BEFORE IT'S TOO LATE

THE DEBTS BANKRUPTCY WILL NOT WIPE OUT

A practical playbook for understanding excluded debts, surviving liabilities and the questions to ask before applying for bankruptcy

England and Wales | Law and official guidance checked July 2026

The key message

Bankruptcy can provide relief from many unsecured debts, but it does not erase every liability. Some debts are not included at all. Others are included but survive discharge. Secured creditors may still enforce against the asset. New debts remain yours to pay.

Navigate Business Recovery Limited

Practical guidance for directors, business owners and individuals facing financial difficulty

How to use this playbook

This playbook is designed to help you understand a point that is often missed: bankruptcy and discharge are not the same thing as every debt being written off. The legal treatment of a liability depends on what the debt is, when the underlying obligation arose, whether it is secured, whether fraud is involved and whether another person is jointly liable.

It is particularly important to obtain advice before applying for bankruptcy where you have a home, a business, personal guarantees, joint debts, family Court liabilities, student loans, benefit overpayments, litigation claims, pensions or assets that may be received before discharge.

Important

This is a guide to personal bankruptcy in England and Wales. It does not apply to company liquidation, Scottish sequestration or bankruptcy in Northern Ireland.

The three questions that decide what happens to a debt

1. Is the liability a bankruptcy debt arising from an obligation incurred before the bankruptcy order?
2. Is the debt provable in the bankruptcy, so that the creditor can claim in the estate?
3. Will discharge release the bankrupt from personal liability for any unpaid balance?

These questions are related, but they are not identical. A debt can be provable and still survive discharge. A debt can be non provable and remain enforceable. A secured creditor can rely on its security even where a shortfall is ultimately treated as an unsecured bankruptcy debt.

At a glance: four different categories

Category	What it means	Typical examples
Provable and normally released on discharge	The creditor claims in the bankruptcy and the unpaid balance is normally released on discharge.	Credit cards, unsecured loans, trade debts, ordinary pre bankruptcy tax debts, most ordinary benefit overpayments.
Provable but not released on discharge	The creditor may claim in the bankruptcy, but the unpaid balance can remain payable after discharge.	Fraud debts, certain personal injury damages, lump sums and costs arising from family proceedings.
Non provable and not released	The debt does not participate in the bankruptcy and remains payable.	Most modern student loans, criminal Court fines, maintenance liabilities, confiscation orders, specified Social Fund loans.
Secured liabilities	The creditor may enforce against the secured asset. Any shortfall may be provable as an unsecured debt.	Mortgages, secured loans and some hire purchase or asset finance arrangements.

1. What bankruptcy does and does not do

Bankruptcy is a formal personal insolvency process. It does not apply to a limited company. Once a bankruptcy order is made, the official receiver becomes receiver and manager of the estate. A trustee may later be appointed. Property belonging to the bankrupt generally vests in the trustee, subject to statutory exclusions and protections.

Most bankruptcy restrictions end automatically on discharge, usually after 12 months. Discharge releases the bankrupt from most bankruptcy debts, but the trustee may continue to realise assets that formed part of the estate. An Income Payments Agreement or Income Payments Order can also continue after discharge until its term ends.

Do not confuse discharge with the end of the estate

Discharge usually ends the personal restrictions and releases most debts. It does not automatically return assets to you, stop the trustee dealing with property already vested in the estate or end an existing Income Payments Agreement or Order.

2. Debts that are usually included and released

The definition of a bankruptcy debt is deliberately wide. It generally includes liabilities existing at the date of the order and future or contingent liabilities arising from an obligation incurred before the order. Common examples include:

- Credit cards and overdrafts.
- Unsecured personal loans.
- Ordinary trade and supplier debts for which you are personally liable.
- Most ordinary tax liabilities arising before the bankruptcy order.
- Rent, utilities and council tax liabilities arising before the relevant bankruptcy date, subject to the facts and charging arrangements.
- Most ordinary benefit and tax credit overpayments that were not obtained by fraud.
- A mortgage or secured loan shortfall arising from an obligation entered into before bankruptcy.
- A liability under a personal guarantee given before bankruptcy, even where demand or crystallisation occurs later, subject to the guarantee terms.

The precise treatment can be affected by dates, contractual terms, Court orders and whether the liability arose from a pre bankruptcy obligation. Do not assume that a debt is excluded merely because the amount has not yet been calculated or demanded.

