**DRO A-Z**

**February 2019**

**1st Edition**

**An Introduction to the DRO A-Z**

This is a guidance tool for Approved Intermediaries (AI), their advice staff and Debt Relief Order (DRO) staff. It should not be circulated or provided to anyone who does not advise on or process DRO applications.

The guidance covers many of the common (and less common) situations AIs come across when working with debtors and provides a quick and comprehensive reference guides for all AIs. Reference should normally be made to this document prior to contacting internal and external support teams for advice.

Please note this guidance is provided as a reference tool, it cannot replace the AIs’ professional assessment of a debtor’s individual circumstances and decision to make a DRO application or the outcome of that application.

**How to use?**

You can search this document using ‘Ctrl F’ and type in your search parameter. There are links throughout the document to subjects that may have a related theme (for example – bill of sale will refer to a link to logbook loans).

Where possible, examples have been provided for illustrative purposes only.

Links to legislation and external sites have been included where appropriate.

**Adapted Vehicles for Disabled Use**

The £1000 limit for vehicles does not apply if they have been adapted for disabled use.

Any vehicles that have been adapted for disabled use should be declared as an asset and a note made by the AI in the ‘any other relevant information’ section or in an email sent at the time of submission.

**Address Withheld**

The Official Receiver is required by Section 251W of the Insolvency Act 1986 to publish (‘advertise’) details of the DRO, including the debtor’s address, on the public electronic Individual Insolvency Register (IIR).

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Where a debtor is applying for a DRO and they are at risk of violence a court may make a Person at Risk of Violence (‘PARV’) order for the address to be withheld from the IIR.

An application can be made before or after applying for a DRO under the provisions of Statutory Instrument 2009/642, Rule 20.1 of the Insolvency Rules 1986.

The application is made to the court by the debtor on court (HMCTS) form 20.4 PARV. The fee for the application is remitted by using the court form EX160.

Where a debtor is applying for a PARV, the address withheld flag should be checked in the DRO application and a reason (i.e fleeing domestic violence) stated in the AIs comments.

**Address – no fixed abode**

An address for the debtor is required for all DRO applications. If the debtor has no fixed abode a “care of” address should be used, this can include using the AI’s office address as long as the debtor can receive post delivered to this address.

**Administration Orders**

An Administration Order (AO) is an insolvency proceeding where the County Court issues an order for regular payments to be made by the debtor to the Court.

An AO does not preclude a debtor from applying for a DRO. All debts in the AO must be scheduled individually in the DRO application. The AO will cease once the DRO is approved.

**Administration Order – how to find details**

The court details and the AO number will normally appear on the debtor’s credit file.

Details can also be found through the Registry Trust Ltd, at a cost of £6 per search, their website address is <http://www.trustonline.org.uk/>

**Administration Order – Revoked**

A revocation of an AO is not the same as an annulment, so a revoked AO should be listed on the DRO application as a previous insolvency proceeding.

**Adoption Allowance**

Adoption allowance is classed as income.

**Animals**

Large animals or animals used for breeding purposes may have a value in excess of £1,000 and/or provide income. The AI should take reasonable steps to value animals owned by the debtor (and any income derived) which may breach the DRO asset or income limits.

Please also see [Horses](#1pxezwc)

**Annulment**

DROs cannot be annulled in the same way as a bankruptcy order. If assets devolve upon a debtor he/she must inform the Official Receiver, who will consider whether the DRO should be revoked.

At the end of the moratorium period the debts subject to the DRO are discharged, even if a debtor or a third party have the means to pay the debts in full, there is no provision for the DRO to be annulled, rescinded or otherwise withdrawn.

**Armed Forces Personnel**

For security purposes addresses of Armed Forces bases should not appear in a DRO application.

**Arrears of Wages**

Before approval of a DRO arrears of wages are classed as an asset and subject to the £1000 asset limit.

During the moratorium period the debtor has a duty to report any increase in income or the receipt of any lump sum or other property in order to determine when an individual continues to meet the DRO parameters.

For arrears of wages in excess of £1000 please see [Lump Sum Protocol](#ihv636)

**Arrestment Order**

This is the Scottish equivalent of an Attachment of Earnings Order. A version that includes multiple creditors is known as a Conjoined Arrestment Order where deductions are made to multiple creditors instead of one.

See [Foreign Debts](#3whwml4)

**Asset**

An asset is anything that belongs to a debtor that may be used to pay their debts.

It is a fundamental requirement for a DRO that the debtor does not have assets above the £1,000 limit.

**Assets – valuation of unusual items**

If the debtor owns unusual/specialist items they should take reasonable steps to have these valued by a specialist agent.

**Attachment of Benefits / Deduction from Benefits**

Where Local Councils and the DWP are the creditors they have the authority to make deductions from benefits without going to Court. If deductions are being made, details of the deductions should be provided within the application.

Where deductions from benefits are being made to recover a Social Fund Loan (an excluded debt in a DRO) these deductions will continue after the making of the DRO.

**Attachment of Earnings**

An Attachment of Earnings Order (AOE) is an order made by the Court/or local authority which results in money being deducted from the debtor’s wages by their employer, to pay for one or more of the debtor’s liabilities.

As stated above, DWP/HMRC can make a Direct Earnings Attachment to recover benefit or social fund debt from wages, again without a Court Order.

Local Authorities collecting Council Tax make an attachment of earnings order following a liability order from the Magistrates Court.

County Courts make an attachment of earnings order following default in payment of a CCJ.

Once a DRO has been approved, deductions being made under an AOE for any qualifying debts (but not excluded debts) must cease.

The debtor should give full details of their employer and details of the AOE within the application. This enables the DRO Team to contact the creditor, Court and employer to notify them that the AEO must cease. In exceptional circumstances the debtor may request that their employer is not contacted although this may lead to delays in getting the deductions to cease.

**AXA Air Miles and Employee Shares Schemes**

See [Share scheme – employee](#1mrcu09)

**BACS**

Bankers’ Automated Clearing Services is a scheme for the electronic processing of financial transactions. Some AIs and charities make the payment of the £90 DRO application fee this way (RBS GBS RE INSS DRO- Sort Code: 60-70-80, Account Number: 10002456). BACS is also an option when refunds of the application fee are requested.

All BACS payments made should clearly use the application six digit DRO application ID as a reference.

**Bailiffs**

Bailiffs (also known as enforcement agents) have the right to take control of someone's property to obtain payment of a debt. Most bailiffs cannot use force to gain initial entry to a property, however, walking through an unlocked door is considered a peaceful means of entry. The law states entry must be through the usual means, so it may not be peaceful entry to climb through a window.

A bailiff must give 7 ‘clear days’ notice of their first visit (this ignores Sunday, Bank Holidays, Good Friday and Christmas Day). They are not allowed to enter a property if the only occupant is a minor (under 16) or a vulnerable person. They are not allowed to enter a property between 9pm and 6am.

A bailiff who has previously been allowed peaceful entry may use reasonable force on a subsequent occasion to recover goods which are already subject to a “controlled goods agreement” (previously walking possession). Locksmiths are usually employed for this purpose. They can also use reasonable force if they previously took control of goods by securing them at the premises, such as locking them in a cupboard.

Bailiffs can only seize property belonging to the debtor (including jointly owned property) and cannot seize rented or hired goods.

If a bailiff has not already taken control of goods prior to the making of a DRO, they will not be able to do so for any debts included in the DRO application once the Order has been approved.

If there is already a controlled goods agreement in place, this will have the effect of securing the debt and payments must be maintained to avoid the bailiffs taking the goods to settle the debt. Any payments must be made out of surplus income unless the items are for reasonable domestic needs.

**Bank Accounts**

AIs should advise debtors that their bank accounts may be affected by the making of a DRO, whether it is will depend upon policies and procedures operated by their bank or building society.

Where a debtor’s bank account has been frozen following the making of a DRO, the debtor should be advised to contact their branch and show them the DRO. This may enable them to withdraw any funds held in an account but the ongoing use of the account is a commercial decision for the bank or building society.

A debtor is permitted to open a new bank or building society account after the granting of a DRO; however the bank or building society may require them to disclose that they are the subject of a DRO. The decision to open (or place any restriction on) an account is a matter for the bank or building society.

The Official Receiver will not contact a bank or building society following the making of a DRO unless they are a creditor.

**Bankruptcy**

Bankruptcy is a form of insolvency. If someone is made bankrupt:

* they do not have to deal with the people they owe money to themselves - a public official called the Official Receiver takes control of their money and property, and deals with their creditors
* the things they own may be sold and used towards paying their debts, such as their house or car
* most types of debt are written off when they are discharged from bankruptcy, normally after a year

A debtor can apply for bankruptcy using an online application submitted to the Adjudicator. A fee of £680 is payable before the application is submitted. <https://www.gov.uk/apply-for-bankruptcy>

**Bedroom Tax**

If a debtor has their housing benefit capped under the bedroom tax legislation due to under occupancy, then increased contributions towards rent may be an allowable expense. However, it is not an allowable expense if the debtor is receiving discretionary housing payments, as this would be paid to cover the shortfall and should be shown as income on the DRO application.

If during the moratorium period the debtor moves and they are no longer required to pay the shortfall, a reassessment of their income and expenditure may need to be undertaken.

**Bedroom Tax Award Payments / Discretionary Housing Payment**

Bedroom Tax award payments or discretionary housing payments are given by local authorities to people who move as a result of bedroom tax.

Provided the debtor can demonstrate that the payment is directly required to “cover necessary expenses of moving and decorating / refurbishment (within reason)” they will not impact the DRO during the moratorium period.

**Beneficial Interest**

Where a debtor’s circumstances suggest they may have a beneficial interest in any property the AI must take reasonable steps to understand the position and determine whether the debtor meets the criteria for a DRO.

Below is a list of questions used by examiners in the Insolvency Service to establish a possible beneficial interest in bankruptcy cases. You may find these questions useful as a basis for your own enquiries:

* Do you own or have you ever been the owner of a property?
* Have you transferred a property to a third party, e.g. spouse, civil partner or other associate?
* Are you married to the registered proprietor?
* If so, how long have you lived at the property?
* Did you pay a deposit when purchasing the property?
* Are you shown on the mortgage or on any subsequent charges?
* What mortgage payments have you made and for how long?
* Have you ever claimed to own a property when applying for credit?
* Do you consider you have a beneficial interest in the property?
* If not, why not?
* Have you funded an extension or remedial works to the property?

**Benefits – Backdated – NOT Disability Living Allowance (DLA), Personal Independence Payment (PIP) & Attendance Allowance (AA)**

Before approval - Any benefit lump sum payment received before the DRO is approved is considered an asset.

After approval – See [lump sum protocol](#ihv636)

**Benefits – Backdated – DLA, PIP & AA**

Backdated benefits (pre or post order) from PIP/DLA/AA should be disregarded, as they are needed for medical, care costs and essential equipment.

Please note, any lump sum including underpaid or backdated benefits received before the DRO is approved, is considered cash at bank or, in other words, an asset.

Constant Attendance Allowance under the Industrial Injuries or War Pensions Schemes, War Pensioners Mobility Supplement under the War Pensions Scheme or grants for the use of a vehicle or Armed Forces Independence Payment or similar benefits should be disregarded.

**Benefits – Backdated / Right of Set Off**

If the DWP determine that there is a backdated payment of benefits due to the debtor, they may attempt to apply a right of set-off against any debt outstanding to them. Where the DWP has a statutory option to offset against the debt they may be entitled to exercise this notwithstanding the DRO.

Where this arises, the debtor may want to seek their own independent advice regarding the social security legislation.

**Benefits – Backdated payments of ESA**

Back payments of ESA should be assessed in the same way as any other asset devolving upon the debtor, despite any error made by the DWP, however, if the award includes amounts for disability premiums these will be disregarded.

This includes applying our current asset assessment protocol (after disregarding any disability component of any backdated payment). Each payment should be assessed on a case by case basis.

Payments should not be ignored because they were not requested, or because they may have arisen as a result of administrative errors.

**Benefits – general DLA, AA & PIP**

DLA / AA / PIP cannot overlap – an individual can only be receiving one of these benefits at a time.

Individuals who are eligible for Industrial Injuries Disablement Benefit or a War Pension may additionally receive a Constant Attendance Allowance which is not means tested. This makes them ineligible for Attendance Allowance (the care component of Disability Living Allowance) or the daily living component of Personal Independence Payment.

An exception to this is where the DLA/PIP benefit is higher, in these circumstances the claimant may also receive the difference between the two benefits as DLA/ PIP.

War Pension Mobility Supplement is an alternative to the mobility component of DLA and PIP.

Armed Forces Independence Payments came into effect in April 2013 to meet a government commitment that former service personnel injured in the course of their service won’t face reassessment and are taken out of the PIP scheme. The benefit is assessed (broadly) in the same way as PIP and paid at the same rate.

These alternative benefits should be treated in the same way as DLA or PIP when calculating the debtor’s surplus income.

**Benefits – overpayment**

Overpayment of benefits, including those incurred as a result of fraud, are a qualifying debt. They will be discharged at the end of the moratorium period unless the overpayment is deemed as fraudulent. Recovery of benefits must stop during the moratorium period, even where the debt was fraudulent - See [Fraudulent Benefit Overpayments](#qsh70q).

A person who has been overpaid benefit may be offered an administrative penalty in lieu of prosecution where the benefit provider believes that the overpayment arose as a result of fraud.

An administrative penalty for a benefit overpayment is a qualifying debt for DRO purposes and therefore must be scheduled in any application, however, as this penalty is an alternative to prosecution, it will treated the same as a fraudulent debt.

**Benefits – payment on account recovery**

Following the decision of the Supreme Court in the case of R. (on the application of Payne and Cooper –v- Secretary of State for Work and Pensions), it was found that “no remedy” should be widely interpreted and the Secretary of State does nothave the right to recover overpayments of benefits that are a qualifying debt in a DRO, by way of making deductions from an ongoing award of benefit.

This applies to deductions made in respect of the recovery of Housing Benefit (HB) and Council Tax Support (CTS) including where the local authority (LA) is recovering from ongoing HB and CTS or through the Secretary of State from other benefits. The restriction also applies to the recovery of tax credit overpayments from an ongoing entitlement.

DWP are currently migrating many benefits to the Universal Credit (UC) scheme. Within the UC system eligible benefit claimants can ask for an advance called a payment on account (PoA).

A PoA is not a loan, but on or before making a PoA the claimant is given notice of their liability to repay the advance by deduction from subsequent payments of benefits or to repay any balance to the extent it is not deducted.

A PoA which has not been fully recovered at the date of the application is a qualifying debt. And the DWP cannot recover the balance from any ongoing entitlement to benefit.

