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# Myerson **Family**

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**Our Guide to Insolvency and Divorce**

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# Welcome

We understand the complexities of modern life and, therefore, everything we do is ultimately about you, and it is important you get to know the team that will be working with you every step of the way. It's a deep source of satisfaction that so many clients choose Myerson as their trusted adviser.

## Why Myerson?

Our highly experienced and discreet family lawyers, provide clear and supportive legal advice, tailored towards your individual family needs.

As a Top 200 UK Law Firm, we are also proud to be ranked as '**Top Tier**' in the prestigious international directory **The Legal 500**, and commended by The Times '**Best Law Firms 2023**'. This means you can be certain that you will be receiving the highest quality legal advice.

Being a full-service law firm means we are well placed to provide wide-ranging, tailored legal advice to meet your individual needs. We work closely with other departments internally including Real Estate, Corporate, Commercial and Private Wealth Lawyers to ensure that your needs are protected comprehensively.

You can find out more about our **Family Team** by clicking [here](#).



# Insolvency and Divorce

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Divorce and insolvency are both emotionally and financially challenging events. When they occur together, the legal and practical implications become more complex.

Insolvency occurs when an individual cannot meet their debts as they fall due, or their liabilities exceed their assets. There are several legal mechanisms to deal with insolvency, including bankruptcy and an individual voluntary arrangement (“IVA”).

When one or both spouses are insolvent or become insolvent during or after divorce, it can directly affect financial settlements, the division of assets, and ongoing maintenance.

## Impact of a bankruptcy order on divorce

Bankruptcy is one way for individuals to deal with debts they cannot pay. The bankruptcy process ensures that your assets are shared among those you owe money to (creditors).

When an individual is declared bankrupt, assets such as property are no longer within the control of the Family Court but vest in the Trustee in Bankruptcy.

When a bankruptcy order is first made, an Official Receiver usually handles the bankruptcy. An Official Receiver is an officer of the court who works for the Insolvency Service. The Official Receiver will be the Trustee in Bankruptcy unless an Insolvency Practitioner takes over that role. The role of a Trustee in Bankruptcy is to sell any of your assets except for any reasonable domestic items and items needed for your job.



If one spouse becomes bankrupt, any joint assets are subject to bankruptcy. However, Trustees don't have rights over the assets of your spouse who isn't bankrupt if they own them legally in their sole name. Any transfer of property (i.e. to your solvent spouse) after a bankruptcy petition has been presented will be void.

Therefore, a solvent spouse may find themselves competing with creditors and in conflict with the Trustee in Bankruptcy over what should happen with certain assets.

## The impact of bankruptcy on the family home

The family home often represents a large piece of the matrimonial pot to be divided on divorce. If the family home is owned jointly and a spouse becomes bankrupt, the Trustee in Bankruptcy will gain control of this spouse's share. The Trustee may sell the family home to discharge debts if the solvent spouse cannot buy out the bankrupt spouse's share.

However, there are exceptional circumstances where the Family Court will consider delaying a sale of the family home, such as where you have young children living in the home who would face significant disruption if made to move, or where you are able to demonstrate to the court that you would face exceptional hardship if forced to leave the home. But it is important to be aware that creditors' claims take priority.



# Impact of bankruptcy on pensions

A pension sharing order on divorce allows a spouse to receive, in their own right, benefits that are directly debited from the other spouse's pension scheme. It allows for a clean break between the parties with respect to pensions.

Orders for pension sharing are not affected by bankruptcy. If the spouse with the pension is declared bankrupt, the Family Court's power to grant a pension sharing order is unaffected.

If the spouse who is to benefit under the pension sharing order is declared bankrupt, they would be able to benefit from the order without the pension vesting in the Trustee in Bankruptcy.

However, if a pension is in payment, a Trustee in Bankruptcy can seek an income payments order under the Insolvency Act 1986.

If excessive payments have been made to the pension in order to deprive creditors of the money they're owed, the Trustee in Bankruptcy could make an application to recover those excessive payments.

# Impact of bankruptcy on child maintenance payments

A bankrupt spouse cannot include any child support debt within the bankruptcy, meaning that the payments cannot be discharged in bankruptcy. A bankrupt individual is still legally liable for the debt and must continue to make payments.

If the bankrupt spouse's bank account is frozen or closed after a bankruptcy order and child maintenance is paid by direct debit, they will need to notify their ex-partner and the Child Maintenance Service.

