



NOTE FOR ADVISERS: 3 June 2021 (updated 9 March 2022 following changes to the BORG on 9 February 2022)

CHANGE TO DWP GUIDANCE ON RECOVERABLE HARDSHIP PAYMENTS

What has changed?

The Department of Work and Pensions (DWP) has changed its [Benefit Overpayment Recovery Guide](#) following a judicial review brought by PLP's client.

The DWP guide now makes clear what was always the case in the law: that they can waive Recoverable Hardship Payments ('RHPs'), regardless of whether the claimant meets the requisite earnings threshold. If a Universal Credit (UC) claimant is having RHP deductions taken, they could ask the DWP to waive or reduce their debt.

Universal Credit Sanctions and Recoverable Hardship Payments

'Benefit sanctions' are imposed when a DWP decision maker decides that a UC claimant has, without good reason, not met the conditions of their claim. For example, if the individual has failed to attend an appointment at the Jobcentre or to spend enough time looking for work. A benefit sanction results in the claimant's UC being reduced for a certain period of time. In some cases, the claimant will be entitled to hardship payments to cover their basic and essential needs.¹ However, unlike JSA and ESA hardship payments, UC hardship payments are recoverable— meaning they generally must be paid back by the claimant.² Until recently, the DWP's position was that RHPs could not be written off or waived unless a claimant's earnings exceeded a particular threshold for a certain period of time.³

DWP have a discretion to waive all Recoverable Hardship Payments

Following a challenge brought by PLP's client, the DWP have accepted that they have a discretion to waive RHPs in any case (not just where the claimant earnings meet a certain threshold). Claimants should be able to make representations to the DWP through their journal or by sending a letter - in the same way that a claimant might request that an overpayment be waived.⁴

We suggest that requests for hardship payment waiver to the DWP should:

- State that the DWP has a discretion to waive RHPs, with reference to section 71ZH(1)(a) Social Security Administration Act 1992⁵ and paragraphs 5.83 and 8.1 of the DWP [Benefit Overpayment Recovery Guide](#) .

¹ The criteria for entitlement for hardship payments is set out in regulation 116(1) of the Universal Credit Regulations 2013/376.

² See Regulation 116(1) of the Universal Credit Regulations 2013/376.

³ Reg. 119(2) of the Universal Credit Regulations 2013/376 provides that RHP recovery is *suspended* during any assessment period in which the claimant exceeds the earnings threshold contained at Reg. 90 of the 2013 Regulations. Reg. 119(3) of the 2013 Regulations states that RHP debt is *written off* if, for at least six months since the last day on which Universal Credit was paid at a reduced rate (or for two or more periods that total at least six months), the claimant exceeded the earnings threshold in Reg. 90 of the 2013 Regulations.

⁴ The Benefit Overpayment Recovery Guide suggests requests to waive recovery should be in writing, at para. 8.2

⁵ Section 71ZH(1)(a) Social Security Administration Act 1992 states that "Secretary of State *may* recover any amount paid by way of a payment under section 28 of the Welfare Reform Act 2012 (universal credit hardship payments) which is recoverable under that section".



- Explain why the DWP should waive the debt – for example if recovery would be detrimental to the health or welfare of the debtor, or if the claimant is facing financial hardship due to the debt. Any other relevant circumstances should also be referred to.
- Enclose evidence of the risk to the claimant’s health or welfare, or of financial hardship if possible. For example, a letter from a support worker, GP or other medical professional⁶. Where financial hardship is the reason for the waiver request, evidence of the claimant’s means should be enclosed, such as an income and expenditure summary, details of any debts and bank statements for the past 6 months.⁷
- If the sanctions that gave rise to the hardship payment have since been set aside on appeal, make reference to this and explain why this strengthens the case for waiver (see below).
- Request that in the meantime, steps taken to recover the hardship payment money are not taken.

Even where sanctions have been set aside, a hardship payment waiver can still be requested

The DWP initially argued that their discretion to waive hardship payment debt did not apply in our client’s case because her sanctions had since been set aside by the FTT. We argued that, on the contrary, the case for waiver was even stronger in these circumstances because were it not for DWP’s unlawful sanctions our client would not have had to take on hardship payment debt in the first place.

In our appeal, we relied on statements made by then Secretary of State Chris Grayling, who stated during the passage of the Welfare Reform Bill that (our underline):

“when somebody has been sanctioned through a mistake or through no fault of their own, they have the right to appeal. If they are successful at appeal, their previous financial position will be reinstated, and there will certainly be no question of recovering any hardship payment that had been made.”⁸

What if the DWP refuses to exercise discretion to waive hardship payments?

If the DWP decision maker refuses to exercise their discretion at all, or if they refuse to waive the debt despite evidence of financial or medical hardship, the decision may be challengeable by judicial review.

PLP may, subject to capacity, be able to assist to challenge the decision further. Please contact enquiries@publiclawproject.org.uk.

⁶ Para 8.12 – 8.13 of the Benefit Overpayment Recovery Guide v2.70.

⁷ Para. 8.10 – 8.11, 8.14 of the Benefit Overpayment Recovery Guide v2.70.

⁸ HC Debate (26 April 2011), Welfare Reform Bill, col. 512. Available at: <https://publications.parliament.uk/pa/cm201011/cmpublic/welfare/110426/pm/110426s01.htm> [last accessed 1 June 2021]