

Chapter 33

Department of Social Protection

Welfare Overpayment Debts

Welfare Overpayment Debts

33.1 The Department of Social Protection (the Department) has a debt management function designed to record and, where possible, to recover excess amounts paid to welfare claimants.

33.2 The Department's approach to debt management takes account of the circumstances that gave rise to the overpayments and to the limited financial resources available to many welfare recipients. Instalment repayment arrangements may be agreed with the debtors, including deductions from welfare payments where there are continuing entitlements.

33.3 The prospect that the Department will actively seek to recover any payments in excess of entitlement should act as an incentive for scheme claimants to try to ensure that the information they provide in support of their claims is complete and correct. Where there is evidence that a claimant has deliberately made a false or fraudulent claim, the Department may initiate criminal proceedings against the individual(s) concerned, in addition to seeking to recover the overpayment debt.

Chapter Focus

This chapter examines the Department's debt management and criminal prosecution processes to establish its effectiveness in identifying, recording and recovering welfare payment debts, and in prosecuting fraud cases.

Basis for Recording of Overpayments

33.4 The Department may identify that a welfare payment is in excess of a claimant's entitlement either because new information is provided voluntarily by the claimant or as a result of its control activity. When an excess payment is identified, the payment is terminated or the amount is reduced to the correct level.

33.5 Payment termination/reduction does not always result in the recording of an overpayment debt. In cases of claimant or departmental error, the deciding officer reviewing the case may determine the effective date of a revised payment amount to be a current rather than a retrospective date, in which case no overpayment legally arises. In other cases, it may be likely that there was overpayment in the past but the deciding officer does not have evidence to establish the date the excess payment commenced and accordingly cannot record or pursue an overpayment. Consequently, only a proportion of identified payments in excess of entitlement are pursued as overpayments. The Department does not measure or report the extent to which detection of excess payments is followed by recording of an overpayment debt.

33.6 The Department carries out a programme of activity designed to detect instances where payments are in excess of entitlements. Control activity cases and their outcomes are recorded manually. As a result, the Department is unable to provide accurate data on the total number of cases where payment was stopped or reduced following a review, or the value of the terminations/reductions.

33.7 In many cases where a claim is terminated or payment reduced as a result of some control activity, the Department calculates a 'control saving'. In 2009, these savings were estimated at around €84 million, and were related to an estimated 68,300 cases. In contrast, overpayments were recorded in respect of 42,500 cases.

33.8 At scheme level, there is no clear relationship between the claiming of a control saving and the recording of an overpayment for recovery. For example, control savings were claimed in relation to an estimated 12,800 Jobseekers' cases reviewed, but overpayments were recorded in 23,700 such cases. In contrast, control savings were claimed in an estimated 13,200 One Parent Family Payment cases reviewed and in around 9,200 Family Income Supplement cases, but overpayments were recorded in around 1,500 and 740 cases respectively.

33.9 Apart from the inherent difficulty in finding sufficient evidence to underpin the recording of an overpayment debt, the Department attributes the differences in the number of cases where control savings were claimed and overpayments raised to two main reasons

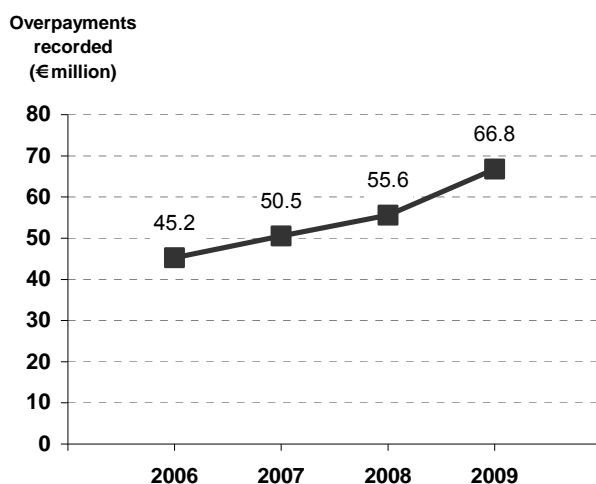
- overpayments may be recorded in cases where claimants voluntarily provide information that indicates past overpayment or because payment continues for a period following the provision of relevant information
- because of claim processing backlogs in relation to Jobseeker cases, control saving records do not include all cases reviewed that resulted in payment being terminated or reduced.

