

# Dealing With Debt

How to make someone bankrupt



CUSTOMER SERVICE EXCELLENCE



INVESTOR IN PEOPLE



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## **This leaflet:**

- answers the questions you are most likely to ask about how to make someone who owes you money bankrupt;
- explains what happens after the bankruptcy order is made.

If you want to make yourself bankrupt, please read our leaflet 'Dealing with debt - How to petition for your own bankruptcy.' If a company, rather than an individual, owes you money, please read our leaflet 'Dealing with debt - How to wind up a company that owes you money'.

This leaflet is only a guide, so you may also want to read the relevant legislation in the Insolvency Act 1986 and the Insolvency Rules 1986 as amended.

## **1 What is bankruptcy?**

The court can make a bankruptcy order against an individual who fails to pay his/her debts. A bankruptcy order makes sure that the assets of the bankrupt are shared out fairly among the creditors and imposes certain restrictions on the bankrupt. Bankruptcy does not necessarily mean that the debts of the bankrupt will be paid.

## **2 Where can I get specific advice about dealing with someone who owes me money?**

Before you take any action to put an individual into bankruptcy, you should get your own legal or financial advice about bankruptcy and the other options available to you.

The Insolvency Service and the courts cannot advise on specific insolvency problems, for example whether you should make someone bankrupt or whether you should look at alternatives. You can get advice from your local Citizens Advice Bureau, a solicitor, a qualified accountant, an authorised insolvency practitioner, a reputable financial adviser, or a debt advice centre.

## **3 How is a bankruptcy order made?**

You apply to the court using a 'bankruptcy petition'. A bankruptcy petition is usually presented by a creditor on the grounds that the debtor cannot pay his/her debts. A bankruptcy petition can also be presented by either the debtor or, if the debtor has already made a voluntary arrangement to deal with the debt, by the supervisor of this arrangement.

## **4 How do I prove to the court that the debtor cannot pay his/her debts?**

The court will regard an individual as being unable to pay his/her debts if either of the following occurs:

- A creditor who is owed more than £750 serves a 'statutory demand' for the money due and it is not paid or secured (for example, by a guarantee to provide something else of the same value); or a settlement is not agreed, within 21 days, and the debtor has not applied for the statutory demand to be set aside.

You can get the form for a statutory demand from your local court or The Insolvency Service website at [www.insolvency.gov.uk](http://www.insolvency.gov.uk). The forms for the statutory demand are:

- Form 6.1 - to be used for a debt for a specific amount which is payable now;
- Form 6.2 - to be used for a debt of a specific amount which is payable now following a judgment or order of court;
- Form 6.3 - to be used for a debt that is payable in the future.

The completed form must usually be served on the individual in person. The creditor must have proof of service, so it is usual to employ a process server to carry out this function (these are listed in Yellow Pages under 'detective agencies'). The court is not involved in the issuing of statutory demands, so no court fee is payable.

- A creditor who is owed more than £750 obtains judgment against the individual, and an execution is 'unsatisfied', i.e. the sheriff or bailiff was unable to seize enough assets to clear the debt. You can get the forms to issue a claim for judgment from your local court, or from the court service website at: [www.courtservice.gov.uk](http://www.courtservice.gov.uk). Court fees depend on the amount of the claim, and range from £30 to £1,530 - the court can tell you the precise court fee payable for a particular claim.

## 5 In which court should I present a bankruptcy petition?

Not all courts can deal with bankruptcy. You can present a bankruptcy petition at the High Court in London, or in a county court that deals with bankruptcy matters. Generally, you should present the petition for bankruptcy to the court that deals with the area where the debtor has lived or traded for the longest period in the previous 6 months. If the debtor lives in one court district and runs a business in another, you should go to the court dealing with the district where the business is, as this takes priority over the home address. If you are not sure which court you should go to, please phone your nearest county court for advice.

The address and phone number of your local county court are listed under 'Courts' in the phone book. Look for: 'civil courts - county courts' and not magistrates' courts. You will need to contact the court to find out if it has jurisdiction (authority) to hear a bankruptcy case. The Courts Service website at [www.hmcourts-service.gov.uk](http://www.hmcourts-service.gov.uk) has a list of county courts with bankruptcy jurisdiction and an index that shows what geographical area they cover.

## 6 How do I present a bankruptcy petition?

You cannot just complete the petition and present it to the court. Insolvency law requires that:

- the petition be served on the debtor; and
- statements of truth are lodged at court verifying the bankruptcy petition and that it has been served on the debtor.

You may have to make further statements of truth if, for example, you wish to withdraw the petition. Therefore, to ensure that you meet all legal requirements, it is usual to ask a solicitor to issue a bankruptcy petition.

