The content

Debt Advice Handbook 15th edition

Description

With living costs and unemployment rising, budgets squeezed and problem debt on the increase, no adviser should be without this essential guide to the practice and process of giving money advice in England and Wales.

Who's this book for?
It is essential for debt advisers, welfare rights advisers, lawyers, local authority and housing association staff, social workers and union official.

What does it do?
The handbook provides the most comprehensive information needed by advisers on the key stages of money advice, including interviewing clients, establishing liability, prioritising debts, preparing a financial statement, negotiating with creditors and dealing with bailiffs. Fully indexed and cross-referenced to law, regulations and official guidance, and to court and tribunal decisions Includes tactical guidance and examples

What's new?
Fully updated to cover all recent changes to legislation, caselaw and court procedure and practice Emphasis is placed on taking due care of vulnerable clients and making sure that any payment arrangements agreed are appropriate. There is a focus on sustainable credit arrangements that do not affect a client's abilities to pay essential living expenses and priority debts.

Properties

Author(s):
CPAG

This content was last updated:
2025-06-26

Print publication date
Feb, 2024

Print ISBN
978 1 915324 11 5

3. Bankruptcy

Who can become bankrupt

A client may become bankrupt if:

- they are unable to pay their debts and apply for their own bankruptcy (see here); *or*
- a creditor is owed at least £5,000, or two or more creditors are owed a total of at least £5,000 between them, and applies to have the client made bankrupt (see here); *or*
- they have defaulted on an individual voluntary arrangement (IVA) and the supervisor or a creditor included in the IVA applies for their bankruptcy (see here).

A court (in the case of a creditor's petition) or the adjudicator (in the case of a client's bankruptcy application) only has jurisdiction to make a bankruptcy order if:

- the centre of the client's main interests (see here) is in England and Wales; *or*
- the centre of the client's main interests is in a European Union (EU) member state (other than Denmark) and they have an 'establishment' in England and Wales (see here); *or*
- the client is domiciled in England and Wales, or at any time in the previous three years they have been ordinarily resident or have had a place of residence in England and Wales or have carried on business in England and Wales. [1]

---

1 s265 IA 1986; EU Regulation 2015/848

Advantages and disadvantages

Advantages

- Bankruptcy can remove the uncertainty and anxiety caused by negotiating with a large number of creditors simultaneously.
- There can be a sense of relief for the client.
- The client usually pays less than the amount owed. In cases where payments are required, there is one payment to the trustee rather than individual payments to creditors. Payments usually last for three years.
- It can be a fresh start; the process is intended to rehabilitate the client.
- Creditors must accept the situation and contact with the client should stop. Most creditors are unable to take further action against the client (see here).
- The process is certain.
- After discharge, most types of debt are written off and can no longer be pursued by creditors

(see here).

Disadvantages

- The client will almost certainly lose any assets of value that can be sold, unless they are exempt (although even then the client may have to accept a replacement of lower value).
- If the client acquires any asset between the dates of the bankrutcy order and their discharge, they must notify the official receiver who may claim the asset (unless it is exempt).
- If there is equity in the family home (ie, it is worth more than the mortgage and any other debts secured on it), the trustee will want to realise the client's share of this. This may lead to the home being sold. However, this cannot happen if the value of the client's share (after-sale costs) does not exceed £1,000.
- If the client owns a business and employs people, or the business has a value, the employees may have to be dismissed and the business sold.
- If the client has mortgage or rent arrears, the home could be at risk because the trustee in bankruptcy may not allow payments towards the arrears to be taken into account when assessing the client's available income if they determine that payment of arrears plus ongoing payments are not of a 'reasonable amount' but appear to be 'excessive'. Bankruptcy does not prevent a secured lender from taking possession proceedings. A landlord can also take possession proceedings on the grounds of rent arrears even though those arrears are covered by the bankruptcy. In addition, the landlord may be able to enforce a suspended possession order if further arrears accrue post-bankruptcy or even if the arrears included in the bankruptcy are not paid, or there are grounds other than rent arrears to start possession proceedings – eg, persistent delay in paying rent. In addition, the client's tenancy agreement may contain a so-called 'insolvency clause' enabling the landlord to seek possession of the property in the event of the client's bankruptcy or debt relief order (DRO). The client's tenancy agreement should always be checked for such a clause as part of advising on bankruptcy or a DRO.
- If a client is an undischarged bankrupt or subject to a bankruptcy restrictions order or bankruptcy restrictions undertaking, they cannot obtain credit of £500 or more without disclosing their status and they may find it more difficult to open a bank account, even a basic one (see here).
- The process can be expensive. A client who has been made bankrupt by a creditor or following a failed IVA and who wishes to pay off the debts in order to preserve an asset (eg, the family home) must also pay post-bankruptcy costs and these could be substantial.
- The client must allow their financial affairs to be scrutinised by officials who may take criminal action if irregularities are found. They may also become subject to a bankruptcy

restrictions order or bankruptcy restrictions undertaking (see here). However, apart from the restriction on obtaining credit, this may have no effect on them.

- The client may be barred from certain public offices or may be unable to practise certain professions – eg, as an accountant or solicitor.
- The client's credit rating continues to be adversely affected after discharge and this will probably make running a business or buying a home in future very difficult because the cost of credit may be higher, assuming they can obtain it.
- The client may feel judged and humiliated. Some clients may feel there is a stigma attached to bankruptcy and this could be reinforced in cases where a bankruptcy restrictions order or bankruptcy restrictions undertaking is made.
- The client's immigration status may be affected and so specialist immigration advice should be obtained. Sources of immigration advice available locally can be searched for at find-legal-advice.justice.gov.uk. For further information, see also gov.uk/government/publications/good-character-nationality-policy-guidance.
- While undischarged or subject to a bankruptcy restrictions order or bankruptcy restrictions undertaking, the client cannot be a company director without permission of the court (which may be granted on condition that the client makes payments from their income for the benefit of creditors). Also, they cannot trade under any name other than the one used at the date of the bankruptcy order without disclosing the name under which they went bankrupt to everyone with whom they do business.
- The names of people who are made bankrupt are published in the *London Gazette,* the Individual Insolvency Register (which is a public register) and may also be published in the local press. Bankruptcy restrictions orders and bankruptcy restrictions undertakings may also attract local publicity, and friends and neighbours may find out about the client's financial difficulties and, if a bankruptcy restrictions order is made, that they have been found to have acted irresponsibly in relation to their financial affairs.
- Not all debts are written off at the end of bankruptcy – eg, social fund loans, student loans, fines, compensation orders, criminal courts charge, compensation for personal injury or death, maintenance and child support and debts incurred through fraud.
- Secured creditors are not affected by bankruptcy and can still enforce their security.
- Joint debts are not written off for anyone who is jointly liable with the client, as creditors can still pursue the non-bankrupt co-client. If they are the client's partner, the family will still be in financial difficulties unless they have taken separate action to resolve their debt problems.

If a client wants to make themself bankrupt

The debtor's bankruptcy application

The debtor's bankruptcy application

If a client wants to make themself bankrupt, they must apply to an official of the Insolvency Service called the 'adjudicator' on the grounds that they are 'unable to pay their debts' (although it is possible to become bankrupt for only one debt which the client is unable to pay). [1] This involves completing an online application form, called the 'debtor's bankruptcy application', including details of the client's income and expenses in the format of the standard financial statement (see here). This can be downloaded from sfs.moneyadviceservice.org.uk/en/use-the-sfs. The client can also download *Guidance for Debt Advisers* for themself from apply-for-bankruptcy.service.gov.uk. Once the application has been created, there is no time limit within which it must be completed and submitted.

An adjudicator's fee of £130 is payable together with a deposit of £550. The total fee of £680 can be paid either online by debit, third-party credit or pre-paid cards (Insolvency Service guidance states that clients should not use their own credit cards) by logging into their application and quoting their payment reference number, or in cash at any Royal Bank of Scotland branch. [2] Payment by instalments is available for clients paying online. The minimum instalment is £5 and there is no time limit within which full payment can be made. Cash payment must be of the full amount. Cheques are not accepted. Fees being paid by charities should be paid through the Insolvency Service website at apply-for-bankruptcy.service.gov.uk/third-party-payment, quoting the client's payment reference number. Neither the adjudicator fee nor the deposit can be remitted.

Note: see here if the client or a member of their family is at risk of violence and does not want details of their address to be entered on the Individual Insolvency Register.

The centre of the client's main interests

The adjudicator can only make a bankruptcy order if:

- the centre of the client's main interests is in England and Wales; *or*
- the centre of the client's main interests is in an EU member state (other than Denmark) and they have an 'establishment' in England and Wales; *or*
- the client is domiciled in England and Wales, or at any time in the previous three years they have been ordinarily resident or have had a place of residence in England and Wales *or* have carried on business in England and Wales. [3]

A person's 'centre of main interests' is the address from where they administer their affairs on a regular basis (eg, their professional address) and where contact with them can be made.

The centre of main interests of a client who operates a business or carries out a professional

activity is presumed to be in England and Wales if their main place of business is situated in England and Wales, unless they have moved their place of business to England and Wales within the three months prior to applying for bankruptcy. In the case of other clients, their centre of main interests is presumed to be in England and Wales if their usual residence is in England and Wales, unless they have moved to England and Wales within the six months prior applying for bankruptcy. If the client administers their financial affairs on a regular basis in an EU state (other than Denmark), they must usually apply for bankruptcy there. 4

A client who has an 'establishment' in England or Wales, but whose centre of main interests is in an EU state, may apply for their own bankruptcy in England or Wales. 5 An 'establishment' is the place where the client carries out, or has carried out, their business in the three months before applying for the bankruptcy order. Business carried out on an occasional basis does not count, nor does merely having a property, such as a holiday home, in England or Wales.

If a client has previously lived abroad, they may not be able to apply for a bankruptcy order in England and Wales. Specialist advice should be obtained. 6

---

1 *Re: Hancock* [1904] 1 KB 585

2 If the client has an overdraft, advise that there could be an issue with using a debit card to pay the Adjudicator's fee as it could be said that the client had increased the overdraft with no reasonable expectation of it being repaid.

3 In *Mobile Telecommunications Company KSCP v Prince Hassan* [2025] EWHC 85 (Ch) the High Court set out a five-part test for determining whether a debtor has had a place of residence in the jurisdiction for the purpose of s.265(2)(b)(i) IA 1986 (which applies to creditors' petitions: s.263I(2)(b)(i) applies to debtors' applications and is identically worded). See para 148 of the judgment. For example, a third-party's residence the client is temporarily occupying with the permission of that party does not count for this purpose. See *Lakatamia Shipping Co v Hsin Chi Su* [2021] EWHC 1866 (Ch).

4 See P Madge, 'Centre of interest', *Adviser* 93; EU Regulation 2015/848

5 See s263I(ab) IA 1986, as inserted by The Insolvency (Amendment) (EU Exit) Regulations 2019 No.146. Following the UK's exit from the EU and the end of the implementation period on 30 December 2020, the government has published guidance on recognition of cross-border insolvencies in relation to EU states, available at gov.uk/government/publications/cross-border-insolvencies-recognition-and-enforcement-in-eu-member-states.

