



OPERATIONAL SELECTION POLICY OSP32

RECORDS RELATING TO COURT ACTIONS
FOR INDIVIDUAL INSOLVENCY
(CASE FILES & DATASETS)
1973-2003

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Introduction

1 Authority

- 1.1 In 1998 the Public Record Office (hereafter to be referred to as The National Archives) published its first Acquisition Policy. This set out the principles that are to guide the selection of records for permanent preservation in The National Archives. The following year the Archives produced a complementary Disposition Policy dealing with the selection of public records to be held in places of deposit other than The National Archives.
- 1.2 Both acquisition and disposition policies are being implemented through the production of Operational Selection Policies. These are detailed statements of appraisal plans as they apply to categories of records found in one or more government departments. They are developed by The National Archives in partnership with other government departments and in consultation with other repositories appointed by the Lord Chancellor as places of deposit. They are subject to public consultation.
- 1.3 Operational selection policies are intended to be working tools for those involved in the selection of public records for permanent preservation. They may be reviewed and revised at any time in the light of comments from record producers, reviewers or users of the records or as a result of newly discovered information. The extent of any review or revision exercise will be determined according to the nature of the comments received.
- 1.4 Operational Selection Policies do not provide guidance on public access to selected records.
- 1.5 If you have any comments upon this policy, please email records-management@nationalarchives.gov.uk
Or write to:
Acquisition and Disposition Policy Manager
Records Management Department
The National Archives
Kew
Richmond
Surrey
TW9 4DU

2 Scope

- 2.1 This policy concerns the case file records of the
 - Supreme Court of Judicature: High Court of Justice, Bankruptcy Court of the Chancery Division
 - Court of Appeal on Bankruptcy, London

- Court of Appeal, Civil Division – Bankruptcy jurisdiction
- County Courts – Bankruptcy jurisdiction files

3 Background and functions – The Bankruptcy Court

- 3.1 **Origins** The organisation of modern judicial bankruptcy proceedings dates from the Judicature Act of 1873 which created the High Court in 1875: replacing the Ancient Court of the Queens Bench, Court of Common Pleas, Court of the Exchequer, Chancery Court and Probate, Divorce and Admiralty Court with new judicial bodies. The Chancery Division of the High Court comprised one of these new organisations. Part of the responsibility of the Chancery Division was to hear personal insolvency disputes.

The High Court became part of the Supreme Court of England and Wales under the Supreme Court Act 1981, which articulates its current jurisdiction.

4 Courts within the Chancery Division with responsibility for individual bankruptcy

- 4.1 **Individual bankruptcy** The Bankruptcy Court of the High Court has jurisdiction over individual insolvency disputes and disposing of proceedings (e.g. selecting the Court that will hear the case), most recently arising under Parts VIII to XI of the Insolvency Act 1986 and related legislation. Such court actions include applications for interim orders to support an Individual Voluntary Arrangement (IVA), applications to set aside a statutory demand, bankruptcy petitions and various applications concerned with the realisation and distribution of assets of individuals who have been adjudged bankrupt, as well as proceedings concerning the administration in bankruptcy of the insolvent estate of a deceased person. Proceedings in the Bankruptcy Court are issued in the Bankruptcy Issue Room and are dealt with by the Registrars in Bankruptcy, and not the Masters of the Chancery Division.
- 4.2 The High Court is based at the Royal Courts of Justice, on the Strand, London but also sits at 26 Crown Court centres throughout England and Wales throughout the following legal circuits: Midland & Oxford; North Eastern; Northern; South Eastern (comprising London and Greater London); Wales & Chester and Western. Under the Courts and Legal Services Act 1990, s.61, Sch. 1, any case that does not require to be heard by a High Court Judge and falls within the jurisdiction of the County Courts may be transferred to and heard by the latter.
- 4.3 This Operational Selection Policy covers individual insolvency court records created from 1973 to 2003. The Enterprise Act 2002 was enacted from September 2003 and changed some of the procedures that had been in place previously. Notably, these introduce new

features such as, where appeals are to be filed in the High Court, Fast Track Voluntary Arrangements and bankruptcy discharge after 1 year (instead of three years). As these were introduced late in the period under discussion this Operational Selection Policy focuses on the records produced by the earlier procedures that were in place for the majority of the period from 1973 to 2003.

