



Debt relief orders and the bankruptcy petition limit: Call for evidence

Citizens Advice response to the Insolvency Service

October 2014

About Citizens Advice

The Citizens Advice service provides free, independent, confidential and impartial advice to everyone on their rights and responsibilities. It values diversity, promotes equality and challenges discrimination.

The service aims:

- to provide the advice people need for the problems they face
- to improve the policies and practices that affect people's lives.

The Citizens Advice service is a network of 320 independent advice centres that provide free, impartial advice from around 3,300 locations in England and Wales, including GPs' surgeries, hospitals, community centres, county courts and magistrates courts, and mobile services both in rural areas and to serve particular dispersed groups. In 2013/14 Citizens Advice bureaux in England and Wales advised 2 million people on 5.5 million problems.

Since April 2012 we have also operated the Citizens Advice Consumer Service, formerly run as Consumer Direct by the OFT. This telephone helpline covers Great Britain and provides free, confidential and impartial advice on all consumer issues. In 2013/14, the Consumer Service dealt with 1.2 million contacts on 626,000 enquiries across England, Wales and Scotland.

Introduction and summary

Debt relief and insolvency remedies are important as they can offer the most realistic options and a light at the end of the tunnel for many of our clients, by writing off all or part of their indebtedness. They are not an easy options as there are significant restrictions and regulations that must be complied with, and the measures have long term consequences for individuals who use them, however the feedback from our advisers is that insolvency measures have been hugely beneficial for many clients who have been able to access them and often been driven to desperation by their financial problems. Insolvency measures are beneficial for creditors too as they relieves them from the burden of chasing unrecoverable debt. Ensuring access to appropriate debt remedy is essential in a climate where personal household and problem debt is increasing.

The introduction of DROs in April 2009 was a positive development in insolvency policy which Citizens Advice welcomed. They provide an affordable option to bankruptcy for some of the most vulnerable people in debt: those who have very low income and assets. In 2013/14, the CAB service dealt with over 1.6 million debt issues. Of these over 126,000 – 8 per cent of the total – were about DROs.

In order to gather views and experiences from Citizens Advice approved intermediaries (AIs) for this call for evidence, we undertook a survey of our AIs on certain questions. The survey was undertaken by 232 of our AIs from August to September 2014.

Summary of our key points:

- Citizens Advice recommends that the Insolvency Service increase the maximum debt limit to at least £20,000, as a matter of urgency.

- There should not be a minimum limit of debts for DROs in England and Wales as in some instances a DRO is an appropriate option for clients with low levels of debt or just one debt.
- Raising the maximum asset amount to £1,850 would make the option of a DRO more accessible and it would lead to a reduction in the subsidy of bankruptcies.
- The surplus income amount for DROs should be increased in line with inflation to about £63 per month.
- The £90 fee for DROs should not be increased as this would present a barrier to entry for some of our clients.
- The current treatment of windfalls based on backdated awards of benefit is not appropriate. Backdated awards of benefit should not be treated as property but as income over the period to which they relate.
- The barriers DROs can impose on employment and self-employment could be mitigated by increasing the surplus income limit and by changing the definition of disregarded property to include business vehicles as is the case in relation to other insolvency remedies
- The bankruptcy creditor petition limit should be increased to at least £5,000.

Q1: When responding can you please indicate the size of your organisation

Large (250+)

Q2: What level do you think the maximum debt amount should be set to and why?

Citizens Advice believes there is a strong case for increasing the maximum debt limit. We have clear evidence that access to bankruptcy remains a significant problem for people seeking advice about debts. There is a need for the maximum debt limit to be increased in line with inflation and the majority of our AIs we surveyed think there should be an increase in the maximum debt limit

Access to bankruptcy

Our survey found the majority (57%) of our AIs thought that the £15,000 maximum debt limit is too low. The main reason they gave was because they had seen many clients who were unable to afford bankruptcy but had debt levels above the £15,000 limit.

Citizens Advice welcomed the introduction of DROs as a way of increasing access to insolvency remedies. We believe that the policy has been broadly successful in helping low income debtors who need protection from their creditors and debt relief. However, access to bankruptcy is still a significant problem as we have evidence of debtors who struggle to afford the bankruptcy deposit but who are ineligible for DROs. For example, these cases of people with debts over the £15,000 DRO limit who were not able to afford bankruptcy:

A CAB in the South West saw a 39 year old single woman who had three children aged 13, 11 and 9. One of her children was in receipt of Disability Living Allowance and another one was also being tested for this benefit. She provided full time care for her children. She struggled with her ongoing expenditure and had no money to pay

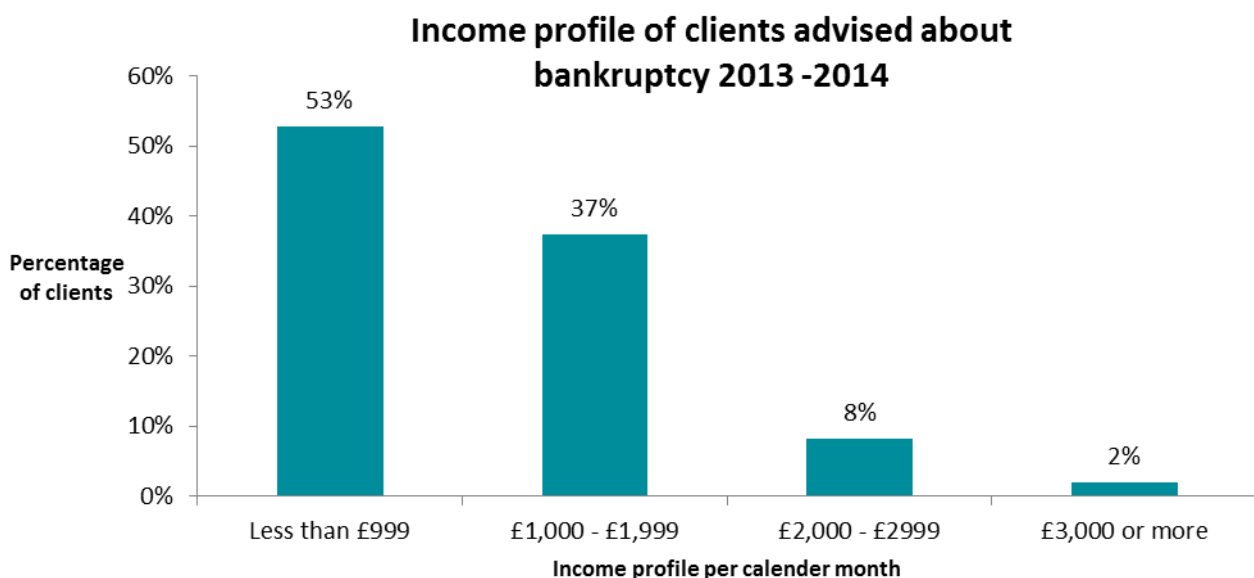
her creditors and therefore she could not afford the deposit for bankruptcy. Her debts exceeded £15,000 so she could not apply for a DRO. She was feeling hopeless as her debts were escalating and was concerned about the impact this would have on her and her children.

