



Advice NI Social Policy Report

Tax Credits: Undisclosed Partner Interventions

Spring 2013





Vision

Advice NI's vision is of a society of confident, informed, and active citizens who can access their rights and entitlements.

Mission Statement

The following mission statement guides our work.

Advice NI's mission is to develop an independent advice sector that provides the best possible advice to those who need it most.

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Advice NI holds a set of core values which are central to both what we do and how we do it. These values guide us in our work as a membership organisation and as a staff team and influence how we engage with our wider range of stakeholders.

- We respect and promote the independence and diversity of our membership
- We address and represent the needs and interests of our members in a fair, flexible and equitable way.
- We are accountable and transparent in all our work and actively seek ways to include our stakeholders.
- We provide a quality, professional and relevant service to our members.
- We promote a community development approach in all our work
- We work in creative and collaborative ways in the interests of all our members and those they serve.
- We promote equality, social justice and well being.

**Advice NI Social Policy Report
Tax Credits: Undisclosed Partner Interventions**

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Advice NI Social Policy Report

Tax Credits: Undisclosed Partner Interventions

Introduction

This Advice NI Social Policy Report raises concerns about how HMRC decides against any claimant's single status. HMRC can terminate tax credit awards for single claimants who often then experience extreme hardship as a result. We understand that it is important to ensure that claimants comply with tax credit legislation but Advice NI is concerned that HMRC's decision-making regarding compliance is not sufficiently reasonable, fair and transparent.

Credit Reference Agencies

In 2011, HMRC began using credit reference agency data to identify potential areas of error and fraud. HMRC focuses particularly on 'undisclosed partners', identifying tax credits claimants who are claiming singly but who HMRC believe should be claiming jointly with a partner.

Burden of Proof

HMRC's own guidance [CCM3025] confirms that the burden of proof for Section 16 investigations (investigations into the revision of decisions during the award period in question) lies firmly with HMRC. Having processed the claim and made a decision to award tax credits in the first instance, HMRC have already accepted the claimant's information and determined entitlement for the year. If HMRC subsequently cast doubt over that information during the tax year, the burden of proof lies with them to satisfy that doubt. The HMRC guidance [CCM3025] goes on to state, "We must be satisfied that our doubts are based on good reason."

Advice NI is concerned that claims are being terminated without 'good reason'. Despite the guidance [CCM3025], compliance officers often appear to put the onus on the individual to prove their single status and do not appear to give due consideration to each individual's set of personal circumstances. Whilst the data obtained from credit reference agencies may be useful in many cases as supplementary evidence, it cannot be solely relied upon to prove a person's status.

Often, a former partner will remain named on the former couple's mortgage for a substantial period of time after the separation. As such, the former partner might continue to use that address to apply for credit (loans and other financial applications). This is a misrepresentation on the part of the non-resident partner and is beyond the control of the claimant who is residing in the property. By relying on such data to make decisions against claimants who are in this position, the claimant is being penalised for a misrepresentation made by their former partner. It is primarily for this reason that we believe credit reference agency data should not be considered in isolation.

Contact with Compliance Officers

Compliance officers should be able and willing to receive an explanation of the factors which have contributed to the belief that the award may be incorrect. We have found in many cases that it is virtually impossible to make contact with the compliance officer on the direct dial telephone number provided in their opening letter. Moreover, helpline staff are unable to transfer calls to specific compliance officers. In one particular case, our adviser attempted to make contact with a compliance officer by telephone more than 15 times between 27th June and 19th July 2012 with no success. Our clients have reported similar difficulties. We are aware that this issue has been raised with HMRC and was discussed at the Benefits and Credits Consultation Group meeting in July 2012.

Once contact has been made, clients have reported finding the attitudes of compliance officers to be condescending, insensitive and aggressive. It is felt that compliance officers often do not listen to the facts of the case or give consideration to all of the factors in each case - including exceptional circumstances and highly relevant non-financial data which we believe deserves to be given more weight than the credit reference agency data.

Evidence

During the initial telephone conversation with the compliance officer, claimants are usually asked to provide their ex-partner's address. Unfortunately many estranged partners do not have an amicable relationship and it is often not possible for them to obtain this information from their ex-partner. Moreover, in many cases claimants are also being asked to provide copies of their ex-partner's bank statements and/or other documentation to prove the ex-partner's address. We are extremely concerned that claimants who are unable to provide this information are being penalised for this without their explanation and other evidence being given appropriate weight and consideration.

