

EVALUATION OF DISCHARGE - 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 discharge 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 is automatically discharged one year after the commencement of bankruptcy. Further, discharge can occur earlier if the OR files a notice at Court stating that the investigations into the affairs and conduct of the bankrupt are unnecessary or completed.

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

- To enable the prompt rehabilitation of bankrupts judged to be non-culpable who have fully co-operated with the Official Receiver
- To not discriminate against 'second-time' bankrupts judged to be non-culpable who have fully co-operated with the Official Receiver
- To speed up the process of suspending the discharge of a bankrupt due to non-co-operation where a trustee other than the Official Receiver has been appointed
- 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 discharge 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 discharge 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 enable the prompt rehabilitation of bankrupts judged to be non-culpable who have fully co-operated with the Official Receiver

10. The objective relates to the time scale involved in the duration of bankruptcy by reducing the impact of financial failure on individuals. The evaluation looks at the discharge periods, including early discharge, the impact of the discharge provisions, customer satisfaction with the discharge provisions and the rehabilitation of non-culpable bankrupts.

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

Objective 2: To not discriminate against ‘second-time’ bankrupts judged to be non-culpable who have fully co-operated with the Official Receiver

12. The objective looks at the treatment of ‘second-time’ bankrupts. The evaluation looks at the effect of ‘second-time’ bankruptcy discharge provisions, creditor satisfaction with those provisions, creditor loss due those provisions and any discrimination against ‘second-time’ bankrupts.

13. Only information on the level of second-time bankrupts has been obtained to date, as follows:

	2001-2002	2002-2003	2003-2004
Total no. of bankruptcy orders	23,426	25,177	29,633
Number of ‘2nd time’ bankrupts ¹	963	977	1,126
‘2nd time’ bankruptcy cases as % of bankruptcy orders	4.11%	3.89%	4.80%

Objective 3: To speed up the process of suspending the discharge of a bankrupt due to non-co-operation where a trustee other than the Official Receiver has been appointed

14. The objective relates to the power of an insolvency practitioner (IP) to apply for a suspension of discharge in cases where the IP is trustee. The evaluation looks at the level and timeliness of suspension of discharge applications where an IP has been

¹ Information extracted from The Insolvency Service’s internal database. It excludes cases where the first bankruptcy order was annulled.

appointed trustee, and IP satisfaction with the power to apply for a suspension of discharge.

15. No benchmarking information has yet been obtained as regards this objective.

Objective 4: To help lift the stigma of bankruptcy

16. This is a cross-cutting objective of the EA. The evaluation looks the effect of the discharge changes on stigma.

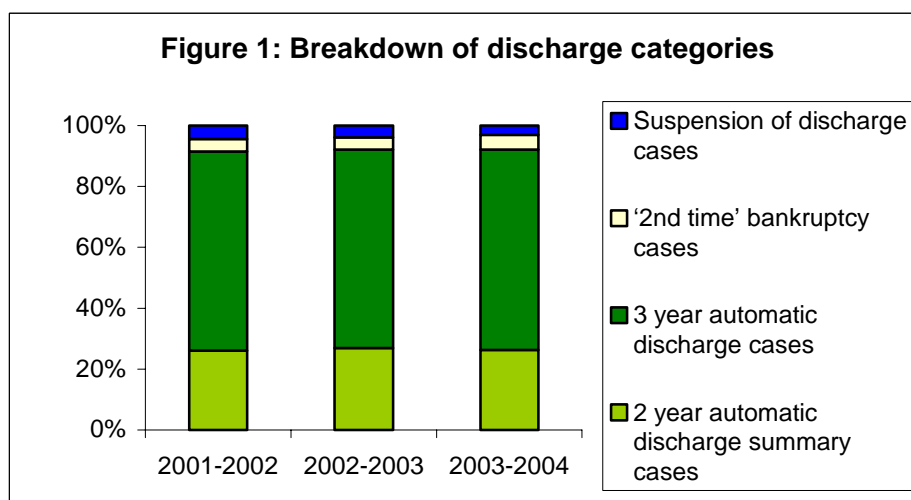
17. Full details of the benchmarking information obtained in respect of this objective is contained at [appendix 3](#).

