

Specialist Debt Advice Service

DRO Update

August 2019

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Insolvency and Universal Credit – Advance Payments

In bankruptcy, Advance Payments (also known as Payments on Account) are provable debts. [Chapter 40.43 has been amended to reflect this](#) – and so the Department for Work and Pensions (DWP) should not recover Advance Payments from the bankrupt individual. The Debt Relief Order (DRO) Team has also confirmed that Advance Payments are qualifying debts for DRO.

Tenancy deposits

In some cases, a client may have a potential claim against their landlord where the landlord did not protect the tenancy deposit in a tenancy deposit scheme (TDS). We received an enquiry where the client had outstanding rent arrears of £5000 owed to their previous landlord and could potentially make a claim against the landlord to pay the tenancy deposit of £575 back and compensation up to 3 times the value of the tenancy deposit. How would such a claim be viewed for the purposes of a DRO?

Pre – DRO: successful claim receiving the monies directly

If the claim is successful, the client might receive the monies directly. If this happens, and if the amount amounts to over £1000, the client won't be eligible for a DRO. If your client still wants to go ahead with the DRO application they can choose to reduce the amount to below the DRO property limit before making the application. This is covered in the Citizens Advice DRO FAQs:

“Where the client does not use the money to make pro rata payments to creditors then they should keep records of what the money has been spent on and why. See DRO Newsletter June 2015.

The client must be careful not to make any preferential payments to creditors, especially money owed to friends or relatives. They should not give away any of the money or use it to buy gifts.

The client can spend the money on:

- *Making payments to creditors on a pro rata basis*
- *Items that are disregarded under rule [Rule 9.9 of the Insolvency Rules 2016](#) these are:*
 - *such tools, books and other items of equipment as are necessary to the debtor for use personally by him in his employment, business or vocation;*
 - *such clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the debtor and his or her family”*
 - *a single domestic vehicle worth less than £1,000*
 - *a vehicle which has been adapted for the needs of the disabled client*
- *Necessary repairs to any of the above*
- *Paying off any excluded debts that will not go into the DRO such as magistrates court fines, child support arrears, student loans, or social fund loans.*
- *Paying off any rent arrears where there is a threat to the tenancy. If the client chooses this option the payments will need to be reported as preferences and a full*

explanation given to the DRO team explaining why it was felt necessary to repay the rent arrears.

- *Paying for day to day living costs.”*

Pre – DRO: claim successful and landlord offsets monies against rent arrears

On the other hand, if the claim is successful, there is a possibility that the landlord will offset the amount against any rent arrears outstanding. In this case, the amount of rent arrears (£5000) exceeds the potential value of the claim and so advisable that the client should continue to seek legal advice about the merits of pursuing the deposit claim to establish the value of any right of action they have before proceeding with the DRO.

The DRO Team have also confirmed that since the test for debts is whether it's a liquidated sum payable on demand, it would be deemed a 'right of action', rather than 'money owed'. Therefore, the right of action would be counted as their property. If they failed to declare this right of action on their DRO application, they will have made a mistake on the application.

The DRO Team has previously said that 'where proceedings are in their infancy, and the claim is somewhat speculative, and the value of the same has not been determined then the debtor would not be precluded from applying for a DRO.' In this case, 'the right of action should be noted on the DRO application but as no value has been established it would not be scheduled as an asset.'

The client has a duty to report any errors in or omission from the application, and this duty is ongoing after the end of the moratorium.

As stated in the DRO FAQ's in the DRO Toolkit, the Official Receiver has no power to revoke the DRO after the moratorium has ended, but if he/she decides that it is in the public interest to do so, can apply to the court to make an order to revoke the DRO. This is only likely to happen where she considers that the client has deliberately failed to report the TDS claim and the amount in question is relatively high.

Magistrates Court fine and court costs

A Magistrates Court fine is an excluded debt in a DRO, but what about orders for costs?

The DRO Team have confirmed that orders for costs would be qualifying debts for the purposes of a DRO.

Section 150 of the Magistrates' Court Act 1980 (MCA 1980) defines a 'fine' as including "any pecuniary penalty...payable under a conviction". A distinction is drawn between enforcement of "sums adjudged to be paid by a conviction" (relating to fines) and "sums adjudged to be paid by an order" within the body of the MCA 1980.

The DRO Team state that because the Insolvency Act 1986 specifically uses the wording "fine imposed for an offence" rather than the wider definition of "a sum adjudged to be paid by a conviction or order" means that orders for costs including enforcement costs do not fall within the definition of a fine. Therefore, orders for costs would be qualifying debts for the purposes of a DRO.

