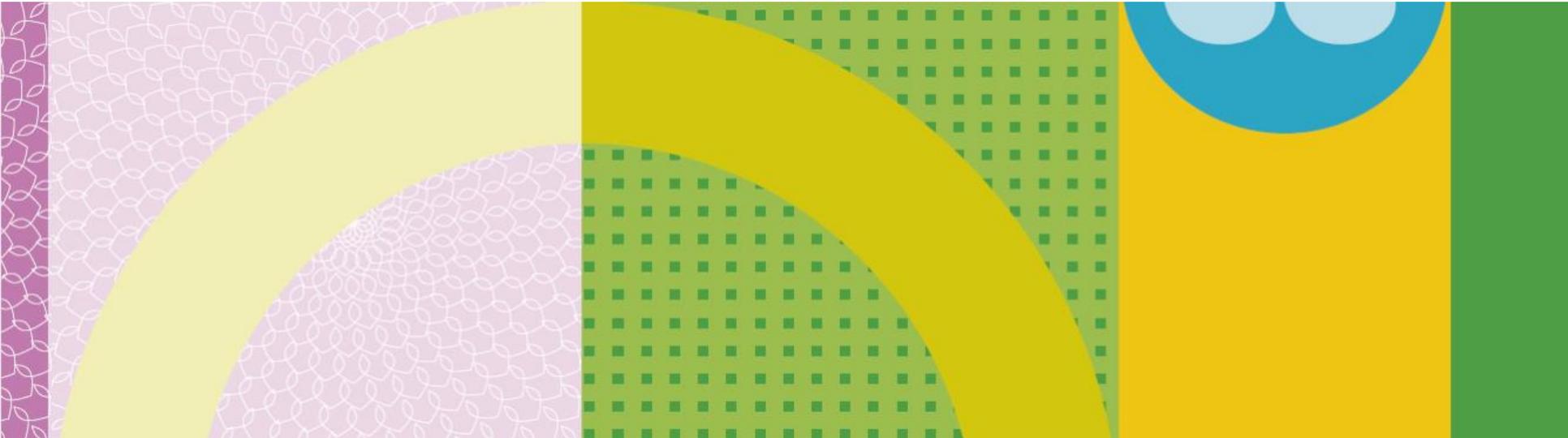




Institute of Money Advisers Virtual Annual Conference 2021



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Virtual exhibitors

Welcome



**Welcome to our
DRO Update 2021**

Facilitated by:

Marina Gallagher and
Lorraine Charlton

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Today we'll cover



New DRO parameters including effect on current DRO

Covid easements

Declines and revocations 2020/21

Changes to DRO A-Z guidance including:

- HP for vehicles
- Controlled goods agreements
- Penalties
- Lump sums of disability premiums

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New parameters



[The Insolvency Proceedings \(Monetary Limits\) \(Amendment\) Order 2021](#)

[The Insolvency \(England and Wales\) \(Amendment\) Rules 2021](#)

Both Regulations came into force on 29 June 2021 and apply to orders made on or after that day

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New parameters



From 29 June

- Debt limit £30,000
- Property limit £2,000
- Surplus income limit £75
- Disregarded vehicle up to £2,000

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Reasons for DROs being refused during 2020/2021



- Previous DRO within past 6 years – 15
- Debts above the limit – 13
- A preference was made – 12
- Undischarged Bankruptcy – 4
- IVA – 3

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Reasons for DROs being refused during 2020/2021



- Surplus income was above the limit – 2
- Residential qualification failed – 2
- Assets were above the limit – 2
- Stated owns property – 1

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Reasons for DROs being revoked during 2020/2021



- Debts were above the limit – 101
- Assets went above the limit – 49
- 1 person owned their own property
- The person who had the DRO died – 16

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Reasons for DRUs being revoked during 2020/2021



- Surplus income went above the limit – 9
- Failing to comply with a statutory duty – 2
- Preference was made – 1
- Vehicle value exceeded - 1

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Orders made before 29/06/21



- Client has an increase in **surplus income** or an increase in **property** during the moratorium the **new** surplus income and property parameters will apply
- The lump sum protocol has been removed
- If a debt comes to light which takes the client over the **debt limit that applied at the time the DRO was made** the DRO can be revoked

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Controlled goods agreements



- It **may** be possible to include payments under a controlled goods agreement as an expense when calculating surplus income
- 'If there is already a controlled goods agreement in place, this will have the effect of securing the debt and payments must be maintained to avoid the bailiffs taking the goods to settle the debt. Any payments must be made out of surplus income **unless** the items are for reasonable domestic needs.'

