

EVALUATION OF BANKRUPT'S HOME – SECOND 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.

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 vested in the bankrupt's estate (as it did previously) 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 the second interim report to summarise the evaluation work and findings to date¹.

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

¹ The first interim report dated March 2005 is available on The Insolvency Service's website (www.insolvency.gov.uk).

- 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. To date, benchmarking information and information relating to the operation and effect of the Enterprise Act 2002, i.e. from 1 April 2004, has been, and continues to be collected.

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 evaluation information obtained in respect of this objective are 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 evaluation information obtained in respect of this objective are contained at [appendix 3](#).

Objective 3: To help lift the stigma of bankruptcy

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

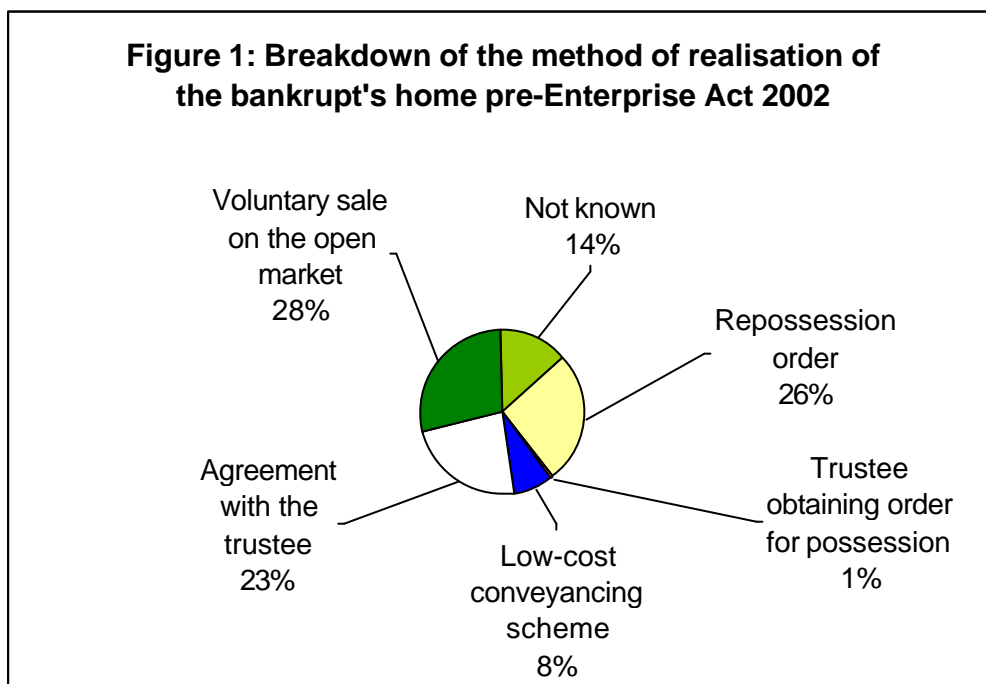
15. Full details of the evaluation information obtained in respect of this objective are contained at [appendix 4](#).

Section 5 - Preliminary conclusions and recommendations

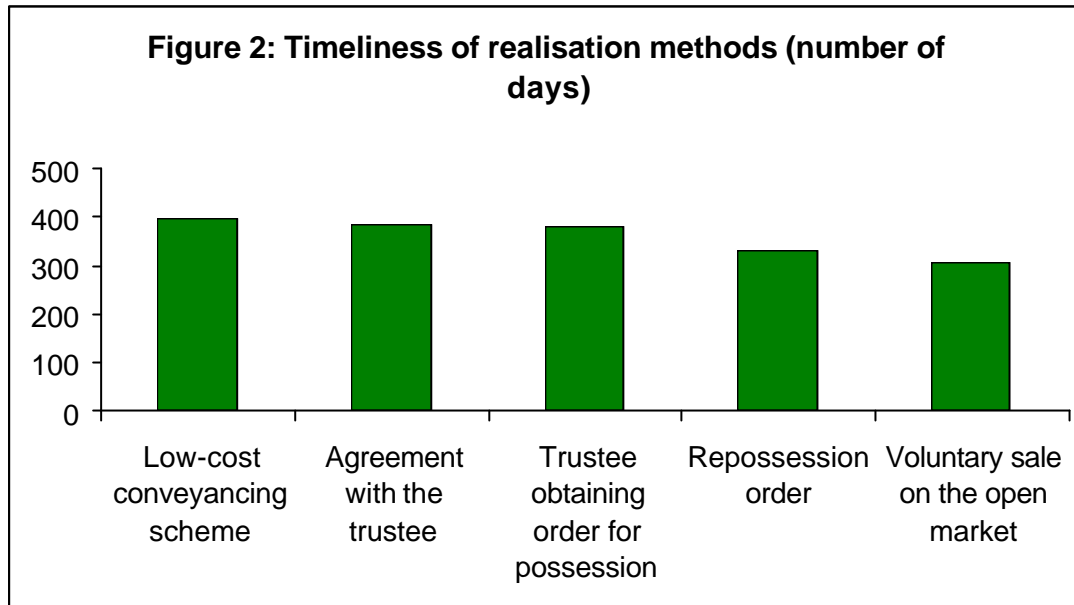
16. From the evaluation information available, the following observations can be made:

