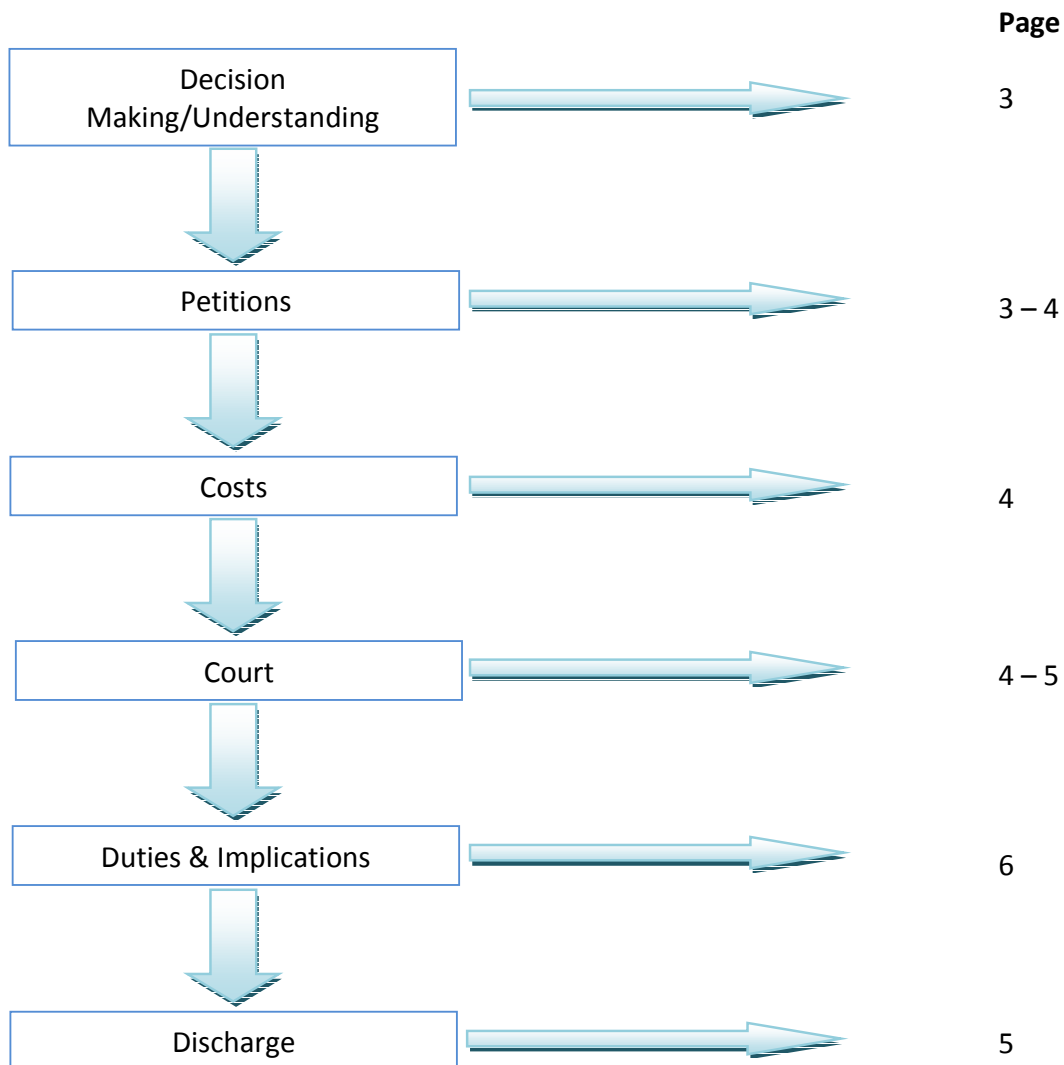


Below are the main stages of bankruptcy, we have created this section to demonstrate that as daunting and complex as the bankruptcy process may seem, it can be broken down into easily manageable stages. We hope that this firstly allows you to understand the process in simple stages and secondly allows you to navigate through the guide quickly and efficiently.

The 'Quick Glance' Bankruptcy Process



Welcome to your guide to bankruptcy in England and Wales. Taking steps towards bankruptcy is a very serious decision and is not one that should be taken lightly. Rest assured though you have taken a sensible step in requesting as much information as possible prior to making any decisions.

