

EVALUATION OF BANKRUPTCY RESTRICTIONS ORDERS - INTERIM EVALUATION REPORT

Section 1 - Purpose of the paper

1. To provide details of the on-going evaluation work being undertaken in respect of the Bankruptcy Restrictions Order (BRO) provisions of the Enterprise Act 2002 (EA).

Section 2 – Background and Purpose of Evaluation

2. On 1 April 2004, new insolvency legislation came into force contained in the Enterprise Act 2002. This new legislation introduced provisions whereby the court can make a BRO, which are designed to provide better protection for the public and a civil alternative to prosecution. BROs will place restrictions on the most culpable bankrupts from between 2 and 15 years.

3. The objectives of the BRO provisions contained in the Enterprise Act 2002 are:

- To protect the public and commercial community, by enabling the court to make a BRO so that a culpable bankrupt will continue to be subject to the restrictions of bankruptcy for a period of 2 to 15 years;
- To allow lenders and public to differentiate between culpable and non-culpable and make better informed decisions in their dealings with bankrupts; and
- To deter fraud and misconduct.

4. The principal aim of the evaluation is to provide a comprehensive assessment of whether, to what extent and how the provisions relating to BROs meet these policy objectives. The evaluation also provides information and data that can be used to inform future policy decisions.

5. The Insolvency Service made a commitment to the Government to undertake an evaluation of the Enterprise Act 2002 within 3 years of commencement of the various provisions. The BRO provisions commenced on 1 April 2004 and therefore, the evaluation is due to be completed by 31 March 2007. This is an interim report to summarise the evaluation work and findings to date.

Section 3 – Approach

6. The evaluation uses both quantitative and qualitative evaluation methods, including:

- Analysis of data on individual insolvency cases held on The Insolvency Service's internal Information Technology system
- Sampling and review of files on individual insolvency cases to supplement information from other sources
- Meetings with professionals within the insolvency sector to seek their views regarding the appropriateness and impact of insolvency legislation
- Structured questionnaires and interviews with bankrupts, creditors, and other members of the public to obtain their views and experience of the impact of insolvency legislation and to obtain feedback on the wider issues associated with bankruptcy

7. In order to ascertain the impact of the Enterprise Act 2002 provisions, benchmark information was obtained regarding the operation and effect of the existing legislation, i.e. before the implementation of the Enterprise Act 2002 provisions.

8. A copy of the evaluation planning paper is contained at [appendix 1](#).

Section 4 – Work Carried Out to Date

9. Only benchmarking information has been obtained to date.

Objective 1 - To protect the public and commercial community, by enabling the court to make a BRO so that a culpable bankrupt will continue to be subject to the restrictions of bankruptcy for a period of 2 to 15 years.

10. The objective relates to the power of the court to make a BRO where the conduct of the bankrupt both before and during his bankruptcy shows that the public requires protection. The evaluation looks at the level of protection offered by the BRO regime and customer satisfaction with the way in which culpable bankrupts are dealt with.

11. The benchmark information mainly relates to bankruptcy prosecution action (which prior to the EA, was the only option available to deal with bankrupts whose conduct warranted further action) and disqualification action taken against culpable directors of insolvent companies.

14. Full details of the benchmarking information obtained in respect of this objective is contained at [appendix 2](#).

Objective 2 - To allow lenders and public to differentiate between culpable and non-culpable and make better informed decisions in their dealings with bankrupts.

12. This objective relates to lenders and the public being aware that, in the absence of a BRO, it can be assumed that a bankrupt was non-culpable. The evaluation looks at the effect of the BRO regime on public and lender policies and public awareness of the BRO regime.

14. Full details of the benchmarking information obtained in respect of this objective is contained at [appendix 3](#).

Objective 3 – To deter fraud and misconduct

13. This objective relates to the existence of the BRO regime acting as a deterrent. The evaluation looks at the effect of the BRO regime on the incidence of insolvency-related criminal offences and civil misconduct, and the rehabilitation of 'offenders'.

