

The bankrupt's home - before and after the Enterprise Act 2002

A report produced by The Insolvency Service.
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Section 1: Executive Summary

1.1 Introduction

This report looks at the results of case analysis carried out by The Insolvency Service. The aim of this work was to obtain information regarding the realisation of a bankrupt's interest in a family home before and after the implementation of the Enterprise Act 2002.

On 1 April 2004, provisions of the Enterprise Act 2002 came into force that changed the way in which a bankrupt's interest in a family home is dealt with. The main change was that where a bankrupt had an interest in a family home, the trustee must take action as regards that interest within three years, and if he does not do so, the interest in the family home reverts to the bankrupt at the end of this period.

The Insolvency Service is undertaking a retrospective (ex-post) evaluation i.e. after the adoption of the Enterprise Act 2002, to know better what happened after the implementation of the Act and to apprehend the real effects of the legislative action. The evaluation attempts to comprehensively assess whether, to what extent and how the provisions of the Enterprise Act 2002 met its policy objectives.

The Insolvency Service carried out an analysis of bankrupts' interests in family homes in bankruptcy cases prior to 1 April 2004 (pre-Enterprise Act 2002). A similar exercise was undertaken after 1 April 2004 (post-Enterprise Act 2002). This work was undertaken as part of the evaluation of the bankrupt's home provisions contained in the Enterprise Act 2002, to assess whether the new regime provides certainty to the bankrupt, the trustee and the creditors as to the time scale within which the family home will be dealt with, and whether that timescale is sufficient for the disposal by the trustee of the bankrupt's interest in his/her sole and principal residence in the most appropriate manner.

At this stage, it has not been possible to collate full information as regards the realisation of property interests since the implementation of the Enterprise Act 2002. Therefore, this report only contains partial information on such realisations. Thus, no final conclusions can be drawn as regards the impact of the Enterprise Act 2002 on the realisation of a bankrupt's interest in a family home.

1.2 Key Findings

- In broad terms, the level of bankruptcies where the bankrupt has an interest in a family home¹, and the breakdown of the petition type in such cases, has remained unchanged by the implementation of the Enterprise Act 2002. Both before and after the implementation of the Enterprise Act 2002, less than 9% of bankrupts have an interest in a family home and less than 7% of debtor-petition bankrupts have an interest in a family home.
- There has been no change in the most common ways a bankrupt's interest in a property is realised before and after the Enterprise Act 2002, although there has been a change in the breakdown of realisation methods.
- Post-Enterprise Act 2002, the level of property interests realised through repossession proceedings has more than doubled from 24% to 50% of all realisations. This is consistent with a general increase in mortgage repossessions.
- Insufficient information is currently available to produce meaningful results on the timeliness of the realisation of property interests before and after the Enterprise Act 2002. However, the implementation of the Enterprise Act 2002 and its transitional provisions has ensured that property interests in bankruptcies that are more than 3 years old are dealt with. Further, in the future, it is extremely unlikely that the Official Receiver, as trustee ex officio, will hold a large number of cases with such property interests.
- Because of the impact of external factors, such as the changes in house prices, it is not appropriate to compare the realisation amounts of property interests in cases before and after the Enterprise Act 2002. Therefore, it is not possible to assess whether creditors are receiving a lower return as a result of time scales imposed by the Enterprise Act 2002.
- Both before and after the implementation of the Enterprise Act 2002, complaints relating to the bankrupt's home constituted around 10% of all complaints received by The Insolvency Service. Such complaints mainly relate to the operation of the insolvency legislation prior to the Enterprise Act 2002. There have been no complaints relating to post-Enterprise Act 2002 legislation on the bankrupt's home.

¹ An interest in a family home is defined as a property interest that falls under the definition of a 'qualifying interest' under the Enterprise Act 2002. A 'qualifying interest' is a bankrupt's interest in a dwelling-house that is the sole or main residence of the bankrupt, the bankrupt's spouse or former spouse.

1.3 Methodology

The Insolvency Service undertook a case sampling exercise to obtain information regarding property interests in bankruptcy cases in the year ended 31 August 2003, i.e. prior to the implementation of the Enterprise Act 2002.

The sampling frame was designed whereby one Official Receiver's office was chosen from each of The Insolvency Service's operational regions. Information was gathered regarding the realisation of all the property interests arising² in bankruptcies dealt with by those offices in the year ended 31 August 2003. Details of the offices and regions are shown in Table 1.

