# Tax Credit Overpayments and Recovery

## Introduction

If you have sight loss, or provide care for someone who does, there are a number of welfare benefits you may be entitled to. Some of these benefits can help provide you with an income if you’re not able to work, while others can help towards the extra costs that often make life more expensive if you have a disability.

We have produced various factsheets to help you learn more about the benefits that you’re most likely to be entitled to if your life is affected by sight loss.

This factsheet is about tax credits and the recovery of overpayments. Tax credits are administered by Her Majesty’s Revenue and Customs (HMRC). They are part of the benefits system that is being replaced by Universal Credit. Tax credits comprise two parts: working tax credit and child tax credit and are awarded to people who are on a low income for their particular circumstances.

It is no longer normally possible to make a new claim for tax credits as Universal Credit has replaced this benefit. However, if you already have a claim for working tax credits and have a child, you can normally add the child tax credit to your claim and vice versa. Most tax credit claimants are being migrated to Universal Credit and will not be able to remain on tax credits indefinitely.

Overpayments and underpayments are a normal part of the tax credits system. This is because when you receive a tax credits award it is not finalised until after the end of the tax year for which it has been paid.

Normally tax credit awards are calculated using the claimant’s income from the previous year (so your tax credit award for tax year 2023/2024 is based on your earnings in 2022/2023). If your income has changed and was greater than the income figure used to calculate your tax credits, then an overpayment will be generated.

Many people feel aggrieved and challenged by the tax credit system because of the way the benefit rate is calculated and the frequency of overpayments this method causes.

Nevertheless, the tax credit system is built in such a way as to cause overpayments and equally to recover overpayments, however they are generated.

n.b. The Government aim to migrate all existing tax credit claimants to Universal Credit (UC) over the course of the next two years. This migration process will initially focus on those who are **not** also in receipt of a legacy benefit such as income-related Employment & Support Allowance or Income Support but will then look to transfer all other eligible claimants to UC by 2025.

Please note, it is vital that all tax credit claimants fill in their renewal forms, even if you are moving to UC through the managed migration process. If you are subject to the managed migration to UC process, having your renewal filled out will be essential in ensuring you receive the correct transitional protection payments you are due when on UC.

## Overpayments

The tax year runs from 6 April in one year until 5 April in the next year. In other words, the tax year 2022/2023 runs from 6 April 2023 until 5 April 2024. If your circumstances change within a tax year, you can let HMRC know, and they may be able to change your award in-year.

However, what typically happens is when you come to renew your tax credit claim and confirm your income and circumstances for the previous year, any significant change that occurred to your circumstances will cause either an underpayment or overpayment (in order to adjust and generate the final rate of tax credits that you should have been paid).

## What causes an overpayment of tax credits?

There are a number of common reasons why an overpayment of tax credits could occur, such as those listed below:

* A large increase in your income from one year to the next; the current disregard rate for this has dropped to £2,500 (this means you can earn £2,500 more than last year without it causing an overpayment of tax credits.)
* You are late reporting a change in circumstances that causes your entitlement to fall such as a drop in working hours, change of household or a child leaving full-time education.
* You fail to complete your renewal forms on time and your claim stops.
* HMRC delay processing a change you have reported.
* HMRC make a mistake.

## ****Can HMRC lawfully recover overpayments?****

The law allows HMRC to ask you for any overpayment back, no matter how the overpayment was caused.

HMRC also have discretion over whether to collect any overpayment, and how much of it to collect, or whether and by how much to adjust an award during a year in order to prevent an overpayment arising.

The only exception to the law, in this respect, is the Limitation Act 1980 which applies in England and Wales. The Act provides that recovery action for debts should commence within six years from the debt becoming payable and can include tax credit overpayment debts. In most cases, this prevents HMRC from taking County Court action after such a period of time, but it doesn’t stop recovery from ongoing benefit awards or from earnings.

Even historic tax credit overpayments, dating back many years, can be recovered.

## ****Why are HMRC suddenly collecting a tax credit debt from another benefit such as Universal Credit?****

In February 2017, it was announced that tax credit debts would be transferred from HMRC to DWP or for people living in Northern Ireland, the Department for Communities (DfC).

The reason for this change is that both the DWP and DfC have different recovery routes available to them, allowing them to recover debts that HMRC may have failed to recoup.

One of those routes is that the DWP and DfC can collect outstanding debts directly from an individual’s pay, using a direct earnings attachment (DEA), which permits deductions from salary at source, without the need to first take the individual to court. The other is to collect them from a different benefit, which is needed because tax credits are being replaced by Universal Credit.

This means that many people who might have claimed tax credits in the past or continue to receive them, will be contacted about repaying their debt through alternative measures. It is expected that around 600,000 people will be affected by this announcement and will be asked to repay historic tax credit debt.

