debt where it is reasonable and cost effective to do so. Debts should be recovered as quickly and cost effectively as possible without causing undue financial hardship to debtors.

**2.3** Overpayments fall into two groups:

- those where recovery is specifically provided for under Social Security legislation
- those where recovery is not specifically provided for under Social Security legislation but the Secretary of State may in some cases seek recovery under Common Law principles.

## Recovery under Social Security legislation

### **Misrepresentation or failure to disclose**

**2.4** Where as a result of any person's misrepresentation or failure to disclose a material fact, a payment of a relevant benefit has been made, the Secretary of State can recover:

- any payment which would not otherwise have been made or;
- the sum which the Secretary of State would have received

if there had been no misrepresentation or failure to disclose.

**2.5** The terms misrepresentation and failure to disclose apply to both innocent errors and omissions and deliberate fraud.

### **What Benefit Overpayments are covered by this legislation?**

**2.6** Current benefits covered by this legislation can be found at [Appendix 1](#)

**2.7** Other benefits (no longer able to be claimed) covered by the legislation include:

- Invalidity Benefit

- Sickness Benefit
- Unemployment Benefit
- Supplementary Benefit (including HB Supplement and single payments)

## **Recoverability not dependent on misrepresentation or failure to disclose**

**2.8** In certain instances, legislation also allows us to recover overpaid benefit even though there was no misrepresentation or failure to disclose a material fact.

**2.9** These instances include:

- All overpayments of Universal Credit, New Style JSA & ESA
- overpayments of Income Support, Jobseeker's Allowance (Income Based), Employment Support Allowance (Income Related) and State Pension Credit caused by late payments of income
- overpaid interim payments & Short Term Benefit Awards (STBA)
- some overpayments where payment was made by direct payment.

## **Overpayments where recovery is not covered under Social Security legislation**

**2.10** In certain circumstances, and where a payment has been made outside a benefit award, under common law a person who receives money to which they are not entitled can be asked to pay it back. We ask for the money back because we have a right to recover it and a duty to protect public funds.

**2.11** These overpayments are sometimes referred to as overprovisions. The underlying policy applied to this type of overpayment is that any debtor, who could reasonably be expected to have known that they have been overpaid, should be asked for repayment.

**2.12** Examples of payments made outside a benefit award and where recovery is normally requested are:

- the normal regular payment was £50, claimant was paid £500
- a claimant receives on going payments of a benefit after they have been notified that their award of that benefit has ceased.

**2.13** In such cases it is likely that the claimant would have been aware that the wrong amount of benefit had been paid and so repayment is sought.

**2.14** Action may be taken to recover the money through the civil courts where cost effective to do so.

**2.15** Where a debtor cannot afford the suggested rate of recovery then the Department will consider negotiating a more affordable rate of recovery based on the

debtor's financial circumstances. This would be for a set period and regularly reviewed.

## The Small Overpayment Limit (SMOP)

**2.16** We need to ensure that it is cost-effective to recover overpaid benefit. Therefore a specific level has been identified, below which it is not considered cost effective to apply the full overpayment process. For general overpayments this level is known as the 'SMOP limit' and is currently set at £65.

**2.17** There are some exceptions to the SMOP limit:

- Overpayments that have arisen due to fraud
- DPAD cases. The SMOP limit of £65 does not apply to overpayments occurring due to a Direct Payment having been credited to a claimant's account after the death of the claimant. In these cases the SMOP limit is £25. The lower amount reflects the fact that the overpayment process for these overpayments is simpler and thus cheaper
- JSA/ESA Contributory or Income Based/related element (where both elements have been overpaid and one or both are £65 or under, the overpayments would be combined and where they total over £65 are recoverable)
- Social Fund award overpayment.

**2.18** With the exception of the circumstances described in [Para 2.17](#), as a general rule a SMOP is not either:

- added to another SMOP, or
- added to a larger overpayment

in order to raise the amount above the limit for recovery purposes.

## Who do we seek recovery from?

**2.19** An overpayment is recoverable from the person who failed to disclose or misrepresented, however there are exceptions to this as below:

- where it involves an overpayment of Universal Credit. An overpayment of Universal Credit is recoverable from the person to whom it was paid except where the Universal Credit claim is for a couple. In these circumstances **both** members of the couple are the payee and will **both** be jointly and severally liable for the overpayment (references to claimant below include both members of a couple in joint claim cases)
- payment made to an appointee – overpayment recoverable from either the appointee and/or the claimant
- payment made to a Third Party as part of the Third Party Deduction scheme (not housing costs) – overpayment is recoverable from the claimant unless an amount in excess of the amount agreed with the third party has been paid over in which case that excess is recoverable from the third party.

## Recovery of Universal Credit Housing Costs

**2.20** An overpayment is usually recoverable from the person to whom it was paid, however the following exceptions apply:

- payment of housing costs made direct to landlord and the overpayment is due to a change of address – overpayment is recoverable from both the claimant and/or the landlord
- payment of housing costs made direct to landlord and the overpayment is a result of a misrepresentation or failure to disclose – overpayment is recoverable from person(s) who failed to disclose or misrepresented
- payment of housing costs made direct to landlord and payment made in excess of rent – overpayment is recoverable from the landlord only
- Payment of housing costs made direct to landlord and overpayment is for a reason other than those mentioned above – Overpayment is recoverable from the claimant(s) only.

**2.21** Overpayments that are deemed recoverable from a Landlord can be recovered from any future direct payments to that Landlord and also via the usual recovery methods (e.g. deductions from benefit, Direct Earnings Attachment etc.). This applies even if the direct payments are for different tenants. Regulations are in place to prevent the landlord placing these other tenants into rent arrears to recover the debt.

## Changes to Persons from whom recovery is sought

**2.22** Where an overpayment is recoverable from more than one person then certain changes in those persons' circumstances or the relationship between them may alter the action taken to recover the debt:

- appointeeship ends – Both the appointee and claimant remain jointly and severally liable. However, unless the appointee had committed fraud or misappropriated the money then the overpayment would be recovered from the claimant as a matter of policy.
- one person dies – We could seek concurrent recovery from the estate of the deceased person and from the surviving person(s). See [Para 7.4](#)
- a couple separate (applies to Universal Credit debt only) – When a couple separate and they have an overpayment for which they are jointly and severally liable, the debt is apportioned 50/50 on separation. Any single penny remaining after apportionment is written off. **Once this apportionment has been done we will not reverse the split liability decision.** Any debt for which only one member of a couple is liable will follow that person on separation.

# Chapter 3 – Calculation of Overpayments and Decision Making

## How is the Overpayment calculated?

- 3.1** [Chapter 1](#) outlines the circumstances in which an overpayment may arise.
- 3.2** In the majority of cases where an overpayment is identified, the relevant benefit award is reassessed by a Decision Maker, and the revised/superseded award details are used to calculate the amount of the overpayment.
- 3.3** The amount and period of the overpayment is calculated by looking at:
- the period for which the claimant received the incorrect amount of benefit
  - the amount they were paid for that period
  - the amount they should have been paid for that period
  - any applicable offsets (as outlined in this chapter).
- 3.4** In simple terms the overpayment amount is the amount that the debtor has reductions been paid less the amount they should have been paid, subject to any applicable.

### Example

Claimant's fortnightly Jobseeker's Allowance was paid into his bank account from 07/04/15 up to and including his last payday 20/04/15.

On 27/4/15 claimant notified the department of his return to work on 13/04/15.

Payment received from 07/04/15 to 20/04/15 @ £146.20

Entitled to payment from 07/04/15 to 12/04/15 @ £62.66

Overpayment (£146.20 - £62.66) from 13/04/15 to 20/04/15 = £83.54

## Third Party Payments

- 3.5** Where there are deductions from benefit for things such as fuel, the overpayment calculation is based on the gross benefit paid, including any money paid over to the third party.

**3.6** In some cases reimbursement action may be taken by the Department by requesting a refund and adjusting further payments to the third party. Where such recovery action proves effective, it is treated as a repayment against the debtor's overpayment.

## Decision Making – Overpayment

**3.7** It is Departmental policy to record any recoverable overpayment decision. Some overpayment decisions can be complex and contentious therefore recording the decision and the reasoning behind it is necessary.

**3.8** The overpayment decision is made by a Decision Maker. The Decision Maker will consider all the facts and evidence before applying any appropriate Social Security legislation and case law to reach a decision. An overpayment decision will normally include the following information:

- whether there has been an overpayment
- who or what caused it
- the period of the overpayment
- the amount of the overpayment
- evidence of how the overpayment has been calculated
- whether some or all of the overpayment can be offset, and if so how offsets have been applied
- whether the overpayment is recoverable and
- if so, who the overpayment is recoverable from and the basis for that determination
- a decision on whether, and on whom, to apply a Civil Penalty.

**3.9** The claimant has the right of appeal against the amount of the overpayment (and/or a Civil Penalty), and its recoverability. [Chapter 4](#) gives more information on appeals and disputes.

## Decision Making - Penalties

**3.10** There are two types of penalty:

- Civil Penalty – can be applied where
  - the overpayment arose as a result of the claimant negligently making an incorrect statement, and they failed to take reasonable steps to correct the error;
  - where the claimant failed to disclose information about their claim without a reasonable excuse;
  - where the claimant failed to inform us of a relevant change of circumstances without a reasonable excuse

- Administrative Penalty – may be offered by the fraud investigator to the person as an alternative to a prosecution in certain cases where there has been benefit fraud or attempted benefit fraud. Where a person accepts the offer of an administrative penalty, they will not be prosecuted in respect of that offence. Administrative Penalties are recovered before the associated overpayment.

**3.11** Where an overpayment decision includes a decision on a Civil Penalty the liability for the penalty can sometimes be different to the liability for the overpayment. e.g. where a third party acting on behalf of the claimant failed to provide accurate information the Overpayment and Civil Penalty can be imposed on different people.

**3.12** Where there has been a joint overpayment applied to a couple, and a penalty is appropriate, the penalty is assigned to a single member of the couple – i.e. whomever is deemed most liable for the overpayment. If the couple subsequently separate, the penalty will follow the single person on separation. It will not be recovered from the separated partner.

**3.13** For the purposes of recovery, Civil and Administrative Penalties are treated in the same way as their associated overpayment, however arrears of benefit cannot be offset against a Civil Penalty although they can be offset against an Administrative Penalty.

## Offsetting

**3.14** Social Security legislation allows for benefit overpayments to be reduced by benefit due under another benefit award in certain circumstances. This procedure is known as offsetting.

## Types of offset

**3.15** There are 3 types of offset:

- offsetting prior payment against subsequent award
- underlying entitlement to income related benefits
- prevention of duplication of payments.

## Offsetting prior payment against subsequent award

**3.16** This is covered by regulation 5 of the Social Security (Payments on Account, Overpayments and Recovery) Regulations 1988 and Regulation 16 of the Universal Credit Regulations (Overpayments and Recovery) 2013.

**3.17** This is considered whenever an award is revised, superseded or overturned on appeal for a period for which benefit has already been paid. The regulation allows any benefit paid for the period covered by the original determination to be offset

against the entitlement under the subsequent award. Such an offset, where applicable, is applied to all overpayment types.

**3.18** Simply put, it means that if someone is now entitled to £50 per week for a particular period but has already been paid £40 per week for that period then the £40 per week should be treated as ‘paid on account’ of the new award. Consequently only an additional £10 per week is payable for that period under the new award.

**3.19** This offset can result in a net underpayment for the whole period or a net overpayment for the whole period or indeed neither an overpayment nor an underpayment. Here are examples of all three scenarios.

### Example 1 - Underpayment

Period under review 03/03/15 to 30/03/15

• Total already paid (4 weeks @ £40)	£160
• Total now due (4 weeks @ £50)	£200
• Offset amount	£160
• Net Arrears due	<b>£40</b>

### Example 2 - Overpayment

Period under review 03/03/15 to 30/03/15

Total already paid (4 weeks @ £40)	£160
• Total now due (4 weeks @ £30)	£120
• Offset amount	£120
(NB – this cannot exceed the amount due)	
• Net Overpayment	<b>£40</b>

### Example 3 - No overpayment or underpayment

Period under review 03/03/15 to 30/03/15

• Total already paid (4 weeks @ £40)	£160
• Total now due (2 weeks @ £30 & 2 weeks @ £50)	£160
• Offset amount	£160
• No Net Overpayment or Underpayment	

**3.20** In the last example there is no underpayment or overpayment. It is the net result of the offset that is critical. This is not an overpayment of £20 and an underpayment of £20.

