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From Pillar to Post

Barriers to dealing with deductions from Universal Credit

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Contents

The Public Law Project (PLP) is an independent national legal charity. Our mission is to improve public decision making and facilitate access to justice. We work through a combination of research and policy work, training and conferences, and providing second-tier support and legal casework including public interest litigation.

Our strategic objectives are to:

- Uphold the Rule of Law
- Ensure fair systems
- Improve access to justice

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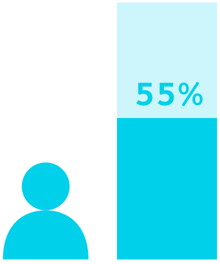
1 Introduction



55% of people in receipt of Universal Credit receive a reduced rate of Universal Credit due to deductions.

A third of survey respondents became destitute as a result of deductions.

In recent years, there has been increasing focus on the insufficiency of current social security rates, including the Universal Credit standard allowance, to meet basic needs.[1] However, over half of households in receipt of Universal Credit are receiving significantly less than even those rates due to deductions made by the Department for Work and Pensions (DWP).[2] These deductions relate to the recovery of debts owed to the Government or certain third parties, such as utilities providers. Many of these debts relate to aspects of how the Universal Credit system is designed or have been caused by mistakes made by the DWP itself.

This research found evidence of significant harm caused by the current deductions regime which risked pushing people towards destitution, eviction and mental and physical health problems. A third of survey respondents became destitute as a result of deductions, while a strong theme from research interviews was of deductions leading to a cycle of debt. Disabled survey respondents were more likely to report having become destitute because of a deduction, to have experienced a negative impact on their mental and physical health and to have had their family negatively impacted.

Given the very grave consequences of deductions for individuals, it is particularly important that there are strong and effective safeguards against their incorrect or harmful application, including the ability to challenge the recovery of debts that may have been incorrectly calculated and to access discretionary measures intended to limit the harm or injustice they may cause.

However, Public Law Project's research identified significant problems with how the system currently functions which prevents those safeguards working meaningfully in practice. The research revealed a fragmented system, requiring people to navigate between different departments, organisations and legal frameworks and policies. Inadequacies in how information is communicated,

1 Research by the Trussell Trust and Joseph Rowntree Foundation has found that the current rate of benefits is not sufficient to cover the essentials, see further: Bannister, Matejic, Porter, Sands, Schmuecker, Wenham, Bull, Ferrer, Hughes, *An Essentials Guarantee: Reforming Universal Credit to ensure we can all afford the essentials in hard times*, February 2024 available at: https://www.jrf.org.uk/report/guarantee-our-essentials. The Work and Pensions Committee has found that rates are set at a "subsistence level", see p. 5, House of Commons Work and Pensions Committee, *Universal Credit: the wait for the first payment*, Third Report of Session 2019 – 21, 14 October 2020, available at: https://committees.parliament.uk/publications/3069/documents/28787/default/

2 In 2022/23, 55% of Universal Credit claims were subject to at least one deduction, see DWP response to Written Question, 31 January 2024 (UIN HL1702) https://questions-statements.parliament.uk/written-questions/detail/2024-01-17/hl1702

Weaknesses in the system were exacerbated for people with physical and mental health conditions and neurodivergent individuals.

combined with the context in which debts are incurred, meant individuals were left unclear about what was being recovered and why, and about what options were available to them to mitigate their harm.

Weaknesses in the system were exacerbated for people with physical and mental health conditions and neurodivergent individuals. Interviews and survey responses showed that these individuals were more likely to have difficulties navigating the system and were impacted more by its application.

This report draws on this research to set out how the system needs to be reformed to address these concerns.

2 Key findings and recommendations

The primary aim of this research was to investigate the barriers claimants face when requesting:

- discretionary measures, such as suspending recovery of deductions, reducing the rate of recovery, and waiving the debt altogether; and
- mandatory reconsideration and appeal of incorrect overpayment decisions which are subsequently recovered by way of deductions.

Further, this report explores whether, how, and to what extent these barriers are exacerbated for people with mental and physical health conditions or people who are neurodivergent.

In so doing, it also contributes to the existing catalogue of research exploring the impact of deductions on welfare recipients.

Key findings

The DWP applies an approach to deductions for Universal Credit overpayments that relies on individuals raising concerns about affordability or harm *after* an initial deduction is made.

1. The DWP applies an approach to deductions for Universal Credit overpayments that relies on individuals raising concerns about affordability or harm after an initial deduction is made. This is particularly problematic when (as evidenced below) there are multiple barriers to claimants raising these concerns, which are exacerbated for those who may be at greatest risk.

2. Barriers to accessing discretionary measures and appeal rights (where these apply) include:

   a. **Confusion between appeal rights and the availability of discretionary measures:** misunderstandings around the circumstances in which decisions can be appealed, and confusion between when a request is being made for an appeal or for the DWP to consider exercising its discretion, can lead to requests for discretionary measures not being considered, or claimants pursuing appeals that have no chance of success.

   b. **Limitations in the information provided to claimants:**

      - **Not receiving prior notification:** nearly a fifth of survey respondents reported that the DWP did not notify them of its intention to make deductions.[3] Interviews suggested it was common for claimants to not be aware that a deduction would be made, or of the existence of the underlying debt, until after their payment was reduced.

3 As discussed further below, the process that applies to notification varies depending on the type of debt being recovered.

- **Insufficient information contained in DWP communications:** while the majority of survey respondents reported that they found correspondence from the DWP (when it had been received and remembered) to be clear, interviews suggested that that information was not sufficient to understand what the deductions related to, the context in which the relevant debt was incurred and how the rate of recovery had been determined.

- **Lack of information about discretionary measures:** information about the DWP's policy on discretionary measures is not included within key correspondence and is not consistently referred to by DWP staff in communications. Less than half of survey respondents were aware of the discretionary measures available under the DWP's policies.

Deductions are governed by a fragmented system which requires people to navigate between multiple different parties and legal frameworks.

c. **A fragmented system:** deductions are governed by a fragmented system which requires people to navigate between multiple different parties and legal frameworks. This is the case for all deductions, but is exacerbated in circumstances where there are multiple deductions relating to debts originating from different departments or organisations.[4]

d. **High threshold and evidential requirements:** the DWP applies a high evidential burden and threshold for the application of discretionary measures, in particular in relation to waivers.

e. **Psychological and emotional barriers:**

- survey respondents who were aware of the possibility of discretionary measures but who didn't attempt to request them cited several reasons for not doing so, including stress (20%), uncertainty of the process (19%), discomfort (19%) and a lack of support or confidence (14% and 12%).

- claimants who did contact the DWP about their deduction (whether to ask about a discretionary measure or for other reasons, such as seeking further information about it) felt embarrassed (52%), feared that they might be judged (52%) or not taken seriously (55%). Over half (52%) were anxious or stressed to speak to the DWP, or were concerned about aggravating their situation (57%).

3. As a consequence of these barriers, there is a risk that people do not:

a. challenge the recovery of DWP overpayments that they think are incorrect – creating a risk that they may be repaying debts that do not lawfully exist,

b. access discretionary measures including in response to unaffordable or otherwise harmful recovery; less than half of survey respondents who could not afford the deduction tried to tell this to the DWP.

4 For example, HMRC in the case of deductions for Tax Credit overpayments or third parties (such as utilities providers or local authorities) in the case of deductions for third party debts, see further section 3 below

4. The impact of deductions can be severe:

    a. a third of survey respondents became destitute as a result of deductions,

    b. a strong theme during the interviews was of deductions perpetuating debt cycles by preventing claimants from covering other bills and daily expenses, on top of reducing already very low incomes.

5. People with physical and mental health conditions and neurodivergent respondents:

    a. were disproportionately impacted by deductions. These survey respondents were more likely to become destitute, more likely to have had a negative impact on their mental health and physical health as a result of the deduction, and more likely to have had their family negatively impacted,

    b. were less likely to be aware of discretionary measures or attempt to have their debt suspended, reduced or waived.

    c. were more likely to have concerns about contacting the DWP, for example, being significantly more likely to agree that they were worried about contacting them on the phone (the current default route for contacting DWP Debt Management), being too overwhelmed or being worried about not being taken seriously.

Key recommendations

1. The DWP should carry out a proactive assessment of claimants' individual circumstances and their ability to repay before the recovery of an overpayment is triggered. Claimants should be contacted before the recovery is triggered to establish an affordable repayment plan, tailored to their needs. This should be in addition to a reduction in the maximum rate of recovery that can currently be applied as a matter of policy.

2. The DWP should improve coordination and information sharing between different departments and organisations, and the consistency and quality of communications with claimants, about deductions and the debts they relate to.

3. All available remedies and discretionary measures should be communicated directly to claimants. There should be a clear explanation of the circumstances in which the mandatory reconsideration and appeal route is and isn't available and what discretionary measures may be available. It should be made clear that the latter, for example suspension of deductions, can be requested during the mandatory reconsideration process.

A more detailed set of recommendations can be found at Annex 1 of this report.

3 Methodology

The findings below are based on quantitative data from a survey of 500 Universal Credit claimants and qualitative interviews with claimants and advisors.

The survey has been carried out in partnership with a research agency, Walnut Unlimited, in accordance with ISO 20252 and ISO 27001, the international standards for market research and information data security. It was designed to take approximately 10 minutes, containing 37 single and multiple-choice questions and a free text box.

At the qualitative stage of research, Public Law Project conducted:

4
focus groups with Universal Credit claimants totalling 15 participants.

8
interviews with welfare rights and debt advisors.

15
interviews with Universal Credit claimants.

Of the claimants interviewed, 8 reported deductions having been taken for Universal Credit overpayments, 1 for an ESA overpayment, 6 for Third Party Deductions, 5 for Tax Credit overpayments, 3 for Advance Payments and 1 for a Pension Credit overpayment. 3 had deductions for debts they were unclear about the origin of, 7 had deductions made for more than one debt and 4 were subsequently identified as not having had a deduction taken (see section 1 on limitations below).

Survey respondents were recruited via an online panel. Fieldwork took place between June 26th–July 11th 2023. Interviewees were recruited through a combination of online advertising, referrals from civil society contacts and survey respondents who agreed to take part in the qualitative stage.

The research also draws on PLP's casework experience supporting clients to request waivers of debts being recovered by way of deduction. In particular, this takes the form of four case studies that are included at Annex 3 of this report.

Limitations

Participant selection was based on self-assessment of having deductions applied at the time of participation or in the last 2 years (with some exceptions). However, our qualitative research revealed that some of those participants were subject to other measures such as benefit sanctions, underpayments and recalculations of entitlement based on earnings. This was true of 3 interviewees and 1 focus group participant, indicating that some of the survey respondents, who were recruited by the online panel, might have also misidentified another situation for a deduction.

The numbers of participants who turned out not to be affected by deductions was relatively low, and therefore not likely to influence the robustness of the research. We believe it might have been caused by the divergence between the literal meaning of a 'deduction' in the English language, and some of the wider contexts in which the term 'deduction' is used by the DWP, and the specific measure that is the focus of this research. The instances of misidentification were not irrelevant to our findings, as it exemplified the confusion surrounding the application of Universal Credit deductions and transparency of the system in general.

As detailed below, interviews with advisers indicated that claimants were often not aware that deductions were being taken before receiving advice. However, reliance on participant self-assessment of having had deductions applied necessarily meant that the research only captured the experience of claimants who were aware, or became aware, that deductions had been taken. It does not capture the direct experience of individuals who remain unaware that deductions had been taken. The inclusion of respondents who had been referred by civil society contacts also creates the possibility of an over reflection of individuals who have received support and advice in relation to their deduction and therefore may have been better placed to request discretionary measures or otherwise navigate the system.

Ethical considerations

Participation in the research was fully voluntary and anonymous. Participating Universal Credit claimants were given an information sheet and all research participants expressed consent for their experiences to be used in the final report. At the beginning of the interview, participants were asked whether they consented to a recording being made for the sole purpose of analysing data and drafting this report. They were also informed they could withdraw their consent to take part in the project. All interviewees were given a £25 voucher to thank them for their time.

Note on terminology

We recognise that use of the word 'claimant' can be dehumanising. However, we have retained its use for clarity, reflecting its use by Government and in the legislative framework. We have however sought to use alternative terminology where appropriate and where clarity would not be impeded.

Acknowledgments

This work has been supported by Lloyds Bank Foundation for England and Wales.

The survey was delivered by Walnut Unlimited based on questions co-designed with PLP.

PLP worked with an advisory group of civil society organisations and academics, including representatives of Rightsnet, Joseph Rowntree Foundation, Trussell Trust, Great Manchester Coalition for Disabled People, Mind, Child Poverty Action Group and Dr Ciara Fitzpatrick. The group met three times, at different stages and helped us to shape our conclusions and recommendations.

We would also like to express thanks to the National Association of Welfare Rights Advisors (NAWRA) and Greater Manchester Money Advice group for allowing us to engage with their members in the course of research to discuss the interim findings and inspire avenues for inquiry.

PLP would also like to thank Iona Sharkey from Citizens Advice Somerset who researched Universal Credit deductions as a part of her degree, shared her thoughts with us and helped to facilitate the advisors survey.

Lastly, although the participants remain anonymous, we would like to thank everyone who took their time to share their experiences.

4 The Universal Credit deductions regime

Universal Credit is a means-tested benefit which is gradually replacing 6 benefits (Child Tax Credit, Working Tax Credit, Housing Benefit, Income Support, income-based Jobseeker's Allowance (JSA), and income-related Employment and Support Allowance (ESA)). The 6 benefits it is replacing are sometimes referred to as 'Legacy Benefits'.

Universal Credit is paid monthly in arrears. Payments are made up of a standard allowance and additional elements depending on eligibility (for example, if you have children or are disabled). The DWP has discretion to deduct money from a claimants' monthly Universal Credit payments to pay off debts owed to the DWP or to third party creditors.