Section 5 - Preliminary conclusions and recommendations

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

Objective 1: To enable the prompt rehabilitation of bankrupts judged to be non-culpable who have fully co-operated with the Official Receiver

- The level of automatic discharge cases remained relatively constant (see figure 1).
- Around 26-27% of bankrupts received an automatic discharge after 2 years.
- Around 65-66% of bankrupts received an automatic discharge after 3 years.
- The level of non co-operation cases declined marginally (from 4.41% to 3.07%).

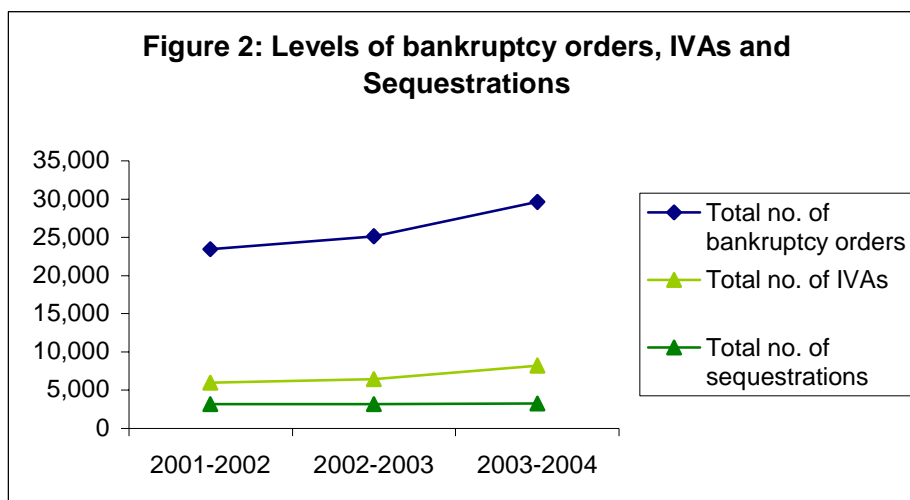


Objective 2: To not discriminate against 'second-time' bankrupts judged to be non-culpable who have fully co-operated with the Official Receiver

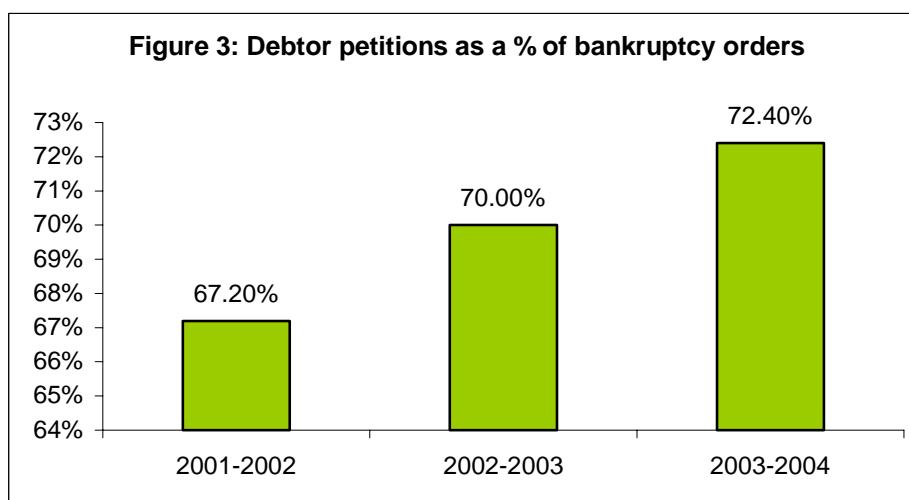
- Around 4% of bankrupts are '2nd-time' bankrupts.

Objective 4: To help lift the stigma of bankruptcy

- The level of bankruptcy orders, IVAs and sequestrations show a rising trend (see figure 2).



- The level of debtor petition cases is rising (see figure 3).



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

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March 2005