Because maintenance payments are assessed by considering each party's income and earning capacity, ability to pay and overall financial position, the bankrupt's reduced income may lead to a reassessment of the amount they



are required to pay for child maintenance.

## Impact of bankruptcy on lump sum payments

Lump-sum orders on divorce order that one party pays a certain amount to the other party. These are a provable debt in a person's bankruptcy, meaning that if a spouse becomes bankrupt and an agreed lump sum is unpaid, the solvent spouse becomes an unsecured creditor. They are entitled to payments from the bankrupt's estate, however, they may not receive the full amount owed as they will be competing alongside other creditors.

Once a bankruptcy order is made, the court can no longer order the bankrupt spouse to transfer assets to the solvent spouse, as they are under the control of the Trustee in Bankruptcy. This means it will be harder to get any lump sum payments.

## The timing of bankruptcy

If a spouse is declared bankrupt before the divorce is finalised, the court will have limited powers to allocate assets as it might have done otherwise. This will often leave the solvent spouse with a less favourable outcome than they had hoped for.

If a spouse is declared bankrupt after the divorce is finalised, there may be challenges in enforcing certain orders against the bankrupt spouse for payments, or lump sum payments, as the solvent spouse will be added to the bottom of their list of creditors. On the other hand, it might keep assets such as the family home out of the Trustee's reach.



# Impact of an individual voluntary arrangement on divorce

An IVA is a legally binding agreement with creditors to pay all or part of your debts. You agree to make regular payments to an Insolvency Practitioner (also known as an IVA supervisor) who will divide this money between your creditors.

A sole IVA is an individual's IVA, whereas an interlocking IVA is a joint arrangement where two separate individuals' debts are managed through one combined plan.

Divorce impacts an IVA as it can affect your ability to keep up with an IVA, especially if household income changes and bills/expenses change, i.e. you're no longer splitting bills with your partner.

If you have a sole IVA and repayments were based on shared household costs, you should contact your Insolvency Practitioner to discuss a potential reduction in payments, a payment break or a variation of the terms.

If your ex-spouse has a sole IVA, on divorce, you will become a creditor alongside all other creditors.

You may be able to split an interlocking IVA into two individual agreements, with each person taking on their share. If splitting isn't viable, an IVA may be terminated and replaced with individual debt solutions.

If an IVA cannot continue, you may be able to enter bankruptcy or a debt relief order.

## Impact of an IVA on the family home

If you decide to sell your home on divorce during your IVA, you can retain all of your share of the equity under the 2025 IVA Protocol. However, if your IVA was approved before July 2025, your IVA Proposal will outline how your home will be treated.



# Impact of an IVA on child maintenance

An IVA does not eliminate the obligation to pay child maintenance. Child maintenance is considered a priority debt and continues regardless of other financial agreements.

In *CMEC v Beesley* [2010] EWHC 485 (Ch), the court held that the Child Maintenance Enforcement Commission is a creditor for the purposes of an IVA in connection with child support maintenance.

Similarly, if you are the recipient of child maintenance payments and enter into an IVA, those payments should still be considered income and may be taken into account when calculating your available funds for the IVA.

## IVA and divorce payments

An IVA cannot cover legal fees or new debts incurred after the IVA was approved. New financial obligations, including divorce-related costs, cannot be added to your existing IVA.

## The timing of the IVA

If the IVA is already in place before divorce proceedings start, the Family Court must recognise the IVA as a binding legal process. The individual with the IVA cannot freely dispose of assets (i.e. transfer property as part of the divorce) without the Insolvency Practitioner's consent. Debts included in the IVA are treated as part of the debtor's insolvency estate, not as material assets for division.

If the IVA is entered into after divorce proceedings, an IVA cannot generally overturn a financial order. If complying with the financial order would cause unfairness or impossibility, the individual with the IVA may seek a variation or stay of the order.

If the IVA happens during divorce proceedings, this can cause complications. For example, the individual's financial position has changed so their Form E in financial disclosure would need to be updated. Any draft financial settlement may need to be revisited as the IVA binds the debtor's future income and



assets. Once an IVA is approved, the debtor cannot sell or transfer their assets without approval from the Insolvency Practitioner. Finally, the court may delay making a final order until the implications of the IVA are clear.