6 See the guidance on the recognition of cross-border insolvencies in relation to EU states, available at gov.uk/government/publications/cross-border-insolvencies-recognition-and-enforcement-in-eu-member-states.

The adjudication process

Once the client's application has been created and they have their reference number, there is no time limit within which the application must be completed and submitted to the adjudicator. There are nine sections to the application.

- **Section 1** asks for personal details, including details of the client's household and whether they are a homeowner or a tenant.
- **Section 2** requests details of the client's current and recent employment history over the previous 12 months, including any self-employment within the previous three years and whether the client has been a director of a limited company within the previous 12 months.
- **Section 3** asks for details of the client's bank account(s) including details of any joint account holder and the current balance(s). Any bank or building society accounts which the client has may be frozen and so any money needed to cover everyday living expenses should be withdrawn before the application for a bankruptcy order is made.
- **Section 4** asks for details of assets and their valuation, specifically vehicles, pensions and insurance policies and cash. This section also asks for details of any assets sold, transferred or given away in the previous five years and details of any solicitor, accountant, bookkeeper or financial adviser who has acted for the client in the previous five years.
- **Section 6** asks for details of the client's income and expenditure. This section follows the structure and terminology of the standard financial statement, including the savings element (see here).
- **Section 7** asks for details of any current legal claims in which the client is involved, including whether the client has been legally separated, divorced or had a civil partnership dissolved in the last five years. Any current magistrates' court proceedings should also be included.
- **Section 8** asks for information about the client's debt history, including reasons for being unable to pay their debts, previous insolvency options used and also details of any preferences made by the client in the last two years (see here).
- **Section 9** is the submission page and asks the client to confirm various matters, including whether the debts listed have been included in another bankruptcy application, whether the client has received debt advice, whether the client has applied for a person at risk of violence (PARV) order (see here) and whether the client is aware of anyone else petitioning to make them bankrupt.

Once the application has been completed and the application fee paid in full, the application can be submitted directly to the adjudicator. **Note:** the application cannot be processed if the fee has been overpaid (eg, part payment by the client and the full fee by a charity), so that should be checked before submission in appropriate cases. A copy should be printed and given to the client.

Once submitted, the application cannot be withdrawn. The adjudicator carries out certain verification checks, including of the electoral register, the Individual Insolvency Register and the client's Equifax credit file, and may ask the client to supply further information in support of the application.

The adjudicator has 28 days in which to determine the application, although the majority are determined within 48 hours. The adjudicator must determine whether the following requirments are met:

- the adjudicator has jurisdiction to determine the application; [1]
- the client is unable to pay their debts;
- no bankruptcy petition is pending against the client;
- no bankruptcy order has been made in respect of any of the debts included in the application.

If they are satisfied that the above requirements are met, the adjudicator *must* make a bankruptcy order. If they are not satisfied that the above requirements are met, they must refuse to make a bankruptcy order. The adjudicator cannot adjourn an application or refer the client for debt advice or for an IVA or a DRO.

The High Court has decided that the correct test to be applied when deciding whether a client is unable to pay their debts is a 'cash flow' test (ie, is the client able to pay their debts as they fall due), rather than a 'balance sheet' test – ie, do the client's liabilities exceed their assets. In that case, the debtor was aged 55 and entitled to draw down an occupational pension which - if cashed in - appeared to be sufficient to pay his debts in full. On that basis, the Adjudicator refused to make a bankruptcy order. The debtor appealed. The district judge decided that the correct test was the 'cash flow' test and, as an 'approved pension arrangement', the pension fund should not be taken into account so that a bankruptcy order was made. The Adjudicator appealed. Although the High Court agreed with the district judge that the correct test was the 'cash flow' test, it decided that the Adjudicator was entitled to have regard to pension assets in determining whether a debtor could pay their debts. Where a pension pot that is sufficient to clear a debtor's debts clearly exists and the debtor has reached the age when they could access the pot by the date the application is adjudicated by the Adjudicator and there is no satisfactory evidence that such a pension pot cannot be realised within a timescale acceptable to a reasonable creditor (to be objectively determined), the debtor will have failed to demonstrate that they are unable to pay their debts (the burden being on them to do so). The High Court discharged the bankruptcy order. [2]

If the application is refused, the client is informed of the reason(s) and that they can ask for a review by email within 14 days. If a request is received, the Adjudicator reconsiders the application within 21 days but may not consider any new information. Following the review, the

Adjudicator either makes a bankruptcy order or confirms the decision to refuse the client's application. No fee should be charged because the £130 fee already paid by the client is 'for the performance of the Adjudicator's functions', [3] which includes carrying out a review if requested.

If the application is again refused, the client is informed of the reason(s). They can appeal within 28 days to the court for the insolvency district where they reside. A template form of appeal is available at gov.uk/guidance/debt-advisor-tools-and-information. [4] The court fee is £99. Remission may be available (see here). Unlike the Adjudicator, the court can consider new information. [5]

If a bankruptcy order is made, the adjudicator uploads a copy of the order to the client's online account and allocates the case to an official receiver on a rota basis who may not be based in the client's local Insolvency Service office. However, should the official receiver need to interview the client in person, the case will be transferred to the client's local office.

---

1 See *Budniok v Adjudicator*, Insolvency Service (*Adviser* 182 abstracts) - a successful appeal against the Adjudicator's decision that the debtor's centre of main interest was not in England and Wales

2 *The Office of the Bankruptcy Adjudicatorv Shaw* [2021] EWHC 3140 (Ch), paras 33 and 42

3 Sch 1 The Insolvency Proceedings (Fees) Order 2016 No.692

4 r10.48 I(E&W)R 2016

5 For further information, see M Gallagher, 'Bankruptcy goes on-line', *Adviser* 174

If a creditor wants to make a client bankrupt

Creditors who are considering making a client bankrupt must bear in mind that the process is intended to benefit all creditors, not just themselves. They could bear all the costs of obtaining a bankruptcy order only to find that other creditors receive more, and they could even end up with nothing at all if the client has no income or assets.

A creditor can apply for someone to be made bankrupt if it is owed at least £5,000, which the

person 'appears' unable to pay. Two or more creditors who are owed a total of at least £5,000 between them can petition together. The creditor must satisfy the court that the client is unable to pay by either: [1]

- serving a 'statutory demand' on the client with which they fail to comply (see below); *or*
- unsuccessfully attempting to enforce a court judgment against the client. When the creditor has used enforcement agents (bailiffs), they must have made serious attempts to enter the client's home and take control of goods. It is not enough that the enforcement agent has merely visited the client's home and been unable to gain access. [2]

If the enforcement method chosen by the creditor produces no or insufficient money, the creditor can petition for bankruptcy. [3] However, it seems that councils issuing bankruptcy petitions for unpaid council tax not only have to show that the debt is due and unpaid, but also that the client's bankruptcy will serve some useful purpose. [4]

---

1 s268 IA 1986

2 *Re: a Debtor, The Times*, 6 March 1995

3 *Skarzynski v Chalford Property Co* [2001] BPIR 673 (ChD)

4 *Lock v Aylesbury Vale DC* [2018] EWHC 2015 (Ch)

Serving a statutory demand

Serving a statutory demand is the most common method used by creditors to satisfy the court of the client's inability to pay. A statutory demand is a document demanding that the client either pays the debt in full or 'compounds for the debt' – ie, comes to an agreement with the creditor, usually by an acceptable offer of payment by instalments, or offers security for the debt which is acceptable to the creditor.

There is no prescribed form, although HM Courts and Tribunals Service (HMCTS) has produced a number of templates which can be found at gov.uk/government/collections/court-and-tribunal-forms.

The statutory demand does not have to be issued by the court or even seen by it at this stage. The creditor cannot claim the costs of issuing the statutory demand unless and until the court actually awards them. [1]

A creditor does not need a judgment in order to be able to serve a statutory demand for the debt. However, without a judgment, the creditor might find that the client is able to challenge the

existence of the debt. A creditor who has a judgment is not required to attempt to enforce it; the creditor can serve a statutory demand instead.

If the client does not comply with the statutory demand within 21 days, the creditor can ask the court to issue a creditor's petition and ask the court to make a bankruptcy order.

---

1 *Howell v Lerwick Commercial Mortgage Corporation* [2015] EWHC 1177 (Ch)

Challenging a statutory demand

Some creditors use statutory demands as a method of debt collection. The courts have said that this is only an abuse of process if the creditor is aware the debt is reasonably disputed. [1] The Financial Conduct Authority's predecessor, the Office of Fair Trading, discouraged the use of statutory demands unless:

- it was commercially viable; *and*
- its use was considered reasonable; *and*
- there was a realistic prospect of bankruptcy proceedings being taken.

Circumstances in which the use of a statutory demand might not be considered reasonable, therefore, include if:

- the debt is known to be 'statute-barred' (see here); *or*
- a valid dispute remains unresolved; *or*
- the client has provided adequate proof that they are unemployed and has no assets; *or*
- the client has demonstrated that there is no (or minimal) equity in their home, that they have no other assets and have made a reasonable payment offer; *or*
- bankruptcy would result in the client losing their job and they have provided a financial statement and made a reasonable offer of payment.

---

1 *Griffin v Wakefield MBC*, [2000] RVR 226

Responding to a statutory demand

Although the creditor may have no intention of making the client bankrupt, statutory demands

should never be ignored. On receipt of a statutory demand, the client should be advised about the consequences of bankruptcy. If they do not want to become bankrupt, they should consider:

- applying for an administration order or proposing an IVA as an alternative to bankruptcy;
- making payment(s) in a lump sum or by instalments either to clear the debt in full or reduce it below the £5,000 bankruptcy limit so that the creditor cannot ask the court to issue a bankruptcy petition;
- offering a payment in full and final settlement of the debt. This could either be in a lump sum or by instalments. The client should be prepared to demonstrate either that they have no assets (including if the home has no or only minimal equity) or that it would not be reasonable to expect them to realise them. If the debt is subject to a judgment, as well as trying to negotiate with the creditor, the client should apply to the court to vary this to enable payment by instalments, with a view to arranging this before the creditor can obtain a bankruptcy order;
- applying for a time order if the debt is regulated by the Consumer Credit Act 1974 (see here);
- offering a voluntary charge over their property as security for the debt (see here);
- applying to set aside the statutory demand within 18 days of service (see below). 1

---

1 The creditor must do all that is reasonable to bring the statutory demand to the client's attention: paras 11.2 and 12.7 PD-IP

Setting aside a statutory demand

If the statutory demand has been 'set aside' (ie, cancelled), the creditor cannot apply for a bankruptcy order. The client can apply for the demand to be set aside:

- on the grounds that there is dispute about the money said to be owed. If the creditor has obtained a judgment, at this stage, the court does not enquire into the validity of the debt. If this is an issue, the client should be advised to consider applying to set aside (see here) or appeal the judgment (see here), although the client can still raise any dispute at the hearing of the petition (see here); 1
- on the grounds that the client has a counterclaim against the creditor, which equals or exceeds the amount of the debt (if this merely reduces the debt below the bankruptcy level of £5,000, the statutory demand cannot be set aside); 2
- on the grounds that the creditor holds security, which equals or exceeds the amount of the debt;

- on 'other grounds' – eg, the debt is 'statute-barred' (see here) or the demand has not been signed. [3] A statutory demand based on a judgment debt is not statute-barred even if the judgment was made more than six years ago. [4]

The application is made on Form IAA, which is available at gov.uk/government/collections/court-and-tribunal-forms. It must be supported by a witness statement to which a copy of the statutory demand must be attached (if the client has it in their possession). If the application is made more than 18 days after the date of service of the statutory demand, the application must include a request for an extension of time with evidence explaining the delay. [5] The application is made to the court for the insolvency district where the client resides. [6] Three copies of each form must be filed. There is no court fee. If the judge considers there are no grounds for the application, they can dismiss it without a hearing. Otherwise, a hearing is arranged at which the district judge considers the application.