5 Hearings of individual bankruptcies in the English and Welsh regions

- 5.1 The County Courts were established under the County Courts Act 1846. As the main civil courts in the regions, part of their jurisdiction covers hearings for individual bankruptcies. County Courts have exclusive jurisdiction in bankruptcy cases outside London. Proceedings are, therefore, brought in the relevant County Court. If the County Court judge decides the case is to be heard by a higher court (The High Court) he will lodge the petition with the local District Registry. If staffs of the District Registry are content, the case will be forwarded to the High Court in London. Usually, for both individual and corporate insolvency cases, a District Judge at a local court hears the case close to where the debtor resides. However, when the Crown is the main creditor (e.g. where the bankrupt / company has incurred tax arrears) then the High Court may choose to hear the case in London.

6 Appeals against individual bankruptcy decisions

- 6.1 To 2003, appeals against County Court (Circuit or District Judge) decisions concerning individual insolvency cases were directed to the Bankruptcy Court in London and heard by a Chancery Judge. From 2004, appeals are lodged with the High Court of Appeal Office. The Court of Appeal only hears appeals concerning orders made by a High Court Chancery Judge. Every such appeal is limited to a review of the decision of the lower court. The appeal will be allowed if the decision of the lower court was incorrect or if it was unjust because of a serious procedural or other irregularity in the proceedings in the lower court.

7 Acquisition policy collection themes

- 7.1 The Acquisition Policy Statement outlines certain themes, which form the basis of The National Archives' appraisal and selection decisions. Of these themes, the following are of potential relevance in considering Court case records relating to individual bankruptcy cases.

2.1.4. Policy and administrative processes of the state: administration of justice and maintenance of security.

2.2.1. The economic, social and demographic condition of the UK, as

documented with the state's dealings with individuals, communities and organisations outside its own formal boundaries.

7.2 This Operational Selection Policy considers records relating to **individual insolvency** cases. The paper is organised as follows:

- A brief outline of the procedural options and activities that can take place during each bankruptcy case.
- Records selected for permanent preservation in The National Archives to date: including criteria for preservation (if any).
- Records deposited locally to date by The Court Service: including any available criteria for disposal (if any).
- Proposals for the future permanent preservation and disposal of records.

Individual Insolvency

8 Individual insolvency procedures

8.1 ***Overview of three formal individual insolvency procedures***
Apart from informal arrangements, there are three (formal) legal regimes in which an individual deals with their debt problems.

- County Court Administration Order
- Individual Voluntary Arrangement (IVA)
- Debtor's Bankruptcy Petition

8.2 ***County Court Administration Order*** This can be pursued where the degree of indebtedness has a £5000 upper limit. Only County Courts use this procedure: not the Bankruptcy Court in London. An overview of the basic procedure is provided in **Appendix 2**. When a County Court Administration Order is made:

- The court takes control of the debtor's assets
- The court divides the assets among the creditors
- Individual creditors are prohibited from taking any further court action against the debtor
- The debtor pays relatively low court fees
- The Order is a public record
- Failure to keep up agreed payments will lead to a review by the court whereby the District Judge or Registrar can revoke the Order

8.3 ***Individual Voluntary Arrangement (IVA)*** An IVA is legally binding agreement between a debtor and his creditors and the regime is contained in Part VIII of the Insolvency Act 1986. The debtor approaches a licensed **Insolvency Practitioner (IP)** and a 'Proposal' is drawn up setting out how the debtor proposes to deal with his/her debts. At this stage the IP acts as the Nominee. The

proposal is then put to the creditors who vote on whether to accept or reject the proposal at a formal meeting. If the proposal is approved generally the IP who was the Nominee is appointed as the Supervisor of the IVA and it forms a legally binding agreement. In some IVAs an application is made to the court for an **Interim Order** to stay or freeze all bankruptcy and other court proceedings against the debtor. If an IVA is approved by the creditors:

- The Supervisor takes control of the debtor's assets included in the proposal
- The Supervisor realises the assets contained in the proposal and divides the proceeds amongst the creditors
- The debtor can continue to run his business
- Individual creditors are prohibited from taking any further court action against the debtor
- The IVA is a matter of public record and details of IVAs can be accessed the Individual Insolvency Register which is displayed on the Insolvency Service website (www.insolvency.gov.uk)

8.4 ***Bankruptcy Petition by Creditor or Debtor*** A person can be subject to a creditor's bankruptcy petition if s/he owes more than £750. A debtor can also present his/her own bankruptcy petition to the court. The bankruptcy regime is contained in Part IX of the Insolvency Act 1986.