In addition, [The Insolvency \(England and Wales\) Rules 2016, Rule 9.2\(1\)\(a\)](#) defines an excluded debt as:

'any fine imposed for an offence and any obligation (including an obligation to pay a lump sum or pay costs) arising under an order made in family proceedings...'

The wording '*...any obligation...*' refers specifically to orders for costs from family proceedings and not to a general order to pay costs arising out of a fine.

The DRO Intermediary Guidance Notes states that court costs are qualifying debts. This is also confirmed in the DRO FAQ's (in the DRO Toolkit) under 'Excluded debts'.

Time shares

A timeshare is a way of buying a stake in a property without purchasing the whole property, and so the main incentive is that an individual would have access to a property they couldn't afford to buy outright. Finding out the value of a timeshare can be quite difficult. There is more information in [Chapter 31](#) of the Insolvency Service Technical Manual on timeshares.

Although we don't advise on timeshares and the validation of them or how to cancel them, we sometimes do get questions from advisers about how they might be viewed in a DRO.

The DRO Team have suggested that the following questions are asked to the client:

- When did you purchase the time share?
- How much did you pay (client to provide evidence)?
- How did you finance purchase, cash or credit agreement?
- If purchased by way of finance agreement, what is the balance outstanding?
- What are the outstanding maintenance charges, if any?
- Have you tried to sell the time share?
- When and with whom (client to provide evidence)?
- Have you asked the time share trustees if they are prepared to purchase back the time share (client to provide evidence)?
- If the client can provide evidence of similar timeshares with values this would be useful in determining whether any intrinsic value exists?

The DRO Team have also suggested that [Ebay](#) or other selling sites could be utilised for this purpose.

Save as You Earn (SAYE) schemes

A [SAYE scheme](#) is a savings-related share scheme where shares can be bought with savings for a fixed price after a period of 3 to 5 years. We received an enquiry where a client was paying £162.50 per month into the scheme, and that after 3 years (December 2018) she can buy shares or receive her lump sum back.

The DRO Team have said that the client is making substantial monthly payments into the scheme, rather than servicing her creditors, and that the funds in question would appear to be a contingent asset that the client cannot access until December 2018. Therefore, in the DRO Team's opinion, it would not be scheduled as an asset in a DRO application.

The DRO Team also state they do not consider that the SAYE monthly contributions would be an allowable expense and therefore the client in question would not appear to meet the disposable income parameter for a DRO.

The 'cycle to work' scheme

We received an enquiry where the client was part of a 'cycle to work' scheme and every month their employer deducted £63 per month from their wages. The bike was believed to be worth less than £1000. How would these payments be treated for the purposes of a DRO?

The Cycle Scheme [website](#) refers to the scheme as a Hire Agreement.

The DRO Team state that 'Hire Agreement' expenditure will be assessed on a case by case basis looking at whether it satisfies the basic domestic need of the client and their family. There are a number of factors that should be considered in each case, for example:

- When was the hire agreement taken out? Was this taken out recently and as a result reduced the debtor's available disposable income?
- Is public transport available?
- Do the payments compare favourably to the cost of public transport?
- Are the payments high when compared with other hire agreements which might be available?

If this is the case, it is advisable to send a supporting email sent at the time of submission which answers the above questions, and this will allow the DRO Team to give a better consideration of the expense. The DRO Team has also asked that a copy of the 'cycle to work' agreement terms and conditions is sent.

Other things to consider

Your client must be aware some lenders will have a contractual right to take back the goods even if there are no arrears but the borrower becomes insolvent. Therefore, it essential that your client checks their agreement.

If the lender has a contractual right, the agreement will contain:

- a specific clause to say the agreement will be terminated if a DRO is made against the client
- a more general clause to say that the agreement will be terminated if the client enters into any formal insolvency arrangement.

Ultimately, it is not possible to say whether the client would qualify at this stage. Submitting the DRO must be done with the advice that the DRO Team could refuse the DRO if the expense is not allowable and puts your client over the £50 available income parameter. Your client must be aware that if the application was refused they would lose their £90 fee.

If the agreement ends during the DRO moratorium, the salary sacrifice would stop, and therefore, the client's income would increase. This will need to be reported to the DRO Team, and the client must be advised that the DRO could be revoked.

Removal costs

It is often the case that clients put money towards removal costs to move to a new property. The DRO Team have confirmed that clients can use lump sums for removal costs. However,

the amounts involved must be taken into consideration and must be reasonable. If it is a lump sum over the £1000 property limit, the client will need to account for the disposal of the funds and a supporting email sent at the time of submission. This should state how the funds were disposed of.