The court does not set aside a statutory demand on the grounds that the creditor has unreasonably refused an offer of payment or security, or even on the grounds that the creditor has refused to consider such an offer. However, this ground *can* be used at the hearing of the petition. Nor does the court set aside a demand on the grounds that it is for an excessive amount. In such a case, the client is supposed to pay the amount admitted to be due and only apply to set aside the amount in dispute. The court will not 'do a deal' with the client to set the statutory demand aside on condition that they make a payment. The court can set aside a statutory demand for a disputed debt, provided it is satisfied there are reasonable grounds of success.

If the application to set aside the statutory demand is dismissed, the creditor is given leave to present their bankruptcy petition.

---

1 para 11.4.4 PD-IP

2 *Howell v Lerwick Commercial Mortgage Corporation* [2015] EWHC 1177 (Ch)

3 r6.5 I(E&W)R 2016

4 *Re: Ridgeway Motors* [2005] EWCA Civ 92; *Munshi v Architectural Association*, High Court, 2015, unreported (typographical error did not render statutory demand unclear)

5 para 11.4.2 PD-IP

6 r10.48 I(E&W)R 2016

The creditor's petition

A creditor must present a bankruptcy petition if it wants to continue with the bankruptcy process,

but this can only be done if the debt is at least £5,000. The petition must contain certain prescribed information. [1] HMCTS has produced a template, available at gov.uk/government/collections/court-and-tribunal-forms. There are different templates depending on whether the creditor is an unsatisfied judgment creditor or has served a statutory demand. The creditor must file the petition at the court, together with:

- a witness statement that the facts stated in the petition are true; *and*
- a court fee which is currently £343; *and*
- the deposit of £1,500.

Responding to the petition

The petition must be served personally on the client. It is still not too late to prevent a bankruptcy order being made, but the client must give at least five business days' notice to the court and to the creditor of their intention to oppose the making of a bankruptcy order. The client can still raise any 'genuine triable issue' even if they did not apply to set aside the statutory demand, but they cannot put forward any matter on which the court has already ruled against them unless there has been a relevant change of circumstances.

Where personal service is not practicable, evidence that the following steps have been taken will usually be sufficient to justify the court making an order for an alternative method of service ('substituted service'): [2]

- a personal call at the client's residence/place of business;
- a letter referring to the call, its purposes and the date of a further call;
- an attempt to arrange an appointment for personal service through the client's solicitor, if any.

---

1 rr10.7-10.9 I(E&W)R 2016

2 para 12.7 PD-IP

The bankruptcy hearing

The hearing is before a district judge. At the hearing, the creditor must prove that they have delivered the petition to the client (and, if relevant, that the statutory demand has been brought to the client's attention) and file a certificate that the debt is still outstanding.

If the client has paid the debt (excluding any creditor's costs) in full before the hearing date, it is dismissed, but the district judge may still order the client to pay the creditor's costs. [1] If not paid, these will have to be the subject of fresh enforcement proceedings, which could be bankruptcy

proceedings if the order is for £5,000 or more. Some creditors claim that, unless the client has paid their costs before the date of the bankruptcy hearing, a bankruptcy order will still be made. This is not correct and should be challenged. The court cannot make a bankruptcy order unless it is satisfied that 'the debt in respect of which the petition has been presented' has neither been paid, nor secured, nor compounded for. [2] Because the creditor's costs are not a 'debt in respect of which the petition was presented', the client cannot be made bankrupt on this petition for those costs. [3]

If the client has reduced the debt (excluding any creditor's costs) to less than £5,000 in between the issue of the petition and the hearing date, the court has the discretion to make a bankruptcy order, taking into account the client's previous conduct. [4] Even if the petition is dismissed, the client could be ordered to pay the creditor's costs.

The court has discretion to refuse to make a bankruptcy order in certain circumstances, including if execution on a judgment has been stayed (including an instalment order for payment), or that an appeal is pending against the judgment or order, or if the creditor has unreasonably refused to accept an offer to pay the debt by instalments, a reduced sum in full and final settlement, or an offer to secure the debt. [5] The High Court has pointed out that a creditor can take into account any history of default, partial payments and broken promises on the part of the client and to consider its own interests, and that 'acting reasonably' is not the same as 'acting justly, fairly or kindly'. [6]

Rule 12.1 of the Insolvency (England and Wales) Rules 2016 provides that the Civil Procedure Rules (CPR) apply to insolvency proceedings unless disapplied by, or inconsistent with, those Rules. Part 21 of the CPR applies to 'protected parties' – ie, those who lack capacity within the meaning of the Mental Capacity Act 2005. Under rule 21.3(3), a party may not take any step in proceedings without the court's permission until the protected party has a 'litigation friend'. In *Re Kumar*, the client was 82 years old and a bankruptcy petition had been issued against him. His daughter wrote to the court stating that her father had Alzheimer's disease and was unable to attend the hearing. She also enclosed a doctor's report and requested an adjournment until after her father attended a consultant's appointment. The district judge queried the client's capacity but the creditor objected to an adjournment and a bankruptcy order was made. On appeal, the bankruptcy order was set aside and the daughter appointed as litigation friend. The court was critical of the creditor's conduct and ordered it to pay the official receiver's and the client's costs of the appeal. The consultant's report confirmed that the client had a form of dementia involving Alzheimer's disease from which the court concluded the client lacked litigation capacity. The district judge should have addressed this issue and applied rule 21.3(3). [7]

A client can be referred to an approved intermediary (see here) for a DRO to be made instead of a bankruptcy order but *only* with the consent of the creditor who issued the bankruptcy

petition. As the effect of a DRO is that no further payments are made to creditors, it is unlikely a creditor would agree to one unless it was satisfied that the client had no assets and no income and would never be in a position to make payments towards the debt.

It is not unusual for the parties to reach an agreement about payment of the debt, and the hearing of the petition can be adjourned, but repeated adjournments should not be allowed unless there is a reasonable prospect of payment within a reasonable time. [8] If an agreement is reached and the creditor does not want to proceed with the bankruptcy, the petition can be dismissed with the permission of the court. The client may, however, find themself being ordered to pay the creditor's costs if the court decides that it was reasonable for the creditor to resort to bankruptcy to recover the debt.

---

1 See *Reliance Wholesale Ltd v AM2PM Feltham Ltd* [2019] EWHC 1079 (Ch)

2 s271(1)(a) IA 1986

3 *Lilley v American Express* [2000] BPIR 70 (ChD), p74 letter E and p77 letters E-G

4 *Lilley v American Express* [2000] BPIR 70 (ChD)

5 s271 IA 1986. See also r10.24 I(E&W)R 2016 and *Barker v Baxendale-Walker* [2018] EWHC 1681 (Ch) where an application to stay the petition was dismissed on the ground that a request for permission to appeal was not the equivalent of a pending appeal.

6 *Ross and Holmes v HMRC* [2010] EWHC 13 (ChD)

7 [2021] EWHC 181 (Ch)

8 r10.23 I(E&W)R 2016; *Edgington v Sekhon* [2015] EWCA Civ 816 - where the application at the hearing was refused on the ground that it was made too late and there was no specific proposal nor evidence of ability to pay; see also *Day v Refulgent* [2016] EWHC 7 (Ch). In *Barker v Baxendale-Walker* [2018] EWHC 1681 (Ch), the judge held: 'The court, of course, has power to adjourn the petition but the practice is to do so only if there is credible evidence that there is a reasonable prospect that the petition debt will be paid within a reasonable time.' However, see also *Ndyabakiha v Hitachi Capital* [2021] EWHC 633 (Ch), discussed in G O'Malley, 'Setting aside a bankruptcy petition', *Adviser* online, 1 April 2021, in which a bankruptcy order was set aside and a new hearing ordered when a late and unevidenced payment offer was made to clear the debt immediately. The decision is fact sensitive, in particular that the debt was subject to a charging order (the creditor would need to give this up once a bankruptcy order was made: s269(1)(a) IA 1986). In *Lebanese Swiss Bank v Abela* [2021] EWHC 3709 (Ch), the High Court confirmed that an adjournment of 'a few weeks' is usually considered enough time for a debtor to raise the necessary funds to settle the debt.

If a supervisor of an individual voluntary arrangement wants to make a client bankrupt

If the client is subject to an IVA, the supervisor can petition for a bankruptcy order on the grounds that: [1]

- the arrangement was based on false or misleading information supplied by the client; *or*
- the client has failed to comply with the terms of the IVA.

In the case of protocol-compliant IVAs (see here), the supervisor must obtain the creditors' approval before taking this step.

---

1 s276 IA 1986

After a bankruptcy order is made

The role of the official receiver

When a bankruptcy order is made (either because the client has applied for their own bankruptcy, or a creditor or supervisor has successfully petitioned), the official receiver automatically becomes the client's trustee in bankruptcy ('the trustee') and may continue to be the trustee until the client is discharged from bankruptcy or they may pass the case to an insolvency practitioner who becomes the trustee. The official receiver contacts the client soon after the bankruptcy order is made, which could be on the same day.

The official receiver's main role (as official receiver as opposed to trustee) is to:

- investigate the client's conduct and financial affairs, and report to the court; *and*
- obtain control of the client's property and any relevant documents.

The client may be asked to complete a questionnaire and it will be helpful for the client to have a copy of their bankruptcy application to refer to if they applied for their own bankruptcy.

A client is usually offered a telephone interview with an examiner (a member of the official

receiver's staff). The examiner checks the client's answers and asks questions to obtain any additional information. In other cases, the client must attend an interview at the official receiver's office.

The client is required to co-operate with the official receiver. They must give up possession of their assets (with some exceptions) and hand over any papers that are reasonably required. [1] Failure to do so could result in their discharge being delayed. The official receiver can arrange for them to be examined in public by the court about their financial affairs and the causes of their bankruptcy, although this rarely happens if the client has co-operated fully with the official receiver. The official receiver can arrange for their mail to be redirected, if appropriate. [2] In appropriate cases, the official receiver can apply to the court to impound the client's passport to prevent them from leaving the country.

It is an offence for the client to do anything that intentionally conceals information or property from the official receiver or trustee, or to deliberately mislead the official receiver or trustee about property which they had either before or after the bankruptcy. Criminal charges can be brought against a client, leading to a fine and/or imprisonment. However, if the client can show that there was no intention to mislead or defraud, this counts as a valid defence.

It is also an offence for the client to leave (or attempt to leave) with assets of £1,000 or more which should have been given up to the official receiver. [3]

The official receiver has a duty to investigate every bankruptcy unless they consider such investigation unnecessary. [4] Any criminal offences revealed must be reported to the authorities. They usually visit any business premises, and may also visit the client's home, but this is rare. If the official receiver does visit, they may remove any items of value which are not exempt (see here).

