

Bankruptcy: proposals for reform of the debtor
petition process

Summary of Responses

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Foreword

As part of the Government's ongoing strategy for managing indebtedness and increasing efficiency, The Insolvency Service (The Service) carried out a review in 2006 of the process for debtors petitioning for their own bankruptcy.

The review also followed a request made by Her Majesty's Court Service (HMCS) to look at the debtor petition bankruptcy process. In recent years there has been an increase in the number of debtor petition bankruptcies and the resulting pressure on court resources has led to significant delays for debtors seeking to access much-needed debt relief and delays for other civil court users.

Our initial study into the feasibility of removing the courts from the debtor petition process showed that with legislative changes it would be possible for the Official Receiver to make the bankruptcy order administratively. This would release court resources to deal with those aspects of the bankruptcy process that require judicial intervention.

Thus, in October 2007 we published a consultation paper, *'Bankruptcy: proposals for reform of the debtor petition process'*, setting out our recommendations for reform of the debtor petition process and inviting stakeholders to share their views on our proposals.

The Service is grateful to everyone who took part in that consultation. This paper summarises the replies we received and draws out the key points emerging from the responses. We hope this document will reassure our stakeholders that we are taking all comments received seriously. We are continuing to develop the policy and will consult further in early 2009.

Executive Summary

In the consultation document entitled '*Bankruptcy: proposals for reform of the debtor petition process*' The Service proposed that bankruptcy orders in debtors' own petition cases be made administratively by the Official Receiver via online applications rather than through the courts.

This report summarises the findings from the consultation.

- Overall, respondents were in favour of the removal of the courts from the order-making process, commenting that an experienced senior civil servant could easily and appropriately carry out the order-making function.
- Respondents who replied that the court should remain directly involved in the order-making process commented that removing the courts would reduce the process to an administrative function. Conversely, respondents who favoured the proposals did so because they viewed the current process as largely administrative.
- For 72% of respondents, online petitions do offer greater efficiencies, and an overwhelming majority considered postal submissions to be a suitable alternative to online applications.
- However, 49% of total respondents were in favour of the debtor personally attending the making of the order although some did observe that this did not necessarily have to be at court.

Respondents expressed concern over the following areas:

- Respondents believed that prior to seeking entry into bankruptcy online debtors would need to have access to sufficient advice and information in order to understand and appreciate the full implications and consequences of bankruptcy. For some respondents, leaflets and advice booklets are not necessarily sufficient, and care needs to be taken as to how best to ensure debtors are fully informed, especially if, under the proposals, face-to-face contact with experienced court and Insolvency Service staff could be limited.
- Almost all respondents agreed that practical safeguards and checks were needed to verify a debtor's identity, and any verification method used should be robust.
- Nearly 10% of the total number of respondents raised the issue of cost of entry into bankruptcy. In particular the deposit and the proposed administration fee was seen as a barrier to entry.
- Almost 10% of respondents also commented that The Service would need to be adequately resourced to carry out the extra function without compromising its investigation duties.

Conclusion

The Service has considered each and every response received. The key issues raised in the replies will need to be reviewed and further consideration given to how best to address stakeholder concerns. We will offer a further consultation document at the beginning of 2009 and look forward to your responses to our reviewed and advanced policies.

However, some of the responses from this consultation document did support the findings from earlier consultations that showed stakeholders are in favour of replacing affidavits with statements of truth. The Service will therefore proceed to remove the requirement to swear an affidavit in insolvency proceedings. The changes will be implemented via a Legislative Reform Order as part of the project to modernise and consolidate secondary insolvency legislation.

Background

Between October 2007 and January 2008 The Service invited over 800 individuals and organisations to take part in our consultation entitled '*Bankruptcy: proposals for reform of the debtor petition process*'. The questions contained in the document sought views on the removal of the court in the debtors' own bankruptcy petition process and whether the order-making function should be carried out administratively by the Official Receiver.

The consultation process

A wide range of stakeholders were invited to take part in the consultation by way of email, through articles in industry publications, and via talks and presentations in England and Wales conducted by the policy development team. The consultation document was also available on our website and printed copies were circulated at the offices of the Official Receiver for staff and debtors.

The consultation period lasted 12 weeks and closed on 11 January 2008.

Respondent categories

In total, 74 responses were received. A list of respondents can be found at Appendix A. Some respondents asked that their replies be kept confidential. Table 1 shows how many responses were received and the different respondent categories:

Table 1: A breakdown of the respondents into categories

Respondent Categories	Number of Responses	Percentage of Responses (%)
Local Authority	1	1
Representative Group - Advisory Service	3	4
Representative Group - Creditors	3	4
Debt Advisors	4	5
Government Departments	4	5
Creditors	5	7
Insolvency Practitioners/ IVA Providers	7	9
Others (including the judiciary)	11	15
Official Receiver Staff	12	16
Debtors	24	32
Total	74	100

A small number of respondents chose to answer in the form of a letter. The majority answered by way of a proforma attached to the consultation document.

We are grateful to everyone who took the time to reply to the document. Your responses and opinions have been very useful in assisting us to clarify and further develop our policy.

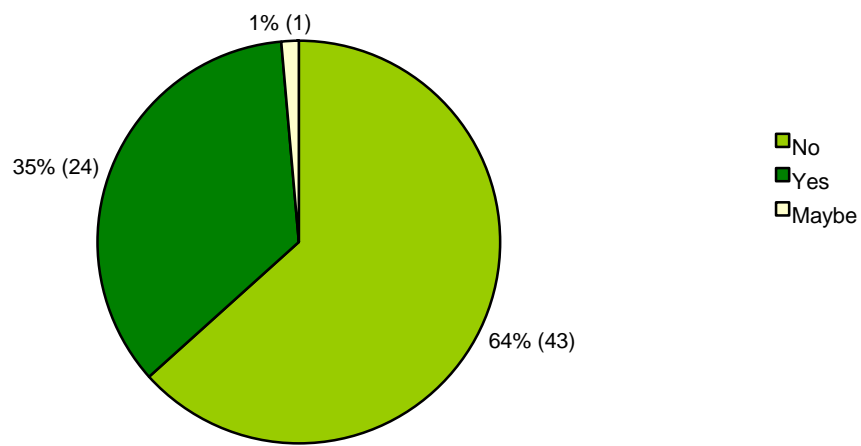
Since the consultation ended we have continued to discuss our proposals with a wide range of organisations at various meetings and events. Further research has also been carried out and we will be consulting on our reviewed policies in early 2009.

The report will now summarise and consider the responses to each of the questions posed in the consultation paper. Each question has been allocated its own chapter.

Question 1: Does there remain a need for direct court involvement in the order-making process in debtor petition bankruptcy cases?

A total of 71 responses were received for this question. Almost two-thirds (64%) of respondents believed there is no need for the courts to be directly involved in the order-making process in bankruptcy petitions filed by the debtor. Just over one-third (35%) believed that court should remain directly involved.

Figure 1.1: Does there remain a need for direct court involvement in the order-making process in debtor petition bankruptcy cases?

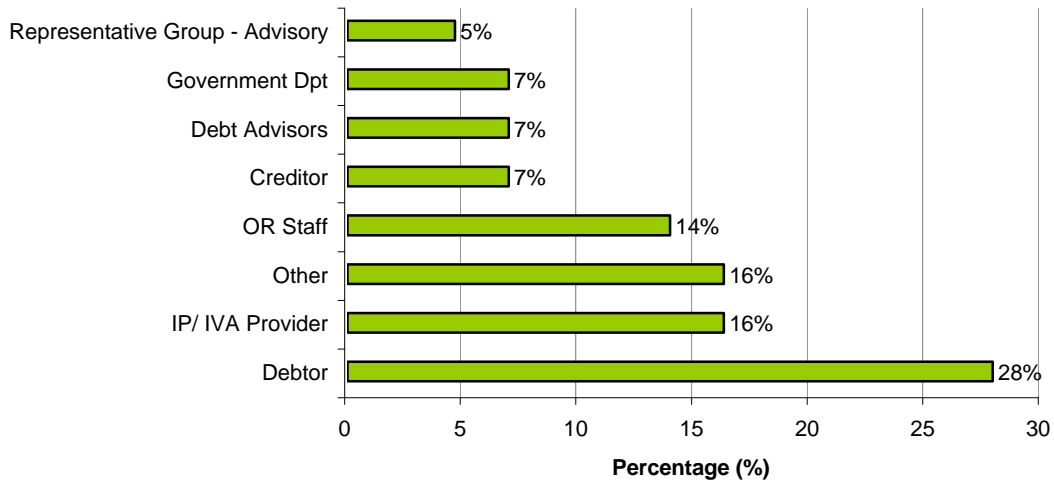


Base: 68 respondents (excludes 'don't know' and non-responses)

Comments in favour of removing the courts

Figure 1.2 below shows respondents, broken down into categories who do not believe the courts are needed in the debtors' own petition process. Those in favour of removing the courts from the process came from across the range of respondent categories with the exception of the creditors representative groups.

Figure 1.2: A breakdown of respondents (in categories) in favour of the removal of the courts from the debtor petition process



Base: 43 respondents who do not believe the courts are needed in the debtors' own petition process

Figure 1.3 summarises some of the main comments made in support of the courts not being directly involved in the order-making process for debtor petition cases.

The main reason given was the general belief that the current process is already partially administrative.

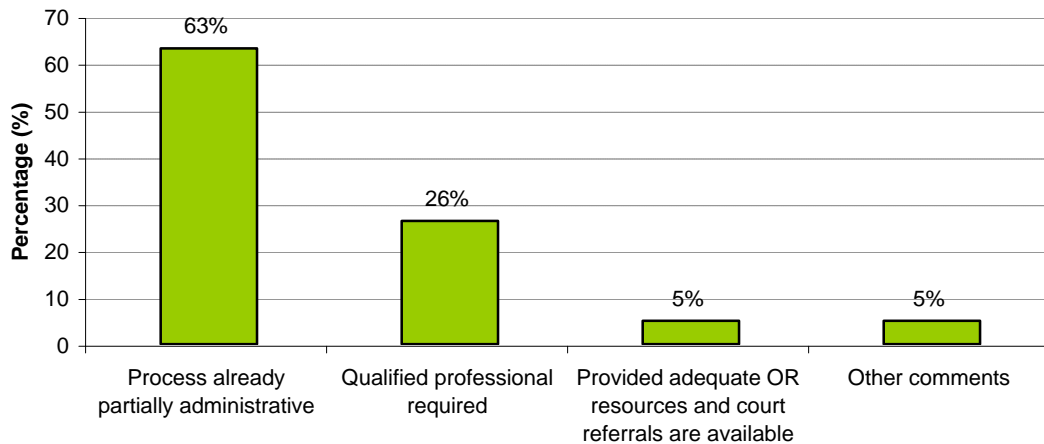
'It is a non-contentious procedure, a fact underlined by there being no requirement to give notice to any person of the petition other than an IVA Supervisor, correspondence with whom can be dealt with on an administrative basis.' (Free From Debt)

Members of the judiciary in particular commented that the order-making process required very little judicial expertise:

'The order is effectively one made by consent so there is little in the way of judicial input.' (Chief Bankruptcy Registrar)

All District Judges The Service spoke to during the post-consultation visits to courts in England and Wales shared this view.