We have put together a step by step guide to take you through bankruptcy as a whole, from understanding the process of bankruptcy to the implications of bankruptcy. The guide also covers answers to the most common questions we are asked.

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An Introduction to Bankruptcy

Step 1 - What is Bankruptcy

Bankruptcy is an option that often has to be considered when an individual cannot pay their debts as they fall due. The bankruptcy proceedings:

- Free you from overwhelming debts so you can make a fresh start, subject to some restrictions, and
- Make sure that your assets are shared out fairly among your creditors.

A first time bankrupt with debts will generally receive their discharge one year after the date of the bankruptcy order (there is the possibility that in some cases the bankruptcy discharge period will be less than one year).

In the past bankruptcy may have attracted a negative image, however, in recent times this image has changed considerably and is now seen as an acceptable way of dealing with overwhelming debts.

We always suggest that you get independent advice when considering bankruptcy by consulting a Solicitor, a qualified Accountant, a Insolvency Practitioner, or a reputable financial advisor. At this stage you will have been through a thorough assessment process with one of our experienced agents who has identified that bankruptcy is the best advice for your current situation.

The Process of Bankruptcy

Step 2 – Petitioning for your own Bankruptcy

Bankruptcy petitions are usually presented either at the High Court in London or a County Court near to where you live or trade.

If you want to petition for your own bankruptcy you should contact your local Court. They can give you the name, address and telephone number of the nearest County Court that deals with bankruptcy.

The address and telephone number of your local County Court is listed under 'Courts' in the phone book, where you should look for 'civil Courts - County Courts' and **not** 'magistrates' Courts'. The Courts Service website at: www.courtservice.gov.uk has an index of County Courts that will show you the area where the County Court has jurisdiction. However, you will need to contact the Court to find out if it has jurisdiction to hear a bankruptcy case.

A Court makes a bankruptcy order only after a bankruptcy petition has been presented. It is usually presented by either:

- Yourself (Debtor's Petition); or
- Creditors who are owed at least £750 by you (Creditors' Petition).

If you choose to petition for your own bankruptcy you will be required to complete a number of forms, all of which are available free of charge. The forms required are available at The Insolvency Service's website (address below) and can be completed either online or can be printed and completed by hand (this must be completed in capitals and in black ink).

www.insolvency.gov.uk

The forms that need completing are:

- **The Petition (Insolvency Rules 1986 form 6.27)** – This form is your request to the Court for you to be made bankrupt and your reasons for the request.
- **The Statement of Affairs (Insolvency Rules 1986 form 6.28)** – This form shows all of your assets and all your debts, including the names and addresses of your creditors and the amount you owe each of them. The form contains a declaration of insolvency that you will need to swear on oath before an officer of the Court or a Solicitor.

Once you have completed the forms they will need printing, signing and dating on each page and presenting at the Court with the appropriate fee. At this stage your petition can then be dealt with at the Court. If you are presenting them at a County Court you will require two copies of the forms before the Court will accept the petition for bankruptcy. If you are taking your petition to the High Court you'll only need one copy.

If a bankruptcy order is being taken out against you by your creditors it can be made even if you refuse to acknowledge or agree to the order. Therefore you should try to co-operate fully once the bankruptcy proceedings have begun. If you dispute the creditors' claims you should try and reach a settlement with them before the bankruptcy order is made: trying to do so afterwards is difficult and expensive.

Step 3 – How much will Bankruptcy cost me?

There are three fees you may have to pay when you take your petition and statement of affairs to court:

- **The Court fee of £150.** In some circumstances the Court may waive this fee; for example, if you are on Income Support. If you are unsure whether you qualify for a reduction in the fee, or if you are exempt from paying the fee, Court staff will be able to advise you.
- **The deposit of £345 towards the costs of administering your bankruptcy.** This deposit is payable in all cases.
- **The fee to swear the statement of affairs.** In a County Court, no charge is made to swear the affidavit, which is part of your statement of affairs. But in the High Court or before a Solicitor there is a £7 charge.

If you are a married couple and you are both applying for bankruptcy, you will each have to pay separate fees.

The fees should be paid in cash, postal orders, or by a building society, bank or Solicitor's cheque. Cheques should be made

payable to H M Paymaster General. Personal cheques will not be accepted.

Step 4 - What will happen at Court?

The Court will either hear your petition straight away or arrange a time for the Court to consider it.