8.4.1 Bankruptcy should always be the option of the last resort because:

- Assets are liable to be sold to repay outstanding debts
- The bankrupt risks losing his/her home and possessions
- The bankrupt faces severe restrictions on his/her finances, such as getting a mortgage, bank account and future credit
- Details of the bankruptcy will be advertised in a local newspaper and recorded on a register that anyone can search
- If the bankrupt is in employment, he/she will probably have to make payments to creditors for 3 years. The bankrupt will only be able to avoid these payments if he/she is on a very low income
- The Official Receiver will look at the facts in every case and will identify dishonest people, who may be prosecuted
- An undischarged bankrupt has a number of restrictions placed upon them, these include not being able to act in the management of a limited company
- The Official Receiver will also consider whether to apply for a Bankruptcy Restrictions Orders (BRO). This protects the public and business community against bankrupts whose conduct may not have been dishonest but was irresponsible or reckless

- In the most serious cases, a BRO could last for 15 years

For all these reasons, if practical, an IVA is the preferred option for a debtor.

8.5 **Bankruptcy procedures** The summary of procedures for proceedings in bankruptcy is provided in **Appendix 4**. When a creditor commences the bankruptcy proceedings, the process begins with a creditors petition (properly served on the debtor) relating to an unpaid debt. The unpaid debt is usually evidenced through a **Statutory Demand** or on unsatisfied judgment. Subsequently there will be a hearing for a bankruptcy order.

A debtor can present his/her own petition for bankruptcy, this will be accompanied by a Statement of Affairs which sets out the debtor's assets and liabilities the debtor's petition will also lead to a hearing for a bankruptcy order.

If at the bankruptcy hearing (creditor's or debtor's petition) the court does make a Bankruptcy Order the **Official Receiver (OR)**, (employed by the Insolvency Service an Executive Agency of the Department of Trade and Industry) is appointed as receiver and manager of the bankruptcy estate. On the making of the bankruptcy Order the OR is automatically appointed as receiver and manager of the bankruptcy estate and his/her main duty is to protect the bankruptcy assets pending the appointment of the trustee in bankruptcy (in whom the bankruptcy assets vest). The trustee may be the OR alternatively, if there are significant assets, a meeting of creditors will be called and the creditors will generally vote for an IP to be appointed as trustee.

Whether or not he is appointed as trustee the OR also has the duty to investigate the bankrupt's conduct and financial affairs, which may result in an application for a BRO or in serious cases a prosecution. The OR will advertise the bankruptcy and invite creditors to 'prove' their debts (i.e. submit claims).

If the bankrupt does not co-operate with the Official Receiver (or, if appointed IP trustee) he/she can be publicly examined in court as to his/her financial affairs and the causes of the bankruptcy. Alternatively an application can be made to the court to suspend the bankrupt's discharge.

8.5.1 To summarise, when a bankruptcy order is made by the Court

- The OR will investigate the bankrupt's conduct and affairs
- A **Trustee** is appointed to deal with the bankrupt's assets.
- The Trustee divides the assets among the creditors
- Individual creditors are prohibited from taking any further

court action against the debtor unless they obtain leave from the bankruptcy court

- The bankruptcy order is advertised in a local newspaper and details of undischarged bankrupts can be found on the Individual Insolvency Register which is displayed on the Insolvency Service website (www.insolvency.gov.uk)
- If he/she co-operates with the OR (and IP trustee) he/she is automatically discharged one year after the bankruptcy order was made. Prior to 15 September 2003 a bankrupt was discharged only after 3 years had elapsed after the order

9 Court records preserved in The National Archives to date relating to cases of individual bankruptcy

9.1 **High Court cases** The *Report of the Committee on Legal Records (Cmnd 3084)* (known as the *Denning Report*), August 1966, recommended the following preservation decisions for individual bankruptcy public records of the High Court (only) in London.