Table 1: A breakdown of the Official Receiver operational regions and sampling frame

Official Receiver operational region	Official Receiver offices covered by operational region	Official Receiver office sampled
Anglia	Cambridge, Ipswich, Southend-on-Sea, St Albans, Northampton, Norwich	Northampton
London	All London Sections, Croydon	London A
Midlands	Birmingham, Leicester, Nottingham	Birmingham A
North-East	Leeds, Hull, Newcastle, Sheffield, Stockton	Newcastle
North-West	Blackpool, Chester, Liverpool, Manchester, Stoke-on-Trent	Blackpool
South-East	Bournemouth, Brighton, Canterbury, Reading, Southampton, Medway	Reading
South-West	Bristol, Cardiff, Exeter, Gloucester, Plymouth, Swansea	Bournemouth

The case sampling exercise was repeated regarding property interests in bankruptcy cases in the year ended 31 August 2005, i.e. after the implementation of the Enterprise Act 2002.

² Only property interests that fell under the definition of a 'qualifying interest' under the Enterprise Act 2002 were included. A 'qualifying interest' is a bankrupt's interest in a dwelling-house that is the sole or main residence of the bankrupt, the bankrupt's spouse or former spouse.

1.3 Methodology (continued)

In some instances, all the necessary details was not available because, for example, the trustee did not respond to The Insolvency Service's request for information. Details of the sample sizes and the number of cases where information was available are shown at Table 2. All percentages in this report have been calculated on the basis of the total number of cases where information is available.

Table 2: Sample Sizes – for case sampling exercise

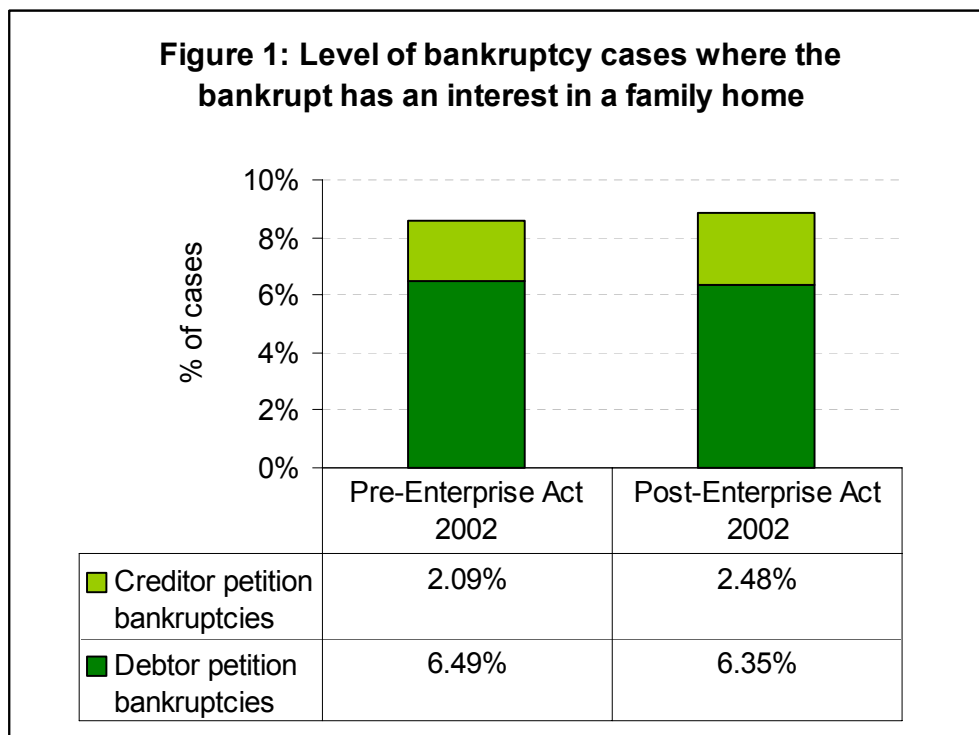
	Property interests in year ended 31 August 2003 (pre-Enterprise Act 2002)	Property interests in year ended 31 August 2005 (post-Enterprise Act 2002)
Sample size	458	748
Number of cases where the bankruptcy order was annulled, or the debts/costs of the bankruptcy were paid in full without realisation of the property interest	24	31
Sample size where property interest to be dealt with	434	717
Size of sample where information was available on:		
Whether property interest dealt with	382	707
Realisation method	368	464
Timeliness of realisation (excluding repossessions)	290	238
Consideration received (excluding repossessions)	241	238
Reasons why property interest not yet dealt with	N/A	266

The Insolvency Service has also analysed other internal records, including its Complaints Register to extract information regarding complaints about how a bankrupt's interest in a family home is dealt with, both before and after the Enterprise Act 2002.

