

Name: [REDACTED]

Membership Number: [REDACTED]

1.	Competency: 1	Learning Outcome: 1.4 (Example 2 of 3)
	Undertake legal research	
2	<b>Evidence Provided:</b> <ol style="list-style-type: none"> <li>1. Research into the rules and procedure with regard to who should apply to lift the suspension of the automatic discharge from bankruptcy (pages 1.088 to 1.094);</li> <li>2. Letter to client confirming who should make the application (page 1.095).</li> </ol>	
3.	<b>Outline how the evidence demonstrates you meet the outcome</b> <b>Identify a situation in which you need to undertake Legal research:</b> <p>I was assisting on matter where we were acting for the trustees of an estate in bankruptcy (the "Trustees") that had sought and obtained an order suspending the automatic discharge of a debtor's bankruptcy due to his failure to co-operate.</p> <p>Further to having compelled the bankrupt's co-operation on conclusion of their enquiries, the Trustees asked me to apply to the court for an order lifting the suspension. I was unclear as to whether the Trustees or the Bankrupt should do this.</p>	
	<b>Identify the sources you need, to undertake the research:</b> <ol style="list-style-type: none"> <li>1. Atkins Court Forms; and</li> <li>2. Insolvency Rules 1986.</li> </ol>	
	<b>Undertake relevant and up to date research and supply that research as part of your evidence</b> <p>I located the required information from the above detailed sources.</p>	
	<b>Apply the findings of your research to the matter you are dealing with and provide evidence of your application of the research to the matter:</b> <p>On researching the matter (pages 1.088 to 1.094), I established that the Trustees were unable to apply for to lift the suspension of the discharge as <u>6.216 Insolvency Rules 1986</u> provide the application is to be made by the bankrupt.</p> <p>On establishing the correct procedure, on sending a draft of a without prejudice letter for the bankrupt for the Trustees approval (page 1.095), I drew to the Trustees attention that the without prejudice letter advised the bankrupt that upon payment, the Trustees would "not object to the Bankrupt's application to lift the suspension of the discharge from bankruptcy (required pursuant to IR 6.216)".</p>	
4.	<b>Reflection and evaluation (what you learnt from the activity you undertook to meet the outcome). Note: you may want to complete this section at a later date once you have had time to reflect on your practice and experience.</b> <p>Whilst I have a sound grasp of many aspects of the pre and post-bankruptcy procedures, I do have gaps in my knowledge. I therefore plan on undertaking a course relating to personal bankruptcy as I believe this will be of immense benefit to me.</p>	
5.	Completion date: 23 July 2015	
6.	Signed (Applicant) [REDACTED]	Date: 23 July 2015
7.	Signed (Supervisor) [REDACTED]	Date 03/08/15

Atkin's Court Forms/Bankruptcy and Insolvency (Volumes 7 (1), (2))/Practice/E: DISCHARGE AND ANNULMENT/1: DISCHARGE FROM BANKRUPTCY/(3) SUSPENSION OF DISCHARGE/280. Lifting an order suspending discharge.

**280. Lifting an order suspending discharge.**

[280]

Where an order suspending discharge has been made<sup>1</sup>, the bankrupt may apply to have it lifted<sup>2</sup>. Where the order for suspension is for a fixed period which has not expired or is to last until specified conditions are fulfilled which have not been fulfilled, it is unlikely that a court will lift the suspension unless some matter is raised which was not raised when the order was made and the matter would have dissuaded the court from making the order for suspension if it had been raised.

1 See generally Insolvency Act 1986 ss 279(1), (3) and Paragraphs 278, 279, [278], [279].

2 Insolvency Rules 1986, SI 1986/1925 r 6.216(1).



UK Parliament SIs 1980-1989/1986/1901-1950/Insolvency Rules 1986 (SI 1986/1925)/Part 6  
Bankruptcy/[6.216 Lifting of suspension of discharge]

[6.216 Lifting of suspension of discharge]

✓ ((1) Where the court has made an order under section 279(3) that the period specified in section 279(1) shall cease to run, the bankrupt may apply to it for the order to be discharged.

(2) The court shall fix a venue for the hearing of the application; and the bankrupt shall, not less than 28 days before the date fixed for the hearing, give notice of the venue to the official receiver and any trustee who is not the official receiver, accompanied in each case by a copy of the application.

(3) The official receiver and the trustee may appear and be heard on the bankrupt's application; and, whether or not they appear, the official receiver and trustee may file in court evidence in support of any matters which either of them considers ought to be drawn to the court's attention.

(4) If the court made an order under section 279(3)(b), the court may request a report from the official receiver or the trustee as to whether the conditions specified in the order have or have not been fulfilled.

(5) If a report is filed under paragraph (3) or (4), copies of it shall be sent by the official receiver or trustee to the bankrupt and to either the official receiver or trustee (depending on which has filed the report), not later than 14 days before the hearing.