## Fraud or misrepresentation during divorce proceedings

Divorce proceedings require both parties to make full financial disclosure. It is the starting point to determine how those assets will be divided. Financial disclosure includes setting out what property you own, the value of any investments, bank/building society accounts, pensions, business interests, etc., along with any liabilities.

If a spouse lies or misrepresents the extent of their wealth, there may be a claim for fraud or misrepresentation. The court may award against the party attempting to withhold information, such as forcing them to pay the additional legal fees incurred to investigate and deal with the non-disclosure. The party withholding information could also be liable for contempt of court.

Examples of fraud or misrepresentation include financial resources or properties being deliberately kept out of divorce negotiations to try and deprive the other spouse of their fair share.

Another example is one spouse transferring their assets into the other spouse's name before they become bankrupt to try and avoid those assets being available to creditors.

A transaction at undervalue is a transaction between two parties for either no consideration, or the consideration is significantly less than the asset's value. Transactions at undervalue can be set aside by the Family Court under S.423 of the Insolvency Act 1986. They can also be set aside per S.37 of the Matrimonial Causes Act 1973, if it's satisfied that the transaction was made with the intention of defeating the other party's financial claim on divorce, and the transaction is so detrimental to the applicant's case that it makes that claim negligible or virtually non-existent as a result.

Under S.37, the court can make freezing orders which prevent one party from dealing with certain assets until the financial issues on divorce have been resolved. For example, the court can prevent a party from moving, selling or hiding the assets, whether matrimonial or non-matrimonial. The court also has power to bring back assets that have already been disposed of.

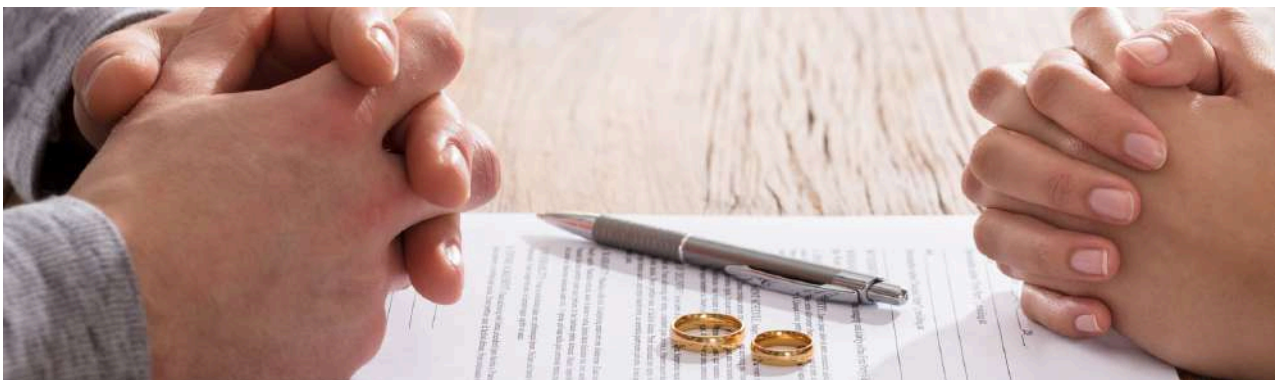


# Practical steps if you or your spouse become insolvent

- Seek legal advice early, ideally from a firm specialising in insolvency and family law like Myerson.
- Timing is important – if bankruptcy is a possibility, parties must act swiftly in financial remedy proceedings to protect their assets before they fall into the bankruptcy estate.
- Get in touch with your Insolvency Practitioner if you have an IVA and are about to go through a divorce.
- Be transparent about all assets, debts, and insolvency proceedings throughout the insolvency and divorce processes. Concealing bankruptcy can severely impact the outcome of a case and result in significant consequences for the concealing party.

## How a solicitor can help

- A solicitor can provide advice on managing divorce and insolvency simultaneously, ensuring that you are meeting your legal duties. They can support you through the insolvency and divorce processes and proceedings.
- A solicitor can negotiate and liaise with the Insolvency Practitioner, Trustee in Bankruptcy, creditors and opposing party, as well as the court.
- They can also consider what the party's interests in various assets are (such as property) and secure such assets in the event of insolvency during the divorce procedure. This can help to minimise the impact on the bankrupt's spouse and children.



# You're in safe hands!

If you would like further information about how we can help you with **Insolvency and Divorce**, or if you have any questions, please don't hesitate to contact a member of our **Family Law Team** today.

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