

## Enquiry of the Month

### Debt relief orders and written off debts

We have received a number of enquiries regarding debts that creditors have agreed not to pursue the client for and whether these are qualifying debts for the purpose of a debt relief order (DRO).

Qualifying debts must be listed in the DRO application and will count towards the £20,000 debt limit. Knowing whether they must list a debt that has been 'written off' may be the difference between the client being eligible for a DRO or not.

### Qualifying debt

We have seen several enquiries where clients have requested that a debt is written off and the following sentences, or similar, have been used in the creditor's standard response letter:

*'...consider their customer still liable for the account but they have decided in the circumstances not to take any further action to recover'*

*'Your account is closed. We have reviewed this matter and decided to take no further action to recover the balance'*

Some letters further confirm that there is *'no obligation for the client to make any further payments.'*

Our opinion is that the use of wording like this, means the debt is no longer due immediately or at some certain future time and therefore, not a qualifying debt pursuant to [s251A](#) of the Insolvency Act 1986.

### Promissory estoppel

Our view is that a client who has been told that they will not be pursued for a debt, who then relies on that fact and applies for a DRO without listing such a debt, should be able to rely on the defence of promissory estoppel if a claim is made against them by a creditor in the future.

Promissory estoppel arises where one party to a contract states that they will not enforce their contractual rights. A clear representation that one party will not enforce part of the contract, can constitute a promise that the other party to the contract is entitled to rely on under the law of equity.

If the other party has then relied on that promise and changed their position as a result, the doctrine of promissory estoppel can be raised as a defence. The court may not make an

order for payment if they think it is inequitable for the party who made the promise to go back on their word and enforce their contractual rights.

You can read more about Estoppel in an article on page 10 -14 of the IMA Quarterly Account Issue 13.

### **DRO team's view**

We looked at the DRO A-Z guidance for the DRO team's approach to such debts. This states the following regarding write offs:

#### *"Write off debt*

*To write off a debt the creditor cannot just state that the debt has been written off. A letter from the creditor must be received writing off the debt and clearly stating it will not be pursued.*

*If the applicant is in possession of correspondence from a creditor stating such phrases, they can choose to omit the debt from the DRO application.*

*However, if it is later determined that the debt was not written off, they will remain liable to repay that debt. If the omitted debt takes the total level of debt over the £20,000 parameter, the DRO may be revoked."*

Our team recently sought clarification on this from the DRO team:

*"Promissory estoppel applies where the debtor has assurance from the creditor that the debt has been extinguished and relies on that statement. Like a statute barred debt the debt is not extinguished just, by virtue of their action or operation of law, the creditor is prevented from a legal remedy to recover the debt.*

*We agree that where the creditor has clearly indicated they do not intend to pursue a debt (and that statement is not qualified by the phrase "at this time") and/or stated the debtor has no obligation to pay, that the debt is not within the definition of a qualifying debt. I will advise our team of this decision and update the A-Z."*