



## Insolvency and Individuals

'Bankrupt' is the most common term used to describe an insolvent individual and you can be made bankrupt following a petition to the Court by one of your creditors or you can present your own petition.

### What is bankruptcy?

If a bankruptcy order is made, the fact is registered with the court and HM Land Registry, the main source of credit reference agency information. Your property and assets will vest in a Trustee in Bankruptcy ("Trustee"), (either the Official Receiver or an accountant who is qualified as an Insolvency Practitioner) and form part of your bankruptcy estate ("Estate"). The role of your Trustee is get in and realise your assets to raise funds to pay to your creditors and to investigate the reasons why you became bankrupt in case there has been any wrongdoing on your part. Whilst you are bankrupt (known as undischarged bankruptcy) you will be restricted in certain offices you can hold and things you may do. For example, you cannot borrow more than £500 without disclosing you are an undischarged bankrupt or be a company director. When you are made bankrupt you have a duty to assist the Official Receiver and your Trustee by, amongst other things, giving them information, surrendering property and generally assisting with their duties. Failure to do so may result in a Bankruptcy Restriction Order ("BRO") or even be punishable with a fine and/or imprisonment for contempt of court.

If you were made bankrupt on or after 1 April 2004, you will be discharged at the end of one year from the date of the bankruptcy order, or sooner if notice is filed by the Official Receiver that his investigation of your conduct and affairs is complete. If you were an undischarged bankrupt on 1 April 2004, you will be discharged on 1 April 2005 or on the third anniversary of the making of your bankruptcy order, whichever is the sooner. If you have already been made bankrupt in the previous 15 years and were undischarged on 1 April 2004, you will be discharged on the fifth anniversary of the bankruptcy order or sooner by court order. However, the discharge periods may be suspended or extended to a maximum 15 years by a BRO if your conduct warrants this. For example, if you have concealed assets or information, committed fraud, gambled or failed to co-operate with your Trustee. At the end of the bankruptcy period you will be a discharged bankrupt but that does not necessarily mean your slate is wiped clean.

### Bankruptcy myths

**Discharge from bankruptcy means that I am no longer bankrupt and the matter is ended.** Not true. Even if your bankruptcy has been discharged, you must still deal with your

Trustee and his administration of your Estate will continue until all matters have been concluded. For example, until all assets are realised. Discharge from bankruptcy means that certain restrictions on you during the bankruptcy period no longer apply and you should bear in mind that some credit reference agencies keep records of bankruptcy information for up to 15 years from the date of the order.

**I cannot earn and keep money whilst I am bankrupt without having to pay it to my creditors.** Not true. However, your Trustee may seek a monthly contribution towards payment of your debts if your income exceeds what is necessary for meeting the reasonable domestic needs of you and your family. For example, expensive subscriptions or contributions to investments are likely to be caught.

**My trustee will try to sell everything of value I own.** Not true. Tools, books and vehicles used by you in any employment or business and clothing, furniture and other items needed to satisfy the basic domestic needs of you and your family will not form part of your bankruptcy Estate unless they are of 'excess value'. If they are, (for example you own antique furniture), your Trustee may claim this for the Estate and provide you with money from the sale with which to purchase a 'reasonable replacement'. Property forming part of your Estate can cover more than just bank accounts in credit, houses, stocks and shares at the date of the bankruptcy order and can include any damages that you may be entitled to under a court claim or other future windfalls such as an inheritance.

**I will automatically lose my home on bankruptcy.** Not true. This is not an automatic consequence of bankruptcy but can result if nothing is done. You may be able to buy back from your Trustee any interest you have in a property but if not, your Trustee will need a court order to remove you and your family before selling the property. If your bankruptcy order was made after 1 April 2004 your Trustee will in most cases have three years from the date of the order in which to realise your property, failing which, it will revert to you. If your house is in negative equity, or very little would be left after payment of the mortgage, your home may be protected from the bankruptcy. **This does not mean that any mortgage company is unable to take action if you do not meet repayments.**

**The Trustee cannot touch my pension.** Not completely true. If you have a pension you should try to deal with this as soon as possible as you may get a nasty shock on retirement. If your bankruptcy order was made on or after 29 May 2000 there is a good chance that a personal or occupational pension scheme (and any entitlement under it) will be excluded from your Estate. Before that date, much will depend upon the type of scheme so advice should be sought. In any event, you may be able to buy back from your Trustee any benefits that have been claimed for the Estate. Be warned however, that provisions exist for the Trustee to recover 'excessive' pension contributions made by you that prejudice your creditors.

