

Debt Relief Orders and Pensions

Summary of Responses

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Introduction

In the consultation document¹, the previous Government set out how the early evaluation of the Debt Relief Order (DRO) regime suggested that there is a group of people who would otherwise be suitable for a DRO but for the fact that they have a future pension right that is both small and still some years away from coming into payment. Currently such debtors would need to access bankruptcy to deal with their indebtedness, and for many the costs of bankruptcy were prohibitively high, leaving them with no means of debt relief.

There were 47 responses to the consultation. Respondents included existing (and applicant) Competent Authorities, individual CAB offices, others in the debt advice sector, organisations representing the pensions industry as well as creditors and the insolvency practitioner sector. The Government thanks all who responded and a full list of respondents is attached at the end of this document.

The purpose of this document is to provide a high level overview of the main points raised by stakeholders as part of the consultation. Given the large volume of responses received, it has not been possible to include in this summary every point raised, or to mention every respondent who raised each issue. For more detail, including individual respondents' views and greater discussion of the issues, we are publishing in parallel with this summary all the non-confidential responses received. These can be found on The Insolvency Service website².

Executive Summary

The consultation of 23rd March 2010 asked for views on five options: no change; specifying a minimum time period between the DRO and the receipt of a pension (e.g. 5 years); specifying an allowable amount of pension value (e.g. £1,000); specifying that the pension has to be an HMRC 'approved' pension³; or a combination of these.

The style of the responses varied greatly and some respondents specifically answered all the questions posed in the consultation, others answered some of the questions or were more narrative in nature and also took in wider issues.

Respondents from all stakeholder groups generally agreed that the eligibility criteria should be amended: debtors with pensions should not be denied access to the DRO scheme. Many respondents felt that the existing provisions were out of line with the equivalent position in bankruptcy, where rights to HMRC approved pensions are retained by the debtor. However there was less consensus on the precise detail of the amendments that should be made.

¹http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_register/DROconsultationComplete.pdf

² <http://www.insolvency.gov.uk/>

³ Approved pension arrangements are defined in section 11(2) Welfare Reform and Pensions Act 1999.

Generally creditor responses stressed that any proposed changes should include protection from potential abuse and that this could be achieved by setting a time and/or fund cap on pension funds that might be excluded. However there was less consensus on where such caps should be set.

Whilst some respondents valued the information provided in the consultation on those currently being excluded, there were some concerns raised that the information/data included in the consultation was insufficient. Some respondents suggested further (empirical) research so as to identify the full extent of the issue and provide more information on the number of debtors currently being excluded, as well as more information on the sizes of the pension funds involved in individual cases.

Most respondents felt that if the pensions were to be assessed for a value/time cap, the approved intermediaries should obtain information from a pension statement that was less than one year old. Respondents also discussed the level of future income generated from pensions funds of varying sizes.

HMRC approved/non-approved schemes

Some respondents made it clear that non-HMRC approved schemes are not used by the type of debtor expected to meet the DRO eligibility criteria (low levels of disposable income, assets and debts). The Pensions Management Institute response indicated that non-approved schemes were “Typically.... top up employer funded arrangements made available only to high earning executives”. The Society of Pension Consultants response set out “We consider it extremely unlikely that an individual, who is a member of a non-approved scheme (almost invariably highly paid senior employees), would be seeking access to a debt relief order”.

Alphabetical list of respondents

BBA
Bradford and Airedale CAB
Bristol Debt Advice Centre
Carlisle and District CAB
CCCS
Christians Against Poverty
Citizens Advice
Civil Court Users Association
Consumer Financial Education Body (CFEB)
Department of Enterprise Trade and Investment (Northern Ireland) (DETINI)
Dorchester and District CAB
East Midlands Housing Association
East Yorkshire CAB
Esher and District CAB
Exeter CAB
Felixstowe CAB
Finance and Leasing Association
Gateshead CAB
Gloucester and District CAB
Hambleton CAB
Harrogate CAB
HSBC
Institute of Credit Management (ICM)
IPA
Kennet CAB
Luton CAB
Money Advice Trust
North Devon CAB
North East Doncaster CAB
North Norfolk CAB
OFT
Office of the Pensions Ombudsman
Paymex Limited
Pensions Management Institute -PMI
PWC
Rhondda Taff CAB
Richmondshire CAB
Rushmoor CAB
RSM Tenon
Society of Pension Consultants
South Lakeland CAB
South Staffs CAB
Stratford upon Avon and District CAB
The Royal British Legion
Think Money Group Limited
Winchester CAB
West Northumberland CAB

Annex A - Analysis of Responses

There were 47 responses to the consultation and these were spread through:-

Sector	Number of responses
Advice sector	34
Creditor sector	5
Insolvency practitioners/Recognised Professional Bodies	3
Pensions sector	3
Other	2
TOTAL	47

Respondents included existing (and applicant) Competent Authorities, individual CAB offices, others in the debt advice sector, organisations representing the pensions industry as well as creditors and the insolvency practitioner sector. Below is a brief summary of responses to the individual questions in the consultation document.

