

Tax credits – challenging decisions



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Child Poverty Action Group works on behalf of the one in four children in Scotland growing up in poverty. It doesn't have to be like this. We use our understanding of what causes poverty and the impact it has on children's lives to campaign for policies that will prevent and solve poverty – for good.

We provide training, advice and information to make sure hard-up families get the financial support they need.

Tax credits – challenging decisions is one of a series of Child Poverty Action Group in Scotland leaflets giving guidance to advisers and those working with families in Scotland about aspects of the tax credit system of particular concern.

Introduction

There are two types of tax credit; *child tax credit* and *working tax credit*. You claim them together and may get either or both. Tax credits are administered by Her Majesty's Revenue and Customs (referred to as HMRC in this leaflet).

Tax credits are gradually being replaced by universal credit. If you are currently getting tax credits, you can continue to get them unless you make a claim for universal credit, and will be able to renew your claim until you are transferred onto universal credit. The process of transferring most people from tax credits to universal credit is planned to happen between 2019 and 2022. See [Tax credits: moving on to universal credit](#) for more information.

This factsheet explains what you can do if you disagree with a decision made by HMRC about your tax credits.

This table sets out the decision-making process and explains some of the words which have a particular meaning in the tax credits context.

<p>Claim</p>	<p>To be entitled to tax credits you must make a claim. You might claim more than once in the course of the year: for example, if you start or stop living with someone as a partner you must make a new claim.</p>
<p>Initial Decision</p>	<p>An initial decision is a decision on whether or not you are entitled and an award of how much you are likely to be entitled to. Following this initial decision, an award may be stopped or amended if HMRC has reasonable grounds for believing it is wrong, or if you report a change of circumstances. This is called a revised decision.</p> <p>Following an initial decision, or before an initial decision is made, HMRC can investigate your claim. This is called an examination and may result in a revised decision. HMRC may decide that you have been overpaid tax credits and that you must repay the overpayment.</p>
<p>Annual Review</p>	<p>After the end of the tax year HMRC gathers the information needed to finalise your award for the previous tax year. It does so by sending out an annual review form (TC603R) and often also an annual declaration form (TC603D). You must return the annual declaration by the specified date. The annual review / declaration also acts as your claim for the new tax year.</p>
<p>Final Decision</p>	<p>The final decision is made after the end of the tax year. HMRC decides your entitlement for the completed tax year. You may have been underpaid tax credits and if so the underpayment will be paid to you. HMRC may decide that you have been overpaid tax credits and that you must repay the overpayment.</p> <p>HMRC may revise (change) a final decision because:</p> <ul style="list-style-type: none"> • they have made an enquiry (eg a random check or because of new information). This can only be done within <i>one year</i> of the deadline for the annual review, and only once into each tax year. HMRC must give notice of opening an enquiry. • there is an official error, but only where the revised decision is in your favour. This can be done up to <i>five years</i> after the decision. • they have made a discovery of fraud or neglect or a change to income tax liability. This can be done up to <i>five years</i> after the decision. <p>If it is too late to request a mandatory reconsideration or appeal, you can ask HMRC to use one of these powers to revise a decision.</p>

Challenging decisions

Many, but not all, decisions made by HMRC about your tax credits award can be challenged. You must first ask HMRC to ‘review’ its decision. This is the procedure for decisions made on or after 6 April 2014, known as ‘mandatory reconsideration’. When you have been notified by HMRC of the outcome of the review, you then have the right to appeal to an independent tribunal if you are still unhappy.

<p>Review, known as ‘Mandatory Reconsideration’</p> <p>Use form WTC/AP to request a review within 30 days of the decision.</p>	<p>This is the first stage of how you challenge a decision on entitlement to tax credits, or the amount.</p> <p>The outcome of the review must be notified to you in a mandatory reconsideration notice.</p> <p>If you are still unhappy with the outcome of the review, you can appeal.</p>
<p>Appeal</p> <p>Appeal on form SSCS5 direct to HM Courts & Tribunals Service within one month of the outcome of the review.</p> <p>Enclose a copy of the mandatory reconsideration notice.</p>	<p>This is the second stage of how you challenge a decision on entitlement to tax credits, or the amount.</p> <p>The appeal is heard by an independent First-tier Tribunal.</p> <p>If you are still unhappy, you may be able to appeal to the Upper Tribunal.</p>
<p>Dispute</p> <p>Use form TC846 to dispute recovery within three months of notification of the overpayment recovery.</p>	<p>This how you challenge a decision to recover an overpayment. The dispute is considered by HMRC according to its guidance, <i>What happens if we’ve paid you too much tax credits?</i> (COP26).</p> <p>You should do this if you accept that you received more tax credits than you were entitled to, but you do not think it was your fault. If you do not agree that you have been overpaid, you should request a review/appeal.</p> <p>If you are still unhappy, you can ask HMRC to look at it again or make a complaint.</p>

If the decision that you are unhappy with has led to an overpayment of tax credits, HMRC will suspend recovery during the *mandatory reconsideration* period and until the *appeal* has been resolved. However, it does not suspend recovery during the *dispute* period. HMRC does, however, have discretion not to recover overpayments and there are many situations where recovery of an overpayment is not appropriate according to its own guidance.