Debt Relief Orders: Guidance for debt advisers

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Controlled goods agreements



Information that should be included in a DRO application includes:

‘particulars of the expenditure which the debtor claims is necessary to meet the monthly reasonable domestic needs of the debtor and the debtor’s family, including the purpose and the amount of that expenditure’

Insolvency Rule 9.3 (k):

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Treatment of HP



- If there are arrears these are a qualifying debt and must be included in DRO
- If the whole debt has been called in the whole debt must be included
 - Risk of repossession
 - Not an allowable expense but can pay from surplus income
 - Or 3rd party can pay

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HP no arrears



If **no arrears** client can choose to leave out of DRO.

According to the DRO guidance not a qualifying debt and won't count towards the debt limit if:

- paid by a third party (if payments are more than surplus income limit) or
- repayments are deemed an allowable expense

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HP no arrears



If **no arrears** client can choose to leave out of DRO:

- Payments are allowable expense if disregarded property eg WM/fridge car <£2,000
- Or 3rd party can pay
- Include a note on application
- If agreement ends during moratorium counts as property unless disregarded

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Treatment of cars on HP



Allowable expense if car not disregarded in limited circs:

Is it for a reasonable domestic need?

- When was the agreement taken out if recently did this result in reducing the client's surplus income.
- Is public transport available
- Do the payments compare favourably to the cost of public transport
(DRO: Guidance for advisers)

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Treatment of cars on HP



- Zack has a good argument that his HP payments are for a reasonable domestic need even though the car is worth more than £2,000

But

- ‘We will only make the decision on the submission of the DRO application. Debtors should be advised that if the expense is not deemed allowable, this may lead to the application being declined and they will lose their application fee.’ (DRO: Guidance for advisers)
- Client can appeal

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Magistrates Court costs



- DRO Team's previous position was that Magistrate's Court costs were qualifying debts
- Current position is that the costs are an excluded debt

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Magistrates Court costs



“ Where the magistrates’ court makes an order for the payment of costs, for the purpose of collection and enforcement, these are to be treated as payable under a conviction.

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Magistrates Court costs



Where costs are to be treated as payable under a conviction, these would also fall under the Magistrates' Court Act 1980 section 150 definition of 'any pecuniary penalty or pecuniary forfeiture or pecuniary compensation payable under a conviction.'

Debt Relief Orders: Guidance for debt advisers

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Social fund loans



Social fund loans are an excluded debt

Where a debt is excluded the creditor can continue to take action to recover it both during and after the moratorium

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Social fund loans



“Social Fund Debt

6.22 Regardless of whether an existing Social Fund debt is included in the insolvency or not, our policy is to suspend recovery of an existing Social Fund loan during an insolvency. If the insolvency was either a bankruptcy or a DRO then recovery would recommence at the end of the insolvency period. Recovery of any new loan taken out during an insolvency would commence immediately.” [Benefits OP Recovery guide](#)

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Fraudulent Overpayment (OP)



If a debt has been incurred as a result of the client's fraud

- It's a qualifying debt
- The client won't be released from liability for it at the end of the moratorium

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Fraud OP defined



Classed as fraud if the client:

- is found guilty of fraud by a court
- admitted fraud under caution
- agreed to pay a penalty under section 115A of the Social Security Administration Act (penalty as an alternative to prosecution)

[Benefit overpayment recovery guide para1.6](#)

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Preference defined



Definition of preference:

Where a **client does something or allows something to be done**, which **puts a creditor or a guarantor** for a debt **in a better position** following the making of a DRO than they would have been in

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Fraudulent OP - preference



“If the debtor has repaid the overpayment by way of deduction from their benefit, this does not need to be reported as a preference as the debtor has not voluntarily made these payments.

