



Benefit overpayments: Guide to requesting a discretionary waiver

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Benefit overpayments: Guide to requesting a discretionary waiver

Overpayments of benefit arise whenever the person receiving a benefit is **paid more than they are entitled to receive**. There are specific rules about whether the Department paying the benefit can recover an overpayment, and **any decision to recover can be appealed under law**. Procedures for deciding on recovery of overpayments and challenging those decisions depend on the benefit that is overpaid. We will cover those procedures in a separate guide.

This guide summarises the procedures for requesting a discretionary waiver of an overpayment from **Debt Management**, which is the part of the Department for Work & Pensions (DWP) (in Great Britain) and the Department for Communities (DfC) (in Northern Ireland) that manages recovery of benefit overpayments (as well as other benefit debt, such as benefit advances and Social Fund or Discretionary Support loans).

What is discretionary waiver?

A discretionary waiver is an additional option available to the Department when an overpayment has been deemed recoverable under law, but due to the debtor's circumstances or the way in which the overpayment arose **the Department recognise that recovery would be inappropriate**. In short, the Department is agreeing not to pursue the overpayment.

Although waivers are only granted at the discretion of the Department (rather than under law), and the number of waivers granted is small, **there are agreed principles which Debt Management should take into account when considering a request for a waiver**. Therefore, better understanding of the criteria that apply and careful preparation of your submission to Debt Management should improve the chances of the debt being waived.

Step 1: Challenge the overpayment decision

Before making a request for a waiver it is sensible to exhaust the dispute process relating to the identification of the overpayment, where there are valid grounds to do so. This will **ensure that any waiver request is made in the context of an accurate calculation of your entitlement and a clear picture of the facts of the case**. That being said, you can request a waiver even if a dispute is outstanding.

Step 2: Establish grounds

Given that waivers are discretionary, there should in theory be no restrictions on the reasons for granting them. However, in large part due to their responsibility to protect the public purse, **the Department only grant these in exceptional circumstances**. To guide decision makers, the [Benefit Overpayment Recovery Guide](#) (BORG) sets out, at paragraph 8.6, a (non-exhaustive) list of potential factors on the basis of which this discretion might be exercised:

- The debtor's financial circumstances and those of their household
- Impact of recovery on the debtor's health or that of their family

- DWP conduct and the circumstances surrounding how the overpayment arose
- The debtors conduct – i.e. whether they took steps to mitigate any overpayment
- Whether the debtor has relied on the overpayment to their detriment
- Whether the Department intended the claimant to have the money
- Debtor did not benefit from the money that was paid
- Any other factor which appears relevant to the decision maker, or which indicates recovery would not be in the public interest

It has generally been the policy of the Department, and this continues to be reflected in the wording, to restrict consideration of waivers to those cases where ‘recovery of the debt is causing either financial hardship or welfare issues for the debtor or their family.’ As such, we recommend trying to emphasise how your circumstances reflect these particular criteria. Nevertheless, in principle waivers can be granted on grounds not solely connected to hardship. In either case, you will probably need assistance from an independent advice agency to make your case, as they will have experience in presenting similar cases to the Department.

Step 3: Make your request

Waiver requests are made to Debt Management and not to the particular benefit section that has identified the overpayment. Debt Management will write to you once the overpayment has been transferred to them for recovery, usually within about a month from the recoverability decision, to advise that recovery action will commence, but you do not need to wait for them to contact you.

Department for Work & Pensions (DWP) for England, Scotland and Wales	Department for Communities (DfC) for Northern Ireland
Telephone: 0800 916 0647 Textphone: 0800 916 0651 Relay UK (if you cannot hear or speak on the phone): 18001 then 0800 916 0647 Monday to Friday, 8am to 7.30pm British Sign Language (BSL) video relay service Monday to Friday, 8am to 6pm Debt Management (C) Mail Handling Site A Wolverhampton WV98 2DF	Debt Management enquiry form Telephone: 0800 587 1322 Textphone: 0800 587 2986 Monday to Friday, 9am to 4pm British Sign Language (BSL) video relay service Debt Management Northern Ireland Department for Communities PO Box 2136 Belfast BT1 9RW

If you are still in receipt of benefits, **Debt Management can commence recovery automatically by deduction**. In some cases, they also have powers to seek recovery direct from wages – this is known as Direct Earnings Attachment. **We would recommend asking for recovery to be suspended while the waiver decision is made**, although the Department can refuse to do so.

