



Specialist Debt Advice Service Spotlight September 2019

Shelter

Direct Earnings Attachment

This month's Spotlight discusses Direct Earnings Attachments (DEA), how they are made and what an adviser needs to do when dealing with a client that has a DEA in place.

What is a DEA?

Introduced by [s.105 of the Welfare Reform Act 2012](#) which made amendments to the Social Security Administration Act 1992, a DEA is an Attachment of Earnings Order where no county court judgment (CCJ) or other court order is required.

DEAs came into force on 23 April 2013 and are collected by DWP Debt Management (DDM). Where there is an outstanding social fund loan, overpayment of benefit paid by the DWP or a local authority, and/or civil/administration penalties, the debtors employer can be instructed by DDM to make deductions from the individuals pay. Deductions will be taken on the frequency of salary. [Section 105\(1\)](#) of the Welfare Reform Act 2012 under Section 71ZD(3)(i) of the Social Security Administration Act 1992 confirms that failure by the employer to comply is a criminal offence punishable on summary conviction by a fine.

As of 1 April 2015 ([s3](#) of the Tax Credits (Exercise of Functions) Order 2014) (see also [s.126](#)(1) of the Welfare Reform Act 2012)), HM Revenue and Customs (HMRC) can pass overpayments of Tax Credits on to DDM so that they can use their power to instruct an employer to implement a DEA, a power currently unavailable to HMRC. This appears easier and less time consuming than amending a clients PAYE tax code which HMRC has the option to do.

Historic overpayments

Many clients are being contacted by DDM and asked to pay historic overpayments and social fund loans they may know nothing about or have simply forgotten a sum was owed. This may lead you to question whether they can take this action to collect the amount owed as it is statute barred. [Section 38\(1\)](#) of the Limitation Act 1980 defines action as:

““action” includes any proceeding in a court of law, including an ecclesiastical court”

Therefore, based on the above, is a DEA an 'action'?

The answer is no. [Section 108](#) of the Welfare Reform Act 2012 amended s.38 of the 1980 Act to include subsection 11 which states:

“References in this Act to an action do not include any method of recovery of a sum recoverable under—

(a) Part 3 of the Social Security Administration Act 1992,

(b) section 127(c) of the Social Security Contributions and Benefits Act 1992, o

(c) Part 1 of the Tax Credits Act 2002,

other than a proceeding in a court of law.”

In turn, DDM are passed a debt to collect either internally, by a local authority or HMRC. The client then seeks your assistance because they have been informed deductions will be taken from their wages. The following has been taken from the [DWP Benefit Overpayments Recovery Guide December 2018](#):

“Direct Earnings Attachment”

5.92 - Where a debtor has failed to make an arrangement to pay and is in PAYE employment, the Department can instruct a debtor's employer to take deductions direct from their employee's salary to recover a debt. This is known as a DEA – Direct Earnings Attachment.

5.93 - For each deduction made by the employer from the debtor's earnings, a charge of £1 can be levied against them for administration costs.

5.94 - The amount of deduction is determined by the level of the debtor's earnings. The rates for monthly pay are shown at Appendix 2 (we have provided this [link](#)) for illustrative purposes.

5.95 - A Direct Earnings Attachment is only usually considered for debtors who won't agree a voluntary repayment plan, although a debtor can request a voluntary DEA if they so choose. It is not intended for those who cannot pay where suspension, abandonment or waiver of the debt would be more appropriate.

5.96 - Where we are unable to take deductions from benefit because there is insufficient benefit in payment, the amount recovered by DEA is restricted to what would have been recovered from benefit.”

It is important to check with DDM what contact they have made with the client prior to their DEA instruction. [Reg.25](#) of the [Social Security \(Overpayments and Recovery\) Regulations 2013](#) allows the DDM to vary the DEA to a lesser/fixed amount so that it is affordable.

Where a DWP benefit overpayment is disputed and is relatively recent, it should be explored if the client asked for a mandatory reconsideration (MR) and/or written statement of reasons (WSOR). Where a client failed to dispute the overpayment when initially notified and now wishes to dispute this, only a decision maker will be in a position to consider a late MR.

Where the client has been notified of a historic overpayment and wishes challenge liability it is useful to establish the date of the decision as the client may not have been informed. This would then allow your client to request a MR. If recovery of the overpayment has already started, the recovery will be suspended until the reconsideration has been completed, unless the overpayment relates to Universal Credit or where there is a late MR.

For disputed Housing Benefit (HB) overpayments the client will need to liaise with the LA who overpaid the benefit. See Shelter's "[Housing benefit revisions and appeals](#)" for more information.

For disputed tax credits overpayments, HMRC have said in their "[Code of Practice 26: What happens if we've paid you too much tax credits](#)", page 10 that an overpayment from previous awards cannot be disputed where it's been more than 3 months since the date of the final decision notice. However, where it can be evidenced there were exceptional circumstances why no dispute was raised initially (such as the client was in hospital), HMRC can apply their discretion and consider the dispute. There is no right of appeal to this discretion.

Summary

Clients should have been notified by DDM of an overpayment or outstanding social fund loan before the commencement of a DEA. This would give the opportunity to negotiate an affordable amount paid either by direct debit or DEA. It is confirmed in the Overpayment Recovery Guide that a DEA should be the final attempt to obtain payment. Unfortunately for the client, most cases will be outside the challenge/dispute timeframe meaning that recovery of the amount will continue until DDM are instructed otherwise.

Complaints to DDM can be made where you feel they are/have been unreasonable in their approach. DDM customer service standards can be found [here](#).