

Name: [REDACTED]

Membership no: [REDACTED]

**1. Competency: 1**

**Learning Outcome: 1.1**

Apply the law to the matter.

**2. Evidence provided:**

Advice Memorandum regarding a bankrupt local authority tenant and advising of whether possession proceedings can be sought against the tenant for rental arrears. A copy of the court possession order is included. Pages 3 - 5

**3. Outline how the evidence demonstrates you meet the outcome**

**Applicable law:** Section 285(3) of the Insolvency Act 1986 and the case of *Sharples v Places for People Homes Ltd (2011)*

**How the law applies:** The client department wishes to seek possession of the tenant's property due to outstanding rental arrears but is unsure how to proceed due to the tenant making himself bankrupt. Advice provided as to whether the client department can still apply for possession of the tenant's property despite a bankruptcy order being made.

**Explain how law applied to the matter:** In this matter, the client department was provided with advice on how to proceed with possession proceedings against the tenant's property whilst a bankruptcy order was in place. The circumstances of the tenant were as follows:

The tenant had multiple debts including a small amount of rental arrears. As a result the tenant applied to make himself bankrupt and completed a statement of affairs petition containing all of his debts which included his rental arrears. The tenant was later adjudged bankrupt.

Section 285(3) of the Insolvency Act 1986 prohibits creditors from seeking a remedy against the debtor or his property in respect of their debts whilst a bankruptcy order is in place. Following the bankruptcy order the tenant's rental arrears increased again and as a result the client department wished to commence possession proceedings of the tenant's property.

Having applied the case of *Sharples v Places for People Homes Ltd (2011)* to the facts, I advised the client department that they can still pursue possession proceedings against the tenant because the objective is to restore the right of full possession and enjoyment of the landlord's property. Applying for the court's permission beforehand was not necessary as the rental arrears being claimed did not form part of the tenant's bankruptcy order. I advised also that the arrears they were seeking to recover would need to be reduced by the amount scheduled as part of the bankruptcy order. On 16 April 2014 the Council was successful in obtaining a possession order against the tenant despite a bankruptcy order being previously made.

**4. 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.

I understand that it is important to understand the full facts of the matter I have been instructed to advise upon and to be aware of the appropriate legislation and current case law as this can have a significant impact in securing a positive outcome in the client departments favour.

**5. Completion date: 22 August 2013**

**6. Signed (applicant)**



**Date:**  
29/5/14

**7. Signed (supervisor)**

**Date:**  
29/05/14.



# ADVICE MEMORANDUM

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From: [REDACTED]  
Legal Services

To: [REDACTED] – Financial  
Inclusion Team

Date: 22 August 2013

Our Ref: [REDACTED]

Your  
Ref:

Copies to:

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**Re: Mr [REDACTED]  
Bankruptcy Order made on Debtor's Petition**

Thank you for your instructions with regards to this matter.

As you are aware, the tenant, Mr [REDACTED] petitioned himself for bankruptcy by completing a statement of affairs petition on 17 July 2013 which includes rental arrears that he owes to the Council. [REDACTED] County Court later adjudged Mr [REDACTED] bankrupt and a bankruptcy order was made against him on 24 July 2013. **Section 285(3) of the Insolvency Act 1986** states that after the making of a bankruptcy order no person who is a creditor of the bankrupt in respect of a debt provable in the bankruptcy shall have any remedy against the property or person of the bankrupt in respect of that debt, or before the discharge of the bankrupt, commence any action or other legal proceeding against the bankrupt except with the leave of the court and on such terms as the court may impose.

I can, however, advise that despite the bankruptcy order being made you can still pursue rent possession proceedings against Mr [REDACTED] should you wish to do so and this is thanks to a case called **Sharples v Places for People Homes Ltd (2011)**, details of which can be found later in this advice memo. However, should you make the decision to proceed with possession proceedings please be aware of the following:

- Mr [REDACTED] has listed the Council as an unsecured creditor for the amount of £101.86 relating to rental arrears existing at the time that he completed his statement of affairs petition on 17 July 2013;
  - If the decision is made to proceed with possession proceedings against Mr [REDACTED], the Financial Inclusion Team will need to deduct the amount of £101.86 from any rental arrears existing at that time as the amount now forms part of his bankruptcy order.
  - Due to the Council's unsecured creditor status, the amount of £101.86 will now be paid back to us on a pro-rata basis. From looking through Mr [REDACTED]'s statement of affairs I couldn't see that he had listed any secured creditors
- [REDACTED]



(normally secured creditors enforce their securities for the debts that are owed to them first before unsecured creditors obtain their monies) which means that the Council, as well as Mr [REDACTED]'s other unsecured creditors should be paid their monies equally and without favouritism. The Official Receiver will now be reviewing Mr [REDACTED]'s assets and an income payment order or agreement will be made with Mr [REDACTED] to allow him to make some kind of regular payments which would then be paid towards the creditors. We should be receiving a report from the Official Receiver soon containing details of his findings.

