

Exercise 5 – deductions

Francis comes to see you about his Universal Credit. He is aged 33, unemployed, and considers that he is fit for work. He has 2 children from a previous relationship who live with their mother - he sees them occasionally, but they don't stay overnight. He has no income apart from his UC and a small amount of council tax reduction.

Francis is receiving only a fraction of his UC standard allowance. His UC award says that there are deductions, but he doesn't understand why they are so high - they come to a total of £134.12 per month.

You work out that he has a deduction for child support maintenance, one for rent arrears, one for council tax arrears, and one to repay the short-term advance payment he needed when he first claimed UC.

Francis also has an APA which pays his housing element direct to his housing association landlord.

1) Is it lawful for Francis to have more than three deductions from his UC?

In this case, yes it is – the answer is c). Child support, rent and council tax are all going to 'third parties' but child maintenance deductions under the 2003 and 2012 schemes are not covered by the 3 deduction limit. The short-term advance is going to the DWP – the same 'party' which pays UC – so it is not included in the limit either.

2) The third party deductions alone (child support, rent arrears and council tax) come to £86.45 and the recovery of the advance is £47.67. Is this lawful?

£7 flat rate child maintenance under the 2012 scheme
£15.89 for council tax (5 per cent of his standard allowance of £317.82)
£63.56 for his rent arrears (20 per cent of his standard allowance)

The answer is b) – the deductions are unlawful only because, together with the deduction for the short term advance, they come to more than 40%, and the rent arrears deduction is too high. Rent arrears are one of the situations where the DWP is allowed to exceed the maximum (if in the claimant's 'best interests'), but only if they are deducting at the minimum 10% - here it is 20%.

3) Which of the third party deductions is higher than the law allows?

The answer is c) – rent arrears can be deducted at anything from 10 to 20%. In Francis' case, the rent arrears deduction is too high in combination with the other deductions as the total is more than 40% of the standard allowance - the DWP are allowed to exceed the 40%, but only if in Francis's 'best interests', and only if rent arrears are being taken at 10%. So, here, the rent arrears deduction should be reduced until overall deductions come to 40% (£127.12), and you could argue for it to be deducted further, pointing out that the regulations allow for a minimum rent arrears deduction of 10%.

Decisions which allow DWP discretion shouldn't be made using blanket rules - so, arguably, the DWP should give more consideration to the rent arrears deduction than just bringing it down so that the 40% overall deduction rate is met.

Francis's consent is not needed for the deduction to be made (his landlord probably applied for it). His landlord might even be prepared to support Francis in asking for the deduction to be reduced further, knowing Francis is determined to clear the debt but is struggling with his other everyday costs. The landlord may not have had a choice about the level of deduction.

4) Which of the deductions can't be changed unless Francis's circumstances change?

The answer is a) – child maintenance - this is fixed and represents Francis's liability for child support. The DWP do not have any choice about making this deduction. They must make it where the conditions are met. It is not in the list of deductions limited to 3, although it is covered by the 40% maximum.

If Francis believes he is not liable to pay child maintenance he should seek advice. If he provides shared care, then he can explore whether the amount can be reduced to reflect this - shared care in Francis' situation could reduce the flat rate of maintenance to nil.

5) Which of the third party deductions probably can't be changed until the arrears are cleared?

The answer is a) – council tax. Francis's consent isn't needed for this deduction. The local authority should have sent details of the liability order or summary warrant concerning his council tax debt.

Although technically the DWP doesn't have to make a deduction, it has the power to make it in these circumstances & the law doesn't give an option for it to be made at a lower level than 5% of the standard allowance. It comes high up in the priority list (after housing debt and fuel), so it is likely to continue to be taken.

6) Francis's repayment of the short-term advance he had at the beginning of his UC claim is being made at 15% - £47.67 a month.

Can he do anything about this?

The answer is c) – the repayment should usually be made within 12 months but it is worth looking at how much Francis received by way of a short-term advance and working out what is the minimum that could be deducted in order to repay within the timescale. 15% is the maximum that can apply in Francis's circumstances - the law allows for a lower deduction. Repayment, including the rate of deduction, is an appealable decision, so Francis could ask for an MR. If necessary this could include a challenge to the level of the rent arrears deduction (as the short-term advance should only be recovered if the conditions about the 40% overall maximum are met).