

Factsheet



Bankruptcy

The information and benefit rates in this leaflet are correct at April 2008

Bankruptcy

Bankruptcy is one method of dealing with your debts if you cannot pay them. Anyone can apply to make themselves bankrupt. If you are declared bankrupt, your assets will be shared among your creditors and after a period of time, any outstanding debts are written off and you can make a fresh start, subject to some restrictions.

You should consider very carefully if bankruptcy is suitable for you and consider first if there are any other alternative solutions to dealing with your debts. Click on how to manage your debts to find more information. These pages give an overview of the bankruptcy process for individual debtors. If your circumstances are different, e.g. you are running a business or partnership, please see the section on further help and advice.

Some debt cannot be included in your bankruptcy, which means even if you are declared bankrupt you will still have to pay them. Some of these debts include court fines for fraud and certain other crimes, debts arising from the family court (for example those relating to CSA payments, or personal injury), and student loans if you were made bankrupt after 1 September 2004.

How do I make myself bankrupt?

If you wish to make yourself bankrupt, you need to fill out the debtor's petition and statement of affairs. You can obtain these from your local county court or from the internet at <http://www.insolvency.gov.uk>. There are also guidance notes with these forms to help you fill them in.

It is also possible for a creditor to apply to make you bankrupt. In order to do this you must owe at least £750 to that creditor. A creditor must first send you a Statutory Demand. If you receive one of these you should seek further advice.

The petition and statement of affairs ask for details of your finances, including where you live, your family, where you work, your income (including any benefits), your spending, what your own (including any car), a list of your creditors and brief details of how you came to be unable to pay your debts, e.g. illness or unemployment.

Once you have completed the forms you need to take these to the appropriate court where you will need to pay a fee and a deposit. The court fee is £150 and the deposit is £345. If you are on a low income you may get help with the court fee but will still have to pay the deposit. See the section on help with court fees for more information.

The application for bankruptcy will be heard either in the High Court if you live in London or your local County Court. If you apply for bankruptcy in Hertfordshire, your application will be heard at either Hertford, St Albans or Luton County Court.

Telephone the court in advance to check that it is the appropriate court for your application. Once you have paid the deposit and fee you will be told when your application will be heard. This is usually very soon afterwards and sometimes your application may be heard straightaway.

At the hearing, the application for bankruptcy will usually be considered by a District Judge who will decide the following:

- whether to make a bankruptcy order
- whether to order an alternative to bankruptcy
- whether to suspend proceedings (perhaps for further information)

If the bankruptcy order is made, you will then have an appointment to see the Official Receiver.

Official Receiver

An Official Receiver is appointed by the Secretary of State and is an officer of the court. The Official Receiver has responsibility for administering your bankruptcy and protecting your assets from the date of the bankruptcy order. He or she will also act as trustee of your bankruptcy estate unless an insolvency practitioner is appointed to do this instead.

The Official Receiver (or trustee) is also responsible for investigating your financial affairs before and during your bankruptcy. He or she may report to the court and has to report to your creditors. The Official Receiver must also report any matters which indicate that you may have committed criminal offences in connection with your bankruptcy, that your behaviour has been dishonest, or you have been in some way to blame for your bankruptcy.

They will assess what you need to live on, decide how you can repay your creditors, which of your assets you can keep and which must be sold to pay your debts.

Bankruptcy may not therefore be the best choice for you if you are a homeowner or have savings or expensive items of value. If this applies to you, look at the alternatives to bankruptcy section.

It is essential to co-operate with the Official Receiver, otherwise you could find your discharge being delayed or other serious action being taken against you. The court and Official Receiver have wide powers to deal with debtors who will not co-operate with them, such as by trying to hide assets, selling them to third parties at below their value or refusing to disclose financial details or documents.

Detailed information about the Official Receiver is available at www.insolvency.gov.uk. See end of factsheet for details of Hertfordshire office.

If you have an illness or disability that makes it difficult for you to attend the Official Receiver's office in person then it may be possible for the interview to be conducted over the phone.

Assets

Once the bankruptcy order is granted, the Official Receiver, or appointed Trustee, may wish to sell any assets that you have. Certain goods are not treated as assets, for example, clothing, bedding, furniture and household equipment for basic domestic needs). Items necessary for you to carry on your employment such as books, tools or a car can be excluded. Your car might be sold if it is considered valuable although you may be allowed to purchase a cheaper one instead. Your car is likely to be sold as an asset unless you could prove to the Official Receiver or appointed Trustee that you needed a car for work or to accommodate a disability.

If the Official Receiver decides you have assets then they will usually be sold as soon as possible. If you are discharged from bankruptcy before any assets are dealt with they will not belong to you on discharge. Your assets will continue to belong to the Official Receiver until they are sold. The only asset treated differently is the house where you live.

