



briefing

Business Support & Insolvency - December 2009

If your debtor has a Debt Relief Order (“DRO”) can you recover overpaid housing benefits?

The bad news

Debt Relief Orders were introduced by the Tribunals, Courts and Enforcement Act 2007 as a new form of debt relief for people who owe relatively little, have no prospect of repayment and for whom bankruptcy is inappropriate. There is no formal court process. The debtor applies online to the Official Receiver.

It appears from the wording of the legislation that benefit overpayments by a Council fall within the definition of a ‘qualifying debt’ within a DRO. This means that you would not be able to recover benefit overpayments whilst a DRO is in operation as creditors are prevented from taking any recovery action for those debts listed in the DRO. When the DRO comes to an end the listed debts are discharged so the liability to repay would be extinguished for all time.

The better news

Fortunately, there has been subsequent caselaw affecting your position: as long as deductions are being made for the overpayment of benefits under the Social Security Administration Act 1992, insolvency proceedings (which would include a DRO) are unlikely to extinguish the right to continue applying these deductions.

A short review of the decision in 2 cases will assist here.

[R v Secretary of State for Social Security ex parte Taylor and Chapman](#)

When a Council exercised deductions from benefits to recover overpayments, it could not be said that a remedy was being exercised against the property of the bankrupt as the benefits in question do not pass to the trustee.

The Court specifically held that in creating the power to make deductions from debtors benefits, Parliament had not intended that bankrupts be immune.

Although the Court did not specifically rule on this for DROs, it can be presumed that a similar approach would be taken otherwise a debtor could obtain a clear advantage from opting for a DRO over bankruptcy.

[Mulvey v Secretary of State for Social Security](#)

The House of Lords stated that the benefit deductions were pursuant to another statutory regime which was in force at the time of the bankruptcy and therefore cannot fall within the scope of the trustees concern. Once again, we can presume the courts would apply the same approach for a DRO.

What you need to do

You must ensure that your debt is **not** included as a qualifying debt in the DRO. To do this you need to notify the Official Receiver of the nature of the debt and the statutory basis for its collection so that it is excluded from the DRO.

More information

Morgan Cole now offers a fully funded bankruptcy and winding up petition service to recover council tax and non-domestic rates to its national base of local authorities, unitary authorities and city councils. For more information please contact one of our dedicated team.



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