

BANKRUPTCY

FACTSHEET 10 (2018)

What is Bankruptcy?

Bankruptcy is a way of dealing with debts that you cannot pay. Whilst you are bankrupt any assets that you have might be used to pay off your debts. After a period of time (usually one year) most of your outstanding debts are written off and you can make a fresh start. The effects of going bankrupt are the same whether you file your own petition or are made bankrupt by your creditors.

How to go Bankrupt

Filing in your own bankruptcy petition

If you wish to make yourself bankrupt you will need a 'Debtor's bankruptcy petition' and a 'Statement of affairs' form. You can get these forms, free of charge, from the Bankruptcy and Chancery Division of the High Court in Belfast and also in selected advice centers across Northern Ireland. **Contact us for advice** or contact the Royal Courts of Justice Bankruptcy and Chancery office on **030 0200 7812**.

You can also now complete your own petition for bankruptcy online. However, we would advise that you seek advice from a recognised free debt service before applying for bankruptcy. If you are thinking of applying for bankruptcy online and have not sought specialist advice already then **contact us for advice**.

You have to pay a deposit and a court fee to go bankrupt. These are quite high. You will usually have to pay these in cash when you hand your forms in to the court, or automatically by card if you petition online. The court will sometimes accept payment by cheque from a third party if someone has agreed to make the payment for you, or will accept a bankers draft or a postal order.

If you are on a low income or certain benefits you may not have to pay the court fee. Everyone has to pay the deposit. **Contact us for advice.**

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Only the High Court in Belfast deals with bankruptcy petitions, so if you are not submitting your application online you must take your petition directly to this court. However even if you submit your application online, there will always be a hearing in front of a judge, who decides whether it is appropriate to make the bankruptcy order.

If the order is made you will then have an appointment to see the official receiver who deals with your bankruptcy. Sometimes they will be happy for this to take place over the phone.

They will want to go through a long questionnaire with you to look at all of your personal and financial details, such as your National Insurance number and pension policy details, income, outgoings and assets.

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A creditor making you bankrupt

A creditor can make you bankrupt if you owe **£5,000** or more to that creditor and you have not been able to agree how to repay the debt. Creditors can also ‘club together’ to make you bankrupt but this is rarely done. You can also be made bankrupt if you previously had an individual voluntary arrangement (IVA) and it has failed.

Before presenting a bankruptcy petition, best practice is that a creditor must firstly send you a ‘statutory demand’ for the debt.

A statutory demand is a pre-court form that requires you to either:

- pay the demanded amount;
- offer to secure the debt against any property you own (create a voluntary charge); **or**
- offer to pay the debt in a way that is satisfactory to the creditor (for example by instalments).

Statutory demands can be hand delivered or posted. Some creditors use them as a bluff to try to get you to pay the debt quickly, but the creditor may never actually apply to make you bankrupt. This is because it does not cost very much for a creditor to send you a statutory demand, but the creditor would have to pay large up-front fees to make you bankrupt.

You can apply to have a statutory demand ‘set aside’ in certain circumstances – for example if your debt is below **£750** or there is a significant dispute about the money owed. There are strict time limits for doing this. **Contact us for advice.**

The creditor can apply for a bankruptcy order through the court **21 days** after a statutory demand has been served but only if the debt owed is **over £5,000**.

Do I have assets?

Once you are bankrupt an ‘official receiver’ will be appointed to deal with your case and to sell your assets. In certain circumstances (for example if you own a lot of valuable items) a separate insolvency practitioner may be appointed to deal with your assets. The person who deals with your assets in bankruptcy is known as the ‘trustee’.

Items necessary for you to carry on your employment such as tools, books or vehicles may also be excluded. If you have valuable household items such as antiques, or expensive electrical equipment, then these could be sold to raise money. Your car might be sold if it is valuable, but it may be exempt if it is necessary for your employment or if it is essential to meet the basic domestic needs of you and your family.

In certain circumstances, for example you have an IVA that has failed, your creditors do not have to serve you with a statutory demand before making you bankrupt. If you have an IVA that has failed, or have received a statutory demand, **contact us for advice.**

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We have a fact sheet on **statutory demands**, which may be of assistance to you.

