

MAXIMISING INCOME – AN INSOLVENCY PERSPECTIVE

PERSONAL INSOLVENCY AND LOCAL AUTHORITY INVOLVEMENT



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Mazars Restructuring Services
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Agenda

- Personal Insolvency Landscape
- Certain Exhibitions Judgement
- Personal Insolvency Processes
- Questions / Discussion



UK Personal Insolvency Landscape

Level of personal unsecured debt in UK =

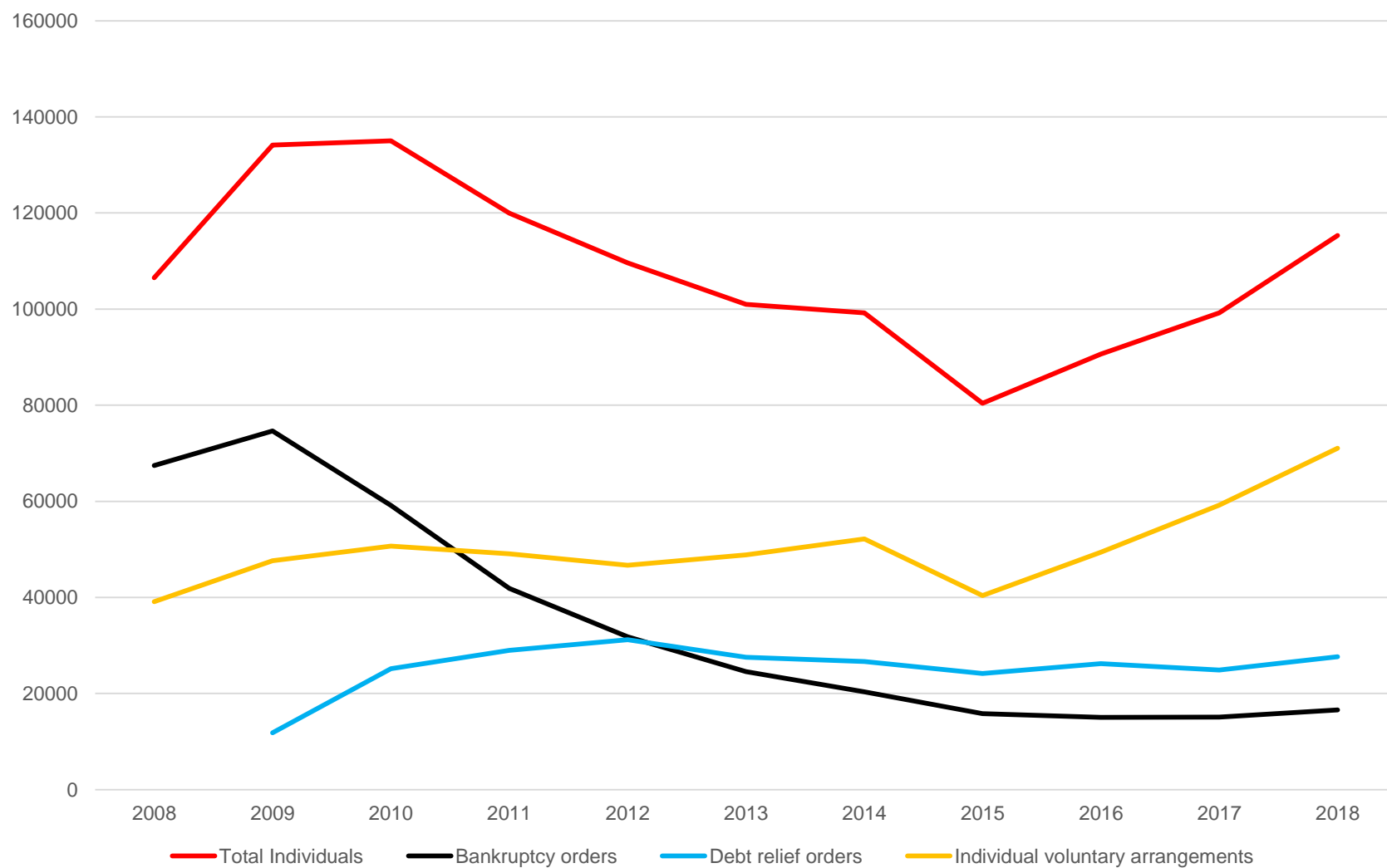
c£216 billion

England & Wales

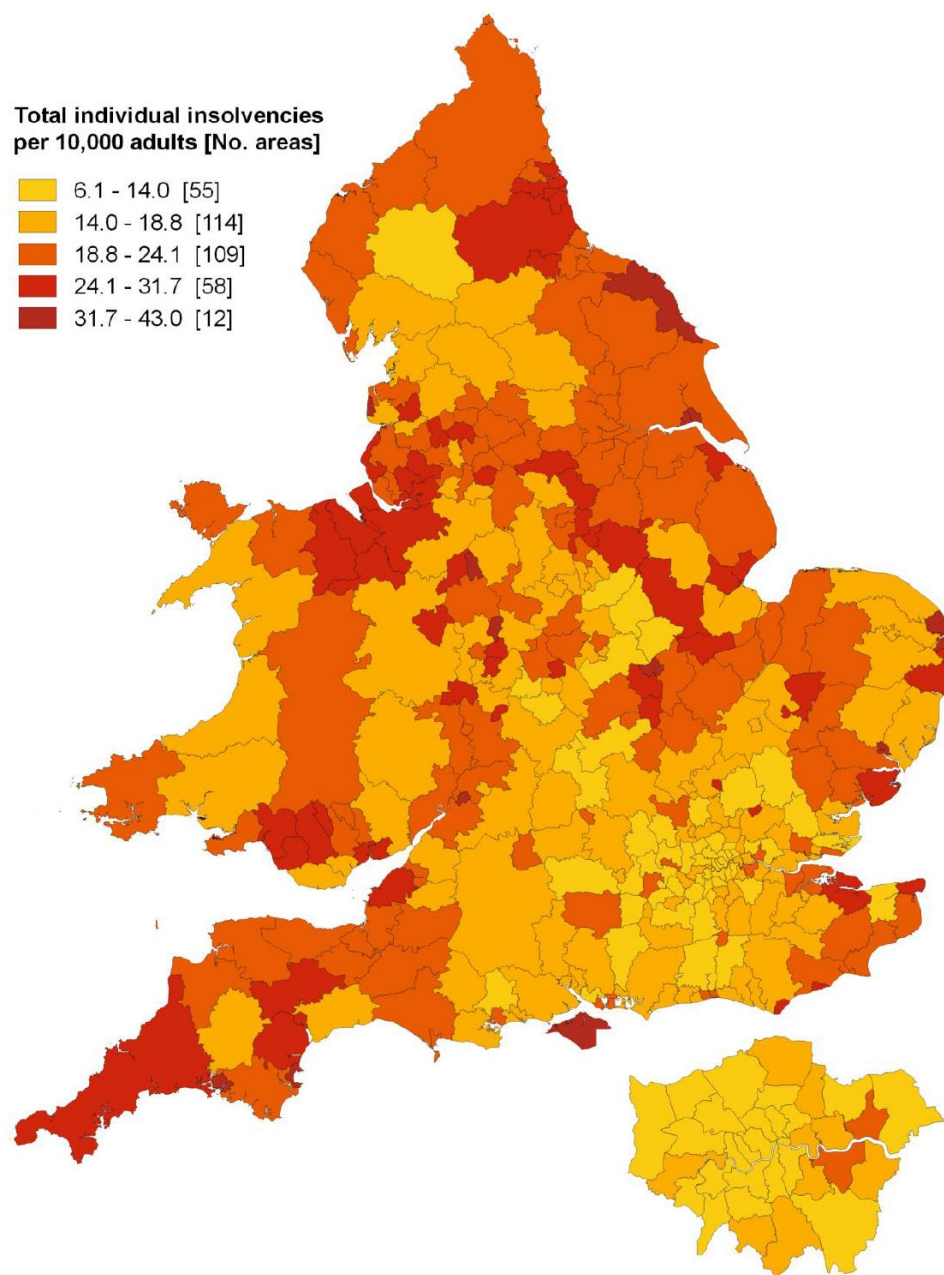
- Population = **58.7m**
- Total Insolvencies in 2018 = **115,299**
- One in every **401** adults