33.10 The Department considers that control savings estimates and overpayments recorded are not comparable. It regards the control savings figures as an internal performance indicator intended for use by management to assess the performance of control activity. It does not consider the number of overpayment cases and/or the value of overpayments recorded to be indicators of its performance.

Overpayments Recorded in 2009

33.11 The Department records overpayment amounts on its Overpayments and Debt Management system. In 2009, it recorded overpayments of welfare entitlements totalling €66.8 million (see Figure 154). This represented a 48% cumulative increase since 2006. This was in line with the 51% increase in the level of overall expenditure on welfare schemes in the same period.

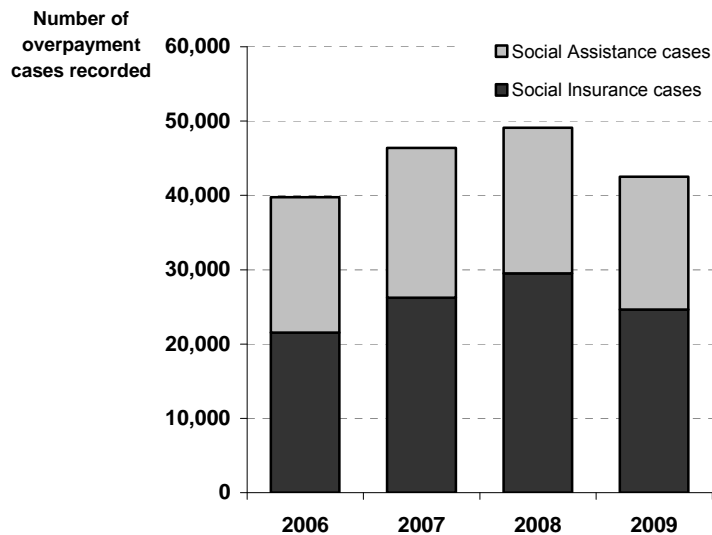
Figure 154 Aggregate value of overpayments of welfare entitlements recorded each year, 2006 to 2009



Source: Department of Social Protection

33.12 The total number of cases in respect of which overpayments were recorded in 2009 was just over 42,500 (see Figure 155). There was a drop of 13% in the number of cases where overpayment was recorded between 2008 and 2009. The number of cases fell for both social insurance and social assistance schemes.

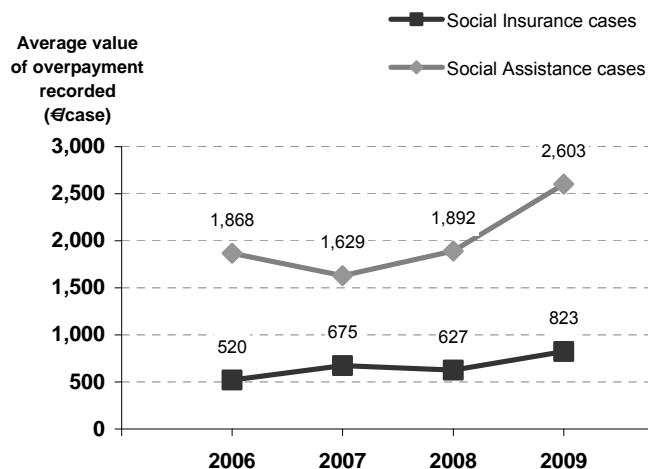
Figure 155 Number of recorded cases of overpayments of welfare entitlements, by scheme category, 2006 to 2009



Source: Department of Social Protection

33.13 The increase in the value of overpayments recorded combined with the drop in the number of cases means that there was a substantial increase in the average value of overpayments recorded (see Figure 156). The average overpayment recorded in 2009 in social assistance cases was 38% higher than in 2008. For social insurance cases, the 2009 average was 31% higher than the 2008 average. Debts in individual cases may relate to overpayments going back a number of years.

