

## **A Social Policy Case Study**

When you are investigating a client's situation and it becomes apparent that they are being treated badly, receiving a poor service or are being disadvantaged somehow – you might have a general sense that the situation is unfair but it might be difficult to imagine that you can do anything to change the status quo. Changing something as fundamental as legislation might be impossible for a single adviser but below is an example of how advisers raising a 'social policy issue' and providing evidence can do just that, when it is a co-ordinated campaign.

### **DRO and Pensions**

#### **The Social Policy 'Issue'**

When DROs came into force in April 2009 the rules stated that occupational and private pensions with a value of over £300, not yet in payment are treated as an asset. We started to receive feedback from our members that this rule was disadvantaging a specific group of people by precluding them from accessing a DRO who would otherwise have fitted the criteria.

Discussions with Citizens Advice confirmed were receiving similar 'complaints'. The Competent Authorities agreed that this represented 'a fundamental flaw' in the rules and seemed wholly unfair and against the original intentions of the DRO legislation to treat a personal or occupational pension not in payment, as an asset when it cannot actually be realised at the time of application. We have raised this issue with the Insolvency Service who understood the need for legislation change.

#### **Testing the Water**

The IMA began a call for evidence in order to see whether this rule was affecting a significant proportion of people. The IMA circulated a survey to its members to identify numbers of people specifically excluded by this legislation. The responses showed that a considerable proportion of potential DRO applicants were excluded because of pensions. We also identified that of those who were excluded the vast majority had relatively small pensions (although over £300) and most people were a considerable number of years away from pensionable age.

#### **Taking it Further and Higher**

Most of the Competent Authorities including the IMA, joined forces and wrote to the then Business Minister Ian Lucas to express our concerns and we were invited to speak to him about the problem. At our visit we laid out our request to scrap the rule and presented the following rationale:

- The debt relief order asset rules represents a distinct inconsistency with in comparison to bankruptcy
- It is unfair and against the original intentions of the DRO legislation to treat a personal or occupational pension not in payment, as an asset when it cannot actually be realised at the time of application
- The rule is inconsistent with the government encouragement for individuals to secure their own future pension provision

We presented our initial evidence which showed that some of the most impoverished and vulnerable of clients – the very people debt relief orders were designed to help, were being excluded from using them because of the pension rule.

#### **Gathering Evidence**

The minister was persuaded by our argument but so that he would be able to take this further, he wanted some more robust and persuasive evidence relating to:

- numbers of people who are being excluded from DROs because of pensions
- an idea of the values of pensions we are talking about
- how far from realisation these pensions might be

In February 2010 Competent Authorities again teamed up to gather further evidence from their Intermediaries which were channelled through Citizen's Advice's Social Policy evidence system.

### **The findings**

Overall information about 242 clients was received, all of which were ineligible for the debt relief order because they had pension funds of more than £300. The initial analysis of the findings shows that many of these people were young with relatively small amounts of money in their pension pots. 78% of people, who were excluded from DRO solely because of their pension, had a pension of less than £5,000. Of these, 42% were under 35 years of age, 69% were under 45. Qualitative data in the survey also suggests that many of the people affected by this rule ironically had pensions which they had built up when they worked in the public sector and therefore had government pensions (armed forces, civil service, NHS, local government). We presented this evidence to the Minister for his consideration.

### **Consultation**

There are a series of steps which are taken before changes are made to legislation; one of these is usually that government will start a formal consultation process for relevant parties and stake holders to respond to. On 23<sup>rd</sup> February 2010 Ian Lucas announced the Government plans to open a consultation on changing the debt relief order rules on pension funds. Ian Lucas said: "Debt Relief Orders help people who would otherwise be trapped in poverty to get back on their feet. Following representations from independent money advisers, I'm proposing a common sense change to ensure that vulnerable people with a very small pension pot are treated fairly. The Government will consult on this change shortly." As part of the consultation we were able to make suggestions about what changes we would like them to make.

### **Statutory Instrument**

The government consultation closed on 24<sup>th</sup> June 2010, they collated the responses and reported that there were a good number of responses with a consensus for change. They announced that they will push forward a Statutory Instrument submission to the new minister, Edward Davey, (under Vince Cable minister for Business, Innovation and Skills) before summer recess. If this was to be accepted and go according to plan the submission would be included in changes for autumn 2010 or spring 2011. At the best of times these procedures are lengthy but our campaign coincided with a change of government which could have had grave implications for the work we had done up to this point.

### **Pensions Reform Spring 2011**

Fortunately the Statutory Instrument (SI) was finally laid before parliament on the 15<sup>th</sup> March 2011 with a view to the legislation coming into force on the 6<sup>th</sup> April 2011, Statutory Instrument 2011 No 85, [www.legislation.gov.uk/ukxi/2011/785/made](http://www.legislation.gov.uk/ukxi/2011/785/made).

The SI contained a single provision for DROs:

#### **Amendments to Rule 5A.10**

*1.—(1) Rule 5A.10 (particular descriptions of property to be excluded for the purpose of determining the value of a person's property) is amended as follows.*

*(2) In paragraph (1)—*

*(a) at the end of sub-paragraph (h) omit "or"; and*

(b) after sub-paragraph (i) add—

“and

(j) any right of the debtor under an approved pension arrangement (as defined by section 11 of the Welfare Reform and Pensions Act 1999<sup>(i)</sup>).”

### **In Practice**

- The effect of this is simple; an approved pension is now excluded as an asset when determining eligibility for a DRO.
- This relates solely to pensions that are not in payment and have not matured, therefore if a debtor has a pension that is currently being paid to them then the income from the pension should be recorded in the income and expenditure section of the DRO application and there is no necessity to record such pensions in payment in the assets section.
- The DRO Web Application and the intermediary guidance notes have been revised by the Insolvency Service to incorporate the changes.
- They offer the following guidance:
  - An approved pension arrangement are any occupational or personal pension schemes registered with the HM Revenue and Customs for tax purposes, all retirement annuity contracts plus stakeholder pensions. These are the most common pension arrangements in the UK. It will be rare for a debtor seeking a DRO to have rights in an unapproved scheme.
  - In order to trace a pension or scheme you can refer to the Direct Gov facility for electronic or telephone help; [Direct.gov Tracing Pensions](#)

### **Co-ordinated Action**

Social Policy work is not always about changing legislation – but by raising the issues and supplying evidence using the Social Policy Evidence Form advisers can ensure that the issue they have highlighted can be integrated into co-ordinated action.

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