B 9 – Bankruptcy case files – to be destroyed 60 years after the opening of the file – selected files of historical or legal precedent interest to be preserved permanently.

B 11 – Registers of Bankruptcy Petitions to the High Court – preserve permanently.

B 12 – Registers of Receiving / Bankruptcy Orders – preserve permanently.

9.2 The latest ***Supreme Court of Judicature - Bankruptcy Court - Records Schedule*** (dated 25 June 2003) continues this High Court preservation decision but makes the following amendments:

B 9 – Bankruptcy case files - Destroy after 20 years but make a random 1% selection for preservation. The High Court files accessioned at The National Archives contain some files of notable persons and celebrities.

B 11 - Registers of Bankruptcy Petitions to the High Court – the ***Bacchus*** computer system is used for the production of Registers of Petitions from 1994. The WIPETS system was used from 1986 to 1994 – printouts of all petitions to be preserved when they are 20 years old.

B 12 - Registers of Receiving / Bankruptcy Orders – no computer output – these registers were obsolete after 1991: they do not exist after this date. All registers up to 1991 to be permanently preserved when they are 20 years old.

10 County Court bankruptcy records – current selection and

disposal

- 10.1 The Denning Report of 1966 noted that many case files (which would include those of individual bankruptcies / insolvencies) had been held for long periods (e.g. over 30 years) at the courts where they were created without being deposited under s.4(1) of the Public Records Act 1958. Further, only the County Court Registers of Petitions and Receiving Orders in Bankruptcy were designated for permanent preservation in this report. These were to be preserved in the local place of deposit.
- 10.2 The latest **Revised High Court (District Registry) and County Court Record Schedules** makes reference only to 'Bankruptcy Files' and recommends that they all be destroyed 20 years after the date of the adjudication. There is no reference to Registers of Receiving / Bankruptcy Orders as these were obsolete after 1991: Registers prior to 1991 should have been preserved permanently in the local record office.
- 10.2.1 **'Files of proceedings under specified Acts'** The schedule also refers to "Files of local or historical interest [that] must be retained for 30 years and then sent to the local record office". "*Files under specified acts*" cited under this schedule refer to case files that were unusual: e.g. where points of law were established by the case. These were also to be preserved.

11 Bankruptcy appeal case files

- 11.1 The Denning Report of 1966 makes no reference to Civil Court of Appeal records. The Civil Court of Appeal was created in 1966 and so was missed by this publication. Further, the latest Court Service **Supreme Court of Justice Civil Appeals Office Records Schedule** refers only to the preservation of selected papers for **J 157 - Supreme Court of Judicature: Court of Appeal (Civil Division) Office**. A search of J 157 identified no case files specifically concerning bankruptcy cases: although this may be because the subject of the appeal (bankruptcy / insolvency) is not specified in the file descriptions. The **Judicial Statistics Annual Report 2001** indicates that bankruptcy appeal cases to this Court comprise 6.5% of the total civil appeals for that year – see **Appendix 1, Table 5**.
- 11.2 The High Court of Appeal on Bankruptcy deals with appeals concerning District Judge / Registrar decisions on individual insolvency cases made in the regions. There is no National Archives file series for the Court of Appeal on Bankruptcy and none of these appeal files have been preserved in The National Archives to date.
- 11.3 The record series J 157 covers the Court of Appeal (Civil Division) only. Concerning bankruptcy cases, the Court of Appeal (Civil

Division) only hears appeals on Orders made by the Court of Appeal on Bankruptcy: those made by Chancery Judges from the latter court.

- 11.3.1 Every such appeal is limited to a review of the lower court. The appeal will be allowed if the decision of the lower court was incorrect or if it was unjust because of a serious procedural irregularity in the lower court. Where such decisions are found for the appellant and they raise precedents, these are reported in the Law Reports, therefore there is little reason to preserve the case files which only contain the applications for appeal and the Appeal Court Judge's order: the bundles of evidence and other papers are returned to the appellants and their legal representatives.

12 The National Archives policy on the preservation of Department of Trade and Industry and Agencies individual bankruptcy case file records

- 12.1 The National Archives Operational Selection Policy does not yet exist for individual insolvency case records: official receivership is the responsibility of the DTI. Consequently, the selection of files concerning the activities of the Official Receiver in individual insolvency cases does not exist to inform the selection and preservation of Court case files.

