

Debt Relief Orders Frequently Asked Questions

1. Which Debts

Q. My client has some joint debts. How are these treated?

A. The full amount of any joint debts must be included in the DRO and will count towards the 15,000 debt limit. The client with the DRO will be protected from enforcement during the moratorium and will be discharged from liability at the end of the moratorium. If the joint borrower has joint and several liability for the debt, they will still be liable for the full amount.

Q. My client has a debt which was incurred through fraud. How is this treated?

A. A debt which is incurred as a result of fraud must be included in the DRO and so will count towards the 15,000 limit. The client will be protected from enforcement action by the creditor during the moratorium period. However, they will not be released from liability at the end of the moratorium, so this debt will still need to be paid.

Q. Can I include my client's business debts in his DRO application?

A. Yes business debts are qualifying debts and must be included in the DRO

Q. Is there a minimum amount of debt that a client must have in order to qualify for a DRO?

A. No the client just needs to have one or more qualifying debts and be unable to pay their debts

Q. Will a statute barred debt count towards the £15,000 debt limit?

A. Yes it will. If you need to exclude it in order for the client to qualify, you will either need a court order dismissing the creditor's claim or a letter from the creditor confirming specifically that the debt is statute barred and therefore unenforceable.

Q. I have grounds for believing that my client's catalogue debt is unenforceable as she did not sign a credit agreement. Will an unenforceable debt count towards the £15,000 debt limit?

A. Yes it will. If you need to exclude it for the client to qualify, you will either need a court order dismissing the creditor's claim or confirming that it is unenforceable or a letter from the creditor confirming specifically that the debt is unenforceable.

Q. My client has a benefit overpayment. Will this be included in the DRO?

A. Yes benefit overpayments (where both the overpayment and the decision to recover are made before the DRO application) and social fund loans are qualifying debts and must be included in the DRO.

Q. Will the DWP still be able to take deduction for my client's benefit overpayment/Social Fund loan during the moratorium?

A. Once the DRO is made the client's creditors will have no remedy against her or him in respect of any qualifying debts. Once the DRO is in place the DRO unit will write to all qualifying creditors informing them that the DRO has been made and that the debts as scheduled to the order are not recoverable.

The DWP says that it can continue to make deductions from benefit during the DRO moratorium in the same way that it can while someone is bankrupt. This may be challengeable and Specialist Support is currently working with the Public Law Project with a view to possibly bringing Judicial Review proceedings against the DWP. The DWP has issued guidance on this subject to councils so you will find that councils will also continue to make deductions to recover housing benefit overpayments following the making of a DRO. Your client should be advised that deductions will continue unless and until the DWP is successfully challenged.

Q. When completing the DRO application for a client with a direct deduction for an overpayment or social fund loan do I need to show the client's income net of the deduction or gross?

A. The client's income and expenditure should reflect the client's situation on the day of the application so the income should be shown net of the deduction.

2. Assets

Q. My client has a small private pension which he cannot access at the moment as he is many years away from retirement. Does this count as an asset?

The Insolvency Service Intermediary Guidance version 5.0 states at p.32:

"If a person has a pension fund, the intermediary will need to satisfy themselves that the fund value does not exceed £300 and consequently preclude the debtor from applying for a DRO"

When challenged about this on the grounds that the client has no access to the pension until the pension matures, the Insolvency Service has said:

"The fund value irrespective of the maturity date is considered to be an asset and a letter from a pension provider stating that the fund has no immediate realisable value would be of no relevance in determining gross assets"

Citizensadvice are hoping to persuade the Insolvency Service to exclude pensions from the definition of property.. In the meantime the advice has to be that clients with pensions will not qualify.

Q. My client has a 'stakeholder' pension will this be classed as an asset?

A. Pre-retirement, any pension fund (other than the State retirement pension) is classed as an asset and will therefore make an individual ineligible for a DRO if the fund value is greater than £300.

Q. My client has retired and is receiving an income from his private pension, does this pension count as an asset?

A. Where the client has retired and is in receipt of a pension, the Insolvency Service has said that they will not treat the pension fund as an asset. So, in this situation, the fund value should not be declared as an asset, but the income from it must be scheduled in the income/expenditure page of the application form.

Q. My client has a car on HP how will this be treated?

A. Cars on HP will not count as assets since the car does not belong to the client until the final payment is made under the agreement. However the outstanding finance will be a qualifying debt and count towards the £15,000 debt total. The client is barred from making payments to qualifying debts once the DRO is made and so the client will fall into default and is likely to lose the car, unless there is a third party who is able and willing to make the HP payments. The HP payments should not be shown as expenditure on the income/expenditure section of the DRO application.

