

Debt Relief Order Newsletter – July 2010



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Water Charges and Insolvency Clauses

The Insolvency Service are aware that as a result of legal advice received by various water authorities and with the approval of OFWAT, many water authorities have now amended their charging regimes to include an “insolvency clause” which they state allows them upon the making of a Debt Relief Order, to apportion their water charges pre and post order.

Intermediaries should where appropriate continue to schedule the full years water charges in a DRO application, however you must ensure that your clients are apprised of the possibility that an insolvency clause may exist within a water authorities charging regime and if that is the case, then upon the making of a DRO the water authority may apportion their charges pre and post order and issue a revised water bill for services provided subsequent to the making of the order.

DWP Deductions from Benefits

The DRO Unit recently advised your Competent Authority of the outcome of a Judicial Review.

On Monday the 26th July 2010 a judge in the Administrative Court ruled on Judicial Review that the Secretary of State does not have the right to recover overpayments of Social Security benefits and Social Fund loans by making deductions from an ongoing award of benefit when the debtor is subject to a Debt Relief Order (DRO).

The DWP are reviewing the implications of this decision and of course do have the right to appeal. However in a bulletin dated the 28th July 2010 issued to all Housing Benefit and Council Tax Benefit staff, the DWP have advised that both they and Local Authorities must cease making deductions on cases where the overpayment was included in the DRO. They must also not commence deductions on any further overpayments which are included in a DRO.

The DWP will be issuing further guidance to their staff as soon as the decision has been fully assessed. This will include information on the provision of refunds and the position on Fraud overpayments.

Creditors Account Numbers and References

This an area that has improved greatly and has ensured that debtors are not harassed unnecessarily by creditors who are unable to trace a debtor due to the lack of a reference, or account number. One issue that does arise however, is where a creditor is scheduled in a DRO application more than once. If for example a debtor has two bank accounts, details of both account numbers should be scheduled and the same applies to all other creditor types, please provide all available account numbers, so as to minimise the ongoing correspondence received by debtors.

Prison Addresses

The disclosure of a prison address to creditors and the Individual Insolvency Register (e-IIR) is clearly a matter for the applicant, however if a debtor does not wish to withhold a prison address, it would assist the DRO Unit if intermediaries could note the DRO application to this effect, confirming that the matter has been discussed with the debtor and the debtor understands that by not partaking in the address withheld procedure, details of their current whereabouts will be notified to both creditors and recorded on the e-IIR



Intermediary Change of Details

All changes of intermediary details, such as e-mail address, telephone number, office move etc must be reported to your Competent Authority in order that they may update their centrally held records and it will be for the Competent Authority to notify the Insolvency Service of any such updates, thank you.

Cheque Payments

Please be aware that when the fee for a DRO application is being paid by way of cheque, a period of time will need to be allowed to cater for normal banking clearance procedures and postal delivery times, prior to submitting an application for determination, failure to do so could result in an application being cancelled.

Bank Accounts

There are many high street banks whose policy is to refuse banking facilities to individuals who are insolvent. The DRO Unit deal with numerous calls from debtors whose bank accounts have been frozen as a result of the making of a DRO and it would therefore be prudent to advise debtors that there is the distinct possibility of their bank account being affected and banking facilities possibly being withdrawn as a result of their insolvency. Debtors will then fully understand that they may have to seek an alternative bank who would be prepared to provide them with banking facilities.

Mobile Phone Contracts

If a debtor schedules a mobile phone contract in a DRO application it is highly likely that the phone company will cancel the contract. Therefore if the debtor is up to date with the periodic payments under the terms of the contract, then the contract provider should not be scheduled as a creditor in relation to any possible future liability, as this is a contingent liability and therefore not a qualifying debt.

Obsolete Applications

The DRO Unit receive a number of enquiries from intermediaries asking what they can do with applications that they have commenced and no longer wish to proceed with. Currently there is no facility to delete applications from the system and therefore any such applications will merely sit dormant. Ideally it would be beneficial to all involved in the process, if obsolete applications could be removed and if and when funding is provided to upgrade the existing Web Application this is a matter that will be raised with the IT specialists.

Local Authority Debts

Local Authorities have many different departments such as Council Tax, Housing Benefit etc, and therefore it would be administratively effective when scheduling a Local Authority as a creditor, to indicate which department the liability is with, in addition to any references that might be available.

Armed Forces Personnel

References to armed forces personnel police officers and their stations or bases, could potentially pose a threat to both the individual and national security. Therefore intermediaries need to give serious thought as to how such individuals details are recorded in a DRO application. If there is no alternative to referring to an armed forces base, then the address withheld procedure should be followed, although most individuals should have a home address that could be used.



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Individual Insolvency Register

One of the automated checks carried out during the DRO application process is a review of the electronic individual insolvency register (e-IIR). Debtors will often advise intermediaries about prior formal insolvency proceedings and explain that they are discharged from bankruptcy, or that their IVA has been terminated. Often it turns out that although the debtor believes their prior insolvency has ended, the IVA has not been formally terminated, or a discharge from bankruptcy has been suspended. A simple way of ratifying the completion of an insolvency proceeding is to carry out a search of the e-IIR, which can be found on the home page of the Insolvency Service website www.insolvency.gov.uk

HMRC Liabilities

As intermediaries are aware the DRO process is automated and therefore the data that is entered on a DRO application dictates what information is sent to creditors. The DWP have been receiving an increasing number of notices where the liability is in fact owed to the HMRC. This is merely a gentle reminder that if a liability lies with HMRC then it is important that the relevant HMRC office is scheduled as the creditor, as although the DWP are indeed also a government department they do not deal with HMRC related issues.

Contacting the DRO Unit

Please note that when intermediaries contact the DRO Unit, if they do not have a DRO number, they must quote the debtors **full name** and **address** and/or **postcode**. The DRO unit do not have the facility to search their database using the application ID.

Web Application Warning Messages

If a warning message appears on the final page of the DRO application, stating that any one of the three principle parameters has been exceeded, it is highly likely that the application will fail as the system is automated, so please recheck the application in such instances

Bills of Sale (Logbook loans)

Where a vehicle is subject to a "log book loan" the correct view in DROs is to say that the vehicle is discounted, irrespective of value, as it is not an asset of the debtor at the date of the DRO. If the loan was to be repaid during the moratorium and the vehicle title returned to the debtor, then it would be an asset acquired and valued accordingly, potentially leading to the revocation of the DRO if the value exceeded £1,000. As log-book loans are only granted for short periods at high interest, we have discounted the possibility of a debtor seeking to remove a high value vehicle from his assets by securing a loan which he discharges at the end of the moratorium period.

The lender should be regarded as a secured creditor. The debt is a qualifying debt insofar as the balance outstanding exceeds the value of the vehicle.

If there were to be a shortfall upon the sale of the vehicle and the debtor had not sufficiently catered for such a shortfall when applying for a DRO, the debtor could not ask for a debt to be added or increased. Therefore if there is any question over the potential shortfall, debtors will need to err on the side of caution.

Intermediaries should discount the loan repayments when calculating disposable income.