
**Vehicle ownership**

We deal with a huge number of enquiries about Debt Relief Orders (DROs), and we aim to provide clarification on tricky areas wherever possible. Last month our Spotlight subject was benefit premiums and DROs. This month, we'll provide guidance on vehicle ownership with a focus on DRO applications.

In most cases, the person who is the main driver of a car and the registered keeper will also be the legal owner. However, we often hear about situations where establishing ownership is not straightforward, for example where the funds to purchase the vehicle were provided by a third party, or where it was given as a gift. For these cases we need to apply some of the legal principles of gifts and trusts to reach a conclusion about vehicle ownership.

The following scenarios relate to vehicles, but the principles can be applied to any assets other than land.

**Gifts**

Where a car - or the money to purchase it - has been provided by a third party, the adviser will need to ask some key questions to establish whether their client owns the property they've received. If conditions have been attached, it may not be a gift at all, but given to the client on trust, for their use but without transferring ownership.

We'll aim to demonstrate when ownership may be transferred in the following three scenarios:

<u>Scenario 1</u>

The client received £5000 from her parents as a gift for her 30th birthday. She decided to use some of the money for a holiday and spent the remaining £3000 on a new car.

This money was a gift, because it came without conditions, and the client decided how she would spend it. This is known in law as a 'perfect gift'. The client's parents would have no legal grounds to ask for the money to be returned. The car belongs to the client.

Scenario 2

The client had her third child last year. Her car was no longer suitable for all three children including their child seats. The client's sister no longer needed her 7-seater, worth around £5000, so agreed she would purchase a small car and the client could have her larger car for as long as she needed it.

In a case like this, the adviser would have to establish the intention of the parties. A question we often suggest intermediaries ask is: *what would happen if your client sold the car – would the person who owned it originally expect the money, or could your client spend it on a holiday?*

If the answer is the latter, then it is a gift, and the property of the client. However, if the friend or family member would expect the car or the value of it to be returned, then it's likely to be held by the client on trust. In this situation, the client has certain responsibilities as the bailee (such as taking reasonable care of the car) but is not the legal owner, and selling it would constitute wrongful interference with goods[1]. The car remains the property of the original owner and does not have to be declared as an asset.

Scenario 3

The client's situation is as stated above, but instead of your client's sister providing use of her 7-seater as a favour, she offers the car to your client in satisfaction of a smaller debt.

If your client has given something in return for the vehicle then this is likely to constitute a contract. One thing of value in return for something else is known as 'consideration' and will make the agreement binding. The client's sister can't demand the car is returned, even if the debt that was written off is less than the value of the car[2]. If ownership of the vehicle was transferred in satisfaction of a larger debt the adviser should determine whether this must be declared as a transaction at an undervalue.

**Joint and beneficial ownership**

Only one owner can be registered as the keeper of a vehicle, but it may have been purchased using funds provided by two people. The funds may have been given as a gift, applying the principles outlined above. If the intention was to own the vehicle jointly, then the client may be a beneficial owner of a proportion of the vehicle.

Where land is jointly owned there is a substantial body of law to refer to for guidance about how the land, and any equity arising from it, is shared and how it will be divided if it becomes necessary to do so. The same is not true for other property, known in law as “chattels”. Where a vehicle is intended to be owned by 2 or more people, they should put their intention in writing where possible. This will constitute a fractional ownership agreement, and the DRO team at the Insolvency Service has confirmed they will accept this type of agreement as long as the facts correspond to the shares in the agreement.

Scenario 1

Your client purchased a car that both she and her husband use. She owned it when they met, but the client’s husband is the registered keeper, as he uses it more. The value of the car is £2000, but your client states the asset is owned jointly with her husband.

This is unlikely to constitute genuine joint ownership. If the funds were provided by the client, the fact that her husband uses the car does not give him proprietary rights over it. It’s very likely the husband’s use of the car is dependent on them remaining married. The car would be the client’s asset, and any transfer of a share by way of a fractional ownership agreement would be a transaction at an undervalue.

Scenario 2

Your client and her boyfriend have each contributed £900 to purchase a car worth £1800 that they both use. Your client is the registered keeper. They have evidence of a bank transfer in the sum of £900 from the boyfriend to your client 4 days before the car was purchased.

This is likely to constitute a fractional ownership agreement. Your client and her boyfriend could formalise this agreement by putting it in writing. This would not be a transaction at an undervalue, as the written agreement would be a reflection of the existing arrangement. Keep evidence of the purchase on file where possible.

We hope this information will help you to reach a conclusion about ownership. Deciding whether a vehicle is an asset is a judgment call many debt advisers will have to make at some point. Please contact the Specialist Debt Advice Service for a second opinion if you need to, and we’ll do our best to help.

1. *Morris v CW Martin & Sons Ltd* [1966] 1 QB 716
2. *Collier v PJ Wright Holdings* [2007] EWCA Civ 1329