

THE INSOLVENCY SERVICE DEBT RELIEF ORDERS AND PENSIONS CONSULTATION PAPER

Response by the Money Advice Trust (June 2010)



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INTRODUCTION

About the Money Advice Trust

The Money Advice Trust (MAT) is a charity formed in 1991 to increase the quality and availability of money advice in the UK. We work with the UK's leading money advice agencies, government and the private sector to increase the availability of money advice, improve its quality, and enhance the efficiency and effectiveness of its delivery.

MAT's vision is to reduce levels of unmanageable debt by:

- Ensuring high-quality money advice through training and support for advisers
- Collecting and disseminating information on debt, credit and the money advice sector
- Improving efficiency and effectiveness within the money advice sector via research and policy work
- Providing advice via National Debtline and Business Debtline
- Raising funds for the sector.

How we have drawn up this response

In preparing this response, we have consulted our partner agencies in the free-to-client money advice sector in order to achieve a consensus view. These partners include:

- Advice NI
- Advice UK
- Citizens Advice
- Citizens Advice Northern Ireland
- Citizens Advice Scotland
- Institute of Money Advisers
- Money Advice Scotland
- National Debtline and Business Debtline (where relevant)
- Payplan.

Some of these partner agencies will also submit their own separate responses to this consultation paper. These submissions may include issues not covered below. Please note, our partner agencies may not have provided views on this response where this consultation paper does not cover their specific jurisdiction.

Please note that we consent to public disclosure of this response.

Responses to individual questions

Question 1 Does the present limit exclude persons who would otherwise qualify because of the value being given to a future pension right in calculating the application of the DRO limit?

Yes. This is a very real problem for clients approaching intermediaries for a DRO. AdviceUK, Citizens Advice, CCCS, the Institute of Money Advisers and the Money Advice Trust have provided ample evidence of the problem to the Insolvency Service and ministers by way of the “DRO and pension funds survey February 2010” which we have again attached for information.

Question 2 How should such a future pension right be valued for this purpose?

It makes sense for future pension rights to be valued at the amount stated in the most recent annual statement from the pension provider. However, if all pensions are excluded as assets for the purposes of a DRO, will their actual value still need to be evidenced?

Question 3 Do you think that rights to a pension should not count towards the eligibility criteria relating to assets provided that the pension cannot be brought into payment for at least a specified period of time?

We do not support the argument put forward under “Option 2” in the consultation paper as follows.

“It also recognises that providing for a blanket exclusion of pension rights as an asset in a DRO might put significant funds out of the reach of creditors who should have the right to be repaid wherever that is practical and justified. It would also arguably be against the spirit of the DRO regime to allow those with rights to a significant pension to have access to a debt relief option which is aimed at the most vulnerable.”

In our view, rights to a pension should not count towards the eligibility criteria relating to assets at all. The time period until realisation of a pension should not generally affect eligibility for a DRO. Clearly if a pension is about to come into payment during the lifetime of the DRO, then this is an issue for the intermediary. Does the client still meet the surplus income requirements for a DRO once the pension income is in payment?

Otherwise, it does not seem fair to take into account whether a very small pension is due to be paid in either the next five or ten years or other set time period. In either set of circumstances, a small pension is not going to fundamentally make any difference to the DRO applicant's ability to pay back their debts at that point.

This is illustrated in the consultation paper under "Option 2" as follows.

"To provide some context, a current pension value of £10,000 would provide an individual with an income of less than £10 per week, payment of which might not even be feasible. This is based on an internet search carried out in February 2010 for the best annuity rates for male and females aged 60 who are spending £10,000. The search revealed that the best annuity level (without guarantee) was just below £500 per annum."

As a further illustration we have used the Moneymadeclear website pension calculator¹ to demonstrate the current projections of monthly income in relation to pension fund for a female aged 45 who aims to retire at 65.

Projection of monthly income in relation to size of pension fund for a female aged 45		
Pension fund	Age of retirement	Monthly income
£1,000	65	£6
£5,000	65	£30
£10,000	65	£60
£15,000	65	£90
£20,000	65	£120
£25,000	65	£150

As this indicates, even a £20,000 pension fund provides a small monthly income, which even once added to a state pension, would provide little available income with which to pay debts.

