

Eligible Loan Deductions Scheme Memorandum of Understanding

This Memorandum of Understanding is made on between the Secretary of State for Work and Pensions [insert address] ["DWP"] and [insert name address and company number] ["the Lender"]

Purpose of the memorandum

1. This memorandum sets out the circumstances in which the DWP will deduct from an individual's benefit payments sums due to the Lender, by way of qualifying loan repayments, in accordance with the legislation governing the Eligible Loan Deductions Scheme ["the Scheme"].
2. This memorandum is intended to constitute ex-statutory administrative guidance to the Parties in relation to the implementation of the Scheme.
3. The Parties agree that this memorandum is not legally binding between them and does not create any legal rights or obligations.

The lender's obligations

4. The Lender warrants that it satisfies the criteria concerning its status and quality of service set out in Schedule 1.
5. The Lender acknowledges that if in the future it fails to satisfy such criteria it may be immediately excluded from the Scheme.
6. The Lender undertakes that in implementing this memorandum it will not do anything likely to prejudice the reputation of the DWP.

The lender's qualifying loans

7. The Lender warrants that only loans which satisfy the criteria set out in Schedule 2 will be referred to the DWP under the Scheme.

The DWP's obligations

8. The DWP agrees to discharge its obligations and responsibilities set out in Schedule 3.

Change of circumstances

9. The Lender will notify the DWP in writing of any change in their circumstances that may affect their ability to continue to participate in the Scheme as soon as practicable.

Review of memorandum

10. The Parties will review the operation of this memorandum annually commencing from the date this memorandum is signed by the parties and at anytime at the request of the DWP.

Amendment and termination

11. DWP may amend any provision in this memorandum at any time by giving notice in writing.
12. Either Party may notify the other that it is withdrawing from the memorandum by giving 28 days notice to the other in writing.
13. In the event of the memorandum being terminated (for any reason) the lender agrees to work with DWP to ensure any outstanding actions are satisfactorily resolved within a reasonable time scale.

Interpretation of the memorandum

14. The DWP may from time to time provide an interpretation of any part of the memorandum and such interpretation shall be binding on the Lender.

Applicability of related legislation

15. The Parties acknowledge that the requirements of the Data Protection Act 1998, the Freedom of Information Act 2000 and the Human Rights Act 1998 will be fully respected in connection with the transfer and retention of any information.

Signed

On behalf of the Secretary of State for Work and Pensions

On behalf of the Lender

Schedule 1

The lender criteria

1. The lender must be:-
 - a. a body registered under section 1 of the Industrial and Provident Societies Act 1965;
 - b. a credit union within the meaning of section 1 of the Credit Unions Act 1979;
 - c. a charitable institution within the meaning of section 58(1) of the Charities Act 1992; or
 - d. a body which is entered on the Scottish Charities Register under section 3 of the Charities and Trustee Investment (Scotland) Act 2005,
 - e. a Community Interest Company for the purposes of part 2, section 26 of the Companies (Audit Investigations and Community Enterprise) Act 2004

which, except for a credit union, is licensed under the Consumer Credit Act 1974 and which is determined by the Secretary of State as an appropriate body to which payments on behalf of the borrower may be made in respect of loans made by that body.

The lender's responsibilities

2. The lender must carry out an appropriate risk assessment of the customer's ability to repay, based on his income and outgoings, as part of the loan application process.
3. The lender must provide the borrower with details of a source of free and independent debt advice where appropriate and, in particular, must have done so before referring a case to DWP.
4. Before making the loan, the lender must explain to the borrower that, in the event of default, the loan may be referred to DWP for repayment by deduction from his benefit.
5. The lender must offer a face-to-face service where the customer requests or where the particular circumstances require it before, or after making a loan.

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6. The lender must provide pre-sales information to the customer before the loan agreement is made which includes full details of the actual cost of the loan and additional charges that may be incurred.
7. The lender must ensure that the following statement appears on the face of the loan agreement:

"I agree that if I default on repayments, information about my loan may be passed on to the Department for Work and Pensions for their consideration of deductions from the benefits that I am or will become entitled to"

8. Where the borrower represents that he has difficulty in making the agreed repayments, the lender must take steps to negotiate alternative arrangements and where appropriate, direct the customer to a source of free and independent debt advice. For clarity, DWP requires lenders to consider cases of financial difficulty sympathetically and positively and in considering new arrangements about how the customer will pay off the debt, should take into account other commitments including money owed to other lenders; the impact of any long-term health difficulty affecting the customer's ability to repay and discuss options available to them; working with recognised debt-counselling organisations if appropriate.
9. The lender must not add to the amount owing at the date of the application, any further interest or other charges. The amount owing is the total of the principal plus interest under the loan agreement less any payments.
10. Before referring a case to DWP the lender must take steps to contact the borrower to discuss the debt and to negotiate alternative repayment arrangements and should, as a minimum:
 - a. write to the borrower outlining the arrears position and the amount of the debt;
 - b. if there is no response, write a second time;
 - c. if there is still no response, write a third time, explaining that unless payment is resumed within 14 days, the case will be referred to DWP for consideration of deductions from benefit to recover the debt, stating the amount of outstanding debt,.
11. The lender must refer a case to DWP on the appropriate DWP referral form signed by a suitably authorised person for the lender
12. The lender must provide a copy of the loan agreement with the referral form.