### How will I be told about an overpayment recovery that has been transferred?

HMRC will write to you if your debt is to be transferred. The letter will state the amount of the outstanding debt and explain what will happen next.

### What is a direct earnings attachment?

A direct earnings attachment is a way of collecting outstanding debts directly from your earnings. It means a creditor (the person who is owed the debt) can require the debtor’s (the person who owes the debt) employer to take payments to repay the debt directly out of the debtor’s earnings. DWP and DfC can set up direct earnings attachments without having to go through court.

The payments are taken from earnings after tax and National Insurance have been deducted. Employers can also add a £1 administration charge to each payment that is taken. In all cases, a minimum of 60% of net earnings must be left for the individual.

### What if I can’t afford to repay?

If you can’t afford to repay the debt, you will need to discuss this with whoever is responsible for recovering the debt; the DWP/DfC or HMRC. Do not delay in making contact if you are worried about the level of repayment. You may need to tell them your household income and expenses in order to explain why the level of repayment is unmanageable and will cause you financial hardship.

However, any dispute as to the overpayment itself, or its recovery, should still be made with HMRC, no matter who is responsible for recovering it.

## ****How to dispute an overpayment?****

There are both limited and different ways to challenge an overpayment, depending on whether you disagree that you were actually overpaid or if you accept you were overpaid but disagree that HMRC should recover the overpayment.

However, neither route is renowned for having a high success rate, so please bear this in mind when trying to dispute an overpayment.

### ****If you don’t think you have been overpaid tax credits:****

Even if the overpayment has been passed over to the DWP/DfC for recovery, any questions about why the overpayment occurred or challenges to the overpayment must be made through HMRC.

You can appeal to an independent tribunal against HMRC's decision on how much tax credits you should receive, which includes an award that shows an overpayment.

You will have to ask HMRC for a **mandatory reconsideration** before appealing to an independent tribunal and strict time limits apply. You can make this request either by phone or in writing.

Any mandatory reconsideration request must be made within **one month** of the date of the final award notice. Sometimes this can be extended to 13 months if you can provide a good reason as to why your request is late.

Once you have received a decision, in respect of the mandatory reconsideration request, the exact same time limits apply to proceeding to an appeal. You can start the appeal process by completing form SSCS5 which is located at **gov.uk/government/publications**.

Accessible versions of form SSCS5 can be requested by emailing **hmctsforms@justice.gov.uk**.

### If you don’t think HMRC should recover the overpayment:

Even if the overpayment has been passed over to the DWP/DfC for recovery, any questions about why the overpayment occurred or challenges to the overpayment must be made through HMRC.

If you accept that you were overpaid tax credits, but you disagree that HMRC should recover the debt (because, for example, you think HMRC are partly to blame for the overpayment occurring) then this does not have appeal rights and an alternative procedure must be followed, called a dispute.

There is a **three-month time limit** for disputes. The time limit runs from the date of the final award notice to the date that a final decision will be made for auto-renewal cases (generally 31 July) or the date of notification of the outcome of an appeal hearing that doesn’t go in your favour.

Disputing an overpayment considers which of the two parties (claimant and HMRC) have and have not fulfilled their respective responsibilities. If you can successfully argue that HMRC are partly or mostly to blame (by not fulfilling some of their responsibilities), then they may agree to waiver (called remit) part, or in rare cases all, of the overpayment.

HMRC have laid out the responsibilities of the claimant and themselves in a document called **COP 26** which is located at: **gov.uk/government/publications**.

The disputes process is not the same as asking for a mandatory reconsideration and you should use a form called a **TC846**, provided by HMRC, also located at: **gov.uk/government/publications**.

The form can be printed and sent to HMRC, or it can be completed online. If you need assistance to complete this form, you can ask HMRC to refer you to their extra support team or take advantage of their webchat facility if you are unable to use the telephone: **tax.service.gov.uk/ask-hmrc/webchat/help-for-users-with-additional-needs**.

You can also authorise someone else to deal with HMRC for you,for example,a friend or relative.

### Challenging the overpayment on the grounds of official error:

The timeframes for challenging the overpayment on the grounds of official error are more generous than the two options laid out above; a decision can be revised in favour of the claimant up to **five years** after the date of the original decision. However, the threshold for official error is not easily met and we strongly advise that you seek advice from either a Citizen’s Advice Bureau or law centreif you are considering using this route.

The Regulations: **The Tax Credit (Official Error) Regulations 2003** state that an official error can only occur if “an error relating to a tax credit is made by an officer of the Board to which the claimant, or any of the claimants, or any person acting for him, or any of them, did not materially contribute”. The Board refers to the Commissioners of Inland Revenue.

#### What if I am out of time to challenge the overpayment?

If you are faced with recovery of an overpayment that occurred historically, then you won’t be able to use the methods outlined above and your only potential remedy is to use HMRC’s complaints process:

**Online:** You can use this method if you have a Government Gateway user ID and password. If you do not yet have a user ID, you can create one and then make your complaint.