---

1 s291 IA 1986

2 s371 IA 1986

3 s358 IA 1986

4 s289 IA 1986

Clients at risk of violence

The official receiver registers the bankruptcy at the Land Registry, advertises it in the *London Gazette,* inserts details in the Individual Insolvency Register (see here) and may advertise it in one local paper. [1]

If the disclosure of the client's current address or whereabouts could lead to violence against them or other members of the family who live with them, the court may issue a PARV order that requires that: [2]

- details of the client's address be removed from any court file;
- the client's details entered in the bankruptcy order must not include details of their current address;
- the details of the client's current address given to the Land Registry be removed. This is important if the client still owns an interest in a previous address through which they might be traced;
- any gazetted or advertised notice must not include details of the client's current address;
- the details entered on the Individual Insolvency Register must not include details of the client's current address (or that such details must be removed).

The application not to have details disclosed can be made by either the client, the official receiver, the trustee in bankruptcy or the Secretary of State, but is most likely to be made by the client. The application is made to the court for the insolvency district in which the client resides, which can be located at gov.uk/find-court-tribunal. [3] The Insolvency Service has produced a number of template application forms, available from gov.uk/government/collections/insolvency-service-forms-england-and-wales.

The application can be made after the bankruptcy order is made or before the bankruptcy order is applied for, which may be preferable for the client as the client then has certainty that their address will not be advertised. The official receiver must be named as respondent to the application on the form if the application is made after the date of the bankruptcy order. The application must be accompanied by a witness statement containing sufficient evidence to support the application. The client must also either produce a copy of the official receiver's consent to the application (if relevant) or, if this is not available, the witness statement must indicate whether consent has been refused. **Note:** the legislation does not give the Adjudicator any role in this process if the application is made before the date of the bankruptcy order.

The court fee is currently £318. Remission may be available (see here) although advisers report that some courts are not charging the fee even where the client does not strictly qualify for remission because of the nature of the application.

The application should comply with paragraph 16 of the *Practice Direction - Insolvency Proceedings* available at justice.gov.uk/courts/procedure-rules/civil/rules/insolvency_pd.

The application is referred to the district judge, who considers whether they can deal with it without a hearing. A hearing may be ordered if: [4]

- the court is considering refusing the application; *or*
- the respondent's consent is not attached to the application; *or*
- the district judge considers that a hearing is appropriate for some other reason.

---

1 r10.32 I(E&W)R 2016, which enables the court to suspend registration until further order

2 See M Gallagher, 'Persons at risk of violence orders', *Adviser* 177

3 r10.48 I(E&W)R 2016

4 para 16(3) PD-IP

The role of the trustee

The trustee is responsible for handling the client's affairs and getting as much money as possible for their creditors. The trustee gathers and sells all the property previously owned by the client and distributes the proceeds among their creditors.

On the making of the bankruptcy order, the official receiver automatically becomes the trustee (although in appropriate cases, the official receiver can decide to appoint an insolvency practitioner as trustee), and the client's estate 'vests' in the trustee – ie, ownership of all their property (except certain items – see here) passes automatically to the trustee. The client cannot sell anything, but if arrangements have already been made to sell something (eg, the home), the trustee almost certainly approves this, provided it is a proper commercial transaction. The proceeds are then used towards satisfying the expenses of the bankruptcy and the creditors.

Property that vests in the trustee includes property in countries outside England and Wales, although there may be practical issues for a trustee in taking control of and realising this.

The client may have property which cannot be disposed of and/or is subject to obligations which would involve expenditure to the detriment of the estate, and hence the creditors – eg, a business lease. The trustee can dispose of such 'onerous property'. [1]

If the client attempts to give away or sell their property after the bankruptcy petition is issued but before the property passes to the trustee, this transfer is void. The court can confirm a sale but, in the absence of this, the property still forms part of the client's estate and can be recovered and sold by the trustee.

The sale of jointly owned property requires the consent of the co-owner or a court order. If a client acquires any property before discharge, they must inform the trustee within 21 days. The trustee then has 42 days (during which the client must not dispose of the property) in which to

claim the property for the estate. [2]

---

1 s315 IA 1986

2 s307 IA 1986

Provable debts

The trustee contacts the client's creditors and invites them to 'prove' their debts – ie, submit claims (creditors owed less than £1,000 do not need to do this). Creditors must, therefore, contact the trustee and demonstrate that they are owed the money. [1]

The court can prevent any creditor who is entitled to submit a claim from attempting to recover the debt in any other way. [2]

The only debts that cannot be proved are: [3]

- fines;
- maintenance orders (other than orders for payment of a lump sum or costs) and child support;
- debts from certain orders of the criminal courts, including confiscation orders and the criminal courts charge;
- student loans;
- social fund loans (if the bankruptcy petition was presented on or after 19 March 2012).

Note: secured loans do not need to be proved because the rights of a secured creditor are not affected by bankruptcy. Secured creditors can, theoretically, remove their security and ask to be included in the list of creditors. If they force a sale of the home, they can be included as creditors for any unsecured balance due.

The trustee works out the value of the debts and any assets. They list the debts in the following order of priority in which they should be paid: [4]

- bankruptcy expenses, including amounts due to the trustee, the court or the Insolvency Service, which charges for the official receiver's services (£2,390 on a debtor's application and £3,300 on a creditor's petition with effect from 9 January 2025). This often leaves creditors with nothing;
- expenses of, for instance, estate agents to realise assets;
- contributions owed by the client to occupational pension schemes;

- arrears of wages to employees for four months before the bankruptcy (up to a maximum of £800 each);
- from 1 December 2020, payments due to HMRC collected by the client on its behalf – ie, VAT, pay as you earn, employee national insurance contributions and student loan deductions;
- other ('ordinary') creditors. These creditors receive nothing until the other 'preferential' creditors have been paid in full. If paid at all, these creditors generally receive only a percentage of the value of their debt;
- deferred debts – eg, debts due to the client's spouse;
- interest on any of the above from the date of the bankruptcy order.

Any surplus is returned to the client.

---

1 r15.28 I(E&W)R 2016

2 s285 IA 1986

3 r14.2 I(E&W)R 2016

4 Sch 6 IA 1986

Restrictions during bankruptcy

Pre-discharge restrictions
Post-discharge restrictions: bankruptcy restrictions orders and undertakings

Pre-discharge restrictions

These include that a client who is an undischarged bankrupt cannot:

- obtain credit of £500 or more from a creditor without disclosing their status as an undischarged bankrupt;
- engage in business in a name other than the one under which they were made bankrupt without disclosing that name to people with whom they have business dealings;
- act as a director of, or directly or indirectly promote, form or manage a limited company without permission from the court;
- act as an insolvency practitioner or an intermediary for DROs (see here);
- act as a charity trustee (unless they are a director of the charity and have obtained permission from the court).

A breach of any of the above is a criminal offence, but the restrictions usually end on discharge (see here).

The Insolvency Service has published a page on the gov.uk website confirming the restrictions that apply to clients predischarge and if they are subject to a bankruptcy restrictions order or undertaking (and their DRO equivalents). These include restrictions in relation to certain professions, occupations or posts, such as holding public office. This information is available at tinyurl.com/2p8bnmte.

Post-discharge restrictions: bankruptcy restrictions orders and undertakings

People who are regarded as 'culpable' because they have acted recklessly, irresponsibly or dishonestly may be subject to an extended period of restrictions after they have been discharged from bankruptcy through a bankruptcy restrictions order or a bankruptcy restrictions undertaking.

Bankruptcy restrictions orders and undertakings are most commonly made because the client has:

- contributed to the bankruptcy by neglecting their business affairs (usually, tax affairs);
- entered into transactions either to prefer friends or relatives ahead of other creditors or at an undervalue;
- incurred debts with no reasonable prospect of being able to repay them.

If a court makes an order or the client agrees to an undertaking, the above restrictions on obtaining credit, engaging in business, involvement in a limited company and acting as an insolvency practitioner continue for a minimum of two years and a maximum of 15 years from the date the order or undertaking was made. [1]

In addition, being subject to a bankruptcy restrictions order or bankruptcy restrictions undertaking may affect a client's employment or their ability to hold certain offices – eg, they cannot serve as an MP, local councillor, a member of the Welsh government or Northern Ireland Assembly, or sit in the House of Lords or act as a school governor. [2]

According to the Insolvency Service, the vast majority of bankruptcy restrictions orders or undertakings are for two to five years. Most are bankruptcy restrictions undertakings given by clients (see here).

Example

A 41-year-old plumber was declared bankrupt in January 2023 and the official receiver was appointed as trustee. While reviewing the plumber's assets, the official receiver discovered that

he had bought a van on hire purchase which he had sold without the permission of the finance company. This caused the finance company a loss of more than £16,000. The official receiver considered that these actions posed a risk to creditors. In August 2023, the plumber accepted a six-year bankruptcy restrictions order.

A breach of a bankruptcy restrictions order or bankruptcy restrictions undertaking is punishable as a bankruptcy offence. [3]

A register of bankruptcy restrictions orders, interim restrictions orders and bankruptcy restrictions undertakings can be inspected at no charge in the Individual Insolvency Register at gov.uk/search-bankruptcy-insolvency-register. Details may also be published in the client's local press. The client can apply to the court to order that details of their current address be withheld on the grounds that there is a reasonable risk that disclosure could lead to violence towards them or a member of their family who lives with them (see here).

Bankruptcy restrictions orders

When considering an application for a bankruptcy restrictions order, the court can take any behaviour of the client into account, but must specifically take into account whether they have: [4]

- failed to keep records which account for a loss of property by them, or by a business carried out by them. The loss must have occurred in the period beginning two years before the petition and ending with the date of the application;
- failed to produce records of this kind on demand by the official receiver or the trustee;
- entered into a transaction at an 'undervalue' (see here);
- made an excessive pension contribution;
- failed to supply goods or services which were wholly or partly paid for and which gave rise to a provable claim in the bankruptcy;
- traded before the start of the bankruptcy when they knew, or ought to have known, that they would be unable to pay their debts;
- incurred before the start of the bankruptcy a debt which they did not reasonably expect to be able to pay (this appears to include increasing the amount of debt on a credit card);
- failed to account satisfactorily for a loss of property or for an insufficiency of property to meet bankruptcy debts;
- carried on any gambling, 'rash and hazardous speculation' or 'unreasonable extravagance', which may have contributed to or increased the extent of the bankruptcy or which took place between the presentation of the petition and the start of the bankruptcy;

- neglected their business affairs, which may have contributed to or increased the extent of the bankruptcy;
- been fraudulent;
- failed to co-operate with the official receiver or the trustee.

Note: only conduct on or after 1 April 2004 can be taken into account. 5

The conduct that the court is required to take into account addresses behaviour by consumers as well as by traders, and behaviour both before and after the bankruptcy order. If no period is specified, it is likely that the more serious the misconduct, the longer the period over which it is taken into account.

The court must also consider whether the client was an undischarged bankrupt at some time during the six years ending with the date of the bankruptcy to which the application relates. However, it is understood that the existence of two bankruptcies is not considered to be misconduct in itself, but it allows the court to put misconduct in context.

