

Alan Houston v Secretary of State for Work and Pensions

Case Ref No: P96/24

Date of Hearing: 25 February 2025

Division and Senators: Extra; Lord Malcolm, Lady Wise, Lord Armstrong

Livestreamed Hearing?: No

Agents and Counsel (*if known*):

Petitioner and Reclaimer:

Party

Respondent:

Maciver, Office of the Advocate-General

Link to Judgment Reclaimed / Appealed (*if available*):

<https://www.scotcourts.gov.uk/media/hebdzac5/2024csoh79-petition-of-alan-houston-for-judicial-review.pdf>

Case Description:

This is a reclaiming motion (appeal) against a decision to dismiss a petition for judicial review.

The petitioner and reclaimer, Mr Houston, is in receipt of state pension credit. The respondent is the Secretary of State responsible for the Department for Work and Pensions.

The DWP have made deductions from Mr Houston's state pension credit. The DWP say that this is because he has to repay crisis loans which it paid him from the Social Fund in 2007. The monthly deductions total £23.

Mr Houston has challenged the decision to make deductions from his pension credit by bringing a petition for judicial review of that decision in the Court of Session. He argues first that, because pension credit is defined as "inalienable" under s187(1) and (2) of the Social Security Administration Act 1982, and in particular because s187(1)(ab) provides that benefits are protected from creditors in bankruptcy, the DWP may not lawfully deduct the crisis loan repayments from them.

Second, Mr Houston argues that any obligation to repay the crisis loan has prescribed – in other words the DWP may no longer seek repayment through the courts because too much time has passed. Mr Houston relies upon s6 of the Prescription and Limitation (Scotland) Act 1973. Mr Houston argues that the obligation to repay the crisis loan is a contract, and the obligation to make repayment of money arising from a contract is extinguished after a period of five years unless any claim is made.

Finally, Mr Houston states that, as matters of fact, he has never taken out a crisis loan in his life, that the DWP have been obstructive and misleading with him and with the court, the DWP have no evidence to substantiate their contention that he did take out a loan, the DWP have erroneously – or perhaps deliberately - destroyed documents relating to his claim, he attempted without success to retrieve documents from the DWP to defend himself, and that when the alleged loan was applied for he was homeless and would therefore have no need – and indeed would be ineligible - for crisis loans which were, apparently, for bedding, curtains, and a cooker.

In answer, the DWP argue that the fact pension credit is unavailable to creditors in the event of the recipient's bankruptcy does not mean they cannot deduct crisis loan repayments from it, because ss78(1) and (2) of the 1992 Act give them a specific statutory authorisation to do so, that the obligation to repay a crisis loan is not a contractual debt to which s6 of the 1973 Act applies, and that i) their computer records show Mr Houston did apply for the two loans, and ii) judicial review is a challenge to the *lawfulness* of a decision, not its merits.

By Opinion dated 9 August 2024, the Lord Ordinary ([Lord Lake](#)) dismissed the petition. He held that s187 of the 1992 Act does not have the effect Mr Houston says that it does; it is clear from the earlier s78 that payments from the social fund

may be recouped from “prescribed benefits” of which pension credit is one.

Likewise, s6 of the 1973 Act applies only to debts specified in Schedule 1 of that Act, of which pension credit is not one. Finally, he was satisfied from the contemporaneous documentation provided by the DWP and an affidavit from one of its employees explaining same that a crisis loan had indeed been offered to, and accepted by, Mr Houston.

Mr Houston now appeals to the [Inner House](#). He argues that Lord Lake misinterpreted the 1992 Act, that all loans are contracts and in any event there is no evidence the DWP ever extended him a loan, and that the evidence provided by the DWP in support of the existence of the loan is at best insufficient and at worst factually inaccurate.

The reclaiming motion will be heard on 25 February 2025 before the Extra Division chaired by [Lord Malcolm](#), sitting with [Lady Wise](#) and [Lord Armstrong](#).