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Certain goods are not treated as assets. These are things such as: clothing, bedding furniture and household equipment for basic domestic needs.

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Even if your car is exempt, you may have to buy a cheaper replacement depending upon its value. The effect of bankruptcy on your car can be a complicated area. **Contact us for advice.**

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 (or 'vest') in the official receiver until they are dealt with.

Bankruptcy and hire purchase agreements

There may be a clause in the hire purchase agreement that allows the hire purchase company to terminate the agreement if you become bankrupt. In this situation, you will have to return the item. Depending upon how much is left to pay on the agreement and the value of the vehicle, the official receiver may take action to sell the vehicle. There may be some situations where you can keep the vehicle if a third party takes over the agreement for you and the hire purchase company agree to this. In some limited circumstances, you may be allowed to keep making the payments under the agreement yourself. **Contact us for advice.**

Pensions

Most personal and occupational pensions should be unaffected by bankruptcy. You will usually be able to keep your pension fund except in rare cases where you have paid very large amounts into your pension to try to stop creditors taking your savings. **Contact us for advice.**

Property and your Home

The value (or 'equity') in a property can be worked out by taking away from the value of the property the amount you owe under any mortgages and secured loans. We use the term 'beneficial interest' to describe your share of the equity. If the property is solely owned by you, your beneficial interest will usually be all of the equity. If the property is jointly owned, your beneficial interest will be part of the equity:

- If you own property then this might be sold depending on whether it has any equity in it. If your partner and children live there then there are rules about how quickly this can happen and you will usually be allowed to remain in the property for at least a year.
- Once you have gone bankrupt, your beneficial interest in your home is transferred to the official receiver or trustee.
- If you are the sole owner then the whole of the value in the property is transferred to the official receiver or trustee.
- With jointly owned property the official receiver or trustee is usually only entitled to the bankrupt person's share of the equity (their 'beneficial interest').

The only asset treated differently is the house where you live. See the later section 'Property and your home'.

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If you have a private pension but chose not to claim it, the income you would have received may be taken into account when the official receiver decides whether you should pay anything towards your bankruptcy debts. For more information about when you may have to make payments towards your debts, see the later section 'Will I have to pay anything from my income?'.

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- Depending on your circumstances, you may be considered to have a beneficial interest even if you are not named on the mortgage. This is a complex area so **contact us for advice**.
- It may be possible for the joint owner or family and friends to make an offer to the official receiver or trustee to buy out your share of the equity. This can be particularly helpful if there is little or no equity.

How long does the official receiver or trustee have to deal with my family home?

The official receiver or trustee has a maximum of three years from when you went bankrupt to deal with your family home. However, as described later, this action may be taken before three years have passed.

The term 'family home' means:

- the place where you normally live;
- the place where your spouse or ex-spouse normally lives; **or**
- the place where your civil partner or ex-civil partner normally lives.

Other properties (such as those you rent out) will not be dealt with under the rules described in this section. If you have a beneficial interest in a property that is not classed as your family home, it is likely that the official receiver will wish to realise your equitable interest immediately. **Contact us for advice**.

Within the three years, the official receiver or trustee could:

- come to an agreement with you about the property;
- sell your beneficial interest to a joint owner or other third party;
- apply for an order of possession of your home;
- apply for an order for sale of your home; **or**
- apply for an order to give them security over your home (known as a charging order).

If they do not deal with your home within the three year time limit, it will automatically pass back to you.

What happens after my bankruptcy order is made?

The official receiver will look at the property classed as your 'family home' to see how much your beneficial interest is worth. The following points apply to this property:

- If there is negative equity, or your beneficial interest is estimated at less than **£1,000**, the value of your beneficial interest will sometimes be reviewed two years and three months after you went bankrupt. In some circumstances, the official receiver may allow your beneficial interest to pass back to you before two years and three months have passed.
- If your beneficial interest is estimated at more than **£1,000**, but is still quite low, it may be possible for a third party (such as a joint owner, family member or friend) to buy your beneficial interest. See the later section 'Is there a special scheme that can be used to buy back my beneficial interest?'. If this does not happen, a separate insolvency practitioner may be appointed as trustee. The property can be dealt with at any time within three years of you going bankrupt, even if this is before the two years and three months stage.