Funeral costs

Scenario one

We recently had an enquiry where a client was responsible for organising his brother's funeral. £8800 is to be transferred from the brother's account to the client's bank account, which would be used to pay for the brother's funeral.

The DRO Team have said that essentially the funds being used are third party funds, and therefore, wouldn't object to these being used this way as long as there is a fairly clear paper trail of what's been spent. The DRO Team would also be interested in knowing if the client was acting in any formal capacity, i.e. as executor.

Scenario two

We received an enquiry where the client had £1900 in savings transferred from the deceased son's account to pay for the funeral, and the client had also arranged for a double plot for her son and herself. A debt of £3000 was owed to the funeral directors.

Similar to scenario one, the funds are effectively coming from the deceased son's account and as such the DRO Team said they won't regard the payment as preferential.

Regarding the plot, the DRO Team suggest checking the terms and conditions of the agreement with the funeral director to see if there is any clause that they lose their right to the plots on entering into insolvency. If they do lose the plots, this would be seen as the funeral director retaining property that hasn't been paid for, and as such the DRO Team said that it would not constitute a 'remedy in respect of the debt'.

Funeral plan payments

We received an enquiry where the client had saved £4000 for their funeral and the adviser wanted to know if the client pays this money into a funeral plan that cannot be cashed in before her death, would there be an issue with this. The DRO Team confirmed the following:

Are the payments to the funeral plan seen as a preference or transfer at an undervalue?

The payment would not be seen as a preference or undervalue transaction however the DRO Team would need to be made aware of such disposals of funds upon submission.

Would the money held in such a fund be treated as property?

If payments towards the funeral plan have been completed prior to seeking debt advice and the funds in the funeral plan cannot be accessed, the Official Receiver would not regard the plan as an asset and will view it as similar to a life policy payable only on death.

If the debtor is still making the payments into the funeral plan, the Intermediary would need to establish whether such payments are to the detriment of their creditors. If after seeking advice the debtor chose to put a lump sum into a payment plan, the DRO Team would look at whether the transaction has taken place to the detriment of their creditors.

Would the DRO Team treat such a transfer as grounds for considering a Debt Relief Restrictions Order (DRRO)?

Yes, the DRO Team could consider the DRO for further investigation with a view to obtaining a DRRO for dissipation (the using up) of an asset.

Value of a franchise

The DRO Team have confirmed that a franchise is classed as an asset for the purposes of a DRO and to determine the value, the client would need to provide a valuation together with any cancellation/exit fees that would be applicable.

It is the net value after deduction of these costs that would be used to confirm the value of the franchise. If the value is in excess of the £1000 property limit, the client would not qualify for a DRO.

The client's financial position needs to be "regularised" meaning if they are to cease trading, then the Intermediary would need to be in a position to properly assess future income and expenditure.

ESA premiums back date received during the DRO moratorium

Recently, the DWP wrote to Employment and Support Allowance (ESA) claimants explaining an error that they had not underpaid ESA premiums, specifically the Severe Disability Premium / Enhanced Disability Premium. This has resulted in clients receiving a back date of ESA premiums during the DRO moratorium for some clients.

We asked the DRO Team how these should be treated by the DRO Team where they had been received during the moratorium period. They advised us:

Firstly, in terms of increase in income during the moratorium the DRO Team have said that *"where an increase occurs during the moratorium period and the debtor remains on means tested benefits the DRO Team would not be concerned about any reassessment of income and expenditure"*.

Secondly, in terms of the lump sum, they have indicated that any elements of the lump sum which relate to back dates of the Severe Disability Premium or Enhanced Disability Premium will be ignored when considering whether the backdated award of ESA has taken the client over the property limit. However, this only applies to ESA awards changing during the moratorium period.

As a result of this, it is important that when the client reports their changes in circumstances that they are very clear as to how this lump sum arose and the fact that they are simply being backdated certain elements of the ESA claim which relate to disability.

For clients who are already in receipt of ESA which includes the Severe Disability Premium and/ or Enhanced Disability Premium at the time of their application, our understanding is that the premiums would NOT be ignored as income. In a response to Citizens Advice Expert Advice team last month, the DRO Team said:

“The treatment of ESA for the purpose of calculating disposable income should continue as it is assessed at the moment. Very rarely do we see cases of individuals on means tested benefits having disposable income.”

Paying into Child ISAs

We dealt with an enquiry where a client was paying her Child Benefit into three separate ISAs for her 3 children. She cannot access the money herself and she believes there to be less than £1000 in the accounts all together. The adviser wanted to know how this would be treated in a DRO.