**Bereavement Support Payments**

Bereavement Support Payments are paid to a partner when their husband / wife / civil partner dies. If they or their partner met certain criteria they can receive a monthly payment for a maximum of 18 months.

Bereavement Support Payments don’t affect benefits for a year after the first payment. After a year, any payments may affect the amount of benefit they are eligible for.

When considering a DRO it should be noted that any remaining lump sum is an asset and ongoing payments are income.

**Bike to Work Scheme**

Money payable under a Bike to Work scheme is not a qualifying debt for DRO purposes.

When assessing disposable income the AI should test level of deductions from salary for reasonableness.

This expense should be considered like any other lease, so questions to ask are: Is there a cheaper method? When was the agreement taken out (i.e. just before the DRO) how much is it in comparison to public transport? Is everything that is being hired needed?

**Bill of Sale – also look at** [**logbook loans**](#3o7alnk)

Where a Bill of Sale has been properly registered with the High Court the lender is a secured creditor. The ability of the creditor to collect and sell the vehicle will be determined by the terms and conditions in the original bill of sale agreement, which should have been filed in the High Court

This type of financing is typically a short term loan and AIs should check to see if title to the property could revert back to the debtor during the moratorium period and the impact this might have on the debtor’s ongoing eligibility for a DRO. Depending on the value of the vehicle and the impact on disposable monthly income, the debtor could become ineligible and face revocation of the DRO.

The AI should follow the guidance for vehicles on HP when listing payments under a log book loan as an allowable expense.

If the value of a secured item is less than the total amount of the secured debt, the balance of the debt will be treated as unsecured. Both secured and unsecured amounts form part of the DRO and must be scheduled on the application.

**Bonus from Employer**

Funds received before a DRO are classed as an asset.

After approval where the AI has calculated regular bonuses as part of the debtor’s income and expenditure a bonus is classed as wages and apportioned. Where a bonus is received which has not already been included, the Lump Sum Protocol applies.

**Border Agency Costs – repatriation**

These are qualifying debts for the purposes of a DRO application.

However, if a lien has been made over the client’s passport, it will not be returned unless the debt has been settled. Payments made to secure the return of a passport are not an allowable expense.

A debtor may wish to seek independent advice in this complex area.

**Budgeting Loans**

See [Social Fund Loan](#46r0co2)

[Crisis Loan](#lnxbz9)

**Bursaries**

A bursary which is repayable is a qualifying debt and must be included in a DRO.

If a debtor receives a bursary during the moratorium period, this is classed as income and should be apportioned over the period to which it relates.

**Buy Now Pay Later credit**

Buy now pay later credit is a qualifying debt.

See [interest free finance agreement buy now pay later](#2p2csry)

**Cancellation Charges**

Cancellation charges are treated as “Interest, Penalties and other sums” and are a qualifying debt. This applies even if the charges are added after the DRO is made.

**Carers Allowance**

Carers Allowance may be paid if the person being cared for is in receipt of certain benefits.

To claim Carers Allowance a person may earn no more than £120 a week after tax and expenses.

Carers Allowance is classed as income.

**Caravans**

Caravans or mobile homes owned by the debtor are an asset and subject to the £1000 threshold.

**County Court Judgment (CCJ)**

A CCJ is a qualifying debt

Where a creditor has obtained a judgment it is the judgement creditor (not the court) whose details should be listed in the DRO application.

To identify the creditor who petitioned for the CCJ an AI can apply to the individual court, who will charge a fee of £7.50.

If the CCJ was issued through the County Court Business Centre (CCBC), they will provide details, including information about the creditor, free of charge. They can be emailed at ccbcdefendants@hmcts.gsi.gov.uk and will require a signed authority from the debtor.

**Charging Order**

A Charging Order is a method a creditor can use to secure a debt against the debtor’s interest in a property.

Please note that for the purposes of DROs, if the debtor owns any property, they may be in breach of the asset parameter and they may be ineligible to apply.

**Charity cheques**

Cheques to pay for a DRO application should be made payable to – The Insolvency Service DRO and sent to – Finance Section, The Insolvency Service, Cannon House, 18 Priory Queensway, Birmingham, B4 6FD.

All cheques sent to the Insolvency Service must be endorsed with the application ID number and a covering note should be sent with the cheque stating the Debtor’s name, address and application ID number.

If an Approved Intermediary needs to confirm the fee payment has been received, they can contact the DRO Team by email (DRO.Preorder@insolvency.gsi.gov.uk) or by telephone (01752 635200) to request this.

**Child Benefit**

Child Benefit is classed as income and we would expect to see any related expenditure for the child scheduled in the DRO application.

**Child Maintenance/Child Support**

If the debtor is a parent with care and has received an overpayment of child maintenance (also known as child support) this should be treated like a benefits overpayment and is a qualifying debt.

If the debtor owes arrears of child maintenance/child support, this is treated as an excluded debt.

Any voluntary payments of child maintenance paid to the parent with care or to CMS/CSA should be reviewed by the AI for reasonableness prior to an application being submitted.

**Child Maintenance/Child Support arrears due to the debtor**

A lump sum of child maintenance/child support arrears paid before DRO approval is classed as an asset.

Where child maintenance arrears are paid to a debtor during the moratorium period the Lump Sum Protocol should be used.

If the debtor is owed a significant amount of child support arrears, the right to collect the arrears lies with the Child Maintenance Service and not with the parent so the arrears would not be classed as money owed for the purposes of a DRO application. However, if the debtor receives any payments, this should be reported to the Official Receiver.

**Child Maintenance/Child Support - overpayments to the debtor**

Debts relating to a maintenance assessment to make child support payments are treated as an excluded debt in a DRO.

However, we do not believe that this obligation extends to the CSA seeking recovery of payments that have been paid to the parent who has care of the child. Therefore, CSA overpayments can be scheduled in the DRO as a qualifying debt.

**Christmas Savings/Vouchers**

Christmas club savings or vouchers are a contingent asset and their value must be taken in to account when assessing a debtor’s eligibility for a DRO.

**Citizenship Applications – effect of insolvency**

The regulations governing who is eligible for British citizenship are the responsibility of United Kingdom Visa and Immigration (UKVI), part of the Home Office, and questions concerning this should be addressed to them.

Neither the Insolvency Service, nor the Specialist Debt Advice Service are qualified nor tasked to provide such guidance.

UKVI can be contacted at: <https://www.gov.uk/contact-ukvi-inside-outside-uk>

From the information provided by the UKVI website, the effect of insolvency upon an application for British citizenship falls under what is termed ‘the good character requirement’. A link to their latest guidance follows:

<https://www.gov.uk/government/publications/good-character-nationality-policy-guidance>,

**Collection Fees for Excluded Debts (including Court Fines)**

Collection fees from agents (e.g. bailiffs/enforcement agents) trying to collect an excluded debt are a qualifying debt.

**Compensation**

* **Medical**

See [personal injury](#19c6y18)

* **Criminal**

See [Compensation for Criminal Injuries](#tyjcwt)

* **Wrongful Arrest**

See [Compensation for Wrongful Arrest](#3dy6vkm)

**Compensation Orders**

 Compensation Orders are classed as “[fine](#4i7ojhp)s” and are excluded debts for the purpose of a DRO.

**Compensation for Criminal Injuries**

Criminal Injury Compensation payments are not classed as assets but should be reported.

If a debtor receives such a payment during the moratorium period and uses the funds to purchase luxury items, this could breach the asset parameter and lead to revocation.

**Compensation for Wrongful Arrest**

A compensation payment received in respect of a wrongful arrest is treated an asset.

Compensation for wrongful arrest received during the moratorium period must be reported and the lump sum protocol will be applied.

**Competent Authorities (CAs)**

A CAs is designated by the Secretary of State to authorise Approved Intermediaries. They are:- Citizens Advice, StepChange, Institute of Money Advisers (IMA), Payplan, Insolvency Practitioners Association, All About Money, Christians Against Poverty, Shelter, AdviceUK, National Debtline, Community Money Advice and Angel Advance.

**Conditional Sale Agreement**

Conditional Sale agreements are agreement to buy goods by instalments, where the buyer can take possession of the goods, but will only own them on the condition that they have paid all the instalments. The agreement may also have other conditions to be met before ownership can take place.

Conditional Sale agreements are treated in the same way as [Hire Purchase agreements](#3as4poj)

For further information, see [Annex A](#1rvwp1q)

**Confiscation Order**

Any obligation arising under a confiscation order made under section 1 of the Drug Trafficking Offences Act 1986 or section 1 of the Criminal Justice (Scotland) Act 1987 or section 71 of the Criminal Justice Act 1988 or under Parts 2, 3 or 4 of the Proceeds of Crime Act 2002 is treated as an excluded debt in a DRO.

See [excluded debts](#1y810tw).

**Congestion Charge**

See [Penalty Notice](#3fwokq0)

**Continuous Payment Authority**

A continuous payment authority is where permission is given to a creditor to regularly take payments from a debtor’s debit or credit card. The payer can request that their bank stop these payments at any point.

Payments under a continuous payment authority must stop on the making of a DRO.

**Contingent Asset**

A contingent asset is a potential asset that may arise because of a future event that is not under an entity's control. e.g. a debtor may have a contingent asset if they are owed or due any money such as PPI which they are unaware of.

If a debtor’s interest in a contingent asset crystalizes during the moratorium period this must be reported to the Official Receiver and may lead to revocation.

**Council Tax**

Each local authority levies and collects a council tax which is payable in respect of residential property in its area. The occupiers of the property may have joint and several liability for council tax.

At the beginning of the financial year, the local authority issues a ‘demand notice’ for the full balance due. This demand notice is an estimate of the tax due and is based on an assumption the tax payer will be resident in the property for the whole of the period, will remain a tax payer and that the property will remain in the same council tax band. The demand notice sets out the payments the tax payer will be required to make over the course of the year on account of the council tax payable. This is usually 10 monthly instalment payments but can be 12 monthly instalments by request.

Any amount due and unpaid under the instalment agreement up to the date of the DRO being approved is a qualifying debt in the proceedings.

If the debtor’s council tax is up to date under the instalment agreement at the date of the DRO, no amount should be scheduled in the DRO application as any unpaid balance relates to future occupation of the dwelling.

Where instalment payments are in arrears and the debtor has defaulted on a reminder or final notice the whole of the remaining liability for the year becomes due and payable. In these circumstances the whole of the amount is due and payable and is a qualifying debt whether or not the council has obtained a liability order.

Where the council has obtained a liability order prior to the making of a DRO the whole debt as notified within the liability order is due and payable and should be treated as a qualifying debt.

**Court Costs**

Court costs which do not fall within the definition of a fine are a qualifying debt.

**Court Fines**

Court fines are treated as excluded debts in a DRO. They should be listed on the application, but marked as excluded. As an excluded debt they are not counted towards the £20k DRO debt parameter.

Fine is defined as “any pecuniary penalty or pecuniary forfeiture or pecuniary compensation payable under a conviction”. This definition includes compensation orders made under the Powers of Criminal Courts (Sentencing) Act 2000 and speeding fines issued by Police Officers under the Road Traffic Offenders Act 1988.

Monthly payments towards fines are an allowable expense.

**Court of Protection (Monies held by court)**

Where a debtor is unable to handle their affairs themselves the Court of Protection may hold monies on the debtor’s behalf. Any money held by the court for the debtor, is an asset, and must be taken into account when considering £1000 asset parameter.

The AI must be satisfied that the client understands the implications of a DRO, or if not, has involved the relevant people to consider their best interests.

**Credit History**

The public details of a DRO will be kept by credit reference agencies, generally for six years from the date the DRO is approved, although the period may vary depending on the policy of the different credit agencies.

**Credit obtained before the DRO**

If the debtor obtains credit shortly before the DRO application the Official Receiver may commence further investigation (FI) which could lead to a Debt Relief Restriction Order. The FI process may also lead to revocation – depending on what the debtor did with the money.

**Credit Union Debts**

Loans made by Credit Unions are qualifying debts and should be listed in the DRO application.

**Credit Union Shares**

Any shares a debtor holds are an asset, and may make a debtor ineligible for a DRO if their value exceeds £1000.

If the debtor does not owe any money to a credit union, the shares must be recorded as an asset in the application.

Where the debtor owes money to a credit union, the outstanding balance of the loan should be considered as secured to the extent of the value of the shares/savings held. Any residual shortfall after the credit union has realised their security is considered to be a qualifying debt.

The secured element of the debt should be listed on the application and marked as such by ticking the relevant box. The remaining balance due should be listed as an unsecured debt.

Where shares are worth less than £1000 and the applicant meets the other DRO criteria the credit union can use their right of set off against any loans outstanding.

**Criminal Court Charges**

The criminal court charge was introduced on 13 April 2015 and applied to all adult offenders prosecuted and convicted for offences committed on or after that date. The charge was abolished on 25 December 2015.

The charge is separate from other financial orders the court may make such as compensation, fine or prosecution costs.

The charge is a qualifying debt in a DRO and is discharged at the conclusion of the moratorium period.

**Crisis Loans**

See [Social Fund Loan](#46r0co2)s.

**Damages**

Any debt which consists of a liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other duty, or to pay damages under Part 1 of the Consumer Protection Act 1987 (which deals with product liability including any disease or other impairment of physical or mental condition) to any person is an excluded debt.

**Debt Relief Restriction Orders/Undertakings (DRRO / DRRU)**

[GOV.UK Guidance- Debt relief restrictions orders and undertakings](https://www.gov.uk/government/publications/debt-relief-restrictions-orders-and-undertakings/debt-relief-restrictions-orders-and-undertakingshttps%3A/www.gov.uk/government/publications/debt-relief-restrictions-orders-and-undertakings/debt-relief-restrictions-orders-and-undertakings)

If, during the course of any enquiries, the Official Receiver finds that the debtor has been dishonest, either before or during the period of the DRO, or that the debtor has behaved irresponsibly, the Official Receiver may apply to Court for a Debt Relief Restriction Order (DRRO) or come to an agreement with the debtor to give a Debt Relief Restriction Undertaking (DRRU).

The effect of a DRRO/DRRU is to place the debtor under certain restrictions for the period stated in the DRRO/DRRU. This will be between 2 and 15 years.

If the debtor has a DRRO/DRRU their details will remain on the IIR for the duration of the order plus an additional three months.

**Default**

A default is the failure to meet obligations, usually in the terms of the repayment of a loan.

**Deputyship Awarded by Court of Protection**

Where the deputyship relates to the property and financial affairs of an individual rather than their personal welfare, the same provisions as a power of attorney apply.

The AI should consider contacting the Court of Protection with details of the potential change of circumstance of the deputy.

