

EVALUATION OF BANKRUPT'S HOME – 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 bankrupt's home 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 a bankrupt's interest in the home will vest in the bankrupt's estate (as it does now) but the trustee must realise the interest within a three year period, otherwise the interest in the home reverts to the bankrupt at the end of this period.

3. The objectives of the bankrupt's home provisions contained in the Enterprise Act 2002 are:

- To provide some certainty to the bankrupt, the trustee and the creditors as to the time scale within which the bankrupt's home will be dealt with, as previously that time scale was open ended;
- To provide a balance between the interests of the bankrupt (and his/her family) and the creditors by providing ample time for the disposal by the trustee of the bankrupt's interest in his/her sole and principal residence in the most appropriate manner; and
- To help lift the stigma of bankruptcy.

4. The principal aim of the evaluation is to provide a comprehensive assessment of whether, to what extent and how the provisions relating to the bankrupt's home 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 bankrupt's home 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 provide some certainty to the bankrupt, the trustee and the creditors as to the time scale within which the bankrupt's home will be dealt with, as currently that time scale is open ended.

10. This objective relates to the time scale involved in realising a bankrupt's interest in a property. The evaluation looks at the timeliness of this realisation and customer satisfaction with time involved.

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

Objective 2: To provide a balance between the interests of the bankrupt (and his/her family) and the creditors by providing ample time for the disposal by the trustee of the bankrupt's interest in his/her sole and principal residence in the most appropriate manner

12. This objective looks at balancing objective 1 with the interests of the creditors. The evaluation looks at returns to creditors and creditor satisfaction with the way an interest in property is dealt with.

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

Objective 3: To help lift the stigma of bankruptcy

13. This is a cross-cutting objective of the EA. The evaluation looks the effect of the bankrupt's home changes on stigma.

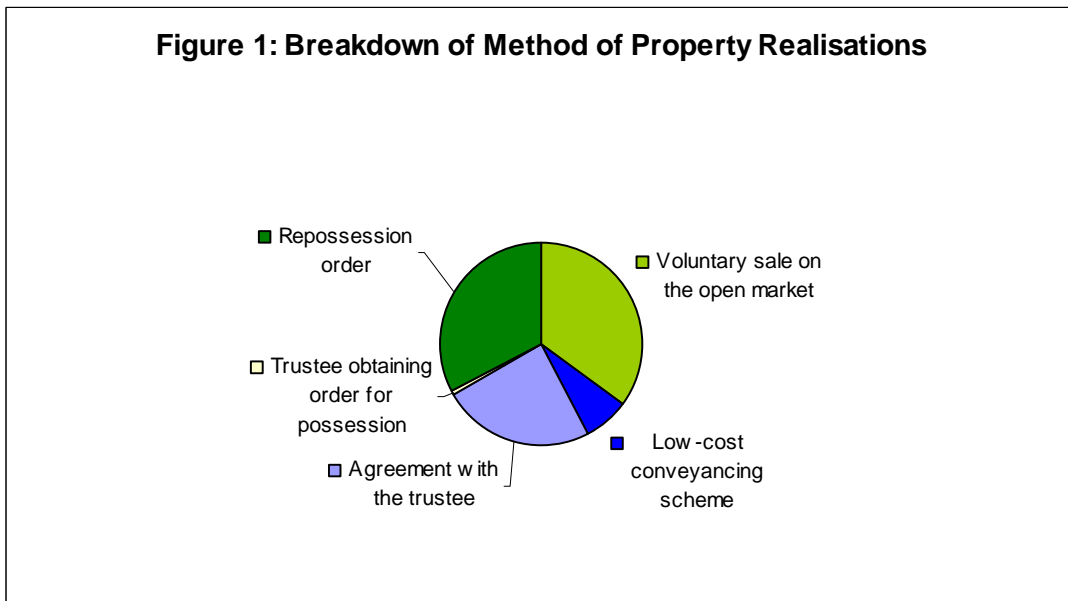
14. Full details of the benchmarking information obtained in respect of this objective is contained at [appendix 4](#).

Section 5 - Preliminary conclusions and recommendations

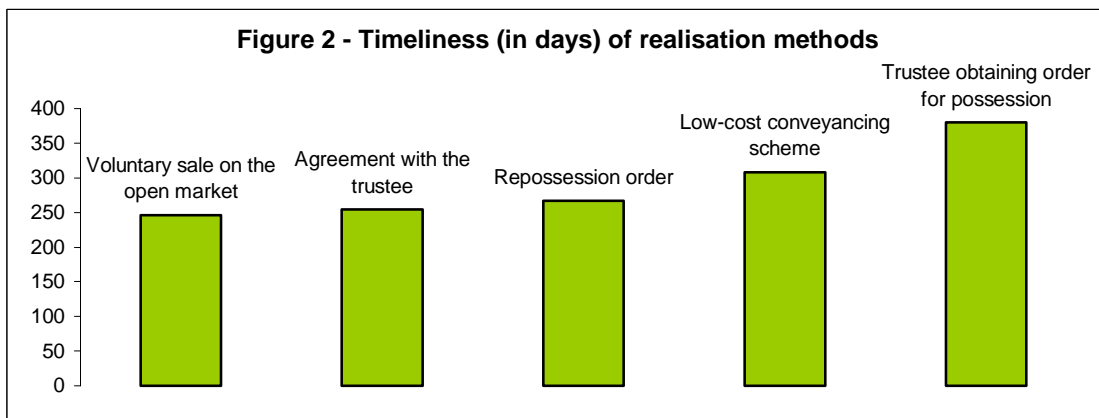
14. From the benchmarking information available, the following observations can be made:

Objective 1: To provide some certainty to the bankrupt, the trustee and the creditors as to the time scale within which the bankrupt’s home will be dealt with, as currently that time scale is open ended.