An outline of some of the main types of debt that can be recovered by deductions is set out below. The rules and policies that govern the approach to recovery, including the rate of recovery and the circumstances in which debts can be recovered, vary depending on the type of debt.

Overpayments

Universal Credit overpayments

An overpayment is any benefit or amount of benefit that a claimant has received but is not entitled to.[5] All overpayments of Universal Credit are recoverable.[6] This includes overpayments that are the result of DWP mistakes ('Official Error' overpayments),[7] for example, where the DWP has made a mistake when calculating a benefit award or has failed to act promptly on a reported change in claimant circumstances affecting a claimant's entitlement.[8]

This differs from the position that previously applied to most social security benefits before the introduction of Universal Credit (and which continues to be

5 Sections 71ZB(1) Social Security Administration Act (SSAA) 1992

6 Section 71ZB SSAA 1992

7 The definition of Official Error overpayment used by the DWP for the purposes of their annual Fraud and Error statistics is a benefit that 'has been paid incorrectly due to a failure to act, a delay or a mistaken assessment by DWP, a local authority or HMRC, to which no one outside of that department has materially contributed, regardless of whether the business unit has processed the information.', the DWP, *Fraud and error in the benefit system financial year ending (FYR) 2023*, publishes 11 May 2023, available here: https://www.gov.uk/government/statistics/fraud-and-error-in-the-benefit-system-financial-year-2022-to-2023-estimates/fraud-and-error-in-the-benefit-system-financial-year-ending-fye-2023

8 *LP v Secretary of State for Work and Pensions* [2018] UKUT 332 (AAC), at [10]

the case for some other social security benefits) where liability was dependent on a claimant misrepresenting or failing to disclose information to the DWP.[9]

While the DWP may recover a Universal Credit overpayment regardless of how it was caused, it has discretion over:

- whether to recover it, and
- the rate of recovery up to a maximum cap.

The DWP's policy on overpayment recovery, including how it exercises this discretion, is set out in its Benefit Overpayment Recovery Guide (BORG).[10]

There are a number of different ways that the DWP can recover Universal Credit overpayments.[11] However, where the claimant continues to be in receipt of Universal Credit, DWP's policy position is that this will ordinarily be by way of a deduction from their ongoing Universal Credit payments.[12] There is no requirement for prior consent from the claimant for deductions to be made.

Exercising discretion on whether to recover

While the DWP has discretion over whether to recover Universal Credit overpayments, the DWP's policy is to recover all debt 'where it is reasonable and cost effective to do so'.

While the DWP has discretion over whether to recover Universal Credit overpayments, the DWP's policy is to recover all debt 'where it is reasonable and cost effective to do so'.

However, Chapter 8 of the BORG provides that in 'exceptional' circumstances, the DWP will waive some or all of an overpayment.

The BORG provides that the DWP Decision Maker should take into account the Claimant's entire circumstances when deciding whether to waive an overpayment. However, it sets out the following non-exhaustive list of factors that should be taken into account:

- the Claimant's financial circumstance and those of their household
- whether recovery of the debt is impacting the Claimant's health or that of their family
- the circumstances surrounding how the overpayment arose for example, fraud, official error, DWP conduct

9 Section 71(1) SSAA 1992.

10 DWP, Benefit Overpayment Recovery Guide, updated 31 January 2024, available here https://www.gov.uk/government/publications/benefit-overpayment-recovery-staff-guide/benefit-overpayment-recovery-guide (accessed 23 May 2024).

11 Universal Credit Overpayments can be recovered by way of deduction from benefit (Section 71ZC SSAA 1992); by deduction from earnings (Section 71ZD SSAA 1992); through the courts (Section 71ZE SSAA 1992); or by an adjustment to benefit (Section 71ZF SSAA 1992)

12 Paragraph 5.2, BORG https://www.gov.uk/government/publications/benefit-overpayment-recovery-staff-guide/benefit-overpayment-recovery-guide#chapter-5--how-do-we-recover

- the Claimants' conduct, for example, whether they took steps to mitigate any overpayment, notify DWP, misrepresented or failed to disclose any matter, any fraudulent conduct etc.
- whether the Claimant has relied on the overpayment to their detriment
- whether DWP intended the Claimant to have the money
- where the Claimant can demonstrate that they 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.[13]

A waiver request can be made for a variety of reasons, or may be a combination of factors that when brought together build the reason for the request.

However, the BORG states that it will normally be expected that recovery of the debt is causing either:

The BORG states that it will normally be expected that recovery of the debt is causing either financial hardship or welfare issues for the claimant or their family.

- financial hardship; or
- welfare issues for the claimant or their family.[14]

The BORG sets out requirements as to the evidence that must be provided by the claimant. This may include information regarding the debt itself, as well as detailing the personal circumstances of the debtor.[15]

In the case of financial hardship, the BORG includes the following non-exhaustive list of what will usually be required:

- a full list of all debts and steps taken to manage the debt with those creditors
- full details of the income and expenditure of the debtor, and where applicable their family, and any other members of the household
- bank statements for the past 6 months, and
- any other relevant information for example, job offers etc.

It states that the financial problems would need to be over an extended period of time with no sign of change. If the claimant has other debts in addition to their debt to DWP, then DWP will consider their overall debt position and the claimant will need to provide evidence that they have sought solutions with all their creditors.[16]

13 Paragraph 8.4 BORG

14 Paragraph 8.7 BORG

15 Paragraph 8.23 – 8.25 BORG

16 Paragraphs 8.26 – 8.30 BORG

Where hardship is claimed on health grounds, the BORG notes it will normally be appropriate for the claimant to supply evidence showing that recovery of the overpayment is or would be detrimental to the health or welfare of them or their family. It notes that the evidence:

- should not simply be a list of any medical conditions
- should demonstrate how recovery of the debt is impacting on the health or welfare of the debtor or their family
- should usually be in the form of a letter from a medical professional for example, a GP, consultant, psychiatric nurse but this will not always be necessary. Often a social worker or welfare adviser may have a clear understanding of the impact that recovery would have on the debtor.
- if the debtor says that their ill health is being exacerbated or caused by financial hardship, then evidence of their financial position should also be provided as specified above for full details of income and expenditure.

The BORG emphasises that care should always be taken in managing expectations so that claimants are not led to believe that their request for waiver will be approved on the production of a letter from their GP supporting their request and that waivers under this ground are only granted in exceptional circumstances.

Maximum rates of recovery for Universal Credit overpayments:

Rate of recovery

Regulations provide for maximum rates of recovery for Universal Credit overpayments of 15% of your Universal Credit standard allowance if you do not have earned income and 25% if you do.[17]

While the DWP has discretion to set lower rates up to the maximum caps described above, the BORG provides that deductions rates will initially be set at these maximum rates.[18]

Chapter 5 of the BORG provides that where a debtor or their representative contacts DWP Debt Management stating that the rate of recovery will cause them or their family 'significant' hardship, the DWP may consider reducing the rate of recovery or suspending recovery for a period of time.

The BORG sets out a requirement that claimants 'provide reasonable evidence to their request', and provides that where hardship is claimed:

- because either the debtor or a member of their family is seriously ill, supporting evidence is provided to explain how or why recovery of the overpayment would be detrimental to their health or welfare,

17 Regulation 11 of the Social Security (Overpayments & Recovery) Regulations (SS (O&R) Regs) 2013

18 With the exception of recovery of fraudulent overpayments which can be recovered up to a rate of 40% under the SS (O&R) Regs but are capped at 25% as a matter of policy under the BORG

- on financial grounds, an affordability assessment will be completed to consider the household income and expenditure.

Where a reduction in the rate of recovery or suspension is agreed, a review date will normally be set for review of whether hardship still applies.[19]

Other social security overpayments

Overpayments of other social security benefits can also be recovered by way of deductions from Universal Credit payments (for example, where a claimant has transferred to Universal Credit from a Legacy Benefit, or where they are in receipt of more than one benefit at a time). Whether overpayments of other social security overpayments are recoverable, for example, where they have been caused by Official Error, varies depending on the social security payment in question.

DWP's policy on its approach to recovery, including the exercise of its discretion by reductions in rate of recovery, suspension or waiver, of other social security overpayments is also set out in the BORG and is as described above.

Tax Credit overpayments

Tax Credits (Child Tax Credits and Working Tax Credits) are two of the six benefits that are being replaced by Universal Credit. They are administered by HMRC.

HMRC may transfer tax credit overpayments to the DWP to recover as if they are an overpayment of Universal Credit. This includes where a person who formerly claimed Tax Credits starts to claim Universal Credit. At this point any outstanding overpayments are transferred to the DWP, where recovery is made by way of deduction from subsequent Universal Credit payments, as if it were a Universal Credit overpayment.

DWP Loans

Recoverable Hardship Payments

Universal Credit claimants who are subject to 'conditionality' (requirements to undertake certain work-related activities as a condition of receiving Universal Credit payments) can be sanctioned 100% of their Universal Credit standard allowance if they don't meet those requirements.

Sanctioned Universal Credit claimants can apply for recoverable Hardship Payments (essentially a loan of 60% of the sanctioned amount) if they can't meet their immediate and most basic and essential needs, have made every effort to get alternative sources of support and stop incurring any expenditure not relating to their basic and essential needs.

19 Paragraph 5.70 BORG

The maximum deduction rate permitted by law for recoverable Hardship Payments is 40% of a claimant's Universal Credit standard allowance, but this is restricted to an amount equivalent to 25% as a matter of policy.

Following a Judicial Review claim lodged by a PLP client, the DWP has amended the BORG to make clear that its policy on waiver also applies to recoverable Hardship Payments.[20]

Advance Payments

Advance Payments are loans that can be taken from the DWP if a claimant is in financial need.

According to DWP policy, there are four types of Universal Credit advance payments:

- **New Claim Advance** – intended to support claimants who are in financial need while they wait for their first payment of Universal Credit.
- **Benefit Transfer Advance** – intended to support claimants transferring from a 'legacy' benefit to Universal Credit who are in financial need as a result of a gap between the final payment of the legacy payment and the first payment of Universal Credit.
- **Change of Circumstance Advance** – intended to support claimants where a change of circumstance results in a significant increase in their Universal Credit entitlements and they will be in financial need pending the first payment of the new, increased entitlement.
- **Budgeting Advance** – intended to support claimants in financial need as the result of a one off, unexpected expense.

DWP policy sets out the maximum amount that can be borrowed and the period over which these must be repaid. For Universal Credit New Claim Advances the maximum amount that can be borrowed is one month of the estimated Universal Credit award payment which the DWP expects to be repaid over a 24 month period.

According to DWP policy, claimants should be offered support to calculate the most appropriate amount of advance payment, based on their monthly outgoings and their ability to repay it over the repayment period.

Under DWP policy, if exceptional and unforeseen circumstances push the claimant into hardship, a deferral for a limited period of time (3 months in the case of New Claims Advances) can be considered.[21]

20 See further here: https://publiclawproject.org.uk/latest/dwp-changes-guidance-on-recovering-hardship-payment-debt/

21 Universal Credit Guidance April 2024, deposited in the House of Commons (Paper reference DEP2024-0442), Advances – New Claim, p. 4, available here: 007Advances-New_claim_V22.0.pdf (parliament.uk) (accessed 28 May 2024)

Third-party deductions

Deductions can be taken from Universal Credit payments and paid directly to a third-party creditor for certain debts such as housing costs, rent arrears, fuel, water charges, council tax arrears and other payments such as court fines.

The rate at which deductions can be taken varies depending on the category of debt, however in most cases, recovery per individual debt is made at a fixed rate of 5% of the Universal Credit standard allowance.

For the most part, third-party deductions can be made without the claimant's consent.[22] There are some exceptions to this, for example where the total amount being deducted for multiple debts exceeds 25%.

Multiple debts

Where there are multiple debts that can be recovered by way of deductions, Regulations provide for a priority order for recovery up to a maximum cap. Since April 2021 that cap has been set at 25% as a matter of policy, although there are some circumstances in which that can be exceeded.

Appeal Rights

Most DWP decisions relating to deductions from Universal Credit are not appealable.[23]

However, where a deduction relates to an overpayment, a claimant may have a right to appeal the decision that there has been an overpayment or the amount of the overpayment (for example, if they think the DWP has incorrectly identified or miscalculated it).

As with appeals of other Universal Credit decisions, a claimant must first request a mandatory reconsideration (internal review by the DWP) before they can appeal to the First-Tier Tribunal.

22 In 2022 a Court found, in relation to third party deductions from Legacy Benefits, rather than Universal Credit, while there was no requirement to seek consent, a claimant did need to be given the opportunity to make representations and provide information to inform the decision whether to apply Third Party Deductions (see Timson, R (on the application of) v Secretary of State for Work and Pensions [2022] EWHC 2392 (Admin)); while this judgment does not related to Third Party Deductions from Universal Credit it is possible that it will impact on the approach taken in that context to, due to the similarity of the schemes.

23 Schedule 3, paragraphs 1(n), 10, 11, 14, 15 Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013/381

Communicating with the DWP about deductions

Universal Credit is designed to be 'digital by default'. One aspect of this is that the main way that Universal Credit claimants manage their claim, find out information about it and communicate with the DWP is via their online Universal Credit account.

For DWP Debt Management, the main channel for contact is by phone.

Relevant information is located across different sections of that account. This includes a monthly payment statement which contains information on how much you will be paid for that month and a high level breakdown of how it has been calculated (including any deductions). In a separate section of the account is the Universal Credit journal, which is used for communications between the DWP and claimants.[24]

Where amounts being deducted relate to debts that require correspondence with other departments or organisations, the contact routes will depend on those organisations. As discussed further below, for DWP Debt Management, the main channel for contact is by phone.