Section 2: Results

2.1 Level of bankruptcies where a bankrupt has an interest in a family home

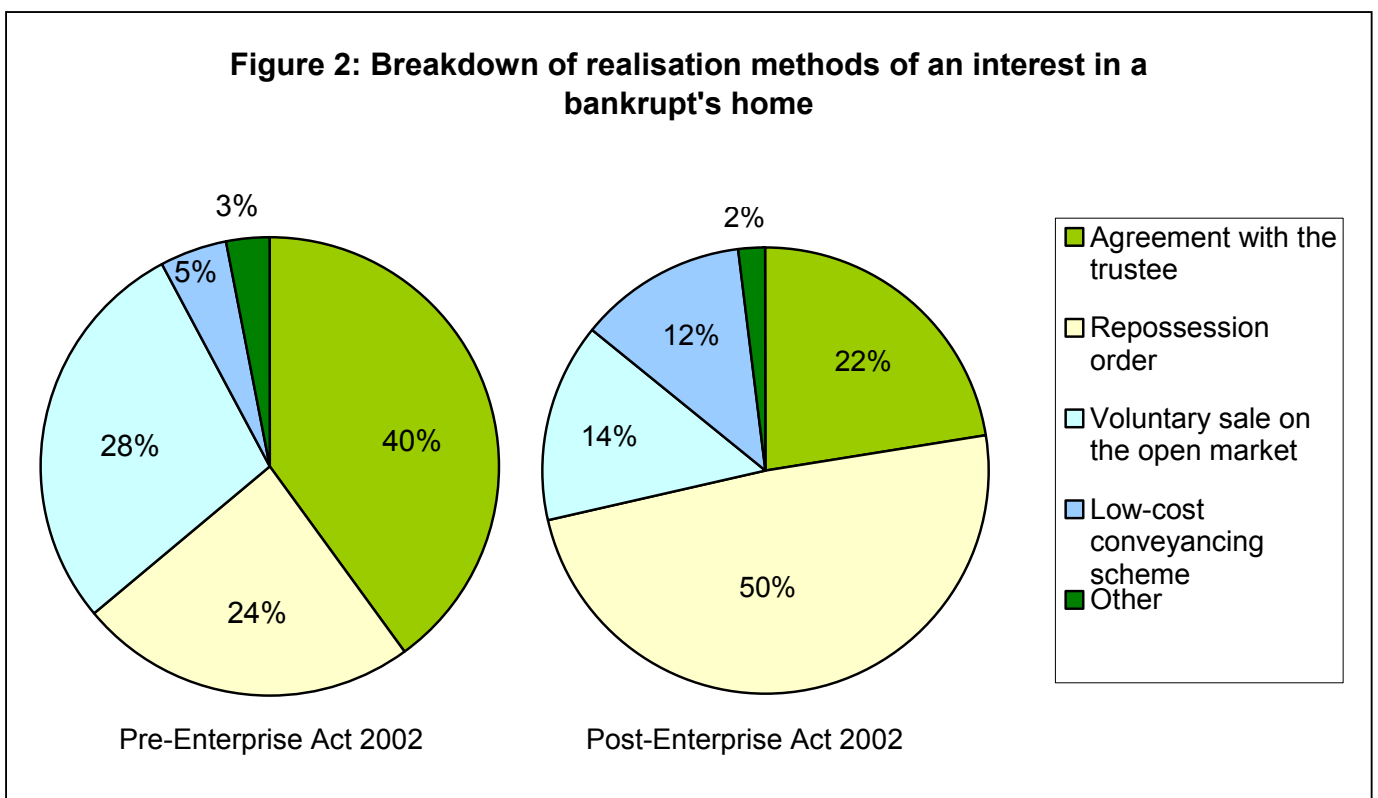
- In broad terms, the level of bankruptcies where the bankrupt has an interest in a family home³, and the breakdown of the petition type in such cases, has remained unchanged by the implementation of the Enterprise Act 2002 (see Figure 1).
- Both before and after the implementation of the Enterprise Act 2002, less than 9% of bankrupts have an interest in a family home³ (see Figure 1).
- Similarly, both before and after the implementation of the Enterprise Act 2002, less than 7% of debtor-petition bankrupts have an interest in a family home³ (see Figure 1).