The Official Receiver may apply to the court for an order restoring property to him or her if you disposed of it in a way which was unfair to your creditors (for example, if before bankruptcy you had transferred property to a relative for less than its worth). The trustee may claim assets which you obtain or which passes to you (for example, under a will) while you are bankrupt.

Hire Purchase Agreements

There may be a clause in the hire purchase agreement which allows the hire purchase company to terminate the agreement if you become bankrupt. In this event, you will have to return the item. If you wish to keep the item, it is possible for the hire purchase company not to cancel the agreement and for the trustee to allow you to continue to make payments.

Life Assurance Policies

Generally, the Official Receiver will be able to claim any interest that you have in a life assurance policy. They may be entitled to sell or surrender the policy and collect any proceeds on behalf of your creditors. If the life assurance policy is held in joint names, for instance with your husband or wife, that other person is likely to have an interest in the policy and should contact the Official Receiver immediately to discuss how their interest in the policy should be dealt with.

Wages

You may be asked to pay an amount to your creditors from your wages. This will only happen if you have available income after paying ordinary household expenses. The Official Receiver can look at your income and expenditure and decide if payments should be made and at what level. When looking at how much you could pay they will take into account essential expenses such as your mortgage, rent, household bills and housekeeping.

What happens to my home?

If you own your home or have a financial interest in it or any other property you must seek help and advice before considering bankruptcy. This is very important - you could lose your home or have a legal charge made against your share of its value which would have to be paid when you come to sell your home in the future.

The home may have to be sold to go towards paying your debts. This applies whether your home is leasehold or freehold or whether it is solely or jointly owned with someone else.

If your husband, wife or children are living with you, it may be possible for the sale in the bankruptcy to be put off until after the end of the first year of your bankruptcy. This gives time for other housing arrangements to be made. Your husband, wife, partner, a relative or friend may be able to buy your interest in your home from the trustee.

If the trustee cannot, for the time being, sell your home, he or she may obtain a charging order on your interest in it, but only if that interest is worth more than £1,000. If a charging order is obtained, your interest in the property will be returned to you, but the legal charge over your interest will remain. The amount covered by the legal charge will be the total value of your interest in the property and this sum must be paid from your share of the proceeds when you sell the property.

If you were made bankrupt before 1 April 2004, after a certain time, usually 3 years, if your trustee has not sold or obtained a charge over your interest in the property, or applied for an order of possession or obtained a charging order against the property, or you have not come to any arrangement with your trustee about that interest, it may be returned to you.

A leaflet called **What will happen to my home** is available from your local Official Receiver's office or www.insolvency.gov.uk.

If you rent your home, the trustee will normally have no interest in it and therefore cannot sell it. However, if you do not comply with the terms of the tenancy agreement, the landlord may take action against you. In most cases

the Official Receiver or your trustee will need to tell your landlord that you are bankrupt.

Restrictions and offences

There are a number of restrictions that are made during bankruptcy that may affect your day to day activities.

For example, you will usually have to close your current bank or building society account. After the bankruptcy order, you may open a new bank or building society account but only if given permission to do so by the Official Receiver and you should tell the bank that you are bankrupt beforehand. Certain bank accounts, called basic bank accounts, which do not offer credit facilities may be more suitable. The Financial Services Authority has a useful leaflet about basic bank accounts which can be downloaded from www.moneymadeclear.fsa.gov.uk .

Utility companies, e.g. gas, electricity and water may ask you to pay in a manner that does not involve giving you credit or ask for a deposit. Alternatively you may transfer the account to someone else, e.g. a partner.

Certain kinds of employment may also be affected by bankruptcy, for example people working as estate agents or in the credit industry. If you belong to a professional body which prohibits bankruptcy you could be struck off, e.g. solicitors or accountants.

Details of your bankruptcy will be made public, e.g. notices in local newspapers and trade papers. It is a criminal offence to obtain more than £500 of credit during bankruptcy but even after discharge, many people will find it difficult to obtain further credit. Information of individual insolvencies are held by credit reference agencies for at least 6 years.

Whilst you are bankrupt it is a criminal offence to:

- obtain credit of more than £500 without telling the lender you are bankrupt
- carry on business (directly or indirectly) in a different name from that in which you were made bankrupt
- be concerned (directly or indirectly) in promoting, forming or managing a limited company, or acting as a company director, without the court's permission, whether formally appointed as a director or not

You may not hold certain public offices, such as a trustee of a charity or a pension fund.

How long does bankruptcy last?

You will usually be automatically discharged from bankruptcy after a maximum of 12 months. This period may be shorter if the Official Receiver concludes his enquiries into your affairs and files a notice in court.

In both circumstances, if you are discharged automatically, you do not have to do anything to get your discharge. If you wish, you can obtain a certificate of discharge from the court that dealt with your bankruptcy. There is a fee of £60 for this.

These rules do not apply if you have previously been made bankrupt, or you have not co-operated with the Official Receiver.

You can also apply for a bankruptcy order to be annulled if you have paid all the debt in full or the bankruptcy order should never have been made.

