



**Bankruptcy Courts Survey 2005:  
A Pilot Study  
Final Report: January 2006**

*John Tribe*

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**CILP**

**Centre for Insolvency Law and Policy**

**Bankruptcy Courts Survey 2005 – A Pilot  
Study**

**Final Report – January 2006**

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## BANKRUPTCY COURTS SURVEY 2005<sup>1</sup>

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<sup>1</sup> The ideas and opinions expressed in this report are **not** the opinions of the Insolvency Service. This is an independent academic report and the opinions, ideas and conclusions reached within are those of the author alone. The Insolvency Service cannot accept any responsibility for any errors or omissions as a result of negligence or otherwise.

## **REPORT SUMMARY**

The Main Conclusions of the *Bankruptcy Court Survey 2005 (BCS 2005)* are:

### ***Debtor associated:***

- The main cause of bankruptcy is bankrupt acknowledged credit misuse, followed by business failure.
- Males are the majority users of the bankruptcy regime.
- There is no definitive age range for the typical bankrupt.
- Debtors present the majority of bankruptcy petitions.
- The vast majority of bankrupts are not homeowners prior to bankruptcy.
- Bankruptcy does not affect employment.
- Knowledge of the Enterprise Act 2002 provisions and their effects is low amongst bankrupts.
- The majority of bankrupts feel morally at fault for their debt problems.
- A large majority of bankrupts did not know what level of indebtedness they were being released from.

### ***Creditor associated:***

- Bankrupts experience immense difficulties in obtaining bank accounts post discharge, which inhibits them from rehabilitation into the credit world.
- The non-monetary effects of bankruptcy are voluminous, but primarily feature dissatisfaction with lenders.

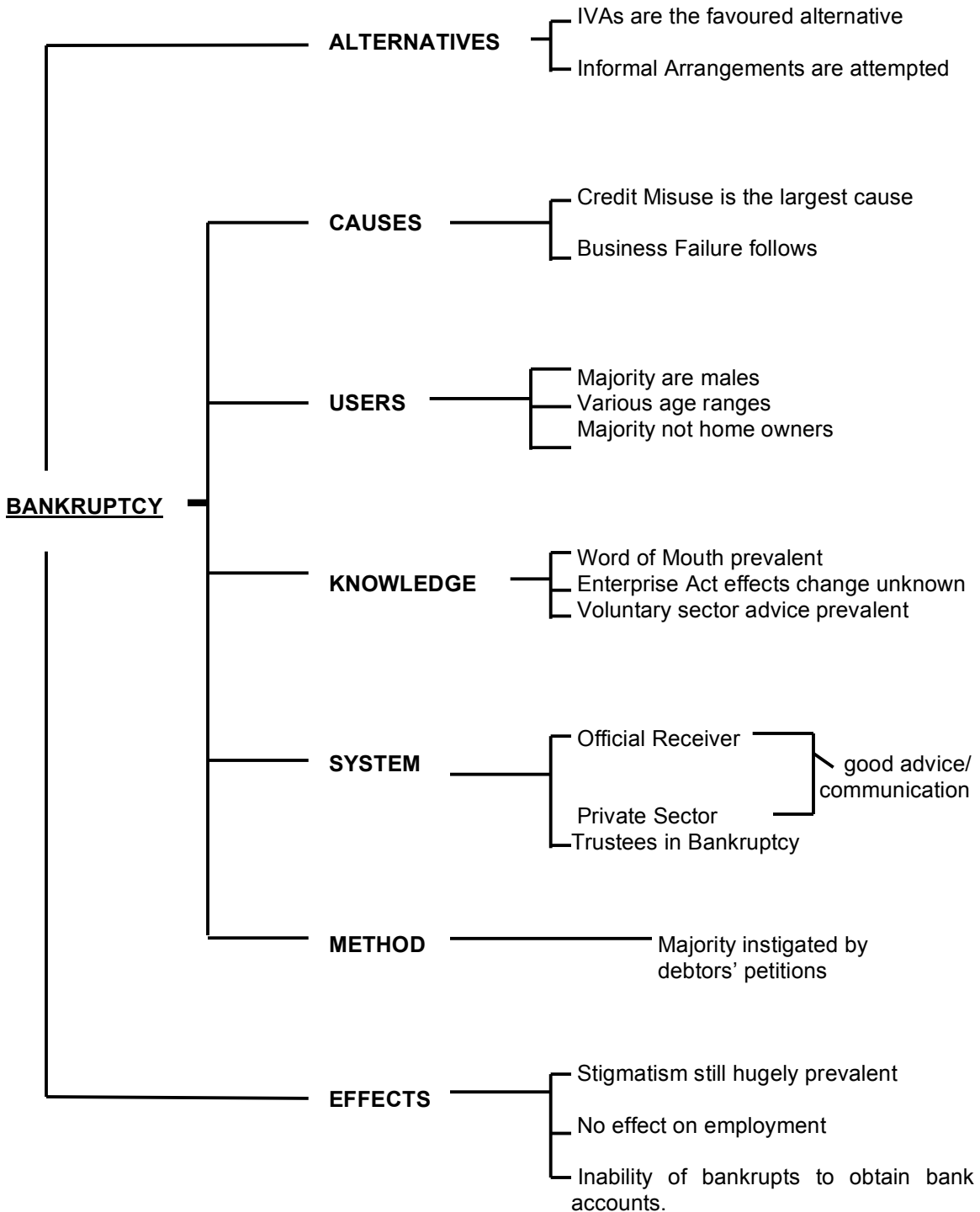
### ***Procedure associated:***

- Informal voluntary arrangements and individual voluntary arrangements are close second choice solutions for over-indebted individuals.
- Alternative routes to bankruptcy are explored prior to the bankruptcy route being pursued.
- Word of mouth and voluntary sector advice are the main information conduits for personal insolvency advice.
- Bankruptcy as an experience is overwhelmingly perceived as negative and stigmatising by bankrupts.
- Bankrupts sum up the bankruptcy process as being ultimately an efficient system.
- The one year maximum period before automatic discharge is deemed sufficient by bankrupts.

**Profession/Advice associated:**

- **Communication and advice from Trustees in Bankruptcy is good according to bankrupts.**
- **Communication and advice from the Official Receiver is overwhelmingly good according to bankrupts.**
- **Bankruptcy jurisdiction within the County Courts is efficient and the supporting infrastructure is well maintained.**
- **On the whole lawyers are not involved in the bankruptcy process in terms of advice; the Citizens Advice Bureau is the main provider of personal insolvency advice.**

The key findings of the *BCS 2005* might be graphically represented as follows:



### **Pilot Study Preliminary Recommendations**

The main recommendations of the *BCS 2005* are:

- Consider the division of bankruptcy into a two-tier system differentiating between entrepreneurially derived debt and consumer derived debt, perhaps under the headings of “business bankruptcy” and “personal bankruptcy”.
- Formulate and enact a system of debtor and creditor education.
- In light of the recent dramatic growth in consumer debt levels reappraise the conduct of consumer debtors, but in particular lending institutions, focusing on the creditor’s responsibility and conduct regarding the consumer debtor’s personal over-indebtedness.
- Whilst considering the division of the bankruptcy procedure between “business bankruptcy” and “personal bankruptcy” also consider eradicating the term ‘bankruptcy’ for non-culpable consumer debt cases.
- It is further recommended that the *BCS 2005* pilot study be expanded from its 6 court sample to a full study that encompasses 30 of the 136 bankruptcy courts in England and Wales to give a better impression of the treatment and experience of the bankruptcy court user.



## **ACKNOWLEDGEMENTS**

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I would like to enthusiastically acknowledge the invaluable help of *Centre for Insolvency Law and Policy (CILP)* research assistants Ms. Leyanda Cocks and Ms. Emily Marshall who undertook the laborious questionnaire distribution and results collation phases of this survey with great care and efficiency.

I would like to acknowledge the helpful guidance and support of my Kingston University colleagues Ms. Fiona Tolmie, Professor Robert Blackburn, Mr. Mark Saunders and Mr. John Lovegrove. I would also like to acknowledge the kind assistance of Ms. Cherie Spinks. I would like to thank Professor Ian F. Fletcher, Professor Jacob Ziegel, Professor David Milman, Professor David Graham QC, Mr. David Marks, Mr. Hamish Anderson, Mr. Michael Mulligan, Ms. Rachel Richards, and Mr. Christopher Branson for their continuing support for *CILP* and the research undertaken at the Centre. The author is indebted to Ms. Jane Trevail of *R3* for supplying information regarding the *R3* annual personal insolvency surveys.

Finally and most importantly I would like to express my gratitude to the respondents, without whose input this project could not have been completed.

Any errors or omissions are of course the responsibility of the author. The statements, opinions, ideas, and conclusions reached in this report are those of the author and do not reflect in anyway the position of the Insolvency Service.

## **PART ONE**

# **INTRODUCTION AND BACKGROUND**

## **PREFACE**

### **BANKRUPTCY COURTS SURVEY 2005**

In March 2005 the *Centre for Insolvency Law and Policy (CILP)*<sup>2</sup>, Kingston Law School, Kingston University, received £26,600 research funding to undertake two pilot studies. The funding was provided by the Insolvency Service, an executive agency of the Department of Trade and Industry. The first project, which was originally due to report in November 2005, is entitled the *Bankruptcy Courts Survey 2005 (BCS 2005)*. It now reports in January 2006, to take into account the continued flow of questionnaire responses coming in to CILP. The project as proposed originally consisted of a pilot study questionnaire of three bankruptcy courts in England and Wales (Birmingham, Croydon, and Reading). This number was however expanded during the course of the research to include three further courts (Cardiff, Exeter, and Newcastle). This expansion was deemed necessary so as to gain a greater number of responses to the questionnaire thus giving greater statistical validity to the results. The *BCS 2005* project received £12,000 of the research funding. Project Two, which will report in March 2006, received the remaining £14,600. This project is an examination of the concept of phoenixism in insolvency and is being conducted by Fiona Tolmie, director of CILP.

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<sup>2</sup> [www.kingston.ac.uk/cilp](http://www.kingston.ac.uk/cilp)

## INTRODUCTION

“We do not know what are the effects of bankruptcy on individuals who, given the need for that relief, utilize this singular legal remedy. Personal bankruptcy may stigmatize or it may liberate, and these consequences may be different for different persons”  
(*per* Shuchman, P. *An Attempt at a “Philosophy of Bankruptcy”* [1973] 21 UCLA Law Rev. 403, at page 438)

This pilot study relates to personal over-indebtedness, with its corollary inability to pay within a reasonable time, of both consumer debtors<sup>3</sup> and entrepreneur debtors.<sup>4</sup> The use and in some cases misuse of credit with the attendant subsequent default is unfortunately an increasing issue in modern commercial relationships as between both consumers and those engaged in business activities and their creditors. Indeed, it has been opined that, “the world...is suffering an all-time high level of financial failures amongst consumer debtors and small businesses.”<sup>5</sup> Consumer over-indebtedness is it seems not limited to the shores of England and Wales.<sup>6</sup>

The most powerful<sup>7</sup> formal response that English law has to regulate this credit relationship breakdown between individuals is bankruptcy.<sup>8</sup> There are of course other regimes, but this report must limit itself to an examination of bankruptcy and English and Welsh bankrupts.<sup>9</sup> Since the provision of bankruptcy relief was extended to insolvent non-traders in 1861,<sup>10</sup> until recently, no regular attempt has been made to compile and analyse statistical and factual evidence regarding

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<sup>3</sup> Throughout this report (hereafter referred to as the *BCS 2005*) the term *consumer debtor* relates to those debtors whose personal over-indebtedness stems from personal expenditure on household items, family and other private expenditure. Examples of this type of debt are, *inter alia*, credit cards, store cards, hire purchase agreements, overdrafts, bank loans, and mortgages.

<sup>4</sup> The term *entrepreneur debtor* is used throughout the *BCS 2005* to denote those debtors whose personal over-indebtedness has occurred as a result of carrying on a business as a sole trader or in a partnership or guaranteeing a limited liability company.

<sup>5</sup> Insol International. *Consumer Debt Report – Report of Findings and Recommendations*. London, May 2001, at introduction. Hereafter referred to as *Insol Consumer Debt Report*.

<sup>6</sup> Hill, J. *The Scotsman*. “Hundreds count the cost as bankruptcy soars.” (22/10/05).

<sup>7</sup> Or “ultimate” as Fletcher has opined, see: Fletcher, I.F. *The Law of Insolvency*. 3<sup>rd</sup> Edition. Sweet & Maxwell Ltd. London, 2002, at para 3-002. Hereafter referred to as *Fletcher*.

<sup>8</sup> On the history of bankruptcy see: Levinthal, L.E. *The Early History of Bankruptcy Law* (1918) vol. 66, U. PA. L. Rev. 233; Levinthal, L.E. *The Early History of English Bankruptcy* (1919) vol. 67, U. PA. L. Rev. 1; Radin, M. *The Nature of Bankruptcy* [1940] University of Pennsylvania Law Review, vol.89, no. 1, pages 1 to 38; Graham, D. *A Dark and Neglected Subject: Landmarks in the Reform of English Insolvency Law* (2002) *Int.Insol.Rev.*, Vol.11(2); 97-119; Tribe, J & Graham, D. *Bankruptcy in Crisis – A Regency Saga* (2004) 17 *Insolv.Int.*, pp.6; Tribe, J & Graham, D. *Bankruptcy in Crisis – A Regency Saga: Part 2 – The Busy Bankruptcy Court* (2004) 17 *Insolv.Int.*, pp.150. See also the excellent historical coverage in: Milman, D. *Personal Insolvency Law, Regulation and Policy*. Ashgate Publishing Ltd, 2005, at pages 5-12. Hereafter referred to as *Milman*.

<sup>9</sup> Those who are subject to bankruptcy orders obtained pursuant to the provisions of the Insolvency Act 1986.

<sup>10</sup> Bankruptcy as a legal state had of course up until 1861 only been available to traders (24-25 Vict, c.134) and it was only in 1883 that voluntary bankruptcy became available (46 and 47 Vict, c.52). On the reforms of 1861 see: Lester, VM. *Victorian Insolvency*. Clarendon Press, 1995.

the experiences and make up of bankruptcy courts' users in England in Wales.<sup>11</sup> Indeed, Ziegel has on a number of occasions expressed in writing his concern that English bankruptcy law academics,<sup>12</sup> practitioners<sup>13</sup> and the United Kingdom government have for too long neglected the serious study of the personal side of the subject within the United Kingdom.<sup>14</sup> Whilst American and Canadian academia have taken a comparatively long interest in the personal side of the subject<sup>15</sup> and have undertaken a number of empirical surveys in relation to bankruptcy,<sup>16</sup> including Sullivan, Warren and Westbrook's magisterial "*As We Forgive our Debtors*",<sup>17</sup> English interest and empirical evidence on the experience of the bankrupt in particular is small.<sup>18</sup> This pilot study questionnaire is then a partial attempt to address this lacuna.

<sup>11</sup> There has been some empirical research undertaken in relation to bankrupts recently, see: Armour, J & Cumming, D. *Bankruptcy Law and Entrepreneurship*. Centre for Business Research. University of Cambridge, 2005. See also: Walton, P & Keay, A. *Preferential debts: an empirical study* (1999) *Insolv.L.*, 3(Apr), 112-118.

<sup>12</sup> The publication of Professor Milman's excellent new treatise goes quite some way to redressing this scholastic imbalance, see: Milman, D. *Personal Insolvency Law, Regulation and Policy*. Ashgate Publishing Ltd, 2005. Professor Milman in his foreword writes that, "scholarship on the subject has mushroomed." (vi) a view contrary to that espoused by Professor Ziegel, *vide supra*, n.14. See also: Tolmie, F. *Corporate & Personal Insolvency*. 2<sup>nd</sup> Edition. Cavendish Publishing Ltd, London, 2003; Keay, A & Walton, P. *Insolvency Law: Corporate and Personal*. Pearson Longman, London, 2003; Fletcher, IF. *Law of Bankruptcy*. Macdonald and Evans, Plymouth, 1978.

<sup>13</sup> Whilst expressly recognising the need for reform, practitioners' treatises do not on the whole call for empirical evidence on bankruptcy to illuminate and inform that reform activity, see: Berry, C & Bailey, E & Schaw Miller, S. *Personal Insolvency: Law and Practice*. 3<sup>rd</sup> Edition. Butterworths, London. 2001, at para 1.3.

<sup>14</sup> Ziegel, J. *Comparative Consumer Insolvency Regimes – A Canadian Perspective*. Hart Publishing, Oxford, 2003, at page 8 where he notes, "In the United Kingdom, until quite recently, consumer insolvencies were not regarded as a major legal and social issue and this perception is reflected in the very modest volume of legal and non-legal literature." See also Ziegel's unpublished "*Consumer Insolvencies: A Neglected Area of Study in English Insolvency Law?*" a paper delivered at the 2003 Oxford Society of Legal Scholars conference. Professor Ziegel is not alone in the advancement of an American/Canadian perspective on English insolvency law scholarship, see further: Adler, M. *The Overseas Dimension: What can Canada and the United States Learn from the United Kingdom?* (1999) 37 *Osgoode Hall L.J.* 415, 420.

<sup>15</sup> Ziegel, J. *Consumer Bankruptcies* (1972) *Chitty's Law Journal*, vol.20, no.10, p.325.

<sup>16</sup> For America see: Shuchman, P. *An Attempt at a "Philosophy of Bankruptcy"* [1973] 21 *UCLA Law Rev.* 403, at page 412 at footnote 25 – for a list of American surveys. See: Woodward Jr, W.J & Woodward, RS. *Exemptions as an incentive to voluntary bankruptcy: an empirical study* (1983) 88 *Commercial Law Journal* 309. For Canada see: Report of the Study Committee on Bankruptcy and Insolvency Legislation, Canada (1970); Schwartz, S & Anderson, L. *An Empirical Study of Canadians Seeking Personal Bankruptcy Protection*. Industry Canada, Ottawa, 1998; Schwartz, S. *The Empirical Dimensions of Consumer Bankruptcy: Results from a Survey of Canadian Bankrupts* (1999) 37 *Osgoode Hall L.J.* 83; Ramsay, IDC. *Individual Bankruptcy: Preliminary Findings of a Socio-Legal Analysis* (1999) 37 *Osgoode Hall L.J.* 15; Brighton, W. *Reactions to Recent Canadian Empirical Studies on Consumer Bankruptcies* (1999) 37 *Osgoode Hall L.J.* 137; Adler, M. *Reactions to Empirical Studies* (1999) 37 *Osgoode Hall L.J.* 127.

<sup>17</sup> See: Sullivan, TA & Warren, E & Westbrook, JL. *As We Forgive our Debtors: Bankruptcy and Consumer Credit in America*. Oxford University Press, New York, Oxford. 1989. See also: Sullivan, TA & Warren, E & Westbrook, JL. *As We Forgive our Debtors: Bankruptcy and Consumer Credit in America*. BeardBooks, Washington DC. 1999. See also: Westbrook, JL. *Comparative Empiricism* (1999) 37 *Osgoode Hall L.J.* 143, and; Sullivan, TA & Warren, E & Westbrook, JL. *The Fragile Middle Class: Americans in Debt*. Yale University Press. 2000.

<sup>18</sup> There has been one socio-legal analysis of the area, see: Ramsay, I. *Debtors and Creditors: A Socio-Legal Perspective*. Professional Books Limited, Abingdon, Oxon. 1986. (a Canadian academic at Osgoode Hall Law School). See also: Kempson, E. *Overindebtedness in Britain: A Report to the Department of Trade and Industry*. July 2001.

The incidence of personal over-indebtedness and subsequent personal insolvency is rising in England and Wales.<sup>19</sup> How can society assist over committed individuals who are both consumer and entrepreneurial in makeup?<sup>20</sup> Only by investigating the actual experiences and perceptions of bankrupts can we go some way to answer Professor Shuchman's statement, noted at the beginning of this introduction; i.e. we can ascertain what the effects of bankruptcy are on the bankrupt and what the experience of the bankrupt is *in fact*. In order to frame a coherent bankruptcy law we must ascertain the usage, perception and experience of those most closely engaged in that legal state, namely, the bankrupt.<sup>21</sup> Once the process of bankruptcy has been analysed from primary source material only then can the procedure be perfected to meet the needs of the society within which the process is operating.

There is one exception to the English bankruptcy empirical dearth of data and that is the *British Association of Business Recovery Professionals (R3)*<sup>22</sup> personal insolvency annual surveys.<sup>23</sup> The association has since 1991 conducted an annual survey of personal insolvency. The methodology of the R3 surveys has not included soliciting responses from bankrupts regarding their opinion of the bankruptcy system; the data used is drawn from the association's practitioner membership body. This is the principal difference between the *BCS 2005* and the R3 surveys. Drawing the information only from practitioners as R3 has done does have some disadvantages, not least losing all data and responses from those bankruptcy cases conducted by the Official

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<sup>19</sup> See: *Fletcher*, at appendix III. See also *Milman* at pages 12-14. The rise in personal over-indebtedness is of course not a uniquely English problem, see further: Ziegel, J. *The Philosophy and Design of Contemporary Consumer Bankruptcy Systems: A Canada-United States Comparison* (1999) 37, Osgoode Hall Law Journal, p.205, at page 207, footnote 1. See also: Watts, R & Hall, J. *The Sunday Telegraph*. "Personal bankruptcies hit record" (30/10/05). See however the recent article: *BBC News Story* (05/01/06) "Consumer appetite for debt wanes."

<sup>20</sup> On the aims of bankruptcy law see: *Milman* at pages 4 and 5 and the citations therein.

<sup>21</sup> See further the suggestion of Brighton (Brighton, W. *Reactions to Recent Canadian Empirical Studies on Consumer Bankruptcies* (1999) 37 Osgoode Hall L.J. 137, at page 142.) in relation to "event history analysis", that is ascertaining from the bankrupt what led to their seeking bankruptcy protection through an examination of credit usage events leading up to their insolvency.

<sup>22</sup> R3 - Rescue, Recovery, Renewal; see: [www.R3.org.uk](http://www.R3.org.uk) - formerly the *Society of Practitioners of Insolvency*. It must also be noted at this stage that the Insolvency Service also undertakes annual surveys of customer comments, suggestions, see: [www.insolvency.gov.uk](http://www.insolvency.gov.uk)

<sup>23</sup> Society of Practitioners of Insolvency - Smith, A & Grundon, T. *Recession Changes the Face of Insolvency – Survey Results*. Page 26- 29. 1992; Society of Practitioners of Insolvency – Smith, A & Grundon, T. *A Challenging Time for the Insolvency Profession – Survey Results*. Page 16 – 21. 1992; Society of Practitioners of Insolvency – *Personal Insolvency in the United Kingdom – Report of the Third SPI Survey of Members Activities*. London, 1994; Society of Practitioners of Insolvency – *Personal Insolvency in the United Kingdom – Report of the Fourth SPI Survey of Members Activities*. London, 1995; Society of Practitioners of Insolvency – *Personal Insolvency in the United Kingdom – Report of the Fifth SPI Survey of Members Activities*. London, 1996; Society of Practitioners of Insolvency – *Personal Insolvency in the United Kingdom. Sixth Survey*. London, 1996; Society of Practitioners of Insolvency – *Personal Insolvency in the United Kingdom: 1997-98, Report of the 1997 Survey*. (7th Survey), London, 1998. R3 – Association of Business Recovery Professionals - *8th Survey of Personal Insolvency*, London, 1999; R3 – Association of Business Recovery Professionals - *9th Survey of Personal Insolvency*, London, 2000. See Appendix, Figure Three.

Receiver, namely those where the asset value is zero or very low. Bankruptcies handled by the Official Receiver are consequently excluded from the *R3* data sample. The *R3* sample figures for data regarding bankrupts has been typically small.<sup>24</sup> The *R3* 9<sup>th</sup> annual report states, with no authority cited, that the figures for the 8<sup>th</sup> annual survey are, “statistically sound for the population.”<sup>25</sup> Whereas *R3* have surveyed insolvents<sup>26</sup> through insolvency practitioner surveys over a yearly time period, thus investigating yearly trends, the *BCS 2005* has attempted to survey bankrupts in six specific courts over a broad time period.<sup>27</sup> The sample is not drawn from individuals who were made bankrupt in a particular year; the *BCS 2005* has instead attempted to survey all bankrupts in each of the six courts, which are discussed below.

Despite this lack of statistical empirical evidence<sup>28</sup> regarding the bankrupts’ use and experience of the bankruptcy process and its aftermath, there has long been a desire to ascertain such information during the course of insolvency law reform initiatives and in a wider ‘credit’ usage and insolvency context.<sup>29</sup> There have been related empirical surveys of credit and debt within the UK<sup>30</sup> and there has been at least one small bankruptcy survey undertaken by an accountancy firm.<sup>31</sup> This desire for empirical bankruptcy research goes back to the seminal Cork Report.<sup>32</sup> The learned committee observed, “scarcely any detailed study has been made into what happens when the credit relationship breaks down and insolvency occurs.”<sup>33</sup> Furthermore, in their 1994 report, *Insolvency: An Agenda for Reform*, the Justice committee enquiring into the state of insolvency laws recognised the need for statistical work on the personal side of the subject<sup>34</sup> and

<sup>24</sup> See Appendix, Figure Three – *R3* Annual personal insolvency survey statistics.

<sup>25</sup> This assumption is based on 109 practitioners responding with details of 1142 cases, which *R3* promulgates is 4.65% of all personal insolvency case in the survey period.

<sup>26</sup> Both bankruptcy and individual voluntary arrangements are considered.

<sup>27</sup> Discussed *vide supra*.

<sup>28</sup> The Insolvency Service publishes figures for the total numbers of bankruptcies. However, these statistics give little more than total amounts, see: [www.insolvency.gov.uk](http://www.insolvency.gov.uk)

<sup>29</sup> Indeed, as early as the mid-nineteenth century the value of evidence in the reform of bankruptcy law was noted; “...like most of the interferences with the law of debtor and creditor, oratory and sentiment then took the place of reason and evidence...” from: Editorial. *Bankruptcy and Insolvency*. Westminster Review, 1846, vol.46, pp.500-516, at page 506.

<sup>30</sup> Berthoud, R & Kempson, E. *Credit and Debt: the PSI Study*. London, Policy Studies Institute, 1992.

<sup>31</sup> KPMG – Bankruptcy Still a Social Stigma, Commercial Press Release, 19 February 2003, which includes details of a survey undertaken by KPMG. Wilkins Kennedy also undertook a survey of 800 bankrupts in England and Wales during April and May of 2005, see: Nugent, H. The Times. “*Bankrupt women paying for credit cards.*” (16/05/05).

<sup>32</sup> The Cork Report, Report of the Review Committee, Insolvency Law and Practice. 1982. Cmnd 8558. Hereafter referred to as *Cork Report*.

<sup>33</sup> *Ibid* at paragraph 200.

<sup>34</sup> Justice: *Insolvency Law an Agenda for Reform*, London, 1994, at para 4.18. Hereafter referred to as *Agenda for Reform*.

more recently the *Insolvency Practices Council* has recognised the need for statistical information on the performance of voluntary arrangements.<sup>35</sup>

With the recent enactment of the Enterprise Act 2002 provisions reducing the automatic discharge period from three years to one year,<sup>36</sup> bankruptcy as a topic for popular discussion has rarely been out of the news.<sup>37</sup> It has been observed by Lightman, J that the reforms engendered in the Act, and in particular the personal insolvency reforms, “are more far reaching than any statute since the Bankruptcy Act 1883.”<sup>38</sup> One of the primary aims of the *BCS 2005* as constructed was to ascertain if this enactment is having any effect, whether positive or negative, in relation to debtors’ entry into the bankruptcy procedure. In addition to the legislative activity of the Enterprise Act 2002, there have also been a number of further research initiatives in the realm of personal debt. The recent report on Individual Voluntary Arrangements (IVAs) by Mr. Michael Green of the University of Wales at Bangor<sup>39</sup> and the Department for Constitutional Affairs recent consultation paper on personal over-indebtedness<sup>40</sup> highlight the growing concern with the treatment of over-indebted individuals.

So what are the effects of bankruptcy on the individual? Who are the individuals using the bankruptcy system? What type of debtors are involved in the process? Do bankrupts suffer from stigmatisation in England and Wales as at least one commentator has noted?<sup>41</sup> Do bankrupts regret going through the bankruptcy process? Has bankruptcy come as a blessed relief?<sup>42</sup> Is the

<sup>35</sup> Insolvency Practices Council – Influencing the standards of the insolvency profession. *Annual Report 2002*. Market Deeping, 2002, at page 14. On individual voluntary arrangements generally see: Bailey, E. *Voluntary Arrangements*. LexisNexis, London, 2003, at Chapter Two.

<sup>36</sup> See: Davies, S (Ed). *Insolvency and the Enterprise Act 2002*. Jordans, London, 2003, at chapters 14 and 16 in particular. Hereafter referred to as *Davies*. See s.256 and Schedule 19 of the Enterprise Act 2002.

<sup>37</sup> See for example: *BBC News Story* (13/01/05) “More people seeking help on debt”; Seargeant, G. *The Times*. “Credit-card junkies turn to the bankruptcy court to clear debts”, (05/02/05); Gleeson, B. *The Cheshire Daily Post*, February 7<sup>th</sup> 2005, “Bankruptcy is on the rise”; *BBC News Story* (14/02/05) “Bankruptcy strikes young debtors”; *BBC News Story* (17/02/05) “NI bankruptcy rates double”; Stuart, J. *The Independent Newspaper*, “Bankruptcy ‘It’s an easy way out. I can start afresh’”. 16 February 2005.

<sup>38</sup> *Op cit* n. 29 *per* Lightman, J’s foreword.

<sup>39</sup> Green, M. *Individual Voluntary Arrangements, Over-indebtedness and the Insolvency Regime*. University of Wales, at Bangor. November, 2002. See further: *Improving Individual Voluntary Arrangements*. Insolvency Service, DTI publications, July 2005.

<sup>40</sup> Department for Constitutional Affairs. *A Choice of Paths: better options to manage over-indebtedness and multiple debt*. Consultation Number CP23/04. July, 2004; See further: Tribe, J & Graham, D. *Diffusing the debt ‘time bomb’* [2004] NLJ, vol.,154 no.7143, pp.1328-1329. See also: Morgan, J. *The Times*. “No-income and no-asset scheme comes under fire.” (09/05/05).

<sup>41</sup> Ziegel at page 7 and 113. In comparison however see the Justice report *Insolvency Law: An Agenda for Reform*, where it is noted at para 1.12, “the automatic discharge of the bankrupt after no more than three years has removed from that procedure much of its traditional stigma and disgrace.” (Justice. *Insolvency Law: An Agenda for Reform*. London, 1994. – hereafter referred to as *Agenda for Reform*).

<sup>42</sup> On this aspect of bankruptcy see further Egan, A. *The Debt Merchants*. Focus, 14/10/1968, an article providing an exposition of debt re-organisation companies which discusses the stigma of default.



high cost of entry into bankruptcy prohibitive?<sup>43</sup> Are other non-bankruptcy procedures more prevalent? Do insolvent consumers lack knowledge and initiative in relation to exit routes from over-indebtedness and in particular bankruptcy?<sup>44</sup> These questions and more will now be addressed from primary source evidence. In so doing we might ascertain if one mid-19<sup>th</sup> century commentator's damning comments are still a truism:

*"In a nation of shopkeepers, as Bonaparte called us, it might be expected that, if there was any one branch of our jurisprudence more efficacious and satisfactory than another, it would be that by which the affairs of bankrupts are administered. Yet this is the foulest blot in our whole judicial system"*<sup>45</sup>

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<sup>43</sup> Ziegel at page 7, see: Supreme Court Fees Order 1999, SI 1999/687, Sch 1; and County Court Fees Order 1999, SI 1999.689, Sch 1. See further: *R v. Lord Chancellor, ex parte Lightfoot* [1999] 2 WLR 1126 and [2000] 2 WLR 318 (CofA affirming).

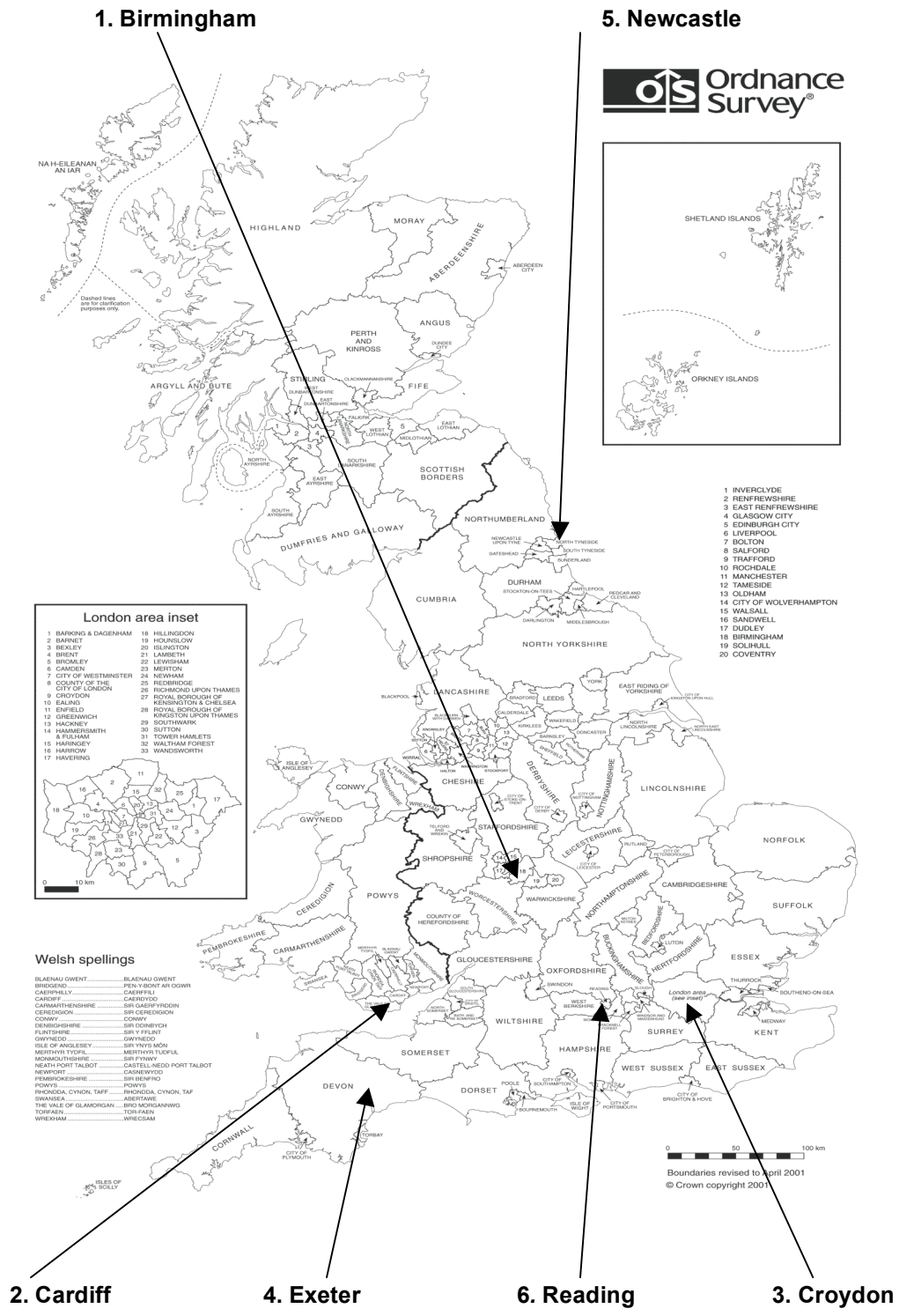
<sup>44</sup> Ziegel at page 112 citing: Berthoud, R & Kempson, E. *Credit and Debt: The PSI Report*. Policy Studies Institute, London, 1992.

<sup>45</sup> Editorial. *Anomalies of the Bankruptcy System*. The Bankers' Magazine and Journal of the Money Market. Vol.13, September, 1853, pp.609-615, at page 609.

## **THE COURTS SURVEYED**

In order to gain a balanced picture of the state of bankruptcy usage across the United Kingdom, six courts were ultimately chosen that were widely different both in terms of geographical location and in terms of user numbers. As noted above, originally the pilot study had intended to focus just on Birmingham, Croydon and Reading. However, as the initial stages of the survey progressed it became apparent that response rates might not be high enough to give a statistically valid survey. The courts sampled were then doubled to include Cardiff, Exeter and Newcastle. This has resulted in a much improved response rate. A map, court address and contacts table, together with the details of the pertinent Official Receiver have been included for reference on the following two pages.

**Map One - indicating geographical locations of the courts surveyed.<sup>46</sup>**



<sup>46</sup> Reproduced from Ordnance Survey map data by permission of the Ordnance Survey © Crown copyright 2001.

**Table One - The Courts Surveyed<sup>47</sup>**

<b><u>County Court</u></b>	<b><u>Court Address</u></b>	<b><u>Relevant Official Receiver Address</u></b>
<b>1. Birmingham</b> (located within the Birmingham Civil Justice Centre)	Priory Courts 33 Bull Street Birmingham West Midlands B4 6DS, England.	3 <sup>rd</sup> Floor West Ladywood House 45/6 Stephenson Street Birmingham, B2 4UP
<b>2. Cardiff</b> (located within the Cardiff Civil Justice Centre)	2 Park Street Cardiff South Wales CF10 1ET, Wales	3 <sup>rd</sup> Floor Companies House Crown Way Cardiff, CF14 3ZA
<b>3. Croydon</b>	The Law Courts Altyre Road Croydon Surrey, CR9 5AB	6 <sup>th</sup> Floor Sunley House Bedford Park Croydon, CR9 1TX
<b>4. Exeter</b> (located within Exeter Combined Court Centre)	Southernhay Gardens Exeter Devon EX1 1 UH, England	3 <sup>rd</sup> Floor Senate Court Southernhay Gardens Exeter, EX1 1UG
<b>5. Newcastle</b> (located within Newcastle-upon-Tyne Combined Court Centre)	The Law Courts The Quayside Newcastle-upon-Tyne Tyne and Wear NE1 3LA, England	1 <sup>st</sup> Floor Melbourne House Pandon Bank Newcastle-upon-Tyne NE1 2JQ
<b>6. Reading</b>	160-163 Friar Street Reading Berkshire RG1 1HE, England	2 <sup>nd</sup> Floor Kings Wharf 20-30 Kings Road Reading, RG1 3ET

<sup>47</sup> For more thorough information on the courts see: [www.hmcourts-service.gov.uk/HMCSCourtFinder](http://www.hmcourts-service.gov.uk/HMCSCourtFinder)

## **QUESTIONNAIRE COMPILATION AND METHODOLOGY**

“Insolvency law is not an exact science”  
(per *Cork Report* at paragraph 196.)

The *BCS 2005* pilot survey involved sending questionnaires<sup>48</sup> to stakeholders in the six courts being examined.<sup>49</sup> Different versions of the questionnaire were drafted to reflect the recipients and their use of the courts, e.g. bankrupts or practitioners. The overall survey was an experimental pilot study and the questions posed were not originally pitched at obtaining specific information; the questions were instead intended to draw out from the respondents issues and queries which could then be further investigated in any future study.<sup>50</sup> Consequently, the questions were numerous and broad in nature. It was obviously hoped however that the data collected in the pilot study stage would be valuable and enable some tentative conclusions to be drawn regarding the experience of bankruptcy court users. The Insolvency Service, practitioners and academics associated with *CILP* reviewed the questionnaires whilst in draft and the final version incorporated their feedback. The details of the bankrupts surveyed were drawn from the Insolvency Service’s *Register of Personal Insolvents*, a public database maintained on the service’s website.<sup>51</sup> A questionnaire was sent to every listed bankrupt for each of the six courts surveyed.

The questionnaire was designed to encompass both positivistic and phenomenological methodologies<sup>52</sup> in that we intended to undertake a large scale survey (in so far as the pilot study stage would allow) encompassing, *inter alia*, both closed and open-ended questions. Open-ended questions do not necessarily lend themselves to large scale surveys and the response to Question One of the survey for example has shown that a plethora of responses may result from a single question, however, at the pilot study stage we thought it appropriate to experiment with questionnaire methodologies. In drafting the questions we attempted to ensure that each respondent would understand and interpret each question in the same manner and that each respondent was asked the same question in the same way. This was a particular consideration across the six courts surveyed. We hope that by using a postal questionnaire that this potential

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<sup>48</sup> On the use of questionnaires in research see: Collis, J & Hussey, R. *Business Research – A Practical Guide*. 2<sup>nd</sup> Edition. Palgrave Macmillan. 2003, at page 173-194. Hereafter referred to as Collis & Hussey.

<sup>49</sup> The stakeholders as originally envisaged included primarily the bankrupts, and advising practitioners (e.g. solicitors and insolvency practitioners) and also court staff, i.e. judges and court clerks.

<sup>50</sup> On pilot study survey design see: Czaja, R & Blair, J. *Designing Surveys: A Guide to Decisions and Procedures*. Pine Forge Press, Thousand Oakes, 1996.

<sup>51</sup> [www.insolvency.gov.uk](http://www.insolvency.gov.uk)

<sup>52</sup> On these methodological approaches see: Adams, G & Schvaneveldt, J. *Understanding Research Methods*. 2<sup>nd</sup> Edition, Longman, New York, 1991.

problem has been surmounted. In designing questions for the *BCS 2005* that would elicit primary research material regarding the experience of the bankrupt we have used both positivistic questions which relate to specific elements of the bankruptcy process and phenomenological type questions which are more open ended and relate to the bankrupts own experience of the process. We hope to have therefore encouraged bankruptcy court users to discuss and mull on the experience they have had.

In drafting the questionnaire the research team intended that in addition to bankrupts, professionals from the practising world of insolvency such as insolvency practitioners and solicitors that dealt with bankruptcy issues in the courts surveyed would also be questioned. Apart from some extremely positive and helpful responses, the rate of response from this sector was extremely low. From ninety-nine questionnaires sent, only six responses were received. This perhaps is due to the *R3* survey which already places an administrative burden on insolvency practitioners or because the amount of open-ended questions contained in the *BCS 2005* practitioner survey deterred busy practitioners from completing the questionnaire.<sup>53</sup> Consequently, the research team decided to concentrate the pilot study's limited resources on eliciting responses from bankrupts alone. Despite the low practitioner response rate, the rest of the respondents, i.e. bankrupts, have responded at a fairly high rate. From the extant statistical literature the response rate for the *BCS 2005* is statistically sound from both a quantitative and qualitative perspective but caution must be exercised with the data.<sup>54</sup> In achieving an 11.5% response rate (see table one below) we hope to have avoided any sample bias.<sup>55</sup> The final response rates for the *BCS 2005* questionnaire were as follows:

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<sup>53</sup> *vide supra*.

<sup>54</sup> Collis and Hussey (Collis, J & Hussey, R. *Business Research – A Practical Guide*. 2<sup>nd</sup> Edition. Palgrave Macmillan. 2003) have opined at page 175 that with postal questionnaires, "response rates of 10 per cent or less are not uncommon". See further: Allan, G. *Qualitative Research*, in Allan, G & Skinner, C. *Handbook for Research Students in the Social Sciences*. The Falmer Press, London, pp.177-89; Bryman, A. *Quantity and Quality in Social Research*. Unwin Hyman, London, 1988; Creswell, JW. *Research Design: Qualitative and Quantitative Approaches*. Sage, Thousand Oakes, 1994.

<sup>55</sup> That is obtaining responses only from individuals who are not representative of the 'bankrupt' population. We believe that our percentage response rate has provided a more representative sample of bankruptcy court users. We have not factored in any tests for reliability and validity of completed questionnaires at this pilot stage.

**Table Two – Respondent Figures**

<u>County Courts</u>	<u>Questionnaires Out</u>	<u>Completed Responses</u>	<u>Percentage Received</u>
<b>1. Birmingham</b>	<b>2457</b>	<b>271</b>	<b>11%</b>
<b>2. Cardiff</b>	<b>1185</b>	<b>126</b>	<b>10.6%</b>
<b>3. Croydon</b>	<b>2163</b>	<b>214</b>	<b>9.9%</b>
<b>4. Exeter (initial)</b>	<b>936</b>	<b>185</b>	<b>19.8%</b>
<b>Exeter (full)</b>	<b>96</b>	<b>53</b>	<b>55%</b>
<b>5. Newcastle</b>	<b>1195</b>	<b>166</b>	<b>13.9%</b>
<b>6. Reading</b>	<b>1210</b>	<b>125</b>	<b>10.3%</b>
<b><u>Totals</u></b>	<b><u>8306</u></b> <b><u>(without Exeter Initial)</u></b>	<b><u>955</u></b> <b><u>(without Exeter initial)</u></b>	<b><u>11.5%</u></b> <b><u>(12.3% with Exeter Initial)</u></b>

Questionnaire Taxonomy

The questionnaire's layout was designed primarily to ensure that the highest number of recipients would complete and return the survey. Our intention was to make the process as user friendly for the recipients as possible, ensuring that the questions were drafted in an intelligible and unambiguous manner. To that end the questionnaire went through three versions which varied in terms of physical layout. This questionnaire development course of action was a gradual process that saw three versions of the questionnaire sent out to bankrupts in the six courts surveyed. Version I was sent to Birmingham, Croydon, and Reading only. Version II was sent to all six courts. Version III was in essence the same as Version II but the physical layout of the questionnaire was changed for Version III. We attempted to reduce the number of pages and the

size of the document to help boost response rates as we felt that the size and number of questions might be putting off potential respondents.

The pilot study enabled the research team to try a number of methods to obtain a higher response rate to the questionnaires sent to bankruptcy court stakeholders. For Birmingham, Croydon and Reading we adopted the traditional questionnaire approach, sending questionnaires to stakeholders using a freepost self-addressed envelope (SAE) accompanied by a University covering letter.<sup>56</sup> For Exeter, Newcastle and Reading we varied our approach by using three different methodologies.

For Exeter, we again sent a freepost SAE, but with a shorter 'Initial Questionnaire' which contained a question enquiring if a longer version of the questionnaire could be sent to respondent.<sup>57</sup> Longer questionnaires (accompanied by a freepost SAE) were then sent to stakeholders who responded favourably. Using this method we envisaged that we would cut down on the amount of wasted questionnaires (and associated material and time) that were not completed by potential respondents in Birmingham, Croydon and Reading when we used the Standard method.

For Newcastle, we used the Standard method, however, we informed recipients that successful completion and return of the questionnaire would lead to the inclusion of the respondent's details in a draw to win £50.00 worth of vouchers for WH Smiths or Boots. The ethical validity of this approach was considered by the CILP research team. It was decided in conjunction with the Faculty's Research Director that this approach could be undertaken as it did adhere to University ethics guidelines on research methodologies. It was hoped that this inducement might lead to an increase in completed questionnaires returned to CILP.

For Cardiff, we intended to deviate from the Standard method quite dramatically and enlist the help of the Cardiff Official Receiver. We proposed sending questionnaire packs to the Official Receiver's Cardiff office to be included in Official Receiver correspondence with the various stakeholders. We envisaged that the importation of more officialism into the exercise (in addition to a cover letter from the University) might bolster responses. Unfortunately, the Cardiff Official Receiver could not assist in relation to this methodological approach due to their own heavy workload burdens. We instead retained the Standard method approach for Cardiff bankrupts.

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<sup>56</sup> Herein referred to as the 'Standard method'.

<sup>57</sup> See *Appendix Three*: Initial Questionnaire. I am grateful to Professor Ian F. Fletcher for suggesting this initial questionnaire approach.



### Questionnaire Completion Guidance

To ensure that respondents completed the questionnaire in as uniform a manner as possible a section on questionnaire completion guidance was inserted at the beginning of the questionnaire. This was framed to encourage the use of [x] to mark a response, and to request that respondents might expand on their given answers in the boxes provided. We also drew a distinction between discharged bankrupts as some questions only applied to one of either category.

### Confidentiality

To ensure the largest possible response to the *BCS 2005* we elected to make the whole process completely anonymous and confidential in terms of the respondents' answers and this report. We did however provide an optional section in the questionnaire allowing for the inclusion of the bankrupt's name. This would then allow us to follow up on any questionnaire with a subsequent interview.

### Order of questions<sup>58</sup>

The *BCS 2005* questionnaire was designed to keep the respondent interested throughout the course of completion. To that end the questions were placed in an order to keep the completing individuals attention. We used a mixture of both positive and negative questions, open and closed questions, multiple choice questions,<sup>59</sup> classification questions, sensitive questions,<sup>60</sup> and legal and non-legal questions. The type and subject matter of the questions does not therefore flow throughout the questionnaire. Related questions are therefore scattered throughout the survey.

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<sup>58</sup> On question order see further: Coolican, H. *Research Methods and Statistics in Psychology*. Hodder & Stoughton, London, 1992.

<sup>59</sup> No Likert scale questions were included in the *BCS 2005*, see Collis & Hussey at page 183.

<sup>60</sup> See further: Lee, RM. *Doing Research on Sensitive Topics*. Sage, London, 1993. It could be argued that some of the non-returning respondents might have been offended by question 19 of the *BCS 2005* which asked if they felt morally at fault for their bankruptcy.

### Accompanying cover letter

To further reduce the size of the physical appearance of the questionnaire itself we determined to use a cover letter to explain the purpose, motivation and intended use of any results of the *BCS 2005* which was individually addressed and signed to each potential respondent.

### Data storage, analysis and non-response bias

For the pilot study, all questionnaire responses were collated and the results were then inputted into *Microsoft Excel* for analysis. For the full project we would move to the *SPSS* (Statistical Package for the Social Sciences) computer software which is a social sciences programme designed specifically to create models based on inputted data which can subsequently be assessed and analysed.<sup>61</sup> Percentage graphs were created using the *Microsoft Excel* programme, both for individual court responses and for overall responses to each question.

We decided to take no action in relation to questionnaires that were not returned. The problem of non-response bias is perennial with postal questionnaires.<sup>62</sup> We have encountered very little item non-response during the *BCS 2005*, that is non-responses to particular questions. We have however encountered a sizeable portion of questionnaire non-response. However, as discussed above we do not consider this to have materially altered the statistical validity of the *BCS 2005*. Our research design is based on a generalisation from the sample to the population of bankrupt users of the courts surveyed and we believe that the percentage of response rate of 11.5% makes this generalisation justifiable.

### Response bias

In reading and interpreting the bankrupt respondent's replies it has to be borne in mind that there arises a possibility of potential respondent bias. That is to say that certain portions of the data set could be imbued with subjectivity. The answers to question 29 have for example resulted in a high degree of praise for the insolvency system. Whilst it is hoped that the system is truly meritorious, it might be the case that the release from debt for the bankrupt has caused within them

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<sup>61</sup> See further: Bryman, A & Cramer, D. *Quantitative Data analysis with SPSS for windows*. Routledge, London, 1997; and, Field, A. *Discovering Statistics Using SPSS for Windows*. Sage, London, 2000.

<sup>62</sup> Wallace, RSO & Mellor, CJ. *Non Response Bias in Mail Accounting Surveys: A Pedagogical Note*. (1988) *British Accounting Review*, 20, pp.131-9.

feelings that might encroach upon their objectivity. “Bankruptcy neurosis” is a recognised issue within bankrupts prior to bankruptcy<sup>63</sup> and it is hoped that no such issues have skewed the objectivity of the respondents’ answers to the *BCS 2005*. This potential must however be borne in mind whilst investigating the data set.

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<sup>63</sup> See *Cork Report* at paragraph 209.

**PART TWO**  
**DATA AND ANALYSIS**

## **DATA AND QUESTION ANALYSIS**

“It is estimated that someone becomes bankrupt in this country every 15 minutes.”  
(per Milman, D. *Personal Insolvency Law, Regulation and Policy*. Ashgate Publishing Ltd, 2005, at page vi.)

The above estimate given by Milman provides a truly shocking picture of the frequency of over-indebted individuals seeking the protection of the bankruptcy laws.<sup>64</sup> Within this section of the *BCS 2005* we examine the bankrupts’ responses and ascertain, *inter alia*, what leads so many debtors, so frequently, to seek redress to the bankruptcy laws? As indicated in the introduction, during the course of the pilot study the questionnaire went through three different versions as the project progressed. The following analysis is based on responses to questions posed in version III of the questionnaire, unless otherwise stated.

The analysis of questions has been set out in the following manner: Firstly, each question receives its own specific treatment and section. By dividing the question analysis up in this manner it was hoped that greater treatment could be undertaken for each question and the points that they individually raise. Secondly, each question is followed by a brief introductory paragraph highlighting the reasoning and motivation for asking the question. This section also on occasion includes further points and comment that relate to the question itself as well as other questions throughout the survey. Thirdly, graphs showing the responses to the question under discussion are given. The master graph shows the combined response from all six courts, where applicable. The individual court graphs are then given, which show the responses from each of the six courts.<sup>65</sup> Fourthly and finally, a summary paragraph is given for each question which attempts to analyse the responses to the question. This paragraph contains qualifying material drawn from the primary source documentation, namely the respondents’ questionnaires. Respondent anonymity is maintained in this section as it is throughout the report. Quotes are given verbatim from the transcripts complete with grammatical and spelling errors. This approach has been adopted to give a true impression of the responses from the bankrupts. Consequently, slang, vulgarities and other terms are used that are not usually to be found in academic legal writing. This language has been retained in the interests of accuracy. An advance apology is made for

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<sup>64</sup> As the *Cork Report* noted at paragraph 198 (c), “the aims of a good modern insolvency law are...to relieve and protect where necessary the insolvent, and in particular the individual insolvent, from harassment and undue demands by his creditors...”

<sup>65</sup> A small number of graphs, e.g. the graphs for question 3, do not add up to a total of 100% overall. It was decided to omit answers and the corresponding graph columns from a number of bar charts for those answers that equated to responses of less than 1%. This decision was taken for presentational purposes, and it is hoped that the does not manifestly detract from interpretation of response themes.

any offence caused to readers.<sup>66</sup> Some of the respondent's comments are particularly scathing regarding certain banks and debt management companies. To avoid embarrassment (and the possibility of legal action!) these bank and company names have been replaced with neutral terms.<sup>67</sup> The questionnaires have not been exhaustively quoted; to do so would make this pilot study unreadable due to excessive length. Instead general thematic comments have been drawn from across the data sample to highlight trends in response. On occasion other comments have been inserted from the questionnaires to illustrate a particular point. Respondents have qualified their answers more frequently in relation to certain questions,<sup>68</sup> whereas other questions received little or no qualifying comment. This must be borne in mind when drawing tentative conclusions from the data set. Some questions by their nature have elicited fuller responses, not necessarily because they are more important or of more concern to the bankrupt respondents, but because the question style and content have been designed to extract a more copious answer. This should not reflect negatively on the questions that have received more scant qualified comment from the respondents. It is because of the unsuitability of the questions that respondents have on occasion failed to provide qualified answers. This accounts for the fact that some of the following expositions contain small summary sections.

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<sup>66</sup> Asterisk (\*) have been used to dilute some of the more offensive words.

<sup>67</sup> e.g. [BANK A] or [COMPANY X] has been used within the text to denote an actual institution. For the positive bank comments this approach has also been maintained.

<sup>68</sup> For example questions 7, 16, 29, and 34.

**1. What was the cause of your bankruptcy?**

- a. Credit misuse
- b. Failed business
- c. Other, please comment

The Cork committee saw bankruptcy as a process through which only the most serious of personal insolvency cases should progress.<sup>69</sup> For the small consumer debtor, other avenues might be more appropriate. In *An Agenda for Reform*, this ‘serious cases only’ theme was continued when the Justice committee writing in 1994 observed, “a most recent phenomenon has been the attractiveness of the bankruptcy process for so many small consumer debtors...”<sup>70</sup> The continued explosion in personal over-indebtedness has continued the trend. Bankruptcy is being used increasingly by the small consumer debtor, indeed, they now appear to be the majority user of the process.<sup>71</sup> As the learned Justice committee go on to explain, “the bankruptcy process was historically never designed with the small debtor in mind and its frequent use for that purpose is therefore tantamount to an abuse of the system.”<sup>72</sup>

The recent statutory changes to the Insolvency Act 1986 relating to personal insolvency enacted as a result of the Enterprise Act 2002 have focused on the bankrupt entrepreneur and their subsequent rehabilitation.<sup>73</sup> Is this the correct focus in terms of current users of the bankruptcy system? Who is using the system and why? What is the cause of bankruptcy? Is it typically entrepreneurially derived debt, or consumer-based debt?

In an earlier report of 1975 Justice had noted that, “by and large it is possible to draw a fairly sharp distinction between two sorts of debtor. On the one hand, there is the debtor who, more or less, has been the victim of misfortune in respect of his financial affairs...for the other category, namely, the person who, whether in the course of his business dealings or otherwise, has been guilty of fraudulent or reckless conduct, the Committee is as firmly of the opinion that a strengthening of the law is required.”<sup>74</sup> Question 1 of the *BCS 2005* is designed to establish the causes of bankruptcy: is it reckless fraud, misfortune or credit misuse? Are the causes economic

<sup>69</sup> *Cork Report*, paragraph 554.

<sup>70</sup> *Agenda for Reform*, at para 4.3.

<sup>71</sup> See the table produced in *Productivity and Enterprise* at para 1.46.

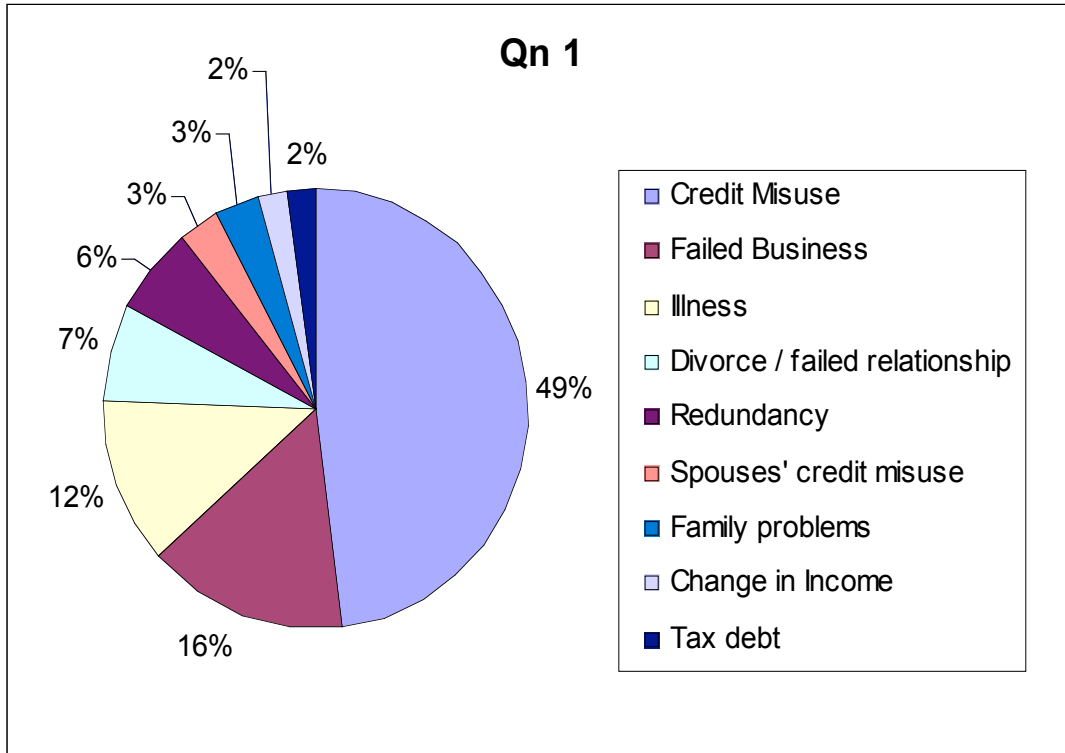
<sup>72</sup> *Op cit* n. 69.

<sup>73</sup> *Op cit* n. 36

<sup>74</sup> Justice. *Bankruptcy – a Report by Justice*. Stephens & Son, London, 1975, at para. 2.

