

WBL Logbook Sheet Template

Competency e.g. 1	Learning Outcome e.g. 1.1	Example Number
1	1.4	2
Evidence provided		
e.g. letter to client dated 01.01.2017, Telephone attendance note dated 01.01.2017		
<ol style="list-style-type: none"> 1. Print out from Practical Law in respect of reviewable transactions 2. Section 339 of the Insolvency Act 1986 3. Letter Before Claim dated 6 July 2020 		
Explain how the example meets the learning Outcome and how the evidence shows this		
<p>Identify a situation in which you need to undertaken legal research:</p> <p>I was instructed by a Trustee in bankruptcy to take recovery action against an associate of the bankrupt. My client believed that the bankrupt had made attempts to gift her assets to the associate so that they did not fall within the bankruptcy. In particular, the “gift” in this matter was the bankrupt’s vehicle.</p> <p>I was unsure of the legal basis upon which a claim could be based for recovery of the vehicle / gift and therefore I had to undertake some legal research before drafting the Letter Before Claim.</p> <p>Identify the sources you need to undertake the research:</p> <p>I used Practical Law to consider the basis of any claims the Trustee / my client would have against the bankrupt’s associate which pointed me to the correct legislation – ie The Insolvency Act 1986. I then considered the relevant sections of the Insolvency Act 1986 which I obtained from www.legislation.gov.uk (in this matter, Section 339 of the Insolvency Act 1986 applied).</p> <p>Undertake relevant and up to date research and supply that research as part of your evidence:</p> <p>I have attached a copy of the relevant page of Practical Law and the relevant section of the Legislation which I identified as the basis for my client’s claim.</p> <p>Apply the finding of your research to the matter you are dealing with and provide evidence of your application of that research:</p> <p>After identifying the relevant legislation and legal basis upon which my client could bring a claim for recovery of the vehicle, I drafted a Letter Before Claim to the associate making demand for repayment of the true value of the vehicle, making reference to the relevant sections of the Insolvency Act 1986 (ie Section 339).</p> <p>1.4 Example 2 – Logsheets</p>		
Reflection and evaluation		
Describe what you learnt from the activity you undertook to meet the Learning Outcome. You may want to complete this section at a later date once you have had time to reflect on your practice and experience.		

If I am unsure of the relevant legal basis for a claim, I am aware of the on-line legal research sources which can be utilised to ensure that any claim is brought on the correct premise and, that my client has a legal entitlement to the recovery action it requires.

Date work completed: (i.e. evidence date)	06/07/2020	
Applicant's Name Please print name	Applicant's signature I confirm that the work within the evidence is my own work	Date



Individual insolvency procedures: **bankruptcy**: **reviewable transactions** in **bankruptcy**

by *Practical Law Restructuring and Insolvency*

Practice notes | **Maintained** | England, Wales

A note on the procedures and powers available to a trustee in **bankruptcy** under the Insolvency Act 1986 which enable the adjustment of antecedent **transactions** and the protection of the bankrupt's assets for the benefit of their creditors.

This note covers **transactions** at an undervalue, preferences, extortionate credit **transactions**, the recovery of excessive pension contributions, **transactions** defrauding creditors and the avoidance of general assignments of book debts.

Scope of this note

This note considers the powers of a *trustee in bankruptcy* to:

- Protect property in the interests of the bankrupt's estate.
- Challenge antecedent **transactions** entered into by a bankrupt before the making of a **bankruptcy** order (**reviewable transactions**).

The procedures are prescribed in the *Insolvency Act 1986* (IA 1986).

For information about **bankruptcy** in general, see *Practice note, Individual insolvency procedures: overview* and *Practice note, Individual insolvency: bankruptcy*.

Reviewable transactions: overview

Following the making of a **bankruptcy** order, certain types of antecedent **transaction** (a **transaction** entered into by the bankrupt before **bankruptcy** commences) may be challenged under provisions in the *IA 1986*. Collectively, these are known as **reviewable transactions**.

The powers to challenge antecedent **transactions** exist to:

- Protect the *pari passu* principle of asset distribution (that is, that the available assets of a bankrupt must be shared equally among the *unsecured creditors*).
- Achieve the best recovery for the **bankruptcy** creditors.

The various ways in which a **transaction** may be challenged are prescribed by the *IA 1986*. They are:

- **Transactions** at an undervalue (*section 339*).
- Preferences (*section 340*).
- Excessive pension contributions (*section 342A*).
- Extortionate credit **transactions** (*section 343*).
- **Transactions** defrauding creditors (*section 423*).

In most cases, the trustee in **bankruptcy** challenges a **transaction** by applying to court. The court has a wide discretion to undo the effect of the **transaction** (for example, by ordering the return of assets or an equivalent value payment to the bankrupt's estate).

Main grounds of challenge: overview

The tables below provide a summary of the main grounds of challenge under the *IA 1986*.

Transactions at an undervalue

Conditions for successful challenge	<p>The bankrupt transferred an asset to another party as a gift or otherwise for no consideration, in consideration of marriage or for significantly less than the asset's true value within five years of either the date of presentation of the petition or the date that the bankruptcy application was made and the bankrupt was insolvent at the time of the transaction or became insolvent as a result.</p> <p>The bankrupt's insolvency is presumed where the transaction was with an associate (unless the party is an associate solely by reason of being an employee) (see <i>Associate: definition</i>).</p> <p>The bankrupt transferred an asset to another party as a gift or otherwise for no consideration, in consideration of marriage or for significantly less than the asset's true value within two years of the date of the presentation of the petition or the date that the bankruptcy application was made.</p>
Timing issues	<p>Any transaction in the five-year period before the presentation of the bankruptcy petition or the date that the bankruptcy application was made, provided the bankrupt was insolvent at the time or became insolvent as a result (insolvency being presumed if the transaction was with an associate) or any transaction within the two-year period of either the date of presentation of the petition or the date that the bankruptcy application was made, irrespective of the bankrupt's solvency.</p> <p>The applicable limitation period depends on the remedy sought. If the claim is for a sum of money it is six years. Otherwise, the limitation period is 12 years. (<i>Sections 8-9, Limitation Act 1980 (LA 1980)</i>.)</p>
Who may bring a challenge?	<p><i>Official receiver.</i></p> <p>Trustee in bankruptcy.</p>

Preference

Conditions for successful challenge	<p>The transaction put the creditor, <i>surety</i> or guarantor of debts or liabilities in a better position, in the event of bankruptcy, than it would otherwise have been in, had that transaction not taken place.</p>
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	<p>The bankrupt was influenced by the desire to prefer the creditor. This intention is presumed where the transaction was with an associate (unless the party is an associate solely by reason of being an employee) (see <i>Associate: definition</i>).</p> <p>The bankrupt was insolvent at time of the transaction or became insolvent as a result of the transaction.</p>
Timing issues	<p>Any transaction during the six-month period before the presentation of the petition (or date that the bankruptcy application was made). If the transaction is with an associate, any transaction within two years of the presentation of the petition (or date that the bankruptcy application was made) or if the transaction is also a transaction at an undervalue, one which took place within five years of the presentation of the petition (or date that the bankruptcy application was made).</p> <p>The applicable limitation period depends on the remedy sought. If the claim is for a sum of money it is six years. Otherwise, the limitation period is 12 years. (<i>Sections 8-9, LA 1980</i>.)</p>
Who may bring a challenge?	<p>Official receiver.</p> <p>Trustee in bankruptcy.</p>