Personal Insolvencies in England & Wales



UK Personal Insolvency Landscape



- Total personal insolvency rate 2017 increased by 9.4% from 2016.
- North East, South West, parts of the North West and Yorkshire have the highest insolvency rates.
- Coastal / Docking areas suffer high rates.
- London and South East had the lowest rates.
- Female insolvency rate higher than male – three years running and gap widening.
- Insolvency rates highest in the 35-44 age category - both males and females.

England & Wales Personal Insolvency Regimes

Debt Relief - England & Wales

- Bankruptcy
- Individual Voluntary Arrangement (IVA)
- Debt Relief Order (DRO)
- Debt Management Plans



Who is involved?

- **The Insolvency Service**
 - a Government Agency which deals initially with all Insolvencies
- **The Official Receiver**
 - An officer of the Court and an employee of the Insolvency Service
- **The Court**
 - Most County Courts and the High Court have the power to make Insolvency Orders
- **An Insolvency Practitioner**
 - An authorised and appropriately qualified person who deals with various types of insolvency.



CT and NNDR Claims in Insolvencies

- **Re: Kaye v South Oxfordshire District Council (2013)**
- April 2013, South Oxford District Council issued Certain Exhibitions Limited with a notice in respect of non-domestic rates for the period 1 April 2013 to 31 March 2014 in the sum of £25,905.
- Certain Exhibitions Limited suffered a fire on 21 April 2013 which destroyed its storage facility and led to disruption of their business.
- Due to the effect of the fire damage, the company entered a CVA on 10 July 2013.
- The council subsequently submitted a claim in the CVA for the arrears to 10 July 2013 with a view to collecting the future instalments.
- The CVA Supervisor (Kaye) objected and the matter went to court, where Kaye was successful in obtaining a judgement.
- The Insolvency Service have subsequently amended their technical manual to confirm that the entire year's council tax or national non domestic rates liability (less any payments already made) is therefore provable in personal and corporate insolvencies as an unsecured debt.

Overview – Debt Management Plans (DMP)

- An unregulated agreement with creditors.
- Intermediary - **not an Insolvency Practitioner.**
- Agree to pay a small amount (e.g. £50 per month) into a fund.
- Creditors paid out of that fund.
- Not binding, no guarantees.
- No debt forgiveness – debtor liable until pays everyone under the terms
- Probably several hundred thousand DMPs but no official figures
- Not-for-profit sector heavily involved



Overview – Debt Relief Orders (DROs)

SIMPLE DEBT RELIEF FOR PEOPLE WITH FEW ASSETS / SURPLUS INCOME (*the financially vulnerable*)

Criteria:

- you've lived or worked in England or Wales in the last 3 years
- owe £20,000 or less
- have less than £50 to spend each month
- assets aren't worth more than £1,000 in total
- not been subject to a DRO in the last 6 years

Process:

- Application to The Insolvency Service
- Lasts for 12 months
- Free of debts at the end of 12 months (unless circumstances have changed)
- No Court involvement



Overview – Debt Relief Orders (DROs)

What to do...