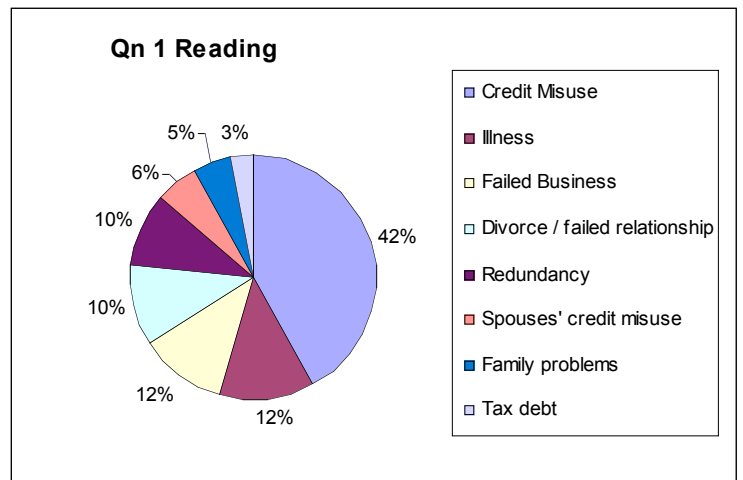
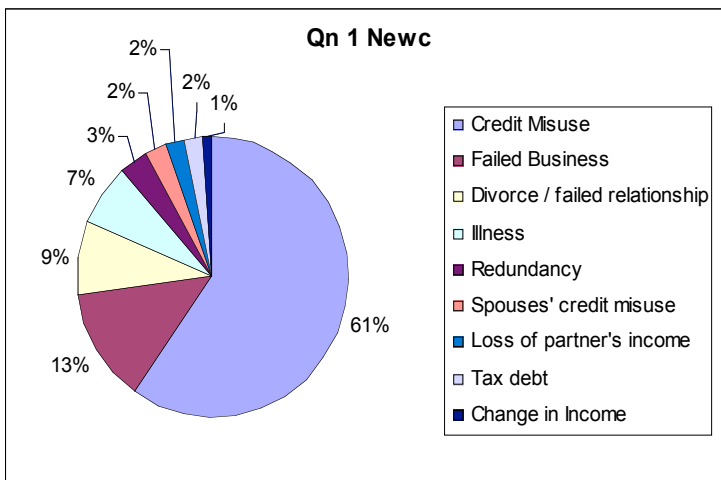
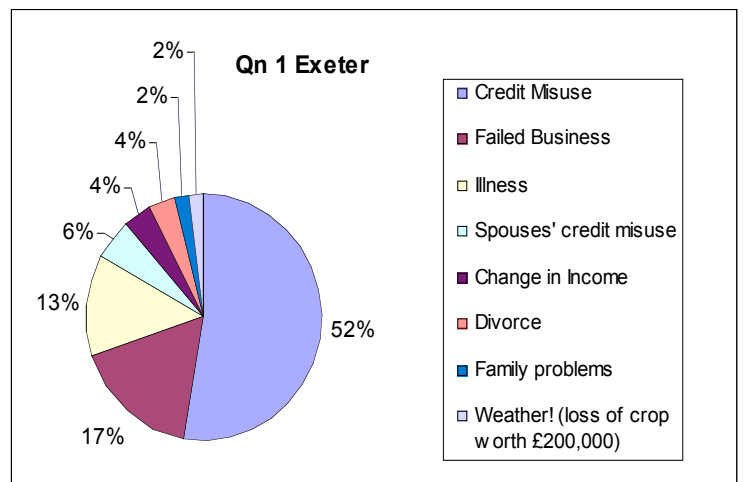
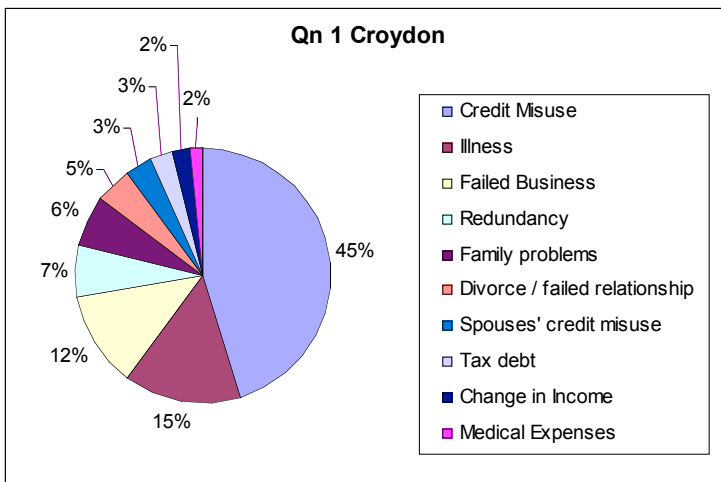
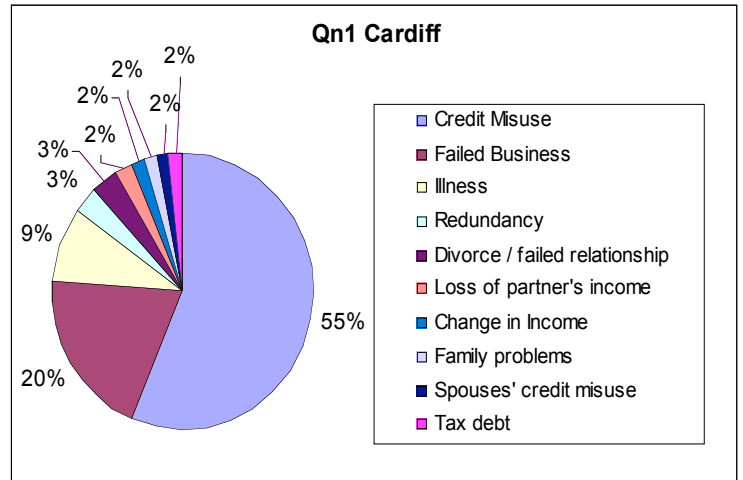
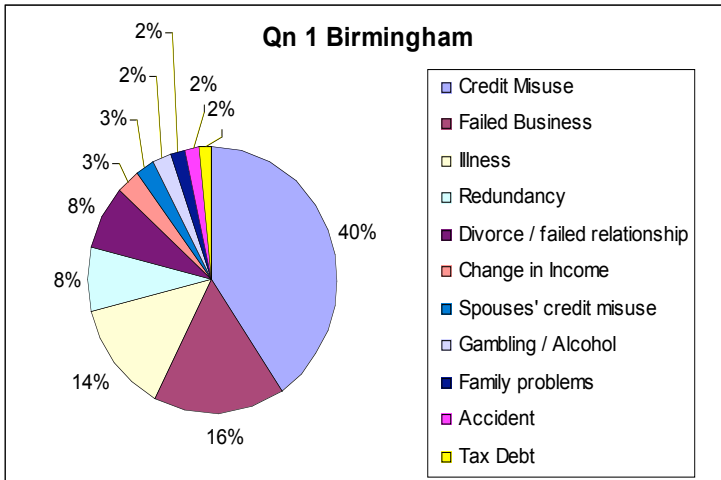
or personal? In ascertaining such facts the question, 'for whose benefit should the bankruptcy laws be drafted?' can be answered from a more informed position.

**Results overall**





**Results by individual court**



## **Summary**

The *BCS 2005* results for this question do seem to support the contention in relation to different types of bankrupt that, “now, the largest category might be described as ‘consumer bankruptcies’...”<sup>75</sup> This type of bankrupt appears to account for 49% of bankruptcy cases in our sample. The second most prevalent cause of personal over-indebtedness is due to failed business liabilities. With the abolition of two of the bankruptcy offences as a result of the Enterprise Act 2002, namely, failure to keep proper accounts<sup>76</sup> and gambling,<sup>77</sup> it is interesting to note relatively large prevalence of miscreant behaviour that might now lead to a Bankruptcy Restriction Order (BRO)<sup>78</sup> or Bankruptcy Restriction Undertaking (BRU). One Newcastle respondent observed, “gambling was a major factor in my indebtedness, ran up large losses with internet casinos.”<sup>79</sup>

Of those respondents who qualified their answers it is interesting to note that a fairly large proportion of those individuals, were in their responses attempting to re-allocate blame away from their own conduct. For example, one respondent noted under ‘other’ that their bankruptcy was caused by, “business partner with sticky fingers but no evidence”<sup>80</sup>; another noted that their bankruptcy was caused because they “leased out property for private rent, let down by managing company.”<sup>81</sup> Another respondent observed, “...found because I was the signatory on our joint credit cards, I was liable for the whole debt.”<sup>82</sup> A Newcastle respondent noted, “a close family member defaulted on loans given by me.”<sup>83</sup> A Cardiff respondent noted, “husband left me in debt.”<sup>84</sup>

Of the questionnaires completed by married bankrupts some element of spousal blame allocation is evident. For example one respondent noted, “the bankruptcy was entirely down to my now ex-husband.”<sup>85</sup> Another noted, “my ex husband ran up debts and made me put them in my name or he would not leave.”<sup>86</sup> One Reading respondent blamed his, “Out of control wife.”<sup>87</sup> A Newcastle

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<sup>75</sup> *Davies* at para 14.9.

<sup>76</sup> s.361 Insolvency Act 1986.

<sup>77</sup> s.362 Insolvency Act 1986.

<sup>78</sup> Pursuant to s.281A Insolvency Act 1986 and Schedule.4A Insolvency Act 1986.

<sup>79</sup> *Newcastle ref: DC.*

<sup>80</sup> *Reading ref: CA.*

<sup>81</sup> *Reading ref: CB.*

<sup>82</sup> *Reading ref: CJ.*

<sup>83</sup> *Newcastle ref: N.*

<sup>84</sup> *Cardiff ref: AF.*

<sup>85</sup> *Newcastle ref: C.*

<sup>86</sup> *Newcastle ref: AB.*

<sup>87</sup> *Reading ref: DN.*

respondent noted, “my deceased wife got carried away with out me knowing.”<sup>88</sup> One respondent stretched the relationship responsibility point still further when he observed, “whilst forming my new relationship her former husband left a large amount of arrears which we couldn’t pay and meet my existing commitments so it was more important to secure a roof over our heads than make a bank even wealthier than it already was.”<sup>89</sup> A Croydon respondent observed, “Credit misuse from ex-wife.”<sup>90</sup> A Cardiff respondent noted, “Husband left me in debt.”<sup>91</sup> Another Cardiff respondent noted, “Debts were incurred by my ex-husbands gambling.”<sup>92</sup>

The largest cause of bankruptcy appears to be credit misuse. The break down of what actually constituted credit misuse was also widely divergent, but on the whole it related to consumer indebtedness as opposed to credit taken out for business purposes. One respondent’s comment, “single mum, couldn’t handle all nursery payments, so misused credit cards”<sup>93</sup> is indicative of a great many of the responses. A number of bankrupts blamed irresponsible lending practices. One respondent noted, “I was given too much credit and when my husband died I was unable to meet the payments”<sup>94</sup> whilst another stated, “credit push at you.”<sup>95</sup> At least two Newcastle respondents cited, “student life”<sup>96</sup> or “cost of university. Unavailability of well paying jobs following graduation”<sup>97</sup> as a reason for their credit misuse.

The ‘failed business’ responses were widely divergent including response such as, “unprofessional competition.”<sup>98</sup> One Newcastle respondent noted, “High interest rates and a business that didn’t take off. After trying everything possible before throwing in the towel.”<sup>99</sup> One Croydon respondent noted, “director of joint venture partner defrauded the business which caused collapse.”<sup>100</sup> Another Croydon respondent noted, “Other companies did not pay my invoices for 5 months which cash flow has disrupted.”<sup>101</sup> An Exeter respondent noted, “under estimating contracts, bad weather stopping progress of contracts.”<sup>102</sup> Another Exeter respondent

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<sup>88</sup> Newcastle ref: DO.

<sup>89</sup> Reading ref: DR.

<sup>90</sup> Croydon ref: GX.

<sup>91</sup> Cardiff ref: AF.

<sup>92</sup> Cardiff ref: AW.

<sup>93</sup> Reading, ref: DF.

<sup>94</sup> Reading, ref: CC.

<sup>95</sup> Reading, ref: CK.

<sup>96</sup> Newcastle ref: CI.

<sup>97</sup> Newcastle ref: FD.

<sup>98</sup> Reading, ref: DE.

<sup>99</sup> Newcastle ref: AY.

<sup>100</sup> Croydon ref: GY.

<sup>101</sup> Croydon ref: HR.

<sup>102</sup> Exeter ref: H.

noted, “clients owing money to the business and a corrupt trustee who caused the bankruptcy.”<sup>103</sup> A further Exeter respondent noted, “our tiny partnership had been vulnerable for quite some time mainly due to erratic sales.”<sup>104</sup>

There were some unusual responses within the courts sampled. One Newcastle debtor responded, “Arrested by police under sexual offences act. This led to loss of my job whilst investigations took place.”<sup>105</sup> Another Newcastle respondent noted, “I was bullied and threatened and double blackmailed by evil monsters giant killers crocodile heads money mad demons twins tax man and VAT man.”<sup>106</sup> A Croydon respondent noted, “I was robbed.”<sup>107</sup> Another Croydon respondent noted, “Previous wealthy housemate developing a fixation on me and attempting to sue me for fictitious amounts of money.”<sup>108</sup> An Exeter respondent noted, “husband partner jailed for fraud causing business to fail, pursued for 10 years after husband went bankrupt and we lost everything.”<sup>109</sup> A Birmingham respondent noted, “[Company M] company took advantage of me not understanding policy at the age of 71.”<sup>110</sup>

The *BCS 2005* shows that the principal cause of bankruptcy is not in the main, as one learned commentator has opined, due to business failure,<sup>111</sup> but instead due to credit misuse within the consumer sector.

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<sup>103</sup> *Exeter ref: AW.*

<sup>104</sup> *Exeter ref: AZ.*

<sup>105</sup> *Newcastle ref: H.*

<sup>106</sup> *Newcastle ref: CL.*

<sup>107</sup> *Croydon ref: GD.*

<sup>108</sup> *Croydon ref: GQ.*

<sup>109</sup> *Exeter ref: BK.*

<sup>110</sup> *Birmingham ref: IF.*

<sup>111</sup> *Milman* at page 18, where the learned commentator notes, “Failure of a business may clearly be one factor, indeed if the R3 (formerly SPI) figures are accepted this is the cause of the majority of bankruptcies.” I would respectfully argue that the R3 figures should not be accepted due to the response bias that the surveys contain as highlighted in the introduction of this report, as indeed does the learned professor at page 17, footnote 81 of his treatise.

**2. What other routes did you consider to relieve your indebtedness?**

- a. An Individual Voluntary Arrangement
- b. A County Court Administration Order
- c. Debt management schemes
- d. An informal arrangement with your creditors
- e. Doing nothing
- f. Other, please comment

The personally over-indebted individual has a number of avenues through which to seek relief from their impecunious circumstances.<sup>112</sup> How conversant are prospective bankrupts with these different routes? How do they see bankruptcy as an option? Is it one option amongst a number or is it presented to them as the only option? In their 1994 report, *Insolvency Law: An Agenda for Reform*, the Justice Committee noted, “the lack of appropriate alternative procedures compels far too many individual debtors to resort to bankruptcy.”<sup>113</sup> Is this statement borne out by the *BCS 2005* responses, or is it simply the case that individuals, whilst aware of alternative regimes, are still electing to go down the bankruptcy route either by choice, but more probably due to necessity?<sup>114</sup> Question 2 of the *BCS 2005* is designed to see what alternative routes to bankruptcy individual insolvent individuals have considered to relieve their personal over-indebtedness.

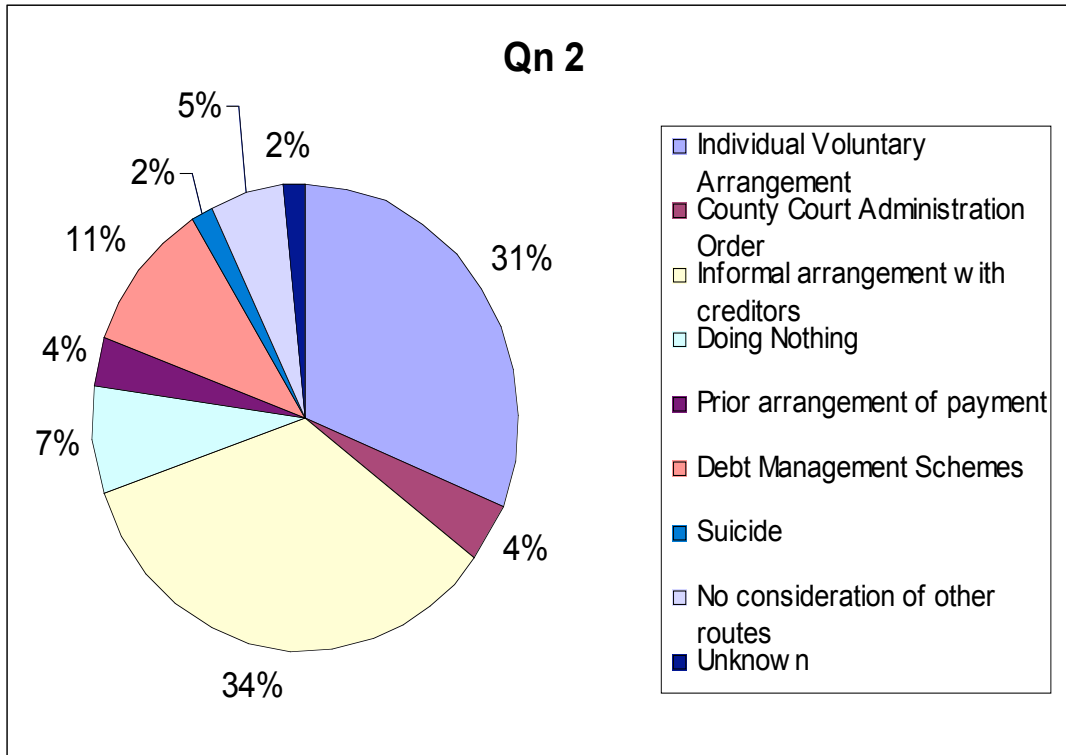
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<sup>112</sup> On these alternatives see *Fletcher*, Chapter Four.

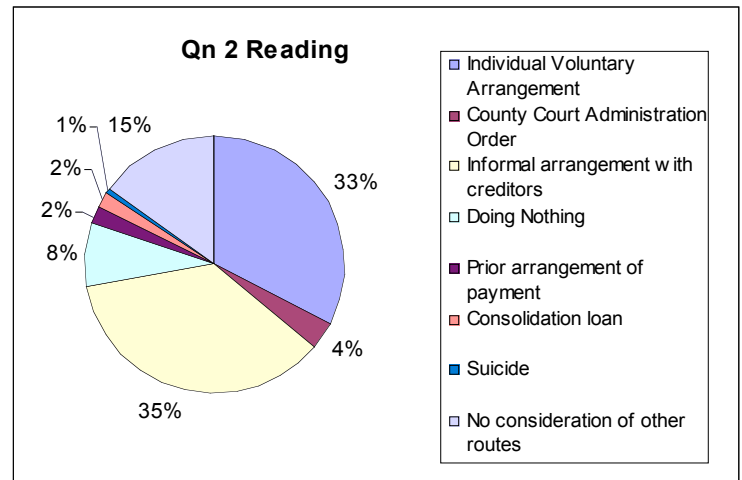
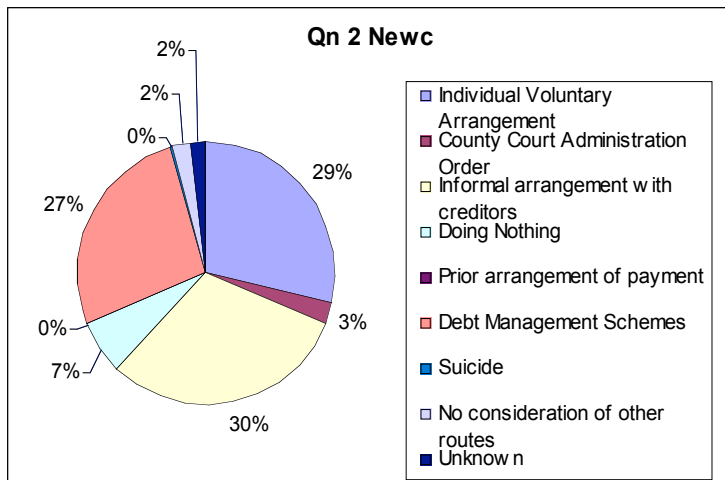
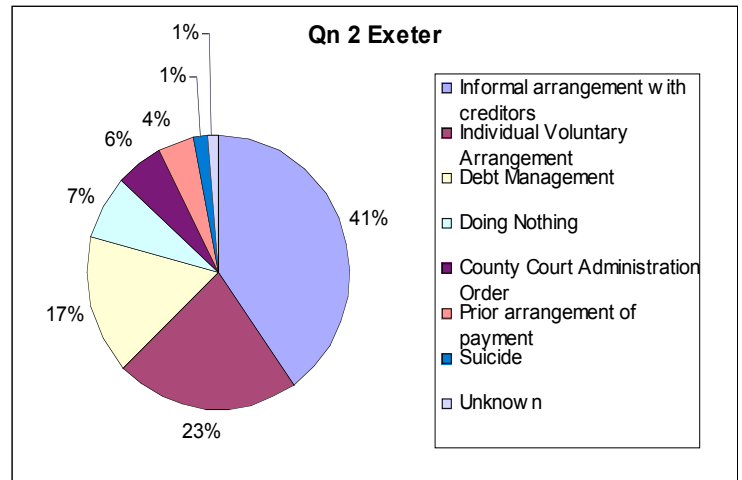
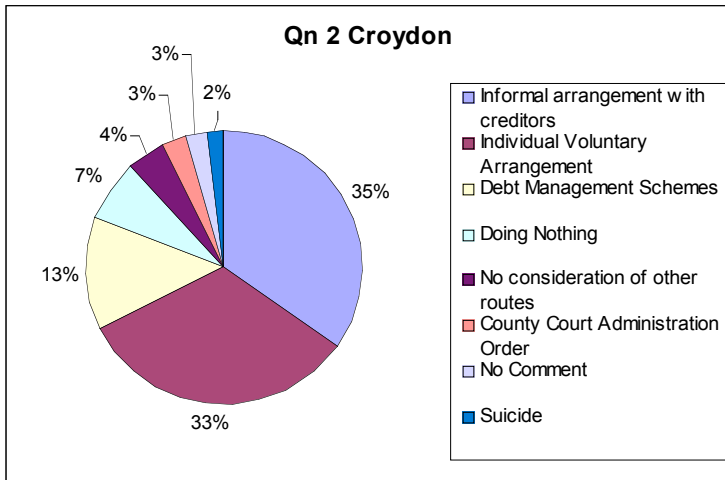
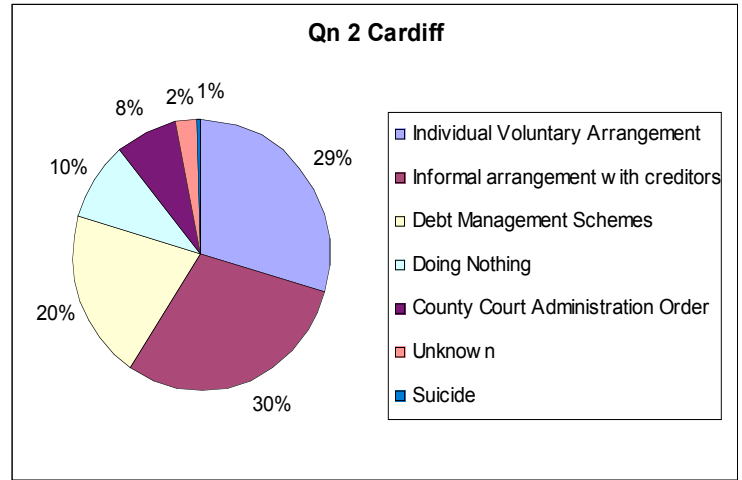
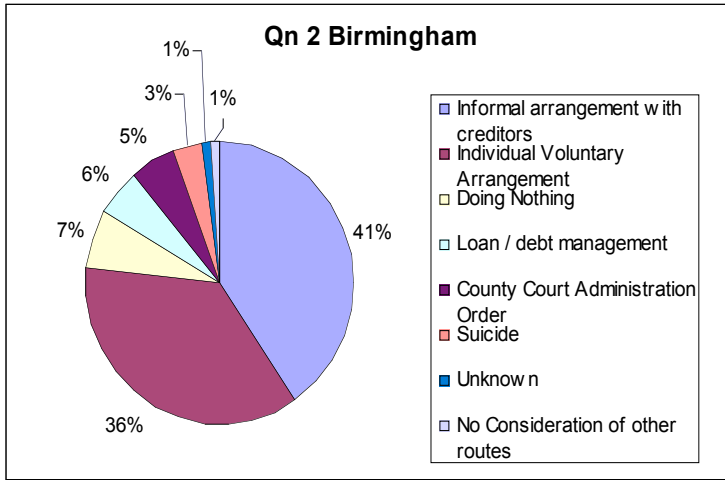
<sup>113</sup> *Agenda for Reform*, at para 1.16. At para 4.22 the Committee laments that the Cork Committee’s recommendations in relation to both Enforcement Restriction Orders and Debt Arrangement Orders were not adopted.

<sup>114</sup> As discussed in subsequent questions the issue of bankruptcy and its stigmatising effects are of particular importance when one considers the alternatives open to over-indebted individuals. If stigma does attach to bankruptcy, perhaps an alternative route may be preferred, i.e. one that does not carry connotations of stigma due to financial mismanagement, e.g. IVAs. On this alternative to bankruptcy approach see: Justice. *Bankruptcy – a Report by Justice*. Stephens & Son, London, 1975, at para 32(b), where it is noted in relation to Deeds of Arrangement as an alternative to bankruptcy that, “from a debtor’s point of view they are beneficial in that the stigma of bankruptcy is avoided.”

**Results overall**



**Results by individual court**



## Summary

In his foreword to *Bankruptcy - A Fresh Start*, the then Secretary of State for Trade and Industry, Stephen Byers, observed that, “the experience of official receivers is that the vast majority of people who become bankrupt become so from necessity not choice, that they will have made very considerable efforts to avoid becoming bankrupt.”<sup>115</sup> The results of the *BCS 2005* broadly support this contention. In the majority of cases debtors have explored alternative avenues to relieve their impecunious position, before finally resorting to bankruptcy.

The most popular formal mechanism appears to be the Individual Voluntary Arrangement (IVA). Some respondents did raise issues with the procedure. One Newcastle debtor opined, “no one was there to help me, all I met was loan sharks, accountants who pass me onto their contact’s, who again took me for even more money.”<sup>116</sup> Another Newcastle debtor opined, “those schemes are not beneficial to the bankrupt only to the scheme providers who make lots of money.”<sup>117</sup> An Exeter respondent noted, “I approached the [COMPANY N] in January 2001 and asked them to approach my 4 main creditors and set up an IVA so I could carry on trading. In the February they informed me that the 4 main creditors had agreed to the IVA but one of the creditors bankrupted me in March 2001.”<sup>118</sup> A Birmingham respondent noted, “I don’t believe (in my experience) that IVA’s are professionally approached and fair. – I feel the people carrying out this service are out for themselves and do not advise correctly.”<sup>119</sup>

The use of private debt management companies is also prevalent. One Croydon respondent noted, “Using a firm that using radio for helping people with debt problems. However this firm was a crook and is now doing 8 years for fraud at Wandsworth prison.”<sup>120</sup> This is perhaps a rather extreme example, but it does raise the question of whether or not fee charging private debt management firms should be concerned in the administration of nearly or completely insolvent estates. A Cardiff respondent’s reply further reinforces this view, “debt management scheme meant I was repaying at a lower rate but would have taken 100 years+ to repay. Debt management co was taking a huge monthly fee.”<sup>121</sup>

Some respondents’ over-indebtedness had brought them to an extremely low ebb. One Croydon respondent’s reply to this question is typical of an unfortunately high number of responses across

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<sup>115</sup> *Bankruptcy – A Fresh Start*, per Stephen Byers’s foreword to the report.

<sup>116</sup> Newcastle ref: BQ.

<sup>117</sup> Newcastle ref: CB.

<sup>118</sup> Exeter ref: AW.

<sup>119</sup> Birmingham ref: EZ.

<sup>120</sup> Croydon ref: GV.

<sup>121</sup> Cardiff ref: AJ.



all six courts, they observed that “Killing myself...was contemplating suicide”<sup>122</sup> was a possible option. An Exeter respondent also gave “suicide”<sup>123</sup> as an alternative to bankruptcy. A Birmingham respondent noted, “Im at my lowest point in my life. I now sleep in my car.”<sup>124</sup> Another Birmingham respondent noted, “suicide (by overdose of medicines bought via internet with credit cards).”<sup>125</sup> Conversely, one Newcastle respondent opined optimistically, “praying/winning lottery stupidly”<sup>126</sup> was the alternative route they considered out of their personal over-indebtedness.

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<sup>122</sup> *Croydon ref: GB.*

<sup>123</sup> *Exeter ref: AE.*

<sup>124</sup> *Birmingham ref: IY.*

<sup>125</sup> *Birmingham ref: IQ.*

<sup>126</sup> *Newcastle ref: FE.*

**2a. How did you hear about these alternative solutions to bankruptcy?**

- a. Television
- b. Radio
- c. Newspapers
- d. Word of mouth
- e. Other, please specify

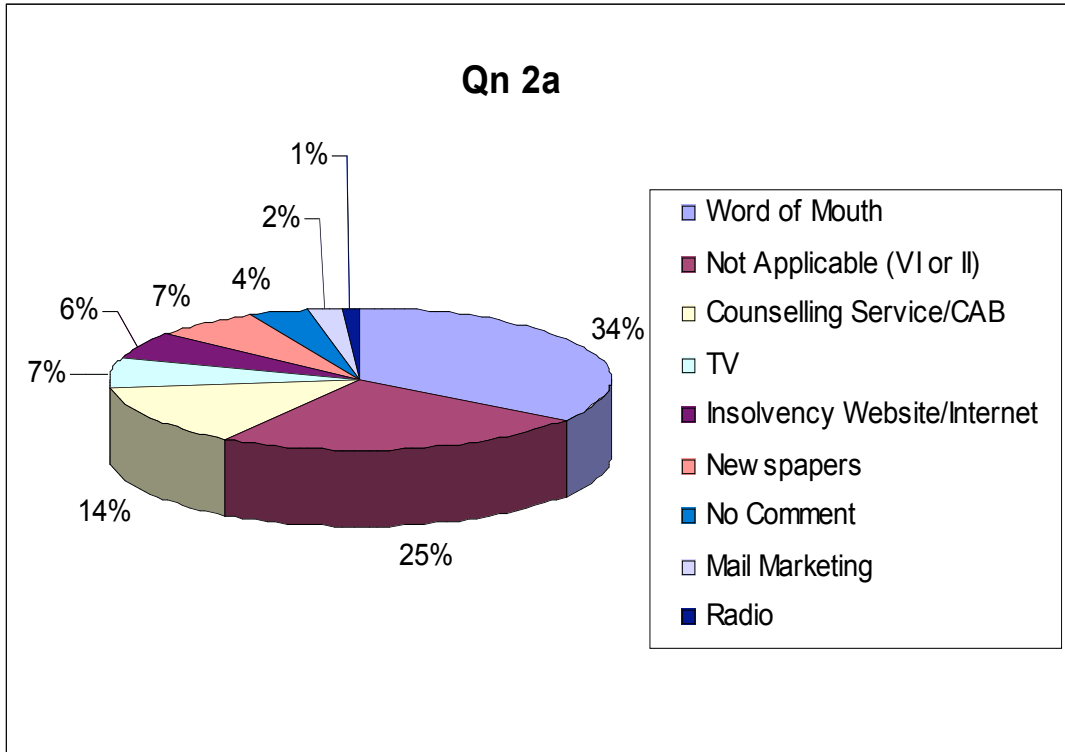
Literature offering credit is bountiful, daily advertising, mail shots and newspaper advertising is all pervasive. However, how reliable is the quality of information given to individuals who have become personally over-indebted? Are they made aware of alternatives to bankruptcy as a route out of personal over-indebtedness and if so by which medium? It has been promulgated in relation to the education of insolvent adults that, “TV is by far the most effective medium of communication. This is particularly the case with low-income groups. Radio is considered the second most effective means of conveying the message...Booklets, brochures and pamphlets, no matter how well they are illustrated, appear to be of little value to those who need help the most.”<sup>127</sup> By what method is information disseminated in England and Wales regarding alternatives to bankruptcy? There is anecdotal evidence of word of mouth information exchange (for example in pubs) and also internet based discussion.<sup>128</sup> But are these instances aberrations? This question was posed in version III of the *BCS 2005*. Consequentially only total respondents in Cardiff, Exeter and Newcastle were asked the question.

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<sup>127</sup> Ziegel, J. *Consumer Bankruptcies* (1972) Chitty's Law Journal, vol.20, no.10, p.325, citing Chapter 4, page 6 of a Canadian Association for Adult Education survey of consumer education.

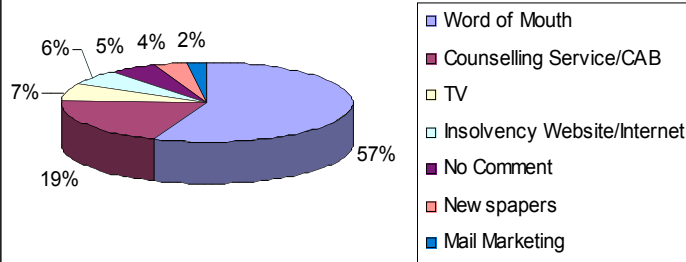
<sup>128</sup> See for example: <http://www.bbc.co.uk/dna/mbarchers/F2693943?thread=1887111> (last visited on the 8<sup>th</sup> January 2005). This website is a radio 4 Archers discussion board. It features a discussion strand on bankruptcy. The following view is espoused by one contributor: “I don't know any details I'm afraid, but I heard something on Radio 4 recently about the fact that bankruptcy no longer had any shame attached to it, so had ceased to be the very last option anyone would go for. Consequently it is apparently on the increase. What the implications of it for the individual are, I really couldn't say, but I can't imagine that it's a helpful thing to have on your record.”

**Results overall**

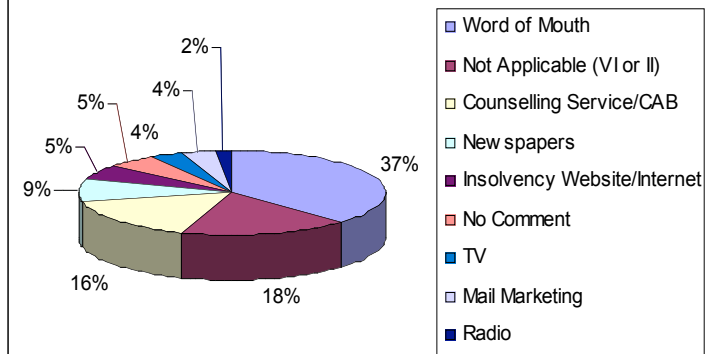


**Results by individual court**

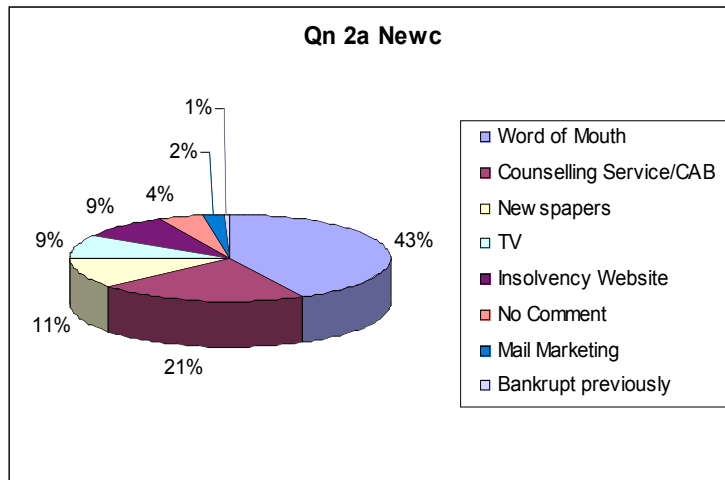
**Qn 2a Cardiff**



**Qn 2a Exeter**



**Qn 2a Newc**



**Summary**

KPMG’s Mark Sands has recently been reported in the *Sunday Telegraph* as stating, “a culture encouraging bankruptcy is spreading in pubs by word of mouth.”<sup>129</sup> The results of the *BCS 2005* in relation to question 2a indicate his contentions are correct and borne out by statistical evidence. Word of mouth and debt counselling advice are the largest disseminators of knowledge regarding routes out of personal over-indebtedness.

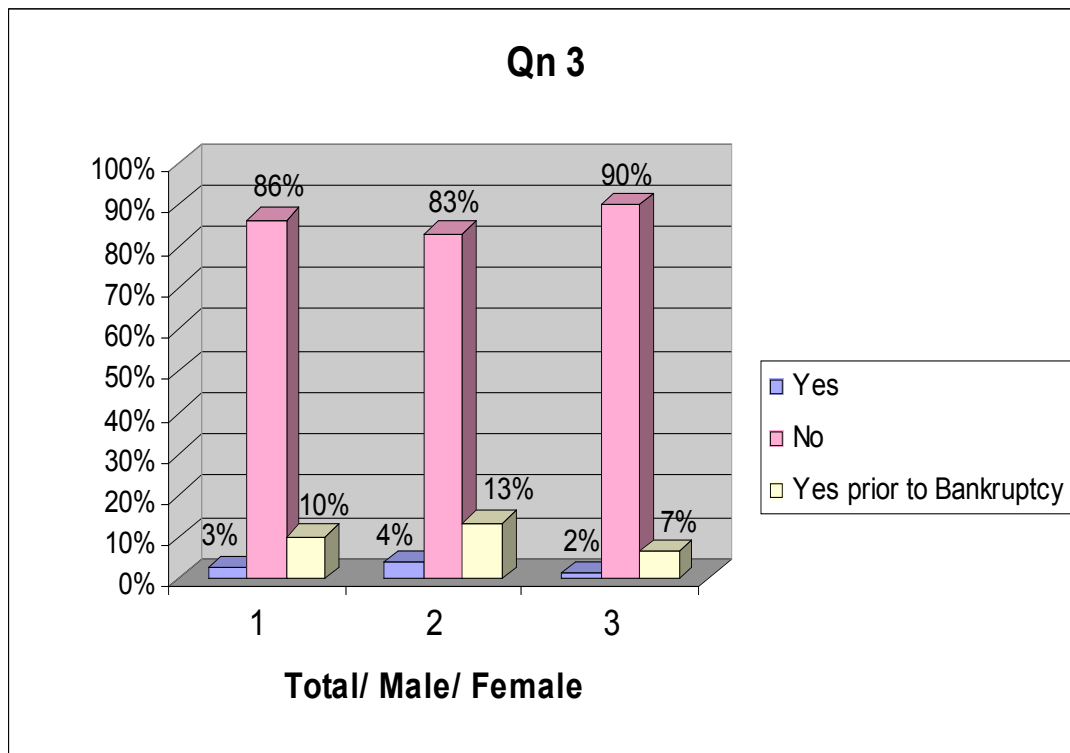
<sup>129</sup> Watts, R & Hall, J. The Sunday Telegraph. “Personal Bankruptcies hit record” (30/10/05) at Business, page 1.

**3. Do you own your own home?**

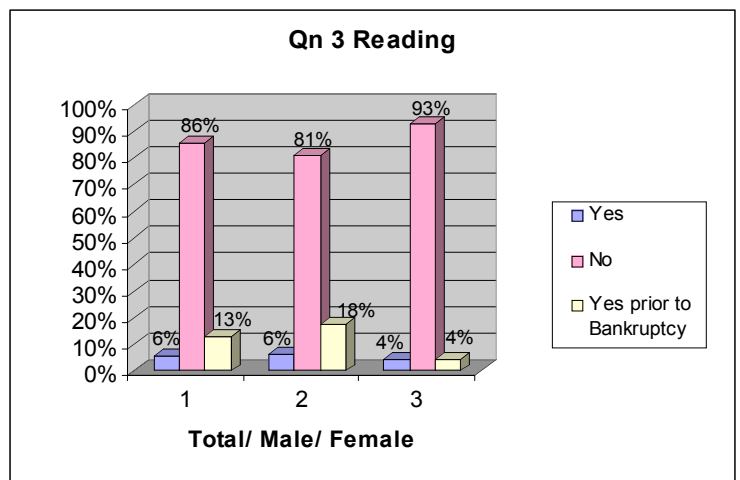
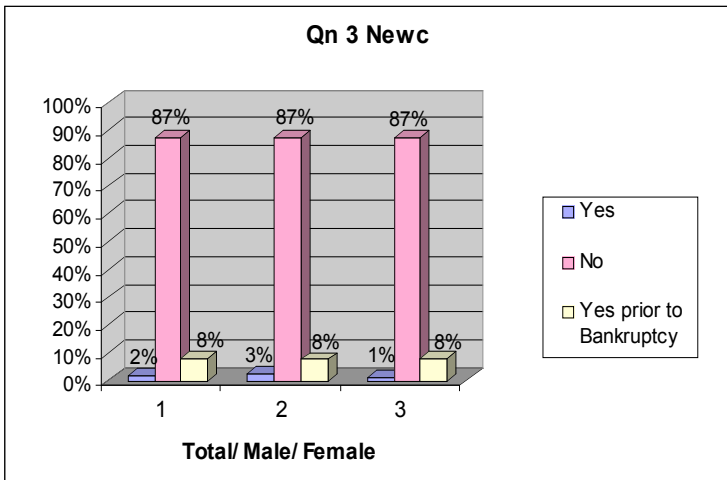
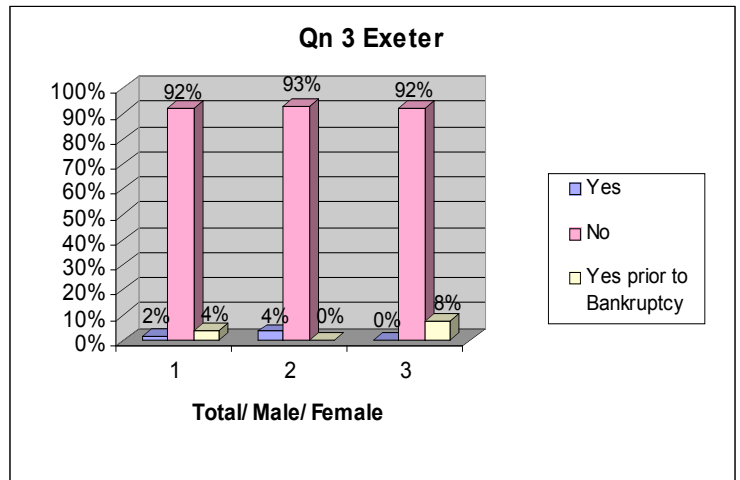
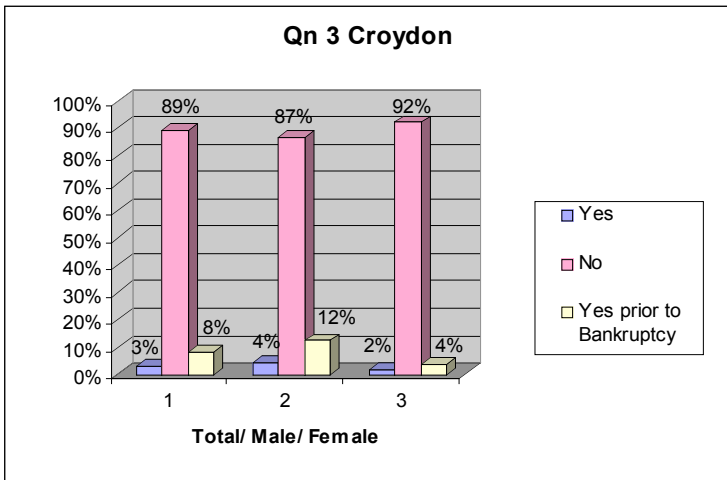
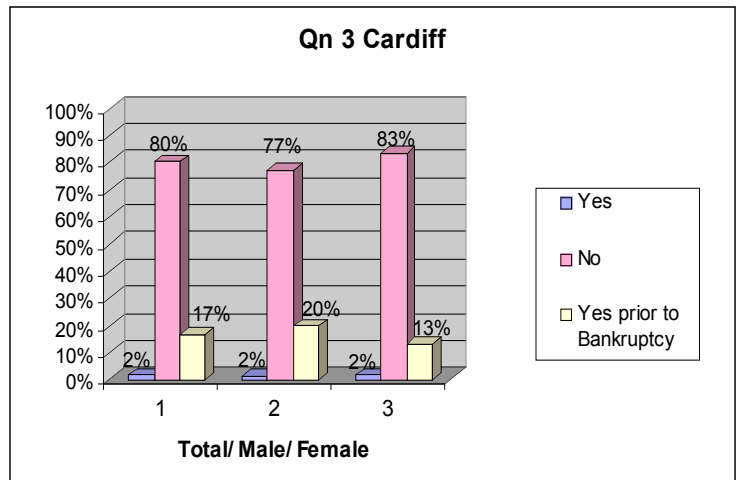
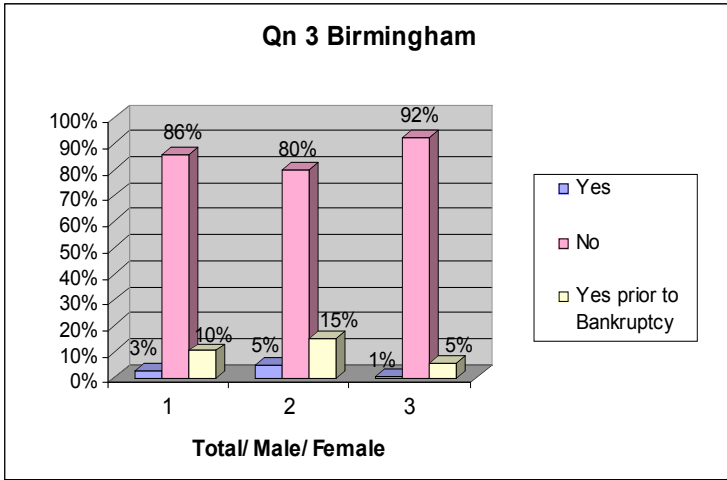
- a. Positive
- b. Negative
- c. Yes prior to bankruptcy

Does ownership of a family home influence the choice of the personal insolvent as to which of the personal insolvency procedures they elect? Is bankruptcy or the Individual Voluntary Arrangement (IVA) procedure the preferred route for the home-owning personal insolvent? Question 3 of the *BCS 2005* is designed to examine whether or not individuals declaring bankruptcy are home owners. If the potential loss of the home is precluding individuals from entering bankruptcy, perhaps in favour of individual voluntary arrangements, then perhaps some consideration may be given to the position of the home within bankruptcy. This area is particularly important in the light of recent changes wrought by the Enterprise Act 2002 in relation to the matrimonial home.

**Results overall**



**Results by individual court**



### **Summary**

Question 3 has elicited one of the most unequivocal responses to the *BCS 2005*. Debtors who resort to bankruptcy are by a substantial margin not home owners, nor were they prior to their bankruptcy. One respondent had voiced fear over the, “possibility of being homeless with a family.”<sup>130</sup>

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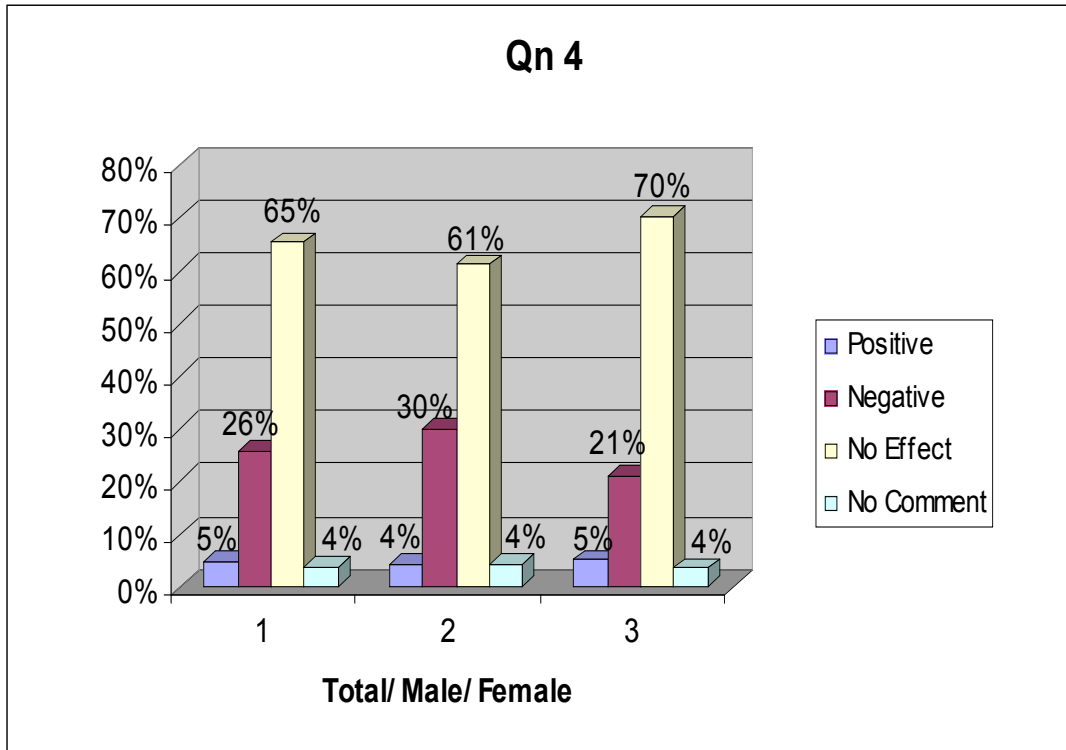
<sup>130</sup> *Reading, ref: CE.*

**4. What has been the effect of the bankruptcy on your job?**

- a. Positive
- b. Negative
- c. No effect

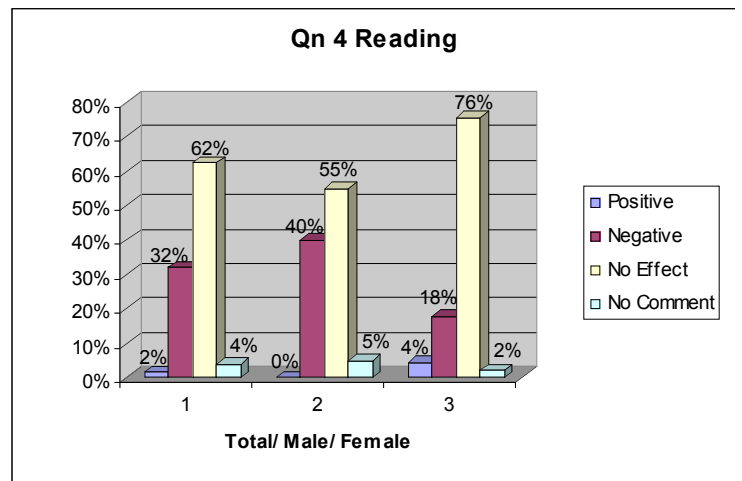
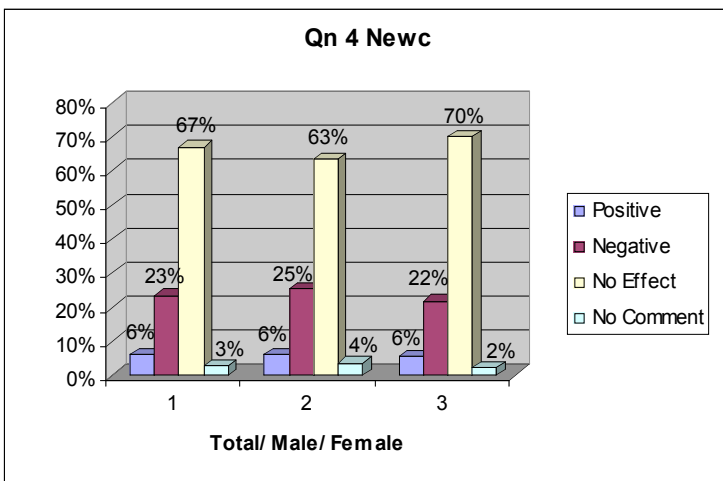
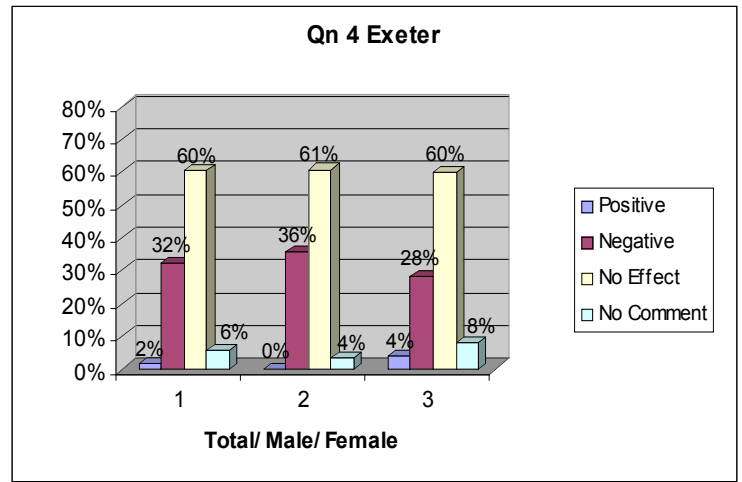
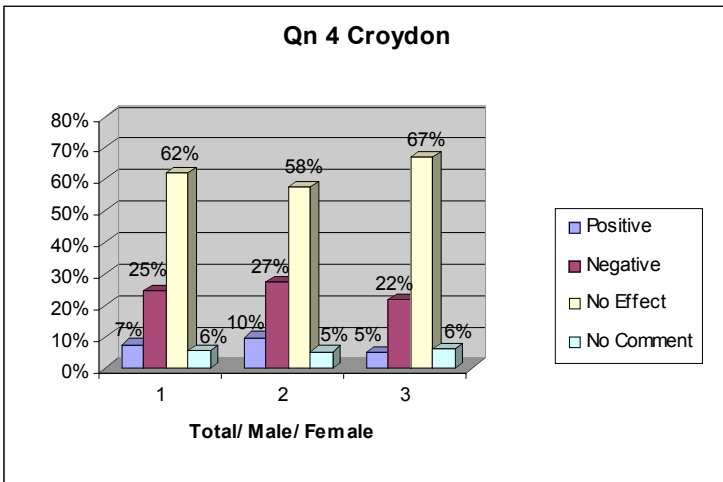
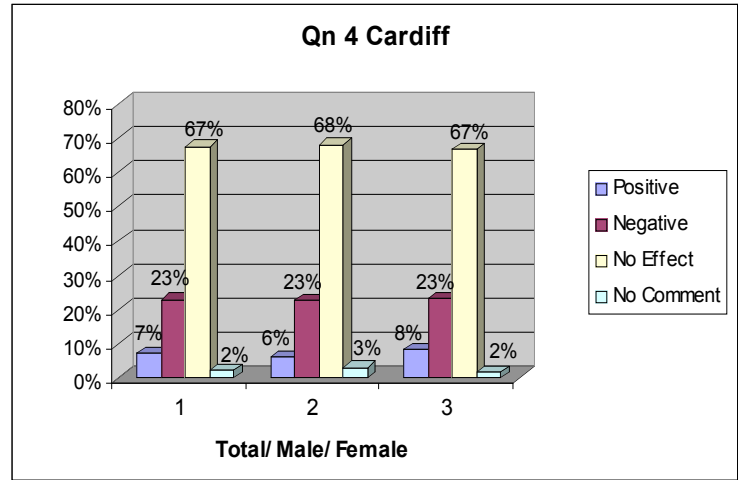
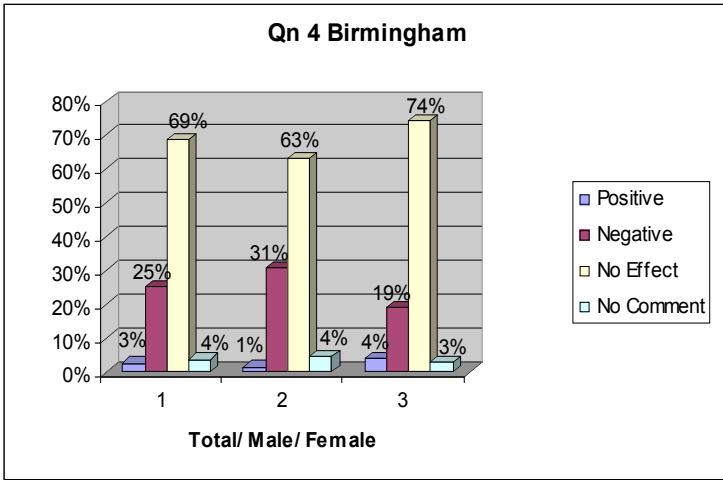
Does becoming a bankrupt adversely affect the employment position of individuals who seek this route out of personal over-indebtedness? Question 4 of the *BCS 2005* is designed to elicit this information. If one of the purposes of bankruptcy is rehabilitation of the insolvent, then this must extend to continued employment. Does this in fact take place?

**Results overall**





**Results by individual court**



## **Summary**

In the main there seems to have been relatively little effect on respondents' employment positions as a result of bankruptcy. However, a substantial number of respondents have indicated, for example, 48% in our Reading sample, that negative consequences have arisen. Why is this? If this is an axiom then it is not consistent with current government aims regarding relief and rehabilitation. Is stigma still prevalent and affecting employment status?

Qualified answers were few, but those that are extant may shed some light on the issue. One respondent noted that they, "lost all credibility so know one would trade with me have to work for my partner."<sup>131</sup> A Croydon respondent observed, "They do not know!"<sup>132</sup> This is perhaps indicative of a desire to keep the fact secret from employers, possibly due to the residual stigmatising, shameful connotations of progressing through the regime that has become apparent from responses to other questions in the survey.<sup>133</sup> One Exeter respondent simply noted, "lost my job."<sup>134</sup> Another observes, "None. Changed jobs halfway through and nobody knows."<sup>135</sup>

There were some positive responses that received qualified statements. An Exeter respondent observed, "as an administrative assistant it had no effect on my job, but I experienced a very supportive attitude from management during the process."<sup>136</sup> Another opined, "everyone very supportive given circumstances."<sup>137</sup>

Of the more negative qualified answers two are indicative of our sample; one Exeter respondent noted that, "my job is at risk because I do not have a bank account."<sup>138</sup> And another Exeter respondent noted, "negative judgements partly leading to resignation."<sup>139</sup>

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<sup>131</sup> Reading, ref: CA.

<sup>132</sup> Croydon ref: HD.

<sup>133</sup> e.g. question 7.

<sup>134</sup> Exeter ref: C.

<sup>135</sup> Exeter ref: F.

<sup>136</sup> Exeter ref: AJ.

<sup>137</sup> Exeter ref: K.

<sup>138</sup> Exeter ref: W.

<sup>139</sup> Exeter ref: CQ.

**5. What has been the effect of the bankruptcy on your family life?**

- a. Positive
- b. Negative
- c. No effect

Unfortunately bankruptcy does not only affect the bankrupt or their creditors. The family of the bankrupt can also be affected quite severely by the process.<sup>140</sup> In the R3 9<sup>th</sup> *Annual Survey of Personal Insolvency* the report noted that there could be, “a tendency for marriage to contribute to insolvency.”<sup>141</sup> The *BCS 2005* is more suggestive of insolvency contributing to the end of marriage. That is to say the result of insolvency and subsequent bankruptcy is the termination of a marriage relationship. In relation to wider social causes and consequences of bankruptcy the *Insol Consumer Debt Report* notes,

*“the socio-psychological consequences on consumers facing financial difficulties have long been underestimated...solving consumer debt problems can be very complex. Unfortunately, these problems are frequently caused by or in relation to socio-psychological factors, such as divorce, redundancy, job loss, addiction, disability, etc. These situations interfere with the quality of life and in many respects may have serious consequences for the health of the debtor and his or her family and the way they live. They may become socially isolated or retreat from life altogether”*<sup>142</sup>

If the effects of personal over-indebtedness can lead to the breakdown of the family unit this, as well as other social effects of bankruptcy must be considered. Is the bankruptcy process, that is to say, the process which leads to relief from over-indebtedness positive for family life?

