



BRIEFING PAPER

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Can an undischarged bankrupt open a bank account?

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Summary

When a person becomes bankrupt, it is usual for the official receiver to notify their bank (and building society) in order to 'freeze' the account while their finances are investigated. Following this investigation, the bank will usually close the account; most high street banks will state bankruptcy as a reason for closure of accounts in their 'terms and conditions'. Any money left in a bank account when it is closed may be passed to the official receiver.

If the bankrupt has a joint bank account, depending on the circumstances, the bank may:

- close the account, refunding half of any money held in the account to the other named account holder; or
- remove the bankrupt's name from the account and allow the other person to keep using it as a sole account

The obvious difficulty for the bankrupt is that most people need a bank account to receive their salary and to make priority payments, such as household bills. Whilst it is not illegal for an undischarged bankrupt to open a bank account, the difficulty may be in finding a bank that will enter into a business relationship with them.

The purpose of this briefing paper is to provide a brief outline of the legal position. It considers how a bankruptcy order will affect an existing bank account and the basis on which an undischarged bankrupt may be able to open and operate a new current account. This note is concerned with bankruptcy procedure in England and Wales. Scotland has its own individual insolvency procedure (known as 'sequestration').

1. Bankruptcy in a nutshell

Box 1: Definition of Individual insolvency:

Insolvency for an individual may be defined either as an individual having '*insufficient assets to meet all their debts*', or '*being unable to pay debts as and when they fall due*'.

Where an individual is insolvent (perhaps as a consequence of credit card debts, unpaid loans, unpaid utilities bills etc.) they may decide to apply to the court for a bankruptcy order (sequestration order in Scotland). Alternatively, a creditor of sufficient value¹ can also apply to the court to make a debtor bankrupt, even if the debtor doesn't want this. It should also be noted that for a sole trader (i.e. an individual trader such as a corner shop owner or a builder) insolvency could also mean bankruptcy.

Once a bankruptcy order has been made by the court, the bankrupt's estate will vest either in the official receiver or, if there are sufficient funds, a private sector insolvency practitioner appointed 'trustee in bankruptcy'.

Box 2: The bankrupt's estate

The bankrupt's estate essentially consists of: "*all the assets which belongs to or is vested in the bankrupt at the commencement of the bankruptcy*".

The main role of the official receiver or trustee is to collect in and sell the bankrupt's assets and to make payments to creditors in accordance with the [Insolvency Act 1986](#) (IA 1986), the [Insolvency Rules 1986](#) (as amended) and the [Enterprise Act 2002](#) (EA 2002).

The bankrupt has a statutory duty to cooperate with the official receiver or his trustee. In addition, the official receiver or trustee has wide powers of inquiry into the bankrupt's property and dealings. For example, they have the statutory power to apply to the court for an order for the private examination in court of the bankrupt's partner or any 'connected' third party.

A private examination order in respect of any 'connected' third party.

Once a bankruptcy order has been made by the court, creditors can no longer pursue the bankrupt for payment; payment of debts becomes the responsibility of the official receiver or trustee.

¹ On 1 October 2015, the minimum level of debt for which a creditor can commence bankruptcy proceedings increased from £750 to £5,000

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For the individual or sole trader, bankruptcy will mean loss of control of all assets. In addition, they will be prohibited from:

- asking for credit of £500 or more from anyone without first telling them about the existence of the bankruptcy order;
- acting as a company director;
- taking any part in the promotion, formation or management of a limited company without the permission of the court; and
- trading in any business under any other name unless the individual or sole trader informs all persons concerned of the bankruptcy

These constraints end when the debtor is discharged from bankruptcy. Automatic discharge usually occurs 12 months after the date of the bankruptcy order.

Automatic discharge from bankruptcy usually occurs after one year.

2. Effect of bankruptcy order on existing bank account?

2.1 Will the account be closed?

On the making of a bankruptcy order, all of the bankrupt's assets and property will come to vest (i.e. be put under the control of) the official receiver or trustee, who will want details of the bankrupt's accounts and other information. The bankrupt is required to hand over all bank cards and cheque books to the official receiver or trustee. All bank accounts and building society accounts in the name of the bankrupt will be frozen by the relevant bank/building society once it is notified of the bankruptcy order. This means that the bankrupt will need to make alternative arrangements for receiving money and paying standing orders, direct debits etc.

Freezing of bank and building society accounts.

In some circumstances, a bank may allow a bankrupt to continue using their existing current account. However, even if the bank agrees to this, there will be an interim period, when the bank is first informed of the bankruptcy order, when the account will be frozen.

Legally, any money deposited in a bank account at the date of the bankruptcy order is an asset in the bankruptcy to be claimed by the official receiver or the trustee. In certain circumstances, the official receiver or trustee may instruct the bank to release some money held in a deposit account to the bankrupt for necessary domestic expenses. However, the balance will usually be kept by the official receiver or trustee for the benefit of the creditors.

Monies held in a savings or deposit account will usually be treated as an asset in the bankruptcy.