24 Research looking at how the provision of information via the online account can impact on claimant's ability to understand what and how decisions have been taken about them can be found in the Child Poverty Action Groups (CPAG) series of reports on Universal Credit, Digitalisation and the Rule of Law: https://cpag.org.uk/what-we-do/project-work/projects-england-and-wales/universal-credit-digitalisation-and-rule-law

5

The DWP's approach to recovery

1. Approach to Universal Credit overpayments

While the DWP has discretion over whether to recover Universal Credit overpayments and the rate of recovery, PLP's research, casework experience and review of publicly available DWP policies and guidance, suggests that its default approach is to recover all identified Universal Credit overpayments at the maximum rate stipulated in policy.

Individual circumstances (such as someone's health situation or caring responsibilities, their ability to afford a deduction, or other circumstances that may be relevant to whether an overpayment should be recovered by deduction, and at what rate) do not appear to be routinely taken into account in advance of a deduction being applied, including in relation to information that the DWP is likely to already hold.[25]

Individual circumstances do not appear to be routinely taken into account in advance of a deduction being applied.

A response to a PLP request under the Freedom of Information Act 2000 (FOIA) suggests that this policy position is reinforced by an automated approach to deduction recovery. This response stated that once the overpayment is referred to DWP Debt Management for recovery the process is 'largely automated' with 'the majority of deductions inserted automatically'. If a customer is in receipt of Universal Credit, the rate of deduction is 'automatically calculated'. While there are points in the process where human agents can intervene this is 'typically following claimant contact.'[26]

Responses to previous FOIA requests have similarly stated that 'the level of deduction is by default determined automatically by the Universal Credit system.'[27] This response also stated that due to the automated nature of the Universal Credit system, and the timings involved between the calculation, notification of the repayment and the start of deductions, it is 'not usually possible to change the deduction rate before the first payment is taken'.

25 For example, the DWP will hold information on whether a claim includes additional elements such as those for carers or where there are children in the household, as well as notes that may have been made on the case system to flag potential vulnerabilities.

26 DWP response to FOIA request submitted by Jagna Olejniczak on 13th June 2023, available at: https://www.whatdotheyknow.com/request/the_level_of_discretion_when_app#incoming-2360067

27 DWP response to FOIA request submitted by Mark Abraham on 30 January 2020, available at https://www.whatdotheyknow.com/request/debt_recovery_notification_and_t

PLP's review of publicly available DWP staff guidance has not identified any indication of opportunities for DWP members of staff to undertake proactive enquiries into the appropriateness and affordability of recovery nor have research interviews or casework enquiries indicated that this occurs in practice.

DWP's policy and practice instead places the onus on claimants to contact the DWP to request consideration of these factors after they have been notified of the deduction.

Impact and consequences of this approach

Even if these barriers are successfully navigated, some harm will have already occurred due to the initial repayments having in most cases been set at an initial maximum rate.

PLP's research found that reliance on claimants contacting the DWP to raise concerns was insufficient to safeguard against the risk of harmful and unaffordable deductions. As detailed throughout the rest of this report, there are a number of barriers that prevent individuals from doing this; barriers that are likely to be exacerbated for claimants that are also most at risk of harm.

In addition, even if these barriers are successfully navigated, some harm will have already occurred due to the initial repayments having in most cases been set at an initial maximum rate.

As a result, even if a claimant contacts the DWP immediately after notification of the deduction, and the DWP responds promptly, as a minimum at least one payment will have been taken at the unaffordable rate.

This was reflected in interviews with claimants and advisers who had successfully negotiated a reduction in rate of recovery – but only after enduring a period of financial hardship.

One of the most common recommendations emerging from interviews with both claimants and interviewees was for proactive assessment of whether recovery is appropriate and affordable, before recovery of an overpayment was put in place.

> “They should give [you an] income and expenditure form just to see if you... are able to afford to pay back because in my circumstances, I couldn't pay even a penny back at that time to be honest.”

Some advisers also cautioned for this to be in addition to the setting of a lower maximum rate of recovery. This was to reflect a concern that even with a process of proactive consideration of circumstances by the DWP, there was a risk that harm could still occur if that consideration failed to take everything into account.

Interviews with claimants also reflected the forced nature of recovery being experienced as disempowering and removing their control over the situation.

> “[I]t's like they did something forcefully and I have no control over it.”

Recommendation: The DWP should carry out a proactive assessment of a claimant's individual circumstances, and their ability to repay, before the recovery of an overpayment is triggered. Claimants should be contacted before the recovery is triggered to establish an affordable repayment plan, tailored to their circumstances.[28]

A discretion rarely exercised

As noted in the preceding section, the DWP does not routinely exercise its discretion on whether or not to recover a Universal Credit overpayment by deduction (and at what rate) before deductions are put in place. This discretion is instead exercised, if at all, after deductions are imposed, reactively in response to claimant contact.

Financial year 2022/23:

Number of deductions:

2.2m

Waivers granted:

26

The BORG sets out how the DWP exercises this discretion. This provides for three potential actions (referred to collectively throughout this report as discretionary measures):

- Reductions in rates of recovery
- Suspension of recovery
- Waiver of recovery.

However, the PLP's research suggests that these discretionary measures are relatively rarely deployed.

Waiver

In financial year 2022/23, 2.2 million Universal Credit awards had a deduction in place for debts other than Advance Payments or Third Party Deductions.[29]

However, DWP data provided in response to PLP FOIA requests[30] showed that only 26 waivers had been granted in 2022 (relating to Universal Credit Overpayments, advances and recoverable hardship payments). This was the highest number of waivers granted in the three year period from 2020 to 2022.

28 A similar approach to the one recommended here has been adopted by Social Security Scotland as part of its Debt Management Strategy for devolved benefits (such as the Scottish Adult Disability Payment and Child Disability Payment). Under the Scottish strategy, there should be no automatic deduction of benefits or application of set rates (unless a claimant doesn't respond to attempts to engage). The described approach is instead to contact the claimant to agree a repayment plan based on an affordability assessment and personal circumstances – the repayment amount isn't necessarily the maximum they can afford, it's the amount that is mutually agreed as sustainable. See further Social Security Scotland, *Debt Management Strategy*, available here: https://www.socialsecurity.gov.scot/asset-storage/production/downloads/Social-Security-Scotland-Debt-Management-Strategy-2023.pdf

29 DWP response to Written Question, 31 January 2024 (UIN HL1702) https://questions-statements.parliament.uk/written-questions/detail/2024-01-17/hl1702

30 DWP response to FOIA request submitted by Jagna Olejniczak on 24 March 2023 available at: https://www.whatdotheyknow.com/request/universal_credit_overpayments_an#incoming-2291570

Year	Waiver Requests Recorded by the DWP	Full Waivers Granted	Partial Waivers Granted
2017	9	Not provided[31]	0
2018	25	Not provided	Not provided
2019	39	Not provided	Not provided
2020	49	7	0
2021	102	6	Not provided
2022	187	18	8
2023*	40	6	Not provided

*First three months of the year

Of PLP survey respondents, excluding those with deductions for Advance Payments and Third Party Deductions,[32] 17.5% reported requesting waiver.[33] Of those that requested waiver, the majority reported that the process was still ongoing (60%) while 34% reported being successful in their request.

Of the 14 claimants interviewed as part of this research who reported deductions for overpayments, or likely overpayments, 2 reported requesting a waiver; 1 in relation to a historic Tax Credit overpayment and 1 in relation to an official error overpayment of Universal Credit. The first of these was not successful, the second was but only following a lengthy and difficult process set out in case study 1.

In relation to interviewed advisers, two advisers stated that they did not request waivers due to them being perceived as too much effort for what they understood to be a low chance of success. Of the advisers who did request waivers, most suggested it was rare for requests to be successful, but that they had secured waivers in some instances. One adviser stated that recently they had had a number of successful waiver requests for Official Error overpayments for clients that they described as 'very vulnerable'.

31 The FOIA response states that this data was not provided to avoid disclosing personal data due to the small numbers involved.

32 Survey respondents who reported deductions for Advance Payments and Third Party Deductions are excluded from these figures to reflect the distinct approaches to recovery and hardship that are applied in relation to these debts – see further section 3 above.

33 While only 17.5% of respondents reported requesting a waiver, this figure is relatively high compared to the numbers of granted waivers officially recorded by the DWP. Possible explanations are that: individuals have misunderstood the question or incorrectly reported requesting waivers when they have not; survey respondents disproportionately represent those that have requested measures and/or requests for waivers have not been recorded as such by the DWP.

Reductions in rate of recovery and suspension

PLP's research suggests that it was more common for claimants to request, and for the DWP to grant, reductions in the rate and, to a lesser extent suspension, of recovery. However, it also suggests that there was a likelihood that many claimants experiencing hardship as a result of deductions were not requesting these measures.

Data provided by the DWP in response to a PLP FOIA request showed that between April 2021 and January 2022:

- 112,279 Universal Credit claimants had an application for an "affordability rate" granted
- 10,019 Universal Credit claimants had recovery of their debt suspended for a period.

While this shows these measures being granted in greater numbers than waiver, as with waiver, it represents a fairly small proportion relative to the number of Universal Credit overpayment deductions in place.

DWP data was not identified through FOIA requests about the number of requests for reductions in rates of recovery or suspensions that were made.

Less than half of survey respondents who reported struggling to afford their deductions reported that they had tried to inform the DWP about their situation.

However, less than half of survey respondents[34] who reported struggling to afford their deductions reported that they had tried to inform the DWP about their situation.

Of PLP survey respondents with deductions, excluding those with deductions for Advance Payments and Third Party Deductions, only 20% reported requesting a reduction in rate of recovery and 12% a suspension in recovery. Of those that requested them, the majority reported that the process was still ongoing (67.9% for suspension and 62% for reduction in rate of recovery). 17.8% of those that requested suspension and 28% of those that requested reductions in rates of recovery reported being successful.

Of the 14 claimants interviewed as part of this research who reported deductions for overpayments, or likely overpayments, six reported that they had requested reductions in rates of recovery. Four of those had a reduction in rate of recovery applied, however in one case, this was only after an initial refusal. With the exception of one, all of these claimants described the process of requesting measures as stressful and difficult, with one reporting that as a result they were unlikely to re-apply for a reduction in rate of recovery when the term of the current reduction came to an end.

In relation to interviewed advisers, one was not aware of the DWP's policy on discretionary measures (although they had had success securing a waiver via an MP) and another reported that they passed negotiations with debt management to their debt adviser colleagues. However, all other interviewed

34 All debt types

advisers referred to regularly requesting reductions in rate of recovery (or in one case, signposting clients to do this themselves), and that this was generally successful. However, the majority also referred to case histories suggesting that where clients had contacted debt management themselves, before seeking advice, they had often not been successful.

2. Approach to Advance Payments

A different approach is taken to Advance Payments. Before Advance Payments are issued, consideration should have been given to their affordability.

The process around this varies slightly depending on which category of Advance Payment it relates to. However, in relation to New Claim Advance Payments for example, DWP policy provides that a DWP agent should have a discussion with the claimant first about the need for the payment and the affordability of it. As noted in section 3 above, the rate of repayment is determined by how recovery is spread over a fixed period.

Advisers raised concerns about the affordability of the current repayment period.

Three of the claimants interviewed for this research reported that they had had deductions taken for Advance Payments. All three recalled being offered a choice of different repayment periods, up to the maximum period available under the policy at the time. Of these individuals, one reported they had found these payments 'manageable' with the exception of one month where they were required to request a deferral in repayment (an experience they described as 'difficult' – see further below). They noted that they had requested the longest repayment period to ensure repayment of the smallest amount each month.

The second person likewise reported requesting the longest repayment period offered (and therefore the lowest monthly amounts) but emphasised that this still had a "large impact" in terms of their finances (and consequential stress).

The third recalled being offered different repayment options, but had subsequently found herself facing what she described as "extreme financial difficulty" as a result of the deductions for this combined with deductions for a Tax Credit overpayment and a Third Party Deduction for Council Tax arrears (the latter having been incurred as a result of the difficult financial situation she was in following imposition of the Advance Payment and Tax Credit Overpayment deductions).

Interviews with advisers also raised concerns about the affordability of the current repayment period.

Under DWP policy, if exceptional and unforeseen circumstances push the claimant into hardship, a maximum 3-month deferral can be considered.

Of the three interviewees who reported deductions for advance payments, two raised that they had had concerns about affordability after the advance payment was granted – one was granted an extension, the other was not, although it was not clear from the interview whether this was due to an extension having previously been put in place, or a misstatement of DWP policy about the ability to extend the repayment period.

3. Approach to Third Party Deductions

As part of one of the focus groups for this research, PLP spoke to three people who had had relatively positive experiences of Third Party Deductions.

All three of these individuals had given prior permission for Third Party Deductions to be put in place; in at least two of those cases, it had been them that had asked for that to be the case. All three were clear on the repayment rate in advance, and in one case, had chosen a rate they deemed affordable.

These three individuals viewed the Third Party Deduction scheme as helpful for assisting them to manage and keep on top of their debts.

Similarly, some of the interviewed advisers noted that Third Party Deductions could be useful to claimants for similar reasons.

However, three other interviewees who were aware that Third Party Deductions had been taken from their Universal Credit payments had less positive experiences.

In these cases, the individuals had not consented to, or been aware that they would be recovered by deduction until deductions were applied. They experienced similar difficulties in identifying information about the origin and nature of the debt being recovered, and the rate of recovery, as detailed in the section below.

6 Barriers to requesting Discretionary Measures

1. Awareness and quality of information about debts and deductions

> You know, you give [clients] advice on management of a debt they didn't know existed."

The research found that the context in which debts recovered by way of deduction were incurred, was likely to contribute to claimants not being aware that deductions were being taken or what they were being taken for.

Claimants and advisers frequently described the difficulty for claimants of identifying that an overpayment has occurred due to a lack of clarity and information about how Universal Credit payments are calculated and eligibility determined.

> I was getting overpayments which I was not aware of. I just thought maybe this payment I'm getting is actually my entitlement?"

> I just thought we're entitled to it... they are sometimes quite lacking in letters and clarification on different things... you just accept what you are paid really."

