



14 December 2011

PRESS SUMMARY

Secretary of State for Work and Pensions (Appellant) v Payne and another (Respondents)
[2011] UKSC 60

On appeal from: [2010] EWCA Civ 1431

JUSTICES: Lady Hale, Lord Brown, Lord Mance, Lord Kerr, Lord Wilson

BACKGROUND TO THE APPEALS

The issue in the case is whether the Secretary of State can continue to recoup Social Fund loans and overpayment of benefits by deduction from current benefit payments during the “moratorium” period after the making of a Debt Relief Order (“DRO”) under Part 7A of the Insolvency Act 1986 (“the IA”).

Mrs Payne obtained a Social Fund budgeting loan in September 2007. In August 2009, she obtained a DRO listing the loan among her qualifying debts. When she notified the Secretary of State, he began making deductions from her income support. In August 2010, the moratorium period came to an end and the debt was discharged.

Ms Cooper incurred an overpayment of benefit. In December 2009 the Secretary of State began making deductions from her incapacity benefit in order to recover the overpayment. In January 2010, Ms Cooper obtained a DRO which listed the overpayment as one of her qualifying debts.

Section 251G(2)(a) of the IA provides that during the moratorium the creditor to whom a specified qualifying debt is owed “has no remedy in respect of the debt”. Mrs Payne and Ms Cooper brought judicial review proceedings challenging the lawfulness of the deductions made after the making of the DROs; their cases were consolidated. Cranston J at first instance found in their favour, holding that the power to make deductions from current benefits ceased to be available when Mrs Payne and Ms Cooper obtained the DROs. A majority of the Court of Appeal (Smith and Toulson LJ) confirmed the High Court’s decision. The Secretary of State appealed.

In the context of bankruptcy, the High Court has held that such deductions can continue to be made between the making of the bankruptcy order and the bankrupt’s discharge from bankruptcy: *R v Secretary of State for Social Security, Ex p Taylor and Chapman* [1997] BPIR 505. The House of Lords reached the same conclusion in the context of Scottish bankruptcy law: *Mulvey v Secretary of State for Social Security* 1997 SC (HL) 105. Once a bankrupt is discharged, however, the Court of Appeal has held that the liability to repay the Secretary of State is also discharged: *R (Balding) v Secretary of State for Work and Pensions* [2007] EWCA Civ 1327.

JUDGMENT

The Supreme Court unanimously dismisses the appeal. The leading judgment was given by Lady Hale, with whom the other justices agreed (Lord Brown and Lord Mance adding short concurring judgments).

REASONS FOR THE JUDGMENT

The Court holds that there is no such thing as the “net entitlement principle”. The claimant has a statutory entitlement to the amount of benefit which she is awarded. The liability to repay arises independently of her entitlement to any benefit from which the Secretary may later decide to recoup it [21]. The power to recover the debt by deduction from benefit is a “remedy in respect of a debt” which may not be exercised during the moratorium, according to section 251G(2) of the IA [22], [34].

The Court sees no reason to distinguish between the DRO scheme and bankruptcy in this respect. The Court considers that *Taylor and Chapman* was wrongly decided. The Secretary of State loses the power to recoup overpayments and Social Fund loans on the making of a bankruptcy order just as he does on the making of a DRO [23].

The Court affirms *Balding* and finds that the principle equally applies to the DRO scheme. All the liabilities to repay overpaid benefits, tax credits and Social Fund loans listed in DROs will in any event be wiped out at the end of the moratorium period [26].

The Court comments that it would be open to the Government to promote delegated legislation to exclude these liabilities from the definition of “qualifying debts” in the DRO scheme and to seek equivalent legislative amendment of the the bankruptcy scheme.

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

www.supremecourt.gov.uk/decided-cases/index.html