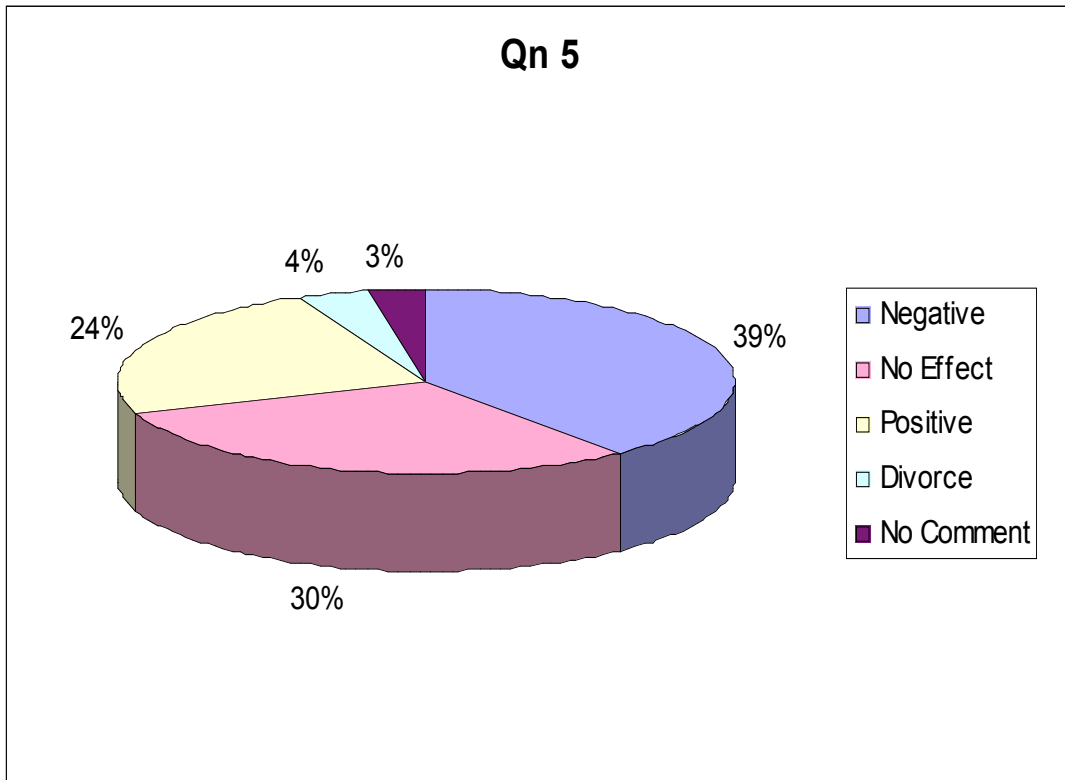
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<sup>140</sup> As the *Cork Report* noted at paragraph 198(i) in relation to the aims of insolvency law, insolvency is not, “limited to the private interests of the insolvent and his creditors, but that other interests of society or other groups in society are vitally affected by the insolvency and its outcome.”

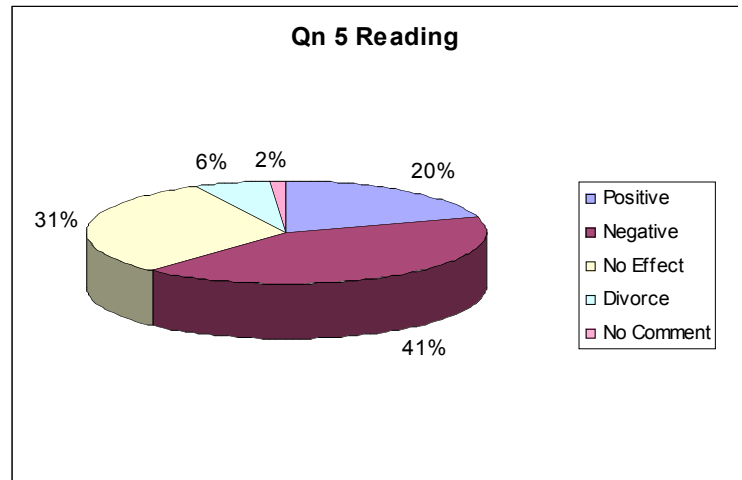
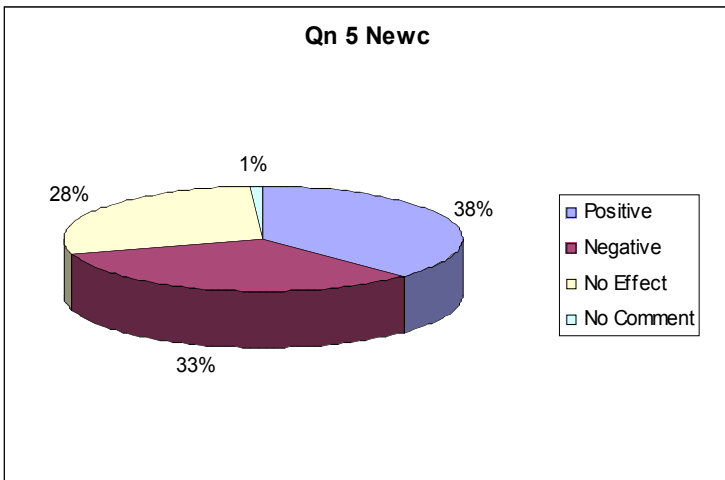
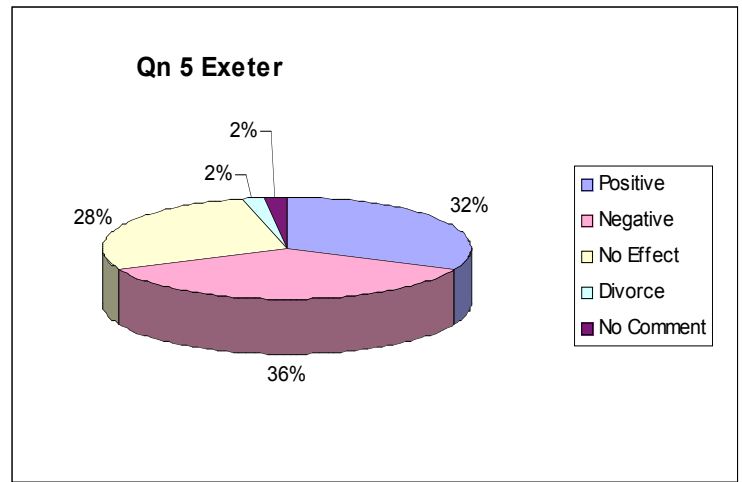
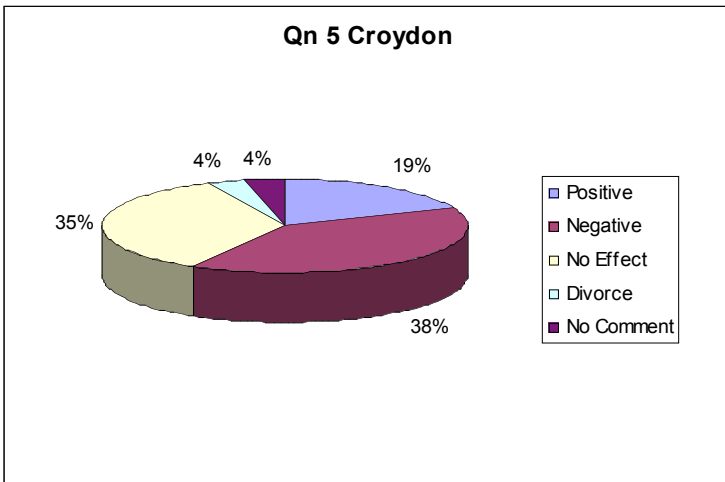
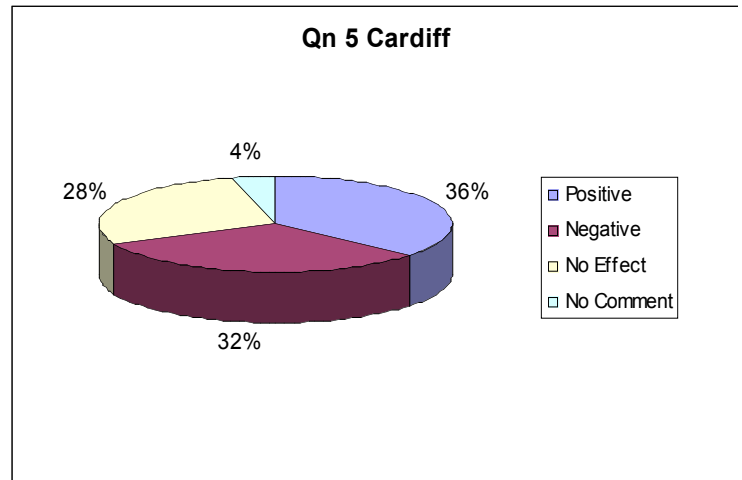
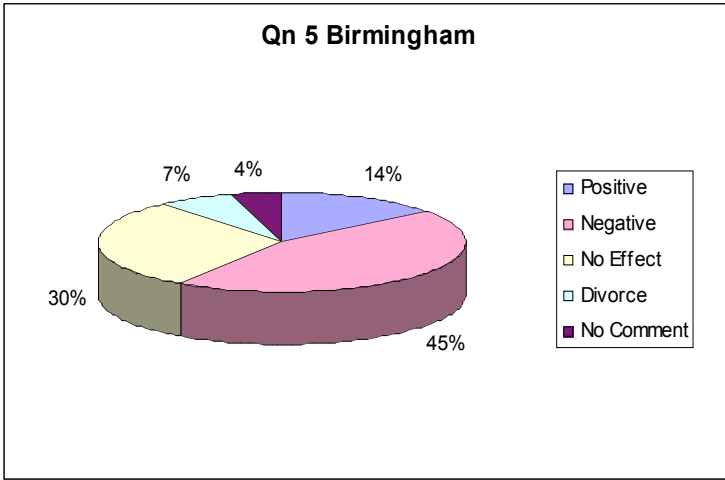
<sup>141</sup> R3 9<sup>th</sup> *Annual Survey of Personal Insolvency*, at page 9.

<sup>142</sup> *Insol Consumer Debt Report*, at page 2.

**Results overall**



**Results by individual court**



## Summary

The results of this question are broadly inconclusive with approximately equal numbers of respondents stating that bankruptcy had either a positive or negative effect on their family life. It could be argued that with 39% of respondents noting a negative effect that there is some cause for concern. If the financial relief attendant with bankruptcy acts as a pressure-release valve, thus freeing individuals from stress, this may account for some of the positive effects respondents are reporting. For example one respondent noted that bankruptcy brought, “peace of mind”<sup>143</sup> whilst another noted that they received, “very good support from my family so have got closer.”<sup>144</sup> Another along the same lines noted, “made us stronger.”<sup>145</sup> A Croydon respondent observed, “Actually, me and my partner have never been so HAPPY!”<sup>146</sup> Another Croydon respondent observed, “Although it was socially irresponsible to find myself in the position of being bankrupt I feel like my life has finally started after 10 years in debt I can finally start planning for the future.”<sup>147</sup> An Exeter respondent noted, “my children rallied round to help me in my financial difficulty, i.e. deposits on private accommodation.”<sup>148</sup> Another Exeter respondent noted, “the experience of having the immense pressure of the debt and the dread of monthly bills & statements removed meant a great deal of stress was lifted. The positive effect of this has greatly outweighed any negative points of bankruptcy.”<sup>149</sup>

Conversely, the pressure, worry and stigmatising effects of the process may be leading to adverse effects on family life. One respondent for example noted that the effects of bankruptcy on their family life had led to them becoming, “very stressed and snappy.”<sup>150</sup> Another noted that, “although my children do not blame me it made me ashamed to have to tell them.”<sup>151</sup> This again reinforces the idea that bankruptcy as perceived by some bankrupts is a shameful state; this point is taken up further below. An additional Reading respondent noted that her, “family were very angry with me”<sup>152</sup> whilst a Newcastle respondent noted, “my family are very upset with me.”<sup>153</sup> Another Reading respondent noted, “It has been a great strain, arguments over money, etc.”<sup>154</sup> One respondent noted, “some members of my family are disgusted with me and feel I should be

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<sup>143</sup> Reading, ref: CG.

<sup>144</sup> Reading, ref: CO.

<sup>145</sup> Reading, ref: CU.

<sup>146</sup> Croydon ref: FV.

<sup>147</sup> Croydon ref: HA.

<sup>148</sup> Exeter ref: H.

<sup>149</sup> Exeter ref: AJ.

<sup>150</sup> Reading, ref: CA.

<sup>151</sup> Reading, ref: CC.

<sup>152</sup> Reading, ref: DB.

<sup>153</sup> Newcastle ref: K.

<sup>154</sup> Reading ref: DK.

treated as a criminal...people do not understand it and can be quite cruel”<sup>155</sup> A Croydon respondent opined, “nearly caused the brake up of my marriage.”<sup>156</sup> An Exeter respondent noted, “suspicion, not trusted.”<sup>157</sup> A Birmingham respondent noted, “several family members have disowned me. It has taken my brother six months to talk to me again.”<sup>158</sup> Another Birmingham respondent noted, “nothing in particular I get a lot of lectures on how to budget.”<sup>159</sup> If bankruptcy is having a negative effect on family life, the specific root cause of the feature of bankruptcy that leads to this situation must be identified. If the continued deprivations caused by an inability to open a bank account post discharge are one of these causes for example then we are only succeeding in reducing the discharged bankrupt, “and his family to undue and socially unacceptable poverty and...depriving him [the bankrupt] of the incentive to succeed in his fresh start.”<sup>160</sup>

The effect of bankruptcy on the family is an important factor which the *BCS 2005* seems to suggest is affecting the family environment of both over-indebted individuals, but perhaps more worryingly their dependents. One respondent noted in response to this question, “cant do things with my kids that I used to.”<sup>161</sup> A further respondent stated, “this just doesn’t affect me, it affects my Ex and kids!! How would the kids react if they lost their home because of me.”<sup>162</sup> A Croydon respondent noted, “lost home, car, all personal goods we had bought for home, now living all in one room.”<sup>163</sup> An Exeter respondent noted, “my ex wife has stopped me seeing my daughter.”<sup>164</sup> Another Exeter respondent noted, “left my b\*\*\*h of a partner! And unfortunately my 2 lovly children.”<sup>165</sup> One Cardiff respondent noted, “my children feel let down, cant keep up with fashion or anything else.”<sup>166</sup> A Cardiff respondent noted, “we were worried what affect it would have on our children, because it was common knowledge that we were bankrupt in the area we live, but they have coped with it well.”<sup>167</sup> A further Cardiff respondent noted, “the need to move house looming has caused a strain to my family.”<sup>168</sup> On a more positive note one Newcastle respondent noted that her bankruptcy “has made me be able to work less to be with son.”<sup>169</sup> The release from

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<sup>155</sup> *Newcastle ref: EI.*

<sup>156</sup> *Croydon ref: HI.*

<sup>157</sup> *Exeter ref: BO.*

<sup>158</sup> *Birmingham ref: ED.*

<sup>159</sup> *Birmingham ref: JE.*

<sup>160</sup> *Cork Report* at paragraph 192.

<sup>161</sup> *Reading, ref: CJ.*

<sup>162</sup> *Reading, ref: CY.*

<sup>163</sup> *Croydon ref: HP.*

<sup>164</sup> *Exeter ref: X.*

<sup>165</sup> *Exeter ref: BX.*

<sup>166</sup> *Cardiff ref: E.*

<sup>167</sup> *Cardiff ref: J.*

<sup>168</sup> *Cardiff ref: Q.*

<sup>169</sup> *Newcastle ref: AL.*

debt has enabled her to cut down on her working hours thus enabling her to spend more time with her son. A Reading respondent observed, “closer knit family due to lack of funds for entertainment.”<sup>170</sup> A Croydon respondent opined that bankruptcy is, “the best thing I have done it has changed mine and my children’s lives, I actually have a life now, I was so unhappy before.”<sup>171</sup> A Cardiff respondent noted, “I am far less stressed meaning I can enjoy time with my children more.”<sup>172</sup>

The bankruptcy process itself has led one debtor into further difficulties. One Newcastle respondent observed, “need a fridge/freezer but can not afford to pay in one lump sum and can not get instalments. Food goes off quickly can not afford to go shopping every day for fresh food and argue more with my husband.”<sup>173</sup>

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<sup>170</sup> *Reading ref: DV.*

<sup>171</sup> *Croydon ref: HQ.*

<sup>172</sup> *Cardiff ref: X.*

<sup>173</sup> *Newcastle ref: DM.*

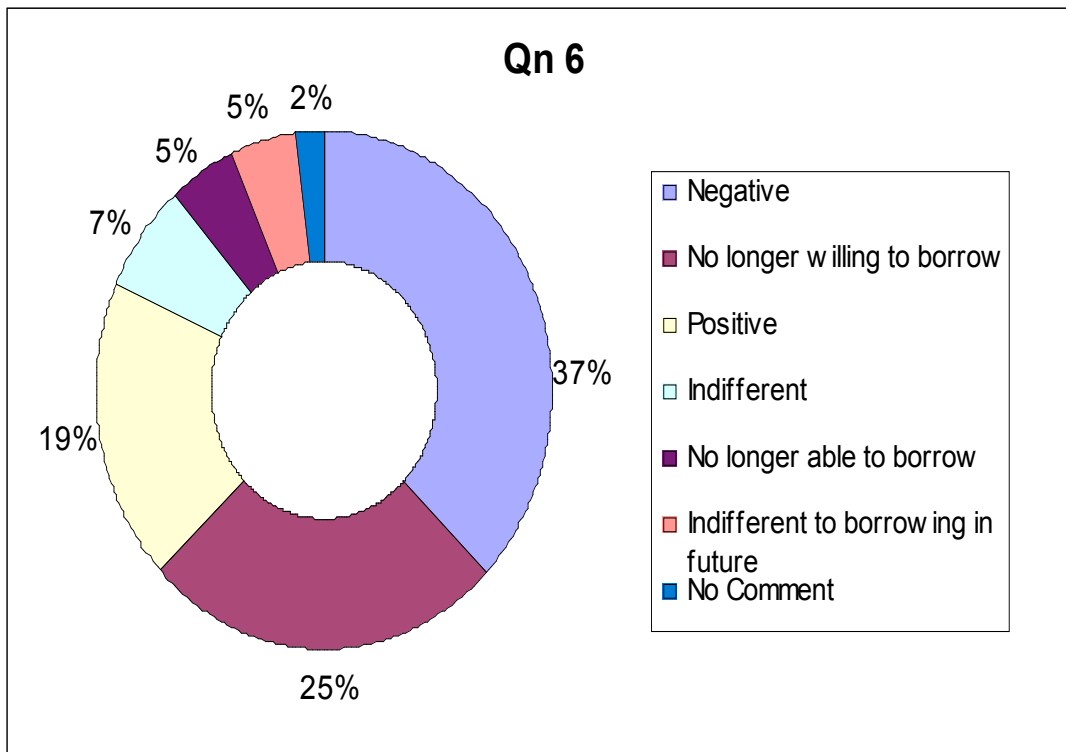


**6. What has been the effect of the bankruptcy on your present and or future borrowing habits?**

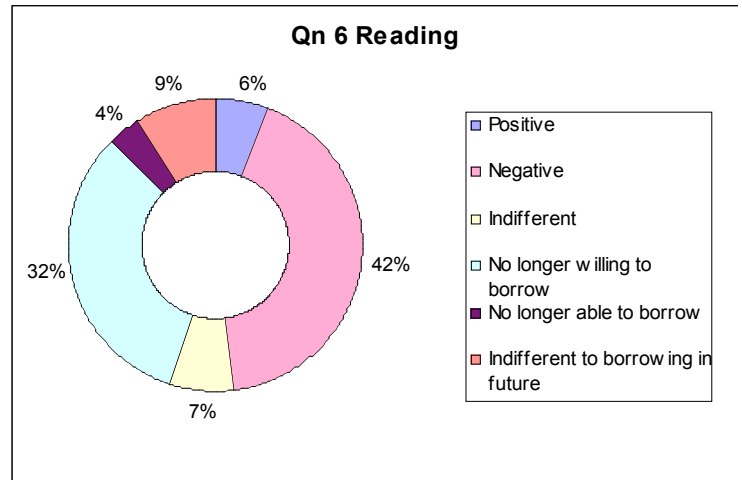
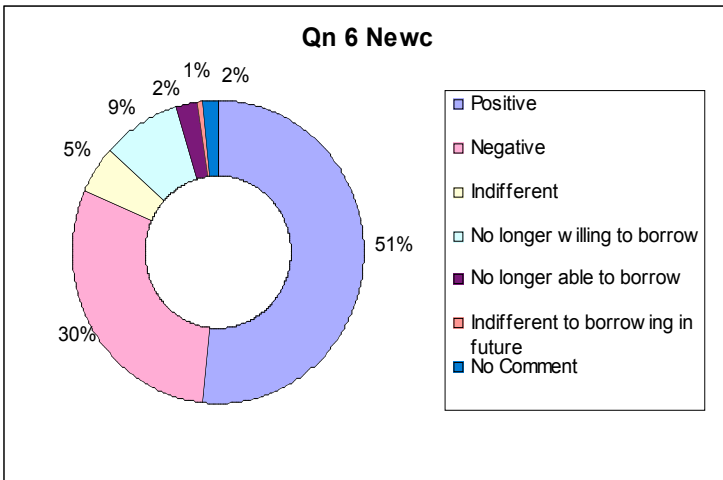
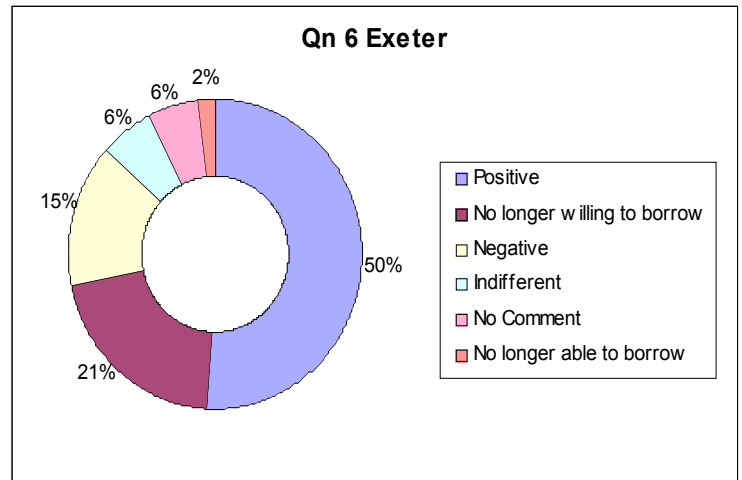
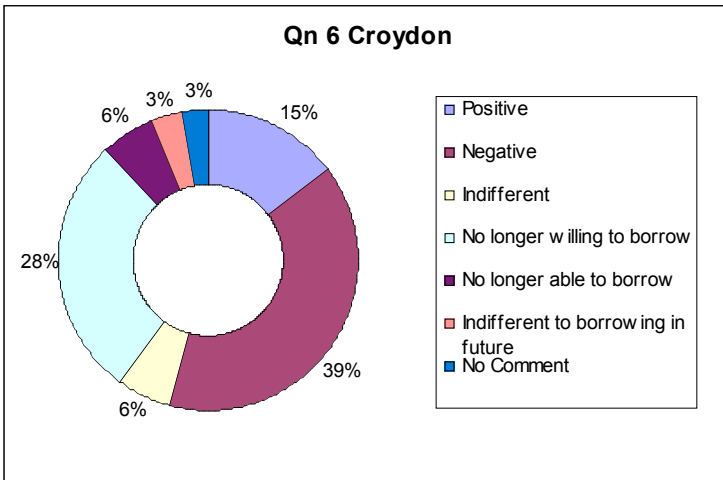
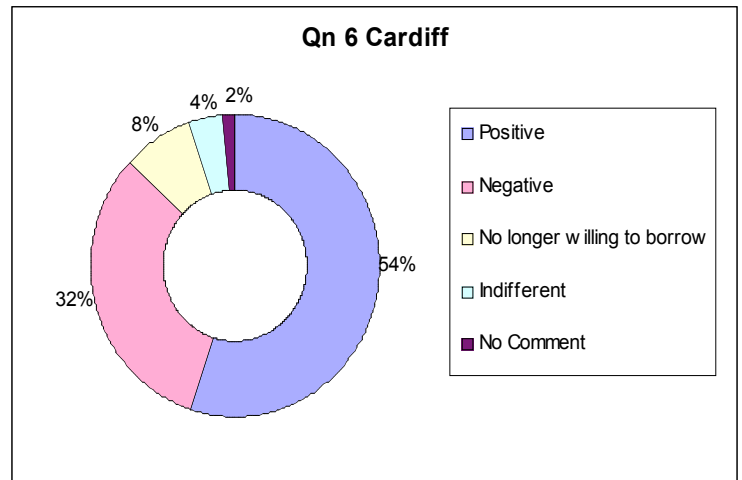
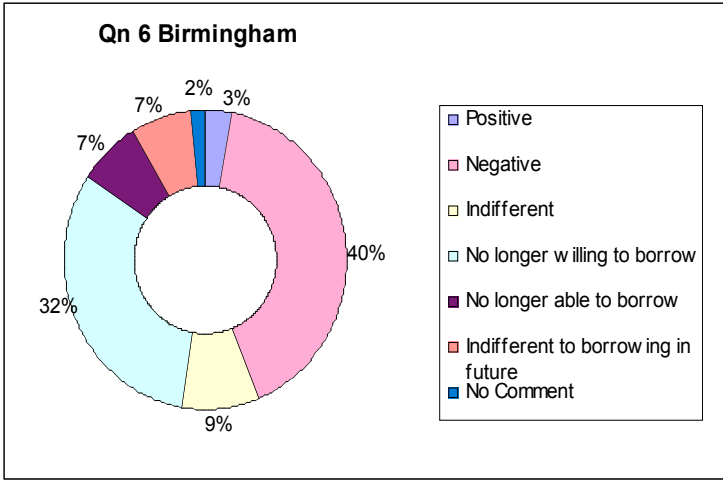
- a. Positive
- b. Negative
- c. No effect

Rehabilitation of financial circumstance, that is the idea of a fresh start, is perhaps one of the most important aspects of current bankruptcy policy. However, does bankruptcy also serve some form of financial educational function that ensures that over-indebted individuals, once relieved of their encumbrances, do not simply abuse the credit system again? Do people change their approach to credit use as a result of their bankruptcy? Question 6 of the *BCS 2005* is designed to ascertain whether present or future borrowing habits change as a result of bankruptcy.

**Results overall**



**Results by individual court**



## **Summary**

What seems most significant in relation to policy formulation regarding respondents answers to question 6 is that there appears to be a sizeable proportion of individuals who are no longer willing to borrow, post their bankruptcy (some 25%, plus 37% reporting a negative effect on their future borrowing habits). If rehabilitation is a key objective of our personal insolvency law, indeed as it has been since discharge was introduced in 1705,<sup>174</sup> then this response pattern is particularly concerning. For example, one respondent noted, “I will never take out loans or credit cards again.”<sup>175</sup> Another observed, “stoped them for all time!”<sup>176</sup> Another Reading respondent observed, “I never!! Would have any credit again!”<sup>177</sup> This type of response is not atypical of the data set. It would be interesting to follow up on the respondents who suggested that the experience of bankruptcy has curtailed their borrowing habits. In compiling the questionnaire we asked the respondents to give their names if possible so that subsequent follow up meetings and interviews might be undertaken in relation to some specific element of the survey. The question of whether or not they did in fact desist from borrowing is a long term research point that could be investigated especially in relation to the responses where names were given. Society is credit based<sup>178</sup> and if the respondents are withdrawing themselves from the credit system this must be further investigated. One response from the Newcastle data set was particularly interesting; “Possibly not inclined to get purchases on credit.”<sup>179</sup>

Another sizeable group of discharged bankrupt respondents have attempted to re-enter the credit market but have been denied access. For example one Newcastle respondent noted, “unable even now I am discharged from bankruptcy to get ordinary current account or credit card.”<sup>180</sup> This issue was repeated by a Croydon respondent who observed, “...had major problems trying to open new bank account.”<sup>181</sup> On this point see further question 7 below.

An Exeter respondent noted, “we are a lot more careful with our money but have very little for luxury.”<sup>182</sup>

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<sup>174</sup> An Act to Prevent Frauds Frequently Committed by Bankrupts, 4&5 Anne, c.17. (1705).

<sup>175</sup> Reading, ref: CD.

<sup>176</sup> Reading ref: DM.

<sup>177</sup> Reading ref: DP. Respondent’s underlined emphasis.

<sup>178</sup> See *Cork Report*, at Chapter One “*The Credit World*” and also paragraph 198(a).

<sup>179</sup> Newcastle ref: DD.

<sup>180</sup> Newcastle ref: H.

<sup>181</sup> Croydon ref: GU.

<sup>182</sup> Exeter ref: M.

**7. Before you became a bankrupt, did you think that you would be treated differently as a bankrupt, if so how have expectations been met?**

It could be argued that there is a widely held perception still prevalent in England and Wales in the year 2005, perhaps due to Victorian literature on debtors prisons and bankruptcy,<sup>183</sup> that bankruptcy as a legal state is accompanied by quite awful social consequences.<sup>184</sup> Indeed, as recently as 1971 a Justice committee on bankruptcy was constituted to investigate the alleged harsh operation of our bankruptcy laws. It reported in 1975.<sup>185</sup> Is this contention supported by the *BCS 2005*? Has this perception of the process changed over time? What did prospective bankrupts consider would be the result of their passing into bankruptcy from a social perspective? Question 7 of the *BCS 2005* was designed to test whether, *inter alia*, social ostracism is still extant for bankrupts.

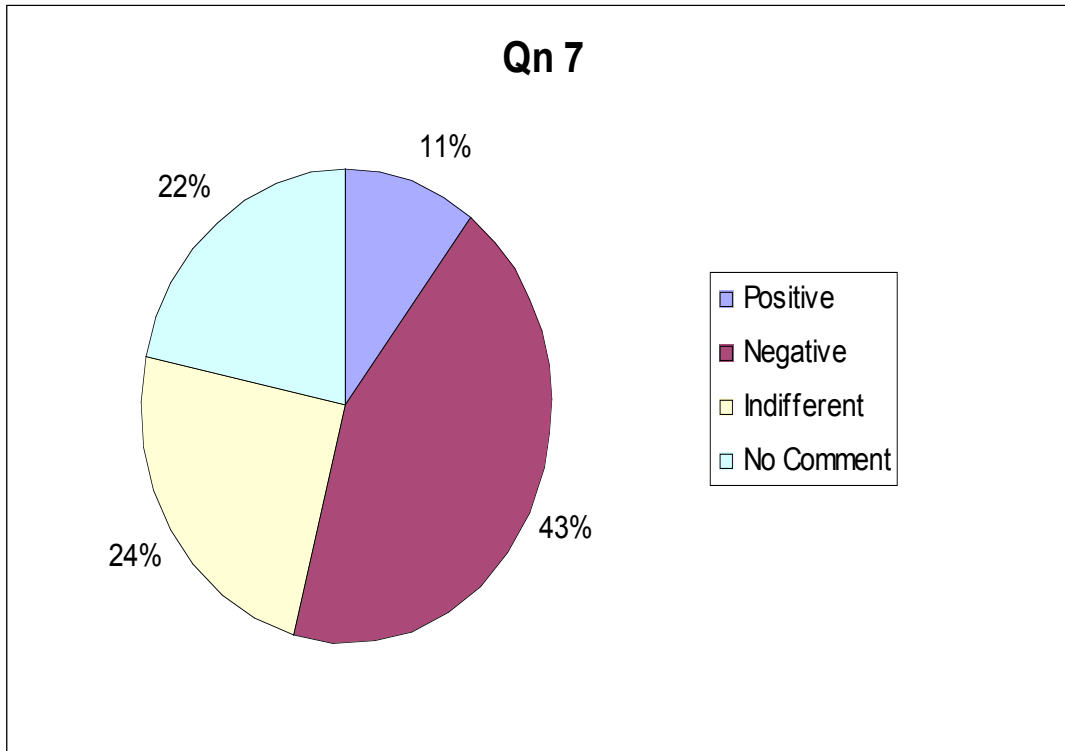
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<sup>183</sup> See for example: Bronte, C. *Shirley*. Wordsworth Classics. Ware, Hertfordshire. 1993; Dickens, C. *Little Dorrit*. Penguin Books, London. 1988; Eliot, G. *The Mill on the Floss*. Penguin Popular Classics. London. 1994; Gaskell, E. *North & South*. Penguin Classics. London. 1995; Trollope, A. *Framley Parsonage*. Harrap, London, 1947.

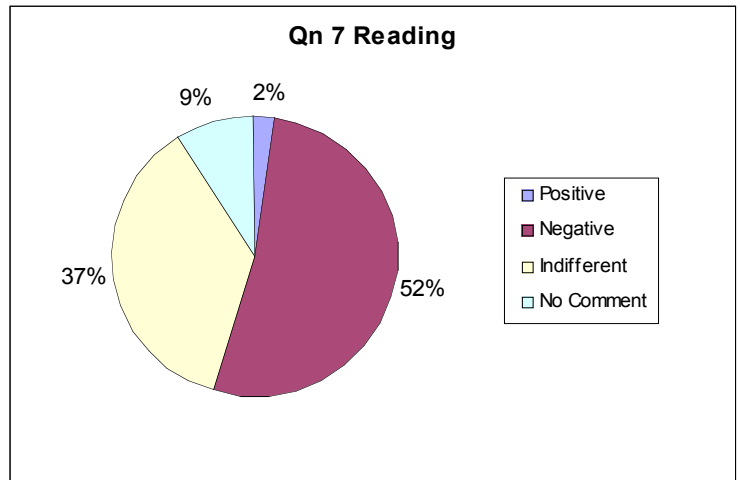
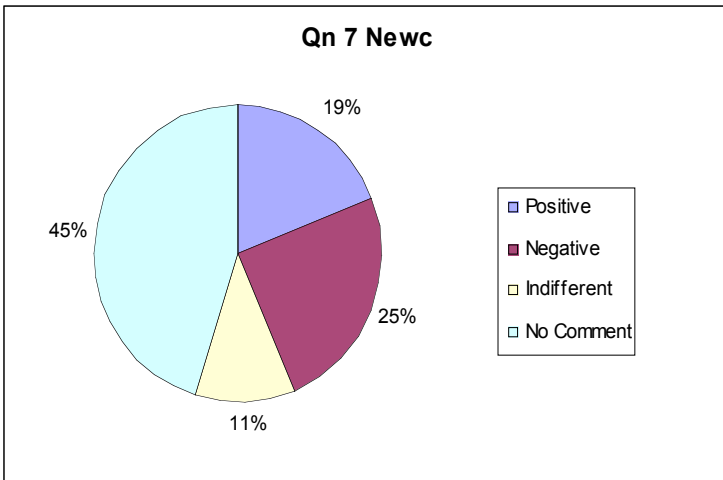
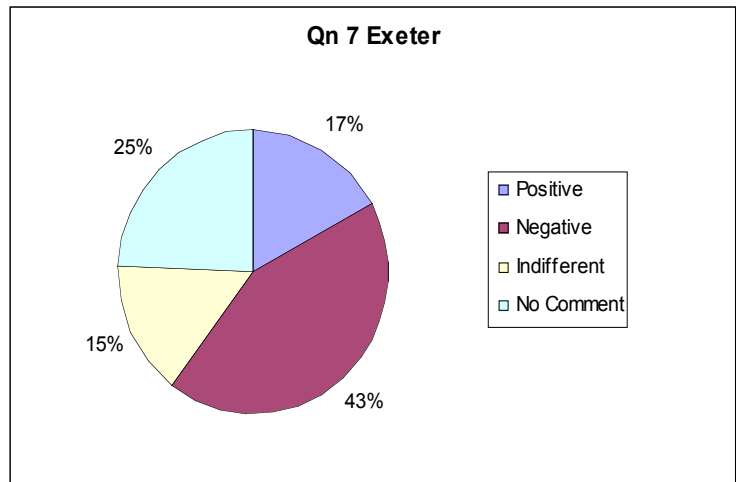
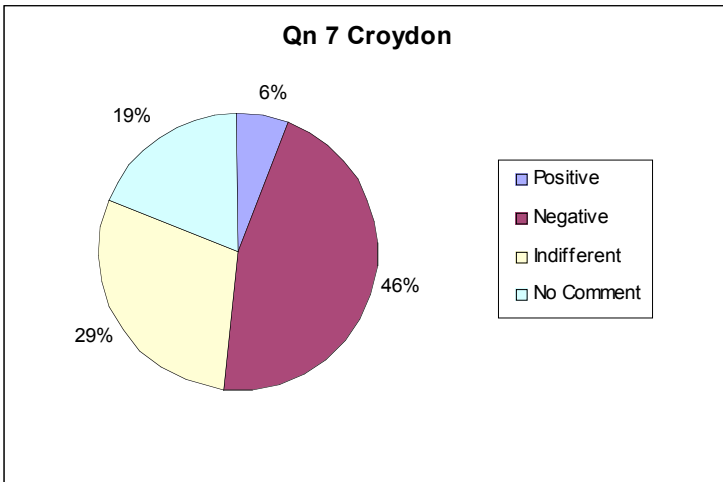
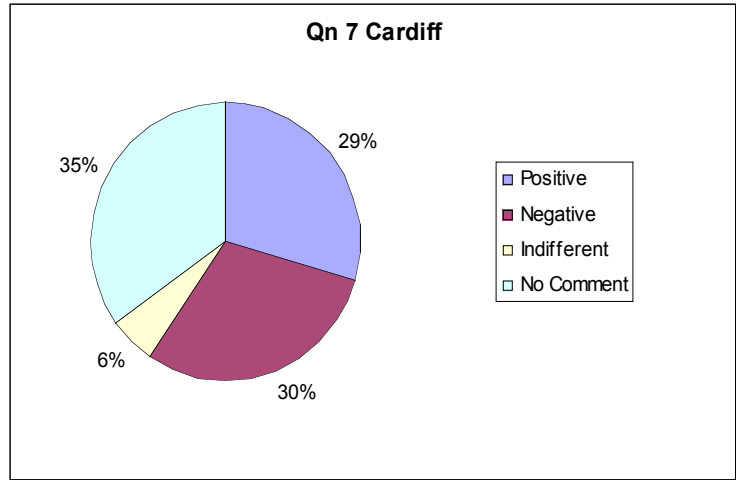
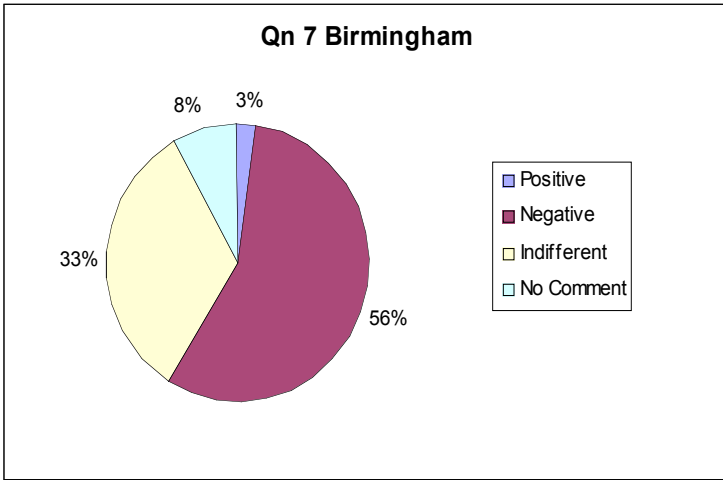
<sup>184</sup> Weiss, B. *The Hell of the English: Bankruptcy and the Victorian Novel*. Bicknell University Press. 1986.

<sup>185</sup> Justice. *Bankruptcy – a Report by Justice*. Stephens & Son, London, 1975, at page V.

**Results overall**



**Results by individual court**



## Summary

Respondents' answers to question 7 vary quite markedly across the sample courts. If there is one trend it is that negative consequences were feared (some 43% overall). That is perhaps a natural corollary of the answers to stigma-related questions. There were some positive qualified statements. One respondent noted that, "I thought I would be treated with disdain and shame but I was given every courtesy and respect which helped me even though I felt ashamed of myself."<sup>186</sup> Another observed that he/she, "thought people would look down on me but this has not been the case."<sup>187</sup> Interestingly one respondent noted, "I don't think that it has the stigma that it used to."<sup>188</sup> An alarming number of individuals had no prior expectations of any sort, this is perhaps indicative of a lack of knowledge about the process. One respondent noted, "didn't really have any expectations to be met."<sup>189</sup> Perhaps the uppermost reason for this negative perception<sup>190</sup> is a lack of knowledge of the bankruptcy system and its effects amongst members of society generally. This is typified by the response of one Reading debtor who observed, "I have heard all sorts of horror stories which weren't true. It has been a lot better than I thought."<sup>191</sup> A Birmingham respondent noted, "thought I'd be treated like a criminal, with restrictions on holidays abroad and all sorts, but everyone has been so nice and helpful its not as bad as I'd imagined."<sup>192</sup>

There were some more negative qualified comments. One Newcastle respondent observed, "...I was treated differently by people around my village huddled groups and whispers or being totally shunned."<sup>193</sup> A Croydon respondent observed, "Yes, I expected to be treated as a pariah. Instead I have been treated with compassion."<sup>194</sup> An Exeter respondent noted, "yes, have been treated differently, made to feel like a criminal in some cases."<sup>195</sup> A further Exeter respondent noted, "yes, I am treated as a loser."<sup>196</sup> A Cardiff respondent noted, "people judge you. It affects how people treat you."<sup>197</sup>

Negative responses, particularly towards banks from discharged bankrupts, were a particularly concerning feature of the responses. One Reading respondent observed, "Yes, particularly by

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<sup>186</sup> Reading, ref: CC.

<sup>187</sup> Reading, ref: CH.

<sup>188</sup> Reading, ref: CV.

<sup>189</sup> Newcastle ref: F.

<sup>190</sup> In addition to the popular perception still fostered by the Victorian novels of Dickens, Thackeray, *et al.*

<sup>191</sup> Reading ref: DK.

<sup>192</sup> Birmingham ref: DC.

<sup>193</sup> Newcastle ref: EZ.

<sup>194</sup> Croydon ref: FL.

<sup>195</sup> Exeter ref: AH.

<sup>196</sup> Exeter ref: BU.

<sup>197</sup> Cardiff ref: H.

financial institutions, but didn't realise how much of a virtual stigma is after discharge."<sup>198</sup> An Exeter respondent noted, "I knew I would be treated differently but In some cases I was treated like a convicted criminal. Didn't expect that and didn't like it."<sup>199</sup> Another Reading respondent noted, "Yes treated lie a Leper you cant even get a bank account for your wage's to be paid."<sup>200</sup> A further Reading respondent observed, "I had a lot of trouble getting a basic bank account for my wages."<sup>201</sup> Another Reading respondent went still further when they observed, "Certainly my old bank, [BANK A], treated me like a criminal."<sup>202</sup> A further Reading respondent noted, "Companies will not deal with bankrupts at all."<sup>203</sup> A Croydon respondent observed, "was unable to get any bank account for 10 months!"<sup>204</sup> Another Croydon respondent noted, "I did not expect to be treated so differently, however, I was extremely disappointed when my then bank asked (TOLD) me to find an alternative, even after I explained my circumstances."<sup>205</sup> One Croydon respondent observed, "Yes I did, but the only difference to my life has been difficulty opening a new bank account after [BANK B] closed mine."<sup>206</sup> One Newcastle respondent observed, "been treat well by insolvency service anyone else doesn't want to know, even more so the banks."<sup>207</sup> An Exeter respondent noted, "banks are quite unhelpful now but I expected that."<sup>208</sup> A Cardiff respondent noted, "no bank are interested, even for putting income support + child benefit money in."<sup>209</sup> A Birmingham respondent noted, "thought I would be treated differently and have been by [BANK A] bank, made to feel worthless."<sup>210</sup> A Birmingham respondent noted, "I have a limited current account facility with the [BANK C] – the only bank who would allow me to open an account."<sup>211</sup> Another Birmingham respondent noted, "yes, with regards banks, you have no way of being paid your wages in most peoples cases you will be forced onto the dole, even then you would have to receive cash payments."<sup>212</sup> A further Birmingham respondent noted, "I was worried I wouldn't be able to open another bank account. Several banks rejected me but [BANK D] accepted me."<sup>213</sup> In *Re Rae Warner*, J opined, "...the bankrupt is a human being whose life must continue during and after insolvency."<sup>214</sup> If banks are precluding discharged bankrupts from obtaining bank accounts

<sup>198</sup> Reading ref: DG. Respondent's underlined emphasis.

<sup>199</sup> Exeter ref: H.

<sup>200</sup> Reading ref: DI.

<sup>201</sup> Reading ref: DP.

<sup>202</sup> Reading ref: DU.

<sup>203</sup> Reading ref: DW.

<sup>204</sup> Croydon ref: FM. Respondents underlined emphasis.

<sup>205</sup> Croydon ref: GZ.

<sup>206</sup> Croydon ref: HG.

<sup>207</sup> Newcastle ref: FC.

<sup>208</sup> Exeter ref: AL.

<sup>209</sup> Cardiff ref: AF.

<sup>210</sup> Birmingham ref: CH.

<sup>211</sup> Birmingham ref: DW.

<sup>212</sup> Birmingham ref: DV.

<sup>213</sup> Birmingham ref: DJ.

<sup>214</sup> [1995] BCC 102 at 111.



then their rehabilitation and life cannot continue as envisaged by the legislature in line with the relief and rehabilitation notions of current insolvency law policy.

There were other negative after effects noted. A Cardiff respondent opined, “I haven’t been treated any differently by family or friends but find a few creditors hard to stop the threats and get the message and accept that I am bankrupt.”<sup>215</sup>

Interestingly one Croydon respondent observed in answering this question that, “I did think there would be a stigma attached to it but when I had actually done it, it wasn’t as bad as I expected. In fact, I found a lot of people – friends and family – had also consider it.”<sup>216</sup> In a similar vain one Cardiff respondent noted, “no. bankruptcy is no longer viewed as a crime or failure.”<sup>217</sup> One Newcastle debtor did indicate that businessmen see bankruptcy as a positive life experience. The respondent observed, “regular people regard u as a failure – whilst businessmen – suggest a great learning process with the benefit of a clean slate.”<sup>218</sup>

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<sup>215</sup> Cardiff ref: AP.

<sup>216</sup> Croydon ref: HA.

<sup>217</sup> Cardiff ref: P.

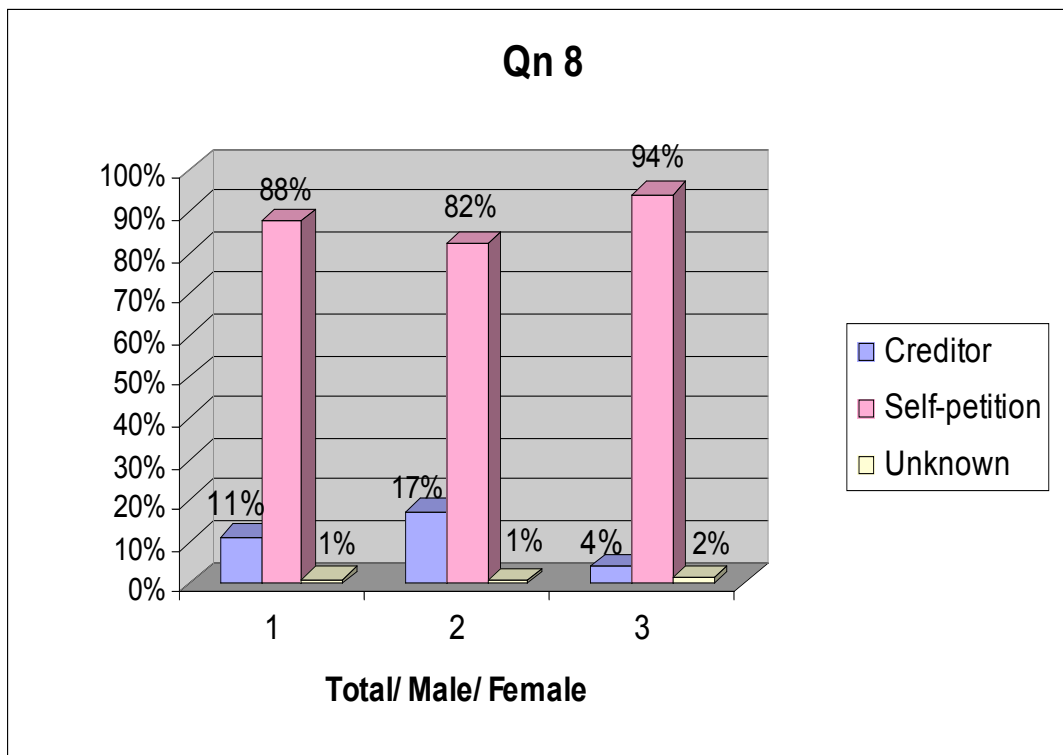
<sup>218</sup> Newcastle ref: BH. This respondent’s answer supports Milman’s contention that, “Bankruptcy has thus become a popular institution and that may be regarded in some quarters as a measure of success.” (*Milman* at page 13).

**8. Who was your bankruptcy instigated by?**

- a. Creditor
- b. You

Who in the main instigates the individual insolvent's bankruptcy petition? Is the process instigated by debtors themselves or by creditors? Milman has observed that, "debtor initiated bankruptcy is now the prevalent species."<sup>219</sup> The recent *Bankruptcy – A Fresh Start* consultation paper also noted, "the experience of Official Receivers is that the vast majority of people who become bankrupt become so from necessity not choice."<sup>220</sup> Are these contentions borne out by the results of the *BCS 2005*?

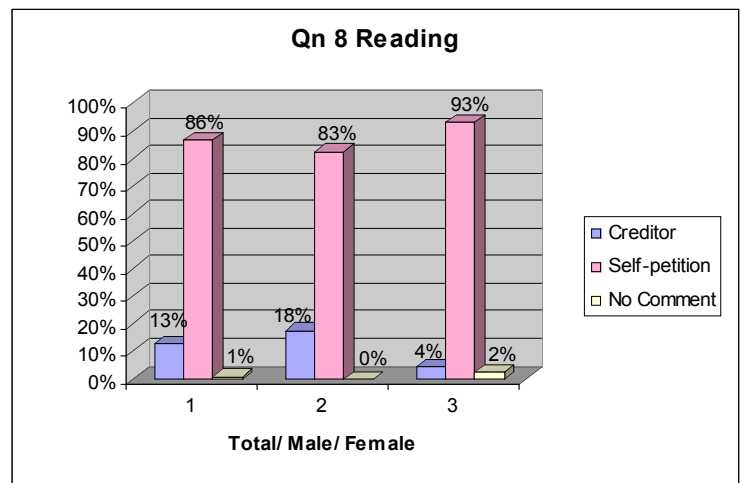
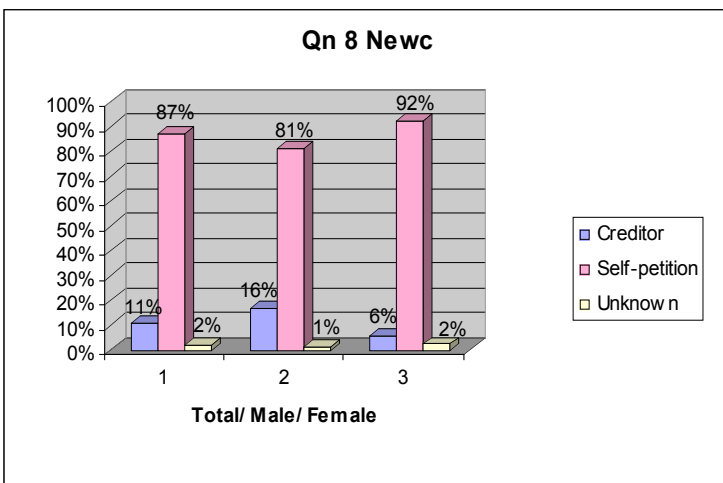
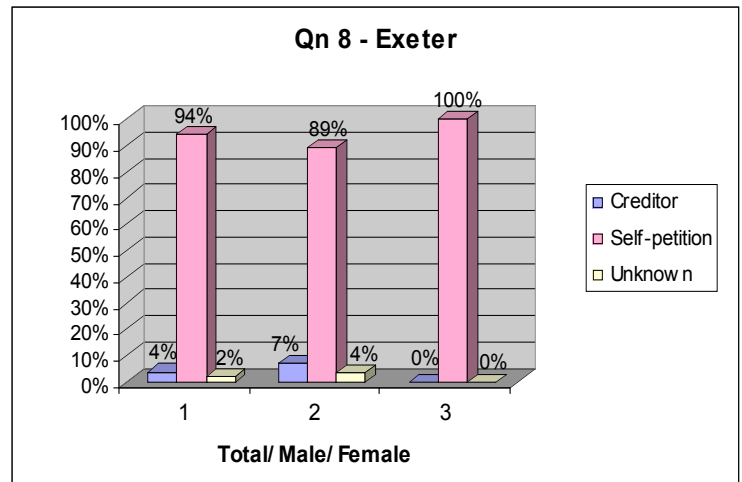
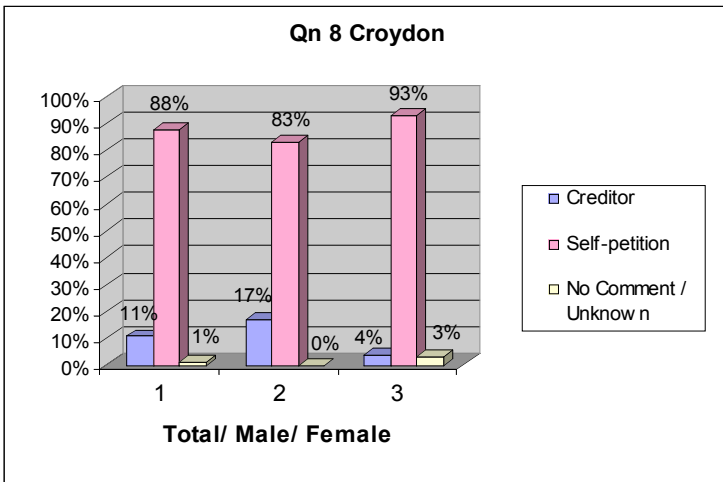
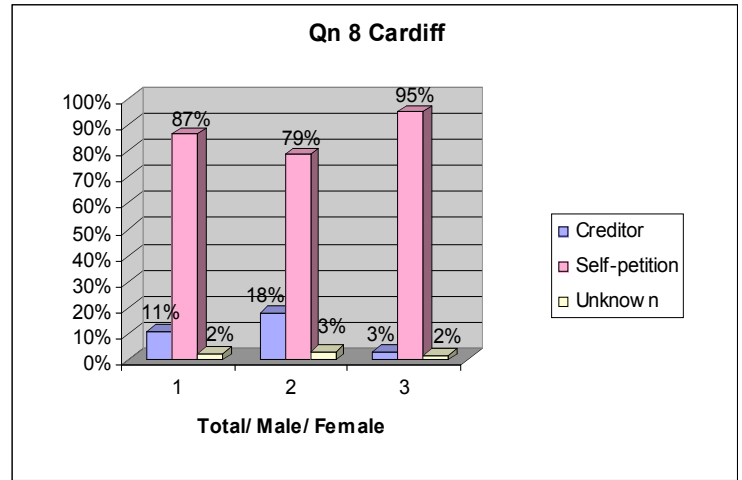
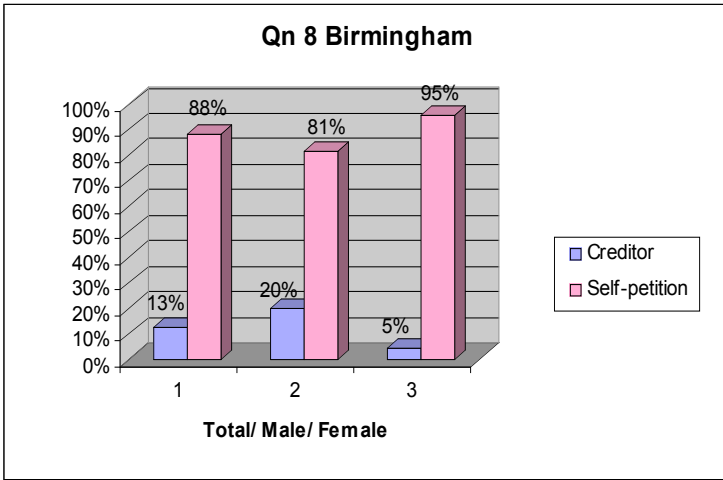
**Results overall**



<sup>219</sup> Milman at page 13.

<sup>220</sup> *Bankruptcy – A Fresh Start* at paragraph 7.1.

**Results by individual court**



## **Summary**

Debtors' petitions are the most prevalent form of bankruptcy petition in all of the sample courts. There was very little qualifying comment for this question. One Cardiff respondent did note, "I was trying hard to keep up payment but knew I couldn't do it."<sup>221</sup> Another Cardiff respondent noted, "One of my friends told me about it when she visited me unexpected and caught me crying over debt."<sup>222</sup>

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<sup>221</sup> *Cardiff ref: R.*

<sup>222</sup> *Cardiff ref: AI.*

**9. Were you aware that the automatic discharge period was reduced in 2004 from 3 years to 1 year before you began your bankruptcy experience?**

- a. Yes
- b. No

The issue of discharge within bankruptcy has had a long and difficult history.<sup>223</sup> Recent legislative attempts to perfect the discharge provisions have themselves not been without controversy.<sup>224</sup> In the July 2001 Consultation Paper, *Productivity and Enterprise: Insolvency a Second Chance*,<sup>225</sup> the Insolvency Service reinforced a proposal originally made in the April 2000 consultation paper *Bankruptcy - A Fresh Start*<sup>226</sup> for a reduction in the automatic discharge period for bankrupts from three years to a maximum of one year. As one learned commentator has noted, automatic discharge might be obtained in as little as 6 months.<sup>227</sup> This proposal was taken forward in the Enterprise Bill and subsequently became law as s.256 and Schedule 19 of the Enterprise Act 2002, amending s.279 of the Insolvency Act 1986.<sup>228</sup> Has this recent statutory change to the reduction in the automatic discharge period from three years to one year had an effect on those seeking a way out of personal over-indebtedness? Were insolvent individuals aware of the reduction and if so did this alter their decisions as to which process they would adopt to resolve the over-indebted position?

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<sup>223</sup> See for example: *Report of the Committee on Bankruptcy Law and Deeds of Arrangement*. Board of Trade – Bankruptcy Law Amendment Committee, HMSO, London, July 1957, Cmnd. 221, at paragraph 7 where it is noted that, “in our opinion the principal defect of the Bankruptcy Acts at present is that they have failed to provide a satisfactory and equitable method of dealing with the discharge of every bankrupt.” Automatic discharge was introduced as a result of the Insolvency Act 1976, originally occurring five years from the commencement of the bankruptcy order (s.7). See: Hunter, M & Graham, D. *Williams and Muir Hunter – The Law and Practice in Bankruptcy*. 19<sup>th</sup> Edition. Stevens & Sons, London, 1979, at pages 136-145.

<sup>224</sup> See: Nisse, J. Independent on Sunday, “*Bankruptcy overhaul is mooted as too many walk away from debts*” (19/09/04) at page 3; Boyden, P. The Financial Times, “*Insolvency is no soft option: Soaring Debt...*” (08/11/03) at page 27; Harrison, M. The Independent. “*Personal Bankruptcies hit 10 year high*” (08/11/03) at page 25.

