





The content

Debt Advice Handbook 15th edition

Description

With living costs and unemployment rising, budgets squeezed and problem debt on the increase, no adviser should be without this essential guide to the practice and process of giving money advice in England and Wales.

Who's this book for?

It is essential for debt advisers, welfare rights advisers, lawyers, local authority and housing association staff, social workers and union official.

What does it do?

The handbook provides the most comprehensive information needed by advisers on the key stages of money advice, including interviewing clients, establishing liability, prioritising debts, preparing a financial statement, negotiating with creditors and dealing with bailiffs. Fully indexed and cross-referenced to law, regulations and official guidance, and to court and tribunal decisions Includes tactical guidance and examples

What's new?

Fully updated to cover all recent changes to legislation, caselaw and court procedure and practice Emphasis is placed on taking due care of vulnerable clients and making sure that any payment arrangements agreed are appropriate. There is a focus on sustainable credit arrangements that do not affect a client's abilities to pay essential living expenses and priority debts.

Properties

Author(s):
CPAG

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Offences and restrictions

A debt relief order (DRO) gives the client a 12-month moratorium, during which time the creditors specified on the order cannot force the client to pay those debts. ¹ Following the moratorium, the client is discharged from all the debts included in the order (other than those incurred fraudulently).

Where the client rents their home, the client's tenancy agreement may contain a so-called 'insolvency clause' enabling the landlord to seek possession of the property in the event of the client obtaining a DRO (or going bankrupt). The client's tenancy agreement should always be checked for such a clause as part of advising on a DRO (or bankruptcy). The client's immigration status may be affected and so specialist immigration advice should be obtained. Local immigration advice can be searched for at find-legal-advice.justice.gov.uk. For further information, see also gov.uk/government/publications/good-character-nationality-policy-guidance.

Although it is almost 15 years since the DRO solution was introduced, practice continually evolves. The *DRO Toolkit* is an essential resource for both advisers and approved intermediaries and is available on AdviserNet (for Citizens Advice advisers and intermediaries) and on the Wiseradviser website ² (for other advisers and intermediaries). The monthly bulletins and articles published by Shelter's Specialist Debt Advice Service (SDAS) regularly provide information and advice about DROs. ³ Institute of Money Advisers (IMA) members can access the Wiseradviser and SDAS websites via links in the *Debt Relief Order Approved Intermediary Resources* section of its website (username and password required). ⁴ The Insolvency Service has published a number of guidance documents for advisers. The first is *Debt Relief Orders: guidance for debt advisers*, which is published in the Debt Adviser Tools and Information section of the Insolvency Service website and is available online at gov.uk/guidance/debt-relief-orders-guidance-for-debt-advisers. This now includes the date the current version was last updated with a summary of the topics updated which can be accessed by clicking on 'See all updates'. The Insolvency Service also regularly published *Intermediary Guidance Notes* which contained information about the roles of the Insolvency Service and approved intermediaries as well as guidance on completing the DRO application form. The Insolvency Service has finally published updated *Intermediary Guidance Notes* on the gov.uk website. It now comprises two documents:

DRO Guidance for Approved Intermediaries and How to Complete and Submit the DRO Application Form. These are both available at gov.uk/guidance/debt-advisor-tools-and-information. 5

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- 1 For an overview, see M Gallagher, 'Debt relief orders', *Adviser* 132
 - 2 [wiseradviser.org](https://www.wiseradviser.org)
 - 3 See, for example, 'Debt relief order practitioner notes' - an archive of responses from the DRO Team to SDAS queries raised by debt advisers - in the 'Spotlight section' of Shelter's SDAS e-bulletin, March 2024
 - 4 [i-m-a.org.uk](https://www.i-m-a.org.uk)
 - 5 See also 'Considering some of the challenges for an Approved Intermediary' in the 'Enquiry of the month' section of Shelter's SDAS ebulletin, July 2020

Debt relief orders and bankruptcy

DROs have some similarities with bankruptcy, but there are several significant differences.

- The cost to the client of applying for a DRO is considerably less than the cost of applying for a bankruptcy order.
- The client can apply for a bankruptcy order on their own, but needs the assistance of an intermediary to apply for a DRO.
- Creditors can object to a DRO being made, but cannot object to a bankruptcy order being made on a debtor's bankruptcy application.
- There is no maximum debt level for a bankruptcy order and no preconditions on income or assets.
- If the client has entered into a transaction at an undervalue or given a preference within the prescribed period, this may be set aside by the trustee in bankruptcy, but could prevent the client from obtaining a DRO. On the other hand, there is no provision for the official receiver to set aside such a transaction if a DRO has been made.
- There is no provision for revoking a bankruptcy order on the grounds that the client's financial circumstances have improved prior to discharge.
- Assets do not vest in the official receiver, and so a DRO does not involve any realisation of assets or require clients to make any payments to their creditors.
- Contingent liabilities cannot be included in a DRO.

- A DRO only releases the client from the debts included in the application. Bankruptcy releases the client from their 'bankruptcy debts' (see here), whether or not they are listed in the bankruptcy application.

Who can apply for a debt relief order

Qualifying debts

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A client who cannot pay their debts and who meets the eligibility conditions (see here) can apply for an order in respect of their 'qualifying debts'.

Qualifying debts

Any secured debt is not a qualifying debt. If a debt is only partially secured, the unsecured element is a qualifying debt, but the secured element is not. For example, if a bill of sale was secured on a car worth £800 and the debt was £1,000, only £200 would be a qualifying debt. Despite this, the full amount of a secured debt counts towards the £30,000 debt limit. In the above example, £1,000 would count towards the limit.

Otherwise, any debt for an identifiable sum which is not excluded qualifies for a DRO.

'Excluded debts' are:

- fines (including compensation, but not the criminal courts charge; costs orders made against the client by the court and treated as payable under a conviction fall within the definition of 'fine' and are, therefore, not qualifying but excluded debts) and confiscation orders. This does not include costs of enforcement – eg, enforcement agents' (bailiffs') charges;
- child support assessments and maintenance orders;
- student loans granted under the Education (Student Loans) Act 1990 or the Teaching and Higher Education Act 1998;
- damages for personal injury or death arising out of negligence, nuisance or breach of contractual, statutory or other duty; ¹
- social fund loans made under section 138(1)(b) of the Social Security Contributions and Benefits Act 1992.

¹ 'Personal injury' has been judicially defined to include any disease and any impairment of

a person's physical or mental condition but does *not* include 'distress', 'upset', 'fear' and other similar human emotions: see *Lees v Kaye* [2022] EWHC 1151 (QB), paras 56-58

Issues with particular types of debt

Business debts

Business debts are 'qualifying debts' for the purposes of a DRO, provided the client is personally jointly or severally liable for them. ¹

Contingent liabilities

Unlike in bankruptcy, contingent liabilities are not qualifying debts because they do not fit the definition of a qualifying debt as being 'a liquidated sum payable either immediately or at some certain future time.' ²

County court judgments

Where a debt is subject to a county court judgment, you should do your best to identify the actual creditor so they can be notified of the making of the DRO. If necessary, contact the court to establish who the creditor is. It is not the court's responsibility to notify creditors of the making of a DRO and so you should not usually enter the debt as a county court judgment and the court as the creditor. However, the DRO Team has confirmed that this is acceptable if it has not been possible to obtain this information from the court up until now and it would be detrimental to delay the client's DRO application. In this case, the DRO Team should be emailed at the time of the application to explain why the creditor's details have not been included. You must ensure that the county court reference number is provided in the application. If the creditor's details are discovered during the moratorium, the DRO Team can then be contacted and asked to amend the DRO to include the creditor's details. The request for amendment **must** be support by evidence - eg, bill of statement.

