

 Fact Sheet DA/012: Bankruptcy

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 Overview

Bankruptcy is a formal insolvency option and is a way of dealing with debts that you cannot pay. Most of your outstanding debts are written off at the end of your bankruptcy, any assets you have may be used to pay off your debt, and you will be able to make a fresh start. This is known as being discharged from bankruptcy. A creditor can make you bankrupt or you can apply to make yourself bankrupt but the effects are the same.

During bankruptcy

It is a criminal offence to: obtain credit of £500 or more without telling the lender you are bankrupt, trade under a new business name without revealing the name you were made bankrupt under, act as a director of a limited company without permission, or act as an insolvency practitioner.

What is the fee?

The total fee to go bankrupt is £680. You can pay the fee online when you make your application. There is an option to pay the fee by instalments, but you must pay the full amount before you can complete the application. Alternatively you can pay in cash at certain banks (but there is no option to pay by instalments).

You may be able to apply for help with the costs through a charitable grant provider (grants-search.turn2us.org.uk), although not many grant providers help with bankruptcy costs.

How do I make an application?

You can only apply online 'apply for bankruptcy' (apply-for-bankruptcy.service.gov.uk), and all questions must be answered accurately. If you provide false information, you could be found guilty of a bankruptcy offence. There is no minimum amount of debt to be eligible to apply for bankruptcy. However you should seek advice from an advice agency or debt specialist as an alternative option to bankruptcy may be more suitable to your circumstances. Your completed application will then be sent to the adjudicator at the Insolvency Service. The adjudicator will look at your application checking that you cannot pay your debts. A check will also be made to confirm that England or Wales is the correct place for you to go bankrupt. Within 28 days of receiving your application the adjudicator will decide if to make a bankruptcy order.

Refusal

If the application is refused a 'notice of refusal' will be sent to you, explaining the decision. You can ask for a review within 14 days of the notice of refusal being delivered. When your bankruptcy order is made, you will then have an appointment to see the official receiver who will be dealing with your bankruptcy. This may be a telephone appointment. During your appointment all of your personal and financial details will be discussed in detail, including any pension policy details, income, expenditure and assets.

Income payments orders & agreements

If your surplus income is more than £20 per month, the official receiver will normally expect you to pay it all into your bankruptcy. The surplus is spare income after you have paid your ordinary

household expenses.

The official receiver will look at your income and expenditure and decide if an income payment agreement should be made. This is a legally binding agreement to pay monthly instalments from your income to the official receiver for three years from the date of the agreement, even though you may be discharged from bankruptcy after one year. The official receiver has the power to ask the court to order you to pay the instalments, known as an 'income payments order' if you do not pay.

Debts still payable after bankruptcy

Liability for most debts will be written off once you are discharged. However you will still remain personally liable for any; magistrates' court fines, student loans, arrears of maintenance or maintenance payments ordered by a court, Child Support Agency and Child Maintenance Service arrears, debts you built up through fraud, and debts you owe as a result of a personal injury claim made against you.

Assets

Items such as clothing, bedding, furniture and household equipment essential for basic domestic needs are not treated as assets. In addition, items necessary for you to carry on your employment or vocation such as tools, books or vehicles may be excluded. If you have assets that are not exempt from bankruptcy, usually a trustee will be appointed to sell them. Your car might be sold if it is valuable, but it may be exempt if it is necessary for your employment or basic domestic needs of your family, you may still have to buy a cheaper replacement though depending upon its value.

The family home

If you own property, and there is equity it may be sold. The equity in a property is the amount left after deducting what is owed on any mortgages and secured loans from the value of the property. The term 'beneficial interest' is described as your share of the equity, for example your beneficial interest will usually be all of the equity if you are the sole owner. Your beneficial interest in your home is transferred to the official receiver or trustee. With jointly owned property that will be the bankrupt person's share. In some cases it may be possible for the other party with a beneficial interest, to make an offer to the official receiver or trustee to buy out your share of the equity. There is a maximum period of three years from when you went bankrupt for the official receiver or trustee to deal with your family home. If your beneficial interest is less than £1,000 when reviewed, no action will be taken and your beneficial interest will pass back to you. If your beneficial interest is more than £1,000 an application for a charging order may be made against your home. Alternatively, another insolvency practitioner may be appointed to sell your home.

Pensions

If you have a personal or workplace pension, you are likely to be able to keep it. The exception would be where you have paid very large amounts into your pension in order to prevent creditors from taking your savings. For personal or workplace pension funds that you have claimed, the official receiver will assess how much income you earn from it and this may influence the decision made when deciding on an income payments agreement.

Hire Purchase agreements

If you have a hire purchase agreement, there may be a clause in it that allows the hire-purchase company to terminate the agreement and return the item or vehicle, if you become bankrupt. Depending upon the value of the vehicle and how much is left to pay under the agreement, the official receiver may sell the vehicle. There may be some situations where you are allowed to keep the vehicle (for example a third party takes over the payments for you).

Employment

If your job involves the handling of money, your employment may be at risk. If you belong to a professional body which does not allow you to become bankrupt, you could be struck off. You should always check your contract of employment to see if bankruptcy is mentioned.

Self-employment

If you are a self-employed business owner (sole trader), the business can be allowed to continue trading if it is profitable, this will be decided by the bankruptcy adjudicator. If the business has assets which are not exempt, the assets are likely to be sold to repay your creditors. If your business has few or no assets, you are more likely to be able to continue trading but this may be difficult if your type of work involves using credit of £500 or more. Credit can include being given time to settle bills, such as 30 day invoices. In addition, if your business tenders for local government contracts, they may not permit bids from undischarged bankrupts.

If you want to check your self-employed situation before committing to bankruptcy, you can call the Insolvency Service Enquiry (www.gov.uk/the-insolvency-service) line: 0300 678 0015 or email: insolvency.enquiryline@insolvency.gov.uk.

Company directors

If you become bankrupt you have to resign as a company director within 21 days of the bankruptcy order being made.

Bank Accounts

The following banks must now allow an undischarged bankrupt to open a basic bank account:

- Barclays
- Santander
- Royal Bank of Scotland (Including NatWest)
- HSBC
- Nationwide
- Co-operative, Lloyds (including Halifax and Bank Of Scotland)
- TSB
- Clydesdale and Yorkshire Bank.

Usually the bank will check your eligibility for their current account first, before offering you a basic account. Other banks may let you open an account as an undischarged bankrupt, but will depend on their policies. Please refer to our fact sheet on safe and basic bank accounts.

Credit Reference Agencies

Your bankruptcy order will be registered with credit reference agencies for six years. After the six years you may be asked whether you have ever been bankrupt, when applying for some credit, for example a mortgage.

Individual insolvency register

Your details are also kept on the Individual Insolvency Register (www.insolvencydirect.bis.gov.uk/eiir) until three months after the date of your discharge from bankruptcy.

Details of your bankruptcy are also published in a trade paper called The Gazette (www.thegazette.co.uk/insolvency) but will not usually appear in your local paper.

Statutory Demands

If a creditor applies to make you bankrupt, you will initially receive a statutory demand. A creditor can apply for a bankruptcy order 21 days after this has been served. Please refer to our statutory demands fact sheet..

Contacts

The Individual Insolvency Register

(www.insolvencydirect.bis.gov.uk/eiir)

The Insolvency Service

T: 0300 678 0015

Online search through the Insolvency Service website.

(www.gov.uk/the-insolvency-service)

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