Here is a summary of the procedure (also see Annex A):

- As the petitioner, you must complete a bankruptcy petition. You should use either:
  - a. Form 6.7 - 'Creditor's bankruptcy petition on failure to comply with a statutory demand'; or
  - b. Form 6.9 - 'Creditor's bankruptcy petition where execution or other process on a judgment has been returned unsatisfied in whole or part'.
    - i. Use form 6.7 if you have issued a statutory demand but the debtor has not complied with it.
    - ii. Use form 6.9 if a sheriff or bailiff acting on a court judgment has been unable to seize enough assets to clear the debt.

These forms can also be accessed on our website at [www.insolvency.gov.uk](http://www.insolvency.gov.uk) in 'Do It Online' You need to fill in the form online print off 3 copies to take to the court

- You must also complete a statement of truth (form 6.13) verifying the matters giving rise to the petition. If a statutory demand has been issued, you must complete a further statement of truth verifying that the statutory demand has been served (form 6.11).
- The petition is filed (handed in) at court and 3 copies made for the following purposes:
  - one to be served on the debtor (see below);
  - one to be attached to the statement of truth (form 6.13) verifying the matters that led to the petition; and
  - one to be served on any supervisor of an individual voluntary arrangement of the debtor.

A deposit and court fee is payable on presentation of the petition (see below).

- The court then fixes the place and date when the petition will be heard. Normally there must be at least 14 calendar days between the petition being served on the debtor and it being heard in court.
- A copy of the petition must be served on the debtor in person. If this is not possible the court can, on application, order that the petition be served on the debtor by alternative means, such as by post. This is known as 'substituted service'. A copy must also be sent to any supervisor of a voluntary arrangement. Immediately after service, the petitioner must file at court a statement of truth verifying service of the petition (form 6.17/6.18).
- If the debtor wishes to oppose the petition, he/she must give the court a statement of truth at least 7 calendar days before the hearing.
- On the day of the hearing, you must prepare a list of people intending to appear at the hearing for the court, using form 6.21.
- At the hearing, you (the petitioner), creditors (who have told you they intend to appear), the debtor and any supervisor of any voluntary arrangement all have

the right to be heard. The court can then:

- stay (delay or stop) the proceedings;
- dismiss the petition;
- adjourn (postpone) the hearing; or
- make a bankruptcy order.

All the forms are in the Insolvency Rules 1986 as amended, and you can get them from legal stationers - see Yellow Pages. Some of the forms are available on The Insolvency Service website at [www.insolvency.gov.uk](http://www.insolvency.gov.uk) where you can print them off for completion.

## **7 How much will it cost to make someone bankrupt?**

- Petition deposit of £390 towards the costs of administration of the bankruptcy - this is a one-off payment towards the costs of the bankruptcy, and if the bankruptcy has enough assets, the petition deposit will be refunded to you
- Court fee of £190.
- Any costs for instructing a solicitor.

## **8 What happens after someone is bankrupt?**

After making a bankruptcy order, the court usually appoints the official receiver (a civil servant in The Insolvency Service and an officer of the court) to be receiver and manager of the bankrupt's affairs. The official receiver has responsibility from the date of the bankruptcy for administering the bankruptcy and protecting the bankrupt's assets.

The official receiver will also act as trustee of the bankruptcy estate unless an insolvency practitioner is appointed. If this happens, the official receiver still has a duty to investigate the bankrupt's affairs. So 2 people may be involved in the bankruptcy:

- the trustee, who is responsible for selling the bankrupt's assets and distributing the money among the creditors; and
- the official receiver, who has a duty to investigate the bankrupt's affairs.

Certain restrictions and duties are imposed on a bankrupt - for further details, please read our leaflet 'Guide to Bankruptcy'.

## **9 Can anyone appeal against or stop the bankruptcy?**

- The court may 'annul' (cancel) a bankruptcy order. The bankrupt (and anyone else) can apply for an order to be annulled if:
  - a. the court did not have all the relevant facts when making the bankruptcy order and would not have made an order had it known those facts; or
  - b. the bankrupt can pay all the debts in full; or
  - c. the bankrupt enters into a voluntary arrangement with the creditors.
- An application to annul the bankruptcy order can be made at any time (even after the bankrupt's discharge). For further information about annulment of the bankruptcy order, please refer to our leaflet 'Can my bankruptcy be cancelled?'.

- The bankrupt can apply for the 'rescission' (cancellation) of the bankruptcy order, if there has been a change in circumstances since the bankruptcy order was made. A rescission will usually only be granted in exceptional circumstances and normally requires the consent of the petitioning creditor.
- The bankrupt can 'appeal' against a bankruptcy order on a point of law. As a result of an appeal, the court can cancel the bankruptcy order or otherwise change its decision. The bankrupt should appeal within 4 weeks of the order being made.
- Bankruptcy proceedings can be 'stayed' (stopped). The bankruptcy proceedings are usually only stayed while waiting for an application for an annulment, an appeal or a rescission of the bankruptcy order, or while an individual voluntary arrangement is being proposed.

## 10 Where can I get more information?

Our publications give more details of insolvency procedures. Please see 'Guide to Bankruptcy' and 'A Guide for Creditors'.