Extortionate credit **transaction**

Conditions for successful challenge	<p>The terms of the credit transaction either require the bankrupt to make grossly exorbitant payments or otherwise grossly contravene the ordinary principles of fair dealing.</p>
Timing issues	<p>Any transaction providing credit to the bankrupt made in the three years before the commencement of the bankruptcy (being the date that the bankruptcy order is made, not when the petition is presented or bankruptcy application made) (<i>section 278, IA 1986</i>).</p> <p>The applicable limitation period depends on the remedy sought. If the claim is for a sum of money it is six years. Otherwise, the limitation period is 12 years. An application, if necessary, would appear to have a 12-year limitation period in this case. (<i>Sections 8-9, LA 1980</i>.)</p>
Who may bring a challenge?	<p>Official receiver.</p> <p>Trustee in bankruptcy.</p>

Excessive pension contributions

Conditions for successful challenge	<p>The trustee in bankruptcy must show the following:</p> <ul style="list-style-type: none"> • An intention on the part of the individual to put assets beyond the reach of creditors. • Excessive contributions with regard to the individual's circumstances. • Unfair prejudice to creditors.
Timing issues	<p>There appears to be no limit on how far back the trustee in bankruptcy can go to claim excessive pension contributions.</p> <p>The applicable limitation period would appear to be six years as this is a claim for money (<i>sections 8-9, LA 1980</i>).</p>
Who may bring a challenge?	<p>Official receiver.</p> <p>Trustee in bankruptcy.</p>

Avoidance of general assignments of book debts

<p>Conditions for successful challenge</p>	<p>Where a person is engaged in business and makes a general assignment of his existing or future book debts before being declared bankrupt, the assignment is void against the trustee in bankruptcy as regards book debts that were not paid before the presentation of the petition, unless the assignment has been registered under the <i>Bills of Sale Act 1878</i>.</p> <p>General assignment does not include:</p> <ul style="list-style-type: none"> • An assignment of book debts due at the date of the assignment from a specified debtor; or of debts becoming due under a specified contract. • An assignment of book debts included in a transfer of a business made in good faith and for value. • An assignment of assets of the benefit of creditors generally.
<p>Timing issues</p>	<p>The applicable limitation period depends on the remedy sought. If the claim is for a sum of money it is six years. Otherwise, the limitation period is 12 years. An application, if necessary, would appear to have a 12-year limitation period in this case. (<i>Sections 8-9, LA 1980</i>.)</p>
<p>Who may bring a challenge?</p>	<p>Official receiver. Trustee in bankruptcy.</p>

Transactions defrauding creditors

<p>Conditions for successful challenge</p>	<p>The transaction was entered into at an undervalue for the purpose of putting assets beyond the reach of a creditor, so as to frustrate an actual or potential claim that the creditor has against the bankrupt.</p>
<p>Timing issues</p>	<p>Any transaction at an undervalue entered into by the bankrupt.</p> <p>The applicable limitation period depends on the remedy sought. If the claim is for a sum of money it is six years. Otherwise, the limitation period is 12 years. (<i>Sections 8-9, LA 1980</i>.) The limitation period can be postponed under <i>section 32(2)</i> of the LA 1980. As the setting aside of the transaction will be claimed in the relief, a 12-year limitation period should generally apply.</p>
<p>Who may bring a challenge?</p>	<p>Official receiver. Trustee in bankruptcy. Any other party prejudiced by a transaction (with the court's permission).</p>

Procedure for challenging a **reviewable transaction**

Where an application to court is required (as in relation to **transactions** at an undervalue, preferences, extortionate credit **transactions** and **transactions** defrauding creditors), it is almost inevitable that the matter will be determined at a full hearing.

The determination of a claim relating to a **reviewable transaction** generally requires the court to fully consider the relevant evidence. The *summary judgment* procedure will rarely, if ever, be appropriate to determine such a claim (*Philips and another v McGregor-Paterson [2009] EWHC 2385 (Ch)*; see *Legal update, Is summary judgment ever appropriate in insolvency claims?*).

An application to court in insolvency proceedings is made under Part 1 of the IR 2016, specifically Chapter 8 (*rule 1.35, IR 2016*).

For more detail about the application procedure, see *Practice note, How to make a court application in insolvency proceedings*.

Business and Property Courts of England and Wales

The specialist civil courts and the lists of the Chancery Division have been known as the Business and Property Courts of England and Wales (B&PCs) since June 2017.

The B&PCs act as a single umbrella for the specialist courts across England and Wales, allowing for more flexible cross-deployment of judges with suitable expertise to sit on appropriate business and property cases. They incorporate courts the courts of the Chancery Division (including insolvency).

For more information, see *Legal update, Introduction of Business and Property Courts of England and Wales from June 2017*.

Insolvency Express Trials pilot scheme expired

The Insolvency Express Trials (IET) pilot scheme operated in the B&PCs from 1 April 2016 until 6 April 2020 for proceedings before the Insolvency and Companies Courts (ICC) judges (formerly known as the **Bankruptcy** Registrars).

The IET was designed to deal with simple applications made to an ICC judge:

- Which could be disposed of in no more than two days.
- Which required limited directions (as opposed to case management) and disclosure of documents.
- Where the costs of each party did not £75,000 (excluding VAT and court fees but including any conditional fee agreement uplift).

Practitioners who dealt with court applications in **bankruptcy** matters in the B&PCs had to consider whether the IET applied. If it did, compliance with additional procedure was set out in Practice Direction 51P.

Costs management, including costs budgets, were expressly excluded from applications that were subject to the IET pilot.

Electronic filing in High Court

Electronic court filing (known as CE-File) in the Rolls Building in the High Court in London is operating as a pilot scheme until 6 April 2021 (confirmed in *113th Update: Practice Direction Amendments*).

The procedure is set out in Civil Procedure Practice Direction 51O (PD 51O), summarised in *Practice note, Electronic working in the UK courts*.

Using the CE-File is mandatory in the Rolls Building courts, including the ICC List.

The CE-File procedure has been extended to B&PCs outside London, on an optional basis, since February 2019 and has mandatory for professional court users since 30 April 2019.

Sanction for the trustee's action

Sanction is no longer required.

The trustee used to have to obtain sanction to bring any court application for a **reviewable transaction** but the references to sanction in *section 314* and *Schedule 5, IA 1986* were removed by *section 121* of the Small Business, Enterprise and Employment Act 2015.