If English is not your first language and you need an interpreter, the Court will not help you find one. You will have to do this yourself and pay interpreter's fees.

At the hearing the Court can do one of four things:

- **Stay (delay) the proceedings** - often because the Court needs further information before it can decide whether to make a bankruptcy order.
- **Dismiss the petition** - perhaps because an administration order would be more appropriate.
- **Appoint an Insolvency Practitioner** - if the Court thinks that an Individual Voluntary Arrangement (IVA) would be more appropriate. This will only be possible if your assets are more than £2,000; your unsecured debts are less than £20,000; and you have not been bankrupt or made an Individual Voluntary Arrangement in the previous five years. If you do not wish to enter into such an arrangement, you should inform the Court.
- **Make a bankruptcy order** – You will be bankrupt the moment the order is made by the Court.

As well as a bankruptcy order, the Court may issue a certificate of summary administration - as long as your unsecured debts are less than £20,000 and in the previous five years you have not been bankrupt or made an Individual Voluntary Arrangement with your creditors. If the Court issues this certificate, it will make the administration of your bankruptcy quicker and simpler.

Step 5 - Who deals with Bankruptcy cases?

The Official Receiver will deal with your bankruptcy case, the Official Receiver is a civil servant and an officer of the Court. They are responsible for administering bankruptcies and will act as a Trustee of your estate unless a private sector Insolvency Practitioner is appointed.

One of the Official Receiver's main duties is to investigate your financial affairs for the time before and during your bankruptcy.

An Insolvency Practitioner can be appointed Trustee instead of the Official Receiver; they must be licensed and are usually Accountants or Solicitors. The Insolvency Practitioner is then responsible for the disposing of your assets and making payments to your creditors.

Step 6 – Discharge from Bankruptcy

Generally you will be automatically discharged from bankruptcy after a maximum of 12 months and have to do nothing to achieve this. This period may be shorter if the Official Receiver concludes their affairs sooner and files a notice of early discharge in Court. If you wish to receive notification of your discharge you will need to write to the Official Receiver or Insolvency Practitioner who dealt with your bankruptcy who will provide you a letter, at no charge, confirming the date of your discharge.

You will **not** get your discharge automatically if:

- Your discharge period has been extended, for example because you have failed to co-operate with the Official Receiver or Trustee.
- If you were subject to a criminal bankruptcy order.

You will be automatically free from bankruptcy if the court annuls (cancels) the bankruptcy order. This would normally be where your debts and the fees and expenses of the bankruptcy proceedings have been paid in full.

Step 7 – The effect of discharge

It is on discharge that you will be released from most debts that you incurred before the bankruptcy order.

The debts you are **not freed** from include:

- Any money owed under family Court proceedings for example, Child Support Agency payments.
- Any Court fines or debts arising from fraud.
- Debts incurred after the bankruptcy order.

For further information on this contact your Official Receiver or Trustee.

Bankruptcy – The Effects

The Duties of a Bankrupt

- When a bankruptcy order has been made, you must provide the Official Receiver with information relating to your financial affairs such as, a list of your assets (property, pensions, insurance policies, etc), amounts of each debt and to which creditor they are owed to, within 21 days.
- Any assets are then to be handed over to the Official Receiver along with any bank statements and insurance policies relating to your property and financial affairs.
- Any assets and income increases obtained during the bankruptcy should be declared to the Trustee.
- You must not obtain credit of £250 or more from any person without first disclosing the fact that you are bankrupt.
- Any bank or building society accounts must no longer be used.
- You must not make any direct payments to your creditors.
- You may also have to attend Court to explain why you are in debt. If you do not co-operate, you could be arrested.

The Implications of Bankruptcy

- You lose control over your assets.
- You cannot attempt to obtain credit for over £250 without declaring your bankruptcy to the potential lender.
- You cannot act as a company director.
- You cannot take any part in the promotion, formation or management of a limited company (Ltd) without the permission of the Court.
- You cannot trade in any business under any other name unless you inform all persons concerned of your bankruptcy.
- You may not practice as a Chartered Accountant / Lawyer.
- You may not act as a Justice of the Peace (JP).

- You may not become a member of parliament.
- You may not become a member of the local authority.
- Your credit is affected for many years after the discharge.
- You may be publicly questioned in Court.

