

Unfair disparity in council tax attachment of earnings orders (AEOS)

We recently came across an unfair disparity in the calculation for attachment of earnings order (AEO) between those debtors who are paid per calendar month (pcm) and those who are paid either four weekly, weekly or daily.

The problem seems to arise because Schedule 4 of Council Tax (Administration and Enforcement) Regulations 1992 (SI 1992/613) which determines the level of deductions. See CPAG Council Tax Handbook 11 edition p207 have calculated the 'monthly' scale for deciding the rate of deductions by simply multiplying the weekly net income figure by 4. There does not appear to have been any special provision for those paid per calendar month (pcm).

This causes a disparity in percentage of wages deducted once the taxpayer's net monthly income exceeds £1,420.

For example, if a taxpayer has net earnings of £1,421 pcm this means a deduction of 17% is applied.

If this taxpayer is earning the equivalent amount but is paid weekly rather than pcm they would earn £327.92 per week ($£1,421 / 52 \text{ weeks} \times 12 \text{ months} = £327.92$).

If the taxpayer is earning the same amount but is paid daily rather than pcm they earn £46.71 per day ($£1,421 \times 12 \text{ months} / 365 \text{ days} = £46.71$).

An AEO calculation based on the above weekly or daily earnings would result in a 12% rate of deduction being applied according to the regulations.

This disparity results in the taxpayer who is paid per calendar month having £241.57 deducted via the AEO. Whereas if they paid weekly this would be the equivalent of £170.51 pcm or if they were paid daily it would be £170.49 pcm. So, the disparity is the equivalent of £71.07 pcm.

Advisers who come across clients who are affected by this problem should contact the local authority (LA) enforcing the AEO and ask that they reduce it on the basis that the statutory rate of deduction is unfair to those who are paid monthly. If the LA refuse to reduce the amount then a formal complaint could be made with a view to escalating this to the Local Government Ombudsman.

The LA's power to negotiate a reduce AEO at less than the statutory amount is discussed in the CPAG Council Tax Handbook 11 edition on p.207.

Local Authorities have a public law duty to act reasonably. If a LA refuses to consider whether not it is reasonable to reduce the rate of an AEO then they this may be failing to exercise their discretion by applying a blanket policy and this could be challengeable by way of judicial review. If a client wishes to pursue this course of action they would need legal representation. Advisers with such clients could contact the SDAS for suggestions of how such advice could be accessed.