



## Bankruptcy factsheet

### What is bankruptcy?

If an individual or company cannot or will not pay a housing benefit overpayment, the Council can use bankruptcy to collect it.

Anyone can be made bankrupt, including individual members of a partnership. The procedures for dealing with companies and for partnerships are different.

Bankruptcy is a serious matter. You will have to give up any possessions of value and your interest in your home. Bankruptcy affects your credit rating and your ability to secure a loan or credit cards. It will almost certainly mean closing any business you run and dismissing your employees. Bankruptcy will also impose certain restrictions on you.

When deciding whether to start bankruptcy proceedings, we will consider the following factors:

- whether the debt is more than £5,000
- whether the taxpayer has contacted us to discuss what they owe or tried to pay it
- whether the taxpayer has responded to requests for information about their financial affairs
- the taxpayer's financial circumstances, including:
  - the value of any assets owned by the taxpayer
  - whether the taxpayer is able to make payments to third parties, such as mortgage repayments, credit card payments and utility bills
- the outcome of previous attempts to recover the arrears, if any.

If bankruptcy proceedings are taken against you, you should seek your own legal or financial advice from a debt advice centre, Citizens Advice, a solicitor, a qualified accountant, an authorised insolvency practitioner or a reputable financial adviser.

**The following information tells you about what will happen if we take bankruptcy action against you.**

### **Step 1: Statutory demand**

A statutory demand is a document that lists the debts you owe to the Council in excess of £5,000. It is the first step towards making you bankrupt.

The demand may be made in person, left at your address or advertised in the local press.

From the date you receive the demand you have 21 days to pay in full or make an arrangement with us to clear your debt. If you need extra time to pay, we will work with you as long as you make contact within 21 days.

#### *Dispute*

If you dispute the debt you can apply to the County Court to have the statutory demand 'set aside'. You must do this within 18 days of receiving the demand. You can find details of how to apply to 'set aside' a statutory demand on page 3 of the demand. Alternatively you can seek your own legal advice on the matter.

#### *Set aside hearing*

The set aside hearing will be in the registrars' chambers. You cannot dispute liability at this stage as the Council has already obtained a liability order against you at the Magistrates' Court. The County Court will be reluctant to overturn the decision previously made at the Magistrates' Court.

Based on the information you and the council representative have supplied, the registrar will decide whether you have a valid dispute. If it is set aside, the Council can make a further application at a later date.

You should also be aware that substantial costs may be awarded against you if the debt remains unpaid and action proceeds to a bankruptcy petition. Settlement at a bankruptcy hearing will result in costs of at least £1,500, which you will be liable to pay.

**Being made bankrupt is a serious matter. You will have to give up any possessions of value and your interest in your home.**

### **Step 2: The bankruptcy proceedings**

Once 21 days have passed since the service of the statutory demand, we will file a bankruptcy petition to the court. We can do this regardless of whether or not you acknowledge and agree with the procedure. Therefore it is in your interest to cooperate fully with us once the bankruptcy proceedings have begun.

If you dispute our claim for the sum owed you should try to reach a settlement before the bankruptcy petition is heard. Trying to do so after the bankruptcy

order is made is both difficult and expensive. At a minimum, you will be required to meet both the costs of the petition (around £1,500) and pay the official receiver's costs (around £1,715).

### **Step 3: The bankruptcy hearing**

The hearing will take place in the registrar's chambers. We will provide a list of any creditors known to us and list your outstanding debts. When the bankruptcy order is made, the court will notify the official receiver who will contact us to request any additional information held about you. The court will send you notification that a bankruptcy order has been made.

### **Step 4: The official receiver**

The official receiver is responsible for looking into your financial affairs after the bankruptcy. He or she reports to the court, the Council and other creditors.

The official receiver will make enquiries about you to get details of any assets or liabilities that you may have, or have an interest in (either on your own or jointly with others). This will include contact with banks, the Pension Service, insurance companies, solicitors, landlords and any other people or organisations who may be able to give information about you.

### **Paying after the hearing**

It can be straightforward to pay your debt to the Council after the court has issued the bankruptcy order, but actually cancelling the order is not. The only way to have the matter withdrawn is via an annulment application to the court. This will incur large costs – in some cases it could cost several thousands of pounds. If you allow the matter to get to this stage and you do not have the extra funds to clear the costs of the annulment, you will be putting your home at risk, which you may then have to sell to clear the costs.

### **Your duties as a bankrupt**

When a bankruptcy order has been made against you, you must:

1. stop using your bank, building society, credit card and similar accounts immediately
2. not obtain credit greater than £500 from any person without first disclosing the fact that you are bankrupt
3. not make payments direct to your creditors.

## **How being bankrupt affects you**

### *Secured creditors*

Secured creditors have a mortgage or charge on your home. If your mortgage payments are not made, the lender may sell your home.

### *Unsecured creditors*

You will be prohibited from making payments to your unsecured creditors, including utility suppliers such as gas and telephone companies. As a result they could discontinue your supply.

### *Your assets*

You will no longer control your assets. However, you can keep the following items as long as their individual value is more than the cost of a reasonable replacement:

- tools, books and other equipment which you need to use personally in your employment, business or vocation
- clothing, bedding, furniture, household equipment and other basic items you and your family need in the home.

The official receiver or trustee will take control of all your other assets when the bankruptcy order is made. Either they, or any insolvency practitioner who is appointed as trustee, will dispose of your assets and use the money to pay the fees, costs and expenses of the bankruptcy, then pay any other creditors you have.

Please note: the trustee may claim property that you obtain or which passes to you (for example under a will) while you are bankrupt.

### *Your business*

If you are self-employed your business may be closed down and your employees dismissed

### *Your salary/wages*

Your trustee may apply to the court for an income payments order (IPO) which requires you to make contributions towards the bankruptcy debt directly from your income. The court will only make such an order if you are left with enough income to meet the reasonable domestic needs of you and your family. If your income goes up or down, the IPO can be changed. IPO payments continue for up to 36 months.

### *Your home*

If you own your home, your share in the property will form part of your estate and will be dealt with by your trustee. Your home may be sold to reduce your debts.

Until your share in the property is sold, the interest will continue to belong to the trustee. This includes any increase in its value which, again, will go towards paying your debts.

Even if the property is sold some time after you have been discharged from the bankruptcy, any increase will belong to the trustee, not you.

### **Bankruptcy restrictions**

The following are criminal offences for an undischarged bankrupt:

1. obtaining credit of more than £500, either alone or with another person, without disclosing your bankruptcy
2. continuing a business, directly or indirectly, in a different name from that in which you were made bankrupt, without disclosing the name in which you were made bankrupt to those with whom you do business
3. directly or indirectly promoting, forming or managing a limited company, or acting as a company director without the court's permission, whether formally appointed as director or not.

**This document is a guide only. You are advised to seek professional legal advice.**