The effect of Bankruptcy on your credit rating

We receive a lot of calls from the public asking, 'what effect will bankruptcy have on my credit rating?'

Information about a bankruptcy stays on record for at least six years and a bankruptcy restriction order can remain there for as long as 15 years. Lenders see these and mark you down when scoring your credit application, because they fear you may not honour your obligations to them if you have failed with others in the past.

Property & Assets

How your home & address is effected by Bankruptcy

If you own your home the Official Receiver or Trustee (if an Insolvency Practitioner has been appointed in place of the Official Receiver) may have to sell your home to go towards paying your bankruptcy debts. This applies whether the home is freehold or leasehold and whether it is solely or jointly owned.

If your husband, wife or children are living with you, it may be possible for the sale to be put off until the end of the first year of your bankruptcy. This gives you time to make other housing arrangements. You should contact the Official Receiver or Trustee dealing with your bankruptcy in this situation.

Another possible option open to you is for your husband, wife, partner, a relative or friend to buy your beneficial interest in the home. The beneficial interest in your home is seen as your interest from the proceeds of selling your home as opposed to the legal title, minus any

mortgages or loans secured to the property. This action would stop the Official Receiver or Trustee selling your home later.

When a bankruptcy order is made, details of the bankrupt are advertised, including addresses at which you currently live and trade, and any previous such addresses. As a result, a bankruptcy order may become associated with an address, and if you live at such an address, you may experience difficulties in obtaining credit. This is because it may be assumed that you are the bankrupt with which the address is associated. However, you have the right to inspect information held by credit reference agencies and have any incorrect information changed if you are not the bankrupt in question. Further information is available in a leaflet called 'Credit Explained' available from the Office of the Information Commissioner

www.informationcommissioner.gov.uk
tel: 08453 091 091

Impact on Assets

Once you have been declared bankrupt, the Official Receiver, or appointed Trustee, can sell your assets to pay your creditors. However, you can keep the following items unless their individual value is more than the cost of a reasonable replacement:

- Tools, books, vehicles and other items of equipment which you need to use personally in your employment, business or vocation;
- clothing, bedding, furniture, household equipment and other basic items you and your family need in the home.

All these items must be disclosed to the Official Receiver who will then decide whether you can keep them.

The Official Receiver/Trustee will take control of all your other assets on the making of the bankruptcy order. The Official Receiver, or any Insolvency Practitioner who is appointed as Trustee, will dispose of them and use the money

to pay the fees, costs and expenses of the bankruptcy and then your creditors. If appointed, the Insolvency Practitioner's fees for acting as a Trustee are also paid from the money raised by selling your assets.

Impact on Earnings

The Official Receiver can look at your income (taking into account expenses such as your mortgage, rent and household bills) and decide if payments should be made to your creditors. You may be asked to sign an 'income payments agreement' to pay fixed monthly instalments from your income for three years.

If you don't pay (or if you don't sign the agreement voluntarily), the Official Receiver can apply for an income payments order from the Court ordering you to pay. This will run for at least three years from the date of the order.

If your circumstances/earnings change, you'll be required to tell the Official Receiver, so they can review your arrangements and make any necessary changes to your payments.

Please bear in mind that you'll still have to meet ongoing commitments such as rent or debts incurred after you become bankrupt.

Where can I get further advice about bankruptcy

Please be aware that before you petition for your own bankruptcy, you should get your own legal or financial advice about bankruptcy and the other options available.

Don't leave it too late, if you have any questions unanswered in this document we would suggest contacting one of the following alternative organisations:

The Insolvency Service
0845 602 9848
www.insolvency.gov.uk

Citizens Advice (CAB)
0207 833 2181 (to find your local office)
www.citizensadvice.org.uk

Community Legal Services (CLS)
0845 345 4345
www.clsdirect.org.uk

Frequently Asked Questions

What should be done if someone wants to buy my beneficial interest?

If an Insolvency Practitioner is handling your bankruptcy, your husband, wife, partner, relative or friend should contact the Insolvency Practitioner for information on what to do.