Credit union debts

Credit union debts are considered as secured debts to the extent of the value of the client's shares which should be listed as assets. If the debt exceeds their value, the excess should be included in the DRO as an unsecured debt and the balance as a secured debt (unless set-off has occurred prior to the submission of the DRO application when the outstanding balance will be an unsecured debt). If the client requests the credit union to set off the debt prior to the submission of the DRO application, this will not be considered as a preference but the DRO Team should be informed via the commentary. The full amount of the debt counts towards the debt limit (see [here](#)).

Foreign debts

Debts owed to overseas creditors should be included. Although the client is protected from enforcement action by the creditor in England and Wales, the DRO is not recognised in other countries, including European Union states and Scotland (which has its own legal system). The client may therefore face enforcement action in countries outside England and Wales, even after they have been released from liability for the debt in England and Wales.

Fraudulent debts

Unless otherwise specifically excluded (see here), debts incurred through fraud are qualifying debts which count towards the DRO debt limit (see here) and which must, therefore, be included in the application. Voluntary payments made by the client towards a fraudulent debt or its full repayment must be reported as a preference (see here) but not, for example, payments made by deduction from benefits, because such payments cannot be classed as 'voluntary'. The client is protected from enforcement action from their creditors during the moratorium period (see here), but is not released from liability for such debts at the end of this period (see here). This means that benefit providers cannot make any deductions from benefit during the moratorium period even if the overpayment is fraudulent.

Guarantors

If a client has a DRO, this does not release any guarantor (or any other person liable for the debt, such as a co-debtor) from their liability.

If the client is guarantor for someone else's debt, their possible future liability under the guarantee is not a qualifying debt. There must be an actual liability to pay an amount, either immediately or at some certain time in the future. This means that, until the borrower defaults, the client has no liability. If the borrower has defaulted, check the terms of the guarantee to see at what point the guarantor becomes liable and whether they are liable for the outstanding balance owed to the creditor or just the missed payments. The creditor might have asked the guarantor to make payments that have been missed by the main debtor. That does not mean the guarantor is automatically liable. The creditor usually has to send a default notice before the debt crystallises and can be included in the DRO.

Hire purchase agreements

If the agreement is in arrears, the amount due and unpaid must be included in the DRO. This includes the outstanding balance if this is due and payable under the terms of the agreement – eg, if it has been called in by the finance company.

If the agreement is in arrears but the outstanding balance is not due and payable, the arrears must be included in the DRO. The client can decide not to include the outstanding balance, if it is not due and payable, but it will still count towards the £50,000 total debt limit (£30,000 prior to 28 June 2024) (see here). Check the terms of the agreement and any notices the client has received from the finance company to see whether the agreement contains any terms under which it could

be terminated if the client enters into any formal insolvency procedure.

If there are no arrears, the client can choose not to include the debt in the application and they remain liable for the remaining payments. The outstanding balance does not count towards the £30,000 total debt limit (see here) provided:

- the agreement is not in arrears; *and*
- the repayments are made by a third party where these are more than £75 a month; *or*
- the repayments are deemed to be an allowable expense.

HMRC debts

These debts should be scheduled individually in the DRO application and not added together and scheduled as one total debt owed to HMRC. **3** Where a tax credit overpayment has been transferred to the DWP and is being recovered from universal credit (UC), the DWP should be scheduled as the creditor.

Even though payments on account payable by self-employed clients subject to self-assessment income tax appear to meet the conditions for qualifying debts, new DRO Team guidance says they are liquidated sums payable either immediately or at some certain future date (31 July and 31 January), with interest being chargeable on late or missed payments. Self-employed clients will therefore need to make arrangements to make these payments (see here).

Mobile phone contracts

Following a complaint from Tesco, the DRO Team has reminded approved intermediaries that you **must** check whether a client's mobile phone contract has only one agreement (for the airtime) or two agreements, the second being for the handset. Where only one entry is made in the DRO application in a case where the client has two separate agreements, the effect is that the provider closes the entire account. **4**

Where the client has two separate agreements, the DRO Team says that the second is likely to be an unsecured loan for the handset (should it be a hire purchase agreement, the rules relating to hire purchase agreements should be followed – see above). Arrears must always be scheduled in the DRO. You should note that the phrase 'in default' used by the DRO Team in its guidance means 'in arrears'. The outstanding balance only needs to be scheduled if it has fallen due for payment - eg, 'if payments are in default' and a default notice has been served but not complied with. Non-payment of the loan could lead to termination of the whole contract and so you need to check the terms of the agreement. Provided the airtime agreement is up to date, there is no need to schedule it in the DRO. **5**

Motor Insurers' Bureau claims

The official receiver says that any third-party claim that has either been settled by the Motor Insurers' Bureau or is the subject of a judgment against the client is a liquidated sum. Any

compensation for personal injury or death included in the claim is an excluded debt (see here). Any other types of claim (eg, for loss of earnings) are qualifying debts and should be included in the DRO.

Advance payments of universal credit

Payments on account or budgeting advances of UC are not loans. Before making an advance payment, the client is notified of their liability to repay it, usually by deductions from subsequent payments of benefit. Any advance payment which has not been fully recovered at the date of the application for a DRO is a qualifying debt. **Note:** while UC payments on account or budgeting advances are qualifying debts, social fund and budgeting loans are specific to legacy benefits and are excluded debts which cannot be included in a DRO but do not count towards the £30,000 total debt limit.

If deductions from benefit incorrectly continue after the date the DRO is made and these are subsequently repaid to the client, the official receiver does not regard these repayments as an increase in income or property for the purposes of revoking the order (see here).

Penalties

There are numerous different types of penalty. Some of these are qualifying debts, some are excluded debts and others may be the subject of prosecution and a fine in the magistrates' court as a consequence of non-payment. It is impossible to produce a comprehensive list of all the different penalties, but if the client discloses that they have an unpaid penalty, you should apply the following rules. ⁶

- If the consequence of non-payment is that the penalty is recoverable as a civil court claim or can be registered for enforcement as if it were payable under a county court judgment, the penalty is a qualifying debt and should be included in the DRO.
- If the consequence of non-payment is that the client *may* be summonsed to the magistrates' court and prosecuted for an offence or the penalty could be registered in the magistrates' court for enforcement and neither of these things has happened yet, the penalty is a qualifying debt and so should be included in the DRO. A DRO will not prevent subsequent prosecution or registration because this is not regarded as a 'remedy in respect of the debt'. ⁷

If the penalty has already been registered in the magistrates' court or the client has been prosecuted and fined, this will be an excluded debt.

Unenforceable debts

Unless the client owes money to a 'loan shark' (see below), this is only an issue if the inclusion of the debt would take the client over the £30,000 total debt limit (see here).

The DRO Team says that if an adviser is satisfied that a qualifying debt is unenforceable (eg,

because it is 'statute-barred' – see here) or is irredeemably unenforceable under the Consumer Credit Act 1974 (see here) *and* there is evidence that the debt is unenforceable (eg, a court order or letter from the creditor acknowledging this), the client can choose not to include the debt in the DRO and it does not count towards the £30,000 total debt limit.

A debt that has been written off arguably no longer fits the definition of a 'qualifying debt' ('payable either immediately or at some certain future time'). ⁸ The DRO Team has confirmed it agrees with this view and, provided the creditor has confirmed in writing that the debt will not be pursued, then the client can choose to omit the debt from the DRO application.

Note: if the official receiver subsequently finds out that a debt was not statute-barred or unenforceable and, as a result, the debts exceeded the £30,000 limit, the DRO is revoked.