In addition, it is often the case that the compliance officer is vague about the period being investigated and will not normally disclose to the claimant what the financial links are. Often a claimant will have no knowledge of the fact that their ex-partner has a mobile phone contract or car insurance registered at the address and it is unfair and unreasonable for the compliance officer to simply state that there are "financial links". In the interest of fairness, to establish the facts of the situation and to allow the claimant the opportunity to provide an explanation for any existing links, details of the evidence held and the corresponding time period should be disclosed in full to the claimant.

Unfortunately one of the criteria which compliance officers may use to cast doubt over a person's single status is the fact that the person is not claiming the single person discount for Council Tax. This does not apply in Northern Ireland as there is no single person discount for Rates, the Northern Ireland equivalent to Council Tax, yet we have seen this being used as evidence by compliance officers in relation to claimants in Northern Ireland.

Another piece of evidence to which compliance officers often refer is that the former partner remains listed on the electoral register. We have received confirmation from the Electoral Office Northern Ireland that there is no legal requirement for a person to remove themselves from the register upon leaving an address. Moreover, annual canvasses are no longer carried out in Northern Ireland, with the most recent canvass having taken place in 2006. Therefore, it would appear to be entirely inappropriate for information from the electoral register to be used as evidence to prove a person's place of residence.

Whilst it may be possible to show that a single claimant is financially responsible for the household, in many cases this does not appear to suffice.

Vulnerable groups

It is usually highly vulnerable groups of people who are being targeted by this type of compliance activity. Due to HMRC's focus on undisclosed partners, lone parents fall into the category most often affected.

Migrants are also often affected by such compliance activity, as in the early stages of their residency they often share a house with others, both male and female. It is often the case that bills and utility accounts are 'pay as you go' or are in the name of the main tenant or landlord of the property, which causes difficulties with the provision of evidence.

These vulnerable groups of claimants are often heavily reliant on tax credits to supplement their earnings or benefit income and the suspension or termination of their award usually has a huge effect on their finances and their ability to provide for their family.

Moreover, due to forthcoming changes to Housing Benefit and wider welfare reform, more people may be forced into shared accommodation, which may give rise to more unnecessary compliance activity where there is one or more single claimants at an address.

Child Maintenance

We are aware that Child Maintenance paid by a non-resident parent has no effect on tax credit entitlement. In some cases, a non-resident parent will pay towards household bills and expenses instead of making direct child maintenance payments.

Consider a household (household A) whereby the agreement between the former partners is that the non-resident parent will pay household bills to the value of £150 per month; then consider another household (household B) whereby the non-resident parent makes a specific child maintenance payment of £150 per month, which the resident parent then uses to pay household bills and expenses.

With compliance officers asking claimants to prove that they are single, household A would struggle to prove that the non-resident parent is not living there, because the

non-resident parent will have financial links to the address. Household B would be less likely to have this problem as their child maintenance contribution is made separately from the payment of household bills and the non-resident parent would therefore not have direct financial links to the address.

In fact the non-resident parent is paying the exact same amount of money, but in our experience the claimant's success in proving their situation depends upon the willingness of the compliance officer to give due weight and consideration to the claimant's explanation.

Termination of a claim

Once a decision has been made against a claimant's single status, the claimant receives notification that their award has been terminated. Tax credit payments will cease and many will experience severe financial hardship and emotional distress as a result.

Claimants who had been in receipt of Child Tax Credit and Working Tax Credit and whose awards included the childcare element of Working Tax Credit may be hardest hit by the termination of their award as they may be required to pay their entire childcare costs and any other costs associated with their work with only their salary as income.

Due to the development of systems linking tax credits and Housing Benefit, the claimant's Housing Benefit may also stop as a direct result of their tax credit award ending. The claimant would lose their entitlement to any free school meals and school uniform grants which were dependent on a tax credit award in the absence of other means-tested benefits.

If the claimant subsequently submits a new single claim for tax credits, the claim will likely be blocked by a compliance marker on the system and subject to another compliance investigation which will usually reach the same decision as the previous investigation.