Figure 1.3: Comments from respondents who replied that the courts should not be directly involved in the order-making process



Base: 38 respondents who replied that the courts do not need to be directly involved in the order-making process (excludes non-responses).

Many respondents who supported the proposal qualified their replies by saying that if the courts were removed from the process;

- A mechanism is needed whereby a debtor must confirm they have sought and had access to impartial advice. This qualification hinged on the belief that the courts play a valuable role in assessing a debtor’s petition for bankruptcy:

‘Perhaps one advantage of the involvement of the court is that it does provide an opportunity for an independent assessment on the appropriateness of bankruptcy for the debtor’s circumstances. However we see no reason why a similar safeguard could not be delivered in another way.’ (Citizens Advice).

- The Service must be adequately resourced to carry out the order-making role:

‘We are concerned as to whether The Insolvency Service has sufficient resource or budget to undertake this additional task.’ (Eversheds)

- A referral option to court should be included where there is a dispute or;

‘..where the debtor has previously been bankrupt (irrespective of who petitioned) or was previously the subject of an IVA, SIVA or DRO.’ (Institute of Credit Management).

- The Official Receiver’s standing should be equivalent to that of a judge;

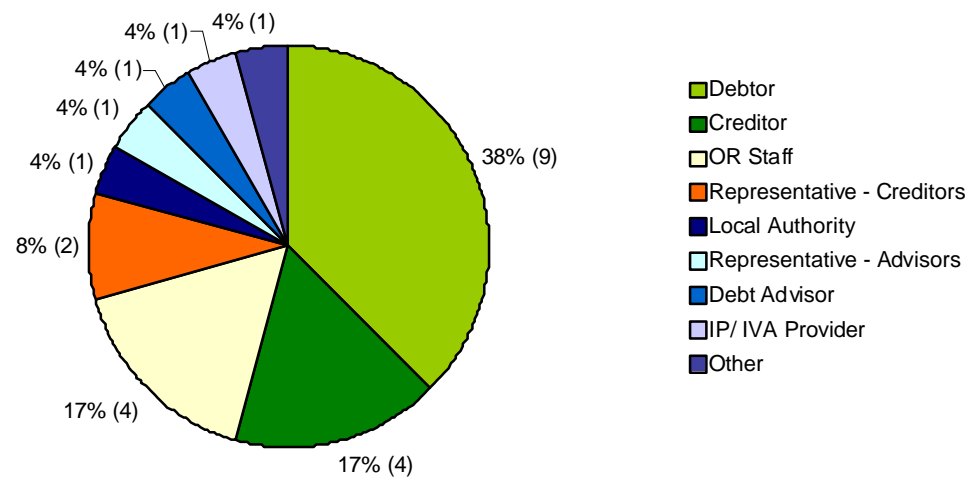
“[P]rovided the OR has the same authority as the judge making the B.O. (sic) [bankruptcy order]’. (OR staff)

There was general consensus that a senior Civil Servant or the Official Receiver was suitably qualified to fulfil the order-making role as long as the legal implications and the post-bankruptcy process are not compromised.

Comments not in favour of removing the courts from the process

A total of 24 (35%) of respondents were in favour of the courts remaining directly involved in the order-making process for debtors' own petition cases. Figure 1.4 breaks down the respondents into categories.

Figure 1.4: Breakdown of respondents (by categories) in favour of courts remaining in the debtor petition process



Base: 24 respondents who are in favour of the courts remaining directly involved in the order-making process for debtors' own petition cases

Debtors generated the strongest support for courts to remain within the process, commenting on their perception that going to go court makes the process 'official' and 'legal'.

Whilst many respondents in favour of removing the courts view the current process as a partially administrative one, a large proportion of respondents against the proposals also raised this as a point of concern, commenting that bankruptcy was becoming seen as an 'easy' and increasingly administrative procedure and removing the courts would remove the debtor's sense of responsibility:

'[T]here should be some involvement of the courts. The proposals appear to be a further example of "dumbing down" the issue of being in debt. The bankrupt/debtor should consider the seriousness of the matter and making it a form filling exercise does not assist.' (Geoffrey Bourne and Parker)

'... court involvement is necessary as it is a serious and far reaching process to go through and the court is best placed to deal with serious processes affecting the applicant...without the court involvement, the process would be

seen as merely administrative and therefore would not encourage a feeling of responsibility on the part of the applicant. ' (Civil Court Users Association)

Furthermore, some respondents included within their main comments the thought that removing the court from the process would also remove the debtors' opportunity for rehabilitation;

'... bankruptcy is meant to be a form of rehabilitation for the debtor and the court process is part of that rehabilitation.' (Civil Court Users Association)

For a large majority of the respondents within this category (87%) there was concern that making entry into bankruptcy appear 'easier' could reduce what some described as the 'gravitas' or the seriousness and formality of bankruptcy and the legislative process;

'[Attending court] impresses upon the debtor that this is a legal process and hopefully stresses the importance and consequences of the action.' (South West Collections)

Some respondents also commented that removing the courts could lead to an increase in the number of debtor petitions;

'... taking away the Court's involvement in the process will increase the number of debtor's petitions. [...] In my view people still see going before a court as an important and possibly life changing moment... By taking away this aspect of bankruptcy will in my opinion reduce the importance of declaring themselves bankrupt. ' (Tendring District Council)

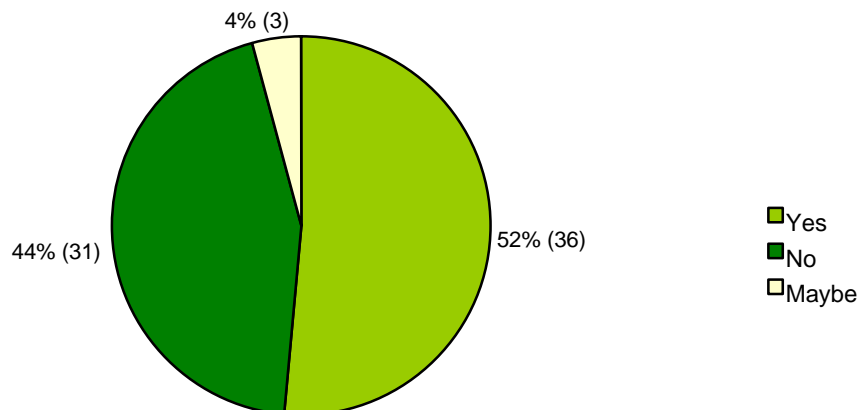
For many respondents in this category, particularly creditors and their representative bodies and OR staff, it was important that the debtor is held to account and made to take responsibility for his liabilities.

'Debtors not only should remain accountable and responsible for the situation they are in, but the court should deal with it at their appropriate level so as not to undermine the process to one of simply administration. The process should promote not undermine accountability, and as a debt relief option, lessons have to be learnt to encourage rehabilitation and to discourage others to an easy solution should they chose to steer toward deliberate over indebtedness.' (National Australia Bank)

Question 2: Should the requirement that the debtor attends the making of the bankruptcy order in person remain?

This question aimed to identify respondents' attitudes towards the debtor attending the order making process, and also considered whether attendance at the court adds anything to the overall process. From a total of 70 replies to this question, just over half (52%) of total respondents are in favour of the debtor attending the making of their bankruptcy order while 44% are against the requirement to attend in person.

Figure 2.1: Should the requirement that the debtor attends the making of the bankruptcy order in person remain?



Base: 70 respondents (excludes non-responses)

Reasons given why debtor should attend making of bankruptcy order

For 52% (36) of respondents, personal attendance with the person making the order could make the debtor fully understand the process and its seriousness (see figure 2.2).

'[R]equiring some form of physical attendance would be likely to make the debtor engage with the process.' (PricewaterhouseCoopers).

Furthermore, being in attendance was perceived as encouraging the debtor to take responsibility for his debts and encouraging him to engage with the process and give greater consideration before entering into bankruptcy.

'The fact that currently a prospective bankrupt has to go before a member of the judiciary before a Bankruptcy Order is made reflects the seriousness of the financial situation of the prospective bankrupt. Removing the need to attend personally makes the procedure "lightweight" and does not reflect the serious step that has been taken.' (KMPG UK LLP)

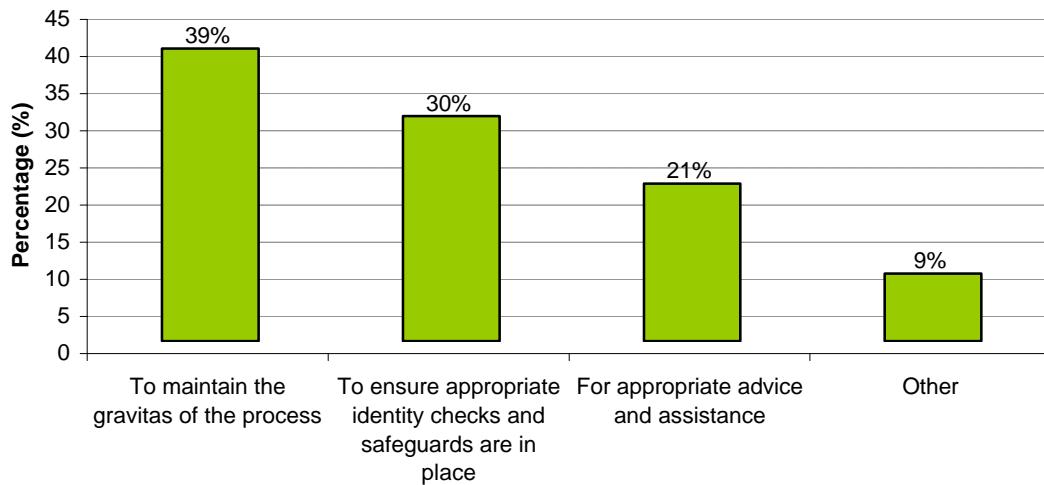
‘...the requirement to attend the court in person at some stage during the bankruptcy process is key to retaining the deterrent affect of bankruptcy [...] as it reinforces the seriousness of the situation’.