³ An interest in a family home is defined as a property interest that falls under the definition of a 'qualifying interest' under the Enterprise Act 2002. A 'qualifying interest' is a bankrupt's interest in a dwelling-house that is the sole or main residence of the bankrupt, the bankrupt's spouse or former spouse.

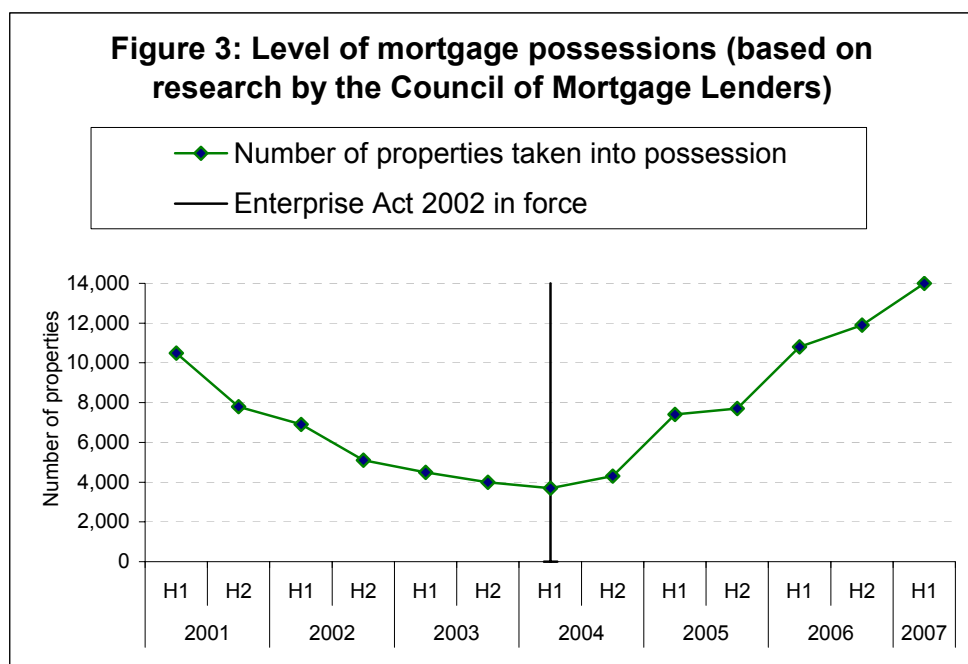
2.2 The realisation of bankrupts' interests in a family home - method

- Both before and after the Enterprise Act 2002, the most common ways that a bankrupt's interest in a family home was realised was by:
 - Agreement with trustee, where a third-party, or the bankrupt, agrees to purchase the bankrupt's interest in the property from the trustee.
 - Repossession order, where the mortgage company obtain a repossession order and sell the property.
 - Voluntary sale of property on open market, where the property is sold on the open market and the trustee receives the value of the bankrupt's interest in the property.
 - Low-cost conveyancing scheme, which is a scheme set up by The Insolvency Service where a third-party, or the bankrupt, agrees to purchase the bankrupt's interest in the property from the Official Receiver as trustee.
- Although there has been no change in the most common ways a bankrupt's interest in a property is realised before and after the Enterprise Act 2002, there has been a change in the breakdown of realisation methods (See Figure 2)



2.2 The realisation of bankrupts' interests in a family home – method (continued)

- Post-Enterprise Act 2002, the level of property interests realised through repossession proceedings has more than doubled from 24% to 50% of all realisations (see Figure 3).
- There has been a general increase in mortgage possessions⁴ – mortgage possessions in the year ended 31 August 2003 (the period of the pre-Act case sampling exercise) were around 9,600 (see Figure 3) compared to around 11,700 possessions in the year ended 31 August 2005 (the period of the post-Act case sampling exercise) (See Figure 3). The percentage increase in the level of property interests realised through repossession proceedings is more than the percentage increase in overall mortgage possession. However, it is to be expected that repossessions where the mortgagor (or joint mortgagor) is a bankrupt would be higher given a bankrupt's insolvent status.



