



# Policy & Information Briefing: Overpayments of Welfare Supplementary Payments: Discretionary Waiver

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## **Policy & Information Team Information Briefing Note**

### **Overpayments of Welfare Supplementary Payments: Discretionary Waiver**

Following representations made by the independent advice network about inequalities in the policy on recovery of overpayments, on 30 September 2024 the Department for Communities (DfC) amended its procedures with regard to certain overpayments of Welfare Supplementary Payments (WSPs) to allow affected claimants to make an application for a discretionary waiver where they have grounds to do so.

A change in policy was needed because overpayments of WSPs made in respect of both the Benefit Cap and Social Sector Size Criteria (SSSC, also known as the Bedroom Tax) tend to be made to, and recovered from, the claimant's landlord. As a result, affected claimants were often unable to ask the Department to consider a waiver before the debt was repaid by the landlord, leaving the claimant in rent arrears and at risk of eviction.

Following the change, WSP overpayments will not be recovered from the landlord immediately. Rather, claimants will be notified that they have 3 months in which to request a discretionary waiver from the Department before recovery is initiated. During that 3-month period DfC will not seek recovery of an overpayment of WSPs from the landlord.

Information about the new policy has been added to the relevant page at [nidirect](#):

[Support if you're affected by welfare changes](#)

#### **What are WSPs?**

WSPs are [extra payments made by DfC](#) to cover a reduction in certain benefits arising from the UK government's welfare reform agenda. This included reduction in entitlement to both disability and carers payments following transition of disabled claimants to Personal Independence

Payment (PIP), time-limiting of entitlement to contribution-based Employment and Support Allowance (ESA), and, as already mentioned, the Benefit Cap and the Bedroom Tax.

These payments have a somewhat unique status, and as such are not subject to the same rules as the core benefits, although they are administered by DfC along the same lines. A person who may be entitled to a WSP cannot make a direct claim – rather, entitlement is established by the affected benefit – for example, PIP or Universal Credit (UC) – and a referral sent to a dedicated WSP team within the Department to set up the appropriate payment.

Entitlement to a WSP will continue for as long as the recipient meets the criteria laid down in the relevant legislation.<sup>1</sup> In most cases, this is determined by the claimant's entitlement to the affected benefit – for example, a claimant will continue to receive WSPs for as long as they have a valid claim to Housing Benefit or UC that is affected by the Bedroom Tax. In addition, the amount of WSP payable will depend on the amount of the reduction to the affected benefit caused by the relevant policy.

### **How do overpayments of WSP arise?**

In essence, overpayments arise either because of a change impacting entitlement, or a mistake or omission by the claimant or the Department.<sup>2</sup> These scenarios reflect the causes of overpayments in other social security benefits. As such, claimants should aim to report anything they think is relevant to their benefit entitlement to the Department. Even if the information proves irrelevant to their award the likelihood of overpayments arising should be reduced.

It is worth noting that the process for reporting changes that are relevant to WSPs are a little different. Rather than contacting the WSP team, who are responsible for making the payments, the claimant must report any changes to the office responsible for paying the affected benefit, as it is entitlement to the affected benefit that determines entitlement to WSPs. It will then be for the affected benefit to inform the WSP team. In most of

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<sup>1</sup> The most up-to-date legislation is available from the Department's [Blue Volumes](#). Volume 12 covers Welfare Supplementary Payments and Discretionary Support.

<sup>2</sup> [Welfare Supplementary Payment \(Amendment\) Regulations \(Northern Ireland\) 2017](#), reg. 6.

the affected benefits this will be the responsibility of general administrative staff, but in UC there is a dedicated team that monitors eligibility for WSPs and makes relevant referrals to the WSP team to amend WSP awards.

A significant advantage of the requirement to report changes to the affected benefit rather than the WSP team is that it reduces the need for the claimant to contact multiple officials across the Department. For example, we know that in some cases – particularly in relation to WSPs for the Benefit Cap and Bedroom Tax, which as we have noted are often paid direct to the landlord – claimants are not even aware they are benefiting from these payments.