- 12.2 **Appendix 1** Tables 1,2,4 and 5 provides summary details of the volume of business passing through the High Court and the County Courts concerning individual bankruptcy proceedings for the year 2001.

13 Proposals for the future permanent preservation and disposal of records of individual bankruptcy cases

- 13.1 **Records relating to individual bankruptcy that provide a national context**

- 13.1.1 **Annual Judicial Statistics concerning national trends in individual bankruptcy court actions created by the Department for Constitutional Affairs to be preserved at the UK National Digital Archive of Datasets (NDAD) every year.** These tables are to be contained in the UK National Digital Archive of Datasets (NDAD) series CRDA/8 and The National Archives reference LE 1: Monthly Civil Business Returns.

- 13.2 **Bankruptcies concerning the case files of individuals**

- 13.2.1 **Cause célèbre case files of historical or legal significance are to be selected.** Such files are to comprise: files that concern famous or infamous individuals; cases that created prolonged interest in the media; cases that contributed to the rise of pressure groups or

Parliamentary action; cases that set a legal precedent. High Court cases to be preserved in the B 9 TNA series. County Court cases to be preserved in the appropriate local place of deposit for public records.

13.2.2 **Records that demonstrate developments and changes in the way bankruptcy was dealt with by the High Court and the County Courts are to be selected:** in policy and the process / procedures of law. Each county / region to select illustrative example files that demonstrate changes in procedures and the application of new policies concerning individual bankruptcies in their region. Only a small number of files need to be selected: e.g. under 10 files. Initially these should cover existing arrangements:

- **County Court Administration Orders**
- **Individual Voluntary Arrangements**
- **Debtor or Creditor bankruptcy petition resulting in an Order being made**

High Court files are to be preserved in The National Archives series B 9 and County Court files to be preserved in local places of deposit for public records.

13.3 **Bankruptcy registers**

13.3.1 Registers of Bankruptcy Petitions from the High Court (London) (to be preserved in The National Archives series B 11) and the County Courts to be permanently preserved in their entirety. County Court Registers to be deposited in local places of deposit for their permanent preservation.

13.3.2 Series B11 'WIPETS' (to 1994) and 'Bacchus' systems (from 1994) Register printouts to continue to be preserved, as there is no electronic archiving provision from these systems that would enable their transfer to the UK National Digital Archive of Datasets.

13.3.3 Registers of Receiving / Bankruptcy Orders (The National Archives series B 12) to be preserved to 1991 after which date they are obsolete. Bankruptcy Order dates are preserved on the Bacchus system from 1994.

13.4 **Bankruptcy Court appeal case files**

13.4.1 Bankruptcy appeals from the Court of Appeal on Bankruptcy and the Court of Appeal (Civil Division) are not to be permanently preserved at The National Archives. The files are incomplete as the bundles are returned to the appellants and their legal representatives. Further, the files only contain, in the main, applications for appeals and the Judge's order and do not provide a great deal of valuable archival information that cannot be drawn from other sources. For

example, the Law Reports always report on precedent cases in appeal actions.

Implementation of the Policy

Concerning individual insolvency court case files, implementation of this policy will fall largely to the Records Management Service of The Court Service with the cooperation of the District Registries, County Courts in the regions and the Supreme Court of Judicature, Bankruptcy Court in London.

Appendix 1

Summary individual and corporate insolvency statistics for the High Court (including District Registries) and the County Courts 2001

Table 1 High Court - Chancery Division: Summary of bankruptcy proceedings before registrars' under the Insolvency Act 1986, for 2001

Bankruptcy petitions by creditors	8,624
Bankruptcy petitions by debtors and legal representatives of deceased debtors	699
Other applications and summonses (e.g. Individual Voluntary Arrangements and Administrative Orders etc...)	11,415
Total applications	20,738

* The High Court transferred 3,496 petitions to the County Courts during 2001.

