

Chapter 34

Welfare Overpayments

Welfare Overpayments

34.1 Welfare payments in excess of entitlement come to light in instances where the claimant provides new information voluntarily or as a result of control activity by the Department of Social Protection (the Department). When an excess payment is identified, the payment is terminated or the amount is reduced to the correct level. An overpayment is recorded except in

- instances of claimant or Departmental error where a Deciding Officer after reviewing the case determines the effective date of a revised payment amount to be a current rather than a retrospective date
- cases where a Deciding Officer may not have evidence to establish when the excess payments commenced and accordingly cannot pursue an overpayment.

The effect of such decisions by a Deciding Officer is that no overpayment legally arises.

Chapter Focus

This chapter outlines the trends in the level of overpayments recorded, the extent to which the Department has subsequently recovered those overpayments and the extent to which the Department institutes legal proceedings either to prosecute fraud cases or to recover amounts due from claimants.

Overpayments Recorded

34.2 The Department recorded welfare overpayments totalling €83.4 million in 2010. This represented a 65% increase since 2007 and was over double the rate of increase in overall welfare expenditure in the same period – which increased by 30%. The details for the period 2007 to 2010 are set out in Figure 153.

Figure 153 Number and Value of Overpayments, 2007 to 2010

	2007	2008	2009	2010
Value of overpayments recorded	€m	€m	€m	€m
Social insurance	17.7	18.5	20.3	27.7
Social assistance	32.8	37.1	46.5	55.7
Total	50.5	55.6	66.8	83.4
Number of overpayment cases	Number of cases			
Social insurance	20,152	19,609	17,877	26,302
Social assistance	26,251	29,492	24,637	26,301
Total	46,403	49,101	42,514	52,603

Source: Department of Social Protection

34.3 The total value of overpayments due for recovery increased from €11 million at the beginning of 2007 to €15 million at the end of 2010.

34.4 The increase in overpayments recorded between 2007 and 2010 is due to an increased number of overpayment cases accompanied by a substantial increase in the average value of individual overpayments over that period. The volume of overpayments increased by 13% while the average value increased by 46%.

Reasons for Overpayment

34.5 The Department distinguishes between those overpayments it attributes to fraud and those that are due to error. Between 2007 and 2010, the value of overpayments recorded each year as being due to fraud has fluctuated in the range of €1 million to €6 million. The number and value of overpayments classified as fraud between 2007 and 2010 is set out in Figure 154.

Figure 154 Number and Value of Fraudulent Overpayments, 2007 to 2010

	2007	2008	2009	2010
Value of recorded overpayments due to fraud	€m	€m	€m	€m
Social insurance	6.3	7.0	6.8	6.8
Social assistance	15.1	14.1	13.9	19.1
Total	21.4	21.1	20.7	25.9
	Number of cases			
Social insurance cases	8,304	9,991	6,788	6,482
Social assistance cases	9,808	8,347	6,251	9,417
Total	18,112	18,338	13,039	15,899

Source: Department of Social Protection

Recovery of Overpayment Debts

34.6 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.

34.7 Between 2007 and 2010, approximately 25% of overpayments recorded were recovered²⁸⁵. The total amount of overpayments due for recovery has increased from €149.5 million at the beginning of 2007 to €315 million at the end of 2010.

34.8 The aggregate value of overpayments recovered by the Department in 2010 was €34.5 million.

- €7.2 million was recovered through direct payments in respect of Non-Contributory State Pension overpayments. Most overpayments recorded in these cases arose on the death of claimants (estate cases).
- A further €7.6 million was recovered by way of direct payments from claimants in relation to overpayments raised in respect of schemes other than Non-Contributory State Pension.
- €9.7 million was collected through deductions from payments to which claimants were currently entitled.

²⁸⁵ The recovery rate is based on the amounts recovered in the period expressed as a percentage of the opening balance of outstanding debt at 1 January 2007 plus overpayments recorded in the period 2007 to 2010. In 2010, recoveries were made from 50% of individuals with debt balances.

34.9 The Department's legal capacity to recover overpayment debts through benefit reductions²⁸⁶ is limited due to a number of factors. The level of recovery must have regard both to the total amount overpaid and the person's ability to repay. A claimant's weekly social welfare payment can only fall below the weekly rate of Supplementary Welfare Allowance appropriate to his or her family circumstances with the claimant's prior written agreement. Since the current weekly rate for Supplementary Welfare Allowance is just €2 below most welfare payments, in many cases this is the most that can be recovered. In practice, in seeking to recover amounts overpaid, the Department takes account of the circumstances that gave rise to the overpayments and to the recipient's financial resources.

34.10 Overpayment debts may also be disposed of, in whole or in part, by being formally written off or cancelled by the Department.

- Debts are written off when the Department concludes that the debt has become irrecoverable. Over the period 2007 to 2010, about 6% of overpayment debts were written off. Write-offs of debts in 2010 totalled €8.5 million.
- In addition, 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. Between 2007 and 2010 1.3% of overpayments were subsequently cancelled.

34.11 In relation to the recovery of overpayment debts, I asked the Accounting Officer to provide a breakdown of the amounts recovered between 2007 and 2010 showing the value attributable to cases classified as fraud, claimant error, Departmental error and estate cases.