A CAB in the South East saw a client living on a low income with debt problems. They were advised on a DRO but when the relevant checks were carried out it transpired that they had a debt level of just under £16,000. They could not afford the bankruptcy fees and were therefore facing several months of trying to reduce their essential expenditure in order to repay creditors and get their debt down to below £15,000 to qualify for a DRO. This was expected to cause them particular hardship.

A CAB in a Northern city saw a 50 year old single man on Employment and Support Allowance who had severe anxiety and depression which had led to him losing his job. He had multiple debts of around £25,000 and was threatened with disconnection due to high arrears with his energy provider. He could not afford the deposit for bankruptcy and was above the debt limit for DROs. His mental health problems were being exacerbated by the extra pressures of managing his debt and repaying creditors.

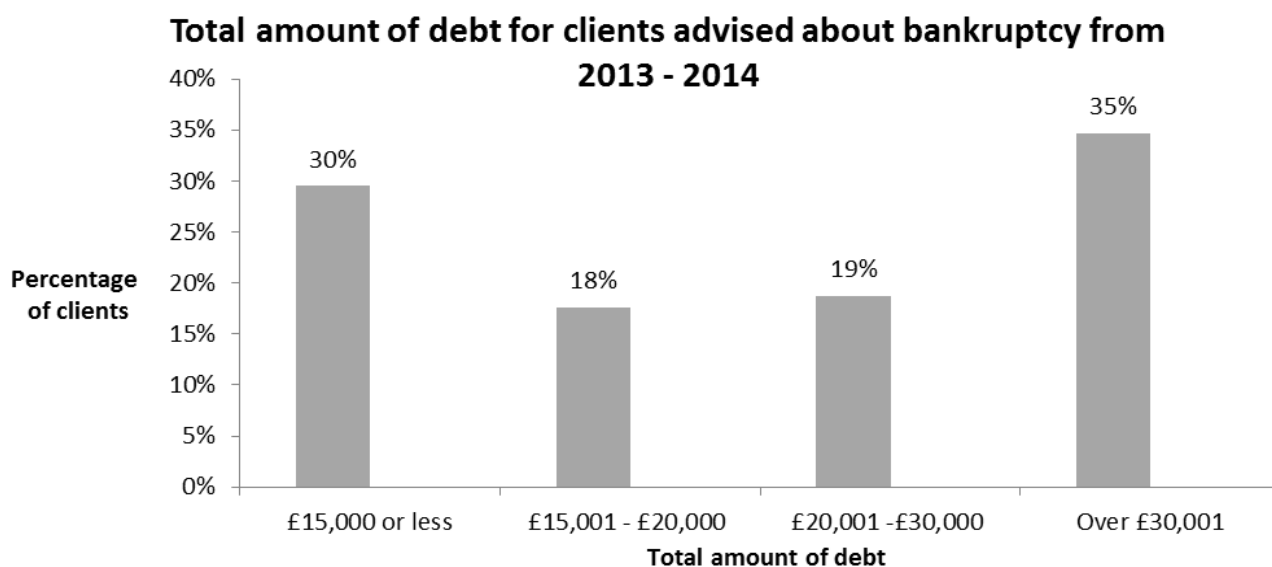
We also have evidence from our data that the problem of access to bankruptcy could be widespread. We carried out some analysis of statistics from our bureaux case recording system based on data of people who sought advice about bankruptcy from bureaux in England and Wales in 2013 - 2014.

The analysis suggests that a significant proportion of people seeking advice about bankruptcy were living on a low income. 53% of our clients advised about bankruptcy were on an income of less than £1,000 a month¹.



¹ Based on analysis of 7,606 clients advised about bankruptcy in bureaux across England and Wales from April 2013 to March 2014.

We were also able to gather information about the debt levels of 3,308 people advised about bankruptcy. The data on debt levels suggests that a significant proportion of people seeking advice about bankruptcy have debts over the £15,000 DRO limit. 71% of this sample of CAB clients reported total debts of more than £15,000. A breakdown by total debts is given below:

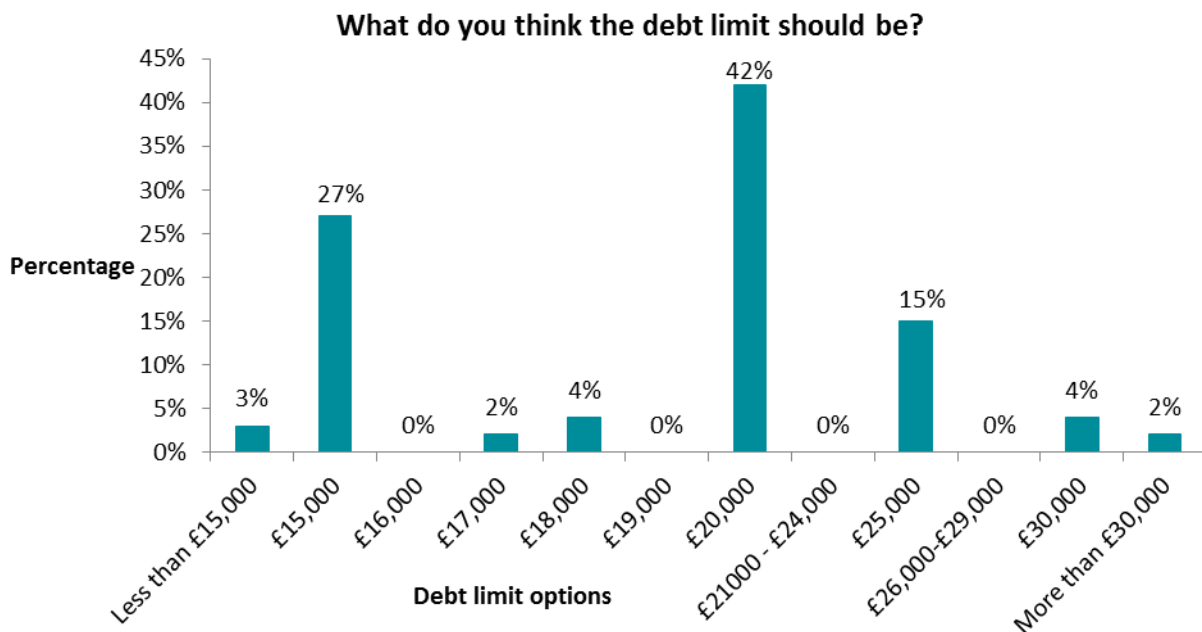


This analysis indicates that a large proportion of those with debts over £15,000 could struggle to pay the bankruptcy deposit as they are on a low income.