Debts owed to loan sharks (see here) can be included in a DRO. However, the official receiver has said that if the client fears for their safety, they can choose to leave the debt out and it does not count towards the £30,000 limit.

Water charges

If the client has an unmetered account, their water charges to the 31 March following the date of the DRO application are a qualifying debt and so must be included in the DRO. Most water companies have 'insolvency clauses' in their charges schemes whereby, in the event of the customer entering a formal insolvency procedure (such as bankruptcy or a DRO), their water charges are apportioned up to the date of the DRO/bankruptcy order and the customer is then issued with a new bill for the remainder of the charging year to 31 March.

Although the client can choose to pay the new bill, the water company's view can be challenged, both as an attempt to exercise a remedy in respect of the debt and to contract out of the statutory insolvency scheme. ⁹ Specialist advice should be obtained in such cases.

¹ For a full discussion of issues relating to self-employed clients, see L Charlton, 'Debt relief orders and the self-employed', *Adviser* 155

² s251A(2)(a) IA 1986

³ See Insolvency Service, *DRO News Special Bulletin*, 29 January 2021

⁴ *DRO News*, May 2023

⁵ See Insolvency Service, *Debt Relief Orders: guidance for debt advisers*

⁶ See L Charlton, 'DROs and penalties', *Adviser* online, 13 August 2019

⁷ See L Charlton, 'Q&A with the Shelter Specialist Advice Service', *Quarterly Account* 49, IMA, pp26-27

⁸ s251A(2)(a) IA 1986

9 See P Madge, 'Deep water', *Adviser* 143 and 'Deep water 2', *Adviser* 177

Qualifying conditions

To obtain a DRO, the client must be unable to pay their debts and must either be domiciled in England and Wales at the date of the application or have been ordinarily resident or carried out business in England and Wales during the previous three years. ¹ In addition, on the date the official receiver determines the application (the 'determination date') they must not:

- be an undischarged bankrupt, or subject to an individual voluntary arrangement (IVA), a bankruptcy restrictions order, a bankruptcy restrictions undertaking, a debt relief restrictions order or debt relief restrictions undertaking;
- have had a DRO made within the previous six years (**note:** if a client has been subject to a DRO within the previous six years that was revoked, they can apply for another DRO provided they currently meet all the other qualifying conditions); ²
- have a bankruptcy petition pending against them, unless the court has referred them for a DRO;
- have total debts above the prescribed limit of £50,000 (this figure includes qualifying debts and secured debts but not excluded debts (see here)). **Note:** the prescribed limit was £30,000 prior to 28 June 2024;
- have surplus monthly income above the prescribed limit of £75;
- have property (assets) valued at above the prescribed limit of £2,000 (but see here when the client owns a single domestic motor vehicle).

Transactions at an undervalue and preferences

The official receiver can refuse to make a DRO if the client has entered into a transaction at an undervalue (see here) or given a preference to anyone (see here) at any time during the two years before the application is made or during the period between the application date and the determination date. **Note:**

- these are different time limits to those for bankruptcy;
- the client need not have intended to give a preference (although the official receiver considers this when exercising discretion).

Payments made directly to the client's creditors by third parties using their own funds are not considered to be preferences for the purpose of a DRO order, neither are payments made by clients out of their surplus income to priority creditors. However, lump-sum payments to priority creditors do need to be reported as preferences (including the source of the funds and why the

payment was made) so that the DRO Team can make the decision, even if this is unlikely to be a decline (refusal). ³ Voluntary payments made by the client towards a fraudulent debt or its full repayment must be reported as a preference – however, not, for example, payments made by deduction from benefits, because such payments cannot be classed as ‘voluntary’. Payments in respect of a fixed-penalty notice where the consequences of non-payment are potentially a prosecution and fine in the magistrates’ court are not considered to be preferences. The DRO Team has confirmed that contractual payments made to creditors are not considered to be preferences unless payments are made with the intention of putting that creditor in a better position over other creditors. Payments in excess of the minimum contractual amount do need to be reported as preferences. Repayment of loans to friends and family are likely to be considered preferential and could lead to the DRO being declined.

Calculating the amount of surplus income and the value of property

Note that only cost of living payments received in the month **before** the DRO application need to be included in the financial statement. For example, if a client applies for a DRO on 5 November, only payments received since 5 October need to be taken into account. Increases in the client’s outgoings should be reflected in the essential expenditure section of the client’s financial statement.

The DRO Team has said that if a cost of living payment is received during the moratorium, this does not have to be reported.

Payments towards the ‘reasonable domestic needs’ of the client and their family can be included as items of expenditure when calculating a client’s surplus income. The courts have, however, decided that illegal expenditure cannot be included. In a County Court decision - where the judge disallowed expenditure of £20 a week on cannabis - although the judge accepted that the client might take cannabis wholly or partly for medicinal reasons, he expressly did not exclude it because of the amount spent each week nor on the basis of a moral judgement, but because consumption of cannabis was illegal. ⁴

When calculating the client’s surplus (or available) income, the official receiver must take into account any contribution made by any member of the client’s family to the amount necessary for the reasonable domestic needs of the client and their family. In practice, the client’s financial statement must be completed using standard financial statement principles (see here). A DRO is an individual remedy and so, if the client is a member of a couple, the financial statement must show the client’s available income and not that of the couple. ⁵

The DRO Team has said that it has noticed an increase in cases where where ‘exactly the maximum allowable expenditure’ under the SFS spending guidelines has been included in the DRO application for the three areas of discretionary or flexible spending costs: Communications and Leisure, Food and Housekeeping, Personal Care. It has warned that it may ask for more in-

depth figures and/or a breakdown if it sees this and has asked intermediaries to make sure that the figures used in DRO applications accurately reflect what clients actually spend (but see next paragraph).

If the client has an attachment of earnings order, a direct earnings attachment or is having deductions from benefits made which will cease once the DRO is made (because creditors must cease exercising any remedy in respect of qualifying debts during the moratorium period), prepare the client's financial statement on the basis of their earnings and/or benefits before the deductions are made. Include any essential expenditure that is needed for the client's reasonable domestic needs, even if it is currently unaffordable. Provided the client's surplus income is still £75 a month or less, the application for a DRO can proceed. However, you should explain to the official receiver on the application form that the client is subject to an attachment of earnings order or deductions from benefits and that their budget has been prepared on the basis of how much their income will be if a DRO is made and the deductions stop.

When calculating the value of property and the amount of surplus income, the following property is disregarded:

- tools, books and other items of equipment (but not motor vehicles) that are necessary for the client's personal use in their employment, business or vocation;
- clothing, bedding, furniture, household equipment and the necessary provisions for satisfying the client's basic domestic needs and those of their family;
- a single domestic motor vehicle belonging to the client and worth less than the prescribed amount (currently £4,000). **Note:** the prescribed amount was £2,000 prior to 28 June 2024;
- a single domestic motor vehicle belonging to the client which has been specially adapted for the client's use because of their disability (but see below).

Property is valued at its gross, rather than net, realisable (and not replacement) value and so clients who are homeowners do not qualify even if their property has negative equity. When valuing motor vehicles, Parkers Guide (available at www.parkers.co.uk/car-valuation/) is acceptable to the DRO Team. However, where the client disagrees with the Parkers' valuation, the DRO Team says that the client will need to explain why this is and provide two independent valuations to support the explanation. The DRO Team has amended the 'Parker's Guide' section of its online *Debt Relief Orders: Guidance for debt advisers* to reflect this.

Where the client has bought a vehicle which has already been adapted for a person with a disability and this adaptation meets the client's needs so that, because of the adaptation, the client can now use the vehicle, it can still be considered exempt.