Creditor Action:

- No action by creditors (no claim submission)
- Only listed creditors are bound
- Any misrepresentation - report
(assets / debts not declared or conduct issues)

Process:

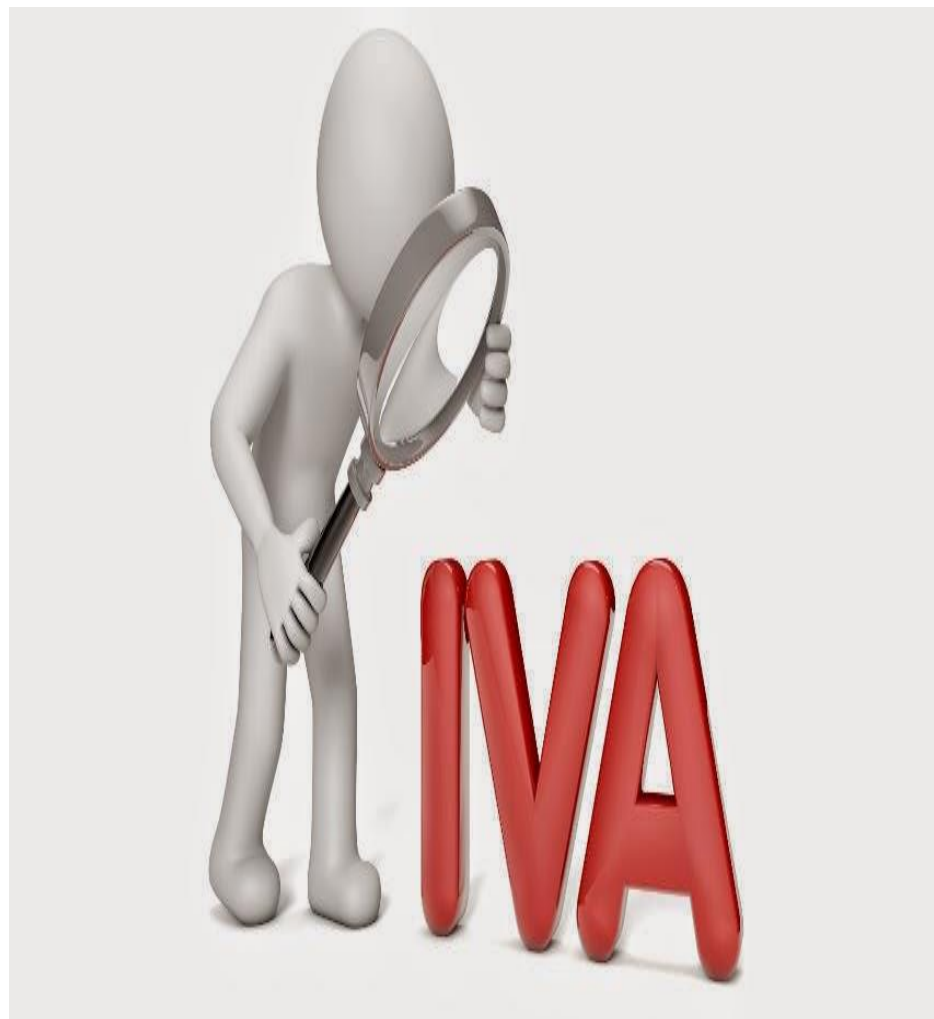
- Report to the Insolvency Service
- DRO could be cancelled – council debt becomes due again
- Falsification – criminal offence
- Could lead to imprisonment – but likely lead to a Debt Relief Restriction Order



Overview – Individual Voluntary Arrangement

ALTERNATIVE TO BANKRUPTCY – A DEAL WITH CREDITORS

- Debtor **proposal** to creditors
- Proposal reviewed by an **Insolvency Practitioner as nominee**
- Creditor vote – >75% to approve
- Modifications
- Binding on all if approved
- **Monthly contribution for 5 years...**
- Property sale/cash injection in 5th year
- Success = debtor released from debts
- Failure usually results in Bankruptcy