**3.21** There is only an overpayment (or indeed underpayment) following offset and the net result of that offset.

**3.22** This type of offset is considered in all cases. However in cases where the entitlement under the new award is nil then there is no need to formally consider the offset (which would anyway be nil).

## Underlying entitlement to Income related benefits.

**3.23** This is covered by regulation 13 of the Social Security (Payments on Account, Overpayments and Recovery) Regulations 1988 and by regulation 8(3) of the The Social Security (Overpayments and Recovery) Regulations 2013. The regulation allows a deduction from any recoverable overpayment calculated equal to any amount of additional income related benefit, which would have been paid had the correct facts been known.

**3.24** There must be a valid claim to the other benefit. There can be no offset on account of a benefit that the claimant *may* have been entitled to (i.e. notional entitlement).

### Example

Income Support and Widows Benefit are claimed on 05/01/15. Income Support awarded at £40 a week from 05/01/15 pending a decision on Widows Benefit. On 26/01/15 an award of Widows Benefit is made at £54.20 a week from 05/01/15, which exceeds the amount of Income Support payable. The Income Support ceases, and the Widows Benefit arrears are reduced by the IS previously paid. The arrears of Widows Benefit from 05/01/15 to 25/01/15 are paid at £14.20 a week.

It is later discovered that the claimant had misrepresented the material fact that her 'husband' had been married before and that their 'marriage' was invalid. The Decision Maker decides that there was no entitlement to Widows Benefit. Widows Benefit had been paid to 22/02/15.

The Widows Benefit overpayment is

£14.20 x 3 weeks paid 05/01/15 – 25/01/15	£42.60
£54.20 x 4 weeks paid 26/01/15 – 22/02/15	£216.80
	£259.40

The additional Income Support of £40 a week payable 26/01/15 – 22/02/15, had there been no misrepresentation, is offset against the overpayment of Widows Benefit under Regulation 13.

Offset under Regulation 13	£160.00
Net Widows Benefit overpayment	
(£259.40 – £160.00)	£99.40

**3.25** The actual overpayment of Widows Benefit is £99.40; it is not an overpayment of £259.40 with a partial recovery.

## Prevention of duplication of payment

**3.26** This is covered by Social Security Administration Act 1992 section 74. Where an income related benefit has been paid, and arrears of another benefit become payable for that same period, the arrears of the other benefit can be reduced (offset) by the amount of income related benefit which would not have been paid had the payment of the other benefit been made on time.

**3.27** This offset is used to prevent excess benefit being paid and does not result in an overpayment. However, if the procedure is not undertaken an overpayment would arise and this would be recoverable under Social Security Administration Act 1992 section 74.

## Diminution of Capital

**3.28** Diminution of capital for legacy income related benefits is covered by regulation 14 of the Social Security (Payments on Account, Overpayments and Recovery) Regulations 1988 and applies to overpayments in excess of 13 weeks that arise due to the claimant's failure to disclose or misrepresentation of their capital assets.

**3.29** Diminution of capital for UC is covered by regulation 7 of the Social Security (Overpayments and Recovery) Regulations 2013. Where the overpayment is in excess of 3 months and is as a result of an error relating to capital, regardless of whether it was due to claimant or official error, a diminution of capital calculation must be undertaken.

**3.30** Where a claimant receiving an income related benefit has capital of £1 or more over the prescribed limit, their entitlement ceases from the day that the capital goes over the limit. If the claimant had been receiving benefit for a length of time and the limit had been exceeded by a small amount near the start of the claim, it would be unfair to expect the claimant to repay the whole amount of benefit paid. If the capital had been properly taken into account from the day it exceeded the limit, it would, over time, potentially have reduced to below the limit in order to provide for living expenses.

**3.31** The regulations provide for the reduction of the figure of capital resources at quarterly intervals from the beginning of the period of the overpayment by the amount overpaid in the previous quarter.

## Example

Claimant makes a claim to Income Support declaring neither income nor capital. The decision maker makes a decision based on the evidence provided, awarding benefit from the date of claim 05/02/2013 @ £150 pw.

On 09/11/2014 it is established that the claimant had capital of £17,560 from the beginning of the claim. This is over the capital limit of £16000. A decision maker revises the award based on the new evidence and takes the capital into account from the date of the claim.

The overpayment will then be calculated using the diminution of capital principle. This will take into account the fact that had the claimant informed us about the capital then benefit would not have been paid and the capital will have reduced over time to provide for living expenses.

The calculation is made at 13 week intervals and the overpayment recovered as such:

Week	Paid	Due	Wkly Overpayment	Total OP
1-13	£150	Nil	£150	£1950

In the following quarter the amount of capital taken into account for the overpayment calculation is reduced by the overpaid amount for the previous quarter, in this case £1950.

For the quarter from week 14, therefore, the overpayment calculation would be based on the claimant having capital assets of £15,610. Because this is below the capital limit, the overpayment would only be on the basis of tariff income from the capital.

## Notification of the overpayment and Civil Penalty

**3.32** Where a recoverable overpayment is not a SMOP then it must be notified to the person from whom it is recoverable (the current notification is an ORG 7).

**3.33** Where the overpayment is recoverable from more than one person then each of the persons from whom the overpayment is recoverable must be notified except where:

- the overpayment is recoverable from the claimant and their appointee and the appointee is still acting for the claimant. In this case a single notification can be sent to the appointee but making it clear that the overpayment is recoverable from both of them.

- the Civil Penalty decision in relation to the overpayment was made against an appointee a separate recoverability notification must be issued to the appointee. This is because a Civil Penalty can only be recovered from the appointee even if the claimant and appointee are jointly liable for the overpayment.

# Chapter 4 – Appeals and Disputes

## Overpayment Decision Disputed

### General

**4.1** Any recoverable overpayment or Civil Penalty decision made by a Decision Maker is notified to the claimant, who then has the opportunity to ask for a reconsideration or an appeal. There is no right of appeal against an Administrative Penalty as these are accepted by the claimant in place of prosecution.

### Mandatory Reconsideration of the Overpayment Decision

**4.2** Where a claimant does not agree with the overpayment decision and/or any penalty that has been applied, they may request either a Written Statement of Reasons (WSOR), which is an explanation of the overpayment decision or request a mandatory reconsideration.

**4.3** A mandatory reconsideration of the decision happens before any appeal and allows DWP an opportunity to resolve disputes at an early stage by looking again at the decision along with any new evidence provided.

**4.4** Any request for reconsideration should be made within one month and one day from the day following the issue of the notice of the overpayment decision. Example – Overpayment decision letter issued 10/3/17. 1 month is to 9/4/17 and 1 day is to 10/4/17. Deductions can commence from 11/4/17.

**4.5** Where the recovery of the overpayment or penalty has already started, recovery is suspended until the reconsideration has been completed. If recovery action has not yet started, no recovery is made while the reconsideration is outstanding.

**4.6** For Universal Credit overpayments, recovery will not be suspended during the mandatory reconsideration process.

**4.7** Where the decision is reconsidered, any subsequent decision would replace the original decision.

**4.8** Where the decision has been changed the claimant has the right to request reconsideration of the revised decision. Where the decision has not been changed, the claimant has the right to appeal against the overpayment and/or penalty decision.

## **Mandatory Reconsideration request received over one month and one day since decision or WSOR**

**4.9** The decision over whether or not to accept a late mandatory reconsideration request lies with the Decision Maker. If recovery of the overpayment has already commenced, recovery should continue until such time that the Decision Maker overturns the overpayment decision. At that time recovery of the overpayment should cease.

### **Appeal – Direct Lodgement**

**4.10** Where the claimant still disagrees with the overpayment decision following mandatory reconsideration, they can appeal against the decision. The claimant must make a Direct Lodgement Appeal directly to Her Majesty's Court & Tribunal Service (HMCTS). They must do this within 1 calendar month of the date of the overpayment reconsideration decision.

**4.11** Following receipt of the Direct Lodgement, HMCTS will contact DWP to request a response to the Appeal. DWP will provide this within 28 days.

**4.12** The request from HMCTS is classed as notification to DWP that the claimant has appealed, and where the recovery of the overpayment has already started, recovery is suspended until the Appeal has been completed. If recovery action has not yet started, no recovery is made while the Appeal is outstanding.

**4.13** For Universal Credit overpayments, recovery will not be suspended during the appeal process.

### **Appeal received over one month since decision issued**

**4.14** The decision over whether or not to accept a late appeal lies with HMCTS. If recovery of the overpayment has already commenced, recovery should continue until such time that HMCTS advise DWP they have accepted an appeal and request a response to the Appeal. At that time recovery of the overpayment should be suspended pending the outcome of the Appeal.

**4.15** For Universal Credit overpayments, recovery will not be suspended during the appeal process.

### **Appeal heard by first-tier Tribunal**

**4.16** Where an appeal has been heard at first-tier Tribunal, the Tribunal may decide to uphold the original decision, uphold the appellant's appeal or revise the decision under appeal. Either party to the appeal (Department or claimant) has the right to dispute the Tribunal's decision by appealing to the upper Tribunal. Civil Penalties cannot be revised, they can only be upheld or dismissed.

**4.17** Any appeal to the upper Tribunal can only be on the ground of ‘error of law’. The following are examples of what is meant by ‘error of law’:

- the first-tier Tribunal applied the law incorrectly
- the first-tier Tribunal conducted the proceedings in breach of the proper procedures
- the first-tier Tribunal failed to give adequate reasons for its decision.

**4.18** The first step in applying for permission to appeal is to request a statement of reasons for the Tribunal’s decision. The statement is written by the chairperson of the first-tier Tribunal that heard the appeal. The request for a statement must be made in writing within one month of the date of issue of the decision notice unless the chairperson considers that there are special circumstances, in which case up to three months may be given.

**4.19** If having considered the statement of reasons, it is believed that the decision of the Tribunal was erroneous in law, there is a period of one month from the statement issue date in which to apply for permission to appeal to the upper Tribunal. This time limit may be extended by the first-tier Tribunal Judge by up to one year for special reasons.

**4.20** An application for permission to appeal is considered by a first-tier Tribunal Judge.

**4.21** If the first-tier Tribunal Judge grants permission, the appeal can proceed to the upper Tribunal. If they refuse permission there is then the option of asking the upper Tribunal direct for permission.

**4.22** Alternatively, the first-tier Tribunal Judge may decide to set aside the decision of the tribunal without the need to refer the case to the upper Tribunal. The case will then be heard by a new Tribunal.

**4.23** If the appeal proceeds to the upper Tribunal, the upper Tribunal has power to set aside the first-tier Tribunal’s decision and refer the case to a new first-tier Tribunal, or to substitute its own decision for the one made by the first-tier Tribunal.

## **Refunds during the reconsideration/appeal process**

**4.24** Any recovery already made will not be refunded until the outcome of the reconsideration/appeal is known.

**4.25** DWP Policy is to suspend deductions upon receipt of a request for a mandatory reconsideration or an appeal (not Universal Credit), however there is no legal requirement for DWP to do so. Until such time as the overpayment decision is overturned, DWP retains the legal right to continue deductions and therefore would not refund any deductions made after the reconsideration/appeal request is received.

## **Over-recovery following Tribunal decision**

**4.26** Where the decision of the tribunal replaces the original decision and is favourable to the claimant it will usually be that either the overpayment is non-recoverable or that the recoverable overpayment has reduced.

**4.27** Any over-recovery made from the claimant is refundable where the new decision is that there is no recoverable overpayment or where the amount recovered exceeds the new amount of the overpayment. However, where there is another outstanding debt any over-recovery will normally be allocated to that debt.

**4.28** If there has been over recovery of a Civil Penalty then the refund should be made to the person who the penalty was imposed on. The over recovery of a Civil Penalty should not be used to recover an outstanding benefit debt without the debtor's agreement.

# Chapter 5 – How Do We Recover?

## General

**5.1** The overriding policy is to recover overpayments and any associated penalties in the most efficient and cost effective way possible whilst ensuring that the debtor is not caused undue hardship.

**5.2** Where the debtor is unable to repay by a single lump sum, the simplest and most effective means of recovery is by ongoing deductions from the debtor's benefit.

