

The image shows the top section of a document. It features a background image of a blurred office interior. Overlaid on this is a white rectangular box containing the text 'Specialist Debt Advice Service', 'Monthly ebulletin', and 'February 2019 edition'. Below this box, the word 'Shelter' is written in large, red, sans-serif font. At the bottom right, on a solid red background, the word 'Shelter' is written again in white, smaller, sans-serif font.

Specialist Debt Advice Service
Monthly ebulletin
February 2019 edition

Gambling and DROs

This month's Spotlight piece explores the effects of gambling on the different aspects of a DRO application.

Definition

There is no definition of gambling contained within insolvency legislation. The Gambling Act 2005 defines gambling in 3 separate forms:

- 1) Gaming as per s.6 - *'playing a game of chance for a prize'*
- 2) Betting as per s.9 – *'means making or accepting a bet on—*
(a) the outcome of a race, competition or other event or process,
(b) the likelihood of anything occurring or not occurring, or
(c) whether anything is or is not true.'
- 3) Participating in a lottery as per s.14 – this does not include participation in the National Lottery as this is governed by different legislation.

It is important to note that spread betting is also excluded from the Gambling Act 2005.

Expenditure towards gambling

It was confirmed in the Insolvency Service's December 2014 Newsletter that gambling is not considered as allowable expenditure and this includes expenses for leisure activities such as Bingo.

However, the DRO Team have said they are not concerned about what a client does with their £50 surplus. This means that during the moratorium, a client could continue to gamble using their surplus income.

If the client is receiving treatment for an addiction, they should be advised that if any treatment is not successful and if they continue to spend on gambling building up further debts after the DRO is made, then these would not be included in the DRO and the client would be liable to pay.

Gambling as a form of self-employment

When assessing eligibility for a DRO, all sources of income including proceeds of gambling from self-employment would need to be included in the DRO income section. Unfortunately, there is no set way to assess the amount of income that should be entered. However, the client should have accounts recording the profits they have drawn as income.

We have dealt with clients who are classed as self-employed and generate their income from betting. However, this is not gambling as defined by the Gambling Act 2005. One example of this would be entering into 'contracts for difference', which is a form of spread betting.

This issue was addressed in the IMA's Spring 2018 Quarterly Account Issue 48 Q&A on page 22.

Ultimately, the client should only be using the income generated from these transactions to continue entering into contracts. The income and expenditure should be reflected in a business statement. Profits can be recorded as income but there should be no gambling related expenses in the personal expenditure section of the DRO application.

A hurdle you may face, is determining whether the client actually meets the £50 surplus income limit for a DRO. You will find that most clients who are using spread betting as a way of generating income will present a fluctuating income and this can be problematic.

The DRO Team have said that where a client's income fluctuates frequently, a DRO may not be appropriate. Any increase in income must be reported in accordance with [s251J](#) of the Insolvency Act 1986 and the client must ensure they continue to meet the qualifying criteria.

Winnings

In addition to the above, s.251J also states a client must report any property they receive during the moratorium.

If a client obtains winnings over £1,000 during the moratorium, this will be classed as property and will be subject the property protocol. Exceeding the asset limit may lead to revocation of the DRO and the client would lose their £90 application fee.

A further issue for clients betting as a form of self-employment, is that although the profit can be recorded as income, winnings during the moratorium will be an asset. A concern held by the DRO Team is that, in some cases a client may be holding over £1,000 in their bank to fund their betting and this would mean they do not meet the eligibility criteria.

Duty to report

Unlike bankruptcy, the DRO application does not contain a 'Debt History' section and therefore, there is no duty to disclose that the debts were incurred as a result of gambling.

It is only when a client is investigated by the official receiver that they must disclose such information. This may happen if a creditor raises an objection to the application.

Debt Relief Restrictions Order (DRRO)

Where gambling has led to a client's debt situation it is possible that the Official Receiver (OR) will apply for a DRRO. Part 2(2) of Schedule 4ZB details the behaviours considered by the court when they are looking at an application for a DRRO, 2(2)(j) states the following:

'carrying on any gambling, rash and hazardous speculation or unreasonable extravagance which may have materially contributed to or increased the extent of his inability to pay his debts before the application date for the debt relief order or which took place between that date and the date of the determination of the application for the debt relief order;'

Therefore, if it is evident after investigation that gambling is the cause of the client's debt situation, this does not preclude them from applying for a DRO but they are likely to be made subject to a DRRO.

Please note, that when the OR is considering the client's conduct with regard to incurring debts which they are unable to pay and gambling, they are able to consider all behaviour dating back to 6th April 2009.

Summary

- You do not have to disclose gambling on the application
- Estimated self-employed income from gambling should be recorded on the DRO application
- Expenditure towards gambling is not an allowable expense
- Betting can be classed as a form of self-employment and income can be drawn from this
- Where a client presents fluctuating income due to betting a DRO may not be appropriate
- Winnings over £1000 will be subject to the lump sum protocol
- If gambling has led to a client's debt situation they may be made subject to a DRRO.