- As long as you are satisfied with the information the client has provided, including the fact that they are Child ISAs and cannot be accessed by the client, then the past payments made would not be considered as a gift/transaction at undervalue.
- If the ISA's are in the children's names, they won't be seen as the client's property and therefore, won't need to be reported on the DRO application.
- However, the client should provide up to date statements of the ISAs so the Intermediary is confident of the amount held.
- If the amount exceeds £1000, or the amount plus her own cash held exceeds £1000, the client should provide evidence that she cannot access the funds.
- Calculate the financial statement as you normally would do, including Child Benefit as a source of income. The client will need to have less than £50 per month surplus income to meet that qualifying condition for a DRO.
- Payments towards the ISAs is not an allowable expense, and therefore, would need to be made out of disposable income.

Private school fees

Where a client is paying private school fees for their child, the DRO Team have said that each case would have to be considered on its own merits, and the burden would be on the applicant to show the necessity of paying private school fees. In a particular case, a client's daughter had been accepted for a place at the local private school at a reduced rate of £50 a month starting in September 2018. Exams in Summer 2019 will cost the client £1200 that she is saving for, which is a priority for the client.

In contrast for bankruptcies, [Chapter 31.7.18](#) of the Insolvency Service Technical Manual shows case law on the issue of 'reasonable domestic need' and school fees.

“31.7.18 Significant court judgments concerning the reasonable domestic needs of the bankrupt and his/her family (school fees)

In the case of Rayatt, (Re: Rayatt (A Bankrupt) [1998] B.P.I.R. 495) [note 24], the court held that school fees could be treated as a reasonable domestic need for income payments order purposes, as to remove the bankrupt's eldest child from the fee paying school she attended just before taking GCSE's would unfairly prejudice her education.

In the case of Scott v Davis [2003] B.P.I.R. 1009 [note 25], the bankrupt (Scott) appealed against a decision to make an IPO against him. The court stated that it is for the bankrupt to produce sufficient evidence to the court for a decision to be made on the matter of school fees as a "reasonable domestic need." The fact that this bankrupt was unhappy with local state schools, opting instead for private education, was not deemed sufficient in itself to make the school fees acceptable as a reasonable domestic need. The court stressed that the individual circumstances of each case must be taken into account when considering reasonable domestic need."

The DRO Team have said that they don't think the judgment in *Rayatt* would necessarily apply here – if the client's child has been "accepted" for a place they assume she isn't attending the school yet, and as such it couldn't be said to be unfairly prejudicing her education. The DRO Team would not normally regard private school fees as acceptable expenditure without significant evidence showing why it is a necessary domestic expenditure in the particular case – as the judgement in *Scott v Davis* states, each case would have to be considered on its own merits – but the burden would be on the applicant to show the necessity.

Paying fraudulent benefit overpayments is seen as a preference

The DRO Team advise that paying off a fraudulent benefit overpayment in full and then making pro-rata payments to other creditors is a preference. This should be noted on the DRO application along with any mitigating circumstances around the payment. However, a third party could make the payment from his/her income.

Paying a lump sum to pawnbroker to recover pawned items is seen as a preference

Where the value of the goods appears to be less than the property limit and your client wishes to go ahead with the DRO the client needs to be advised:

- The loan with the pawnbroker is a secured loan.
- It counts in full towards the debt limit but to the extent that it is secured, it is not a qualifying debt.
- The rights of secured creditors are not affected by the making of a DRO, and so
- The client will have to continue payments in order to get the goods back, but
- These payments will not be an allowable expense when calculating his/her surplus income.
- If the payments are more than £50 per month s/he will not qualify for a DRO.

If your client decides to pay a lump sum to the pawnbroker in order to recover the items the DRO Team have confirmed that this would be considered a preference and should be noted on the DRO application along with any mitigating circumstances around the payment. However, a third party could make the payment from his/her income.

Child support arrears from EU countries are excluded debts

The DRO Team have confirmed that orders made for payment of maintenance or child support in EU countries would be excluded debts for the purpose of a DRO application and fall under the category of family proceedings, similar to the position in bankruptcy. See the Insolvency Service Technical Manual [here](#) for further details.

The Reciprocal Enforcement of Child Maintenance Order arrangements that the UK has with over [100 countries](#) can also provide for enforcement in this way.

Avon agents

We submitted a scenario to the DRO Team where the debtor earns some income as an Avon representative and has an account with Avon, which is generally in a few hundred pounds debit, as orders are placed and subsequently paid by customers. The account shows on the client's Experian Report. The debtor was concerned to include this as a debt in the DRO in the normal way because it might stop her being able to continue as an Avon representative.