3. Criminal Court fines, forfeitures and confiscation orders

A fine imposed following a criminal conviction is not normally a provable debt and is not released by discharge. The statutory definition includes certain pecuniary penalties, forfeitures and compensation payable under a conviction. Confiscation orders under proceeds of crime legislation are also outside the ordinary bankruptcy release.

Not every charge described informally as a “fine” has this status. Civil parking penalty charges, some civil penalties and contractual charges may be provable. The source of the liability and the legal instrument imposing it must be checked.

Practical check

Obtain the actual notice, order or conviction. The label used in correspondence is not enough to determine whether the debt survives bankruptcy.

4. Student loans

Most student loans encountered today are not provable in bankruptcy and are not released on discharge. The position has changed historically, so the date of the bankruptcy order and the legislation under which the loan was made can matter in older cases.

Bankruptcy should not be presented as a method of clearing modern student loan liabilities. Normal repayment rules will continue to apply, usually by reference to income and the relevant student loan plan.

5. Family proceedings, maintenance and child support

Family liabilities require careful separation into different categories. Maintenance liabilities and obligations under child support legislation are generally not provable and are not released on discharge. They remain payable.

A lump sum payment or an order to pay costs arising from family proceedings may be provable in the bankruptcy, but it is not normally released on discharge unless the Court directs otherwise. Not every debt connected with a former spouse or partner automatically survives. The exact wording and legal basis of the order must be reviewed.

Do not rely on a broad description

“Money owed to my former spouse” is not a legal category. Obtain the sealed order and identify whether the liability is maintenance, child support, a lump sum, costs or an ordinary contractual debt.

6. Debts arising from fraud or fraudulent breach of trust

A bankruptcy debt incurred through fraud, or where payment was avoided through fraud, is not released on discharge. The same applies to certain liabilities arising from a fraudulent breach of trust in which the bankrupt participated.

Fraud is a serious legal conclusion. A creditor merely alleging dishonesty does not automatically make the debt survive. The issue may need to be established by agreement, an existing Judgment or a further Court decision. The relevant conduct must involve actual dishonesty, not simply negligence, poor judgment or a contractual breach.

Why this matters

A creditor may prove in the bankruptcy and still pursue the unpaid balance after discharge if the statutory fraud exception applies. The limitation position and any existing Judgment should also be reviewed.

7. Personal injury damages

A liability to pay damages for death or personal injury caused by negligence, nuisance, breach of duty or relevant consumer protection law is generally provable, but is not released on discharge unless the Court directs otherwise.

This exception concerns the bankrupt's liability to compensate another person. It should not be confused with the bankrupt's own personal injury claim, which raises separate questions about whether the claim or its proceeds vest in the trustee.

8. Social Fund budgeting and crisis loans

Specified obligations arising from Social Fund budgeting loans and crisis loans are not provable. Where the bankruptcy petition or application was presented on or after 19 March 2012, those liabilities are not released on discharge.

This category should not be confused with ordinary benefit overpayments, which are generally provable unless the overpayment arises after the bankruptcy order. Fraudulent benefit overpayments may be provable but survive discharge because of the fraud exception.

9. Benefit and tax credit overpayments

Older guides often state that benefit or tax credit overpayments are automatically excluded. That is no longer a safe general statement. Ordinary pre bankruptcy overpayments are generally contingent liabilities and are provable in bankruptcy, whether recovery action began before or after the order.

The important exceptions are:

- Fraud: an overpayment obtained through fraud may not be released on discharge.
- Post bankruptcy overpayments: amounts overpaid after the bankruptcy order are generally new liabilities and remain payable.
- Recovery method: the underlying legal and administrative route should be checked, particularly where deductions are being made from ongoing benefits.

10. Mortgages, secured loans and mortgage shortfalls

Bankruptcy does not remove a lender's security. A mortgage lender may rely on its charge, take possession where the legal requirements are met and sell the property. If you wish to remain in the property, payments will normally need to continue and the lender must be willing to maintain the arrangement.

If the property is sold for less than the secured debt, the shortfall usually becomes an unsecured claim in the bankruptcy where the mortgage obligation was incurred before the bankruptcy order. The lender may prove for that shortfall. The bankrupt is normally released from the unpaid provable balance on discharge, unless a statutory exception applies.