A prospective Deputy must declare any criminal convictions or bankruptcy arrangements to the court when applying to become Deputy and these could lead to the application being refused.

**Disregarded Property**

When calculating the debtor’s total value of assets the following items can be disregarded:

* Clothing/bedding/furniture/household equipment necessary for satisfying the basic domestic needs of the debtor and his/her family and a domestic vehicle up to the value of £1000 (details of which should be entered into the DRO application)
* Books/ tools/equipment necessary to the debtor for use in his/her employment or vocation.

**Directors of Companies**

Limited Companies are separate legal entities and must not be scheduled as part of the debtor’s trading activities.

Debts due by a limited company should not be included in the debtor’s schedule of liabilities, unless the debtor has personally guaranteed a company liability and this guarantee has been called upon.

If a debtor advises you that they have been involved with a limited company, you should establish whether the company is still live and whether the debtor is a director of that company. A free web check is available from Companies House via the following web address <https://beta.companieshouse.gov.uk/>

Once subject to a DRO it is a criminal offence for a debtor to be a director of or act in the management of a limited company without leave of the court. If a debtor is a director of a limited company, they will need to resign this position if a DRO is approved (or apply to the court for leave to act as a director). The DRO Team will require proof that the debtor has taken the appropriate action.

Note: the Official Receiver would ordinarily object to any court application made to remain as a director.

**DLA (Disability Living Allowance)**

Personal Independence Payments are gradually replacing DLA for people aged 16 to 64, including those with an indefinite or lifetime DLA award.

See [Personal Independence Payment (PIP)](#1fob9te)

**DRO’s for Scotland, Northern Ireland and the Republic of Ireland**

If you are approached by an individual who has recently moved to England or Wales, but has incurred their debts in Scotland, Northern Ireland or the Republic of Ireland, they should be made aware that some of their debts may be enforced in other jurisdictions should they return.

The links to relevant websites are:

* For Scotland - <http://aib.gov.uk/> and <https://www.scotcourts.gov.uk/taking-action/bankruptcy>
* For Northern Ireland - <http://www.detini.gov.uk/index/what-we-do/deti-insolvency-index/debt-relief-orders.htm>
* For the Republic of Ireland - <http://www.isi.gov.ie/en/ISI/DRN%20final%20pdf.pdf/Files/DRN%20final%20pdf.pdf>

**Drug Dealers**

Refer to Shelter Specialist Debt Advice Service for advice on including or excluding a debt for drugs in the list of creditors.

See [Loan Sharks](#23ckvvd)

**Educational Liabilities**

University accommodation fees are qualifying debts for the purposes of a DRO application and must be scheduled.

Debtors should be made aware that some educational establishments may not permit a student to re-enrol and/or may refrain from issuing the certificate to confirm completion of the course if there is an outstanding debt.

**Educational payments**

Payments to a private company for a course/qualification that are not from a student loan, bursary etc. are not an allowable expense for a DRO application.

**Educational Penalty Notices**

A penalty imposed by a school or local authority for a child’s non-attendance under a penalty notice is a qualifying debt for the purposes of a DRO.

If, prior to the DRO being made, a court imposes a fine for a child’s non-attendance, then that debt is an excluded debt for the purposes of a DRO.

**Eligibility for a DRO**

To be eligible for a DRO the debtor:

* Must be unable to pay their debts.
* Have total liabilities (not including unliquidated or excluded debts) not exceeding £20,000. Secured debts do not qualify but count towards the £20,000 limit.
* Have gross assets not exceeding £1000 as determined by resale value. Household bedding, furniture, tools and motor vehicles worth less than £1000 are excluded. Total allowable asset value is £1000 plus vehicle value of up to £1000.
* Have disposable income, following deduction of normal household expenses for reasonable domestic needs, not exceeding £50 per month.
* Must be domiciled in England or Wales, or in the last 3 years have been resident or carrying on business in England or Wales.
* Must not have had a DRO approved within the last 6 years.
* Must not be involved in any other formal insolvency procedure at the time of application for a DRO such as: an undischarged bankruptcy order, a current Individual Voluntary Arrangement, a current BRO or BRU, a current DRRO or DRRU, an Interim Order

See full list of[*Restrictions Imposed on Debtor’s*](https://www.insolvencydirect.bis.gov.uk/technicalmanual/Ch37-48/chapter46/Part%207/Part%207.htm#Section%201https://www.insolvencydirect.bis.gov.uk/technicalmanual/Ch37-48/chapter46/Part%207/Part%207.htm)

See also [Preferences](#28h4qwu) and [Undervalue Transactions](#2zbgiuw)

**Eligible Loans Deduction Scheme (ELDS)**

Some organisations, including some credit unions, may have an agreement with the DWP for their debt to be recovered from the debtor’s benefits. Once a DRO is approved, such debts will be qualifying debts, and the recovery from the debtor’s benefits should cease.

It is the debtor’s responsibility to contact the DWP to advise of the DRO and request that deductions cease.

**Endowment**

An endowment policy is a life insurance contract designed to pay a lump sum after a specific term (on its 'maturity') or on death. Typical maturities are ten, fifteen or twenty years. Some policies also pay out in the case of critical illness. An endowment that will mature in the future will be classed as a [contingent asset](#3rdcrjn).

**Employee Share Schemes**

See - [Share scheme – employee](#1mrcu09)

**Employer Loans**

Loans from Employers are qualifying debts.

A debtor may be concerned about having debts like these listed in their DRO but the Official Receiver has no discretion to omit the liability. If the debtor is concerned about the security of their job if the debt is included in the DRO, they may wish to consider having a third party pay off the debt before a DRO application is submitted.

Please also see [Pay Advance](#2grqrue)

**Engagement Rings**

See [Wedding and Engagement Rings](#26in1rg)

**Enterprise Allowance Loans**

The advice from DWP is that and Enterprise Allowance loan is a qualifying debt for DRO purposes.

**Excluded Debts**

Excluded debts cannot be subject to a Debt Relief Order and do not contribute towards the £20,000 liability parameter. The following categories of debt are excluded debts:

[Fines](#2r0uhxc) imposed for criminal offences

[Student Loans](#111kx3o)

[Child Support Maintenance](#3znysh7)

An obligation under a ‘[confiscation order](#4d34og8)’.

[Damages](#35nkun2)

[Social Fund Loans](#111kx3o)

If a debt does not appear in the above list, it is a qualifying debt.

Excluded debts should be listed on the DRO application but should be “ticked” as an excluded debt. Monthly payments towards excluded debts will be an allowable expense

**Excluded Debt – incorrectly marked**

If a debt has been incorrectly marked as excluded within a DRO application, this can be amended and added to the list of qualifying debts once the error has been drawn to the attention of the DRO Team

**Execution and Distress**

No creditor with a qualifying debt has any remedy against the debtor or their property without leave of the court, including the right to begin the process of taking control of goods.

See [taking control of goods](#3l18frh)

**Experian Reports**

AIs are reminded that any erroneous information appearing on an Experian report which may impact the decision to grant a DRO should be regularised prior to submitting the application.

Where a situation cannot be satisfactorily resolved, full documentary evidence must be provided to the DRO Team, together with or prior to the submission of the application.

Applications where the debtor’s liabilities exceed £20,000 and no reasonable explanation or evidence to the contrary has been provided will result in the application being declined.

For the Credit Explained booklet:

<https://ico.org.uk/media/for-the-public/documents/1282/credit-explained-dp-guidance.pdf>

**Family debts**

Debts due to family members are qualifying debts and should be treated as such.

**Fine**

Where a debt has gone to the Magistrates Court and the court has issued a fine, the debt becomes an excluded debt. The debt will not count towards the £20,000 parameter and should be scheduled in the DRO application but marked it as excluded.

Any payments towards a fine are an allowable expense.

Fine for speeding - see fixed penalty notice.

**Fixed Penalty Notice**

Fixed penalty notices or penalty charge notices issued on behalf of a local authority, including those in relation to the London congestion charge, are not fines for the purpose of section 150 of the Magistrates Act 1980. They should be treated as qualifying debts and will be released at the end of the moratorium period. This applies to the majority of parking charges.

A fixed penalty notice issued by the police for speeding is considered a fine and is, therefore, an excluded debt.

Where a fixed penalty notice is registerable at a Magistrates Court, if not paid, to be enforced as a Magistrates Court fine, it is still a qualifying debt.

Also, see [Speeding Fines](#2lwamvv).

**Foreign Debts**

Foreign debts should be scheduled in the DRO application and will count towards the £20,000 liability parameter, but the making of a DRO may not protect the debtor from enforcement of the debt in the country of origin or lead to the debt being discharged from these debts at the end of the moratorium period.

**Foreign Fee Payment (DRO)**

The International Banking Number (IBAN) for foreign/overseas/abroad payments is GB89NWBK60708010002456.

**Fostering**

Payments received for a debtor acting as a foster carer should be treated as income and must be included in any DRO application. While such payments are made partly to cover the expenses of the child there is an element paid as a fee for acting as a foster carer.

**Franchises**

Franchising is based on a marketing concept which can be adopted by an organization as a strategy for business expansion. A franchiser licenses its know-how, procedures, intellectual property, use of its business model, brand; and rights to sell its branded products and services to a franchisee. In return the franchisee pays certain fees and agrees to comply with certain obligations, typically set out in a Franchise Agreement**.**

Where a debtor owns a franchise, the AI should take reasonable steps to determine the current value of the business and/or the residual value of the franchise agreement. Early termination and/or cancellation fees may need to be taken into consideration when assessing the level of debt.

**Fraud**

Debts incurred as a result of fraud or fraudulent breach of trust, are qualifying debts and should be scheduled in any application for a DRO and count towards the £20,000 liability parameter. Recovery of the debt should cease during the moratorium period. But any such debts are not discharged at the end of the moratorium period.

Fraudulent debts should not be treated or marked as excluded debts.

The Insolvency Service is not able to state whether a debt is fraudulent. If the debtor feels they were coerced by the creditor or they wish to dispute whether the debt is fraudulent they must seek independent legal advice. This is a matter between the debtor and the creditor.

**Fraudulent Benefit Overpayments**

Are treated in the same was as other fraudulent debts - see [fraud](#2bn6wsx)

The DWP issued guidance in March 2009 about how it defines fraud for subsidy purposes. This can be found in HB/CTB Circular G5/2009 and sets out three different situations:

* the customer has been found guilty of an offence whether under statute or otherwise
* the customer has made an admission after caution of deception or fraud for the purpose of obtaining relevant benefit or
* the customer has agreed to pay a penalty under section 115A of the Social Security Administration Act (penalty as an alternative to prosecution) and the agreement has not been withdrawn.

**Funeral Plans**

If payments have been completed and the funds in the funeral plan cannot be accessed, the funds are not treated as an asset and be treated in the same way as a life policy payable only on death.

If the debtor is still making the payments into the funeral plan the AI should consider whether such payments are reasonable or are to the detriment of their creditors in deciding whether they are an allowable expense.

If funds were transferred into a funeral plan immediately prior to or after seeking debt advice, the AI should consider whether the funds were intentionally put out of reach of creditors.

**Gambling**

Where a DRO is made debts incurred as a result of gambling may be investigated by the Official Receiver and may result in a DRRO/DRRU.

**Grants from PRS Momentum Music Fund**

The guidance for applicants to the PRS Momentum Music Fund states ‘Artists/Bands applying for the Momentum Music Fund must be at a crucial tipping point in their careers, showing current progression and growth as an artist with the potential to significantly develop their careers over the next two years’.

This suggests any applicant is already earning a regular income from music with the potential for this to increase significantly. AIs will need to be satisfied that the debtor’s income has been fully assessed, taking into account fluctuations in self employment and that they meet the eligibility criteria for a DRO.

Where a sum of money has been awarded, as it is a grant which can only be used for recording, touring (UK only), marketing and promotions, as long as the client can provide a full breakdown of how these funds are to be utilised, they will not be classed as an asset.

**Guarantor – debtor is the borrower, not the guarantor**

If the debtor took out a loan with someone acting as a guarantor for the debt then the debt will be a qualifying debt and should be scheduled on the application. The debtor should be made aware that if a DRO is made the creditor may pursue the guarantor.

**Guarantor – if the debtor was a guarantor for another person’s debt**

If the third party has defaulted and the debtor has been contacted and / or asked for payment, then it is a qualifying debt, the amount of which will depend on the terms and conditions of the guarantee – the guarantee may specify a maximum liability.

The AI may wish to inspect the terms of the guarantee, most are CCA regulated and service of a default notice will indicate what sums are due from the guarantor.

If the third party is making all contractual payments and is not in default at the point of submission, the debt is not for a liquidated sum and should not be scheduled in the DRO application.

**Guardians Allowance**

Payments received should be scheduled as income and the associated outgoings recorded as expenditure.

**HMRC**

Debts to HMRC for a liquidated sum are qualifying debts and should be included in a DRO application.

Where an assessment for tax has been raised by HMRC the amount of the assessment represents a liquidated sum. If the debtor disputes the assessment then they should submit tax returns and deal with this before the DRO is submitted.

Also, see [Tax & Self Assessment](#206ipza).

**HMRC Penalty for Tobacco Duty**

HMRC penalty for tobacco duties should be treated as qualifying debts in the DRO. However, the AI and debtor should be aware that HMRC may deem the debt to be fraudulent and, if so, it will not be discharged at the end of the DRO.

**Help to Save Scheme**

This scheme, administered by HM Revenue and Customs, is open to working people who receive Working Tax Credits, and those who receive Universal Credit with a household income or individual income of at least £542.88 in their last monthly assessment period before their Help to Save application.

Help to Save started with a trial in January 2018 and is available to all those eligible, from October 2018. From January 2019, HM Revenue and Customs will begin to invite Working Tax Credits customers to the trial with the expectation that Universal Credit customers will start to be invited from April 2019.

Once confirmed as eligible, customers can start saving straight away. All transactions, including checking their balance and paying in savings, can be managed in an online account available through GOV.UK.

Customers can save up to £50 each month. At the end of two years, savers will get a 50% bonus based on the highest balance achieved. Customers can then carry on saving for another two years and get another 50% bonus on their additional savings. Over four years, those saving the maximum amount of £2,400 will receive bonuses of £1,200. Money paid into the account can be withdrawn at any time, but this could affect the size of the bonus payment.

Based on the above monies saved in the Help to Save scheme should be treated as an asset.

Any payments in to the scheme after a DRO must be made from allowable surplus income and the debtor will need to consider whether by continuing to pay they still meet the DRO asset criteria during the moratorium period.

**High Court Enforcement**

High Court Enforcement Officers act on behalf of the High Court to chase unpaid debts.