**5.3** For those who are no longer in receipt of benefit, recovery is sought via negotiation with the debtor. Where, as in most cases, the debtor is unable to repay in a single lump sum an instalment plan is negotiated.

**5.4** Where a debtor is unable to repay the overpayment or penalty at the agreed rate there are a range of hardship options available including temporary suspension of recovery, reduction in recovery rate or in exceptional cases write-off of the debt.

**5.5** Where a debtor has more than one overpayment these are usually recovered one at a time. Recovery on the second or any subsequent overpayment is suspended until the first overpayment has been fully recovered. An exception is where we are recovering DWP, LA and/or HMRC debt from Universal Credit where recovery is concurrent.

**5.6** For Universal Credit couples where there is no joint debt but where both claimants have single debts, the recovery is apportioned against each debt. This is unless one of the couple has a fraud classified debt, and where this is the case, the fraud debt is recovered first.

## Penalties

**5.7** For the purposes of recovery, Civil and Administrative Penalties are treated in the same way as their associated overpayment. Arrears of benefit cannot be offset against a Civil Penalty. Where there has been over recovery of a civil penalty it cannot be used to reduce a benefit overpayment without the debtor's agreement.

## Recovery by deduction from benefit

**5.8** Social Security legislation allows for the recovery of recoverable overpayments by compulsory deductions from most benefits. For a complete list, see [Appendix 1](#)

**5.9** The deduction can be made from a different benefit to the one originally overpaid e.g. an Income Support overpayment can be recovered from a person's Retirement Pension. The rate of deduction is determined by legislative rules and policy guidelines depending on the benefit in payment. Any benefit sanctions applied to the debtor may affect the overpayment recovery rate. Deductions may also be taken from a partner's benefit in certain circumstances.

**5.10** Deductions may also be made with the debtor's agreement (voluntary deductions) in cases where compulsory deductions cannot be taken e.g. for Common Law overpayments.

**5.11** With the exception of Universal Credit and New Style JSA and ESA, when making deductions from benefit, the benefit entitlement cannot be reduced to less than 10 pence in any given benefit week. For Universal Credit and New Style JSA and ESA the deductions cannot reduce the benefit entitlement to less than 1 penny in any given assessment period.

## Recovery from Income related Benefits (except Universal Credit)

**5.12** The weekly standard and higher rates of deduction from Income Support, State Pension Credit, Jobseeker's Allowance (Income Based), Employment Support Allowance (Income Related) for overpayment recovery are prescribed in legislation. Additionally, a special rate which is set by policy, applies for cases where Social Fund deductions are also in place.

**5.13** The standard rate of deduction for overpayment recovery for all of these benefits at April 2017 is £11.10pw.

**5.14** The higher deduction rate is appropriate where the overpayment has arisen due to fraud and the debtor has either been convicted, has admitted the offence under caution or has accepted an Administrative Penalty.

**5.15** The higher deduction rate at April 2017 is £29.60pw.

**5.16** The amount of the overpayment deduction can be increased by half of the disregard applied to the following

- Part Time Earnings
- Charitable or Voluntary Payments
- War Pensions

**5.17** For debtors in long term residential accommodation such as a nursing home the maximum rate of deduction is set, as a matter of policy, from April 2017 at £3.70.

## Recovery from New Style JSA and ESA

**5.18** The maximum amount that can be recovered from new style JSA or ESA is 40% of the age-related amount applicable to the liable person under the JSA or ESA regulations respectively.

### Recovery from Universal Credit

**5.19** See [Appendix 2](#) for non-fraud overpayments where the claimant has earnings in excess of the UC disregard, this deduction is 5 times 5% of the appropriate UC standard allowance rate.

**5.20** For fraud overpayments of UC recovery is 8 times 5% of the appropriate UC standard allowance.

**5.21** In all other cases for UC, the deduction rate is 3 times 5% of the appropriate UC standard allowance.

## Recovery from non-income related benefit (where no income related benefit is in payment)

**5.22** For contribution-based Jobseeker's Allowance (old Style JSA(C)) legislation prescribes a maximum rate of overpayment deduction.

**5.23** This is set at one third of the rate of benefit but is restricted to the rate applicable to income-based Jobseeker's Allowance where that would be in payment but for the payment of Contribution-Based Jobseeker's Allowance.

**5.24** For other contributory benefits, as a matter of policy, the maximum rate is set at one third of the rate of personal benefit (that is excluding additional allowances for partners, dependants etc.) and applies to both fraud and non-fraud debt.

## Recovery from non-income related benefit (where there is also income related benefit in payment)

**5.25** Where both an income related and a non-income related benefit are in payment to a debtor it is usual to take deductions from the income related benefit. In cases where there is insufficient income related benefit to take a full deduction, then deductions may be taken from the non-income related benefit instead.

**5.26** In such cases the recovery of any overpayment or penalty should be at the appropriate income related rate.

**5.27** Where a debtor is in receipt of a non-income related benefit, but would qualify for an income related benefit were this not in payment, wherever possible, a 'better off calculation' should be undertaken to ensure that a debtor in receipt of a non-income related benefit is no worse off (post deduction) than an income related benefit debtor (post deduction).

## Recovery from non-income related benefit (where there would be entitlement to an income related benefit if there were no contributory benefit in payment)

**5.28** Where a debtor is in receipt of a non-income related benefit, but would qualify for an income related benefit were this not in payment, wherever possible, a 'better off calculation' is undertaken to ensure that a debtor in receipt of a non-income related benefit is no worse off (post deduction) than an income related benefit debtor (post deduction).

### Example

ESA (C) entitlement = £109.30

ESA (IR) entitlement = £107.05

As ESA (C) exceeds ESA (IR), ESA (C) is in payment. As a contributory benefit is in payment the deduction rate that normally applies is a third of the personal allowance rate -  $£73.10 / 3 = £24.36$ . Applying this deduction rate would result in £84.94 of JSA being paid. ( $£109.30 - £24.36 = £84.94$ )

Better off calculation - If ESA (IR) were in payment the deduction rate would be £11.10. Applying this deduction rate would result in £95.95 of ESA (IR) being paid ( $£107.05 - £11.10$ ).

After undertaking the better off calculation the deduction rate would be  $£109.30 - £95.95 = £13.35$  (the difference between the higher rate of benefit in payment, and the amount of income related benefit that would be in payment with the deduction ( $£11.10 + £2.25 = £13.35$ )).

## Example

ESA (C) entitlement = £109.30

ESA (IR) entitlement = £ 77.65

As ESA (C) exceeds ESA (IR), ESA (C) is in payment. As a contributory benefit is in payment the deduction rate that normally applies is a third of the personal allowance rate which would be £24.36 ( $£73.10/3 = £24.36$ ). Applying this deduction rate would result in £84.94 of JSA being paid.

Better off calculation - If ESA (IR) were in payment the deduction rate would be £11.10. Applying this deduction rate would result in £66.55 of ESA (IR) being paid ( $£77.65 - £11.10$ ).

Applying the better off calculation would result in a deduction rate of  $£109.30 - £66.55 = £42.75$ . As this is more than a third of the personal rate the deduction rate in this case is £24.36.

## Impact of other deductions

**5.29** Deductions can also be taken from income related benefits for a number of other things such as recovery of utility arrears. Where there are other deductions in place the overpayment deduction may have to be reduced.

**5.30** Where a Legacy deduction is made for on-going charges and arrears, the overpayment deduction is reduced by the amount of the arrears component (from April 2017 £3.70). See [Appendix 3](#). This applies to the following deductions:

- housing costs
- rent, and service charges
- fuel costs

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- water charges
- Council Tax

**5.31** Where a Legacy deduction is made for other on-going payments, the overpayment deduction is reduced by the amount of the full deduction. This applies to the following deductions:

- Child Support maintenance (prior to 03/03/03)
- court fines
- Integrated Loan Scheme

**5.32** Where there is more than one of the deductions as listed above, the overpayment deduction is reduced by the amount of each deduction.

**5.33** Where a Legacy deduction is made for the following, the deduction rate is not reduced:

- Community Charge
- Child Support maintenance (post 03/03/03)
- Mortgage interest

## Low Rates of Benefit

**5.34** Where possible deductions should be taken from the income related benefit (e.g. Income Support) in line with the legislative rules on the maximum rate of deduction.

**5.35** Where there is insufficient income related benefit for that rate of deduction to be taken then a deduction should be taken from any non-income related benefit that may be in payment.

**5.36** Where the recovery is from a non-income related benefit (e.g. Carer's Allowance), but an income related benefit is also in payment, (e.g. low rate of Income Support), then the deduction rate should equal that which would have been taken had there been sufficient income related benefit in payment to take the deduction. We would recover at the income related deduction rate even if this was more than one third of the non-income related benefit in payment.

**5.37** Where the contributory benefit is old style JSA(C) then the deduction rate should equal that which would have been taken had there been sufficient income related benefit in payment to take the deduction, unless that exceeded a third of the JSA(C) in which case the deduction would be restricted to one third. This is because the one third maximum is prescribed in legislation for contributory JSA (old style).

**5.38** Where there is insufficient benefit or no other benefit in payment that will allow us to make a deduction we can consider seeking a Direct Debit agreement from the debtor. Where, the debtor is in employment, and fails to set up a suitable repayment plan, we can consider issuing a Direct Earnings Attachment (DEA) - ensuring that the recovery rate does not exceed the applicable deduction rate that would have been taken had there been sufficient benefit in payment to do so.

### Example

Claimant is in receipt of Carer's Allowance of £62.10 and Income Support of £11.00 per week. Claimant has a fraud overpayment therefore recovery would be taken at 40% (£29.60). There is insufficient Income Support to take the deduction therefore deductions should commence from Carer's Allowance at £29.60.

## Example

Claimant is in receipt of Carer's Allowance of £62.10 and Income Support of £11.00 per week. Claimant has a recoverable non fraud overpayment therefore recovery would be taken at 15% (£11.10). There is insufficient Income Support to take the deduction therefore deductions should commence from Carer's Allowance at £11.10.

## Social Fund Rate

**5.39** There is a different recovery rate for cases where repayment of a Social Fund loan is on-going, which is applied when Social Fund deductions are already in place at the time the overpayment recovery commences. [Appendix 2](#) gives a table of deductions appropriate where there are Social Fund deductions.

**5.40** There are also two overriding limits for deductions. These are that:

- benefit cannot be reduced so as to leave less than 10 pence per week in payment (1p in the assessment period for Universal Credit);
- total deductions, excluding housing costs, fines, certain child maintenance or council tax arrears should not exceed 25% of the applicable amount of the income related benefit without debtor consent. This is unless the overpayment being recovered has been classified as arising through fraud. For this purpose, the applicable amount includes any award of Child Tax Credit and Child Benefit as well as the awarded benefit. Where recovery is for fraud classified debt this percentage increases from 25% to 40%.

## Universal Credit Advances

**5.41** A Short Term Benefit Advance (STBA) is usually repayable within 12 weeks and the repayment rate and repayment timescale is agreed with the claimant before the advance is paid.

**5.42** Universal Credit New Claim Advances are usually repayable within 6 months and the repayment rate and repayment timescale is agreed with the claimant before the advance is paid.

**5.43** Universal Credit Benefit Transfer Advances are usually repayable within 12 months and the repayment rate and repayment timescale is agreed with the claimant before the advance is paid.

**5.44** A Universal Credit Budgeting Advance is usually repayable within 12 months and the repayment rate and repayment timescale is agreed with the claimant before the advance is paid.

**5.45** Where any of the advances above are not recovered from the associated benefit claim because the claim ends, or there was no entitlement to that benefit, the outstanding balance is treated as if it were an overpayment and falls to be recovered under *Section 71 of the Social Security Admin Act 1992*. Any outstanding balance is then recovered as if it were an overpayment and recovered at the standard overpayment rate.

## Universal Credit Recoverable Hardship Payments

**5.46** Recovery is suspended if the claimant and/or partner start work and their total income is equal to or exceeds their applicable threshold. The suspension will continue while the claimant's and/or partner's income meets or exceeds their applicable threshold. If their total income falls below their applicable threshold, the hardship payment becomes recoverable.