(6) The bankrupt may, not later than [5 business] days before the date of the hearing, file in court a notice specifying any statements in the official receiver's or trustee's report which he intends to deny or dispute.

If he files a notice under this paragraph, he shall send copies of it, not less than 4 [business] days before the date of the hearing, to the official receiver and the trustee.

(7) If on the bankrupt's application the court discharges the order under section 279(3) (being satisfied that the period specified in section 279(1) should begin to run again), it shall issue to the bankrupt a certificate that it has done so, with effect from a specified date and shall send copies of the certificate to the official receiver and the trustee.]

NOTES

Amendment

Substituted by SI 2003/1730, r 9(1), Sch 1, Pt 6, para 48.

Date in force: 1 April 2004: see SI 2003/1730, r 1(3); for effect in relation to pre-commencement bankruptcies in the same way as they apply to post-commencement bankruptcies see rr 2(3), (4), 9(4) thereof.

Para (6): words "5 business" in square brackets substituted by SI 2010/686, r 2, Sch 1, para 411(1), (2)(a).

Date in force: 6 April 2010: see SI 2010/686, r 1; for transitional provisions see r 6(1), Sch 4, para 1 thereto.

Para (6): word "business" in square brackets inserted by SI 2010/686, r 2, Sch 1, para 411(1), (2)(b).

Date in force: 6 April 2010: see SI 2010/686, r 1; for transitional provisions see r 6(1), Sch 4, para 1 thereto.

See Further

See further, in relation to the application of these Rules, with modifications, for the purposes of the Building Society Special Administration (England and Wales) Rules 2010: the Building Society Special Administration (England and Wales) Rules 2010, SI 2010/2580, rr 60-63.

See further, in relation to the application, with modifications, of these rules to a body which holds a licence issued by the Law Society which is in force under the Legal Services Act 2007, Part 5: the Legal Services Act 2007 (Designation as a Licensing Authority) (No 2) Order 2011, SI 2011/2866, art 8(1), (2), Sch 2.

See further, in relation to the application of these Rules, with modifications, for the purposes of the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012: the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012, SI 2012/3013, reg 3, Schedule, para 2(1), (3)(a).

Document information
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Insolvency Rules 1986

Date made

10/11/1986





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| 7. If there has been no appeal by the complainant and the time for appealing has expired, the Official Receiver may file a notice and <i>step 3</i> above will apply.                                    |                     | r 6.214A(5)     |
| 8. If there has been appeal and it is determined in favour of the complainant, then <i>step 4</i> above will apply.  |                     |                 |
| 9. <b>Application to suspend automatic discharge<sup>3</sup></b> Official receiver or trustee lodges application supported by evidence <sup>4</sup> setting out the reasons why an order should be made. | 369, [769]          | r 6.215(1), (2) |
| <i>Where a public examination is adjourned:</i> Official Receiver may apply there and then for a suspension of the automatic discharge without any formal application or supporting report.              |                     | r 6.176(4)      |
| If the court makes an order suspending the bankrupt's discharge, copies of such order shall be sent by the court to the Official Receiver, the trustee and the bankrupt.                                 |                     | r 6.176(4), (5) |
| 10. Court appoints date, time and place of hearing and gives notice to:  |                     | r 6.215(3)      |
| (1) the Official Receiver;   |                     |                 |
| (2) if he is not the Official Receiver the trustee; and  |                     |                 |
| (3) the bankrupt.  |                     | r 6.215(4)      |
| 11. Where Official Receiver is the applicant, he sends copy of his report to the trustee and the bankrupt.   |                     |                 |
| <i>Time:</i> so as to reach them at least 21 days before the hearing.  |                     |                 |
| Where the trustee (other than the Official Receiver) is the applicant he sends copies of his evidence in support to the Official Receiver and the bankrupt.  |                     | r 6.215(5)      |
| <i>Time:</i> so as to reach them at least 21 days before the hearing.  |                     |                 |
| 12. Bankrupt may file in court notice specifying statements in the Official Receiver's report or the trustee's evidence, as the case may be, which he intends to deny or dispute.                        | 370, [770]          | r 6.215(6)      |
| <i>Time:</i> not later than 5 business days before hearing.  |                     |                 |
| Bankrupt sends copies of notice to Official Receiver and the trustee (if he is not the Official Receiver).   |                     | r 6.215(7)      |
| <i>Time:</i> not less than 4 business days before the hearing.   |                     |                 |
| 13. Court may make order that the relevant period shall cease to run for a set period of time or until certain conditions have been fulfilled. Copies of any such order will be sent by the court to:    | 371, [771] s 279(3) | r 6.215(8)      |
| (1) the bankrupt;  |                     |                 |
| (2) the Official Receiver; and   |                     |                 |