**I am debt free at the end of the bankruptcy.** Not true. People you owe money to at the date of the bankruptcy order will be your bankruptcy creditors and they surrender their ability to take action to recover their debt from you in return for you making available your Estate to pay them. The debt is not written off; the creditor is unable to chase you for it. There are exceptions in that criminal fines, child support payments and the like will survive the bankruptcy and remain to be paid after discharge. Any debts you incur **after** the date of the bankruptcy order will not be written off, for example your monthly mortgage payments, and you will need to continue to pay these or face the consequences.

**Assets put into somebody else's name before the bankruptcy order is made are safe.**

Not true. Dispositions of property at any time after the issue of a bankruptcy petition are potentially void and transactions at undervalue, preferring one creditor over another, transactions at undervalue, are all likely to be spotted and steps taken to unravel them. In some cases, transfers going back five years or more can be challenged and evidence of such activity could lead to a BRO being made against you.

**"I am a bankrupt, get me out of it!"**

Sometimes a bankruptcy order has been made when it ought not to have been due to some mistake, (for example, you do not owe the debt) or procedural error (the petition was not served on you in time or at all). If this is the case it is possible to apply to the court for an order of annulment or for the payment route, by way of a 'fast track' individual voluntary arrangement. If this is granted, the effect is as if the order had never been made in the first place. However, it is also possible to annul bankruptcy by paying all the bankruptcy debts and expenses in full. This is not just a case of paying creditors what they were owed on the day of the bankruptcy order and may include interest, various statutory fees and the Official Receiver and Trustee's fee. Legal advice should be sought from a specialist solicitor before embarking on this.

**Is that the only thing for me?**

Bankruptcy is not the only way and a procedure known as an Individual Voluntary Arrangement ("IVA") may be available. This involves putting together a proposal to pay agreed monthly contributions or periodic lump sums into an account controlled by an Insolvency Practitioner (known as the "Supervisor"). A fee will be charged. At the end of the arrangement (normally five years or less), the Supervisor will distribute the fund to creditors in accordance with the terms of the arrangement. An application to court to obtain an order preventing creditors taking action against you for a specified period is also obtained. The aim of the IVA proposal will be to show why creditors will be better off under the IVA as opposed to your bankruptcy and if they accept it, they will surrender rights to pursue you further for the debt.

A meeting of your creditors will be arranged to consider and vote on whether or not to accept the proposal. If accepted by over 75 percent in value of your creditors, every creditor entitled to notice of the meeting and to vote at it will be bound by its terms, so it is important to keep good records of your creditors. Creditors at the meeting may propose modifications and it is possible that a creditor who is not bound by the arrangement could still petition for your bankruptcy.

An IVA can be especially useful for people who will lose their job if made bankrupt and obvious examples are solicitors, accountants and company directors. It is worthwhile checking your own terms of employment just in case, especially if you are involved in handling money. It also benefits those people who wish to protect property from their creditors which would form part of their Estate if they were made bankrupt. However, this does not suit everyone as the set up fee can be difficult to find and the proposed contribution too low so your creditors are unlikely to vote for the proposal in sufficient numbers. Additionally, if the arrangement fails (for example failure to make contributions or failure to make proper

disclosure to creditors) the Supervisor may be compelled to petition for your bankruptcy in any event.

You may be able to come to a similar arrangement with your creditors without the requirements of the IVA, but if you do, you may not benefit from some of the protection given to you by the Insolvency Act 1986.

If you have at least one County Court judgment and all your debts amount to less than £5,000, you can apply for a County Court Administration Order. Here the court will collect a regular payment from you, charge a small administration fee and make payment to your creditors. Those creditors scheduled in the order will be stopped from taking action against you outside of the order. Although cheap and effective, the low threshold means it is very rarely used, especially as recent figures indicate every man, woman and child in the UK carries approximately £6,600 of debt!

If you would like further information please contact Andrew Knox on 01392 288386 or email [andrewknox@veitchpenny.co.uk](mailto:andrewknox@veitchpenny.co.uk)

***10th February 2005 - Andrew Knox***