**5.47** A Recoverable Hardship Payment is written off once the claimant and/or their partner's total income has met or exceeded their applicable threshold for a total of 26 weeks. This does not need to be 26 continuous weeks. Any recovery already made against the Hardship Payment will not be refunded to the claimant. See [Para 1.12-1.15](#)

**5.48** Where a Recoverable Hardship Payment is not recovered from the Universal Credit claim because the claim ends, the outstanding balance is treated as if it were an overpayment and falls to be recovered under *Section 71 of the Social Security Admin Act 1992*. Any outstanding balance is then recovered as if it were an overpayment and recovered at the standard overpayment rate.

## Recovery from Arrears

**5.49** Where a debtor with an outstanding overpayment is due arrears of benefit, these arrears can be withheld in full to recover an overpayment or Administrative Penalty unless those arrears arose as a consequence of a benefit award being suspended. Reg 102 of the Housing Benefit Regulations 2006 also allow for arrears to be used for the recovery of a HB overpayment. We do not use arrears of benefit to recover any advance that has not converted to be recovered as an overpayment or any Social Fund Debt.

**5.50** Additionally, as a matter of policy arrears are not withheld if the following circumstances apply:

- The arrears are for full periods' benefit that have not been paid on time (this is regardless of whether the arrears are due from the start, middle or end of claim) and the customer is not deceased;
- The arrears are for a specific reason and are earmarked for a specific purchase or expenditure. This scenario normally only occurs with recipients of income related benefits in relation to such things as mortgage arrears or where they are for Universal Credit Housing Costs.
- Where a payment is made at a 'safe rate' which excludes a particular component of the claim pending verification (e.g. verification of housing costs/rent); then once that component has been verified we would not withhold those arrears against outstanding debts.

**5.51** Where the arrears are due for a benefit paid to one member of a couple only (e.g. PIP), then those arrears will only be used to recover any joint debts or single debts owed by the claimant. If the claimant has a partner with single debts of their own, then arrears due to the claimant would only be used to recover the partner's debts with the claimant's permission.

## Universal Credit Arrears

**5.52** Where there are arrears of Universal Credit due for a joint claim, regardless of whether the joint claim is still in payment, then the arrears amount may be withheld as payment against any existing outstanding debt owed by either member of the couple.

**5.53** Where both members of the couple have separate debts, the arrears will be split 50/50 and offset against each members debt.

**5.54** Where only one member of the couple owes a debt, the full amount of the arrears due can be withheld to recover the debt.

## Deduction from Partner's Benefit

**5.55** Compulsory deductions can be made from a partner's income related benefit only if all of the following apply:

- The overpayment is an overpayment of an income related benefit; and
- They were a couple for the period of the overpayment; and
- Benefit is currently in payment to them as a couple.

**5.56** The rate would be determined in the same way as any other overpayment deduction from an income related benefit and normal priority rules would apply e.g. Recovery of the partner's Fraud debt would take priority over the claimant's normal overpayment. See [Para5.12-5.17](#).

## Voluntary Deductions

**5.57** Where deductions from benefit cannot be taken compulsorily, e.g. a common law overpayment or from a partner's benefit, deductions can only be taken with the permission of the benefit recipient.

**5.58** There are no legislative limits on the rate of voluntary deductions but as a matter of policy the appropriate compulsory rate would be used as a guide.

## Lump Sum Recovery

**5.59** Where a debtor has sufficient funds to repay the overpayment, a lump sum payment for the full amount is expected. Where the debtor cannot make a single lump sum payment an instalment plan is negotiated.

## Instalments

**5.60** The rate of recovery by instalment is not governed by legislation but is determined by the debtor's ability to repay. If the debtor is still in receipt of benefit, the appropriate rate of deduction might be useful as a guide. Ideally we look to recover overpayments within two years.

**5.61** Each case will be different, and therefore instalment plans are set in consultation with the debtor and are based on their individual circumstances.

**5.62** The preferred method of payment for instalments is by Direct Debit but other methods are available, for example:

- Debit Card Payment
- Bank Giro Credit (i.e. payment slip including cash/cheque)
- Cheque
- Bank Standing Order
- Cash
- e-payments

**5.63** A debtor or executor cannot offer to repay part of an overpayment on the understanding the part payment represents a full and final settlement. If a debtor or executor makes a repayment on this basis, the payment will be credited to the debtor's account and a letter issued to the debtor or executor explaining that part repayments do not clear a debt and advising the balance of the debt that remains outstanding.

## Changes to Persons from whom recovery is sought

**5.64** Where an overpayment is recoverable from more than one person then certain changes in those persons' circumstances or the relationship between them may alter the action taken to recover the debt.

**5.65** Appointeeship ends – Both the appointee and claimant remain jointly and severally liable. However, unless the appointee had committed fraud or misappropriated the money then the overpayment would be recovered from the claimant as a matter of policy.

**5.66** One person dies – We could seek concurrent recovery from the estate of the deceased person and from the surviving person(s).

**5.67** A Universal Credit couple separate – When a couple separate which can be either during or after the UC claim ends, and they have an overpayment for which they are jointly and severally liable, the debt is apportioned 50/50 on separation. Any odd penny remaining after apportionment is written off. Once this apportionment has been done we will not reverse the split liability decision. Any debt for which only one member of a couple is liable will follow that person on separation.

**5.68** Civil Penalties are not re-allocated to another person and will remain with the individual named in the overpayment decision.

## Debtor Claims Hardship – Repayment Negotiation Framework

**5.69** A Repayment Negotiation Framework which is based on the individual circumstances of the debtor, rather than the size of the debt and repayment period, has been developed. Where a debtor, or their representative, contacts the recovery unit stating that the rate of recovery will cause them, or their family, hardship, all the evidence requested should be provided, and a hardship case can be considered.

**5.70** The recovery of an overpayment from any person in receipt of benefit is almost certain to cause some hardship and upset for them and their family. It is the level of hardship and upset which is taken into account when considering the application.

**5.71** The debtor should provide reasonable evidence to support their request. Where hardship is claimed because either the debtor or a member of their family is seriously ill, it is expected that supporting evidence is provided to explain how or why the recovery of the overpayment would be detrimental to the health or welfare of the debtor or their family.

**5.72** Where hardship is claimed on financial grounds, and the claimant is in receipt of a benefit, an affordability assessment will be completed to consider the household income and expenditure.

**5.73** The officer making the affordability decision may request further information, and if the debtor fails to provide sufficient information the request will be unsuccessful.

**5.74** Hardship will not normally be considered where the debt has been classed as arising from fraud. Where there are dependent children in the household, or where the debtor considers themselves to be in exceptional circumstances, they can request a reduction in repayment on the grounds of hardship and this will be considered. Where there are no dependent children, or where the decision maker decides there are no exceptional circumstances resulting in hardship, the maximum amount allowed by the legislation is recovered.

**5.75** Where hardship is accepted and repayments are reduced the department will not refund any monies that have already been correctly recovered.

## Hardship accepted

**5.76** Where the debtor provides reasonable evidence to support their request a reduced rate of recovery is implemented. A review date of 3 or 6 months will normally be set at which time the debtor's circumstances is reviewed to determine whether hardship still applies. For example, where the hardship decision is based on a financial commitment which will only last for a known period, the reduced recovery rate should be reviewed at the end of that period.

## Suspension of Recovery

**5.77** Where the circumstances of the debtor satisfy specific criteria, for example a benefit sanction, other higher priority deductions etc. recovery action can be suspended until they no longer apply. See Debt Management Guidance on suspension of recovery for full list of reasons.

## Abandonment of Recovery (Write-off)

**5.78** Recovery of an overpayment is abandoned and the balance written off where the Department has been unable to effect recovery, e.g. no benefit in payment, or Direct Earnings Attachment is inappropriate (see [Direct Earnings Attachment](#).) and where it is considered that it is no longer cost effective to pursue the recovery of the debt.

**5.79** Recovery will usually be abandoned in the following circumstances:

- Less than £25 outstanding and there has been no response to a demand;
- A common law overpayment where there has been no offer to repay and the case is not appropriate for civil action;
- The overpayment has been waived.

**5.80** Timescales for considering abandonment are dependent on the value of the debt. Where there has been no recovery for a number of years refer to [Appendix 5](#) to consider whether the overpayment can be abandoned.

## Waiver of Overpayment – Secretary of State Discretion

**5.81** In exceptional circumstances the Secretary of State can use their discretion to waive all or some of an overpayment and any associated penalty where it is appropriate to do so.

**5.82** Waiver will result in abandonment of recovery of all or part of the overpayment and penalty, which are then written off.

**5.83** Waiver is considered on the individual circumstances of the case but is normally only considered where both current and future recovery action will result in severe issues for the welfare of the debtor or their family. See [Chapter 8](#) and [Appendix 5](#).

## Review of Recovery Rates

**5.84** Unlike a loan or other such agreements, the rate of deduction or instalment is not set at a specific rate for the duration of the recovery plan.

**5.85** Rates of recovery can be increased / decreased periodically to ensure efficient recovery of debt and protection of public funds.

**5.86** The maximum rates of deduction are updated, along with benefit rates, each year. However, deduction rates on existing cases do not need to be routinely increased each year as the cost outweighs the small annual increase. This excludes Universal Credit deductions which are automatically updated each year. Where recovery by deduction runs over a number of years it is likely that deductions would be updated every third year, however, this does not mean the recovery rate may not be amended before this time.

## Compensation and Confiscation Orders

**5.87** When a debtor is convicted of benefit fraud the court may award a compensation order. The order is designed to compensate the Department for the loss it has sustained as a result of the fraudulent activity and is often awarded at the same level as the amount of the overpayment. Recovery of compensation orders is undertaken by the court.

**5.88** Where goods are seized from a debtor under the Proceeds of Crime Act 2002 and the offences include benefit fraud, a proportion of the confiscation order is in respect of the benefit fraud.

**5.89** Whilst the court is pursuing such an order, overpayment recovery is suspended. Recovery of a UC Advance should continue as normal if the associated UC claim is still in payment.

**5.90** Once the order is fully repaid any balance of the overpayment is recovered. The balance is the gross amount of the overpayment less any amount recovered under the order.

**5.91** There may be occasions where the order amount exceeds the associated debt. In these circumstances the policy is to use the excess amount to repay any other DWP debts the claimant may have. If there are no other debts we would still retain the excess amount. This is on the basis that the court has awarded us the compensation and the full amount is due to DWP, even where that amount exceeds the actual recoverable overpayment amount.

## Direct Earnings Attachment

**5.92** Where a debtor has failed to make an arrangement to pay and is in PAYE employment, the Department can instruct a debtor's employer to take deductions direct from their employee's salary to recover a debt. This is known as a DEA – Direct Earnings Attachment.

**5.93** For each deduction made by the employer from the debtor's earnings, a charge of £1 can be levied against them for administration costs.

**5.94** The amount of deduction is determined by the level of the debtor's earnings. The rates for monthly pay are shown at [Appendix 2](#) for illustrative purposes.

**5.95** A Direct Earnings Attachment is only usually considered for debtors who won't agree a voluntary repayment plan, although a debtor can request a voluntary DEA if they so choose. It is not intended for those who cannot pay where suspension, abandonment or waiver of the debt would be more appropriate.

**5.96** Where we are unable to take deductions from benefit because there is insufficient benefit in payment, the amount recovered by DEA is restricted to what would have been recovered from benefit.

## Referral to Private Sector

**5.97** Where a debtor is not in receipt of benefit or PAYE employment, and has failed to make an arrangement to pay, we will consider referral to a private sector debt collection agency. Civil action through the courts will also be considered, where it is cost effective to do so.

**5.98** Where a debt is referred to a private sector debt collection agency, they are bound by the same legislative constraints and considerations as our own collection agents.

**5.99** This action is only considered with non-compliant debtors who won't pay. It is not intended for those who cannot pay where suspension, abandonment or waiver of the debt would be more appropriate.

**5.100** Where the recovery of the overpayment is under common law, civil action is only likely to be considered where the overpayment is substantial and there is strong reason to believe that the debtor should have been aware of the overpayment at the time it was made.

## Tax Credit and Housing Benefit Debt – recovery from Universal Credit

**5.101** It will also be possible to recover overpayments of migrated Tax Credit and Housing Benefit from Universal Credit. Where there is a combination of overpayments of Universal Credit, Tax Credit and Housing Benefit there is single deduction taken from Universal Credit but the recovery is allocated equally between the two or three debts.