See [Bailiffs](#30j0zll)

**High Court Judgment**

A High Court Judgment is treated like a County Court Judgment and is a qualifying debt for a DRO.

Enforcement Action fees must be scheduled separately to the original debt, the debtor should contact the High Court prior to submission to obtain the correct balance due to interest being added.

**Hire Purchase Agreement and Conditional Sale Agreements**

Goods subject to an ongoing hire purchase (HP) agreement should not be treated as an asset, as they do not belong to the debtor until all of the payments under the HP agreement have been paid.

Any unpaid instalments where the due date has passed *must* be included as a debt in the DRO application.

Under Rule 9.3 (9) of the Insolvency (England & Wales) Rules 2016 the debtorhas discretion whether or not they include the balance of the HP debt in a DRO application.

The OR cannot and will not object to a third party making payments under a debtor’s HP agreement. However it might be preferable for all parties concerned if the agreement is transferred into the third party’s name. This will require the agreement of the finance company. Payments by third parties should be made directly to the HP firm not via the debtor.

Hire purchase liabilities not scheduled in a DRO application, do not count towards the £20,000 liability parameter when the following are satisfied:

* not in arrears
* paid by a third party (if payments are more than £50 per month)

**Hire Purchase and Conditional Sale Agreements – allowable expense**

If a debtor decides to omit future obligations under an up to date HP or conditional sale agreement from their DRO application, the AI will need to determine whether the future payments are an allowable expense.

A payment will only be an allowable expense if the items for which payments are being made are necessary to satisfy the *“basic domestic needs of the debtor and his family”*.

Where an item on HP (other than a vehicle) falls within the items excluded by Rule 9.9 Insolvency (England & Wales) Rules 2016 then payments in respect of the debt excluded from the DRO might be allowed.

Where the payments are in respect of a vehicle, then the debtor must demonstrate that the vehicle would be exempt for DRO purposes (i.e. the residual value of the vehicle at the date of the application was less than £1,000 or the vehicle has been adapted for the use of the debtor as a disabled person).

If a debtor has a vehicle that is subject to HP and the liability is not scheduled in a DRO application because there are no arrears payments will not be an allowable expense if the value of the vehicle exceeds £1000.

There will be a number of factors to be considered in each case, for example:

• When was the agreement taken out? Was this taken out recently and as a result reduced the debtor’s available disposable income.

• Is public transport available?

• Do the HP payments compare favourably to the cost of public transport?

For scenarios, please see [Annex A](#1rvwp1q)

**Hire Purchase - items stolen or sold**

Stolen - If the item has been stolen the AI should confirm with their client that they have reported the theft to the police and have been given a crime incident number, as well as contacting the finance company to inform them of the loss.

Since there is no longer an item against which the loan can be secured, the full amount of the debt should be scheduled. However, the debtor should be prepared that the creditor may still claim the secured amount from the debtor once they become aware of the loss of the vehicle.

Sold – The AI should establish the circumstances in which the item sold, to whom and what happened to the proceeds as this may identify a transaction at an under value, preference or an asset.

The debtor should also be made aware that HP company may contact the police and that the creditor may continue to pursue the debtor if they believe that there has been any element of fraud or fraudulent breach of trust.

**Hire Purchase – third party to continue payments**

See [Hire Purchase Agreement](#3as4poj)

**Horses**

A debtor’s horse is an asset.

The AI should take reasonable steps to value the animal for the purpose of establishing whether the debtor meets the DRO eligibility criteria.

If an AI is satisfied that the horse is a pet with no or little value, they will need to establish with the debtor the costs of keeping the animal. Stabling, plus any other associated costs of keeping a horse are not allowable expenses for DRO purposes.

**Incentive to Move Payments**

Incentive to move payments are granted by local authorities to relocate over-accommodated tenants and release housing stock for re-allocation.

The Official Receiver cannot and will not object to the granting of an “incentive to move” payment to a debtor subject to a DRO, provided that the payment is used entirely to cover the cost of moving. Receipt of the payment must be reported as property received during the moratorium period but the DRO will not be affected as long as the payment is used in this way.

Councils seeking to offset ‘Incentive to Move’ payments against rent arrears scheduled in a DRO should consult their own legal advisors.

Where a council seeks to offset an ‘incentive to move’ payment against damage to their property by the tenant they should again consult their own legal advisors but it is likely they will be able to off set the cost of damage where the damage assessment was not scheduled in the DRO as long as the terms and conditions of their loan allow.

**Income**

Also see [Reasonable Domestic Needs](#nmf14n)

**‘**Surplus’ income is the amount by which monthly income exceeds the amount necessary for the reasonable domestic needs of the debtor and his/her family. Allofthe debtor’s income, (including disability living allowance, child benefit, child tax credit etc) will be taken into account when calculating this figure.

Where a debtor is self employed or is in receipt of seasonal income, the AI should establish the average monthly income that the debtor receives and calculate their income and expenditure using this figure. You may wish to use 3 months worth of income earned to determine the average.

For self employed debtors, the income and expenditure calculation should include provision to pay income tax and national insurance contributions if these are not deducted at source.

**Income Tax Refund**

Income tax refunds received before submission of a DRO application are an asset.

The [Lump Sum Protocol](#ihv636) should be implemented for Income tax refunds received during the moratorium period over the £1000 threshold:

**Independent Living Payments – Direct Payments**

The claimant may receive Direct Payments for their care directly into their bank account from the Local Authority. These payments are then used to pay for their care needs.

These payments are also known as ‘direct payments’ and the money can only be used for care otherwise the payment is stopped. These funds may be disregarded for the purpose of a DRO application and if there is a surplus remaining after payment of care costs, the claimant should contact the local authority in order to discuss the return of the surplus funds.

**Individual Voluntary Arrangement**

An Individual Voluntary Arrangement (IVA) is a formal agreement made between a debtor and his creditors to repay his/her debts (either in full or in part.)

Where a debtor informs and AI that they have been subject to an IVA which has been terminated or completed the AI must check the IIR to verify this. If there is any doubt that an IVA has been formally ended then the AI should contact the IVA supervisor for a documentation confirming the IVA has ended which will include:

• Covering letter – making reference to Rule 5.34 or 8.31

• Certificate of Termination Rule 5.34 or 8.31 Completion/Failure

• Copy of the final Report to Creditors

• Final Receipts & Payments – if there were no Receipts & Payments this should be referred to in the covering letter

To update the IIR the above documentation\* should be emailed to:

CustomerServices.EAS@Insolvency.gsi.gov.uk

\*Photos of the above documents are not accepted, scanned or original only.

If an IVA is shown on the IIR as current and no documentary evidence has been provided to the contrary, the Official Receiver will decline the DRO application.

**Information Commissioners Office – Credit Reference Agencies**

Here is a link to the Information Commissioner’s booklet ‘Credit Explained’ which outlines how credit histories work- <https://ico.org.uk/media/for-the-public/documents/1282/credit-explained-dp-guidance.pdf>

Credit reference histories are provided by commercial credit reference agencies. The Official Receiver is not required to contact such agencies to report that a DRO has been made and has no influence or control over these organisations or the credit reference histories they provide. As such, the Official Receiver cannot request that credit reference agencies update/change their files.

Any concerns and individual has about their credit reference history must be addressed directly to the credit reference agency and the creditors responsible for noting their credit reference history. They may wish to provide them with a copy of the DRO.

**Inheritance**

Money or property left to an individual as a beneficiary of a deceased estate becomes their property from the date of death and is an asset from the date of death whether or not it has been received.

It is possible for a recipient to disclaim an interest in an inheritance if they do this in writing before they receive the property. A copy of such a disclaimer made by a debtor applying for a DRO must be sent to the DRO Team.

**Interim Order**

An interim order is an order of the Court that is an order effective for a period and pending a final outcome. An example of an interim order is the moratorium for a debtor who is intending to make a proposal for an IVA.

**Interest Free Finance Agreement, Buy Now Pay Later**

Interest free finance agreements provide for interest free instalment payments usually to purchase domestic items (e.g. sofas). If payments are made as per the agreement no interest is charged but where full repayment extends beyond the agreement period interest will be added to future repayments.

If the agreement is in default the whole debt including potential interest should normally be scheduled in the DRO application although AIs should check the exact terms and conditions of the agreement.

If the debtor is unable to maintain ongoing payments, or they are not reasonable, the remaining balance due under the agreement should be scheduled. The debtor should be made aware that the item may remain the property of the retailer until the agreement has been paid in full so they may take action to recover it.

**Joint and Several Liability**

A DRO will only protect the individual who is subject to it. The making of a DRO will not protect or write off the liability of any individual who is jointly liable for a debt with the debtor, or anyone who has provided a guarantee for the debt.

Each individual who is jointly and severally liable for a debt is liable for the whole amount of the debt until it is paid in full.

In some instances joint debts can be split (removing joint and several liability) following the break up of a relationship e.g. joint tax credits overpayments and the AI should check the status of a debt when completing the application. The AI must be satisfied that they have seen sufficient evidence to confirm the debt has been split.

**Judgments**

Court fines are excluded debts for the purposes of DROs.

Other court judgments obtained by a creditor against the debtor are qualifying debts. This includes, for example, county court judgments or costs awarded against the debtor in civil proceedings.

These remain on the credit file for 6 years.

**Leases**

A lease agreement is a contract between two parties, the lessor and the lessee. The lessor is the legal owner of the asset; the lessee obtains the right to use the asset in return for regular rental payments. The lessee also agrees to abide by various conditions regarding their use of the property or equipment.

Debts arising under the terms of a lease are qualifying debts.

Consideration also needs to be given to whether the asset subject to the lease has any value.

**Leases – Business Premises**

If a debtor is occupying business premises the AI should take reasonable steps to value the debtor’s interest in the lease. This will depend upon the location and prescribed use of the premises and the terms of the lease.

**Legal Aid**

Unpaid legal aid is a qualifying debt if the debtor has already received the bill.

**Legal Fees**

Legal fees are a qualifying debt.

**Liability Order**

If a debtor defaults on their council tax payments, the local authority can obtain a liability order in the magistrates’ court. A liability order gives the local authority the power to take certain action to recover their debt, including an Attachment of Earnings Order and the power to use bailiffs to take control of the debtor’s goods.

A liability order does not make a debt secured. The debt will only become secured once the debtor has entered into a controlled goods or walking possession agreement.

If there is a liability order in place, the repayments should cease on the making of a DRO. If the goods are subject to a controlled goods agreement, the debtor will need to consider maintaining payments in order to keep the goods but they cannot be included as an allowable expense, unless it relates to items for reasonable domestic needs.

**Life Insurance**

If a policy is payable only on death, it is not regarded as an asset for DRO purposes.

If the policy has a cash value it is an asset for DRO purposes.

Life insurance monthly payments are an allowable expense.

An endowment policy that will mature in the future is classed as a contingent asset unless it has a current cash value when it is an asset.

**Littering Penalty**

A littering penalty is a qualifying debt and should be scheduled in a DRO application.

The enforcement of a fixed penalty charge is prohibited by section 251G (2) of the Insolvency Act 1986 and the debt remains a civil debt caught by the DRO.

Where the matter has been referred to the Magistrates Court and resulted in a conviction and an associated fine the fine is an excluded debt.

**Loan Sharks**

The AI should refer to the Shelter Specialist Debt Advice Service for advice on including or excluding debts due to a loan shark in the list of creditors. Whilst they will not make the decision as to whether the debt should be included, guidance will be given based solely on the situation.

If there is a threat to the debtor or their immediate family they may opt to leave the debt out of the DRO application. The debt due will count towards the £20,000 liability parameter, so the AI should email the DRO team details of the debt and why it has been omitted at the time of submission.

Police involvement might be appropriate, if there is a physical threat.

Illegal money lending (loan sharking) is a criminal offence and often sees unlicensed lenders target vulnerable people. The National Trading Standards Illegal Money Lending Teams in England and Wales investigate and prosecute illegal money lenders. Hosted by Birmingham City Council and Cardiff Council the teams work in partnership with trading standards services across England and Wales.

The teams are made up of specialist investigators and victim support officers from various backgrounds including trading standards, policing and debt advice.

These specialist teams can be contacted at:

• In England, contact: reportaloanshark@stoploansharks.gov.uk

• In Wales, contact: imlu@cardiff.gov.uk

For more information about the work of the Illegal Money Lending Teams then please visit <http://www.stoploansharks.co.uk/>.

**Logbook Loans – Bill of Sale**

To be valid a bill of sale must be registered with the High Court. Where it is the debtor is no longer the legal owner of the vehicle. If the bill of sale is not registered the debtor is the legal owner of the vehicle.

Where the Log Book Loan ends during the moratorium period and ownership reverts to the debtor the DRO may be revoked if the value of the vehicle is greater than £1,000.

If the debtor does not want to keep the vehicle and the value of the vehicle is less than the secured debt, the balance of the debt should be treated as unsecured scheduled separately as an unsecured debt on the application.

If the debtor wishes to keep the vehicle and the vehicle is worth up to £1,000 the debt should be scheduled in 2 parts, secured and unsecured, and payments treated as an allowable expense.

If the debtor wishes to keep the vehicle and it has a value above £1,000 the debt should be scheduled in 2 parts, secured and unsecured, and payments not treated as allowable expense (and can only be paid out of disposable income).

**London Congestion Charge**

see [penalty charge](#1v1yuxt)

**Lump Sum Protocol**

This applies where a debtor receives a lump sum during the moratorium period after a DRO has been made.

Where a lump sum is received and the value of the debtor’s total property (including the lump sum) does not exceed £1,000 no action will be taken.

Where a lump sum is received and the value of the debtor’s total property (including the lump sum) is between £1,000 and £1,990 the Official Receiver will consider the circumstances of the case and may not revoke the DRO.

Where a lump sum is received and the value of the debtor’s total property (including the lump sum) exceeds £1,990 the Official Receiver will consider the circumstances of the case but it is likely the DRO will be revoked.

Where a DRO is revoked and the debtor remains insolvent the debtor can use the lump sum to enter a different insolvency remedy e.g. bankruptcy/IVA.

**Maternity Grant - Sure Start**

For the purposes of a DRO application, a maternity grant is not classed as an asset.

The £500 grant is given to help with the costs of a new baby. Any funds received should be spent on related expenditure for example a new cot, pram etc.

**Maternity Pay - received as a lump sum before applying for a DRO.**

Where a debtor’s contract has been terminated they may receive a lump sum of maternity pay rather than monthly payments. In these circumstances the maternity lump sum should be apportioned over the period to which it relates to assess the debtor’s surplus income position.