Figure 156 Average value of recorded overpayments of welfare entitlements, by scheme category, 2006 to 2009



Source: Analysis by Office of the C&AG

33.14 The Department attributes the increase in the average value of overpayments recorded in 2009 to a drop in the number of short-term overpayment cases recorded. Overpayments lasting less than one week in duration fell from around 19,400 in 2008 to around 15,200 in 2009. When cases terminate (e.g. where a claimant secures employment), payment may continue for a short period, resulting in short duration (and hence lower value) overpayments being recorded. Changes in control procedures, such as transferring Jobseeker payment cases to Post Office payment rather than electronic funds transfer (EFT) have also tended to reduce disproportionately the proportion of short-term overpayment cases.

Reasons for Overpayment

33.15 The Department classifies recorded welfare debts under three headings, corresponding to the main reasons why overpayments arise. These are

- Overpayments due to confirmed or suspected fraud.
- Overpayments due to client error or errors made by third parties who provide information in relation to claims.
- Overpayments due to departmental/clerical error.
- A further category of overpayment case — referred to as estate cases — is based on the method of discovery of the overpayment. This usually arises where mandatory returns made to the Department in the course of processing of the estates of deceased individuals reveal circumstances (usually undisclosed means) that indicate that the individuals concerned may not have been entitled to some or all of the welfare payments made to them. By convention, the Department does not categorise such cases as fraud/suspected fraud.

33.16 Figure 157 shows the breakdown of the overpayments recorded in 2009, using the classification outlined above. This indicates that almost half of the overpayments recorded were attributed to errors made by claimants or by third parties. Almost all estate cases, which accounted for recorded overpayments of €0.6 million (16% of the total), related to non-contributory State Pension recipients.

Figure 157 Value of welfare overpayments recorded in 2009, by overpayment classification

Classification of cases	Social insurance cases	Social assistance cases	Total	
	€m	€m	€m	%
Due to fraud	6.8	13.9	20.7	31
Due to claimant/third party error	10.7	20.8	31.5	47
Due to departmental error	2.8	1.2	4.0	6
Estate cases	—	10.6	10.6	16
Total	20.3	46.5	66.8	100

Source: Department of Social Protection

33.17 Less than one third of the amount recorded in 2009 as overpayment debts was attributed to fraudulent claims. By comparison, the percentage of overpayments recorded in 2008 as being due to fraud was 38%. The equivalent figure in 2006 was 45%. Between 2006 and 2009, the value of overpayments recorded each year as being due to fraud has fluctuated in the range €20 million to €21.5 million.

33.18 Fraud was detected or suspected in over 13,000 of the overpayment cases recorded in 2009. This represented a drop of 29% relative to the number recorded in 2008 (see Figure 158).

Figure 158 Number of overpayment cases attributed to fraud or suspected fraud, 2006 to 2009

	2006	2007	2008	2009
Social insurance cases	7,877	8,304	9,991	6,788
Social assistance cases	8,950	9,808	8,347	6,251
Total	16,827	18,112	18,338	13,039

Source: Department of Social Protection

33.19 The Department attributes the decrease in the percentage of overpayments attributed to fraud to the fact that many of the newer debt holders were in a claim overpayment situation for the first time and often were first time customers of the Department. When making the decision on the overpayment category in such cases, there is a general presumption of honest mistake and overpayments are usually classified as customer error. It also considers that increased control effectiveness has resulted in fewer opportunities for fraudulent activity – one such example would be the transfer of the payment process for Jobseeker payments from EFT to payments in person through the Post Office – thus eliminating the lower value fraud cases.

Recovery of Overpayment Debts

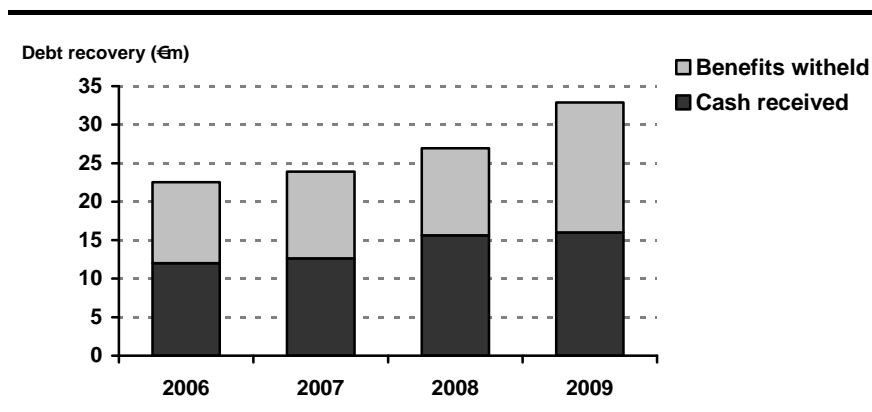
33.20 Overpayment debts are recovered by the Department in two ways