Often claimants will feel that they must submit a joint claim in order to access any tax credit payments. However, significant difficulties may arise if they were to do this. Firstly, they do not consider themselves to be part of a couple. Their former partner would have to supply their details and consent for the joint claim to go ahead. It seems inappropriate and inadvisable to proceed with a joint claim where the claimants are not part of a couple. However, for many claimants who find themselves in this position and are experiencing financial hardship, this is the quickest, easiest and in some cases their only prospect of payment. Secondly, if they did submit a joint claim and then successfully appealed the original decision against their single claim, the amount that was claimed jointly would then become an overpayment.

Claimants whose awards have been terminated and who are unable to proceed with a new claim for the reasons above are without payment whilst they appeal the decision to terminate their single claim. Typically, it takes several months for a decision to be reached on an appeal. Claimants may therefore find themselves with little or no income for an extended period of time.

In many cases, claimants will feel they have no choice but to leave work and claim benefits, and the Department for Work and Pensions (in GB) or Social Security Agency (in NI) will most likely accept their single claim to benefits.

Case Studies

Case Study One

The claimant received notification in February 2012 of a tax credit compliance investigation in relation to a possible undisclosed partner. The claimant telephoned the compliance officer and explained that she and her husband had been separated for four years. As part of an informal separation agreement, her estranged husband had been contributing to household bills in lieu of paying child maintenance. The claimant's estranged husband remained named on the joint mortgage and had since used the address to apply for credit. The compliance officer did not accept the claimant's explanation of her situation and her award was terminated.

The claimant contacted Advice NI Tax and Benefits service in March 2012 for advice. The claimant asked her estranged husband for evidence, in order to appeal the decision, which he agreed to provide. The evidence included letters, insurance documents and bank statements linking him to other addresses during the four year period since the separation, as well as a birth certificate for a child that his subsequent partner had borne to him since the separation. This evidence was submitted in March 2012 with an appeal against the decision to terminate the claimant's award.

The claimant made a new single claim in May 2012 which was investigated and rejected by a compliance officer in June 2012. The compliance officer stated that although the claimant had provided proof that her estranged husband had been living elsewhere (indeed, with another partner and their child), he and the claimant 'could have got back together' – contrary to the HMRC guidance [CCM3025] which states that any doubts must be based on good reason.

An appeal against the decision to reject the new single claim was submitted in June 2012. The two appeals ran alongside one another. On 18th September the appeals were accepted and the claim was put back into payment. A technical error meant that payment was not received by the claimant until 19th October 2012. During this period the claimant was refused emergency hardship payments and manual payments were being considered.

Case Study Two

The claimant received notification in April 2012 of a tax credit compliance investigation in relation to a possible undisclosed partner. The claimant attempted to make contact as soon as she received the opening letter and eventually got speaking to the compliance officer after several days of being unable to get through. As the claimant had been unable to get through to the compliance officer for nine days she had also sent a letter to the compliance officer explaining her situation. The claimant and her ex-husband had separated when their three children were very young. The children are now teenagers. The claimant's ex-husband had been using the claimant's address for correspondence because he worked in the security forces,

was living in a communal apartment block and had had mail tampered with previously.

When the claimant got speaking to the compliance officer she found his attitude to be insensitive, aggressive and intimidating. The claimant offered to provide household bills and bank statements, all of which were in her name. The compliance officer refused to accept these and instead asked the claimant to provide documentation belonging to her ex-husband, for example his rates bill, TV licence and electricity bills.

The claimant then asked her ex-husband to provide her with the requested documents, which he agreed to do. However, this caused difficulties between the former couple as the claimant's ex-husband had not previously been aware that the claimant was claiming Child Tax Credit and he subsequently objected to the amount of child maintenance he was paying.

Meanwhile, the claimant was referred to the Advice NI Tax and Benefits service for advice and support.

The claimant found the entire investigation period extremely stressful. The claimant suffers from mental health issues and felt very anxious any time her ex-husband visited the children at home as she did not fully understand what the compliance investigation involved and was concerned that the house may have been being watched. A letter from the claimant's doctor was included with the evidence outlining the claimant's mental and physical health problems.

Neither the claimant nor the intermediary were informed of the decision in favour of the claimant until July 2012.