In addition the AI should take reasonable steps to identify any assets which may have been purchased or debts which have been repaid with the money which might impact on the debtor’s eligibility for a DRO.

**Mobile Phone Contracts**

If the debtor is up to date with their mobile phone contract and there is no outstanding liability at the date of determination, then there would be no indebtedness to schedule in the DRO and provided the Intermediary assessed the contract payments as an allowable expense, the contract can continue.

The AI should check the type of agreement, as they can be finance or HP agreements. The value of the handset/device should be checked to ensure it will not breach the asset parameter should it become the debtor’s property during the moratorium period.

Should the debtor subsequently default on the contract the creditor will have the usual rights to recover the debt.

The inclusion of a mobile phone liability in a DRO will normally result in the contract being terminated and the debtor being issued with termination charges for the remainder of their contract these will be a qualifying debt in the DRO and discharged at the end of the moratorium period.

**Mobility Scooters**

There are three classifications of invalid carriage:

* Class 1 - manual wheelchairs – these are not an asset for the purposes of a DRO.
* Class 2 - powered wheelchairs and scooters, for footway use only with a maximum speed of four miles per hour (mph) and a maximum un-laden weight of 113.4 kilograms – these are an asset for the purposes of a DRO.
* Class 3 - powered wheelchairs and scooters, for use on roads/highways with a maximum speed of eight mph and the facility to limit the maximum speed to four mph for use when travelling on footways, and with a maximum un-laden weight of 150 kilograms. A class 3 must be registered with the Driver and Vehicle Licensing Agency (DVLA) – these are an asset for the purposes of a DRO.

A “scooter” can be considered as a single domestic motor vehicle, for the purpose of determining property to be excluded for the purpose of a DRO.

**Motor Insurers Bureau (MIB)**

The MIB was established in 1946 for the purpose of providing compensation to the victims of negligent uninsured and untraced motorists. The MIB will pay the injured party compensation and then pursue the uninsured party for reimbursement.

If the debtor is the uninsured party a debt to the MIB which is a liability to pay damages in respect of death or personal injury is an excluded debt.

A claim to MIB for which the debtor is liable should only be scheduled as a qualifying debt to the extent of loss or damage to property.

**Moratorium Period**

The moratorium period in a DRO is the length of time during which the debts owed by a debtor are protected from the claims and actions of their creditors. Creditors cannot continue or commence legal action against the debtor for repayment of these debts without leave of the Court.

After the DRO moratorium period has come to an end, debts would usually be discharged. If the moratorium period is terminated by the court or the Official Receiver before it has expired, the debtor will again be subject to the actions of their creditors.

In a DRO the moratorium period is usually 12 months although this can be extended on the application of the Official Receiver

**Motability Vehicles**

Motability customers are moving to PIP and may receive a lump sum payment (of £2000 or £1000 depending on the date they start in the scheme) if they become ineligible for the enhanced rate of the Motability component of PIP. This lump sum will not be treated as an asset

Vehicles that are subject to the “Motability Scheme” are usually lease hire agreements and are not assets for the purpose of a DRO.

Payments under a Motability agreement are an allowable expense and should be scheduled in the list of outgoings.

Any allowance received for payment towards a Motability agreement (usually funded by [Disability Living Allowance](#2jxsxqh)), should be shown in the income element of the income/expenditure section of the application.

If the debtor has two vehicles and they need two vehicles and one vehicle is a Motability vehicle paid for out of the debtor’s benefits, the second vehicle should be treated as an asset in the usual way.

**Motability Vehicles - lump sum payment towards vehicle**

Debtors can make a one off lump sum payment to obtain a higher specification vehicle and continue with their normal payments from their mobility allowance.

In these circumstances the AI should consider the following:

* Was a lump sum paid?
* How much was the payment?
* When was the payment made?
* Where did the funds come from?

If a debtor used savings to purchase a higher specification vehicle, rather than paying their creditors a proportion of what they owed, this could be a transaction to the detriment of creditors in the run up to their insolvency.

A lump sum top up to the detriment of creditors would not necessarily preclude a debtor from applying for a DRO, but it would certainly be a matter that the Official Receiver would consider investigating.

**Motor Traders**

It is unlikely that anyone currently trading as a motor trader would be eligible to apply for a DRO as they buy and sell large numbers of motor vehicles, with varying values and, it is unlikely that they will meet the asset parameter.

**Motorbike Valuations**

Parkers no longer provide online valuations for motorbikes.

The Official Receiver will accept valuations from reputable organisations such as:

[www.wisebuyers.co.uk](http://www.wisebuyers.co.uk)

[www.thebikemarket.co.uk](http://www.thebikemarket.co.uk)

**Multiple Vehicles**

A debtor can own more than one vehicle, one under the £1000 vehicle exemption and the remaining vehicle under the £1000 asset parameter. However the AI must consider whether the expenditure associated with the second vehicle is an allowable expense.

**National Insurance Contributions**

National Insurance (NI) contributions are a qualifying debt.

Debtors should be made aware that any shortfall in their NI contribution may affect their state pension. The debtor can check their national insurance record using this link: <https://www.gov.uk/check-national-insurance-record>

**NHS charges**

Charges for NHS dental care are a qualifying debt.

**Objections to a DRO**

An objection to a DRO can only be made on a prescribed ground by a scheduled creditor owed a qualifying debt. Objections must be made within 28 days of that creditor being notified of the making of the DRO - Insolvency Act 1986, Section 251K (1) and (2).

The grounds for an objection are:

1. That the information supplied by the debtor in support of their application for a DRO is incorrect, incomplete or misleading
2. That an undischarged Bankruptcy Order is currently in force in respect of the debtor
3. That the debtor currently has an IVA
4. That the Official Receiver should not have been satisfied that:
	1. the debt or debt scheduled in the DRO was a qualifying debt when the application was made by the debtor,
	2. the debtor did not meet the conditions specified in Part 1 of Schedule 4ZA of the Insolvency Act 1986
	3. the debtor did not meet the conditions specified in Part 2 of Schedule 4ZA of the Insolvency Act 1986

Objections received after 28 days from the making of the DRO or outside the grounds for an objection will not be treated as a valid objection. Similarly, objections received from anyone other than a scheduled creditor are not valid. However, the information provided will be examined and passed to the DRO Under Enquiry team if appropriate.

**Obligations/duties of debtors.**

When applying for a DRO the debtor must:

* Provide the OR with a full list of all assets and liabilities including a list of creditors.
* Comply with the OR’s request to provide information and cooperate fully if requested.

When a DRO has been approved the debtor must:

* Comply and fully cooperate with OR’s request for additional Information if requested.
* Inform the OR of any assets or increases in income obtained whilst subject to a DRO, including lump sum cash payments, windfalls, property and money left in wills.
* Inform the OR of any errors or omissions in the information provided as soon as they become aware of them.
* Must not obtain credit of £500 or more without disclosing the fact that a DRO has been made.
* Must not make payments direct to creditors included in the DRO.

**Obtaining credit before the DRO**

If the debtor obtains credit shortly before submitting a DRO application and a DRO is made details may be passed to the DRO Under Enquiry team to consider whether further investigation is appropriate.

Such an investigation may lead to a DRRO/DRRU and/or the revocation of the DRO.

**On going commitments**

Debtors should continue to pay for continuing commitments such as rent and utility bills during the DRO period and after the order is made.

**Overdraft**

If a debtor’s bank account is overdrawn at the date of the DRO application, the overdraft is a qualifying debt for the purposes of a DRO.

**Parkers Guide**

Parkers Guide provides an acceptable valuation guide for vehicles, appropriate account should be taken of damage, high mileage etc. when assessing a vehicles value.

Sites such as webuyanycar.com are not considered to provide realistic valuations for vehicles.

**Parking Charges**

Parking charges are qualifying debts for the purposes of a DRO**.**

**Pawned items**

The AI should:

* Identify what is pawned.
* The value of the item.
* The date the item was pawned.
* How the funds received were used.
* Where the legal title to the pawned goods lies - with the debtor or the broker - this will depend upon the terms of the agreement.

 If, as is usual, the debtor is still the legal owner of the goods, then they will count towards the £1000 asset parameter.

There is usually a six month period where the debtor is able to redeem their property. After this date, the goods will become the property of the pawn broker who can dispose of them how they wish.

Payments to buy back items are only permitted from the debtor’s disposable income.

It is recommended that the debtor deals with pawned assets before applying for a DRO e.g. by redeeming the items and selling them at market value and making pro rata payments to all their creditors.

**Pay Advance**

An “Advance of Salary” to assist with the purchase of a rail season ticket is not a qualifying debt for the purpose of a DRO application.

Where an advance of salary is received for other purposes and the debtor’s employment continues so that he/she has provided the contracted services for which they have been (pre)paid there is no debt to the employer.

If the debtor’s employment ends before providing the contracted services they have been (pre)paid for any advance which cannot be recovered from salary is a qualifying debt.

If a debtor obtained an advance of salary for a purpose other than travel, then the AI should determine what the advance was used for.

See [Employer Loans](#3j2qqm3)

**Payday Loans**

A payment for a payday loan would not normally be considered a preferential payment for DRO purposes where a [Continuous Payment Authority](#17dp8vu) was given at the time the loan is taken out, as the debtor has no control over the payment being deducted.

But it is expected that the debtor take all reasonable steps to ensure that further payments are not deducted. A Continuous Payment Authority can be withdrawn by contacting the bank.

**Payments sent abroad**

Where a debtor lives and works in this country payments sent outside of the United Kingdom, for whatever reason, are not an allowable expense for DRO purposes.

**Penalty Charge – Fixed**

Fixed penalty charges issued on behalf of a local authority, including those in relation to the London congestion charge, are not fines for the purpose of section 150 of the Magistrates’ Act 1980. They should be treated as qualifying debts and will be released at the end of the moratorium period. This is applicable to the majority of parking charges.

**Penalty Notice - DVLA**

A Penalty Notice issued by the DVLA, for example for non payment of road fund (car tax) licence, is a civil penalty notice and not a fine, and should be treated as a qualifying debt.

However, if the debtor did not pay the penalty and a court fine has been issued by a magistrates court the fine is an excluded debt.

**Pensions - income**

It is the responsibility of the AI to assess the debtor’s income and expenditure and determine whether the debtor qualifies for a Debt Relief Order. Pension income received should be included in this assessment.

**Pensions - asset**

Under changes to the DRO rules from 6th April 2011, approved pensions are excluded from the calculation of assets in the DRO application.

Unapproved pensions must be listed and the value included in the list of assets. It is possible that if the debtor has an unapproved pension they will not qualify for a DRO. This will depend on the amount held in the pension fund and the debtor’s total liabilities and clarification should be sought from the DRO team.

It can be assumed that a pension is **approved** if one or more of the following are true:

1. The pension is an occupational pension scheme with nationally or internationally based organisations (such as the armed forces, local government, Civil Service, national retailers, high street banks, utility companies).
2. The policy is operated by a major pension provider/insurer (such as Scottish Widows, Scottish Equitable, Standard Life, Prudential, Scottish Life, Aviva, Aegon, Skandia, Legal and General, Axa, Zurich, etc) and the annual pension statement sent to the debtor identifies that the scheme or policy is registered for tax purposes under section 153 of the Finance Act 2004.

If there is no evidence to suggest whether the scheme or policy is approved the debtor may have to provide further evidence before the application can proceed. This can be obtained by the debtor from their employer/former employer, scheme administrator, or pension provider asking for confirmation that the pension is an approved scheme registered for tax purposes under Section 153 of the Finance Act 2004.

See also [undrawn personal pensions and occupational pensions](#1egqt2p)

**Personal Contract Purchase**

A personal contract purchase (PCP) is a form of vehicle finance.

A PCP contract requires the customer to make monthly payments for a set contract period with the right to drive the vehicle. At the end of the period the customer can make a final payment to take ownership of the vehicle or return the vehicle without penalty.

Ownership of the vehicle while payments are being made is retained by the finance company.

A PCP is a [conditional sale agreement](#1t3h5sf) and under UK law the purchaser is protected under the Consumer Credit Act 1974 and the Financial Services Regulations 2004

PCP contracts should be treated in the same manner as [conditional sale](#1t3h5sf)/[hire purchase](#3as4poj) agreements.

**Personal Health Budgets**

A personal health budget (PHB) is a payment made to the debtor to support the identified healthcare and wellbeing needs of an individual. A PHB is agreed between the individual, or their representative, and the local clinical commissioning group (CCG). It isn’t new money, but a different way of spending health funding to meet the needs of an individual.

A PHB is not an asset or income and should be treated as allowable expenditure as it can only be spent on the debtor’s care needs.

Any overpayment of a personal health budget would be a qualifying debt for DRO purposes.

For further information: [www.nhs.uk/NHSEngland/patient-choice/personal-health-budget/Pages/about-phb.aspx](http://www.nhs.uk/NHSEngland/patient-choice/personal-health-budget/Pages/about-phb.aspx)

Also see [Independent Living Payments](#49x2ik5)

**Personal Injury Compensation**

Where a debtor is awarded personal injury compensation the AI should ascertain whether the right of action relates to general damages and/or special damages.

* Special damages i.e. loss of earnings, care & assistance, travel & expenses etc. are an asset for DRO purposes.
* General Damages i.e. compensation for the injuries received, are not an asset for DRO purposes.

If an amount received from general damages is converted into assets during the moratorium period then the debtor’s eligibility for the DRO will need to be reviewed.

If an accident leading to a right of action happened prior to an application for a DRO, then details of this contingent asset should be disclosed and the OR informed of any payment made or likely to be made within the moratorium period (which can be extended for a short period).

If an accident leading to a right of action happens within the moratorium period then the OR should be notified and the lump sum protocol will apply.

**PIP- Personal Independence Payment**

Personal Independence Payment (PIP) helps with some of the extra costs caused by long-term ill-health or a disability if you’re aged 16 to 64. For backdated payments see [Backdated PIP.](#1fob9te)

**Power of Attorney - debtor**

Eligibility to hold a Power of Attorney for the financial affairs of an individual ceases on the making of a DRO. The debtor must cease acting as a Power of Attorney in relation to an individual’s financial affairs upon the making of the order.

**Power of Attorney – third party over debtor’s affairs**

A person holding a lasting Power of Attorney under the Mental Capacity Act 2005 can deal with an individual’s financial affairs including completing a DRO application.

Before completing a DRO application with someone acting under a Power of Attorney the AI should have sight of an original valid Power of Attorney. The person holding the Power of Attorney should sign the DRO submission page, notated with the capacity in which they are acting.

AIs should forward a copy of the Power of Attorney to the Official Receiver on submission of the DRO application.

