CONSUMER CREDIT Counselling Service

A Registered Charity

Response to:

Insolvency Service consultation on Debt Relief Orders and Pensions

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Context

In 2009, the Consumer Credit Counselling Service (CCCS) was contacted by nearly half a million people for help with their debt problems. Of the clients who received in-depth counselling by telephone and online, only a quarter were in a position to repay their debts. The majority of clients had to be offered other solutions, including insolvency.

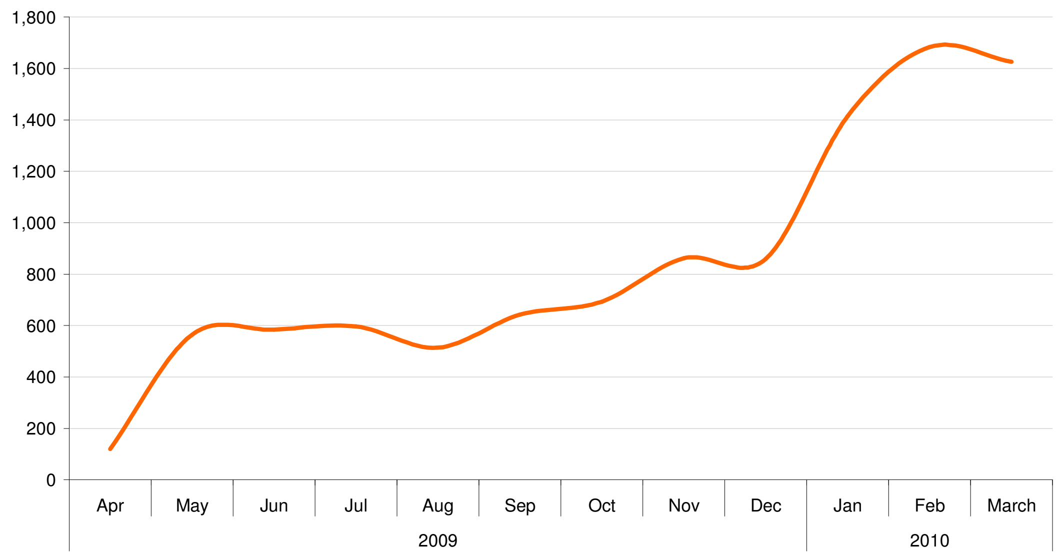
In preparation for the availability of Debt Relief Orders (DRO) from April 6 2009, CCCS was designated a competent authority by the Insolvency Service and a specialist team within the charity administers the applications of those recommended a DRO by a CCCS counsellor.

The criteria for eligibility are tightly prescribed, aimed at helping the less well-off with no assets and relatively low levels of debt and in this, DROs have been largely successful. By the end of 2009, Debt Relief Orders (DROs) accounted for six percent of all recommended solutions to CCCS telephone clients. Correspondingly, the number of people applying for bankruptcy fell, as a DRO better suited their situations.

The demand for DROs from CCCS has been twice as high as the charity anticipated. Between April 6 2009 and April 6 2010 CCCS carried out 7,677 DRO counselling sessions.

The higher than anticipated demand is partly due to referrals from other debt advice agencies without trained intermediaries, and the economic climate which has caused more people to seek help. Over the year, CCCS completed 1,380 applications.

Rising number of DRO counselling calls



Summary of CCCS Response:

CCCS believes that DROs are a valuable form of debt relief overall, aiding many vulnerable debtors in bad financial situations who need help most.

It is our belief, however, that the current position on pension funds being treated as assets means that some of the most vulnerable people are unable to access what should be their most appropriate form of debt relief, even though they cannot liquidate or access their pension for years. Our counsellors estimate that about 10 percent of clients who would otherwise be suitable for DROs are not eligible because they have a pension, irrespective of how small or far-off it may be.

In common with other debt advice charities, CCCS would like to see the pensions criteria in DROs scrapped completely, which would mean that DROs are more in line with other forms of insolvency, including bankruptcy and Individual Voluntary Arrangements (IVAs) where pension provisions are not included, except in exceptional circumstances. While we understand the need to protect the interests of creditors as well as debtors, it is our view that if debtors meet the other eligibility criteria, they are unlikely to have access to a high worth pension at any time in the near future.

