

# Guide to

## Social Welfare Overpayments

*You can find a more detailed guide on this issue on the websites of [FLAC](#) and [Community Law & Mediation](#).*

An overpayment is a debt owed to the **Department of Social Protection** because a Deciding Officer of the Department has issued a new decision that a claimant (the person receiving a payment) was not entitled to a payment, or was entitled to a lower payment, for a specified period. An overpayment can result from:

- an error made by the claimant or the Department; or
- the claimant not informing the Department of a change in circumstances; or
- the claimant intentionally giving false information to receive a payment.

### How will I know that an overpayment has happened?

You should receive two separate notifications by letter from the Department of Social Protection. It is very important that you deal with each of these appropriately.

1. **A decision by a Deciding Officer:** This letter informs you of a revised (new) decision of a Deciding Officer. It states that you were not entitled to a payment for a particular period for specific reasons. You may **appeal** this decision to the Social Welfare Appeals Office (see below).
2. **The debt recovery letter:** This letter outlines your options for paying the debt to the Department and is sent on the basis that you are not disputing the decision of the Deciding Officer by submitting an appeal to the Social Welfare Appeals Office. This letter is sent by an officer in the Department authorised to recover the stated debt due, this person is known as an Authorised Officer. If you agree to repay the stated debt, you must be given the opportunity to comment on the amount and method of repayment the Department is proposing. If you are disputing the overpayment, and have started an appeal to the **Social Welfare Appeals Office**, you will need to inform the Department of Social Protection (more below).

Sometimes both letters are sent to the claimant at the same time, which can be confusing. It is thus important that you as claimant appeal the letter which contains the Deciding Officer's revised (new) decision to the Social Welfare Appeals Office if you wish to challenge the overpayment. If you choose to appeal the decision of the Deciding Officer [the first letter] you need to write to the official in the Department who sent the second letter (the debt recovery letter) advising that you are challenging the basis of the overpayment decision.

If the Department starts to recover money from you before you receive a decision from a Deciding Officer, you should request such a decision **in writing**, so that you have the option to appeal.

### Challenging the decision of the Deciding Officer

You have the right to appeal the revised decision of the Deciding Officer to the Social Welfare Appeals Office. You may wish to apply for legal advice from the **Legal Aid Board** (see also **FLAC's Guide to Making a Social Welfare Appeal**): Here are some steps to be followed when making an appeal:

- Submit an appeal form to the Appeals Office. This form can be downloaded from the Appeals Office or be obtained from a local Intreo or social welfare office. This must be done **within 21 days** of the

date of the Deciding Officer's decision. It is at the discretion of the Chief Appeals Officer to decide whether or not to accept late appeals.

- When filling out the appeal form, you should also **request an oral hearing**. This gives you the opportunity to state your case in circumstances where it is often difficult to do this in writing.
- When making an appeal, it is recommended that you **seek advice**. Organisations that may be able to provide help include **Citizens Information Centres (CICs)**, the **Money Advice and Budgeting Service (MABS)** as it is a debt, and Independent Law Centres (see 'Resources' on back page).
- You should also **write to the Authorised Officer** in the Recovery Unit, requesting that the Department take no action to recover the debt while the matter is with the Appeals Office.
- You should also **seek all records** from the Department of Social Protection in relation to your claim, including the decision that you were overpaid. You should be careful to state in this letter that you are doing so in accordance with the provisions of the **Freedom of Information Act**. See FLAC's **Guide on Making a Freedom of Information Request**.

## What will the Social Welfare Appeals Office examine?

Firstly, the Appeals Officer will want to find out whether the facts presented by each side are correct. Secondly, he/she will wish to establish whether or not the claimant acted in good faith.

In a situation where the facts are not in dispute, but the claimant acted in good faith, the Appeals Officer may examine any mitigating factors. Such factors refer to circumstances or evidence relevant to how the debt arose, what each side did or did not do, and why. As well as examining the particular circumstances of the claimant, the Appeals Officer will consider the degree to which either party should be held to account for failing to meet their respective obligations. This can include the Department's duty to provide adequate information or to maintain a claim, and the claimant's obligation to disclose a change of circumstances. In summary, the Appeals Officer tries to decide whether it is fair and reasonable that the Deciding Officer made a retrospective decision with the effect that a person is found liable for a debt.

The Appeals Officer should consider all relevant matters in order to decide whether the Deciding Officer's decision was fair and reasonable. If the appeal is successful, the debt is cancelled. If the appeal is unsuccessful, the debt will be recovered. However, the way in which the Department recovers the debt and the amount it can seek as a regular payment can still be negotiated, if you provide good arguments.

## Recovery of the debt

Where an overpayment is not appealed or where an appeal fails, the Authorised Officer will start to recover the debt. Before recovery can begin, the Department must meet some requirements:

- It must inform you of the proposed method of recovery;
- It must give you an opportunity to reply to this proposal, your reply could include facts/evidence relevant to the person's capacity to pay; and
- It must consider any views/facts/circumstances you put forward **before** making any deduction.

Please note that **the Authorised Officer on behalf of the Department will generally propose the maximum amount permitted by law, which is 15% of any payment you are receiving**. However **the Department can recover more than 15%, but only if the claimant consents to this in writing**. You should seek advice before signing and consenting to any agreement that allows the Department to recover more than 15%.

Before you consent to any repayments, you are advised to **make a Freedom of Information request** to the Department, if you have not already done so (see above under 'Challenging the decision'). You should also request that recovery be postponed until such time as you have had the chance to respond to the Department's proposal on an informed basis.