	(3) if he is not the Official Receiver, the trustee.		
	<b>Application by bankrupt to lift suspension of automatic discharge.</b>		r 6.216(1)
14.	Bankrupt lodges application <sup>5</sup> supported by witness statement setting out the reasons why the order suspending automatic discharge should be discharged. <i>Where it is self evident that the bankrupt has fulfilled his obligations under the Insolvency Act 1986, a supporting witness statement may not be necessary.</i>	372, [772]	rr 6.216, 7.7A
15.	Court appoints date, time and place of hearing.		r 6.216(2)
16.	Bankrupt serves a copy of the application, indorsed with the hearing date, together with a copy of the supporting witness statement on the Official Receiver and the trustee, if he is not the Official Receiver. <i>Time: not less than 28 days before the hearing.</i>		rr 6.216(2), 7.7A
17.	The Official Receiver and the trustee, if he is not the Official Receiver, may file in court evidence of any matter which he considers ought to be drawn to the court's attention. <i>Where the order provided for the relevant period to cease to run until the fulfilment of certain conditions, the court may request a report from the Official Receiver or trustee as to whether those conditions have been complied with.</i>		r 6.216(3)
18.	Copies of any report filed shall be sent by the person filing it to the bankrupt and to the other person. <i>Time: not less than 14 days before the hearing.</i>		r 6.216(4)
19.	Bankrupt may file notice specifying statements in the report which he intends to deny or dispute. <i>Time: not later than 5 business days before hearing</i> Bankrupt sends copy notice to the Official Receiver and the trustee. <i>Time: not less than 4 business days before the hearing.</i>	370, [770]	r 6.216(5)
20.	At the hearing, the Official Receiver and the trustee may appear and be heard. <i>Where the court is satisfied that the relevant period should begin to run again, it will discharge the order suspending automatic discharge and issue to the bankrupt a certificate that it has done so from a specified date and shall send copies of the certificate to the Official Receiver and the trustee.</i> <b>Certificate of discharge</b>	373, 374, [773], [774]	r 6.216(6)
21.	Where a bankrupt is discharged, he may apply to the court for a certificate of discharge.		r 6.216(3)
(1)	Bankrupt applies to court for certificate of discharge. <i>Time: at the end of the relevant period.</i>		r 6.216(7)
(2)	If the court is satisfied that the bankrupt is	375, [775]	r 6.220
			r 6.220(1)
			r 6.220(1)



discharged, court prepares and sends bankrupt a sealed certificate of discharge stating the date from which it is effective.

NOTE: In an appropriate case the Secretary of State or the Official Receiver on his directions may apply to the court for a bankruptcy restrictions order against a bankrupt or accept a bankruptcy restrictions undertaking from him<sup>6</sup>. The effect of such an order or undertaking is that during the period when it is in force it subjects the bankrupt after his discharge to certain of the restrictions that apply while he is undischarged<sup>7</sup>.

- 1 Insolvency Act 1986 s 279(2), (3). See Paragraphs 273, 278-286, [273], [278]-[286].
- 2 Insolvency Rules 1986, SI 1986/1925, rr 6.176, 6.214A, 6.215, 6.216, 6.220, 7.32, 7.50.
- 3 Insolvency Act 1986 s 279(3)-(5).
- 4 Where it is the Official Receiver, it will normally take the form of a report. Otherwise, it will be a witness statement: see Insolvency Rules 1986, SI 1986/1925, rr 7.7A, 7.9.
- 5 For up to date details of fees, see ACF DIRECTORY OF COSTS AND FEES.
- 6 Insolvency Act 1986 s 281A, Sch 4A.
- 7 See Paragraphs 274-277, [274]-[277].

This matter is being dealt with by [REDACTED]

[REDACTED]

[REDACTED]

Our ref: [REDACTED]

Your ref:

23 July 2015

And by email: [REDACTED]

[REDACTED]

Dear [REDACTED]

Re [REDACTED] (in Bankruptcy)  
[REDACTED] County Court No [REDACTED] of 2013

Thank you for your email confirming you would like to accept the third party's offer of £70,000.00.

As you are aware, we are currently holding £5,000.00 in respect of monies received from the [REDACTED] mother on the [REDACTED] 2014. Accordingly, acceptance of the offer will result in a total recovery of £75,000.00.

As we still have not received any communication from [REDACTED] in relation to the Bankrupt's liabilities, I propose sending the attached without prejudice letter to the Bankrupt's solicitors accepting the third party's offer to pay £70,000.00 in settlement of the asset of the bankruptcy estate and costs. You will note this letter confirms that upon receipt of the payment, the Trustees will not object to the Bankrupt's application to lift the suspension of the discharge from bankruptcy (required pursuant to IR 6.216), and will take a neutral stance on any application for annulment pursuant to s282(1)(b) whilst advising of the lack of response from [REDACTED]

I confirm that our work in progress for this matter currently stands at £27,982.00, plus disbursements in the sum of £2,647.62 and VAT which will have to be discounted.

I look forward to receiving confirmation as to whether you are happy for the proposed letter to be sent.

Yours sincerely

[REDACTED]

Direct Line: [REDACTED]  
Direct Fax: [REDACTED]

[REDACTED]