14. Full details of the benchmarking information obtained in respect of this objective is contained at [appendix 4](#).

Section 5 - Preliminary conclusions and recommendations

15. From the benchmarking information available, the following observations can be made:

Objective 1 - To protect the public and commercial community, by enabling the court to make a BRO so that a culpable bankrupt will continue to be subject to the restrictions of bankruptcy for a period of 2 to 15 years.

- There is a falling trend in the level of disqualification orders made in company cases over the period 3 years prior to April 2004. Further research would be necessary to ascertain the cause of the decline, e.g. changes in legal precedent, although it would appear that it is **not** as a result of misconduct not being addressed, i.e. disqualification action is being taken in all appropriate cases. This further research is outside the remit of this evaluation.
- The average length of a disqualification order has remained consistent at around 5 years.
- There is a falling trend in criminal misconduct in bankruptcy cases over the period 3 years prior to April 2004. This appears to be primarily attributable to an increase in the proportion of debtor petition cases and, possibly, of non-trading cases.
- We may expect breaches of BROs to occur in less than 1% of cases.
- The level of calls to the Disqualified Directors' Hotline shows an increasing trend. This appears to reflect an increase in public awareness of the Hotline, as well as an increase in the number of disqualification orders in force over the period.
- A case study of creditors shows that 27.5% of bankruptcy creditors feel that the insolvency regime protects the public from dishonest or reckless individuals, with 22.5% being undecided. This opinion is broadly similar to that held by creditors generally, i.e. bankruptcy and liquidation creditors.
- A survey of people aged 15 or over shows that 62% of the respondents agreed that the insolvency regime protects the public from dishonest or reckless individuals, with 27% being undecided. This opinion covers both corporate and individual provisions. Respondents who were aware of The Insolvency Service were more likely to agree than those who weren't aware of The Service.
- A survey of insolvency stakeholders shows that around 38% of the respondents feel that The Insolvency Service's sanctions deter and protect against financial wrong-doing, with 3% being undecided. This opinion covers both corporate and individual provisions.

Objective 2 - To allow lenders and public to differentiate between culpable and non-culpable and make better informed decisions in their dealings with bankrupts.

- There exists non-insolvency legislation that imposes restrictions on undischarged and discharged bankrupts. The Insolvency Service is currently working with the relevant bodies to encourage them to recognise that the existence of a BRO (not merely a bankruptcy order) is an indicator of 'unfitness', and legislation should reflect this (where it does not conflict with their own policy aims).
- Credit reference agencies keep a record of a bankruptcy order for 6 years, together with a record of discharge where appropriate.

- Mainstream financial institutions have broadly similar policies in dealing with bankrupts. Generally, applications by undischarged bankrupts for accounts or loans will be refused. Applications by discharged bankrupts are shown more consideration, but due to inevitable 'bad' credit reference histories, the applications are likely to be refused. This highlights the need for changes in credit reference agency policies in the recording of bankruptcy orders and BROs in order to enable lenders to differentiate between culpable and non-culpable bankrupts, and The Insolvency Service is working with Credit Reference Agencies in this respect.
- Searches of the Index of Disqualified Directors maintained by Companies House are in the region of 46,000 per month.

Objective 3 – To deter fraud and misconduct

- As detailed above, the level of bankruptcy prosecutions have declined.
- The level of 'second-time' bankrupts where a prosecution was obtained in the first case is minimal

16. The very first BRO (by way of a Bankruptcy Restrictions Undertaking [BRU]) was made on 4th November 2004, and the bankrupt agreed to an undertaking of 6 years. At the date of this report, a further 9 BRO/Us have been made, and 22 applications are pending. At this stage, there is insufficient data to draw any conclusions as regards the operation of the BRO regime.

17. Further, as detailed in the evaluation planning paper (appendix 1), as BRO action can only be taken in respect of conduct after 1 April 2004, it is anticipated that BRO figures for 2004/5 will lower than in future years. This impact may also be felt in 2005/6.

18. No changes to the evaluation planning paper are recommended at this time.

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