Step 4: Submit supporting evidence

The BORG is clear that ‘the debtor is responsible for providing all necessary information and evidence to explain and support their application.’ As such, it is

essential that you **provide as much evidence as possible in support of your request for a waiver**. In light of the weight given by the Department to the respective grounds, this evidence can be split into three categories:

Financial hardship

If you claim that the debt will cause undue financial hardship, the BORG states that this needs 'to be over an extended period of time with no sign of change', as **suspension of recovery is preferred where an improvement in your financial situation is likely**. Therefore, to demonstrate financial hardship you need to provide the following types of evidence:

- full list of debts and any action taken with creditors;
- income and expenditure breakdown for all members of the household;
- bank statements covering previous 6 months;
- any other relevant information, particularly relating to potential changes to your financial situation.

Welfare and/or ill health

When claiming hardship on welfare or health grounds, you need to be able to show that 'recovery of the overpayment is or would be detrimental to the health and/or welfare of the debtor or their family'. Useful documentation could include:

- letter from a health professional familiar with your history;
- supporting evidence from other professionals, such as social worker or welfare adviser;
- if impact on welfare due to financial hardship, must also provide evidence as above.

Ideally, the evidence will be specific about the impact of the overpayment recovery on your or your family member's health or welfare. As such, evidence should offer an opinion and not just a list of medical conditions or treatments.

Other

As we have explained above, a number of other factors may also be considered by the decision maker in relation to a waiver request, and you should **explain this and provide any evidence you can** in support of these grounds:

- you were wrongly advised by the Department and this led to the overpayment;
- you acted in good faith or took steps to prevent or reduce the overpayment;
- anything that stopped you from taking steps to prevent or reduce the overpayment, such as incapacity due to illness or injury;
- impact of the debt on your ability to live a normal life, for example accessing financial services or obtaining employment.

As we have mentioned already, **other grounds will generally only be considered alongside a request on financial or welfare grounds**, but it is nevertheless important to include as much information as possible.

Step 5: Receive your decision

Debt Management should send a letter notifying you about their decision about the waiver. There is no specific time-frame within which a decision should be made. You can use the contact details above to get in touch with them.

If the waiver is granted, **recovery will stop immediately and you will no longer be asked to pay back the overpayment.** However, the Department will not refund any money already recovered.

In the event that your waiver request is rejected, **the Department may still agree to either temporarily suspend recovery, or reduce the rate of recovery.** So long as you have provided sufficient evidence of financial hardship, you should not need to submit anything further.

You cannot appeal a decision about a discretionary waiver, but **you can make an application for [judicial review](#).** This is a court procedure allowing you to challenge the decisions or actions of a public body (such as the Department) on the grounds that it has acted unlawfully (that it has not applied its own procedures correctly). As you might imagine, bringing a judicial review case can be complicated, so **you will need specialist advice and representation** from local independent advice agencies and qualified legal professionals. You should seek advice on judicial review quickly, as there are short time limits. Legal aid may be available to help cover costs.

And finally, did you know?

- You can request a waiver even if you are already repaying a benefit debt, and you can ask the Department to suspend recovery while the decision is made.
- Waiver requests are not limited to 'Official Error' (Departmental error) overpayments, they can be requested in relation to any benefit overpayment debt, regardless of the cause.
- When Debt Management consider a waiver they will take your overall debt balance into account. However, not all government debt can be waived – for example, overpayments due to fraud, Housing Benefit overpayments, advance payments on current awards and loans are excluded.
- Whilst you cannot appeal a waiver decision, you may be able to apply for judicial review if the decision is unfair, and you can also make multiple waiver requests (for example, if you were not able to provide all the necessary information or if you have a change of circumstances).
- HMRC recover Tax Credits overpayments, so you will need to [contact them directly](#) if you are struggling to repay. However, Tax Credits debt moves with the claimant when they claim Universal Credit and can then be recovered by Debt Management.

Discretionary Waiver Checklist

Step 1: Challenge the overpayment decision

- Find the letter from the Department about the overpayment
- Do you accept that you were overpaid the amount demanded?
- If not, submit an appeal against that decision (recovery should stop)
- Seek independent advice for assistance

Step 2: Establish your grounds

- Make a budget to see what, if anything, you can afford to repay
- Will recovery, or the prospect of recovery, impact your health or wellbeing?
- Consider the impact on the rest of your family
- Create a record of your contact with the Department about the overpayment
- Collate copies of communications from the Department about your entitlement

Step 3: Make your request

- If you have received a letter from Debt Management, have this to hand
- Contact Debt Management and request that they waive the overpayment
- Ask Debt Management to stop recovery while the decision is made

Step 4: Submit supporting evidence

- Contact medical professionals early as their replies may take longer
- If it takes longer than expected to collate evidence, let Debt Management know
- Make a copy of the evidence that you submit
- Submit a detailed request (independent advice can help) with the evidence

Step 5: Receive your decision

- If the waiver is refused, are the reasons given clear?
- If not, ask for clarification from Debt Management
- Seek advice on judicial review if the reasons seem wrong/unfair
- Check that reduction or temporary suspension has been considered
- If your circumstances get worse, submit a new request



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