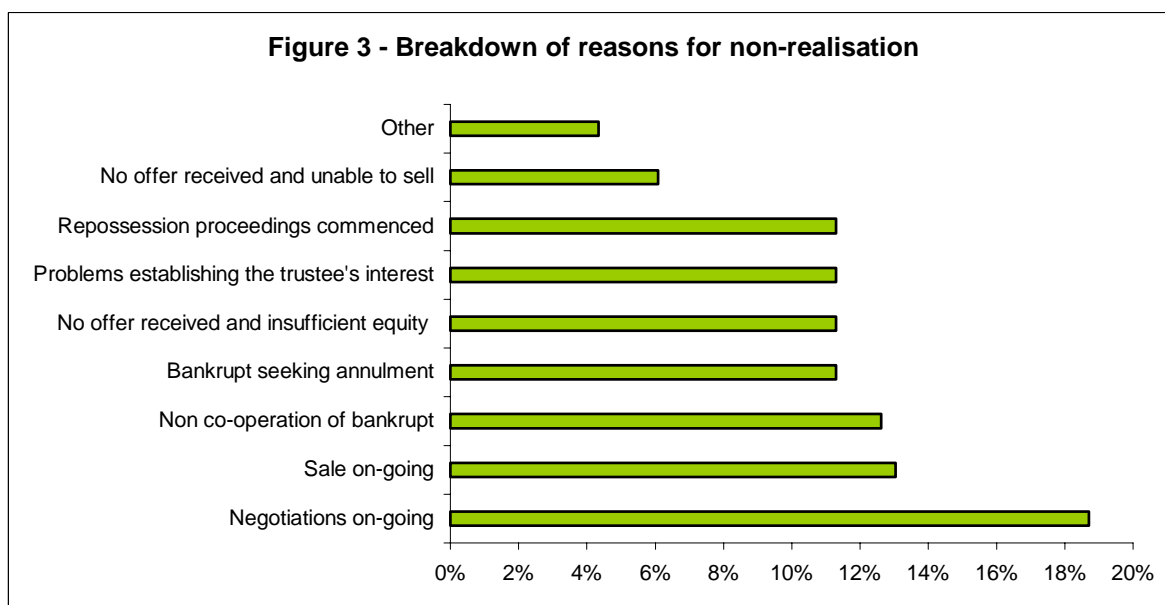
- From the information currently available through the sample of property interests in the year ended 31 August 2003, property interests are mainly realised by way of voluntary sale on the open market, repossession or through agreement with the trustee (see figure 1).



- From the information currently available through the sample of property interests in the year ended 31 August 2003, the average realisation time is about 8½ months. This is based on information from only 26% of the relevant property figures, and as more realisation details are collected, it is expected that the average realisation time will increase.
- From the information currently available through the sample of property interests in the year ended 31 August 2003, realisation by way of voluntary sale on the open market is the quickest method of realisation (see figure 2).



- Prior to the Enterprise Act 2002, trustees very rarely obtained charging orders in respect of property interests.
- Prior to the Enterprise Act 2002, around 90% of cases held with The Insolvency Service's Protracted Realisations Unit were over 3 years old.
- From case study material, it appears that the primary reason for why an interest in a property can take over 3 years to realise is because the trustee failed to take any action in respect of the property and the bankrupt was not aware (or failed to realise) that the interest remained vested in the trustee until such time as the interest was realised. This issue appears to be the main cause for complaints by bankrupts.
- From the information currently available through the sample of property interests in the year ended 31 August 2003, the main reason for the non-realisation of a property interest is due to on-going negotiations (see figure 3).



Objective 2: To provide a balance between the interests of the bankrupt (and his/her family) and the creditors by providing ample time for the disposal by the trustee of the bankrupt's interest in his/her sole and principal residence in the most appropriate manner

- From the information currently available through the sample of property interests in the year ended 31 August 2003, around 30% of property interests are realised for consideration of £1,000 or less.
- Around 8% of cases are realised for £1,000 or less under The Insolvency Service's low-cost conveyancing scheme.
- The funds available to creditors from a £1,000 realisation is minimal.
- Prior to the Enterprise Act 2002, it is highly unlikely that an interest in a bankrupt's home would be disclaimed.

Objective 3: To help lift the stigma of bankruptcy

- Around 8.5% of bankrupts have an interest in a property which will fall under the new Enterprise Act provisions.
- Around 6 % of debtor petition bankruptcies have an interest in a property which will fall under the new Enterprise Act provisions.

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

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March 2005