You can obtain further copies of this booklet from The Insolvency Service website: <http://www.insolvency.gov.uk/>. All of our publications are also available on this website.

You may also, free of charge, order copies of our publications from the DTI Publications Orderline. To do this you will need the reference number (URN) of the forms required. This can be found on the back cover of the leaflets or on the website. Orders can be made:

By telephone: 0845 015 0010 (calls to this number are charged at national rate).

By email: [publications@berr.gsi.gov.uk](mailto:publications@berr.gsi.gov.uk)

By fax: 0845 015 0020

Minicom users should telephone: 0845 015 0030

All of our publications are also available on our website <http://www.insolvency.gov.uk/>

For general enquiries you can contact The Insolvency Service Insolvency Enquiry Line on 0845 602 9848 or email [Insolvency.Enquiryline@insolvency.gsi.gov.uk](mailto:Insolvency.Enquiryline@insolvency.gsi.gov.uk)

For general enquiries to the Court Service you can call its Customer Service Unit on 0207 210 2266 or email [cust.ser.cs@gtnet.gov.uk](mailto:cust.ser.cs@gtnet.gov.uk)

The Court Service publishes a series of information publications on their website at <http://www.courtservice.gov.uk/>

This publication provides general information only. Whilst every effort has been made to ensure that the information is accurate, it is not a full and authoritative statement of the law and you should not rely upon it as such. The Insolvency Service cannot accept responsibility for any errors or omissions as a result of negligence or otherwise.

## 11 Bankruptcy terms - what do they mean?

**Annulment of a bankruptcy order** - a court order that cancels the bankruptcy order.

**Bankruptcy order** - a court order that places an individual into bankruptcy.

**Bankruptcy petition** - a request to the court for an individual to be placed into bankruptcy, giving the reasons why.

**Creditor** - someone to whom the individual owes money.

**Debt** - the money the individual owes.

**Debtor** - the individual who owes money.

**Discharge** - freed from bankruptcy or freed from the restrictions of bankruptcy.

**Execution** - if a creditor has obtained judgment against the individual and has not been paid, the creditor can apply to the court for 'execution', which gives the sheriff/bailiff the power to seize the individual's goods to pay the debt.

**Individual Voluntary Arrangement (IVA)** - a formal arrangement by which a debtor pays his/her creditors, either in full or in part. The debtor would need to apply to the court with the help of an authorised insolvency practitioner, who would supervise the arrangement and pay the creditors in accordance with the accepted proposals.

**Insolvency practitioner** - an authorised person who specialises in insolvency, usually an accountant or solicitor. Insolvency practitioners are authorised by the Secretary of State or one of certain recognised professional bodies.

**Liabilities** - the money the individual owes.

**Trustee** - the trustee is either the Official Receiver or an insolvency practitioner who takes control of the bankrupt's assets. The trustee's main duties are to sell these assets and share the money out among the creditors.

**Rescission** - one of the ways in which the court can cancel the bankruptcy order.

**Recognised professional body** - a professional body that the Secretary of State allows to authorise a person to act as an insolvency practitioner.

**Statement of truth** - a statement in writing and on oath, which is sworn before an authorised person, e.g. an authorised solicitor or court official.

**Verify** - confirm that a document or statement is true.

## Petitioning for bankruptcy

To prove that you have grounds to petition, you must be owed at least £750 and

Either

**Issue a statutory demand against the debtor** using forms 6.1, 6.2 or 6.3, which should be served on the debtor usually using a process server (no court fee is payable)

Or

**Have an 'unsatisfied execution on judgment'** - where you obtain a court judgment and a sheriff / bailiff is unable to seize enough of the debtor's goods to pay the debt (court fee is payable)

If the debtor does not or cannot clear the debt

### Complete the petition for bankruptcy

You should use form 6.7 or 6.9 or fill in the form online and make 3 more copies as follows

Copy 1 - to be personally served on the debtor

Copy 2 - to give to the person who supervises any voluntary agreement of the debtor

Copy 3 - to be attached to a statement of truth verifying the petition (*form 6.13*) and, if applicable, a statement of truth saying that a statutory demand has been served (*form 6.11*)

### File the petition at court

The original petition and the 3 copies should be given to the court with form 6.13 and 6.11 (if applicable), together with the money for the deposit and court fees

### The court fixes a time and date to hear the petition

These details will be written on the petition and the copies

### Serve the petition on the debtor

The petition should usually be served on the debtor using a process server, and a copy must also be served on any supervisor of a voluntary arrangement of the debtor. You must then file at court a statement of truth confirming that the petition has been served on the debtor (*form 6.17 / 6.18*)

### Day of the hearing

You must prepare a list of people intending to appear at the hearing (*form 6.21*). At the hearing, the court will decide whether to make a bankruptcy order



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Publications are also available on our website [www.insolvency.gov.uk](http://www.insolvency.gov.uk)