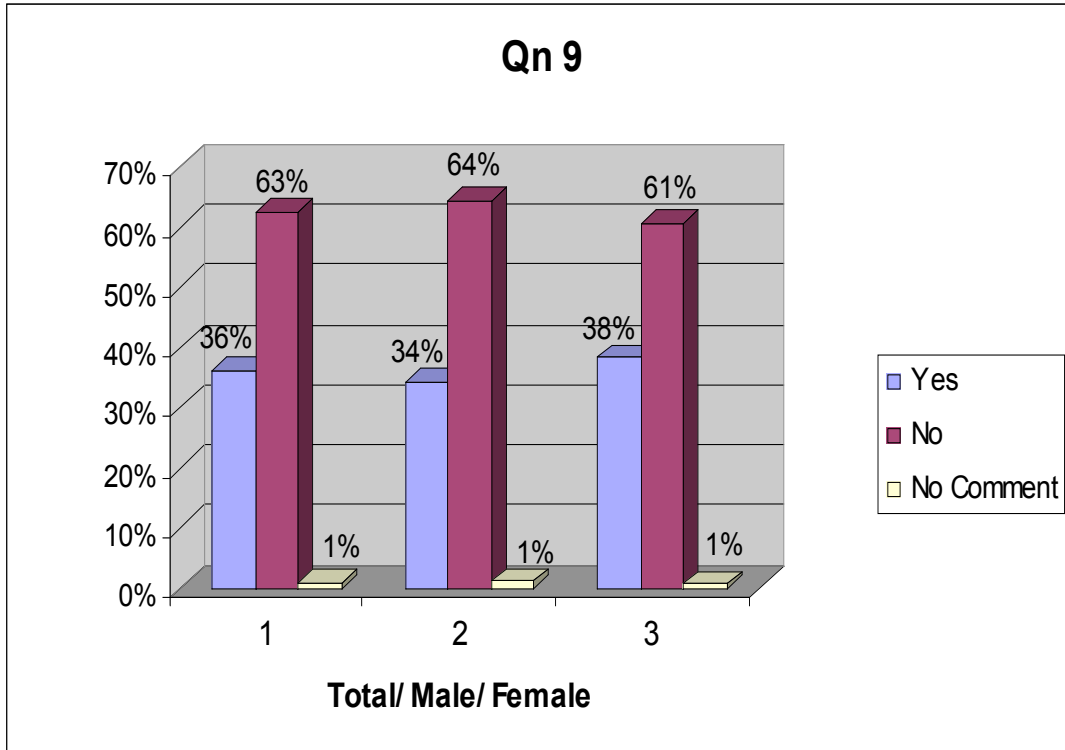
<sup>225</sup> *Productivity and Enterprise: Insolvency – A Second Chance*. Insolvency Service, DTI, The Stationary Office, London, July 2001, Cm 5234, at para 1.6 and para 1.14. Hereafter referred to as *Productivity and Enterprise*.

<sup>226</sup> *Bankruptcy – A Fresh Start*. Insolvency Service, DTI publication, April 2000. Hereafter referred to as *Bankruptcy – A Fresh Start*.

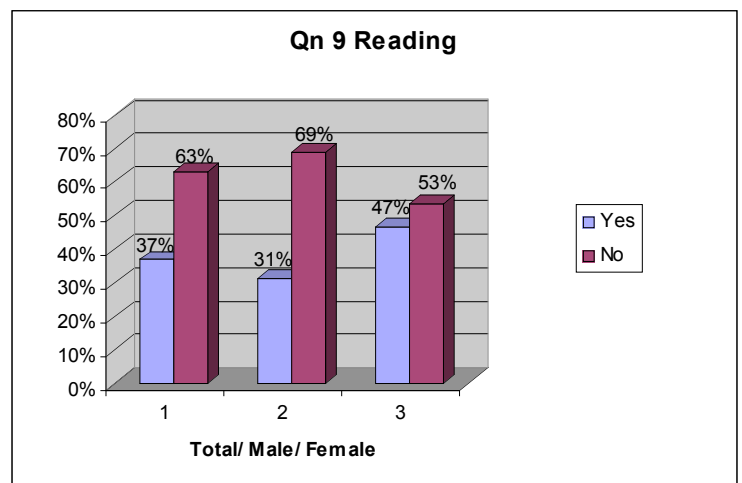
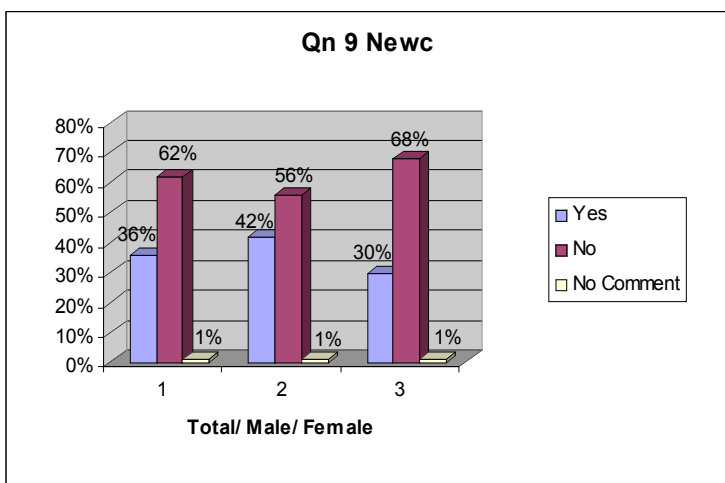
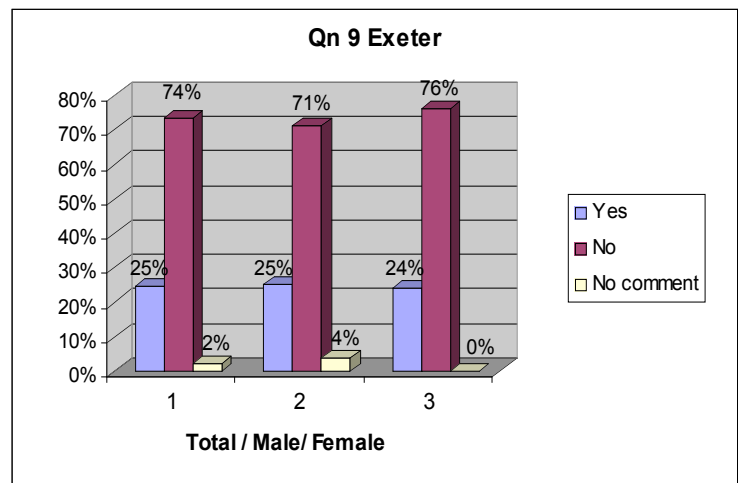
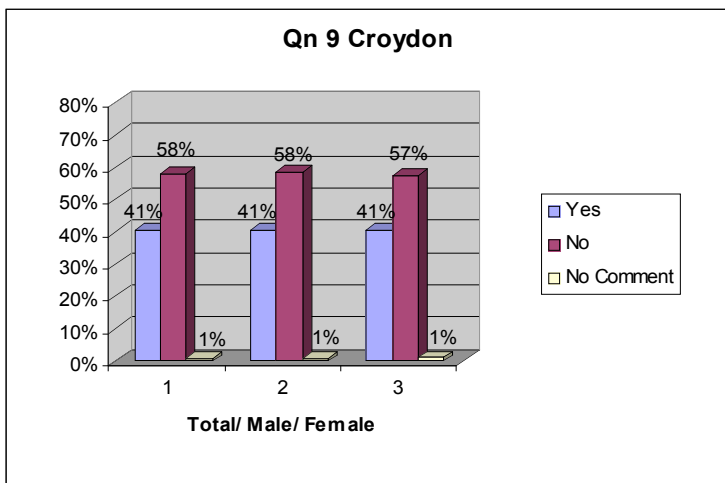
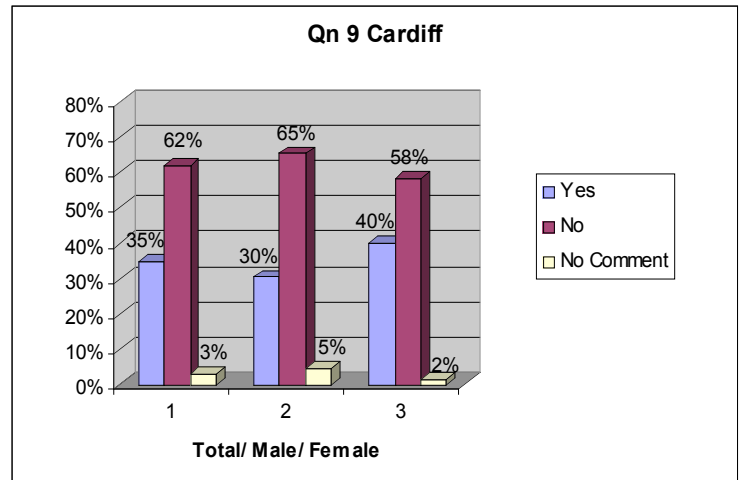
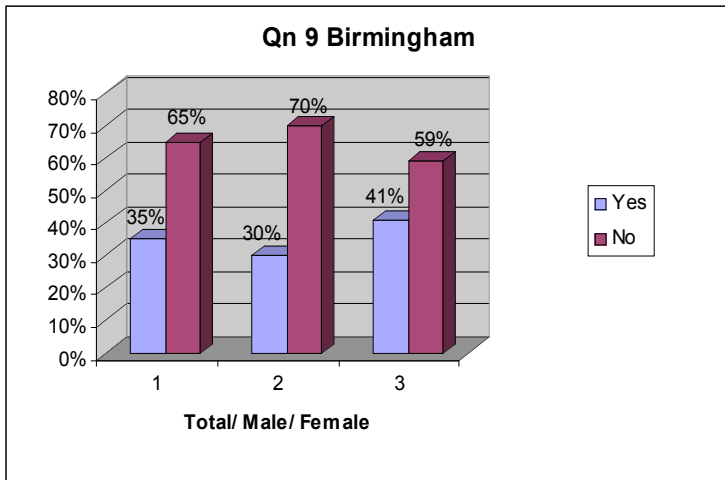
<sup>227</sup> Davies, at para. 14.1.

<sup>228</sup> See: Sealy, L & Milman, D. *Annotated Guide to the Insolvency Legislation*. Second Revised Seventh Edition. Sweet & Maxwell Ltd, London, 2004, at pages 307 and 208. See also Davies, at page 204.

**Results overall**



**Results by individual court**



## **Summary**

The sample of bankrupt respondents includes both pre-Enterprise Act 2002 bankrupts and post-Enterprise Act 2002 bankrupts.<sup>229</sup> Consequently, the responses to this question pertain most appropriately to those individuals who were insolvent just prior to or just after the Enterprise Act 2004 came into force. Overwhelmingly, it seems as if prospective bankrupts were not aware of the statutory changes to the law of personal insolvency brought into effect by the Enterprise Act 2002 or the effects these statutory changes would have on them personally. There is however a respondent bias in that a proportion of respondents are pre-Enterprise Act 2002 bankrupts. They will obviously not have known about changes which were not even proposed when their cases were being heard. The respondents' knowledge of the new procedures was broadly scant. One Newcastle respondent noted in relation to the changes; "I only found out about it when I was in court"<sup>230</sup> and observed that, "I was made aware by the Official Receiver."<sup>231</sup> It also seems as if the voluntary sector is propagating knowledge about the recent statutory amendments. One Newcastle respondent observed, "I read it in some information I had from National Debtline and was told by CAB."<sup>232</sup>

One Newcastle respondent was however directly influenced by the reduction in the discharge period. They observed, "was for this reason I declared myself bankrupt."<sup>233</sup>

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<sup>229</sup> On these respective groups of bankrupts see the analysis below, "Pre and Post Enterprise Act responses to discharge" at page 183.

<sup>230</sup> *Newcastle ref: K.*

<sup>231</sup> *Newcastle ref: N.*

<sup>232</sup> *Newcastle ref: CA.*

<sup>233</sup> *Newcastle ref: L.*



**10. How much of an influence did the reduction in the automatic discharge period from 3 years to 1 year have on your decision to go through the bankruptcy debt relief route?**

- a. Very little
- b. Fairly important
- c. Very Important
- d. Crucial
- e. Other

Mr. Steve Treharne an insolvency partner at KPMG was quoted in *The Times* newspaper on the 5<sup>th</sup> February 2005 as saying, “the increase in bankruptcy levels suggests that the simplified approach is making the procedures more attractive.”<sup>234</sup> Is this true? Have the changes brought about by the Enterprise Act 2002 to the law of personal insolvency in terms of the reduction in the discharge period from three years to one year influenced individuals who are encumbered by personal over-indebtedness? If the effect of the reduction in the automatic discharge is to make bankruptcy a more attractive option for over-indebted individuals will there be a corresponding movement from the consumer credit industry arguing that it is too easy for consumers to go bankrupt and obtain a discharge? Will this ease lead to abuses within the system? In 2001 the *Insol Consumer Debt Report* observed:

*“A law offering a discharge should however not be seen as an easy way out. For the law to be respected, the legislators should seek to avoid a dichotomy between the debtor and society. The barriers to obtain a discharge should on the one hand not be so high that the debtor is discouraged from using the procedure. On the other hand, sufficient recognition of the system should be created so that society is willing to forgive and permit a fresh start.”*<sup>235</sup>

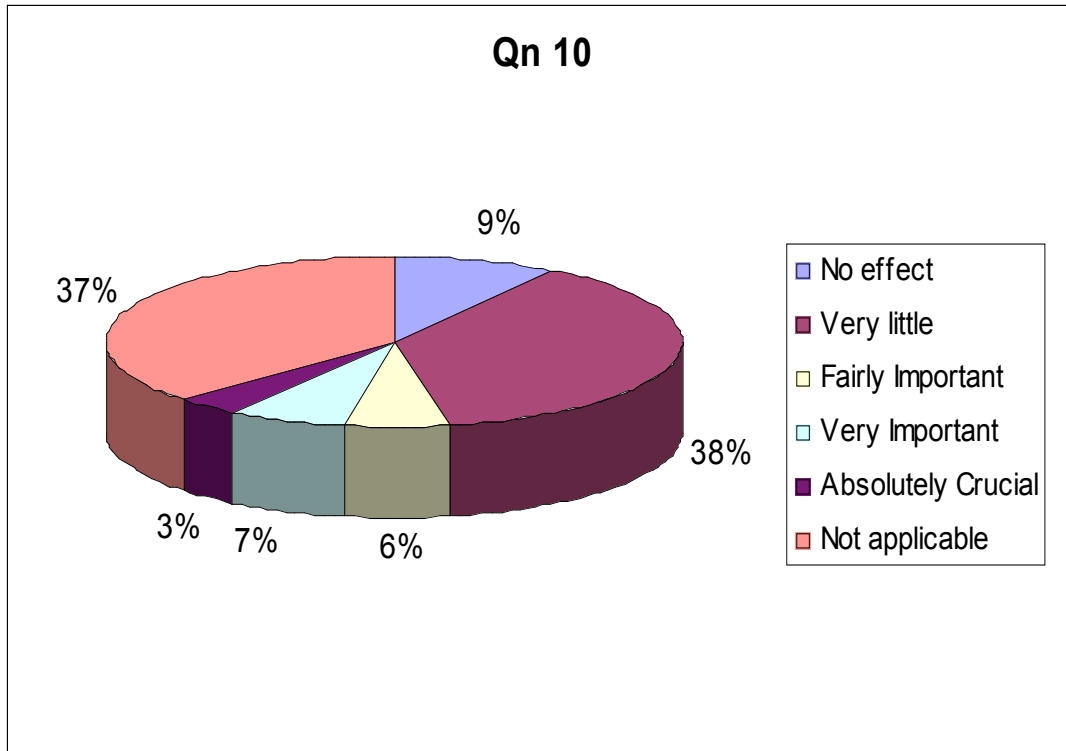
So what are bankrupts’ perceptions of the discharge provisions?

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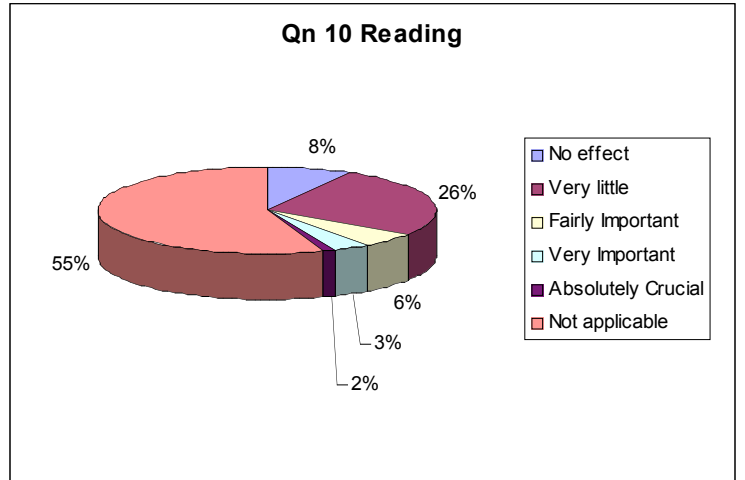
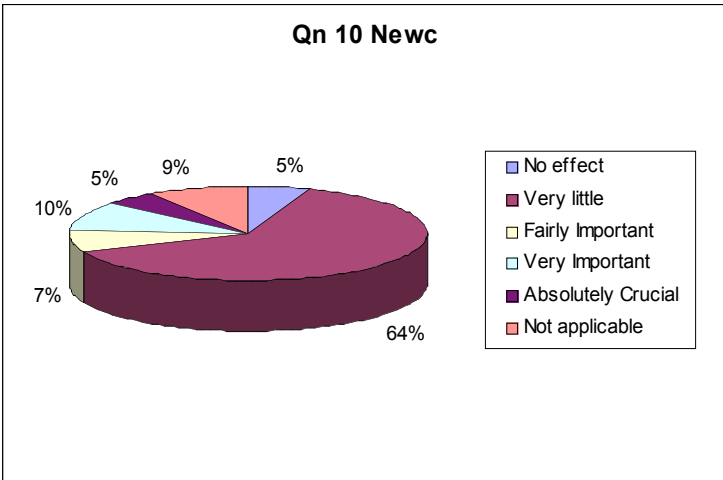
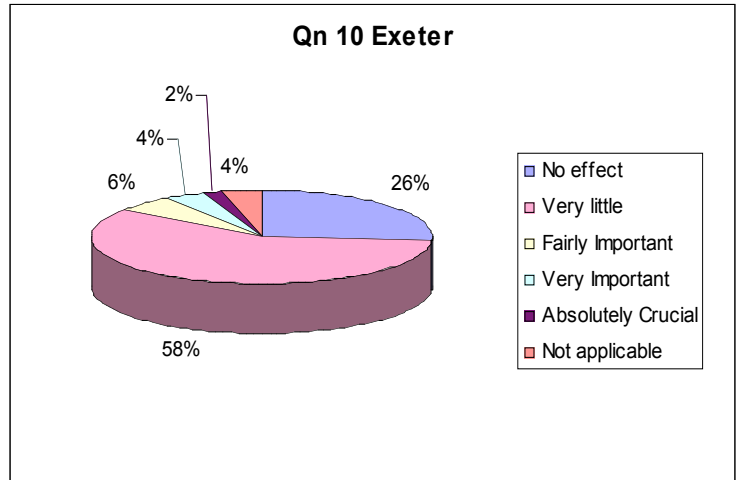
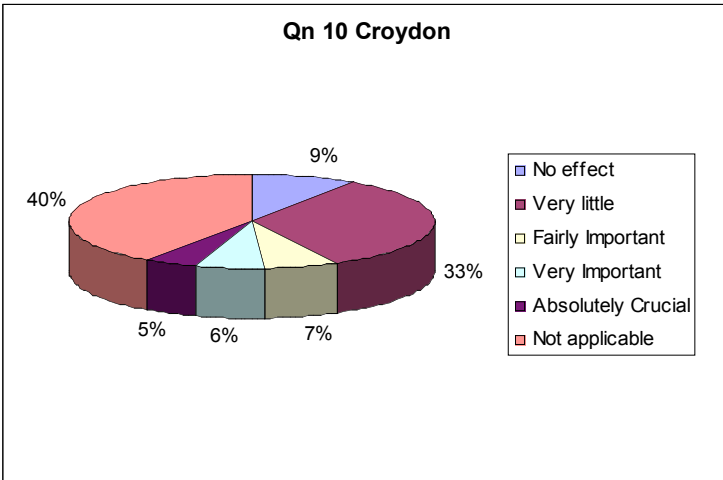
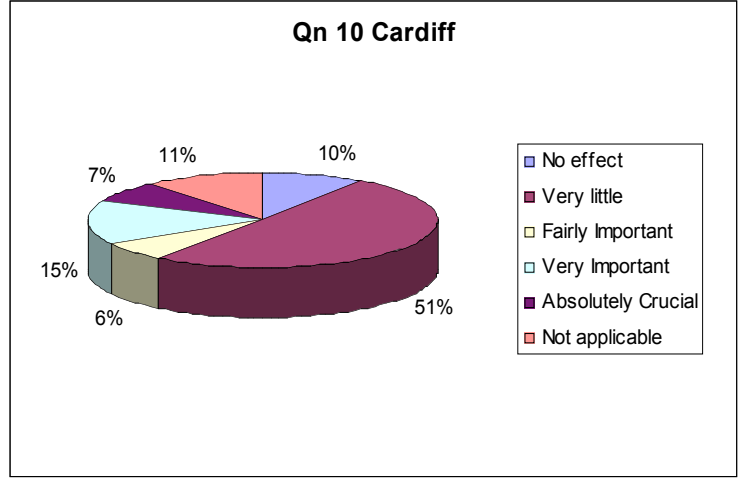
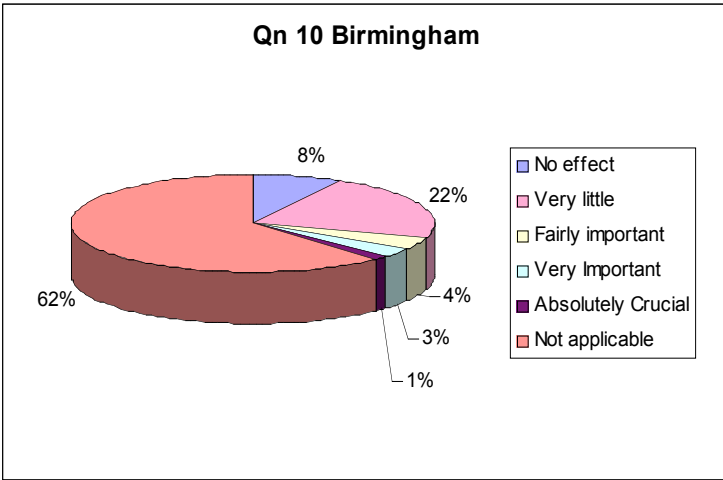
<sup>234</sup> Searjeant, G. *The Times*, Saturday February 5<sup>th</sup> 2005, “*Credit-card junkies turn to the bankruptcy court to clear debts*”, at page 3.

<sup>235</sup> *Insol Consumer Debt Report*, at page 6.

**Results overall**



**Results by individual court**



## Summary

As with the response to question 9 there is a respondent bias issue with this question which relates to pre- and post-Enterprise Act 2002 bankrupts. It seems on the whole that bankrupts have not been swayed by the reduced discharge period. Simply, they are insolvent and therefore have to seek redress to the bankruptcy procedure. There is on the whole no financial calculation as to when over-indebted individuals choose to opt into the procedure; for the vast majority of respondents entry was a necessity. This view is supported by one Reading respondent who observed, “I was going to do it anyway, regardless of the discharge period.”<sup>236</sup> Similarly, a Newcastle respondent observed, “I was too far gone with me indebtedness to be concerned about the discharge period!”<sup>237</sup> A Croydon respondent noted, “No influence at all as I was in an impossible situation and the stress prior to bankruptcy was frankly almost unbearable. It was my only practical way to resolve the situation.”<sup>238</sup> A Exeter respondent noted, “Didn’t know about it but it wouldn’t have made any difference as I had no alternative because the bank wouldn’t help me with my overdraft...”<sup>239</sup> A Cardiff respondent observed, “the discharge period could be 100 years+ I would still have made the same decision.”<sup>240</sup> Curiously a Birmingham respondent observed, “we had no option, as our creditors would not stop from making us bankrupt. We think they had an insurance policy covering money owed if they made us bankrupt.”<sup>241</sup>

There are however bankrupt respondents who were influenced by the reduction in the discharge period. One Reading respondent’s answer to this question is worth quoting in full, they observed, “this is misunderstood by your profession I think. The difference is a 7 year block mark rather than a 9 year one. Both take us perilously close to never being able to buy our own house again.”<sup>242</sup> One Newcastle respondent who was directly influenced by the reduction noted that, “my debt could have been paid off in 3 years (with no living allowances).”<sup>243</sup> Presumably the respondent is opining that a one year bankruptcy period before discharge (or possibly six months) to absolve the debt is preferable to a three year repayment regime. Indeed, the same respondent goes on to observe in answer to question 15; “I know some individuals were bankruptcy was the only option as apposed to some who did it because they just don’t want to pay money back.”<sup>244</sup> Another Newcastle respondent noted, “It might have put me off going bankrupt if it were 3

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<sup>236</sup> Reading ref: DK.

<sup>237</sup> Newcastle ref: DC.

<sup>238</sup> Croydon ref: HB.

<sup>239</sup> Exeter ref: H.

<sup>240</sup> Cardiff ref: Q.

<sup>241</sup> Birmingham ref: IA.

<sup>242</sup> Reading, ref: CZ.

<sup>243</sup> Newcastle ref: L.

<sup>244</sup> Ibid.

years.”<sup>245</sup> Another Newcastle respondent opined, “I probably would not have instigated bankruptcy myself if I had it over me for 3 years.”<sup>246</sup> A Birmingham respondent noted, “depending on the individuals situation – all things should be taken into consideration – no.2 cases are the same.”<sup>247</sup>

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<sup>245</sup> *Newcastle ref: Q.*

<sup>246</sup> *Newcastle ref: FD.*

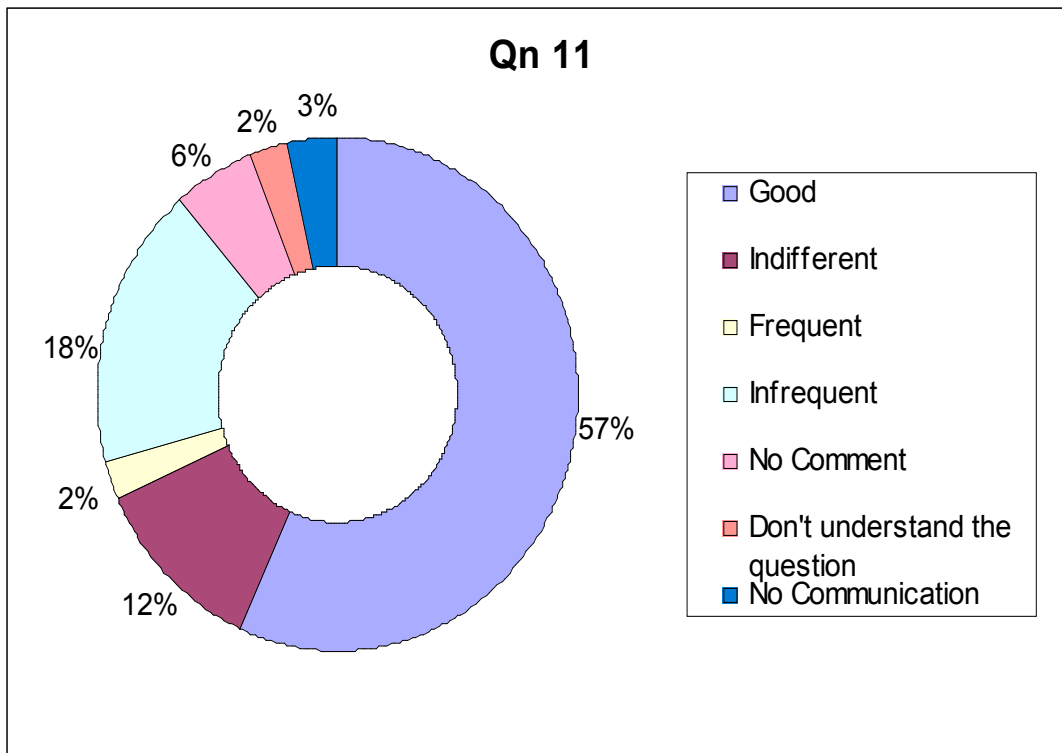
<sup>247</sup> *Birmingham ref: IX.*

**11. How were/are your relations with the Trustee (private sector) in relation to communication?**

- a. Good
- b. Indifferent
- c. Frequent
- d. Infrequent
- e. Other

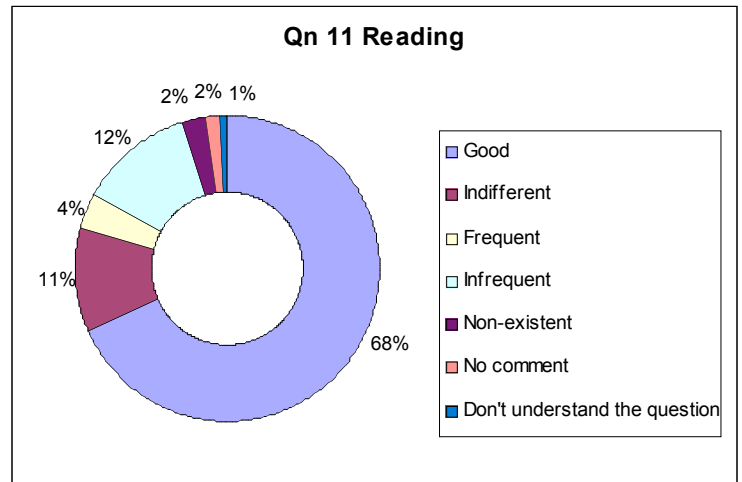
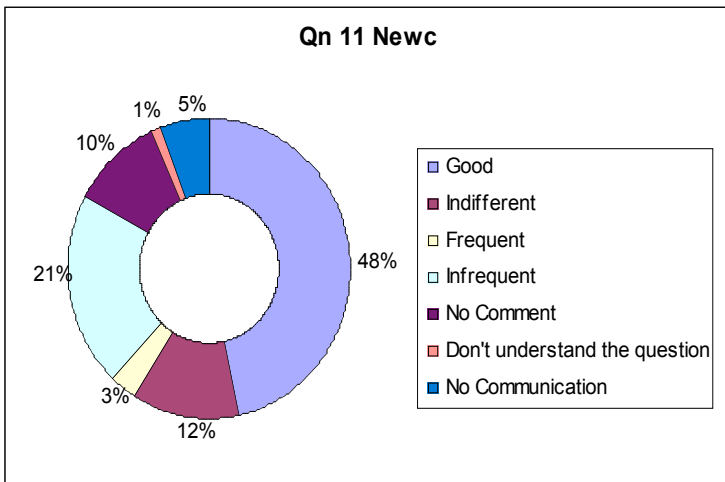
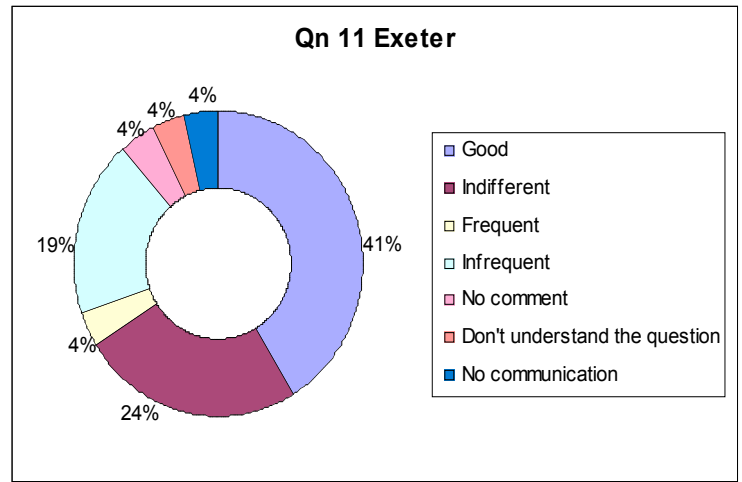
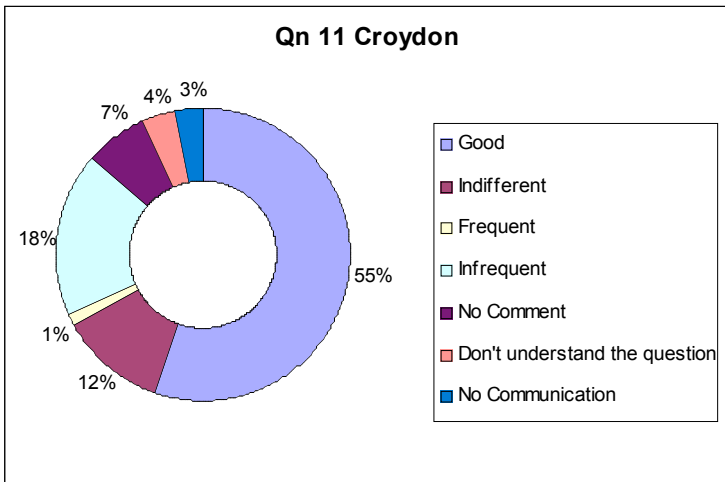
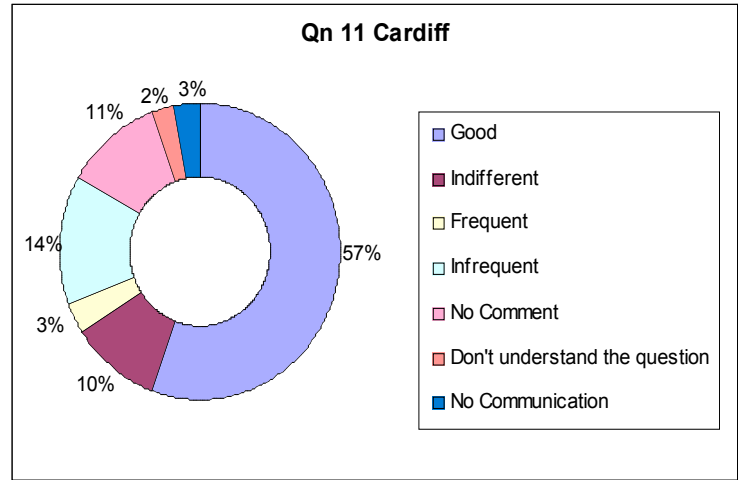
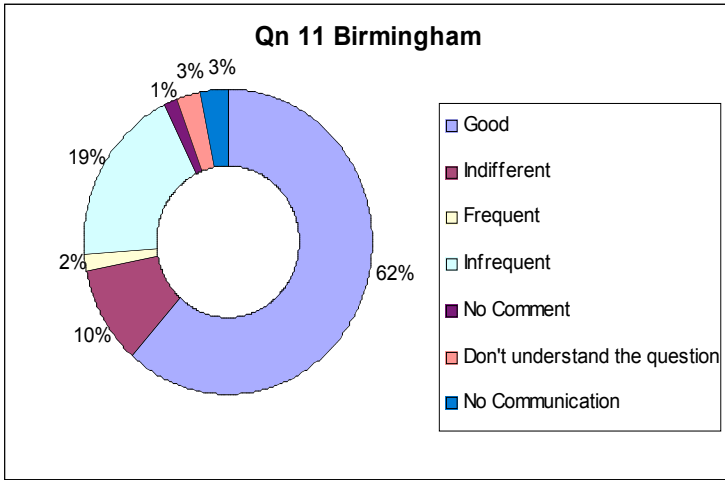
Question 11 of the *BCS 2005* was designed to ascertain whether cases handled by Trustees in Bankruptcy were conducted in a communicative manner. Are private sector officeholders performing their functions as required? The *Insolvency Practices Council* opined in its 2000 annual review that communication between insolvency practitioners and debtors and creditors was not adequate or timely.<sup>248</sup> Is this how bankrupts themselves perceive communication with their insolvency practitioner?

**Results overall**



<sup>248</sup> Insolvency Practices Council – Influencing the standards of the insolvency profession. *Annual Report 2000*. Market Deeping, 2000, at page 12.

**Results by individual court**



## Summary

The consensus of opinion of respondents to the *BCS 2005* seems to show that bankrupts are broadly of the opinion that communication between themselves and their Trustees in Bankruptcy is good in terms of quality, if a little infrequent. This is a positive result as it shows that the *Insolvency Practices Council's* concerns in this area are being addressed<sup>249</sup> and indeed that private sector trustees are satisfying their clients in relation to this most important aspect of their duties. A Croydon respondent observed, "They have been very good on the occasions I have contacted them for information and help."<sup>250</sup> An Exeter respondent noted, "hardly any contact but I felt that this was fine, no contact was needed! What contact there was very good."<sup>251</sup> A Cardiff respondent noted, "very well written easy to understand."<sup>252</sup>

There were occasional negative responses to this question, such as one Newcastle debtor who opined, "Don't trust him as it was him who misled me when I was in an IVA."<sup>253</sup> This type of response highlights the questionable efficacy of parties professionally advising on procedures that they are financially self-interested in; but it is a rare comment in a broadly positive set of response to this question. A Croydon debtor sharply observed, "he is a boy doing a man's job...he is a prat"<sup>254</sup> regarding his Trustee in Bankruptcy.

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<sup>249</sup> See: Insolvency Practices Council – Influencing the standards of the insolvency profession. *Annual Report 2001*. Market Deeping, 2001, at page 10 "correspondence between IPs and Debtors/Creditors."

<sup>250</sup> *Croydon ref: FC.*

<sup>251</sup> *Exeter ref: F.*

<sup>252</sup> *Cardiff ref: V.*

<sup>253</sup> *Newcastle ref: P.*

<sup>254</sup> *Croydon ref: GO.*

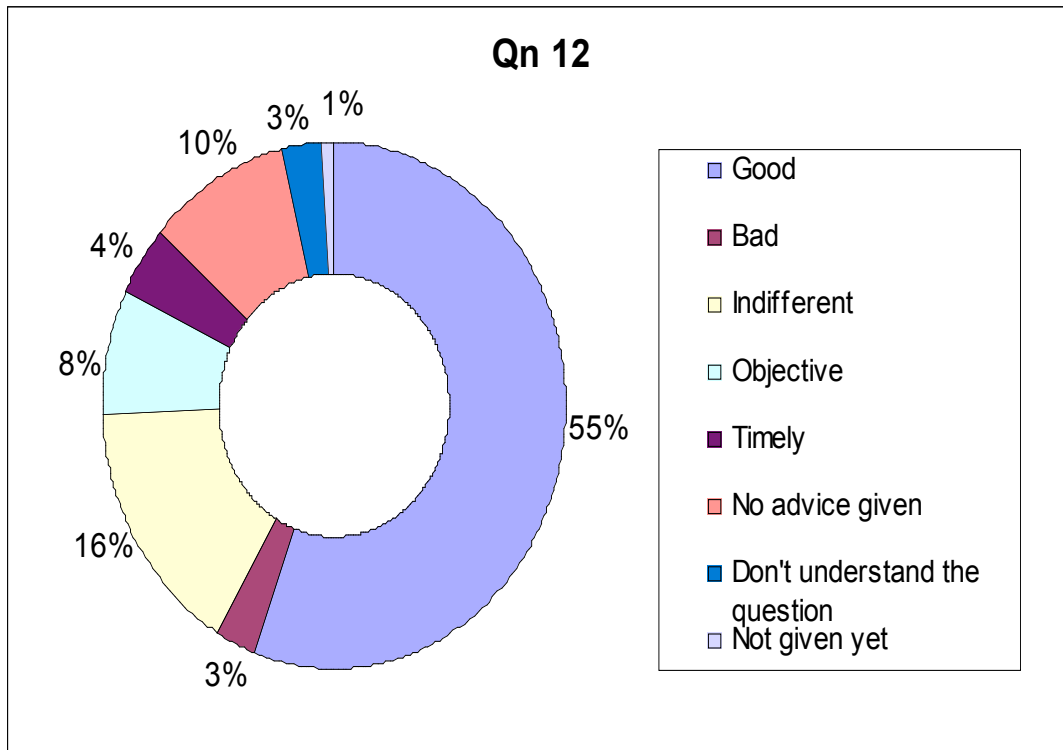


**12. How were/are your relations with the Trustee (private sector) in relation to advice?**

- a. Good
- b. Indifferent
- c. Objective
- d. Timely
- e. Other

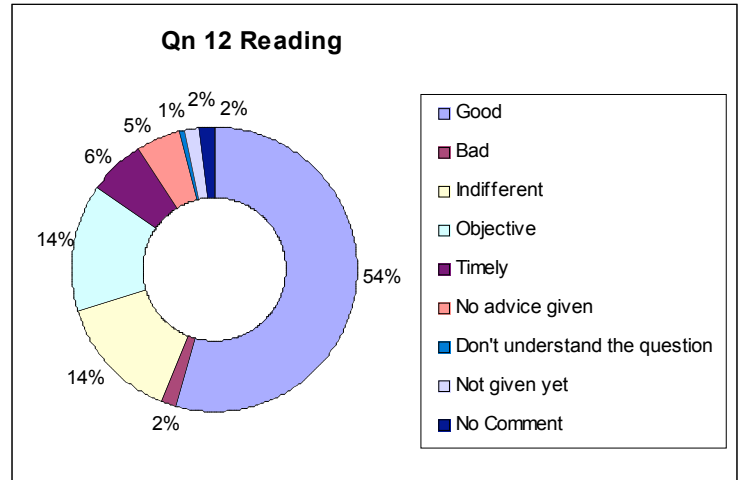
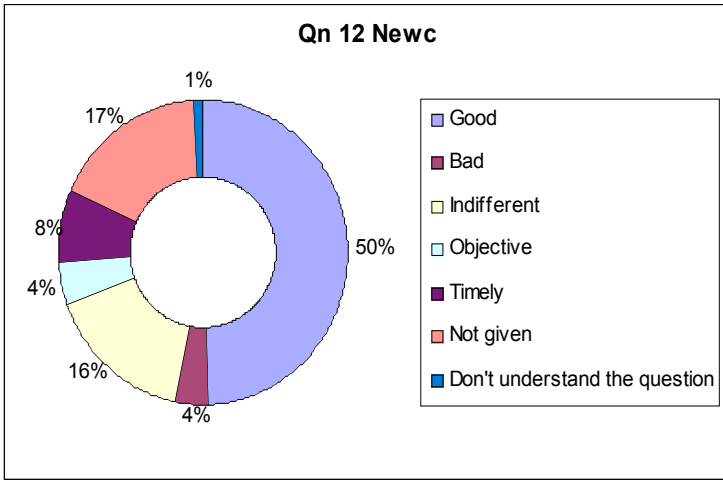
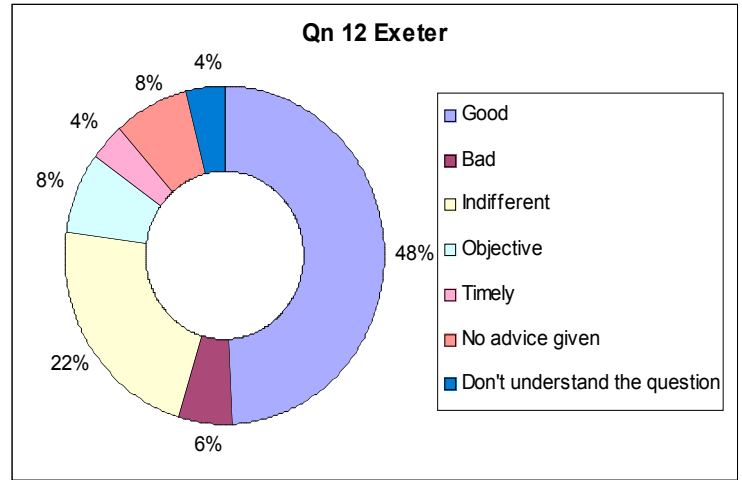
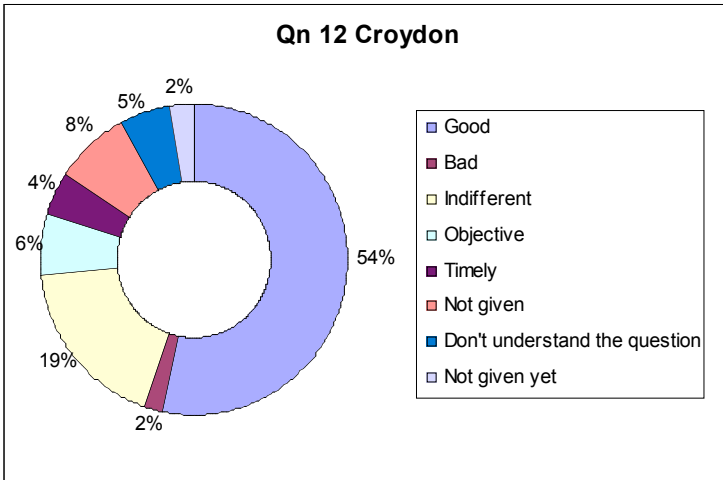
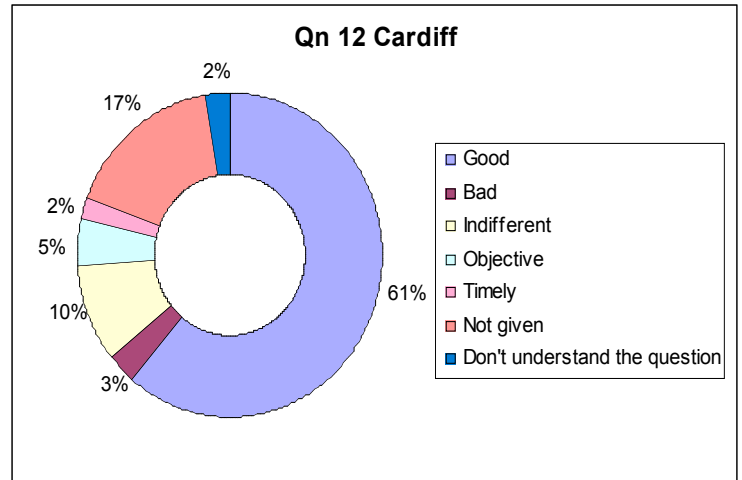
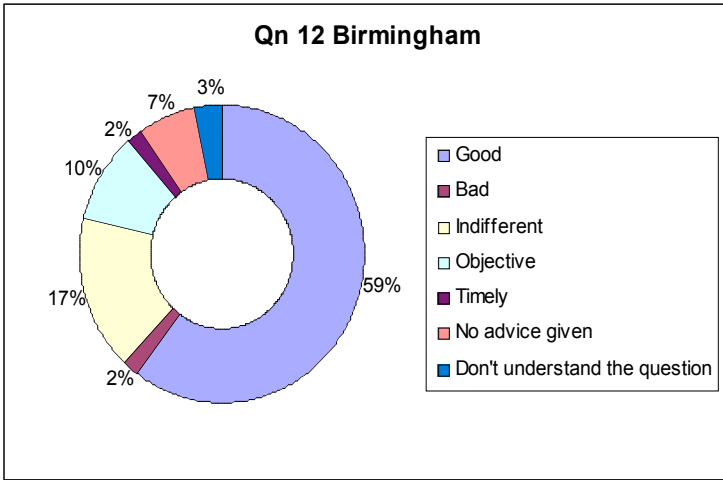
If the individual insolvent passing through the bankruptcy process is in need of advice and his estate is being administered by a private sector Trustee in Bankruptcy, how are these officeholders dispensing this side of their function? As noted in the Cork Report, “a certain degree of knowledge and experience is essential if he [the insolvency practitioner] is to discharge his functions adequately.”<sup>255</sup> Whilst they are not *prima facie* in place to give advice, if advice and guidance is sought by bankrupts what are their experiences of the responses given? Question 12 of the *BCS 2005* was designed to ascertain whether or not this expectation was being met.

**Results overall**



<sup>255</sup> *Cork Report* at paragraph 736.

**Results by individual court**



## **Summary**

Few responses were qualified further. One Cardiff debtor did note, “communication with my trustee which I found very helpful.”<sup>256</sup> A Birmingham respondent noted, “Have needed to ask several questions and have found him very helpful and understanding.”<sup>257</sup>

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<sup>256</sup> *Cardiff ref: O.*

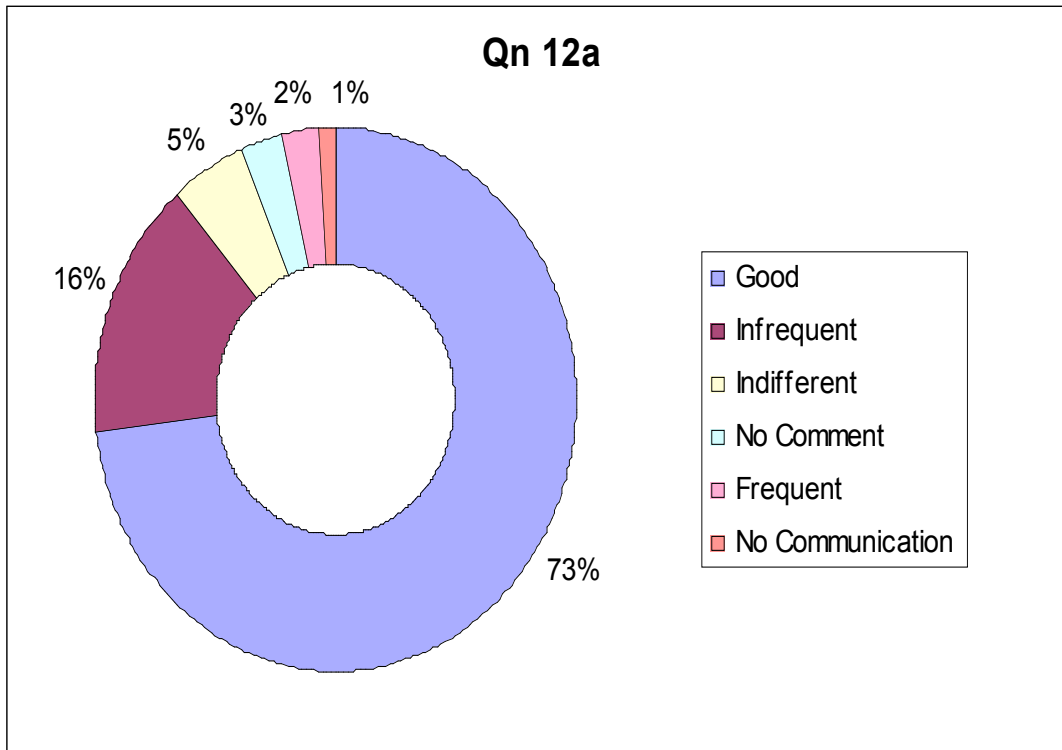
<sup>257</sup> *Birmingham ref: ER.*

**12a. How were/are your relations with the Official Receiver in relation to communication?**

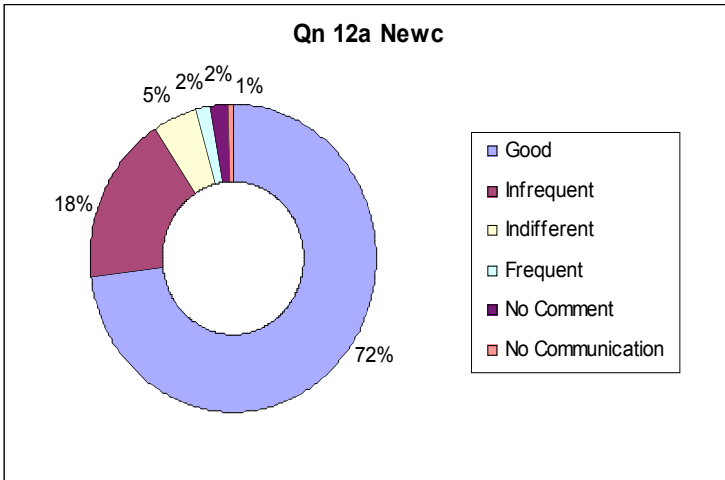
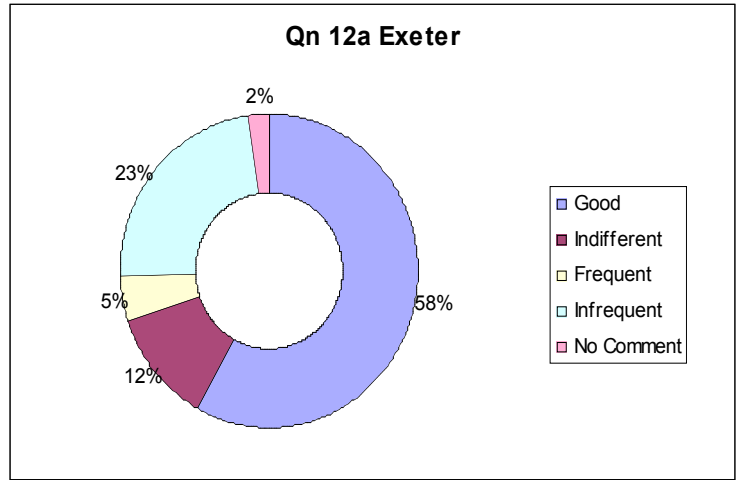
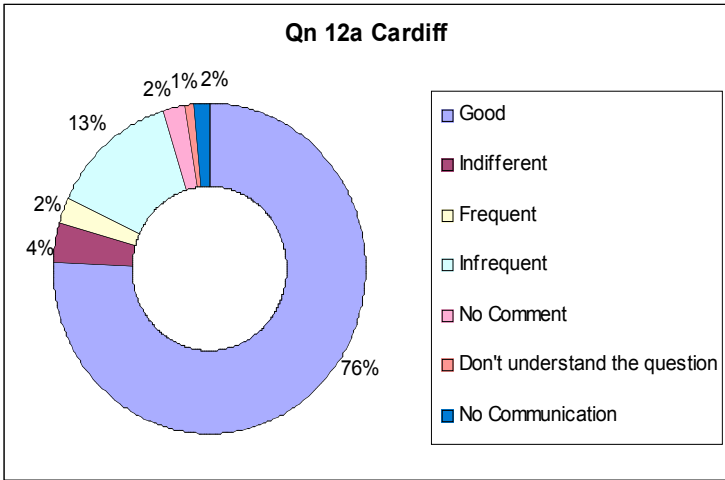
- a. Good
- b. Indifferent
- c. Frequent
- d. Infrequent
- e. Other

Question 12a of the *BCS 2005* was designed to ascertain whether cases handled by the Official Receiver were conducted in a communicative manner. Are these officeholders performing this side of their functions as required? The details of the relevant Official Receivers are given in Table One, *vide supra*. This question was posed in version III only of the *BCS 2005*, consequentially only all respondents in Cardiff, Exeter and Newcastle were asked this question.

**Results overall**



**Results by individual court**



## **Summary**

Praise for the Official Receiver was the prevalent reaction throughout the survey responses to this question. Comments such as, “they have been very helpful at the Official Receivers Office”<sup>258</sup> highlighted a sense of satisfaction with the service provided by the public sector officeholders. This position was replicated across the sample courts. One Newcastle debtor observed, “they said I can phone them if I need any advice they have been very helpful!”<sup>259</sup> another noted that the Newcastle Official Receiver was, “excellent.”<sup>260</sup> Whilst another observed, “the OR in Newcastle has been extremely fair and professional and I feel as though I can talk to him at any time, although the need has rarely arisen.”<sup>261</sup> An Exeter respondent noted, “treated with respect and dignity totally non-bias or critical.”<sup>262</sup> Another Exeter respondent noted, “she has been clear and approachable.”<sup>263</sup> A further Exeter respondent noted, “very helpful and treated with diplomacy, tact and respect. Cannot praise the service enough.”<sup>264</sup> A Cardiff respondent noted, “He put our minds at ease and was very easy to talk to.”<sup>265</sup>

There were a smaller number of more negative responses that received qualified comment. One Newcastle debtor observed, “Initial communication was good but then stopped. Slow to set in motion. Still getting calls from creditors for several months.”<sup>266</sup>

Perhaps the most interesting response was from a Birmingham respondent. He/she noted, “the role of the Clerk/Official Receiver is very important as your link to your new bankruptcy world. I had loads of minor worries and questions which weren’t answered by published leaflets. Once you have been through the bankruptcy hearing, you do feel ‘left’ and it is vital that you have someone professional and ‘in the know’ to talk to. A “Bankruptcy Advisory Service” would be really useful for this purpose. Most bankrupts are I imagine just normal people who are working and trying to raise families and don’t choose this option – therefore we don’t know much about it, and its day to day worries which concern us. I was lucky to have a good clerk, but I’m sure other bankrupts may not have had this benefit.”<sup>267</sup>

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<sup>258</sup> *Reading, ref: CF.*

<sup>259</sup> *Newcastle ref: K.*

<sup>260</sup> *Newcastle ref: AW.*

<sup>261</sup> *Newcastle ref: DC.*

<sup>262</sup> *Exeter ref: AD.*

<sup>263</sup> *Exeter ref: AQ.*

<sup>264</sup> *Exeter ref: AS.*

<sup>265</sup> *Cardiff ref: J.*

<sup>266</sup> *Newcastle ref: FD.*

<sup>267</sup> *Birmingham ref: HD.*

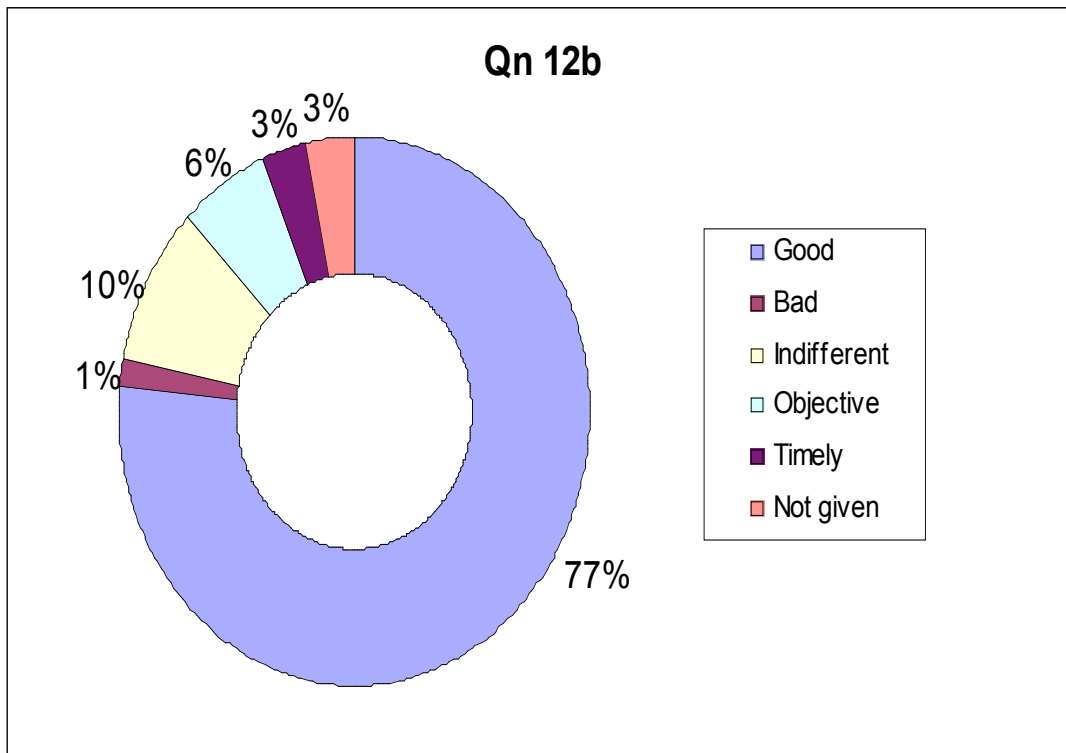
**12b. How were/are your relations with the Official Receiver in relation to advice?**

- a. Good
- b. Indifferent
- c. Objective
- d. Timely
- e. Other

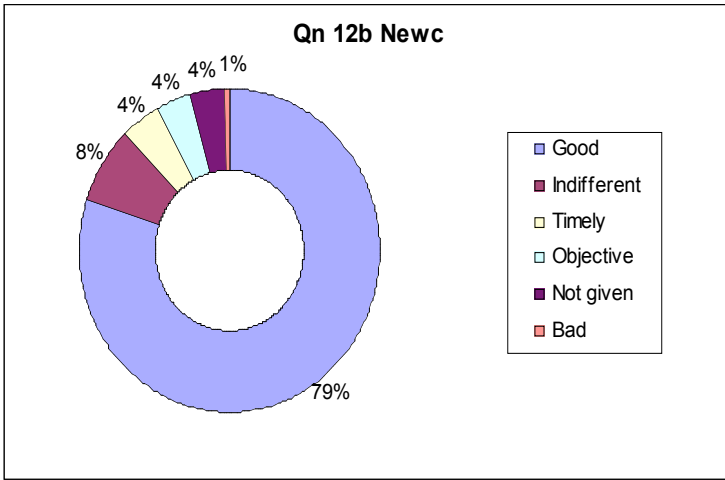
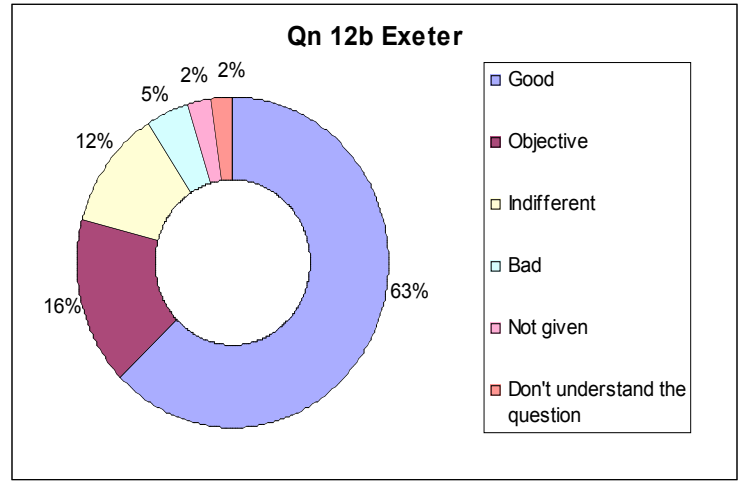
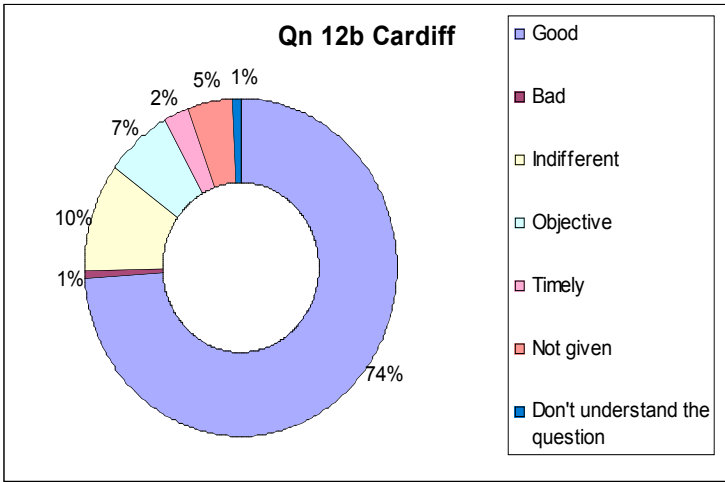
If the individual insolvent passing through the bankruptcy process is in need of advice and his estate is being administered by the Official Receiver, how are these officeholders dispensing this side of their function? Question 12b of the *BCS 2005* was designed to ascertain whether or not this expectation was being met.

