



Report

Date: 2 September 2016

Security Level: IN CONFIDENCE

To: Hon Anne Tolley, Minister for Social Development

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Alignment Project: Ministerial Direction on Debt Recovery - checking bank accounts of clients before issuing a debt deduction notice

Purpose of the report

- 1 When MSD seeks to recover debt from a former client (debtor) using a deduction notice, we do not always collect bank balance information when determining the amount to be deducted.
- 2 This practice is inconsistent with the *Ministerial Direction on Debt Recovery* (the Direction), which obliges MSD to check bank balances and outgoings for every deduction notice issued.
- 3 MSD does not propose to change practice because:
 - bank balances are generally not helpful in providing an understanding of the debtor's ability to repay their debt through regular income deductions, and so are not useful for setting a deduction rate
 - it would incur additional operational costs for MSD to collect this information
 - debtors could be negatively impacted as they would be required to provide extra information that may impose costs on them.
- 4 We seek your agreement to amend the Direction to align with our current practice.

Recommended actions

It is recommended that you:

- 1 **Note** that the way that MSD recovers debt is inconsistent with the Ministerial Direction on Debt Recovery (the Direction), which notes that bank balances must be taken into account when issuing a debt deduction notice

Yes / No

- 2 **Note** that debt deduction notices are only used when other reasonably practical steps to recover debts have been unsuccessful, and that they are set at a rate that will not cause undue hardship to debtors

Yes / No

- 3 **Note** that MSD does not always check bank balances when issuing a deduction notice to a debtor's source of income, if we hold current information about their income and outgoings
Yes / No
- 4 **Note** that MSD always checks bank balances when issuing a deduction notice to a debtor's bank
Yes / No
- 5 **Agree** to amend the Direction to align with current practice, by:
- only requiring bank balances to be checked where a debt deduction notice is being issued to a debtor's bank
 - allowing MSD the discretion not to check bank balances if it already holds sufficient information about a debtor's financial circumstances
- Agree / Disagree**
- 6 **Note** that no retrospective action is required in regard to past practice
Yes / No
- 7 **Agree** to send a copy of the report to the Associate Minister for Social Development.
Agree / Disagree



Ruth Bound
Deputy Chief Executive
Service Delivery

7/9/16

Date

Hon Anne Tolley
Minister for Social Development

Date

Background

- 5 Debts to MSD are usually created where a person received a form of recoverable assistance while they were a client of MSD, such as an Advance Payment of Benefit or a Special Needs Grant, or an overpayment of benefit or student allowance entitlement.
- 6 The Social Security Act 1964 (the Act) requires MSD to take all reasonably practicable steps to recover debt. MSD has the power to issue deduction notices to recover debts, and the Direction sets out guidance for how MSD uses its power to recover debts from clients and former clients.
- 7 Clause 6 of the Direction specifies the process that MSD should follow when issuing deduction notices. MSD is required to consider the amount of the debt, the balance in various bank accounts that the debtor has, the known outgoings of that person (such as essential automatic payments, home mortgage repayments, etc.), and the amount that the debtor could reasonably be assumed to require to live on before determining the deduction rate.
- 8 Section 11(e)(i) of the Act grants MSD the power to obtain information from a debtor's bank for the purposes of ascertaining their financial circumstances.

Our current policy and practice is not to check bank balances where deduction notices are being issued to a debtor's source of income, and we hold current information about their income and outgoings

Current practice

- 9 As a first step in the debt recovery process for debtors who are no longer in receipt of a benefit, MSD's Collections Unit writes to the debtor stating that the debt is to be recovered, the amount of the debt, providing review and appeal rights, and asking the client to contact MSD so arrangements for recovery can be made. A second written notice is sent to the debtor if they do not respond to the first notice after at least two weeks.
- 10 MSD makes a variety of debt repayment options available to debtors. Arrangements can be made to repay the debt from savings, or regular payments can be made at a rate they can afford.
- 11 If the debtor does not make contact with MSD and/or does not make voluntary payments as requested, then MSD may decide to issue a debt deduction notice to:
 - the debtor's source of income (for regular deductions)
 - the debtor's bank (for a lump sum deduction from a bank account).
- 12 Debt deduction notices are only used when other reasonably practicable steps to recover debts have been unsuccessful. Deduction rates are set at a level that will not cause undue hardship, based on the information available to MSD.
- 13 If a debtor disputes the deduction rate, it can be renegotiated, at any stage, at a level that he or she can afford.

MSD does not always check bank balances when issuing a deduction notice to a debtor's source of income

- 14 In cases where MSD will be issuing a debt deduction notice in respect of a debtor's source of income, and the debtor has provided MSD with information about their income and outgoings, we do not always then check bank balances.
- 15 MSD only checks bank balances when we are unable to obtain sufficient information about the debtor's source or amount of income and outgoings.
- 16 It is MSD's view that, in most cases, it is not necessary to check bank balances in order to determine a debtor's ability to repay their debt through regular income

deductions. Our view is that in most cases the person's income and outgoings provide enough information to determine a person's repayment ability.