Individual Voluntary Arrangement

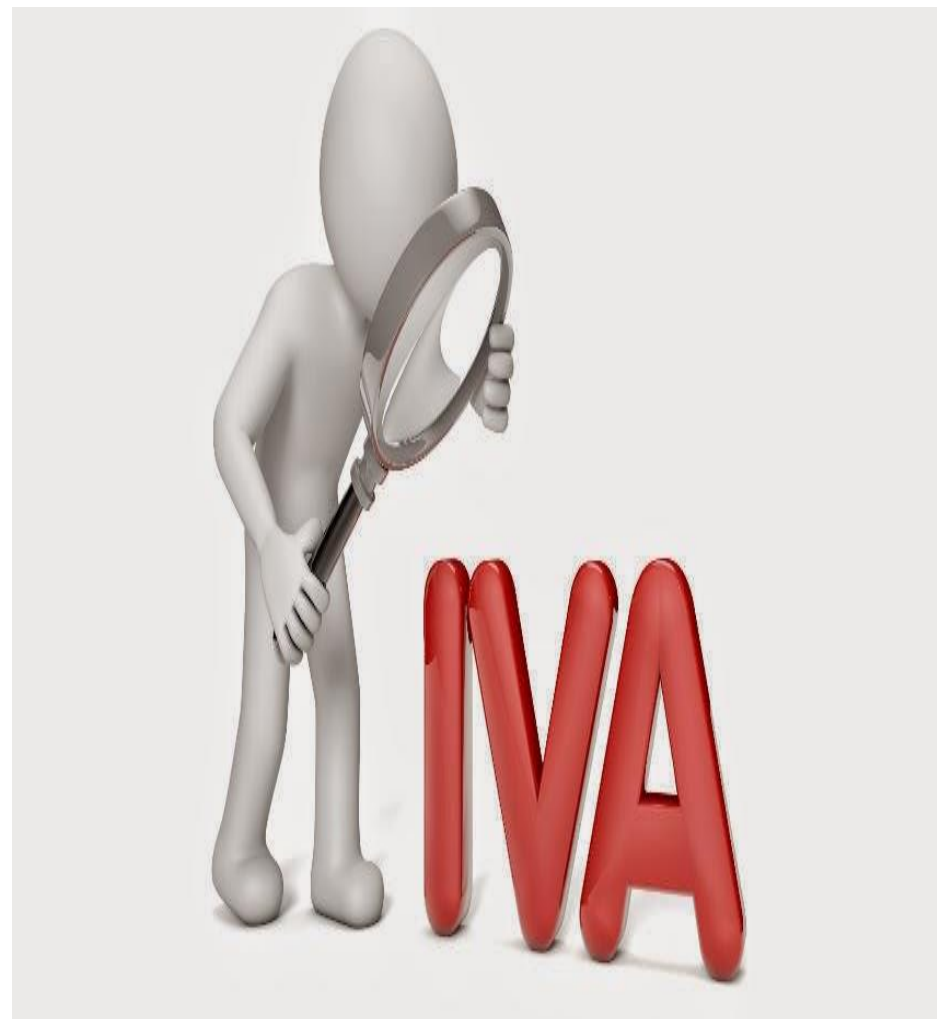
What to do...

Creditor Action:

- Proposals – Read
 - Asset Valuation
 - Income & Expenditure
 - Third Party Funds

Process:

- Challenge / Modify
 - Exclude CT / NNDR?
- Vote
 - Reject if payments up to date, AEOs or Attachments to Benefits in place?



Individual Voluntary Arrangement

What to do...

Creditor Action:

