

Debt Bulletin: Debt changes and news

Produced by the Active Inclusion Service, Newcastle City Council

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Case study: Client has received an advance of wages from their employer; is it a debt for the purposes of insolvency?

A resident recently approached Money Matters and requested a Debt Relief Order (DRO). They worked as a taxi driver and disclosed that they owed their (ex) employer a substantial amount of money. The taxi company operated a system where drivers could receive an “advance of wages” to subsidise repairs and MOT-related expenses to keep their cars roadworthy. The resident asked if the debt could be excluded from the DRO as they hoped to return to work with the company, meaning that we needed to consider whether the advance of wages is a provable debt for the purposes of a DRO?

The Insolvency Service’s Technical Manual contains the following guidance

“40.42 Advances of salary Most individuals are paid an annual salary under their contracts of employment and the employer pays this by making (usually) monthly payments through the year. Where an advance of salary has been given to the employee, he / she has simply been paid in uneven instalments, receiving a larger proportion at the time of the advance and a reduced sum thereafter. Consequently, if the employment continues it can be regarded that there is no debt as the employee will provide the services for which he/she has been (pre) paid.”

In this instance the “advance” would count as a qualifying debt as the resident:

- Was employed by the company on a self-employed basis and not paid a wage (the advance was paid by a verbal agreement to repay as and when the resident had spare income) and



- Had left employment of the company

In the case of the latter:

“If, however, the employee ceases before the employee has provided all the labour for which they have been paid this then gives rise to a debt which is provable in the bankruptcy as the advance cannot then be recovered from the salary. This arises even if the employment terminates post-bankruptcy as there would be a contingent liability.”

Fines and other penalties explained

The main financial penalty advisors usually encounter are Magistrates’ Court fines – a pecuniary punishment (plus costs and compensation for the prescribed offence). There are other penalties, including:

- **Fixed Penalty Notice** – an administrative alternative to prosecution before the Magistrates’ Court. A Fixed Penalty Notice may be used to deal with anything from anti-social behaviour to littering and dog control offences. A Fixed Penalty Notice is treated the same way as a court fine and is, therefore, excluded from insolvency applications.
- **Penalty Charge Notice** – predominately issued by local authorities for parking offences (parking on double yellow lines, bus lane offences etc.) Notices issued on behalf of a local authority are not fines for the purpose of section 150 of the Magistrates’ Courts Act 1980. Failure to pay leads to enforcement via the County Court (Traffic Enforcement Centre). They should be treated as qualifying debts.
- **Civil penalty** – can be imposed by the Department for Work and Pensions (DWP) or a local authority in relation to an “offence”, such as a late reporting a change in circumstances. A civil penalty is a ‘provable’ debt in that it can be dealt with by insolvency applications.
- **Administrative penalty** – can be imposed by the DWP or a local authority as an alternative to a fraud prosecution. By accepting the penalty, the client will have admitted fraud. Whilst the overpayment plus the penalty charge are included in insolvency, they are not written off and discharged at the end of the insolvency term and the client will remain liable for them.

Hardship and Council Tax

If a client is unable to pay their Council Tax (both arrears and amounts falling due until the end of the financial year), they may make an application under Section 13A of the Local Government Finance Act 2012 for discretionary relief. The Valuation Tribunal Service considered two cases of severe hardship (SC v East Riding of Yorkshire Council (2014)) and ruled in favour of both cases. Discretionary relief was granted for both arrears and Council Tax due until the end of the financial year.

However, a recent application to a resident’s home authority (outside of the north east) was refused by the council. The council in question stated that the benefit cap was government policy to reduce a level of a claimants’ income and that it wasn’t “hardship”. NB. Whilst the authority in question invited an application to the Valuation Tribunal, the resident in question decided on voluntary surrender of the property and so ended any further liability.

Case law: Orders for Sale in Insolvency (and Charging Orders) – Pickard and another (Joint Trustees in Bankruptcy of Constable) v Constable [2017] EWHC 2475 (Ch), All ER (D) 99 (Oct)

A district judge had failed properly to consider the alternative of a shorter period of suspension on the sale and possession of a house in which the bankrupt had a 50% interest and which she shared with her husband (who was 63 years old and suffered from myasthenia gravis, an autoimmune condition that had a debilitating effect on his health). The district judge had ordered that the sale of the property be postponed until the death of, or earlier permanent vacation of the property by, the husband, with a parallel postponement of the order for possession.

On appeal (by the trustees) it transpired that no actual medical evidence had been given to the district judge. The appeal ruled that the district judge had:

- Made factual findings that were unsupported by evidence and / or were speculative
- Erred in the exercise of his discretion

The original decision was replaced with a suspended order of sale for 12 months.

Historical Tax Credit overpayments

A resident may have a historical Tax Credit overpayment still on file with HM Revenue & Customs (HMRC). If the claim for Tax Credits has ended and the resident declined to cooperate with HMRC, the overpayment may have been placed in historical archives by HMRC and the resident may not have been contacted for years.

From October 2018, it is planned that all historical archive Tax Credit overpayments will be transferred to the DWP for collection. This means that all new insolvency cases should be checked to see if there are any historical archive overpayments of Tax Credits.

From October, advisers may be approached by closed insolvency cases – residents who have been contacted about the recovery of a historical overpayment of Tax Credits. If the debt had “become due” (a final decision made that a recoverable overpayment had taken place) prior to the application, it counts towards the £15,000 or £20,000 (depending on the date of the DRO application) limit.

In bankruptcy, the official receiver can be asked to include the debt. However, this can't be done for a DRO. Even though the DRO moratorium has ended, the debtor is still obliged to report the “new” debt to the DRO team.

We are waiting for further instructions from the DRO team on how they intend to approach historical Tax Credit overpayments which have not been included in a DRO.

Further information and help

Can be found on [Newcastle City Council's debt and money advice web page](#).

This debt bulletin was written in **April 2018** by the Active Inclusion Service at Newcastle City Council. It is provided quarterly and is as accurate as possible at the time of writing. The bulletin is part of the Active Inclusion Newcastle offer of support to professionals, which includes debt awareness and benefits **face to face training** and **eLearning**. [For more details see our web page for professionals and volunteers.](#)

You may also be interested in the weekly **Active Inclusion Newcastle e-bulletin** which provides a brief update on financial inclusion and homelessness prevention issues. If you want to receive this, or for more details, email activeinclusion@newcastle.gov.uk

If you, or the Newcastle residents you support, need some debt advice you can phone our consultancy line on **0191 277 1050** (Monday to Friday from 8.30am to 4.30pm).