Claimants spoken to as part of this research often had no realistic way of being aware of a potential overpayment until they were notified of it by the DWP.

This was exacerbated in situations where an overpayment was due to a mistake by the DWP, where a claimant had received assurances from the DWP that it was correct or where the debt being recovered was incurred a long time ago.

As a result, claimants spoken to as part of this research often had no realistic way of being aware of a potential overpayment until they were notified of it by the DWP.

This can be contrasted with the position where debts were something more consciously and recently incurred as described in the section on Advance Payments and, depending on the context, Third Party Deductions at section 4 above.

Interviews with advisers suggested that the individuals they advised were often not aware that deductions were being taken before they approached them for advice.

> Most of my clients aren't even aware that there is [a deduction being taken] until I point it out to them."

Further, interviews and focus groups with both claimants and advisers found that where individuals were aware that deductions were being taken, limitations in the information provided about them (and the debts they related to), meant that claimants (and advisers) were often not aware or clear about:

- What debts were being recovered by way of deductions
- The origin and context in which those debts were incurred
- How overpayment debts had been calculated
- The fact they are being recovered by way of deductions from their Universal Credit payments
- How the rates of repayment by way of deduction had been determined
- How long they would be repaying the debt.

The research found a number of factors contributing to this, including:

- The context in which the debt was incurred
- Claimants not receiving, or not remembering receiving, the initial notification of a debt or the intention to recover it by way of deduction
- Difficulties in seeking out information from the DWP
- Limitation in the quality of the information that was provided in the initial notification, payment statement and in follow up communications with the DWP.

This impacted on people's ability to identify (and challenge) incorrect overpayments and make the case for why and how discretion should be exercised. It also negatively impacted on their ability to budget and plan.

Notification

The process for notifying or informing a claimant about a debt depends on the category of debt, and the department or organisation it relates to.

In relation to Universal Credit overpayments, claimants should receive a notification of an overpayment, and the intention to recover it by way of deduction, via the template form UCD367 (see Annex 2).

This is provided by way of a notification on the Universal Credit journal.

Claimants who have deductions taken from their Universal Credit for overpayments of other social security debts, should have received an initial notification of the overpayment from that social security benefit. Claimants with outstanding Tax Credit overpayments who subsequently claim Universal

Credit, should also receive a letter, using template TC1131 (UC),[35] from HMRC advising them that it will be transferred to the DWP and recovered by way of deductions from their Universal Credit payments.

Focus groups and interviews with both advisers and claimants suggested deductions were often only noticed when the expected amount of money failed to appear in peoples' accounts.

Our research found that many people did not receive, or remember receiving, a notification about an overpayment or of the DWP's intention to recover it by way of a deduction.

Of survey respondents other than those in receipt of Advance Payments or Third Party Deductions, only 35% reported receiving a notification about deductions.

Focus groups and interviews with both advisers and claimants suggested deductions were often only noticed when the expected amount of money failed to appear in peoples' accounts. Interviewed claimants often did not recall receiving a notice about deductions. Interviews with advisors revealed that claimants seeking advice were often unaware, before receiving advice, that a deduction was being applied and did not recall receiving a notification.

> "I can only go on what the client said; they're telling us they're not getting [a notification of the intention to recover the overpayment by deduction]."

There are a number of potential explanations for this. It is possible that notifications are not being provided to claimants (and interviews with advisers suggested this could well be the case in some instances). However, it is also possible that notifications have been provided at some point in time, but that these have either been missed, or are not recalled. Notifications appear in individual's Universal Credit journals as links or attachments within electronic messages that are often not clearly signposted as a formal decision requiring attention.

Interviewed advisers, noted that this was also a particular risk in relation to claimants that do not regularly access their Universal Credit account and journal (for example, because they are not subject to conditionality and therefore have limited reason to regularly log on to check their messages).

> "The client has to go into their journal to see it, and I think clients are only going to their journal if they have to complete tasks for the claimant commitment or they went to the bank that morning and their money is not there... and they've [gone on] their journal to be like, what's going on?"

35 For an example of template TC1131 see here; https://assets.publishing.service.gov.uk/media/5a7fa2a1ed915d74e622ba8e/annex-a-debt-technical-guide.pdf

“If it’s happening in practice, I don’t think clients are picking up the letters; I think what’s probably happening in practice now is that it’s done through the journal and... you’re assuming someone is going online and checking their journal. They will be checking their journal if they’ve got a claimant commitment that requires them to check their journal, but if you’ve got a person who has a disability and has no work commitments... they’re very unlikely to be checking their journal.”

Advisers also emphasised that where individuals experienced a drop in income, they may not attribute this to a deduction due to opacity around how payments are calculated. For example, if a claimant’s payment amounts vary from month to month due to fluctuations in their earned income, they may attribute the receipt of the lower amount to that.

Adequacy of information provided

There were consistent concerns about whether the information provided in communications was sufficient to provide an understanding of what the deduction related to, and how both the debt and the resulting rate of recovery had been calculated.

57% of survey respondents, excluding those with deductions for Advance Payments and Third Party Deductions, who reported that they did receive communications about their overpayment deduction thought they were clear and easy to understand and a relatively low number of respondents (17%) disagreed with this statement. However, this number was higher amongst respondents with physical or mental health conditions and neurodiverse respondents.

While the information contained in communications was perceived by many survey respondents to be clear, interviews and focus groups suggested there were consistent concerns about whether the information provided in those communications was sufficient to provide an understanding of what the deduction related to, and how both the debt and the resulting rate of recovery had been calculated.

For Universal Credit overpayments, the template letters include information on:

- The amount overpaid
- The period in which that overpayment occurred
- The reason for the overpayment

You were overpaid £0.00 <insert 'on' date or 'from' date range 'to'>. This is because <insert reason>.

Extract from UCD367 – Universal Credit overpayment letter (See Annex 2 for full letter)

Information was often not sufficient to understand the circumstances of how an overpayment arose and how it had been calculated.

Advisers reported that this information was often not sufficient to understand the circumstances of how an overpayment arose and how it had been calculated. They noted that the reason given may be quite high level. These advisers reported that it was normally necessary to have to ask for further additional information. A common practice was to request a written statement of reasons. Some advisers reported that even where such requests were made, the DWP sometimes did not provide the necessary specific breakdown until after the claimant had been through the mandatory reconsideration process and started the appeal stage (should that route bepursued).

Similar concerns were raised in relation to Tax Credit overpayment letters.

The template Universal Credit overpayment letter states that where the individual overpaid is in receipt of Universal Credit, the money will be taken back from their monthly payment in instalments – a reference to the recovery of overpayments by way of deduction from Universal Credit payments. It advises claimants to check their next statement to see what the repayment amount is.

You do not need to do anything if you are claiming Universal Credit.

We will take this money back from your monthly payment in instalments. Check your next statement to see what the repayment amount is. If you struggle to make this repayment, call Debt Management on 0800 916 0647.

Extract from UCD367 – Universal Credit overpayment letter (See Annex 2 for full letter)

Similarly the template Tax Credit overpayment transfer letter TC1131(UC) states 'We'll send details of the amount you owe to the Department for Work and Pensions (DWP) so they can recover it from your Universal Credit payments.'[36]

Neither letter includes information on the rate of recovery, what the likely monthly deduction amount will be or how it will be determined. As discussed further in the section on impact below, research interviews highlighted how the absence of that information exacerbated the stress and difficulties associated with deductions.

The Universal Credit Payment Statement

Where debts are being recovered by way of deductions from Universal Credit, once a deduction is applied, reference to this should also be included in the Universal Credit payment statement section of a claimant's Universal Credit account.

36 See template TC1131 here: https://assets.publishing.service.gov.uk/media/5a7fa2a1ed915d74e622ba8e/annex-a-debt-technical-guide.pdf

Focus groups and interviews with both claimants and advisers suggested that this was a common source of information that deductions were being taken rather than a notification letter such as the template UCD367 referred to above.

I don’t remember getting a letter about it. I think it only showed up maybe in an online statement or something? You know, when you actually get your money.”

However, the information included within the statement is limited to a high-level description of what is being recovered by way of deduction.

If it just says ‘DWP debt’ or ‘DWP benefit overpayment’, people... often have no idea.”

I don’t understand, personally myself, I don’t know whether other people struggle with it, but when you get your payment and... you see all these things with the numbers and everything, and the deductions, and you’re like why? Why is that being deducted? [It] doesn’t explain why.”

In addition, the term ‘deduction’ is also used by the DWP to refer to other circumstances that lead to a reduction in the total Universal Credit monthly payment, for example, where there are deductions made for earned income (if the person is working) or to apply the benefit cap.

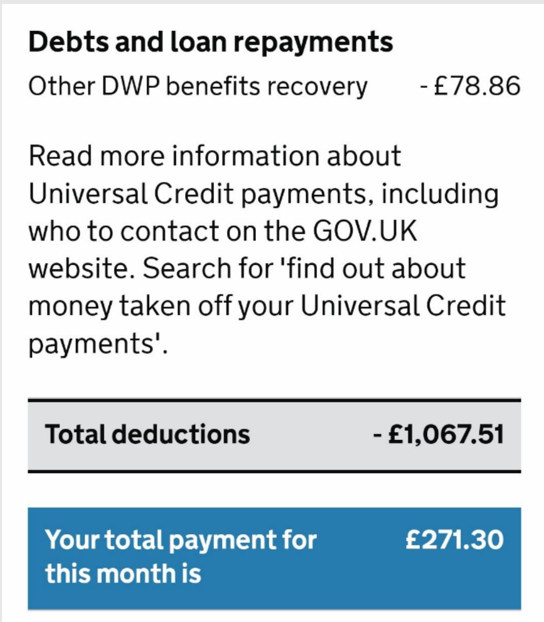


Image 1: screenshot of ‘how we calculate your payment’ section of a research participant’s Universal Credit account

Difficulties accessing further information from the DWP

Interviews with both claimants and advisers suggested that it was common to experience difficulties in trying to secure further information about a debt or deduction from the DWP.

Interviews with both claimants and advisers suggested that it was common to experience difficulties in trying to secure further information about a debt or deduction from the DWP.

These difficulties were exacerbated in some cases by the need to navigate between two different DWP departments: the Universal Credit team and the Debt Management team.

Within the DWP, responsibility for determining a claimant's Universal Credit entitlement and whether there has been any Univeral Credit overpayment, sits with the Universal Credit team, while responsibility for subsequent recovery of any overpayment debts sits within the Debt Management team.

If a claimant needs information about the reason for an overpayment decision and the entitlement decisions it relates to (or if they would like to challenge those decisions by mandatory reconsideration) they are required to contact the Universal Credit team as the team that administers the benefit. If a claimant would like to discuss the DWP's approach to debt recovery, or request the application of discretionary access to hardship measures, they are required to contact Debt Management. Interviews suggested this could lead to people being passed back and forth between teams, with neither able to provide a complete picture in response to the questions asked.

> That can be a nightmare. The majority of the time they're not able to provide answers over the phone and they kind of very often refer you to the UC helpline. [Debt Management] say 'we just deal with the debt; UC helpline can give you the reasons for the debt and especially overpayments.' But then [the] UC helpline will through you back over to DWP debt management. So I've had that many times, where it's just a dead end."

Our research found a similar division of responsibilities within some of the members of the advice sector we spoke to, with debt advisers providing advice in relation to debt recovery and welfare benefit advisers providing advice relating to entitlement.

Multiple Deductions

A third of survey respondents reported deductions being made for two or more reasons. Seven of the interviewed claimants described deductions for more than one type of debt.

Interviews with these respondents suggested that the situation was further complicated by the need to navigate between different DWP teams (for example, an overpayment of a different DWP benefit), government departments (for example, a Tax Credit overpayment) or other third party (for example, recovery of utilities arrears via the third party deduction scheme).

The situation can also be complicated in these circumstances by the way in which the DWP communicates its intention to recover debts. As noted in section 3 above, where there are multiple debts that could be potentially recovered by way of deductions, the DWP applies a maximum cap on the total amount that can be deducted at any one time. Where the amount of individual deductions exceeds this cap, a priority order is applied.

Interviewee experiences suggested that claimants were very often not aware of the existence of debts until they reached the top of the priority "queue" and started to be recovered.

For example, one interviewee reported contacting the DWP after he noticed deductions coming out of his monthly payment for two separate deductions, only to find there were 13 outstanding debts, waiting to be reclaimed, that he was not previously aware of.

Historic Debts

DWP, as with other debtors, cannot recover debt that is older than six years by way of court action. However, there is no equivalent restriction in relation to debts recovered by way of deduction. As a result, deductions can relate to debts that are a considerable number of years old.

For example, as part of this research we spoke to a claimant who was having a deduction taken for a tax credit overpayment that was 16 years old and another who was having deductions for debts that were 14 years old.

A fifth of survey respondents reported receiving deductions for historic debts.

Interviews with advisers and claimants with deductions for historic debts, emphasised this as a further complicating factor for trying to identify the circumstances of the debt being recovered. In these circumstances, it appeared more common for DWP to be unable to provide relevant information about the debt and how it was incurred. It was in turn harder for the claimant to be able to recall the necessary details of something that had occurred a long time ago.

Impact of lack of information about debts and deductions

It is not possible to challenge the existence of an overpayment, or request relief from its recovery, if you do not know it exists.

One very obvious impact of a lack of information about the existence of debt or deduction is that it will prevent individuals from taking action in relation to it; it is not possible to challenge the existence of an overpayment, or request relief from its recovery, if you do not know it exists.

However, a lack of information about the context and the nature of the debt also makes it difficult for individuals to identify whether there are likely to be grounds for challenging it by way of an appeal, for example, because they think it has been calculated incorrectly.

This can also create difficulties for requesting that the DWP exercise their discretion in relation to its recovery, where considerations of the circumstances in which the debt was incurred may be relevant. This is particularly the case in relation to waiver, where the considerations and relevant factors listed in the BORG include the circumstances surrounding how the overpayment arose.