1 Clients considering applying for a DRO who are not British citizens should consult an

immigration solicitor first, as it may affect their immigration status and an application for British citizenship

2 *Curr v The Insolvency Service*, 2 June 2021, Salisbury County Court

3 See L Charlton, 'Q&A with the Shelter Specialist Debt Advice Service', *Quarterly Account* 48, IMA, p24

4 *Islington BC v (1) C (2) Official Receiver*, Central London County Court, 3 February 2012 [2012] BPIR 363 at para 20

5 For guidance on drawing up financial statements if the client is a member of a couple, see P Madge, 'A single statement', *Adviser* 147, updated by L Charlton and republished in *Adviser* online, 8 January 2020

Issues with particular types of expenditure

Alcohol and tobacco

Alert: In its November 2024 Newsletter, the DRO Team controversially issued new guidance on including these items as essential expenditure in a DRO application.

Following a challenge by the sector, the DRO Team subsequently emailed Competent Authorities to confirm that its guidance has been updated and this now reads as follows:

'The financial statement on the DRO application should be completed using the Standard Financial Statement for consistency. Alcohol and tobacco items are allowable expenditure within the Standard Financial Statement guidelines. Alcohol and tobacco items are allowed so that a realistic picture of the spending is provided.

The Standard Financial Statement contains "spending guidelines". These can highlight areas where the individual's expenses exceed those considered normal. High expenditure amounts on alcohol and tobacco may lead to expenditure guidelines being exceeded,'

Although the guidelines might be breached in exceptional circumstances, the trigger should not normally be exceeded because of alcohol and/or tobacco products. If these were included, costs should be reduced across the 'Food and Housekeeping', 'Communications and Leisure' and 'Personal Costs' categories to bring spending within reasonable limits.

If a client believes there are exceptional circumstances where exceeding the spending guidelines should be allowable, they may want a note recorded on the application to explain this and the Approved Intermediary must email the DRO Preorder team with the details on submission of the DRO application. The DRO Team says these will be reviewed on a case-by-case basis.

Rent arrears and payments under controlled agreements

Rent arrears are not an allowable expense, whether the rent arrears are payable under a suspended possession order or under an agreement made with the landlord. However, rent arrears can be paid after a DRO is made, either from the client's surplus income or by a third party.

Any payments made to enforcement agents under a controlled goods agreement to prevent them removing the goods must usually be made from the client's surplus income or by a third party but are an allowable expense if the goods subject to the controlled goods agreement are for 'the reasonable domestic needs' of the client and their family.

Hire purchase payments

Ongoing hire purchase payments are only an allowable expense if:

- the client chooses to omit the outstanding balance from the DRO (see here); *and*
- there are no arrears; *and*
- the goods would be disregarded goods if they belonged to the client - ie, if they are a single domestic motor vehicle worth less than £4,000 (£2,000 prior to 28 June 2024) or one that has been specially adapted because the client has a disability or where the goods are necessary to meet the client's basic domestic needs; *or*
- when the goods would not be disregarded but the expenditure is considered necessary to meet the client's reasonable domestic needs. In the case of a vehicle worth more than £4,000 (£2,000 prior to 28 June 2024), an email should be sent to the DRO Team at the time the DRO application is submitted detailing why the client should be allowed to continue making the repayments. The factors the DRO Team will consider include when the agreement was taken out, whether public transport is available and whether the repayments compare favourably with the cost of public transport. ¹

Sending money abroad

The DRO Team has confirmed that supporting a dependant not living with the client can be acceptable as being for a 'reasonable domestic need'. However, rather than checking with them prior to submission as previously, you are now required to carry out an assessment to satisfy yourself that the amounts are reasonable and that they are legitimate and necessary payments to a close family member – eg, parent, wife, husband, sibling.

The DRO Team has suggested a list of questions to be asked of your client as part of this process:

- the full circumstances explaining why the payments are being made;
- how long they have been making these payments;
- why the family are living apart;

- any other relevant information about the situation.

This information is to be provided to the DRO Team, either in the notes on the application itself or by email to the Pre-order Team, so it is recorded that the payments are being made and that you have carried out the relevant checks and are satisfied.

1 There is a discussion of this issue in relation to vehicles in the Insolvency Service's *Technical Guidance for Official Receivers* from para 24.20 (available at tinyurl.com/3zwujea5)

Issues with particular types of property

Cash

Cash in hand or in a bank account can be disregarded if it is intended to be used to pay for the essential expenditure listed in the income/expenditure section of the application. Regardless of its original source, cash is property unless it represents arrears of disability benefits (ie, attendance allowance (AA), disability living allowance (DLA), personal independence payment (PIP), equivalent benefits paid to armed forces personnel, disability premiums paid with legacy benefits, the severe disability premium paid with pension credit (PC), the disabled child element of UC) and transitional payments paid as a result of not being able to claim the severe disability premium in UC.

Money owed

If the client is owed money, it is regarded as property unless they have unsuccessfully attempted to recover it and these attempts are documented. Arrears of child support and compensation owed to the client through the magistrates' court are not property for this purpose.

Pensions

Alert: DRO Team guidance is that, where a client can repay their debts in full from their pension funds/assets, they do not meet the DRO eligibility criteria. Therefore, where a client has one or more pension funds whose total value exceeds the level of their debts and they are of an age when they can access their pension(s), they may not pass the 'insolvency test' - ie, whether the client is unable to pay their debts (see below) and as a result the client would not be eligible for a DRO. In that situation, buying an annuity would not only provide a regular income but also reduce the amount in the pension fund. The DRO Team has now issued guidance on this scenario. If they purchase an annuity with the lump sum, then this would be considered as income in terms of the eligibility criteria. If a client had converted their pension fund(s)/assets into an annuity and so met the eligibility criteria in respect of both assets and disposable income, it would be likely that, if they applied for a DRO, it would be made. However, the DRO Team says that this scenario might

be seen as the disposal of an asset with the intention of putting it beyond the reach of creditors. The official receiver might, therefore, consider the possibility of enforcement action: a debt relief restrictions order/agreement (see here) and/or fraudulent disposal of property (s251Q IA 1986). Where you become aware that pension fund(s)/assets have been used in this way, the DRO Team says that you should make them aware of this at the time when the application is submitted. The sections on 'Pensions' in *Debt Relief Orders: guidance for debt advisers* has not yet been updated.

Any undrawn 'approved' pension entitlement should not be taken into account when assessing the value of the client's property. ¹ However, if the client has reached the age where they are entitled to withdraw all or part of their pension as a lump sum (often aged 55), you must assess whether they would be able to withdraw enough to clear their debts in full. This is to determine whether the client can meet the requirement of being unable to pay their debts. Where the pension is already in payment, any regular income from that pension must be taken into account when assessing the client's available income.

Firstly, you will need to establish whether the client has a 'defined contribution' or a 'defined benefit' pension, as in the case of the latter it may not be possible to access the pension pot as a lump sum. In the case of a defined contribution pension, you must:

- check a recent pension policy statement in order to assess its value; *and*
- confirm whether the client can take money from the pension to pay off their debts within 'a reasonable timescale'.

It is usual for the first 25 per cent of a pension lump sum to be accessible tax free. However, you will need to allow for any fees payable (this information can be obtained from the pension provider) and any tax on the remainder that will be deducted at source. There is information on 'Taking your whole pension pot in one go' (including a valuation calculator) on the MoneyHelper website at [tinyurl.com/murb7kyb](https://www.moneyhelper.org.uk/en/Debt-relief/Debt-relief-orders/Debt-relief-orders-guidance-for-debt-advisers).