2.2 What happens if the bank account is overdrawn?

If, at the date of the bankruptcy order, the bank account is overdrawn, the money owed to the bank will also be a debt in the bankruptcy.

2.3 What is set-off?

If, before the date of the bankruptcy order, the debtor owes the bank money on a loan or credit card account, or has an overdraft, the bank is entitled to use the money the debtor has in another account to pay towards this debt. This is known as 'set-off'.

2.4 What if the bank account is in joint names?

If money is held in a bank account in joint names, the official receiver or trustee must decide how much of the money legally belongs to the bankrupt. Only the bankrupt's share of the money will be treated as an asset in the bankruptcy; money belonging to the other account holder will be released to them (i.e. it will not form part of the bankrupt estate). However, if the bank account is overdrawn, the bank can ask the joint account holder to pay all the money owed.

Only the bankrupt's share of money held in a joint account will be treated as an asset in the bankruptcy.

3. Can a bankrupt open and operate a current account?

3.1 The legal position

After the date of the bankruptcy order (and before discharge), the bankrupt may open a new bank or building society account but is required to tell the financial institution that they are bankrupt. It is for the financial institution to decide whether they will let the bankrupt operate a bank account and they may impose conditions and limits.

It is not illegal for an undischarged bankrupt to open a bank account.

Box 3: Obtaining credit

- An undischarged bankrupt should not apply for any overdraft or credit facilities without first informing the financial institution that they are bankrupt, or write cheques which are likely to be dishonoured.
- It is a criminal offence for an undischarged bankrupt to obtain credit of £500 or more either alone or jointly with any another person without disclosing the fact of their bankruptcy.

Although it is not illegal for an undischarged bankrupt to open a bank account, the difficulty may be in finding a bank (or building society) that will enter into a business relationship with him/her. There are various options available to the banks, for example:

- Some banks may allow the bankrupt to keep using their existing bank account after they have cleared this with the official receiver or trustee.
- If not, some banks and building societies are willing to let bankrupts open a 'basic account' into which wages could be paid (a basic cash-in cash-out account).

3.2 Alternatives to high street bank accounts

Whilst bankrupt, there are a number of possible alternatives to high street bank accounts, including:

- Credit union current accounts
- Post Office card account
- Pre-paid card accounts

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Credit union current accounts

Some credit unions offer a current account, which is very similar to a high street bank account, charging a small weekly or monthly fee (although there is no guarantee that a debit card will be offered).² To have access to these accounts the bankrupt would first have to become a member of the credit union.

Credit unions are not-for-profit community organisations run by their members who offer savings and loans services.

Post Office card account

If the bankrupt's income only consists of benefit payments, state pension and/or tax credit payments, another option may be to open a Post Office card account. This is a simple account that can only be used to receive such payments, and allows the bankrupt to withdraw cash at any Post Office branch. A benefit of this account is that the account-holder cannot go overdrawn or incur any charges.

Pre-paid card accounts

Pre-paid card accounts are usually available to undischarged bankrupts. The bankrupt will 'top up' the card by adding money to it and can use it like a debit card to spend money. Most pre-paid cards allow the bankrupt to pay their wages (and sometimes benefits) straight onto the card. Some cards also allow the bankrupt to set up direct debit payments for regular bills. The downside, however, is that these cards usually charge a monthly fee and can be expensive.

3.3 Does the trustee need to be told about a new bank account?

Whilst the bankrupt is not required to tell the official receiver or trustee about any new bank account opened after the date of the bankruptcy order (and before discharge) unless they are specifically asked, they are legally required to volunteer information about any money held in an account that is more than they need for their reasonable living expenses. The official receiver or trustee can apply to the court for an Income Payments Order (IPO) to claim the surplus amounts in the bank account for the benefit of the creditors.

Box 4: Income Payments Order (IPO)

- In brief, an IPO requires the bankrupt to make contributions towards the bankruptcy debts from his/her income.
- However, the court will not make an IPO if it would leave the bankrupt without enough income to meet his/her reasonable domestic needs.
- Alternatively, the official receiver or trustee may enter into an Income Payments Agreements (IPA) with the bankrupt. Under an IPA, the bankrupt agrees to pay a certain amount of money from his/her income to the official receiver or trustee for a specified period of time.

² Credit union current accounts are only available to people who live in certain areas of the country or work in certain jobs. The bankrupt would need to check with their local credit union if they offer a current account.

4. How long does bankruptcy last?

Box 5: Discharge from bankruptcy

- 'Discharge from bankruptcy' is the term used to describe the process that frees a person from the restrictions of bankruptcy and releases them from most of the debts they owed at the date of the bankruptcy order.
- Most bankrupts are automatically 'discharged' from bankruptcy **12 months** after the making of the bankruptcy order, even if no payments have yet been made to creditors.
- It is important to note that even after a bankrupt has been discharged, he/she may still find it difficult to open some types of bank account. For example, it may be difficult to open an account with an overdraft facility. This is because banks and building societies will conduct a credit reference search against their application.

It may take a little time for the discharged bankrupt to 'rebuild' their credit worthiness.

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