If the Official Receiver is handling your bankruptcy, your husband, wife, partner, relative or friend should contact the Official Receiver. If the home is jointly owned, they may be able to take part in a low-cost conveyancing scheme run by The Insolvency Service and a firm of Solicitors. Under this scheme, the beneficial interest and the legal title can be transferred to your husband, wife, partner, relative or friend. Please note that they will have to pay for a Solicitor or licensed conveyancer to act for them in the transaction;

- £211 (as at February 1999) to cover the Official Receiver's legal costs. This amount must be paid in advance. It includes an allowance for expenses which may be incurred in the

transaction. If the allowance is not fully used, they will receive a refund;

- the cost of an independent valuation unless you already have a very recent independent valuation of the property;
- the agreed purchase price for the beneficial interest based on the valuation. If your home is now worth less than the amount you still owe on it, the price of the beneficial interest will be set at £1.

If your husband, wife, partner, relative or friend cannot afford the costs of the scheme at present, they may still be able to take part at a later date. They should contact the Official Receiver/Trustee about this.

What happens if no-one buys the beneficial interest?

It remains with the Official Receiver or Trustee. It does not return to you on your discharge from bankruptcy. The value of the beneficial interest may increase over time if the market value of your home increases.

The benefit of any increase in value will go to the Official Receiver or Trustee to pay your debts, even if the home is sold some time after you have been discharged. There is no expiry date as to when this can take place, for a more specific timeframe you will need to contact your Official Receiver or Trustee. You and your family will have to move out if the home has to be sold to pay your creditors.

What happens if I rent my home?

If you fail to keep to the terms of your tenancy agreement, such as not paying your rent, the landlord may take action against you. The Official Receiver or Trustee will normally have no interest in your home to sell for the benefit of creditors. In most cases the Official Receiver or Trustee will need to tell your landlord that you are bankrupt. We suggest that you seek legal advice on what may happen under the terms of your tenancy.

Jargon Buster

Administration Order - An Administration Order is a Court order which covers your outstanding debts. Under it you would make a monthly payment to the Court, who will then distribute that money on a pro rata basis amongst your creditors.

Bankruptcy Order – A Court order making you bankrupt.

Bankruptcy Petition – A request made (by you as a debtor or one of your creditors) to the Court for you to be made bankrupt, and giving the reason why.

Bankruptcy Restriction Order - An extension of exactly the same restrictions that all bankrupts must comply with before their discharged. You may be subject to an extended bankruptcy restriction due to reckless behaviour before bankruptcy.

Beneficial Interest – This is your interest in the proceeds of sale of the property.

Certificate of Administration – A single County Court order that covers your debts. It allows you to make a single payment every month into the Court. The Court staff will then divide the money amongst your creditors on a pro-rata basis.

Court Fee – An administration cost imposed for the Court, by the Court.

Creditor – Someone you owe money to.

Creditors Petition – A petition to make you bankrupt from your creditors.

Debtor – Someone who owes you money.

Debtors Petition – A petition from you to declare yourself bankrupt.

Debts – The money you owe.

Discharge – The process that takes away the restrictions of bankruptcy and releases you from most of the debts you owed at the date the bankruptcy order was made.

Enterprise Act 2002 – Although The Enterprise Act 2002 has reduced the length of time for an automatic discharge, these changes do not alter the length of time your bankruptcy is on your

credit reference file which continues to be 6 years from the date of your bankruptcy.

Income Payments Order - This allows the Official Receiver or Trustee in bankruptcy to apply to the Court for you or your employer to make regular payments into the bankruptcy estate from your surplus income for a specific period of time.

Insolvency Practitioner – An authorised person who specialises in insolvency, usually an Accountant or Solicitor.

IVA (Individual Voluntary Arrangement) – A legally binding agreement between you and your creditors. Allowing you to pay your debts off, usually at a reduced rate.

Jurisdiction – The authority of a Court to deal with legal proceedings.

Official Receiver – is charged with administering your bankruptcy which involves protecting your assets and investigating the causes of bankruptcy.

The Insolvency Service – Provide information to the public on insolvency and redundancy matters via their website, leaflets, Insolvency Enquiry Line and Redundancy Payments Helpline.

Statement of Affairs – Is a form which shows all of your assets and all your debts, including the names and addresses of your creditors and the amount you owe each of them.

Trustee – The Trustee in bankruptcy is either the Official Receiver or an Insolvency Practitioner who takes control of your assets. The Trustee's main duties are to sell and assets and share the money out among the creditors.

Unsecured Creditor – A creditor who does not hold security (such as a mortgage) for the money you owe.

Unsecured Debt – A debt owed to an unsecured creditor.