- through direct payments by debtors
- by withholding some or all of any welfare payments due to the debtors.

In individual cases, debts may be recovered by one or by a combination of the above means.

33.21 The aggregate value of overpayments recovered by the Department in 2009 was €32.9 million (see Figure 159). This was 22% more than the amount recovered in 2008, and 46% more than was recovered in 2006. This pattern of increase in recoveries mirrors the increases in the level of overpayment debts recorded and in the overall expenditure level in the same period.

Figure 159 Welfare overpayment recoveries, by method of recovery, 2006 to 2009



Source: Department of Social Protection

33.22 Around €16 million (49% of the total amount recovered) was received by way of direct payment in 2009. This compared to €15.6 million (58%) recovered in cash in 2008. Debt recovery in 2009 in relation to non-contributory State Pension cases amounted to a total of €8.7 million, mainly through cash recoveries.

Recoveries from Current Welfare Claimants

33.23 Just over half of the overpayment debts recovered in 2009 — amounting to a total of €6.9 million — was collected through deductions from payments to which claimants were currently entitled. This represented a significant increase in the level of recovery through deductions compared to 2008, when €1.3 million was withheld.

33.24 The Department has stated that of the 139,000 individuals against whom debts had been recorded at 31 December 2009, some 64,000 (46%) were servicing their debts at some level. Because the majority of these are on low incomes, the typical value of repayments made is less than €10 a week.

33.25 The Department's legal capacity to recover overpayment debts through benefit deductions²⁴¹ is limited. Such recoveries must have regard both to the total amount to be recovered and the person's ability to repay. In such cases, a claimant's weekly social welfare payment may fall below the weekly rate of supplementary welfare allowance appropriate to his or her family circumstances, but only with the claimant's prior written agreement.

Write Offs of Welfare Debts

33.26 Overpayment debts may also be disposed of, in whole or in part, by being formally written off by the Department. This is usually done on the basis that the debt has become irrecoverable for some reason.

33.27 The Department reviewed its procedures for approval and recording of write offs in 2008. The main elements of the process are as follows

- All scheme managers have the legal authority to write off overpayment debts.
- The repayment of a debt may be cancelled where there is no realistic prospect of repaying the debt or where there is no reasonable prospect of recovering the debt within a reasonable timescale without incurring considerable administrative costs. The Department outlined the kinds of circumstances where this might be done e.g. where the person overpaid has died without estate; the Statute of Limitations applies (i.e. the person was not informed within six years of the discovery of the overpayment); the cause of the overpayment was Departmental error and the amount was not significant; the claimant has a serious medical condition; the overpayment is less than €3.50.
- The reason for the write-off must be recorded on the claim papers and signed by the authorised officer (or recorded electronically with a recorded action requiring a digital signature/password), to maintain an audit trail.
- 5% of write-off cases are reviewed by a supervisor.
- The procedures are monitored and reviewed to ensure that they are working satisfactorily.

²⁴¹ Provided for in Article 245 of Statutory Instrument Number 142 of 2007.

33.28 Write offs of debts in 2009 totalled €1.6 million. This was more than double the level of write offs in 2008, which totalled €4.9 million. The Department has stated that, during 2009, it undertook an exercise to review the debt balance on its system. This found that a significant balance was being reported each year in respect of customers who have been deceased for over six years and thus recovery of the debt would not be possible. Such debts were then further examined and debts with a value of €6.8 million were written off.

33.29 Cancellation of previously recorded debts may occur as a result of a revised decision in the light of new or further information or to correct errors in recorded amounts. Debts amounting to €1.3 million were cancelled in 2009. The comparable figure for 2008 was €1.1 million.