## Tax Credit and Housing Benefit Debt – recovery from other benefits

**5.102** It will also be possible to recover overpayments of migrated Tax Credit and Housing Benefit from other benefits. Where this is the case, normal recovery rules apply and we will only recover one debt at a time. Where there is already an overpayment deduction in place and a request is received to recover a Housing Benefit overpayment, the request will not be actioned and is returned to the sender.

## Tax Credits – off benefit recovery

**5.103** Migrated Tax Credit debt can also be recovered even though there may be no benefit in payment. The debt will be recovered as if it were a benefit overpayment and the same off benefit rules apply. Where a debtor fails to make an arrangement to repay, a DEA or referral to private sector can be considered.

## Court Costs

**5.104** Costs arising from court action to seek recovery of overpayments of Universal Credit and New Style JSA and ESA, can be recovered as if they were overpayments, including via compulsory deductions from benefit or DEA.

**5.105** For the purposes of recovery by deduction from benefit these should be included in the overpayment amount or if they are the only outstanding debt, referred as an overpayment.

## Statute of Limitations for Civil Action

**5.106** In England and Wales, for enforcement through the courts i.e. civil action, there is an overriding time limit of six years from:

- the date of the overpayment decision
- the date of the overpayment notice letter, where a decision was not appropriate
- any written acknowledgement of the debt by the debtor
- the date of any voluntary repayment

whichever is the later. This does not affect our ability to recover overpayments by deductions from benefit or via DEA.

**5.107** A compulsory deduction or recovery from arrears of benefit will not be treated as a voluntary payment.

**5.108** In Scotland, there is an overriding time limit for civil action of twenty years from the date of the overpayment decision. Where there is no decision this time limit is either:

- five years from the date of the overpayment notice,
- an acknowledgement of liability whichever is later.

## Statute of Limitations for Recovery

**5.109** Other than recovery by Civil Action, for England and Wales there are no time limits for recovery of a benefit debt. While the policy is to consider abandoning some debts based on the cost effectiveness of pursuing recovery, the legal right to recover does not expire in England and Wales, and the Department retains the right to recover the debt where it is cost effective to do so.

**5.110** In Scotland the debt is abandoned 20 years from the date of the last effective recovery, or 20 years from the date of the last relevant claim (e.g. any action by the Department to recover the debt).

**5.111** A compulsory deduction or recovery from arrears of benefit is treated as a relevant claim where the recovery is not disputed by the claimant (Scotland only).

# Chapter 6 – Insolvency

**6.1** For the purposes of overpayment recovery, the term “insolvency” is used to cover:

- **Bankruptcy** – full legal proceedings – a creditor can petition to the court to make a debtor bankrupt, or an individual applies online for approval by an adjudicator, who then issues a bankruptcy order against the individual.
- **Debt Relief Orders (DRO)** - obtained from the Official Receiver (an officer of the court), but must be applied for through an authorised debt adviser.
- **Sequestration (Scotland)** - full legal proceedings - the Scottish equivalent of individual Bankruptcy & is awarded either by the Court or by the Accountant in Bankruptcy
- **Minimal Asset Process (MAP) (Scotland)** – introduced in 2015 as a new route into bankruptcy for people with low income and minimal assets. MAP Bankruptcy is available to Scottish residents who meet certain key criteria
- **Protected Trust Deeds (Scotland)** – a protected trust deed, overseen by the Accountant in Bankruptcy, is a voluntary but formal arrangement that is used where a debtor grants a trust deed in favour of the trustee which transfers their estate to the trustee for the benefit of creditors.
- **Administration Orders** – a county court issues an Administration Order and the Order runs until all the debts are paid in full. The making of a Composition Order however means that only a proportion of each debt will be repaid and we will write off any balance at the end of the Order period.
- **Individual Voluntary Arrangements (IVA)** – the debtor’s insolvency practitioner submits the debtor’s proposal to the court, and debtor and their creditors reach a voluntary agreement to repay all debts to a given value .

**6.2** While there are some differences in how we treat the different types of insolvency above, regardless of whether or not our debt is included in the insolvency, it is DWP policy not to take any recovery action throughout a period of insolvency. This is the policy regardless of whether the debtor is repaying their debt by deductions from benefit or whether off benefit recovery is taking place.

**6.3** Once the insolvency period has commenced, any deductions from benefit should cease, and any deductions made after the start date of the insolvency should be refunded to the debtor. This includes any monies recovered for a fraud debt.

**6.4** If the debtor is due arrears of benefit during the insolvency period it should not be withheld to recover the debt.

**6.5** No payments from the debtor should be accepted within the insolvency period, but if the debtor insists on making a voluntary payment after the insolvency period it should be kept and allocated to the debt. If the debtor later requests a refund, any monies repaid would not be to the debtor, but paid to the official receiver/insolvency practitioner/administrator instead. Repayment via Direct Earnings Attachment or by Direct Debit are not classed as voluntary and can be refunded to the debtor upon request. Any payment received during an insolvency will not be used to recover any other debt that is owed regardless of whether it is included in the insolvency.

**6.6** Payments that are received for any type of insolvency via an official receiver/insolvency practitioner/administrator, or by a court are legitimate payments and should not be refunded.

**6.7** Where a Benefit Advance was taken out before the start of the insolvency, recovery would be suspended during the insolvency period. At the end of the insolvency period the debt would be written off unless it was classified as Fraud. Where an Advance is taken out during an insolvency period, recovery of that Advance would not be suspended and would continue as business as usual.

## Bankruptcy/Sequestration

**6.8** Where the recoverable overpayment period is entirely before the start date of the bankruptcy order, or where the overpayment period spans the bankruptcy order, recovery should be suspended until after the end date of the order. This is regardless of when the overpayment decision is made, for example a decision could be made **after** the order date. On discharge the outstanding balance is written off unless it is a fraud overpayment, when normal recovery action should commence. Recovery of SF loans or any payments due from Compensation orders could legally continue during a bankruptcy however it is DWP Policy to suspend recovery of SF loans. SF loans are not written off at the end of a bankruptcy so recovery would continue business as usual.

### Example

Bankruptcy Order made on 17/6/13. On 12/1/15 it was realised the claimant had been overpaid Income Support for the period 14/7/03-11/6/07. As the overpayment period was wholly before the date of the order, no further recovery action should be taken.

**6.9** Only when the overpayment period is **wholly** after the date of the Bankruptcy order will the overpayment **not** be considered as included in the order and normal recovery action could commence. However it is policy to suspend recovery until discharge.

## Debt Relief Orders (DRO)

**6.10** It is the debtor's responsibility to ensure that their DWP debt is included in the DRO. Where the recoverable overpayment period is entirely before the start of the DRO period, or where the overpayment period spans the DRO, the debtor can include that debt in the DRO and recovery should be suspended until after the discharge date. On discharge the outstanding balance is written off unless it is a fraud overpayment, when normal recovery action should commence.

**6.11** Only debts included in the DRO will be written off on discharge. Once a DRO has been approved you cannot in law add another debt. So if a debtor forgets to include a debt they already knew about, or only become aware of a new debt after the DRO has been set up and agreed, then regardless of the circumstances of the new debt, it cannot be added to the DRO.

**6.12** Consequently if an OP decision is made after the DRO has been set up and agreed, then it would not be included and it would not be written off at the end of the DRO period. We would however suspend recovery of that debt until the DRO period has ended.

## Minimal Asset Process (MAP)

**6.13** The policy is to align the Minimum Asset Process with how we treat other forms of insolvency, and suspend recovery until the end of the MAP period regardless of whether our debt is included or not. Where our debt is included in the order, the debt (unless classified as fraud) is written off at the end of the MAP period. Where it is not included, following the end of the MAP period, recovery would recommence for any debt not included in the MAP or any outstanding fraud debt.

## Protected Trust Deed

**6.14** The recoverable overpayment(s) must be included in the Protected Trust Deed and any debts not included will not be discharged at the end of the period. Recovery is suspended until discharge at which point any debt included in the Protected Trust Deed is written off unless it has been classed as fraud when normal recovery action can commence, or recommence. Unprotected Trust Deeds are not considered a form of insolvency and recovery will continue as normal.

## Administration Orders with Composition Order

**6.15** Under an Administration Order, all debts should be repaid in full. However, if a Composition Order is granted, which will pay only a proportion of the debt, the balance of any debt(s) included in the order is written off at the end of the order period, including any fraud overpayment. The decision date of the debt determines whether it is included or not, and not the overpayment period end date. Where our debt is not included the policy is to suspend recovery until the order end date then

recommence recovery. Any overpayment, where the decision date is after the date of the original Administration Order, will not be included in the order and would not be discharged.

### **Example**

Admin Order made on 17/6/12. On 11/5/15 it was realised the claimant had been overpaid Income Support for the period 5/3/12 – 5/11/12. Because the overpayment period ends AFTER the date of the Admin Order, even if a Composition Order was made, the debt will not be written off once the Order has been discharged.

## **Individual Voluntary Arrangement (IVA)**

**6.16** Any debt included in the IVA – the decision date on the debt determines inclusion or otherwise, and not the overpayment period end date – is written off at the end of the IVA, excluding any fraud overpayment. Debts can be added to an IVA and the period of the IVA can be extended. Recovery for a fraud debt can recommence after discharge of the IVA.

### **Example**

IVA made on 15/4/13 for the period 15/4/13 to 29/12/14. On 13/11/14 a recoverable overpayment decision is made for the period 17/5/11-13/9/11. The claimant is notified and includes the overpayment in the IVA. The IVA is extended to 1/4/15 at which time any outstanding debt is written off.

## **Debt Arrangement Scheme (DAS) (Scotland)**

**6.17** DAS is NOT insolvency, but is a government-run, voluntary debt solution administered by the AiB, but not involving the courts. It allows the debtor to freeze any interest, fees and charges on their debts whilst repaying their debts in full over a longer period by way of a Debt Payment Programme. The debtor makes agreed regular payments to an approved payments distributor who then makes payment to DWP Debt Management if included in the DAS.

**6.18** If our debt is included in the DAS we would suspend recovery until the period ends. If the debt is not included we would continue with deductions throughout the DAS period.

**6.19** At the end of the DAS period any debt included within the DAS would be

written off. We can continue with recovery for any debt not included in the DAS.

## Social Fund Debt

**6.20** Social Fund are classed as excluded debts for the purposes of insolvency and cannot be included in the following types of insolvency commencing after March 2012;

- Bankruptcy/Sequestration
- IVA
- DRO
- Scottish Trust Deeds
- MAP
- DAS

**6.21** Recovery would be suspended during the insolvency period and recommence on discharge.

## Penalties

**6.22** Civil Penalties (CPen) should be dealt with in the same way as recoverable overpayments but the date of the decision is the deciding factor as to whether it is included in an insolvency or not.

**6.23** If the Civil Penalty was applied after the date of the insolvency it would not be included in the insolvency and we would recover the Penalty regardless of whether the actual overpayment is recoverable or not i.e. any Civil Penalty applied **after** the start date of an insolvency is recoverable.

### Example

Bankruptcy Order made on 4/11/13. On 6/1/14 a recoverable overpayment decision is made for the period 3/4/13 – 15/10/13. Decision made to also apply a Civil Penalty. As the overpayment period falls before the date of the Order, it would be written off but we would still recover the Civil Penalty.

**6.24** Administrative Penalties should be treated in the same way as recoverable Fraud overpayments. If included in an IVA or Composition on an Administration Order, the Administrative Penalty would be written off at the end of the IVA, or discharge of the order.

## Death of Debtor

**6.25** Insolvency debt is discharged on the death of a debtor and so debts are

handled in the same way as if the discharge or end date had been reached.

## Joint UC Debt

**6.26** Where there is a joint UC debt and one member of the couple become insolvent or dies then the total amount of the joint debt can be recovered from the solvent/surviving member of the couple.

# Chapter 7 – Recovery from Estates (RFE)

## Recovery from deceased's estate

### General

**7.1** When a person dies there is a requirement for their estate to be administered in accordance with the law. The person or persons responsible for the legal administration of the estate are known as the Personal Representative(s). One of the first duties of the Personal Representative is to collect in the assets of the estate. The assets must then be used to pay the deceased's debts. Any remaining assets should then be disposed of in accordance with the deceased's wishes.

