‘Not for profit’ lenders and deductions from benefits

New rules from December 2006

As part of its ambition to increase access to affordable sources of credit for people on low incomes, the government is proposing to introduce new regulations that would allow deductions from a person’s social security benefits where they have failed to repay a loan to a ‘not for profit’ lender.

The proposed new regulations will provide for deductions from benefit in respect of loans from lenders such as credit unions and community development finance institutions (but will not be available to commercial lenders who tend to have higher charges and recourse to effective recovery arrangements).

When the scheme is in operation, lenders who meet defined criteria relating to good lending practice will be able to apply to the DWP to be included in the scheme, and could then apply for repayment to be made by deductions from benefit where the claimant has defaulted on repayment of a loan and reasonable action (short of legal action) has been taken to recover it.

NB – Whilst the DWP has modelled the new scheme on the existing ‘deductions from benefit’ rules, including the rates of deduction and the maximum limits which may apply, it is proposed that deductions will be able to be made from a wider range of benefits including income support, income-based and contributory JSA, pension credit, incapacity benefit, state retirement pension and carer’s allowance.

It is intended that the changes will be introduced in December 2006.

CSA to be replaced with more streamlined and tougher new body

Agency ‘has fallen well short of expectations’, says Secretary of State

Accepting the recommendations of Sir David Henshaw’s independent review of the child support system – that the Child Support Agency (CSA) can never be made to work properly – Secretary of State for Work and Pensions, John Hutton, told Parliament on 24 July 2006 that a new system of child support will be established which will be simpler to use and to administer; will be tougher on parents who do not face up to their responsibilities; will maximise the reduction in child poverty; and will deliver value for money for the taxpayer.

‘Despite the best efforts of its staff’, Mr Hutton said that the overall performance of the CSA had ‘fallen well short of expectations’. With only a minority of cases handled by the CSA receiving any maintenance, a backlog of around 300,000 cases, debts of over £3 billion having built up with limited prospects of recovery, and levels of customer service ‘never reaching the standards of quality and consistency the public are entitled to expect’, Mr Hutton told MPs that ‘the need for radical

Migration of families from income support/JSA to child tax credit

Government announces further delay

The government has announced that the migration to child tax credit of those families still in receipt of income support or income-based JSA for their children, is to be further delayed.

Whilst the transfer had originally been planned for autumn 2004 it has already been twice delayed and, in Parliament on 20 July 2006, the Paymaster General said that it should be put back once more.

It remains the government’s ‘firm intention’ to migrate all income-based support for children into a single, seamless system of support delivered through child tax credit, the Paymaster General said. However a final decision will not be made until next year on whether the transfer should go ahead even in 2007. The decision will be taken in the light of the importance the government attaches to ensuring the continuity of support that these families receive for their children, the Paymaster General added.
Burden of proof where a claim form is posted but is said not to have been received

The DWP has issued new guidance in relation to a recent Court of Appeal judgment – in Levy v Secretary of State for Work and Pensions – that considered the issue of the burden of proof where a claim form is posted but is said not to have been received.

The case concerned a claimant who, having become a widow on 23 May 2000, posted a claim form for widow’s benefit on 4 July 2000. Despite receiving no response from the DWP, due to illness she made no enquiries as to what had happened until, on 29 October 2001, she submitted a further claim with a request for backdating. However the DWP had no record of the first claim being received at the appropriate DWP office and therefore only awarded benefit from 29 July 2001 (since the regulations allow for ‘automatic’ backdating for three months prior to the date of claim).

Following unsuccessful appeals to a tribunal and a social security commissioner, the claimant was granted permission to appeal to the Court of Appeal. However the Court of Appeal also dismissed the appeal.

The new guidance – DMG Letter 10/06 – outlines that –

‘The claimant’s representative proposed that the law allows for claims to be treated as received in the normal course of post based on the fact that a claim form was properly addressed, pre-paid and posted by the claimant.

The Court of Appeal though did not accept that the fact of sending a claim form by post is an act which is relevant for the purposes of determining the date on which the claim is made or treated as having been made. In other words legislation has no application in determining the date of claim by reference to the day of posting.’