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- If your beneficial interest is more significant, it may still be possible for a third party to buy your beneficial interest. See the later section 'Is there a special scheme that can be used to buy back my beneficial interest?'. If this does not happen, the official receiver is likely to appoint a separate insolvency practitioner to act as trustee. This means that the property could be dealt with at any time within three years of you going bankrupt.

What happens if my beneficial interest is reviewed after 2 years and 3 months?

Your beneficial interest will be reviewed **two years** and **three months** after your bankruptcy order is made if:

- a separate insolvency practitioner has not been appointed as trustee; **and**
- your family home has not already been dealt with by the official receiver.

If your beneficial interest is less than **£1,000**, it will be transferred back to you. This means that your family home will not be affected by your bankruptcy.

If your beneficial interest is worth more than **£1,000**, but is still quite low, you (or a third party) should have a chance to buy it back from the official receiver. See the next section 'Is there a special scheme that can be used to buy back my beneficial interest?'. If this does not happen, the official receiver should apply for a charging order against your home.

If your beneficial interest is more significant, a separate insolvency practitioner is likely to be appointed to deal with your property. You (or a third party) may still be able to 'buy out' your interest, but it may cost more to do this. See the next section 'Is there a special scheme that can be used to buy back my beneficial interest?'. If this does not happen, the trustee could sell your home.

Is there a special scheme that can be used to buy back beneficial interest?

If the official receiver is acting as your trustee and your family home is in joint names, you may be able to use a 'property conveyancing scheme' run by the Insolvency Service. This scheme helps to keep the cost of the process low.

However, you will not be able to use this scheme if:

- your property is in your sole name; **or**
- a separate insolvency practitioner is acting as trustee.

If you are not able to use the Insolvency Service's property conveyancing scheme, the costs relating to the process of buying your beneficial interest are likely to be a lot higher.

In any case, you will need independent legal advice from a solicitor. They will charge you for their services. Any third party who wants to buy back your beneficial interest will also need legal advice.

If you have a mortgage or secured loan on the property, the monthly payments still need to be maintained to stop your lender taking possession action.

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Contact us for advice.

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What if I rent my home?

If you rent your home, your tenancy agreement may allow your landlord to evict you if you go bankrupt. Check the terms and conditions of your tenancy carefully to see if your landlord can do this.

If you have rent arrears from before the date of your bankruptcy order, your landlord can still take court action to evict you from your home. However, they cannot get the arrears back from you because they are a debt that will be included in your bankruptcy.

If you build up any rent arrears after the date of your bankruptcy order, your landlord can take action to evict you and get the arrears back.

When the official receiver works out whether you should pay anything from your income, you will not be allowed to pay anything to rent arrears if your landlord has not yet taken court action against you. See the next section 'Will I have to pay anything from my income?'. If your landlord has already taken court action against you, the situation is more complicated and we would need to assess your circumstances.

Contact us for advice.

Will I have to pay anything from my income?

This will only happen if you have enough spare money (or 'surplus income') after paying ordinary household expenses. The official receiver will look at your income and outgoings 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.

Income payment orders and income payment agreements

Most bankruptcy orders will end after one year. However, you may be asked to sign a legally binding agreement to pay monthly instalments from your income to the official receiver for three years from the date of the agreement. This is called an 'income payment agreement'. If your circumstances change then you need to tell the official receiver, as the agreement can be looked at again.

If you do not pay, the official receiver can ask the court to order you to pay the instalments. This is called an 'income payment order'. This will run for three years from the date of the order. You can ask the court to look at this order again if your circumstances change.

If your only source of income is state benefits, an income payment agreement should not be made.

There are no fixed guidelines on the level of repayments as each case is assessed individually. In deciding how much you can pay, the trustee or the official receiver looks at your individual circumstances. However, a repayment from your income is usually only made if you can make a payment of at least £50 a month.

Contact us for advice.

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Be careful if you live in mortgaged accommodation and it is in negative equity. Negative equity means that if your home were sold, the mortgage and all secured loans would not be repaid. In this situation, the official receiver may not take into account payments to the secured lenders when they work out how much you should pay under an income payment agreement.