Limitation periods

The limitation period relevant to each type of claim for recovery under any of the causes of action prescribed in *sections 339* to *344* and *section 423* of the IA 1986 depends on the remedy being sought as the *LA 1980* applies.

An action on a specialty may not be brought more than 12 years after the date on which the cause of action accrued (*section 8, LA 1980*).

Actions to recover a sum of money by virtue of any enactment are subject to a six year limitation period (*section 9, LA 1980*).

A statute is a form of specialty and accordingly actions to assert a non-pecuniary right (such as setting aside a property **transaction**) are subject to a 12 year limitation period, but statutory claims for sums of money are subject to a six year limitation period.

For a discussion of the issue of limitation for these claims, see *Hill v Spread Trustee Co Ltd EWCA Civ 542* and *Legal update, Transactions at an undervalue and section 423, Insolvency Act 1986*.

Where there is any doubt as to the appropriate category in which to place any particular claim, the court should look at what the substance or essential nature of the relief being sought truly is to determine the applicable limitation period (see *Re Priory Garage (Walthamstow) Ltd [2001] BPIR 144*).

For more detail, see *Practice note, Limitation periods: an overview*

The date from which the limitation period starts to run for these types of claims is from the date of the making of the **bankruptcy** order. This is because the cause of action only accrues on the debtor being made bankrupt and the **bankruptcy** commences on the date of the **bankruptcy** order (*section 278, IA 1986*).

When limitation starts to run in claims concerning **transactions** to defraud creditors under *section 423* of the IA 1986, which can be made by victims of the **transaction**, as well as by the officeholder, was the subject of detailed

analysis in *Hill v Spread Trustee Company Ltd & Anor* [2006] EWCA Civ 542 (12 May 2006). The Court of Appeal held that the limitation period started to run only when all the constituent elements of the cause of action came in to existence. As the applicant was the trustee in **bankruptcy**, in that instance the date that limitation started to run from was the date of the **bankruptcy** order. The effect of section 424(2) of the IA 1986 Act was not that there could be only a single cause of action in respect of one **transaction**. There might be separate limitation periods for different applicants under section 423 of the IA 1986 but it was not until a **bankruptcy** order was made that the trustee was identified as the person entitled to sue.

Therefore, if the section 423 claim is being made by the trustee in **bankruptcy**, limitation will start to run from the date of the **bankruptcy** order.

Recoveries and costs

Where a trustee in **bankruptcy** brings a successful claim in relation to a **reviewable transaction**, any sums that are recovered generally form part of the **bankruptcy** estate for the benefit of the general unsecured creditors.

The causes of action which lead to the recoveries in question do not come into existence until the trustee's appointment. As such, recoveries made from a successful challenge to a **reviewable transaction** cannot be the subject of a charge entered into by the debtor before the **bankruptcy** process, nor is the cause of action capable of being assigned by the trustee (*Re Oasis Merchandising Services Ltd* [1998] Ch 170). (Although *Re Oasis* was in the corporate context, the same principles are considered to apply in **bankruptcy**.)

The trustee's costs incurred in challenging a **reviewable transaction** should be recovered from the bankrupt's estate as being expenses or costs properly chargeable or incurred in preserving, realising or getting in any of the assets of the bankrupt or otherwise relating to the conduct of any legal proceedings which he has power to bring or defend (*rule 10.149*, IR 2016).

These costs are paid out in priority to any distribution to creditors.

Third party protection

An order by the court in respect of a **transaction** at an undervalue or a preference may impose an obligation on or affect the property of any person whether or not that person entered into the **transaction** at an undervalue with the debtor. Therefore, there is some protection given to third parties (people who were not a party to the **transaction**) offered by *section 342(2)-(2A)*.

These provisions protect a person who did not deal directly with the bankrupt and who acquired their interest in good faith and for value. They are not required to pay any sums, or have their interest in property prejudiced, in any order relating to the **transaction**.

Any order under *section 339* (**transaction** at an undervalue) or *section 340* (preferences):

- Shall not prejudice any interest in property which was acquired from a person other than that individual and was acquired in good faith and for value, or prejudice any interest deriving from such an interest.
- Shall not require a person who received a benefit from the **transaction** or preference in good faith and for value to pay a sum to the trustee of the bankrupt's estate except where he was a party to the **transaction** or the payment is to be in respect of a preference given to that person at a time when he was a creditor of that individual.

(Section 342(2), IA 1986.)

Presumption of not acting in good faith

Where a person has acquired an interest in property from a person other than the bankrupt, or has received a benefit from the **transaction** or preference, then unless the contrary is shown it is presumed that the interest was acquired otherwise than in good faith where at the time of that acquisition or receipt:

- The person had notice of the of the relevant surrounding circumstances and of the relevant proceedings.
- The person was an associate of or was concerned with the bankrupt or the person with whom the bankrupt entered into the **transaction** or gave a preference.

(Section 342(2A), IA 1986.)

"Relevant surrounding circumstances" are:

- The fact that the bankrupt entered into the **transaction** at an undervalue.
- The circumstances that amounted to the giving of the preference by the bankrupt.

(Section 342(4), IA 1986.)

A person has notice of the relevant proceedings if he has notice of either of the following:

- The fact that the petition (or **bankruptcy** application) on which the bankrupt is adjudged bankrupt has been presented (or made).
- The fact that the bankrupt has been adjudged bankrupt.

(Section 342(5), IA 1986.)

The protection generally protects bona fide purchasers for value without notice but also extends to those who did in fact have notice of the relevant surrounding circumstances and proceedings.

Although there is a presumption that someone who did have such notice was not acting in good faith, an individual can avoid being a subject of an order by demonstrating that in fact he was acting in good faith.

Any sums that are required to be paid to the trustee in accordance with an order under [section 339](#) or [340](#) shall be comprised in the bankrupt's estate ([section 342\(3\), IA 1986](#)).

Transactions at an undervalue

Requirements for a **transaction** at an undervalue

The court may set aside a **transaction** as a **transaction** at an undervalue if the bankrupt:

- made a gift to a person or otherwise entered into a **transaction** with that person on terms that provided for him to receive no consideration;
- entered into a **transaction** with that person in consideration of marriage or the formation of a civil partnership; or
- entered into a **transaction** with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the individual.

(*Section 339(3), IA 1986.*)

- The **transaction** was entered into at a relevant time (*section 341, IA 1986*).

Entering into a **transaction**

A **transaction** is not conclusively defined in the *IA 1986*.

It includes a gift, agreement or arrangement. An arrangement can include an agreement or understanding between parties whether formal or informal, made verbally or in writing. In addition, participating in an arrangement may comprise several individual **transactions**. (see *Legal update, Transactions at an undervalue.*)

Where a debtor deals with a third party, the court can look at the dealing as a whole and is not restricted to looking at individual **transactions**. A debtor can enter into a **transaction** at an undervalue by participating in an arrangement which results in an asset being sold at an undervalue; there is not necessarily any need for the debtor to be an actual party to the **transaction**.