We have identified the reasons for our views in the joint letter to Ian Lucas MP as follows²:

"We are concerned that simply increasing the pension fund limit for people and limiting it to people who are some years off being able to access their pension fund could have the following undesirable effects:

¹ http://www.moneymadeclear.org.uk/tools/pension_calculator.html

² AdviceUK, Citizens Advice, CCCS, the Institute of Money Advisers and the Money Advice Trust joint letter to Ian Lucas MP 5/3/10

- *It would unreasonably exclude a greater number of people who have worked in the public sector (for example, teaching, NHS, local government, emergency services, armed forces) who have built up larger pension funds than people who have worked for private sector employers, many of whom have not saved for a pension at all;*
- *The introduction of personal accounts in 2012 will mean that everyone should be contributing to a personal pension to ensure that they have an adequate income in retirement. If this policy works, then the average pension fund will increase over time. This means that the Government would have to increase the current pension asset limit in the DRO legislation on a regular basis to ensure that the limit did not affect a growing number of people both in the public and private sectors over time.*
- *It is out of line with Insolvency Service policy that the debt relief order legislation and rules should mirror bankruptcy as far as possible, whilst ensuring that it is relatively cheap to administer.*
- *It will be complex and time consuming for hard pressed authorised intermediaries to administer.”*

Applying eligibility criteria that takes in to account the period of time before a pension can be brought in to payment may, in fact, indirectly act as an age restriction criteria for debtors seeking a DRO. Those clients who are nearing retirement age may therefore be penalised. This may make the process less accessible for those nearing retirement age, regardless of their circumstances.

Question 4 If so, do you consider that 5 years until access is an appropriate period? Do you consider that 10 years until access is an appropriate period?

We do not favour a time limit on access to a pension to be built into DRO eligibility.

Question 5 Do you think that having an entitlement to a pension should not count towards the eligibility criteria relating to assets provided that the current value of the pension is no more than a specified amount?

The current surplus income threshold for a DRO is set at £50 and this along with the assets restrictions acts as an effective filter to ensure that DROs meet their purpose in providing debt relief for those individuals who are unable to access any form of debt relief due to the costs involved in seeking relief via bankruptcy.

These existing filters provide a clear indication of the client’s financial status and would suggest that applying restrictions relating to pension values would not add any further value to the pre-screening process.

Question 6 If so, do you consider that a current value of £1,000 is an appropriate amount?

We do not favour implementation of a cap on pension value for meeting the assets eligibility criteria for a DRO.

A current value of £1,000 would produce a negligible monthly pension and if the pension includes any eligibility for a lump-sum payment, this amount will also be negligible. We do not consider this to be an appropriate amount.

Question 7 Do you consider that a current value of £5,000 is an appropriate amount?

We do not consider that a current value of £5,000 is an appropriate amount for similar reasons.

Question 8 Or do you consider that a current value of £10,000 is an appropriate amount?

We do not consider that a current value of £10,000 is an appropriate amount for similar reasons.

Question 9 Do you have comments on how the entitlement should be valued for this purpose?

As it is impossible to provide accurate assessments of future pension growth, we assume the most accurate and reliable figures for the pension fund will be as provided by the pension provider on the most recent annual statement.

Question 10 Should there be an additional requirement that pensions must have HMRC approval in order that the pension rights do not count towards the value of assets for the purposes of determining whether an individual is eligible for a DRO?

This seems to be a sensible approach and we would favour alignment with bankruptcy rules on this point.

Question 11 Do you think that a combination of time caps and/or financial caps with or without HMRC approved status should be applied in determining whether pension rights would not count towards the value of assets for the purposes of determining whether an individual is eligible for a DRO? If so, please indicate your preferred combination in this table:

Qualifying criteria	With HMRC approved status	Without checking whether HMRC approved status
£1,000 and 5 years		
£1,000 and 10 years		
£5,000 and 5 years		
£5,000 and 10 years		
£10,000 and 5 years		
£10,000 and 10 years		
If you wish to suggest different criteria please enter the details below		
We would favour neither a time cap nor a financial cap on the exclusion of pension funds as assets in for DRO eligibility as long as the pension does not become payable within the lifetime of the DRO.	Yes	

Question 12 Is it practical to suggest that the approved intermediary needs to be in possession of details about a debtor’s pension(s) before making the application for a DRO?

If there is a requirement to check pension funds to ensure eligibility under the assets rules for DROs, then it is vital that the intermediary obtains details about their client’s pension(s) before making the application for the DRO. There is clearly no point in making the application, paying the fee, and then finding that the client does not meet the DRO asset criteria after all because of their pension. Intermediaries already have to request various items of information from clients in order to process the DRO application. As long as the requirement is for no more than the latest annual pension statement to be checked, then this is feasible.

In many cases, however, the client may not be able to find such details and would need to contact their pension provider for an updated statement. This will be exacerbated by the common scenario where the client has moved jobs repeatedly and thus has various very small pensions with different providers. This will mean delays in their application for a DRO and increased stress for the client. In some circumstances there will be a risk of clients ceasing to be eligible due to their debt levels rising above the £15,000 threshold. There will also be an impact on the intermediary because of increased costs due to the extra staff time involved in processing each case.

Question 13 If not, can you suggest an alternative way in which these details can be checked without risking increased costs for the debtor?

We are unable to establish what the process is for checking if a pension fund has HMRC approved status. It appears that the vast majority of pension schemes do have HMRC approved status. If HMRC contains this information in a searchable database, we wonder if there are possibilities for links between the Insolvency Service and HMRC to enable intermediaries to use a free search facility. This would provide a swift process to enable checks, saving intermediary time and ensuring there are fewer delays in the application process. This could be similar to the free service provided by Experian to intermediaries carrying out credit checks before submitting DRO applications.