The DRO Team confirmed that as the applicant is the person legally responsible for the account, they would have to regard it as a debt and it would need to be listed. From that as a starting position, they can see two possible routes that may be worth considering:

- The DRO applicant collects the outstanding monies before submitting the DRO and clears any deficit on the account with Avon – this wouldn't be seen as a preference, as the funds are coming from a third party.
- The DRO applicant goes to Avon, discusses the situation and comes to an agreement with Avon as to how they go forward.

Sending money abroad

The DRO Team have confirmed that they do not consider money being sent abroad an allowable expense in any circumstances.

We are seeking further guidance on this from the DRO Team in relation to whether certain situations allows for money to be sent abroad such as child support payments.

Paying landlord during the moratorium for a joint water debt (Wales only)

Welsh Water held the private landlord jointly and severally liable with the client, as the landlord did not provide WW client details within 21 days of the client moving into the property under the [Water Industry \(Undertakers Wholly or Mainly in Wales\) \(Information about Non-owner Occupiers\) Regulations 2014](#) and [WW's Scheme of Charges](#) on pages 10-11.

The client's concern is that once the debt is added to the DRO, the landlord may end the client's tenancy with a section 21 notice because the debt would have been discharged in the DRO.

The DRO Team have confirmed as follows:

- If the debtor utilises his disposable income on the proviso that this does not exceed the £50 parameter then this would be allowable.
- Regardless the debt will need to be listed on the application and notice would be sent to Welsh Water.
- If the debt is a joint and several liability then the full payment becomes the responsibility of the solvent partner. In light of this then it maybe prudent to ask to see a copy of the tenancy agreement to see if there is anything written into it regarding non payment of utilities and when the tenancy was entered into. Particularly in light of the legislation quoted.
- The Approved Intermediary must be satisfied that the individual meets all the parameters and where possible have the supporting documentation to clarify details.

Domestic violence where the vehicle cannot be returned

We sought guidance on a particular case where the client has separated from her husband due to domestic violence. The client had bought a car, which her husband is insured on. However, he is refusing to return it to her. The police have refused to assist her and she does not want to take court action against the perpetrator of domestic violence. We wanted to know whether the DRO Team would look at this on a case-by-case basis or if the DRO would be automatically declined due to the vehicle being worth over £1,000 and not being able to retrieve the car to use / sell the vehicle.

The DRO Team confirmed that they would look at it on a case-by-case, based on the circumstances. If the vehicle in question was for example a £10,000 Mercedes then they might be asking why the police weren't interested, but on the other hand if the vehicle's not far over the exemption limit, they'd probably take the pragmatic view that the costs of any recovery would far exceed the actual value of the asset and treat it accordingly.

HP payments allowable under child Disability Living Allowance (DLA) payments

A client had a vehicle on hire purchase (HP) valued at £1,600 with payments of £200 per month. The car had not been adapted and was not a Motability vehicle. We sought guidance on whether the client could use their child DLA payments to make the monthly payment if they relate to the care of the child, and how this needs to be reflected in the financial statement.

The DRO Team stated the following:

“The matter of whether the Official Receiver considers use of the DLA to maintain the HP payments is appropriate hangs very much on what the car is used for. Why is the car needed? Are there alternative forms of transport?”

The other factor to be mindful of is whether the HP ends during the DRO moratorium, thus rendering the debtor liable for revocation due to the vehicle's value.”

So, the guidance could potentially be challengeable where the client has a good case to argue that the car is needed for a reasonable domestic need particularly where there is a disability and where alternative forms of transport are not available.

The Citizens Advice Expert Advice team have also sought guidance from the DRO Team previously on a similar case asking if this would be an allowable expense, to which the DRO Team confirmed:

"With regards to the mobility scooter scenario, as you are aware where a debtor is in receipt of PIP or similar allowances for a protected characteristic, it has always been agreed that the income from the benefit is declared and a contra entry is also recorded in expenditure. The Official Receiver does not seek a detailed explanation as to the disposal of PIP etc. and in the scenario that you have outlined the OR would not object to the PIP income being utilised in the manner suggested."

If the car is not needed to ease the problems associated with the client's disability in this case then the only other alternative is for the client to use their surplus income of £50 per month and ask a third party eg a partner or a friend or relative to cover the remaining £100 per month during the moratorium.

HP payments allowable under Personal Independence Payments (PIP)

Similar to the scenario above, a client has a car on HP worth over £1,000. The monthly payment is £150 and the client is maintaining payments using her PIP allowance. The client feels she needs the car to visit her young daughter who lives some distance away and the family court has ordered that she visits her at least every 4 – 6 weeks. The client also suffers from anxiety which prevents her from using public transport.

We sought guidance on whether the DRO Team might view the HP payments as a reasonable expense when the cost of hiring a vehicle would be more than the £150 instalments.