Where the realisable value of the client's pension (together with any other available assets) is less than the client's total debts, then they are unable to pay their debts (the 'insolvency test'). Where the realisable value of the client's pension (together with any other available assets) is only 'marginally' above the client's total debts, you must make a 'realistic assessment' of whether those debts can be paid in full, having regard to how long any realisation will take and the fact that the client's debts may increase during this time. The DRO Team says that 'urgent household costs', such as maintenance or repairs, can be taken into account when making this assessment, but that, if the value of the client's pension (and other assets) is enough to repay the client's debts in full, and the client has access to the pension and can get the funds they need to do this, the client will not meet the eligibility criteria. The DRO Team acknowledges there may be an exception where there is a contractual or other legal reason why the client may not be able to access their pension. The DRO Team has to date provided no guidance on the meanings of 'marginally',

'realistic assessment', 'reasonable timescale' or the scope of 'urgent household costs' (other than maintenance or repairs).

Even if a client has not reached the age where they can access their pension, the DRO Team says that you must still establish whether the client has any pensions and, if so, whether they are 'approved' or not – ie, approved for tax purposes by HMRC. If they are not 'approved', they are assets and their value must be listed in the assets page of the DRO application and the client may well be over the asset limit, so will not be eligible for a DRO. If they are 'approved', DRO Team guidance is that you do not need to value them and you can answer 'No' to the question 'Do you have a pension?' in the DRO application. DRO Team advice is that you should advise clients who will reach the age that would enable them to access their pension during the moratorium that, if they access it during the moratorium, this would need to be reported as an increase in income. If it increases surplus income to more than £75 a month, this could lead to revocation of the DRO. Any lump sum drawn down during the moratorium will be treated as income and apportioned over a period of 12 months.

Note: the DRO Team is no longer pre-assessing pensions prior to submission of the DRO application. If you have assessed that the realisable value of a client's pension is above the client's total debts, but a DRO application is nevertheless submitted, it must be accompanied by a supporting email explaining why you or your client believe the client is still unable to pay their debts. This email should be sent to: DRO.Preorder@insolvency.gov.uk with the subject 'Pension' and the application number. The Pre-order Team may get back to you if they have questions or need any further information.

The section entitled 'Undrawn pensions and occupational pensions' in the *Debt Relief Orders: guidance for debt advisers* has been removed and replaced with new sections entitled 'Pensions', 'Pensions as income', 'Pensions accessible as a lump sum' and 'Pensions as an asset'. If you are in any doubt as to how to proceed, you should seek specialist advice.

Right to claim compensation

Alert: Before the practice was banned by the FCA with effect from 28 January 2021, some lenders offering car finance allowed brokers (-ie, the person arranging the loan -eg, car dealers) to adjust the interest rates offered to clients. The higher the interest rate, the more commission the broker received from the lender. This practice was known as a Discretionary Commission Arrangement (DCA) and may have been applied to a client's car loan without their knowledge. The FCA is investigating whether some car finance customers were charged too much for their loans and may, therefore, be entitled to compensation.

A client with an outstanding DCA complaint may potentially be entitled to compensation, which is a 'right of action' that might, therefore, need to be declared on the DRO application as property. However, it is unclear what the outcome is going to be for clients who have made a DCA

complaint, but have not yet received a response. Will they receive compensation and, if so, how much will it be? The DRO Team has, therefore, confirmed that a DCA complaint relating to car finance will not be treated as an asset until the client has received confirmation that they are entitled to compensation. However, approved intermediaries have been asked to provide information about any such complaint when they submit the DRO application.

Meanwhile, the FCA has announced that firms' time for responding to complaints about DCAs has been extended to 4 December 2025.

However, following the Court of Appeal's decision in *Firststrand Bank t/a Motonovo Finance* [2024] EWCA Civ 1282 (a decision concerning non-discretionary car finance commission arrangements where the lender has been given permission to appeal to the Supreme Court) the FCA has also extended firms' time to respond to complaints about types of car finance commission arrangements other than DCA until 4 December 2025. The DRO Team has confirmed that the above guidance applies equally to potential claims regarding such car finance commission arrangements as it does to DCAs. The FCA has announced it plans to announce its findings in May 2025. You can view more information regarding complaints about car finance commission arrangements on the FCA website.

The client's right to claim compensation from another person or organisation is potentially property, but not if the claim is purely personal to the client – eg, for injuries to the person, feelings or reputation. However, if the claim includes a claim for a 'pecuniary loss' (eg, lost wages), only that part of the claim is regarded as property. ² Compensation from the Windrush scheme is treated in a similar way to compensation for personal injury claims. ³ Claims for compensation for wrongful arrest or unlawful detention are not regarded as property, but any claim for pecuniary loss is regarded as property (this represents a recent change in DRO Team policy, as previously both elements were treated a property). Claims for compensation to the Criminal Injuries Compensation Authority are not regarded as property, even if pecuniary losses are included. A claim for compensation for unfair dismissal (a claim that it was unfair to dismiss the employee) is not regarded as property, but a claim for compensation for wrongful dismissal is a claim for breach of contract and is regarded as property. A claim for compensation for injured feelings in a discrimination case is not regarded as property but a claim for financial losses (eg, wages) is regarded as property. You should, therefore, check the nature of any employment-related claims being pursued by the client.

If the client is pursuing a claim, their solicitor should be contacted to confirm whether or not the other party has accepted liability and how much compensation the client is likely to receive. Then specialist advice should be sought about whether the client's right counts as property for DRO purposes.

Note: if a client receives compensation during the 12-month moratorium period (see here), or

even afterwards if the right of action existed at the date of the DRO application, this could lead to any DRO being revoked. This also applies to rights to action that are not regarded as property at the pre-order stage. It might be in a client's best interests to resolve any potential or pending compensation claims before deciding whether or not a DRO is the most appropriate option.

This advice also applies to clients who have outstanding claims for refunds of premiums for mis-sold payment protection insurance in connection with any credit agreements (see here). The official receiver says:

- refunds are not property until the creditor or insurance company accepts the claim and the amount of any refund has been agreed;
- creditors can exercise any contractual right to set off the refund against any debt owed by the client. If this is done before the DRO application is made, it is not regarded as a preference. If it is done during the 12-month moratorium, it is not regarded as a remedy in respect of the debt;
- any refund paid to the client during the moratorium period could result in the DRO being revoked.

Any funds received before the DRO application can be paid pro rata to qualifying creditors without involving any issue of preference or they could be used to buy any basic household goods (which are disregarded when calculating how much property the client owns) that the client currently needs.

1 Failed pension schemes that would have been 'approved' and which have been taken over by the Payment Protection Fund continue to be 'approved' for DRO purposes. Chapter 57 of the *Technical Guidance for Official Receivers* states that unapproved pensions are rare. The Insolvency Service's position is that a pension with a recognised national provider or recognised national employer is approved.

2 See Insolvency Service, 'Personal injury compensation', 'DRO A-Z' (*Debt Relief Orders: guidance for debt advisers*)

3 See 'Windrush compensation and insolvency', L Charlton, *Adviser* online, 19 September 2019

Making the application

Alert: as announced in the Spring Budget, the £90 application fee has been removed with effect from 6 April 2024. From that date, no fee is payable. The DRO Team has said that clients who had

already paid the fee before 6 April but had not submitted their applications by that date will not automatically receive a refund. The client must contact the DRO Team and request a refund.