Case Study Three

The client had received an HMRC 'Notice to Pay' for £28,883.26 and had sought advice from the Advice NI debt advice service, Debt Action NI. The Debt Action NI team referred her internally to the Advice NI Tax and Benefits Service for specialist assistance.

Before contacting the service, the client had undergone a tax credits compliance investigation. Upon contacting the compliance officer, the claimant was told that HMRC had found many financial links to another person at the address, and the claim was terminated with immediate effect.

This meant that the client's award of Child Tax Credit and Working Tax Credit stopped, and the client was reduced to living on a very low income. She was struggling to make ends meet and was relying on family and friends for financial assistance in order to meet her household expenditure. It also left her facing a huge overpayment of tax credits which not only left her feeling financially insecure but emotionally stressed as she was a lone parent with three young children to support. The client suffered from anxiety and insomnia and was considering leaving her

employment due to the difficult emotional and financial situation in which she found herself.

The Tax and Benefits adviser met with the client and documented the client's situation in chronological order for the tax years in question. The client had entered into an Independent Voluntary Agreement (IVA) with her ex-partner and when they had separated in 2010 her ex-partner had been unable to open a single bank account due to his credit rating, so had continued to use the couple's joint bank account. The adviser examined all financial links and found reasonable explanations of why these links existed and why they had not been severed after the couple's separation. The adviser gathered the original documents from the client and wrote to the Tax Credits Office stating that the client could provide information to explain the financial links identified by HMRC. Each link was explained in detail and the adviser requested a re-consideration of the decision to terminate the client's single claim.

In early December 2012 the client received a decision letter from tax credits stating that she was eligible for tax credits for the period in question, that her claim was to be reinstated and the overpayment would not be recovered. All monies were then backdated to when the original claim was terminated.

The client was delighted with the result and spoke of a great sense of relief to learn that, not only was her claim to be reinstated, but that the overpayment would not be recovered. The client stated that she could not have done this herself as she found the Tax Credits Office very difficult to deal with.

The Advice NI Tax and Benefits Service were very pleased with the outcome of this case and, in particular, to have been able to highlight the fact that although HMRC had originally relied upon the financial aspects of the client's situation, an individual's complete set of circumstances must be given due consideration.

Recommendations

1. HMRC Tax Credits should make explicit in its guidance the practical steps a claimant should take after relationship breakdown to lessen the likelihood of being identified unnecessarily as a 'high risk' case. For example, a section should be added to the '*Tax credits when your partner leaves or a new partner moves in*' section of the website at www.hmrc.gov.uk/taxcredits. Claimants who are genuinely separated will gladly accept this advice and the reduction in unnecessary compliance investigations will greatly assist both claimants and HMRC Tax Credits.
2. Compliance procedures and attitudes should be refocused to reflect the fact that for Section 16 investigations the burden of proof lies firmly with HMRC to prove that the claim is incorrect. The onus must not be on the claimant to prove their single status. Compliance officers should act sensitively towards claimants during their investigations and should be trained to glean relevant information from claimants during their initial contact and to give the appropriate weight and consideration to the information provided by the claimant. The evidence provided by credit reference agencies must not be considered in isolation. Compliance officers should encourage claimants to seek independent advice and the involvement of an independent adviser should be regarded as a helpful and positive measure.
3. Unacceptable delays are being experienced by claimants undergoing compliance investigations of this nature. HMRC must recognise the distress that such investigations can cause to claimants, and compliance officers should not issue opening letters unless there is capacity to see the investigation through within a reasonable time period.

Conclusion

This report outlines some of the problems and issues which may arise through the use of credit reference agency data to determine a claimant's relationship status for tax credit purposes. Whilst we appreciate that such data can be useful in helping to identify and prevent fraud and error, we believe that the data alone is being too heavily relied upon and that decisions are being made without due consideration of other factors relevant to each case.

It is vital that changes are made within the compliance department of HMRC Tax Credits so that the data obtained through credit reference agencies retains its worth as useful supplementary information in compliance investigations.