To ensure that this will not be the case, however, we suggest that a limit should be set for eligibility under the pensions criteria and that if this limit is exceeded, there should be a requirement for further information (it should not count as an automatic disqualification). CCCS suggests an appropriate limit would be a pension fund worth more than £25,000; below this the debtor would still be eligible for a DRO, providing the other criteria are satisfied.

Response to Consultation Questions:

Option 1
No change

1. **Does the present limit exclude persons who would otherwise qualify because of the value being given to a future pension right in calculation the application of the DRO limit?**

   CCCS believes that using future pension rights in calculating assets for DRO eligibility decisions excludes vulnerable clients who may otherwise qualify from accessing an effective and appropriate means of help.

   CCCS believes 10 percent of those counselled by the charity who would otherwise be suitable for DROs are deemed to be ineligible because they have a pension, irrespective of how small it is or how long it may be until it can be claimed.

2. **How should such a future pension right be valued for this purpose?**

   CCCS does not support option one. The value of pension funds should not be included at all in asset calculations for DRO eligibility. The inclusion of pension assets acts as a significant barrier for people seeking help.

Option 2
Specifying a time cap

3. **Do you think that rights to a pension should not count towards the eligibility criteria relating to assets provided that the pension cannot be brought into payment for at least a specified period of time?**

   CCCS does not believe that introducing a time cap on the inclusion of pension funds in DRO asset calculations is a viable option.

   Those with less than £50 per month surplus income cannot pay back their debts or afford the fee for bankruptcy. As DROs are aimed at vulnerable consumers who have little income, taking future pension payments into account makes little sense. For applicants gaining no financial benefit from their pension at the present time, this only serves to exclude people from an appropriate and effective means of help when they need it most.

   Additionally, future pension income should only be included in instances where it will lift clients above the £50 income threshold in line with current criteria.

   Some safeguards would be needed against people making excessive contributions to pension funds prior to becoming insolvent. CCCS proposes a pension value threshold of £25,000, above which further information would need to be provided to the approved intermediary, to show that contributions by the applicant were legitimate.

4. **If so, do you consider that 5 years until access is an appropriate period? Do you consider that 10 years until access is an appropriate period?**

CCCS does not support a defined time period for deciding the inclusion of pension assets in DRO eligibility criteria. See question three.

Option 3
Specifying a financial cap

5. **Do you think that having an entitlement to a pension should not count towards the eligibility criteria relating to assets provided that the current value of the pension is no more than a specified amount?**

   Setting a financial cap on the total value of pension assets for inclusion in a DRO is not a practical solution.

   It is pension income that should be considered, as this determines a person's ability to repay their debts.

   The overall value of a pension fund has no impact on a person's situation, other than in providing a degree of long term security. Larger total funds often still only give a relatively small income.

   Pension payments should however only be included where they will raise a person's monthly income above the £50 surplus limit within the moratorium year of a DRO.

   In line with insolvency laws for bankruptcy, individuals must not be put under any obligation to access their pension funds early to repay creditors, either as regular income or as a lump sum if their pension scheme terms allow this.

   This would be likely to increase people's reliance on state funding in later life, as their provisions for old age would be greatly affected. Consequently, the state could ultimately be seen to be funding creditor losses.

   Setting a single flat rate cap would also discriminate against and disproportionally affect older people, who are more likely to have built up a more substantial pension pot than younger DRO applicants.

6. **If so, do you consider that a current value of £1,000 is an appropriate amount?**

   CCCS does not support a financial cap. Setting a pension fund value cap is not viable. See question five.

7. **Or do you consider that a current value of £5,000 is an appropriate amount?**

   CCCS does not support a financial cap. Setting a pension fund value cap is not viable. See question five.

8. **Or do you consider that a current value of £10,000 is an appropriate amount?**

   CCCS does not support a financial cap. Setting a pension fund value cap is not viable. See question five.

9. **Do you have comments on how the entitlement should be valued for this purpose?**

As CCCS does not support a value cap, we instead propose that a threshold should be placed on pension fund value above which additional information must be supplied to the approved intermediary, to show that contributions made by the DRO applicant have not be excessive.

CCCS proposes that such a limit should be set at £25,000.