The application is made to the official receiver online through an approved intermediary. ¹ It must be made on a prescribed form and contain prescribed information. Section 251B(2)(a) of the Tribunals, Courts and Enforcement Act 2007 requires the application to include a list of the debts to which the client is subject, specifying the amount of each debt and the creditor to whom it is owed. Rule 9(3)(10) I(E&W)R 2016 provides: 'A debtor may include a debt of which payment is not yet due at the date of the application if it is for a liquidated sum payable at some certain future time'. The use of the word 'may' suggests that a qualifying debt that is not in arrears or not yet due for payment (- eg. there are arrears but the outstanding balance has not been called in) does not necessarily need to be included in the DRO. The DRO Team has confirmed that they agree with this interpretation and it has applied to hire purchase agreements for some years (see here). However, if arrears only are included but not the future payments, it would be open to the creditor to terminate the agreement and not only would the outstanding balance not be written off at the end of the moratorium but also, in the meantime, the creditor could enforce payment of that part of the debt not included in the DRO. Note also, that the balance (future payments) of an omitted debt will usually count towards the £50,000 total debt limit unless the continuation of a service depends on the client maintaining payments (the outstanding balance of Buy Now, Pay Later agreements always count towards the debt limit) and the ongoing payments towards an omitted debt are only an allowable expense when calculating the client's surplus income if payment is necessary for the reasonable domestic needs of the client and their family. Payments which are always treated as meeting a reasonable domestic need include:

- car insurance finance;
- mobile phone airtime and handset;
- television;
- broadband;
- entertainment packages;
- vehicles on hire purchase/conditional sale which have been adapted for a disabled person;
- vehicles worth up to £4,000 on hire purchase/conditional sale (and those worth in excess of £4,000 in exceptional cases (see here)).

When advising a client on omitting a debt that could be included in a DRO, you must consider whether it is in their best interests to do so, as this might appear to be counter-intuitive in the case of this particular debt solution. One issue to bear in mind is that the DRO Team says essential services include: mobile phone contracts, broadband and entertainment packages. ²

The DRO Team has said that intermediaries should not combine debts to the same creditor in the

application - eg, multiple council tax accounts or tax credit overpayments.

To reduce the costs and speed up the process, the official receiver makes certain assumptions when determining an application, unless they have reason to believe otherwise, that:

- the client is unable to pay their debts; *and*
- the specified debts are qualifying debts; *and*
- the client satisfies the conditions for a DRO (see here).

On receipt of an application, the official receiver may:

- defer consideration of the application to enable them to make enquiries; *or*
- refuse the application on the grounds that:
 - the client does not meet the criteria; *or*
 - the client has given false information in connection with the application; *or*
 - the application is not on the prescribed form or does not contain the prescribed information; *or*
 - the client has not answered questions to the official receiver's satisfaction; *or*
- make a DRO containing details of the client's qualifying debts.

The official receiver also carries out verification checks. The Individual Insolvency Register is checked to see if the client is currently an undischarged bankrupt, subject to an IVA, a bankruptcy restrictions order or undertaking, or a debt relief restrictions order or undertaking. The official receiver also carries out a credit reference check through Experian to check the client's identity, residence and total debts.

The most common reasons for DROs being declined in 2022/23 were because:

- the client had a current IVA;
- the client had made a preference in the previous two years;
- the client had a previous DRO in the last six years.

It is good practice for advisers to carry out these checks themselves and to address any issues disclosed before applying for a DRO – eg, if the credit report incorrectly shows that the client's total debts are over £30,000. If it is not possible to get the Experian report amended before submitting the DRO application, the evidence demonstrating the inaccuracy of the report should be submitted to the official receiver by email before the application itself, with a request that the evidence be taken into account when considering eligibility for the DRO. Similarly, if a check of the Individual Insolvency Register reveals that the client is subject to an IVA but your understanding is that the IVA has either been completed or failed and should, therefore, be shown as terminated,

you should contact the IVA provider, obtain the following termination documents and send these to the DRO Team when submitting the application:

- a covering letter from the IVA provider confirming that the IVA has either been completed or terminated, making reference to rule 8.31 of the Insolvency (England and Wales) Rules 2016; *and*
- certificate of completion/termination; *and*
- copy of the report to creditors; *and*
- final receipts and payments (or, if none, this should be confirmed in the covering letter).

If this is not done, the order is declined. The official receiver can not reconsider and change such decisions (only the court can do this), but the client can resubmit the application provided either the report has been amended or the evidence is submitted. This costs the client a further £90 fee.

Note: a recent unreported county court decision has held that a DRO that has been revoked has been cancelled, nullified or rescinded and, therefore, never existed. ³ The DRO Team has accepted this decision, which means that, when a client has had a DRO within the previous six years and that DRO was revoked, that will not prevent the client from applying again (provided, of course, they meet all the other qualifying conditions). However, the DRO Team says that you must email them with an explanation of how and why the client now satisfies the qualifying conditions and it will then 'give consideration' to the reapplication. Otherwise, there is a risk the application will be declined as the automated process will reveal the previous DRO.

Some clients might be worried that, if a qualifying debt is listed, the creditor will find out on being notified of the making of the DRO and subject the client and/or a member of their family to violence - eg, a debt owed to an individual such as a private landlord. All qualifying debts must be included in the application, but you can leave the creditor's address blank when listing the debt and this will prevent the creditor being sent any notification of the debt. If you leave the address blank for this reason, you must send a supporting email to the DRO Team when submitting the application. However, at the end of the moratorium, the creditor will not know that the debt has been written off and can no longer be recovered. In those circumstances, you should consider whether a person at risk of violence (PARV) order might also be appropriate (but this assumes the creditor does not already know the client/family's current address).

Note: see [here](#) and [here](#) if the client or a member of their family is at risk of violence and does not want details of their address to be entered on the Individual Insolvency Register.

¹ See A Cumming, 'DRO 2', *Quarterly Account* 43, IMA

² For a more detailed discussion of this issue, see S Wilcox and A Shafiq, 'Omitting a debt from a DRO application' in the Spotlight section of Shelter's SDAS e-bulletin, October 2024

3 *Curr v The Insolvency Service*, 2 June 2021, Salisbury County Court

After the application is made

Reporting changes in circumstances

Once the DRO application is made, the client must co-operate with the official receiver. This includes providing any information that the official receiver may require.

If the official receiver declines to make the order, they must give their reasons to the client. The fee is not refunded. The client can apply to the court and ask it to overrule this decision.

If a DRO is made, details are registered in the Individual Insolvency Register (see here) (and on the client's credit reference file). If the client has reasonable grounds for believing that they or any member of their family who normally resides with them would be at risk of violence if their current address was disclosed, the client can make an application to the court for an order confirming that their details should not include their address. The application (known as a person at risk of violence (PARV) order) is made to the court for the insolvency district in which the client resides. ¹ There is no prescribed form, but the Insolvency Service has produced a number of template forms that are available at gov.uk/government/publications/rule-204-debtor-application-for-an-order-for-non-disclosure-of-current-address. The court fee is currently £318. Remission can be applied for, although advisers report that some courts are not charging the fee even where the client does not strictly qualify for remission because of the nature of the application.

Where a client needs a PARV order, the DRO Team says this should be obtained *prior* to the submission of the DRO application and a copy emailed to the Pre-order Team before or when the application is submitted. It says that in exceptional circumstances, where a court hearing cannot be obtained before the DRO application is made, this can be made with evidence of the PARV application. The DRO Pre-order Team should be emailed using the word PARV in the title and including the date of the court hearing. If evidence of a PARV application is provided, the address will be temporarily withheld until the outcome of the PARV application is known. If a PARV order is then made, this should be emailed to the Pre-order Team. **Note:** if the PARV order is not obtained before the DRO is made, there is a risk the court might not make a PARV order after the DRO is made and, if this happens, the DRO Team will be unable to withhold the client's address from Insolvency Register. The application can be made once the DRO ID number is generated. ²

The DRO Team has confirmed that clients who have a PARV order and subsequently move address during the moratorium do not need to obtain a new PARV order. Where a client who does **not** have a PARV order moves during the moratorium and needs to withhold that address, they **do** need to obtain a PARV order for the new address.