In relation to the DRO the Official Receiver will deal with the person acting under the Power of Attorney.

**PPI**

A qualifying debt covered by Payment Protection Insurance remains a qualifying debt for DRO purposes.

A debt that has been off-set by a PPI less than 2 years before a DRO is applied for will not be treated as a preference for DRO purposes.

**PPI – Offset**

The Official Receiver takes the view that a creditor may exercise a right of set off by deducting from a PPI settlement a debt scheduled in a DRO once the moratorium period has ended. Section 323 of the Insolvency Act 1986 is the authority for right of set off and the Official Receiver’s view is that this is automatic. A right of set off under such legislation is not a remedy and may be applied post-moratorium irrespective of whether the debt has been discharged or not.

**PPI – already paying to creditor**

Where a creditor is still receiving payment from the PPI there debt remains a qualifying debt and payments are not classed as a preference payment.

The debtor should be advised to inform the PPI insurers that a DRO has been made.

**Preference**

A DRO application could be affected if, within 2 years of the DRO application, the debtor has made payments to one or more creditors in preference to other creditors. It is not possible to state precisely what might fall into this category, as any preference will depend on the facts and determined on a case by case basis.

In reaching a decision on whether to approve or decline a DRO application, the Official Receiver will have to consider the amount of the payment, whether it would have altered the financial position had it not happened, consider the timing and the reason behind the payment.

Where funds are deducted from benefit or wages as an Attachment of Earnings Order to one creditor payments will not be classed as a preference.

For further information, see [Annex B](#4bvk7pj)

**Preference Payday Loans**

See [payday loans](#vx1227)

**Prepayment Meters for Utilities**

See [Utilities](#3ygebqi).

**Previously owned properties**

Where a client informs their AI that they have previously owned a property that has been sold within the last two years, it is good practice to ask the client to provide a copy of the completion statement and details of how any funds received have been spent, particularly if a large sum was involved.

**Prisoners**

Where an individual is in prison they are not prevented from obtaining a DRO. However, the AI will have to obtain a written authority from the incarcerated individual and send this to the DRO Team.

Where a debtor is in prison at the time of applying for a DRO the AI should mark the address withheld box to trigger the protocol for dealing with prison addresses. Unless the prisoner is at risk of violence, no subsequent application to court is necessary.

Provided the address withheld box is selected, reference to any prison address will be removed from the debtor’s description and excluded from any documentation sent to creditors.

The disclosure of a prison address to creditors and IIR is clearly a matter for the applicant. If a debtor does not wish to withhold a prison address, it will assist the DRO Team if the AI could note the DRO application to this effect, confirming that the matter has been discussed with the debtor and the debtor understands that by not using the address withheld procedure, details of their current whereabouts will be notified to both creditors and recorded on the IIR.

**Reasonable Domestic Needs**

Surplus income for DRO purposes is the amount by which monthly income exceeds the amount necessary for the ‘reasonable domestic needs’ of the debtor and his/her family. All income is taken into account when calculating this figure, including Disability Living Allowance, Child Benefit and Child Tax Credit. Any amount paid by a family member towards reasonable domestic needs is also taken into account.

The Standard Financial Statement is used to assess a debtor’s income and expenditure which normally includes a small allowance for savings. When calculating surplus income for a DRO no allowance should be made for savings.

DLA and equivalent benefits paid to the debtor can be off-set against adult or child care costs as appropriate.

**Redundancy Payments**

Where a debtor receives a repayment relating to redundancy during the moratorium period whether the funds are classed as income or as an asset depends upon the reason for the payment:

Redundancy Payments and payment in lieu of notice are treated as assets for the purposes of a DRO.

Unpaid wages, including holiday pay, together with payments in respect of wages during a worked notice period are treated as income.

**Rent Arrears**

When calculating the debtor’s income and expenditure, the AI should not allow rent arrears as an allowable expense – even if there is a Suspended Possession Order (SPO) in place.

If the debtor wishes to make payments towards the outstanding rent arrears from their disposable income, then the Official Receiver would not take any action.

On 15 July 2011 the Court of Appeal handed down judgment in the cases of Christine Sharples v Places For People Homes Limited and Stephen Godfrey v A2 Dominion Homes Limited [2011] EWCA Civ 813.

Where a property is occupied under an assured or a secure tenancy, a landlord might only gain possession of the property by way of a court order. To gain possession, the landlord must prove one or more of the statutory grounds for possession. Rent arrears are a statutory ground for possession.

The Court of Appeal confirmed that rent arrears are a qualifying debt in a DRO.

In many respects the position is largely unchanged except for the key issue of dealing with payments in respect of rent arrears.

The judgment is clear, where a landlord has a defaulting tenant (by reference to accumulated rent arrears) they can seek possession of the property both before and after the making of a DRO or bankruptcy order, notwithstanding that the arrears are a qualifying or provable debt. The landlord is simply exercising his right to recover his property from a defaulting tenant. No leave of the court is required to either continue or commence the possession proceedings.

A possession order might still be suspended on any grounds except payment of rent arrears (e.g. it might be suspended by reference to payment of current (future) rent). It must therefore follow that a possession order suspended *prior* to the making of the DRO or bankruptcy order might be varied *after* the making of the order to exclude the rent arrears.

Rent arrears accrued at the date of the DRO are qualifying debts. Consequently the landlord, as a creditor, will lose his/her rights to recover the rent arrears through any means.

When completing an assessment of essential expenditure for the purposes of a DRO no allowance should be made for the payment of rent arrears, whether or not at the time of completion the debtor is under a SPO. For DRO purposes this would give the true reflection of whether their surplus income exceeded the £50 qualifying limit.

Upon the making of the DRO, application could be made to the court (by the debtor) to vary the terms of the suspension to exclude the rent arrears but the debtor should be advised to seek specialist housing advice before taking this step.

Under no circumstances should the debtor be advised to cease making payments under the terms of the SPO before the SPO has been varied by the court.

**Rent Deposits**

A landlord may not withhold a debtor’s deposit in order to offset rent arrears scheduled in a DRO as this is contrary to Section 251G of the Insolvency Act 1986.

However, a landlord may retain part of the deposit to pay for damage to the property if such a provision is included in the tenancy agreement.

**Rent Deposit Scheme**

If the debtor has paid a deposit on his/her home this would not be classed as an asset. However, if the debtor moves and the deposit is returned to the debtor these funds are an asset which could affect the debtor’s eligibility for a DRO during the moratorium period.

If the debtor moves and has the deposit transferred from one housing association or tenancy agreement (if privately renting) to another then this will not affect eligibility.

**Residency in the UK**

If the debtor is not a UK citizen and could be asked to leave the country by the Border Agency in the future they can still apply for a DRO.

If the debtor is concerned that a DRO may affect their immigration status they should check with the Home Office.

<https://www.gov.uk/government/organisations/uk-visas-and-immigration?utm_source=google&utm_medium=website%20link&utm_term=UKVI%20homepage&utm_content=UKVI%20homepage&utm_campaign=UKVI%20homepage>

Also see [Citizenship Applications – effect of insolvency](#2et92p0)

**Restrictions Imposed on an Applicant Subject to a DRO**

Debtors who have had their DRO application approved will be subject to the same restrictions subject to a bankruptcy order. The main restrictions are the debtor:

* must not obtain credit of £500 or more, either alone or jointly with another person, without disclosing to the lender that they are subject to a DRO.
* may not carry on a business (directly or indirectly) in a name that is different from the name under which they were granted a DRO, without telling all those with whom they do business the name under which they were granted a DRO.
* may not be involved (directly or indirectly) with the promotion, management or formation of a limited company, and may not act as a company director, without the court’s permission.
* may not hold certain public offices, or hold offices as a trustee of a charity or a pension fund.
* will not be eligible to apply for a DRO again for six years from the date of approval.

**Retention of Title**

A “retention of title” clause allows a supplier to retain ownership over goods supplied until such time as certain conditions are met (usually payment), and provides the supplier with a form of security against the buyer's default or insolvency.

The creditor is able to remove their goods, if the terms of their agreement allows, meaning they are no longer the debtor’s assets.

**Revocations**

Where a debtor is found to have been in breach of the DRO conditions, the Official Receiver may revoke the order and the debtor will again be liable for the scheduled debts.

Once a DRO has been revoked the decision cannot be reversed unless ordered by the court.

Details of the revocation will appear on the IIR a day after the order has been revoked and remain on the IIR for 3 months. Details may be held by various credit reference agencies usually for 6 years.

**Revocations – applying for bankruptcy**

If a debtor ceases to be eligible for a DRO and has been notified of an intention to revoke the order they should not apply for bankruptcy until the revocation has taken place.

A bankruptcy order cannot be made on the same debts that are listed in a current DRO. We normally allow 28 days from notification to revocation of a DRO to allow a debtor to get their affairs in order but if it is urgent that the bankruptcy be made sooner for any reason, the debtor or AI should contact the DRO team.

**Right of Action**

A right of action is a claim someone believes that they have against another to enforce a right e.g. to recover money or property. A right of action can lead to legal action and may involve court proceedings.

A right of action should be disclosed in a DRO application and reported during the moratorium period as it may impact the debtor’s eligibility for a DRO.

**Right of Set Off**

Some banks and financial institutions may have the right to transfer cash from bank or savings accounts to pay off other debts held with them, such as credit cards or loans. The right to do this will be stated in the terms and conditions and will relate to funds deposited in an account before a DRO application is approved.

**Salary Sacrifice – Childcare**

Credit funds held in a childcare salary sacrifice scheme are not able to be withdrawn and are not classed as an asset for DRO purposes.

**Salary Sacrifice – Leased vehicle**

A debtor with a salary sacrifice scheme to finance a lease car may not be eligible for a DRO.

The AI should enquire whether the debtor is required to have a car for their employment and satisfy themselves that the monthly payments are a reasonable expense given that they will not be funds available to his creditors.

 Relevant information to consider includes:

* When was the agreement taken out?
* Is public transport available?
* Do the lease payments compare favourably to the cost of public transport?

Ultimately the AI must be satisfied that there are no reasonable alternatives and that the sum scheduled for vehicle payments genuinely meets the “reasonable domestic needs of the debtor and his family”.

**Savings Account for a Child with a Parent Named on Account**

Where the debtor is the parent named on an account for a child the AI should satisfy themselves that the funds in the account belong to the child and were not put in a savings account to remove the funds from the reach of the parent’s creditors.

The account should be changed in to the name of the child and have the parent as a co-named guardian.

**School Fees**

The exact nature of the school fees must be established as some may be deemed an allowable expense i.e. school lunches, school trips, extra tuition, special needs costs etc.

Fees for attending a private school are not normally regarded as an allowable expense. If the debtor deems it to be a necessary expense, they would need to provide significant evidence to justify this. The first question to be asked is, why does the child attend a private school?

**School Penalty for Child’s Non Attendance at School**

This is a penalty notice and a qualifying debt for the purposes of a DRO if the penalty is not paid inclusion in the DRO will not prevent the Local Authority from issuing a summons and a fine could result.

A fine issued by a Magistrates Court for a child’s non attendance is an excluded debt for DRO purpose. Any associated court costs are qualifying debts.

**Secured Creditors**

A DRO does not affect the rights of a secured creditor. Where a creditor has secured their debt, they will have the right to recover their property if repayments have not been made. (Please see [Taking Control of Goods](#3l18frh) and/or [Bailiffs](#30j0zll) for more information on a secured creditor enforcing their rights.)

Secured creditors (or the secured element of the debt) must be listed on the DRO application and identified as a secured debt by marking the relevant tick box. If the value of a secured item is less than the total amount of the secured debt, the balance of the debt is treated as unsecured. This would form part of the DRO, and must be scheduled separately as an unsecured debt on the application.

Payments to secured creditors should be scheduled in the DRO and an explanation provided.

**Self Employed Taxi Drivers**

Where a debtor is a self employed taxi driver the AI should provide the following information to the DRO team when the application is submitted:

* Rent for any vehicle used to provide taxi services.
* Associated costs, especially where no vehicle has been recorded in the DRO application.
* Details of how the income and expenditure has been calculated.

**Share Scheme – employee**

Any interest that the debtor has in an employee share scheme is an asset for DRO purposes, even if, the value of the shares cannot be realised until some time in the future.

Some examples of share schemes:

Tesco - reward their employees by allocating them shares in the company. These shares are held by the employees from the first day of employment and therefore constitute an asset, despite the fact that the Tesco employee cannot realise the shares immediately (3 year retention period).

AXA - allocates to its employees air miles, which convert to shares after a period of two years, as long as the employee does not leave the company within that time. The employee does not own the air miles and are not an asset but when the air miles have been converted into shares, the shares are an asset.

Royal Mail – the shares are classed as a contingent asset.

**Social Fund Loans – Crisis and Budgeting Loans**

Social Fund Loans are an interest-free budgeting or crisis loan from the Social Fund aimed at individuals who are on a low income and need help with certain important costs.

Social fund loans are excluded assets, do not need to be included in the DRO application and do not count towards the £20,000 parameter.

Monthly payments to social fund loans are an allowable expense.

A budgeting advance under Universal Credit is not part of the Social Fund and is a qualifying debt.

**Special Guardianship Allowance**

Payments received for a debtor who caring for a child under a Special Guardianship Order should be treated as income and must be included in any DRO application.

This allowance is means-tested but Local Authorities have to assess how much fostering allowance would have been paid had the child been fostered rather than cared for under a Special Guardianship Order. The rate for Special Guardianship Allowances should be calculated in line with fostering allowances. Deductions may be made to take into account Child Benefit and Tax Credit.

Payments may also be made to contribute towards the expenditure necessary for the purposes of accommodating and maintaining the child.

**Specialist Debt Advice Service - Shelter**

The Specialist Debt Advice Service provide an advice service to debt advisers from free to client advice agencies, including the following organisations:

Local Citizens Advice

Housing Associations

Local Authorities

Institute of Money Advisers (IMA) & Advice UK members

Other non-profit and free to client advice agencies

They are the agreed point of contact for technical advice on DROs and where possible they will provide answers / information to specific queries and possibly make suggestions on how the AI should proceed.

Please utilise other available resources and technical guidance before approaching this service.

The Specialist Debt Advice Service is available by telephone 0330 058 0404- Monday to Friday 9am-5pm or by making an online enquiry any time via: [www.shelter.org.uk/debtadviceservice](http://www.shelter.org.uk/debtadviceservice).

They will respond to enquiries within 3 working days, or sooner in emergency cases.

**Speeding Fines**

Speeding fines are excluded debts for the purposes of a DRO as they are a road traffic offence under the Road Traffic Offenders Act 1988. Speeding fines are issued by the police authority and not the local authority and should be marked as excluded on the DRO application.

