

Bankruptcy Factsheet

<p>What is bankruptcy?</p>	<p>Bankruptcy is a term often misquoted by the media. It is, in fact, an insolvency procedure available only to individuals, sole traders and partners when unable to meet their liabilities as they fall due or whose liabilities outweigh their assets.</p> <p>It is a procedure that should always be considered as a last resort and we would urge all individuals, sole traders and partners</p>	<p>experiencing financial difficulties to engage our free business review in order that all alternatives can be considered.</p> <p>Who can benefit from it?</p> <p>Individuals and the self employed who own no assets, other than their tools of trade and household effects.</p>
<p>The effects of bankruptcy</p>	<p>You lose control of your assets.</p> <p>Without leave of court you may not act as a company director or take part in the promotion, formation or management of a limited company.</p> <p>You may not obtain credit in excess of £500 without first advising the lender of your bankruptcy and obtaining their permission. Please note that this relates to trade credit as well as personal credit.</p>	<p>You may not trade in any business other than in your own name, unless you inform those parties you will be dealing with of your bankruptcy.</p> <p>You may not practice or act as a chartered accountant, solicitor or Justice of the Peace, nor become a member of parliament or your local authority.</p>
<p>Who can petition for your bankruptcy?</p>	<p>An individual, sole trader or partner, (the debtor), known as a Debtor's petition.</p> <p>The Debtor is required to complete an online application via the Government website www.gov.uk/apply-for-bankruptcy and this will be reviewed by an adjudicator who works for the Insolvency Service who will decide if the Debtor should be made bankrupt. Strangely enough there is a cost for making the application, currently £680. Further information on the process is provided below</p>	<p>A creditor owed in excess of £5,000.</p> <p>With the exception of the Government departments including HM Revenue & Customs, before a creditor may petition for bankruptcy he must have first of all obtained judgement in respect of his debt and show that it has not been settled or, alternatively, evidence that a statutory demand served on the debtor which has not been settled or secured within a 21 day period. Further information on the process is provided below.</p>

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<p>Continued...</p>	<p>The other route into Bankruptcy relates to circumstances where the debtor is already subject to an Individual Voluntary Agreement (IVA), the supervisor may present a petition following failure of the debtor to comply with his obligations under the IVA.</p> <p><i>The Debtor's Petition</i></p> <p>The debtor makes an application online via the Government website www.gov.uk/apply-for-bankruptcy. The online application includes various questions relating to the debtor's financial circumstances and this will be reviewed by a person who works for the Insolvency Service known as an adjudicator. Payment of £680 is required to submit the application, which can be paid via instalments if this cannot be met at once. Once you have paid sufficient instalments to reach £680 then you may submit your online application.</p> <p>You will need to disclose information about your income, outgoings and debts so you will need wage slips, benefit / pension statements, bills / account statements and any threatening letters to hand.</p> <p>If you run a sole-trader business or are in partnership then you will need to disclose this information. If you are known by any other name, including any trading names, these must be disclosed also.</p> <p>Details of any other bankruptcy, IVA or a Deed of Arrangement or Composition with Creditors within the last five years must be stated, including if any of these procedures are currently in force.</p>	<p><i>The Creditors' Petition</i></p> <p>A creditor at his own cost (this can be between £1,000 and £3,000 and who is owed in excess of £5,000) may, following obtaining judgement or having issued a statutory demand that remains unsatisfied, unsecured and not subject to dispute after a 21 day period, present a petition for the bankruptcy of the individual.</p> <p>The petition is personally served on the debtor, his solicitor or a person instructed by the debtor.</p> <p>As soon as the petition has been presented, restrictions apply which affect the capacity of the debtor to deal with his assets.</p> <p>If the debt continues to remain outstanding at the date of the hearing, a bankruptcy order is made by the court.</p> <p><i>Post Bankruptcy Order</i></p> <p>Once the bankruptcy order has been made by the court, control of the debtor's estate passes to the Government department known as the Official Receiver's office (OR). It is the responsibility of the OR's office to take control of the debtor's assets and the debtor is called in for immediate interview to explain his current circumstances and provide information regarding all his assets and liabilities.</p>
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<p>Continued...</p>	<p>Where the debtor has assets, the OR will instruct agents to secure them.</p> <p>Subject to certain policy criteria relating to the bankruptcy estate (i.e. value, nature and extent of assets and whether there are any complex matters to deal with), the OR may seek to pass the bankruptcy case to a commercial Insolvency Practitioner (IP), who would act as Trustee and administer the bankruptcy.</p> <p>It is the role of the trustee to realise the assets of the debtor for payment if possible of a dividend to creditors.</p> <p>If the OR considers that there is no requirement to seek the appointment of an IP as such skills are not necessary for the bankruptcy in question, the OR will retain the case, unless creditors meeting a certain threshold request otherwise.</p> <p>If 50% of creditors seek the appointment of an IP then the OR should respect their wishes and facilitate the appointment, again subject to further criteria (see below).</p>	<p>If creditors seeking the appointment of an IP represent less than 50%, then generally the OR would refuse this request however it would be for the requesting creditor / IP to approach other creditors for their support in order to reach the 50% threshold.</p> <p>Even if the 50% threshold is reached there are certain criteria which, if applicable, the OR would likely retain the bankruptcy: -</p> <ul style="list-style-type: none"> • Sufficient realisations have been made to pay all costs and bankruptcy debts in full; • Sufficient assets remain which when realised will be enough to pay all costs and bankruptcy debts in full; • There is no evidence to suggest and IP would discover further assets <p>In the event that there are insufficient assets with which to seek the appointment of an IP, the role of trustee will remain with the OR whose responsibility will be to deal with the affairs of bankruptcy.</p>
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<p>Advantages of bankruptcy</p>	<p><i>The Debtor</i></p> <p>Bankruptcy can provide relative peace of mind, particularly for those individuals who have no assets. Section 283(2) of the Insolvency Act 1986 precludes creditors from taking enforcement action against the tools of trade and household effects of the Debtor Discharge from bankruptcy proceedings usually occurs after one year. However this period can be either decreased or extended by the Official Receiver, according to the circumstances of the individual.</p>	<p><i>Creditors</i></p> <p>Provides opportunity for the trustee to investigate the affairs of the debtor and, if applicable, bring actions in respect of potential voidable transactions such as transactions at an undervalue and preferences.</p>
<p>Disadvantages of bankruptcy</p>	<p><i>The Debtor</i></p> <p>Please refer to the effects of bankruptcy above. In addition to this, your affairs will be subject to scrutiny by the trustee in bankruptcy who has significant powers to investigate transactions entered into by the debtor prior to bankruptcy.</p>	<p><i>Creditors</i></p> <p>Low expectation of dividend being paid. If assets were available it is likely the debtor would have sought agreement of an IVA.</p>

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