



FIRST RIGHT OF APPROPRIATION

You have a right to specify how money paid into your bank account is used. Yours is the 'first right of appropriation' of that money. However most people do not know this or need to use it in the normal course of banking.

If you do not specify what you want the money to be used for, then your bank has the second right of appropriation. That means they decide what they will pay. Usually this is on a first come, first served basis with money deducted from your account in date order until there is no money left or more is paid in.

A problem arises if you have an unauthorised overdraft or are at the limit of an authorised overdraft with your bank. If your wages or benefits are then paid into your account you may not be able to access your money if the bank takes it to reduce the overdraft. They have the right to do this if you do not instruct them to use your wages, etc in a different way before that money is paid into your account.

You may have an unsecured loan with the same bank you have your current account with. The bank will automatically take your loan instalment from your current account whether you can afford it or not (It is not a direct debit or standing order that you can cancel). Unfortunately this can mean people having no money left out of their wages or benefit to pay rent, mortgage or council tax or to buy food.

The best thing to do is open a new bank account elsewhere and have your income paid into that. But you may not be able to do that before your next money is paid to you...

What to do if you know you will 'lose' your next wage packet or benefits payment if it gets paid into your bank account.

Go to your bank with a letter clearly instructing them what payments you want them to make out of the next amount to be paid in. There is an example letter attached, along with supporting information which you could also send to your bank.

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The reasons why the bank should do as you instruct:

The Law Relating to Banking Services (Laddelow & Roberts, para 25):

'a customer with an overdrawn account is entitled to pay in a cheque and appropriate it to a cheque he has drawn, and his bank will not be able to use the credit to reduce the overdraft.'

The Law and Practice of Banking Volume One (para 2-79):

'money paid into a bank account to meet a particular bill or cheque must be applied accordingly.'

The Law and Practice of Banking Volume One (para 2-75):

'if he (the customer) does not make a specific application at the time of appropriation, then the right of application generally devolves on the party who receives the money.'

-you are making a specific application so the right of application does not devolve on the Bank.

These examples demonstrate the right to appropriate where a credit balance is exhausted or the account has reached the limit of its permitted overdraft and further money is paid in. In this situation the customer has a right to appropriate a further payment in so that it is not used to reduce the overdraft.

(Where no further monies are paid in by the customer the bank is entitled to refuse to act on the customer's instructions.)

Banks Lending Code 2009

Section 9 Financial Difficulties

163. ...the subscriber should acknowledge that income should only be used to repay 'non-priority' debts once provision has been made for any 'priority' debts. The subscriber should leave the customer with sufficient money for reasonable day-to-day expenses, taking into account individual circumstances. Subscribers will not subject customers to harassment or undue pressure when discussing their problems.

164. A debt is considered 'priority' where the customer's failure to pay could lead directly to the loss of one or more of the following:

- The customer's home (e.g., rent, mortgage, secured loans);
- The customer's liberty (e.g., council tax, child support maintenance, income tax, court fines);
- The customer's utility supplies (e.g., water, gas, electricity); or
- The customer's essential goods or services (e.g., a cooker, a fridge, or the means to travel to work).

- Your home, utilities and ability to buy food are all at risk if you cannot access your income.

FIRST RIGHT OF APPROPRIATION: example letter

Mr A. N.Other
129 Anystreet
Anytown
BS99 0XZ

The Manager
Big Bank
Money Street
Cashtown

Date

Dear Sir/Madam

Re: First Right of Appropriation – account No:

Funds are due to be paid into the above account in the next week/2 weeks/etc. They are:

Wages	- £.... approx.
Child Benefit	- £.... approx.
Disability Living Allowance	- £.... approx.
	£ total approx.

I write to exercise my first right of appropriation over these funds and wish you to pay the following items from them:

£450.00	Standing Order in favour of Cashtown Council (rent payment)
£ 94.00	Direct Debit in favour of Fullpower (Gas & Electricity)
£300.00	Cash withdrawal for food and other essential living expenses
£844.00	

I also remind you of the Bank's obligations under the Lending Code 2009 and that you should agree to leave me with sufficient money for reasonable day-to-day expenses, especially priority bills.

With thanks for your assistance.

Yours sincerely