British Bankers’ Association, KMPG and eight other respondents (a total of 30% of respondents in this category) also commented that personal attendance enables the verification of a debtor’s identity and/or dissuades fraudulent, ‘mischievous’ applications.

‘...attending court in person is an important way of ensuring that bankruptcy applications are only made by the individual petitioner [thus] preventing fraudulent applications...Removing the need for debtors to do this and to subject themselves to any form of pre-order enquiry makes not just the ability to go bankrupt easier, but also the opportunity for dishonest or dilatory bankrupt’s to misrepresent their financial position.’ (KMPG UK LLP)

For a further seven respondents (21%), personal attendance means the debtor can access appropriate advice and assistance in clarifying parts of the process and receiving help in completing the forms.

Figure 2.2: Reasons given why debtor should attend the making of the bankruptcy order



Base: 36 respondents who believed the debtor should attend the making of the bankruptcy order (includes ‘maybes’ and excludes non-responses).

Reasons why debtor does not need to attend making of order

For the 44% (31) of respondents who were not in favour of the debtor attending the order-making process in person, the general consensus was that provided forms are accurately completed and appropriate safeguards are in place, there would be no exceptional value in personal attendance.

'Little purpose; routine decision making; OR can always call for an appearance if petition demands it; will be reviewed anyway by OR. Judges have had little or no effect on decisions to date.' (Michael Green, University of Wales).

The three respondents who answered 'maybe' have also been included in the following table as the reasons they outlined corresponded with the comments in support of the debtor not attending the order-making process as table 2.1 shows:

Table 2.1: Comments supporting why the debtor does not need to attend the making of the order

Response	Number	%
Attendance not necessary if appropriate identity checks and safeguards are in place	13	42
Reduces time and cost burden on debtor	5	16
Attendance acts as a barrier to accessing debt relief therefore removing this requirement makes it easier for debtor	4	13
In support of removing requirement to attend, but still concerned that the process could become too easy for debtor	3	10
No apparent value in personal attendance	3	10
Provided an accurately completed electronic form is submitted	2	6
Attend OR interview and makes full disclosure	1	3
Total	31	100

Base: 31 respondents who believed the debtor does not need to attend the making of the bankruptcy order.

Suggested checks and safeguards mentioned in the responses, include:

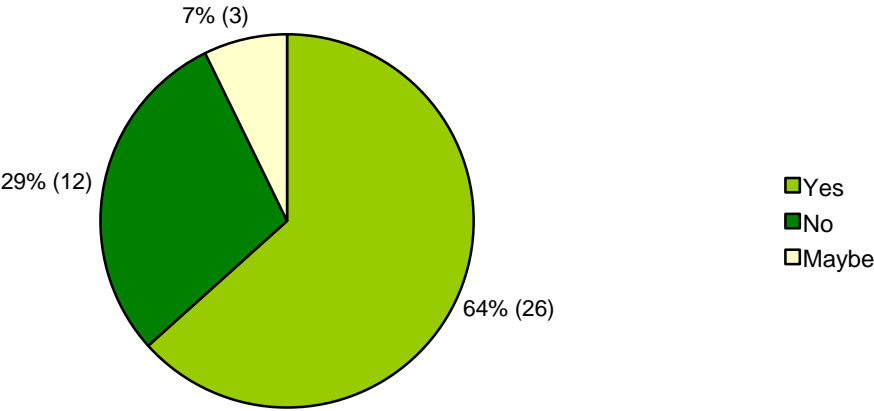
- Making sure the debtor is fully aware of the implications of bankruptcy; and
- Ensuring the debtor has received advice and understands the advice they have been given

Five respondents commented on the efficiencies and benefits of removing the requirement to attend. For those respondents it would mean relieving a burden (e.g. stress, cost of travel) from some debtors and would save time for the courts, the debtor, and the Official Receiver.

Attendance with a senior official

Although 64% (43) of respondents believe there is no longer a need for the court to remain in the order-making process (see figure 1.1), of these, 29% (12) believe there remains a need for the debtor to attend the order making process and see *someone*, though not necessarily a Registrar or District Judge (see figure 2.3).

Figure 2.3: If the court were removed from the process, do you believe the debtor should still attend the making of the order?



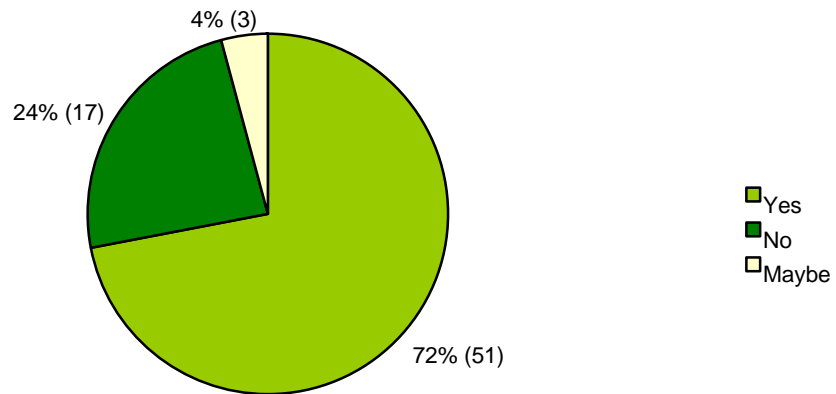
Base: 41 respondents who commented that the court can be removed from the order-making process (excludes non-responses).

Question 3: Do you think it would be more efficient if an online petition process were available?

Since 2005 The Service has had the facilities to enable debtors to complete the petition and statement of affairs for bankruptcy online. The Service has also provided electronic access to guidance and information to facilitate the online completion of bankruptcy forms. The completed forms can then be printed and presented to the appropriate court. The consultation proposed to extend this capability to enable petitions to be submitted online to the Official Receiver.

When asked if it would be more efficient if an online petition process were available, 71 responses were received and on the whole, the majority of those who responded believed that an online petition process would be more efficient.

Figure 3.1: Do you think it would be more efficient if an online petition process were available?



Base: 71 respondents

Efficiencies of an online process

Forty-five per cent of respondents (23) in favour of online petitions believed an online system would offer greater efficiencies in speeding up the petition process, saving time for debtors and Official Receiver's staff. Modernisation of the process was also considered beneficial as '*[I]t is a computer age we live in*' (Debtor). Table 3.1 below summarises the main comments given in favour of an online petition process.

Table 3.1: Comments on the online petition process and its efficiencies.

Response	Number	%
Offers efficiencies in terms of time and cost	24	52
Would offer efficiencies providing debtor has access to online facilities	9	20
Providing appropriate identity checks and safeguards are in place	4	9
Only as an alternative	3	7
Although qualified professional should administer process	2	4
In favour but concerned about the removal of gravitas	1	2
Provided the process is straightforward and easy to understand	1	2
Resources for online process must be sufficient	1	2
Other	1	2
Total	46	100

Base: 46 respondents who replied that it would be more efficient if an online petition process were available (excludes non-responses).

Access to online facilities

Nineteen per cent of respondents (9) in favour and 12% (2) not in favour of online petitions raised the issue of accessibility, in particular for those who are IT illiterate or who do not have access to online facilities.

'The sort of people we (CABx) help tend to have less access to the internet/understanding of the processes involved and therefore it could have a detrimental effect on them.' (Debt Advisor, North Kirkelss CAB)

Some respondents also commented that 'efficiencies' should not be the main reason for changes to be introduced.

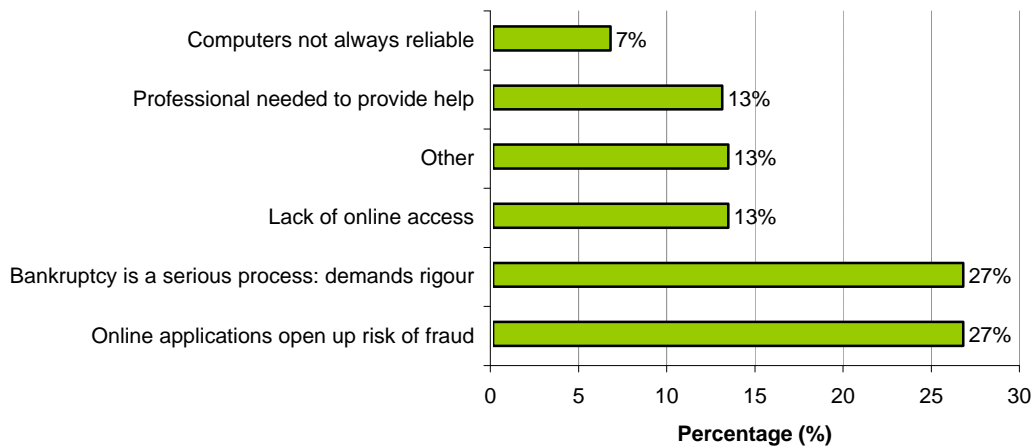
'[W]e are generally in support of proposals which reduce operational inefficiencies and related costs, providing these do not also remove necessary safeguards.' (British Bankers' Association)

Not in favour of online petitions

A total of 24% (17) respondents replied that an online petition process would not bring about greater efficiencies (see figure 3.2). When giving a reason for their assertions, a number of respondents did not address the issue of efficiencies, but went on to explain why they believe the order making process should remain within the courts. For example, KMPG stated:

'The hearing of the petition must be in person. The internet cannot be a substitute for the vigorous process that should be carried out'

Figure 3.2: Reasons given why an online petition process would not be more efficient



Base: 15 respondents who replied that an online process would not offer greater efficiencies (excludes non-responses).

A high proportion of comments on why an online petition process would not be more efficient raised two main concerns. Firstly, there was concern over the potential for fraudulent applications to be made by impersonators;

'I feel this method is unsafe and [...] could lead to fraudulent applications.'
(Debtor)

'[A] fully remote process without the need for attendance anywhere in person by the debtor creates a real risk of fraudulent or mischievous applications. It is one thing to fill in a form online in another's name; it is quite another to appear in person and claim to be someone else.' (Association of District Judges)

Secondly, there was a belief that the proposals would make bankruptcy too easy:

'Bankruptcy is a very serious step for any individual. It should not be made as simple as ordering a CD over the Internet. It will immediately lose its serious status and lead to abuse.' (Anthony Sharp Associates)

'Bankruptcy should still be considered a serious event in a person's life. There is a risk that if debtors are able to make themselves bankrupt online from the comfort of their home they may enter into bankruptcy too lightly, and indeed without the requirement to face a judge or official receiver, or any other their party, this may not encourage full disclosure of assets (either deliberately or through lack of understanding).' (PricewaterhouseCoopers)

Some of the total respondents, including those in favour of online petitions, commented that any online system would need to be:

'...sufficiently robust and secure...' (PricewaterhouseCoopers)

'If the process was robust, accurate and provided online support, it would be efficient for the court and save the debtor extended journeys to their local Insolvency court.' (National Australia Bank)

Some suggested that forms could be completed online but should be submitted personally as this was considered adequate to reduce fraudulent applications.

