

# Bankruptcy

## Fact Sheet



### What is Bankruptcy?

Bankruptcy offers the opportunity to make a fresh start in circumstances where the debts you owe are overwhelming and there is little prospect that you will ever be able to clear them or make an offer to settle them. Bankruptcy is the legal way of declaring your inability to repay your debts and you will usually be discharged from bankruptcy after 12 months.

### How to go Bankrupt?

If you wish to make yourself bankrupt you can obtain forms from the Bankruptcy and Chancery Division of the High Court in Belfast or from the Insolvency Service website at [www.detini.gov.uk/insolvency](http://www.detini.gov.uk/insolvency) where you can either download hard copies of the bankruptcy petition and statement of affairs or input the information online. You can also pay your bankruptcy deposit on-line using a credit/debit card.

There are three fees that you will have to pay when you take your petition and statement of affairs to the Court:

- **A deposit of £310 towards the costs of administering your bankruptcy payable to the Insolvency Service.** You should then take the receipt of your deposit paid to the Insolvency Service, along with your completed petition and statement of affairs, to the High Court.
- **The fee payable to a solicitor** before whom you swear the contents of your statement of affairs.
- **The court fee of £115.** In certain cases e.g. if you are receiving Income Support, the Court fee may be waived.

Once you have lodged your forms and receipt of deposit at the High Court Belfast, the High Court will either hear your petition straight away or arrange a time for the court to consider it. No members of the public will be present and the hearing only lasts 10 minutes approximately if your case is straightforward.

When your bankruptcy order is granted you will then have an appointment in person or by phone with the Official Receiver, this is the Court officer who handles the administration of your Bankruptcy. The Official Receiver will agree what is to happen to any assets you may have and, in cases where you have sufficient income to make regular payments, how much the payments should be and how long they will be made for. After a Bankruptcy order is made he will inform your creditors. Creditors can then take no further action against you.

### How are you made Bankrupt?

A creditor can petition for your Bankruptcy if you owe the creditor more than £750 and you have been unable to agree how to repay the debt.

Before presenting a bankruptcy petition a creditor must send you a statutory demand. 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).
- Offer to pay the debt in a way which is satisfactory to the creditor, e.g by instalments.

21 days after the statutory demand is served the creditor can apply for a Bankruptcy Order. You can apply to have the statutory demand set aside in certain circumstances where you dispute the sum owed or the debt is less than £750.

### How long does Bankruptcy last?

You are normally “discharged” from your Bankruptcy after one year. Longer periods may apply if this is not your first bankruptcy.

### How will people find out?

Your Bankruptcy will be reported in the Belfast Telegraph & Gazette on a Friday evening.

### What is an asset?

An asset is anything that belongs to you that may be used to pay your debts. Certain goods are not treated as assets; these would be items of household goods.

If you own a car, the Official Receiver will take into account its value, and whether it is essential to you before deciding whether to remove or sell it. If your vehicle is essential to your employment it may be exempt and is not expensive (in the Official Receiver's opinion). You may have to buy a cheaper vehicle and the remaining funds to go towards paying your debts. The tools of your trade are normally exempt.

### Will I have to pay anything from my wages?

Money will only be deducted from your wages if your income is above the average and it appears that you might have available income after paying ordinary household expenses.

### Bankruptcy and hire purchase agreements

There may be a clause in your HP agreement that allow the HP company to terminate the agreement if you become bankrupt. If this is the case you will then have to return the items.

## Pensions

The law changed on 29th May 2000 regarding personal and occupational pensions that they will remain unaffected by bankruptcy. You will be able to keep your pension fund except in rare cases where you have paid huge amounts into your pension to try and stop your creditors taking your savings.

## Property and your home

If you own property then this might be sold depending on whether it has any equity (value) in it. The sale can be delayed for 12 months if your partner and children live there, to give them time to find somewhere else to live.

Once you are bankrupt your interest in your home is transferred to the Official Receiver or trustee as it is your asset. This enables them to sell the home. If you are the sole owner then the whole of the value of the property is transferred to the Official Receiver or trustee. Where the property is jointly owned the Official Receiver is usually only entitled to the bankrupt person's share of the equity. This is called your **'beneficial interest'**.

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 **phone us for advice**.

It may be possible for the joint owner or family and friends to make an offer to the Official Receiver to buy out your share of the equity. This is particularly helpful if there is little or no equity.

Remember - It is very important that your beneficial interest in your home is bought out as soon as possible or the Official Receiver may be able to sell the house, even if you have been discharged from bankruptcy.

If there is negative equity or no equity in the property then the value of the beneficial interest can be set at a minimal amount of £1.

If your home has very little equity in it (up to a set level of £1,000), then the Court will not be able to order a sale or put a charging order on your property. They still have up to three years to see if your house has risen in value and is worth selling. Try to come to an agreement with the Official Receiver over your beneficial interest as soon as you can to avoid this happening.

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.

If you cannot save your home through someone buying out the Official Receiver's interest the property is likely to be sold.

## The effects of bankruptcy

Your bank accounts will be frozen once you are declared bankrupt for the Official Receiver to carry out an investigation of your finances. You will need to make alternative arrangements for receiving and making payments. Money in your account will be counted as an asset in your Bankruptcy estate. Overdraft accounts will be counted as debts. The Official Receiver can release money from your account for living expenses. Your bank may agree to unfreeze your account but they do not have to do so. You can open a

new bank account but you must tell the bank that you are Bankrupt. Successfully obtaining an account varies from bank to bank so you may have to shop around.

Depending on the type of job that you do your employment may be affected. Always check your contract of employment to see if bankruptcy is mentioned. If you handle money your employment could be at risk. You will lose your consumer credit license if you need one for your work in the finance industry.

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 and even after this time you may be asked whether you have ever been bankrupt before when applying for some credit, particularly a mortgage.

Details of your bankruptcy are also kept on the Individual Insolvency Register, which is maintained by the Bankruptcy and Chancery Office at the High Court, for ten years.

## Bankruptcy offences

Whilst you are bankrupt it is an offence to:

- Take out credit of more than £500 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 company without permission;
- Act as an insolvency practitioner.

Various other restrictions may apply. More detailed information is available on the Insolvency Service website at [www.detini.gov.uk/insolvency](http://www.detini.gov.uk/insolvency) or phone us for advice.

## Discharge from bankruptcy

Under the Insolvency (Northern Ireland) Order 1989 as amended by the Insolvency (Northern Ireland) Order 2005, if you go bankrupt you will usually be automatically discharged from your bankruptcy after one year however much you owe. If you need proof of your discharge you can ask the court for a certificate of discharge but this will cost £75. You can also apply to have your bankruptcy annulled if you have paid all the debts and expenses of the bankruptcy in full, or a bankruptcy order should never have been made.

These rules do not apply if you have had a previous bankruptcy or your automatic discharge has been suspended due to not co-operating with the Official Receiver or being found guilty of a bankruptcy offence.

Call us FREE on: 0800 917 4607

Visit us at: [www.advice4debtNI.com](http://www.advice4debtNI.com)



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