An application for a bankruptcy restrictions order must be made by the Insolvency Service or by the official receiver and within one year from the date of the bankruptcy order. It must be supported by a report and evidence.

The hearing date must be fixed for no earlier than eight weeks from when the court decides on the venue. Since the application is made as part of the bankruptcy proceedings, rather than in separate proceedings, the hearing takes place in the client's local bankruptcy court. The hearing is in public.

The application must be served on the client not more than 14 days after the application was filed at court, together with:

- at least six weeks' notice of the hearing; *and*
- a copy of the report; *and*
- any further evidence in support of the application in the form of a witness statement; *and*
- an acknowledgement of service.

The client must:

- return the acknowledgement of service to the court, indicating whether or not they intend to contest the application, not more than 14 days after the application is served. Otherwise, they may attend the hearing, but cannot take part unless the court agrees; *and*
- file at court any evidence opposing the application which they wish the court to consider, within 28 days of being served with the application and supporting evidence; *and*
- serve copies on the Insolvency Service/official receiver within a further three business days.

Within 14 days, the Insolvency Service/official receiver must file at court any further evidence and serve a copy on the client as soon as reasonably practicable.

The court may make a bankruptcy restrictions order regardless of whether or not the client attends the hearing or submitted any evidence. [6]

In order to avoid the need for court proceedings, the Insolvency Service/official receiver may instead accept the client's offer of a **bankruptcy restrictions undertaking** – ie, the client agrees to accept the bankruptcy restrictions. An undertaking has the same effect (including the consequences of a breach) as an order from the court from the date it is accepted.

The official receiver informs the client of the period they think the court will make the bankruptcy restrictions order for and the client must decide:

- whether or not they accept there is a case for a restrictions order; *and*
- whether or not they want to avoid going to court and risk a longer period.

Interim bankruptcy restrictions orders

Because the client must be given at least six weeks' notice of an application for a bankruptcy restrictions order and an application must be made within 12 months of the bankruptcy order (unless the court gives leave to apply later), there may be a gap of several months between the date of discharge and the date of hearing when the client is not subject to any restrictions. In this situation, the Insolvency Service/official receiver can apply to the court to make an interim order.

An interim bankruptcy restrictions order has the same effect as a full order and lasts from when it is made until: [7]

- the application for the bankruptcy restrictions order is determined; *or*
- the Insolvency Service/official receiver accepts a bankruptcy undertaking; *or*
- it is revoked.

Only two business days' notice of the application is required and the hearing is in public. The Insolvency Service/official receiver must file a report and evidence. [8]

---

1 Sch 4A para 4 IA 1986

2 Guidance on the main statutory consequences flowing from a bankruptcy restrictions order or undertaking is on the Insolvency Service website

3 Sch 21 EA 2002 and s389 IA 1986

4 Sch 4A para 2 IA 1986

5 Art 7 The Enterprise Act 2002 (Commencement No.4 and Transitional Provisions and Savings) Order 2003 No.2093

6 rr11.2-11.5 I(E&W)R 2016

7 Sch 4A para 5 IA 1986

8 r11.6 I(E&W)R 2016

How bankruptcy can affect a client

Protected goods

Some goods do not pass to the trustee and cannot be taken. These include: [1]

- tools of the trade, including a vehicle, which are necessary and used personally by the client in their 'employment, business or vocation'. [2] Stock is not protected, which usually means that the business must close down if it depends on stock; [3]
- household equipment necessary to the basic domestic needs of the client and their family. This should include all clothing, bedding, furniture and household equipment and provisions, except perhaps particularly valuable items (eg, antiques and works of art) or luxury goods with a high resale value – eg, expensive TVs.

If the value of any protected goods exceeds the cost of a 'reasonable replacement', the trustee can require them to be sold for the benefit of the creditors. In practice, this rarely happens but, if it does, the trustee must provide the funds to enable the client to replace the goods. Importantly, the amount of money provided to replace the goods must be enough to buy a 'reasonable

replacement' which meets the needs that the current goods meet.

The trustee can visit a bankrupted person and remove goods or close a business. In practice, however, this is mainly done in cases of businesses or domestic properties in which there may be valuable goods. If the client acquires any asset which is not protected in the period between the bankruptcy order and their discharge, the trustee may claim it within 42 days of becoming aware of it. [4]

---

1 s283(2) IA 1986

2 In *Birdi v Price* [2018] EWHC 2943 (Ch), the judge held that equipment used by the debtor's employees but not physically used by the debtor were not 'used personally', although this did not mean that exclusive use was necessarily required. The court considered the earlier decision of *Wood v Lowe* [2015] EWHC 2634 (Ch), where the judge held that the exemption did not cease to apply because the debtor was unable to use the tools for a time due to ill health. L's tools were therefore exempt (on the basis that it was not unlikely that L would ever work again). The judge also suggested (without hearing argument) that the exemption did not require the bankrupt to physically use the tools. In relation to the part of the *Wood* decision relating to the use of tools by the debtor's employees, until such time as the Court of Appeal considers the issue, the later decision in *Birdi* is to be preferred.

3 In *Mikki v Duncan* [2016] EWCA Civ 1312, the court held that only physical assets owned by the client could be exempt as a tool of the trade; a vehicle subject to a hire purchase agreement could not be a tool of the trade

4 ss308 and 309 IA 1986

Bank accounts

The client's bank account may be frozen.

There is no legal reason why a client cannot have a bank account. All the major banks and building societies offer fee-free basic bank accounts to undischarged bankrupts, as these are considered suitable because they involve no credit facilities. Post Office card accounts are not suitable for all clients. There is, however, the possibility of being able to open a credit union current account, although not all credit unions offer these.

If the client's bank honours a cheque after the date of the bankruptcy order, the transaction is not void if either: [1]

- the bank did not have notice of the bankruptcy order before honouring the cheque; *or*

- it is not reasonably practicable to recover the payment from the person to whom it was made.

---

1 s284 IA 1986

Utility companies

Although utility companies cannot insist on payment of pre-bankruptcy arrears as a condition of continuing to supply services, they may require a security deposit or the client to pay via a prepayment meter or prepayment mode via a smart meter. It may, therefore, be necessary to transfer the accounts to a non-bankrupt member of the family. The policies of a client's utility suppliers should be checked before petitioning for bankruptcy so that the client knows what to expect.

Motor vehicles

The trustee must deal with any motor vehicle owned by, or in the possession of, the client as a matter of urgency, as it is a potential source of liability for the trustee.

If the client claims the vehicle is exempt, they must communicate this either during the interview with the official receiver or in correspondence, setting out the reasons(s). [1]

If a car is essential for their employment (eg, if there is no reasonable alternative transport to and from work), the client may be allowed to keep it, although if it is particularly valuable the trustee may order it to be sold to allow a cheaper replacement to be bought. Current guidance is that £3,250 should usually be allowed for a replacement vehicle, but this could be more depending on the circumstances and how much is needed to buy a 'reasonable replacement'. If a car is accepted as exempt, the discretionary guidance provided to the official receiver is that it will only be sold if the official receiver is reasonably satisfied that there will be a benefit to the bankruptcy estate after accounting for the costs of sale and the cost of a reasonable replacement.

Insolvency Service guidance on the definition of 'employment, business or vocation' includes bankrupt clients who are informal, full-time carers of a disabled friend or relative (including a child) who use a vehicle in connection with that role. Although receipt by the client of carer's allowance is not essential, the Insolvency Service regards this as indicative that the client is pursuing a 'vocation' as a carer.

Previous Insolvency Service guidance said that a motor vehicle could never be regarded as an

item of 'household equipment'. Current guidance now allows the official receiver to consider claims from bankrupt clients that a motor vehicle is necessary to meet basic domestic needs. 'Necessary' in this context means that no reasonably practical alternative exists to meet a genuine need. The test of necessity is not satisfied just because using a motor vehicle is more convenient than the alternatives, unless these are likely to be more expensive.

According to the Insolvency Service, the people most likely to come within the guidance are clients who are disabled and need a vehicle for mobility. The vehicle must be used personally by the client. If they require assistance to travel in the vehicle, it does not fall within the guidance.

Clients who live in urban areas with reasonable public transport are unlikely to be able to benefit from the 'domestic needs' guidance (other than because of disability). However, even in an urban area, it might be possible to claim exemption on the grounds that a vehicle is necessary to transport children to school if there is no public transport alternative or if children attend different schools and it is not possible to get all children to school on time without use of a car or the distance to travel would make walking or cycling an impractical alternative. Although using a taxi rather than owning a vehicle might be considered reasonable for undertaking a weekly shop, the cost of daily or frequent journeys by taxi might be considered excessive when set against the costs of maintaining and running a car.

If a motor vehicle is not exempt, a member of the client's family or a friend may be able to negotiate to buy the vehicle to enable the client to retain it.

If the vehicle is subject to a hire purchase or conditional sale agreement, the finance company may be able to terminate the agreement and repossess the vehicle if the client becomes bankrupt. The trustee always contacts the finance company and so the finance company may seek to repossess it. In other cases where there is insufficient equity to make it worth the trustee's while selling the vehicle themself, they may invite the finance company to repossess the vehicle.

A mobile home that is not parked on a protected site (ie, a site registered by the local authority), but under an informal arrangement, is more likely to be regarded as a 'motor vehicle' than a 'house' even if it is the client's permanent residence. The question of whether it is exempt under the 'domestic needs' category therefore arises. A mobile home parked on a registered site with a degree of immobility may be regarded as a 'house'. A caravan used as a permanent residence with a degree of site permanence and immobility is also likely to be regarded as a house.

---

1 See M Gallagher, 'Bankruptcy: keeping the car', *Adviser* 122

Income payments orders

If the client has at least £20 a month available income, the trustee may suggest a weekly or monthly payment to the trustee from their earnings via an income payments agreement. If payment is not agreed, they can apply to the court for an income payments order. This must be applied for before the client is discharged and the order must specify the period for which it is to last. This must be no longer than three years from the date of the order. These payments are ordered to be paid to the trustee and can be required of either the client or employer under an attachment of earnings order. [1] Either the client or the trustee can apply to vary the order (both before and after discharge).

The court must leave sufficient money for the reasonable domestic needs of the client and their family. [2] An income payments order should not be sought if the client's only source of income is state benefits (which includes all forms of income supplement and support provided by central or local government, including war disability pensions) but, where the client has benefit and non-benefit income, the trustee can consider an income payments agreement or order. However, this will only be up to the amount of the non-benefit income even if the client has more than this amount in surplus income. Arrears of benefit paid to the client after the date of the bankruptcy order should not be claimed where the client's only income is state benefits.

If the client has an income payments agreement (see here) and there is a change of circumstances, the trustee can still apply to the court for an income payments order rather than vary the agreement. [3] **Note:** the Insolvency Service has said that monies received under the Household Support Fund/cost of living payments will not be treated as a windfall and do not need to be disclosed to the official receiver. The additional payments should be offset against higher fuel bills and clients should **not** seek a reassessment of their monthly contributions under the income payments agreement/order.

Calculating the order

The trustee should calculate the client's available income by deducting from their actual income the household outgoings, less contributions from other members of the household towards these (either actual or assumed). For the treatment of pensions, both those in payment and those which the client could choose to access, see here.