For PricewaterhouseCoopers, the use of DRO intermediaries offers the best solution:

[W]hilst we do not consider there remains a need for the debtor to attend the making of the order, we think it would be desirable to require the petition to be filed via an approved intermediary – in the same way as for debt relief orders under the Tribunals, Courts and Enforcement Act 2007.'
(PricewaterhouseCoopers)

Possible efficiencies to an online process

Three respondents offered a tentative 'maybe' to whether there are efficiencies in an online process.

For the debtor an online process would make the entire process 'too easy'.

The OR staff raised concern about accessibility, stating that although electronic and postal options would be more efficient for the elderly and the disabled, the debtor should still be required to attend in person, although did not offer an explanation why.

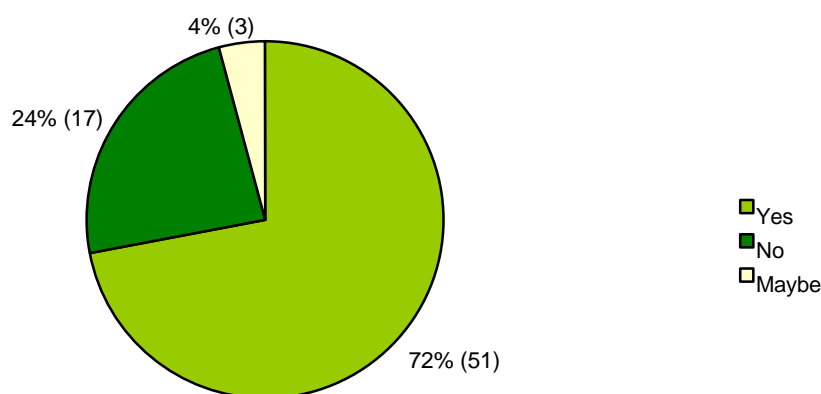
The National Australia Bank qualified their 'maybe' response with the provision that as long as checks were made on the information supplied by the debtor, and the entire process was '*robust, accurate and provided online support*', then online petitions could provide efficiencies.

Question 4: The Insolvency Service appreciates that not all debtors would have access to an online facility. Do you think an option to apply for bankruptcy by post would be a suitable alternative?

Alongside an online petition process, the consultation document proposed a parallel postal process that would give an individual wishing to petition for their bankruptcy the option of filing their application by post.

A total of 70 respondents answered the question; would a postal option be a suitable alternative to an online facility? Over three-quarters of respondents favoured this alternative. Seventeen percent (12) of respondents disagreed with postal applications, while a further 6% (4) said 'maybe' and qualified their responses.

Figure 4.1: Do you think an option to apply for bankruptcy by post would be a suitable alternative?



Base: 70 respondents (excludes non-responses).

Comments in favour of a postal alternative

Respondents recognised that not all debtors have access to online facilities, whether due to a disability, IT literacy or the operational costs involved in having online access (see table 4.1). Consequently, almost half of the respondents in favour of postal applications concurred with the reasons outlined in the consultation document, mainly that a postal alternative is accessible and would give individuals more options.

'The post is cheap and universally available. (Grant Thornton UK LLP)

'If on-line s (sic) offered, so too must the post option for those with no access...[but] we still feel that the opportunity to be able to attend and apply in person should still be available.' (National Australia Bank)

Table 4.1: Comments on whether a postal alternative would be suitable

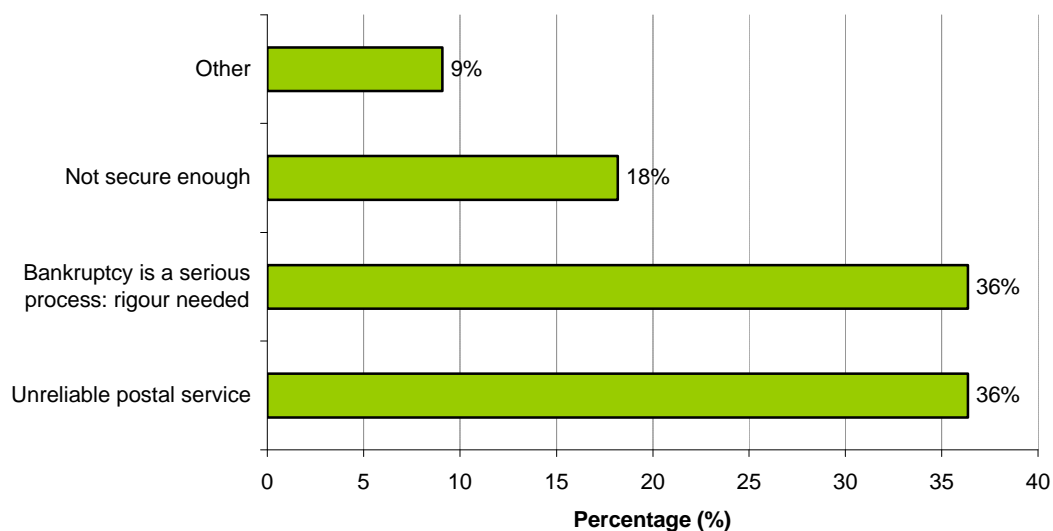
Response	Number	%
Gives debtors an alternative method for applying	30	68
Would offer some efficiencies compared to attendance	3	7
Provided identity checks and safeguards are in place	3	7
Simple forms needed	2	5
Would be a needed alternative but postal service is unreliable	2	5
If everything has been correctly filed	1	2
Would enable a third party to help debtor complete forms	1	2
Qualified professional required	1	2
Other	1	2
Total	44	100

Base: 44 respondents who replied that a postal option would be a suitable alternative to online applications (excludes non-responses).

Not in favour of a postal alternative

For 36% of respondents the postal service is slow, lacks security and is unreliable therefore would not be a suitable alternative to online applications.

Figure 4.2: Reasons against postal applications



Base: 11 respondents not in favour of a postal alternative (excludes non-responses).

The National Australia Bank, although in favour of postal applications as an alternative, highlighted the problems that could arise from postal submissions:

[...] if forms are not completed correctly this could force the delays the Court service is trying to avoid' (National Australia Bank)

An equal number (36%) commented that bankruptcy is a serious matter and should not be made too simple. Some believed that 'reducing' bankruptcy to postal applications would undermine the seriousness of the process.

Five percent of respondents did not provide a definite answer. Within this category was PricewaterhouseCoopers who commented;

'Our proposal that debtors' petitions should be required to be filed via an approved intermediary might mean that all debtors' petitions could be filed online, rather than need to retain a postal option as well.[...] However, if this proposal is not adopted, then we agree that there should be an option to file by post for the reasons stated in the consultation.'

Grant Thornton and the National Australia Bank both suggested personal attendance should also be offered to the debtor as a further alternative to online applications.

'Thought should be given whether to allow personal attendance as an alternative for those who want it, even if only at a single address.' (Grant Thornton)

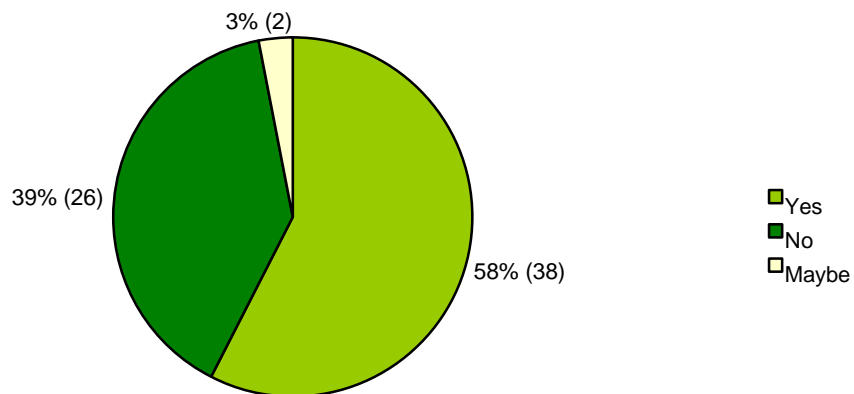
'[T]he opportunity to be able to attend and apply in person should still be available.' (National Australia Bank)

Question 5: If a debtor has petitioned for bankruptcy online, do you think that there should be a built-in delay before the application is processed to allow the debtor the opportunity to reflect on his application and, if appropriate, seek advice?

This question asked respondents to consider whether an automatic time delay should be built into any new electronic submission process to avoid rash or ill-considered applications.

Sixty-six respondents offered an express answer to this question with nearly 60% being in favour of a built-in delay before the application is processed.

Figure 5.1: Should there be a built-in delay before an online application for bankruptcy is processed?

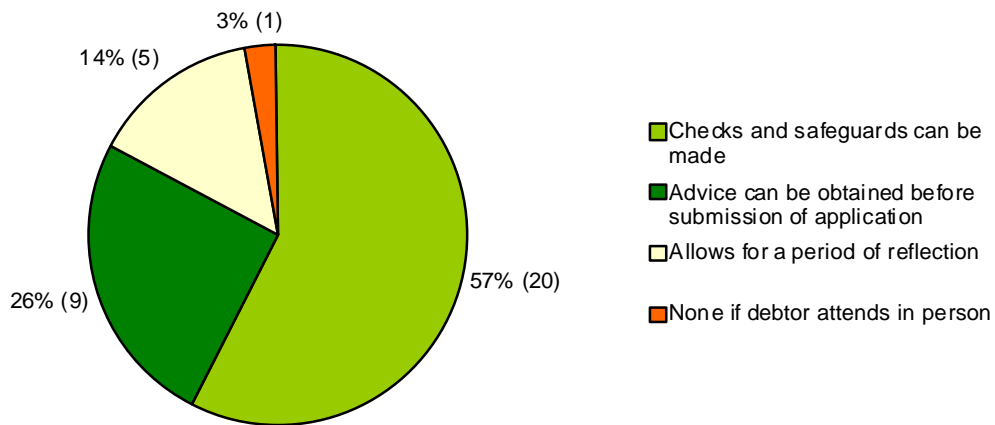


Base: 66 respondents

Comments in favour of a built-in delay

For many respondents, this built-in delay would enable the debtor to reflect on his application, seek and access advice and obtain further information on the implications of bankruptcy before submitting the petition and promptly accessing debt relief.