Inflationary rises

As acknowledged in the call for evidence document, the £15,000 limit was set out nearly ten years ago in the Insolvency Service consultation *Relief for the indebted* published in 2005. The call for evidence document states that an inflationary change since introduction some four years later would bring the debt limit up to nearly £19,000 (based on the CPI measure of inflation). Therefore Citizens Advice would urge the Insolvency Service to consider raising the DRO debt limit to bring it in line with inflation, as a priority.

In terms of what the maximum debt amount for a DRO should be, our survey of AIs asked them what the debt limit should be and found that £20,000 was clearly the most prevalent option (42% of AIs surveyed thought it should be £20,000). Overall, the majority (69%) thought that it should be over £15,000 with 30% thinking it should remain £15,000 or less.



Based on the need for at least an inflationary rise, the evidence of people struggling to afford the bankruptcy deposit but also unable to access DROs and our AIs experience, we would recommend that the Insolvency Service should increase the maximum debt limit to at least £20,000, as a priority. We would also recommend that the Insolvency Service should set out when a timetable for when the limit will next be reviewed to ensure the limit is updated with inflationary increases in future.

Q3: Do you think there should be a minimum limit of debts?

Citizens Advice does not believe there should be a minimum limit of debts for DROs in England and Wales. DROs were implemented to help people on low incomes with a relatively low amount of debt to gain a fresh start from the enormous stress of being in debt. This debt remedy should remain open to people with low levels of debt or just one debt where appropriate.

Generally, our AIs do not see a large number of clients with low levels of debt (e.g. under £1,000) who ask for a DRO or who would be advised about a DRO as an option. However, there are exceptions where a DRO is an appropriate option for clients on a low level of debt.

For example, those clients living on benefits who are unable to work due to health issues are very unlikely to be able to pay back even a relatively low level of debt. For example, a client paying a minimum payment of £1 a month on a £900 debt would take over 70 years to pay back. If a limit of, for example, £1,500 was placed on access to DROs, a client with debts less than that would be excluded and would have to wait until their situation got worse before they could seek a fresh start.

Moreover, even low levels of debt can cause particularly distress for debtors on a low income and where there are multiple creditors or debt collectors involved collecting several small amounts of debt. For some of our clients having a debt of £1,000 can cause as high

levels of stress and anxiety as having a debt of over £15,000 can for others. This is because they can see no way of repaying this debt.

This is particularly an issue for clients with mental health problems who can find it very difficult to cope with even a comparatively low level of debt. For example, one of our AIs helped a man with mental health problems with a DRO for a debt of less than £400 and this brought him enormous relief.

The implications of a minimum limit of debts on DROs for clients with a relatively low level of priority debt is also a concern as a client with council tax arrears, for example, of £1,100 at enforcement stage would be unable to apply for a DRO (if there was a £1,500 limit) to release them from this obligation. Without the option of a DRO, the client would have to either face bailiff action or the threat of imprisonment.

Q4: What level do you think the maximum asset amount should be set at and why?

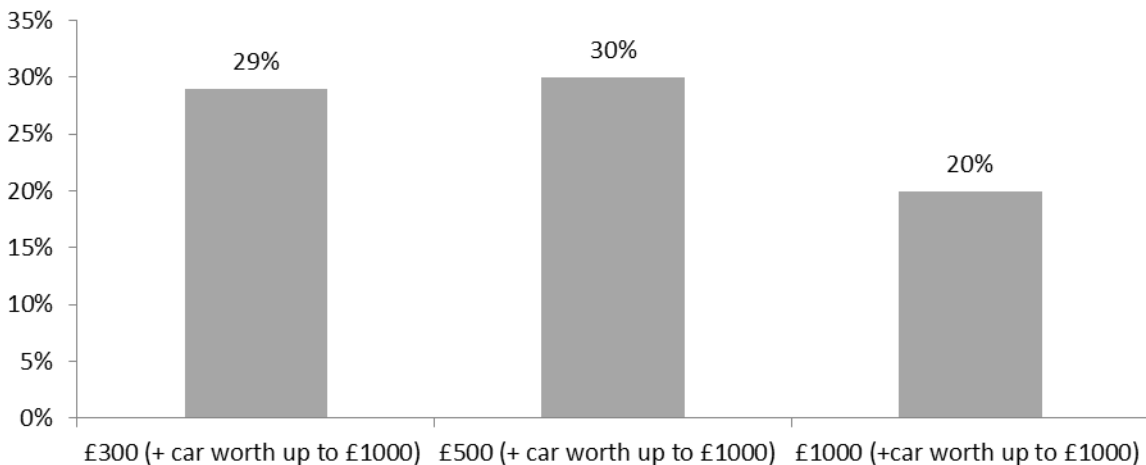
Citizens Advice believes there is a case for increasing the maximum asset amount. At the moment, someone who has more than £300 worth of assets (so does not qualify for a DRO) but does not have the necessary £705 needed to apply for bankruptcy is left in a position where they are unable to access either debt remedy. Raising the limit to £705 would mean that those who do not qualify for a DRO because their assets were above the limit could, in some circumstances, be able to use those assets to raise the necessary bankruptcy fee so they would be able to access one or other of these remedies.

In other instances, clients with assets not much over the £300 limit are not in a position to realise those assets to pay the bankruptcy deposit or make reasonable offers to their creditors. For example, in the great majority of cases the sale of £500 worth of assets to finance repayment of debts is unlikely to impact upon an individual's debts when they are contemplating a DRO. There are also particular assets, for example, smartphones, laptops, other electrical goods or sentimental jewellery (e.g. engagement rings) which can push some of our clients over the asset limit but are considered essential by the client in their daily lives.

At the very least, Citizens Advice thinks the maximum asset amount should be raised to the equivalent of the bankruptcy application fee which is currently £705 (although that may fall in April 2016 when the new online Debtor Petition application comes in because the court will no longer be involved).

There was not a clear indication from our AIs of what the asset level should be. A maximum asset amount of £500 was only very slightly preferred over the current levels:

What do you think the maximum asset amount should be?