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 just over a year. This is based on information from only 42% 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. As a result of the provisions of the Act, it is expected that charging orders will be obtained where the interest in the property exceeds £1,000 and cannot be sold, e.g. due to the ill-health of the bankrupt.
- Prior to the Enterprise Act 2002, around 90% of cases with an interest in a property held by the Official Receiver as trustee ex officio² were over 3 years old. The level of cases now held by the Official Receiver as trustee ex officio that are over 3 years old has reduced to around 30%³. This reduction in aged cases has been achieved mainly by the appointment of insolvency practitioners as trustees in cases to deal with the property interests and therefore, does not actually mean those property interests have yet been realised.
- From case study material, it appears that prior to the Enterprise Act 2002, the primary reason why an interest in a property could take over 3 years to realise was because the trustee had not taken any action in respect of the property and the bankrupt was not aware (or failed to realise) that the interest remained within the bankruptcy estate until such time as the interest was realised. This issue appears to be the main cause for complaints by bankrupts.
- Prior to the implementation of the Enterprise Act 2002, complaints relating to the bankrupt's home constituted just under 10% of all the formal complaints received by The Insolvency Service.

² The Official Receiver become trustee ex officio when the trustee is released from office. The Official Receiver, as trustee ex officio is then responsible for dealing with any post-release enquiries and the realisation of outstanding assets.

³ On available information as at 31 August 2005, Regional Trustee and Liquidator Units (RTLUs) held 870 relevant cases, of which 105 were over 3 years old (a further 257 cases were held by an RTLUs for which no ageing data is known). The Protracted Realisations Unit held another 200 cases, all over 3 years old.

- 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 because the trustee has not received an offer for the interest in the property, and there is insufficient equity to warrant the sale of the property (see Table 1).

Table 1: Reasons why property interests in the year ended 31 August 2003 have not yet been realised

Reason remains unrealised	% of unrealised cases
No offer received and insufficient equity to warrant sale of property	16.38%
Problems in establishing the trustee's interest	15.95%
Bankrupt seeking annulment	14.22%
Negotiations on-going	13.79%
Non co-operation of bankrupt	10.34%
Sale on-going	8.19%
Not known	7.76%
Repossession proceedings being commenced	4.74%
No attempt to realise	2.59%
No offer received and trustee unable to sell property at current time	2.59%
Trustee making application for order for possession and sale	2.16%
Trustee only recently appointed	1.29%

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, just over 40% of property interests are realised for consideration of £1,000 or less.
- Prior to the Enterprise Act 2002, around 8% of cases were realised for £1,000 or less under The Insolvency Service's low-cost conveyancing scheme.
- Prior to the Enterprise Act 2002, the funds available to creditors from a £1,000 realisation was 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

- Based on case sampling results to date, prior to the Enterprise Act 2002, around 8.5% of bankrupts had an interest in a property that would have fallen under the new Enterprise Act provisions. Since the implementation of the Act, this level has remained unchanged.
- Based on case sampling results to date, prior to the Enterprise Act 2002, under 7% of debtor petition bankruptcies had an interest in a property that would have fallen under the new Enterprise Act provisions. Since the implementation of the Act, this level has remained unchanged.
- Therefore, it would appear that the new provisions under the Act have not affected a debtor's willingness to enter into bankruptcy proceedings, where the debtor has an interest in a 'family home'.
- These results are consistent with survey results regarding attitudes to bankruptcy, which showed that as regards the effects of bankruptcy, the possible loss of the family home was not the most significant factor that contributed to the stigma associated with bankruptcy - not being able repay creditors, problems with getting a bank account and the effect on a bankrupt's credit rating were seen as greater contributors towards the stigma associated with bankruptcy. Therefore, it appears that the bankrupt's home provisions contained in the Enterprise Act 2002 have not yet reduced the stigma associated with bankruptcy for those individuals who own their own home.

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

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