

Bretts Business Recovery Guides: Personal Insolvency

There are three formal insolvency procedures available to an insolvent individual (“debtor”).

1) Bankruptcy

A Bankruptcy Order is made by the Court either on the application of a creditor who is owed over £750 or a debtor personally.

The process of requesting the Court to make someone bankrupt is referred to as *petitioning the Court for a Bankruptcy Order*.

- A debtor who wishes to petition the court to make themselves bankrupt must pay fees of up to £700 (as at May 2013). This figure comprises a Court fee of £175 and a fee of £525 to contribute towards the costs of administering the bankruptcy.
- The Court fee may be waived in certain circumstances (e.g. if the debtor receives certain benefits).
- Once the Court has made an Order that a debtor is to be made bankrupt, their assets come under the control of the Official Receiver, who is automatically appointed as Trustee in Bankruptcy.
- If the bankrupt has assets, the Official Receiver may call a meeting of creditors to appoint a Trustee in Bankruptcy, who must be a Licensed Insolvency Practitioner, in his place, or the Secretary of State may appoint a Trustee.

The Trustee is responsible for realising the bankrupt’s assets, settling the costs of the bankruptcy including the costs of the Official Receiver and if possible distributing funds to creditors.

- Bankruptcy generally lasts for one year before an individual is discharged, but the individual may have to make contributions from their income for the benefit of their creditors for up to 3 years.
- If the bankrupt has acted dishonestly or is blameworthy in some way the Official Receiver may apply for a **Bankruptcy Restriction Order (BRO)**.
- This lasts for between 2 and 15 years, and the restrictions are the same as those applying to bankruptcy.

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Bankruptcy affects an individual's ability to obtain credit, even after they've been discharged, as credit reference agencies keep a record of bankruptcy for six years.

- Bankruptcy usually involves the closure of any business that the bankrupt runs and the dismissal of their employees.
- It can affect employment. Members of certain professions, including solicitors and people whose roles are regulated by the Financial Services Authority, aren't allowed to become bankrupt.

Personal Insolvency

If a bankrupt owns a house either solely or jointly with a partner, their share or interest in the property must be realised for the benefit of creditors.

In many cases a forced sale of the property, which can be expensive and time consuming, may be avoided if a spouse or other relative or friend can purchase the bankrupt's interest.

Individual Voluntary Arrangement ("IVA")

An alternative to Bankruptcy is an **Individual Voluntary Arrangement (IVA)**.

An IVA is a legally binding agreement between a debtor and their creditors, where the debtor repays all or part of their debt over a fixed period of time.

A debtor can make either a one off or regular payments for the benefit of their creditors. An IVA based upon regular contributions may last for up to five years.

If a debtor runs a business they can continue to trade while in an IVA.

Failure to comply with the terms of an IVA may result in a debtor being made bankrupt.

Debt Relief Orders ("DRO")

DRO's came into force in England and Wales on 6th April 2005.

They presently cost £90 and are intended to be a low cost alternative to Bankruptcy. DRO's are administered by the Official Receiver and are available to debtors who:

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- Owe less than £15,000 in total.
- Have assets worth no more than £300 (although a debtor may have one vehicle worth no more than £1,000).
- Have less than £50 a month of disposable income i.e. after settling their living costs.

DRO's are not available to individuals who have an interest in a property (even if it is in negative equity).

A debtor can only apply for a DRO through an approved intermediary.

The Citizens Advice Bureau puts debtors in touch with an approved intermediary in their local area.

Once a DRO is made the debtor's debts are frozen for twelve months. During this time creditors cannot pursue the debtor nor can they add interest or charges to the debt.

If after 12 months the debtor's circumstances have not changed the debts are written off.

For More Information, Please Contact BBR Today

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