If the debtor has **made a voluntary payment or repaid the overpayment in full this should be reported as a preference** on the DRO application. The AI should include the circumstances regarding the repayment.” DRO Guidance

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Disability premiums



- Lump sums of ESA disability premiums are ignored as property



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Legacy benefits



- Lump sums of disability premiums in legacy benefits are ignored
- HB, IS, IRESA, IBJSA, WTC and CTC
- ‘The ongoing payment of premiums can be offset under adult care costs’

Debt Relief Orders: Guidance for debt advisers

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Child DLA and pension credit



- If DLA is received for a child and disabled child element/premium received in a benefit, including UC, any lump sum is ignored
- Ongoing payments can be offset under childcare costs
- Lump sums of severe disability premium received with pension credit are ignored
- Ongoing payments can be offset under adult care costs

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Universal credit and transitional payments



‘As a result of not being able to claim the severe disability premium in UC, some debtors may receive transitional payments. Lump sums are disregarded as an asset pre and post DRO. On-going payments can be offset under adult care costs.’

Debt Relief Orders: Guidance for debt advisers

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Universal credit and limited capability for work



‘Both the LCW and LCWRA are not disregarded as income or an asset pre or post DRO and the asset limit applies pre DRO...The on-going income should not automatically be offset under care costs unless the debtor can display evidence of this.’

Debt Relief Orders: Guidance for debt advisers

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Penalties



A Fixed Penalty Notice FPN issued under Health Protection (Coronavirus restrictions) Payment of a COVID-19 related FPN prior to a DRO does not need to be reported as a preference. During the DRO period, payment may be made from surplus income or by a third party to avoid prosecution. (DRO guidance for advisers)

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Penalties



- Must be included as qualifying debt
- Criminal - DRO won't stop enforcement so dispute or pay from surplus income
- Civil - DRO will stop enforcement and penalty is written off in the DRO
- [List of criminal penalties published by the Sentencing council](#)

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Person at Risk of Violence Order



- ‘Where an application indicates a PARV order is required but this has not been obtained by the time the DRO application is submitted the DRO Team will not process the DRO application until a PARV order is obtained.’ Debt Relief Orders: Guidance for debt advisers
- Court application can be made as soon as DRO ID number is generated

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Person at Risk of Violence Order



- Copy of PARV Order should be emailed to DRO Team and 'address withheld' box ticked on the DRO application
- If client moves during moratorium and is at risk, application should be made to court as soon as possible
- Apply to nearest court to client with bankruptcy jurisdiction
- £280 fee but may get remission. There are reports in some cases that courts haven't charged the fee because of the nature of the application

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S/E payments on account



- Most self-employed clients will receive 2 demands for 'payments on account'
- Payments on account are advance payments towards a tax bill
- They're an estimate of liability based on the previous year's tax bill

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S/E payments on account



‘As payments on account are estimates of tax liability and are not finalised until the debtor completes their self-assessment tax return, these amounts are contingent liabilities and cannot be scheduled in a DRO.’

(DRO Guidance for debt advisers)

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Covid 19 concessions



- Increase in income because of coronavirus doesn't have to be reported
- Receipt of a lump sum because of coronavirus doesn't have to be reported
- Currently remaining in force during furlough scheme
- Receipt of lump sums of UC LCW or LCWRA premiums following a delay because of coronavirus won't lead to revocation

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Keeping up to date



- [DRO Guidance for debt advisers on Gov.uk](#)
- [Expert advice emails](#)
- DRO Toolkit
- [Shelter updates](#)
- [Tech Manual](#)
- [Adviser online articles](#)

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Q and A



Q. enforcement of criminal PCN - if they have no remedy for the money does this mean that they cannot use bailiffs who would take goods for sale

A. A criminal PCN is not enforced by bailiffs in the first instance. If the PCN remains unpaid it could lead to a prosecution for the offence in the magistrates court or for some types of criminal offence the penalty is registered as a fine in the Magistrates court. Once it becomes a fine, bailiffs can be used to enforce it.

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Q and A



Q. Can clients still pay the fee at the Post Office?

A. Yes, as far as we know

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Q and A



Q If a DRO is refused, is there any effect other than losing £90? There isn't a time limit to re-apply (as long as the issue is rectified...)