**Post:** Tax Credit Office
HM Revenue and Customs
BX9 1LR
United Kingdom

Tel: **0345 300 3900**

If you are complaining by telephone or post, you will need to provide:

* your National Insurance number, Unique Taxpayer Reference (UTR) or VAT number
* your full name, address and phone number
* details of what happened and when
* how you’d like your complaint resolved.

In all cases you will need to provide very clear arguments as to why you think HMRC are at fault (in other words, how they have not fulfilled their responsibilities).

#### If you need someone to complain on your behalf

You can ask someone else to complain for you. You’ll need to [authorise them to deal with HMRC on your behalf](https://www.gov.uk/appoint-tax-agent) before they can do this: **gov.uk/appoint-tax-agent**.

## What happens when you complain to HMRC?

HMRC will review your complaint; this is called a ‘first tier’ review. HMRC advise that they will not treat you any differently because you’ve made a complaint and once HMRC has reviewed your complaint, you’ll be told the outcome.

HMRC will consider refunding any reasonable costs directly caused by their mistakes or delays. Costs can include:

* postage
* phone charges
* professional fees.

You must keep all receipts if you want to claim a refund.

### If you disagree with the outcome of the first-tier review:

You can ask for your complaint to be reviewed a second time. This is called a ‘second-tier’ review. HMRC will tell you how to do this.

A different person will review your complaint and tell you the outcome.

### If you disagree with the outcome of the second-tier review

You can [ask the Adjudicator’s Office to review your complaint](https://www.gov.uk/guidance/how-to-complain-to-the-adjudicators-office-about-hmrc-or-the-voa): **gov.uk/guidance/how-to-complain-to-the-adjudicators-office-about-hmrc-or-the-voa**.

This service is free and independent of HMRC. You can only ask the Adjudicator’s Office to look at your complaint if you’ve had a first and second tier review from HMRC.

### If you disagree with the Adjudicator’s Office:

You can ask your member of parliament to refer your complaint to the [Parliamentary and Health Service Ombudsman](https://ombudsman.org.uk/): **ombudsman.org.uk**.

## What happens to the recovery of an overpayment during a mandatory reconsideration/appeal or dispute?

Neither HMRC, nor the DWP/DfC, routinely suspend recovery of an overpayment while the dispute is being considered.

If the overpayment recovery is still being managed by HMRC then you can speak to HMRC’s Debt Management team about reducing or suspending the overpayment while the dispute is considered. Similarly, if the overpayment recovery has been passed to DWP/DfC you can speak to them and request the same. However, neither HMRC nor DWP/DfC are obliged to act on your request. If the dispute is successful, then any money you have repaid should be refunded to you.

## Where can I go for further help?

RNIB can provide advice about the disputes process itself and may be able to advocate on your behalf to help you reduce the regular repayment of debt.

Overpayments of tax credits are not uncommon and are not usually related to sight loss and as a result, we are unable to represent you through the disputes process. If you would like representation to challenge either an overpayment itself or the recovery of an overpayment, please contact either your nearest Citizen’s Advice Bureau or a law centre.

### How we can help

If you would like more information about tax credits you can speak to our Advice service by calling our Helpline. Our advisors can also carry out a full benefit check with you and give you advice about applying for other benefits you may be missing out on.

Our Welfare Benefit Sight Loss Advisers are available to offer you help if you would like to challenge a benefit decision or think you should be awarded more than you have been. Our advisers can help you with the mandatory reconsideration and First-Tier Tribunal (appeals) process.

RNIB’s Legal Rights service is available to offer you help with more complex benefit queries and appeals, such as those to the Upper Tribunal, once the initial appeals process to the First-Tier Tribunal has been completed.

### RNIB Helpline

If you need someone who understands sight loss, call our Helpline on **0303 123 9999**, say **“Alexa, call RNIB Helpline”** to an Alexa-enabled device, or email **helpline@rnib.org.uk**. Our opening hours are weekdays from 8am – 8pm and Saturdays from 9am – 1pm.

### Sight Advice FAQ

Sight Advice FAQ answers questions about living with sight loss, eye health or being newly diagnosed with a sight condition. It is produced by RNIB in partnership with a number of other sight loss organisations. **sightadvicefaq.org.uk**

### Connect with others

Meet or connect with others who are blind or partially sighted online, by phone or in your community to share interests, experiences and support for each other. From book clubs and social groups to sport and volunteering, our friendly, helpful and knowledgeable team can link you up with opportunities to suit you. Visit **rnib.org.uk/connect** or call **0303 123 9999**.

The factsheet gives general guidance only and is not an authoritative statement of the law.



**RNIB Legal Rights service**

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