What happens when bankruptcy ends?

The process of bankruptcy ending is called being discharged. After you are discharged you are released from most of the debts that you owed when the order was made. There are certain exceptions to this, called non-provable debts, which you are still liable for. Non-provable debts include benefit overpayments, court fines and maintenance payments.

When you are discharged you can borrow money and carry on business without the restrictions that apply during bankruptcy.

Any assets that the Official Receiver held or claimed during the bankruptcy are not returned to you on discharge. It may be some time after your discharge before all your assets, such as your home, are dealt with.

Bankruptcy restriction orders (BRO)

The Official Receiver can apply to the court for a BRO if they think you have been dishonest either before or during your bankruptcy or if you have acted in such a way as to make matters worse, e.g. trading or taking out credit when you knew you couldn't pay your debts or not keeping proper accounts.

A BRO can last between 2 and 15 years and means you are subject to the same restrictions as an undischarged bankrupt, e.g. cannot take out more than £500 credit without informing the lender about the order, becoming an MP, local councillor or Insolvency Practitioner or be a director of a company or form a company without permission.

Alternatives to bankruptcy

There are some alternatives to bankruptcy. Informal arrangements that reschedule your debts, an administration order or an individual voluntary arrangement may be more suitable.

Administration orders (AO)

An administration order allows you to pay all your debts by making a single monthly payment into your local county court. The court then divides this payment among your creditors. Generally, your creditors can take no further enforcement action while you have an administration order or charge interest on the debt.

Further information on administration orders is available at www.hertsdirect.org/benefits

Individual voluntary arrangements (IVA)

An IVA is a formal arrangement through the county court, that you make with your creditors. You need to be able to raise a lump sum to pay the creditors or to make regular payments from your income to your creditors. An IVA is usually arranged through an Insolvency Practitioner who will charge you for this. Sometimes this will be a up-front fee but some will take instalment payments from the regular payments you make to creditors.

An IVA normally lasts for between 3 and 5 years. If the terms of the IVA are not kept to, either your creditors, or the Insolvency Practitioner can apply to the court for a bankruptcy order.

You can get the names of local Insolvency Practitioners by contacting the county court or Official Receiver offices.

Help with court fees

You will have to pay any court fees, unless you are on income support/income-based jobseeker's allowance/guarantee credit part of pension credit or working tax credit with no child tax credit. You may have to show proof that you are receiving these benefits.

You can also be exempt from the fee if you have earnings below a set level. This depends upon the number of children you have and whether you are single or part of a couple. The table below gives more information.

Single:

<u>Number of children</u>	<u>Total gross income</u>
<u>0</u>	<u>£12000</u>
<u>1</u>	<u>£14735</u>
<u>2</u>	<u>£17470</u>
<u>3</u>	<u>£20205</u>
<u>4</u>	<u>£22940</u>

couple:

<u>Number of children</u>	<u>Total gross income</u>
<u>0</u>	<u>£16000</u>
<u>1</u>	<u>£18735</u>
<u>2</u>	<u>£21470</u>
<u>3</u>	<u>£24205</u>
<u>4</u>	<u>£26940</u>

For additional children add an extra £2,735 for each child to the gross income figure for 4 children.

The court can also remit part of the fee if it would cause you financial hardship.

More information can be found in leaflet EX160A, available from courts.

Further help and advice

- Official Receiver's Office (Hertfordshire), 1st floor, Trident House, 42-48 Victoria Street, St Albans, Herts, AL1 3HR
Tel: 01727 832233
Fax: 01727 732400
E-mail: stalbands.or@insolvency.gsi.gov.uk
- The Insolvency Service, PO Box 203, 5th Floor, 21 Bloomsbury Street, London WC1B 3QW
Enquiry Line: 0207 291 6895
www.insolvency.gov.uk
- Business Debtline offers a free, confidential and independent helpline for self-employed people and small businesses who have debt problems. They have a helpline and offer a self-help pack, backed up with advice on the telephone.
Helpline: 0800 197 6026 (mon - fri 10 - 4.00 p.m.) 24 hour answering machine at all other times - www.bdl.org.uk
- National Debtline is a national telephone helpline run by the charity Birmingham Settlement. It offers independent advice from specialists and they have further information that they can send to people.
Telephone 0808 808 4000 (website www.nationaldebtline.co.uk)

- For details about your local Citizens Advice Bureau contact the Customer Services Centre at Hertfordshire County Council (HCC) on 01438 737555 or 01923 471555 if calling from an 01923 or 0202 8 number. You can also access information from www.hertfordshirecab.org.uk.
- For legal help and information and details of other advice agencies in Hertfordshire, contact the Community Legal Advice helpline on 0845 3454345 (Mon - Fri 9 a.m. - 6.30 p.m.) or visit the website at www.communitylegaladvice.org.uk
- You can read and download all Money Advice Unit factsheets from HCC website at www.hertsdirect.org