Figure 5.2: Comments on the benefits of an automatic built-in delay in the application process



Base: 35 respondents who commented in favour of an automatic delay built into the application process (includes 'maybes' and excludes non-responses)

For 19 respondents in favour of a built-in delay and for a further respondents who answered 'maybe', a delay would be useful as a tool to enable various checks to be made by the decision-maker and safeguards to be put in place.

Recommended checks included verification of the debtor's identity, while several respondents suggested using an automated email reply to confirm the debtor's details.

The suggested safeguards all centred on the need for the debtor to access good quality advice and to ensure that the debtor is aware of the implications of bankruptcy before entering. Respondents suggested that debtors could be asked at the very beginning of the application process to confirm they have received advice and name their source of advice. This information could then be recorded on the application form to identify and determine the level and quality of advice received by the debtor. If the debtor fails to record anything, the debtor could be sign-posted to appropriate advice agencies.

Fifteen percent of respondents (5) thought that due to the seriousness of the bankruptcy process, a reflection period is essential to ensure debtors do not rush into bankruptcy. However, if the debtor has sought advice and is happy to proceed, it was also felt that there should be no further delays.

'For those who have already given it some thought and/or have probably consulted some authority/agency regarding the options, there is no need for a delay. For the latter, any mandatory delay can only increase the debtor 'problems'. (Institute of Credit Management)

Nevertheless, 21% of the respondents (8) in favour of built-in delays qualified their support by stating that advice, information and the consequences of bankruptcy should all have been sought and considered before making the application, and not afterwards.

'... it is vital in any case that the debtors have sought appropriate and impartial advice before proceeding to petition for their bankruptcy.' (Call Credit)

'I would hope that advice would already have been sought.' (Debtor)

Similarly a large majority, 77% of respondents against a built-in delay, believed advice should have been sought before the debtor begins the process of petitioning for his own bankruptcy, not afterwards:

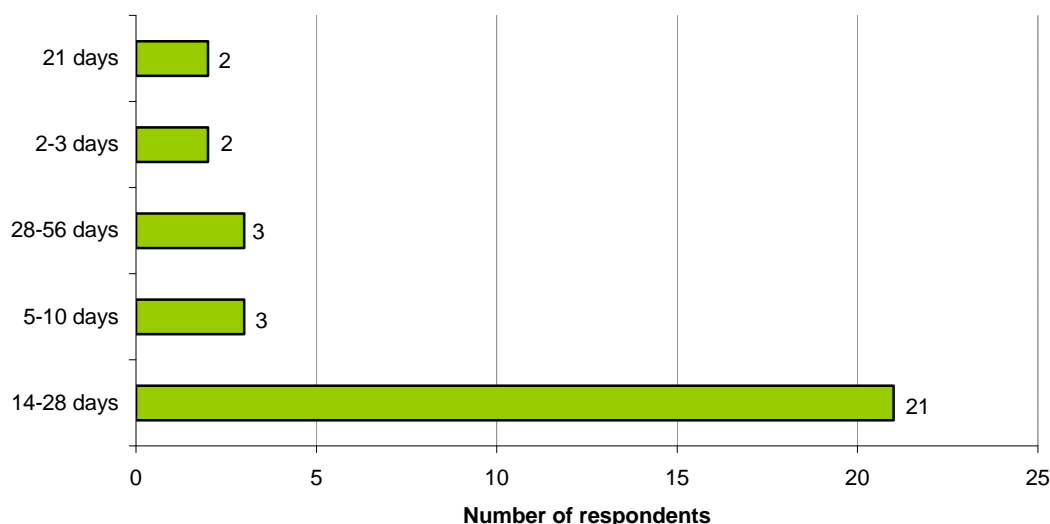
'I think once you get to this stage, all alternative processes would have been investigated and most people would have made the decision that this is their only way forward.' (Debtor)

Question 6: If you have answered yes, please say how long a period do you think should be built into the process.

In question five a total of 38 respondents thought a delay should be built into an online application process to allow the debtor the opportunity to reflect on his application, and if appropriate, to seek advice. A further two respondents replied 'maybe' to question five. Question 6 asked those respondents who replied 'yes' and 'maybe' to specify how long any delay should be.

The majority of respondents across the various categories thought a period of between a minimum of 14 days and a maximum of 28 days would be sufficient. A minority of respondents thought more than four weeks would be needed.

Figure 6.2: Suggested maximum period of delay



Base: 31 respondents who offered suggestions on how long a delay period should be (excludes non-responses)

The representative groups for the advice sector were more cautious about specifying any time period for built-in delays.

Table 6.1: Delay period specified by the respondent categories

Period of up to:	Number	Category of Respondent
2-3 days	2	Creditor, Debtor
5-10 days	3	2 Debtors, Government Department
14-28 days	21	10 Debtor, 1 OR Staff, 5 Debtors, 2 Government Departments, 2 Creditors, 1 Advisor
21 days	2	Creditor, Other
28-56 days	3	Debtors
Not specified	5	IP/IVA Provider, Other, Representative Group - Advisory Service, Debt Advisor, Debtor
Unsure	3	Other, 2 Representative Group - Advisory Service

Base: 39 respondents who commented on how long a delay period should be.

A large proportion of the total 66 respondents who answered question five, including those in favour of built-in delays, did emphasise the point that debtors should be seeking advice before they take the decision to apply for bankruptcy rather than take advice at the application stage.

Length of delay

Caution has to be taken over how long a delay should be. For example, account needs to be taken for postal applications that could require more time to be received than online submissions, as some respondents highlighted.

In order to determine the length of any delay, consideration does need to be given to exactly what the debtor would be expected to do during this period and how long the debtor would need in order to do it.

Some respondents in favour of built-in delays supported the suggestions put forward in our proposals; that this period could offer the debtor an opportunity to reflect on his petition and to seek advice if he has not already done so. One suggestion by the ICAEW is that the debtor uses this time to speak to a member of staff at the Insolvency Service.

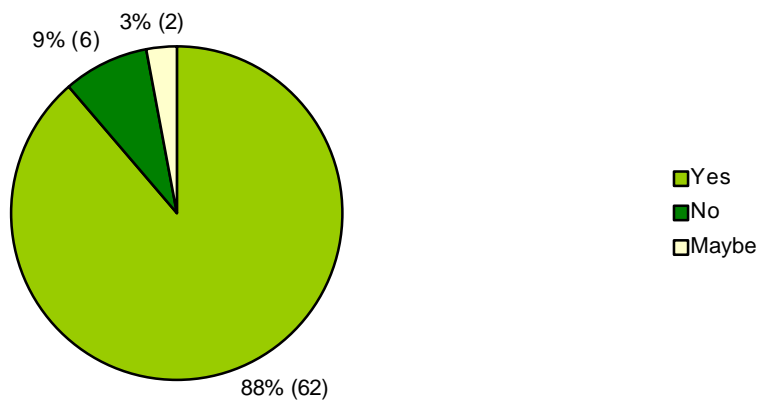
Nevertheless, it remains paramount that once the cooling-off period has expired, the application should be dealt with promptly.

Question 7: Do you think that there should be some check on a person's identity when they petition for bankruptcy?

The nature of online applications can offer a degree of anonymity. This has raised concerns amongst some respondents surrounding the true identity of possible petitioners.

A majority of the total 70 respondents who answered this question replied that checks should be made on a person's identity when a petition is filed for bankruptcy.

Figure 7.1: Should there be checks on a person's identity when they petition for bankruptcy?



Base: 70 respondents

Reasons for checks

The majority of those who believed checks should be made indicated that such measures would prevent potential abuse of the bankruptcy process, for example through malicious or fraudulent applications.

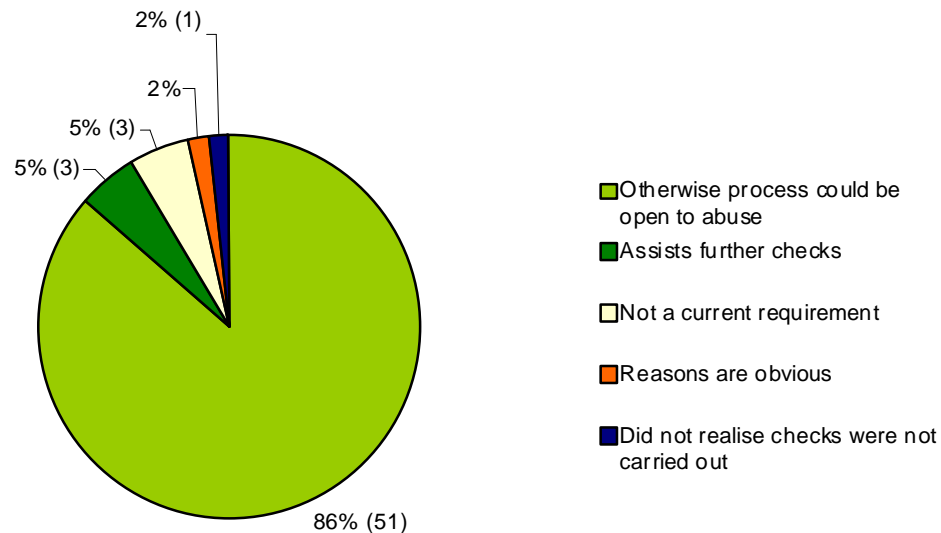
Even though the current process is not being abused, some respondents believe the perceived ease of online applications could open the process to abuse due to the anonymity online applications offer compared to applications in person.

'Remote contact, particularly online, carries a degree of anonymity and has been found to increase the risk of impersonation and fraud compared to face-to-face contact. Protection of consumer identity remains high on public and media agenda.' (Call Credit)

The perceived ease of online applications was also believed to remove the debtor's responsibility towards his debts, and this was viewed as undesirable.

A small percentage (5%) of respondents believe identity checks would support further enquires and interviewing of the debtor (see figure 7.2).

Figure 7.2: Comments by respondents who replied there should be some checks on a person's identity when they petition for bankruptcy



Base: 59 respondents in favour of identity checks (excludes non-responses).

For those who responded in favour of checks, 7% did not realise that there are neither current concerns surrounding the identity of debtors nor identified problems with fraudulent petitions.

A total of six respondents recognised that identity checks are not a requirement in the current bankruptcy process. AdviceUK summarised:

'Currently no checks are carried out and there is no evidence to suggest incidences of fraud or impersonation. OR investigation and fee = sufficient deterrent.' (AdviceUK)

Nevertheless, half of these respondents - Citizens Advice, National Bank of Australia, and PricewaterhouseCoopers - replied that under the proposals there should be checks on a person's identity before entering into bankruptcy.

'We note that the current process required no form of identity check when an individual attends at court, although the Insolvency Service is not aware of any examples when a debtor has claimed he is someone else.'