Welfare Debt Balance

33.30 The net impact of new welfare overpayment debts recorded by the Department, debts recovered and write offs is shown in Figure 160.

Figure 160 Movement in the Department's debt balances, 2006 to 2009

	2006	2007	2008	2009
	€m	€m	€m	€m
Outstanding debts at 1 January	131.2	149.5	232.1	256.6
Overpayment debts recorded in year	45.2	50.5	55.6	66.8
Prior year adjustments ^a	—	61.6	1.8	(1.0)
Debts cancelled	(0.1)	(1.4)	(1.1)	(1.3)
Debts written off	(4.3)	(4.3)	(4.9)	(11.6)
Total recoverable debts	172.0	255.9	283.5	309.5
Debts recovered in year (cash or withheld)	(22.5)	(23.8)	(26.9)	(32.9)
Outstanding debts at 31 December	149.5	232.1	256.6	276.6

Note:

a Following the introduction of the Overpayment and Debt Management system (November 2006), certain debts (totalling €44 million) previously written off for accounting purposes but still considered potentially recoverable were written back to the system. A further €17 million of previously unrecorded overpayments considered potentially recoverable was also registered on the system. Some smaller adjustments were made in 2008.

33.31 The Department's overall debt recovery rate — measured by recoveries as a percentage of the total recoverable debts in the year — is low. At 10.6% in 2009, it represented a small increase relative to the 9.5% rate achieved in 2008. However, around 90% of the amount considered recoverable consistently remains outstanding.

33.32 The age profile of the outstanding debt balance is another indicator of debt management performance. Figure 161 shows the age profile of the debt outstanding at the end of December each year from 2006 to 2009. Almost two thirds of the debt is three years or older.

Figure 161 Age analysis of overpayment debts outstanding at end December, 2006 to 2009

Age of outstanding debt	2006 ^a	2007	2008	2009
	%	%	%	%
Less than 1 year	21	13	15	17
Between 1 and 2 years	20	11	10	11
Between 2 and 3 years	24	12	9	9
3 years and older	35	64	66	63
Total	100	100	100	100

Source: Department of Social Protection

Note:

- a The percentage of older debts increased in 2007, following the writing back of recoverable debts on the new Overpayments and Debt Management system.

Legal Enforcement

33.33 The Department considers cases involving fraud or deliberate abuse of the welfare system with a view to taking legal proceedings where appropriate. These may involve criminal prosecutions in relation to significant cases of abuse, and/or civil proceedings to facilitate the recovery of scheme overpayments or the collection of PRSI arrears.²⁴²

Criminal Prosecution Cases

33.34 The Department places emphasis on ensuring that prosecutions are taken in the more serious cases where there is strong evidence of fraud. In this connection, the Department has developed a matrix for vetting cases for criminal prosecution. This uses a range of nine characteristics, and weightings applied to them, to determine which cases should be considered for criminal prosecution. The characteristics include duration of the fraud, amount of the overpayment, false declaration at the time of the claim, failure to notify the Department of a change in circumstances and previous history of defrauding the Department. A computer programme has been developed based on the matrix and where a case scores over a certain figure it is then considered for prosecution. The matrix is being used at present by the Department's Central Prosecution Service on 'live' cases received from social welfare inspectors. It will be rolled out across the regions in the third quarter of 2010.

33.35 During 2009, the Department sent a total of 301 alleged fraud cases to the Chief State Solicitor's Office (CSSO) for prosecution. This was about 15% less than the average for the preceding three years. Figure 162 gives a breakdown of the cases the Department referred to the CSSO in the period 2006 to 2009, by type.

²⁴² Apart from overpayment of welfare, debts to the Department may arise where employers evade payment of Pay Related Social Insurance (PRSI) contributions that are due.