MSD always obtains bank balance information when issuing a deduction notice to a debtor's bank

- 17 If MSD has not received a response from the debtor after repeated attempts at contact, and there is nothing in Ministry records to indicate their ability to repay (such as receipt of Accommodation Supplement or Temporary Additional Support payments), then MSD sends a request for information to their bank under s11 of the Act. This is to ensure that there are sufficient funds in the debtor's account for the lump sum deduction, and that their regular outgoings from that account have been taken into consideration.
- 18 MSD always obtains bank balance information where we are issuing a deduction notice to a bank. However, the process for obtaining information from banks can be slow, and a high volume of requests can impose costs on the banks providing the information.

The policy intent is not to cause undue hardship to the client

- 19 The policy intent of the Direction is to ensure that MSD gathers enough information about a client's financial circumstances to fix debt repayments at a level which will not cause him or her undue hardship. It is also to ensure that the debt recovery process is fair and reasonable.

The law says that MSD must have regard to all relevant considerations before issuing a deduction notice, including the balance in debtors' bank accounts

- 20 Section 86(1BA) of the Act imposes a general obligation on MSD to consider a debtor's individual circumstances, by having "regard to all relevant considerations" before issuing a deduction notice.
- 21 Clause 6(5) of the Direction guides MSD to issue a deduction notice to a debtor's employer or other source of income as a first preference, unless issuing deduction notices to a bank is the only realistic option for recovering the overpayment available in the circumstances.
- 22 Clause 6(6) of the Direction also obliges MSD to "take into account the balance in the various bank accounts that the debtor has, the known outgoings of that person [...] and the amount that the debtor could reasonably be assumed to live on", for "any deduction notice issued".

Practice could be changed to align with legislation, but MSD does not recommend this option

Legal advice on risk of current practice

- 23 Section 9(2)(h) Legal professional privilege

Client impacts

- 24 Approximately 60 debt deduction notices are issued per day. If practice were changed to align with legislation, MSD would need to collect and process bank balance information for all notices issued.

- 25 MSD could look to collect this information in the first instance by asking debtors to provide the information in the same way as is done in other contexts when Work and Income is checking financial information. For example, clients applying for one-off assistance who are not receiving ongoing financial assistance must verify their assets by providing bank balances or transaction records.
- 26 A practice change requiring asset verification may also impose costs to some debtors, as some banks charge a fee to provide printed bank statements or transaction records.

Operational cost of changing practice

- 27 MSD administrative staff process around 60 debt deduction notices per day (based on a total of 233 working days per year). Approximately a third of these require s11 requests to a bank.
- 28 Extra resource would be required if MSD were to collect bank balance information for all notices (i.e. the remaining 40 notices). MSD estimates that this would require an additional three full-time dedicated staff at a cost in the region of \$209k per annum (including standard set up costs).

Response

- 29 MSD does not propose to change practice because:
 - bank balances are generally not helpful in providing an understanding of the debtor's ability to repay their debt through regular income deductions, and so are not useful for setting a deduction rate
 - it would be costly for MSD to collect this information (approx. \$209k per annum)
 - debtors could be negatively impacted in that they would be required to provide extra information that may impose costs on them (e.g. some banks charge a fee to provide printed balance statements to their customers).

MSD recommends that the Direction be amended to align with current practice

Client impacts

- 30 There is unlikely to be any impact on debtors if legislation were aligned with practice. This is because MSD would not be placing any further obligations on the debtor.

Legislation change

- 31 MSD's preferred option is to amend the Direction to enable us to distinguish between deduction notices issued to banks and those issued to sources of income. The proposed changes would amend the Direction so that it:
 - is limited to debt deduction notices being issued to banks, rather than all debt deduction notices
 - allows for a more limited consideration of a debtor's circumstances when a debt deduction notice is issued to their source of income (meaning that MSD would not be required to check bank balances, where it has sufficient information about a debtor's circumstances, to set a reasonable rate of deduction).
- 32 By amending the Direction, only debt deduction notices issued to banks would require bank balances to be checked. This aligns with current practice and ensures that there are sufficient funds in the debtor's account to cover the lump sum deduction. It also ensures that the debtor is left with enough money to cover regular expenses.
- 33 For deduction notices issued to the debtor's source of income, checks on bank balances and outgoings would be optional. This will align legislation with current practice, allowing MSD the discretion not to check bank balances if it already holds sufficient information about a debtor's financial circumstances.

- 34 If MSD does not know a debtor's full circumstances or they have not made contact after repeated attempts by MSD, we will continue to check their bank balances and outgoings, as per current practice.

No retrospective action is required in regard to past practice

Legal advice

35 Section 9(2)(h) Legal professional privilege

Response

- 36 MSD will not undertake a retrospective review, because:
- clients have always had the ability to contact the Ministry at any stage to advise their deduction amount is causing hardship, with the Ministry immediately making an adjustment going forward once their full circumstances are known
 - clients have also always retained the ability to apply for a Review of Decision if they disagreed with the decision to establish the debt, which has the immediate effect of MSD suspending recovery of the debt (regardless of how it is being repaid)
 - there would be administrative costs associated with undertaking a review, and it is unclear whether there would be any benefit to the client, given that the payments made reduced a debt the client owed to MSD.

Next steps

- 37 If you agree to amend the Ministerial Direction, MSD will provide you with an amended version for your signature.
- 38 Once signed, officials will arrange for the Direction to be gazetted and tabled in Parliament as soon as practical. Changes would enter into effect 28 days after being gazetted.

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