Although the risk of someone pretending to be someone else and filing (sic) an application to be made bankrupt may seem small, the damage that could be done to that other person is significant.’ (PricewaterhouseCoopers)

Citizens Advice qualified their support for identity checks with the condition that

‘...there is reasonable flexibility in the forms of proof required to ensure that this requirement does not in itself become an additional barrier to accessing bankruptcy.’ (Citizens Advice)

Various suggestions were made by respondents regarding how to verify a debtors’ identity, including using the guidelines issued under the Money Laundering Regulations 2007.

For PricewaterhouseCoopers, intermediaries offer the best solution:

*‘Our proposals that petitions be filed via approved intermediaries would help to address concerns as to identity. The approved intermediaries could be required to ask the debtor to produce some form of proof of identity.’
(PricewaterhouseCoopers)*

Comments not in favour of checks

Only six respondents (9%) were not in favour of identity checks because they are not a current requirement and there is no evidence to suggest that identity fraud is currently an issue in bankruptcy.

Question 8: What measures do you think would be appropriate to safeguard against abuse of a bankruptcy system where the court did not make the order in debtor's petition cases?

This was a more open question inviting comments from all respondents on the safety measures that could be employed to protect an online bankruptcy petition process from misuse. In other words, what could be done to prevent inappropriate or dishonest applications for bankruptcy?

A total of 72% (53) respondents offered a variety of suggestions, whilst 28% (21) of respondents expressed uncertainty as to the meaning of the question or what suggestions to put forward.

Comments received have been grouped into approaches that can be applied;

- (a) Before presentation of the bankruptcy petition
- (b) At the point that the order is made; and
- (c) Once the order has been made

Before presentation of the petition – Information and Identification

One way to safeguard both debtors and the integrity of the bankruptcy process is to ensure that only those who genuinely need access are able to gain entry. This means that the debtor has to have sufficient information about the options available to him before choosing bankruptcy, and ideally, have already tried appropriate alternatives.

One government department suggested a prescribed information booklet about the consequences of bankruptcy and other debt relief options sent directly to the debtor's home address.

The same respondent also felt that creditors' interests should be safeguarded and so they should be informed of pending applications so that *'[creditors] can adjust their actions accordingly'*.

A high proportion of respondents' suggestions related to verifying the applicant's identity, highlighting how significant the issue of identification and authentication is amongst stakeholders.

Respondents suggested checks prior to the petition being processed, including the debtor providing official documentary evidence before the application can be considered. Respondents who favoured this option recommended the use of photo identification, valid passport, driving licence, birth certificate, national insurance numbers and supporting financial statements.

One respondent suggested guarantees from third parties such as solicitors and debt advisors in a process similar to passport applications. The Consumer Credit Counselling Service and PricewaterhouseCoopers suggested limiting access to

bankruptcy through debt advisors acting in a role similar to approved DRO intermediaries. The intermediary could offer advice as to the suitability of bankruptcy and then help in complete the forms and file the petition on the debtor's behalf in appropriate cases.

For Money Advice Trust and AdviceUK, the bankruptcy checking process should match the Debt Relief Order (DRO) identity checking process but it would be better if the Official Receiver were to carry out checks *after* the order had been made:

'... we are aware that there will be requirements to check various documents etc under the proposals to process Debt Relief Orders (DROs) online. It would be reasonable to make sure that the requirements for both processes match each other. It may be that the ID requirements contained withi (sic) the DRO scheme, which require ID information upfront, will be covered for bankruptcy post-order by subsequent Official Receiver investigations and are therefore unnecessary at the debtor petition stage.' (MAT and Advice UK)

A few respondents raised the possibility of a face-to-face meeting or interview before and after the order was granted, and only after the first meeting would a decision be made as to whether the applicant should enter into bankruptcy.

'...the opportunity for malicious filing would be reduced if the petitioner were made aware of the possibility of being called to a face-to-face meeting.' (Institute of Credit Management)

Tendring District Council suggested an order nisi at the application stage, and a bankruptcy order absolute after the Official Receiver conducts a full investigation into the debtor's affairs.

A few respondents, including debtors and KPMG believe that the *'[p]rocess should continue to be left with the Court and personal attendance should be insisted upon'*.

At the point the order is made

Two respondents commented that in cases involving previous bankruptcies, Bankruptcy Restriction Orders or other complexities, referrals should be made to a judge for consideration before an order is made.

It was also felt by some that;

'[a]n experienced official of the INSS just as capable as district judge in distinguishing abuses of the process.' (ICAEW).

However, it was also generally felt that the order-making function should not be given to anyone below experienced examiner-level.

Once the order has been made

For 18% (9) respondents, it was felt imperative that the same robust sanctions and powers the Official Receiver currently has for enquiry and investigation should remain.

Some respondents wanted to see these powers of enquiry extended whereby the Official Receiver would make random visits to the debtors' home or would make enquiries in every case in order to validate all the information submitted by the debtor;

'...including the debtors identity indebtedness and credit history to ensure appropriate cases are referred for BROs etc' (Eversheds, LLP)

The Accountant in Bankruptcy and Chief Registrar Baister both suggested that if an order is improperly made or needs to be annulled or a decision needs to be reviewed, then a procedure needs to be built into the system to accommodate an appeal process.

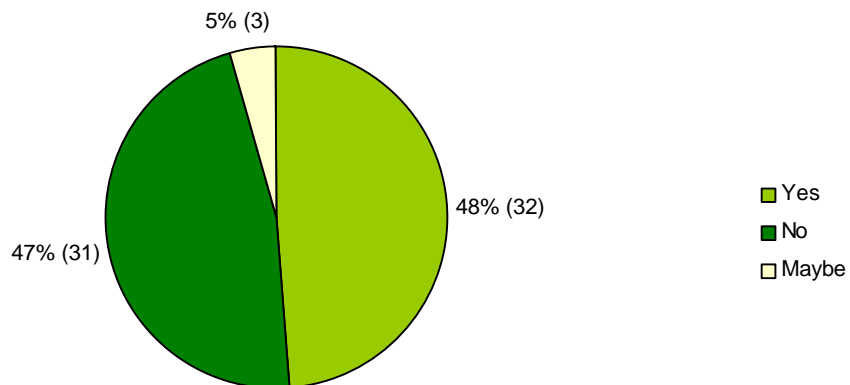
Question 9: Do you think that the requirement for a debtor to swear his petition documents adds anything to the process?

Currently a debtor filing his own petition for bankruptcy is required under the Insolvency Act 1986 to swear an affidavit confirming the documents he or she is submitting are true and correct. For some debtors filling their own bankruptcy petition, this can add a financial burden and for those affidavits sworn at court, an additional administrative load on court staff.

However in creditors' petition cases, debtors are routinely required to sign a statement of truth under the Perjury Act 1911 when accounting for their affairs. This question therefore considers the value of swearing an affidavit in debtors' petition cases.

A total of 66 replies were received. Figure 9.2 shows there was a very close divide between those who thought the swearing of the petition added something to the process (48%), and those who did not (47%).

Figure 9.2: Do you think the requirement for a debtor to swear his petition document adds anything to the process?

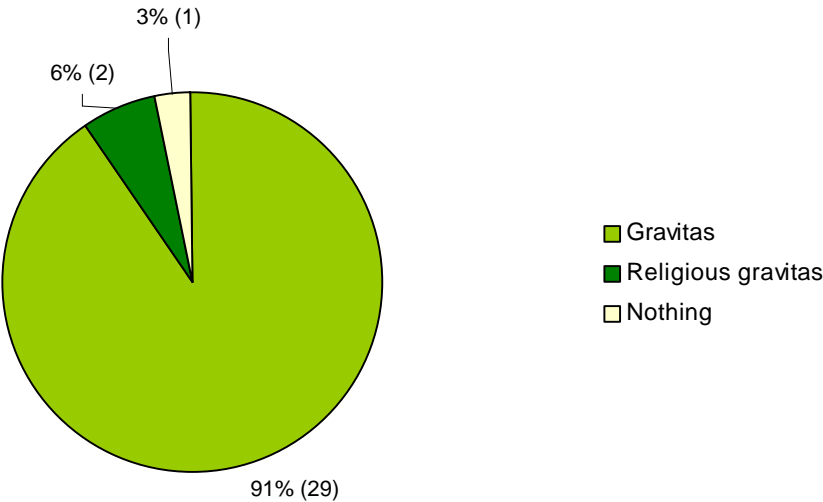


Base: 66 respondents

Swearing documents adds to process

For 48% (32) of respondents, the swearing of the petition does add something to the bankruptcy process. For the majority of these (91%), this is 'gravitas', or the official and formal part of the procedure, which dignifies the process and serves as a reminder that bankruptcy is a serious process with legal implications and consequences (see figure 9.3).

Figure 9.3: What does the requirement for a debtor to swear his petition document add to the process?



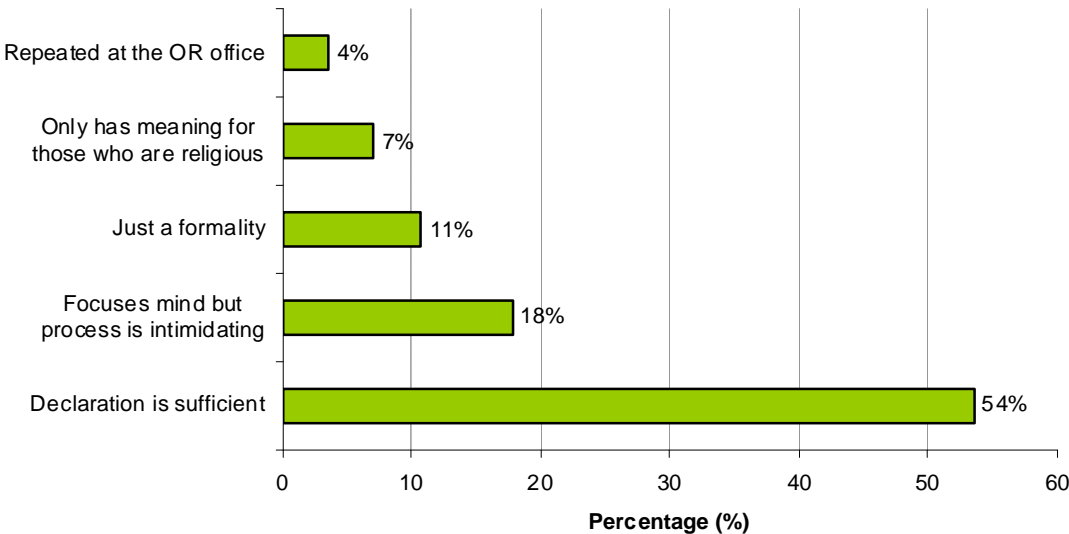
Base: 32 respondents who replied that swearing an affidavit does or may add something to the bankruptcy process (excludes non-responses)

For another 6% of respondents (2) the swearing of the petition only carries significance for those who are religious.