Figure 162 Cases sent to the CSSO with a view to criminal prosecution, 2006 to 2009

	2006	2007	2008	2009
Jobseeker's Allowance	169	184	183	153
Jobseeker's Benefit	113	124	140	113
Illness Benefit	20	9	9	13
Disability Allowance	—	5	6	2
One Parent Family Payment	16	8	4	10
Other welfare payment cases	1	3	4	—
All welfare payment cases	319	333	346	291
Employer offences ^a	21	13	5	9
Working with false PPS number ^b	6	4	3	1
Obstruction of social welfare inspectors	2	7	—	—
All employment related/obstruction cases	29	24	8	10
Total cases referred to CSSO	348	357	354	301

Source: Department of Social Protection

Notes:

- a Includes where employers fail to pay PRSI contributions; fail to produce or maintain proper wage records; or fail to provide employment details for employees.
- b In addition, there was a further small number of cases each year of misuse of PPS numbers where the person was concurrently claiming a welfare payment usually using his/her own PPS number while working under a different PPS number. These cases are included in the relevant scheme figure numbers.

33.36 Relative to the number of welfare overpayment cases recorded each year where fraud is detected or suspected, the rate of referral of cases to the CSSO is very low, averaging at less than 2% a year.

33.37 In general, cases prosecuted are those that involve a high amount of detected overpayments. For example, cases finalised in court in 2009 involved average welfare overpayments in excess of €5,800 each, compared to an average value of recorded overpayments in the year of around €1,500.

33.38 In addition to the 301 cases sent to the CSSO for prosecution in 2009, a further 70 cases were determined not to be suitable for prosecution. The decision not to prosecute these cases was made by the Department and/or on advice received from the CSSO. The main reasons for non-prosecution are as follows

- 13 cases due to the lapse of time since the offence was committed
- 19 cases due to insufficient evidence to initiate criminal proceedings
- 16 cases due to prosecution criteria not being met
- 13 cases due to the personal circumstances of the client
- 9 cases due to the person being no longer resident in the State/whereabouts not known/deceased.

33.39 In 2009, a further 42 cases of possible personation/identity fraud were referred by social welfare inspectors to the Garda Síochána for prosecution under the Criminal Justice (Fraud and Theft) Act 2001. These cases are not included in the number of cases referred to the CSSO.

Outcome of Prosecution Cases

33.40 At the beginning of 2009, the CSSO and local state solicitors had on hands a total of 889 criminal cases referred by the Department. These cases were at various stages of the prosecution process. Together with the 301 further cases referred during the year, this amounted to a total active caseload of 1,190.

33.41 The number of criminal prosecution cases against welfare payment recipients finalised in court has increased in recent years. A total of 347 cases were finalised during 2009 (see Figure 163). This represents an increase of 12% on the previous year.

Figure 163 Results of court hearings of criminal prosecution cases involving welfare recipients, 2006 to 2009

Outcome	2006	2007	2008	2009
Fined ^a	99	107	199	225
Community service	10	7	9	10
Prison sentences	4	12	2	11
Suspended sentence	16	22	19	34
Bound to the Peace	2	4	1	1
Probation Act	51	51	44	48
Adjourned with liberty to re-enter (repayment ordered)	56	7	17	4
Case struck-out/dismissed	14	10	17	12
Withdrawn	4	2	1	2
Total cases finalised	256	222	309	347

Source: Department of Social Protection

Note:

a Each year, fines were imposed also in a small number of cases, in conjunction with another penalty.

33.42 Two cases were withdrawn and 12 (3.5%) were struck out. Convictions were secured (or adjourned with liberty to re-enter) in the remaining cases. About two thirds of the cases decided resulted in fines being imposed (in some cases, in conjunction with other penalties e.g. community service or a suspended sentence). The average fine imposed in 2009 was just over €900.

33.43 Seven employer-related cases were finalised in 2009 (down from 15 cases in 2008). One case was withdrawn, and one was struck out. In three cases, fines were imposed, averaging just over €80 each. One of those convicted was made the subject of a community service order and one was given the benefit of the Probation Act.

33.44 Sixteen cases referred to the CSSO prior to 2009 and where summonses remained unserved were finalised during 2009 without court proceedings, due to the lapse of time.

33.45 At the end of 2009, the CSSO and local state solicitors had on hands a total of 820 criminal cases referred by the Department at various stages of the prosecution process.

Publicity about Prosecution Outcomes

33.46 The court decision in individual prosecution cases is a matter of public record and members of the public can obtain the information by contacting the local court service in the particular region. The outcome of prosecution cases is also often highlighted in local newspapers. This publicity may have the effect on others living in the area of deterring fraud attempts.