Such a facility would need to be free of charge, as most competent authorities would be unable to absorb the costs of a fee for such a service and it would not be reasonable to pass the cost on to clients by way of a DRO application fee increase.

Question 14 Do you agree with the estimates set out in the initial impact assessment of the costs and benefits of the possible options? Can you provide further information to help inform the impact assessment as set out in that document?

It is difficult to comment on the additional costs identified for intermediaries. We would need to know how much it would cost for a request to HMRC for confirmation that an individual pension is approved. However, we suspect that £20 - £30 is a conservative estimate for the costs to the intermediary for obtaining this information.

The costs will vary with each client, depending upon their circumstances. Some will have easy access to the information, whilst others will require considerably more support from their intermediary to obtain it. If an intermediary obtains the information on their behalf, further costs may be incurred by the intermediary and their organisation.

Impact assessment

Question 1 How many people, who currently cannot apply for a DRO only because they have rights to a pension, do you think might be eligible if current pension values of up to £1,000 or £5,000 or £10,000 do not count towards the value of assets?

We cannot provide any firm figures on this as we do not collect evidence across the board on the size of the pension fund held by each client who is found not to be eligible for a DRO purely because of their pension fund being more than the £300 asset limit. However, in the survey carried out jointly in February 2010 by AdviceUK, Citizens Advice, CCCS, the Institute of Money Advisers and the Money Advice Trust there were the following findings.

Count of Size of pension fund		
Size of pension fund	Total	%
£10,000-24,999	17	7.00
£1000-4999	81	33.3
£25,000-49,999	1	0.4
£5000-9999	14	5.8
Don't know	91	37.4
Less than £1000	39	16.0
(blank)		
Grand Total	243	100

These figures also illustrate that it is difficult for clients to readily answer the question relating to the size of their pension fund as many of the clients did not have the information to hand.

Citizens Advice and CCCS evidence suggests that “around one in eight debt clients, who meet all other eligibility criteria, cannot apply for a debt relief order because they have a pension fund worth more than £300”.³

National Debtline found similar results with an earlier survey of their callers.

If this estimate is repeated across all competent authorities, then we would expect that the 17,475 DROs granted in the first full year of operation⁴ would rise to a figure of 19,659 DROs granted (a 12.5% increase) were all clients with pension funds of more than £300 to be eligible for a DRO.

Question 2 How many people, who currently cannot apply for a DRO only because they have rights to a pension, do you think might be eligible if that pension does not count towards the value of assets provided that it does not come into payment for at least 5 years or 10 years?

Again, we cannot provide any firm figures on this as we do not collect evidence across the board and this information is not readily available when clients contact intermediaries.

From a recent National Debtline survey of clients over a period from November 2009 to April 2010 there were the following responses.

Years before pension can be collected		%
1-9	0	0.00
10-19	11	25.58
20-29	8	18.61
30+	15	34.88
Not known	9	20.93
Total cases	43	100.00

³ Letter to Ian Lucas MP Minister for Business and Regulatory Reform 5/3/10

⁴ <http://www.insolvency.gov.uk/otherinformation/statistics/201005/table2.pdf>

Question 3 What percentage of debtors are likely to have such details about their pension readily available?

We would expect there to be very few clients who have ready access to details about their pensions. The client base for DROs will typically have low incomes, and are more likely to have had various jobs, typically in the public sector resulting in a number of small pensions with different providers. Debt advisers frequently deal with people who have few details about their finances available, or have felt so pressured by their debt problems that all “official” letters are unopened and kept in a drawer. Many of our clients can take a lot of support to return basic information such as pension statements.

However, it is certainly possible for details of pensions to be accessed by the client or adviser contacting the relevant pension providers. However, the process is likely to be subject to delay as clients and advisers search for paperwork and then have to contact the pension providers and wait for responses.

Question 4 How much might it cost an approved intermediary to obtain details about the current value of a pension, the date it comes into payment and whether or not it is registered with or approved by HMRC?

As indicated, there are likely to be considerable time costs for intermediaries in obtaining these details. This will cause delays in putting in DRO applications and subsequently mean that fewer applications can be dealt with. These time costs could be minimised by the provision of access to a free database of HMRC approved pensions. This time cost could also be minimised by adoption of our preferred option where the value of the pension is ignored as an asset altogether for the DRO as long as the policy does not become payable within the lifetime of the DRO.

Question 5 How much would it cost a pension provider to provide details about the current value of a pension, the date it comes into payment and whether or not it is registered with or approved by HMRC?

We are unable to answer this question. We can only assume that this information would be readily at hand due to the requirements on pension providers to supply detailed annual statements and that therefore costs would be minimal.



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