- The increase in the proportion of property interests realised through repossession proceedings post-Enterprise Act 2002 has obviously reduced the proportion of cases realised through sale on the open market and through agreement with the trustee (see Figure 2).

⁴ Figures based on Table AP4 'Possessions on Mortgaged Properties' compiled by the Council of Mortgage Lenders, available at: <http://www.cml.org.uk/cml/filegrab/1AP4.xls?ref=2753>

2.2 The realisation of bankrupts' interests in a family home – method (continued)

- However, there has also been an increase in the proportion of cases realised under the low cost conveyancing scheme from 5% pre-Enterprise Act 2002 to 12% post-Act. This method of realisation is only used in cases where the Official Receiver is trustee. The increase in this proportion of realisation-type is partially attributable to the increase in property cases where the Official Receiver is trustee – from the sampling exercises, pre-Enterprise Act 2002, the Official Receiver was trustee in 24% of cases with a property interests compared to 38% of such cases post-Enterprise Act 2002.

2.3 The realisation of bankrupts' interests in a family home – timeliness

- The Enterprise Act 2002 introduced provisions whereby the trustee must take action as regards that interest within three years, and if he does not do so, the interest in the family home reverts to the bankrupt at the end of this period (unless an application for an extension of time is made)⁵. The three-year period commences on the date of the bankruptcy order or, if the bankrupt does not inform the official receiver, or any insolvency practitioner acting as trustee, of his interest within 3 months of the bankruptcy order, the date that the official receiver or other trustee becomes aware of the interest.
- The Enterprise Act 2002 also contains transitional provisions for cases where the bankruptcy petition was presented before 1 April 2004 where there is a bankrupt's interest in a family home⁶. The transitional provisions state that such interests must be dealt with by 31 March 2007 (unless an application for an extension of time is made) - otherwise, the interest reverts to the bankrupt on this date.
- Information has been collected on the timeliness of property realisations both before and after the Enterprise Act 2002. However, it should be noted that the transitional provisions may well have affected the timeliness of realisations pre-Enterprise Act 2002 as trustees were required to take action to avoid the interest re-vesting in the bankrupt on 31 March 2007.
- Further, a number of post-Enterprise Act 2002 property interests have not yet been realised as the three-year period has not yet expired.
- When calculating the timeliness of realisations, realisations through repossession have been excluded as the trustee has no control over such realisation.

⁵ Under section 283A of the Insolvency Act 1986, a bankrupt's interest in a family home will re-vest in the bankrupt after 3 years unless one of the following events occurs before that date;

- the trustee realises the bankrupt's interest;
- the trustee applies for an order for possession and/or sale;
- the trustee applies for a charging order;
- the trustee and the bankrupt agree that the bankrupt shall incur a liability in consideration of which the bankrupt's interest shall cease to form part of his estate;
- the trustee sends notice to the bankrupt that he considers that the continued vesting of the dwelling-house in the bankrupt's estate will be of no benefit to creditors or that re-vesting will facilitate a more efficient administration of the bankrupt's estate.

⁶ The transitional arrangements only apply to interests in a family home that falls under the definition of a 'qualifying interest' under the Enterprise Act 2002. A 'qualifying interest' is a bankrupt's interest in a dwelling-house that is the sole or main residence of the bankrupt, the bankrupt's spouse or former spouse.