34.12 The Accounting Officer stated that while overpayments recorded were classified between fraud and error, recoveries were not so classified. As a result, the Department was not in a position to provide information in respect of the proportion of each category of debt subsequently recovered.

Legal Enforcement

34.13 Legal action by the Department may entail 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 arrears²⁸⁷.

Criminal Prosecution Cases

34.14 Overall, between 2% and 3% of cases classified as fraud are referred for prosecution. In general, cases prosecuted are those that involve high value overpayments. For example, court cases finalised in 2010 involved average welfare overpayments in excess of €6,500 each, compared to an average value of overpayments classified as fraud in the year of around €1,600.

34.15 The number of criminal prosecutions against welfare payment recipients finalised in court increased between 2007 and 2009. However, it dropped in 2010 to 246 – a decrease of 29% on the previous year²⁸⁸.

²⁸⁶ Provided for in Article 245 of Statutory Instrument Number 142 of 2007.

²⁸⁷ 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.

²⁸⁸ This figure does not include any cases referred to An Garda Síochána under the Criminal Justice (Theft and Fraud Offences) Act 2001.

34.16 Almost 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 2010 was just over €875.

34.17 In addition to proceedings against welfare recipients, seven employer-related cases were finalised in 2010 (the same number as 2009). One of those convicted received a prison sentence. In four cases, fines were imposed, averaging just under €1,040 each. Two cases were struck out.

34.18 At the end of 2010, the prosecuting authorities had a total of 742 criminal cases on hands at various stages of the prosecution process (2009 : 820).

Civil Debt Enforcement Proceedings

34.19 In a small number of cases, the Department pursues civil proceedings as a means of recovering debts where there is a reasonable expectation that the debtor has sufficient means to discharge the debt.

34.20 Between 2006 and 2010, the Department finalised a total of 103 civil proceedings. Positive outcomes were achieved in 55 cases which included

- lump sum settlements agreed in seven cases resulting in the recovery of total debts amounting to €196,720
- the agreement of instalment arrangements in 43 cases
- judgements in favour of the Department in five cases as a result of court cases²⁸⁹.

34.21 The remaining 48 cases were terminated due to changes in the circumstances of the debtor (30 cases) or because the case had become statute barred. At the end of 2010, the Department had 51 civil cases that had yet to be finalised (2009 : 56 cases).

Views of the Accounting Officer

34.22 In relation to the relatively small proportion of fraud cases referred for prosecution, the Accounting Officer stated that it would not be practical or cost beneficial to prosecute every case of suspected welfare fraud. She stated that the Department places emphasis on ensuring that prosecutions are taken in the more serious cases where there is strong evidence of fraud and in this regard, in 2010 the Department developed a matrix for vetting cases for criminal prosecution.

34.23 The matrix uses a range of nine characteristics, with weightings assigned to each characteristic, 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, previous history of defrauding the Department and the client's efforts to repay the overpayment.

²⁸⁹ These included decrees awarded (two cases), instalment orders granted (two cases) and a judgement mortgage (one case).

34.24 The Accounting Officer also stated that the Department proposes to review its overall approach to overpayment recovery, particularly in the context of overpayments that have arisen from social welfare fraud. While the details will have to be established, including in particular legal requirements, options that will be explored during 2011 include

- removing the current restriction on the recovery of overpayments, including the amount it can recover each week
- where persons who have overpayments are in employment, matching earnings data against debt holders with a view to accelerating recovery or modifying their tax credits
- examining the potential to withhold tax rebates from individuals with recorded overpayments
- recovering overpayments from other payments made by the State including redundancy, student grants, and farm payments
- pursuing overpayments from other EU Member States where foreign nationals with overpayments assessed against them have returned home.

Conclusion

The number and value of welfare overpayments has increased steadily since 2007. By 2010, the value of overpayments recorded in the year had increased to €3.4 million – an increase of 65% in the three years. Over the same period, overall social welfare expenditure had increased by 30%.

Between 2007 and 2010, about 25% of overpayments recorded were recovered. The total value of overpayments due for recovery increased from €11 million at the beginning of 2007 to €15 million at the end of 2010.

In 2010, over half of recoveries were collected by way of deduction from current welfare payments with the balance collected by way of direct payments from claimants or from the estates of deceased claimants.

€26 million or 31% of overpayments recorded in 2010 were classified as fraud. The Department could not provide a breakdown of recoveries in 2010 relating to fraud and those that were due to error. Between 2% and 3% of overpayments classified as fraud are referred for prosecution. In 2010, the Department introduced a new system for vetting cases for prosecution in order to ensure that the more serious cases, where there is strong evidence of fraud, are referred for prosecution.

The Department has signalled its intention to review its overall approach to the recovery of overpayments and, in particular, those that are due to fraud. It indicated that the terms of this review will extend to

- options to remove current restrictions on overpayment recovery
- the recovery of overpayments through the tax system, from State payments such as redundancy payments, farm payments and student grants
- the pursuit of overpayments from other Member States to which foreign nationals with overpayment debts have returned.