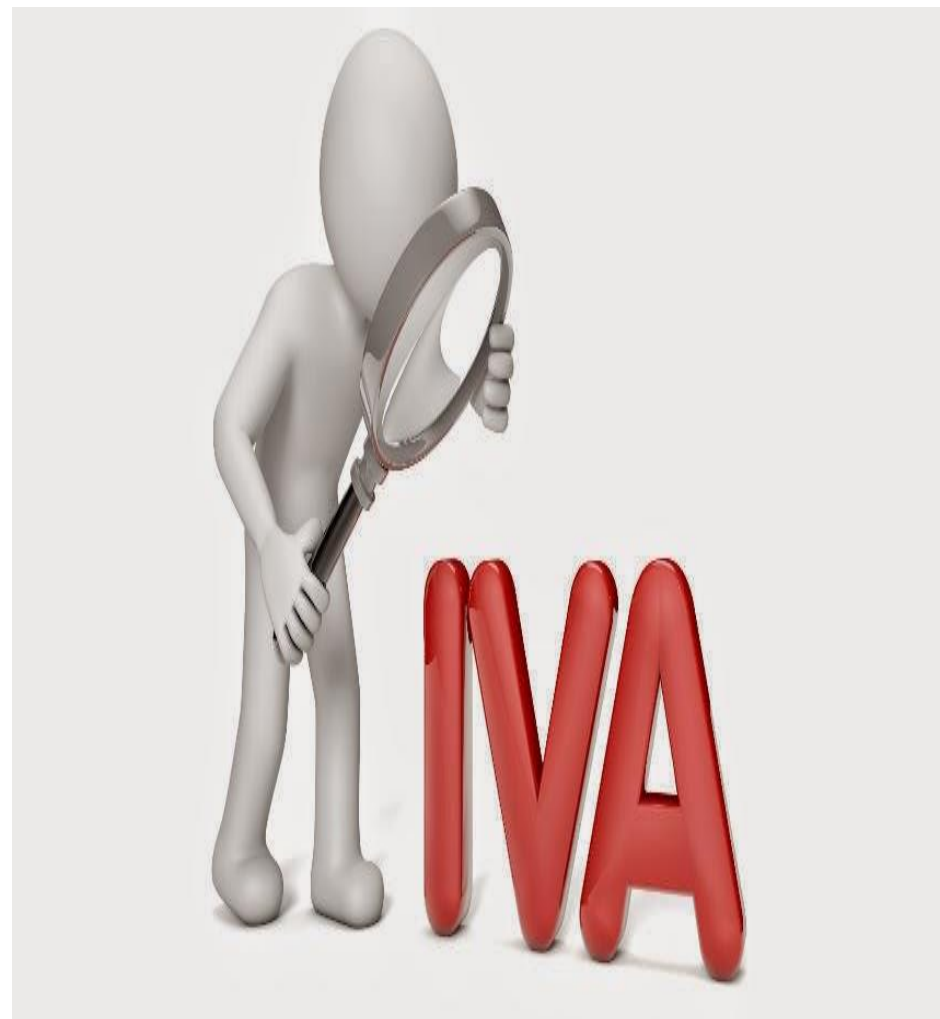
- Non Inclusion
 - IVA binding

Process:

- Challenge Supervisor
- Potential to fail IVA

Regular Supervisor omission

- Challenge I.P.
- Complain to regulator - easiest via Insolvency Service Website



Overview – *Bankruptcy*

USUALLY THE LAST RESORT...

- Application to **Court** – debtor’s petition or creditor’s petition
- Creditor must be owed £5,000 or more – *too much?*
- **Court** makes Bankruptcy Order
- **Official Receiver** deals with initial process
- Debtor’s Statement of Assets & Liabilities and Income & Expenditure (and Interview)
- **Official Receiver** decides whether the level of assets justifies the appointment of an **Insolvency Practitioner** as **Trustee in Bankruptcy**
- **Trustee’s** role is to turn the assets into cash and pay the costs of the estate
- The surplus is paid *pari passu* to creditors



Bankruptcy – General Points

- Funds are paid into Insolvency Service Account
- Insolvency Service – OR general fee £6,000 (July 2016)
- Trustee's fees – approved by creditors.
- Paid out of the funds realised. No funds = no fees

- Restrictions for the Bankrupt
- Discharge from debts and restrictions
- Poor conduct = Bankruptcy Restrictions Order (BRO):- 2-15 years



Bankruptcy – Bankruptcy Restriction Orders and Bankruptcy Restriction Undertakings