**7.2** If the deceased was in receipt of an income related benefit prior to their death, the Department is entitled to a detailed inventory of the assets of the estate. This is to ensure that the Department was aware of all of the deceased's capital assets during the period of their benefit claim. A comparison is made between the information provided for the benefit claim and the assets declared in the estate. If there are discrepancies between the value of the assets provided for the benefit claim and the value of the assets in the estate, or it is discovered that there are assets in the estate which were previously unknown to the Department, an overpayment is calculated based on what the claimant should have received had their assets been correctly declared. Any undeclared income identified during RFE investigations may also cause an overpayment.

**7.3** Where a debtor dies with outstanding Social Security debt the Department becomes a creditor of the estate. The Department will then make a claim for these debts from the estate. Where there is no estate the outstanding balance is written off except in the circumstances detailed in [Para 7.4](#).

**7.4** Where the debt is marked as a joint debt (applies to Universal Credit only), and one of the couple dies, the Department will seek to recover the full amount of the overpayment from the surviving partner. This is unless the couple had separated before death in which case the overpayment for which they were jointly liable would have been equally apportioned on separation. The Department would seek to recover the debt apportioned to the deceased partner from their estate, and where there is no estate would look to write-off the outstanding balance.

## **Checking estates where an Income related Benefit was in Payment prior to Death**

**7.5** Where a legal estate has been identified and the total value of the assets exceeds the minimum capital level, or the declared capital, the Personal Representative is required to provide full details of the estate. Upon receipt of the details, where it is evident there is no overpayment to calculate, the Personal Representative is notified accordingly. However, if the assets exceed the declared level/minimum capital level further investigations will be made to establish if there is an overpayment.

**7.6** Where the estate's assets do not appear to agree with those declared for benefit purposes, the benefit claim details are obtained.

**7.7** A comparison will then be made between the two. Where it is evident that all of the capital assets were known to the Department or any overpayment would be below the SMOP limit no further action is taken, unless there are any outstanding debts to be claimed from the estate. The Personal Representative is notified accordingly. If it is apparent there is likely to be an overpayment in excess of the SMOP limit the Personal Representative is asked to provide further details.

**7.8** Where the Personal Representative fails to, or refuses to, provide a detailed breakdown of the estate assets the Department can use existing legislation to take the Personal Representative to the civil court. (Section 126 Social Security Administration Act 1992).

## **Information required from the Personal Representative**

**7.9** In order to substantiate a claim for benefit, the Secretary of State is entitled by legislation to request any reasonable evidence required. If it is apparent there is likely to be an overpayment in excess of the SMOP limit, the Personal Representative is required to provide financial information relating to the deceased's assets during the period of the benefit claim. This information is required to ensure that the overpayment calculation is as accurate as possible. If the costs in obtaining this information are prohibitive or disproportionate to the size of the estate the Personal Representative, with the Department's agreement, can obtain limited information.

**7.10** When the Personal Representative has provided all of the information requested, the Department is in a position to establish the period of the benefit overpayment, the value of the capital assets to be used in the overpayment calculation and whether there has been any undeclared income.

**7.11** There is no provision available for the Secretary of State to compensate for any expenses incurred as this information should have been provided during the period of the benefit claim.

## **Where Personal Representative does not provide information**

**7.12** Where the Personal Representative does not, or refuses to, provide a breakdown of the estate, an overpayment calculation is prepared based on the gross probate figure.

**7.13** If the Personal Representative does not, or refuses to, provide information relating to the assets of the estate an overpayment can be calculated using the value of the assets at the date of death as declared in the breakdown.

**7.14** An overpayment calculation based on this information is likely to lead to an inflated claim being made against the estate. Unless the Personal Representative provides the information requested the claim will stand.

## **Overpayment calculation**

**7.15** The normal benefit calculation rules apply. [Chapter 3](#) provides details of how an overpayment is calculated.

## **Overpayment Recovery decision**

**7.16** Recovery of any overpayment is made from the Personal Representative in their capacity as Executor or Administrator of the estate. A recoverability decision will only be made when a legal estate has been identified (i.e. Probate, Letters of Administration or Letters of Confirmation in Scotland have been granted). Prior to that the estate is not a legal entity against which a recoverability decision can be made.

## **Who to consider for recovery action**

**7.17** The Secretary of State has the discretion to decide who recovery action should be taken against. Departmental policy is to seek recovery from the estate. However, the Secretary of State is entitled to name anyone involved in the benefit claim where there is evidence that that person has personally benefited from the overpayment.

## **Disputes and reconsideration**

**7.18** The Personal Representative and anyone else named in the decision from whom recovery can be made has the right to dispute that decision, as if they were the claimant. All disputes will follow the normal reconsideration and appeal procedures.

## **Where there are insufficient funds in the estate to meet all the debts**

**7.19** There is a priority order to follow when the Personal Representative establishes that the estate does not contain sufficient funds to pay all creditors in full, after paying funeral and estate expenses.

**7.20** If there are insufficient funds to pay all the creditors in one group in full, they are expected to pay them on a pro-rata basis. Where this is correctly applied to the Department's claim, the part payment is accepted in settlement of that claim.

## **Administration and distribution of the estate**

**7.21** There are few time limits applicable to the administration of an estate, which can take from several months to several years depending on its complexity. A claim against the estate is considered as being made on time where final distribution has not yet been made.

**7.22** If the Personal Representative states that the estate has already been distributed, checks are made to establish that the estate has been administered correctly.

**7.23** Where the Personal Representative has:

- correctly advertised for creditors,
- dealt with all known expenses, debts, and creditors,
- waited the full two calendar months from the date of the advert(s) before final distribution (6 months in Scotland);

the estate will have been correctly administered, and any claims made outside of that time are too late (unless further assets come to light).

**7.24** If the Personal Representative has not complied with the above (e.g. did not advertise for creditors), there is no actual time limit in which to make a claim, however the Personal Representative can go to Court to ask for a debt to be set aside on the grounds that they have acted reasonably.

**7.25** Should enforcement action be required, the normal time limits of 6 years in England and Wales, and 5 years in Scotland will apply from the relevant date. The relevant date remains the same as the overpayment decision subject to the usual resetting rules.

**7.26** Where there are multiple executors, all executors are jointly and severally liable for repayment of any overpayment. Often there is a lead executor or solicitor who the Department have been corresponding with and requests for repayment should be addressed to them in the first instance, making it clear that all executors are considered jointly and severally liable for the overpayment. If an agreement to repay is forthcoming from any executor that would be accepted on the assumption that the executors may have discussed the approach. However, it is important to ensure that all executors are made aware of the fact that they remain jointly and severally liable and if payment subsequently breaks down they may still be approached for the remaining debt. If no offer to repay is forthcoming the Department may apportion the debt between the executors and take appropriate recovery action against each executor individually. In such cases the debt is apportioned equally between all the executors with any odd pence written off.

## **Late claim against the estate - where the estate has been correctly administered**

**7.27** When the estate has been correctly administered and distributed before the Personal Representative received the Department's claim, the Personal Representative is notified that no further action is taken to pursue the claim against the estate.

**7.28** However, should any further assets be disclosed the Personal Representative is expected to meet any outstanding claims.

## **Late claim against the estate - where the estate has not been correctly administered**

**7.29** When the Personal Representative has distributed the estate early or paid creditors/beneficiaries in the wrong order, they are personally liable for unpaid debts.

## **Payment of the debt by instalments**

**7.30** Where a personal liability exists, and the Personal Representative is unable to immediately dispose of non-liquid assets in order to repay the debt, an offer of a lump sum part-payment, plus an instalment agreement to clear the balance in a reasonable amount of time may be acceptable. When the offer is accepted, Direct Debit is the preferred method of repayment. If the Personal Representative is in receipt of benefit recovery by voluntary deduction from their benefit is considered; written agreement of the Personal Representative is required in this instance.

**7.31** Where the Personal Representative is named in the overpayment decision, the debt can be recovered by compulsory deductions from benefit, or via a Direct Earnings Attachment. Where the Personal Representative is not named in the overpayment decision, the debt can only be recovered by voluntary repayments and where this fails, by civil litigation.

**7.32** Where there is more than one overpayment, the recovery action to take on each debt is dependent on whether the Personal Representative is named in the decision.

**7.33** If the debt is being settled by instalment the Department has the discretion to charge interest. Interest is set at 1.5% above the Bank of England base rate.

## **Enforcement Action**

**7.34** The Department may consider action if there is no satisfactory response to the final demand, or an instalment offer has broken down and no new offer is made. Careful consideration is given to the Personal Representative's circumstances.

**7.35** Action is considered as soon as it is apparent that the debtor will not pay unless they are made to do so. This will prevent enforcement being prejudiced by a long delay in the handling of a case.

**7.36** Where the debtor states that assets will need to be sold in order to meet the debt, the Department will consider whether to delay enforcement pending the sale of the assets.

**7.37** Where there is no estate or insufficient funds in the estate, the Department would look to write-off the outstanding balance.

### **When will Abandonment be considered?**

**7.38** The debt is abandoned by writing it off when all reasonable, and cost effective, action has been taken, and all avenues, including enforcement through the Courts have been investigated to recover the debt. See also [Para 5.81-5.83](#), and [Appendix 5](#) for further details about abandonment.

# Chapter 8 – Write-off and Waiver

## General

**8.1** The Secretary of State has a duty to protect public funds and an obligation, wherever possible, to ensure an overpayment is recovered. In exceptional circumstances the Secretary of State does have discretion to waive recovery of an overpayment. A number of factors are considered, including whether recovery is likely to be detrimental to the health or welfare of the debtor or a member of their family.

**8.2** Discretion can therefore be applied on cost (write-off) or welfare grounds (waiver), subject to Her Majesty's Treasury Managing Public Money guidelines.

## Types of discretion applicable

**8.3** There are three main types of discretion applicable to overpayment debt recovery.

These are:

- Where the Secretary of State does not consider that further action is warranted on cost grounds e.g. SMOP, no repayment is sought from the claimant. [Para 2.16-2.18](#) details the policy regarding the SMOP limit.
- Abandonment of recovery action, by writing off the amount outstanding. This may be applied for various reasons, from cost effectiveness to welfare considerations. [Appendix 5](#) outlines the conditions for abandonment.
- Waiver the debt, by writing off all or part of the amount outstanding. This is considered only where there is reasonable evidence available that the recovery of the overpayment would be detrimental to the health and/or welfare of the debtor or their family, or that recovery would not be in the public interest. A request for waiver should normally be made in writing.

## Evidence to support waiver request

**8.4** The information provided by the debtor or their representative is normally accepted in good faith, unless information or local knowledge is held which puts it in doubt.

**8.5** Where the waiver is requested on financial grounds full details of the income and expenditure of the debtor, partner, dependants and any other members of the household would need to be provided.

**8.6** Where a waiver is requested on health grounds, the debtor must show how the continued recovery of the overpayment would be detrimental. Specific evidence from a medical practitioner, and/or hospital is required, unless the Disability Living Allowance Unit or Personal Independence Payment Team can confirm that a claim has been allowed under their 'special rules'. It is not, however, sufficient that an award of DLA or PIP has been made under the special rules for the waiver request to succeed.

## Action following request for waiver

**8.7** It is the debtor's responsibility to provide sufficient information to support their request. Before a decision can be made the debtor may be asked to provide more information.

**8.8** We are only able to waive recovery of the balance of the overpayment outstanding at the time the decision is made. We do not refund any money already correctly recovered.

## Debtor does not agree with decision

**8.9** There is no right of appeal against a decision not to apply discretion, or where the debtor disagrees with the discretion applied.

**8.10** The debtor may however be able to apply for a Judicial Review if it is felt that the Secretary of State has not fairly applied their discretion.

# Appendices

# Appendix 1 – Prescribed Social Security Benefits/Payments:

DWP benefits that we can recover overpayments of under social security legislation (S71 of the Social Security Administration Act) and that we can take compulsory deductions from.

