

Enquiry of the month

Can a benefit overpayment be statute barred and must these be scheduled in a DRO?

We have recently received an increased amount of enquiries requesting clarification as to whether benefit overpayments can become statute barred. Many of these enquiries relate to historic tax credit overpayments which have been passed to DWP to collect.

Advisers who have become aware of these overpayments have also asked, would these debts need to be listed in a DRO application if they are statute barred.

Advice and options

Benefit overpayments are subject to [s9 of the Limitation Act 1980](#) which imposes a six year limitation period for court action. Therefore, in accordance with s9, if the client has not made a payment or acknowledgement in six years, the overpayment should not be registered in the county court for enforcement.

However, for the purposes of the Limitation Act, [s108 of the Welfare Reform Act 2012](#) provides that an 'action' to recover a debt does not include any method of recovery other than court proceedings. Thus, deductions from benefits or earnings can be made for statute barred overpayments as these methods do not require court action.

For advisers, this means that if your client is receiving an on-going benefit award and is notified that deductions are going to begin for an old benefit overpayment unfortunately, your client will not be able to challenge the deductions on the grounds the overpayment is statute barred.

If there has been significant delay in recovery, advisers could assist the client to make a formal complaint on the grounds of maladministration. If recovery of the overpayment is going to cause hardship, this should be emphasised in the complaint. If the client is unhappy with the response received, they can ask their MP to escalate their complaint to the [Parliamentary and Health Service Ombudsman](#).

In a situation where the client is neither employed nor receiving benefits and they receive notification of recovery for an old benefit overpayment, advisers will need to explore whether the overpayment has been registered at the county court. If the debt has not been registered, the overpayment will be unenforceable. However, should the client subsequently claim benefits or begin employment, the overpayment could be recovered using deductions from benefit or earnings.

For general reference, limitations and recovery is covered on pages 42 and 43 of the [Benefit overpayment recovery guide](#).

Scheduling statute barred overpayments in a DRO

Unlike other statute barred debts, statute barred benefit overpayments must be scheduled in a DRO application. The DRO A-Z Feb 2019 edition states -

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.