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### **Introduction**

Any payment of Universal Credit made in excess of entitlement is a recoverable overpayment, regardless of how the overpayment was caused. This includes those overpayments arising wholly as a result of official error. This is because there is a duty to protect public funds and an obligation, wherever possible, to make sure that an overpayment is recovered.

### **Overpayments caused by official error**

Where an error or omission by an officer of the Department for Work and Pensions, or another government agency or department causes an overpayment this is treated as official error.

The types of errors that can happen are:

- making an error when calculating a benefit award
- making an error when taking action on a reported change of circumstances which affects an existing benefit award
- failure to act promptly on a reported change of circumstances which affects an existing benefit award

### **Overpayments caused by claimant error**

A claimant or their representative may provide their new claim details incorrectly or fail to report a change in circumstances. In these cases, there is 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 by mistake or deliberate.

If the overpayment is caused by claimant error and is over £65, a Civil Penalty of £50 should also be considered. The Civil Penalty is in addition to the overpayment and recovered in the same way. A Civil Penalty may be considered and may be imposed on claimants whose actions resulted in an overpayment because they:

- negligently made an incorrect statement or gave incorrect information in connection with their Universal Credit claim or award without taking reasonable steps to correct the error
- failed, without reasonable excuse, to provide information as required
- failed, without reasonable excuse, to report a change of circumstances

## **Civil Penalties**

In Universal Credit, a decision maker decides whether to impose a Civil Penalty.

Decision makers may need to gather further information to help them decide whether to impose a Civil Penalty or not. In each case, the decision maker must consider:

- what evidence they need to gather from the claimant to understand the reasons why they made the error or failed to do as required
- how that evidence will be gathered

Civil Penalties cannot be applied to a Corporate Appointee or Personal Acting Body, landlord or third party payee. It can only be applied to an individual - which can be an appointee.

If a Civil Penalty is applied to an appointee, the decision is separate to the claimant's overpayment decision. This is because the Civil Penalty applies to the appointee, not the claimant, and the appointee is responsible for payment. When the Civil Penalty is referred to Debt Management for recovery, it is important to make clear who it is to be recovered from.

## **Civil Penalties: Multiple failures or errors**

A claimant or appointee may fail to disclose information or provide incorrect information on more than one occasion. If the changes and overpayment are being dealt with and processed at the same time, only one Civil Penalty should be considered. An example of this could be for a fluctuating amount of capital that might be picked up during one check.

## **Civil Penalties: Decision Making**

As the legislation allows for any overpayment of Universal Credit to be recovered, a recoverability decision on the overpayment is not required. However, a record must be kept in all cases recording:

- how the overpayment arose and the calculation
- who the overpayment is recoverable from and the reason
- consideration of a penalty - reasons why the decision maker has decided to impose a Civil Penalty or not and the evidence to inform that decision

A Civil Penalty cannot be imposed if it has already been imposed by another benefit for the same failure or error.

A Civil Penalty cannot be applied to a fraud case if a claimant has been:

- charged with a benefit offence
- offered a caution or an Administrative Penalty as an alternative to prosecution

## **Civil Penalties: Couple claims**

If a couple has made a joint claim for Universal Credit, only one Civil Penalty can be imposed in respect of the same overpayment. It can be imposed on either member of the claim.

However, this does not apply if one member of the couple was not, and could not reasonably be expected to have been aware of the other person's actions. A Civil Penalty could not then be imposed on the person unaware.

## **Civil Penalties: Right of appeal**

The decision to impose a Civil Penalty is made at the same time as the overpayment decision. The claimant has the right to appeal the overpayment decision, Civil Penalty or both.

## **Overpayments caused by claimant fraud**

If an overpayment arises because of fraud on the claimant's part, an Administrative Penalty may be offered as an alternative to prosecution. If a claimant accepts the offer of an Administrative Penalty, this is in addition to the overpayment recovery. The Fraud and Error Service decides whether to offer an Administrative Penalty and calculates the amount.

There is no right to appeal against an accepted Administrative Penalty because the claimant can choose whether to accept the offer or not.

## Recovering overpayments

All overpayments must be identified, accounted for and referred to Debt Management to consider recovery action where it is cost effective.

Small overpayments of £65 or under (SMOP) are not considered cost effective to recover. There are exceptions to this limit such as Fraud debts; these are recovered regardless of the amount overpaid.

## Who an overpayment is recoverable from

An overpayment of Universal Credit is recoverable from the person to whom it was paid except in the following circumstances.

If the Universal Credit claim is for a couple, both members of the couple are the payee and will be jointly and individually liable for the overpayment.

References to claimant below include both members of a couple in a joint claim.

Payment made to	Recoverable from
Payment made to an appointee. See Appointees, Personal Acting Bodies and Corporate Acting Bodies for further information.	Overpayment recoverable from the appointee and/or the claimant.
Payment of housing costs made direct to a 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 a landlord and the overpayment is a result of a misrepresentation or failure to disclose.	Overpayment is recoverable from the person(s) who failed to disclose or misrepresented.
Payment of housing costs made direct to a landlord and payment is made in excess of rent.	Overpayment is recoverable from the landlord only.
Payment of housing costs made direct to a landlord and the overpayment is for a reason other than those mentioned above.	Overpayment is recoverable from the claimant only.

**NOTE:** A Civil Penalty or Administrative Penalty may be assigned to a single member of a couple even where the overpayment would be recoverable from both members of the couple.

For further information, see Advice for decision making (ADM), Recoverability of an overpayment.

## **Deduction amounts**

The overall maximum amount that can be deducted from the benefit unit's Universal Credit standard allowance is set at 25%. There are two exceptions to this:

- where there are deductions for arrears of fuel or water, deductions for ongoing normal consumption will also be made but the amount deducted for normal consumption will not count towards the 25% maximum
- if a sanction or penalty is being applied, or if an advance is being recovered - priority deductions (for example, arrears of fuel costs) are still taken even if the total amount of deductions is higher than the 25%

When deductions are made, each individual item has maximum or set deduction rate. For further information see Deductions and for the order in which they are made see Deductions priority order.

Fraud overpayments are deducted at the 25% maximum amount of the benefit unit's Universal Credit standard allowance. A lower percentage can be deducted when other deductions are being made in line with the deduction priority order.

Non-fraud overpayments can be recovered by deducting up to 15% of the benefit unit's Universal Credit standard allowance. If the household earnings are above the level of the work allowance, an additional 10% of the standard allowance can be deducted. Where there is no applicable work allowance, a calculation is needed to ensure the household is no worse off in work. The priority order will still apply.

## **Reducing deduction amounts**

Debt Management may reduce the deduction amount where this would cause hardship to the claimant.

## **Debt Management recoveries**

If an overpayment remains outstanding at the point where the claimant is no longer entitled to Universal Credit, the claimant can arrange voluntary repayment to Debt Management.

If the claimant has moved into employment and has not made alternative arrangements to repay the overpayment, Debt Management will seek to recover the debt through a Direct Earnings Attachment with the employer.

A Direct Earnings Attachment cannot be sought if the claimant is:

- self-employed
- on a low wage (weekly net earnings under £100 or monthly net earnings under £430)
- in the Armed Forces

The maximum rates for a Direct Earnings Attachment are based on a percentage of the debtor's specified earnings. Debt Management can consider recovery at a rate below the maximum rate if the deductions would cause hardship.

### **Diminution of capital**

Diminution of capital for Universal Credit is 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. For further information, see Chapter 3 – Calculation of Overpayments and Decision Making