The DRO Team confirmed that the DRO application would normally have been declined due to the value of the vehicle. However, if the payments are not in arrears and the HP does not end during the moratorium this may be something that could be exceptionally considered.

The DRO Team state:

- This would depend on the individual circumstances of the case.
- You would need to consider if the debtor is not able to use public transport for a particular reason.
- You will also need to consider if the cost is less than hiring a vehicle.
- You should also consider the current value of the vehicle in question.

In this particular case, if the payments are not in arrears and the HP does not end during the moratorium and payments are being made from PIP, then the HP payment could be exceptionally allowed. This will need to be noted as such on the application and a suitable explanation sent to the DRO Team. Please note that if the PIP is removed during the period of the order then the order may be revoked.

Catalogue accounts

A catalogue debt is a qualifying debt and must be scheduled in the DRO application. Payments made within the last 2 years could be seen as a preference and must be listed. The client cannot use that account going forward.

An individual is able to open a new catalogue account after a DRO has been entered into, but must inform the creditor that they are in a DRO if the client wants to take out credit of more than £500.

Subrogated rights

In a situation where the guarantor pays off the principal debt to the creditor, they can then step into the shoes of the creditor and sue the debtor. This is due to the guarantor having “subrogated rights”. If a DRO applicant had paid off a loan and so had received these subrogated rights, they would have a right of action that could potentially be seen as an asset.

We sought guidance on whether the DRO Team expect such subrogated rights to be declared as an asset and they stated the following:

“A right of action is an asset. Each case is judged on it’s merits and you would need to consider whether the pursuit of such an action was worthwhile. If a guarantee has been called in, it would suggest that the original purchaser may be insolvent themselves.

A DRO applicant would need to demonstrate what action, if any, had been taken to seek recovery. If it is clearly demonstrated that the debt is bad and irrecoverable, it would not be scheduled as an asset.

For a debt to be “bad and irrecoverable”, the person owed the money must have taken all reasonable steps to try to get it back. These steps could include taking enforcement action through the courts process or instructing tracing agents.”

Bereavement Support Payments

An individual can claim ‘[bereavement support payment](#)’ (BSP) where their partner passed away after 6 April 2017. The amount received would be an initial lump sum of £2,500 followed by a monthly payment of £100 follows for a maximum of 18 months. The DRO Team confirm that the lump sum payment of BSP would be classed as an asset, and that the monthly payment of £100 would be classed as income and would need to be taken into account when calculating income and expenditure. If the client still has the £2500 BSP lump sum, they currently do not qualify for a DRO.

‘Lien’ over a passport

We received an enquiry where the client owed a debt to the foreign office for repatriation to the UK. A debt owed to the foreign office for repatriation is a qualifying debt in a DRO and therefore, needs to be scheduled in a DRO application.

The complication was that the foreign office is holding a ‘lien’ over the client’s passport until the debt is paid. We questioned whether this debt would be seen as a secured debt because a lien is a security as per [s248 of the Insolvency Act 1986](#), which states:

“In this Group of Parts, except in so far as the context otherwise requires—

(a) “secured creditor”, in relation to a company, means a creditor of the company who holds in respect of his debt a security over property of the company, and “unsecured creditor” is to be read accordingly; and

(b) “security” means—

(i) in relation to England and Wales, any mortgage, charge, lien or other security”

The DRO Team have said that the Official Receiver cannot decide on whether having a lien over a passport is seen as coercion. However, we would argue that having a lien over the passport is a coercion to pay a qualifying debt, especially as the passport has no value to anyone other than the person it belongs to, and to ask them to release the passport.

A client in this situation would have to consider whether a DRO is a suitable option. The DRO Team have confirmed that if the client enters into a DRO, the client could utilise their allowable disposable income in any way they saw fit.

‘Lien’ over immigration documents

The DRO Team have decided that having a lien over immigration documents is different to a lien over a passport on the basis that not having a passport does not allow travel, but not having immigration documents could lead to deportation of children.

The DRO Team confirm that given the nature of the documents held and the individual circumstances of this case (solicitors holding the documents due to a debt outstanding), they feel that a “reasonable” allowance could be made in relation to the payment of the solicitors costs.

The approved intermediary would need to properly assess income and expenditure and determine whether the proposed payments to the solicitors are a “reasonable domestic need”.

If you have clients in a similar situation, please contact us for further advice, as the DRO Team have emphasised that payments towards debts where the creditor has a “lien” will be assessed on a case-by-case basis.

Money put in child bank account

A client had placed monies in a child bank account for her baby.