According to Table 11 in the call for evidence document, 86% of bankruptcies have less than £2,000 of assets and 82% have less than £1,500 worth of assets. It costs the Insolvency Service at least £1,850 to administer a bankruptcy. So this means that in most bankruptcy cases there are no assets for creditors and there is no opportunity for the Insolvency Service to cover most of its own costs. Therefore, the Insolvency Service is subsidising these bankruptcies. Raising the limit to £1,850 would make the option of a DRO more accessible and it would lead to a reduction in the subsidy of bankruptcies.

Q5: What level do you think the surplus income amount should be set at and why?

Citizens Advice believes there is a case for a small increase in the surplus income amount to bring it in line with inflationary rises. The call for evidence document states that an increase in the surplus income amount would bring it to about £60 or £63.

We do acknowledge that the Insolvency Service states that the case for increasing the surplus income amount is weaker than potential changes to the other limits. It is also not a priority for our AIs with nearly three quarters (72%) of those surveyed stating that the current surplus income amount is about right.

However, the Tribunals Courts and Enforcement Act 2007 made provision for an amended Administration Order (AO) scheme requiring a minimum surplus income level of £50 a month which would have enabled clients with DROs whose surplus income went over the £50 surplus income limit to transfer to an AO thus retaining a form of debt relief and protection from enforcement action by their creditors. Because the AO provisions have never been implemented, clients do not have that protection and so we think a higher surplus income level for DROs in line with inflationary increases is appropriate.

Some of our AIs believed the surplus income amount could be adjusted slightly to take account of family size. The surplus income amount can have a very different impact on an individual than on a single parent with three or more children. In comparison, the Income Payments Order in bankruptcy includes contingencies of £10 a month for each family

member. We would not favour a reduction in the permitted surplus income levels for smaller households as this would make the DRO budget too inflexible. People who are required by their landlord and/or the courts to pay for rent arrears post-DRO need the flexibility to do so, and good practice in budgeting requires plans that are sustainable and flexible enough to cope with unexpected costs.

We think there is a strong case that the payment of rent arrears pre- and post-DRO should be made an allowable expense. Some of our clients have to use their surplus income to pay their rent arrears to protect their tenancy and keep a roof over their heads. We consider protecting an at-risk tenancy a reasonable domestic need.

If rent arrears payments are not allowable expense for DRO there is a risk that DROs will become unmanageable for some debtors with rent arrears as welfare reform may have an impact on the recovery of rent arrears. The Department of Work and Pensions (DWP) is considering a significant increase in the amount that can be deducted for rent arrears under Universal Credit rules – and historically the courts have taken these deduction levels as a guide to the rent arrears payments that they require when setting the terms of a postponed possession order for tenants on a low income. Under the proposed change the deduction rate for rent arrears could be increased from 5% of a household's standard allowance (already an increase from a single person's personal allowance before Universal Credit) to 40% of an entire households' standard allowance. If accepted by the courts and landlords this change would have an adverse effect on the ability of debtors to pay rent arrears during a DRO even if they were able to afford to do so. In the proposal for a single person under 25 rent arrears deductions would increase from £12.46 a month to £99.71 at the 2014 rates, and couple over 25 could be faced with a deduction increasing from £19.46 a month to £156.52 a month.

We would recommend that the Insolvency Service and DWP discuss the potential impact of this proposed change. The DWP has also suggested they could make a Financial Hardship decision if a claimant or third party (from the Advice Sector or a Social Landlord) contacted the DWP to say the claimant was struggling because of the amount being deducted. We would suggest that if this occurs during the DRO moratorium period a Financial Hardship decision should be mandatory.

Q6: Do you think additional costs of the competent authorities should be covered by the application fee? If so, how much and why?

The income generated via DRO application fees does not fully cover the costs of providing the competent authority role.

We understand that it is unlikely that the Insolvency Service is in a position to redistribute a greater proportion of the current fee to competent authorities. However, Citizens Advice does not support a proposal to increase the amount paid to competent authorities if this

would mean a rise in the fee payable by clients. We already see cases where our clients struggle to afford the £90 fee:

A CAB in Wales saw a 23 year old woman who was a single parent living in a social rented property with her dependent children. She was on income support, housing benefit and council tax reduction. She had rent arrears, council tax arrears, gas and electricity arrears, water arrears and a credit agreement. Her total debt was around £3800. She was struggling to afford the £90 fee for a debt relief order.

A CAB in the West Midlands saw a 27 year old unemployed woman who wanted to apply for a DRO but could not afford the fees and there was no charitable assistance available. Her debts remained unresolved.

Citizens Advice would prefer to see efficiencies realised through DRO2 to drive down costs and keep the DRO application fee low.

Q7: Do existing payment systems provide sufficient coverage to enable debtors to pay the fee? If not, what other payment systems should be added?

Citizens Advice approved AIs overall have found that there is sufficient coverage to enable our clients to pay the DRO fee. The majority of our clients do not have problems making payments at the post office, through charity cheque or at payzones. One issue raised was that the Payzone website does not offer a DROs option on its store locator webpage: <http://www.payzone.co.uk/Store-Locator>

If the Insolvency Service is exploring new additional options for paying the DRO fee, direct BACs transfers could be useful for our clients with internet or mobile banking. Although there could be some issues to overcome around identity verification with this method and also concerns that as banks are potential creditors it may not be in the client's interest to alert them to the fact that payments are going to the Insolvency Service. If this option is introduced it may be useful to try and anonymise these payments in some way.

Q8: Do you consider the six year restriction is appropriate? If not, please provide reasoning for an alternative.

The six year restriction is in our view appropriate and we would not like to see it increased or restrictions imposed on the number of times a person can apply. We acknowledge that the six year restriction matches the time period that entries remain on the credit reference agency registers and that any increase would be difficult to align and administer with checking on credit reference registers.

The aim of DROs is to give people a fresh start from their debts and therefore when coupled with financial capability training should ideally not be needed regularly. Although it can vary locally, our AIs largely do not see clients who have previously had a DRO seeking further money advice for debt problems. For example, one of our AIs in the survey stated that they have only seen one or two clients out of around 600 who have come back into the

bureau for money advice after having a DRO. Therefore, we think the six year restriction is largely appropriate.

Some of the AIs in our survey do see clients that could benefit from another DRO due to a change in circumstances within six years, for example, being made redundant or changes to their benefit entitlements. However, if an increase is being considered Citizens Advice would recommend that the six year restriction remains. This leaves the option available for those people who due to difficult circumstances have got into further debt over six years after they had a DRO, which we consider to be a significant length of time.

Q9: Do you consider that the competent authority/intermediary model is working well? How could it be improved? Would another model be better?

