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Press release – Supreme Court upholds Court of Appeal decision – thousands of the poorest people in society will benefit (SSWP v Payne and Cooper)

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The claimants, Ms Payne (1) and Ms Cooper (2), owed money to the DWP in respect of a overpayment of benefit (Cooper), and the repayment of a Social Fund loan (Payne). Both were subject to Debt Relief Orders (DROs) (3). Neither debt was fraudulent.

The issue in both cases was whether the DWP had the power to make deductions from the claimants' ongoing benefits during the one-year moratorium period following the making of the DROs, in order to recover the overpayment/repayment.

DROs are similar in many respects to bankruptcy except for people with no assets and no income. Since 1997 the courts have held that during the time between the making and the discharge of a bankruptcy order, the DWP does have the power to make deductions from benefit in respect of overpayments of benefit and non-repayment of Social Fund loans (4). The Secretary of State argued that the law relating to DROs should be the same as the law relating to bankruptcy, and that for that reason, deductions should be allowed.

The relevant statutory provision relating to DROs (5) states that after the making of a DRO, a creditor (here the DWP) "has no remedy in respect of the debt". Ms Payne and Ms Cooper argued that deductions from benefits were "a remedy", and therefore the DWP had no power to make them. This argument succeeded in the High Court and in the Court of Appeal (by a majority) both times on the basis that the natural meaning of the word "remedy" included deductions from benefit. In a concise judgment, the Supreme Court agreed with the Court of Appeal and the High Court on this issue. That was enough to dispose of the case in the claimants' favour.

The Supreme Court went on to consider the position following the making of a bankruptcy order, and decided that it should be the same for bankruptcy as for DROs. In other words, there is no power to make deductions from benefits following the making of a bankruptcy order, just as after a DRO.

Ravi Low-Beer of the Public Law Project, the solicitors for Ms Cooper, said:

"This judgment will give a helping hand to thousands of the poorest people in our society – people who effectively have no real income and no real assets at all. It ends the anomaly by which debts to the DWP were treated differently from debts to other creditors. Now, like other creditors, the DWP will be unable to enforce debts listed in

Comment [g1]: There are some creditors who can recover – eg, for magistrates court fines, maintenance, damages for personal injury

the DRO by making deductions from benefit during the year long period between a DRO and its discharge.

The amount at stake is typically £9.90 per week or less, for a year. For someone with less than £50 surplus income per month to live on, and assets of less than £300, that can be the difference between getting back on an even keel, and sliding into social problems like mental ill health, family breakdown and homelessness with massive hidden costs to the public purse.

None of this applies to cases where a debt was incurred fraudulently – in those cases, the DWP will be able to recover the debt in spite of the DRO.

The Supreme Court has also held that there can be no deductions from benefit following the making of a bankruptcy order. Unlike Ms Payne or Ms Cooper, some bankrupts do have significant assets. But in those cases, the DWP will be able to claim its share of those assets through the bankruptcy estate, like any other bankruptcy creditor.”

David Martinez of Edwards Duthie, the solicitors for Ms Payne, said:

“This judgment was the result of the great teamwork between the two legal teams as well as valuable support from the Citizens Advice Specialist Support Debt Team. In the long term this judgment will help many of the poorest people in our society rebuild their lives.”

Notes to Editors

(1) represented by Edwards Duthie Solicitors, Desmond Rutledge and Richard Drabble QC

(2) represented by the Public Law Project, Paul Stagg and Richard Drabble QC

(3) Debt Relief Orders are a new form of insolvency instrument introduced in April 2010, whose purpose is to allow very poor debtors (with property of not more than £300 and surplus income of not more than £50 per month over the course of a year), to be released from their debts. Following the making of a DRO, there is a moratorium period (usually of one year), during which debts listed in a schedule to the DRO are intended to be frozen. At the end of the moratorium period, the DRO is discharged and the scheduled debts extinguished.

(4) Although the courts also held that debts to the DWP are discharged like other bankruptcy debts when the bankruptcy order is eventually discharged.

(5) Section 251G(2)(a) of the Insolvency Act 1986.