The DWP therefore advises that the date which is of relevance is the date on which the claim is made and that date is the date on which the claim is received by an appropriate office, not the date of sending the claim.

‘Working with customer representatives’

The DWP has published new guidance for its staff on ‘working with customer representatives’.

In its introduction to the new guidance the DWP advises that it has received feedback about the reluctance of some of its staff to deal with representatives over the phone, and of a failure to keep representatives informed of the progress of customer claims and decisions after proper authority has been received.

Whilst the DWP highlights that a lot of staff have real concerns about data protection and disclosure of information about customers’ claims, it acknowledges that a balance needs to be struck between its duty to protect a customer’s personal information, and disclosing information where it is appropriate to do so.

The new guidance therefore sets out the principles that guide decisions about dealing with representatives, and when and what to disclose to them, and since ‘it is important that we have good working relationships with all representatives’, is designed to foster a correct and consistent approach, by ensuring that all frontline staff understand –

● when it is appropriate to deal with a representative;

● what information can be disclosed;

● to whom it can be disclosed; and

● when it can be disclosed.

The DWP’s Guide for staff working with customer representatives is available @ www.dwp.gov.uk/advisers/repsguide.pdf

Cities given more freedom to develop their own plans to help people off benefit and into work

The government has announced that 13 cities across Great Britain are to be given greater freedom to provide individually tailored programmes to help people into work.

In the successful areas, granted ‘Cities Strategy’ pathfinder status, consortia made up of government agency providers, local government, and the private and voluntary sector will be established to focus on providing support to individuals who are currently farthest from the help available from the welfare state, including incapacity benefit claimants, lone parents, older people and those from ethnic minority groups.

Whilst just £5 million is being provided to ‘get the plans off the ground’, if areas are successful in meeting government agreed targets they will be eligible for additional funding that can be re-invested into local services and priorities.

Announcing the areas to be granted pathfinder status, Secretary of State for Work and Pensions, John Hutton, said –

‘Local people know what will work best to tackle the particular problems in their area – that is why we want to give cities more freedom to develop their own plans helping people off benefit dependency and into work.

… Helping people off benefit and into work helps families out of poverty, boosts the local economy and provides savings for taxpayers. We want cities who help more people into work to share in this success, through additional funding that allows them to invest further in the local community.’

NB – the successful cities and towns, which join two London pathfinders announced earlier this year, are –

Birmingham, Blackburn, Dundee, Edinburgh, Glasgow, Heads of the Valleys, Leicester, Liverpool, Manchester, Nottingham, Rhyl, Sheffield, and Tyne and Wear.
DWP placed ‘inappropriate’ staff in Jobcentre Plus contact centres

Work and Pensions Select Committee chair says 1000 claims a day affected

As a result of DWP head-count reductions and efficiency savings, ‘inappropriate’ staff have been placed in Jobcentre Plus contact centres, according to the chair of the Work and Pensions Select Committee, Terry Rooney, MP.

Mr Rooney’s comments came in a recent debate in Parliament on the Select Committee’s March 2006 report on the impact of the efficiency savings programme that highlighted that the DWP has been trying to simultaneously roll-out Jobcentre Plus offices, integrate a new information technology system, and deliver very significant head-count reductions. ‘Any one of those would have been a major project on its own’, Mr Rooney told MPs, but ‘having all running at the same time stretched management capability to the limit and perhaps even to breaking point.’

In addition, for Jobcentre Plus claimants, the situation was compounded during 2005, Mr Rooney said, because, in delivering the head-count reductions, the DWP transferred staff to fill new vacancies rather than put them out of a job and, as a consequence, ‘inappropriate’ staff were placed in contact centres –

‘Anyone who has had experience of contact centres … knows that a special talent is required to work in them … the skills required … are specific (and) do not relate to someone who has spent 20 years being a decision maker, benefit processor or claims assessor. Last summer, because of the process that I have described, there was virtually a total breakdown in the contact centre operation.’

The situation has improved significantly since last summer, Mr Rooney acknowledged, but ‘it would have been difficult for it not to’. Whilst the ‘achievement level’ now in terms of calls relating to new claims being answered is about 94%, Mr Rooney said, this still means that approximately 1,000 claims a day are affected, and 1,000 people are delayed in receiving their entitlement.