Citizens Advice considers that the current model works well for our clients, because the competent authority role is one function amongst many that Citizens Advice performs in relation to the bureaux network. In addition to information provided by the DRO Team (formerly the DRO Unit), we obtain other management information and intelligence about our providers and approved AIs. We have the opportunity to triangulate the quality data and spot potential problems early. In this way, we can intervene to provide challenge or support before a serious problem arises, through our internal quality assurance procedures.

For example, a CAB in the south west of England was subject to a Quality of Advice Assessment, which is an internal quality procedure. The assessor looked at a case where a DRO application had been made. The assessor observed that the management of the client's case had been confusing, as the client had been passed between two different workers. The DRO application was successful. Using the information from the assessment, Citizens Advice was able to query the circumstances with the bureau and determine that the AI's login for the DRO web application was being used securely and in line with the rules.

There are some risks associated with the current model. For example, policy guidance can be difficult to interpret in relation to different circumstances. In some cases when we have asked the DRO Team for guidance, they have informed us that the particular issue is up to the competent authority to decide. We would prefer to have a system which promotes greater consistency between the competent authorities, allowing us to share expertise and experience, whilst retaining the 'mixed economy' of DRO delivery channels to the public. This would reduce the risk of policies being interpreted and applied differently by different providers. We do not feel that the current pattern of competent authority meetings adequately achieves this.

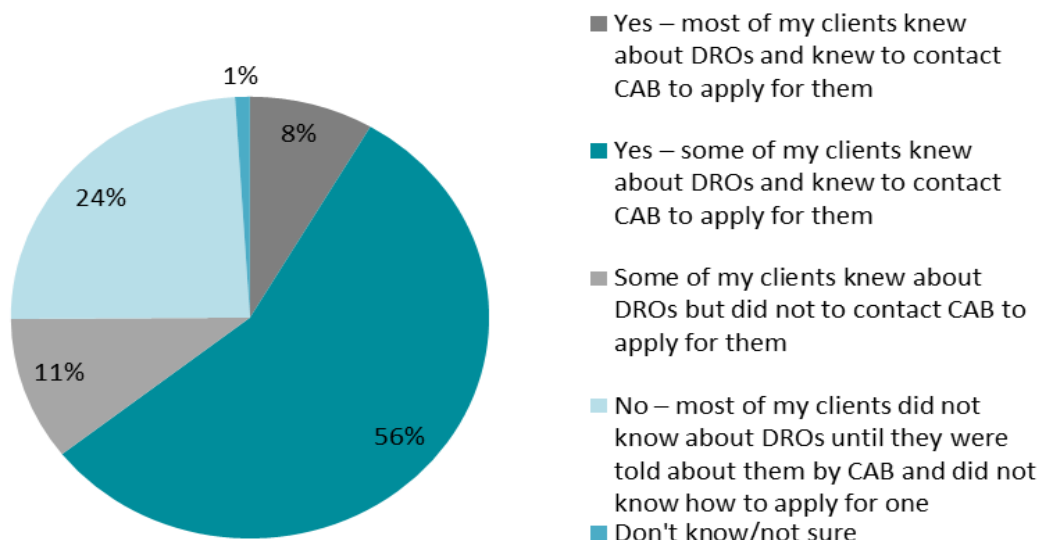
Currently, the greatest operational risk in the model is that debtors or AI's are unable to go back to a DRO application to make changes once it has gone past a certain point. While this is understandable, the lack of flexibility has had an unintended consequence of making the application process more protracted, as AI's struggle to feel confident that all debts have been disclosed by clients. Many CAB clients seek advice about multiple issues at once, and have chaotic lives which mean that in many cases, they themselves do not know the extent of their liabilities or are unable to articulate them. Therefore Citizens Advice

recommends that greater flexibility is introduced into the system to achieve better outcomes for debtors.

Q10: Are debtors who are suitable for DROs aware of their existence?

The majority (64%) of the approved intermediaries we surveyed stated that some or most of their clients knew about DROs before they had been advised by a bureau. Just under a quarter (24%) stated that most of their clients did not know about DROs.

Do clients know about DROs before they had been advised by your bureau/agency?



Awareness and knowledge of DROs can vary locally with a couple of our AIs saying that about 50% of their clients had heard of DROs and one saying less than 5% of their DRO clients were aware before they came for advice from the bureau.

Of our clients who are aware of DROs, there are those that have done research on the internet and have their £90 ready and others who have heard of the '£90 thing' that will help them with their debts. Other clients are referred by support workers and local agencies or have been told about DROs by their family or friends.

For some clients it is only when discussing their options at a bureau that they become aware of DROs:

A CAB in the South West saw a woman with bipolar disorder who had one child and lived in rented accommodation on benefits. Her debts were below £15,000, she had no assets or car and her budget indicated she had less than £50 per month available. A DRO was discussed with the client and she had not heard of this debt relief before. The adviser then checked her eligibility.

A CAB in Yorkshire and the Humber saw a man with £14,000 debt who was referred to the local bureau following suspension of a warrant for rent arrears. He had not

heard of a DRO but once advised was able to get the £90 fee from a charity and the bureau submitted an application for him.

Q11: Do debtors know to contact a competent authority to pursue a DRO application?

In the operational model delivered by the Citizens Advice service, it is less relevant that debtors know how to contact the competent authority than it is that they know how to contact their most local CAB service provider.

Very few contacts are made to Citizens Advice from members of the public who wish to apply for a DRO. Only about 1% of contacts to our DRO mailbox are from the public, which is less than 1 enquiry per week. The primary purpose of the mailbox is as a contact point for Citizens Advice Bureaux.

Our evidence on debtors contacting competent authorities and pursuing a DRO:

- In 2013/14 there were 192,379 unique hits on the DRO pages of Adviceguide, which is the Citizens Advice public facing information site.
- The average number of searches for 'DRO' per month in the UK on Google is 9,900. In August 2014, Adviceguide appeared in search results on Google 7,437 times. The Number of times people clicked through to Adviceguide was 1,932, giving a click through rate of 25.98%.
- Most Adviceguide pages include links to a page where users can find details for their nearest CAB by entering a place name or postcode.

Q12: Is there any issue with the geographical coverage of the competent authority networks?

Between the different delivery models of the different competent authority networks there is good geographical coverage of England and Wales. Citizens Advice thinks that it is vital to retain the current mixed model of advice provision, in order to maximise access to DROs.

Within the Citizens Advice service, there is good geographical coverage offering DRO's to clients. Not every Citizens Advice Bureau has an Authorised Intermediary, and these bureaux refer clients to their nearest service or to a different provider. This can involve some additional travel for clients.