Unless a client knows about the deduction, because they need at the very least to be able to tell me what happened before I can start to make an argument that either they're not liable or that it should be waived... if the client has no idea what happened or what the circumstances were, then there's no real leg for me to stand on."

A strong theme from claimant interviews was the impact of a lack of advance notice, and a lack of clarity on deduction rates, on their ability to budget.

A further strong theme from interviews with claimants was the impact of a lack of advance notice, and a lack of clarity on deduction rates, on their ability to budget and the associated stress and anxiety of having to manage a debt. Claimants repeatedly emphasised the desire for better information about how the deduction had been calculated, how the rate had been determined and how long it would last for.

Recommendation: The DWP should urgently develop a system where the key information about deductions is clearly displayed alongside the payment statement on a claimant's online account. It would also be desirable to introduce hyperlinks next to such information, indicating steps to follow if there are concerns about affordability and how to request discretionary measures.

2. Awareness of and information about discretionary measures

The research found that many claimants (and some advisers) were not aware of what discretionary measures were available as a matter of DWP policy.

The survey carried out as a part of this research highlighted limited understanding of what could be asked for. Of respondents other than those reporting deductions for Advance Payments and Third Party Deductions, 22% of respondents were aware that they could request a suspension of their deduction and 34% of respondents that they could request a reduction in the rate of recovery and only 23% were aware of the possibility of waiving the debt.

Of those that were aware of discretionary measures, but did not request them, 20% reported that this was because they didn't know what the process for doing so was.

Survey respondents who were not disabled were significantly more likely to be aware of discretionary measures than disabled claimants.

This was supported by interviews with claimants and advisers. A strong theme was that claimants were not aware of the option to request these at least initially (until they had sought advice or found out from another source), or at all.

A lot of the time, they know there's a deduction and have no idea what to do about it, that they have no recourse for it at all."

One of the advisers we spoke to was also not aware of these measures, or the existence of the BORG.

> "I'll be completely frank with you, I'm not aware of those three different mechanisms, and I'd not realized they'd published guidance."

Lack of information about discretionary measures

The standard Universal Credit Overpayment letter 'UCD367' does not include any information on the right to ask for a waiver, suspension or a reduction in the rate of recovery.

The information included in the letter is limited to a sentence that 'if you struggle to make this repayment call Debt Management on 0800 916 0647'.

You do not need to do anything if you are claiming Universal Credit.

We will take this money back from your monthly payment in instalments. Check your next statement to see what the repayment amount is. If you struggle to make this repayment, call Debt Management on 0800 916 0647.

Extract from UCD367 – Universal Credit overpayment letter (See Annex 2 for full letter)

Similarly information contained on DWP websites signposts people towards contacting Debt Management to 'talk you through your options', but does not include information on what those options might be.

Get help with your repayments

Contact DWP Debt Management if you need help managing your repayments. They can talk you through your options, including what you can afford to pay.

DWP Debt Management contact centre
Telephone: 0800 916 0647
Textphone: 0800 916 0651
NGT text relay (if you cannot hear or speak on the phone): 18001 then 0800 916 0647
Video relay service for British Sign Language (BSL) users - check you can use the service
Calling from abroad: +44 (0)161 904 1233
Monday to Friday, 8am to 7:30pm
Find out about call charges

Screenshot of DWP website at: https://www.gov.uk/benefit-overpayments/how-to-make-a-repayment

Interviews with advisers and claimants, suggested that discretionary measures, in particular the option to request a waiver, was also not consistently referred to when claimants contacted the DWP about their deductions.

Confusion between appeal rights and discretionary measures

PLP casework and research interviews indicated there may be confusion between the availability and suitability of appeal rights and the option to request discretionary measures.

For example, one claimant wrote to the DWP to request that they 'write off' (waive) the overpayment being recovered or 'at the very least suspend all recoveries until an affordable repayment plan is agreed'. This was treated by the DWP as a mandatory reconsideration request. The subsequent mandatory reconsideration notice upheld the overpayment decision stating that 'the current legislation in relation to UC gives the DWP authority to recover overpayments made to claimants regardless of whether the overpayment was caused by DWP'.

This suggests that the DWP treated this as a request for internal review of whether the DWP had the power to recover the overpayment, rather than a request for them to exercise their discretion to waive, or in the alternative suspend and reduce the rate of its recovery.

This is further indicated by a subsequent response sent to the claimant's MP stating that 'there is no record of [the claimant] ever requesting a reduced rate of repayment or applying for a waiver.'

More detail on this interaction can be found in case study 1. A similar experience is detailed in case study 4.

3. Difficulties contacting Debt Management

Currently the standard way to contact Debt Management directly is by phone. Options to contact them directly via the Universal Credit journal or by email are not routinely made available.

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Both claimants and advisors reported that call waiting times for Debt Management were relatively long.

> "There was one time I called and had to hold and hold and hold for them... so that made me give up on communication with them."

Interviews suggested that the first point of contact in relation to deductions was often the Universal Credit team, using the Universal Credit journal, helpline, or the job centre rather than contacting Debt Management directly.

However, interviews with claimants and advisers suggested that Universal Credit staff were not always well equipped to provide information about the debt management options available. This could also lead to delayed conversations where questions were referred to Debt Management.

"The journal essentially didn't help at all... you seem to get different responses, so sometimes you'll get them saying they've contacted debt management and sometimes you'll get them sharing debt management contact information and then some you just don't get any response and you either go back in through the journal or go into debt management directly."

A number of advisers and claimants interviewed for this research referred to a preference for being able to correspond with the DWP, including Debt Management, by writing, for example through the Universal Credit journal, rather than by phone.

The reasons expressed for this preference included:

a. The relative time that each contact route took

"You can write the email quicker than hang on the phone."

"For debt recovery, you have to phone a dedicated number, and we don't do that for people... we haven't got the capacity to do that. We just tell the clients to do it."

b. The desire for a paper trail recording what had been discussed

One claimant emphasised the link between the need for a paper trail and their ability to keep track of what had been agreed:

"I want it in writing so as I can clearly understand what you're asking me, what you're telling me, and that it's not left to my failing short-term memory to recall what you are asking me to do."

The importance of having it in writing was also emphasised for him, as a result of previous negative experiences with DWP where information provided in one interaction was subsequently contradicted in a later interaction. The absence of written correspondence exacerbated his sense of mistrust in his interactions with debt management.

"...That's one of the reason why I feel I can't trust [the DWP]."

Recommendation: The DWP Debt Management Team should open alternative possibilities for claimants to contact them, including text messages and e-mail. Universal Credit and Debt Management teams should work together to enable claimants to contact Debt Management via the Universal Credit journal.

4. Perceived as too difficult a process

The anticipation of a difficult and stressful process was identified in interviews as a key reason why claimants or advisers might not contact debt management.

Of those that were aware of discretionary measures, but did not request them, 25.5% reported that the reason for not doing so was that the process looked stressful and 16.6% that it looked too complex and time consuming.

The anticipation of a difficult and stressful process was identified in interviews as a key reason why claimants or advisers might not contact debt management.

For example, one interviewee had previously successfully requested a temporary reduction in the rate of recovery. The temporary period was due to come to an end, however he was not certain he was going to request a further reduction in rate of recovery due to the difficulties associated with the process.

> "I don't know if I'm going to do it again now… apart from ringing them up and spending hours trying to get through to them… that's the only way you can communicate with them. That's a really awful way of communicating because they hardly every reply and if they do, it's ages later and it's too late."

Interviews with some advisers indicated that they simply did not have the capacity needed to support claimants to engage with the process:

> "We send claimants to do it, because… it would just take so long to actually do that it would eat up the appointment time."

This was exacerbated where there was also a perception of a low likelihood of success, in particular in relation to waiver.

> "I'm aware of how rare it is to get it waived, so that's only if I happen to meet a client with very, very compelling reasons that I bother to try to get it waived."

Interviews also emphasised the context in which this potentially lengthy and difficult process was occurring. For example, one adviser who supports individuals with cancer, noted that individuals trying to focus on their treatment had limited time and energy to prioritise engaging with a difficult process. They also noted the need for a quicker and easier process in a context where individuals had a limited amount of time due to a terminal cancer diagnosis.

> "It's wasted effort and a waste of time, and lots of our clients don't have time because… about 40% of our client group has an incurable cancer, so it's sort of really urgent stuff for them."

A theme from interviewed claimants, was a concern about the impact of taking on the stress of a difficult process when combined with a perceived low likelihood of success. This was particularly the case where there were wider health considerations or other life stresses within someone's life.

I'm reluctant to [further pursue a waiver request] because of the impact it's going to have on my health, and at the end of the day, if I do it, there's still no guarantee that they're going to say yes, we accept it, so I could put in an awful lot of effort, put myself under an awful lot of stress, have my health [impacted], all for nothing."

Interviews with advisers suggested a variation in the frequency with which they advised seeking waivers. A couple of advisers referred to advising clients to pursue alternative debt management approaches (such as Debt Relief Orders) that were perceived as lower hassle but as having a higher chance of success.

5. Anxieties about contacting the DWP

The survey revealed that half of claimants who did contact the DWP were anxious or stressed to speak on the phone.

Many claimants had emotional concerns about judgement and embarrassment when thinking about contacting the DWP about their deduction.

The survey revealed that claimants who did contact the DWP felt embarrassed (52%) or feared that they might be judged (52%) or not taken seriously (55%). Half of claimants were anxious or stressed (52%) to speak on the phone when contacting the DWP. Many were also concerned about aggravating the situation (57%).

Of those that were aware of discretionary measures, but did not request them, the most common reason selected was that they felt uncomfortable doing so (29.4%).

The fear of aggravating the situation was also a theme identified within claimant interviews, for example, a belief that it could trigger a more severe form of recovery or inadvertently triggering a decision to cancel their benefit altogether.

If something like this happens, you feel they might... demand that you pay all at once, or enforce a charge on you or give you a particular timeframe you have to pay it off [by]; so that made me silent."

They might cancel my benefit."

Some of the interviewees also expressed a fear of retaliation. For example, one interviewee expressed a perception that their decision to pursue a waiver request through multiple routes had led to less favourable treatment of him by the DWP in other contexts, linking it to a separate decision to reduce their Personal Independence Payments. PLP is not alleging that such retaliation could or would be adopted by the DWP, however this perception is illustrative of the potential fears that individuals may have when seeking to take action.

I got to the point where I felt I was being singled out because I was willing to stand up and challenging them."

6. Requesting reductions in rate of recovery and suspension

Interviews with claimants and advisers suggested variability in the quality of interactions with debt management when contact was made.

This included negative experiences where debt management representatives seemed ill equipped to advise on potential options. For example, one interviewee reported speaking to a debt management representative who was temporarily working from home while ill. The interviewee reported that the representative appeared not to be clear on the discretionary options available and rejected the request for a reduction in the rate of repayment.

“I tried to phone [debt management] up and say ‘reduce the money we’re paying’ because we can’t survive on it, and we... went through to a lady sitting at home and she didn’t know what to [do] about it, and she said no.”

There were also examples of more positive experiences however. For example, one interviewee contacted debt management after he noticed deductions were being taken from his standard allowance. The debt management representative provided him with a list of debts recorded on the system, and offered to reduce the rate of recovery.

“I rang them up, the guy I spoke to, he was really helpful and he got them cut down to £5 each.”

Unsupported claimants

Interviewed advisers suggested they were, in general, successful when requesting reductions in rate of recovery.

However, there was also a perception that claimants representing themselves were less likely to be successful in their requests. This included advisers referring to their impression from reviewing claimants’ previous attempts to engage with the DWP through their Universal Credit journal prior to them seeking advice.

“You can go back and see their journal entries which haven’t been successful... you’ll hear that they’ve raised it at the job centre directly and not been given any information.”

“Clients have a much harder time talking to the debt management team themselves. The debt management team, I find, are much more willing to listen to me as an adviser when I say these should be reduced.”

This was also reflected in some of the examples from claimant interviews. For example, one participant described making multiple attempts to request a reduction in rate of recovery, without receiving any meaningful reply. He subsequently was successful after seeking advice from a more experienced friend.

Perception of an arbitrary approach

Where requests for reductions in rate of recovery were granted, a theme from interviews was a lack of clarity around how that decision had been reached.

Where requests for reductions in rate of recovery were granted, a theme from interviews was a lack of clarity around how that decision had been reached.

This included a perception that this was arbitrary rather than linked to a considered approach to the evidence of what was affordable and appropriate in the circumstances.

“The amount they’ll reduce it to really depends, whether they’ll put a freeze on it for a number of months depends. Our advisers use the standard financial statement that the money and pension service put together... but the outcomes really do vary... I do wonder whether they’re just plucking out what feels right to them.”

Temporary relief

Where a reduction in rate of recovery or suspension is agreed, DWP policy provides that a review date will normally be set. One of the research participants explained how difficult they found the process of having to go through a difficult renegotiation period at regular intervals.

“Each time [the reduced rate] used to run for like a year or six months... and then the [reduced rate] would stop and then you’d get a really horrible letter [saying] we’re going to take these deductions and it would shoot back up again to a higher amount. You’d have to ring and bring it down, but it would take 4, 5, 6, 7 weeks to actually get someone to OK it... so it was tough going each time.”

Another research participant also reported that their reduced rate of recovery had recently come to an end. However, they stated that they were unsure whether they were going to attempt to renegotiate a replacement rate due to the difficulties they had experienced with the process the first time.

7. Requesting waiver

As set out in the paragraph on waivers at section 4 above only two of the claimants interviewed had requested a waiver, one in relation to an official error overpayment and one in relation to a tax credit overpayment.

The first of these is detailed in case study 1. The second reported that they had requested waiver on the grounds that the debt was over 16 years old and citing hardship related to their disability and the fact they were facing eviction. Their waiver request was refused.