- Attendance Allowance
- Bereavement Benefit
- Carer's Allowance
- Disability Living Allowance
- Employment and Support Allowance (ESA)
- Incapacity Benefit
- Income Support
- Industrial Death Benefit
- Industrial Injuries Disablement Benefit
- Jobseeker's Allowance
- Maternity Allowance
- \*New style Jobseeker's Allowance
- \*\*New style ESA
- Pension Credit
- Personal Independence Payment
- Pneumoconiosis, Byssinosis & Miscellaneous Disease Benefit
- Reduced Earnings Allowance
- Retirement Pension
- Severe Disablement Allowance
- State Pension
- Universal Credit
- Widows Benefit
- Widowed Mothers Allowance
- Workers Compensation (Supplementation) Benefit

## **Limited Prescription:**

Overpayments that can be *recovered* from the Prescribed list, but we cannot take compulsory deductions *from* them to recover a DWP overpayment.

- Back To Work Bonus (treated as the qualifying benefit)
- Council Tax Benefit (pre April 2013)
- Housing Benefit
- Social Fund Payments
- Winter Fuel Payments
- War Pension

**Prescribed Recovery:**

These can be recovered in the same way as prescribed benefits but as they are not payments no recovery can be taken from them.

- Administrative Penalty
- Civil Penalty

**We do not recover from the following DWP Benefits/Payments:**

**Payments not Prescribed:**

Overpayments of these are not recoverable under social security legislation and we cannot take deductions from any payments of these.

- Training Allowance
- Widow's lump sum payment
- Disablement Gratuity
- Christmas bonus
- Tax Credits
- LA Benefits
- New Deal
- Bereavement Benefit lump sum payment
- Universal Credit Recoverable Hardship Payments (any outstanding balance outstanding once the UC claim has closed can be recovered as if it were an overpayment)
- Council Tax Reduction Schemes

\*/\*\* - for claims made on or after 29/4/13 in a relevant district and by a Pathfinder group.

# Appendix 2 – Rate of Deduction for Overpayment Recovery

## Income related Benefit (not Universal Credit)

The standard and higher rates of deduction from income related benefit for overpayment recovery are prescribed in legislation. There is an administrative lower rate that has been introduced for use where directed. e.g. claimants in residential care home.

Additionally, a different rate has been agreed for cases where Social Fund deductions are in place.

Further provisions exist for increasing a deduction rate where the household has income that is disregarded in the benefit assessment. e.g. partners income is disregarded.

## Standard Deduction Rate

The standard deduction rate is calculated at 3 x 5% of the personal allowance for a single claimant aged not less than 25. Where the 5% is not a multiple of 5p, it is rounded up to the next higher such multiple.

### Example

Jobseeker's Allowance (IB) 25 year old personal allowance rate from April 2016 = £73.10

5% of £73.10 = £3.655

Rounded up to the nearest multiple of 5p = £3.70

3 x £3.70 = £11.10

## Higher Deduction Rate

From April 2015, where the debt is as a result of fraud, the deduction is calculated at 8 x 5% of the personal allowance for a single claimant aged not less than 25 years. Where this is not a multiple of 5p, it is rounded to the **nearest** such multiple.

### Example

Jobseeker's Allowance (IB) 25 year old personal allowance rate from April 2016 = £73.10

5% of £73.10 = £3.655

Then rounded up to the nearest multiple of 5p = £3.70

8 x £3.70 = £29.60

## Lower Deduction Rate

The lower deduction rate is calculated as one third of the standard rate; using the above example = £3.70.

### Table of Deduction Rates for; Income Support, JSA(Income Based), ESA(Income Related), Pension Credit and Housing Benefit

From	Standard Rate 15% £ (Non Fraud Debt)	Maximum Rate 25% £ (Fraud classified Debt)	Lower Rate 5% £ (Nursing Homes)
April 1999	7.80	10.40	2.60
April 2000	7.95	10.40	2.65
April 2001	8.10	10.80	2.70
April 2002	8.10	10.80	2.70
April 2003	8.25	10.80	2.75
April 2004	8.40	11.20	2.80
April 2005	8.55	11.20	2.85
April 2006	8.70	11.60	2.90

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April 2007	9.00	12.00	3.00
April 2008	9.15	12.00	3.05
April 2009	9.75	12.80	3.25
April 2010	9.90	13.20	3.30
April 2011	10.20	13.60	3.40

April 2012	10.65	17.75	3.55
April 2013	10.80	18.00	3.60
April 2014	10.95	18.25	3.65
<b>From</b>	<b>Standard Rate 15% £ (Non Fraud Debt)</b>	<b>Maximum Rate 40% £ (Fraud classified Debt)</b>	<b>Lower Rate 5% £ (Nursing Homes)</b>
April 2015	11.10	29.60	3.70
April 2016	11.10	29.60	3.70
April 2017	11.10	29.60	3.70
April 2018	11.10	29.60	3.70

## Social Fund Rate

There is a different rate for cases where repayment of a Social Fund loan is on going which is applied when Social Fund deductions are already in place at the time the overpayment recovery commences. In these cases deductions should be set at the lower of the standard rate applicable to the case (taking into account other deductions) or the rate in the table below (based on the level of SF repayment).

The rates are reviewed every year in line with changes to benefit rates but any amendment to the rate of recovery is made only where it is considered appropriate.

### From April 2017 these rates are:

SF loan repayment rate	Maximum Standard OP deduction rate	Maximum Higher OP deduction rate
5 - 9%	£7.65	£17.05
10 - 11%	£6.35	£15.95
12 - 14%	£4.95	£13.30
15% and over	£3.75	£11.40
Less than 5% (where rescheduled loan or lower deduction rate in place)	£2.40	£9.45

## Uprating of deductions

The maximum rates of deduction are uprated, along with benefit rates, each year. However, deduction rates on existing cases do not need to be routinely increased each year as the cost outweighs the small annual increase. This excludes Universal Credit deductions which are automatically uprated each year. Where recovery by deduction runs over a number of years it is likely that deductions would be uprated

every third year, however, this does not mean the recovery rate may not be amended before this time.

## Disregarded Income

Where the debtor has partially disregarded income such as certain benefits or part time-earnings, legislation allows the Department to increase the deduction rate for recovering an overpayment by an amount equal to half of the applicable disregard. Wholly disregarded benefits such as Attendance Allowance and Disability Living Allowance are not included within this provision.

Where the disregard is applicable to part-time earnings and the debtor claims hardship the Department will take into consideration any work-related expenses such as fares and child minding. The Department strives to ensure in such instances that the wider Government agenda on welfare to work is not undermined by effectively making someone who is working worse off in terms of overall income than if they were not working and in receipt of benefits.

### Example

Debtor receives JSA(IB) of £57.90 per week and they have part-time earnings of £20 per week. The earnings attract a £10 weekly disregard.

The deduction rate should be: £11.10 (which in this case is the standard 15% deduction rate) + 1/2 the disregard (£5.00)

The total rate of deductions should be £16.10

Where the earnings are less than the disregarded income, we would increase recovery by half of the earnings amount.

### Example

Debtor receives Income Support (IS) of £157.45 per week and they have part-time earnings of £15 per week. The earnings attract a £20 weekly disregard.

The deduction rate should be: £11.10 (which in this case is the standard 15% deduction rate) + 1/2 the earnings (£7.50) because the earnings of £15 are less than the disregard of £20.

The total rate of deductions should be £18.60

## Table of Deduction Rates for Universal Credit

<b>From April 2017</b>	<b>Standard Rate 15% £ (Non-Fraud Debt)</b>	<b>Higher Rate 25% £ (Earnings &amp; UC)</b>	<b>Maximum Rate 40% £ (Fraud Classified Debt)</b>	<b>Lower Rate 5% £ (Nursing Homes)</b>
Single under 25	37.77	62.94	100.71	12.59
Single 25 & over	47.67	79.46	127.13	15.89
Couple both under 25	59.28	98.80	158.08	19.76
Couple one/both 25 & over	74.83	124.72	199.56	24.95

## Table to show when to apply the 25% in work deduction

<b>Claim Type</b>	<b>Standard deduction (15%)</b>	<b>Middle Rate Deduction (25%)</b>	<b>Difference between the standard and middle rates</b>	<b>Amount of disregarded earnings required to trigger 25% deduction</b>
Single under 25	37.77	62.94	25.17	25.18
Single 25 and over	47.67	79.46	31.79	31.80
Couple both under 25	59.28	98.80	39.52	39.53
Couple one or both 25 or over	74.83	124.72	49.89	49.90

## Universal Credit Advances

Universal Credit New Claims Advance and Universal Credit Budgeting Advance recovery rates are agreed by Universal Credit at the time of payment. Once the Universal Credit claim ends, if there is still an outstanding amount to be recovered, rates are dependent on the benefit recovered from as detailed in the tables above.

## Jobseeker's Allowance (Contributory Based)

The rate of recovery for JSA(C) is legislatively set as one third of the age-related amount applicable to the claimant. Where this includes a fraction of a penny the amount is rounded down to the nearest whole penny.

## Other Benefits

The rate of recovery is unspecified in legislation. As a matter of policy, the maximum rate is usually set at one third of the rate of personal benefit (that is excluding additional allowances for partners, dependants etc.).

This is the rate of benefit applicable to the debtor themselves without inclusion of any increases for dependants. Where this includes a fraction of a penny the amount should be rounded down to the nearest whole penny.

Any income being taken into account against the benefit does not affect this calculation; the deduction rate would still be one third of the personal rate.

### Example

The Debtor has weekly entitlement to Incapacity Benefit (IB) of £79.45 and also receives a weekly occupational pension of £105.00. IB payable therefore is £59.45 per week.

The rate for deductions should be  $£79.45 / 3 = £26.48$

Where this calculation results in a deduction rate greater than the amount of benefit in payment then the deduction rate is set so as to leave 10p per week benefit in payment. For Universal Credit and New Style JSA and ESA the deduction rate should be set to leave 1p in payment in the given assessment period.

## Direct Earnings Attachment (DEA)

When a DEA notice is issued to the debtor's employer, it will confirm whether the higher rate of deduction is applicable. It is the employer's responsibility to calculate

the amount of deduction based on net debtor's net earnings and in accordance with the following table.

The table below is for calculation of the deduction at the **Standard Rate**.

Employee paid daily	Employee paid weekly	Employee paid monthly	Deductions from earnings
Up to £15	Up to £100	Up to £430	Nil
Between £15.01 - £23	Between £100.01 - £160	Between £430.01 - £690	3%
Between £23.01 - £32	Between £160.01 - £220	Between £690.01 - £950	5%
Between £32.01 - £39	Between £220.01 - £270	Between £950.01 - £1160	7%
Between £39.01 - £54	Between £270.01 - £375	Between £1160.01 - £1615	11%
Between £54.01 - £75	Between £375.01 - £520	Between £1615.01 - £2240	15%
£75.01 and more	£520.01 and more	£2240.01 and more	20%

The table below is for calculation of the deduction at the **Higher Rate**. (Prosecuted Fraud cases)

Employee paid daily	Employee paid weekly	Employee paid monthly	Deductions from earnings
Up to £15	Up to £100	Up to £430	5%
Between £15.01 - £23	Between £100.01 - £160	Between £430.01 - £690	6%
Between £23.01 - £32	Between £160.01 and £220	Between £690.01 - £950	10%
Between £32.01 - £39	Between £220.01 - £270	Between £950.01 - £1160	14%
Between £39.01 - £54	Between £270.01 - £375	Between £1160.01 - £1615	22%
Between £54.01 - £75	Between £375.01 - £520	Between £1615.01 - £2240	30%
£75.01 and more	£520.01 and more	£2240.01 and more	40%

## Hardship

The deduction rates outlined above should be used to calculate the maximum

deduction that is allowable in law. The policy intent is to uphold the maximum rate of deduction. However, the debtor claims hardship as detailed in the main body of this guide, a reduced repayment rate can be considered.

# Appendix 3 – Priority of Deductions

## Priority of Deductions from Income related Benefit (not Universal Credit)

Schedule 9 of The Social Security (Claims and Payments) Regulations 1987, prescribes what deductions may be made from prescribed benefit and what payments may be paid direct to third parties. It also details the maximum amount deductible and the order of priority. This only covers external third parties such as utility suppliers and local authorities, not Social Fund and overpayment recovery.

### Order of Priority - Paragraph 9(1B)

- Arrears of Mortgage interest
- Arrears of Housing Costs
- Arrears of Service Charge for fuel, and rent not included in housing costs
- Arrears of Fuel Costs
- Arrears of Water Charges
- Arrears of Council Tax
- Court Fines
- Child Support Maintenance (pre 03/03/03)
- Integration Loans
- Repayment of Tax Credit overpayments

### Maximum Deduction Rate for the Above

For income related benefits, this is set at 1 x 5% of the personal allowance for a single person aged 25 or over, rounded up to the nearest 5p.