Advice NI Tax and Benefits Service

Advice NI offer a free, confidential advice service for those struggling with HMRC issues. In recent months the service has seen a surge in calls from clients seeking advice on issues relating to tax credit compliance investigations. The service is available throughout Northern Ireland on freephone 0800 988 2377 or by emailing tax@adviceni.net

Appendix 1

HMRC Response to Advice NI Social Policy Report – Tax Credits: Undisclosed Partner Interventions

We increased the number of checks we make in September 2011 to ensure that single awards have been made in the correct capacity. We have checked a high volume of single awards and have prevented very high losses to the exchequer as a result. Of those awards changed as a result of these interventions, 8% of claimants have appealed.

We are working closely with these claimants to understand their reasons for appealing, so that we can further improve our process and the burden we put on them after a decision has been made on their entitlement for the year.

We have answered the points you raised in your paper below:

Burden of Proof

HMRC are using a third party, in this case Experian Credit Reference Agency, to obtain financial information to support a risk that HMRC has already identified to increase the level of good cause we have to undertake a check.

Where we believe that an award may not be correct, we request information or evidence from the claimant to help us to decide whether to amend or terminate the award.

Within our opening communication HMRC informs the claimant that we are checking their award, and that we hold information that indicates that there may be another adult living at their address. At this point we name the other adult, so that the claimant is better informed about the reason for our checks. We then ask the claimant to contact us direct to discuss this information with a caseworker so that we can check their award is correct and ensure that they are not receiving any tax credits that they are not entitled to. We also inform them that we may need evidence to support their single award status.

When a claimant telephones us we discuss their award and explain why we believe it may be wrong. We ask proactive questions using the data we hold and the financial data provided by the Credit Reference Agency. This is done to establish whether further evidence is required for us to make a full decision. We may ask further questions about the other adult's whereabouts, the stability of the claimant's relationship with the other adult, arrangements for their children and how members of the public acknowledge their relationship. If we request further information we give the claimant 30 days to provide it.

Each case is looked at uniquely by a caseworker and consideration is given to each claimant's individual circumstances. Decisions are made on the balance of probability, based on the information we have and the information that the claimant has given. Decisions should not be made solely on the basis of the Credit

Reference Agency data, and claimant's awards should not be amended without good reason and our process does not support this.

For example, we understand that a couple who have separated may still have a joint mortgage for a substantial period of time after their separation. But we would expect to see some form of difference in the way their finances and lives are conducted, for example we wouldn't expect both sets of wages to still be paid into a single account.

Contact with Compliance Officers

All our caseworkers should treat our claimants in line with our Customer Charter (<http://www.hmrc.gov.uk/charter/charter.pdf>). If we receive evidence that this hasn't happened in specific cases we would take this matter very seriously. We are aware that over the summer months claimants did have difficulty making contact with our caseworkers' direct line telephone numbers due to the introduction of a new telephone system. We are sorry for any inconvenience caused as a result of those problems and we took action as soon as possible to rectify them. Where we were aware that people may have been affected by this problem we gave them extra time to supply their information to us.

Evidence

I note that you are concerned that claimants are asked to provide the other adult's new address if they are no longer living with them. We request this so that we can make checks against our systems and Credit Reference Agency data to verify these details and potentially eliminate the doubts that we have. If the claimant does not have the information it would not adversely affect their award to tax credits. We understand that a claimant may not always realise that the other adult is still using their address. Where this is the case, we would expect this to be balanced by (for example) not finding evidence of ongoing joint financial links, etc.

The fact that the other adult is on the electoral register and whether or not the claimant has applied for a single person discount for Council Tax is data that is available to the caseworker. This data is used to give a picture of the claimant's circumstances, and is not to be used in isolation as evidence. We are aware that single person discount for council tax does not apply in Northern Ireland and we have issued a reminder to our caseworkers about this.

Vulnerable Groups

I note your concern about vulnerable groups of people being affected by our Compliance activity. I can assure you that these groups are not being targeted specifically. Our interventions are based solely on the risks where available evidence suggests that there is another adult living at the address of a single claimant, and other supporting data from the whole tax credit population. We aim to treat each individual claimant in line with our Customer Charter.

Child Maintenance

We understand that child maintenance from an ex-partner may be made in different forms, and we may ask for supporting evidence of an agreement between both parties.