Note: the official receiver calculates the client's surplus income using the standard financial statement. Although the official receiver also uses the standard financial statement spending guidelines when assessing a client's reasonable domestic needs (see here), the client's expenditure can still be queried even if it is within the spending guidelines as these are viewed as a benchmark and are not treated as an allowance. If a standard financial statement has been

completed by the client with a debt adviser within the six months prior to the date of the bankruptcy order, the official receiver may use that standard financial statement to establish the client's surplus income and so a copy of that standard financial statement should be sent to the official receiver.

Bankruptcy does not affect a landlord's right to recover their property from a defaulting tenant and a possession order can still be made and suspended post-bankruptcy order, but not on payment of rent arrears. [4] Any suspended possession order in force at the date of the bankruptcy order could be the subject of an application to vary the suspended possession order, but a client should seek specialist housing advice before applying to vary a suspended possession order after the making of a bankruptcy order. Guidance states the official receiver should not make a client homeless and and should not take any steps to interfere with the payments being made.

Generally, no allowance should be made for payments relating to bankruptcy debts, but where the rent plus arrears is considered reasonable for rent, an allowance should be made. Where the payments appear excessive, the client should be asked to attempt to vary the arrangement with the landlord, which is something you could assist the client to do.

Any surplus is available income and, provided this is at least £20 a month, the order is assessed at the full amount of the surplus income. If the client has both benefit and non-benefit income, the amount of the order should not exceed the non-benefit income figure – ie, payment should not come out of the client's benefit income.

The client may apply to the court to vary an income payments order or for it to cease before its specified date. [5]

---

1 s310 IA 1986

2 In *Folds v Bucknall* [2020] EWHC 329 (Ch), the court had to consider payments made by the bankrupt client to his ex-wife, who lived in Italy. There was no evidence the ex-wife relied on his financial support or that not receiving the payments would cause her hardship. The court decided that she could not be described as 'family' and the payments could not be considered as necessary.

3 *Re: Edmondson* [2014] EWHC 1494 (ChD)

4 Chapter 31.7.82 TM; *Sharples v Places for People Homes* [2011] EWCA Civ 813

5 Sch 19 para 7 EA 2002

Income payments agreements

The client can come to an agreement with the trustee about a payment arrangement and incorporate it into a written income payments agreement without applying to the court. An income payments agreement is enforceable as a court order just like an income payments order and can be varied by either: 1

- a further written agreement; *or*
- the court, on the application of either the client or the trustee.

In the first instance, clients are offered an income payments agreement. If the client thinks that the household expenditure claimed is reasonable but the trustee does not agree, the client does not have to sign an agreement, but can leave the decision to be made by the court. Provided the client has not acted unreasonably, it is unlikely that the court will order the client to pay any costs of the application even if the court ultimately agrees with the trustee.

---

1 s310A IA 1986

Pensions

If the bankruptcy order was made on a petition presented to the court before 29 May 2000, personal pensions are part of the bankrupt client's estate and must be paid to the trustee by the pension company. This is the case whether the payments fall due during or after the bankruptcy. 1

Trustees may argue that occupational pensions pass to them as a matter of course, and so the position should be checked with the pension company. However, although an occupational pension cannot normally be claimed directly by the trustee, the income could be made the subject of an income payments order (see here). 2

If the bankruptcy order was made on a petition presented on or after 29 May 2000, all pension rights under 'approved pensions', including personal pension plans, are excluded from the client's estate – ie, they do not vest in the trustee. However, if the client becomes entitled to the pension (including a lump sum) during the period of the bankruptcy, it could be made the subject of an income payments order. 3

If the client chooses to draw money from their pension

'Approved pensions' are any occupational or personal pension schemes registered with, and approved by, HMRC for tax purposes. They include retirement annuity contracts and stakeholder schemes. It can be assumed a pension is approved if one or more of the following applies:

- the pension is an occupational pension scheme with nationally based organisations;
- the policy is operated by a major pension provider/insurer – eg, Scottish Widows and Legal and General;
- the annual pension statement received by the client states that the scheme or policy is registered for tax purposes under section 153 of the Finance Act 2004.

If none of the above establishes whether or not the pension is approved, the client should be advised to contact their pension provider to confirm whether the pension is registered with for tax purposes under section 153 of the Finance Act 2004.

The Court of Appeal has held that, if a client is entitled to receive payments (usually a tax-free lump sum and/or monthly pension payments) from a scheme and can do so merely by asking for it, the pension does not fall within the definition of 'income' for the purposes of an income payments agreement or income payments order, unless the client had elected to draw that pension. They cannot be forced to elect to draw any paynments from their pension by the trustee. [4]

Note: if the client can access their pension pot and that would clear their debts in full, specialist advice should be sought.

---

1 *Re: Landau (a bankrupt), The Times*, 1 January 1997

2 *Kilvert v Flackett, The Times*, 3 August 1998

3 s11 and Sch 2 Welfare Reform and Pensions Act 1999

4 *Horton (Trustee in Bankruptcy) v Henry* [2016] EWCA Civ 989

Insurance policies

Ordinary term life insurance policies or endowment policies are not exempt and usually pass to the trustee in the normal way. If a third party is named as beneficiary under the policy, the policy does not normally vest in the trustee. However, if a client was originally the beneficiary under the policy but transferred the right to receive the proceeds to a third party as a gift or without getting the cash value of the policy in return from the beneficiary, this is a transaction at an undervalue (see here) and the trustee may be able to seek to overturn it and claim the benefit of the policy.

Student loans

Student loans made by the Student Loans Company or Student Finance Wales, whether made before or after the bankruptcy order, are not part of the client's estate and so cannot be included in an income payments order or agreement.

The Student Loans Company or Student Finance Wales does not carry out credit checks as part of its loan application process. Any clients who are considering bankruptcy and intend to become students can be reassured that their bankruptcy will not affect any student loan application.

Owner-occupied homes

If the client has a beneficial interest in their home, that interest automatically becomes the property of the trustee in bankruptcy on their appointment. The trustee protects their interest by registering either a notice or a restriction at the Land Registry.

If the home is solely owned by the client, the legal title vests in the trustee and the client's interest, which passes to the trustee, is the whole value of the property. If it is jointly owned, only the client's share vests in the trustee, but this does not prevent the trustee from taking action to realise that share. The trustee can realise the value of that interest (eg, by selling it to a joint owner or forcing a sale of the property) and this does not have to be done before the client's discharge from the bankruptcy. There is also the possibility that the client may have a beneficial interest in another property (eg, a former home – see here) which the trustee might seek to realise.

The trustee has a three-year 'use it or lose it' period from the date of the bankruptcy order to deal with the client's interest in a property which, at the date of the bankruptcy order, is their sole or principal residence, or that of their spouse/civil partner or former spouse/civil partner. The trustee's three-year 'use it or lose it' window does not usually begin until the client informs the trustee of that interest or the trustee 'otherwise becomes aware of it'. However, if the trustee becomes aware of it within three months of the date of the bankruptcy order being made, it will begin on the date of the bankruptcy order. [1] After the three-year time limit expires, the interest no longer forms part of the client's estate and transfers back to them. It is, therefore, no longer available to pay the client's bankruptcy debts. However, this does not happen if, during the three-year period, the trustee: [2]

- realises the interest – eg, by selling their interest to the client's partner or some other third party. The full sale price must be paid to the trustee before the end of the three-year period; *or*
- applies for an order for sale or possession; *or*

- applies for a charging order in respect of the client's interest; *or*
- comes to an agreement with the client about payment for their interest.

If the case is not passed to an insolvency practitioner to deal with following the making of the bankruptcy order and the value of the client's interest is subsequently reviewed by the Insolvency Service before the three-year time limit and the client's interest in the property is worth at least £5,000 and it is not possible to attract an insolvency practitioner to act as trustee or sell the client's interest to a willing purchaser, the official receiver should consider applying for a charging order. If the trustee decides to take this option, the charging order is for the value of the client's interest in the property at the date of the charging order (including a deduction for the estimated costs of sale from the value of the property – currently 3 per cent) plus simple interest at the prescribed rate (currently 8 per cent a year) plus the costs of the application. However, where the value of the client's interest is more than the total amount owed to the client's unsecured creditors, the charging order is limited to the amount owed to unsecured creditors at the date of the application plus other amounts payable out of the client's estate such as the bankruptcy expenses and statutory interest plus simple interest at 8 per cent a year and the costs of the application as above. Therefore, the client retains the benefit of any subsequent increase in the value of the property.

Note: the three-year period can be extended by the court for such longer period as it thinks just and reasonable, taking into account all the circumstances of the case. [3]

Low-value exemption

If the value of the client's interest is less than the prescribed amount (£1,000), the court *must* dismiss any application by the trustee in bankruptcy for: [4]

- an order for the sale or possession of the property; *or*
- a charging order on the client's interest in the property.

In valuing the client's interest in the property, the court must disregard: [5]

- any loans secured by mortgage or other charge against the property; *and*
- any other third-party interest – eg, a joint owner's share of equity; *and*
- the reasonable costs of sale, currently estimated at 3 per cent of the gross value of the property.

Realising a client's interest in the property

If another person shares ownership of the home and there is sufficient equity, the trustee tries to sell the client's share to that person. They must obtain an up-to-date valuation at their own expense, plus details of any outstanding mortgages or secured loans, and pay their own legal costs (£211 under the low-costs conveyancing scheme).

If the property is jointly owned, the trustee requires the value of the client's share (usually, 50 per cent of the equity) plus their legal costs, but allows some discount to take account of the savings made from not having to take possession of the property and conduct the sale. Any increase in the value of the property as a result of expenditure by either party after the date of bankruptcy should also be taken into account.

If the property is solely owned by the client, they may be able to buy back their interest from the trustee. If there is equity, the purchase money will have to come from a third party – eg, a friend or relative. Mortgage lenders are reluctant to agree to people buying an interest in property, unless they take some responsibility for the mortgage. In the case of jointly owned properties, the co-owner(s) is already responsible for the mortgage. In the case of solely owned properties, however, before agreeing to transfer their interest to a partner or third party, the trustee must ensure that arrangements have been made between the proposed transferee and the mortgage lender(s) for future payment of the mortgage.

The trustee usually seeks a court order for the sale of a jointly owned property if the non-bankrupt owner will not or cannot purchase the beneficial interest and there is sufficient equity. If there is a spouse or civil partner and/or children, their interests should be considered, but after a year these are overridden by the interests of the creditors unless the circumstances of the case are exceptional (see here). This means that, in practice, homes are not sold for at least a year after the bankruptcy.

In deciding whether to order the sale of a house, the court must consider: 6

- the creditors' interests;
- whether the spouse/civil partner contributed to the bankruptcy;
- the needs and resources of the children and spouse/civil partner;
- other relevant circumstances (but not the client's needs).

If at the date of the of the bankruptcy order there is negative equity, or the equity is less than £1,000, the case is reviewed again before the three-year time limit expires.

- If the property is in negative equity and the official receiver considers there is no reasonable prospect of a surplus becoming available from the property within the three-year period, they should consider taking steps to transfer their interest back to the client (known as early revesting).
- If the client's share in the property is valued at less than £1,000 and the official receiver considers there is no reasonable prospect of a surplus in excess of £5,000 being available within the three-year period, they should consider early revesting.
- If the value of the client's share in the property is worth more than £1,000, the trustee invites the client or a third party, such as a co-owner or family member, to buy back the client's share.