It is also very important that that you **consider your capacity to pay before you agree to a repayment proposal**. If the amount you can pay is less than what the Department is seeking, you need to inform the Department in writing and provide credible evidence in support of this. MABS can assist in this regard by drawing up a Standard Financial Statement [SFS] on your behalf, which can be submitted to the Department with any supporting evidence.

When you are submitting this evidence to the Department, you should request that any response be sent in writing to confirm acceptance of the repayment amount or, if it is rejected, the reasons for doing so.

### How much can the Department recover?

If you are receiving a social welfare payment, the Department can now legally recover up to 15% of your personal weekly rate of payment without your consent. This power to deduct only applies to payments to which you as debtor are personally entitled. In the case of Child Benefit, deductions cannot be made unless the debt relates to a Child Benefit overpayment.

The authority of the Department to recover up to 15% of your social welfare payment is not absolute; that is, the Department must consider if it is appropriate to recover this amount, and in so doing they must have due regard to your ability to pay. When considering a person's ability to repay at a particular rate, you as claimant should submit all relevant household income and expenditure details. The Department should consider not only your weekly income and expenditure, but they should also have regard to how sustainable a proposed repayment rate will be in the long term. This is particularly relevant in the case of larger overpayments. It is important to note that there is no minimum amount the Department must recover on a weekly basis.

If your social welfare payment is reduced by 15% because you are repaying a debt to the Department, you cannot claim Supplementary Welfare Allowance (basic income payment), even if your income is regarded as insufficient to meet your basic needs. The Department can also deduct up to 15% of your weekly wages/earnings, and/or recover money held in a financial institution, provided this does not make you eligible for Supplementary Welfare Allowance.

### Can the debt be cancelled or reduced?

As well as appealing the Deciding Officer's revised decision in relation to an overpayment, it is also possible to apply to have the debt cancelled or reduced on a number of grounds.

- Firstly, if the debt occurred because of Departmental error, or the Department failed to act promptly on information received, you could make a case that the debt should be reduced or cancelled. However, you must demonstrate that you could not reasonably have been expected to be aware that a failure or error had occurred
- Secondly, an overpayment may be reduced or cancelled by the amount of another social welfare payment to which you would have been entitled during the same period. You cannot request that an overpayment be 'offset' by another social welfare payment that you would have been entitled to if the Department claims that you acted fraudulently. This restriction does not apply to decisions made before 29 June 2011.
- Thirdly, the Department may write off a debt where there is no possibility of recovery.

### Other situations

**Historical overpayments:** In relation to the recovery of a debt caused by an overpayment, claimants do not have the protection of legal time limits that would usually apply in the case of debt recovery. However, if

the Department failed to act within a reasonable timeframe to recover a debt and the claimant challenges the basis of the overpayment, the claimant should get legal advice.

**Estate cases:** ‘Estate cases’ refer to recovery of overpayments from the estate of a deceased person, which means all the assets he or she leaves in the will. Here the personal representative (known as the executor) acting for the dead person’s estate is legally obliged to disclose the deceased person’s assets to the Department before the estate is distributed. You should refer to the **Department guidelines on this issue**.

## What if the Department rejects my debt recovery proposal?

In this instance, you should consider whether you have grounds to make a complaint to the **Office of the Ombudsman**, whose role is to establish whether a decision by a public body is fair. You must have already tried to make your case to the Department and either been rejected or not received any answer. It is important to note that you cannot appeal the decision of an Authorised Officer to the Social Welfare Appeals Office.

You may also **seek independent legal advice**, to investigate if there are any legal avenues available to challenge the recovery of money by the Department. Legal advice can be obtained from a private solicitor or an independent law centre or you can apply to the Legal Aid Board. You can as a first step make contact with relevant frontline organisations which provide advice on social welfare law and/or debt - see below for a full list.

## Resources

### Department of Social Protection

- Overpayment Recovery – Guidelines on Recovery of Debt [Feb 2013]: <http://bit.ly/OPguide>
- Prosecution Criteria for Department: <http://bit.ly/DSPprosec>
- Decision Making and Natural Justice: <http://bit.ly/DSPnatjust>
- Estate cases: <http://bit.ly/DSPestates>

### FLAC (Free Legal Advice Centres)

- Making a Social Welfare Appeal: <http://bit.ly/SWAOguide>
- Making a Freedom of Information Request: <http://bit.ly/FOIguide15>

### Relevant bodies

- **Social Welfare Appeals Office:** <http://www.socialwelfareappeals.ie/>
- **Office of the Ombudsman:** <http://www.ombudsman.gov.ie/en/>
- **Citizens Information Centres:** <http://www.citizensinformation.ie/en/>
- **MABS:** Money Advice & Budgeting Service – [www.mabs.ie](http://www.mabs.ie) Helpline: 0761 07 2000

### Independent Law Centres:

- **FLAC (Free Legal Advice Centres):** [www.flac.ie](http://www.flac.ie)
- **Community Law and Mediation:** [www.communitylawandmediation.ie](http://www.communitylawandmediation.ie)
- **Ballymun Community Law Centre:** [www.bclc.ie](http://www.bclc.ie)
- **Mercy Law Resource Centre:** [www.mercylaw.ie](http://www.mercylaw.ie)
- **Community Law and Mediation Limerick:** <http://bit.ly/CLMLim>