"You can ask for it to be written off and we did and they just said no, we're going to take it. So not really fair in that way, if you've got very big circumstances, like you're disabled or you've been evicted like we were at the time, they didn't take any of that into consideration at all and just carried on taking it."

As noted above, two advisers stated that they did not request waivers due to them being perceived as too much effort for what they understood to be a low chance of success. Of the advisers who did request waivers, most suggested it was rare for requests to be successful, but that they had secured waivers in some instances.

Evidence

Themes from interviews with advisers and claimants who had experience with requesting waivers emphasised challenges related to the evidential burden placed on claimants (see further section 3 above).

In the case of financial hardship, the BORG includes the following non-exhaustive list of what will usually be required:

- a full list of all debts and steps taken to manage the debt with those creditors
- full details of the income and expenditure of the debtor, and where applicable their family, and any other members of the household
- bank statements for the past 6 months and
- any other relevant information for example, job offers etc

It states that the financial problems need to be over an extended period of time with no sign of change. If the claimant has other debts in addition to their debt to DWP, then DWP will consider their overall debt position and the claimant will need to provide evidence that they have sought solutions with all their creditors.[37]

Interviews with claimants suggested that these requirements were experienced as onerous in practice.

"I had to provide all my bank statements, details of my income and outgoings... but then they came back and they said they were unable to reconcile my bank statements with my income and outgoings [so] they needed me to provide invoices and receipts for everything."

37 Paragraphs 8.28 - 8.29, BORG

Interviewers with debt advisers suggested that this process was experienced as more onerous than equivalent interactions with private organisations.

As set out at section 3 above, under the BORG individuals claiming waivers on grounds of ill-health, evidence showing that recovery of the overpayment is or would be detrimental to the health and / or welfare of the debtor or their family.

One adviser who reported successfully requesting waivers, explained that due to the nature of their organisation, they had a relationship directly with the trust that allowed them to more directly access medical records. She in part attributed her relative success rate of requesting waivers to this. However similar arrangements are unlikely to be placed for most other advice organisations (or unsupported individuals.)

In contrast, another adviser described an example of requesting a waiver on behalf of a client with terminal cancer, supported by medical evidence from his clinician, of the negative impact the stress of having an outstanding overpayment debt was having on him. The adviser reported that the request for waiver was rejected on the basis that they would only consider hardship caused by current, live recovery rather than prospective recovery, a situation that the adviser characterised as:

“Although medically… your specialist agrees that this is going to have a deleterious effect on your health, we think that you should have to suffer that before you’ll be considered for waiver.”

The same adviser expressed a perception that there was a tendency on the part of the DWP to minimise what was, in his assessment, compelling evidence of serious harm.

“I don’t really know what good evidence for [medical hardship] looks like. It’s hard to imagine what that would be, certainly beyond my clients’ evidence.”

A lengthy process

Advisers who did request waivers for their clients, consistently described it as being a relatively lengthy and time-consuming process.

The timeline for requesting waiver was described variably as taking “months” or as requiring multiple exchanges with DWP. This included situations which the advisers characterised as time critical.

“I wrote to the debt management team specifically to request a waiver with medical evidence [four months before the date of interview] and we’re still waiting. They’re a very vulnerable household, very time sensitive situation… it’s just impossible to guarantee how quickly it takes; it’s never a quick thing.”

Where waivers were refused, further follow up would further lengthen this process.

For example, one adviser described a case which, having been turned down by the DWP, had been referred as a complaint to the Ombudsman. At the time of interview, it was nearly two years since the initial request for waiver, with the complaint still ongoing.

> "So that's now with the Ombudsman over a year and a half, nearly two years late, after going through all the internal complaints processes, for a man who's got an incurable cancer, who's very severely disabled by it."

Another described a lengthy process of back and forth correspondence of around a year before escalating the case to an MP, which ultimately proved successful. A similar experience is reflected in case study 3.

Confusion with appeal rights

As noted above, some case studies referred to instances where requests for waivers had instead been incorrectly treated as a request for mandatory reconsideration and appeal. This is illustrated in case study 1 and 4.

One research participant who reported that they were neurodivergent, explained how difficulties she had judging tone impacted on her experience of requesting discretionary measures.

Claimants with physical and mental health conditions and neurodivergent claimants

The research found that barriers to accessing discretionary measures were exacerbated for claimants with physical and mental health conditions and neurodivergent claimants.

The research survey found that these respondents, as compared to other respondents were:

- Less likely to know where to ask for help and advice.
- Less likely to have reported receiving a notification about a deduction.
- Less likely to have found communications from the DWP clear and easy to understand.

Interviews with claimants that reported physical or mental health conditions or described themselves as neurodivergent also reflected this.

One research participant who reported that they were neurodivergent, explained how difficulties she had judging tone impacted on her experience of requesting discretionary measures.

Interviews also raised concerns about an apparent failure to make reasonable adjustments in some instances or a lack of understanding of certain conditions.

For example, one research participant described how he had difficulties with his short term memory as a consequence of a stroke. As noted above, the default route for communication with Debt Management is by phone. Following referral to Debt Management, this participant asked if he could be provided with a written form instead, explaining why this was important for him due to the difficulties he had with his short-term memory. These requests were not actioned.

> “I constantly said to them, because I have difficulty on the telephone and my medical report has proved that I have difficulties with what the neurologist described as... my short-term memory; I said to them that I don’t want to do this by telephone can we do it in writing? Can you give me an address to write to? And they have consistently ignored that. All they ever give me is a phone number for debt management... despite me pleading with them time and time again in numerous letters.”

In this advisors experience circumstances which he was confident would be waived by a private sector debtor were less likely to be waived by the DWP.

One of the advisers referred to their perception, based on their experience, that DWP did not appreciate how certain mental health conditions or cognitive disorders could contribute to incurring an overpayment, and how they might constitute relevant considerations for whether a waiver was appropriate. They referred as an example to circumstances where individuals have problems with their memory or impulse control. They also described circumstances in which individuals incurred overpayments when they were experiencing a mental health crisis or having been unexpectedly hospitalised.

The perception of this adviser was that the DWP exhibited less understanding of these considerations than private sector debtors. In their experience circumstances which he was confident would be waived by a private sector debtor were less likely to be waived by the DWP. He also noted, that DWP did not, in his experience use the equivalent standard forms used by the private sector for gathering evidence in these circumstances.

This perspective was also reflected in interviews with some other advisers and claimants who compared DWP’s understanding of the impact of certain conditions, or medications, unfavourably to their experience with private sector debtors.

7 Impact

PLP's research found that:

- Deductions had a negative impact on individual's finances and mental and physical health.
- Claimants with physical and mental health conditions and neurodivergent claimants were more likely to experience those negative impacts.
- The current approach to deductions has a negative impact on individuals' trust and perception of the DWP.

One in three survey respondents reported that they became destitute as a result of deductions.

"It was a lot to us"

Financial hardship and destitution

A third (33%) of survey respondents reported that they became destitute[38] as a result of deductions while over half (55%) reported that the deduction had a negative impact on household finances. 29% reported that they spent less on essentials and 26% that they used food support such as food banks as a result of the deduction. Over a quarter (27%) were unable to afford 2 meals a day for 2 or more days while 9% reported that they had slept rough for one or more nights as a result of a deduction.

These findings were supported by interviews with both advisers and claimants. Interviewed claimants often referred to dealing with deductions by reducing their expenditure on basics and essentials such as food, heating or measures linked to requirements for their health.

> "It was a struggle, you know, sometimes as... bad as... we'd go without food so then we knew that we could feed our kids."

Research participants also emphasised the financial context in which deductions were being applied as important to understanding their impact.

Universal Credit rates are not currently determined with reference to any independent calculation of what amount is required to ensure a minimum standard of living. In April 2024, the basic rate (the Standard Allowance) for a single person was £91 per week.

38 Applying the Joseph Rowntree Foundation definition of destitute under which individuals must not be able to afford two or more essentials to be considered destitute.

A key theme from interviews was the impact of a sudden, and unexpected, reduction in income when finances were already very tight.

Research by the Joseph Rowntree Foundation and the Trussell Trust has shown that current rates are insufficient to cover essentials like food, utilities, vital household items and travel (excluding rent and Council Tax).[39]

As a result, deductions are applied to payments that may already be insufficient to meet people's essential financial needs.

One adviser explained that the people they provided advice to about deductions usually had an existing deficit budget (when an individual's spending commitments exceed the money they have coming in). Their assessment was that *"if you were going to try to do an affordability assessment you would come to the conclusion that no one could afford a deduction"*.

This context is acknowledged within the BORG itself which states that *"the recovery of an overpayment from any person in receipt of benefit is almost certain to cause some hardship and upset for them and their family"*.[40]

A key theme from interviews with both claimants and advisers was the impact of a sudden, and unexpected, reduction in income when finances were already very tight.

> "When you get a letter and you have to owe the country loads and loads of money... and when you aren't rich (it would be alright if you were rich)... but when you've been overpaid and you think you're already on the poor line and then you suddenly get a... letter saying you owe that amount... it does make you angry. Really angry, and a bit scared."

Claimants frequently referenced to the impact of this on existing, fixed commitments and carefully planned budgets.

> "I'm the kind of person that, even before I get paid, I already have budgets for how to spend the money. So getting deductions without notification that makes me feel this isn't fair; this should not be happening because it will totally change my budget."

The unexpected nature of deductions is a particular feature of deductions for overpayments. As discussed further at section 4 above, claimants are often unaware of the existence of overpayments before deductions are triggered, and due to limitations in the information provided, hampered in their ability to budget once they are.

39 Bannister, L. Matejic, P. Porter, I. Sands, S. Schmuecker, K. Wenham, A. Bull, R. Ferrer, I. and Hughes, A. (2023) An Essentials Guarantee: reforming Universal Credit to ensure we can all afford the essentials in hard times. Joseph Rowntree Foundation and Trussell Trust. Available at: https://www.jrf.org.uk/report/guarantee-our-essentials

40 Paragraph 5.74, BORG

Several interviews also emphasised the impact of having to pay back money that they had already spent having assumed it was something they were entitled to, or even having explicitly checked with the DWP that it was correct.

> “I think they have the right to take their money back – but not when they paid me. I think that is a bit unfair because... when I spent the money I didn’t know. If I’d known I [would have] saved the money, I would have put it away, but if I have spent all the money, and then I have to pay them back... from where will I pay [them]?”

Similar examples of this are reflected in case studies 1 and 4 at Annex 3.

Triggering further debt

A further theme from research interviews and survey results was of deductions leading to claimants having to take on further debt, or falling into arrears in relation to other bills, to deal with the resulting shortfall in income.

> “There’s certain bills that we don’t pay, so they can mount up and mount up.”

> “I had budgets; all of that planned out... so it really affected my because I couldn’t pay bills, I couldn’t do certain things, I was restricted financially and it’s really affected me.”

Surveyed repondents reported:

Delaying bill payments:
21%

Taking out additional loans:
21%

Borrowing money from friends and family:
19%

Using a credit card or overdraft:
12%

This was also reflected in survey responses in which 21% of respondents reported delaying bill repayments, 21% taking out additional loans, 19% borrowing money from family and friends and 12% using a credit card or overdraft as a result of the deduction.

One research participant described applying for Universal Credit and having to apply for an advance payment which was then deducted from her future payments. She was subsequently also notified that additional deductions would be taken for an historic child tax credit overpayment. As a consequence of the reduction in her income, she fell into council tax arrears which were then also recovered by way of deductions from her Universal Credit payments.

Advisers similarly raised concerns of a ‘domino effect’ of deductions triggering a wider set of problems, for example, with rent arrears or council tax arrears.

A difficult point in time

A further theme identified from claimant and adviser interviews was of deductions being triggered at a difficult point in time when someone was particularly ill equipped to deal with a reduction in income.

As described in sections 3 and 4 above, deductions can be applied to recover historic overpayments, including those relating to a previous claim that is no longer in payment. In these circumstances, recovery can be 'triggered' when an individual subsequently makes a claim for Universal Credit. Some interviews identified how as a result, recovery of the debt was triggered at precisely the moment when they were in a vulnerable financial position.

For example, one participant described how they had claimed Universal Credit after having to give up their job due to ill health. They described how this was a particularly difficult time for them due to the sudden drop in their income while continuing to face existing spending commitments. This situation was made harder by further deductions then being taken from her payments, including in relation to a historic tax credit overpayment that appears to have been triggered by the opening of the Universal Credit claim.

> "It's cruel... when you work all your life and there is a time when you're going through the hardest time of your life and [the DWP starts taking deductions for a historic tax credit overpayment]. It's really disappointing."

Similarly, an interviewed adviser described providing advice to a client who was recovering from a second kidney transplant and who was in and out of work as a result. The adviser had supported them to apply for Universal Credit. This triggered recovery of a historic overpayment from a previous ESA claim. According to the adviser, this came at a critical point in her client's recovery from her kidney transplant.

> "[She] couldn't pay for food, all her bills. She was really at a critical point where she should be recovering from a kidney transplant, quite a significant health issue, to the point where she couldn't care for herself."

"This wasn't our fault"

A sense of injustice

Many of the government debts recovered by way of deductions have been driven by system design or have been caused by Official Error.

Many of the government debts recovered by way of deductions have been driven by system design or have been caused by Official Error.

Research interviews suggested that recovery in these circumstances was associated with a particularly negative perception of the fairness of the system (as well as the practical consequences for individuals' ability to budget and manage their finances in relation to debts they may not have been aware of prior to their recovery).

Official Error

As described in section 3 above, all Universal Credit overpayments are recoverable, including those caused by a mistake or omission on the DWP's part.

Data provided by the DWP in response to a FOIA request in 2021 showed that 75% of Universal Credit overpayment debts recorded on the debt management system were recorded[41] as due to Official Error.[42] Responses to more recent FOIA requests have stated that this data is no longer available.[43]

Research participants who had been able to identify that the overpayments being recovered had been caused by Official Error described this as feeling particularly unjust.