2.3 The realisation of bankrupts' interests in a family home – timeliness (continued)

- On information available, the average time for a property interest to be realised pre-Enterprise Act 2002 (excluding repossessions) was 609 days, i.e. around 20 months, from the date of the bankruptcy order. On information available to date, 63% of post-Enterprise Act 2002 property interests have been realised within an average time (excluding repossessions) of 366 days, i.e. around 12 months. However, given the effect of the transitional arrangements as detailed above and the level of unrealised interests post-Enterprise Act 2002, no conclusions on the timeliness of property realisations can be drawn.
- As detailed above, the Enterprise Act 2002 aims to ensure that in almost all cases, the property interest is dealt with within 3 years of the bankruptcy order. The case sampling exercise shows that pre-Enterprise Act 2002, around 15% of property interests were dealt with after 3 years of the bankruptcy order.
- Further, when the trustee is released from office, the Official Receiver become trustee ex officio. The Official Receiver, as trustee ex officio, is then responsible for dealing with any post-release enquiries and the realisation of outstanding assets. Prior to the Enterprise Act 2002, such cases with unrealised assets were dealt with by The Insolvency Service's Protracted Realisations Unit (PRU). An aged case analysis of cases with an interest in a property held by PRU shows that prior to the Enterprise Act 2002, The Insolvency Service was holding a sizeable number of property interests which were more than 3 years old (see Table 3). The vast majority of cases that were held by PRU as at 28 February 2004 had insolvency practitioners appointed as trustees to deal with the interest in the property.

Table 3: Aged case analysis of cases with an interest in a property held by The Insolvency Service's Protracted Realisations Unit (PRU)

Age of cases	Number of Cases as at:	
	31 August 2003	28 February 2004
Pre-1991	113	87
1991 – 1995	4,292	2,825
1996 – 2000	3,501	2,632
2001 - 2003	856	773
Total	8,762	6,317
% of cases dated pre-2000	90.23%	87.76%

2.3 The realisation of bankrupts' interests in a family home – timeliness (continued)

- The role of PRU was taken over by Regional Trustee and Liquidator Units (RTLUs), and an aged case analysis of cases with an interest in a property held by them⁷ shows that post-Enterprise Act 2002, the level of cases over 3 years old as at 31 August 2005 is around 13% (see Table 4). Additionally, as at 31 August 2005, PRU held about 200 cases with an interest in a property. About 60 of these cases were dealt with under The Service's low-cost transfer scheme and charging orders on health grounds were obtained.

Table 4: Aged case analysis of cases with an interest in a property held by The Insolvency Service's Regional Trustee and Liquidator Units (RTLUs)

	Number of cases as at 31 August 2005
Pre 31 August 2002	105
Post 1 September 2002	765
Total	870
% of cases over 3 years old	12.68%

- Therefore, post-Enterprise Act 2002, the level of cases with property interests held by the Official Receiver as trustee ex officio that are over 3 years old has reduced to around 30%⁸. The reduction in aged cases since 28 February 2004 has been achieved mainly by the appointment of insolvency practitioners as trustees in cases to deal with the property interests and under the transitional provisions, the vast majority must now have been dealt with. Therefore, the implementation of the Enterprise Act 2002 and its transitional provisions has ensured that such property interests are dealt with and in the future, it is extremely unlikely that the Official Receiver as trustee ex officio will be holding a large number of cases with property interests.

⁷ A further 257 cases were held on which aging data was not available.

⁸ 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.