#### Example

Income Support 25 year old personal allowance rate from April 2017 = £73.10

5% of £73.10 = £3.655 Rounded up to nearest multiple of 5p = £3.70

For multiple deductions the rate is limited to 3 times the single debt rate.

### **Example**

Single deduction rate = £3.70

Multiple deduction rate = £3.70 x 3 = £11.10

These rates also apply to any other benefit combined and paid with Income Support or Jobseeker's Allowance.

## **Social Fund Loans, Overpayment & Penalty Recovery**

The recovery of Social Fund loans and benefit overpayments are not included within the above legislation. It has been decided under current policy to place these at the end of the above order of priority, in the following order:

- Social Fund Loan repayment
- Administrative Penalty
- Overpayment recovery
- Civil Penalty

## **Social Fund Repayment**

Social Fund loan repayment is subject by Social Fund legislation to its own repayment rate, previously agreed by the debtor. It should take into account the debtor's commitments.

For SF debtors moving to UC digital their recovery rate at the date of move will remain the same until all loans are recovered.

## **Overpayment Recovery**

Overpayment recovery is subject by legislation to a maximum rate of recovery, and also to a maximum amount of deduction for multiple debts from the priority list.

### **Example**

Claimant's Income Support award has third party deductions for arrears of fuel costs amounting to £6.80 per week

The outstanding overpayment is recoverable at the standard rate of £11.10

The maximum deduction rate from benefit is £11.10

The balance available for **overpayment** recovery is £11.10 - £6.80 = £4.30

## **Other Deductions**

The following deductions may be made over and above any other deduction, and do not affect the amount of recovery determined above:

- Arrears of Community Charge
- Current costs/usage made from benefit
- Mortgage interest
- Housing costs
- Miscellaneous housing costs
- Service charges for fuel, and rent not included in housing costs;
- Fuel costs
- Water charges
- Reduced Benefit Direction by the Child Support Agency
- Flat Rate Maintenance

# Appendix 4 – Priority of Deductions from Universal Credit

The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 Schedule 6 prescribes what deductions may be made from prescribed benefit and what payments may be paid direct to third parties. It also details the maximum amount deductible and the order of priority.

The maximum amount that can be deducted from Universal Credit is an amount equivalent to 40% of the claimant's Universal Credit Standard Allowance. There are two exceptions to this which are;

- Deductions for normal consumption of utilities do not count towards the 40% maximum
- If a sanction or penalty is being applied, or if an advance is being recovered, priority deductions i.e. housing and fuel costs, are still taken even if the total amount of deductions is higher than the 40%

A maximum of three third party deductions are taken at any given time and if the claimant is receiving insufficient Universal Credit to meet the deductions the priority order listed below is applied.

## Order of Priority

1. Fraud Sanctions
2. Conditionality Sanctions
3. UC Advance of benefit (New claim or Change of Circumstances)
4. UC Advance of benefit (Benefit Transfer)
5. Budgeting Advance
6. Owner-occupier service charges arrears
7. Rent, including service charges, arrears (minimum deduction rate 10%)
8. Fuel arrears (Gas and/or Electricity)
9. Council Tax or Community Charge arrears
10. Fines or Compensation Orders (minimum deduction rate 5%)
11. Water charges arrears

12. Old Scheme Child Maintenance
13. Flat Rate Maintenance
14. Social Fund loans
15. Recoverable Hardship Payments
16. Housing Benefit and DWP Administrative Penalties
17. Housing Benefit, Tax Credit and DWP Fraud overpayments
18. Housing Benefit and DWP Civil Penalties
19. Housing Benefit, Tax Credit and DWP normal overpayments
20. Integration loan arrears
21. Eligible loan arrears
22. Rent, including service charges arrears (maximum deduction rate of up to a maximum 20%, inclusive of the minimum 10% applied above)
23. Fines or Compensation Orders (maximum deduction rate of up to £108.35, inclusive of the 5% applied above)

### **Example**

Claimant is receiving Universal Credit of £317.82

He has deductions for Rent arrears – deducted at 10%, and Electricity and Council Tax Rent arrears - deducted at 5% each. This totals  $1 \times 10\% + 2 \times 5\%$  of the claimants UC standard allowance.

It then transpires the claimant has a fraud classified overpayment. As the claimant already has deductions totalling 20%, the maximum that can be deducted for the fraud debt is 20% of his UC standard allowance.

$(20\% + 20\% = 40\%)$

NB – Where we are also deducting for Fuel arrears we also make a deduction for on-going consumption. The on-going consumption does not count towards the 40% maximum deduction.

The sub-order rules are as follows –

- a) Categories 16 or 18 - Where there are debt balances for both DWP and LA debt to be recovered in the same category then the deduction is split equally between the two debt owners i.e. 50% to DWP debt and 50% to LA debt.
- b) Categories 17 or 19 - Where there are debt balances for more than one of DWP, LA or HMRC debt to be recovered in the same category then the deduction is split equally between the two/three owners.
- c) Categories 1-5 or 15-19 – Subject to the priority order in 1 to 23 and (a) and (b) above, where the recovery is via a deduction from a joint UC claim then the recovery is allocated to DWP joint debt ahead of any DWP single debt.
- d) Subject to all the above rules recovery is allocated to the oldest debt first.

## Maximum Deduction Rates

Third Party Deductions are deducted at an amount equivalent to between 5%-20% of the claimant's UC Standard Allowance. If required, a deduction is also taken for ongoing consumption of gas, electricity and water, which are deductible at variable rates dependant on the claimant's usage.

Fines have a maximum deduction rate of £108.35 a month, and a minimum deduction rate of an amount equivalent to 5% of the claimant's UC Standard Allowance. Any other deductions being taken reduce the maximum deduction rate pound for pound, so that the total of all deductions doesn't go above the overall maximum deduction rate of 40% of the claimant's UC Standard Allowance.

Flat Rate Maintenance is deducted at a set rate. Currently the set rate for the 2003 scheme is £5 a week (£21.67 a month). For the 2012 scheme this is £7 a week and in addition to this there is a 20% collection charge making that payment £8.40 a week (£36.40 a month). For the 1993 scheme the set rate is £7.20, but where the charge is made through benefit as a third party deduction, the amount taken is restricted to 5% of the claimant's standard allowance. A claimant can have a percentage of their applicable set rate deducted if they have joint responsibility for a child.

Social Fund loans continue to be recovered at the rate that was last agreed with the claimant.

The maximum deduction rate for Recoverable Hardship Payments, Administrative Penalties and Fraud Overpayments is an amount equivalent to 40% of the claimant's UC Standard Allowance.

The maximum deduction rate for Civil Penalties and Ordinary Overpayments is an amount equivalent to 15% of the claimant's UC Standard Allowance. Where there are earnings, this can be increased to 25% of the claimant's UC Standard Allowance. As a matter of policy we would only apply this if the monthly household earnings are above £60.

# Appendix 5 – Abandonment Criteria

## Conditions for Abandonment

Where any of the following conditions apply, any balance of the overpayment outstanding may be considered for abandonment:

- The outstanding balance of the debt is below £25; and
  - a) a final demand is issued; and
  - b) no further recovery action can be taken; and
  - c) it is not the subject of criminal proceedings.
  
- The outstanding debt exceeds £25, and a defined period has elapsed in which there has been no effective recovery.

<b><i>Amount of Debt</i></b>	<b><i>Time Elapsed since last recovery</i></b>
Under £100	At least 6 years
Under £300	At least 10 years
Over £300	At least 20 years

- The debtor is sent to prison and the sentence does not relate to a benefit offence the debt may be written off where the length of the sentence and balance outstanding satisfy the following criteria:

<b><i>Sentence</i></b>	<b><i>Overpayment Classification</i></b>	<b><i>Amount of Debt</i></b>
3 to 10 years	M	Less than £500
5 to 10 years	F	Less than £500
10 years or more	M or F	Any amount

Key: “M” = Mistake by debtor

“F” = Fraud, either on conviction, admitted after caution or acceptance of an Administrative Penalty.

- The debtor has been deported or gone abroad, and:
  - a) a UK benefit is not payable abroad; and/or
  - b) there is no likelihood of their return to the UK, or the payment of UK benefit at some future date e.g. Retirement Pension.

# Appendix 6 – Classification

Once an overpayment has been calculated then it needs to be classified and a decision made that it is recoverable and who it is recoverable from. This is unless the overpayment is a payment made to a single claimant after death (DPAD) or a SMOP. A SMOP is a non-fraud overpayment with a value of £65 or less. See paragraphs 2.16 to 2.18 for details

Classification is an indicator that describes the type of overpayment and has a bearing on subsequent recovery action. The current classifications are as follows:

- F – Overpayment arose due to fraud.
- M – Overpayment arose due to claimant error
- OE – Overpayment arose due to official error
- CL – A common law overpayment that arose on account of an overpayment made outside an award
- O – Other

For Universal Credit and New Style JSA & ESA debt, we only need to differentiate fraud overpayments, and overpayments where there is an associated penalty. This is because under UC all overpayments are classified as recoverable.

The new classifications for UC and New Style JSA & ESA debt are as follows:

- F – Overpayment arose due to fraud. (Defined as where the person has been found guilty of an offence, made an admission under caution or accepted an Administrative Penalty)
- R – All other recoverable amounts

# Appendix 7 – Legislation for the Overpayment Process

<b>Subject</b>	<b>Legislation</b>
Administrative Penalty	SS Administration (Fraud) Act 1997 SS Administration Act 1992, S115A
Civil Penalty	SS Administration Act 1992 S115C/D
Couples, recovery from partner	SS (Payments on Account, Overpayments and Recovery) Regulations 1988, Regulation 17
Decision making and appeals	SS (Decision Making and Appeals) Act 1998
Diminution of capital	SS (Payments on Account, Overpayments and Recovery) Regulations 1988, Regulation 14 SS (Overpayments and Recovery) Regulations 2013 Regulation 7.
Direct Earnings Attachment (DEA)	Social Security (Overpayments and Recovery) Regulations 2013 Part 6. SS Administration Act 1992 S 78 (3C) - SF debt via DEA
Direct Payment	SS(Payments on Account, Overpayments and Recovery) Regulations 1988, Regulation 11
Fraud rate of deduction	SS Payments on Account, Overpayments and Recovery) Regulations 1988, Regulation 16(5)
Insolvency	Insolvency Act 1986 Section 281(3) – fraud debts not discharged in bankruptcy Insolvency Act 1986 Section 251I (3) – fraud debts not discharged in DRO Insolvency (amendment) Rules 2012 Rule 3 (2)(e) - SF classed as an “excluded debt”
Interim payment	SS (Payments on Account, Overpayments and Recovery) Regulations 1988, Regulations 2-4
Northern Ireland Offset	SS (Payments on Account, Overpayments and Recovery) Regulations 1988, Regulations 5-6 and 13

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Prevention of duplication of payments	SS Administration Act 1992, S74 SS (Payments on Account, Overpayments and Recovery) Regulations 1988, Regulations 7-9 SS (Overpayments and Recovery) Regulations 2013 Regulation 6.
Priority of Deductions from Benefit	SS (Claims and Payments) Regulations 1987, Schedule 9
Recoverable overpayment	SS Administration Act 1992, S71 SS (Overpayments and Recovery) Regulations 2013 Regulations 3-5.
Recovery from estates	Administration of Estates Act 1925
Recovery by deduction from benefit	SS (Payments on Account, Overpayments and Recovery) Regulations 1988, Regulations 15-16 SS (Overpayments and Recovery) Regulations 2013 Regulations 10-16.
Social Fund	SS Act 1998, S75 SS Administration Act 1992, Ss71ZA & 78 Insolvency Act 1986 Regulation 281 (6) – SF debt not discharged after March 2012
Standard rate of deduction	SS (Payments on Account, Overpayments and Recovery) Regulations 1988, Regulation 16(4)(b)
Recovery from arrears of benefit	SS (Payments on Account, Overpayments and Recovery) Regulations 1988, Regulation 16(3)
Recovery from couples (Joint Debt)	SS Administration Act 1992 S71ZB (2)(b)