The DRO Team stated that for monies placed in a child’s bank account, the intermediary would need to be satisfied that the funds belonged to the child and were not put in a savings account to remove the funds from the benefit of the parent’s creditors. The account would need to be in the name of the child and have the parent as a co-named guardian.

Money held for setting up social enterprise

The client had plans to set up a not-for-profit Social Enterprise and had a grant of £4,000 in the bank. They cannot access the money without providing proof of what the money is spent on. £3,500 of the grant is set aside for start-up costs (rent, insurance and other costs), and £500 set aside for materials. Is the grant an asset for the purposes of a DRO application?

The DRO Team state that the grant of £4,000 would be classed as an asset for the purposes of a DRO application. The Intermediary may wish to ask further questions as to how the Social Enterprise would be set up and administered, as the applicant would not be able to act as a director or be involved in the formation/promotion of a company without leave of the Court if they were successful in their DRO application, should the position with the grant funds be resolved.

Risk of violence

We had an enquiry from an adviser asking if a debt can be excluded from a DRO application due to the fear of violence. The client has borrowed money from her mother and fears if the mother finds out about the other debts and the fact client may apply for a DRO, she may cause harm to the client.

The client has suffered abuse from her mum and remains scared of her and there is a risk of violence if her mum were to find out about the other debts. The client has paid nothing back to her mother yet and she has not asked for the money back at this stage. If the client were to ask for something in writing to say she does not want it back it would provoke questions to reveal about the DRO.

The DRO Team stated that the debt must be listed. However, when adding this debt, the Intermediary could leave the address blank resulting in the client's mother not receiving any notification of the DRO.

Upon submitting the application, a supporting email must be sent to the DRO Team setting out reasons why the address has been omitted so that the Intermediary is not chased for the address.

Armed Forces Compensation Scheme

The client appealed against a decision to not award the client from the Armed Forces Compensation Scheme (AFCS). If successful, the client might receive a lump sum and perhaps a monthly payment called the Guaranteed Income Payment. The AFCS is a government scheme for those who have suffered injury or illness on or after 06/04/05.

How would a lump sum from the AFCS be treated if he receives it during the moratorium?

The DRO Team confirmed that the AFCS would be treated in the same way as PIP and DLA. If the debtor does receive a lump sum payment within the moratorium period this would usually be disregarded, as this would be needed for medical, essential equipment and care costs. This would also be the case if the debtor receives a monthly income.

Home Loss Payment

We've had an enquiry from an adviser whose client wants to apply for a DRO but is due to receive a £6000 [Home Loss Payment](#). This amount exceeds the amount of their debts. Home Loss Payments are paid to compensate for the distress and inconvenience of having to move at a time not of your choosing.

The DRO Team confirmed that the Home Loss Payment will be classed as an asset and so it appears that the client would breach the acceptance criteria for a Debt Relief Order.

Refugee Integration Loan

The DRO Team confirmed that a [Refugee Integration Loan](#) is a qualifying debt and should be scheduled as such in the DRO application.

If your client has this type of loan, it is likely the client might be applying for citizenship / right to remain. Therefore, it is advisable for the client may want to seek specialist immigration advice on how the DRO might impact an immigration application.

Disclaiming employee shares

An employee share scheme is an asset for DRO purposes even if they are not able to realise the value of the shares immediately – see pages 46 - 47 of the DRO A-Z Guide for further information.

In addition to the guidance in the DRO A – Z Guide, the DRO Team have confirmed to us that they would treat any relinquishment of the shares as a transaction at undervalue which will have a bearing on the determination decision.

Power of Attorney revocation

[Section 13\(3\)](#) of the Mental Capacity Act 2005 states:

“13 Revocation of lasting powers of attorney etc.

(1) This section applies if—

*(a) P has executed an instrument with a view to creating a lasting power of attorney, or
(b) a lasting power of attorney is registered as having been conferred by P,
and in this section references to revoking the power include revoking the instrument.*

(2) P may, at any time when he has capacity to do so, revoke the power.

(3) P's bankruptcy[F1, or the making of a debt relief order (under Part 7A of the Insolvency Act 1986) in respect of P,] revokes the power so far as it relates to P's property and affairs.”

This section implies that if a person applies for a DRO the Power of Attorney (PoA) would be revoked where they have given PoA to another person in respect of their property and affairs.

The DRO Team's original guidance was that if it is a third party with PoA over the client's affairs, then they should be able to act on the client's behalf and complete the DRO application. However, the DRO Team have confirmed that their original guidance is incorrect and will update the entry in the DRO A-Z Guide as soon as possible.