Citizens Advice is working to increase the accessibility of DRO's via the CAB network. Funding has been secured to establish a centralised DRO unit, which will accept referrals from bureaux without ready access to an AI, and provide DRO applications to clients, by telephone. Through this project, more consistent access to DRO's will be secured.

Q13: Is there any issue with the speed of DROs applications? If yes, how can it be improved?

DRO are a quick and efficient way of resolving indebtedness without having to go to the county court. In our survey of approved intermediaries, many were positive about the speed of the process as the applications are processed quickly by the DRO Team at the Insolvency Service and this provides a quick resolution for clients. They find that the DRO Team and the DRO toolkit (provided by the Citizens Advice specialist support team) are very helpful for any queries and decisions on a DRO are usually made within one to two days.

There are however, a number of factors which impact on the speed of DRO applications:

- High demand for services is an issue for all competent authorities.
- The DRO application process may be protracted when clients are unable to provide timely information about their debts. This is a particular issue for vulnerable clients who also benefit from face to face support.
- Credit reports can take a long time to arrive, delaying the DRO application process. In some cases, the reports take so long to arrive, the AI or client have to re- access updated balances on accounts because the amount of debt has increased during the period waiting for the report. In a few cases, the delay has caused the debt to increase beyond £15,000 which means that the client is no longer eligible for the solution.
- The Web application is unwieldy and not user friendly. There have been reliability issues. We understand that the DRO Team currently has 36 outstanding work requests to improve the application. However, Citizens Advice welcomes the development of DRO2.

Q14: Is there any issue with the number of intermediaries? If yes, is this a funding issue?

Our debt services are in extremely high demand, and AI's offer a range of different debt remedies within our holistic service. Our response to question 12 is also relevant to this question.

Q15: Do you think that the revocation system is working effectively? If not, what changes should be made?

Citizens Advice AIs have overall found that the revocation system is working effectively. Most of the AIs (in our survey) had only experienced a limited number of revocations but had broadly found the decisions to revoke or not revoke the DRO were fair and handled well by the DRO Team:

I have had a revocation due to the client benefitting from a will. The process was handled sensitively by the DRO team. Citizens Advice approved intermediary

The only DROs I have had which have been revoked are where client's full indebtedness was not apparent when the DRO was submitted, so they did not qualify. I think this is fair enough. Citizens Advice approved intermediary

The increasing flexibility of the use of discretion on the part of the DRO Team within the Insolvency Service is particularly important in our approved intermediaries' experience of DRO revocations:

We have not had many problems with DRO revocations, the policy of allowing some leeway (e.g. in asset increases over £300) has been very effective in preventing unjust outcomes for unforeseen changes in circumstances. Citizens Advice approved intermediary

Q16: Is the current treatment of increases in income and asset windfalls appropriate?

Citizens Advice thinks that the current treatment of windfalls based on backdated awards of benefit is not appropriate. The backdated awards of benefit should not be treated as property but as income over the period to which they relate. At the moment a client's DRO can be revoked if they get a backdated award of benefit that is more than £300 (under current DRO Team guidance, more than £705 unless it is a payment of Disability Living Allowance or an equivalent benefit when it is in practice completely disregarded regardless of the amount). Delays in the processing of appeals in particular ESA often mean that a client can wait many months for the outcome of their appeal. If successful they might get a significant lump sum which represents the income that they would have received if they had been getting the benefit that they were in fact entitled to all along. It is unreasonable for a DRO to be revoked in this situation, as the case below illustrates:

I had a client that I felt was penalised for her honesty on receiving some "back dated" benefit despite my pleading with the DRO Team and suffered at the hands of her creditors because the DRO was revoked. Citizens Advice approved intermediary

Q17: Do you consider that the DRO restriction system is working well to deter reckless behaviour? What changes should be made, if any?

As the number of DRRO and DRRUs per year is so low, Citizens Advice has little experience of the impact they have on deterring reckless behaviour so we will not be commenting on this question. On the basis of the information we have they are being used in appropriate cases of apparent abuse of the DRO process

Q18: Do you consider that the DRO regime has encouraged debtors to seek debt relief at an earlier stage? If yes, please explain how this has been a benefit including any case study evidence?

The introduction of DROs in 2009 was a positive development in insolvency policy which Citizens Advice strongly welcomed. DROs have enabled access to debt relief at an earlier stage by providing an affordable insolvency option for people in debt with low income and assets. Those that meet the DRO entry criteria are able to access this form of insolvency without needing to find the deposit for bankruptcy.

The number of DROs has been higher than the number of bankruptcy orders since late 2012 suggesting DROs provide an important alternative to those who may struggle to afford bankruptcy².

Of Citizens Advice approved intermediaries, 80% agreed that DROs has increased access to debt relief at an earlier stage (with only 6% disagreeing).

DROs not only provide access to debt relief at an earlier stage, they are often the only debt relief option available for vulnerable clients:

A CAB in the South West saw a man with learning disabilities and mental health difficulties who had until recently lived with his girlfriend. Both the girlfriend and her family had taken out liabilities in the man's name and said that they would pay these back. These debts were never repaid. The man left his girlfriend and moved back to live with his retired parents. His parents tried to help with his debts but were unable to and had never had debt problems before. A DRO was his only option as he was on a living a low income. It provided an escape from the stress and anxiety both he and his family were experiencing.

Q19: What is an appropriate length of time for discharge?

Q20: Do you think the length of discharge and the length of DRO restrictions should be the same or different? Please provide reasoning for your response and indicate what an appropriate time for both is?

(These questions will be taken together and responded to together as they are related.)

Citizens Advice considers the current 12 months length of time for discharge and length of time for DRO restrictions are appropriate and should remain the same.

The AIs in our survey mainly stated that the 12 month moratorium period was reasonable. It gives clients time to stabilize their finances and work out options for a fresh start. The 12 months is also aligned with bankruptcy as it is the same as the period in which a bankrupt person remains an undischarged bankrupt.

It is simpler to keep the length of discharge and the length of DRO restrictions the same as it may be confusing for our clients to have different time limits.

² The number of DROs has been higher than the number of bankruptcy orders since Q3 2012. Insolvency Statistics – April to June 2014 (Q2 2014)

Q21: Do you think DROs impose any barriers on employment or self-employment? If yes, how could this be mitigated?

For clients who intend to take up employment or self-employment during the moratorium period there is a potential barrier in that the client's income may increase substantially and take their surplus income above the £50 limit. Any increase in expenditure to off-set the increase in income would need to be justified as essential when a new financial statement is sent to the DRO Team. Clients who are already employed or more likely self-employed at the date of the DRO whose income is subject to considerable fluctuation are in the same position, especially where there is no established pattern.