Housing benefit overpayments

New DWP guidance

The DWP has issued new overpayment guidance to local authority housing benefit departments, reminding them of the procedures to be adopted when considering the issue of underlying entitlement, and when it is appropriate to commence recovery.

In relation to the issue of underlying entitlement – the amount of benefit a claimant would have been entitled to had the correct facts been known which can then be ‘offset’ against the amount of the overpayment – the new guidance, HB/CTB circular A13/2006, advises that –

- an overpayment has not been properly calculated until underlying entitlement has been considered;
- it is the local authority’s responsibility to request details of the claimant’s correct circumstances over the overpayment period, not the claimant’s responsibility to apply for underlying entitlement to be considered;
- the claimant should be given one month in which to provide any requested information or evidence, ‘or such longer period as the relevant authority may consider reasonable’; and
- it is to a local authority’s advantage to calculate underlying entitlement, because it receives 100% subsidy for it.

In addition, in relation to when recovery action should commence, the new guidance reminds local authorities that DWP policy is that, when recovery is to be made from an ongoing benefit, it should not commence until the one-month appeal rights period has expired and that, if an appeal is brought, recovery action should be postponed until the appeal has been decided.

NB – the new guidance also advises HB departments of a recent Tribunal of Commissioners’ decision – CH/4234/04 – in which it was held that local authorities do not have a broad discretionary power to decide whether an overpayment is recoverable from a landlord or a claimant. Instead, it must make a decision to the effect that the overpayment is recoverable from both the landlord and the claimant.
People coming from abroad and advance claims for benefit

Government proposes rule change

The government has said that it intends to introduce new regulations that would exclude people arriving from abroad from making advance claims to certain social security benefits.

The change is proposed in response to the Court of Appeal’s February 2006 judgment in Secretary of State for Work & Pensions v Bhakta that upheld a social security commissioner’s decision (in CIS/1840/2004) that, in relation to the habitual residence test, a decision maker and tribunal had erred in not considering whether to make an advance award of benefit. The Court of Appeal effectively decided that the mere passage of time might be enough to enable a claimant to satisfy the habitual residence test and that, as a consequence, it should be possible for the Secretary of State to determine ahead of time when that test would be satisfied and therefore make an award of benefit from that date.

However the government’s view is that when considering the habitual residence test a decision maker needs to take into account such a variety of factors that it is impossible to predict a point in time in the future when a person might become habitually resident and that the advance claim provisions are aimed at more easily predictable future events.

In consequence, the new regulations would amend regulation 13 of the Claims and Payments Regulations – that enables a person to make a claim in respect of a future period where there is no present entitlement but, on the existing circumstances, an entitlement will arise on a fixed and certain day – to exclude the habitual residence test from its scope. As a result, it would not be possible for people arriving from abroad to make advance claims for income support, income-based JSA and pension credit.

NB – Similar amendments are also proposed in relation to housing benefit and council tax benefit.

For more information on all these changes see –

www.rightsnet.org.uk
the welfare rights website for advice workers

CSA to be replaced with more streamlined and tougher new body

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overhaul is clear.’

Key changes, which will be outlined in a white paper in the autumn, include –

- significantly increasing the amount of maintenance that parents with care on benefits can keep;
- providing better advice and guidance to parents and encouraging them to make their own voluntary arrangements;
- ending the rule that forces parents on benefit to use the CSA – whether or not they have a voluntary arrangement in place;
- powers to suspend passports and impose curfews on parents who persistently avoid their responsibilities;
- exploring methods of publicising enforcement action, including the feasibility of naming those successfully prosecuted; and
- examining a range of options to ensure that more fathers take responsibility for their children, including changing the law on registration of births to encourage or require joint registration.

NB – Mr Henshaw also proposed a radical approach to conversion – by closing all existing claims and asking people to reapply. However Mr Hutton said that, whilst a clean break is needed to ensure the new body does not get dragged down by past failures, the government is also conscious of the need to ensure that where arrangements are working properly through the existing CSA, the flow of money to children should not be disrupted.