

## Enquiry of the month

### **Considering some of the challenges for an Approved Intermediary**

We occasionally deal with DRO enquiries where the adviser is unsure how to proceed because of information in the DRO application that might be questionable or misleading. Sometimes, the adviser is unsure how to proceed due to the client's actions prior to submission of the application.

The competent authority (CA) for the approved intermediary (AI) will have their own specific guidance in how the deal with applications and what they expect from their AIs. The following legislation provides the rules:

- [Section 251U of the Insolvency Act 1986](#)
- [Rule 9.5 of the Insolvency \(England and Wales\) Insolvency 2016](#)
- [The Debt Relief Orders \(Designation of Competent Authorities\) Regulations 2009](#)

Here are some examples:

#### **A client who was given the option of a DRO decided to maximise their available credit with the intention of including the debt in their application**

The DRO A-Z guidance issued in February 2019 on page 16 states the following:

##### ***“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”*

[Schedule 4ZB](#) of the [Insolvency Act 1986](#) (IA 86) provides for Debt Relief Restrictions Orders and Undertakings (DRROs / DRRUs). Paragraph 2(h) states:

*“2 - The court shall, in particular, take into account any of the following kinds of behaviour on the part of the debtor*

*(h) incurring, before the date of the determination of the application for the debt relief order, a debt which the debtor had no reasonable expectation of being able to pay”*

The AI must make the client aware that their actions are likely to have consequences ([r.9.5\(3\)\(c\)](#) of the [Insolvency \(England and Wales\) Rules 2016](#) (IR 2016)), and that they must sign the ‘Debtor’s Declaration Statement’ which states the client is truthful in their application and also that their creditors will be informed of the application made.

The AI must take guidance and instruction from their CA who will consider if the application should be submitted against their advice, and if so, tick the relevant box

and note their reasons why. Alternatively, the CA may advise the AI to simply make a note of the client's actions. Should the AI or CA think it best to remain silent and only make the client aware of the consequences then the AI should be aware of subsection 8 and 9 of [s.251U](#) IA 1986, which states:

*“(8) An approved intermediary is not liable to any person in damages for anything done or omitted to be done when acting (or purporting to act) as an approved intermediary in connection with a particular application by a debtor for a debt relief order.*

*(9) Subsection (8) does not apply if the act or omission was in bad faith.”*

The AI and CA must use their discretion in establishing whether a client has manipulated the DRO eligibility process and question the client accordingly. Each application is dealt with on a case by case basis therefore assessed on its own merits, and all comments made by the AI will be taken into consideration by the Official Receiver (OR) when determining the application.

### **A client gave a family member £5,000 inheritance to ‘look after’ more than two years ago**

Where the client has said a family member is ‘looking after’ the £5,000, this implies that the money belongs to the client, therefore exceeding the £1,000 asset parameter – [r.9.5\(2\)\(b\)\(iii\)](#) of the IR 2016. The AI must not omit this fact from the application as this would be an omission in bad faith as per subsection 9 of [s.251U](#).

If the money was gifted to the family member this will not need to be noted as this transaction at undervalue occurred more than two years ago - [para.2\(c\)](#) of Schedule 4ZB of the IA 1986 confirms a court will consider a DRRU/O where a transaction at undervalue occurred 2 years before date of the determination of that application.

### **A client repaid debt to friend using backdated PIP**

Although backdated PIP can be disregarded, a preference has occurred as per [para.10](#), of Schedule 4ZA of the IA 1986, and this must be reported if it happened within two years prior to the application being submitted. Failure is an omission in bad faith as per subsection 9 of [s.251U](#) IA 1986.

In summary, the AI must ensure their client is eligible to apply for a DRO by meeting the criteria. Even if that criteria is not met, a client can still request their application be submitted. The application allows for any supplementary information which the AI might feel is relevant, and it is the OR who will make the final decision and if the client should be subject to a DRRU or DRRO.

Specialist advisers Steve Wilcox and Rachel Wilson wrote an article for QA titled ‘DRO - Approaching the grey areas’ which is an excellent resource available for all AI’s