Termination of an award

We are aware that there are a high volume of appeals outstanding associated with Undisclosed Partner Interventions. We have significantly increased the number of caseworkers dealing with appeals in order to reduce the waiting times, which we recognise are not acceptable. We have identified that, when a claimant appeals, they often provide information that we did not have access to at the time we made our original decision. We have therefore added a reconsideration step for related appeals, which should speed-up the time taken to deal with these cases. Our guidance does not advise a claimant to submit a joint award to counteract our decision to terminate their single award.

Case Studies

We are unable to provide a balanced response to the case studies without knowing the specific details of these cases. But we are pro-active where we are given specific cases to review. If you can let us have details of cases where the processes we have outlined above do not appear to have been followed, we will be happy to look into them.

Recommendations

We value your opinions made within the recommendations in the report, and we are taking steps to further improve the decision making of our caseworkers, through ongoing training and support.

Dealing with claimants on an individual basis is the only way of ensuring that their tax credits awards are correct. Where we believe that an award is incorrect we want to help the claimant to get it right.

As a result of early appeals data and feedback from intermediaries such as Advice NI, we have initiated further training on decision making for our caseworkers to help them deal with our most vulnerable claimants with circumstances that are not seen as often. The aim of this is especially to apply the principles of balance of probability and around looking at evidence holistically.

We understand that a Compliance check on a claimant's award for tax credits can be distressing for them. We try to build a reasonable period of time into our checks for claimants to respond to our initial queries and following further contact to decrease this burden.

We are working to understand how we can refine and continuously improve our processes to benefit claimants and reduce waiting times, by looking at the causes of the appeals being received.

Appendix 2

Tax Credits when you separate from a partner

Advice NI recognises that separating from a partner can bring about a vast array of new problems and issues. Amidst the financial and emotional concerns, tax credits may seem relatively unimportant. However, it is vital to let HMRC Tax Credit Office know of the change of circumstances as quickly as possible.

As soon as a couple separate, the claimant(s) should inform the Tax Credit Office of the change. For couples who were married, the change from joint to single claim should be reported within one month of a legal separation or any separation which is likely to be permanent. For unmarried couples, the change should be reported within one month of the couple stopping living together.

Any tax credits paid through an existing joint claim after the couple's separation may be an overpayment, which may have to be repaid to HMRC¹. Therefore, it is important that steps are taken to end the joint claim immediately and apply for a new single claim if appropriate. The change must be reported within one month.

HMRC are carrying out an ongoing exercise to identify 'high risk' cases, where they believe a single claimant should be claiming jointly with a partner. They use credit reference agency data and other data to highlight any financial links there may be to another adult at the claimant's address.

Example

Anne separated from her partner Bill on 1st November 2012, when Bill moved out of the family home. As Anne and Bill had a joint claim to tax credits, they are required to inform the Tax Credits Office within one month of the separation - ie, by 1st December 2012.

After Bill moves out, he still has car insurance, a mobile telephone bill and a bank account at Anne's address. Anne and Bill also have a joint bank account. This data may be highlighted through HMRC's checking procedures and Anne's single claim may be identified as 'high risk' and may be subject to an investigation.

Once a new single claim has been made it is important that the newly-single claimant takes steps to avoid their claim being identified as 'high risk'. The single claimant should try to ensure that no financial links to the former partner remain.

¹ Upon submitting a new single claim, the claimant can ask for **notional offsetting** to be applied in order to offset the overpayment against the amount that would have been paid if the claim had been made immediately.

Steps may include:

- Notifying Land & Property Services of the change in respect of Rates
- Closing joint bank accounts, or stopping using such accounts
- Notifying gas and/or electricity providers of the change and having accounts moved into the single claimant's name only
- Ensuring the former partner changes their address on car insurance, mobile telephone bills etc.
- Asking the former partner not to use the address for future credit applications
- Asking the former partner to redirect their mail to their new address
- Refusing to accept mail for the other partner at the address – returning mail to sender
- Considering formalising any child maintenance agreement

Taking these practical steps after a separation may reduce unnecessary stress for single claimants and will help HMRC to ensure that claimants are receiving their correct tax credit entitlement.

Advice NI offer a free, impartial and confidential advice service for those struggling with HMRC issues. Advice NI would encourage any tax credit claimants in Northern Ireland who are affected by the issues raised in this report to contact the Advice NI Tax and Benefits service by telephoning 0800 988 2377 or by emailing tax@adviceni.net



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