Does not add to the process

Almost an equal amount of the total 66 respondents, 47% (31), replied that swearing a petition does not add anything to the bankruptcy process.

Figure 9.3: Reasons why swearing a petition does not add anything to the bankruptcy process



Base: 28 respondents who replied that swearing a petition does not add anything to the bankruptcy process (excludes non-responses).

These respondents considered the swearing of the petition to be an onerous task for the debtor, which adds very little to the overall process:

'A formal court process is often intimidating and off-putting for people in debt, who may be vulnerable for a range of reasons and are likely to be under considerable stress. The requirement to swear the petition by affidavit is certainly (sic) likely to be an intimidating experience for many people. [...] In our view this requirement adds nothing of benefit to the overall process beyond serving as a reminder to the applicant tht (sic)are entering into a formal procedure with onerous responsibilities and sanctions.' (AdviceUK)

For many of the respondents who did not see any additional benefits of swearing a petition, the applicant's signature against a declaration or statement of truth was considered sufficient compared with an affidavit. One respondent commented *'[M]ost debtors have no idea what they're swearing to'* (OR staff).

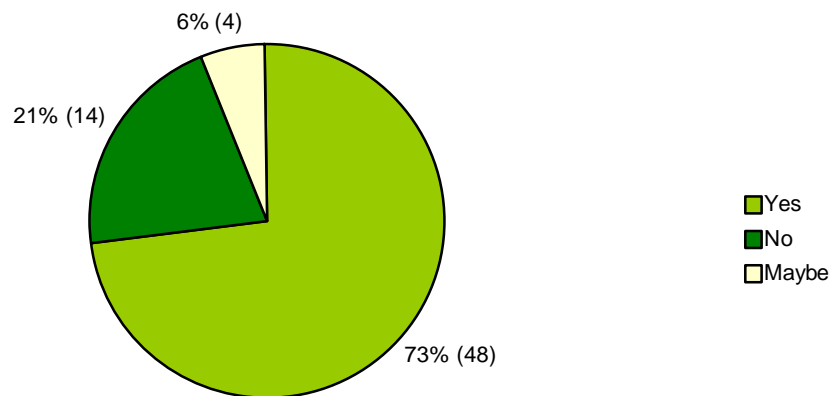
The general consensus was that there is more value in a clearly worded declaration that highlights the requirement for truthfulness and outlines the debtor's obligations in bankruptcy and what the implications and consequences of failing to abide by these obligations are. This would also add a formality to the process.

Question 10: Do you think that an acceptable alternative would be for the debtor to provide a statement that the information he is providing is, to the best of his knowledge, full, true and accurate?

Responses to Question 9 concluded that a statement of truth outlining the legal implications of false statements could be more beneficial than a sworn affidavit. Question 10 explores the idea of replacing affidavits with statements of truth.

Of the 66 respondents who answered this question, almost three-quarters (73%) were in favour of the debtor signing a statement declaring that the information he is providing is true and accurate to the best of his knowledge, information and belief, as an alternative to a sworn affidavit (see figure 10.1 below).

Figure 10.1: Would an acceptable alternative be for the debtor to provide a statement of truth?



Base: 66 respondents

Sixty-eight percent (45) of respondents in this category commented that as long as a list of consequences and sanctions accompanied the statement and these consequences were made clear to the debtor, then a statement would be sufficient.

In favour of affidavits

For 21% respondents (14), the requirement to swear an affidavit should remain. Their main concern was that signing a declaration could 'trivialise' the order-making process. Some commented that if the petition process was not taken seriously, it would be open to abuse as the message given would be that there is little consequence in giving false statements.

'Transferring responsibility for the process to official receivers should not be an excuse to trivialise it. Petitioners should not be under the impression that they are engaged in a casual affair so that the veracity of what they record in their statement of assets is of little consequence. We feel that they are less likely to see the

procedure in this light if they have to meet a solicitor and attest to the truth of the document in front of him...We also think that removal of the requirement to swear the petition document would result in an inequitable and incoherent two tier system of Orders...The other advantage of requiring the debtor to swear his petition is the opportunity it affords to verify his identity.’ (Government Department)

14% (2) of the respondents, despite stating that a statement of truth should not replace an affidavit, did concede that a statement accompanied by the consequences made clear, would be adequate.

Outcome of previous consultations

The results of this question concurred with the results of an earlier consultation carried out in September 2007 as part of the modernisation and consolidation of the Insolvency Rules 1986. Stakeholders were asked whether

‘[T]he requirement for a document to be sworn by affidavit within insolvency proceedings should be replaced with a requirement for such documents to be verified by a statement of truth in accordance with the Civil Procedure Rules 1998.’ (A consultation document on changes to the Insolvency Act 1986 and the Company Directors Disqualification Act 1986 to be made by a Legislative Reform Order for the modernisation and streamlining of insolvency procedures, pp 36).

This earlier consultation suggested that changes to the swearing requirement would make insolvency legislation consistent with other areas of civil law.

Similarly in this earlier consultation, respondents stated that as long as sanctions are not reduced or at least remained the same, they did not object to statements of truth replacing the requirement for insolvency documents to be sworn by affidavits.

The removal of affidavits will not reduce most of the current regulatory protections for insolvency proceedings. Sections 353 and 354 of the Insolvency Act 1986, applicable to all bankrupts, will still make it unlawful for debtors to not disclose or to conceal assets or liabilities. Bankruptcy Restriction Orders and Bankruptcy Restriction Undertakings will also continue to offer sanctions against culpable or dishonest bankrupts who fail to account to or co-operate with the Official Receiver or trustee.

Furthermore, under the Civil Procedure Rules 1998, any person found to be making a false statement in any document verified by a statement of truth may have proceedings brought against them for contempt of court.

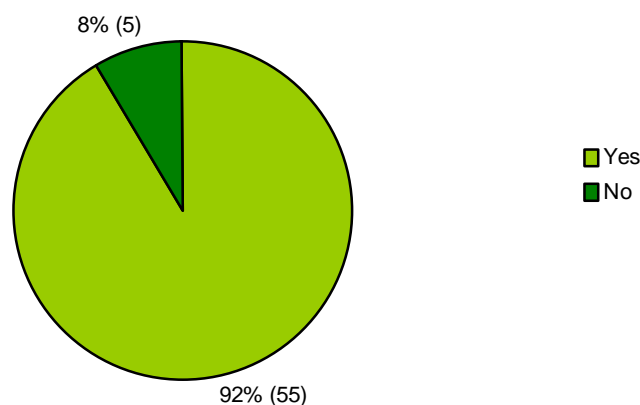
The proposal to replace sworn affidavits with statement of truths has therefore been put forward as part of the key initiative to simplify and modernise insolvency legislation. Changes to primary legislation are currently underway via a Legislative Reform Order (LRO), which is currently going through the Parliamentary process.

Thus, providing Parliament approves the LRO, statements of truth will replace affidavits by October 2009.

Question 11: Should the OR have the option to refer a debtor to an Insolvency Practitioner to consider an IVA (as is currently available to the court under s. 273 of the IA 1986) and/ or to put the debtor forward for a DRO, if appropriate?

A majority of respondents (92%) replied positively to the proposal for the Official Receiver to have powers to refer a debtor to an Insolvency Practitioner for consideration of an IVA, or to a DRO as appropriate.

Figure 11.1: Should the OR have the option to refer the debtor to an IVA or DRO?



Base: 60 respondents

Respondents commented on the benefits of a qualified professional reviewing the debtor's circumstances before an order is made. In particular, it was considered that this method would enable the debtor to access the most appropriate debt relief remedy.

'[Will] help people with debt problems towards the most appropriate solution for their circumstances as quickly and efficiently as possible.' (Citizens Advice)

Over 80% of respondents commented that this would simply be a substitution of the court's current statutory power, therefore it would make sense to continue the procedure and provide the Official Receiver with the same discretion as in the court process and give debtors the same opportunities.

'This duplicates existing procedures and it seems reasonable to retain the option at the OR's discretion.' (Accountant in Bankruptcy)

For some, the Official Receiver's power should extend to other appropriate debt resolution remedies.

'The changes to be introduced under the Tribunals, Courts and Enforcement Act 2007 will usher in a suite of debt remedies that it is envisaged that people in debt can select or 'move between' according to their particular circumstances. As well as IVAs and SIVAs, there will be DROs and a revised Administration Order process. We would suggest that the official receiver should have the option to refer the debtor on, where appropriate, to any of the proposed debt remedies, not just to an IVA or DRO.' (Money Advice Trust)

A total of eight respondents - three who replied that the Official Receiver should not have the power to make referrals, and five who replied that the Official Receiver should have the power to make referrals - stated that the debtor should have sought advice before applying for bankruptcy. For these respondents, the responsibility should not be with the Official Receiver to direct the debtor to an appropriate remedy.

Some commented that a mechanism should be built into the process whereby the Official Receiver can ensure that the debtor has considered and ideally pursued all other appropriate remedies for debt resolution before electing bankruptcy, and the debtor is not unduly penalised for accessing the wrong route.

'... we believe that it would not necessarily be an appropriate or efficient use of resources to make a referral out to an authorized intermediary and back in to the Insolvency Service.. the Insolvency Service must ensure that a debtor who has applied 'down the wrong route' does not have to pay two sets of fees – one for the bankruptcy application and another for the DRO.' (Citizens Advice)

Grant Thornton UK LLP commented on the inadequate criteria used by the courts to determine whether a case should be referred to an Insolvency Practitioner under s. 273, in particular, the failure of the statute to comment on surplus income, which many successful IVAs rely upon. The Service is aware of this issue which remains under evaluation.

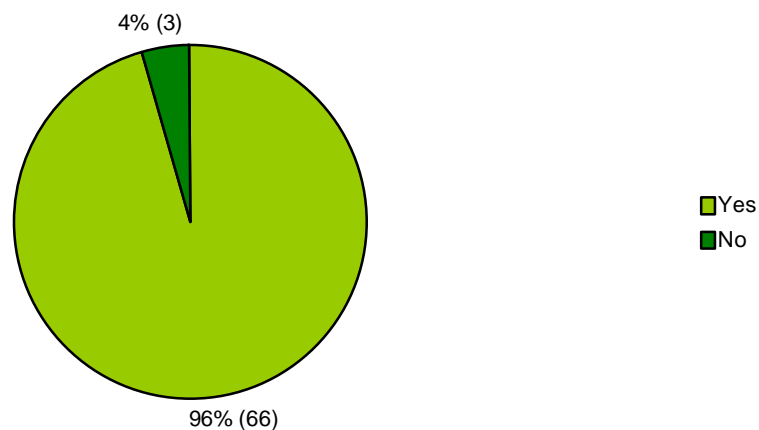
The key is therefore to ensure the debtor has adequately considered the implications of bankruptcy by ensuring he has received advice before submitting the application. The Official Receiver can then retain an additional power to make referrals as a safety net to ensure the debtor accesses the most appropriate debt relief tool.