Consideration requirement for **transaction at an undervalue**

Where a **transaction at an undervalue** claim is brought, the trustee will have to satisfy the court as to the value (and deficiency) of the consideration in question.

A comparison must be made between the value acquired by the debtor and the value provided by him (*section 339, IA 1986*), measured in money or money's worth. Therefore, consideration which cannot be valued in such terms falls outside the statutory provisions and cannot be taken into account to save a **transaction** from being an undervalue.

The consideration must pass to the debtor; if it does not then the debtor will have received no consideration and there will have been a **transaction at an undervalue**.

The *IA 1986* does not stipulate that the only consideration to be considered is that given to the debtor by the person to whom the debtor gives consideration. Therefore, where the debtor enters into linked **transactions** with different people, the identification of the consideration passing to the debtor is a question of fact and it may be appropriate to consider all the linked **transactions** together. The **transaction** between the debtor and the person in question should be looked at as a whole.

For example in *Department for the Environment, Food and Rural Affairs v Feakins and another [2004] EWHC 2735 (Ch)* the debtor took part in an arrangement where his property was sold by mortgagees to another party (his wife), subject to an agricultural tenancy in favour of the debtor's company and at a valuation which took

account of the tenancy. The debtor's company then surrendered the tenancy to leave the purchaser with vacant possession. The High Court ruled that the debtor had entered into a **transaction** at an undervalue. (See *Legal update, Transactions at an undervalue.*)

Relevant time for **transaction at an undervalue**

The relevant time is defined as a period of five years ending with the day of the presentation of the **bankruptcy** petition (or day that the **bankruptcy** application is made) on which the individual is adjudged bankrupt (*section 341, IA 1986*).

Where a bankrupt made a **transaction** at an undervalue more than two years before the day the petition is presented (or day the **bankruptcy** application was made), that time is not a relevant time unless the individual was insolvent at the time he entered into the **transaction** or became insolvent as a result (the insolvency requirement) (*section 341(2)*).

Accordingly, where the **transaction** took place within the two-year period prior to the presentation of the petition or day the **bankruptcy** application was made, it is not necessary to show that the bankrupt was insolvent or became insolvent as a result.

However if the **transaction** was made more than two years before the date of the presentation of the petition, or day the **bankruptcy** application was made, up to a maximum of five years before, the insolvency requirement must be satisfied.

The insolvency requirement is presumed to be satisfied in relation to any **transaction** at an undervalue which is entered into by an individual with a person who is an associate of his (otherwise that by reason only of being his employee) (see *Associate: definition*).

For an example of a case where the presumption of insolvency was rebutted under section 341(2), see *Salter v Wetton [2011] EWHC 3192 (Ch)*.

Insolvency requirement for **transaction at an undervalue**

When it is necessary to prove the insolvency requirement, the burden of proof is on the trustee.

The court will consider evidence to determine whether the individual was insolvent at the time of the **transaction**, or became insolvent as a result. For the purposes of *section 341*, an individual is insolvent if he is unable to pay his debts as they fall due (commonly referred to as cash flow insolvency) or the value of his assets is less than the amount of his liabilities, taking into account his prospective and contingent liabilities (*section 341(3)*) (commonly known as balance sheet insolvency).

Where the **transaction** was made with an associate, there is a presumption that the individual was insolvent at the time, unless it can be shown otherwise (*section 341(2), IA 1986*).

Associate: definition

An associate of an individual is defined as:

- The husband or wife or civil partner (or former husband, wife or civil partner) of the individual.
- A relative of the individual or a relative of the individual's husband, wife or civil partner.

- The husband or wife or civil partner of a relative of the individual.
- Any person with whom the individual is in partnership and the husband or wife or civil partner or a relative of any individual with whom he is in partnership.

(Section 435, IA 1986.)

A relative of an individual is defined as being a brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendent, treating a relationship of half blood as a relationship of whole blood, the stepchild or adopted child of any person as his child and an illegitimate child as the legitimate child of his mother and reputed father (section 435(8), IA 1986).

Transfer of interest in family home as **transaction at an undervalue**

In most cases the family home will be the most valuable asset in the **bankruptcy** estate.

If the debtor has divested himself of any interest he has in the home, often by transferring his interest to his wife prior to being declared bankrupt, then that **transaction** is vulnerable to being set aside as a **transaction** at an undervalue in circumstances where the debtor received no consideration or less than full market value.

In the past, property transfers made as a result of court orders in ancillary relief proceedings were capable of being set aside where the transfer was at an undervalue. The fact that the transfer took place as a result of a court order in divorce proceedings did not prevent such **transactions** being successfully pursued by trustees in **bankruptcy**. However, the position has changed since the Court of Appeal decision in *Hill v Haines [2008] Ch 412*. The court held that the compromise of ancillary relief proceedings can constitute consideration. In the absence of fraud, collusion or some other similar consideration, it will be extremely difficult for a trustee to successfully challenge transfers made within the context of ancillary relief proceedings.

For more information on such transfers and challenges to them, see *Practice note, Bankruptcy and family law proceedings*.

Orders that may be made on a **transaction at an undervalue claim**

If the conditions for a **transaction** at an undervalue are satisfied the court may make a wide variety of orders. The court may:

- Require any property transferred as part of the **transaction**, or in connection with the giving of the preference, to be vested in the trustee of the bankrupt's estate as part of that estate.
- Require any property to be so vested if it represents in any person's hands the application either of the proceeds of the sale of property so transferred or of money so transferred.
- Release or discharge (in whole or in part) any security given by the individual.
- Require any person to pay, in respect of benefits received by him from the individual, such sums to the trustee of his estate as the court may direct.

- Provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the **transaction** or by the giving of the preference to be under such new or revived obligations to that person as the court thinks appropriate.
- Provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for the security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the **transaction** or by the giving of the preference.
- Provide for the extent to which any person whose property is vested by the order in the trustee of the bankrupt's estate, or on whom obligations are imposed by the order, is to be able to prove in the **bankruptcy** for debts or other liabilities which arose from, or were released or discharged (in whole or in part) under or by, the **transaction** or the giving of the preference.

The court has the discretion to refuse to make an order even if the conditions for a **transaction** at an undervalue are satisfied (*Re Trustee in bankruptcy of Claridge [2011] EWHC 2047 (Ch)*); see *Legal update, Court's discretion to make no order despite transaction at undervalue (High Court)*.

