Enquiry of the Month

Pension fund exceeding total level of debt and the implications for a DRO application

We received an enquiry from an adviser at Richmond Citizens Advice. This concerned a client who wished to apply for a debt relief order (DRO), but the adviser was concerned that the client had a considerable pension pot that she could access and the value of this was higher than her total debt.

The client's pension was an approved pension with Aviva with a value of approximately £52,000. The client could access the full pension now, by way of a lump sum or a regular draw down, but the client is choosing not to. The client is 58 and does not intend to retire for another 8 years. The client's debts total to £19,268.

The client's net monthly income is £2,191, and her disposable income is £5.98 per month. The adviser was unsure how much the client / their employer was contributing to their pension each month, but this is highly unlikely to be enough to make back the amount it would cost to repay their debts within the next 8 years. The adviser was unsure what the fees would be for drawing the pension, but the draw down would be subject to tax as the client used the 25% tax-free draw down some time ago.

ADVICE:

We advised that as the pension is approved and undrawn, the fund will not count as property. We did explain however, that in order to apply for DRO, an applicant must be able to show that they are unable to pay their debts as per s251A of the Insolvency Act 1986. The DRO team has said that where an applicant can access their pension and the value of this is 'considerably more than' their total debt, they may not be viewed as unable to pay their debts and therefore be ineligible for a DRO.

The DRO team's position is confirmed in the DRO A-Z Guidance (February 2019 version) where it states:

"With effect from 1 April 2015, individuals aged 55 or over with a personal pension can withdraw all or part of their pension as a lump sum. If a debtor has a pension fund and is 55 or over the intermediary will need to consider if they are eligible for a DRO.

The AI will need to establish the following:

- *The age of the debtor*
- *The total value of the personal pension fund*
- *The total amount of their liabilities*

If the debtor is 55 (or will be by the end of the moratorium period) and their total pension fund is in excess of their total liabilities, the AI should refer to the DRO Team.

If the AI has established that the pension benefits are less than total liabilities, any potential DRO applicant can be advised that a DRO application will not be affected by the personal pension."

The following, which has been taken from the Citizens Advice DRO Toolkit, expands on the DRO team's position slightly:

"The DRO Team has said that if a client has access to a personal pension fund this may mean that they are able to pay their debts and so won't be eligible for a DRO. A number of factors will be taken into account, including

- *the amount available in the pension fund (after tax and fees have been deducted)*
- *the level of debt*
- *their age at the time of the application*
- *whether or not they may be able to save anything further towards their future pension*

The DRO Team has said that where the value of the fund after tax and fees is less than the total amount of debt, the client's eligibility for a DRO will not be affected. But if the value of the fund after tax and fees is 'considerably more than' the total amount of debt, the client may not be eligible.

You must contact the DRO Team with full details ***before*** *making the application in all cases where the value of the fund is more than the total amount of debt, to see if a DRO is likely to be made."*

We advised that as the value of the client's pension fund is more than their total level of debt, the DRO team should be contacted to determine whether they are eligible.

SUCCESSFUL OUTCOME:

The DRO team responded to say that they would consider the client to be eligible for a DRO.

Their response was as follows:

"I have reviewed the figures provided and the official receiver has taken your client's circumstances into consideration and has determined that the level of pension fund would not preclude them from applying for a DRO.

The debtor could potentially receive £11032.00 after payment of debts in full, in other words an uplift of 62% on their total liabilities and therefore I do not consider the fund value to be 'considerably higher than the amount owed'.

I trust the above has clarified the position and confirm that all such cases involving pension funds, should continue to be referred to the Official Receiver in order that they might be considered on a case by case basis, until such time as we have assessed a sufficient number of cases, in order to be able to establish a protocol going forward."

This was a great result for the client who can now go ahead and apply for a DRO knowing that her pension will not affect her eligibility.

The outcome in this case demonstrates how important it is for intermediaries to contact the DRO team in such cases where the value of the pension exceeds the total level of debt.

On the face of it, it may look like the value of a pension is 'considerably higher than the amount owed' but, once all circumstances have been considered and the figures assessed by the Official Receiver, the applicant may still be eligible for a DRO.