Warning about new acknowledgments

Do not sign a fresh deed, repayment agreement or acknowledgment of a mortgage shortfall after bankruptcy without legal advice. A new post bankruptcy obligation may create a fresh liability.

11. Joint debts

Bankruptcy only deals with the bankrupt person's liability. It does not release a joint borrower, spouse, partner or guarantor. Where liability is joint and several, the creditor may pursue the non bankrupt person for the full unpaid balance, subject to the contract and any payments received from the bankruptcy estate.

This is particularly important for joint mortgages, joint bank loans, household debts and business borrowing. A bankruptcy that protects one person may increase the pressure on another.

12. Personal guarantees and company debts

A limited company's debts do not automatically become the director's personal debts. A director becomes personally exposed only where there is a separate legal basis, such as a personal guarantee, joint borrowing, a director's loan account, a tax liability, a Judgment or liability established through misfeasance, fraud or another personal claim.

A guarantee given before bankruptcy may create a present or contingent bankruptcy debt, even if the company defaults or the lender makes demand later. The wording of the guarantee, the date it was given and any later variation or acknowledgment should be reviewed.

For directors

Do not assume that the liquidation of your company either automatically makes you liable or automatically releases you. The company liability and your personal liability are legally separate questions.

13. Debts incurred after the bankruptcy order

Bankruptcy does not protect you from new debts. Credit, rent, utilities, tax, benefit overpayments and other liabilities arising after the bankruptcy order remain payable. The fact that the underlying relationship existed before bankruptcy does not always decide the issue. The date and source of the legal obligation must be examined.

14. Assets and income are a separate issue

A debt being included in bankruptcy does not mean the process has no financial consequences. The trustee may claim and realise property forming part of the estate. This can include a beneficial interest in a home, shares, business interests, money owed to you, valuable possessions and some legal claims.

Most approved pension rights are generally excluded from the bankruptcy estate, but pension income may be taken into account for an Income Payments Agreement or Order. Excessive pension contributions can be challenged in certain circumstances. An undrawn pension and the ability of a trustee to compel access require specialist analysis.

An inheritance or other property to which you become entitled before discharge may be claimed as after acquired property, even if the money is received later. The date the entitlement arises can be decisive.

15. Seven dangerous bankruptcy myths

"Bankruptcy writes everything off immediately." No. Most debts are dealt with through the estate and release normally occurs on discharge. Some liabilities survive and secured rights remain.

"If a debt is not listed, it is not included." Usually incorrect. A qualifying bankruptcy debt does not necessarily fall outside the process merely because it was omitted, although deliberate non disclosure can create serious problems.

"All fines survive bankruptcy." Only certain criminal Court fines and related liabilities. Many civil penalties and charges are provable.

"Benefit overpayments always survive." Ordinary pre bankruptcy overpayments are generally provable. Fraud and post bankruptcy overpayments require different treatment.

"My company debts become mine when the company fails." Not automatically. A separate basis of personal liability is required.

“My spouse is protected because I am bankrupt.” No. A joint borrower or guarantor may remain liable for the whole balance.

“Discharge means the trustee must stop dealing with my assets.” No. Assets already vested in the estate may continue to be realised after discharge.

16. The NBR pre bankruptcy decision playbook

Before applying for bankruptcy, work through these steps. The objective is not simply to count your debts. It is to understand which liabilities will remain, which assets may be lost and whether another solution could produce a better result.

1. Build a complete creditor schedule

List every creditor, the balance, the original agreement date, whether it is joint, secured, guaranteed, disputed or connected with a Court order.

2. Separate company and personal liabilities

Identify which debts belong to a company and the exact legal basis for any personal exposure.

3. Obtain the underlying documents

Collect guarantees, loan agreements, mortgage statements, family orders, Judgments, benefit decisions, student loan records and penalty notices.

4. Identify excluded and surviving debts

Mark criminal fines, maintenance, student loans, fraud allegations, personal injury damages, Social Fund loans and post bankruptcy liabilities for specialist review.

5. Map the assets at risk

Include property, beneficial interests, vehicles, shares, money owed to you, claims, trusts, inheritances, digital assets and business interests.

6. Assess income and household needs

Prepare a realistic household budget and identify income that may be available for an Income Payments Agreement or Order.