The Department emphasises that it sends notifications to claimants about WSPs when they are first awarded and when there is a change in the award, but they also recognise that more could be done to inform claimants, particularly in relation to the link between WSPs and the affected benefit. Suggestions have been made to the Department for improvements as part of its current review of the mitigations package and we hope these suggestions can be taken forward.

### **How are overpayments of WSP recovered?**

Unsurprisingly, DfC are authorised to recover WSP overpayments in much the same way as [overpayments of social security benefits](#) – that is, by deduction from benefits and [earnings](#), as well as from WSPs themselves. They can also recover by court action if necessary.<sup>3</sup>

Recovery will generally be made from the person who has received the payment. This includes the claimant, or claimants for a joint claim, and anyone appointed to receive payments on their behalf. In addition, the Department is also authorised to recover from the claimant's landlord – WSPs in respect of both the Bedroom Tax and the Benefit Cap are routinely paid direct to landlords.<sup>4</sup>

When the overpayment is recovered from the claimant or their appointee this will be dealt with by [Debt Management](#). In that case, the usual recovery policies will apply, and the debtor will be able to approach the

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<sup>3</sup> Welfare Supplementary Payment (Amendment) Regulations (Northern Ireland) 2017, reg. 7.

<sup>4</sup> Welfare Supplementary Payment (Amendment) Regulations (Northern Ireland) 2017, reg. 8.

Department to negotiate a reduced rate of recovery. They can also request that Debt Management suspend or waive recovery, if there are grounds to do so.

If the overpayment is recovered from the landlord, this will be handled by the [WSP team](#), who will send a recovery demand directly to the landlord. In the majority of cases, the landlord will simply return the overpaid sum and engage with the tenant about rent arrears. The problem with this approach, and the reason for the change in policy, is that it means certain WSP recipients do not get an opportunity to apply for discretion, and therefore are disadvantaged relative to other debtors.

### **How does an affected person request a discretionary waiver?**

A person seeking a discretionary waiver will need to contact the [WSP team](#) in the first instance, who will review the application to see whether sufficient evidence has been provided to warrant the case being passed to [Debt Management](#), who are responsible for deciding whether the waiver can be granted. This will help to prepare the application for prompt assessment by the Debt Management decision makers. Debt Management will consider applications based on the same policies as those used in relation to other forms of government debt – we have previously published a [guide to requesting a discretionary waiver](#) which outlines this policy.

As our previous guide explains, the debtor will need to provide relevant grounds for seeking a waiver. Requests are most likely to be successful where those grounds include evidence of financial hardship or an impact on the health of the debtor or members of their household. However, other factors might also be relevant, such as attempts by the debtor to prevent the overpayment or assurances about their entitlement given to them by the Department.<sup>5</sup>

As mentioned in the introduction, the claimant will have 3 months in which to request a waiver via Debt Management. This period will usually run from the date of the overpayment notification. However, if a claimant asks the Department to review the WSP decision and the decision is amended then the 3-month period to apply for a waiver will recommence

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<sup>5</sup> See Law Centre NI's guidance on [Overpayments In Social Security & The Discretionary Waiver](#) for example waiver request letters that cover the different grounds for seeking a waiver.

from the completion of the review. [Advice NI debt advisers](#) are available to support anyone making an application for a discretionary waiver.

During the 3-month waiver period, limited information will be shared with social sector landlords (that is, the Northern Ireland Housing Executive (NIHE) and housing associations) to advise them that an overpayment has been identified. By contrast, DfC does not intend to provide any information about overpayments to private sector landlords during this period. Therefore, it will be for claimants to decide to what extent they wish to engage with their landlord about any overpayment and/or their intention to seek a waiver. Nevertheless, no action will be required by the landlord until the 3-month waiver period has ended.

If the claimant chooses not to seek a waiver during the 3-month period, or if the waiver is refused, then DfC will revert to the standard recovery procedures outlined above. In that case, the claimant can expect to be contacted by their landlord about rent arrears and would be advised to [seek independent debt advice](#) to help them put in place a manageable repayment plan.



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