Examples of potential **transactions** at an undervalue

Examples of potential **transactions** at an undervalue include the following:

- A transfer of property for no consideration (*Tomlinson v Harrington [2009] BPIR 331*).
- A transfer of shares for no consideration (*Miller v Bayliss [2009] EWHC 2063 (Ch)*).
- A payment made under a loan agreement, which stipulated that the lender would lose any money already forwarded to the borrower if the full loan amount was not transferred by a certain date (*Bramston v Riaz [2014] BPIR 42*).
- A gift of property.
- Providing goods or services for no consideration.
- Buying goods or services that are worthless, or the value of which is significantly less than the price paid.
- Letting a creditor retain an asset where the value of the debt owed is significantly less than the value of the asset.

Preferences

A trustee may apply to court to set aside a **transaction** for being a preference where an individual has been adjudged bankrupt and has given a preference to anyone within the relevant time.

Requirements for a preference

An individual gives a preference to a person if each of the following apply:

- That person is:
 - one of the individual's creditors or a surety; or
 - a guarantor for any of the individual's debts or other liabilities.
- The individual does anything (or suffers anything to be done) which has the effect of putting that person into a position which, in the event of the individual's **bankruptcy**, will be better than the position he would have been in if that thing had not been done (*section 340(3)*).
- The individual was influenced in deciding to give the preference by a desire to prefer the party (*section 340(4)*) (see *Desire to prefer and the presumption of desire when preference to an associate*).
- The preference was given at a relevant time, that is, during the six months before the onset of insolvency (although a preference to an associate in the two years before the onset of insolvency may be challenged) (*section 341*) (see *Relevant time for preference*).
- The individual was insolvent at the time of the **transaction** or became insolvent as a result (*section 341(2)*) (see *Insolvency requirement for preference*).

Desire to prefer and the presumption of desire when preference to an associate

For a **transaction** to constitute a preference, the debtor must have been influenced in deciding to give the preference by a desire to prefer the party (*section 340(4)*, IA 1986).

The element of desire leads to a subjective test, not an objective one. It is necessary to establish something stronger than an intention to undertake the **transaction** that prefers the party in question; the debtor must have positively wished to put the party in a better position.

The debtor must intend to do the act or permit the sufferance which comprises the preference. A voluntary act or forbearance must be shown. Pressure for payment by the creditor may therefore afford a defence.

If the person is an associate (other than by being an employee), it is presumed that the individual intended to put that person in a better position (*section 340(4)*, IA 1986) (see *Associate: definition* above).

Relevant time for preference

The relevant time is generally considered to be the time when the decision to enter the **transaction** was taken, not the time when the **transaction** was effected (*Re MC Bacon [1990] BCC 78*).

The relevant time for setting aside a preference is set out in *section 341* of the IA 1986.

If the preference is given to an associate of the debtor (other than an employee), the relevant time is the two-year period prior to the date of the presentation of the **bankruptcy** petition or date the **bankruptcy** application is made (*section 341 (1)(b)*, IA 1986).

Otherwise, the relevant time is six months before the date of the presentation of the petition or **bankruptcy** application (*section 341(1)(c), IA 1986*).

Insolvency requirement for preference

The debtor must have been insolvent at the time of the **transaction** or become insolvent as a result of it (*section 341(2), IA 1986*).

There is no presumption of insolvency if a preference is made to an associate (in contrast to the provisions relating to **transactions** at an undervalue) (see *Associate: definition*).

Orders that may be made on a preference claim

The same orders that can be made by the court on a successful challenge to a **transaction** at an undervalue can be made in respect of a preference that has been successfully challenged (see *Orders that may be made on a transaction at an undervalue claim* above).

Exceptional circumstances may mean that justice and fairness renders the making of restitutionary order inequitable.

In *Bucknall and another v Wilson (Re Fowlds) [2020] EWHC 1200 (Ch)*, the High Court declined to order restitutionary relief. It also considered activating *the rule in ex parte James* against the trustees in **bankruptcy** who had failed to make basic investigation into the respondent's personal and financial circumstances.

For more information, see *Legal update, No restitution following preference given to associate by bankrupt (High Court)*.

Examples of potential preferences

Examples of potential preferences include the following:

- Paying an unsecured creditor in priority to other creditors.
- Granting security to a previously unsecured creditor (*Re Mistral Finance Ltd [2001] BCC 27*).
- Returning goods to a supplier when title has passed to the debtor.
- Guaranteeing another person's debt to a creditor where that person is unlikely to be able to pay the debt.
- Granting the right to property to another in circumstances where he would not otherwise have the right to the property (*Re Goel v Pick [2006] EWHC 833 (Ch)*).

Extortionate credit **transactions**

A trustee in **bankruptcy** can challenge any credit **transaction** made by the bankrupt for being extortionate within the three-year period prior to the date of the commencement of the **bankruptcy**.

The bankrupt has to be a party to the **transaction** that provides credit to him but it does not matter whether he was insolvent at the time or became insolvent as a result.

A **transaction** is extortionate if, having regard to the risk accepted by the person providing the credit, either of the following apply:

- Its terms require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit.
- It otherwise grossly contravenes ordinary principles of fair dealing

(Section 343(3), IA 1986.)

There is a presumption that the **transaction** is extortionate and the onus is on the party providing the credit to the bankrupt to show that it is not (*section 343(3), IA 1986*).

The court can make an order in relation to extortionate credit **transactions** entered into by the bankrupt up to three years before the day on which the **bankruptcy** order was made (and not from the date the petition was presented or date the **bankruptcy** application was made, as with **transactions** at an undervalue and preferences) (*sections 343(2) and 278, IA 1986*).

The court has discretion to make a wide variety of orders in respect of successful challenges to such **transactions** including setting the **transaction** aside in whole or in part, varying the terms, requiring the credit provider to pay any sums paid by the bankrupt to the trustee, requiring the credit provider to give up any security given by the bankrupt in relation to the **transaction** and ordering an account between the parties (*section 343(4), IA 1986*).

Excessive pension contributions

Recovery of excessive pension contributions

A bankrupt's rights under any pension arrangement are either excluded from his estate or, in the case of unapproved pension schemes, capable of being excluded (see *Welfare Reform and Pensions Act 1999*). This is because of the concern that if individuals were to lose their pensions on **bankruptcy** they would become totally dependent on the state.

A trustee is, however, permitted to make an application to recover excessive pension contributions by the individual before his **bankruptcy** (and also to apply for an income payments order in respect of pension payments made to the bankrupt).

The trustee in **bankruptcy** may apply to the court to recover excessive pension contributions where an individual who is adjudged bankrupt has either of the following:

- Rights under an approved pension arrangement.
- Excluded rights under an approved pension arrangement.

(Section 342A(1), IA 1986.)

The court may make such an order as it thinks fit for restoring the position to what it would have been had the excessive contributions not been made if it is satisfied that both of the following apply:

- The rights under the arrangement are to any extent, whether directly or indirectly, the fruits of relevant contributions.
- The making of any of the relevant contributions has unfairly prejudiced the bankrupt's creditors.

(Section 342A(2), IA 1986.)

Relevant contributions are those made by the bankrupt or those made on his behalf to his pension scheme (section 342(A)5, IA 1986).