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13. The lender must not take action to recover the debt while deductions are being taken.
14. Where the lender receives a payment from the borrower after deductions have started, the lender must recall the case from DWP.
15. The lender may decide at any time that it no longer wishes to receive payments under this Scheme and, if so, must notify DWP, at which point, deductions will cease.
16. In the event of DWP making an over-recovery of a debt and the recovered amount has been received by the lender, the lender must repay to DWP that amount. This includes where the decision to take deductions was changed or overturned on appeal.
17. The lender must retain its records in relation to an application for deductions for a period of 12 months after deductions have ceased.
18. The lender must agree to provide the DWP with the information it may reasonably require from time to time for purposes of review.
19. The lender must notify DWP if they become aware that the borrower is personally insolvent.
20. The lender must not seek recovery of the loan by other means after deductions have started.

Schedule 2

Loan criteria

1. The loan must be a personal, unsecured cash loan.
2. The loan must not be cash advanced against a credit card.
3. The loan must not be for the purposes of business or self-employment.
4. The loan is not subject to an unresolved dispute between the lender and the borrower.

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Schedule 3

DWP responsibilities

1. DWP will not accept any responsibility for the debt or act as a guarantor. Deductions are only possible whilst the borrower is in receipt of a prescribed benefit. In the event benefit ceases the case will be returned to the lender.
2. Deductions from benefit can only be made if the customer is in receipt of one or more of the following benefits:
 - a. Income Support
 - b. Jobseekers Allowance
 - c. Carers Allowance
 - d. State Pension
 - e. Pension Credit
 - f. Incapacity Benefit
 - g. Employment and Support Allowance (ESA)
3. DWP is limited by law to the amount that can be deducted from a person's benefit. The flat rate amount prescribed in regulations is 5% of the prevailing income support rate for a single person aged 25 or over, rounded up to the next 5p. This equates to £3.30 for 2010/2011 and £3.40 for 2011/2012.
4. DWP will return any case that cannot be recovered by deductions from benefit.
5. Deductions from benefit cannot be made from the benefits of borrowers living outside Great Britain. These cases will be returned to the lender without explanation.
6. Deductions will only apply to loans taken out in Great Britain after the Parties have signed this Memorandum.
7. The deductions for private loans have the lowest priority in the list of deductions that the DWP can make. Deductions under the Scheme may no longer be possible where deductions of a higher priority start.
8. Deductions will not be taken if deductions in respect of a Social Fund loan are already being taken. Deductions will not be taken and, if commenced will cease, where deductions are taken to recover an overpayment of benefit.

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9. Deductions can only be taken in respect of one loan at a time. Referrals received when deductions are already being taken will be returned.
10. Deductions can only be considered where loan repayments are in arrears. This means that the borrower has failed to make (and has not resumed) payments, either as originally agreed or as agreed in a subsequent re-negotiation for a period of 13 weeks prior to the date of referral to DWP. In addition, the lender must have made reasonable action, short of going to court, to persuade the borrower to resume payments.
11. When a lender first refers a case, and deductions from benefit are possible, DWP will issue a notification to the customer explaining that recovery will be made from their benefit. DWP will be responsible for discussing with the customer matters relating to deductions from benefits and payments to the lender. Any subsequent contact with the customer regarding the loan arrangements will be the responsibility of the lender.
12. DWP will make payments of monies collected to the lender's bank account on a four-weekly basis based on a single schedule detailing all transactions since the last statement.
13. In the event of the borrower appealing against the DWP decision to take deductions, those deductions will continue pending the outcome of the appeal.
14. In the event of DWP making an over-recovery of a debt (and the over-recovered amount has not yet been received by the lender), an adjustment will be made by DWP before the next payment notification is issued to the lender.
15. In the event of DWP making an over-recovery of a debt and the recovered amount has been received by the lender, DWP will reimburse the borrower and recover that amount from the lender. This includes where the decision to make deductions was changed or overturned on appeal.
16. Where the borrower disputes the amount of the loan outstanding, DWP will refer the borrower to the lender.
17. In the event of the borrower becoming personally insolvent, deductions will cease.