The following cases highlight some examples from CAB evidence:

A CAB in Cheshire saw a 41 year old man who was unemployed and actively seeking work. He had debts of less than £15,000 and disposable income of less than £50 per month. He had no assets. He met all the criteria for a fresh start through a Debt Relief Order. However he was hopeful that his circumstances would improve over the next 12 months. This meant that a DRO might not be appropriate as an improvement in his circumstances during the moratorium period could see the DRO revoked.

A CAB in Kent saw a 36 year old man who was unemployed and in receipt of jobseekers allowance. He was troubled by debts and interested in a Debt Relief Order. But he was put off because he was hopeful of finding a job and if successful, he may find his DRO being revoked because of the £50 disposable income rule. Nevertheless, he could not afford to consider bankruptcy.

A CAB in County Durham saw a 29 year old woman who was a lone parent in receipt of income based benefits. She had long standing debts of almost £8,000. She was reluctant to apply for a DRO as it was likely that she would find employment within the next 12 months and therefore her monthly surplus would probably increase to above the £50 monthly threshold, which would result in her DRO being revoked. But the barrage of letters and phone calls from her creditors was causing her great stress and affecting her health and her quality of family life. She was unable to afford the cost of petitioning for bankruptcy.

The barriers DROs can impose on employment and self-employment could be mitigated by increasing the surplus income limit (see question 5) and by changing the definition of disregarded property to include business vehicles as is the case in relation to other insolvency remedies. We would also welcome the DRO Team adopting a more flexible approach to revocations during the moratorium period where a debtor's income fluctuates.

Q23: What impact have DROs had on the wellbeing of debtors – please provide evidence?

Our experience of DROs is that they have had an overwhelmingly positive impact on the wellbeing of debtors. Of the AIs we surveyed, 99% said that DROs have had a positive impact on their clients who have had them (90% mostly positive, 9% quite positive). Our AIs describe the impact DROs have on clients:

Clients are generally relived and delighted when their DRO has been approved. Citizens Advice approved intermediary, North West

Great solution (for) too many of my debt clients who have struggled for years dealing with their debt. Citizens Advice approved intermediary, Yorkshire and the Humber

DRO applications are the only interviews where after completing the process the client leaves smiling. Citizens Advice approved intermediary

Debt Relief Orders can help vulnerable families get back on their feet and can have a transformative impact on our client's lives:

A CAB in the West Midlands saw a woman with two dependent children who was pregnant with her third child. Her income was made up of Income Support, Child Benefit and Child Tax Credits. She came to the CAB for advice on debts of £6,000. In attempting to repay these debts she was cutting back on her expenditure on food and household items. She could not see her financial position improving in the near future. The various options were described and she was advised that she fulfilled the relevant criteria for a DRO. The DRO allowed her to make a fresh start and ensured she had sufficient income to meet the essential needs of her growing family.

A CAB in the South East saw a woman who had depression and was very stressed by her debts. The CAB was able to help her successfully apply for a DRO. After the moratorium period the woman felt well for the first time in many years. She was able to come off benefits, move back into work as at a local supermarket, where she now still works and has been promoted to supervisor.

A CAB in the East Midlands saw a woman who had been the carer for her grandmother who had passed away. She was £2,500 in debt to about 6 non-priority creditors and had no way of repaying as she lost some of her benefits on the death of her grandmother. Having the DRO meant being able to make a fresh start without the stress of her debts.

DROs have improved the wellbeing of our clients by providing much needed relief from the stress and anxiety of being in debt. 95% of our AIs said that DROs have improved their client's mental health. The mental and emotional strain of being in debt can be debilitating across many aspects of life. DROs can provide a welcome relief from this:

A CAB in the East Midlands saw a 50 year old woman who was working 16 hours per week in a chip shop with little prospect of increasing her hours. She had a range of debts that were greatly affecting her mental health. These included a water bill which she had not paid for a number of years. High Court bailiffs added charges to the water debt that had gone to a County Court Judgment. After having a DRO, she was able to put the stress of debt behind her and make a fresh start.

A CAB in Wales saw a man who had mental health problems and was finding life very difficult to manage. He was worried about losing his privately rented home as he could not afford to pay the rent as well as what he owed creditors. The DRO together

with a successful Employment and Support Allowance appeal (which took him into the Support Group) made a huge difference to his life, health and peace of mind.

A CAB in the South West saw a man who was being pursued by bailiffs and becoming increasingly depressed by his debt situation. He had given up all sport and social activities as he could no longer afford them. With the bureau help he was able to get a DRO and resume his previous sports activities to improve both his physical and mental health.

DROs can also provide much needed relief from hassle from creditors. This enables our clients to sleep at night, answer the phone and their own front door without fearing creditors:

A CAB in the North West saw a woman with mental health problems whose circumstances were unlikely to improve. Her CAB adviser attempted a write-off request with a Debt and Mental Health Evidence Form provided but only one of her creditors agreed to the request. She was able to apply for a DRO thanks to assistance from a charity with the fee. Since the DRO, she was able open her mail, answer the telephone and reach out to local community groups which has given her a new lease of life and improved her mental health condition. Without the introduction of DROs, she would have been stuck in the spiral of being in debt and receiving constant telephone calls and letters which was exacerbating her mental health condition.

DROs also enable clients to escape the cycle of making endless token payments and help them to remove themselves from inappropriate fee-charging debt management plans and Individual Voluntary Arrangements. This can also improve their wellbeing in the longer term.

DROs are obviously not magic bullets on their own, but combined with effective money advice they can provide our clients with a low cost solution to their debt problems that gives them the fresh start that they need.

Q24: What would you consider an appropriate creditor petition level? Please provide evidence for this view, including any case study examples.

Paragraph 3.3 of the call for evidence document, sets out the potential way in which a debt can escalate following the issuing of a creditors petition and bankruptcy order being made.

In January 2013 the OFT imposed requirements on Royal Bank of Scotland and National Westminster to address their concerns including:

‘An apparent failure by the banks to consider customers’ financial circumstances and the proportionality of the approach before asking the court to put a charging order in place. For example, the OFT found evidence that the banks were not always taking account of customers’ efforts to repay debts using a debt repayment plan or other method, and that many charging orders were used to secure relatively small amounts of debt, sometimes below £5,000³.’

³ <http://webarchive.nationalarchives.gov.uk/20140402142426/http://oft.gov.uk/news-and-updates/press/2013/03-13>

A charging order can ultimately lead to an order for sale and loss of the home and an increase in the debt through court costs. Bankruptcy can also lead to loss of the home and a phenomenal increase to the debt, as pointed out in paragraph 3.3. Bankruptcy can also have other life damaging effects such as loss of employment. If it is disproportionate to obtain a charging order for a debt which is less than £5,000 because of the effect this can have on the borrower and their family, it must also be disproportionate to be able to apply for a creditor's petition for a debt which is less than £5,000 when bankruptcy can have a much more devastating effect than a charging order.