"I think it's really wrong when they make the mistake... and we're penalized for it."

"Nobody will hold their hand up and say 'yes, we made a mistake, we're really sorry'... and it's always the computers that made a mistake... to me a computer only does what a human tells it to do... the fault is still a human's fault and somebody needs to accept responsibility."

In addition to overpayments that would fall strictly within the definition of Official Error, interviews with advisers and claimants for this research also emphasised how the complexity of the social security system, rules and frameworks and opacity around how payment calculations were made, limited individuals' ability to identify or prevent overpayments from occurring.

"I think it's wrong that they put the onus on you as a claimant to understand their procedures and their systems when in the vast majority of cases, they don't even understand themselves."

Debt by design

Other forms of debt recovered by way of deductions are reflective of how systems are designed.

For example, overpayments and underpayments of Tax Credits were an inherent feature of how that system functioned. Calculation of tax credit

41 DWP response of 18 August 2022 to FOIA request submitted by Magdalena Calley (Ref: FOI2021/61616): https://committees.parliament.uk/writtenevidence/123479/pdf/

42 The FOIA response does not provide the definition of Official Error applied. The definition of Official Error applied by the DWP for the purposes of its annual 'Fraud and Error in the Benefits System' statistics is "where the benefit has been paid incorrectly due to a failure to act, a delay or a mistaken assessment by the DWP... to which no one outside of that department has materially contributed, regardless of whether the business unit has processed that information", available here: https://www.gov.uk/government/statistics/fraud-and-error-in-the-benefit-system-financial-year-2023-to-2024-estimates

43 DWP response of 27 September 2023 to FOIA request submitted by Samuel Willis available at: https://www.whatdotheyknow.com/request/universal_credit_deductions_data_2/response/2133399/attach/3/Response%2069724SHCM%201.pdf?cookie_passthrough=1

awards are calculated based on an estimate of earnings for the year ahead, with reconciliation occurring at the end of the year when a calculation can be based on real earnings.

Similarly, Advance Payments are designed to deal with the issue of the '5 week wait' for Universal Credit. Due to how the Universal Credit system is designed, people claiming Universal Credit for the first time (including those transferring from an existing Legacy Benefit) must wait 5 weeks for their first payment. New Claim Advance Payments and Benefit Transfer Advance Payments were designed to provide support for claimants during this gap before the first payment but has the result of building in debt from the outset of someone's claim.

One claimant described the experience of being required to transfer from Tax Credits to Universal Credit and needing to take out an Advance Payment to cover the resulting gap in payments. They referred to the frustration of feeling forced to incur a debt as a result of a government policy decision.

> "There's a lot of money for something that wasn't our fault. We had to go on Universal Credit [as part of managed migration from Tax Credits]. We had no choice. And then obviously for them to say, OK, you can have this to live on but we've got to take this off you every month... it was a struggle."

They also talked about the stress of having to incur a debt:

> "I wasn't just agitated as [the time I took out the Advance Payment], it was until I paid it off. I knew I owed money, to me it was like, I'm stressed now, because I've borrowed money that I didn't want to. That 12 months [that it took to repay it] was just horrendous."

Historic Debts

Interviewed claimants who had deductions for historic debt also identified this as feeling unjust, in particular when combined with circumstances where the DWP was unable to provide much detail on how the debt was incurred.

> "I feel if somebody cannot explain to you where a debt is coming from, how are they [allowed to recover] it?"

Physical and mental health

42% of survey respondents reported that the deduction impacted their mental health.

42% of survey respondents reported that the deduction impacted their mental health, 33% that it impacted negatively on the well-being of their family and 30% that it impacted negatively on their physical health.

A common theme from interviews with claimants and advisers, was of the stress associated with being in debt, exacerbated by the system design.

“Having a lot of debt over your head, it is worrying.”

“I was... confused, overwhelmed, stressed out, all sorts of things... [I] couldn’t have enough sleep because of all these things.”

Impact on claimants with physical and mental health conditions and neurodivergent claimants

This research was clear on the disproportionate impact deductions have on individuals with physical and mental health conditions and neurodivergent individuals.

This research was clear on the disproportionate impact deductions have on individuals with physical and mental health conditions and neurodivergent individuals. The survey revealed that this group was more likely to be made destitute[9] and for their household finances to be negatively affected.[10] 60% of respondents with disabilities reported a negative impact of deductions on their mental health, compared to 32% of those without disabilities.

These findings were consistent with interviews. For example, one of the participants, who was a full-time wheelchair user, had to cut her energy use which impacted her hygiene. Another reported difficulties in heating the house and getting to hospital appointments after her husband’s serious operations. She also said his special dietary requirements, stemming from medical needs, were constantly compromised due to money shortages. One participant who reported having complex Post Traumatic Stress Disorder (PTSD) described how the stress of dealing with the deduction aggravated his condition.

Annex 1: Full list of recommendations to the DWP

Affordability and individual circumstances

1. The cap for overpayments deductions should be lowered further.
2. The DWP should carry out a proactive assessment of claimants' individual circumstances and their ability to repay before the recovery of debt is triggered.
3. The DWP should use the data available to it to identify vulnerabilities before the deduction can be applied.
4. Claimants should be contacted before the recovery is triggered to establish an affordable repayment plan, tailored to their needs.

Advance payments

5. Advances should be treated as non-recoverable grants and only recovered when the claim turns out to be fraudulent.

Tax Credit Overpayments

6. Tax credit overpayments older than six years should be automatically written off, in line with the statutory limitation period that applies to recovery of debts via the courts.
7. The DWP should only recover tax credit overpayments in exceptional circumstances, or if it can be shown that the claimant could not reasonably be expected to think that their payments were right.
8. The DWP should update the Memorandum of Understanding with the HMRC to require a more specific information about debt, in order to provide more comprehensive information about the debt to claimants.

Official Error Overpayments

9. Official Error overpayments should only be recovered in exceptional circumstances and written off by default.
10. The DWP should develop an error strategy to reduce the prevalence of official error overpayments.

Third Party Deductions

11. The DWP should develop mechanisms to ensure third-party deductions from Universal Credit are not taken without claimants' consent and during the process of disputing or renegotiating the debt with the creditor.

Communications

12. The DWP should amend its working practices so that claimants are told in a clear and accessible way:

a. that deductions will be taken from their award;

b. how the overpayment occurred, what period it relates to and what category of debt is owed;

c. the total amount owed; and

d. how the rate of recovery was determined and how long the recovery will last.

13. When the DWP corresponds with a claimant about an overpayment or a deduction, it should clearly refer to the claimant's right to request that the deduction be waived, suspended, or recovered at a lower rate.

14. The DWP should urgently develop a system where all the information about deductions is clearly displayed on the Universal Credit journal, for example by clicking on the "deduction" on the monthly UC calculation. It would also be desirable to introduce hyperlinks next to such information, indicating steps to follow in order to request hardship measures.

15. The DWP should establish a cooperation strategy between their Universal Credit and Debt Management departments, enabling claimants to navigate more easily between the two when seeking information regarding a deduction.

16. PLP recommends that the DWP revise its communications to clearly state:

a. that claimants have the right to challenge any underlying decisions that the claimant has been overpaid via Mandatory Reconsideration, and

b. whether, where the claimant has been overpaid, that overpayment can be recovered in law (such as those caused by official error in relation to benefits other than UC, new style JSA and ESA).

17. The DWP Debt Management Team should open alternative possibilities for claimants to contact them, including text messages and e-mail. UC and Debt Management teams should work together to enable claimants to contact Debt Management via the Universal Credit Journal.

Other recommendations

18. The DWP should develop mechanisms to ensure it does not recover debt from claimants during "breathing space" (debt respite scheme) and/or after Debt Relief Order/Minimum Asset Process.

Annex 2: Template form UCD367

FREEPOST DWP
Universal Credit Full Service

If you call us, please have the answers to your security questions ready

www.gov.uk/universalcredit

Telephone: 0800 328 5644
Textphone: 0800 328 1344

You have been paid more Universal Credit than you are entitled to.

This will now be taken back.

Dear

You were overpaid £0.00 <insert 'on' date or 'from' date range 'to'>. This is because <insert reason>.

You do not need to do anything if you are claiming Universal Credit.

We will take this money back from your monthly payment in instalments. Check your next statement to see what the repayment amount is. If you struggle to make this repayment, call Debt Management on 0800 916 0647.

You can pay this money back now in full if you do not want us to take it from your monthly payment. You can also make a part payment. Ways to pay:

Online banking
Account name: DWP Debt Management
Sort code: 60-70-80
Account number: 10025634
Reference: Your National Insurance number

Debit card or direct debit
Telephone: 0800 916 0647
Textphone: 0800 916 0651
Opening times: Monday to Friday 8am to 7:30pm

Use your journal to contact us if you have any questions.

You can also call us on the number above. To speak to an agent in Welsh, please call: 0800 328 1744.

We have many different ways we can communicate with you.

If you would like Braille, British Sign Language, a hearing loop, translations, large print, audio or something else please tell us using the phone number at the top of this letter.

Please turn over

Universal Credit is operated by the Department for Work and Pensions

UCD367
Page 1 of 3

If you stop claiming Universal Credit, Debt Management will contact you with alternative ways to pay.

If you do not respond to this contact, we can take the money directly from your wages. The law allows us to do this without applying to a Civil Court and your employer is legally bound to comply if requested to do so. The amount your employer will take will depend on the amount you earn. Your employer may also charge you an administration fee; this will not exceed £1 for each payment taken from your earnings.

Yours sincerely,

Universal Credit

UCD367
Page 2 of 3

If you disagree with a decision

You can ask us to explain why

You, or someone who has the authority to act for you, can phone us or use your journal to request a written explanation. You will need to do this within **one month** of the date of this letter.

You can also ask us to reconsider a decision

Tell us if you have more information, or if you think we have overlooked something which might change the decision. Do this within one month of the date on this letter.

We will look at what you tell us and send you a letter to tell you what we have decided, and why. We call this letter a Mandatory Reconsideration Notice.

When you have done this you can appeal

If you disagree with the Mandatory Reconsideration Notice, you can appeal to a tribunal.

You must wait for the Mandatory Reconsideration Notice before you start an appeal.

Treating people fairly

We are committed to the Equality Act 2010 and treating people fairly. To find out more about this law, search 'Equality' on **www.gov.uk**

Call charges

Calls to 0800 numbers are free from personal mobiles and landlines.

Why DWP needs personal information and how we treat it

We treat personal information carefully. We may use it for any of our purposes. To learn more about information rights and how we use information, please see our DWP Personal Information Charter at **www.gov.uk/dwp/personal-information-charter**

UCD367
Page 3 of 3

Annex 3: Case studies

Case study 1

Summary: A was overpaid new style Employment Support Allowance (ESA) due to a DWP error. This was despite A repeatedly checking the accuracy of this with the DWP. After receiving repeated assurances that it was correct, A spent the money on a neurological assessment and on paying an increase in his Council Tax bill (which had been caused by the impact of the incorrect eligibility decision on his eligibility for Council Tax Reduction). After initial difficulties contacting Debt Management, A requested that the DWP waive recovery. The DWP incorrectly treated this as request for Mandatory Reconsideration. With the support of his MP, A submitted a further waiver request (alongside a parallel complaint). The DWP refused this request. Following intervention by PLP on A's behalf the DWP agreed to waive recovery.

A had a stroke a number of years ago which resulted in a significant and ongoing neurological impact. He had a number of other health conditions which amongst other things were impacted by stress.

In 2020, he was awarded Universal Credit (UC) with Limited Capability for Work Related Activity (LCWRA) and ESA.

He subsequently received a communication from the DWP advising him that his entitlement to ESA would end in January 2021. However, in July 2021 he received a further DWP message that indicated he was still receiving ESA. He responded to this message noting the previous correspondence advising he was no longer eligible and asking the DWP to clarify.

A DWP agent responded to say that they had checked the system and A had been (re)awarded ESA and a back payment (for the period since January 2021 when he had not been receiving ESA) would be issued to him.

A replied to ask whether that was correct, noting the previous letter. The DWP again responded to say A had been assessed as entitled for ESA and that a back payment was due to him. The £4,553 back payment subsequently arrived in his bank account.

The DWP notified the local authority that this lump sum had been paid. This in turn was assessed by the local authority as impacting his eligibility for Council Tax Reduction. As a result he was issued with a higher Council Tax bill. A wrote on his UC journal twice about this raising concerns that he had been negatively impacted as a result of the DWP's error.

He received no response to these messages. However on 16 October 2021 he received a message on his journal informing him he has been overpaid £2,745.21 as he had 'received a late payment of £4,553.07' when he 'had already received a payment', In response, A attempted to call Debt Management but was told to call back as the system was down. He then raised his concerns on his UC journal and in a formal complaint. In his complaint he noted that he had done all he could to verify the accuracy of the payment; that most of the money had been used to by the council tax bill and for neurological assessment and that he would not have paid for the assessment if he knew DWP would ask for money back.

In November 2021, he received a second letter from the DWP notifying him he had been overpaid £1,356.86 as he had 'received a late payment of [ESA] when he had already received payment'.

Four days later he received a response to his complaint. The DWP apologised for:

- Sending two overpayment letters rather than one,
- Debt Management terminating his call,
- Failing to meet deadlines
- The delay in notifying him of the overpayment
- Causing A stress and frustration

However if also stated that all UC overpayments, including those 'arising wholly as a result of official error' were recoverable and that they were 'required to recover all overpayments incurred'. It did not include any reference to the Benefit Overpayment Recovery Guide and the DWP's policy on waiver.

On 26 November, Mr A requested a revised response to his complaint. In his letter A asked that DWP 'write-off' the overpayment amount, or at the very least suspend recoveries until an affordable repayment plan was entered into. In support of this he noted that

- The overpayment had caused him significant financial hardship through no fault of his own
- That having checked the validity of the arrears payment, he had spent it on medical care that he would not have otherwise entered into and paid the additional Council Tax Bill.