- If it is not possible to sell the client's share in this way and there is not sufficient equity to attract an insolvency practitioner to act as trustee, the official receiver as trustee should transfer the property to the Insolvency Service's Property Team. The value of the client's interest will be reviewed again before the expiry of the three-year time limit. Where the value of the client's interest is greater than £5,000 and there is no willing purchaser, the official receiver should seek the appointment of an insolvency practitioner to act as trustee (if the value of the interest is high enough to attract one) or they should apply for a charging order.

If a charging order is obtained on the client's share in the property, the trustee is not subject to any limitation period for seeking an order for its sale – ie, they can apply to the court for an order for sale at any time in the future. [7]

If a property is sold, the trustee sends any money due to the co-owner or other person with an interest in the property on completion. It is important that people who share a home with a bankrupt person are independently advised by a solicitor, particularly if they have made direct contributions to the purchase price, because they may have an equitable or beneficial interest in the property for which they should be paid, even if they are not an 'owner' on the deeds.

Endowment policies

If there is an endowment policy in place to pay a mortgage, it may vest in the trustee who can arrange for it to be sold. The policy is treated as an asset and taken into account when valuing the client's interest in the property if: [8]

- it has been formally assigned to the mortgage lender; *and*
- the policy document is held by the mortgage lender; *and*
- the mortgage lender's interest in the policy for repayment of the mortgage has been noted with the insurance company; *or*
- there has been a specific agreement between the mortgage lender and the client that the policy will be used to pay the mortgage.

This may result in there being sufficient equity for the trustee to realise the property.

Exceptional circumstances

If an application is made for the sale of a property which is, or has been, the home of the client or the client's spouse or civil partner or former spouse or civil partner, and it is more than one year after the date the client's estate vested in the trustee, the court must assume that the interests of the bankrupt's creditors outweigh all other considerations, unless the circumstances of the case are exceptional. Family hardship caused by the bankruptcy is not considered an exceptional circumstance. [9]

Exceptional circumstances

Before the Human Rights Act came into force on 2 October 2000, caselaw established that circumstances could only be exceptional if they were unusual. However, the decision in *Pickard and another v Constable* contains a useful summary of the current interpretation of the test. 10

1. Even if there are exceptional circumstances, the court can still make an order for sale.

2. Exceptional circumstances relate to the personal circumstances of one of the joint owners and/or their children, such as a physical or mental health condition but not those of the bankrupt client.

3. Exceptional circumstances cannot be categorised or defined. The court must make a judgment after considering all the circumstances.

4. To be exceptional, the circumstances must be 'outside the normal melancholy consequences of debt and improvidence' or 'compelling reasons not found in the ordinary run of cases'.

5. It is not an exceptional circumstance that the spouse and children are faced with eviction because there are insufficient funds to provide them with a comparable home.

6. Creditors have an interest in an order for sale being made even if the whole of the net proceeds go towards the expenses of the bankruptcy and they receive nothing. This situation is not an exceptional circumstance.

The court can postpone the sale of the property to a future date which it considers 'fair and reasonable' – eg, until the ill/disabled person has either died or chosen to leave the property or for a set period of time. 'Exceptional circumstances' should be supported by verifiable evidence. 11

Beneficial interest

If the property is in the sole name of the bankrupt client, their (non-bankrupt) partner may be able to argue that they have a beneficial interest in the property – ie, they are entitled to a share of the proceeds of sale. If this can be established, the trustee cannot claim against the partner's share of the property. So, if the property is sold, the partner is entitled to be paid the value of their share and does not have to make any payments to the trustee. 12

On the other hand, if the property is in the sole name of a non-bankrupt partner, the trustee may try to establish that the client has a beneficial interest. The trustee also investigates whether

the property was put into the partner's sole name in circumstances that could amount to a transaction at an undervalue (see here).

Beneficial interest is generally assumed to be the same as the legal interest and so, unless the legal documentation of the property states otherwise, the starting position is that the client has a 50 per cent beneficial interest in jointly owned property (if there is one joint owner). If the property is solely owned by the client, it is assumed that they have a 100 per cent beneficial interest.

If a family home has been bought in the joint names of a cohabiting couple who are both responsible for any mortgage but there is no express declaration of their beneficial interests, they are both equally entitled to the beneficial interest unless there is evidence that they had a different intention at the time they acquired the home or they later intended that their respective shares would change.

The onus of proving that the parties intended their beneficial interests to be different from their legal interests is on the party seeking to establish this.

If the property is in the sole name of one of the partners, joint beneficial ownership is not presumed. The trustee looks at whether it was intended for the non-owner party to have any beneficial interest in the property and, if so, what it is. There must have been a common intention for one of them (the legal owner) to hold the property on behalf of the both of them. If there is no evidence of discussions leading to an actual written or verbal agreement, arrangement or understanding between the parties, a common intention to share the property can be inferred from their conduct.

The other partner may have acquired a beneficial interest either by:

- a court order; *or*
- a promise by the legal owner, either at the time the property was acquired, or subsequently, that they should have a beneficial interest and that in reliance on that promise they acted to their financial detriment – eg, by making substantial contributions to the household expenditure; *or*
- a common intention to hold the beneficial interests in the property in shares other than in the same proportion as the legal title and by materially altering their position – ie, acting to their detriment ; [13] *or*
- making a direct financial contribution to the purchase of the property – eg, by:
    - paying some or all of the deposit; *or*
    - making contributions to the mortgage repayments; *or*
    - paying for substantial improvements to the property.

Living in someone else's house (even as a partner, civil partner or spouse), sharing household

expenses and fulfilling ordinary domestic duties, such as looking after the property and bringing up children, do not of themselves entitle someone to a beneficial interest unless these can be seen as making an indirect contribution towards the mortgage repayments.

If the other partner has a beneficial interest, the value of their share depends on the value of their contributions, any agreement between the parties and any inferences that can be drawn from their conduct. 14

Even if the trustee is dealing with a jointly owned property, there may be a question about whether one of the parties has more than a 50 per cent share in it. If the property is held in joint names as joint tenants, this is considered to be conclusive evidence of an intention to hold the property in equal shares, unless one of the parties can demonstrate fraud or that there has been a mistake in the conveyance, or that there has been undue influence (see here) or a declaration of the beneficial interests. If Land Registry Form TR1 has been used (compulsory for all transfers since 1 April 2008), there is a specific declaration of trust tick box. The House of Lords has said that, if there is no declaration of trust, the presumption should be that properties in joint names are owned in equal shares rather than in proportion to the parties' financial contributions to its purchase. 15 If a party seeks to argue otherwise, the onus is on them, and unequal contributions to the purchase are not sufficient on their own. In the case of joint ownership of a family home where there has been a clear agreement that one of the parties is to have a greater share in the property than they would otherwise have been entitled to, it is still necessary for that party to have acted to their detriment or changed their position in order to establish a common intention that they should be entitled to that greater share in the absence of a signed written declaration of trust or disposition of a party's interest in the property. 16

Specialist advice should always be sought if you have grounds for believing that either the client or someone else may have a beneficial interest in a property which could be the subject of a claim by the trustee. 17

---

1 In *Khilji v Mehers* [2025] EWHC 546 (Ch), the High Court held that, if the client does not inform the trustee of their interest within the three-month period, the three years does not start to run until the date the 'trustee becomes aware of it'. Mrs Khilji denied having any interest in the property. The trustee must have actual knowledge. It was not enough that they could potentially have known from the paperwork

2 s283A IA 1986

3 s283A(6) IA 1986 and r10.170 I(E&W)R 2016

4 s313A IA 1986

5 Art 3 The Insolvency Proceedings (Monetary Limits) (Amendment) Order 2004 No.547

6 s335A IA 1986, as inserted by TLATA 1996

7 *Doodes v Gotham* [2006] EWCA Civ 1080

8 See para 31.35M TM at insolvencydirect.bis.gov.uk/freedomofinformation/technical/TechnicalManual/ch25-36/chapter31/part3/part1/part1.htm

9 s335A IA 1986

10 *Pickard and another v Constable* [2017] EWHC 2475 (Ch)

11 See, for example, *Martin-Sklan v White* [2006] EWHC 3313 (ChD), *Nicholls v Lan* [2006] EWHC 1255 (ChD) and *Brittain v Haghighat* [2009] EWHC 90 (ChD). In *Grant v Baker* [2016] EWHC 1782 (Ch), although the High Court agreed that the circumstances were exceptional, it allowed an appeal against an order for indefinite postponement based on the underlying purpose of the bankruptcy legislation is to enable a bankrupt's interest in a property to be realised and made available for distribution among their creditors. The court substituted the order for indefinite postponement by a postponement for 12 months.

12 If the non-bankrupt partner makes payments after the date of the bankruptcy order, any payments of capital increases their share, but not any payments of interest or interest only: see *Byford v Butler* [2003] EWHC 1267 (ChD)

13 *O'Neill v Holland* [2020] EWCA Civ 1583

14 *Stack v Dowden* [2007] UKHL 17; *Jones v Kernott* [2011] UKSC 53

15 *Stack v Dowden* [2007] UKHL 17

16 *Hudson v Hathaway* [2022] EWCA Civ 1648. On the facts, Ms Hathaway did not need to rely on common intention as there was evidence that Mr Hudson had signed away his beneficial interest in the property to Ms Hathaway in writing. See also, *Allen v Derev* [2023] EWHC 387 (Ch) where there was no evidence of a common intention to gift the property to the wife and no declaration of trust. See also *Allen v Webster* [2024] EWHC 988 (Ch) where it was held that, when calculating beneficial interest, the court must examine changes to the common intention of the parties and their financial contributions. A party's beneficial interest crystallises when the common intention changes. Allen was, therefore, entitled to his share of the property's value at that time

17 For a discussion on this issue, see M Allen, 'Whose house is it anyway', *Quarterly Account* 8, IMA

Rented accommodation

Assured, protected and secure tenancies do not automatically vest in the trustee, but can be claimed within the 42-day period, if they have a value, but this is relatively rare.

Pre-bankruptcy rent arrears are a 'bankruptcy debt', which cannot be excluded from the bankruptcy and are provable like any other bankruptcy debt.

The landlord has no 'remedy' in respect of that debt. [1]

However, the Court of Appeal has ruled that: [2]

- a landlord can take possession action based on rent arrears which are a bankruptcy debt and any possession proceedings pending at the date of the bankruptcy order should not be put on hold ('stayed');
- at the hearing, the court can make an outright possession order or suspend the possession order, but cannot suspend the order on condition that the client pays the arrears; nor can the court give judgment for those arrears;
- any suspended possession order should be made on condition that the client pays the current rent (plus any costs awarded after the date of the bankruptcy order).

In the case of assured and secure tenancies, the landlord can use some other breach of the tenancy not involving rent arrears as a ground for possession. For example, if the tenancy contains a forfeiture clause on bankruptcy, the landlord could obtain a possession order on that ground. [3] Before the client petitions for bankruptcy, the tenancy agreement should be checked for such a clause and enquiries made about the landlord's policy on enforcing it.

If there is a suspended possession order already in force when the client goes bankrupt, the landlord could still apply for a warrant if the order was not complied with.