For further information on how to challenge overpayment recovery please see CPAG in Scotland’s leaflets, [Tax credit overpayments](#) and [Tax credits and complaints](#).

Below is a table explaining which decisions you can challenge by applying for a review and then, if necessary, making an appeal to the First-tier Tribunal, and which you cannot.

Decisions subject to review/appeal	Decisions <u>not</u> subject to review/appeal
Initial decision	Decision not to accept a late application for a review
Final decision	Decision to recover an overpayment
Revised decision eg, after a change of circumstances or an examination	Decision regarding the rate or method of recovery of an overpayment
Revision on enquiry	Decision about how your tax credit is paid
Revision on discovery	Decision to postpone payments
Decision imposing a penalty	Decision to charge interest on a penalty
Decision to charge interest on an overpayment	Decision to open an enquiry
You can appeal to a tribunal to bring the enquiry process to a close	

There is caselaw [SG v HMRC \[2011\] UKUT 199 \(AAC\)](#) para 70 that suggests it is strongly arguable that you have the right of appeal against a decision that you do not have good cause for making a late annual declaration. Recent caselaw [CI v HMRC \[2014\] UKUT 158 \(AAC\)](#) has also held that a decision to reject a 'defective' claim (i.e. not made on the correct form or not containing the required information) is appealable.

If you do not have the right to review/appeal a decision, an alternative legal remedy may be available through the courts, see CPAG in Scotland's leaflet [Tax credits and judicial review](#) for more information. The decision to recover an overpayment of tax credit can cause difficulties for claimants and yet this is a decision you cannot take to a tribunal. However, you can request a review/appeal against the final or revised decision about how much tax credits you are entitled to, i.e. if you do not agree that you have been overpaid, or you think that the amount of the overpayment is wrong.

If you are unhappy with an initial or a revised decision which has been made in the course of the tax year (i.e. before the final decision has been made), it becomes redundant once a final decision is made. You will then have to request a review/appeal against the final decision if the disputed issues remain unresolved. There is caselaw [DF v HMRC \[2016\] UKUT 47 \(AAC\)](#) that says HMRC should notify the Tribunal of the new decision in this situation, and the appeals should be heard together.

If it is too late to request a review or appeal, you may be able to ask HMRC to use its power to revise the entitlement decision in your favour on grounds of official error. There is caselaw [JI v HMRC \[2013\] UKUT 199 \(AAC\)](#) para 50, which suggests a refusal to do so is appealable.

Reviews (mandatory reconsideration)

A review must be requested in writing. HMRC has a special 'Reconsideration form' to request a review, which is included in the factsheet *What to do if you think your child tax credit or working tax credit is wrong (WTC/AP)*. This must be received by HMRC within 30 days of the notification of the decision. If your application for a review is late, you must explain why. HMRC may accept a late application if it is satisfied that there are special circumstances that meant you could not apply within the time limit. The application must be made within the absolute deadline of 13 months of the decision, but the longer the delay, the more compelling the reasons must be. If your application for a review is late, and HMRC refuses to accept it, you do not have the right of appeal against the original decision or this refusal.

The review must be carried out as soon as is reasonably practical. HMRC may request further information, and if it is not provided by the specified date may proceed with the review. The original decision may be upheld, changed or cancelled. HMRC must send you the outcome of the review, known as a *mandatory reconsideration notice*, containing the reasons for its conclusion. If you are still unhappy with the outcome of the review, you now have the right of appeal.

Example

Maria is a lone parent with 2 children. She usually works 35 hours a week. She claims tax credits in April. An initial decision is made awarding child tax credit and working tax credit, including the 30 hour element for working at least 30 hours per week.

Over the summer, her hours start to fluctuate and some weeks she works less than 30 hours a week. In October, she makes an agreement with her employer that her hours will be fixed at 28 hours a week, and notifies the Tax Credits Office. HMRC examines her claim and decides that she was not entitled to the 30 hour element from at all, and that it intends to recover the overpayment for the whole period.

Maria disagrees with the decision that she was not entitled to the 30 hour element at all, as she believes she was correctly entitled until her hours changed in October. She requests a review within 30 days, using the reconsideration form in leaflet WTC/AP. Recovery of the alleged overpayment is suspended.

HMRC looks at the information she has provided about her actual working hours. HMRC issues a mandatory reconsideration notice showing that the decision has been changed, and it has decided that she was entitled to the 30 hour element from April to June. However, it says she was still overpaid the 30 hour element from July to October, and it intends to recover the overpayment for that period.