**Results overall**

This question was posed in version III only of the *BCS 2005*, consequentially only all respondents in Cardiff, Exeter and Newcastle have responded.



**Results by individual court**





## **Summary**

Broadly respondents gave positive feedback on their relationships with the Official Receiver and in some cases directly in relation to the Insolvency Service itself. One Newcastle debtor observed, “Insolvency Service was extremely understanding.”<sup>268</sup> Another Newcastle respondent observed, “I found the Official Receiver to be very helpful. I had to speak to him with queries on several occasions and he explained everything to me in terms I could understand. He was very helpful.”<sup>269</sup> One Croydon respondent noted, “my Official Receiver was excellent.”<sup>270</sup> A Birmingham respondent noted, “The Official Receiver is a really nice man in fact were on first name terms on phone.”<sup>271</sup>

Some debtors opined that there was room for improvement in terms of their relationship with the Official Receiver in terms of advice. One respondent observed, “Definitely feel there is a real need for more advice on how to cope after discharge, e.g. getting bank account.”<sup>272</sup> An Exeter respondent noted, “found I had to contact my debtors independently, little advice from Official Receiver...poor...negative in approach to my situation.”<sup>273</sup>

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<sup>268</sup> Newcastle ref: H.

<sup>269</sup> Newcastle ref: EU.

<sup>270</sup> Croydon ref: FC.

<sup>271</sup> Birmingham ref: FL.

<sup>272</sup> Newcastle ref: H.

<sup>273</sup> Exeter ref: AP.

**13. Do you think one year before discharge is a sufficient time-period?**

- a. Yes
- b. No

In 1984 the government opined in its white paper response to the Cork Report that it was, “satisfied that in a modern society the emphasis should be on the rehabilitation of debtors and that a three year period of restriction is sufficient for those who have failed financially.”<sup>274</sup> The Government’s position on this aspect of bankruptcy law has changed somewhat with the Enterprise Act 2002, the period being reduced from three years to one year before automatic discharge for non-reckless debtors.<sup>275</sup> It could be argued that bankruptcy provides in addition to its rehabilitation and relief functions, a form of punishment in that bankrupts are removed from the credit world for a period of time to ensure that they do not abuse the credit system in the future.<sup>276</sup> This period of bankruptcy prior to discharge is this punishment element. Is the one year maximum automatic discharge period a sufficient deterrent as engendered in the Enterprise Act 2002 provisions to ensure that the credit system is not abused, or is bankruptcy now as one commentator has recently opined, “regarded as a soft option”?<sup>277</sup> Bankrupts are perhaps going to be subjective in their responses, but it is important to ascertain what bankrupts consider to be ‘just’ as an appropriate discharge period.

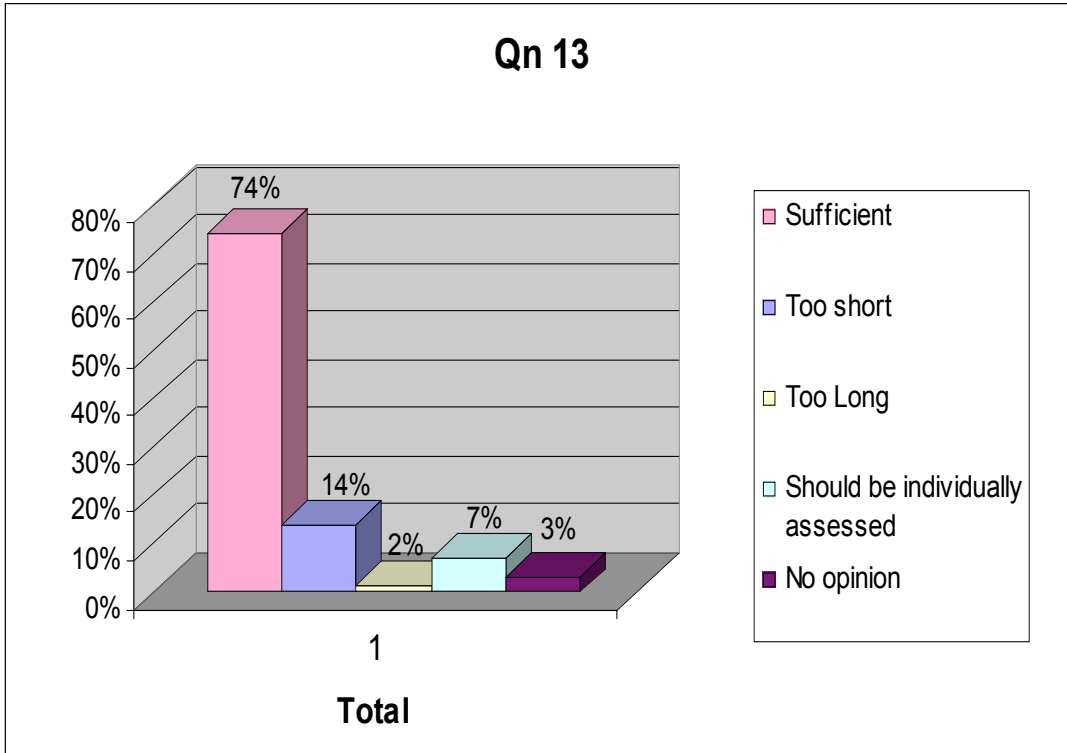
<sup>274</sup> *A Revised Framework for Insolvency Law*. HMSO, London, February 1984. Cmnd. 9175, at para. 118.

<sup>275</sup> See further: Davies, S (Ed). *Insolvency and the Enterprise Act 2002*. Jordans, 2003; Brockman, C. *Bankruptcy – a fresh start?* (2004) NLJ, 154(7122), 488-489; Frieze, S. *Personal Insolvency – one year after the Enterprise Act came into force* (2005) Insol.Int, 18(4), 57-59; Walters, A. *Personal Insolvency law after the Enterprise Act: an appraisal* (2005) JCLS, 5(1), 65-104.

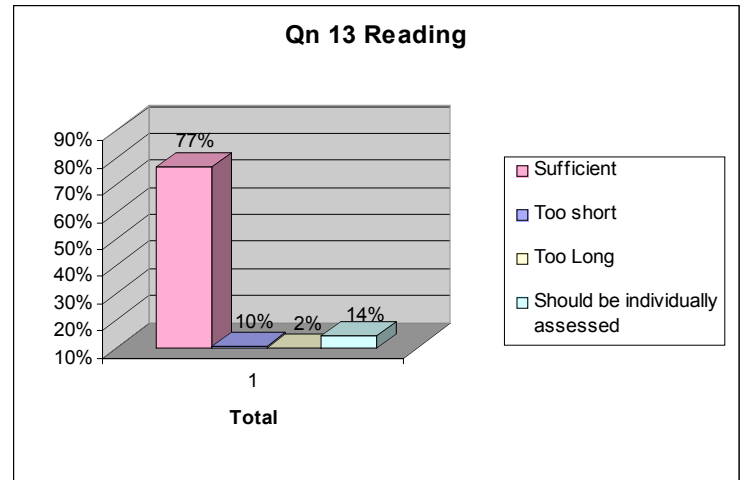
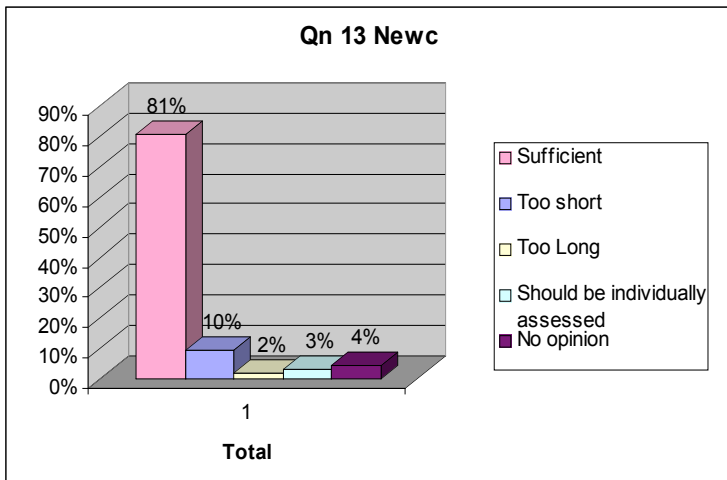
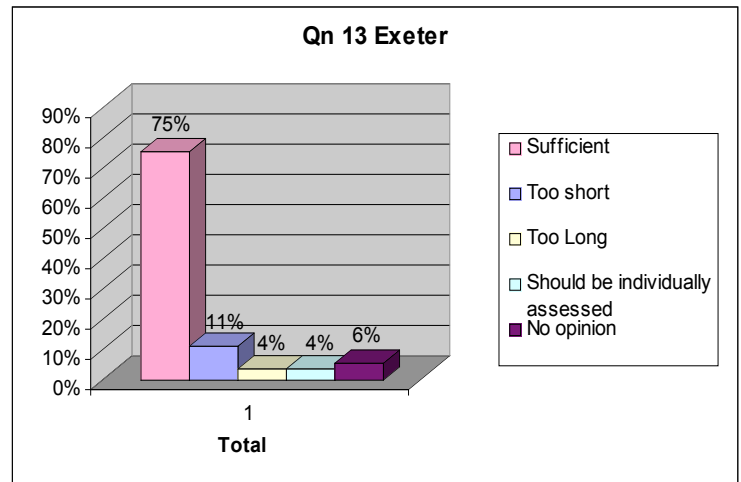
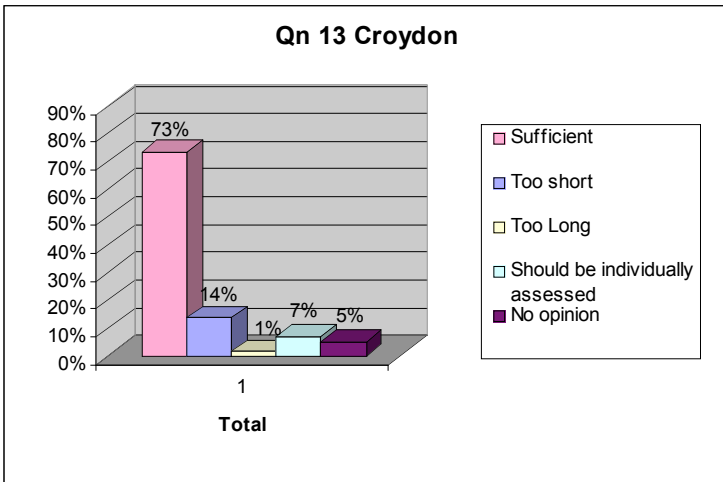
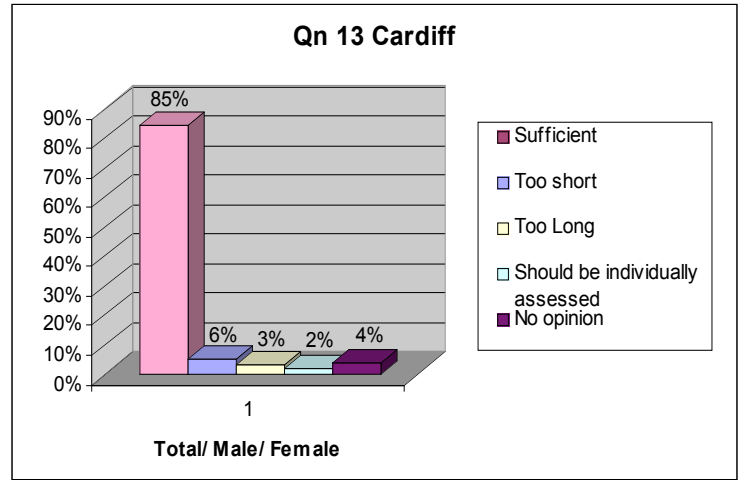
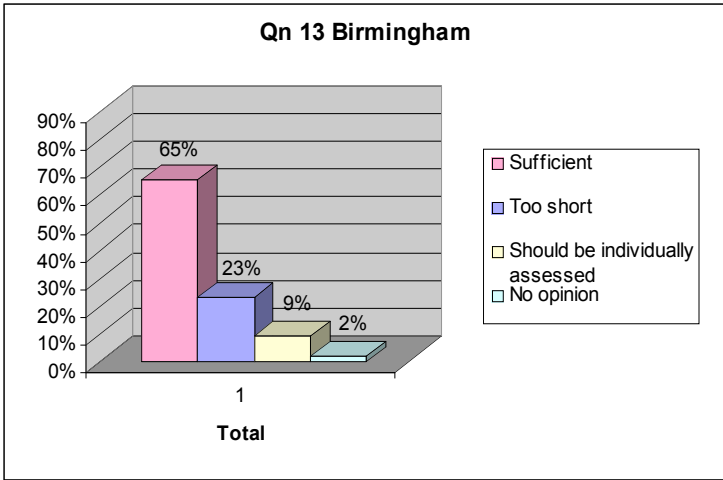
<sup>276</sup> In this regard Fletcher has opined in relation to insolvency law policy that, “the punitive and legal aspects of legal policy have seemed hard to reconcile with the rehabilitative philosophy with which they are supposed to co-exist” (see Fletcher at para 3-003).

<sup>277</sup> Frieze, S. *Personal Insolvency – one year after the Enterprise Act came into force* (2005) Insol.Int, 18(4), 57-59.

**Results overall**



**Results by individual court**



## Summary

Perhaps unsurprisingly the majority of respondents have stated that the one year time period is sufficient. As Frieze has noted the increase in bankruptcies following the Enterprise Act 2002 changes has been accompanied by a larger increase in the alternative IVA procedure,<sup>278</sup> the conclusion being that general economic conditions, not the laxity of the bankruptcy period is responsible for the rise in individual insolvents seeking bankruptcy relief. As he goes on to observe, “many of the increased number of personal insolvencies may be due to credit card or other consumer debt problems rather than any change on the bankruptcy laws of the country.”<sup>279</sup> The length of discharge may be important for reasons of quasi-punishment and deterrent and the length of the discharge period could have quite a marked affect on those seeking bankruptcy relief. It was interesting to note therefore one Newcastle debtor’s response that, “I have certainly learned my lesson from this experience,”<sup>280</sup> a response which perhaps indicates that bankrupts perceive the procedure as educational as well as quasi-punitive.

One Croydon respondent noted, “but sort the good guys from the bad guys”<sup>281</sup> when agreeing that the one year before discharge was sufficient. A Birmingham respondent noted, “every case and everybody’s circumstances is different. I was irresponsible with money so, I think people who just throws money away should suffer a bit.”<sup>282</sup> An Exeter respondent noted, “depending on why the person went bankrupt, i.e. criminal actions”<sup>283</sup> before agreeing that one year was a sufficient period before discharge. A Cardiff respondent noted, “in some cases it should be longer.”<sup>284</sup> Another Cardiff respondent noted than one year was sufficient, “for the average decent person who has simply made a mistake.”<sup>285</sup> Interestingly one Exeter respondent observed, “I think it encourages bankruptcy.”<sup>286</sup> Another Birmingham respondent noted, “I am two years into a three year “stretch.” I think one year and people will take advantage.”<sup>287</sup>

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<sup>278</sup> Frieze, S. *Personal Insolvency – one year after the Enterprise Act came into force* (2005) *Insol.Int*, 18(4), 57-59.

<sup>279</sup> *Ibid.*

<sup>280</sup> *Newcastle ref: N.*

<sup>281</sup> *Croydon ref: HW.*

<sup>282</sup> *Birmingham ref: EX.*

<sup>283</sup> *Exeter ref: R.*

<sup>284</sup> *Cardiff ref: L.* Respondents underlined emphasis.

<sup>285</sup> *Cardiff ref: AJ.*

<sup>286</sup> *Exeter ref: CS.*

<sup>287</sup> *Birmingham ref: DD.*

**14. Should the automatic discharge be:**

- a. Longer
- b. Shorter

As noted above, automatic discharge was first introduced by the Insolvency Act 1976 as occurring five years after the bankruptcy order was made.<sup>288</sup> This automatic discharge period was reduced by the Insolvency Act 1986 to three years, and we have now seen legislative amendments enacted within the Enterprise Act 2002 reducing the period before automatic discharge to one year. In relation to these recent changes it has been observed that, “it is difficult not to conclude that the reduction of the bankruptcy period from 3 years to 6 months or less will alter fundamentally attitudes towards, and the economic effect of, bankruptcy.”<sup>289</sup> If the one year (or possibly six months) automatic discharge period is insufficient what should the automatic discharge period figure be in the opinion of those who are actually suspended from dealing with their own estates, namely bankrupts? In Australia we have seen a similar enactment to our recent Enterprise Act 2002 amendments to discharge, receive rough usage.<sup>290</sup> The Australian provisions were subsequently amended, bringing the automatic discharge period back up to three years from six months due to perceived widespread abuse of the system.<sup>291</sup> We are of course also witnessing an increase in the severity of the American bankruptcy laws at the present time.<sup>292</sup> Whilst being conscious that, “Insolvency must not be an easy solution for those who can bear with equanimity the stigma of their own failure”,<sup>293</sup> we must also insure that discharge entitlement is not unduly onerous. What are the prevalent attitudes of bankrupts as to the length of the automatic discharge period?

<sup>288</sup> Insolvency Act 1976 s.7. See: Hunter, M & Graham, D. *Williams and Muir Hunter – The Law and Practice in Bankruptcy*. 19<sup>th</sup> Edition. Stevens & Sons, London, 1979, at pages 136-145.

<sup>289</sup> *Davies*, at para 16.1

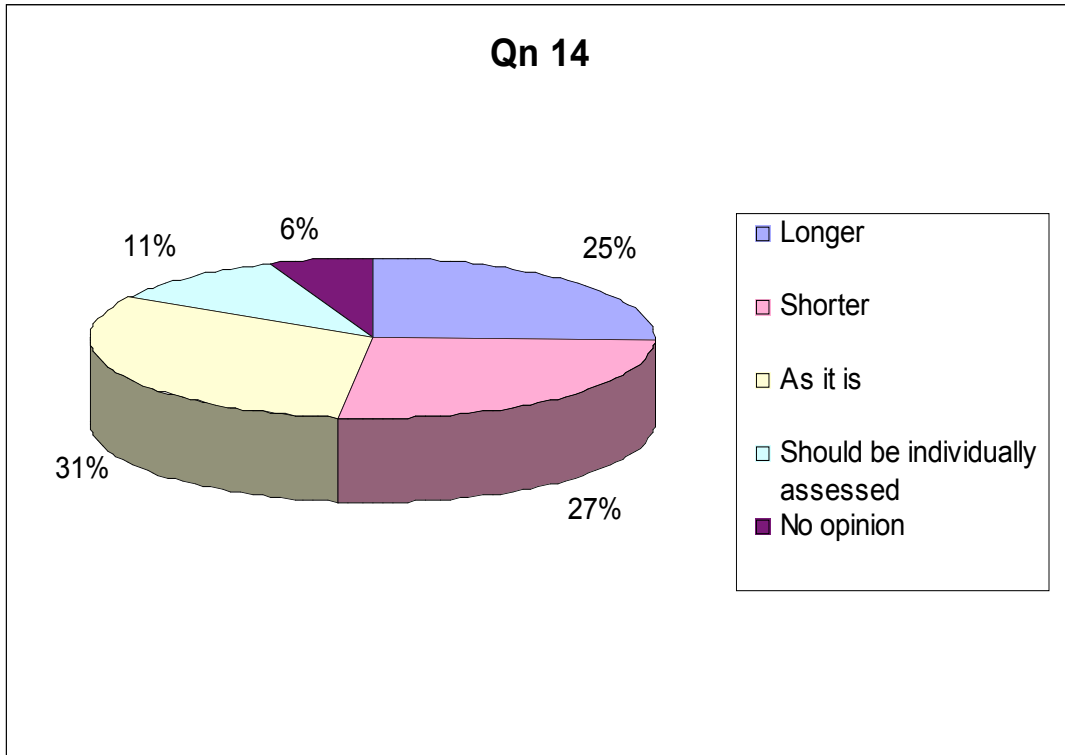
<sup>290</sup> On the Australian law of personal insolvency see: Keay, A & Murray, M. *Insolvency: Personal and Corporate Law and Practice*. 4<sup>th</sup> Edition. Lawbook Co, Sweet & Maxwell, NSW, 2002. See also: Duns, J. *Insolvency Law and Policy*. Oxford University Press, Victoria, Melbourne, 2002.

<sup>291</sup> See the Bankruptcy Legislation Amendment Act 2002. See also: *Davies*, at para 14.22.

<sup>292</sup> See *Milman* at page xxxiv. See also the recent increase in the severity of the Russian bankruptcy laws; *Kommersant Daily “Punishment for False Bankruptcy”* (28/11/05).

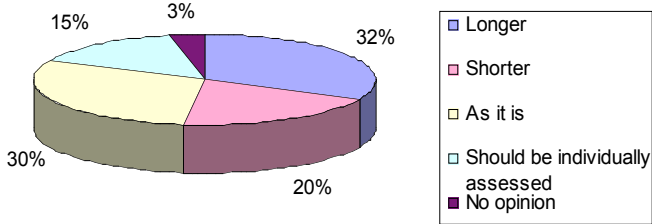
<sup>293</sup> *Cork Report* at paragraph 191.

**Results overall**

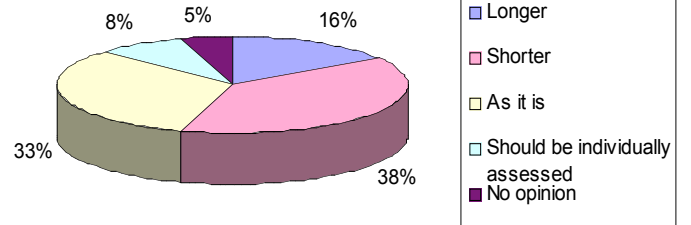


**Results by individual court**

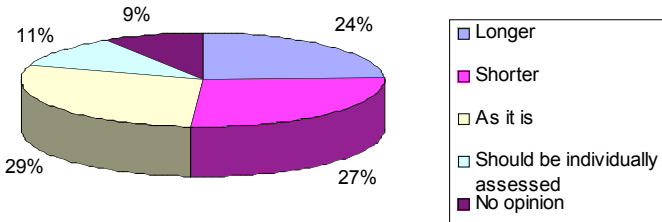
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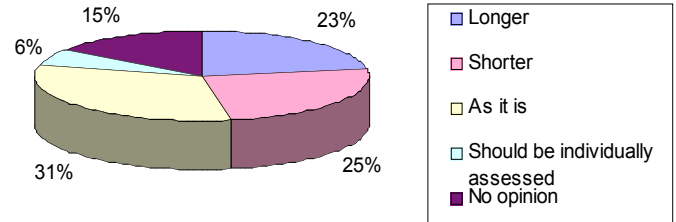
**Qn 14 Cardiff**



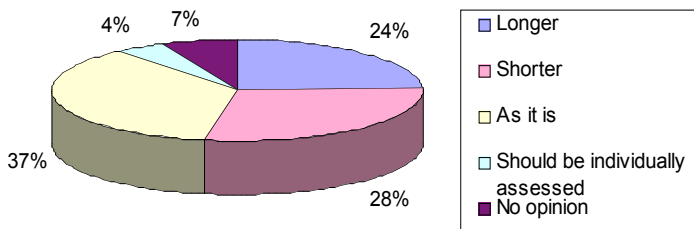
**Qn 14 Croydon**



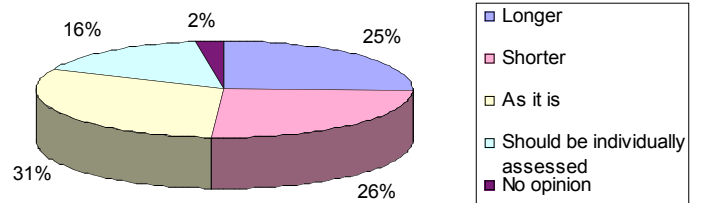
**Qn 14 Exeter**



**Qn 14 Newc**



**Qn 14 Reading**





## **Summary**

Responses to this question are fragmented and there was very little qualification comment. One Exeter respondent did observe, "I think it is fine as it is."<sup>294</sup> Another Exeter respondent observed, "depending on the circumstances. First time shorter. Second time longer."<sup>295</sup> A Cardiff respondent noted, "1 year is fair."<sup>296</sup>

With similar percentages for 'longer' (25%), 'shorter' (27%) and 'As it is' (31%) no substantial conclusions can be drawn for the bankrupt respondents' replies to this question, other than there is a widely divergent opinion amongst bankrupts as to what the length of automatic discharge before bankruptcy should be.

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<sup>294</sup> *Exeter ref: N.*

<sup>295</sup> *Exeter ref: S.*

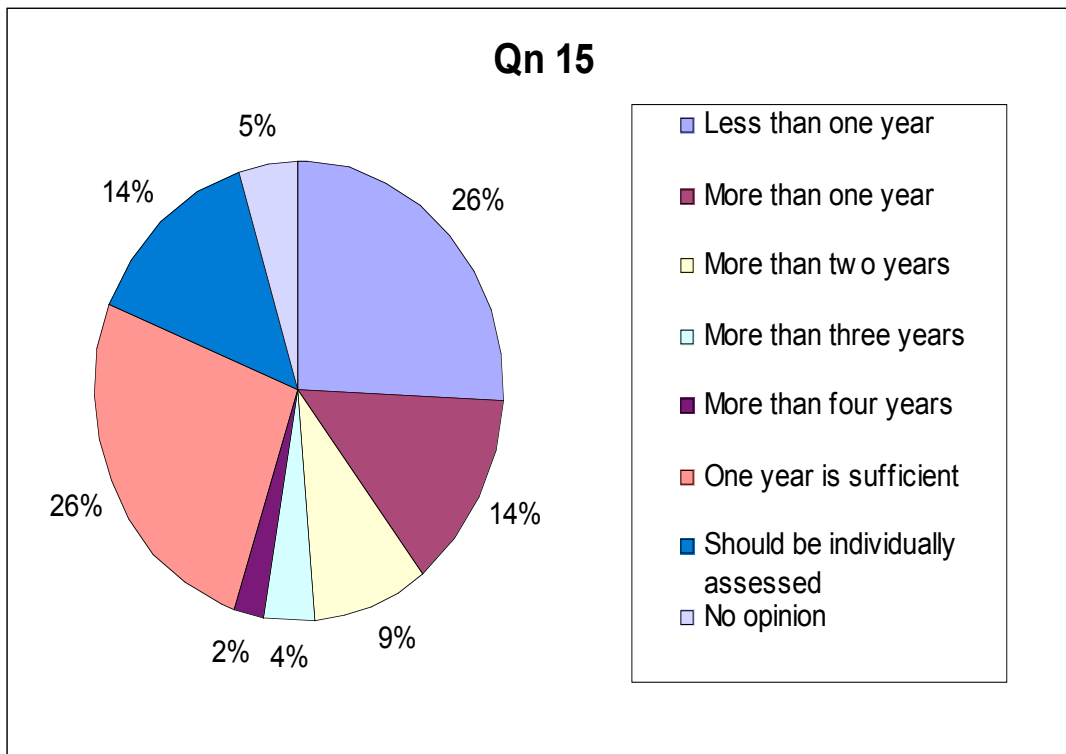
<sup>296</sup> *Cardiff ref: F.*

**15. What length of time do you think an individual should be adjudged bankrupt before they receive an automatic discharge?**

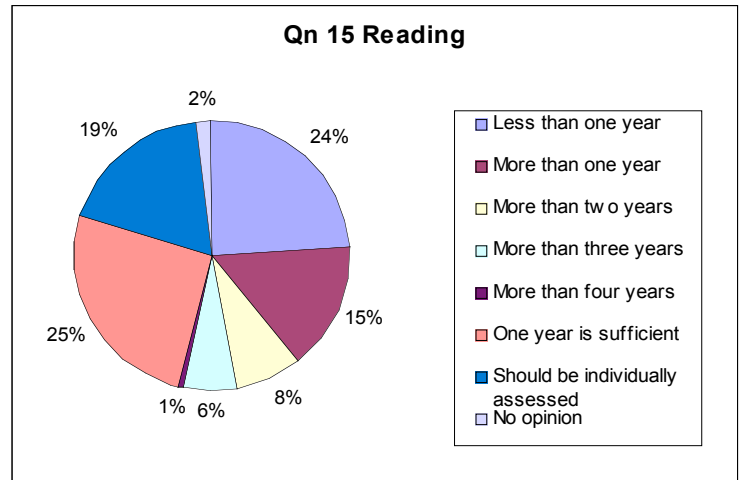
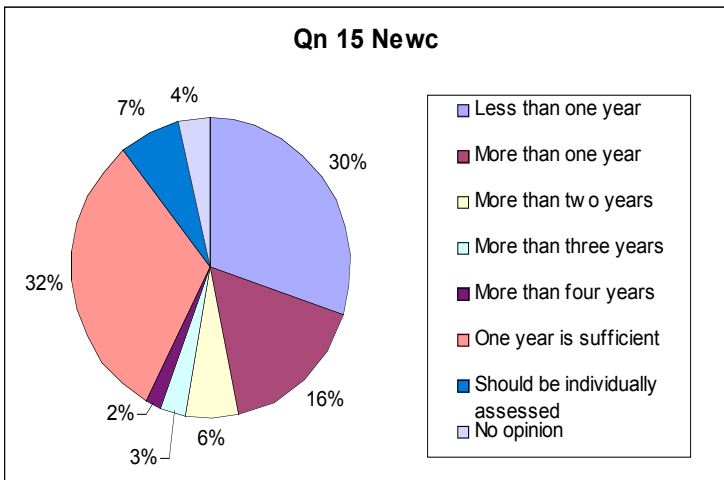
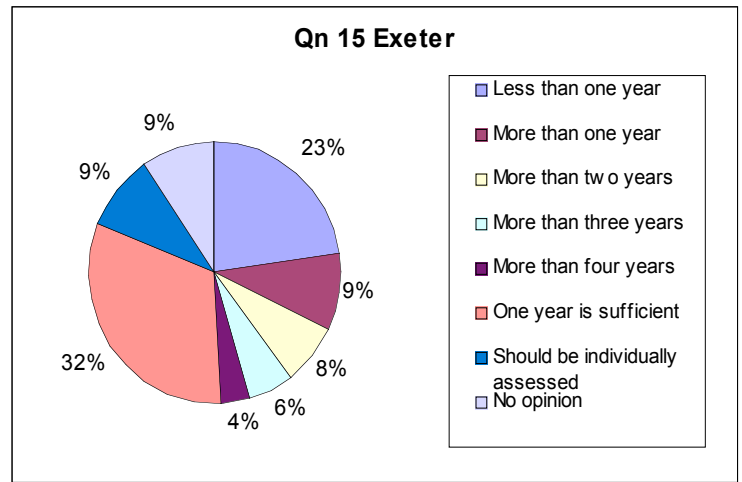
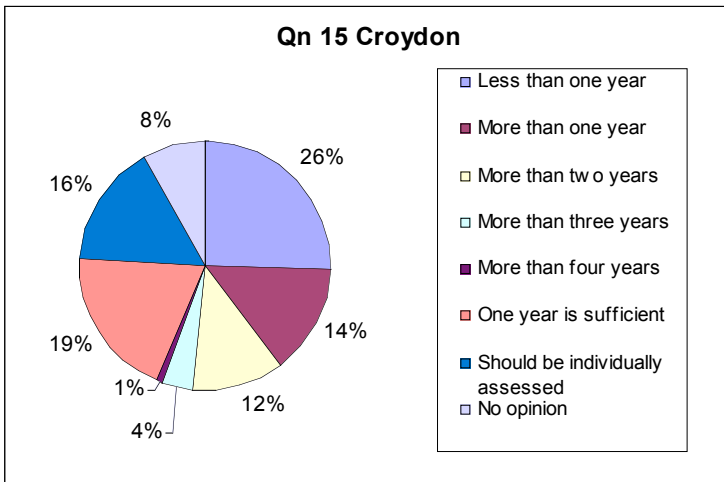
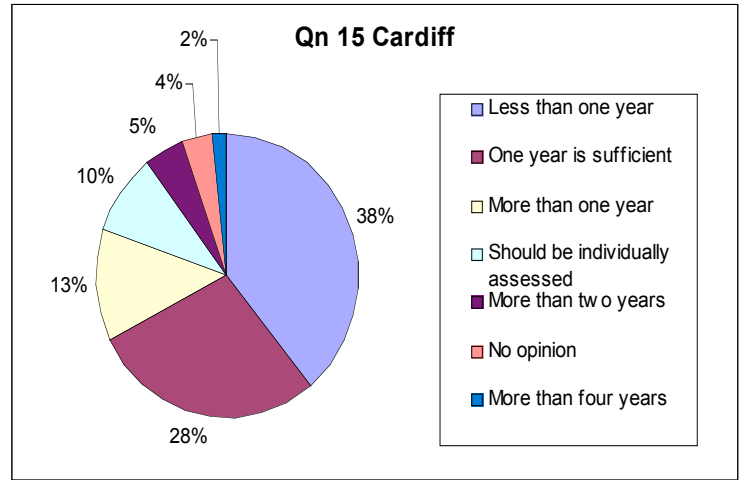
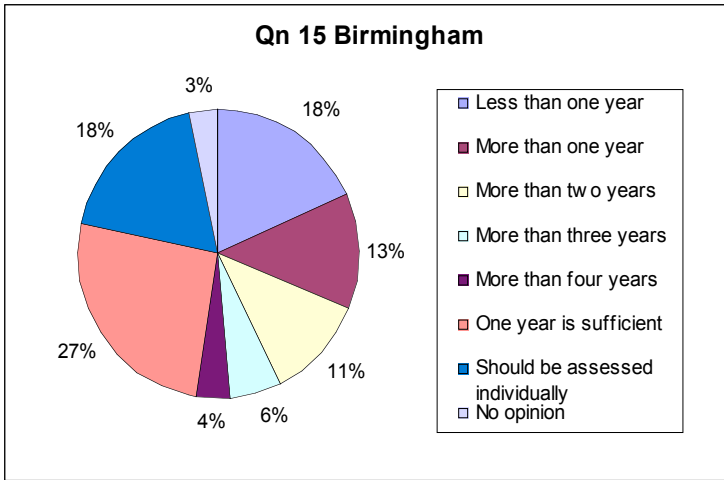
- a. Less than 1 year
- b. More than 1 year
- c. More than 2 years
- d. More than 3 years
- e. More than 4 years

What in the opinion of bankrupts would be an appropriate period for the bankruptcy period to run before automatic discharge occurs? Question 15 of the *BCS 2005* is designed to ascertain this time period.

**Results overall**



**Results by individual court**



## **Summary**

The length of time that a bankruptcy order should be in place before automatic discharge is perhaps one of the most problematic areas in the law of personal insolvency. If the period is too short, then creditors may feel that defaulting debtors are being too easily released from their failed debt obligations. If the period is too long then the objectives of relief and rehabilitation may not be achieved within a reasonable, practically useful time period. The response of bankrupts on this issue is of particular interest. There are those respondents who feel that a short period is most appropriate. Whereas there are others who take a more penitent approach and believe that a longer period should be 'served' as some form of recompense for their conduct.

One Newcastle debtor's response is interesting, they opined in relation to the length of bankruptcy before discharge, "does not matter how long or short the time period is. If you are left with no other option."<sup>297</sup> This response is analogous to the question 10 summary point<sup>298</sup> that if you are in need of bankruptcy relief, its qualities are not of any particular interest as your need is such that you must progress into the procedure. However, from a wider policy perspective the length of discharge, especially for rehabilitative purposes is hugely important. It is interesting to note therefore that there is no real consensus amongst bankrupts as to what the length of the bankruptcy period should be before discharge.

A Croydon respondent noted, "1 year is fine for personal bankruptcy may be for business longer is required."<sup>299</sup> Another Croydon respondent noted, "sliding scale depending on circumstances. Should be a Deterrant."<sup>300</sup> An Exeter respondent also noted, "depends on circumstances."<sup>301</sup> This sliding scale, individual circumstances point is of interest, but of course it may be too costly to undertake such an approach in practice. An Exeter respondent qualified their answer by noting, "I feel one year is insufficient for the true impact of bankruptcy to sink in. It could perhaps be seen as 'too easy'. Two to three years seems adequate."<sup>302</sup>

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<sup>297</sup> *Newcastle ref: BD.*

<sup>298</sup> *Vide supra.*

<sup>299</sup> *Croydon ref: GN.*

<sup>300</sup> *Croydon ref: GY.*

<sup>301</sup> *Exeter ref: AH.*

<sup>302</sup> *Exeter ref: AJ.*

**16. What in your opinion, are the non-monetary affects of bankruptcy?**

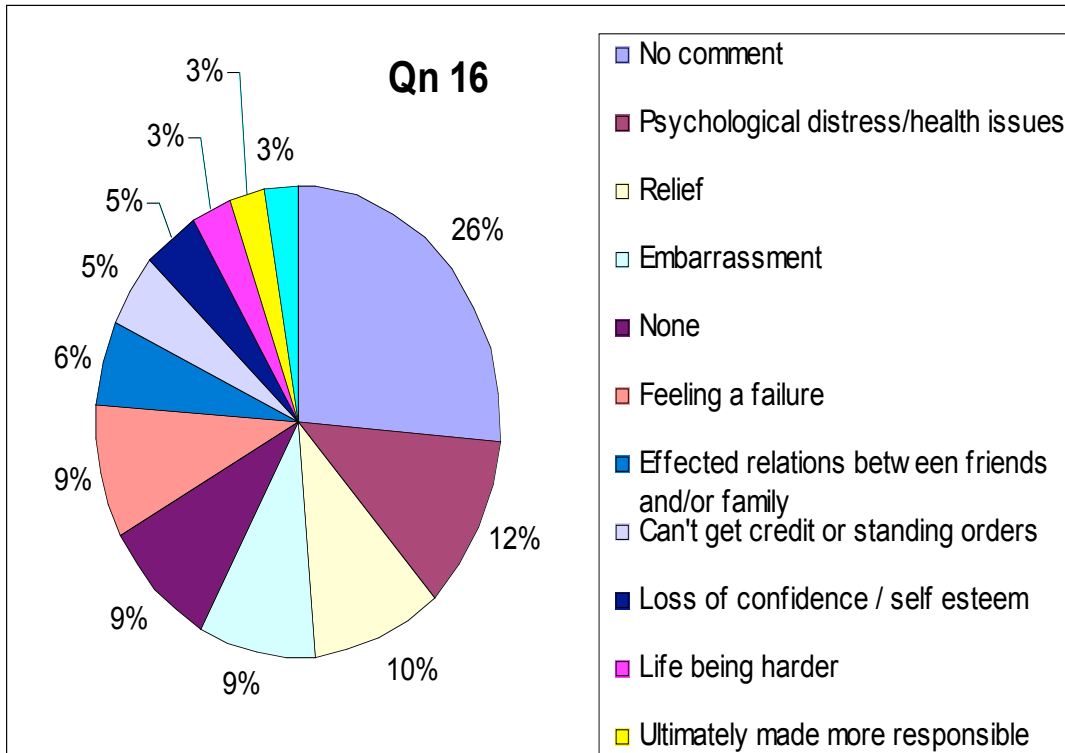
Historically the constraints posed on a bankrupt as a result of the bankruptcy order have tainted the procedure with the notion of being of a “quasi-penal nature.”<sup>303</sup> In addition to these more formal consequences regarding future conduct with credit, management of the estate, etc, what are the non-monetary affects of the procedure from the viewpoint of those going through it, namely the bankrupts? In a recent *Independent Newspaper* article Julia Stuart opined that, “Bankruptcy is, it appears, the new “get out of jail free” card.”<sup>304</sup> Once the monetary obligations have been dealt with through the bankruptcy process however, what are the further non-monetary affects? Whilst a bankrupt may ‘get out of jail free’ in a momentary sense (according to Stuart) what are the wider effects on their day to day progression? Question 16 of the *BCS 2005* was designed to address these non-monetary aspects of bankruptcy – what are they?

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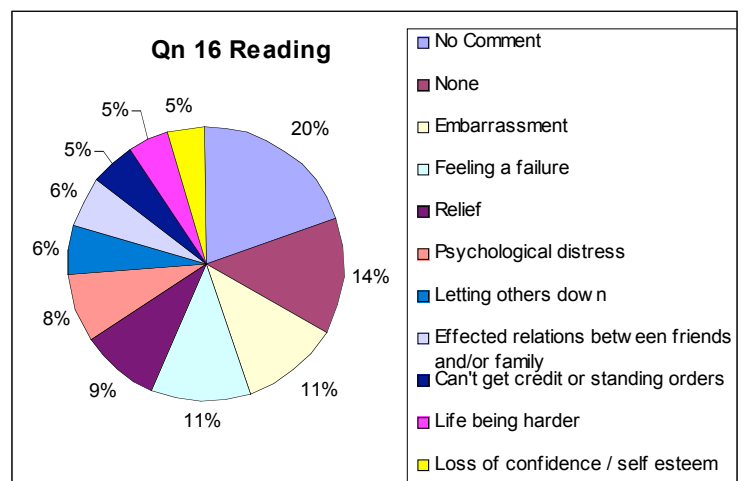
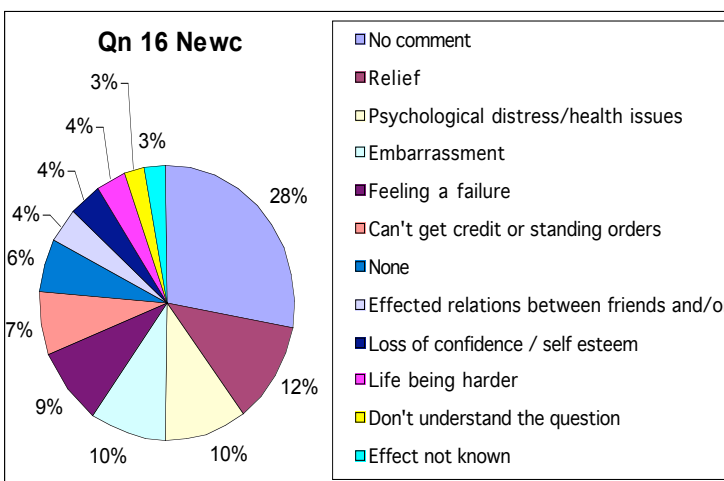
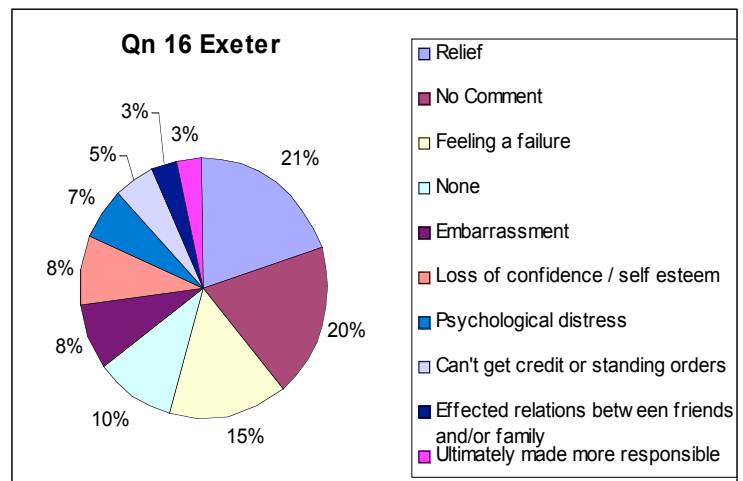
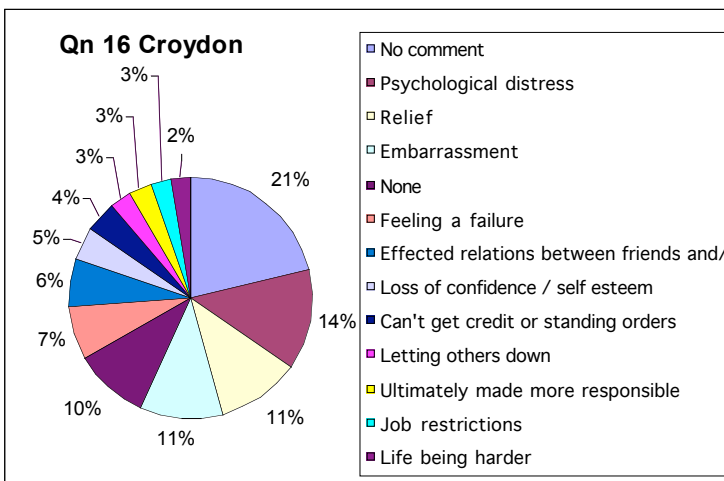
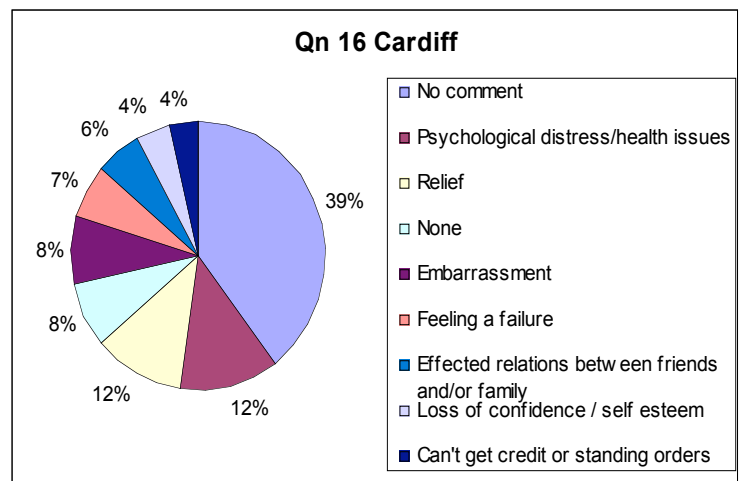
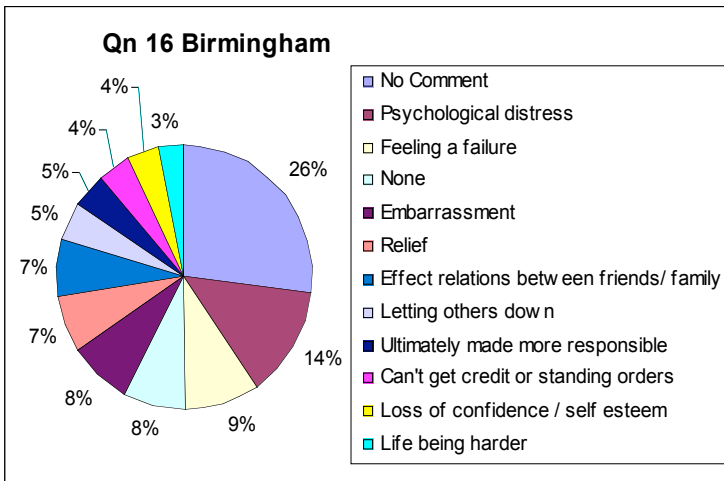
<sup>303</sup> *Cork Report* at paragraph 132.

<sup>304</sup> Stuart, J. *The Independent Newspaper*, “Bankruptcy ‘It’s an easy way out. I can start afresh’”. 16 February 2005. Stuart quite unforgivably states that the Enterprise Act 2002 changes were enacted to, “make it easier for companies to go bankrupt.”

**Results overall**



**Results by individual court**



## Summary

The responses to question 16 across the sampled courts are very broad. However, there does appear to be a trend towards the negative in terms of bankrupts' perceptions of the non-monetary affects of the procedure. For example, one respondent qualified their answer by noting that bankruptcy would lead to a, "loss of credibility and trust and stigma of bee no good or a crook."<sup>305</sup> Another observed, "people look at you differently once they know."<sup>306</sup> And a third debtor opined, "a lot of people do not understand Bankruptcy and therefore form a stereotypical opinion."<sup>307</sup> One Croydon respondent noted, "social stigma when common knowledge."<sup>308</sup> A Cardiff respondent also noted, "stigma."<sup>309</sup> Slightly more darkly one Newcastle debtors noted, "after suffering harasment of some creditors, and also them contacting work coligues, its taken away a lot of that stress and embarasment."<sup>310</sup> A Croydon respondent observed, "worry, anxiety, I had to be put on anti depressants. Embarassment – when in local paper. You feel a failure, that you couldn't even manage your finances."<sup>311</sup> An Exeter respondent noted, "losing my dignity and good name. Losing contacts you thought were friends."<sup>312</sup> A further Croydon respondent noted, "people still look up on bankruptcy as a failure."<sup>313</sup> Another noted, "stress, uncertainty, feeling of failure, low self-esteem, etc."<sup>314</sup> One Newcastle respondent noted, "some people look down on you cant have a car."<sup>315</sup> Another Newcastle respondent noted, "Stigma. My father runs a business and has the same initials and address as myself. People read the name (initials only) in newspapers with the address and spread word that his business was bankrupt. Has affected business."<sup>316</sup> An Exeter respondent observed, "Local newspaper notice – is that really necessary?"<sup>317</sup> Another Exeter respondent observed, "Stressful process. In some circumstances made to feel like you have done a terrible thing, that you are stupid or to blame."<sup>318</sup> Another Exeter debtor noted, "felt ashamed, embarrassed and was aware of the stigma (perceived) of foolhardy over spending."<sup>319</sup> A Cardiff respondent noted, "it does your reputation no favours and it can cause personal shame at ones circumstances."<sup>320</sup> A Birmingham respondent observed, "stigmatising by many people

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<sup>305</sup> Reading, ref: CA.

<sup>306</sup> Reading, ref: CF

<sup>307</sup> Reading, ref: CY.

<sup>308</sup> Croydon ref: HW.

<sup>309</sup> Cardiff ref: G.

<sup>310</sup> Newcastle ref: AH. The respondent worked as a Hostel Officer.

<sup>311</sup> Croydon ref: FC.

<sup>312</sup> Exeter ref: H.

<sup>313</sup> Croydon ref: GW.

<sup>314</sup> Croydon ref: HZ.

<sup>315</sup> Newcastle ref: FA.

<sup>316</sup> Newcastle ref: FD.

<sup>317</sup> Exeter ref: W.

<sup>318</sup> Exeter ref: AH.

<sup>319</sup> Exeter ref: AP.

<sup>320</sup> Cardiff ref: L..



particularly professionals who earn a great deal more and can not understand the strain.”<sup>321</sup> Another Birmingham respondent observed, “stress on marital and other family relationships – malicious gossip of society, neighbours, etc.”<sup>322</sup> A Birmingham respondent noted the possibly misconceived view of the new post Enterprise Act 2002 bankruptcy procedure within the eyes of the public when he observed, “stigma. Opportunities decrease. It is assumed you have mishandled your affairs rather than bad health having serious repercussions.”<sup>323</sup>

On the other hand the responses were also infused with more positive replies. One Newcastle debtor observed, “I couldn’t count how many nights sleep were lost prior to the bankruptcy. It was a huge load off my mind, and a total relief after the order.”<sup>324</sup> An Exeter respondent noted, “lack of confidence, unable to live life as I would want – although it’s given me the chance to get to grips with reality.”<sup>325</sup>

One Croydon respondent noted, “you become far more shrewd, canny. Greater awareness of the ease with which one can slip into bankruptcy, and therefore a greater understanding of those in a similar position.”<sup>326</sup> Interestingly one Exeter respondent who had declared bankruptcy following business related indebtedness noted, “put in the same boat as dishonourable and careless businessman.”<sup>327</sup>

One Birmingham respondent brought up the issues of banks in their response to this question when they observed, “it happened the way I expected except – now – after discharge the [BANK A] have insisted on closing my a/cs now they’ve been released by my trustee.”<sup>328</sup>

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<sup>321</sup> *Birmingham ref: CC.*

<sup>322</sup> *Birmingham ref: II.*

<sup>323</sup> *Birmingham ref: JB.*

<sup>324</sup> *Newcastle ref: L.*

<sup>325</sup> *Exeter ref: AN.*

<sup>326</sup> *Croydon ref: FE.*

<sup>327</sup> *Exeter ref: AM.*

<sup>328</sup> *Birmingham ref: JJ.*

**17. Did you feel that you would be stigmatised by going through the bankruptcy process?**

- a. Yes
- b. No

As the leading authority on English insolvency law has observed, “in everyday usage the terms “bankruptcy” and “bankrupt” carry heavy connotations of personal disaster accompanied by social stigma, giving rise to the supposition that bankruptcy is a fate to be avoided at all costs.”<sup>329</sup> Have we moved away from these arguably Victorian notions of the bankrupt as a mischievous, irresponsible miscreant who is stigmatised due to their abuse of the credit system? Or have we moved to a position where we can consider the insolvent individual as honest but unfortunate and therefore not deserving of society’s opprobrium?<sup>330</sup> With the removal of compulsory public examination we have seen a reduction in the stigmatising effects of bankruptcy whereby, “the indignity which the debtor must face in having his financial ineptitude and personal failings aired in open court and particularly in the provinces accompanied by publicity in the press”<sup>331</sup> are thankfully extant for the bankrupt no longer. However, does stigma still exist?<sup>332</sup> Question 17 of the *BCS 2005* is designed to see if individuals contemplating bankruptcy thought they would be stigmatised, what was their perception of the process? In their 8<sup>th</sup> annual survey of personal insolvency *R3* speculated, *inter alia*, that the stigma of failure is easier to bear in the South East”,<sup>333</sup> there also appears to be a growing perception that the stigma associated with bankruptcy is fading.<sup>334</sup> Do the results of the *BCS 2005* bare these conclusions out?

<sup>329</sup> *Fletcher*, at para 3-002. See also the 1975 Justice committee report where it is noted, “in the eyes of the debtor as well as of the commercial community and society at large, the indignities associated with the status of bankruptcy are considered to be at the root of and are conveniently summarised in the well-known expression, still frequently encountered, “the stigma of bankruptcy.””, see: Justice. *Bankruptcy – a Report by Justice*. Stephens & Son, London, 1975, at page 1.

<sup>330</sup> A number of civil law jurisdictions do of course still view bankruptcy as repugnant, see: Niemi-Kiesilainen, J. *Changing Directions in Consumer Bankruptcy Law and Practice in Europe and USA* (1997) 20 J. Consumer Policy 133; and, Niemi-Kiesilainen, J. *Consumer Bankruptcy in Comparison: Do we cure a market failure or a social problem* (1999) 37 Osgoode Hall Law Journal 473.

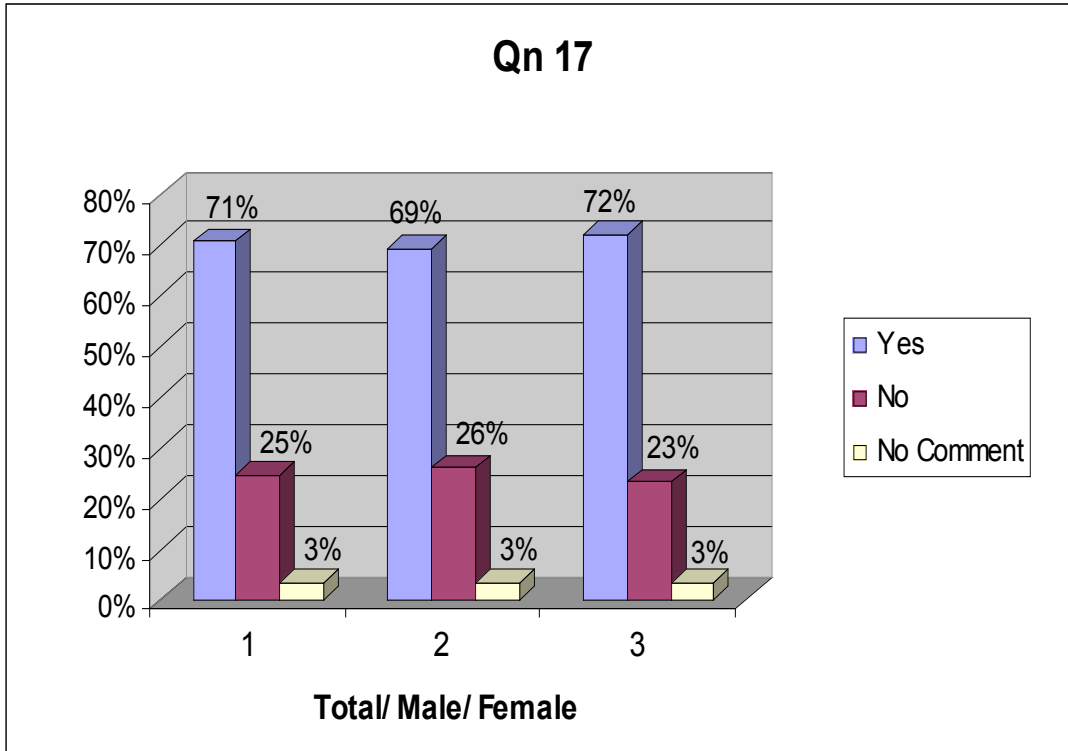
<sup>331</sup> Justice. *Bankruptcy – a Report by Justice*. Stephens & Son, London, 1975, at para 41.

<sup>332</sup> There is judicial dicta observing that it does, see; *Financial Services Authority v. Dobb White & Co* [2003] EWHC 3146 (Ch), [2004] BPIR 479, at paragraph 13, where Gabriel Moss QC (sitting as a deputy High Court judge opines, “I take into account that possibility and the suggestion that there is still some stigma attached to bankruptcy, which there may be.”