7. Check the effect on other people

Consider joint borrowers, guarantors, business partners, employees, landlords, family members and anyone living in jointly owned property.

8. Compare the alternatives

Consider negotiation, a debt management plan, refinancing, an Individual Voluntary Arrangement, a Debt Relief Order, Breathing Space or another tailored solution.

9. Get advice before signing anything

Do not enter fresh acknowledgments, variations, security documents or repayment agreements without understanding whether they create a new liability.

10. Record the advice and decision

Keep a written record of the information considered, the alternatives and why bankruptcy was selected.

17. Documents to gather before seeking advice

- A current list of all personal and company creditors.
- Loan, overdraft, credit card and finance agreements.
- Personal guarantees and indemnities.
- Mortgage statements and property valuations.
- Joint borrowing documents.
- Court Judgments, orders, fines and enforcement notices.
- Family Court orders and child support assessments.
- Student loan statements.
- Benefit and tax credit overpayment decisions.
- HMRC statements and tax returns.
- Bank statements for at least the previous 12 months.
- Details of pensions, trusts, inheritances and life policies.
- Details of shares, business interests and director's loan accounts.
- Evidence of assets transferred, sold or gifted in recent years.
- A household income and expenditure schedule.
- Details of ongoing litigation or claims you may have against others.

18. Bankruptcy is not the only option

The correct solution depends on your debt level, assets, income, creditor profile and objectives. Alternatives may include:

- Direct negotiation or a structured settlement.
- A debt management plan.
- A statutory Breathing Space of up to 60 days while regulated debt advice is obtained.
- An Individual Voluntary Arrangement.
- A Debt Relief Order, where the statutory eligibility criteria are met.
- Refinancing or an orderly sale of assets.
- A negotiated settlement of personal guarantees.
- A company restructuring or formal company insolvency process where the problem sits primarily within a business.

An alternative is not automatically better merely because it avoids bankruptcy. It must be affordable, realistic and capable of dealing with the liabilities that matter most.

Speak to Vee before it is too late

Bankruptcy can be the right solution, but only when the consequences are understood. An early review can identify debts that will remain payable, assets that may be exposed, personal guarantees, joint liabilities and alternatives that may preserve more value.

Book a confidential meeting with Vee Bharkhada: www.navigatebr.com/book-a-meeting-with-vee/

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Legal framework and official sources

This playbook has been prepared by reference to the law and official guidance in force and publicly available as at July 2026, including:

- Insolvency Act 1986, including sections 281, 283, 306, 307, 310, 310A, 382 and 383.
- Insolvency (England and Wales) Rules 2016, including rule 14.2.
- Welfare Reform and Pensions Act 1999.
- Education (Student Loans) (Repayment) Regulations 2009.
- The Insolvency Service Guide to Bankruptcy.
- The Insolvency Service Technical Guidance for Official Receivers, including chapters on creditors and liabilities, pensions, property, rights of action and income payments.
- GOV.UK guidance on bankruptcy discharge, Breathing Space and alternative debt solutions.

Disclaimer

This playbook is provided for general information and educational purposes only. It is not legal advice, financial advice, regulated debt counselling or advice on the merits of any particular bankruptcy application.

It applies only to personal bankruptcy in England and Wales. It does not cover sequestration in Scotland, bankruptcy in Northern Ireland, corporate insolvency or every category of debt or asset.

Bankruptcy law is technical and fact sensitive. The treatment of a liability may depend on the date and wording of an agreement, the nature of a Court order, the source of the obligation, whether the debt is secured, whether fraud is alleged or established and whether the liability is joint, contingent or incurred after the bankruptcy order.

Navigate Business Recovery Limited is not a firm of solicitors and does not conduct reserved legal activities. Where legal advice, Court representation, regulated debt advice or the conduct of litigation is required, advice should be obtained from an appropriately authorised solicitor, barrister, insolvency practitioner or regulated debt adviser.

No person should apply for bankruptcy, stop making payments, dispose of assets, sign a fresh agreement or take any other step solely in reliance on this playbook. Navigate Business Recovery Limited accepts no responsibility for loss arising from reliance on the information contained in it.

Law and official guidance checked as at July 2026. Future legislative, regulatory or case law developments may alter the position.

Where there’s a will there’s a way. Where there’s Vee there’s ALWAYS a way.