Appeals

An appeal must be requested in writing and sent directly to HM Courts & Tribunals Service (HMCTS). It is advisable to use the form ([SSCS5](#)) which can be downloaded from the HMCTS website (see *Further information*). The form asks if you want a hearing at which you and or your representative (if you have one), can attend in person or if you want your appeal to be decided without a hearing. Statistically, there is more likelihood of success at a hearing, where you have the opportunity of attending in person and putting your side of the argument to the tribunal. It also increases your chances if you have a representative, for example from an advice centre, but it is not essential. If you opt for a decision without a hearing the case is decided by the judge on the basis of the appeal papers alone, and you are not given the opportunity of attending in person.

HMCTS then arrange a date for the appeal to be heard. When you get to an appeal, HMRC's decision is looked at again by a tribunal which is completely independent of HMRC. This is the First-tier Tribunal (Social Entitlement Chamber), which also deals with social security appeals. Tax credits appeals are usually heard by one legally qualified person, known as a judge, although the procedure is less formal than in court.

The appeal must be received by HMCTS within one month of the mandatory reconsideration notice. Late appeals are possible as long as they are made within the absolute deadline of 13 months. If your appeal is late, you must include the reason why the appeal was not made in time. The tribunal will consider whether to accept the late appeal in light of its overriding objective to deal with a case fairly and justly.

If you decide that you do not wish to proceed, you can withdraw the appeal with the tribunal's consent, in writing in advance or at the hearing. If you change your mind, you can request that it is reinstated within one month.

Example

Following the review described in the previous example, Maria is still unhappy about the outcome as she believes she was correctly entitled to the 30 hour element until October – she appeals on form SSCS5 within one month of the mandatory reconsideration.

The tribunal looks at all the evidence again and has the power to change HMRC's decision, so there is a risk Maria could lose the amount awarded for the period in the review.

Recovery of the alleged overpayment is suspended until the appeal is decided.

The First-tier Tribunal decides that she was correctly entitled to the 30 hour element until October.

Going to appeal

HMRC must send its response to your appeal to HMCTS as soon as is reasonably practical and has a target of 42 days. This response must include copies of paperwork relating to the disputed decision and HMRC's submission, setting out the basis of their decision. If there is a delay in HMRC making its response, consider making a complaint or write to the district Principal Judge of the Tribunals Service to request that s/he instructs HMRC to produce appeal papers. You or your representative, if you have one, must receive a copy of HMRC's response unless the tribunal directs otherwise.

The tribunal must consider the grounds of appeal raised in the written appeal application, but can also consider other matters and can only exclude evidence if it does not comply with directions given or it would be unfair to admit it. The tribunal can only consider the circumstances as they were at the time of the disputed decision. The decision of the appeal tribunal will either confirm or alter HMRC's decision.

After the appeal

Once the tribunal has made its decision, both parties (you and HMRC) have the opportunity to request a full statement of reasons for the tribunal's decision. This must be requested, in writing, within one month of the tribunal's decision being sent or given. The tribunal can extend this time limit if this is consistent with its overriding objective to deal with cases fairly and justly.

Requesting a full statement of reasons is necessary if either side wishes to try and appeal against the tribunal's decision. This further appeal (from either you or HMRC) must be on a 'point of law' and is dealt with by the Upper Tribunal (Administrative Appeals Chamber), formerly the Social Security and Child Support Commissioners. You must apply to the First-tier Tribunal for permission to appeal to the Upper Tribunal within one month of being sent the statement of reasons (the First-tier Tribunal can extend this time limit if it is fair and just to do so).

You can apply to the First-tier Tribunal for a decision to be set aside (cancelled) if:

- You, your representative or the tribunal were not sent or did not receive a document relating to the proceedings;
- You or your representative were not present at the hearing; or
- There has been some other procedural irregularity

Your request for a decision to be set aside must be received within one month of the tribunal decision (the tribunal can extend this time limit if it is fair and just to do so, but you should not wait for the statement of reasons or permission to appeal if you want to apply for a decision to be set aside). If the decision is set aside, your appeal is heard by a new tribunal.

You can apply to the First-tier Tribunal to correct a clerical error or accidental slip or omission in its decision at any time.

Further information and advice

Child Poverty Action Group in Scotland

0141 552 0552 advice line for advisers on benefits and tax credits,
Monday to Thursday 10am to 4pm, Friday 10am to 12 noon

Email: advice@cpagscotland.org.uk

email advice for advisers on benefits and tax credits

Website: www.cpag.org.uk/scotland/taxcredits

for more tax credit leaflets from CPAG in Scotland

CPAG publishes the *Welfare Benefits and Tax Credits Handbook*, a comprehensive guide to benefits and tax credits for claimants and advisers.

CPAG in Scotland's advice line is only for advisers. If you are having problems with your own tax credit or benefit claim and are in need of advice you should contact your citizens advice bureau or other local welfare rights service.

HM Revenue and Customs

Tax Credit Helpline 0345 300 3900
(textphone 0345 300 3909)

Website: www.gov.uk/benefits-credits/tax-credits

HM Courts & Tribunals Service (Scotland):

General enquiries 0141 354 8400

Fax: 01264 347 981

Wellington House

134-136 Wellington Street

Glasgow G2 2XL

www.gov.uk/courts-tribunals/first-tier-tribunal-social-security-and-child-support

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