See [Fixed Penalty Notice](#2xcytpi)

**Start Up Loans**

A DWP Start Up Loan Scheme is linked to the New Enterprise Allowance. The loan is a qualifying debt for DRO purposes and should be included in the DRO application.

 Further information may be found using this link [www.startuploans.co.uk](http://www.startuploans.co.uk)

**Statute Barred Debts**

Where, prior to the DRO application being submitted, the AI has established that limitation applies to a debt **and** the debtor has evidence that the debt is statute barred, then the debtor can choose not to list the debt in their DRO application.

The AI should be satisfied that the debt is statute barred and keep any evidence on the debtor’s file.

The issue of statute barred debts is not straight forward and limitation on debt enforcement is a complex area of law.

Section 251A (2)(a) of the Insolvency Act 1986 states that a qualifying debt is a debt that is for a liquidated sum payable immediately or at some certain future time. If a debt is statute barred then it is neither “payable immediately or at some certain future time” and therefore is not a qualifying debt.

Limitation periods for debts differ: All contract claims are barred after six years but claims under deed (i.e. mortgage shortfall debts) are barred after 12 years. To add to the difficulty if a debt is “acknowledged” in writing or a part-payment is made while the limitation period is running, then time starts to run again, thus potentially extending the life of the debt.

If the creditor has previously taken a debtor to court and obtained a judgment, the debtor will be unable to use the Limitations Act 1980 to dispute the debt. If the judgment is over 6 years old, the creditor may need the permission of the Court to enforce the debt.

Because there may be uncertainty as to limitation, the Insolvency Service recommends that all unpaid debts, including potentially statute barred ones, are scheduled in the Debt Relief Order, especially if the inclusion of this type of debt does not bring the total indebtedness to over £20,000.

If the debtor chooses to leave a statute barred debt out of the DRO application and the Official Receiver subsequently discovers that it was not statute-barred and, as a consequence, at the date of the DRO application the debts exceeded £20,000, the DRO will be revoked.

If a debtor knows that they have a statute barred debt but has no information about it and it does not appear on any credit reference reports, an application can proceed without including the debt.

In any scenario where statute barred debts are not scheduled in a DRO application, a note should be included in the application, explaining that there are statute barred debts detailing the sum if known or explaining the quantum is unknown, or an email sent to the DRO Team explaining this before the application is submitted.

In summary, debts barred by limitation or are otherwise unenforceable, do not need to be included as qualifying debts for the purposes of a DRO and if they are not listed will not count towards the £20,000 debt limit.

As limitation and enforceability can be such an uncertain area, the general rule should be: if in doubt, list it.

**Statute Barred Debts for Benefit Overpayments**

Section 108 of the Welfare Reform Act 2012 has clarified that the definition of 'action' in the Limitation Act 1980 does not apply to recovery under social security and tax credits legislation by means other than proceedings in a court of law.

Therefore, as the benefit provider does have a remedy to enable recovery from future benefits or deduction from earnings, the debt cannot be excluded from the DRO. (It is not barred by limitation).

Of course the effect of the DRO (subject to the overpayment arising from fraud) is to prevent further deductions being made during the moratorium period.

**Stock**

Stock held by a debtor will normally be an asset for DRO purposes.

The Official Receiver will, however, consider such matters on a case by case basis. For example, if the debtor ordered items specifically for a client, (for instance; an Avon representative ordering for customers) this may be excluded as an asset. However, if the debtor ordered stock on a speculative basis and that stock was worth more than the asset parameter, the debtor may be ineligible for a DRO.

**Student Grant**

Overpayment of a student grant or bursary is a qualifying debt for DRO purposes even if the course period in which the grant was calculated is not completed in full as long as debt is a liquidated sum and repayment has been requested

The income from a grant can be assessed over the nine months of studying or for the full year.

**Student Loans**

Student loans made under the Teaching and Higher Education Act 1998 are excluded debts for DRO purposes. The amount of the loan must be scheduled in a DRO but it does not count towards the £20,000 limit.

Even if a DRO is made the loan remains the responsibility of the debtor to repay within the terms of the agreement.

Student debts sold to a commercial 3rd party remain excluded debts.

Monies received from a student grant or loan is income and should be apportioned across the months it relates to.

If a debtor requests a student loan they should inform the lender of their intention to apply for a DRO and ask the lender to provide written confirmation that they granted the loan in full knowledge of the insolvency.

Where they already have a student loan the debtor should inform the lender of the DRO when applying.

24+ Advanced Learning Loan. The organisation managing the loan is Student Finance England, operating on behalf of Student Loans Company. This is a new variation of a student loan, but it is still classified as an excluded debt.

Maintenance loans are treated in the same way as student loans.

**Student Accommodation Fees – see** [**educational liabilities**](#1664s55)

**Sure Start Maternity Grant – see** [**maternity grant**](#32hioqz)

**Surplus Income - See** [**Reasonable Domestic Needs**](#nmf14n)

**Suspended Custodial Sentence - non payment of Council Tax**

If the applicant is subject to a suspended custodial sentence due to non payment of council tax, the debtor can apply for a DRO and schedule the unpaid council tax as a debt. If the DRO is approved the debtor can apply to court to request that a stay of criminal proceedings on the grounds the debtor’s liability will be discharged under the terms of the DRO.

**Taking Control of Goods**

An Enforcement Agent who has entered premises (for example to collect council tax under a liability order or with a warrant of control from the court) may immediately take goods to sell in order to settle the debt. However, the Enforcement Agent will normally enter into a controlled goods agreement. If this happens, the debtor will remain in possession of the goods but be required to make repayments to the Enforcement Agent to prevent them from returning to seize the goods.

Pre DRO - Once a controlled goods agreement has been entered into, the debt will become secured but only for the value of the goods.

Details of the debt should be entered in the DRO as a secured creditor to the value of the goods and unsecured for the balance. Monthly payments may be an allowable expense if the goods are for the basic domestic needs of the debtor and their family.

Where the value of the goods is not known the debt should be listed as unsecured.

During moratorium period - If the debt has been scheduled in the DRO and debtor signed the controlled goods agreement after approval of the DRO, the DRO supersedes the controlled goods agreement and the Enforcement Agent has no remedy.

The goods listed in the controlled goods agreement are not always classed as an asset. Items that would normally count as basic domestic need are not considered as an asset. However, items that do not count as basic domestic needs (jewellery and 50” plasma TV etc.) would count as an asset.

Payments can continue if they represent a reasonable domestic expense.

**Tax & Self Assessment**

Any tax liability which has been determined by return or assessment, (even if that assessment is disputed by the debtor) at the date of the DRO is a qualifying debt.

**Time Shares**

When attempting to value an interest in a time share the AI should consider the following:

* When was the time share purchased?
* How much was paid (debtor to provide evidence)?
* How was the time share purchase financed (cash or credit agreement)?
* If purchased by way of finance agreement, balance outstanding.
* What are the outstanding maintenance charges, if any?
* Has the time share been marketed for sale?
* When and with whom (debtor to provide evidence)
* Are the time share trustees prepared to purchase back the time share (debtor to provide evidence)
* If the debtor can provide evidence of similar timeshares with values this would be useful in determining whether any intrinsic value exists

**Tithing/Tithe payments**

Tithe payments are regular monthly payment from income to a charity or a religious organisation/place of worship. This expenditure should not be funded at the expense of creditors so should not be included as an allowable expense.

Debtors may continue to make these payments,however, they should be funded from their surplus income.

**Tobacco**

Since the implementation of DRO2, there has been some discussion regarding whether tobacco costs can be included within household expenditure. Nothing has changed regarding how we expect intermediaries to calculate monthly disposable income. Most are using the Standard Financial Statement, so as long as you are satisfied that the debtor is within the relevant spending guidelines then tobacco related costs can be included. If and when there is to be a proposed change to this policy, there will be consultation on the subject.

**Tomlin Order**

A Tomlin Order is a Court Order under which court action is stayed, on terms which have been agreed in advance between the parties and which are included in a schedule to the order. As such, it is a form of consent order. The order permits either party to apply to court to enforce the terms of the order, avoiding the need to start fresh proceedings. A debt subject to a Tomlin Order will still be a qualifying debt fro DRO purposes.

**Tools of the Trade**

The legislation states “In determining the value of a debtor’s property the Official Receiver may disregard such tools, books and other items as are necessary to the debtor for use personally by him in his employment, business or vocation.”

To qualify the debtor must either be currently employed or actively looking for employment in a role requiring the use of those tools. If the debtor is unemployed, the AI must be satisfied that the debtor has a reasonable expectation of returning to work.

Should the debtor not have a reasonable expectation of returning to work, the tools may be considered an asset by the Official Receiver.

[Vehicles](#2dlolyb) are not tools of the trade.

**Trade Debts**

If the debtor wishes to list what looks like trade debts, the AI should check whether or not they are trading or have ever traded. If they have, details should be entered in the DRO application. If the answer is no, they will need to send in a supporting email at the time of submission explaining the inclusion of the trade debt.

**Truancy fines –** look under [school fines](#37m2jsg)

**Trust Funds**

Trust Funds for the benefit of the debtor are classed as assets. For the purposes of insolvency legislation ‘property’ includes money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property.

AIs should consider the level of debt, amount of money in the Trust Fund and when/how these funds can be accessed in deciding whether the debtor meets the DRO criteria.

**Trustee of a Charity**

Section 72 of the Charities Act 1993 disqualifies debtors subject to a DRO from acting as a trustee of a charity.

**Tuition Fees**

Tuition fees are qualifying debts for DRO purposes. Ongoing payments towards course fees are not usually an allowable expense but should be judged on a case-by-case basis.

**TV Licence**

If someone has a TV, legislation requires that they have a TV Licence. Any arrears owed should not be scheduled in a DRO as, by law, payments must be made and brought up to date.

Any outstanding debt is not discharged at the end of the moratorium period.

Payments towards arrears are an allowable expense.

**TV Prepayment Meters for Household Items**

The AI should determine if the agreement is HP or a Loan and the usual Loan or HP guidance will apply.

**Undervalue Transactions**

A DRO application may be affected if the debtor has given away or sold for less than its true value any property in the 2 years prior to the DRO application

For further information, see [Annex B](#4bvk7pj)

**Undrawn Personal Pensions and Occupational Pensions – Also see** [**Pensions**](#4f1mdlm)

[**https://www.gov.uk/government/news/undrawn-pension-entitlements-summary-of-guidance-for-insolvency-practitioners-and-debt-advisors**](https://www.gov.uk/government/news/undrawn-pension-entitlements-summary-of-guidance-for-insolvency-practitioners-and-debt-advisors)

With effect from 1 April 2015, individuals aged 55 or over with a personal pension can withdraw all or part of their pension as a lump sum.  If a debtor has a pension fund and is 55 or over the intermediary will need to consider if they are eligible for a DRO.

The AI will need to establish the following:

* The age of the debtor
* The total value of the personal pension fund
* The total amount of their liabilities

If the debtor is 55 (or will be by the end of the moratorium period) and their total pension fund is in excess of their total liabilities, the AI should refer to the DRO Team.

If the AI has established that the pension benefits are less than total liabilities, any potential DRO applicant can be advised that a DRO application will not be affected by the personal pension.

**University Accommodation Fees – see** [**Educational**](#z337ya) **Liabilities**

**Unliquidated Debt**

An unliquidated debt, is a debt for which the amount owed cannot be determined from the terms of the contractual agreement or another standard.

Example: if the debtor has a mortgage or charge against the property, the exact amount of the liability is not known – i.e. there may or may not be a shortfall in the property sale.

Unliquidated debts are not qualifying debts.

**Utilities**

Debtors must continue to pay for ongoing commitments, such as rent and utility bills during the period of the DRO, and will be responsible for any debts that are incurred after the DRO is approved.

These will be allowable expenses for DRO purposes.

Utility companies often use prepayment meters to collect arrears by recalibrating their meters. If a debtor has scheduled a utility bill in their DRO application, the provider can no longer collect the arrears and debtors should ensure that their provider recalibrates their meter to stop the collection of arrears.

**V5C document**

The V5C document (also known as the V5 form or logbook) records the Registered Keeper (or Keepers) of the vehicle. Legally, that's the person registering and taxing the vehicle, not necessarily the owner. Normally the owner and registered keeper will be the same, but there are occasions where they might differ.

**VAT Debts**

A VAT debt for a known amount is a qualifying debt. An invoice or demand for payment must have been received.

Please ensure VAT numbers are listed as the creditor reference.

VAT-registered businesses:

* must charge VAT on their goods or services
* may reclaim any VAT they’ve paid on business-related goods or services

If the debtor has a VAT-registered business they must report to HM Revenue and Customs (HMRC) the amount of VAT they’ve charged and the amount of VAT they’ve paid. This is done through their VAT return which is usually due every 3 months.

HM Revenue and Customs (HMRC) record a ‘default’ if:

* they do not receive the debtor’s VAT return by the deadline
* full payment for the VAT due on the debtor’s return has not reached HMRC account by the deadline

HMRC may enter a 12-month ‘surcharge period’ if the debtor defaults. If they default again during this time:

* the surcharge period is extended for a further 12 months
* they may have to pay an extra amount (a ‘surcharge’) on top of the VAT they owe

If they submit a late return, they will not have to pay a surcharge if they:

* pay their VAT in full by the deadline
* have no tax to pay
* are due a VAT repayment

The debtor has to submit a final VAT Return when they cancel their VAT registration. They can usually do this online using their VAT online account.

HMRC will send them a paper version to complete if their registration is cancelled because they are insolvent.

**Vehicles**

[Adapted vehicles for disabled use](#1ci93xb)

Motor vehicles include a car, motorbike, scooter or any other form of motorised vehicle up to a value of £1000 do not count as an asset for DRO purposes.

Valuations should take account of the condition and mileage of the vehicle.

Parkers: [www.parkers.co.uk/cars/prices](http://www.parkers.co.uk/cars/prices)

Parkers provide acceptable free valuations for most registered cars. If a valuation is not available on Parkers, an AI can accept the debtor’s own valuation.

Useful sites:

Auto Trader: [www.autotrader.co.uk/car-valuation](http://www.autotrader.co.uk/car-valuation)

Regit: [www.regit.cars](http://www.regit.cars)

Confused.com: [www.confused.com](http://www.confused.com)

RAC Cars: [www.raccars.co.uk](http://www.raccars.co.uk)

HPI Valuations: [www.hpivaluations.com](http://www.hpivaluations.com)

What Car?: [www.whatcar.com](http://www.whatcar.com)

Classics World: [www.classicsworld.co.uk](http://www.classicsworld.co.uk)

Autotrader also provide valuations for vans, motorbikes, motorhomes, caravans, trucks and farm and plant vehicles.