Therefore, whilst a third party can hold a PoA and apply for a DRO for an individual, under s13(3) of the Mental Capacity Act 2005, once the DRO is approved it revokes the power in relation to property and financial affairs.

Applying for a DRO may not be in the client's best interest as there would be no authority for the third party to continue to act on their behalf in relation to their financial affairs and may wish to seek legal advice.

The DRO Team have also confirmed that that all restrictions cease upon the ending of the order and so they can apply for a further Power of Attorney once the order has ended.

The effect of a DRO on an adviser's status as an Authorised Intermediary

We sought guidance from the DRO Team on whether having a DRO approved which had subsequently been discharged would likely result in the debtor being considered not a 'fit and proper person' to be an Authorised Intermediary under [Regulation 11\(b\)\(iii\)](#) of The Debt Relief Orders (Designation of Competent Authorities) Regulations 2009 (the Regs).

With regard to the wording 'fit and proper person' Regulation 9 provides descriptions of individuals deemed not to be fit and proper persons and therefore not to be approved by competent authorities to act as intermediaries (this is as stated in the Explanatory Note). [Regulation 9](#) of the Regs lists several reasons for ineligibility including:

“(f)undischarged bankrupts;

(g)individuals in respect of whom there is or has been in force a bankruptcy restrictions order or undertaking or an interim bankruptcy restrictions order or undertaking or any bankruptcy restrictions order or undertaking made under the Insolvency (Northern Ireland) Order 1989(1) or the Bankruptcy (Scotland) Act 1985(2)

(h)individuals to whom a moratorium period applies or in respect of whom a debt relief order or application for a debt relief order, has been made;”

The DRO Team confirmed that any person who does not fall within the definition of being an ineligible person would therefore be eligible. If there is a reason why it is believed a particular individual is still not suitable to be an intermediary, the DRO Team would need to be advised of the particular circumstance for further consideration.

The legislation does not list an IVA as something that would prevent a person from becoming a debt adviser.

Private number plates

The DRO Team confirmed that private number plates are treated as separate assets, as they can be bought and sold without a vehicle. Therefore, a client could have a car worth £1,000 and a number plate valued £1,000 and still meet the criteria for a DRO.

How personal injury compensation is treated

We asked the DRO Team to clarify the guidance on personal injury compensation contained the DRO A – Z Guide (page 39), as it was unclear exactly how compensation would be treated.

The Intermediary should obtain a breakdown of how much was awarded for 'General Damages' (pain, suffering and loss of amenity) and how much was for 'Special Damages' (loss of earnings, care & assistance, travel & expenses etc).

Special Damages

Any amounts received for Special Damages would be treated as an asset and so will affect the making of an order, if in excess of £1,000.

The Intermediary should also consider if any future award of Special Damages is likely to be in excess of £1,000 as this could result in revocation of any order (lump sum protocol).

This would apply equally for rights of action that were in place before and since the approval of any order.

General Damages

It is only the General Damages that would not be considered as an asset. Where General Damages have been received the client would effectively have to sit on the funds until the end of the moratorium period, although they are allowed to use the funds to everyday living expenses and their upkeep.

The DRO Team should still be advised of any funds of this nature that the client may have received prior to the application or receives during the moratorium.

Having said that, any General Damages sums that have been converted from cash in bank may be looked on as assets and may affect the determination or keeping of an order (such as buying a car valued over £1,000 is purchased). Likewise, for example, if the client disposes of funds or makes preference payments. The Official Receiver would expect to be notified of any transactions that may affect any determination decision.

Joint bank accounts

We received a query where the client has a joint account with his partner with £1500 in the account. The client does not pay anything into the account and does not access the funds. His partner pays her income (wages) into the account and most of the household expenditure is paid from the client's partner via this account. It is unclear how much of the £1500 is earmarked for current financial expenditure but believes that some of this will be to pay for this month's essential expenditure such as housekeeping. It was also unclear what the bank account contract says about ownership of the funds.

The DRO Team state that they would rely on the debt adviser assessing their client's full circumstances. The debt adviser would need to be satisfied that the partner is the source of the funds and how this money is then spent.

The adviser may wish to view statements of the account to be sure this is an accurate reflection of their client's claims and that this money is solely his partner's money.

It may also be worth asking the client to sign a declaration stating he has no interest in the funds and potentially asking them to remove their name from the joint account.

This decision would need to be made by the client and The Insolvency Service cannot provide advice on what is the best action to take.

As with many aspects relating to a DRO application, the DRO Team would recommend the debt adviser providing a supporting email with any documentary evidence attached as all cases are reviewed on an individual basis with each client's circumstances taken into consideration.

Ultimately, the DRO Intermediary must be satisfied that the money is not their client's funds.

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