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The Effects of Bankruptcy

- You will usually have to close your bank or building society account when you are made bankrupt. You will be able to open another one immediately after the date of your bankruptcy order. You must tell the bank or building society that you are bankrupt if they ask. It is important to wait to open the account until after you have gone bankrupt. It is then up to the bank to decide if you can open an account with them.
- Gas, electricity and telephone companies usually want you to pay in such a way that involves you not having credit. If you live with a partner you could transfer the account into their name. Sometimes a deposit is also asked for as security.
- In general, a business with little or no assets may be able to continue trading. A business with assets is likely to be forced to close if the official receiver decides that the assets be sold to repay your creditors. You may be able to continue self-employment, but it can be difficult if your work involves using credit of **£500** or more. Credit includes being given time to settle bills, such as 30-day invoices.
- Depending on the type of job that you do, your employment or membership of any professional bodies which you require for your self-employment could be at risk. If employed, check your contract of employment to see if bankruptcy or formal insolvency proceedings are mentioned. If you belong to a professional body which does not allow you to be bankrupt, you could be struck off. For example, this may affect solicitors and accountants.
- Under the rules in the **Consumer Credit Act 1974**, your creditors will usually have to keep sending you annual statements, as well as arrears and default notices in a set format. This will happen even when you are bankrupt but should stop once you are discharged. Don't worry, this does not mean that there is a problem with your bankruptcy. If you receive other letters demanding payment, you should take this up with the official receiver and **contact us for advice**.
- Even after the bankruptcy period you may find it difficult to obtain credit. The bankruptcy order will be registered with credit reference agencies for at least **six years**. Even after this time you may be asked whether you have ever been bankrupt, when applying for some credit, particularly a mortgage. Details of your bankruptcy are also kept on the Individual Insolvency Register for three months after the date of your discharge from bankruptcy.
- Details of your bankruptcy are usually published in a trade paper, for example 'The Belfast Gazette' or 'Stubbs Gazette'. Your bankruptcy details are also currently published in the Belfast Telegraph.

A lot of banks will not let you open an account when you are bankrupt. We have details of basic bank accounts that may be able to help. With these accounts you can have a cash card but no cheque book usually.

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If you have a trading business you should contact us for advice.

If you handle money, your employment could be at risk. If you work in the finance industry you will lose your consumer credit licence.

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Bankruptcy Offences

Whilst you are bankrupt it is a criminal offence to:

- take out credit of **£500** or more without telling the lender you are bankrupt;
- use 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.

Bankruptcy Restriction Orders

You will usually be discharged from bankruptcy after one year. The court has the power to make a bankruptcy restrictions order against you if the official receiver feels your behaviour has been dishonest in some way, or if there has been 'unfit' conduct.

A bankruptcy restriction order can last for between **2 and 15 years**. If you break the order it can be a criminal offence.

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Unfit conduct can include:

- not keeping records that could explain a loss of money or property;
- gambling;
- trading whilst you knew you couldn't pay your debts;
- causing your debts to increase by deliberately not managing your business properly;
- taking out credit which you knew you couldn't repay;
- giving away your assets or selling them at less than their value to avoid them being included in the bankruptcy; **and**
- paying some creditors rather than others.

This is not a complete list of types of unfit conduct. If you are unsure whether a certain type of behaviour may be considered to be 'unfit' and would like further information **contact us for advice**.

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A bankruptcy restrictions order means you are not allowed to:

- apply for credit of **£500** or more without telling the lender about the order;
- continue to run a business in a different name from the one in which you were made bankrupt, without telling those you want to do business with the name under which you were made bankrupt;
- become an MP or local councillor;
- be a director of a limited company or form a new limited company without permission; **or**
- be an insolvency practitioner.

A bankruptcy restrictions order does not stop the official receiver from taking criminal proceedings for an offence, such as selling goods you have on a hire purchase agreement, or for putting false information on a loan application.

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Discharge from Bankruptcy

You will usually be automatically discharged from your bankruptcy after **one year** whatever you owe. If you co-operate with the official receiver, this can happen even earlier.

If you need proof of your discharge you can ask the court for a certificate of discharge. There is a fee to pay.