In considering whether the making of any relevant contribution has unfairly prejudiced the individual's creditors the court must in particular consider:

- Whether any of the contributions were made for the purpose of putting assets beyond the reach of the individual's creditors.
- Whether the total amount of any contributions made by, or on behalf of, the individual to pension arrangements and represented (whether directly or indirectly) by rights under approved pension arrangements or excluded rights under unapproved pension arrangements, is an amount which is excessive in view of the individual's circumstances when those contributions were made.

The trustee is entitled to make a written request to the person responsible for the pension arrangement to provide him with information about the arrangement or the pension rights as the trustee may reasonably require and the recipient has nine weeks within which to respond.

For more information, see *Practice note, Forfeiture of occupational pension benefits: What happens to a member's pension on **bankruptcy**?*

Orders made on an application to claim excessive pension contributions

The court has a wide discretion to make the order that it sees fit to restore the position to what it would have been had the excessive contributions not been made (section 342(B)(1), IA 1986).

A restoration order may include provision:

- Requiring the person responsible for the arrangement to pay an amount to the individual's trustee in **bankruptcy**.
- Adjusting the liabilities of the arrangement in respect of the individual.
- Adjusting any liabilities of the arrangement in respect of any other person that derive, directly or indirectly, from rights of the individual under the arrangement.
- For the recovery by the person responsible for the arrangement (whether by deduction from any amount which that person is ordered to pay or otherwise) of costs incurred by that person in complying in the bankrupt's case with any requirement under section 342C(1) or in giving effect to the order.

The maximum amount which the person responsible for an arrangement may be required to pay by an order is the lesser of:

- The amount of the excessive contributions.
- The value of the individual's rights under the arrangement (if the arrangement is an approved pension arrangement) or of his excluded rights under the arrangement (if the arrangement is an unapproved pension arrangement).

(Section 342(B)4, IA 1986.)

Pension sharing cases

A pension sharing **transaction** is an order for pension sharing within the scope of the *Welfare Reform and Pensions Act 1999* by parties to a divorce or an annulment.

The trustee has power to challenge a pension sharing **transaction** either as a **transaction** at an undervalue or a preference. The court may make an order requiring payments to be made or liabilities to be adjusted where it appears that one or more contributions giving rights under a pension sharing **transaction** have unfairly prejudiced the transferor's creditors.

For more information on pension sharing orders and claims that can be made by trustees, see *Practice note, Bankruptcy and family law proceedings*.

Transactions defrauding creditors

Requirements for a **transaction** defrauding creditors

Section 423 of the IA 1986 has broad application.

There is no requirement for the individual to be insolvent or bankrupt.

A **transaction** can be set aside if:

- The **transaction** is entered into at an undervalue (as under section 339, IA 1986, see **Transactions at an undervalue**).
- The purpose of the **transaction** was to put assets beyond the reach of a person who is making or may make a claim against the individual, or to otherwise prejudice a person's interests in relation to such a claim.

Whether the relevant purpose has been formed is a subjective test (*Hill v Spread Trustee Co*). The court has to be satisfied that the person actually had the purpose, not that a reasonable person in that person's position would have had it.

In addition, the aim of entering the **transaction** has to be more than a mere hope of gaining an advantage.

It appears to be sufficient for the person entering into the **transaction** to have had a "substantial" purpose of putting assets beyond the reach of a claimant (or of otherwise prejudicing their interests); it is not necessary to establish that this was the dominant purpose (*Concept Oil Services Ltd v En-Gin Group LLP and others [2013] EWHC 1897 (Comm)*); see *Legal update, The meaning of "transaction" in the context of a transaction defrauding creditors*

(*High Court*) and *IRC v Hashmi* [2002] 2 BCLC 489; *Hill v Spread Trustee Co Ltd* [2006] EWCA Civ 542 (at paragraph 131) and *BTI 2014 LLC v Sequana SA & others* [2019] EWCA Civ 112 (*Legal update, Dividends: directors' duty to consider interest of creditors and transactions at an undervalue (Court of Appeal)*).

Bad faith or knowledge on the part of the other party to the **transaction** is not relevant; only the debtor's purpose is. However, there is protection for bona fide purchasers for value (see *Orders that may be made on a transaction defrauding creditors claim*).

Procedure for challenging a **transaction** defrauding creditors

An application under *section 423* of the IA 1986 can be made by:

- The official receiver or trustee in **bankruptcy**.
- Any other individual prejudiced (or capable of being prejudiced) by the **transaction** (with the leave of the court).
- The Financial Conduct Authority and the *Pensions Regulator* (*section 375, Financial Services and Markets Act 2000* and *section 58, Pensions Act 2004*).

(*Section 424, IA 1986*.)

Where the individual is bankrupt, a claimant must obtain the court's permission before making an application under *section 423* of the IA 1986.

Where the individual is not bankrupt, prior permission is not required (*section 424, IA 1986*).

Orders that may be made on a **transaction** defrauding creditors claim

The types of orders that can be made are set out in *section 425(1)* of the IA 1986.

These include requiring any property transferred as part of the **transaction** to be vested in any person. An order under *section 423* of the IA 1986 must not:

- Prejudice any interest in property that was acquired from a third party in good faith, for value and without notice of the relevant circumstances, or any interest deriving from such an interest.
- Require a person who received a benefit from the **transaction** in good faith, for value and without notice of the relevant circumstances to pay any sum, unless he was a party to the **transaction**.

If appealing an evaluative decision against applying *section 423* of the IA 1986, the appeal court should not carry out a balancing task afresh. Instead, it must find some identifiable error, flaw or gap in the reasoning of the court which no reasonable judge could have reached on the evidence adduced (*Re Sprintroom Ltd* [2019] EWCA Civ 932).

The court may make an order under *section 423* of the IA 1986 which has extra-territorial effect (*Dornoch Ltd and others v Westminster International BV and others* [2009] EWHC 1782 (*Admlty*)). However, the court must be satisfied that, in respect of the relief sought, the defendant is sufficiently connected with England for it to be just and proper to make the order. (See *Legal update, Transaction at an undervalue set aside even though transferor was not insolvent*.)

For an example of where a **transaction** was found to have a sufficient connection with England, see *Concept Oil Services Ltd v En-Gin Group LLP and others* and *Legal update, The meaning of "transaction" in the context of a transaction defrauding creditors (High Court)*.

Avoidance of general assignment of book debts

Where a person engaged in any business makes a general assignment to another person of his existing or future book debts, or any class of them, and is subsequently made bankrupt, then the assignment is void against the trustee in **bankruptcy** as regards book debts that were not paid before the presentation of the petition (or date that the **bankruptcy** application was made), unless the assignment has been registered under the Bills of Sale Act 1878 (*Section 344, IA 1986*).

"Assignment" includes an assignment by way of security or charge on book debts (*section 344(3)(a), IA 1986*).