Table 2 High Court - Chancery Division: Individual bankruptcy orders made, 2001

Orders made	
Bankruptcy Orders on creditors' petitions	4,380
Bankruptcy Orders on debtors petitions	697
Total orders	5,077

Table 3 Individual bankruptcy - summary of proceedings started in the County Courts, 2001

Bankruptcy petitions	21,232
Administrative Orders	7,548

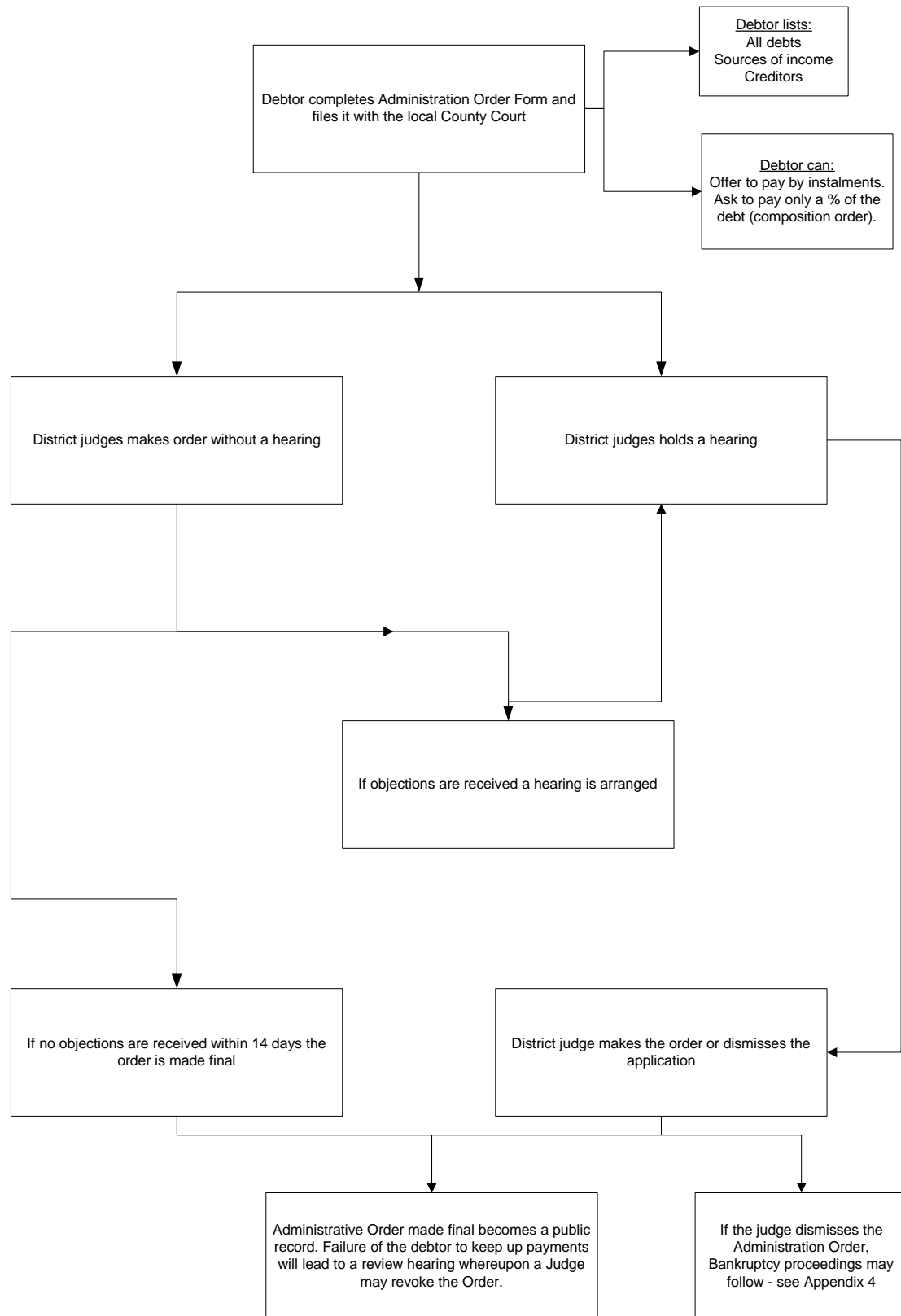
Table 4 High Court - Chancery Division: Appeals concerning bankruptcy cases from inferior Courts, 2001

	Set down for hearing	Allowed	Dismissed	Withdrawn or struck out	Total
County Courts	51	9	25	4	38
High Court Registrars	56	3	24	6	33
	107	12	49	10	71

A total of 1,071 civil appeals were filed during 2001.