The low threshold for creditors' petitions makes bankruptcy a credible threat for unscrupulous creditors. CAB evidence highlights creditors threatening bankruptcy for relatively small debts that are not much over the £750 limit. In some of these cases the creditors have refused offers that seem reasonable or which were similar to the offers accepted by other creditors.

A CAB in Yorkshire and the Humber saw a man who lived with his wife and teenage child. He had debts of around £5,000 including a credit card debt for £1,500 that had been purchased by a debt collection firm. The firm petitioned for his bankruptcy. He offered £80 per month but the creditor declined this, saying that they would only accept this if he paid £500 in respect of court costs. The couple were worried about losing their home and this had increased his wife's health problems.

A CAB in the East of England saw a woman who was made bankrupt by a creditor for a debt £1,200. She was a very unwell woman and her health deteriorated and she lost her home after going bankrupt.

A CAB in the West Midlands saw a 25 year old single woman living in private rented accommodation with her two children aged two and eight months. The woman was unemployed and in receipt of jobseekers allowance, child tax credit, child benefit, housing benefit, and council tax benefit. She had bought a car on hire purchase when she was in work. The car was re-possessed when she could not keep up the payments. She was then told that she owed £1,500. The woman was not able to pay such a large sum upfront, but was willing to pay monthly instalments. However the debt collection company asked for £200 per month which she could not afford. She received lot of phone calls demanding payment, and then received a letter threatening bankruptcy action. The company also told her that they could take over her bank account and seize her children's toys.

A CAB in Yorkshire and the Humber saw a 42 year old woman who lived with her husband and two adult children in a jointly mortgaged property. Both the woman and her husband worked full time with a joint income of around £2,000 a month. She was made bankrupt for a debt of £785. They faced losing their home unless she could find the money to clear this debt and bankruptcy costs of £5,000.

The limit for the creditors petition should therefore be at least £5,000 but consideration should be given to applying a higher limit than this because of the potential effects of a bankruptcy order following the issuing of a creditors petition.

Q25: Is there any other aspect of DROs or the creditor petition limit you would like to comment on? Please do so here.

There are a number of specific issues in relation to DROs that we would like to see improved:

- *Address withheld procedure:* Currently, the client cannot apply to have their address withheld from the Insolvency Register on the ground that there is a risk of violence from someone who is able to obtain the client's address from the Register (which is a public document) until after the DRO has been made (the position is the same for bankruptcy and IVAs). The draft Insolvency Rules propose to enable clients who intend to apply for their own bankruptcy to make applications for address withheld orders before they file their petition and before any order is made. There is no reason for DROs to be treated any differently. Some people need the reassurance that a violent ex-partner will not be able to trace them through the Register before they apply for the insolvency remedy and won't apply unless the address withheld order is made which means they cannot take advantage of that remedy.
- *Preferences:* A preference is defined in the same way for bankruptcy as it is for DROs: something done by the client which puts a creditor in a better position in the event of a bankruptcy/DRO than they would have been in if that something had not been done. This means that if the client pays one creditor but not others or pays one creditor more than others (i.e. not on a pro rata basis) then this is a preference. The potential effect of a preference is different in bankruptcy than DROs. In bankruptcy, the trustee can reclaim the amount of the preference from the creditor. In DROs, the DRO Team has discretion not to make a DRO. However, in bankruptcy the legislation provides that the trustee may not seek repayment of the preference unless the client made the payment with the intention of preferring that creditor (there is a presumption that payments to 'associates' of the client are made with that intention). There is no equivalent provision in DROs. In practice, very few DROs are declined on the ground of preference. During the period 1 April 2012 – 31 March 2013, only 17 applications were declined on the ground of preference. Not only is the amount of time AIs spend investigating preferences disproportionate to the number of DROs declined, although so few DROs are declined on this ground, AIs cannot guarantee that the DRO will not be declined. In practice, preferential payments to friends and family at the expense of other creditors tend to lead to decline whereas paying priority debt arrears or making contractual payments to other types of creditor or paying instalments ordered by a court tend not lead to decline even where these are made at the expense of other creditors. There would be more certainty if the bankruptcy provision re: intention to prefer was replicated in DROs. Of course, intention can be inferred from conduct and circumstances and that would remain the position.
- *Omitted debts:* Unlike bankruptcy, in DROs a client only gets debt relief for the debts scheduled to the DRO. The legislation allows a DRO to be amended but specifically does not allow new debts to be added (there is a short window of opportunity for this between the DRO application being submitted and the DRO being approved). Sometimes debts get left off because of a technical problem with the web application, sometimes creditors provide misleading information so their debt is left

off and sometimes clients (particularly vulnerable clients) are genuinely unaware of, or have forgotten about, debts until the creditor turns up out of the blue (see also the response to Question 3). Provided the debts would still have been within the total debt limit and the client has not deliberately left a debt off the application which should have been included, we feel that the DRO Team should have the power to add new debts to the application in the above circumstances.

- *Duty to report:* This issue is connected with the legislation's requirement that the debtor report any errors in or omissions from the DRO application to the DRO Team. This requirement lasts for as long as the DRO Team is able to carry out functions in relation to the application or the DRO. The DRO Team's ability to carry out functions does not cease with the end of the 12-month moratorium period as these functions include applying to the court and the legislation allows an application to be made to the court 'at any time'. The reporting requirement is, therefore, potentially open-ended and leaves the debtor at risk of having their DRO revoked some years after the end of the moratorium period, a situation which cannot arise in bankruptcy. Unless the omitted debt(s) would have taken the debtor over the debt limit, we would argue that the debtor's requirement to report the omitted debt should only apply during the moratorium period. Similarly with other errors or omissions: the debtor's requirement to report should only apply during the moratorium period unless the matter to be reported would have led to the DRO being declined because the debtor did not in fact meet the qualifying conditions. This would bring the requirement into line with the associated requirement for the debtor to report any change of circumstances between the date of the application and the date of the determination of the application where that change of circumstances affected or would have affected the determination of the application, that is, whether or not the DRO was made (a requirement that is also potentially open-ended).
- *The online application form for a DRO:* Our AIs reported that though the DRO online application has improved there are still problems making it difficult to use. One issue is that entering creditor's names and addresses is time consuming and unnecessarily complicated. The website itself can be unreliable and it is difficult to fill in the form as AIs are unable to select a certain page and have to go back through each page.