This was treated as a Mandatory Reconsideration request by the DWP. A Mandatory Reconsideration Notice on 30 November 2021. It upheld the overpayment decision noting again that the DWP has authority to recover overpayments regardless of whether they were caused by the DWP.

A's MP referred his complaint to the Independent Case Examiner (ICE) on 28 April 2022. There were some delays in the ICE processing of the complaint due to the MP's office failing to provide relevant information to the ICE on time. On 19 April 2023, when it appeared as though the ICE would not be considering the complaint due to these failures, A's MP wrote to the Minister of State for Disabled People, Health and Work to raise the issue.

On 31 May 2023, the Minister responded. The response noted that claimants with similar concerns to A had the option of negotiating reduced repayment plans or requesting a waiver.

Despite A having clearly requested waiver or suspension in his message of 26 November 2021, the Minister wrote that he was advised there was no record of A ever requesting a reduced rate of repayment or applying for a waiver.

A's MP assisted him in making another waiver request on 16 June 2023. It highlighted the financial hardship A was experiencing as a result of the recovery of the overpayment and asked the DWP to account of the fact that A:

- Had provided all relevant information to the DWP
- Was incorrectly advised by the DWP that there was no overpayment and therefore reasonably assumed that he was entitled to keep and use the money
- Had therefore used the money for medical bills and the increased council tax bill
- That paying back that money now would cause unfairness having relied upon the advice from the DWP to his detriment
- Had a reasonable expectation that he was entitled to the payments made.

On 27 July 2023 the ICE sent their complaint resolution letter to Mr which stated that the DWP intended to offer him a sincere written apology and a consolatory payment of £75. A accepted this offer without prejudice but did not initially receive the apology or the payment.

The DWP responded on 5 August 2023 and refused to waive the recovery of the debt. This time, the DWP did not accept there had been a DWP error although they conceded it was 'not an ideal customer journey'. The decision letter indicated that the principal reason for refusing the request was insufficient evidence of financial hardship. It requested that A provide evidence of bills, bank statements and information on all other debts (including any correspondence with the creditors relating to recovery of these debts). It did not engage with the detrimental reliance argument put forward by A1.[1]

A was concerned about the impact that the stress associated with gathering additional financial information would have on his condition. He has a health condition that reacts to triggers such as stress, fear, anxiety and excitement. The stress of the overpayment recovery had had a significant impact on his health, something he highlighted in multiple messages to the DWP and which was corroborated by a neurological assessment report which stated he was experiencing 'extremely high levels of stress… due to current difficulties with the [DWP]'.

Public Law Project subsequently issued a Pre-Action Protocol letter (a pre-cursor to Judicial Review) on his behalf following which the DWP agreed to waive recovery.

1 This communication occurred after judgment in R. (on the application of K) v Secretary of State For Work and Pensions [2023] EWHC 233 (Admin) (hereafter R(K) v SSWP): https://www.bailii.org/ew/cases/EWHC/Admin/2023/233.html in which the court found that the claimant in that case had a legitimate expectation that she was entitled to the amount she received after receiving assurances she was entitled to it, which the DWP had breached by trying to recover it from her as an overpayment. For more detail on this case see case study 4.

Case study 2

Summary: B was overpaid UC first due to the DWP failing to take into account a University stipend (a grant) and then incorrectly treating that stipend as a loan. This was despite B having declared this information and provided the relevant documentation on a number of occasions. The second overpayment was identified after B contacted the DWP after he heard other students had had similar difficulties. Following intervention by PLP on B's behalf the DWP agreed to waive recovery.

B had served in the British Armed Forces in Afghanistan. He was subsequently diagnosed with anxiety, depression, Post Traumatic Stress Disorder (PTSD) and high blood pressure. He had a history of self-harm and a condition that flares up when under heightened stress.

B first claimed UC in November 2019. He began a PhD course in October 2021 and was granted a stipend. He informed the DWP about this and sent them all of the relevant information. He responded to two sets of follow up questions to this by the DWP, answering the questions asked. Despite this, the DWP failed to take the stipend into account for the purposes of calculating B's award, resulting in an overpayment.

B requested a Mandatory Reconsideration of this on the basis that the DWP had got the start date of the course wrong (and therefore calculated the amount of the overpayment incorrectly). The Mandatory Reconsideration Notice upheld the original decision

B subsequently received injury compensation. This should not have impacted on B's eligibility for UC. However, the DWP incorrectly treated it as impacting his eligibility and therefore closed his claim. B successfully challenged this incorrect decision and restarted his claim. He was again asked by the DWP to provide information on his student finance, which he did.

B later heard from other PhD students that they had experienced issues with the DWP's calculation of their UC entitlement linked to stipends. He assumed this would be because they had not submitted evidence (which he had). However, his anxiety about this led him to check this again via his UC journal.

The DWP responded on 7 August 2023 setting out their calculation on the basis that Mr B was receiving student loan. He responded the next day to state that he did not receive a student loan, he received a stipend (grant).

On 12 August 2023, the DWP responded to say he had been overpaid as the DWP had incorrectly treated the stipend as a loan rather than a grant. On 23 August he received an official overpayment letter stating he had been overpaid £10,480.05 as his student income had been recalculated.

Following intervention by PLP on B's behalf, the DWP agreed to waive recovery.

Case Study 3

Summary: C was overpaid Universal Credit due to the DWP failing to take into account income from her Widow's Pension. She had informed the DWP that she received this and had been assured that it would not affect her claim. She relied on that assurance and spent the money she received on daily living expenses. Four years later the DWP contacted her to inform her that they would be recovering the resulting overpayment of £7258.08. She contacted the DWP to object. This was treated as a Mandatory Reconsideration request which was refused on the basis that the DWP was entitled to recover overpayments however caused. She subsequently received a further overpayment letter which appeared to relate to the fact that the DWP had again miscalculated the amount owed. With the support of PLP she sent a pre-action protocol (PAP) letter (a precursor to Judicial Review] following which the DWP agreed to waive recovery.

C has health issues and is disabled. One of her health conditions meant she is often in pain and is often very fatigued. In July 2019 she was moved from Child Tax Credits to UC following a change in circumstances.

At her initial appointment with UC she informed the work coach that she was in receipt of a Widow's Pension and provided him with the details including the amount she was receiving.

She, and the friend who attended with her, recalls being informed by the Work Coach that it would not be enough to affect her claim. This did not seem unlikely to Mrs C as it had not affected her previous CTC claim. She trusted that the work coach knew the position and relied on his assurance. She recalled that she had signed a claimant commitment which included a statement that as a corollary of her meeting her commitments, she could expect the DWP to provide her with accurate information.

From July 2019 onwards she received UC and assumed that the amount she was receiving was correct. She spent it on essential day to day living expenses such as food.

On 9 August 2023 she received a journal message enclosing a letter (template UCD367) informing her her UC had been updated with the details of the occupational pension she received which had generated an overpayment of £7258.08.

She noted that the letter included the following wording:

If you disagree with a decision

You can ask us to explain why

You, or someone who has the authority to act for you, can phone us or use your journal to request a written explanation. You will need to do this within **one month** of the date of this letter.

You can also ask us to reconsider a decision

> Tell us if you have more information, or if you think we have overlooked something which might change the decision. Do this within one month of the date on this letter.
>
> We will look at what you tell us and send you a letter to tell you what we have decided, and why. We call this letter a Mandatory Reconsideration Notice.
>
> **When you have done this you can appeal**
>
> If you disagree with the Mandatory Reconsideration Notice, you can appeal to a tribunal.
>
> You must wait for the Mandatory Reconsideration Notice before you start an appeal.

In light of this, she sent a message to the DWP on 9 August noting it was unacceptable that the overpayment would be recovered as she had done what she was asked to do and declared her pension at the start of her claim. She asked the DWP to call her as soon as possible to discuss it and stated she wished to appeal the decision.

This was treated as a Mandatory Reconsideration (MR) request. DWP issued a Mandatory Reconsideration Notice (MRN) setting out its decision on 15 August 2023. It acknowledged that C had declared her Widow's Pension when she submitted her claim but maintained its decision to recover the overpayment on the basis that the DWP had authority to 'recover overpayments made to claimants regardless of whether the overpayment was caused by DWP'. It stated that if she disagreed, she could appeal.

It also stated that having reviewed the overpayment as part of the MR, the DWP had identified it had previously miscalculated it and that the overpayment amount was in fact larger.

Neither the initial overpayment letter nor the MRN made reference to the Benefit Overpayment Recovery Guide and the DWP's policy on waiver.

On 17 October, C was issued a further overpayment letter referring to a further overpayment of £34.12. This appeared to related to the DWP having again incorrectly calculated the payment.

These repeated instances of miscalculation compounded C's frustration and heightened her anxiety that these mistakes would be made again in future, leading to her being in further debt which she had no power to avoid.

She was also left unclear as to what the total overpayment sum was.

Her mental health deteriorated because of the overpayment decision. It exacerbated her anxiety. She found herself constantly thinking about the overpayment and how she would pay it back and the impact that it would have on her health. It had also impacted on her physical condition, exacerbating her symptoms.

Following referral to PLP a pre-action protocol letter was sent to the DWP following with it agreed to waive recovery.

Case study 4

Summary: K was overpaid Universal Credit (UC) due to a DWP mistake. K appealed the DWP's decision to recover it. The appeal Tribunal confirmed that K had taken 'all reasonable steps to repeatedly clarify her entitlement' and that it had been caused by the DWP's error1. However, the Tribunal had no power to overturn the decision due to the DWP having the statutory power to recover overpayments however caused. K then made repeated requests to the DWP to waive recovery. However, these were 'rebuffed without consideration'2 by DWP officials who incorrectly denied they had discretion to consider waiver. Only following pre-action correspondence (a pre-cursor to Judicial Review) did the DWP consider whether to waive the overpayment. There followed three decisions all refusing to waive the overpayment. Following a subsequent Judicial Review, each of these three decisions were found to be unlawful.

K is a single parent of two young disabled adults (A and B), both of whom have complex needs that require daily support. She works part time but due to her caring responsibilities is unable to increase her working hours.

In April 2019, K claimed Universal Credit (UC) inclusive of the Child and Disabled Child (CDC) elements. In July 2019, A began an apprenticeship which combined work and college study. K reported this to the DWP at the time. A's participation in the apprenticeship meant that K was no longer entitled to CDC. However, the DWP continued to incorrectly pay her the CDC element of UC. K queried this at a meeting with her caseworker in September 2019 and was reassured that A should stay on her claim. K followed up the same day, again informing the DWP via her UC journal. DWP continued to pay her the CDC element.

K again queried her entitlement in January 2020 via her UC journal. DWP's internal records suggest that while some consideration was given to this, no one responded to K's query and she continued to be paid the CDC element.

In June 2020 K again contacted the DWP via her UC journal. A DWP official responded to say that the DWP would continue to pay CDC in relation to A until his course ended. In January 2021 K contacted the DWP again in relation to a different change of circumstance. It was at this stage that a DWP official spotted the error in the calculation, resulting in the DWP notifying K that they would be recovering the resulting overpayment of £8623.20.

K submitted a complaint about this in February 2021. The response to this in March 2021 informed her that the overpayment was with the Debt Recovery Team and that she could apply for a waiver on health or financial grounds.

In March 2021 K made a request for Mandatory Reconsideration which she then further appealed to the First Tier Tribunal (the FTT). The FTT noted that K had taken 'all reasonable steps to repeatedly clarify her entitlement and provide information' and that the DWP had 'repeatedly miscalculated her entitlement'. The FTT concluded the overpayment had occurred due to official error, however the FTT was bound by the law to uphold the DWP's decision to recover it (due to the fact that s 71ZB Social Security Administration Act 1992 permits recovery of overpayments due to official error).

In June 2021, with the assistance of an advice centre, K wrote to the Debt Management team to request a waiver. No response was received and so the request was resent in August 2021 accompanied by further evidence.

K chased this again in September 2021 via her UC Journal. The DWP responded to say that her documentation had been received but that as she had 'gone through both the Mandatory Reconsideration route and the Tribunal route and both of these have upheld our decision', there are 'no further routes' by which to challenge the overpayment and they would have to keep deducting it from payments.

K responded the same day, drawing the DWP's attention to the sections of the DWP's Benefit Overpayment Recovery Guide (BORG) regarding waiver.

The DWP again responded to reiterate that 'as I have stated previously the routes for you to challenge an overpayment with Universal Credit are Mandatory Reconsiderations and a tribunal following an upheld Mandatory Reconsideration. Neither myself or anyone working for Universal Credit can reconsider your overpayment as you have exhausted all appeal routes with us. The legislation you have quoted does not apply directly to the processes that we have here.'3

K was then supported by PLP to submit a pre-action protocol (PAP) letter4. In response, the DWP for the first time gave substantive consideration to the request for waiver. The request was rejected. It did however state that discretion would be exercised to suspend recovery.

It subsequently transpired (in the course of court proceedings) that the suspension related to deductions for a distinct Carer's Allowance (CA) overpayment that K was not previously aware of. The UC overpayment had been automatically suspended until the CA overpayment was fully recovered (as the CA was first in time and took precedence).

K submitted a further PAP letter and further evidence in support of her waiver request. On 20 December 2021, the DWP made a further waiver decision taking into account the newly submitted evidence and again rejected the request.

On 18 January 2022 a claim for Judicial Review was submitted. The subsequent judgment found that all three of the waiver refusal decisions were unlawful. In addition it found that the Secretary of State for Work and Pensions had breached K's legitimate expectation by promising that she was entitled to the money and then later reneging on that promise by trying to recover it from her as an overpayment.

Full details of the judgment and the facts of the case can be found here: https://publiclawproject.org.uk/latest/dwp-acted-unlawfully-in-seeking-to-recover-8k-of-clients-debt-accrued-through-own-error/

publiclawproject.org.uk