"General assignment" does not include either of the following:

- An assignment of book debts due at the date of the assignment from specified debtors or of debts becoming due under specified contracts.
- An assignment of book debts included either in a transfer of a business made in good faith and for value or an assignment of assets for the benefit of creditors generally.

(*Section 344(3)(b), IA 1986*.)

Effect of avoidance of general assignment of book debts

Section 344 of the IA 1986 applies whenever the bankrupt has been engaged in any business and, prior to his **bankruptcy**, has made a general assignment of his existing or future book debts, or any class of them.

The effect is that where book debts are the subject of a general assignment, and that assignment has not been registered under the *Bills of Sale Act 1878*, the assignment is void against the trustee as regards those book debts unpaid at the presentation of the **bankruptcy** petition or **bankruptcy** application.

For the purposes of section 344(1) and (2), "assignment" includes an assignment by way of security or charge on book debts (*section 344(3)(a), IA 1986*).

The expression "general assignment" does not include any assignment of book debts due at the date of assignment from specified debtors or of debts becoming due under specified contracts (*section 344(3)(b)(i)*). It also excludes any assignment of book debts included either in a transfer of a business made in good faith and for value or in an assignment of assets for the benefit of creditors generally (*section 344(3)(b)(ii)*).

In *Hill v Alex Lawrie Factors [2000] BPIR 1038*, the court considered the position where a general assignment of book debts by a bankrupt (not registered under the Bills of Sale Act 1878) contained terms which had resulted in specific assignments of some of the generally assigned debts. The judge concluded that the specific assignments were valid against the trustee. In so concluding, he noted that the mischief against which section 344 was directed was the difficulty in establishing whether the bankrupt had received fair value in return for effecting a general assignment at a time at which he was likely to have been in financial difficulty:

"A purely general assignment of book debts may make it impossible or difficult to see whether the **transaction** is in any way impugnable." (*Paragraph 15.*)

END OF DOCUMENT



Insolvency Act 1986

1986 CHAPTER 45

PART IX

BANKRUPTCY

CHAPTER V

EFFECT OF BANKRUPTCY ON CERTAIN RIGHTS TRANSACTIONS, ETC.

Adjustment of prior transactions, etc.

339 Transactions at an undervalue.

- (1) Subject as follows in this section and sections 341 and 342, where an individual is [^{F1}made] bankrupt and he has at a relevant time (defined in section 341) entered into a transaction with any person at an undervalue, the trustee of the bankrupt's estate may apply to the court for an order under this section.
- (2) The court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if that individual had not entered into that transaction.
- (3) For the purposes of this section and sections 341 and 342, an individual enters into a transaction with a person at an undervalue if—
 - (a) he makes a gift to that person or he otherwise enters into a transaction with that person on terms that provide for him to receive no consideration,
 - (b) he enters into a transaction with that person in consideration of marriage [^{F2}or the formation of a civil partnership], or
 - (c) he enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the individual.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Insolvency Act 1986. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

- F1** Word in s. 339(1) inserted (6.4.2016) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 19 para. 31](#); [S.I. 2016/191, art. 2](#) (with [art. 3](#))
- F2** Words in s. 339(3)(b) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), ss. 261\(1\), 263, Sch. 27 para. 119](#); [S.I. 2005/3175, art. 2\(2\)](#) (subject to [art. 2\(3\)-\(5\)](#))

Modifications etc. (not altering text)

- C1** S. 339 applied (with modifications) by [S.I. 1986/1999, art. 3, Sch. 1 Pt. II](#)
 S. 339 applied (with modifications) (4.4.2006) by [The Cross-Border Insolvency Regulations 2006 \(S.I. 2006/1030\), reg. 2, Sch. 1 Art. 23 paras. 1-3](#) (subject to [Sch. 1 Art. 23 paras. 6-9](#))
- C2** S. 339 restricted by [Drug Trafficking Offences Act 1986 \(c.32, SIF 39:1\), s. 15\(6\)\(a\)\(7\)](#)
 S. 339 restricted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\), ss. 30\(6\), 34\(5\)\(a\), 47\(4\)\(a\)](#)
 S. 339 restricted (25.4.1991) by [Companies Act 1989 \(c. 40\), s. 182\(4\), Sch. 22 para. 8\(1\)\(a\)](#); [S.I. 1991/878, art. 2, Sch.](#)
 S. 339 restricted by [1986 c. 32, s. 15\(6\)\(a\)\(b\)](#) (as substituted (prosp.) by [1993 c. 36, ss. 13\(9\), 78\(3\)](#) (with [s. 78\(6\)](#)) (which amending provision was repealed (3.2.1995) by [1994 c. 37, ss. 67, 69\(2\), Sch. 3](#)))
 S. 339 restricted (3.2.1995) by [1994 c. 37, ss. 32\(5\)\(a\), 69\(2\), Sch. 2 para. 5](#) (with [s. 66\(2\)](#))
 S. 339 restricted (1.11.1995) by [1988 c. 33, s. 84\(6\)\(a\)](#) (as substituted by [1995 c. 11, s. 8\(7\)](#) (with [s. 16\(5\)\(6\)](#)); [S.I. 1995/2650, art. 2](#))
 S. 339 restricted (1.4.1996) by [1995 c. 43, ss. 44, 50\(2\), Sch. 2 para. 2\(5\)](#)
 S. 339 restricted (11.12.1999) by [S.I. 1999/2979, reg. 17\(1\)](#)
 S. 339 restricted (24.3.2003) by [2002 c. 29, ss. 419\(1\)-\(4\), 458\(1\)\(3\)](#); [S.I. 2003/333, art. 2, Sch.](#) (subject to [arts. 3-13](#) (as amended by [S.I. 2003/531, arts. 3, 4](#)))
- C3** S. 339 excluded (25.4.1991) by [Companies Act 1989 \(c. 40\), ss. 154, 155, 165\(1\)\(a\)](#); [S.I. 1991/878, art. 2, Sch.](#)
- C4** S. 339 modified (3.2.1995) by [1994 c. 37, ss. 32\(5\)\(b\), 69\(2\), Sch. 2 para. 5](#) (with [s. 66\(2\)](#))

Our ref [REDACTED]

Strictly private and confidential

Direct tel [REDACTED]

Direct fax +44333 [REDACTED]

Date 6 July 2020

Email [REDACTED]

Dear Sir

Our Client: [REDACTED]
[REDACTED] in Bankruptcy
Letter Before Claim

We act for [REDACTED], the trustee in bankruptcy of [REDACTED] ("**the Bankrupt**"). [REDACTED] was appointed to act as Trustee of the Bankrupt on [REDACTED] following a bankruptcy order made on the same date.

It is understood that prior to the Bankruptcy Order being made, the Bankrupt owned a [REDACTED] ("**the Vehicle**"). The Bankrupt has informed the [REDACTED] that on [REDACTED] she traded in the Vehicle at a car dealership in part payment for the purchase of your new Volvo V41 ("**the Volvo**").