The safest course of action for a tenant with rent arrears or subject to a possession order who is considering bankruptcy is to make enquiries about the policies and practice of the landlord and the local district judge. Advisers have reported that some social landlords do not require rent arrears to be paid after a bankruptcy order has been made. The landlord's policy should always be checked so a client knows whether or not they will be expected to pay. If rent arrears have accrued after the date of the bankruptcy order, whether or not there are pre-bankruptcy rent arrears, there are no restrictions on the landlord taking proceedings. [4]

---

1 s285(3)(a) IA 1986

2 *Sharples v Places for People Homes*; *Godfrey v A2 Dominion Homes* [2011] EWCA Civ 813

3 See, for example, *Cadogan Estates v McMahon* [2001] 1 AC 378

4 *Sharples v Places for People Homes; Godfrey v A2 Dominion Homes* [2011] EWCA Civ 813

Transactions at an undervalue and preferences

Transactions at an undervalue

A transaction is said to be made at an 'undervalue' if it involves an exchange of property for less than its market value. This may be innocent, with everyone acting in good faith, but if a trustee considers that such a transaction has reduced the assets available to creditors, they can apply to the court, which can set the transaction aside (see below). [1]

Examples of transactions at an undervalue include:

- gifts (including money);
- working or selling goods for nothing or for an amount significantly less than the value of the labour or goods;
- giving security over assets for no benefit in return;
- transferring an interest in property to a former partner (but not under a court order on divorce unless there are exceptional circumstances, such as fraud [2]).

The trustee can apply to the court to have a transaction at an undervalue set aside if: [3]

- it was carried out in the five years before the date of the bankruptcy order; *and*
- the client was insolvent at the time or the transaction led to their insolvency; *or*
- the transaction was carried out within two years of the date of the bankruptcy order, regardless of whether or not the client was insolvent.

If the transaction was with an 'associate' (eg, partner, relative, partner's relative, business partner or employer), it is assumed that the client was insolvent at the time of the transaction, unless it can be shown otherwise.

Note: there are different rules on transactions at an undervalue for DROs (see here).

Preferences

If the client has done something before the bankruptcy which has put a creditor or a guarantor of one of their debts into a better position than they would have been in the event of the client's bankruptcy (eg, giving a voluntary charge or paying them in full), this may be a 'preference' if other creditors have not been similarly treated. In addition:

- the client must have intended putting them in a better position; *and*
- the client must have been insolvent at the time or the action must have led to their

insolvency; [4] *and*

- the payment must have been made in the six months before the date of the bankruptcy order (or in the two years before if the preference was to an 'associate' – eg, spouse, partner or other relative, business partner or employer/employee). [5]

If the preference was to an 'associate', it is assumed that the client intended putting them in a better position, unless it can be shown otherwise. An exception to this is if the person is only an associate because they are an employee. Paragraph 31.4A.37 of the Insolvency Service's *Technical Manual* gives some examples of the types of transactions which may be viewed as preferences by the official receiver.

Note: there are different rules on preferences for DROs (see here).

Action the trustee can take

In the case of either transactions at an undervalue or preferences, the court can restore the position of the parties by, for example, requiring any property or money to be returned to the trustee, ordering the release of any security, or ordering that the trustee be paid for goods or services. Protection is given to third parties who act in good faith without notice of the circumstances. [6] Previously, the trustee did not take court action for less than £5,000, but there is no longer any minimum amount.

---

1 s342 IA 1986

2 *Hill v Haines* [2007] EWCA Civ 1284

3 ss339 and 341(1) IA 1986

4 s340 IA 1986

5 s341 IA 1986

6 s342 IA 1986

Enforcement action by creditors

Once a bankruptcy petition has been presented to the court or a bankruptcy order has been made, the court can order any existing court or enforcement action being taken by creditors to be discontinued in order to preserve the client's property for the benefit of all of their creditors. Once the bankruptcy order has been made, anyone who is a creditor of the client with a debt provable in the bankruptcy (see here): [1]

- is prohibited from exercising any remedy against the property or person of the client in order to enforce payment of the debt; *and*
- is not allowed to start any new court action against the client before their discharge without the permission of the court – eg, for a post-bankruptcy debt. [2]

If the client has a benefit overpayment, the DWP cannot carry on making deductions from benefit to recover it. It must 'prove' for the debt in the usual way (see here). [3] **Note:** whether or not an overpayment is a bankruptcy debt depends on when it occurred, not on when the decision to recover was made. [4]

For the position on rent arrears, see here, and on secured creditors, see here.

---

1 s285 IA 1986

2 See P Madge, 'Debt remedies in insolvency', *Adviser* 154

3 *SSWP v Payne and Cooper* [2011] UKSC 60

4 See 'Bankruptcy and benefits', in the 'Enquiry of the month' section of Shelter's SDAS ebulletin, October 2019

Discharge

Provable debts
Contingent debts and liabilities

Clients made bankrupt on or after 1 October 2013 are discharged after 12 months, unless the official receiver or the trustee in bankruptcy applies to the court and the court is satisfied that the client is failing, or has failed, to comply with their obligations under the Insolvency Act 1986 – eg, they have not co-operated with the official receiver/trustee. In this case, the court may order the suspension of the 12-month period either for a set time or until a specified condition is fulfilled. [1]

---

1 s279 IA 1986

Provable debts

After discharge, the court issues a certificate to the client on request. There is a £75 fee. The

client is automatically released from all their debts, including 'contingent debts or liabilities' (see here), except: [1]

- to secured creditors. If the home was sold, but insufficient equity raised to pay the secured lender, this debt is no longer secured, but the unsecured part remains unenforceable provided the mortgage or secured loan was taken out before the bankruptcy, even if the home was not sold until after discharge. Any jointly liable person remains liable for the whole debt;
- student loans; [2]
- fines, including the criminal courts charge, victim surcharge and compensation orders (but the client is released from parking and other charges enforced through the Traffic Enforcement Centre); [3]
- maintenance orders and other family court orders, child support and debts from personal injury claims (although the court does have the power to release liability for these in full or in part); [4]
- debts incurred through fraud, including benefit and tax credit overpayments;
- social fund loans if the bankruptcy petition was presented on or after 19 March 2012;
- debt arising from certain other orders of the criminal courts, including confiscation orders.

Occasionally, the trustee is still working on something (eg, the sale of a home) when discharge is granted. In this case, that asset can still be realised and distributed after discharge despite the fact that the recipients of the funds could not otherwise pursue payment.

The duties to co-operate with, and to provide information to, the official receiver and/or trustee continue after discharge for as long as it is reasonably required. [5] The Insolvency Service has set up regional trustee and liquidator units in order to deal with long-term matters.

Credit reference agencies record bankruptcies, but it is not necessarily impossible to obtain credit again after discharge.

---

1 s281 IA 1986

2 Reg 80(2)(b) The Education (Student Loans) (Repayments) Regulations 2009 No.470

3 Even though the criminal courts charge has been abolished, in cases where it has been imposed, a client who has gone bankrupt after it was imposed will still not be released from it on discharge

4 'Personal injury' has been judicially defined to include any disease and any impairment of a person's physical or mental condition but does *not* include 'distress', 'upset', 'fear' and other similar human emotions: see *Lees v Kaye* [2022] EWHC 1151 (QB), paras 56-58.

5 ss291(5) and 333(3) IA 1986

Contingent debts and liabilities

A contingent debt or liability is 'any debt or liability to which [the client] may become subject after the commencement of the bankruptcy (including after [their] discharge from bankruptcy) by reason of any obligation incurred before the commencement of the bankruptcy'. [1]

Contingent debts are bankruptcy debts, even though they did not exist at the date of the bankruptcy. A common example of such a debt is a mortgage shortfall, where the obligation under the mortgage (or secured loan) existed before the date of the bankruptcy order, but the property was not sold until after the date of the bankruptcy order or even after the client's discharge, leaving a shortfall debt.

Before a Supreme Court decision on 24 July 2013, the phrase 'any obligation' was narrowly defined by the courts and the following debts had been held not to be contingent liabilities and, therefore, not bankruptcy debts:

- the outstanding balance of a client's current year's council tax liability where the local authority was not in a position to apply for a liability order because the client had failed to comply with a reminder or final notice;
- benefit or tax credit overpayments made before the date of the bankruptcy order, but where the decision to recover was not made until after the date of the bankruptcy order;
- court costs awarded after the date of the bankruptcy order in relation to proceedings that had commenced before the date of the bankruptcy order.

The above debts are now all bankruptcy debts. The DWP accepts that a benefit overpayment where the period began before the date of the bankruptcy order but ended after the date of the bankruptcy order is also a bankruptcy debt. HMRC and local authorities should also accept this for tax credits and benefits respectively.

---

1 s382(1)(b) IA 1986

Annulment

A bankruptcy order can be annulled (cancelled) at any time by the court if the client has either repaid the debts and bankruptcy expenses in full, [1] or has provided full security for them, or if there were insufficient grounds for making the order in the first place. [2] The client then becomes liable once again for all the bankruptcy debts. A bankruptcy order can also be annulled if a

creditors' meeting has approved a proposal for an IVA (see here). [3]

In cases involving petitions presented on or after 6 April 2010, if the bankruptcy is to be annulled on the grounds of full payment of the debts and expenses (including the trustee's remuneration and expenses), the client can apply to the court for a ruling that the trustee's remuneration charged and/or expenses incurred are excessive and should not be allowed. [4] Such an application must be made no later than five business days before the hearing of the application for annulment.

When deciding whether the debts have been paid or secured, the court can take into account a solicitor's undertaking to pay them out of funds due to be paid to the client.

The court has power to rescind a bankruptcy order if there has been a change of circumstances since the order was made and this may again benefit creditors. [5]

---

1 See D Pomeroy, 'Bankruptcy annulment', *Adviser* 113, and *Halabi v Camden LBC* [2008] WLR(D) 46, in which the court held that the practice of annulling bankruptcy orders on the basis of a solicitor's undertaking to make the required payments was not legal and the annulment order should provide for it not to take effect until the trustee confirmed that all the required payments had actually been made.

2 s282 IA 1986. In *Dusoruth v Orca Finance* [2023] EWHC 1050 (Ch), the High Court held that the court always has discretion *not* to annul a bankruptcy order under this section even where the statutory conditions for a valid petition under s267(2) IA 1986 were not met (in this case, the debt was not for a 'liquidated sum'). See also, *Khan v Singh-Sall* [2023] EWCA Civ 1119. It seems that the limitation period is suspended during the period between the making of a bankruptcy order and an annulment order.

3 s261(1) IA 1986

4 rr10.143 and 18.35 I(E&W)R 2016

5 *Fitch v Official Receiver* [1996] 1 WLR 242. Setting aside orders on the basis of which a bankruptcy order was made are grounds for rescission not annulment: *Yang v Official Receiver* [2017] EWCA Civ 1465. In *Amin v Redbridge LBC* [2018] EWHC 3100 (Ch), Mr Amin found himself held liable for the costs of the official receiver and the council of the petition (but not of the rescission application) when the bankruptcy order was rescinded following the setting aside of the liability orders. See also A Shafiq, 'Made bankrupt for council tax? To annul or rescind? That is the question…'.

out of date.