Steps must be taken by the Insolvency Service, in conjunction with trade bodies and pension providers, to make sure that the value of applicants' pension assets are accurately assessed using up-to-date figures. A process – perhaps using template letters – needs to be put in place to ensure the swift transfer of data between intermediaries and providers.

Option 4
Requirement that the pension scheme has to be HMRC approved

10. Should there be an additional requirement that pensions must have HMRC approval in order that the pension rights do not count towards the value of assets for the purposes of determining whether an individual is eligible for a DRO?

CCCS has no objection to the need for pensions to be HMRC approved before being included in a DRO application. This is in line with the Welfare Reform and Pensions Act 1999.

Option 5
Combination of time caps, financial caps and/or HMRC approved status

11. Do you think that a combination of time caps and / or financial caps with or without HMRC approved status should be applied in determining whether pension rights would not count towards the value of assets for the purposes of determining whether an individual is eligible for a DRO? If so, please indicate your preferred combination in this table:

Qualifying criteria	**With HMRC approved status**	**Without checking whether HMRC approved status**
£1,000 and 5 years		
£1,000 and 10 years		
£5,000 and 5 years		
£5,000 and 10 years		
£10,000 and 5 years		
£10,000 and 10 years		
If you wish to suggest different criteria please enter the details below		

CCCS does not support time caps of financial caps, and so does not support any combination of the two options.

12. **Is it practical to suggest that the approved intermediary needs to be in possession of details about a debtor's pension(s) before making the application for a DRO?**

    To be able to properly assess a person's eligibility for a DRO, the intermediary would require full information about a debtor's pension before submitting an application.

    The Insolvency Service must ensure that processes are in place to make the transfer of information between pension providers and intermediaries a swift as possible, so that DRO applications are not unreasonably delayed.

    This will be especially necessary if, as CCCS proposes, a pension value threshold of £25,000 is set above which intermediaries must seek further information, in order to check that the applicant's recent pension contributions have not been excessive.

    This will require further work for intermediaries, which CCCS is prepared to undertake. CCCS anticipates that the increase in work required by intermediaries would not adversely affect the DRO application process unduly.

    The benefits of allowing more people to access DROs who need them outweigh the negatives of a slightly slower, more labour intensive process.

13. **If not, can you suggest an alternative way in which these details can be checked without risking increased costs for the debtor?**

    CCCS has no response to this question.

Initial Impact Assessment

14. **Do you agree with the estimates set out in the initial impact assessment of the costs and benefits of the possible options? Can you provide further information to help inform the impact assessment as set out in that document?**

    - **1) How many people, who currently cannot apply for a DRO only because they have rights to a pension, do you think might be eligible if current pension value of up to £1,000 or £5,000 or £10,000 do not count towards the value of assets?**

    - **2) How many people, who currently cannot apply for a DRO only because they have rights to a pension, do you think might be eligible if that pension does not count towards the value of assets provided that it does not come into payment for at least 5 years or 10 years?**

      Approximately 10 percent of those counselled by CCCS who would otherwise be suitable for DROs are not eligible because they have a pension, irrespective of how small or far-off it may be.

      However, CCCS does not support financial caps or time caps on pension assets for determining DRO eligibility. No caps should be enforced.

    - **3) What percentage of debtors are likely to have such details about their pension readily available?**

- **4) How much it might cost an <u>approved intermediary</u> to obtain details about the current value of a pension, the date it comes into payment and whether or not it is registered with or approved by HMRC?**

- **5) How much would it cost a pension provider to provide details about the current value of a pension, the date it comes into payment and whether or not it is registered with or approved by HMRC?**

  It is likely that applicants will be able to find out the value of their pension fund relatively easily, the date on which it will become payable, and whether it is HMRC approved / recorded, either from documents such as annual statements they have filed at home or from their pension provider.

  Determining a specific figure for costs to intermediaries and providers is difficult. There will be an extra cost in man-hours for intermediaries in collating the necessary information, in cases where clients could not readily provide the data themselves.

  DRO applications are increasing in number, and DROs typically take longer to set up than other forms of debt help. CCCS is prepared to absorb increased costs, as part of its commitment to helping struggling debtors.

  To lessen the workload on intermediaries and ensure DRO applications are not unduly delayed, simple processes will need to be put into place by the Insolvency Service to ensure the efficient transfer of data between providers and intermediaries. This could be achieved with template letters. This would help minimise costs.