

## BANKRUPTCY PETITIONS IN THE BRS CONTEXT

### Explain to me why it is you are here?

Get petition from them.

Main things to check are:

- Does it state that it is based on a statutory demand (+ stat demand has not been set aside)?
- Is the debt properly set out and explained (with a breakdown of what is due and owing and how)?
- When did they receive it (should be 14 days before)?
  - o What is PC seeking today?

### What do you say about this?

What the Judge will assess:

S.271(1) of the Insolvency Act 1986:

Proceedings on creditor's petition

*"(1) The court shall not make a bankruptcy order on a creditor's petition unless it is satisfied that **the debt**, or one of the debts, in respect of which the petition was presented is either—  
(a) **a debt** which, having been payable at the date of the petition or having since become payable, **has been neither paid nor secured or compounded for**, or  
(b) a debt which the debtor has **no reasonable prospect of being able to pay** when it falls due.*

*(2) In a case in which the petition contains such a statement as is required by section 270, the court shall not make a bankruptcy order **until at least 3 weeks have elapsed since the service of any statutory demand under section 268.***

*(3) The court may **dismiss the petition if it is satisfied that the debtor is able to pay all his debts or is satisfied —***

*(a) that the debtor has **made an offer to secure or compound** for a debt in respect of which the petition is presented,*

*(b) that the **acceptance of that offer would have required the dismissal of the petition,** and*

*(c) **that the offer has been unreasonably refused;***

*and, in determining for the purposes of this subsection whether the debtor is able to pay all his debts, the court shall take into account his contingent and prospective liabilities.*

*(4) In determining for the purposes of this section what constitutes a reasonable prospect that a debtor will be able to pay a debt when it falls due, it is to be assumed that the prospect given by the facts and other matters known to the creditor at the time he entered into the transaction resulting in the debt was a reasonable prospect.*

*(5) Nothing in sections 267 to 271 prejudices the power of the court, in accordance with the rules, to authorise a creditor's petition to be amended by the omission of any creditor or debt and to be proceeded with as if things done for the purposes of those sections had been done only by or in relation to the remaining creditors or debts."*

Do check: have you put in any evidence (filed and served)?

Only really a handful of things they will say:

Deny (→ Don't want to pay)

→ Don't owe it

Admit → Can pay

→ Can't pay

(Deny the debt because don't want to pay:

Not a viable argument. You will need to investigate further and advise on one of the other three options...)

Deny the debt because don't owe it:

Check whether lodged notice of opposition (was it at least 5 business days before the hearing) and what it says.

When assessing whether it is credible to deny that the petition debt is due and owing the question to have in your mind is: *"is the debt disputed on grounds which are substantial?"*

Same as summary judgment real prospect of success / genuine triable issue test.

- See Maxim's talk re HMRC.
- Often is a question of whether this ought to have been a claim for damages or not: e.g. monies owed under a contract but say they did not sign it; solicitors bills have to be assessed.
  - o If there is a viable route to dispute the debt, you will want to seek directions (if no notice of opposition then may simply get an adjournment for that to be put in)
  - o Ultimate aim is to go to a full hearing (directions for evidence, then list for hearing → signpost to Advocate!)

Admit the debt and can pay:

HOW? What can you explain to PC / Judge about this?

What you need to bear in mind: reasonable period of time?

- Payments incoming (e.g. work contract) – do they have any letters about this?
- Property – are they selling, if so have they had a valuation, appointed agents, put it on the market, received offers etc?
- Money from friends / family – worth gently enquiring into substance of that (“I’ll get mum to pay” is different to “my mum wants to give me my inheritance early and has cashed in some of her pension and is going to transfer me the funds once the money has come through to her account”).
  - o Consider the length of the adjournment: what does the client need versus what they want?
  - o Bear in mind what hearing number this is (the earlier on it is and the more crystallised the payment plan, the longer you may be able to obtain)

Admit the debt but can't pay:

WHY?

What other debts do they have?

Have they taken any advice about insolvency options / encourage them to do so.

- IVA (speak to an IP, they will put together a proposal to go to creditors to pay back most or all of debts over a period of up to 5 years)
- Breathing space (debt advisor can apply for this, is a 60 day "pause" on enforcement action and running of interest, gives an opportunity to take advice about debt position)
- National Debtline / Business Debtline (for the above / other advice)
- Bankruptcy (undischarged for one year (assuming comply), all assets vest in OR and then trustee, all assets will be gathered in and realised - they will have three years to realise their home if they own it, affects ability to get credit and stays on credit file for at least 3 years, cannot act as a director, may affect ability to continue in several professions)
  - o Again, bear in mind what hearing number this is (the earlier on it is and the more sure they are of the alternative route, the longer you may be able to obtain)

Remember only really four possible outcomes from any hearing: dismiss, give directions, adjourn or bankrupt.
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*\*\*Usual disclaimer along the lines that this is a potted version of defending someone facing a bankruptcy petition and cannot and should not be cited as authoritative!\*\**