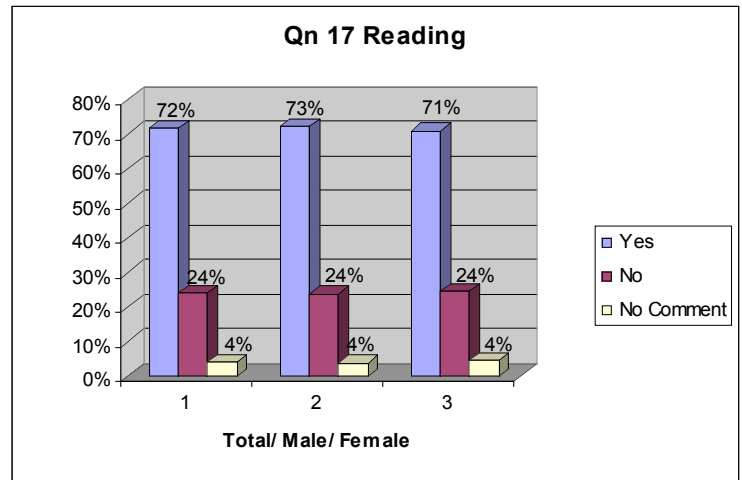
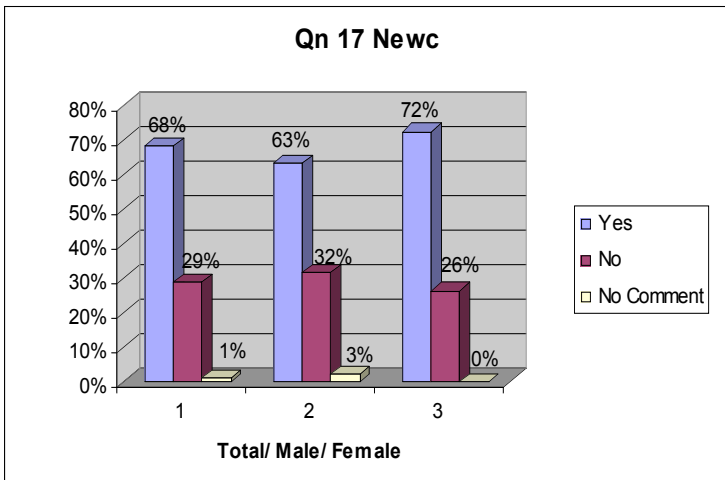
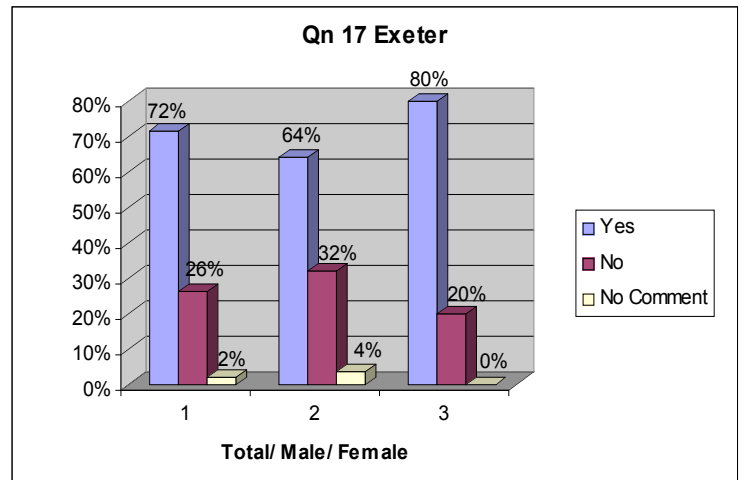
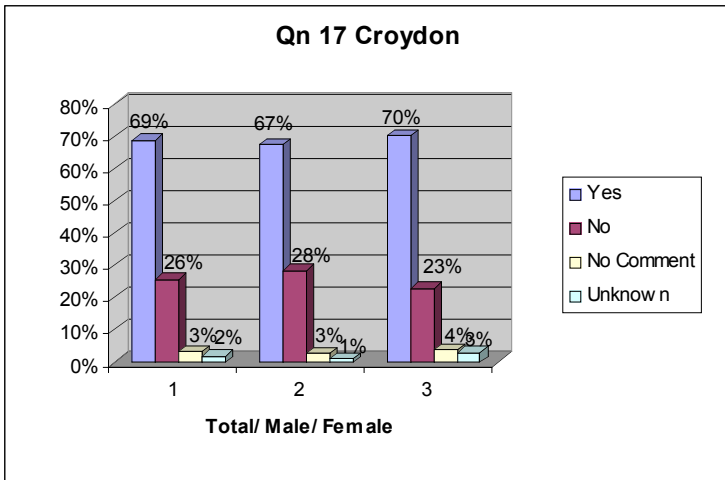
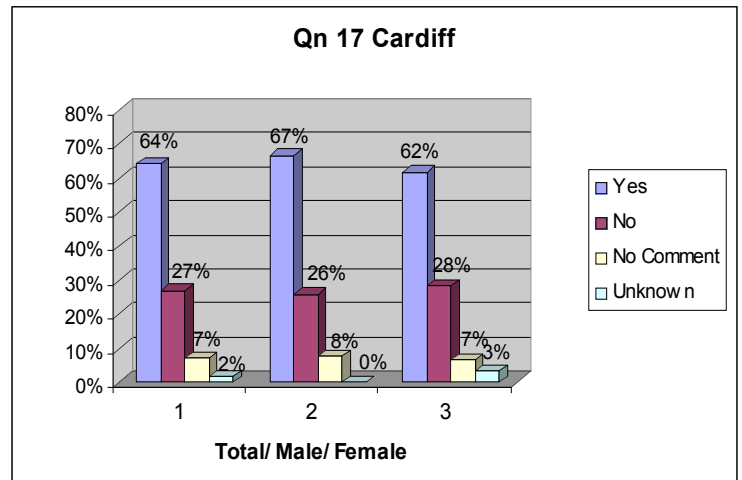
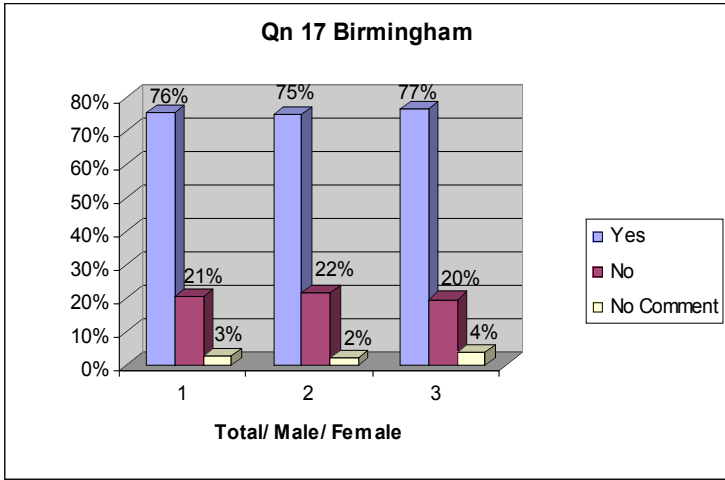
<sup>333</sup> *R3 8<sup>th</sup> Personal Insolvency Survey* at page 18.

<sup>334</sup> Swann, C. The Financial Times, “*Big Rise in bankruptcies seen as stigma of failure fades.*” (08/05/05) at page 7.

**Results overall**



**Results by individual court**



## **Summary**

In short the answer to the question posed above, namely whether the results of the *BCS 2005* indicate that there has been a drop in the level of stigma attaching to bankruptcy, can be answered with a resounding NO. Or at the very least personal insolvents' perception of being stigmatised is still very strong. If it is as one learned commentator has recently opined the Government's position that "credit card bankrupts are not generally serial fraudsters...and...it is antiquated and wrong in principle to label them as 'undischarged bankrupts' together with all the stigma which attaches to that expression",<sup>335</sup> then clearly there is some work to be done in changing the perception of bankruptcy, especially regarding consumer debt.

One bankrupt respondent observed, "strain on your life for a long time never able to forget the way you get to feel unworthy and a total loss of confidence, outcast from Society."<sup>336</sup> These are strong sentiments that are echoed across the entire sample. An Exeter respondent noted, "It was published in the paper! That is too humiliating. Everyone knows."<sup>337</sup>

There were aberrations to this trend. One Newcastle respondent observed that they in fact did not feel stigmatised as, "it is a part of life."<sup>338</sup>

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<sup>335</sup> *Davies*, at para 14.10. As indicated by the responses to question 1, the majority of bankrupts appear to be consumer debtors. As will be developed in due course in this report, perhaps the focus of bankruptcy reform should therefore be trained towards this species of debtor.

<sup>336</sup> *Reading*, ref: *CM*.

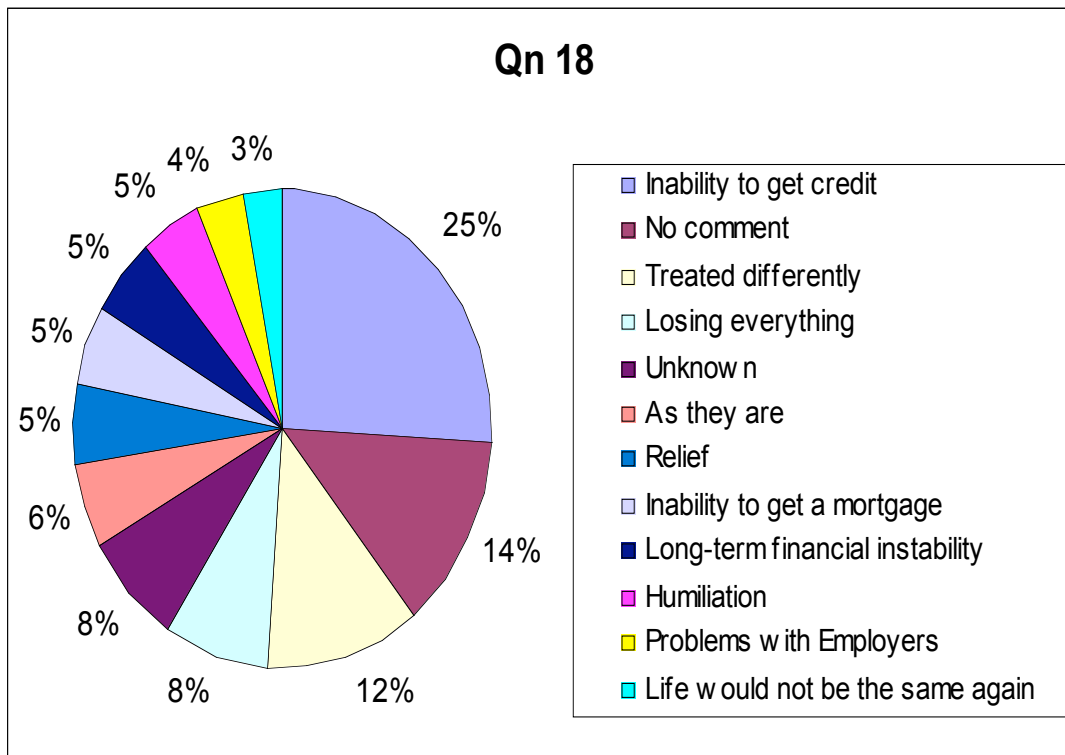
<sup>337</sup> *Exeter* ref: *S*.

<sup>338</sup> *Newcastle* ref: *DE*.

**18. What did you think the consequences of bankruptcy would be?**

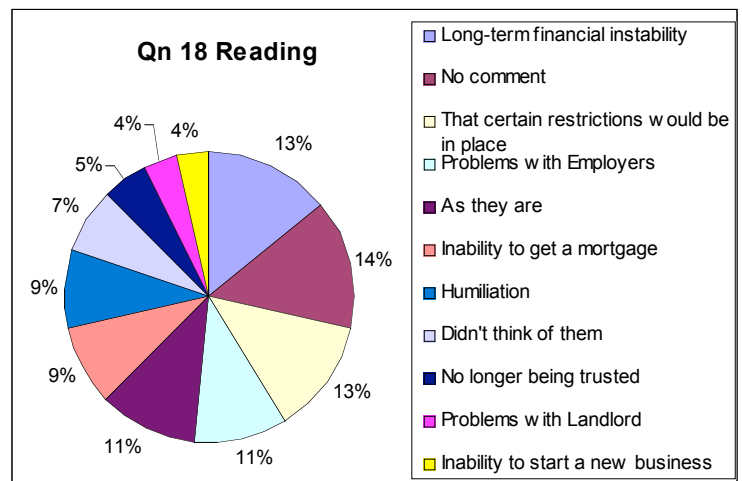
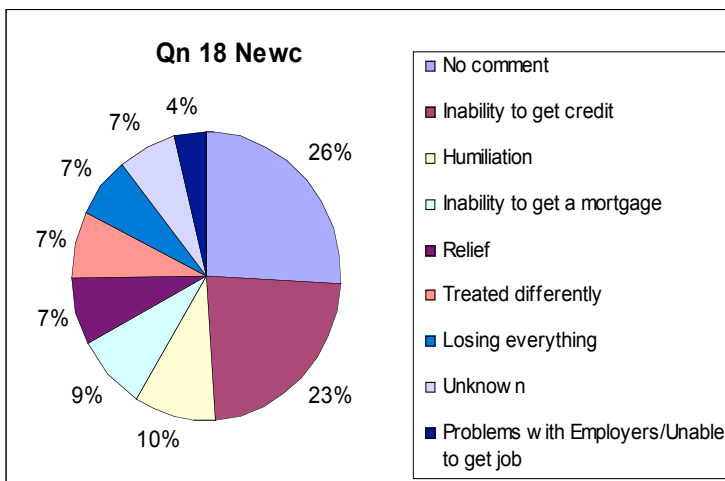
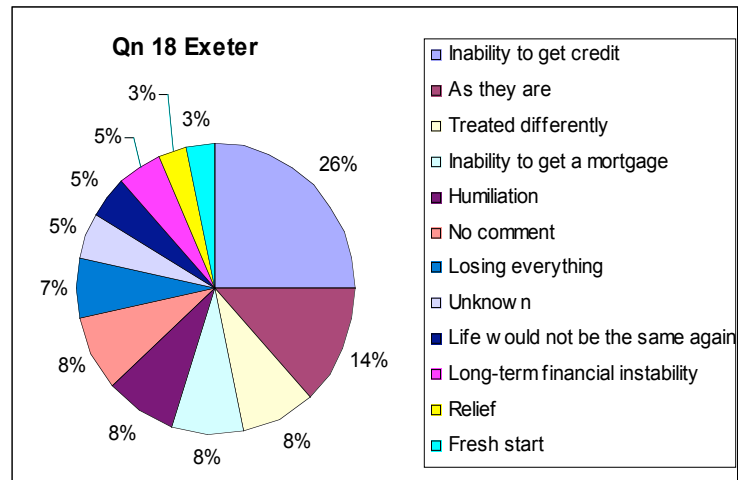
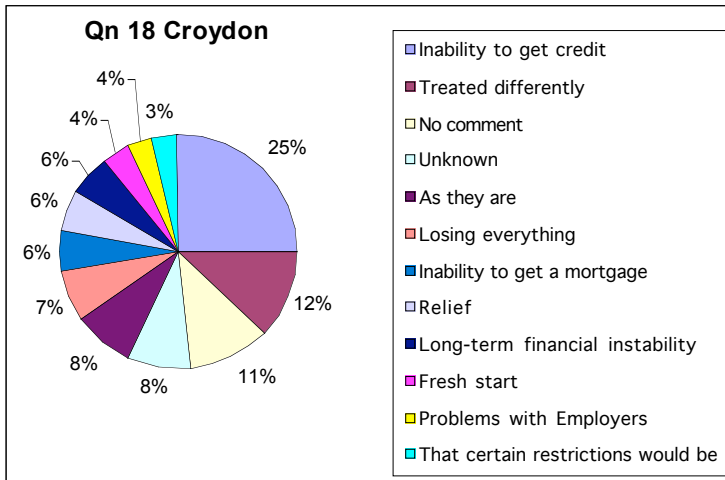
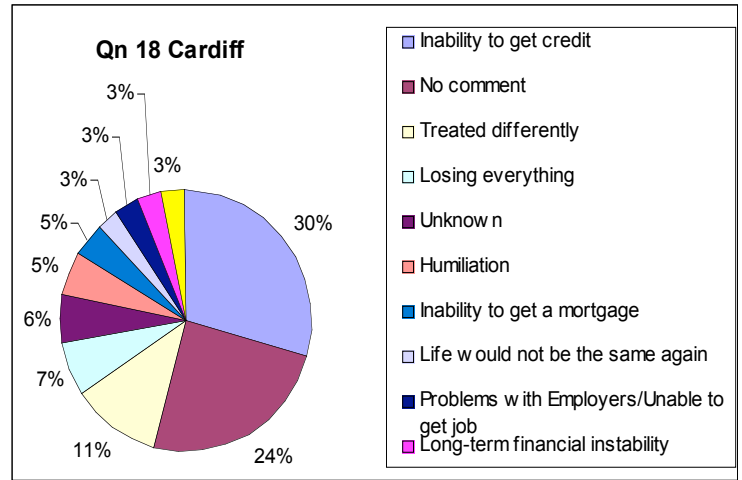
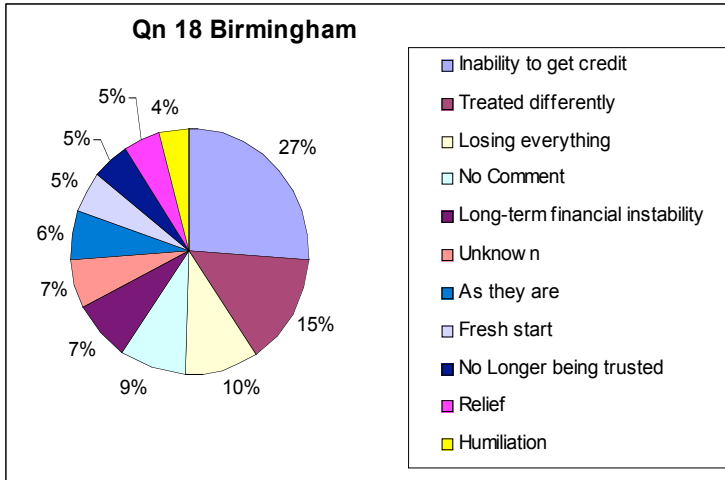
Before embarking on the bankruptcy route what did individual over-indebted individuals consider would be the consequences of going into bankruptcy? In *Re A Debtor (No. 32 of 1991 (No.2))* Vinelott, J. opined, “bankruptcy results in a serious restriction on the debtor’s freedom of action and on his reputation.”<sup>339</sup> Were bankrupts aware of these and other potential fetters? Question 18 of the *BCS 2005* was designed to extrapolate this information.

**Results overall**



<sup>339</sup> [1994] BCC 524 at 528, as cited in *Milman* at page 41.

**Results by individual court**



## **Summary**

Responses to this question were again widely disparate. One particularly interesting theme arose from a number of responses which is typified by one Newcastle debtor's response. He/she observed, "I thought that friends and family would think it was a disgrace. But actually the opposite happened. As it appears to be an everyday thing these days."<sup>340</sup> It is assumed that 'it' in this context is used to denote bankruptcy and that therefore bankruptcy is an everyday thing. If this is the case or at least the perceived case, this respondent seems to be suggesting that there is a dilution in his/her family and friend's opinion of bankruptcy and perhaps by implication a wider general dilution in public condemnation towards the procedure and its users. A Cardiff respondent noted, "I thought something bad was going to happen like prison or something"<sup>341</sup> maintaining the more orthodox position amongst bankrupts.

One Croydon respondent seemed to be generally aware of the consequences of a bankruptcy order when they noted, "bad credit for a number of years and difficulty to obtain a mortgage or credit in the future. Also, the issue of company directorship."<sup>342</sup>

A Birmingham respondent noted, "personally I feel hopeless and degraded it's a horrible feeling and I still have creditors threatening me with court action and imprisonment."<sup>343</sup> Not a particularly fresh start for this respondent.

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<sup>340</sup> *Newcastle ref: AA.*

<sup>341</sup> *Cardiff ref: AX.* On further prison comment see *op cit* page ??

<sup>342</sup> *Croydon ref: HO.*

<sup>343</sup> *Birmingham ref: CL.*



**19. Did you feel that by going into bankruptcy you were morally at fault?**

In *The Times* newspaper on 5<sup>th</sup> February 2005, Mr. Malcolm Hurlston, chairman of the *Consumer Credit Counselling Service*<sup>344</sup> was quoted as saying, “we have seen the number of people choosing to go bankrupt increase because it is more socially acceptable.”<sup>345</sup> Is this reflected in fact? Do individuals see bankruptcy as being more socially acceptable than in previous periods in English legal history,<sup>346</sup> or is there still a residue of stigma and associated connotations of moral deviance attached to the legal state of bankruptcy?<sup>347</sup> Question 19 of the *BCS 2005* was designed to elicit if those with the closest appreciation of the social consequences of bankruptcy, namely bankrupts, felt they were either perceived as being morally at fault<sup>348</sup> or if they felt within themselves they were morally at fault for breaking credit relations and passing into bankruptcy.

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<sup>344</sup> [www.cccs.co.uk](http://www.cccs.co.uk)

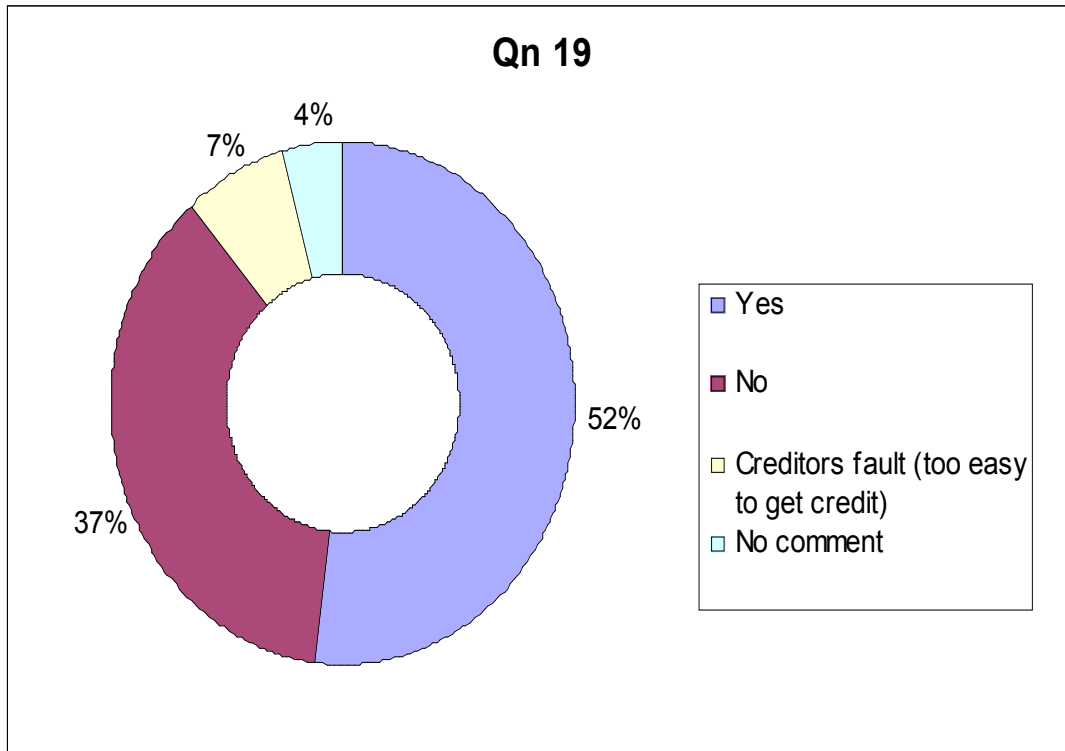
<sup>345</sup> Searjeant, G. *The Times*, Saturday February 5<sup>th</sup> 2005, “*Credit-card junkies turn to the bankruptcy court to clear debts*”, at page 3.

<sup>346</sup> On bankruptcy as a socially stigmatising device see: Weiss, B. *The Hell of the English Bankrupt and the Victorian Novel*. Bicknell University Press. 1986.

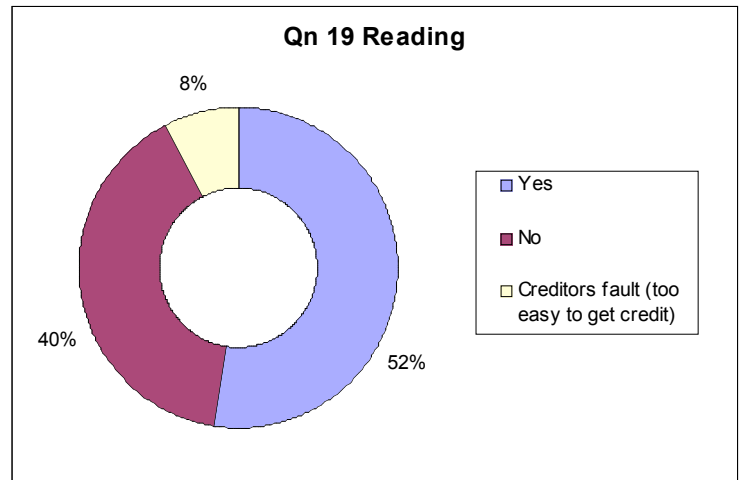
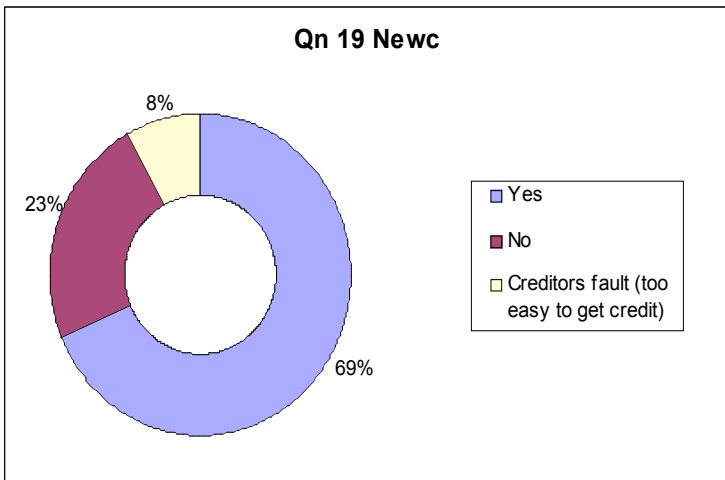
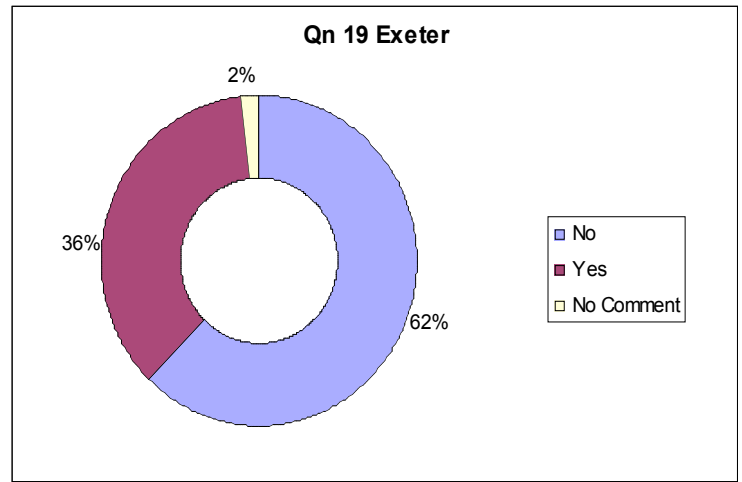
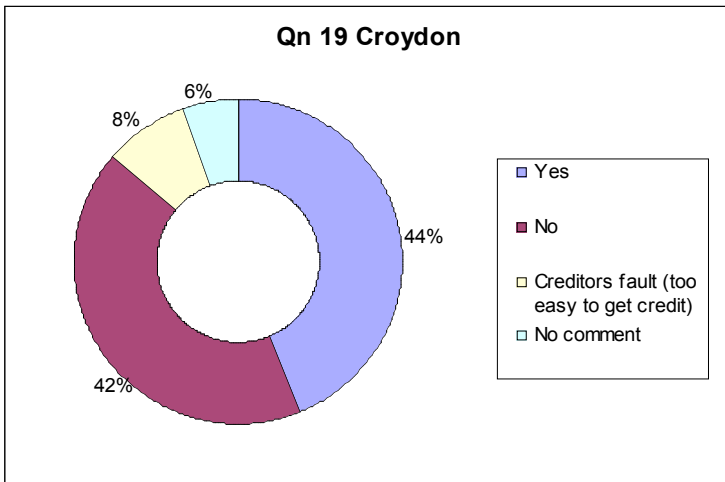
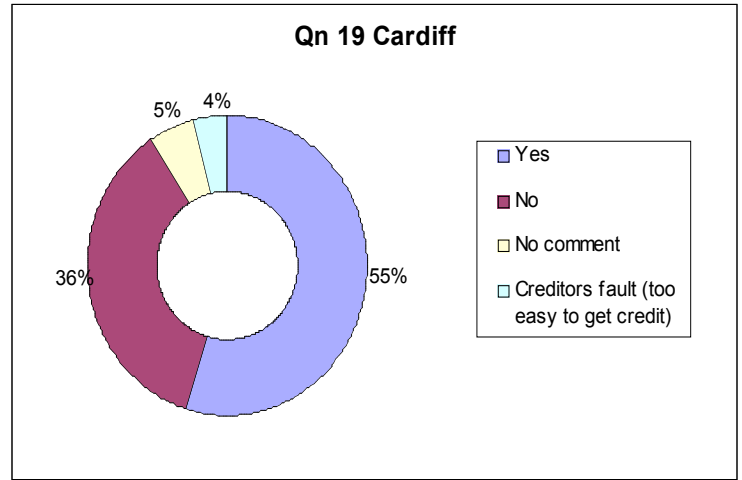
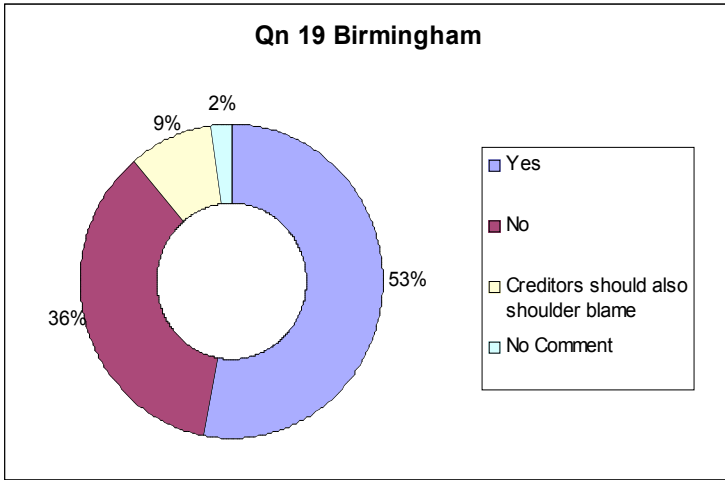
<sup>347</sup> In *Productivity and Enterprise*, the Insolvency Service observed at para 1.6, “we will reduce the stigma of bankruptcy by removing many of the disqualifications, prohibitions and restrictions which currently apply automatically to people who are subject to a bankruptcy order.” See also the group of paragraphs 1.21-1.24 entitled, “Reducing the Stigma of Failure.”

<sup>348</sup> On this aspect of bankruptcy see further: Skene Mckenzie, DW. *Morally bankrupt? Apportioning blame in bankruptcy* (2004) JBL, Mar, 171-218, an interesting article which compares the Enterprise Act 2002 personal insolvency reforms with recent Scottish reform initiatives.

**Results overall**



**Results by individual court**



## Summary

A small proportion of all respondents directly blamed creditors lending practices for their predicament (7%). However, 37% of respondents also thought they were not responsible for their position. For example one respondent answered in respect of their own moral culpability that they were not at fault, stating, “I feel the bank really should not have offered a loan at my age.”<sup>349</sup> One Newcastle debtor noted, “No I didn’t have any feelings at all Banks and the likes are just a bunch of a\*\*\*\*\*s drivin by greed.”<sup>350</sup> Further typical responses from this ‘no responsibility for their own actions camp’ include, “No not at all as really it wasn’t my fault.”<sup>351</sup>, “No. A greedy lender forced the issue.”<sup>352</sup> One Reading respondent observed, “I was treated badly by [BANK A] when I told them about my debt they offered me another loan, they said I could stay with them as I have been with them since 17 years old and withdrew without writting to me distressed further months.”<sup>353</sup> A Croydon respondent observed, “No. I think by going into bankruptcy you are admitting you need help, and that you have followed correct procedures in doing so. In my case I had so much credit thrown at me by companies. They only had to check to see my level of borrowing.”<sup>354</sup> A further Croydon respondent observed, “Yes to a degree. But if you have to question the financial infrastructure of allowing persons like me to accumulate such debts.”<sup>355</sup> An Exeter respondent observed, “Yes! But I strongly feel and maintain that financial company are also to blame and must take responsibility for irresponsible lending.”<sup>356</sup> Another Exeter respondent noted, “I think lenders are to blame as well as debtors. Credit is too easy to obtain...I think lenders don’t help when you get in trouble. They don’t really want to know, They still want there “pound of flesh””<sup>357</sup> In a significant number of qualified answers there seems to be a complete refutation of personal responsibility for the debtor’s over-indebted state. Another Croydon respondent observed, “Banks should not be allowed to increase credit limits without a written request from their customer, people are being involuntarily sucked into debt often when at their lowest ebb, this practice should be illegal.”<sup>358</sup> A Cardiff respondent noted, “No! I blame the Banks and Credit Card Companies for offering you more money to pay off one creditor but also putting you in deeper debt.”<sup>359</sup> Another Cardiff respondent observed, “I feel that credit card companies make it too easy to get credit when they knew I was unemployed and only receiving benefits.”<sup>360</sup>

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<sup>349</sup> Reading, ref: CF.

<sup>350</sup> Newcastle ref: BA.

<sup>351</sup> Newcastle ref: F.

<sup>352</sup> Reading ref: DO.

<sup>353</sup> Reading ref: DY.

<sup>354</sup> Croydon ref: FC.

<sup>355</sup> Croydon ref: GS.

<sup>356</sup> Exeter ref: AD.

<sup>357</sup> Exeter ref: BC.

<sup>358</sup> Croydon ref: HB. Respondent’s underlined emphasis.

<sup>359</sup> Cardiff ref: J.

<sup>360</sup> Cardiff ref: K.

Whilst Ziegel has observed that lenders should take more responsibility for their lending practices, this view is not necessarily borne out by bankrupts themselves, who to some degree recognise that they are responsible for their use of credit, even if it is in their opinion ridiculously easy to obtain. One Newcastle debtor was particularly open in his/her response when he/she stated, “In a way yes, as I did borrow money and spend it!!”<sup>361</sup> Another Newcastle respondent noted, “I feel it is a (deserved) penalty for poor money management. There is a stigma.”<sup>362</sup> A Croydon respondent noted, “I was at fault – Totally to blame.”<sup>363</sup> An Exeter respondent noted, “being rubbish with money – buying cars and doing them up – such a waste.”<sup>364</sup> One Cardiff respondent noted, “yes by having to much debt an not having enough money to pay the repayments back each month.”<sup>365</sup> A Birmingham respondent noted, “yes, I felt like a failure, especially as I couldn’t blame it on a business failing. It was entirely my mis-management of my finances.”<sup>366</sup> It is this group of debtors that make up the majority of our sample at 52% overall.

One Croydon respondent highlighted a very fundamental issue. He/she observed, “Yes, buy physical survival takes precedence over morality sometimes as long as no individuals are hurt.”<sup>367</sup>

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<sup>361</sup> *Newcastle ref: L.*

<sup>362</sup> *Newcastle ref: EM.*

<sup>363</sup> *Croydon ref: FV.*

<sup>364</sup> *Exeter ref: BO.*

<sup>365</sup> *Cardiff ref: M.*

<sup>366</sup> *Birmingham ref: ID.*

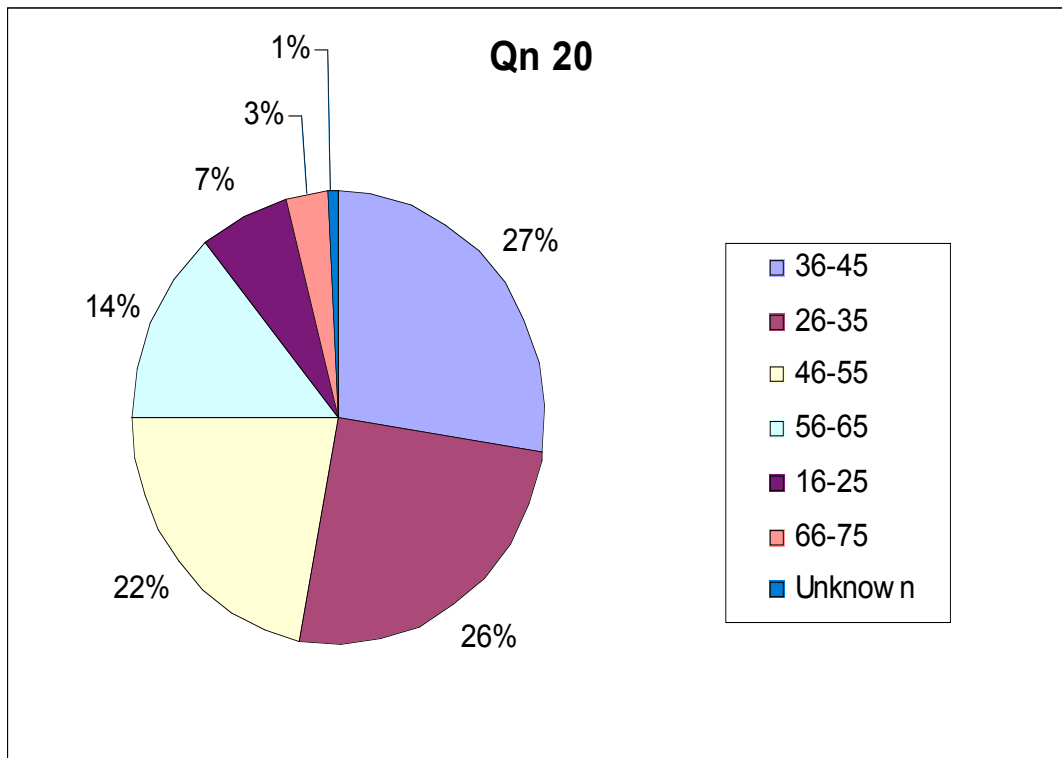
<sup>367</sup> *Croydon ref: FP.*

**20. How old were you at the date of your bankruptcy order?**

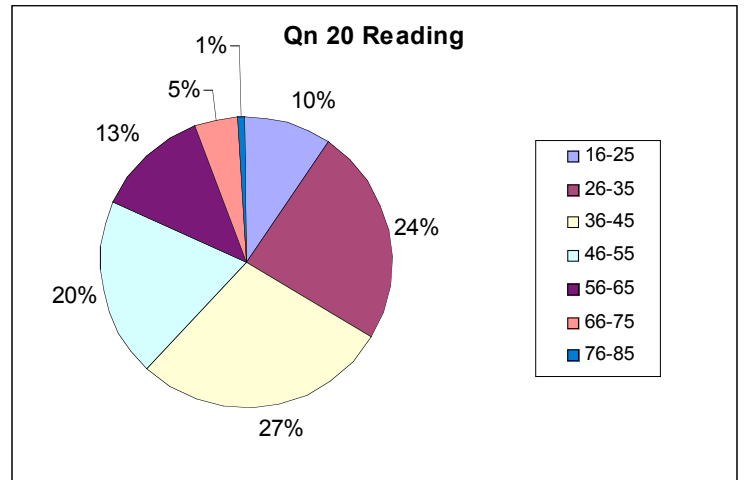
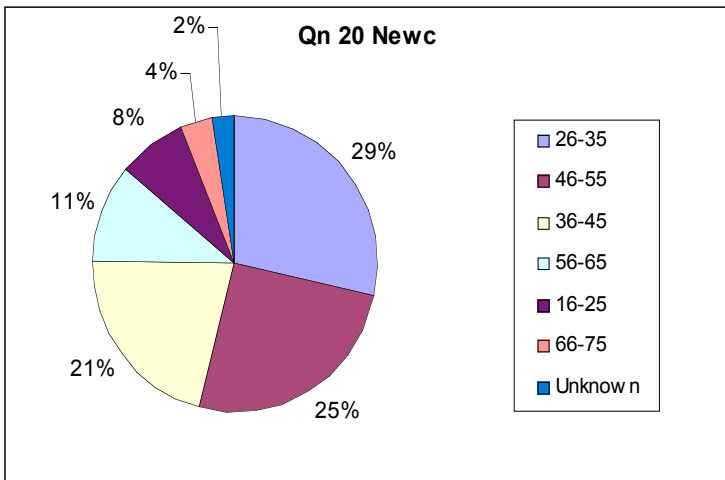
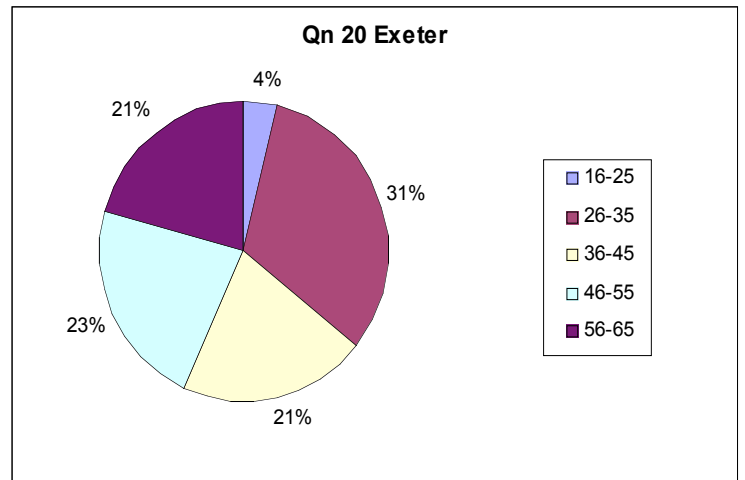
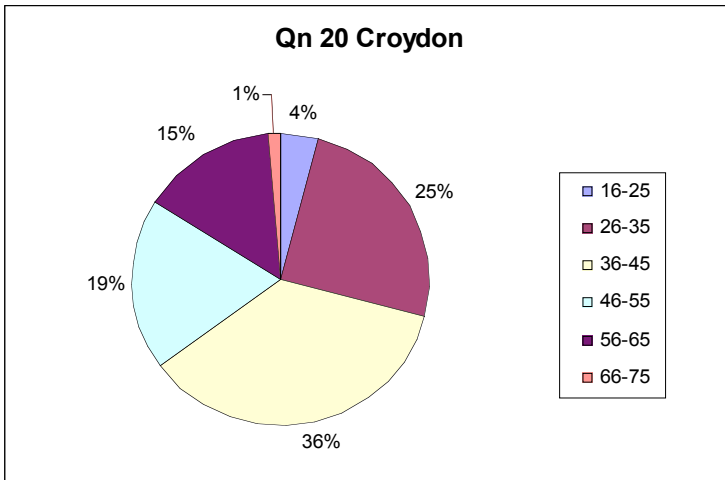
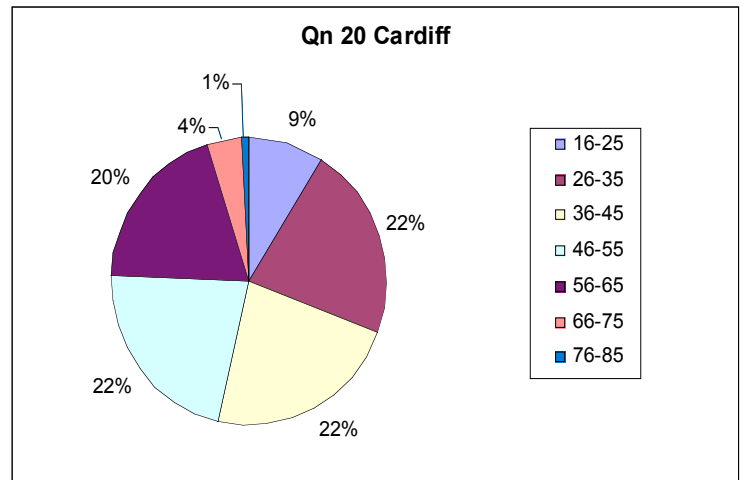
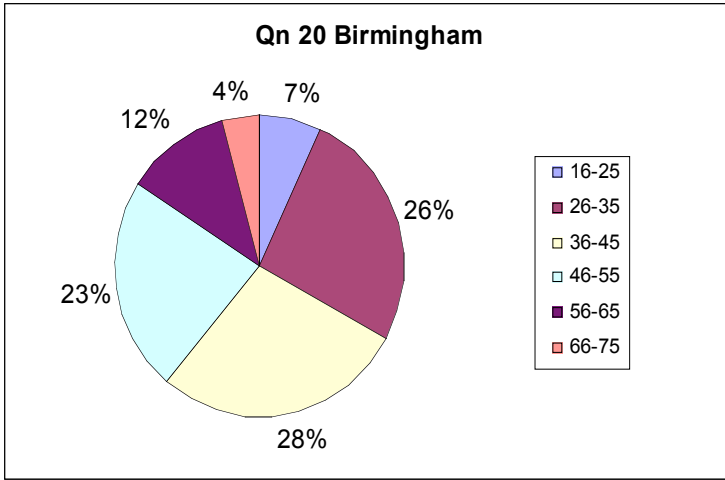
- a. 16-25
- b. 26-35
- c. 36-45
- d. 46-55
- e. 56-65
- f. 66-75
- g. 76-85
- h. 86-95

What is the average age of the insolvent individual who passes into bankruptcy in the courts surveyed in the *BCS 2005*?

**Results overall**



**Results by individual court**



### **Summary**

The results of the sample suggest that the majority of bankrupts are under 45 (53%). But there does not seem to be a significant group within that or any other age range. Bankruptcy can unfortunately affect people of all ages. The youngest respondent to the *BCS 2005* was 21 and the oldest was 75.

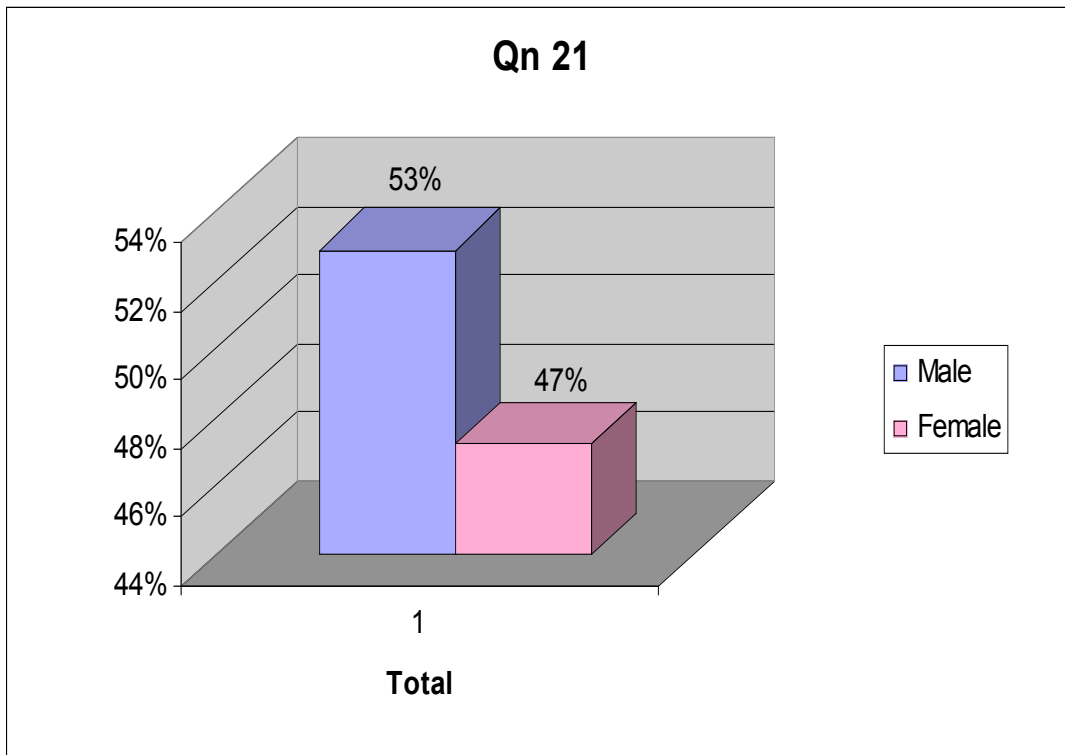


**21. Are you:**

- a. Male
- b. Female

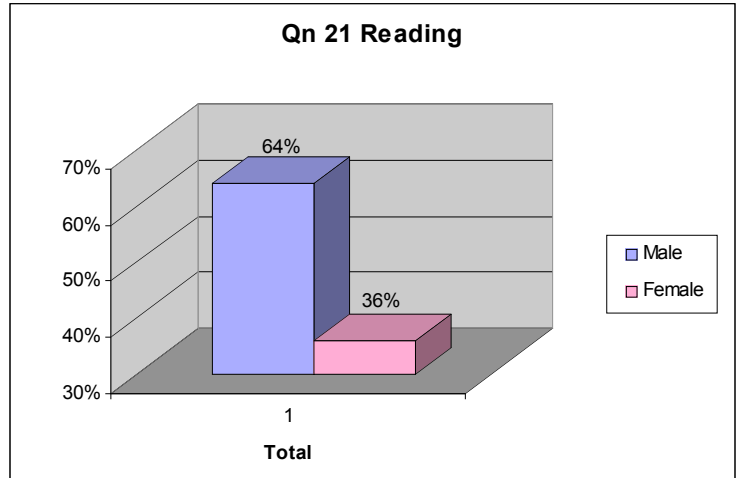
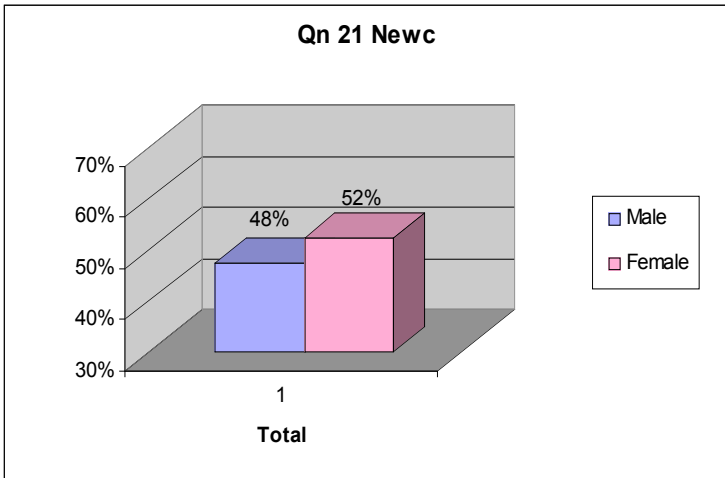
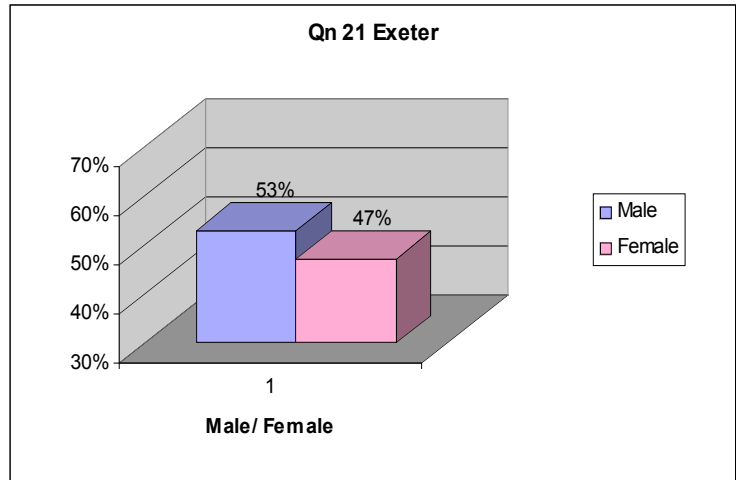
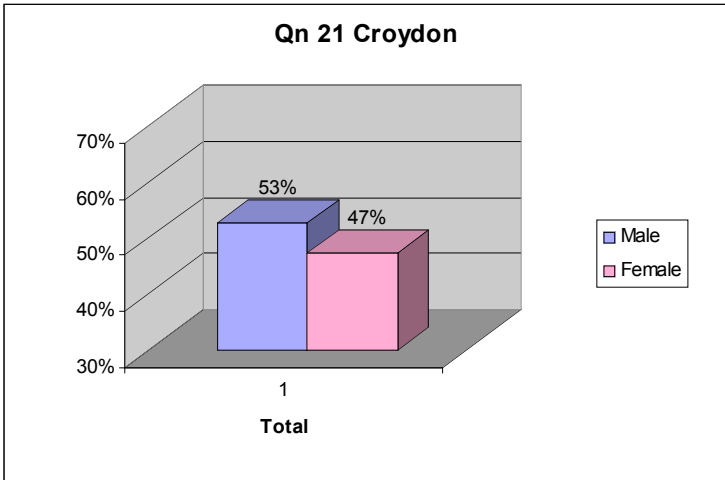
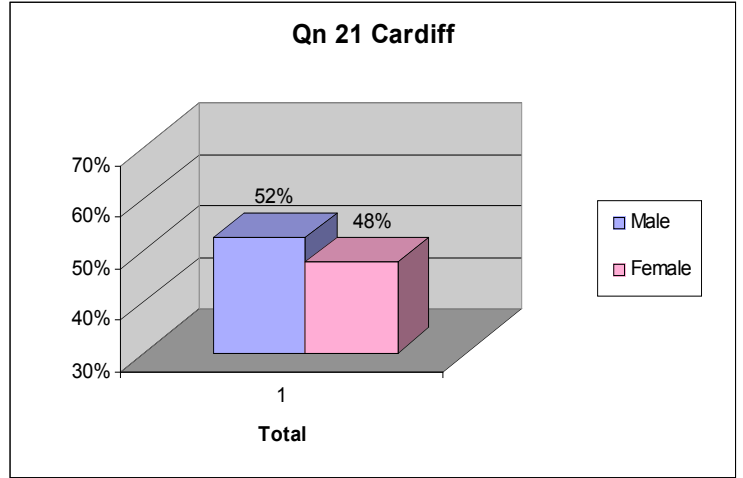
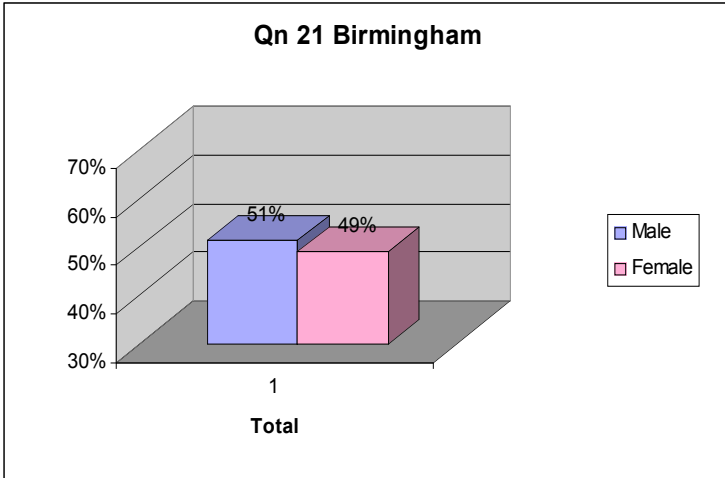
Is one of the sexes more likely to get into a financially embarrassed state than the other sex? In a recent report in *The Times* Mr. Keith Tondeur of Credit Action was reported as saying, “Traditionally, debt was a male thing, but the gap between men and women is narrowing very quickly.”<sup>368</sup> How is this gap reflected in the *BCS 2005* sampled courts?

**Results overall**



<sup>368</sup> Nugent, H. *The Times*. “Bankrupt women paying for credit cards.” (16/05/05).

**Results by individual court**



## **Summary**

Unsurprisingly there was no qualifying comment on this question. Traditionally it could be argued that male members of the household were responsible for budgetary control, thus accounting for the higher incidence of male bankruptcy. Newcastle is an aberration amongst our sampled courts. The data set were repeatedly checked, but confirmed that the majority of respondents to our Newcastle sample were females. There is a mere 6% difference between the two sexes in the BCS 2005. With a longitudinal survey it would be interesting to note how this may change over time.

**22. What level of debt has your bankruptcy order relieved you from?**

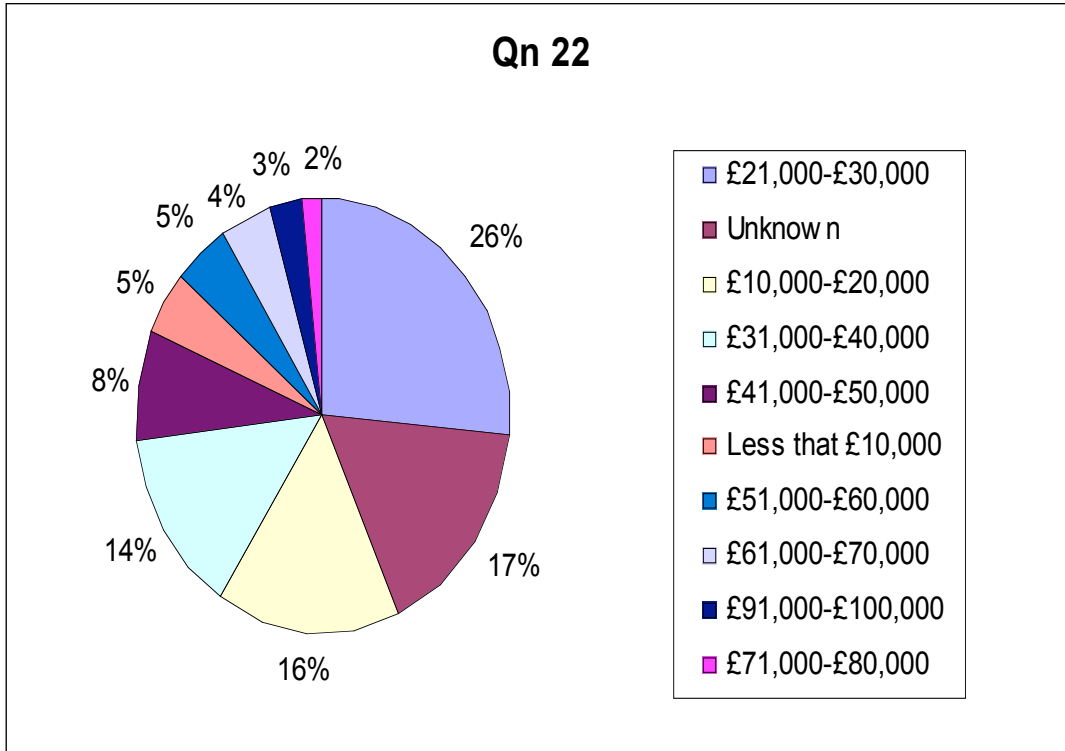
In a well known, frequently cited quote Lord Meston has observed that “if you go “bust” for £700 you are probably a fool, if you go “bust” for £7,000 you are probably in the dock, and if you go “bust” for £7 million you are probably rescued by the Bank of England.”<sup>369</sup> In our sample of six courts what in fact are the levels of indebtedness that are causing people to seek the relief of bankruptcy? It is particularly important to ascertain what levels of debt are leading individuals towards and through bankruptcy so that the most appropriate procedures can be formulated for the most appropriate circumstances. If levels of indebtedness are generally low in relation to those seeking bankruptcy relief then perhaps the laws are framed too liberally. As one mid-19<sup>th</sup> century commentator observed, “It has been said that insolvency and bankruptcy laws are the poor-laws of the middle classes...that unless the insolvency laws be reformed, the vices of idleness, extravagance, and dishonesty encouraged by them, will destroy the middle classes.”<sup>370</sup> If our bankruptcy laws are too lenient in terms of entry level sums, then perhaps they will encourage behaviour that is not conducive to a stable credit system. Is it possible that the new Enterprise Act 2002 regime in terms of discharge could lead to increased risk taking by the consumer?