Q. My client has a car on the Motability scheme how will this be treated?

A. In v.5.0 of the Intermediary Guidance at p.35 the Insolvency Service say that a car being hired under the Motability lease hire scheme will not count as an asset. The repayments will count as an allowable expense and should be put in the list of outgoings

Unfortunately if the car is being purchased under a Motability HP agreement then this is treated the same as any other HP agreement so the outstanding finance is a qualifying debt and payments cannot be included in the client's expenditure. The client may be able to transfer over to the Motability lease hire scheme instead.

Q. I understand that hire purchase payments cannot be included as expenditure in a DRO application. Does this apply to essential goods such as a sofa or TV? What if the agreement is in the joint names of the client and their partner?

A. All hire purchase agreements are qualifying debts regardless of whether the goods are vehicles or essential goods and so no repayments can be included in the client's expenditure.

The Insolvency Service has said that if someone else is prepared to make the repayments out of their own money to prevent the goods being repossessed that is allowed. If the agreement is in joint names, then the other party is liable for the repayments and can continue to make them (however, these repayments are still not allowable in the expenditure shown on the DRO application).

Q. What if the hire purchase agreement is paid off during the moratorium?

A. If the agreement is paid off during the moratorium then the goods now become an asset and will need to be declared to the Insolvency Service. If the agreement is in joint names then the client will be entitled to a half-share.

3. Income and Expenditure

Q. My client has rent arrears but there is no SPO. Will she be allowed to continue to make payments to the arrears after the DRO is made?

A. According to v.5.0 of the Intermediary Guidance at pps. 7 - 8 in order for payments of rent arrears to be considered as an allowable expense there needs to be evidence that there is an agreement in place, so if there is no SPO then there must be a written agreement with the landlord. Your client may need to get this before making their DRO application

Q. My client has an SPO and so I understand that she can continue to pay her rent arrears after the DRO is made but there does not appear to be any where on the expenditure sheet to show these payments.?

A. There is no separate item on the expenditure list on the application form. You will need to put rent arrears under 'other' and include a short note in the commentary box

Q. Where the client is getting council tax benefit do I need to show the amount of council tax payable net of council tax?

A. No all income must be shown. Put in the full amount of council tax payable under expenses and the amount of council tax benefit under income.

4. After the DRO is made

Q. My client has a DRO. She is due to receive a lump sum payment from the DWP in respect of arrears of benefit Does this have to be declared as an 'after-acquired asset'? What effect would it have on the DRO: could it be revoked?

A. There are no exemptions for lump sum benefit payments either before or after the making of a DRO. They are assets. The acquisition of any assets after a DRO is made is a relevant change of circumstances which needs to be reported to the Insolvency Service (see the section headed 'Duties imposed on a debtor' on pps 4 – 5 of v.5.0 of the Guidance for more on this). There is no set procedure for notifying the Insolvency Service of a change of circumstances but, as it is potentially an offence not to do so, it is recommended that it be done in writing (including email).

Yes, the DRO could be revoked. As the change of circumstance could lead to the DRO being revoked, the notification should put forward any reasons why, in the client's opinion, the DRO should not be revoked.

Q. If the DRO was revoked, could the client do anything about it?

A. Any decision by the OR (eg, to refuse or revoke a DRO) can be challenged by the client applying to the client's local county court with bankruptcy jurisdiction

The Insolvency Service must give reasons for revoking a DRO (and for refusing a DRO) and so you should insist on having this information in order to address those reasons in the challenge. The Insolvency Service says it is prepared to re-consider decisions and so you should contact the OR direct in the first instance.

Q. I am aware that a client can continue to pay rent arrears included in a DRO during the moratorium. But what is the position at the end of the moratorium?

A. The section headed 'Payments to creditors' on pps. 7 - 8 of v.5.0 of the Guidance sets out the conditions under which rent arrears can continue to be paid, that is, either under the terms of a possession order or under an agreement to pay the arrears (with evidence).

Once the moratorium ends, the client will be discharged from the rent arrears scheduled to the DRO. The client can then either choose to carry on paying off the arrears or (assuming no further arrears have accrued) apply to discharge any possession order.(although this is probably more appropriately dealt with as a housing issue).

In the case of a joint tenancy or where there is a guarantor, the co-tenant/guarantor will not be discharged from liability and so will have to continue payments during and after the moratorium.