A That's right. If a DRO is refused before it is made, there is no time limit to re-apply. The client will just lose the £90 fee. This is in contrast to where a DRO is revoked after it is made, in which case a new DRO cannot be made for 6 years after the 1st order was made.

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Q and A



Q. if a client is only in receipt of disability related benefits but has a private pension pot that they can draw down on as they are 56 and effectively could cover their debts but to do so would affect their benefit entitlement - would a DRO still be processed?

A. The DRO team would take this into account when assessing whether the client meets the insolvency test. The DRO Team will consider if the client can access the pension saving or not, for example if the pension provider won't release the pension until the client has been advised by an independent financial adviser and the client can't afford to pay for this the pension is not available to them. Any effect on the client's ongoing benefit entitlement would be another thing that the DRO team could take into account. The client would need specialist benefits advice about this. Full details should be given to the DRO Team and the case should be discussed with them before an application is made.

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Q and A



Q.Should a bailiff be making a CGA on items for basic needs?

A.Under regulation 4, Taking Control of Goods Regulations 2013, a bailiff shouldn't enter into a controlled goods agreement which includes items needed for 'basic' domestic needs. If a controlled goods agreement is checked and it does contain goods needed for basic domestic needs, this can be challenged, using the process set out in Civil Procedure Rules 85.8 and 85.9.

The DRO Team's current position on payments made under a controlled goods agreement is that payments can be included as an item of expenditure when calculating surplus income, if the payments have to be made in order to keep goods which are needed to fulfil 'reasonable' domestic needs.

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Q and A



Q. Who owns the property under a CGA? What happens if the CGA ends during the moratorium?

A. The client still owns the property. If the CGA ends during the moratorium, in terms of the property this will have no effect on the DRO as the goods belong to the client throughout. It's important to note that goods in a controlled goods agreement will count as property if they are not disregarded under the rules.

If the CGA ends, this might affect the client's surplus income. It's not an increase in income so does not have to be reported but if the DRO were to be reviewed for any reason then the DRO could be revoked if the client's surplus has gone over the £75 limit now that the CGA is finished.

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Q and A



Q. Presumably bailiff fees for enforcing magistrates court fines (where not secured via controlled goods agreement) can still go in the DRO?

A. Yes, they would be a qualifying debt, even though the Magistrates Court fine and court costs are excluded debts

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Q and A



Q. For the magistrate court costs if these existed before the new changes were brought in would they still be an excluded debt?

A. Yes, the DRO Team's previous position was that Magistrates' Court costs were qualifying debts. That position changed and the guidance now states that they are excluded debts. The date that the court costs came into existence has no effect on this.

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Q and A



Q.If a 3rd party is making payments for the client's HP goods and the agreement is transferred into their name, will it be treated as a transaction at an undervalue?

A.For a transaction to be at an undervalue the client needs to receive substantially less than the item is worth. For it to affect the DRO the transaction needs to take place before the application. So for example the client has HP for a car worth £4,000 and only £500 left to pay under the HP agreement and they agree before the application is made that the whole agreement is transferred to the 3rd party, then yes this could potentially be a transaction at an undervalue and would need to be reported.

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Q and A



Q If a client has a court case for fraudulent overpayment of benefits and the case is thrown out by the judge can the overpayment then be included in the DRO

A The overpayment must be included in the DRO. If it is classed as fraudulent the client won't be released from liability for it at the end of the moratorium. If the client is found not guilty of fraud by the court then this cannot be classed as a fraudulent overpayment and it will be written off in the DRO.

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Q and A



Q If the DRO Guidance is 'Guidance', does that mean there is room for flexibility?

A. Most of the guidance is based on the regulations. Advisers should follow the guidance. Where the INSS interpretation of the regulations in the guidance does not accord with our interpretation we do challenge it and over the years the DRO team has agreed to change guidance on numerous issues. Where the OR has made a discretionary decision the client will be able to challenge this by appeal if they don't agree.

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Q and A



Q. Could payment options be increased to online via guest payment etc.?

A. As far as we are aware the Insolvency Service don't have plans to allow for online payments. If this would be helpful for clients this is something that we could raise at a future competent authority meeting.

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