- The bankruptcy order itself has a life span of around 12 months, although the Official Receiver may decide to discharge the bankruptcy early depending on Mr [REDACTED]'s circumstances in which case we can lodge an objection to such an early discharge. Once the bankruptcy order eventually expires, the debtor is then discharged from the order and automatically released from most, if not all, of the debts owed at the date the bankruptcy order was made.
- The remedy in this situation, as mentioned above, is the case of *Sharples v Places for People Homes Ltd (2011)*. In this case, possession proceedings were brought against Ms [REDACTED] for outstanding rental arrears. Five days before the possession hearing, a district judge adjudged Ms [REDACTED] bankrupt. The official receiver was appointed receiver and manager of her estate. The Judge ruled that the arrears were 'a debt provable in her bankruptcy' and did not therefore make an order for the arrears, but he did order outright possession of the property because ultimately the objective is to restore to the Landlord the right to full possession and enjoyment of the landlord's property.
- We can apply the case of *Sharples v Places for People Homes Ltd (2011)* to Mr [REDACTED]'s situation and seek possession for rental arrears accruing from 18 July 2013 onwards as Mr [REDACTED] still has an obligation to pay his weekly rent towards his property despite the bankruptcy order being made against him. If we apply for possession during the life of the bankruptcy order we won't need to apply for leave from the court beforehand as long as we are not claiming the £101.86 already scheduled to the order. You can still serve your pre-warning letters and the Notice of Seeking Possession against Mr [REDACTED] in the usual way. We should also be successful in obtaining an order both for possession of Mr [REDACTED]'s property and for rental arrears as Mr [REDACTED]'s debt from 18 July 2013 onwards would not have been scheduled as part of his bankruptcy order.

I hope that the above information is of assistance to you. If you have any further queries please do not hesitate to contact me.

Mr. [REDACTED]  
Assistant Legal Officer

[REDACTED]

Order for possession

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In the	
County Court	
Claim No.	

1st Claimant: [redacted] Borough Council  
 Ref: [redacted]  
 1st Defendant: [redacted]  
 Ref: [redacted]



On the 16 April 2014, Deputy District Judge [redacted]  
 at [redacted] County Court, [redacted]

Upon hearing Representative representing [redacted] Borough Council  
 and upon [redacted] not attending

The court orders that

1. The defendant give the claimant possession of [redacted] forthwith.

And it is adjudged that

The claimant recover against the defendant the sum of £[redacted] for debt and interest to date of judgment  
 and £[redacted] for costs amounting together to the sum of £[redacted]

It is ordered that the defendant pay the sum of £[redacted] to the claimant.



**To the defendant**

The court has ordered you to leave the property by the date stated in paragraph 1 above.  
 If you do not do so, the claimant can ask the court, without a further hearing, to authorise a bailiff or High  
 Court Enforcement Officer to evict you. (In that case, you can apply to the court to stay the eviction; a judge  
 will decide if there are grounds for doing so.)

The claimant will send you a copy of the bill of costs with a notice telling you what to do if you object to this  
 amount. If you do object, the claimant will ask the court to fix a hearing to assess the amount.  
 Payments should be made to the claimant, not to the court. If you need more information about making  
 payments, you should contact the claimant.

If you do not pay the money owed when it is due and the claimant takes steps to enforce payment, the  
 order will be registered in the Register of Judgments, Orders and Fines. This may make it difficult for you to  
 get credit. Further information about registration is available in a leaflet which you can get from any county  
 court office.

**Need help with your problem?**

You may qualify for help with the costs of legal advice or getting someone to speak or negotiate for you from Civil  
 Legal Aid. For further information please refer to [www.gov.uk/legal-aid](http://www.gov.uk/legal-aid).