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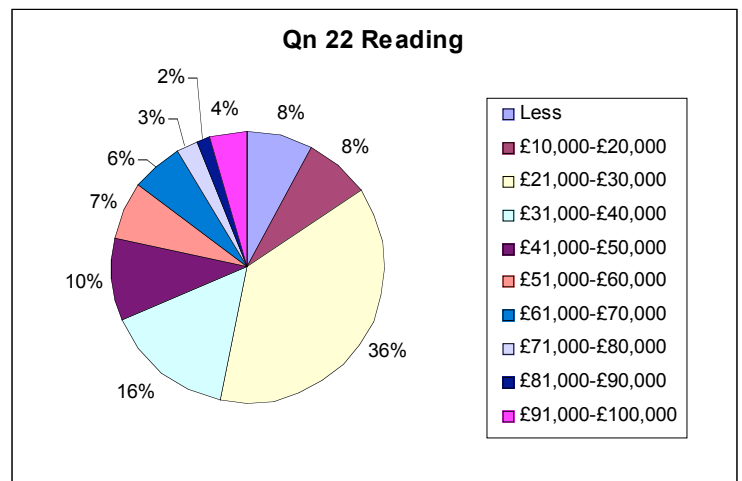
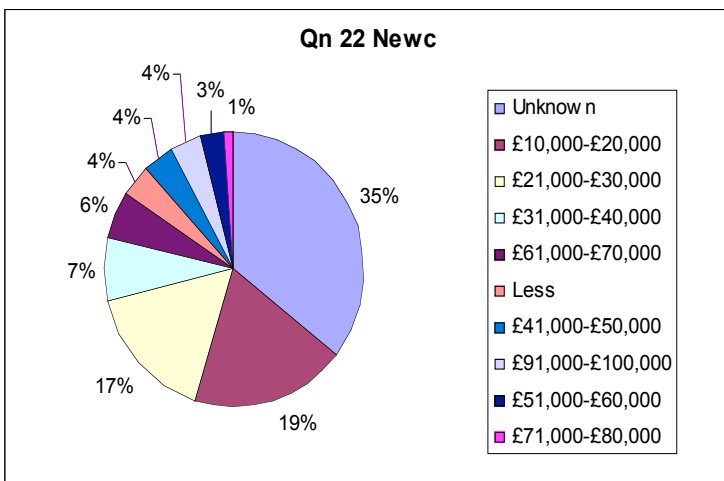
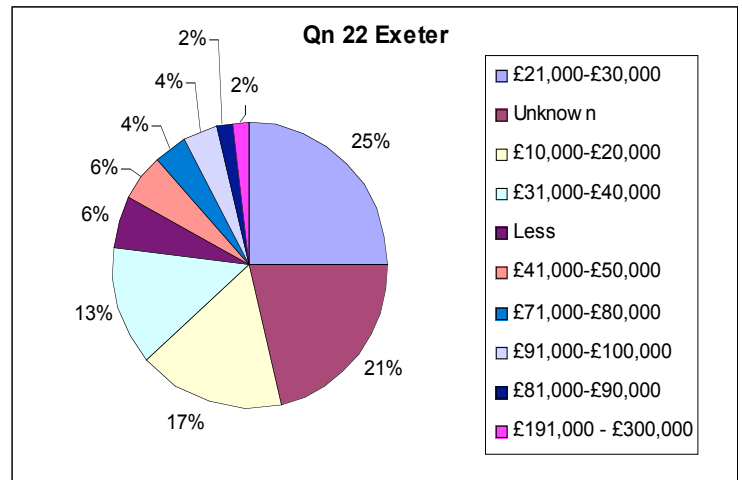
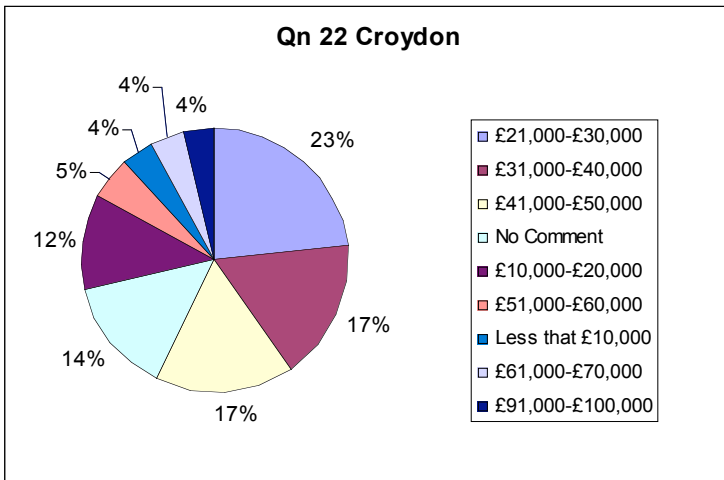
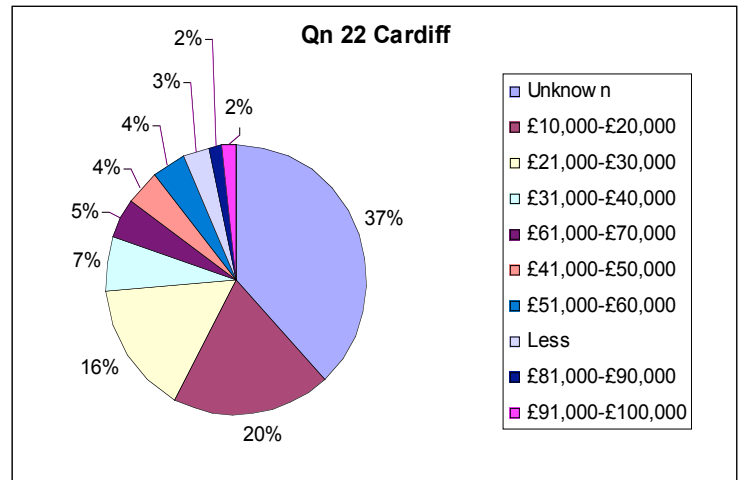
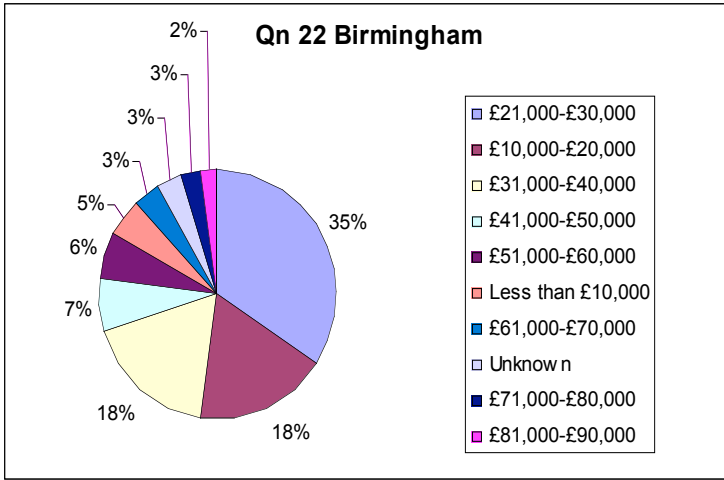
<sup>369</sup> *per* Lord Meston, Hansard, HL, 15<sup>th</sup> January 1985, HL, vol.458, col.914.

<sup>370</sup> Houston Browne, J & Ogbourne, WW. *The Bankrupt Law Consolidation Act 1849 [12 & 13 Vic. c.106]; with a popular explanation of the Powers, Duties, Obligations, and Responsibilities of Debtors and Creditors; the facilities for avoiding Bankruptcy, and the Provisions for punishing Fraud.* London. 1849.

**Results overall**



**Results by individual court**



## **Summary**

Perhaps worryingly, a significant number of individuals who were declared bankrupt did not know what level of debt the bankruptcy order was relieving them from. For example, one respondent replied to this question by stating, “not totally sure, CAB did things on my behalf.”<sup>371</sup> The overall indebtedness figure for individuals using bankruptcy seems to be in the £21,000 to £30,000 bracket (26%).

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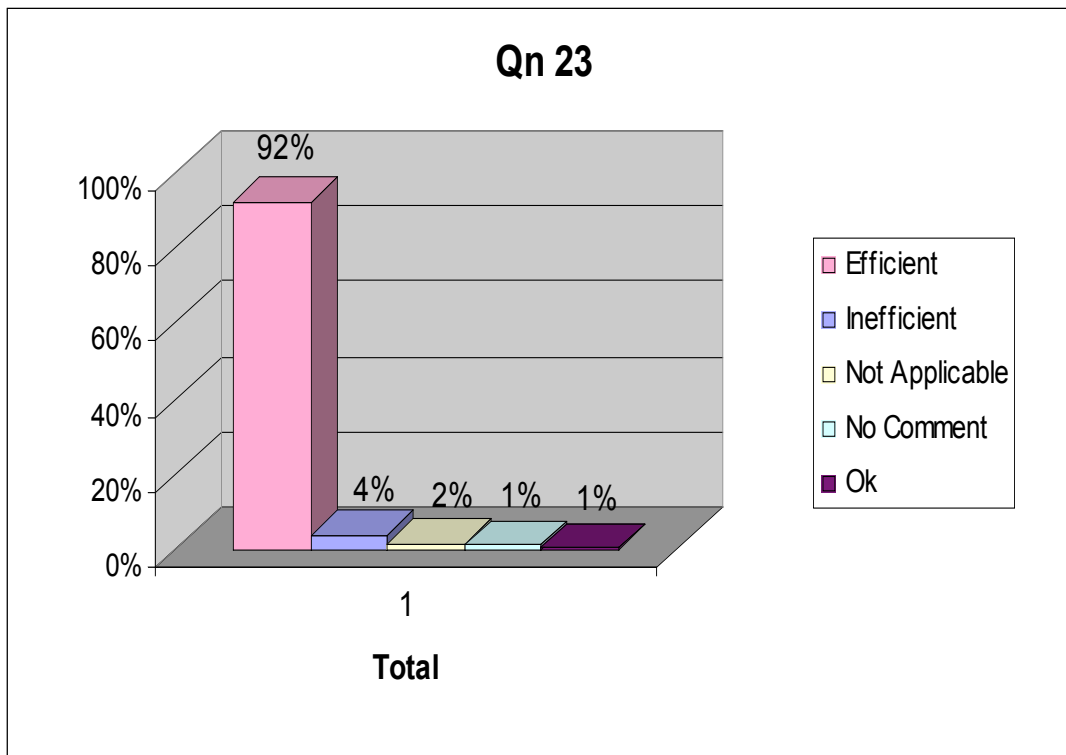
<sup>371</sup> *Reading, ref: CG.*

**23. What was your impression of the bankruptcy court where your petition was heard, was it:**

- a. Efficient
- b. Inefficient

It was hoped that this question might draw out general comments on the process of bankruptcy from the perspective of the court user. In their 1994 report *An Agenda for Reform*, the Justice committee considering the law of insolvency had observed in relation to deficiencies in the bankruptcy system that, “administrative overload in these circumstances leaves the debtor in an unnecessary state of limbo and causes frustrations which a more appropriate and speedy procedure would provide.”<sup>372</sup> Were these conditions still prevalent?

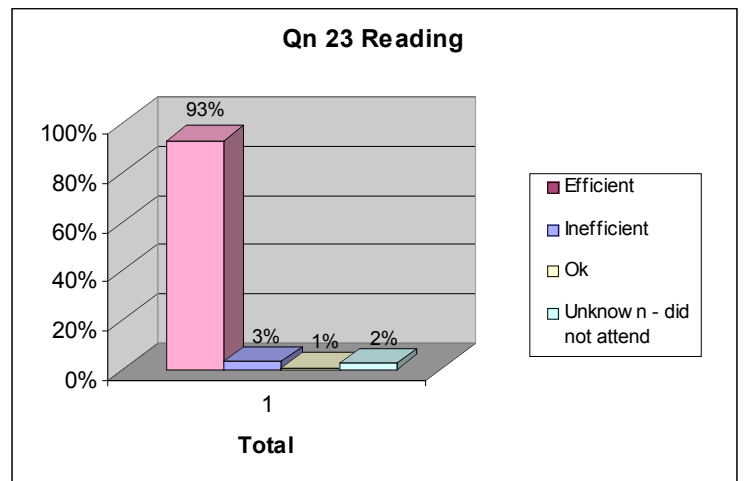
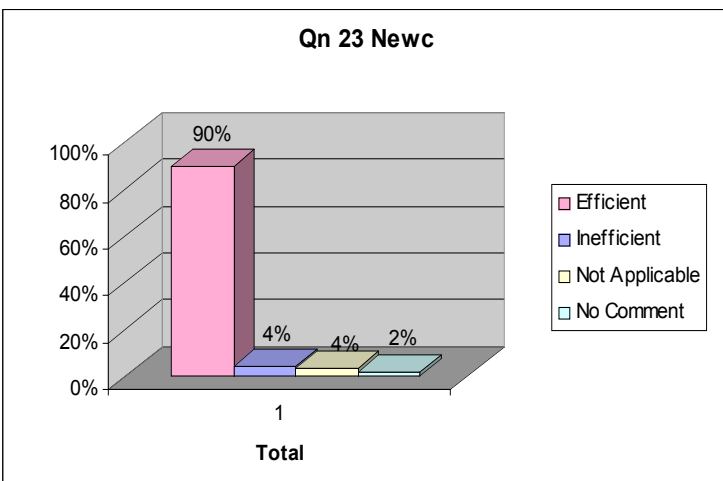
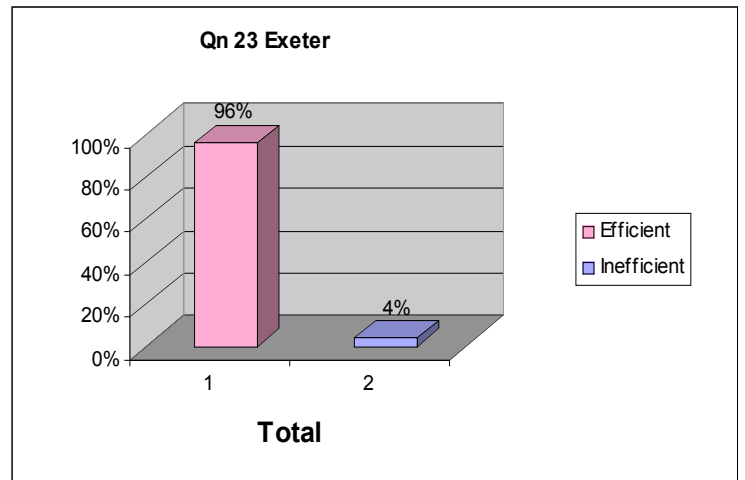
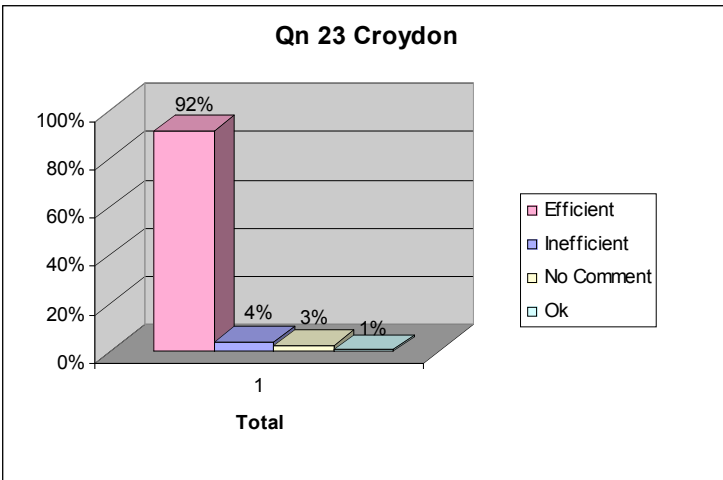
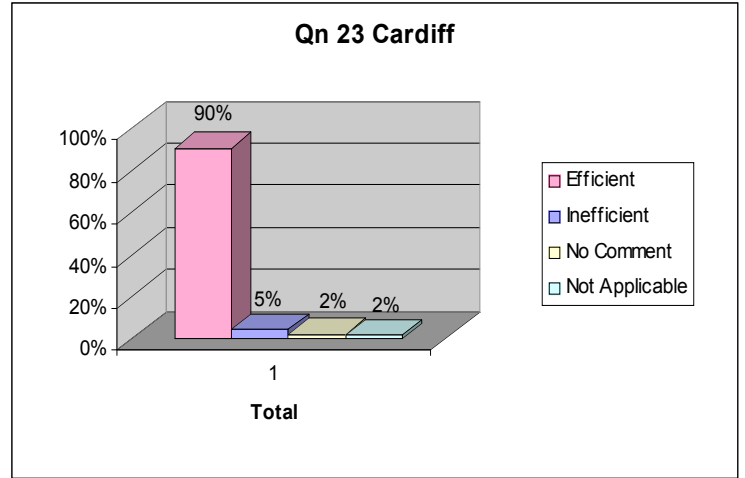
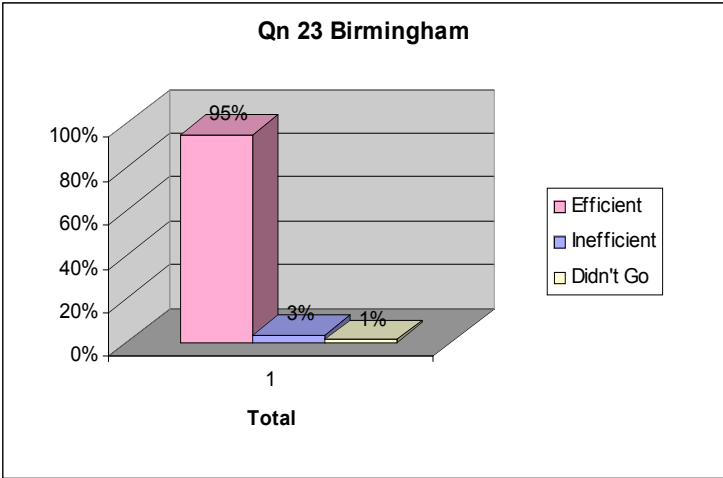
**Results overall**



<sup>372</sup> *Agenda for Reform*, at para 4.13.



**Results by individual court**



## **Summary**

Almost unequivocally, the responses to this question have been that the sampled courts are run on efficient lines. There was minimal qualifications comment, but of the comments that were received, they were almost invariably in the negative. One Reading respondent observed, "...we should never have been asked to swear affidavits within hearing range of the queue of visitors at the court. We were taken into a private after my wife burst into tears attempting to do this quietly so no one heard."<sup>373</sup> A Croydon Respondent also noted, "there was no privacy."<sup>374</sup> A Reading debtor curiously observed that the court was, "maybe too efficient."<sup>375</sup> The Justice committee would be eminently pleased with the trend in administrative efficiency exhibited by the responses to the *BCS 2005*.

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<sup>373</sup> *Reading, ref: CZ.*

<sup>374</sup> *Croydon ref: FY.*

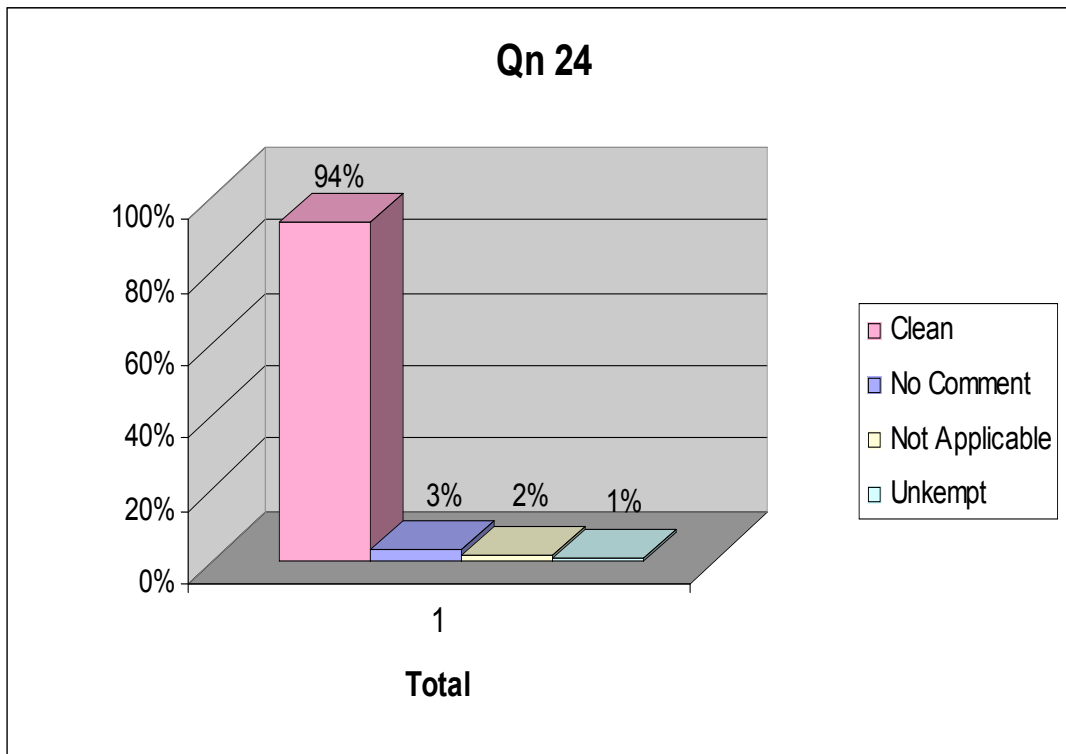
<sup>375</sup> *Reading ref: DT.*

**24. What was your impression of the bankruptcy court where your petition was heard, was it:**

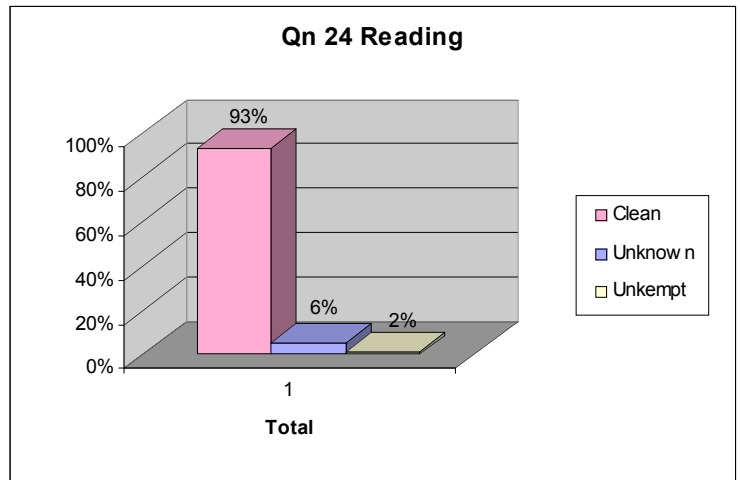
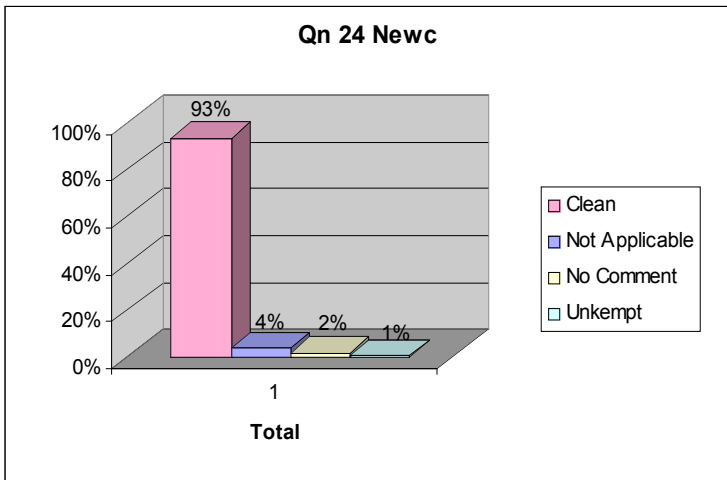
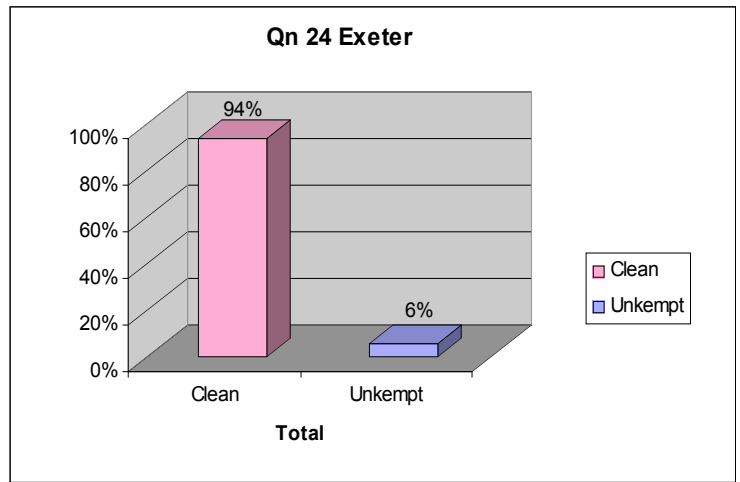
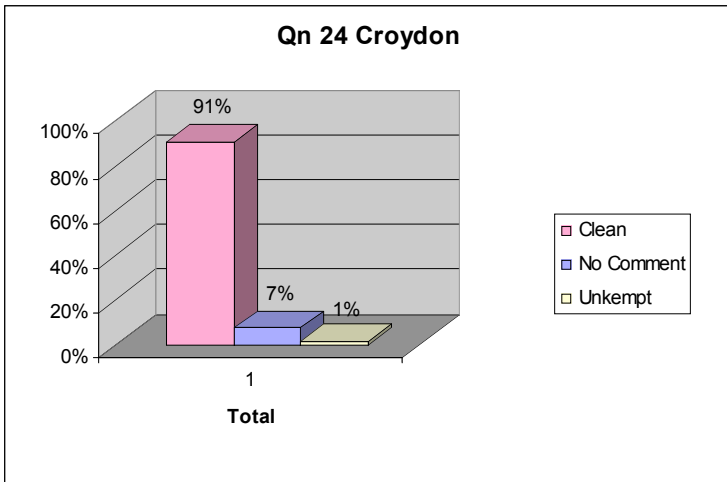
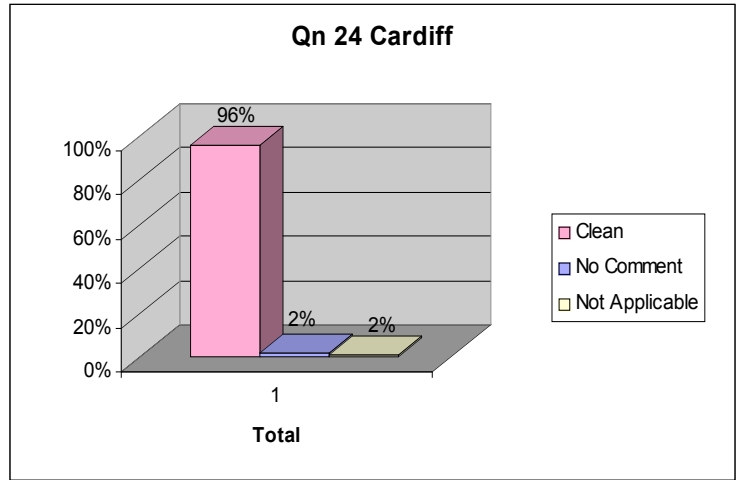
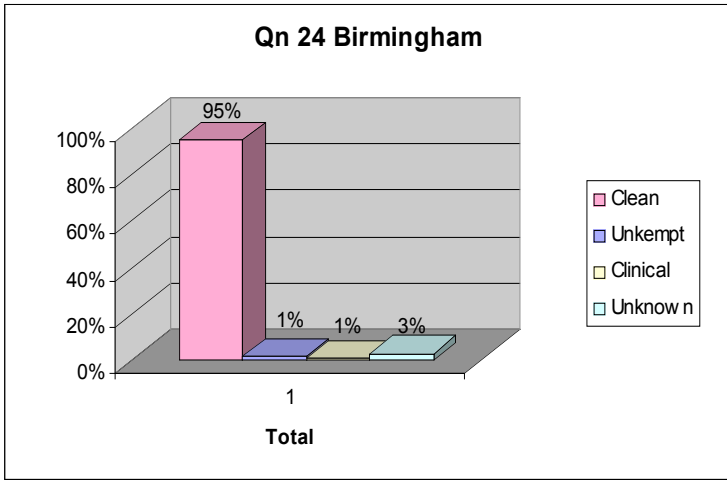
- a. Clean
- b. Unkempt

This question was added to the survey, for two reasons. Firstly, to break up the flow of the more serious questions by which it is surrounded and secondly to ascertain what the physical condition and tangible experience of going through the bankruptcy process was like for bankrupts. The details of the relevant courts are given in Table One, *vide supra*.

**Results overall**



**Results by individual court**



### **Summary**

There were very few qualifying statements in relation to this question. One Exeter respondent did add, “It was a new court house.”<sup>376</sup>

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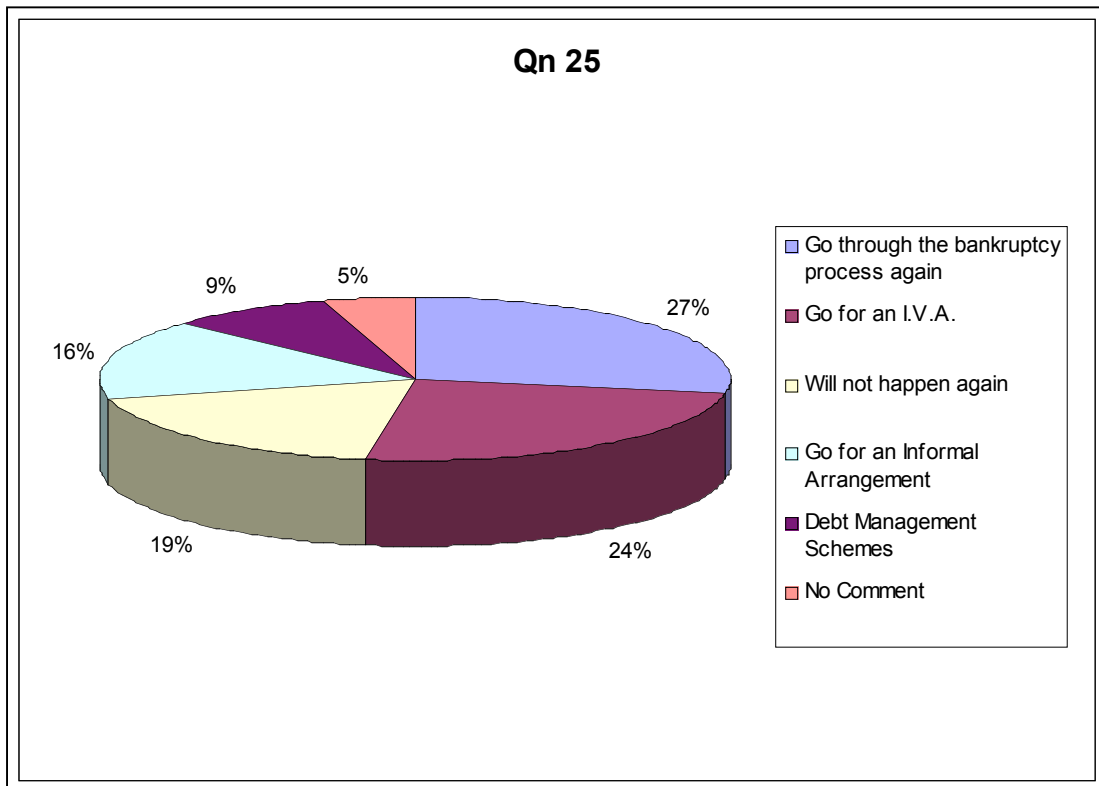
<sup>376</sup> *Exeter ref: X.*

**25. If you were faced with a situation of personal over indebtedness again would you again go through bankruptcy or would you instead try and undertake a different route, such as:**

- a. An Individual Voluntary Arrangement
- b. Debt management schemes
- c. An informal arrangement
- d. Go through the bankruptcy process again

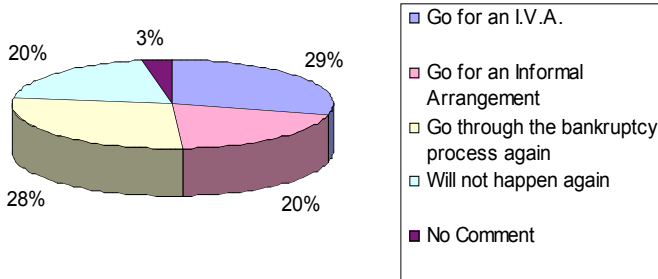
Repeat financial failure amongst over-indebted individuals is not wholly desirable in a society based on credit. However, individuals can and do find themselves in financially embarrassed circumstances on multiple occasions. If this happens and they have already experienced bankruptcy, what would their preferred exit route from their personally indebted state be?

**Results overall**

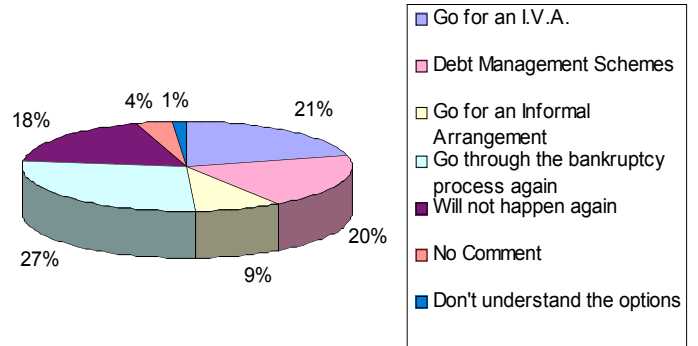


**Results by individual court**

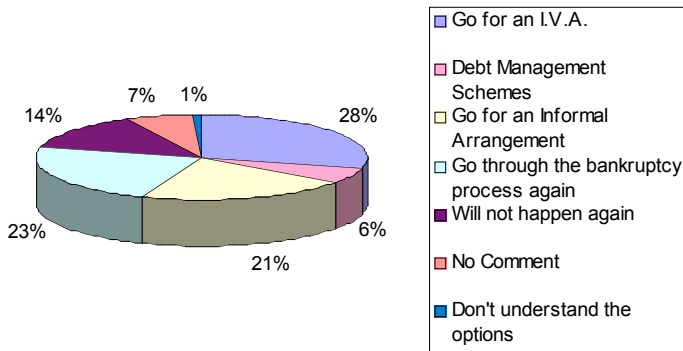
**Qn 25 Birmingham**



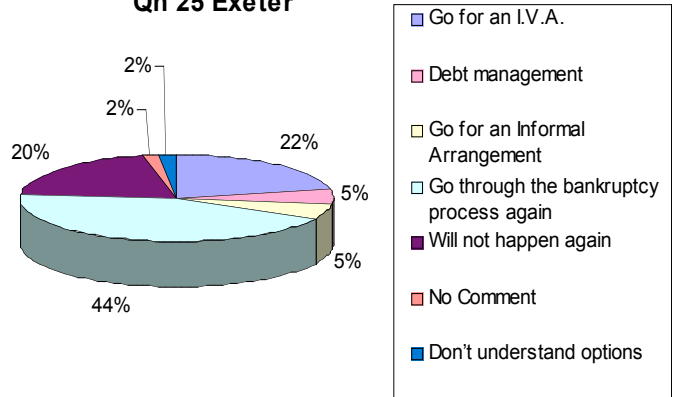
**Qn 25 Cardiff**



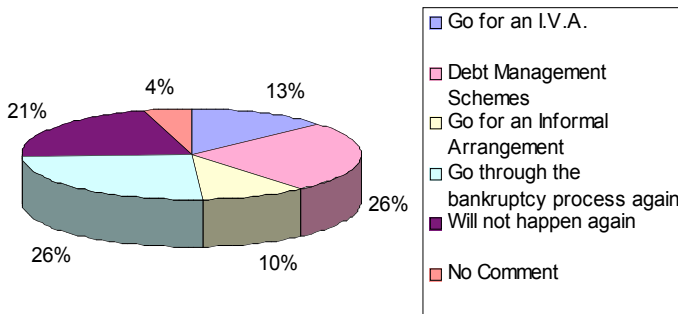
**Qn 25 Croydon**



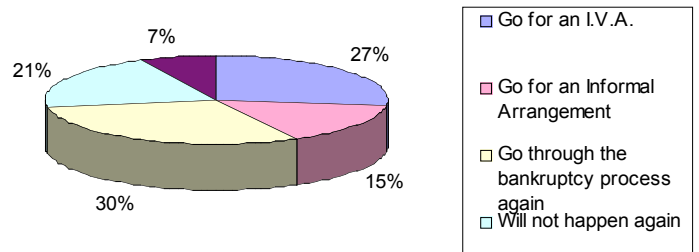
**Qn 25 Exeter**



**Qn 25 Newc**



**Qn 25 Reading**



### **Summary**

Encouragingly, in the sense that the procedure must not be too onerous, bankruptcy at 27% appears to be the favoured route for individuals who have already past through the bankruptcy system. Overwhelmingly respondents observed that they would not be getting into debt again, but it is perhaps encouraging that the system is approved by those with the most intimate knowledge of it.



**26. Have you had any experiences post your discharge that you can only ascribe to your past status as a bankrupt?**

- a. No
- b. Yes, please comment

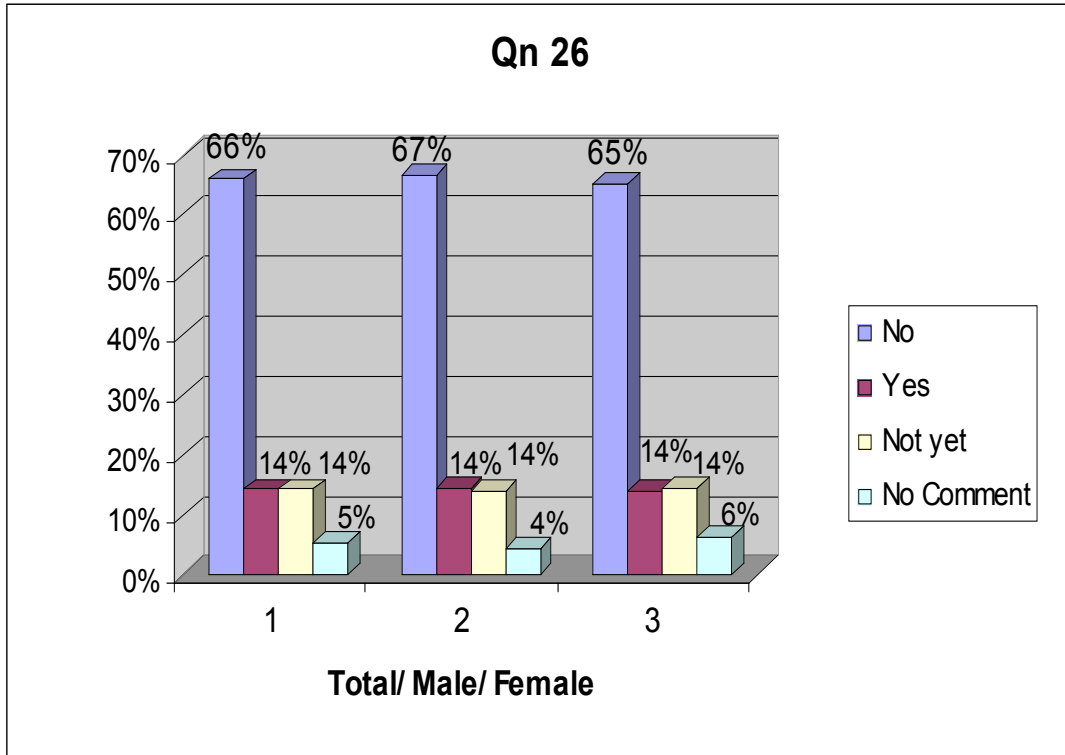
Are there residual effects of bankruptcy that last longer than the civil status and capacity restrictions promulgated by the Insolvency Act 1986, as amended? Do bankrupts suffer from any impediments that are not legally proscribed due to their past status of a bankrupt? In their 1975 report the Justice committee enquiring into the state of the bankruptcy laws noted, “where there is no acceptable alternative to bankruptcy, the treatment accorded to the bankrupt and his dependants is no harsher than is reasonably necessary for the protection of the interests of his creditors and of society generally.”<sup>377</sup> Question 26 of the *BCS 2005* was designed to ascertain whether adverse or positive consequences can follow a bankruptcy. In essence, have the expectations of the 1975 Justice committee been met, particularly post discharge? Or as one judge has recently opined, can bankrupts expect to resume a “normal life.”<sup>378</sup>

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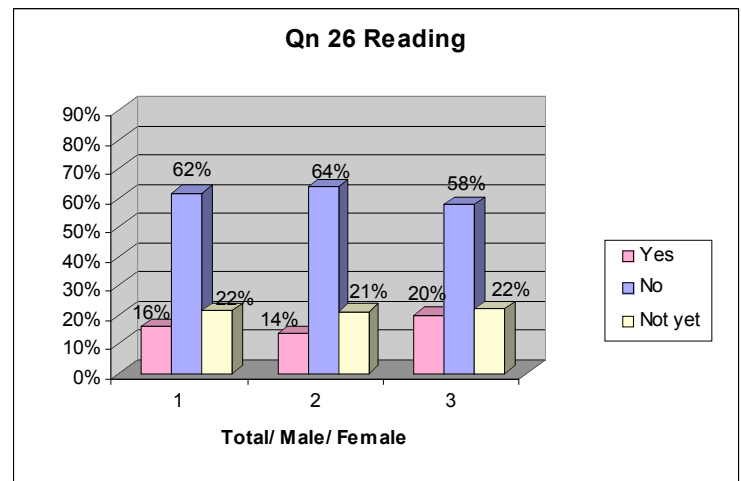
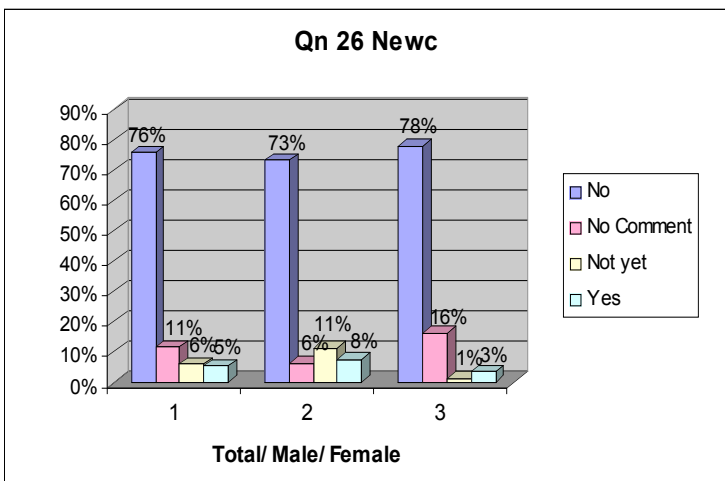
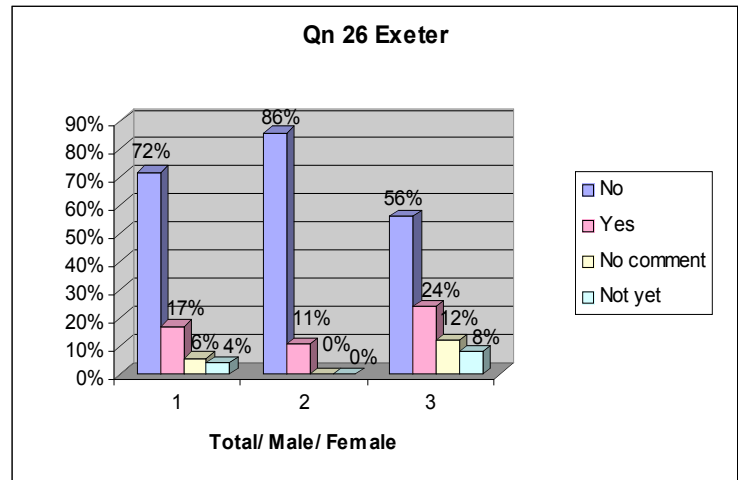
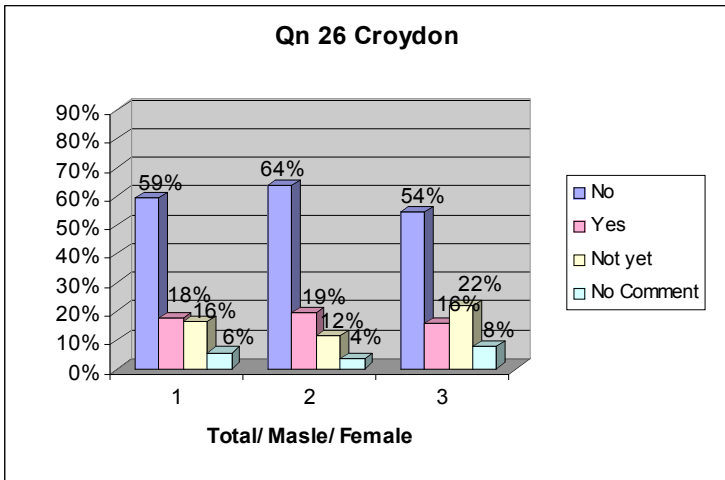
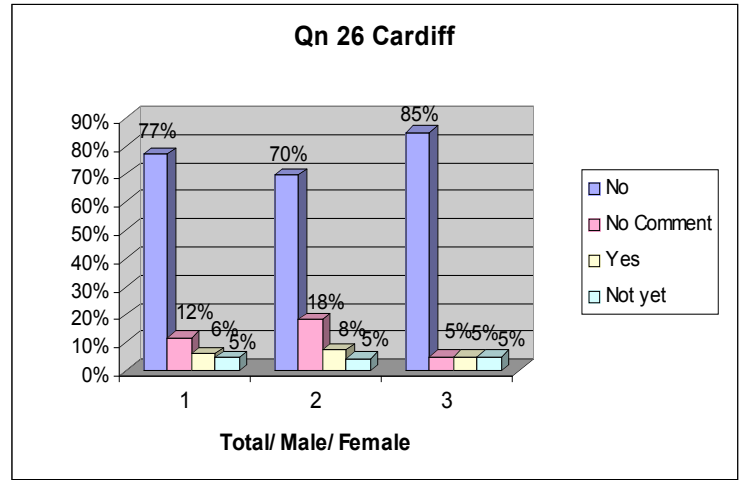
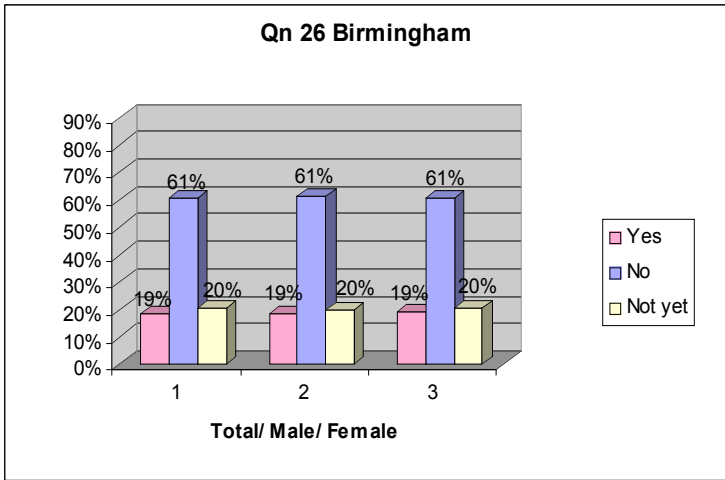
<sup>377</sup> Justice. *Bankruptcy – a Report by Justice*. Stephens & Son, London, 1975, at page V.

<sup>378</sup> *per* Moore-Bick, LJ in *Financial Services Compensation Scheme Ltd v Larnell (Insurances) Ltd* [2005] EWCA Civ 1408, at paragraph 58 where he notes, “a natural person can expect to obtain a discharge from bankruptcy which will enable him to resume normal life.” See also: Sir Donald Nicholls VC in *Re Paramount Airways (in administration)* [1993] Ch 223, where the learned judge notes, “The law is more merciful to an individual...in due course, he is discharged from bankruptcy and is permitted to resume a normal life, freed from the burden of his past debts.”

**Results overall**



**Results by individual court**



## **Summary**

The trend seems to be a fairly resounding NO in terms of post bankruptcy residual consequences. Bankruptcy from the perspective of the bankrupt could therefore be deemed to be a truly successful fresh start mechanism in the majority of cases from our sample courts. There were however some responses in the positive. That is to say some respondents were treated differently because of their bankruptcy. One Croydon respondent noted, “problems getting bank account.”<sup>379</sup> A further Croydon respondent noted, “Banks and Building societies aren't keen for your custom. But you respect money more.”<sup>380</sup> An Exeter respondent noted, “difficulty in reinstating bank facilities and having to find £60 to cover discharge details which made no difference yet.”<sup>381</sup> A Cardiff respondent noted, “very high mortgage repayment prices.”<sup>382</sup> A Birmingham respondent noted, “uninvited letters offering loans at ridiculously high % rates...difficulties over having a personal bank account...lost respect from people.”<sup>383</sup> A further Birmingham respondent noted, “trying to get a bank account, I literally had to prove I was not a criminal and was not going to rob the bank.”<sup>384</sup> Interestingly another Birmingham respondent noted, “I recently had a credit company asking for payment of a loan which had been sold to them by a bank that was filed in my bankruptcy.”<sup>385</sup> A further Birmingham respondent noted, “unable to have a debt card for further 6 years with my bank [BANK C].”<sup>386</sup> Similar sentiments were expressed in relation to question 7, and the responses to this question are outlined above, the two questions taken together show a rather large theme inasmuch as bankrupts are having real substantive difficulties in obtaining banking facilities, a key tool in a credit based economy.

It seems as if some bankrupts are also experiencing future employment difficulties due to their status as a bankrupt. One Exeter respondent observed that, “job applications and interviews”<sup>387</sup> had changed post bankruptcy. One Exeter respondent also observed, “homeless, penniless, on benefits, alcohol and drug abuse.”<sup>388</sup>

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<sup>379</sup> *Croydon ref: FH.*

<sup>380</sup> *Croydon ref: GX.*

<sup>381</sup> *Exeter ref: R.*

<sup>382</sup> *Cardiff ref: A.*

<sup>383</sup> *Birmingham ref: HA.*

<sup>384</sup> *Birmingham ref: GR.*

<sup>385</sup> *Birmingham ref: GI.*

<sup>386</sup> *Birmingham ref: IO.* Respondent's italicised emphasis.

<sup>387</sup> *Exeter ref: AD.*

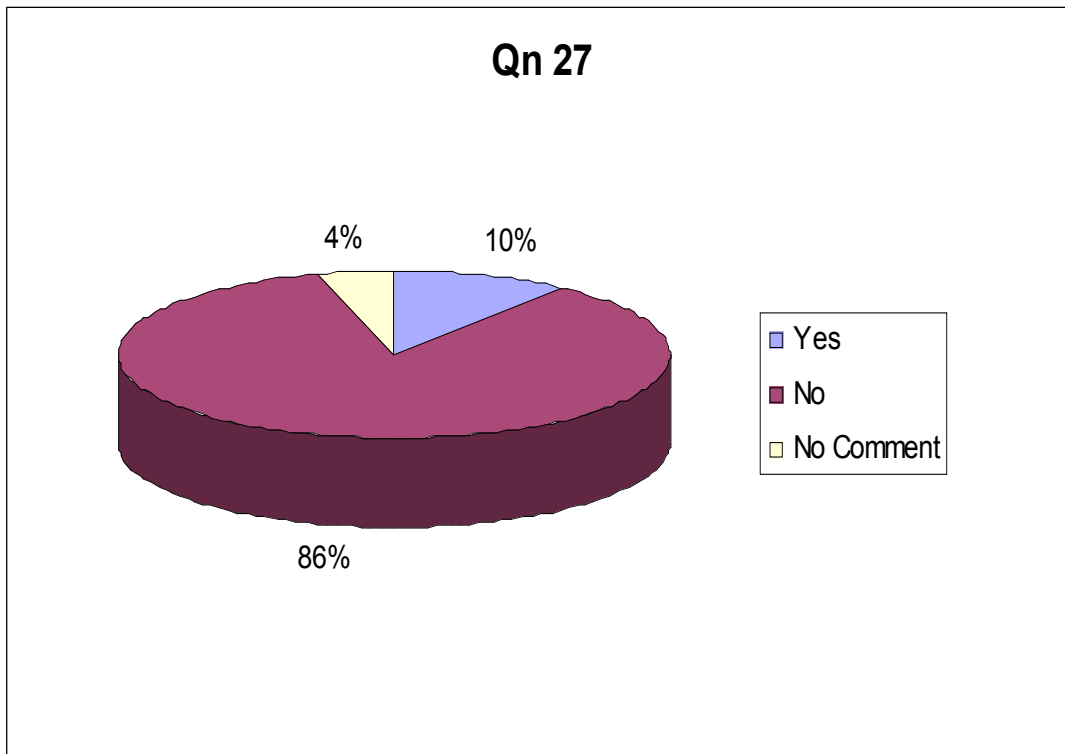
<sup>388</sup> *Exeter ref: BU.*

**27. Do you think any possible lack of knowledge on your behalf in relation to insolvency procedures led to you going into bankruptcy as opposed to another regime?**

- a. No
- b. Yes, please comment

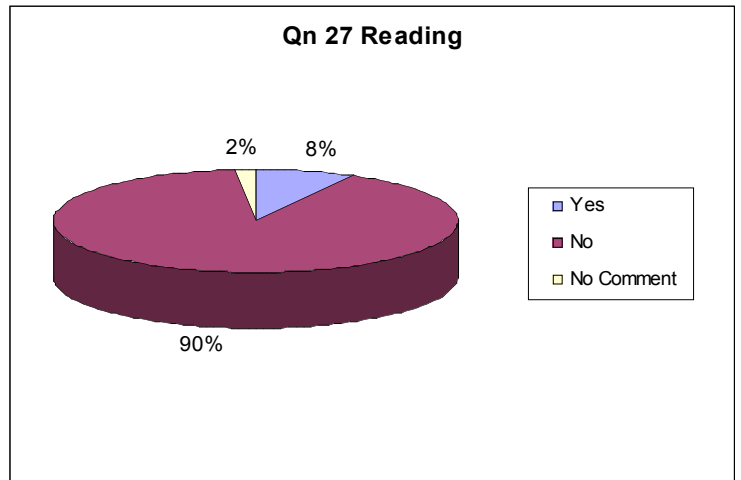
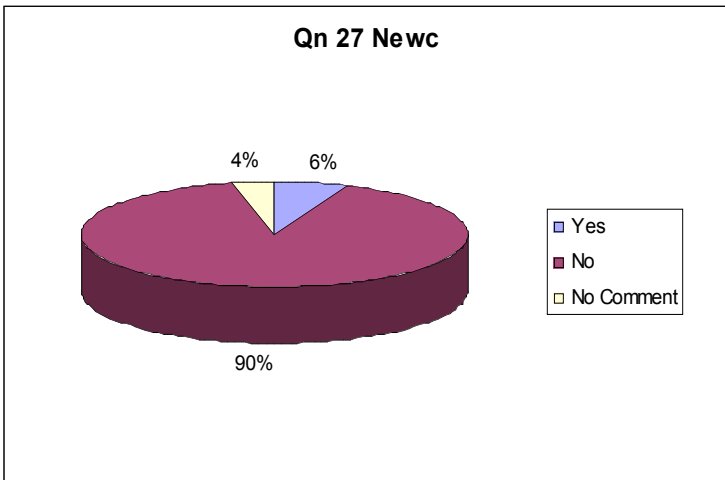
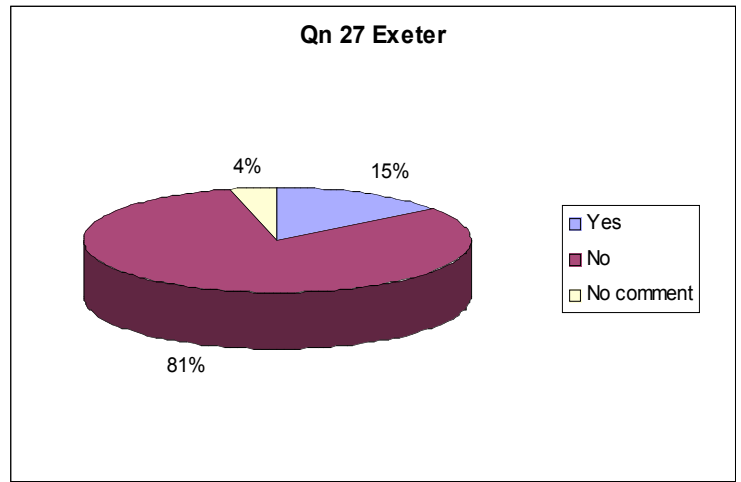
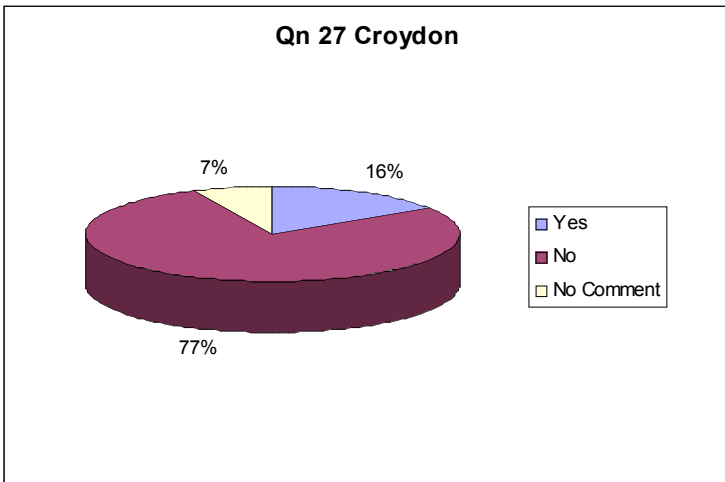
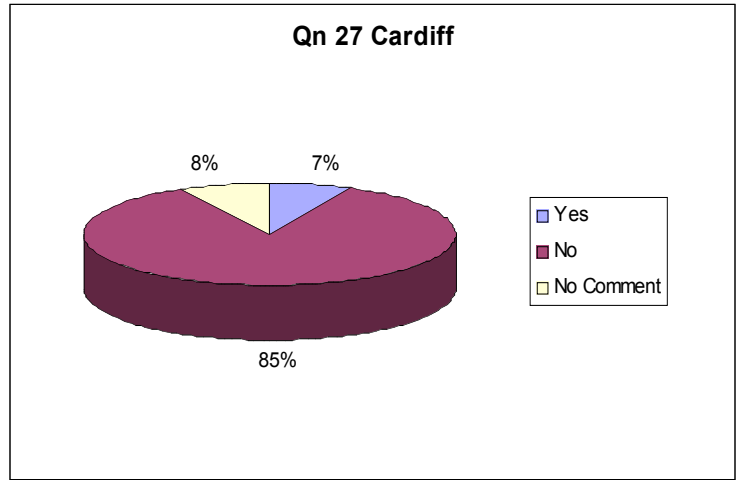
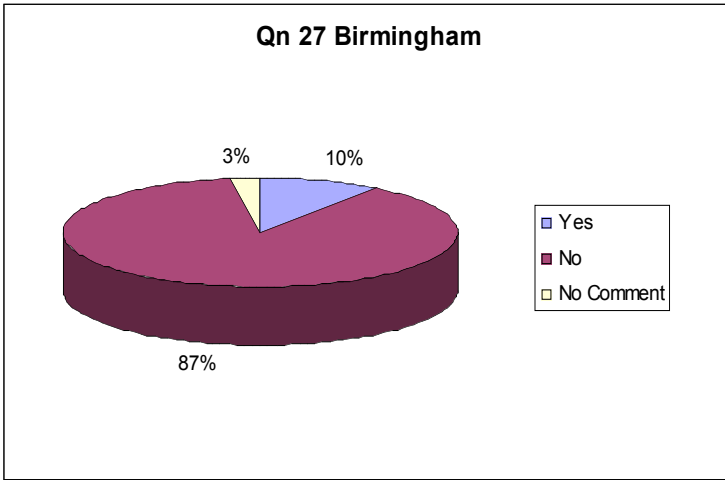
During the passage of the Insolvency Bill through the House of Lords in 1985, Lord Hutchinson of Lullington observed that the Cork Committee set out to recommend a system of insolvency laws that was, “simple and easily understood...expressed in modern language.”<sup>389</sup> Do the experiences of the bankrupt show that the Insolvency Act 1986 and subsequent amending statutes have achieved this objective?