2.3 The realisation of bankrupts' interests in a family home – timeliness (continued)

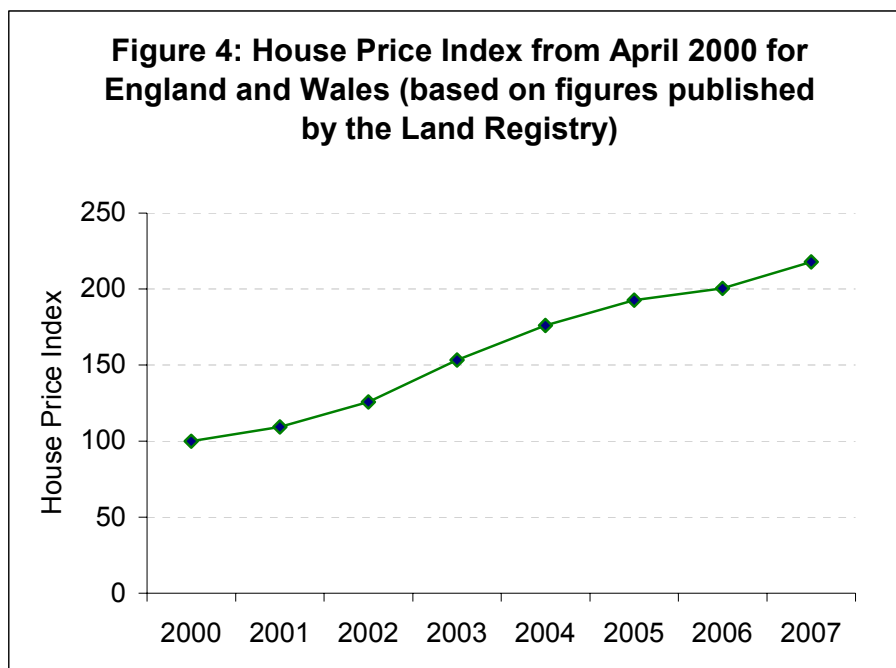
- As stated above, the Enterprise Act 2002 aims to ensure that in almost all cases, the property interest is dealt with within 3 years of the bankruptcy order. This is in order to provide some certainty to the bankrupt, the trustee and the creditors as to the time scale within which the family home will be dealt with (as prior to the Enterprise Act 2002 that time scale was open ended). The instances where the realisation of a property interest will not occur within 3 years from the bankruptcy order are:
 - Where the 3 year period does not start from the date of the bankruptcy order because the bankrupt does not inform the Official Receiver, or any insolvency practitioner acting as trustee, of his interest within 3 months of the bankruptcy order - in such cases, the 3 year period will start from the date that the Official Receiver or other trustee becomes aware of the interest;
 - The trustee applies for an order for possession and/or sale; or
 - The trustee applies for an extension of time.
- No cases have been identified in the post-Enterprise Act 2002 case sampling exercise where the 3 year period does not start from the date of the bankruptcy order.
- From the results of the case sampling exercise, pre-Enterprise Act 2002, the trustee obtained an order for possession and/or sale in less than 2% of cases, compared to less than 1% of cases to date post-Enterprise Act 2002. Further such orders may arise in post-Enterprise Act 2002 cases.
- From the results of the case sampling exercise, pre-Enterprise Act 2002, a trustee has applied for an extension of time in one case (because of the transitional provisions); none have been identified in post-Enterprise Act 2002 cases. Further extensions may arise in post-Enterprise Act 2002 cases.
- Further, under the Enterprise Act 2002, there are instances where the realisation of a property interest involves changing the nature of that interest, which is then not realised. In such cases, it could be argued that this does not provide certainty to creditors and the trustee. The instances where the realisation of a property interest involves changing the nature of that interest are as follows:
 - the trustee and the bankrupt agree that the bankrupt shall incur a liability in consideration of which the bankrupt's interest shall cease to form part of his estate; or
 - The trustee applies for a charging order.

2.3 The realisation of bankrupts' interests in a family home – timeliness (continued)

- No cases have been identified in the case sampling exercise either before or after the Enterprise Act 2002 where the trustee and the bankrupt agree that the bankrupt shall incur a liability in consideration of which the bankrupt's interest shall cease to form part of his estate.
- From the results of the case sampling exercise, pre-Enterprise Act 2002, a trustee has applied for/obtained a charging order in 3 cases, and in 2 cases post-Enterprise Act 2002 cases. Further charging orders may arise in post-Enterprise Act 2002 cases.

2.4 The realisation of bankrupts' interests in a family home - consideration

- Because of the impact of external factors, such as the changes in house prices, it is not appropriate to compare the realisation amounts of property interests in cases before and after the Enterprise Act 2002. Therefore, it is not possible to assess whether creditors are receiving a lower return as a result of time scales imposed by the Enterprise Act 2002.
- However, it is clear from case studies that pre-Enterprise Act 2002, creditors received more money through the realisation of properties more than 3 years after the bankruptcy order compared to if that realisation had taken place within 3 years of the bankruptcy order. This is due mainly to the increase in house prices (see Figure 4) and, in most cases, a reduction in the mortgage as the bankrupt has remained in the property.
- However, the increase in monies received through the realisation of properties more than 3 years after the bankruptcy order has to be balanced against the timeliness of any dividend paid.



- Prior to the Enterprise Act 2002, all property interests were eventually realised unless the property interest was disclaimed. Under the Act, a property interest can re-vest in a bankrupt if either the trustee sends notice to the bankrupt that he considers that the continued vesting of the dwelling-house in the bankrupt's estate will be of no benefit to creditors or that re-vesting will facilitate a more efficient administration of the bankrupt's estate, or if the trustee fails to deal with the property interest within the 3 year period.