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

All respondents who answered this question recognised that the current asset limit excludes debtors with future pension rights and that this was denying help to many vulnerable debtors.

Citizen's Advice in their response set out "Our evidence indicates that a significant number of the people affected by the pension eligibility criterion have worked in the public sector, for example local government or the NHS, or have served in the in the armed forces. Citizens Advice currently runs a project funded by the Royal British Legion and the Royal Air Force Benevolent Fund which provides benefit and money advice to current or ex-service personnel. CABs involved in this project report that their clients are often unable to access DROs."

The British Bankers Association in their covering letter set out "We fully support the principle of extending the eligibility criteria for DROs to accommodate people with financial difficulties that are currently unable to access a DRO due to small future pension assets. We believe that if there is no prospect of any repayment within a reasonable period of time, people with low levels of unmanageable debt should have access to appropriate debt relief such as a DRO, providing they meet the eligibility criteria ".

However some respondents also flagged up that any change to access criteria should also ensure that it protected against any potential abuse of the system. The British Bankers Association in their covering letter also set out *"However, we require more information in order to agree to a solution that is fair, but at the same time is not prone to potential abuse."*

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

Those respondents that specifically answered the question were of the view that the fund should be valued at the time of the DRO application.

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

The advice sector and IP sector generally thought pension funds should be totally excluded no matter what the value, unless the debtor could start receiving income from those funds during the moratorium period.

The CCCS in its response set out that it “...does not believe that introducing a time cap on the inclusion of pension funds in DRO asset calculations is a viable option”

However creditors generally felt that the eligibility criteria should have some form of time/amount cap, for example the Civil Court Users Association set out “*Provided that the pension cannot be accessed for a specified period of time and are of a certain value then it does not need to be considered as an asset for the purposes of DRO calculations.*”

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

Most advice providers opposed a time/amount cap, for example the Money Advice Trust set out “*The current surplus income threshold for a DRO is set at £50 and this along with the assets restrictions acts as an effective filter to ensure that DROs meet their purpose in providing debt relief for those individuals who are unable to access any form of debt relief due to the costs involved in seeking relief via bankruptcy.*”

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

Generally creditors considered 5 years was appropriate, for example the British Bankers Association set out “*Intuitively, a 5 year period seems reasonable*”. The minority of advice providers who did not oppose a time cap also suggested 5 years.

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

Generally advice providers did not support a time/amount cap and felt any such caps (especially) age could be discriminatory.

Only 4 respondents indicated an amount cap and these ranged from £15,000 to £50,000.

Citizens Advice recognised that some may have concerns about whether or not there had been any excessive contributions to the pension fund before the Debt Relief Order was made and suggested that where the pension funds exceeded £15,000 then investigations should be carried to ensure that there had been no excessive payments into the pension.

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

No one agreed with this amount.

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

Only one respondent agreed with this amount.

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

Only one respondent agreed this amount.

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

The advice sector generally opposed a fund/time cap. Most respondents who answered this question indicated that annual statements are generally available and that these should be used for valuation purposes. An example of this view is the Money Advice Trust response which set out “*As it is impossible to provide accurate assessments of future pension growth, we assume the most accurate and reliable figures for the pension fund will be as provided by the pension provider on the most recent annual statement.*”

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

Most respondents supported the view that only funds in HMRC approved schemes should be excluded, for example the Insolvency Practitioners Association set out “*Consistent with the provision in relation to bankruptcy,*

exclusion should be limited to approved pension arrangements and unapproved pensions otherwise excluded by Secretary of State regulations.”

As mentioned earlier some respondents made it clear that schemes that are not HMRC approved are unlikely to be used by debtors with little or no assets as such schemes are *“made available only to only high earning executives”*

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

In general the advice sector opposed using time/amount for example Citizens Advice set out that it *“does not support a combination of time caps and financial caps”*.

In contrast the creditor sector was more supportive of using such caps as illustrated by the British Bankers Association response which set out *“Yes – As mentioned previously, we support an option 5 solution as presented in the consultation document, which proposes a combination of time cap, financial cap and HMRC approved pension scheme status”*

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

Most respondents who answered this question considered that it was practical for the intermediary to do this work. However many did express the view that The Insolvency Service should prepare clear (internal) guidance for intermediaries for this aspect as illustrated by the response from the CCCS *“To be able to properly assess a person’s eligibility for a DRO, the intermediary would require full information about a debtor’s pension before submitting an application.*

The Insolvency Service must ensure that processes are in place to make the transfer of information between pension providers and intermediaries a swift as possible, so that DRO applications are not unreasonably delayed.

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

No respondents suggested an alternative way of checking pension details.

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

Of the few respondents that answered, most thought there was insufficient information contained in the initial impact assessment.