You can also apply to have your bankruptcy 'annulled' (that is, cancelled). This can be done for example, if you have paid all the debts and expenses of the bankruptcy in full, or you can show that a bankruptcy order should never have been made. If you want further information on these points, **contact us for advice**.

If you do not co-operate with your official receiver, for example if you refuse to provide information that they ask for, they may stop your discharge going ahead. **Contact us for advice.**

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What debts do I still have to pay after Bankruptcy?

Although your liability for most debts will be written off once you are discharged, there are exceptions to this. Even after discharge you will still be personally liable for:

- magistrates' court fines;
- student loans;
- arrears of maintenance or maintenance payments ordered by a court;
- Child Support Agency arrears;
- debts you built up through fraud; **and**
- debts you owe as a result of a personal injury claim against you.

For arrears of maintenance payments ordered by a court, Child Support Agency arrears and debts resulting from personal injury claims, the court has the power to order that you do not have to pay all or part of these.

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This is not a complete list of the debts that you will still have to pay after your bankruptcy ends. If you are unsure if you will still be liable for a debt after discharge, **contact us for advice**.

What if I live abroad?

If you live abroad, you may still be able to make yourself bankrupt in Northern Ireland. You have to meet certain criteria to be able to do this and will still have to make your application through the High Court in Belfast. **Contact us for advice**.

Alternatives to Bankruptcy?

Individual Voluntary Arrangements

An individual voluntary arrangement (IVA) is a formal arrangement to repay your creditors part of what you owe and can be a way of avoiding bankruptcy. You need to be able to raise a lump sum to pay the creditors or be able to make regular payments from your income to your creditors.

To arrange an IVA you need to find an insolvency practitioner prepared to work for you. The insolvency practitioner prepares a proposal to put forward to your creditors. If the creditors who are owed **75%** in value of your debts, who choose to vote, agree to accept the proposal then the IVA is put in place.

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An IVA will usually last for **five years if based on income payments**. If you do not keep to the arrangement, the IVA will fail and the insolvency practitioner or your creditors can apply to make you bankrupt instead.

If you are interested in setting up an IVA, **contact us for advice**. We will be able to discuss an IVA with you, as well as advising you on what other options you may have for your debts.

Be careful of companies who offer to put you in touch with an insolvency practitioner for an up-front fee. You can contact an insolvency practitioner without paying a fee to a third party.

We have a fact sheet on **individual voluntary arrangements** which may be of assistance to you. **Contact us for a copy.**

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Fast Track Voluntary Arrangements (FTVA)

Even if you have been made bankrupt it is still possible to have a special form of IVA called a 'Fast-Track Voluntary Arrangement' (FTVA). If you get a FTVA it means your bankruptcy order can be reversed (or annulled). You have to put forward a payment proposal to your creditors through your official receiver that would mean they will be paid more than they would under your bankruptcy.

The official receiver runs the FTVA for you if it is set up. The FTVA has lower fees than a normal IVA as there are set fees and costs. If it fails then your creditors could try to make you bankrupt again.

You need to carefully weigh up the advantages and disadvantages of asking for a FTVA. If you need further information, **contact us for advice.**

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Debt Relief Orders

A debt relief order (DRO) is a way of dealing with your debts if you have a low surplus income and few business or personal assets. A DRO may be able to help you if:

- you do not own any property;
- you have assets (including business assets) worth less than **£1,000** in total (not including your motor vehicle);
- you own a motor vehicle worth less than **£1,000**;
- you have less than **£50 a month** spare income to pay your creditors; **and**
- your total debts are under **£20,000**.

If your DRO application is successful then most of your creditors will be unable to take action to recover your debts for **12 months**. The debts are then written off after the **12 months** are up. If you are interested in setting up a DRO, **contact us for advice**.

Informal arrangements and debt management plans

If bankruptcy or an IVA are not suitable options, you may be able to make informal arrangements with your creditors. **Contact us for advice**.

If you would like an organisation to act on your behalf to negotiate affordable payments, you might want to consider a free debt management plan (DMP). This is a repayment schedule for unsecured debts. If you are interested in setting up a free DMP, **contact us for advice**.

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