Civil Debt Enforcement Proceedings

33.47 The Department pursues civil proceedings as a means of recovering debts only where there is a reasonable expectation that the debtor has sufficient means to discharge the debt. Over time, some cases may be dropped for a variety of reasons, while others may be settled in advance of court hearing. The overall result is that few cases end up being determined in court.

33.48 Between 2005 and 2009, the Department referred a total of 28 cases to the CSSO to initiate civil debt proceedings. The annual rate of referral has fallen significantly, from 13 cases in 2005 to just two or three in each of the past three years (see Figure 164).

Figure 164 Civil debt enforcement proceedings cases, 2005 to 2009

	2005	2006	2007	2008	2009
Cases referred to the CSSO	13	8	2	2	3
Cases finalised in year	21	13	6	48	13

33.49 The Department finalised a total of 101 civil proceeding cases over the period 2005 to 2009. Of these, a total of 47 cases were terminated either because of changes in the circumstances of the debtor (29 cases) or because the case had become statute barred (18 cases).

33.50 The Department achieved positive outcomes in 54 civil proceedings cases between 2005 and 2009

- lump sum settlements were agreed in seven cases without going to court, resulting in the recovery of debts totalling €103,000 (an average of around €14,700 per case)
- arrangements were agreed in a further 41 cases for repayment of the outstanding debts by instalments
- six cases were finalised in court, all resulting in judgements in favour of the Department — decrees awarded in three cases, instalment orders granted in two cases and a judgement mortgage granted in the remaining case.

33.51 At the end of 2009, there were 56 civil proceedings cases that had yet to be finalised (2008 — 58 cases).

Conclusion

Where it considers that it has sufficient evidence to do so, the Department records overpayment debts and seeks to recover the excess payments. In other cases, there may be enough evidence to stop or reduce payment but not to record an overpayment debt. The extent of such non-recording of excess payments is not known. The Department needs to improve its systems to measure and monitor the extent to which payments are stopped or reduced due to non-entitlement but where overpayment debts are not recorded.

In 2009, the Department recorded welfare overpayment debts totalling €66.8 million. This represented around 0.3% of the overall level of expenditure by the Department on welfare schemes in the year. Together with previously recorded debts, the total amount recorded for recovery in the year was €110 million. Actual recoveries amounted to €32.9 million.

The level of overpayment debts recorded by the Department each year has risen in line with the overall level of social welfare payments. The amount of outstanding debt recovered each year has also kept pace with overall welfare expenditure.

The level of recovery of recorded debts has ranged between 9% and 13% of the amount recorded as overpayments over the past four years. Almost two thirds of the debt recorded for recovery is more than three years old. Some of the excess welfare payments to which the debts relate are even older.

In 2009, about half of the debt amount recovered was through cash repayments by or on behalf of the debtors. The remainder was recovered through withholding amounts from current welfare entitlements. At the end of 2009, some 46% of those with recorded overpayments were servicing their debts in this way. In general, the sums being withheld from current entitlements are small in absolute terms, but at an individual level, they may be significant given the limited income of the claimants concerned. The Department is legally constrained in the amounts it can withhold in this way.

Observation of the Accounting Officer

33.52 In relation to prosecutions, the Accounting Officer stated that not all cases presented for criminal prosecution will have a debt. Other offences include the misuse of a PPS number. For the most part, the criminal cases presented are working and claiming cases. Judges, however, will always request information in relation to the amount of the debt (if any) when they are deciding on the appropriate penalty to be applied in any case. The Department pursues criminal prosecutions cases mainly where there has been a serious abuse of the system over a period resulting in a large overpayment. The average value of overpayments for which criminal cases were finalised in court in 2009 was in excess of €5,800 while the average value of a recorded overpayment was around €1,500. This shows that the Department pursues the most serious cases of fraud.

33.53 She stated that the Courts are independent of the executive branch of government and each case of alleged fraud has to be proven before a judge. Pursuit of civil proceedings to recover debts occurs in only a few suitable cases, in particular, where it has established that the person is in a position to repay the debt and has made no effort to do so.