2.4 The realisation of bankrupts' interests in a family home – consideration (continued)

- From the results of the case sampling exercise, pre-Enterprise Act 2002, no property interests were disclaimed, but around 12% were realised for £1 or less - around 4% were under the low cost conveyancing scheme and around 2% were by agreement with the trustee (see Table 5).

Table 5: Level of cases realised for £1 or less broken down by realisation type

Realisation method	% of cases	
	Pre-Enterprise Act 2002 cases	Post-Enterprise Act 2002 cases
Voluntary sale on open market	4.98%	-
Low cost conveyancing scheme	4.15%	14.71%
Sale by agreement with the trustee	2.07%	-
Other	0.41%	-
Total % of cases realised for £1 or less	11.62%	14.71%

- In contrast, post-Enterprise Act 2002, around 15% of property interests have been realised for £1 or less, all under the low cost conveyancing scheme (see Table 5). Further, post-Enterprise Act 2002, around 1% of property interests have been disclaimed. Further such realisations may occur in post-Enterprise Act 2002 cases.
- Further, pre-Enterprise Act 2002, property interests re-vested in a bankrupt in less than 1% of cases (under the transitional provisions), compared to around 1.5% of post-Enterprise Act 2002 cases. Further re-vestings may arise in post-Enterprise Act 2002 cases.
- The Enterprise Act 2002 also introduced 'de minimis' provisions, whereby if the value of the bankrupt's interest in a family home is below £1,000, the court will dismiss any application by the trustee for either an order for sale of, an order for possession of or a charging order on that property. In effect, if the bankrupt's interest in a family home is less than £1,000 and no agreement can be reached, the trustee has no method of realising that interest.

2.4 The realisation of bankrupts' interests in a family home – consideration (continued)

- From the results of the case sampling exercise, pre-Enterprise Act 2002, around 12.5% of property interests were realised for £1,000 or less - around 4% were under the low cost conveyancing scheme and around 2% were by agreement with the trustee (see Table 6).
- Post-Enterprise Act 2002, around 17% of property interests have been realised for £1,000 or less, with around 16% being realised under the low cost conveyancing scheme (see Table 6). Further such realisations may occur in post-Enterprise Act 2002 cases.

Table 6: Level of cases realised for £1,000 or less broken down by realisation type

Realisation method	% of cases	
	Pre-Enterprise Act 2002 cases	Post-Enterprise Act 2002 cases
Voluntary sale on open market	5.81%	0.84%
Low cost conveyancing scheme	4.15%	15.97%
Sale by agreement with the trustee	2.07%	-
Other	0.41%	-
Total % of cases realised for £1,000 or less	12.45%	16.81%

2.5 Customer satisfaction regarding the realisation of bankrupts' interests in a family home

- 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 Service⁹. The nature of the complaints mainly relate to a lack of action by the trustee in respect of a property and to the bankrupt not being aware (or failing to realise) that the bankrupt's interest remained as part of the bankruptcy estate until such time as that interest was realised.
- In the 3 years since the implementation of the Enterprise Act 2002, complaints relating to the bankrupt's home also constituted just under 10% of all complaints received by The Insolvency Service¹⁰. However, it should be noted that over 90% of such complaints relate to pre-Enterprise Act 2002 cases. Further, 70% of such complaints relate to a lack of action by the trustee in respect of a property and to the bankrupt not being aware (or failing to realise) that the bankrupt's interest remained as part of the bankruptcy estate until such time as that interest was realised. It appears that many of these complaints have arisen because of action taken in respect of the property interest prior to 31 March 2007 in light of the transitional provisions.
- All such complaints are from bankrupts, or third parties who hold an interest in a property in which a bankrupt has an interest.
- No complaints have been identified by creditors either before or after the implementation of the Enterprise Act 2002.
- A similar pattern is seen in the emails received by The Insolvency Service via its Insolvency Enquiry Line.

⁹ There are 1,164 complaints recorded in The Insolvency Service's complaints register in the 3-year period 1 April 2001 to 31 March 2004, i.e. pre-Enterprise Act 2002, and 110 of the complaints relate to the bankrupt's home.

¹⁰ There are 952 complaints recorded in The Insolvency Service's complaints register in the 3-year period 1 April 2004 to 31 March 2007, i.e. post-Enterprise Act 2002, and 89 of the complaints relate to the bankrupt's home.