- OR investigates and reports to Bankruptcy Restrictions Unit
- BRO/BRU binds the Bankrupt to certain conditions
- BRO Application usually made within 1 year of the Bankruptcy Order
- BRU made by agreement (without application)
- BRO/BRU last for 2 - 15 years
- Offences can result in imprisonment, a fine or both
- Bankrupt subject to BRO/BRU may still trade
- BRO's/BRU's register held by the Secretary of State
- If Bankruptcy Order annulled, the BRO/BRU will also be annulled



Bankruptcy – Income Payment Orders (IPO) and Income Payment Agreements (IPA)

- IPO/IPA defines terms for the Bankrupt to make contributions from income
- IPO Application made within 1 year of the Bankruptcy Order
- IPA made by agreement (without application)
- IPO/IPA usually last for 36 months
- IPO/IPA can be varied during the term



Bankruptcy

What to do...

Creditor Action:

- Council Petitioning

Process:

- Policy
- Protocols followed:
 - Internal procedures
 - Vulnerability checks
 - Due diligence
 - Mazars Pro-file Report



MAZARS

Pro-file report

Private and confidential report produced exclusively for the use of

CORNWALL COUNCIL **wardhadaway law firm**

Case Name: Kevin J Bennet

Date: 12 February 2018

Total Estimated Known Assets: **£524,579**

Total Liabilities (Council debt and s29(6)S searches): **£15,303**

Net Asset Position: **£509,276**

Summary Position: Rating: **Green**

Property: The subject is the proprietor of several properties with potential equity estimated at: **£524,579**

Total known liabilities are: **£15,303** leaving a net asset position of: **£509,276**

The council debt is **100%** of the total known liabilities.

The subject appears to be the proprietor of five properties.

The solely owned property at 12a Treasney Gardens, Penzance, Liskeard PL14 6PL, is unencumbered and therefore holds the most equity, approximately £135,289.

11 Moniview Road, Wisegates, Looe, PL13 1QE is solely owned and has a current value of approximately £199,500. There is one outstanding mortgage with The Mortgage Works with a balance of £105,259 leaving equity of £94,241.

The Quarry, Elm Tree Road, Looe, PL13 1HY is another solely owned property, worth approximately £167,500 with one outstanding mortgage to The Mortgage Works for £56,112. Equity is therefore estimated at £111,388.

The two remaining solely owned properties, 11 South Parade, Ruanon, valued at £81,266, and 12 Treasney Gardens, Liskeard, valued at £142,396, are subject to charging orders (of unknown value) in favour of Histon Borough Council, and Keith Colley & Gerald Joyce (to Children) respectively. Although unconfirmed, it is anticipated that there is significant equity in these properties.

Bankruptcy or charging order would be suitable based on the significant assets.

Inquiries of adult social care team are recommended ahead of bankruptcy petition proceedings.

Property and Account Details:

Account Ref(s):	<u>Johnston</u>
Property address (1):	<u>12a Treasney Gardens, Penzance, Liskeard, PL14 6PL</u>
Account Ref(s):	<u>Johnston</u>
Property address (2):	<u>11 Moniview Road, Looe, PL13 1QE</u>
Account Ref(s):	<u>Johnston</u>
Property address (3):	<u>The Quarry, Elm Tree Road, Looe, PL13 1HY</u>
Account Ref(s):	<u>Johnston</u>
Property address (4):	<u>11 South Parade, Ruanon, WA1 4NZ</u>
Account Ref(s):	<u>Johnston</u>
Property address (5):	<u>12 Treasney Gardens, Penzance, Liskeard, PL14 6PL</u>

Original Debt: **£15,303**

Enc: Land Registry Copy, Property Valuation, Call Credit Report

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ProFile - Bennett K J (Comms)

Bankruptcy

What to do...

Creditor Action:

- Submit Claims

Process:

- Proof of debt form to OR or IP
 - IP assistance – *Weekly Reports / Claim Service*

Creditor Action:

- Share Information
 - Undeclared assets
 - S366 request by Bankruptcy Trustee

Process:

- Liaise with Official Receiver or Bankruptcy Trustee





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About Mazars:

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