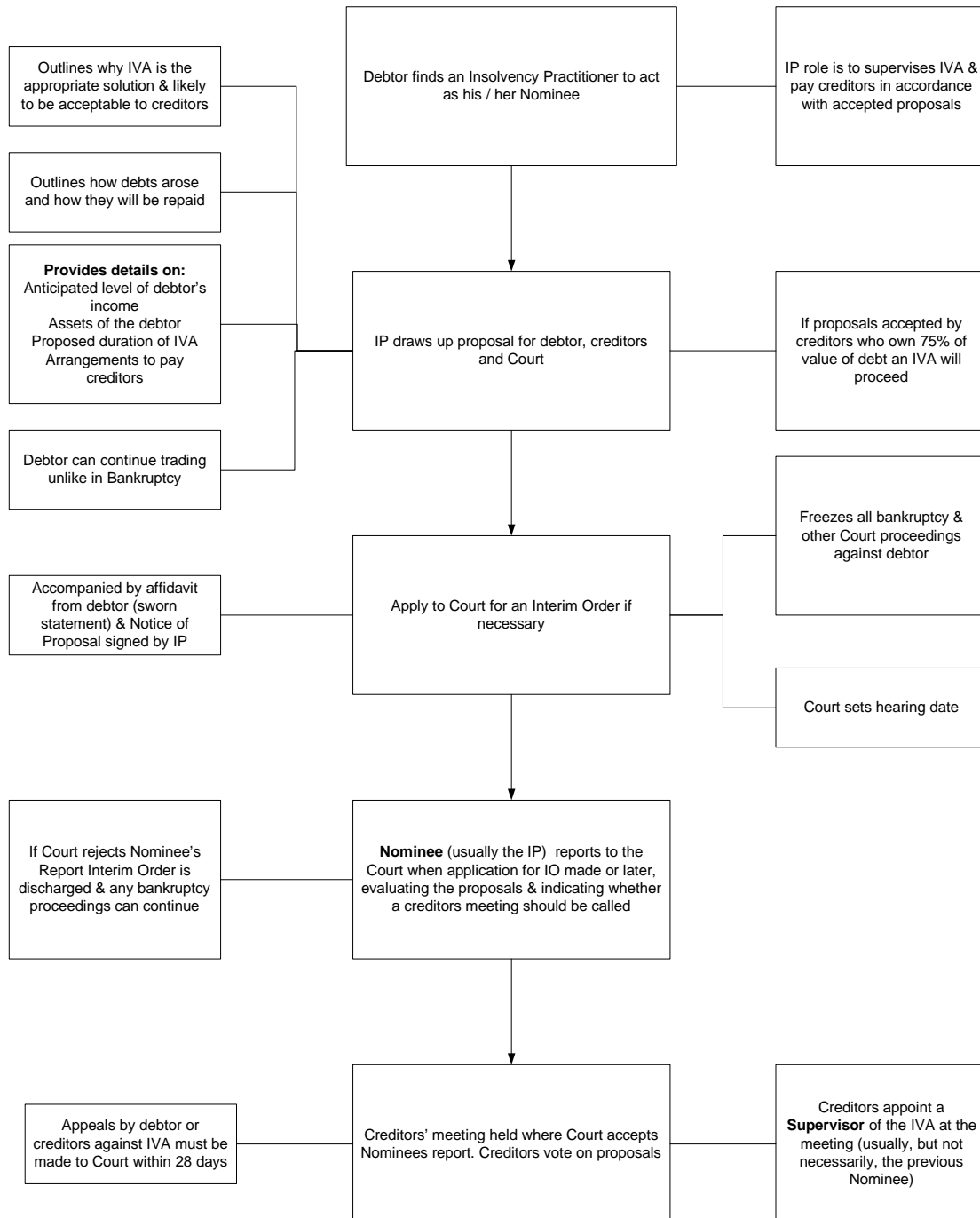
Appendix 2

County Court Administration Order procedure to 2003



Appendix 3

Individual Voluntary Arrangements (IVA) procedures to 2003



Appendix 4

Bankruptcy procedures to 2003