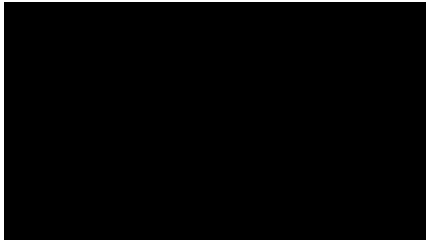
It is understood that the trade-in price for the Vehicle was [REDACTED] of which has been "gifted" to you and utilised to purchase the Volvo.

We are therefore writing to you to set out details of a claim the [REDACTED] may pursue against you under the provisions of the Insolvency Act 1986 ("**the Act**").

Practice Direction on Pre-action Conduct and Protocols

This is a letter before claim which has been drafted in accordance with the Practice Direction on Pre-action Conduct and Protocols contained in the Civil Procedure Rules ("**Practice Direction**"). We draw your attention to the Practice Direction guidance as to the form and content of responding to a letter before claim. We also refer you to paragraphs 13 and 16 of the Practice Direction concerning the Court's powers to impose sanctions for failing to comply with its provisions. A copy of the Practice Direction can be found at www.justice.gov.uk.

Ignoring this letter may lead to our client starting proceedings and may increase your liability for costs.



We should make it plain that if we do not receive a prompt and satisfactory response to this letter from you, together with acceptable proposals for discharging the claims against you which properly reflects the strength and extent of the claims you face then we have instructions to commence proceedings against you on behalf of [REDACTED], without further notice. Such proceedings will seek appropriate financial relief together with the cost of the proceedings.

We therefore strongly recommend that you take legal advice in respect of the contents of this letter.

Legal Basis for the Claim

[REDACTED], as Trustee in Bankruptcy, has a duty to protect property in the interest of the Bankrupt's estate. Therefore, following the making of the bankruptcy order, [REDACTED] may challenge some transactions to ensure that the best recovery for the bankruptcy creditors is achieved.

In particular, the [REDACTED] has the right to challenge the bankrupt's gift to of £4,000 ("the Gift") and we have set out below the legal basis for any such claim the [REDACTED] may have to undo the effect of that gift.

Transaction at an undervalue

Section 339 of the Insolvency Act 1986 ("the Act") provides that an individual enters into a transaction at an undervalue if he enters into a transaction with a person for which the consideration given is significantly less than the value of the consideration provided by the individual.

In such circumstances, the [REDACTED], as Trustee of the bankrupt's estate, may apply to Court for an order to restore the position to what it would have been if that individual had not entered into the transaction. In such circumstances, the [REDACTED] may apply to Court for an order requiring you to repay the Gift back to the Bankrupt's estate.

The Bankrupt has confirmed that she traded in the Vehicle, as a part payment for the Volvo as a gift to you and to thank you for providing her with somewhere to stay. As the Gift has been made within 2 years from the presentation of the Petition, the Official Receiver is confident that he has a strong case against you for recovery of this sum.

Alternative dispute resolution

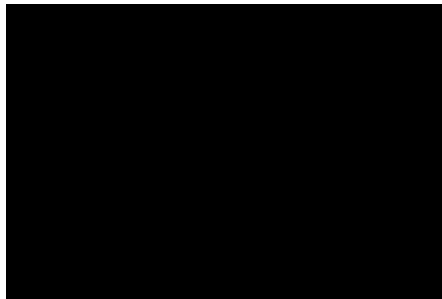
The [REDACTED] is prepared to participate in alternative dispute resolution, either by discussion and negotiation with you, with or without the involvement of solicitors or by formal mediation, provided that in either case the process is carried out promptly. We put you on notice that proceedings may be commenced without should it not be possible to resolve this claim by alternative dispute resolution in early course. If you consider some form of alternative dispute resolution is appropriate, please write to us to put forward such proposals within 30 days from the date of this letter.

Next steps

You should respond to this letter with your proposals for payment within 30 days of the date of this letter (by 6 August 2020).

Payment of the Debt

The Debt of [REDACTED] be paid by bank transfer to our client account, the details of which are as follows:



Account na [redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]

Reference: [redacted]

Please contact us using the number at the top of this letter to verify our account details verbally before making any transfer to the above account. [redacted] accepts no liability for monies transferred to incorrect account details whether or not such verbal confirmation has been obtained.

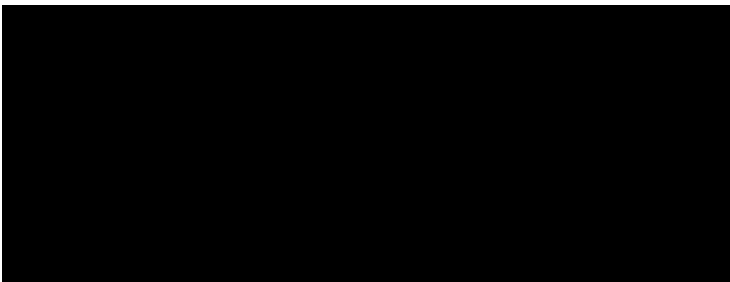
Failure to respond to the letter

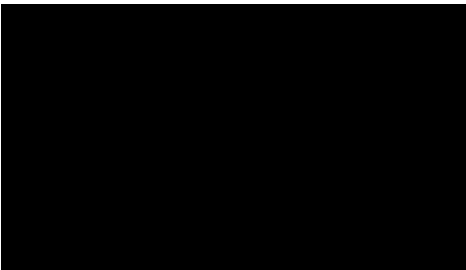
If you do not respond to this letter within the prescribed timeframe, [redacted] reserves all its rights, including the right to commence proceedings (without further reference to you should that prove necessary and appropriate). If the absence of a satisfactory response from you results in the need for such proceedings, then this will lead to a liability on your part to pay in addition the costs of the proceedings and, as you may appreciate, such costs are likely to be substantial. Additionally, [redacted] reserves the right to enforce the debt by way of bankruptcy proceedings.

Ignoring this letter will result in action against you in which costs will also be sought. We trust that this will not be necessary and therefore look forward to hearing from you.

This is a serious matter and we strongly recommend that you seek urgent independent legal advice in relation to the contents of this letter.

Yours faithfully





Independent Advice Organisations		
Organisation	Telephone	Website
StepChange Offers free and independent debt advice	Freephone: 0800 138 1111	www.stepchange.org
National Debtline Offers free and independent debt advice	Freephone: 0808 808 4000	www.nationaldebtline.org
Business Debtline Offers free and independent debt advice for the Self Employed	Freephone: 0800 197 6026	www.businessdebtline.org
Money Advice Service Offers free and independent debt advice	Freephone: 0800 138 7777	www.moneyadvice.service.org.uk
Citizens Advice Bureau Offers free and independent debt and legal advice	Check local directories	www.citizenadvice.org.uk
Shelter Offers free and independent legal advice	Freephone: 0808 800 4444	www.shelter.org.uk