RAC Cars also provide valuations for motorbikes.

The DRO Team do not accept valuations from webuyanycar.com; wewantanycar.com or similar sites as their valuations do not reflect the true value of vehicles.

If the debtor owns more than one vehicle please see [Multiple Vehicles](#1hmsyys).

Vehicles are not classed as [tools of the trade](#4k668n3).

Other Forms of Transport:

If a debtor’s sole means of transport is other than a motor car or motorcycle it will be treated as a vehicle and not an asset. However, if the debtor also owned a motor car or motorcycle, then it may be regarded as an asset.

Other forms of transport may be:

Bicycles

Electric bicycles

**Victim Surcharge**

A Victim Surcharge is a penalty applied by the Court to people convicted of offences, in addition to a conditional discharge, a fine, a community or custodial sentence, to provide compensation to the victims of crime.

An unpaid victim surcharge is an excluded debt for the purposes of a DRO.

**Voluntary Maintenance Payments**

An individual should be allowed to make provision for the upkeep of their children.

The debtor is expected to regularise their affairs prior to applying for a DRO. If they are making voluntary maintenance payments, they ought to ensure that they contact the Child Maintenance Service (CMS) or Child Maintenance Options service in order to ascertain whether the sums that they are paying are in accordance with current assessment levels and, wherever possible, obtain written confirmation.

For the debtors own protection there should be a written agreement between both parties acknowledging and agreeing to the voluntary monthly instalments. The debtor may also want to consider regularising the position, by seeking legal advice and perhaps the preparation of a written agreement detailing how the voluntary contributions have been arrived at.

Ultimately it is for the AI to satisfy them self that the voluntary maintenance payments being made are in line with what would be expected as from a CMS assessment, or an order under matrimonial proceedings, and the debtor should be expected to provide some documentary evidence to support the basis of the voluntary arrangement.

The onus is on the debtor to satisfy the AI that any voluntary payments are not to the detriment of their creditors and do not exceed expected assessments under the formal channels available.

**Wage Advance**

See [Pay Advance](#2grqrue)

**Warrant of Execution**

If a creditor has obtained a judgement against a debtor and the debtor defaults on payment, the creditor may be entitled to apply to court to obtain a warrant of control. This gives the creditor the right to seize the property of the debtor. However, until the warrant is executed (i.e. the Enforcement Agent has entered a controlled goods agreement) the debt is not secured.

**Water Rates**

The treatment of unpaid water rates will depend on the charging regime operated by the provider.

Where water is supplied under a charging scheme that is rate-based rather than metered, the charging scheme may provide that any standing charges are due and payable in advance, generally on 1 April each year. In these circumstances the whole of that year’s charge, or unpaid balance at the date of the DRO, may be scheduled in the application, in addition to any arrears from previous periods.

It is the responsibility of the AI and debtor to establish the water company’s terms and where the full amount for the year may be scheduled, it should be scheduled.

The Insolvency Service are aware that as a result of legal advice received by various water authorities and with the approval of OFWAT, many water authorities have now amended their charging regimes to include an “insolvency clause” which they state allows them, upon the making of a DRO, to apportion their water charges pre and post order.

AIs should, where appropriate, continue to schedule the full years water charges in a DRO application, however the debtor should be informed that an insolvency clause may exist within a water authorities charging regime and if that is the case, then the water authority may apportion their charges and issue a revised water bill for services provided subsequent to the making of the DRO.

Debtors may wish to take legal advice should the water company apportion the bill in accordance with their insolvency clause.

Charges for metered supplies are treated differently as the meter should be read at or about the date of the DRO and the amount to be scheduled in the DRO based on that reading. New charges will become payable as water is used.

**Wedding and Engagement Rings**

AIs should look at the value of wedding and engagement rings when considering DRO eligibility.

An engagement or wedding ring does not become the property of the debtor until the marriage or civil partnership has taken place. Until then, it remains the property of the individual that purchased it.

There are a number factors to consider, including:

• Has the marriage/civil partnership taken place? (if not yet married then may not be an asset)

• Who provided the funds for the purchase and obtain evidence?

• How much did the ring(s) cost?

• What is the second hand/resale value? (Ask debtor to obtain valuation if necessary)

• Does the value of the ring(s) combined with any other assets exceed £1000?

**Witness protection**

If the client is part of a witness protection programme there is a special scheme in place. Witness protection will liaise with the AI completing the DRO application and the manager of the DRO Team.

**Write off debt**

To write off a debt the creditor cannot just state that the debt has been written off. A letter from the creditor must be received writing off the debt and clearly stating it will not be pursued.

If the applicant is in possession of correspondence from a creditor stating such phrases, they can choose to omit the debt from the DRO application. However, if it is later determined that the debt was not written off, they will remain liable to repay that debt. If the omitted debt takes the total level of debt over the £20,000 parameter, the DRO may be revoked.

**Annex: A**

**Hire-purchase and Conditional Sale agreements**

If a debtor decides to omit future obligations under an up to date hire purchase or conditional sale agreement from their DRO application, the AI will need to determine whether the future payments towards that agreement are an allowable expense.

As an item of expenditure it would only be an allowable expense if the items which are deducted from income are those necessary to satisfy the *“basic domestic needs of the debtor and his family”*. Where an item on HP falls within the items excluded by the legislation [see [Hire Purchase Agreements](#3as4poj)] then payments in respect of the debt excluded from the DRO might be allowed.

Where the payments are in respect of a vehicle then the debtor must demonstrate that the vehicle would be exempt (i.e. the residual value of the vehicle at the date of the application was less than £1,000 or the vehicle has been adapted for the use of the debtor as a disabled person). Therefore if a debtor has a vehicle that is subject to hire purchase and the liability is not scheduled in a DRO application because there were no arrears, then it would not be an allowable expense if the value of the vehicle exceeds £1000.

AIs should note that a debtor who has multiple HP agreements which consume a significant proportion of their income, who elects to exclude those debts from a DRO application may be considered to be abusing the process and the application may either be refused, or revoked.

The Official Receiver appreciates that this is a complex area and the following scenarios are provided to assist AIs.

**Example Scenarios:**

**Debtor has arrears on a hire purchase agreement.**

**Action:** The debtor can either:

1. schedule the whole liability in the DRO application and this would count towards £20K liability parameter, or
2. schedule just the arrears in the DRO application and choose to exclude the future contractual liability from the DRO application, in which case the arrears will be a specified qualifying debt and count towards the £20K liability parameter and the excluded element of the HP liability will not be a specified qualifying debt and will not count towards the £20K liability parameter. **Inform DRO Team** about any liability appearing on the debtor’s Experian report that the debtor has chosen to exclude.

**Outcome:**

1. Whole debt is a qualifying debt and one that would be discharged at the end of the moratorium period; debtor unable to continue payments and creditor’s only remedy would be to seek recovery of their goods.
2. Scheduled arrears are a qualifying debt and one that would be discharged at the end of the moratorium period. The debtor would not be permitted to make payments in respect of the arrears. The excluded element of the liability is not a specified qualifying debt and the debtor will remain liable. If the goods in question are for the debtor’s basic domestic needs the future repayments will be an allowable expense.However it is likely that if arrears are scheduled in a DRO application the debtor will be in default and the company may seek recovery of their goods.

**Debtor has hire purchase agreement with no arrears.**

**Action:** The debtor can either:

1. schedule the whole liability in their DRO application and this will count towards £20K liability parameter, or
2. choose to exclude the liability from the DRO application in which case it will not be a specified qualifying debt and not count towards the £20K liability parameter. **Inform DRO Team** about any liability appearing on the debtor’s Experian report that the debtor has chosen to exclude.

**Outcome:**

1. Debt is a specified qualifying debt and one that will be discharged at the end of the moratorium period. Debtor unable to maintain payments and creditor’s only remedy is to seek recovery of their goods.
2. Debt is not a specified qualifying debt and the debtor will remain liable. If the goods in question are for the debtor’s basic domestic needs the repayments will be an allowable expense.

For example, payments in respect of a fridge or cooker will be allowed but payments in respect of an “ultra HD” plasma screen television should not.

**Debtor has hire purchase agreement with no arrears for a motor vehicle worth £3000.**

**Action:** The debtor can either:

1. schedule the whole liability in their DRO application and this will count towards £20K liability parameter, or
2. choose to exclude the liability from the DRO application in which case it will not be a specified qualifying debt and will not count towards the £20K liability parameter. **Inform DRO Team** about any liability appearing on the debtor’s Experian report that the debtor has chosen to exclude.

**Outcome:**

1. Debt is a specified qualifying debt and one that will be discharged at the end of the moratorium period, Debtor unable to maintain payments and creditor’s only remedy is to seek recovery of their goods.
2. Debt is not a specified qualifying debt and the debtor will remain liable. As the vehicle in question is worth in excess of £1000 the repayments on the agreement will **not** be an allowable expense. The AI should satisfy them self that payments are being maintained by a third party prior to submitting the DRO application

**Debtor has hire purchase agreement with no arrears for a motor vehicle worth £900.**

**Action:** The debtor can either:

1. schedule the whole liability in their DRO application and this will count towards £20K liability parameter, or
2. choose to exclude the liability from the DRO application in which case it will not be a specified qualifying debt and not count towards the £20K liability parameter. **Inform DRO Team** about any liability appearing on the debtor’s Experian report that the debtor has chosen to exclude.

**Outcome:**

1. Debt is a specified qualifying debt and one that will be discharged at the end of the moratorium period. Debtor unable to maintain payments and creditor’s only remedy will be to seek recovery of their goods.
2. Debt is not a specified qualifying debt and the debtor will remain liable. As the vehicle in question is worth less than £1000 the repayments on the HP agreement **will** be an allowable expense.

**Annex B**

**Antecedent Transactions**

**Guidance in relation to preferences and undervalue transactions**

**What are antecedent transactions?**

The word "antecedent" is defined as "going before". In a very basic form, the provisions of the legislation relating to antecedent transactions allow the Official Receiver to decline a Debt Relief Order (DRO) application when it was inappropriate, unfair or wrong for the said transaction(s) to take place.

If something has been done in the run-up to insolvency which results in one creditor being treated more favourably than the others, or where a person other than a creditor benefits from the actions of the debtor and the creditors suffer as a result, the Official Receiver may decline an application for a DRO. For example, where one or more debts have been paid or substantially reduced in preference to others.

One overriding principle of insolvency proceedings is that, once commenced all creditors are treated equally and fairly. The principle of antecedence is a way of extending thatprinciple of equality back two years before the commencement of those insolvency proceedings.

Once identified, the Official Receiver may conduct an inspection of the debtor’s paperwork and/or banking records and may wish to obtain confirmation of the events that took place from creditors, suppliers or other persons capable of giving relevant information.

In addition to considering the period when the preference was given and that a creditor or guarantor has benefited, it is also necessary to consider the context of the transactions and the debtors intentions at the time, for example whether they intended to put a person in a better position than they would otherwise have been in during the normal course of the debtor’s insolvency. It is not necessary for the intention to put one person or group of people in a better position to be the dominant intention of the debtor.

These transactions are defined in schedule 4ZA to the Insolvency Act 1986 at paragraphs 9 & 10.

**What is a preference?**

The relevant sections define that giving a preference is the doing of anything by an individual or the suffering by an individual of anything which has the effect of putting either one of their creditors or someone who is a surety or guarantor of one of their debts in a position which, in the event of the individual having a DRO approved, will be better than the position he would have been in if that thing had not been done.

An example of giving a preference may be the payment in full of a creditor, where if that had not been done, the individual would have only been able to pay a small percentage of that debt, by ensuring that a pro rata distribution was made where all creditors are treated equally. That creditor is clearly better off, as is any guarantor of that debt.

**Effect of pressure by creditor(s)**

When an individual has made a preference by paying a debt because of threats by a creditor to commence legal proceedings for a recovery, it may be construed that the intention was to eliminate that threat and not to prefer the creditor.

However, pressure from creditor(s) is not necessarily a good defense where it was not the only motive. Even when an individual was subject to a court order, the preference may be challenged especially if it is obvious that the individual failed to defend the proceedings to the advantage of the creditor. As regards suspect transactions, consideration should be given as to whether the intention was to maintain good relations with a particular creditor (e.g. a bank or supplier). The motives of preferring a creditor and maintaining good relations can co-exist with the latter being evidence of the former.

**Types of undervalue transaction**

The Insolvency Act defines transactions made by an individual which may be defined as an undervalue transaction.

Firstly, there is a gift or transaction for which the individual received no consideration. This appears to be straightforward to understand, where no benefit has been derived from the payment or transaction, but it is necessary to know whether any indirect benefit has been derived or consideration less that market value.

Secondly, there is a transaction which the debtor has entered into in consideration of marriage or the formation of a civil partnership.

Thirdly there is a transaction whereby the individual has received inadequate consideration. It is necessary to establish what consideration was received and what ought to have been received and to decide whether the discrepancy in value is "significant". There is no guide in deciding if the disparity is significant. As far as DROs are concerned, it is provided that a transaction in consideration of marriage is to be regarded as a transaction at an undervalue.

**Debt Relief Orders and Antecedent Transactions**

When assessing a debtor’s affairs with a view to determining a DRO application, each case will be judged on its own merits, on a case by case basis. To assist AIs in this area, there follows a list of the types of questions that should be considered and will possibly be asked by the DRO Team once an application has been submitted.

Debtors should be encouraged to retain all documentary evidence that might support their responses and also be aware that the Official Receiver will thoroughly investigate all such matters, before determining an application, and may require sight of this documentation.

**Preferences**

* Was the debtor insolvent at the time the payments were made?
* Why did the debtor make the payments?
* To whom did they make payments?
* Dates the payments were made and amounts?
* Was there any agreement drawn up with respect to the payments?
* Why didn’t the debtor distribute the funds to all of their creditors pro rata?
* Was there any creditor pressure?
* If a preference has been made to an associate (relative) is there any documentary evidence that the funds repaid, were in fact owed?
* How did the debtor obtain the funds in order to make the payments i.e. what was the source of the funds?

**Undervalue Transactions**

* Was the debtor insolvent at the time of the transfer?
* Why did the debtor transfer the property in question?
* When did they transfer the property and to whom?
* Was it valued at the time of transfer and if so provide documentary evidence?
* What was the value of the property transferred and any evidence to support this valuation?
* How much consideration, if any, did the debtor receive and evidence to support this?
* What has the debtor done with any funds received?
* Did the debtor seek legal advice in relation to the transfer?
* Does the debtor retain any interest in the property in question?