Any creditor listed in the DRO may object in writing to the DRO being made or to the inclusion of details of its debt(s) on the prescribed grounds (eg, that the client is not eligible for the DRO; it is not a valid ground that the creditor does not want to be included) within the prescribed period – 28 days after the creditor has been notified of the order.

The official receiver must consider every objection and may conduct an investigation if they consider it appropriate. If the official receiver decides to revoke the DRO, they must give the client details of the objection and the grounds and give the client 21 days in which to respond, stating why the order should not be revoked. If the official receiver decides to revoke the DRO, they can do so with immediate effect or at a future date, no more than three months later in order to give the client time to make payment arrangements with their creditors. The client can apply to the court to overrule this decision.

1 r9.22 I(E&W)R 2016

2 A client who moves due to a risk of violence during the moratorium period must obtain a PARV order for the new address so it can be withheld from the Individual Insolvency Register

Reporting changes in circumstances

Alert: Where a client acquires a vehicle during the moratorium with a value of up to £4,000 on or after 28 June 2024, while the DRO will not be revoked (regardless of whether the DRO was made before, or on or after, that date, see below), it must still be reported as a change of circumstances to the DRO Team. The DRO Team says you should enquire how the client has managed to acquire a vehicle of greater value than a previous vehicle, or a new vehicle, given the DRO property, disposable income and borrowing limits. The DRO Team has not suggested that this explanation should be provided with the notification, but it may indicate that there have been other changes of circumstances requiring notification.

Once a DRO is made, the client must inform the official receiver as soon as reasonably practicable of any increase in their income during the moratorium period, or of any property they acquire. The purpose of this is to ensure that they remain eligible for the order. If not, the DRO could be revoked. **Note:** the DRO Team has confirmed that it does not need to be notified of decreases in the client's surplus income or of one-off payments of less than £2,000 ¹ (but, if this payment when taken with other property the client already has takes the client over the £2,000 property limit, then it seems that it would need to be reported). When reporting an increase in income, an up-to-date financial statement should also be provided, amending any items of expenditure that have changed since the date of the application. If the client's surplus income is

found to exceed £75 a month, the client's DRO could be revoked. **Note:** The DRO Team has said that, in the case of DROs made before 28 June 2024, if the client acquires a car with a value of up to £4,000 on or after 28 June 2024, the new £4,000 value limit will apply and the DRO will not be revoked.

The annual uprating of benefits is not a change that must be reported. Receipt of a winter fuel payment or a maternity grant must be reported and do not lead to revocation of the DRO. Ongoing payments of AA, DLA, PIP and 'equivalent benefits', including disability premiums paid with legacy benefits and the severe disability premium paid with PC, can be offset against 'adult care costs' – and backdated arrears of these benefits and arrears of disability premiums are disregarded, but their receipt must be reported. The DRO Team has also confirmed that if a client is receiving the disabled element of UC for a child in their care, any lump sum or ongoing payments can be offset. Arrears and ongoing payments of employment and support allowance itself are not disregarded and neither are the limited capability for work/limited capability for work and work-related activity elements of UC. ² The DWP can now pay lump sums of some backdated benefit payments in monthly instalments, but this can only be done with the client's consent. Where the client has elected to receive lump sums of these benefits by instalments, the DRO Team treats these as income. In some cases, these can be offset against 'adult care costs' as above. Where that is not the case, you should consider whether receipt of monthly instalments will take the client over the £75 a month surplus income parameter when advising the client on whether it is in their best interests to agree to this. ³ **Note:** the DRO Team has confirmed that monies received under the Household Support Fund/cost of living payments received during the moratorium are not considered as windfall payments nor as an increase in income requiring reassessment of surplus income.

The only situation in which a DRO must be revoked is if the client dies. In all other cases, the decision to revoke is discretionary and the official receiver should take the individual circumstances of the case into account before making a decision. This includes situations where surplus income has increased to more than £75 a month and where the value of property owned by the client has increased to more than £2,000. Any information which the client wants the official receiver to take into account when making their decision should be provided when the increase in income/acquisition of property is reported. ⁴

¹ See *DRO News*, May 2023

² However, a 'transitional payment' of UC where the client was previously in receipt of the severe disability premium could be disregarded. See the 'Enquiry of the month' section in Shelter's SDAS ebulletin, December 2019

³ The Social Security Benefits (Claims and Payments) (Amendment) Regulations 2021

No.1065. See also, the 'Enquiry of the month' section in Shelter's SDAS ebulletin, March 2022.

4 See L Charlton, 'Something to report - Parts 1 & 2', *Adviser* 187 and 189

The effect of a debt relief order

Payments to creditors

Once the DRO is entered on the Individual Insolvency Register, a moratorium takes effect in respect of the specified debts, and the creditors specified in the order have no remedy in respect of their debts. This means they cannot force the client to pay the debts included in the DRO. They are also prohibited from issuing proceedings to enforce their debts or from presenting a bankruptcy petition without permission of the court. Any pending court proceedings may be stayed. The moratorium period is 12 months. During the moratorium, the client is subject to the same restrictions as in bankruptcy – eg, on obtaining credit (see here). **Note:** should there be a relevant change in the client's circumstances resulting in either their council tax reduction being reduced or the loss of a discount between the date of the DRO and the end of the current council tax year on 31 March, the local authority will issue a new demand for the remainder of that year. Regardless of the fact that the council tax debt was scheduled in the DRO, this liability will have fallen due after the date of the DRO and so will not be covered by it.

The making of a DRO revokes an enduring power of attorney and also a lasting power of attorney so far as it relates to the donor's property or affairs. ¹ The DRO Team has amended the 'Lasting Power of Attorney - debtor' section of its online *Debt Relief Orders - Guidance for debt advisers* to reflect this.

Unless the moratorium period is terminated early, at the end of the moratorium the client is discharged from their qualifying debts listed in the order (but not from any debts incurred through fraud ²).

¹ s13 and Sch 4 para 17 Mental Capacity Act 2005

² *Ivey v Genting Casinos t/a Crockfords* [2017] UKSC 67

Payments to creditors

The rights of secured creditors (including if an enforcement agent has a controlled goods agreement) are unaffected and the client may continue to make payments from their surplus

income to protect the goods (unless the items are for the 'reasonable domestic needs' of the client and their family, when the payments can be listed as essential expenditure). Alternatively, a family member or friend could continue to make the payments.

The client can pay any rent arrears included in the DRO out of their surplus income if they are at risk of repossession or if, for example, their landlord will not agree to a transfer request unless the arrears are paid. Alternatively, a family member or friend could continue to make the payments.

Although the client could apply to vary an existing suspended possession order to provide for payment of their current rent only or ask the court to suspend any post-DRO possession order on payment of current rent, there is no guarantee that the court will make such an order and specialist housing advice should be obtained before an application is made.

If a hire purchase debt is included in a DRO, a third party can either make the payments from their own income on the client's behalf in order to protect the goods from repossession by the creditor or arrange to transfer the agreement into their own name with the consent of the creditor and the client.