Question 12: Do you think that a debtor should be asked to confirm that they have had access to information that explains other debt solutions and their implications?

For some respondents the court is the last opportunity prior to the making of the order for the debtor to be informed of the implications and consequences of bankruptcy. Many respondents therefore commented on the importance of ensuring the debtor has received impartial advice, has understood the information given to him and is aware of the implications of entering into bankruptcy.

The majority of respondents were in favour of debtors confirming they have had access to information that explains bankruptcy and other debt solutions and their implications, as shown in figure 12.1 below.

Figure 12.1: Should the debtor confirm that they have had access to information that explains other debt solutions and their implications?



Base: 69 respondents

For 88% of the 66 respondents who were in favour of debtors confirming they have accessed information, this confirmation would offer reassurance that the debtor has considered all available options before petitioning for bankruptcy and therefore would act as an adequate safeguard.

'A preferred solution to the requirement for debtors to reflect on the application and seek advice, would be to require specific confirmation from petitioners that they have considered all options and are aware of the consequences of their actions, before they are allowed to proceed.' (British Bankers' Association)

A checklist to assist the debtor in the application process was also suggested as a useful tool to remind and encourage the debtor to think about what he is doing:

'Clear and straightforward information on bankruptcy should be included with application materials and this might include a simple diagnostic checklist to help debtors think about whether bankruptcy is a suitable option or whether they should seek further information on alternatives.' (Citizens Advice)

However, there was concern as to whether just confirming access to information would be enough.

'... asking debtors to confirm that they have accessed information may be of little use in practice. Citizens Advice evidence across a range of problems shows how providing information does not necessarily deliver safeguards for consumers. A person under extreme pressure from their creditors might sign such a conformation (sic) when they have been [un]able to access or interpret information about other possible options. This may be particularly true of applicants making postal applications who have not been able to access information about other debt solutions' (Citizens Advice)

Some respondents placed great importance on the level and quality of advice given to debtors, which, it was generally agreed, needed to be broad, of good quality and impartial and should encompass both statutory and non-statutory remedies.

"There needs to be some mechanism in the application to establish the level of advice a petitioner has already sought/had. Where it is clear that the petitioner has not sought any form of 'second opinion' on their course of action, then maybe a delay can be arranged.' (Institute of Credit Management)

A range of respondents, including money advisors, creditors and legal service providers offered to assist in the drafting or editing of any text or leaflets that may be produced to facilitate electronic applications.

However, it was also felt by debt advisors in particular that reliance should not be placed wholly on booklets as a source of information:

'Information (in the form of printed leaflets or online) is insufficient. The suitability of the other solutions to the individual's circumstances may not be immediately apparent. Assistance from an impartial advisor is key'. (CCCS)

'We have some concerns (sic) regarding whether a booklet could supply sufficient tailored information to deal with a person's specific circumstances. The advice sector would be likely to regard the role of booklets as supporting advice provided by an agency, rather than constituting a 'stand-alone' product.' (Money Advice Trust/ Adviceuk)

There was general agreement that debtors should be directed to independent, free-to-client debt advice, and that more use should be made of this sector, including debt counselling and intermediaries forwarding petitions to the Official Receiver in a model similar to the Debt Relief Order procedure and to the Canadian model.

'If our suggestion that petitions be filed via approved intermediaries is adopted, it will be implicit in the system that advice about other debt solutions and their implications will have been received by the debtor prior to his petition being filed. However, if our suggestion is not adopted, we believe that a system similar to that in Australia, described at paragraph 52 of the consultation, should be adopted. We do not consider this to be an ideal solution, however, as it is likely that some debtors will confirm they have read the information when they have not. For that reason we prefer our own suggestion.' (PricewaterhouseCoopers)

'Perhaps a booklet, combined with a variation (sic) on the approach adopted in Canada where a debtor must (sic) consult a "trustee" as professional debt consultant (sic) before filing for personal bankruptcy would be a way forward....' (Money Advice Trust and AdviceUK)

The Civil Court Users Association, the Consumer Credit Counselling Service and a government department suggested the application form should contain a provision for the debtor to actually state from whom they have sought advice.

The National Australia Bank went further to suggest debtors should not only provide details of whom they have sought advice from and the options they have considered, but should also offer an explanation as to why they have not tried other debt relief options.

'The debtor should be able to provide information of whom they have been to, and the options they have considered. Possibly why they have been disregarded.'

Non-confirmation of advice

Two respondents replied there is no need to confirm the debtor has sought advice. One, a debtor, stated this was because those considering bankruptcy should have already sought advice, and based on this assumption there would be no need to provide confirmation.

Tending Council replied no with the reason being that *'[g]etting impartial advice is not always easy'*.

A number of respondents raised some concern about *'debtor understanding'* of the process and *'access to appropriate advice'*. Clear signposting contained with the application forms could help alleviate this and therefore could contribute to an increase in accessing advice.

Question 13: Please make any further comments that you feel would assist in the consultation exercise.

This broad question was included to allow respondents to provide general comments and opinions on any aspect of the proposal they so wished. In turn, this enabled us to draw out any stakeholder issues the consultation did not necessarily deal with explicitly in a question. This section will therefore only deal with themes that have not been dealt with previously in this report.

Official Receiver: Resources and Power

There was overall a positive response to the order-making process being transferred to the expertise of the OR's office. However, concern remained as to whether the OR had sufficient resources (time, staff, money) to deal with the additional workload this would involve. This was considered a particular issue if case numbers were to increase because of what could be perceived as easier (electronic) access or as a result of economic changes.

Some respondents stated that streamlining the process would remove 'duplication of work' between the court and the Official Receiver's office, specifically, the completion of the petition, statement of affairs at the court and the initial data capture form at the Official Receiver's office.

In addition to the question of the Official Receiver's resources, the Insolvency Practitioner sector raised concern that The Service's position within the personal insolvency industry could become too prevalent:

'...the overall effect of these proposals runs the risk of putting the Insolvency Service in too dominant position in respect of the personal insolvency process...Not only do we have concerns over the level of additional work that a properly revised and robust debtor's petition process would place on the Insolvency Service, we also have concerns over how that will be funded and what it will mean in terms of returns for creditors.

It is essential not only to be transparent, but also be seen to be transparent, and therefore protect the integrity (perceived or otherwise) of the Insolvency Service.' (KMPG LLP UK).

Costs and fees

A number of respondents commented on the current and proposed entry costs into bankruptcy. In particular, concern was raised over the fees proposed in the consultation document (Impact Assessment), and whether the proposed fees would be sufficient to make the process self-funding. Another respondent also commented that any reduction in funding should not affect the investigatory work and duties of the Official Receiver.

Citizens Advice, Consumer Credit Counselling Service, Geoffrey Bourne Parker, Institute of Credit Management and a government department all highlighted the

proposal's financial implications. Citizens Advice, Consumer Credit Counselling Service and Geoffrey Bourne Parker in particular commented on the OR's deposit, amount of the proposed administration fee and the burden the proposed removal of the court remission and exemption fee could impose on the debtor:

'...the Insolvency Service must consider how to make the application process as accessible and user friendly as possible...CAB evidence shows that debtors are commonly unable to access bankruptcy because they cannot afford the application fee or deposit. Indeed many CABx spend a considerable amount of time applying to charities for help with their clients' bankruptcy fees. This is clearly a ludicrous situation. The proposal to remove the remission scheme for the application fee will make this situation much worse and the fact that the fee will be reduced for those debtors who do not need remission does not compensate for this...In addition, CAB evidence shows how the bankruptcy deposit acts as a significant barrier to accessing bankruptcy even whether the court fee has been remitted...' (Citizens Advice)

'May I say that if a debtor was unable to pay the court fee then there was every eventuality that it would be remitted or exempted due to the debtor's circumstances. The main issue was with the OR deposit as there is no mechanism for exemption/remission...Removing the court fee but increasing the deposit will merely make things worse.' (Geoffrey Bourne Parker)

The Service recognises and takes on board all the comments raised regarding the issue surrounding fees and costs. We are currently exploring a range of ways to address these concerns.

Conclusion

This document aimed to provide a detailed summary of the responses received from the consultation: *'Bankruptcy: proposals for reform of the debtor petition process'*. Each response was carefully considered during the analysis process and we appreciate all the replies received.

Following the positive feedback received from previous consultations, The Service will replace the requirement to swear an affidavit in debtor petitions with a statement of truth in line with the Civil Procedure Rules 1998. Legislative changes are expected to take effect from October 2009 subject to Parliamentary approval.

The Service will continue to review its policies in relation to the transfer of the order making function for debtors' own petitions from the courts to the Official Receiver's office. We aim to issue a further consultation at the beginning of 2009 and look forward to receiving your comments.

Appendix A: List of Respondents

*Respondents have asked that their identities are kept confidential

Accountant in Bankruptcy	HMRC
AdviceUK	Insolvency Practitioners Association
Anthony Sharp Associates	
Association of Business Recovery Professionals (R3)	Insolvency Technical Committee Institute of Chartered Accountants in Ireland
Association of District Judges	Institute of Credit Management
Beldam Burgmann Limited	KPMG UK LLP
Benedict Mackenzie LLP	McCambridge Duffy
British Bankers' Association	Michael Green, University of Wales
Call Credit	Money Advice Trust
Chief Bankruptcy Registrar	National Australia Bank
Citizens Advice	Nationwide Building Society
Civil Court Users Association	North Kirkless CAB
Confidential - Debtors (10)*	OR Birmingham A
Confidential - Government Department (2) *	OR Blackpool
Confidential - OR Staff*	OR Southend
Consumer Credit Counselling Service	OR St Albans
Debtors (14)	PricewaterhouseCoopers LLP
Deloitte & Touche LLP	Simmonds & Company
Eversheds LLP	South West Collections
Free From Debt	Tendring District Council
Geoffrey Bourne and Parker	The Institute of Chartered Accountants in England and Wales
Grant Thornton UK LLP	Vantis
Green & Co/ Royal Bank of Scotland	