

# BANKRUPTCY

**DEBTOR'S  
PETITION**

**CREDITOR'S  
PETITION**

**YES**

**Total debts under  
£20,000?**

**NO**

## SUMMARY CASE

1. Bankruptcy is 2 years
2. Official Receiver is Trustee.
3. (Usually) in-depth investigation.

**Official Receiver is Receiver and  
Manager on making of the Order.  
Bankruptcy is normally 3 years.**

**NO**

**Official Receiver must decide  
within 12 weeks whether to call  
a meeting of creditors or not.**

**YES**

**Official Receiver  
becomes Trustee.**

**Meeting of Creditors decide  
who is to be Trustee. (An  
Insolvency Practitioner -  
must be licensed by DTI.)**

**Official Receiver still has legal  
duty to investigate affairs of  
bankrupt.**

## **BANKRUPTCY**

As defined in the Insolvency Act 1986. This is the growing legislation that, together with the Insolvency Rules 1986, defines what the Official Receiver is empowered to do.

Bankruptcy is basically an inability to pay debts as and when they fall due.

What is required?

1. A petition.
2. An Order (the Bankruptcy Order.)

Who can petition?

1. Any person himself/herself. (Debtor's petition.)
2. A creditor who has not been paid and/or no arrangement agreed between creditor and debtor. (Creditor's petition.)
3. Minimum debt? £750.

Why is it important whether there is a Trustee or not? Official Receiver as Receiver/Manager only has limited power, e.g. technically cannot ask for money as a bank account – can only give notice to the bank.

### **ASSETS**

Not all assets can be claimed by the Trustee.

Most obvious are "tools of trade."

- Furniture, clothes, what is required for normal living.
- Jewellery! Generally not exempt, but common sense – ornate/expensive wedding rings?
- Motor vehicle – contrast motor vehicle (usually exempt, especially if van, etc) and motor car (generally not – can be, though, if specific circumstances.)
- Equity in house/property – be aware of the legal position of Trustee.
- Life policies – generally claimable depends on what type.
- Stock.
- Book debts.
- Intellectual property.
- Cash in hand and at bank.

### **LIABILITIES**

- Not all debts can be 'written off' in the bankruptcy.
- The most obvious one is a fine imposed by a court as a result of a criminal offence. (includes parking and motoring offences!)
- Another is the student loan.
- Payments under the Matrimonial Causes Act, maintenance, etc.



## **OVERALL**

- The Official Receiver's main duty is to investigate the affairs of the bankrupt, whether Trustee or not.
- Provisions in the law if you are a second time bankrupt within 15 years.
- Bankruptcy offences as defined in the Act.

## **DISCHARGE**

- Debtor's petition, Summary Case, 2 years.
- All others, 3 years.
- Discharge is automatic, but Official Receiver can make application to Court to Suspend the automatic discharge.