Overpayments of benefits or tax credits can only be included in a DRO if the recovery decision has been made before the date of the DRO application. Such overpayments cannot be recovered by deductions from ongoing benefits or tax credits or any other method during the moratorium period. At the end of the moratorium, the client will be released from liability for the overpayment unless the debt was incurred through fraud, in which case the client is not released from liability and recovery can recommence. ¹ If a client forgets to include an overpayment in their DRO application or the overpayment decision is not made until after the DRO was approved (so that it could not be included), it is DWP policy to suspend recovery of that overpayment until the end of the moratorium period. The DWP applies the same policy to social fund loans even though they are excluded debts. ² The DWP should be challenged if it fails to comply with this policy and continues with deductions following the making of a DRO. Although if the overpayment has been included in the order, the DWP could be challenged for exercising a remedy in respect of the debt.

¹ *SSWP v Payne and Cooper* [2011] UKSC 60

² DWP, *Benefit Overpayment Recovery Guide*, April 2023, paras 6.10-6.12 and 6.16-6.17

The role of intermediaries

In order to obtain a DRO, a client must apply through an approved intermediary. Intermediaries are

authorised by competent authorities (such as Citizens Advice and the IMA) and cannot charge fees in connection with an application. The responsibilities of intermediaries include:

- assisting clients to make applications;
- checking that applications have been properly completed;
- sending applications to the official receiver.

Intermediaries must:

- inform the client that the official receiver carries out verification checks (see here); *and*
- assist the client to complete the online application if, after having the various debt options explained to them, they wish to apply for a DRO. An intermediary must submit an application to the official receiver if instructed to do so by the client, even if the client has been advised that there are other available options, and/or that the application will be rejected and they will consequently lose the £90 application fee; *and*
- draw the client's attention to all the qualifying conditions, the effects of a DRO (including the duties and restrictions on the client as well as the moratorium period and discharge from the scheduled debts); *and*
- explain the possible consequences of providing false information or omitting information from a DRO application – eg, the possibility that the order could be revoked and the consequences of that in relation to their creditors, plus possible criminal and/or civil penalties such as a debt relief restrictions order (see here).

An intermediary may also assist the client to:

- identify what information is required to complete an application; *and*
- establish whether or not their total debts, income and assets exceed the prescribed amounts; *and*
- ensure the application is fully completed.

Intermediaries are advised to write 'confirmation of advice' letters covering these areas and, if the advice is that the client is not eligible for a DRO, but the client insists on going ahead, to get the client to sign a letter stating that they understand they do not qualify for a DRO and have been advised about the reason this is the case. The letter also needs to state that they understand they will not receive a refund of their £90 application fee when the DRO is refused. You can find a sample letter to use for this purpose on the Wiseradviser website and in AdviserNet. The use of a standard post-DRO letter reminding clients of their responsibilities and what happens next is also recommended.

The Insolvency Service expects intermediaries to satisfy themselves that applications are accurate and, where possible, to verify the information supplied by clients. If the client insists on

submitting the application against the intermediary's advice, because it is clear they do not qualify (eg, the client's debts exceed the £30,000 limit), then the 'advised against submission' box at the end of the application should be selected.

To assist intermediaries, the Insolvency Service has provided *Debt Relief Orders: guidance for debt advisers* containing technical information, which is updated from time to time and which now includes the date it was last updated, together with a summary of the topics updated which can be accessed by clicking on 'See all updates'. The DRO Team occasionally publishes a newsletter called *DRO News* (available from your competent authority). The Insolvency Service has also published an updated version of what was previously known as the *Intermediary Guidance Notes* on the gov.uk website. This now comprises two documents: *DRO Guidance for Approved Intermediaries* and *How to Complete and Submit the DRO Application Form*. The *Debt Relief Orders: guidance for debt advisers* and the updated *Intermediary Guidance Notes* are available at gov.uk/guidance/debt-advisor-tools-and-information.

It is essential that intermediaries familiarise themselves with, and use, these documents when advising clients and preparing applications.

A DRO toolkit is also available, which can be accessed either in AdviserNet, the IMA's website (i-m-a.org.uk) or at Wiseradviser (wiseradviser.org).

The role of the official receiver

The official receiver can amend the DRO during the moratorium period to correct errors or omissions. However, they cannot add any debt(s) not specified in the application. This means that, unlike in bankruptcy (where provable debts are covered by the order even if they are not included in the application), if any debt which would have been a qualifying debt for DRO purposes is omitted from the application, it cannot be added at a later date. Although it is the client's responsibility to inform the intermediary of all their debts, it is advisable to obtain copies of all their credit reference reports (and essential to obtain a report from Experian) before an application is completed to ensure, as far as possible, that all qualifying debts are included. ¹

In addition to being under a duty to report to the official receiver certain changes of circumstances, including if they move to a new address, and to co-operate with requests for information from the official receiver, if the client becomes aware after the order is made of any error or omission in the information supplied in support of the application, they must inform the official receiver as soon as possible.

The DRO notification letter sent to creditors also invites them to inform the official receiver of any conduct or behaviour by the client that may be relevant.

The official receiver may revoke the order (but is not required to do so) if:

- information provided by the client is incomplete, inaccurate or misleading;
- the client has failed to co-operate with the official receiver or provide the required information;
- a bankruptcy order has been made against the client or they have proposed an IVA to their creditors;
- the official receiver was not satisfied that the client met the conditions for making it (see [here](#));
- at any time after the client applies for an order, they no longer meet the conditions for monthly surplus income and/or assets;
- the client dies (in which case, the order *must* be revoked).

The most common reasons for revocation in 2022/23 were:

- the client's property (assets) went above £2,000 during the moratorium;
- the total of the client's debts was found to be in excess of £30,000 at the date of submission of the DRO application;
- the client's disposable income went above £75 a month.

The official receiver can revoke the DRO either with immediate effect or at a specified date no more than three months ahead. They must consider whether the client should be given the opportunity to make arrangements with their creditors for payment of their debts.

A creditor or client who is dissatisfied with the official receiver's decision can apply to the court to overrule this decision. ²

Clients who have had a DRO revoked no longer need to wait six years from when that DRO was made to apply for another DRO (see [here](#)). If that is being considered, you should explore the reason(s) the previous DRO was revoked, when this was and how the issues that led to the revocation have been resolved. This is because the DRO Team may want to be satisfied that this was done appropriately – eg, did not involve a preference or a transaction at an undervalue being made.

¹ See Financial Ombudsman decision DRN 5262865 at tinyurl.com/bdhr5xas

² See L Oliver, 'Consultancy corner: challenging the OR's decision to revoke a DRO', *Adviser* 185. Fee 3.12 is now £95.

Offences and restrictions

As with bankruptcy, it is a criminal offence for the client to:

- make false representations or omissions in connection with a DRO application;
- fail intentionally to co-operate with the official receiver or knowingly or recklessly make false representations or omissions in relation to information supplied in connection with a DRO application or after a DRO is made;
- conceal or falsify documents;
- dispose of property fraudulently;
- deal fraudulently with property obtained on credit.

During the moratorium (or while a debt relief restrictions order or undertaking is in force), the client cannot:

- obtain credit of £500 or more without revealing their status to the lender;
- trade in a name that is different from that in which the DRO was made without revealing the name in which the order was made to everyone with whom they have business dealings;
- be a director of a limited company without the permission of the court.

A breach of any of these requirements is a criminal offence.

If, during the course of any enquiries, the official receiver believes that the client has been dishonest or 'blameworthy' (either before or during the period of the DRO), they can apply for a debt relief restrictions order, or obtain an undertaking from the client, on the same grounds as a restrictions order or undertaking can be applied for in bankruptcy and for the same two- to 15-year period (see here). The effect of a debt relief restrictions order or undertaking is to extend the restrictions that applied during the moratorium. Unless the court orders otherwise, the revocation of the DRO does not affect any debt relief restrictions order or undertaking.

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Please be aware that welfare rights law and guidance change frequently. This page was printed on Friday, October 17, 2025 and may go out of date.