**Results overall**



<sup>389</sup> *per* Lord Hutchinson of Lullington, Hansard, HL, 15<sup>th</sup> January 1985, vol.458, col. 908. See the *Cork Report* at paragraph 198(k).

**Results by individual court**



## **Summary**

The decision to progress down the route of bankruptcy does not seem to have been reached after a period of informed reflection amongst our sample, but rather of a choice necessitated by inevitable circumstance. Consequentially there are few qualifying answers to this question. One Newcastle respondent observed that they received, “bad advice from insolvency practitioner...insolvency practitioners were not helpful and made me feel like I had committed a crime.”<sup>390</sup> A Cardiff respondent noted, “not enough information on how to gat an IVA and being misled by these companies.”<sup>391</sup>

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<sup>390</sup> *Newcastle ref: CX.*

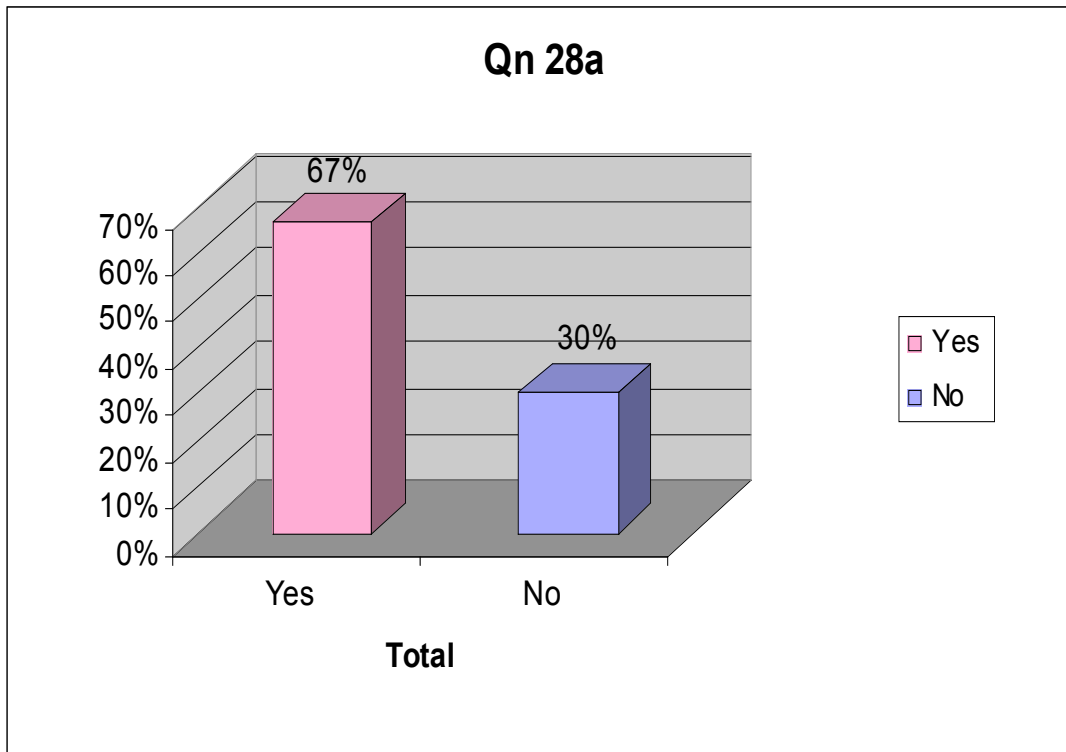
<sup>391</sup> *Cardiff ref: J.*

**28a. Before you went through the bankruptcy process, did the fear of any possible consequences pray on your mind?**

- a. No
- b. Yes, please comment

This question is related to question 19. We wanted to test if the bankrupt's responses were consistent across the survey by asking a number of similar questions. This question was designed to try and elicit the same kind of responses as for question 19 in relation to the social perceptions of bankruptcy and its consequences from the perspective of the bankrupt. Essentially, do over-indebted individuals believe that, "the debtor, by becoming bankrupt, is not someone in whom society can have trust or confidence."<sup>392</sup> What did prospective bankrupts feel the perception of them would be?

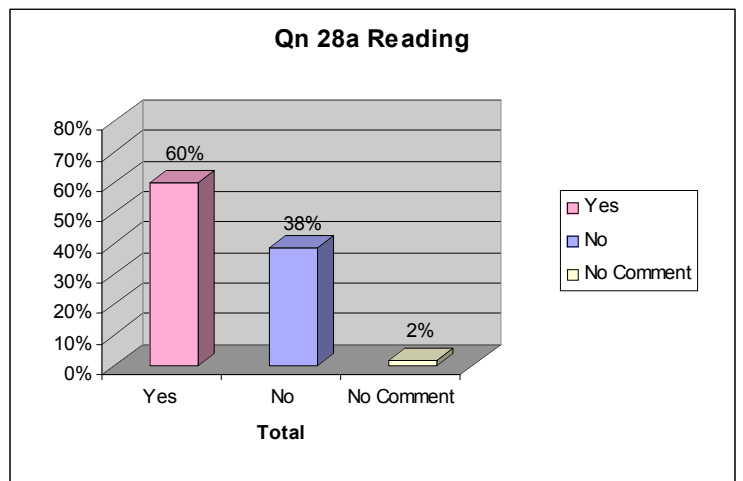
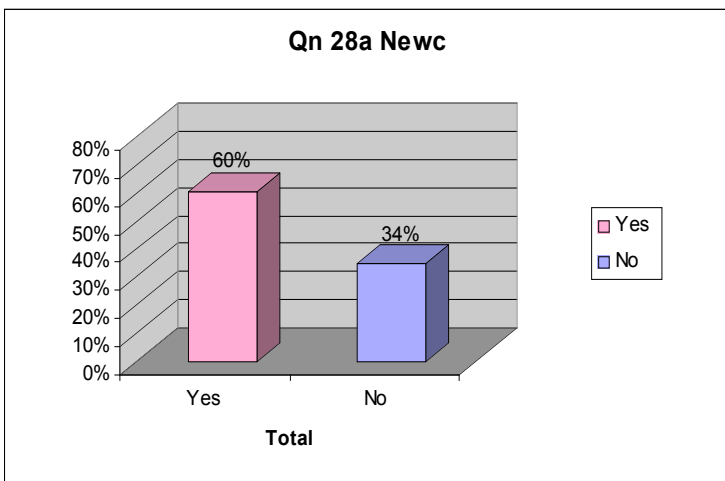
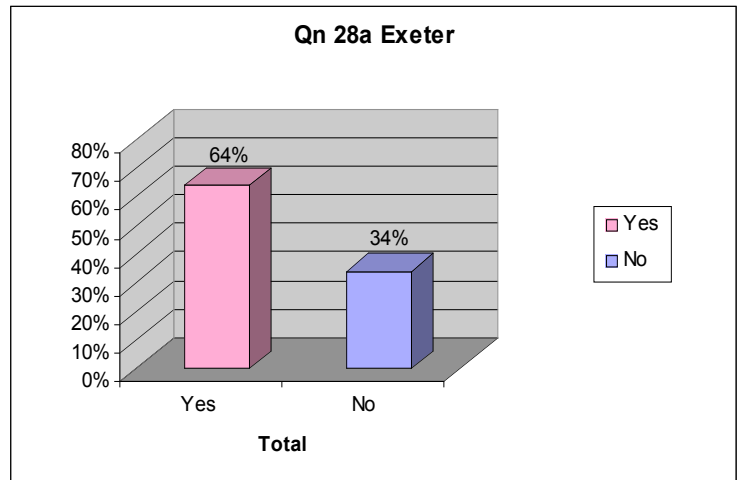
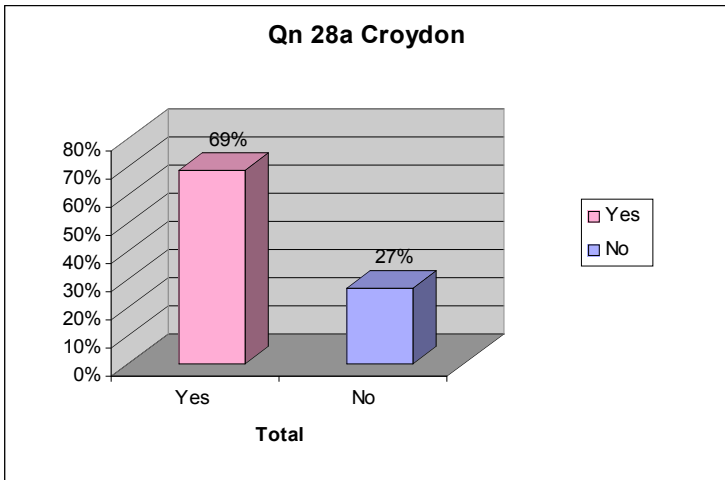
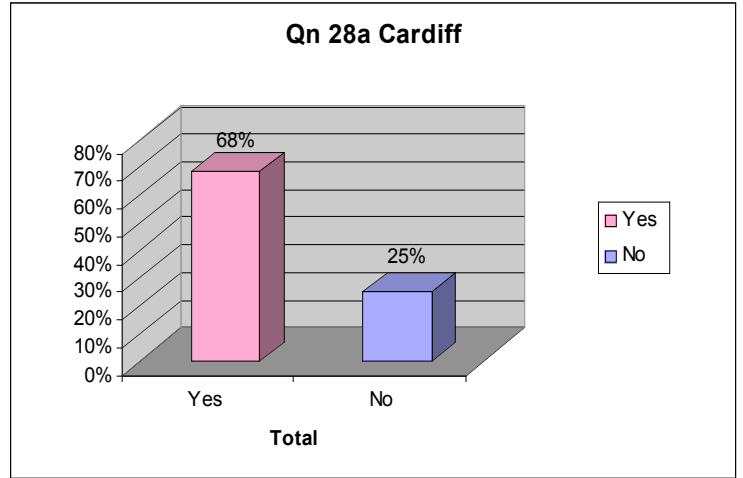
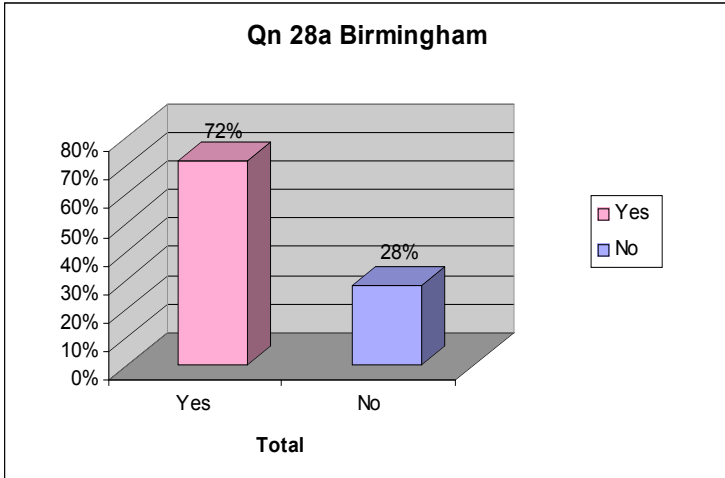
**Results overall**



<sup>392</sup> *Productivity and Enterprise*, at para 1.21.



**Results by individual court**



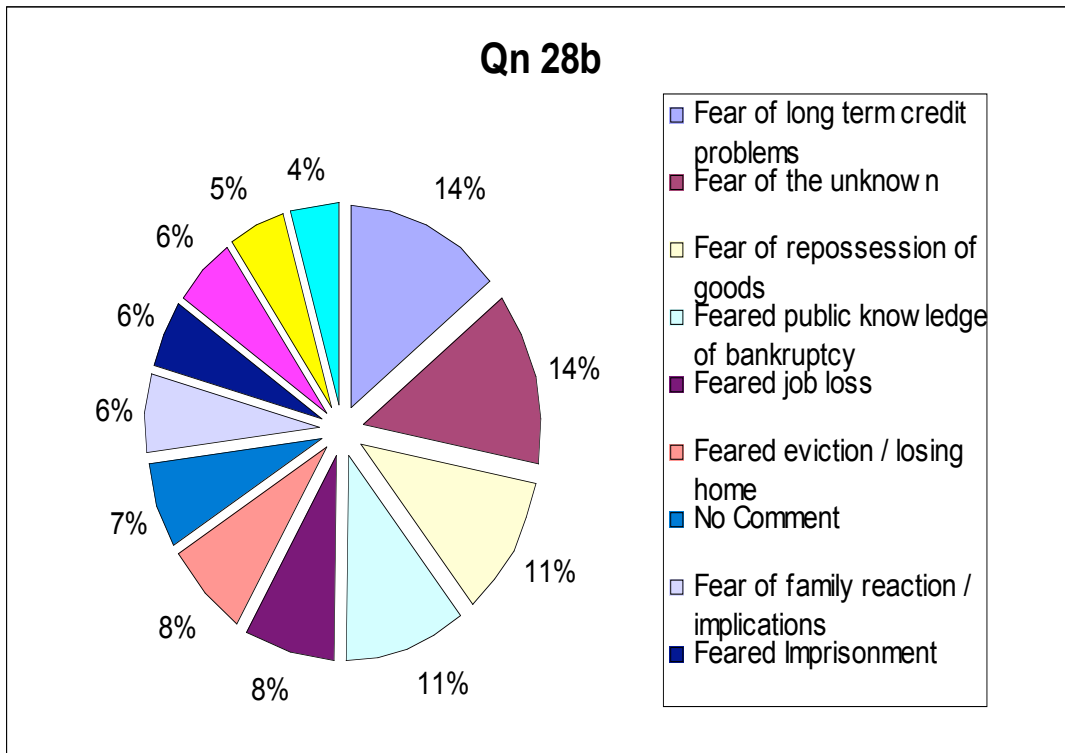
### **Summary**

The majority of respondents did envisage some form of consequence resulting from their use of the bankruptcy regime (67%). A great number of respondents qualified what these possible consequences might be so we have inserted a 28b section to examine what these perceived consequences were.

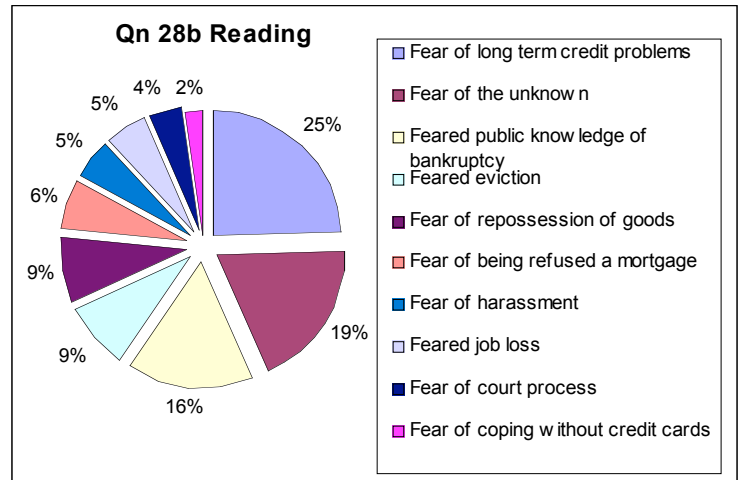
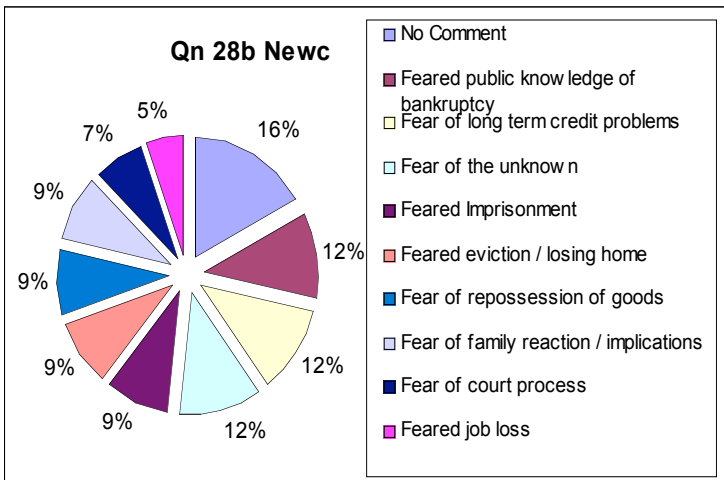
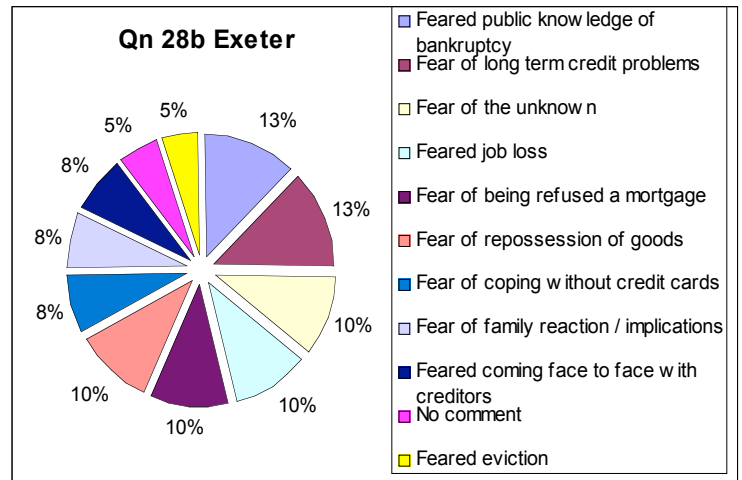
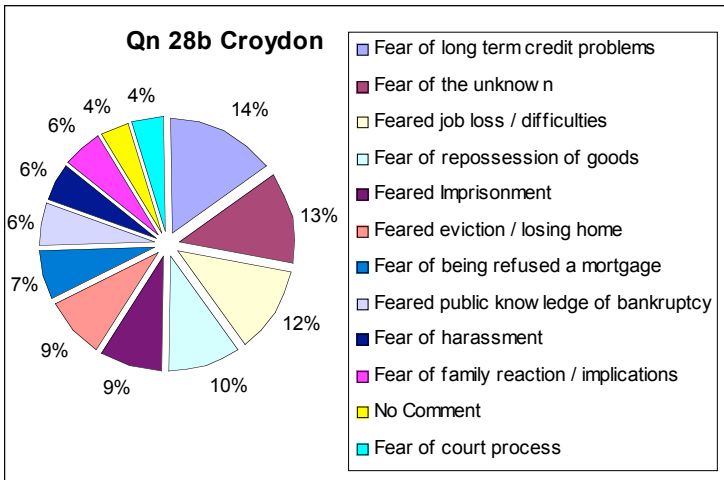
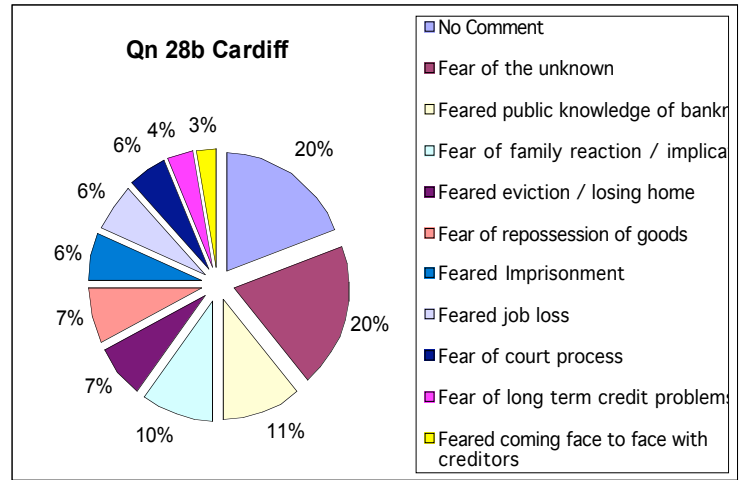
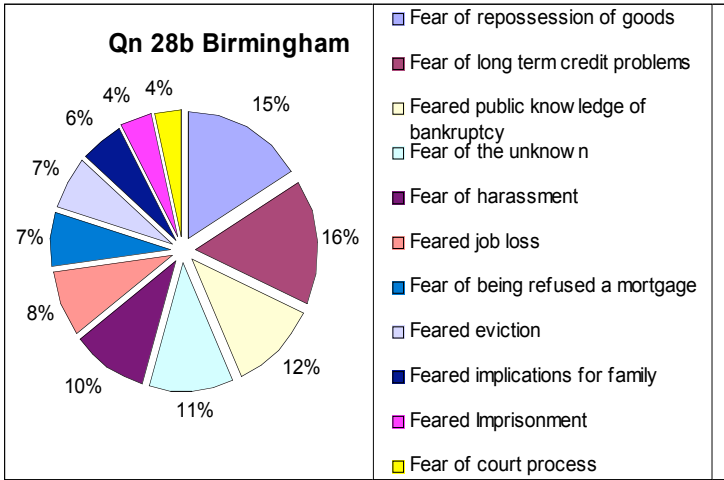
**28b. What were those possible consequences that you expected?**

This question follows on from question 28. If prospective bankrupts did fear possible consequences, what were these?

**Results overall**



**Results by individual court**



## Summary

Responses to this question were as expected hugely disparate as evidenced by the above tables. There was a particular group of responses that dwelt on the perceived negative aspects of personal over-indebtedness. A number of Newcastle respondents, took a particularly Dickensian approach to their position thinking that imprisonment may occur due to their conduct; for example one debtor noted, “I thought I would go to prison.”<sup>393</sup> A number of Croydon respondents also noted, “prison”<sup>394</sup> as a possible consequence of their over-indebtedness. One in particular observed, “I thought I would be sent to prison (silly thought).”<sup>395</sup> A Cardiff respondent noted, “I an my wife thought we might have to go to prison or made to pay the debt back over the next 15 yrs.”<sup>396</sup> A Reading respondent noted, “I thought my picture would be in the newspaper.”<sup>397</sup> A Cardiff respondent noted, “loosing everything; employment, home, car. It makes you feel sub-human.”<sup>398</sup> In *Smith v. Braintree DC* Lord Jauncey opined, “not only has the legislative approach to individual bankruptcy altered since the mid-19<sup>th</sup> century, but social views as to what conduct involves delinquency, as to punishment and as to the desirability of imprisonment have drastically changed...”<sup>399</sup> It is respectfully submitted that the responses received from bankrupts to the *BCS 2005* to this question and question 17 (stigma) and 18 (consequences of bankruptcy) rebut this proposition in relation to societal views of over-indebtedness. Society still views personal over-indebtedness as a form of delinquent behaviour and our sampled bankrupts’ experiences evidence that prison and extreme social stigma are viewed as corollaries of bankruptcy by prospective bankrupts.

A further group of responses focused on the possibility of loss of the home and personal possessions. One Croydon respondent observed, “loosing essential assets such as the family car.”<sup>400</sup> A Newcastle respondent thought that, “Bailiffs coming to my door! (being scared in my home).”<sup>401</sup> A Further Newcastle respondent opined, “thought they might of done me for frund, etc.”<sup>402</sup> an Exeter respondent noted, “no furniture for the children.”<sup>403</sup>

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<sup>393</sup> *Newcastle ref: P*. See also *Newcastle ref: BY* and *Newcastle ref: CH*.

<sup>394</sup> *Croydon ref: FA*. See also *Croydon ref: FQ* and *Croydon ref: GI*.

<sup>395</sup> *Croydon ref: GX*.

<sup>396</sup> *Cardiff ref: J*.

<sup>397</sup> *Reading, ref: DA*.

<sup>398</sup> *Cardiff ref: N*.

<sup>399</sup> [1990] AC 215 at 237-8, as cited in *Milman* at page 23.

<sup>400</sup> *Croydon ref: HO*.

<sup>401</sup> *Newcastle ref: F*.

<sup>402</sup> *Newcastle ref: C*.

<sup>403</sup> *Exeter ref: AQ*.

One Newcastle respondent did not feel that the consequences of bankruptcy were worth the reduction in personal over-indebtedness of £75,000. They observed, “was ok as an option but not worth the consequences or effects it had!”<sup>404</sup>

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<sup>404</sup> *Newcastle ref: FC.*

**29. How would you sum up the bankruptcy process that you have been through to a friend or colleague?**

In *Agenda for Reform* it was noted in relation to bankruptcy that, “debtors who have found the process to be relatively ‘soft’ spread the word that bankruptcy is not so bad, and thus more and more debtors opt for bankruptcy.”<sup>405</sup> If this is in fact true and if a bankruptcy regime is viewed as a being a “soft” option or even worse a “debtors’ charter” then the insolvency laws may fall seriously into disrepute. However, if the insolvency laws and system are viewed as too onerous then they will raise the censure of its users. We do not want to fall into a position where the insolvency laws, and particularly bankruptcy law is viewed as a system that, “exhausts finances, patience, courage, hope; so overthrows the brain and breaks the heart.”<sup>406</sup> Question 29 of the *BCS 2005* was designed to ascertain what message bankrupts are conveying to other individuals. Is the impression being given by debtors that bankruptcy as a legal state is a convenient method of ridding oneself of consumer debt, is the bankruptcy process in the words of the Justice committee, “the further education college for debt avoidance”<sup>407</sup> and if so are bankrupts teaching unwholesome lessons to other members of society?

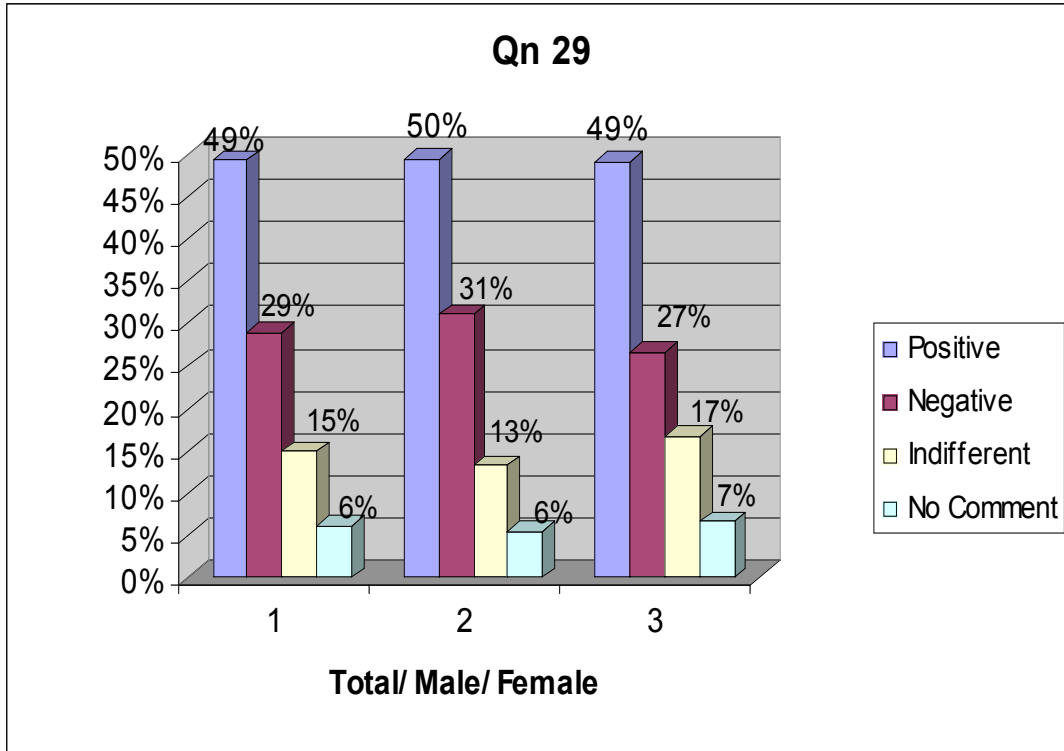
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<sup>405</sup> *Agenda for Reform*, at para 4.29.

<sup>406</sup> Dickens, C. *Bleak House*. Penguin Classics, London, 1985, Chapter One, as cited in the *Cork Report* at paragraph 724.

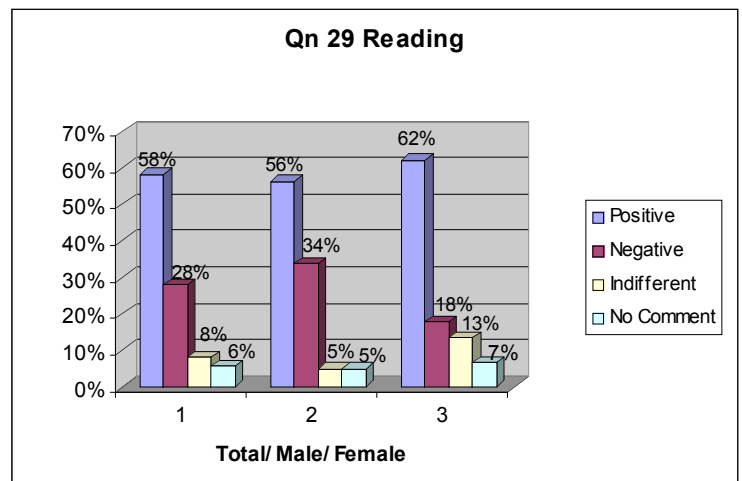
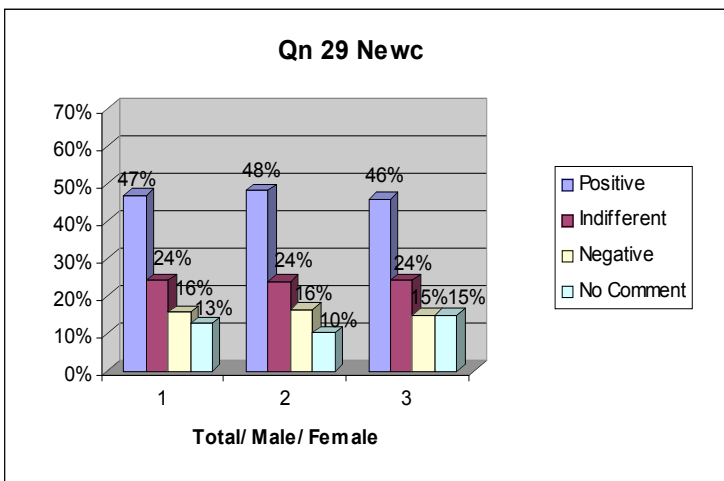
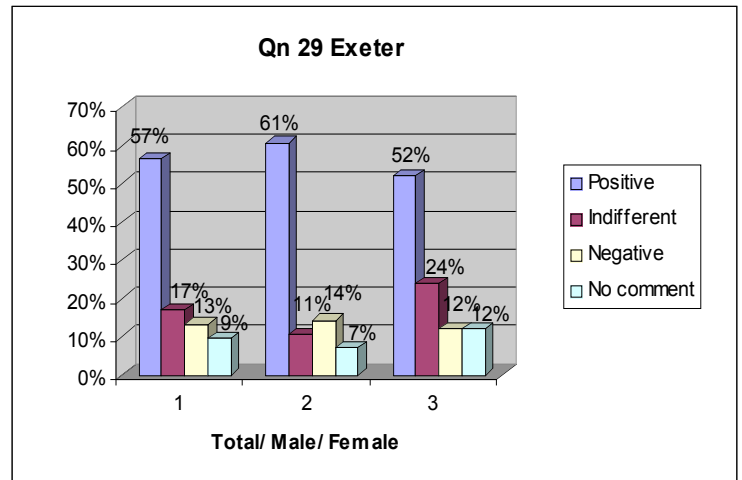
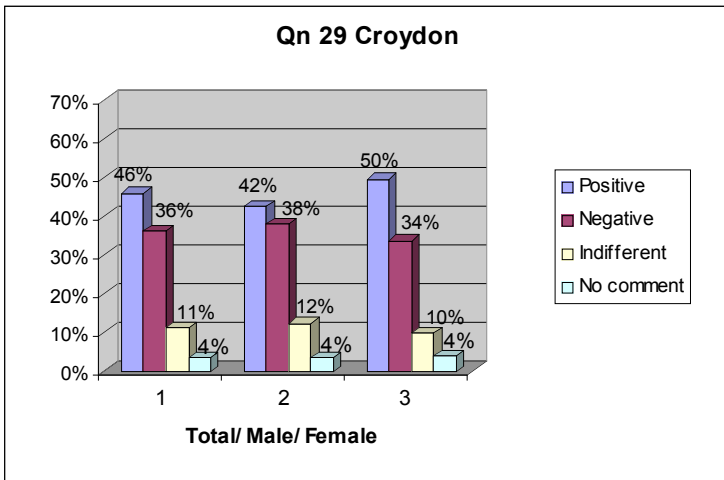
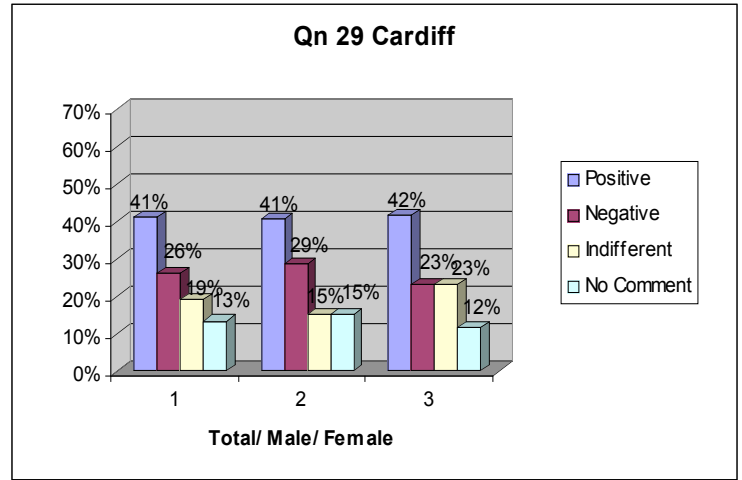
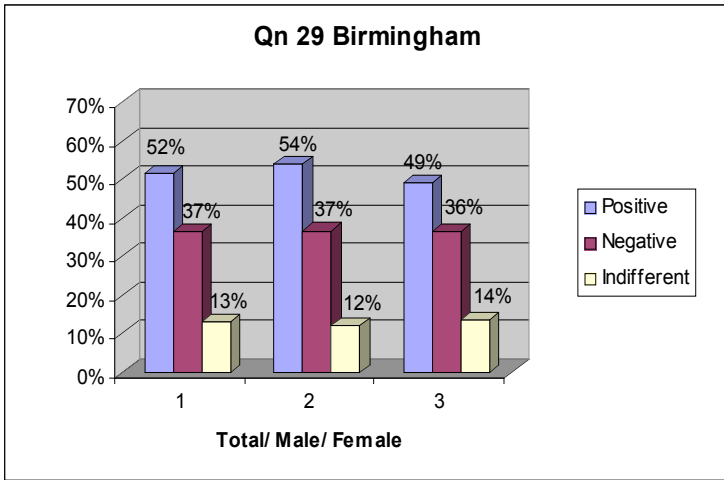
<sup>407</sup> *Ibid* at para 4.30.

**Results overall**





**Results by individual court**



## **Summary**

From a procedure user perspective the responses to question 29 are broadly encouraging, with 49% overall giving positive responses. One respondent's qualification of his/her answer sums up a great many of the responses; he/she observed in relation to the bankruptcy process that it was, "quite easy not as bad as you think."<sup>408</sup> One Newcastle respondent was particularly positive when they noted, "I'd say everyone that I spoke to in court and insolvency were very nice and make me feel like I would be ok and put my mind at rest they gave me lots of information that I needed."<sup>409</sup> Another Newcastle debtor praised the Insolvency Service when in answer to this question he/she noted, "okay – insolvency service very very helpful + supportive."<sup>410</sup> A further Newcastle respondent noted, "all people I encountered through the process were lovely people whom treat you with respect and kindness."<sup>411</sup> Praise for the system was also forthcoming in Reading where one debtor respondent noted, "If you don't have a house or a flash car, stop the sleepless nights, worry, thinking about topping yourself and stress. It is a viable option. It was like a big weight had been lifted."<sup>412</sup> Praise for the system was also forthcoming in Croydon. One respondent opined, "Although the word bankruptcy frightens most people the process is relatively easy and there's plenty of people to advise you."<sup>413</sup> A Birmingham respondent also noted, "was very nervous when I got to the court going to different departments, but every one was very kind and helpful and understanding."<sup>414</sup> Another Birmingham respondent noted, "it's very emotional, but the staff try and put you at ease."<sup>415</sup> Another Croydon respondent observed, "Do it. Dealing with *one* person is the best way, telephone calls stop, threats, intimidation, people banging on your door, STOP."<sup>416</sup> A Cardiff respondent opined, "It was a massive relief for me although I was scared and the people who dealt with my case were very professional yet sympathetic."<sup>417</sup>

Relief from indebtedness was also one of the major responses to this question falling within the positive responses. One Newcastle respondent's feelings of relief, "A relief as I was near to suicide"<sup>418</sup> was indicative of a great many responses that emphasised the relieving aspects of the bankruptcy process and ultimately the discharge. This respondent was however notable for the seriousness of mental state that they were relieved from. A Croydon respondent noted, "I would

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<sup>408</sup> Reading, ref: CN.

<sup>409</sup> Newcastle ref: K.

<sup>410</sup> Newcastle ref: AN.

<sup>411</sup> Newcastle ref: CU.

<sup>412</sup> Reading ref: DP.

<sup>413</sup> Croydon ref: GU.

<sup>414</sup> Birmingham ref: IU.

<sup>415</sup> Birmingham ref: IE.

<sup>416</sup> Croydon ref: GW.

<sup>417</sup> Cardiff ref: I.

<sup>418</sup> Newcastle ref: Z.

be 100% behind them best thing I've ever done would recommend anyone to go and do it they treated me Just as normal as the next person brilliant."<sup>419</sup> A Croydon respondent observed, "honest, fair, efficient, understanding – but still emotionally v.distressing."<sup>420</sup> An Exeter respondent noted, "Best thing we have ever done to relieve us of extreme worries."<sup>421</sup>

There are however negative impression responses (29% overall). One respondent noted, "The most frightening experience of my life!! Going to court somewhere Ive never been, I felt like a criminal."<sup>422</sup> A Newcastle debtor observed that the bankruptcy process was, "very stressful degrading process, having your name in the newspaper for all to see, makes you feel like a complete failure you loose all your self confidence."<sup>423</sup> Another respondent observed, "people who know me have made it hell."<sup>424</sup> One Exeter respondent noted, "After 52 years in business – the last 23 years in partnership with my wife I see bankruptcy as the ultimate badge of failure."<sup>425</sup> A Cardiff respondent noted, "try another route if possible and think of the consequences it would have on your life."<sup>426</sup> Another Cardiff respondent noted, "nightmare."<sup>427</sup> A third Cardiff respondent noted, "there can be nothing worse I could possibly experience, not even a family death caused as much anguish."<sup>428</sup>

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<sup>419</sup> *Croydon ref: FJ.*

<sup>420</sup> *Croydon ref: HM.*

<sup>421</sup> *Exeter ref: M.*

<sup>422</sup> *Newcastle ref: C.*

<sup>423</sup> *Newcastle ref: G.*

<sup>424</sup> *Newcastle ref: EZ.* See also *Croydon ref: GP* referring to the bankruptcy process as "HELL."

<sup>425</sup> *Exeter ref: AZ.*

<sup>426</sup> *Cardiff ref: C.*

<sup>427</sup> *Cardiff ref: D.*

<sup>428</sup> *Cardiff ref: N.*

**30. Did you think the judge that heard your case was fully conversant with insolvency law?**

- a. Yes
- b. No

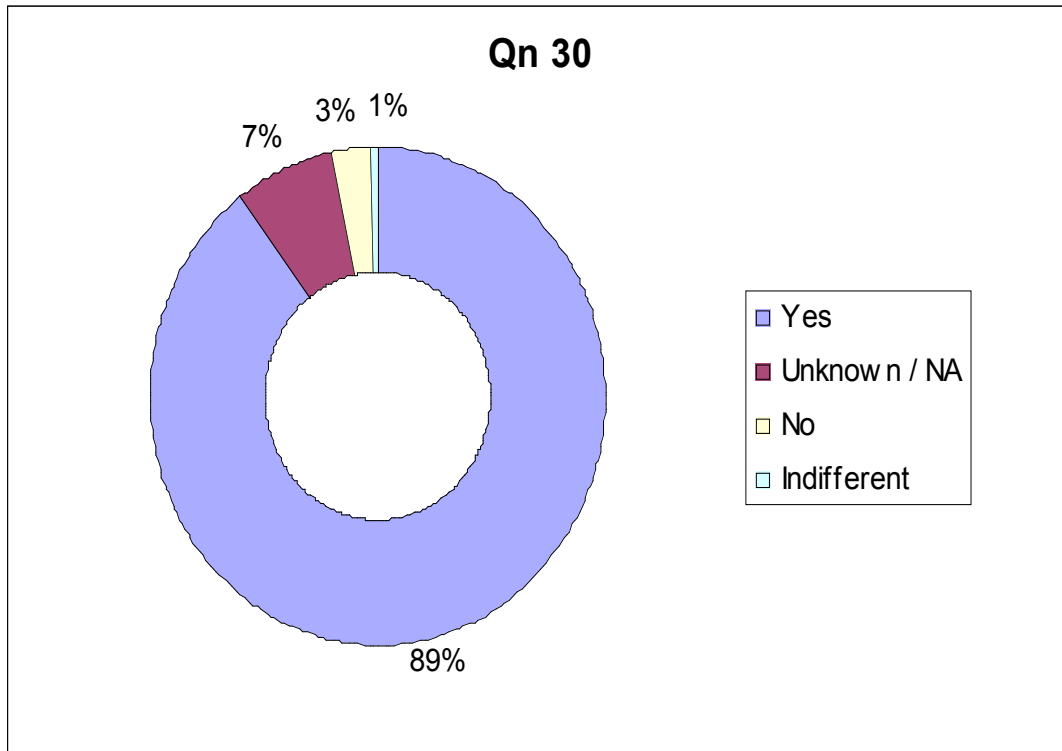
In a recent article entitled *Business as Usual in the County Court?*<sup>429</sup> Lightman questioned the appropriateness of certain chancery related cases being heard in the County Court. In analysing two recent Court of Appeal decisions<sup>430</sup> that criticised the handling of two undue influence cases heard by non-specialist district judges, the author concluded that there might be occasions when cases should be transferred to the Chancery County Court to ensure that suitably qualified judges hear the case. Question 30 of the *BCS 2005* is designed to elicit from the lay user their impressions of whether the judge hearing their bankruptcy case was sufficiently conversant with the relevant legal rules to deal with the matters arising before them. It is therefore a question designed to test to some extent Lightman's conclusions, but in a bankruptcy context. Do bankruptcy court users in fact consider that the judge hearing the case was sufficiently qualified? A caveat obviously applies, being that the bankrupt is a non-specialist who might not be able to ascertain whether the judge seems familiar or not, however, it is the bankrupts' experience and perception that this survey is seeking to ascertain.

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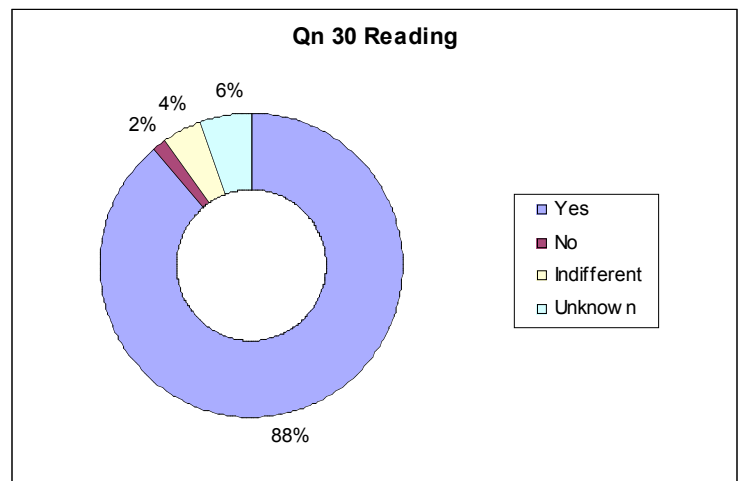
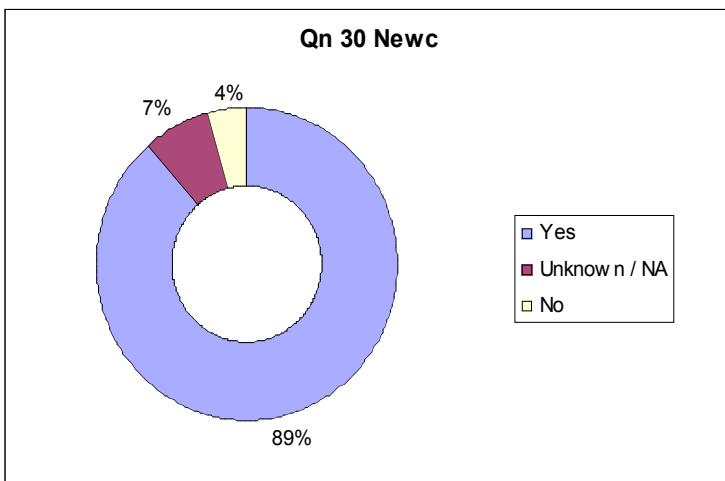
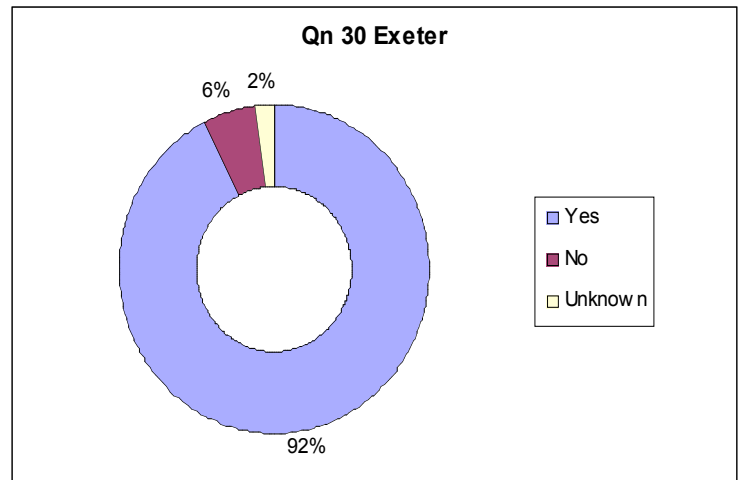
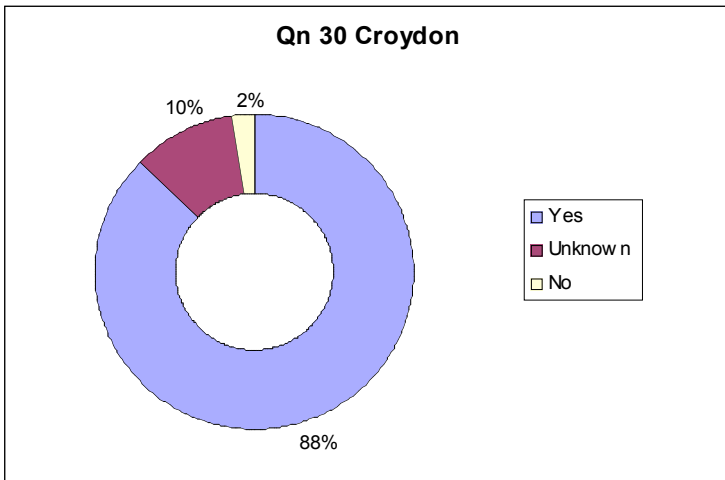
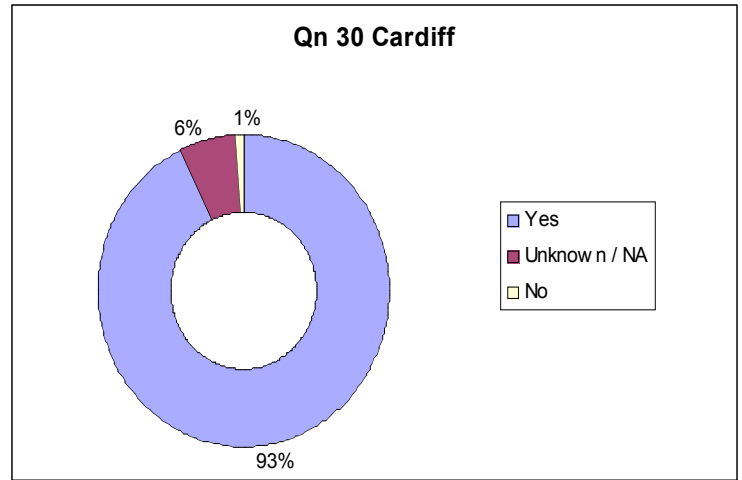
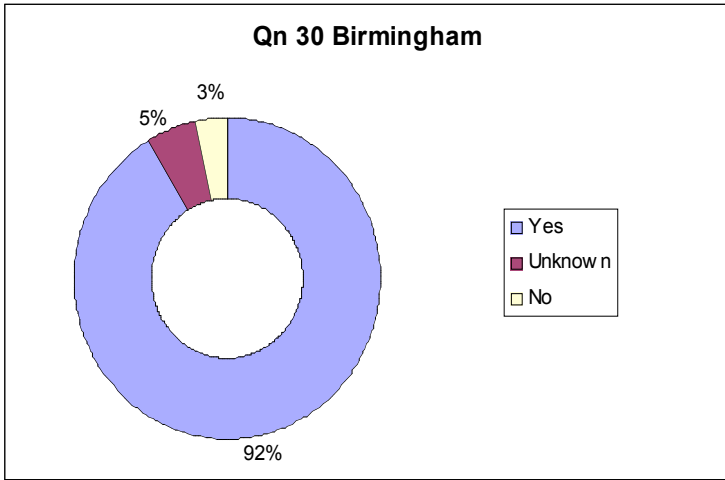
<sup>429</sup> Lightman, D. *Business as usual in the County Court?* [2005] NLJ, vol.155, no.7162, p164. Lightman does suggest that both corporate and personal insolvency proceedings (with some exceptions) are matters that might be transferred to a Chancery County Court, i.e. one of the County Courts that correspond to the Chancery District Registries, namely, Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester, Newcastle-upon Tyne and Preston, where circuit judges with expertise in Chancery matters sit as High Court judges of the Chancery Division.

<sup>430</sup> *UCB Group Ltd v. Hedworth* [2003] EWCA Civ 1717; *Stevens v. Newey* (The Times, 14 January 2005).

**Results overall**



**Results by individual court**



## Summary

Overwhelmingly responses to this question show that the judiciary in the sample courts are well versed with the pertinent insolvency provisions relating to personal insolvency (89%), indeed it could be stated that we have moved far from the position (at least in the lay persons opinion) when it could be observed in relation to judges hearing insolvency cases, “some of whom of necessity have only a limited knowledge of the law and practice of insolvency.”<sup>431</sup> A number of respondents qualified their responses. A Newcastle debtor replied in relation to the judge hearing his/her case, “she was amazing.”<sup>432</sup> One Reading respondent noted, “The judge that dealt with the petition was excellent!! Make me feel at ease.”<sup>433</sup> A further Reading respondent noted, “the judge was extremely understanding and genuinely seemed to be curious about my circumstances. I was dealt with quickly and efficiently.”<sup>434</sup> A Croydon respondent noted, “she was very lovely and caring, helpful.”<sup>435</sup> An Exeter respondent noted, “she was very helpful and understanding, when I was distressed with the situation I was in.”<sup>436</sup> Another Exeter respondent noted, “Extremely nice as I was very upset.”<sup>437</sup> A Birmingham respondent noted, “he was very pleasant.”<sup>438</sup> Another Birmingham respondent noted, “was not made to feel like a criminal judge said she understood why I was petitioning for bankruptcy and wished me good luck in any further ventures.”<sup>439</sup> A further Birmingham respondent noted, “very calm, professional manner.”<sup>440</sup>

There were some negative responses. One Reading debtor observed, “He suggested that I would not have contributions to pay whereas the Official Receiver did.”<sup>441</sup> Another Reading debtor noted, “When I questioned the judge about my creditor’s costs they were claiming because I thought they were excessive, he said that they were immaterial as I was going to be bankrupt. But having an interest in my home with my wife that was my only asset. I thought that was an unfair comment.”<sup>442</sup> A Newcastle debtor observed in relation to the judge; “He made a ‘tut’ noise and signed the petition. I thought he was going to put me across his knee and slap my bum.”<sup>443</sup> A further Croydon respondent noted that the judge, “made me feel uncomfortable and a criminal.”<sup>444</sup>

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<sup>431</sup> *Cork Report* at paragraph 994.

<sup>432</sup> *Newcastle ref: BX.*

<sup>433</sup> *Reading ref: DP.*

<sup>434</sup> *Reading ref: DU.*

<sup>435</sup> *Croydon ref: FJ.*

<sup>436</sup> *Exeter ref: X.*

<sup>437</sup> *Exeter ref: AS.*

<sup>438</sup> *Birmingham ref: CM.*

<sup>439</sup> *Birmingham ref: JH.*

<sup>440</sup> *Birmingham ref: JC.*

<sup>441</sup> *Reading ref: DG.*

<sup>442</sup> *Reading, ref: CV.*

<sup>443</sup> *Newcastle ref: BP.*

<sup>444</sup> *Croydon ref: GT.*

An Exeter respondent noted, “probably! He was also rude and unnecessarily nasty.”<sup>445</sup> Another Exeter respondent noted, “very ‘judgemental’ of my case!! Made me feel like a scared naughty girl.”<sup>446</sup> A Cardiff respondent observed, “the judge was incompetent. I was made bankrupt for a debt that, 1) was not mine, 2) I was able to show evidence for, 3) I did not receive the goods, 4) I did not write the cheque my name was not included on that account.”<sup>447</sup> A Birmingham respondent noted, “the ORs attitude was good; the Courts disparaging.”<sup>448</sup>

One Exeter respondent noted a comment the judge had made in her particular case; he apparently observed, “Why are the building society doing this?”<sup>449</sup> A Cardiff respondent observed, “he told me if people don’t return to business there would be no economy.”<sup>450</sup>

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<sup>445</sup> Exeter ref: AH.

<sup>446</sup> Exeter ref: CQ.

<sup>447</sup> Cardiff ref: N.

<sup>448</sup> Birmingham ref: JG.

<sup>449</sup> Exeter ref: BK.

<sup>450</sup> Cardiff ref: AD.

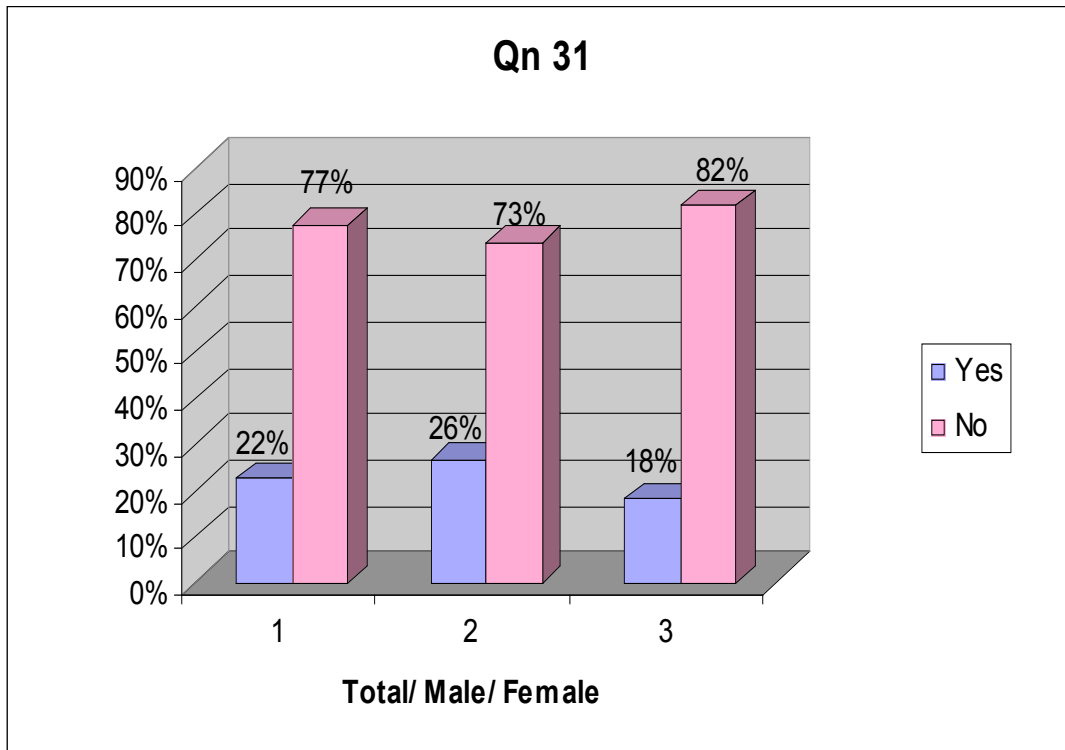


**31. Did you seek the advice of a solicitor before you commenced the bankruptcy process?**

- a. Yes
- b. No

In Canada there is very little participation of lawyers in the bankruptcy process. This is as distinct from the position in America.<sup>451</sup> In its 1975 report Justice noted that, “The bankrupt had failed to take proper legal advice when he was still in a position to do so...”<sup>452</sup> How do prospective bankrupts begin their journey along the bankruptcy route in England and Wales? Is it as a result of legal advice, or are other approaches extant?

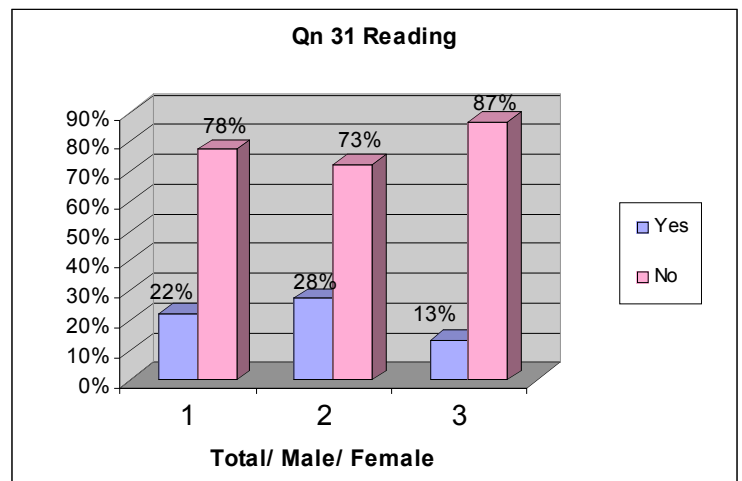
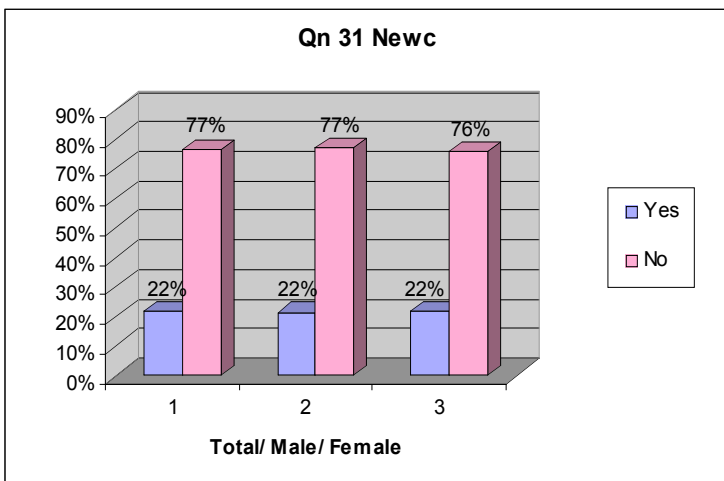
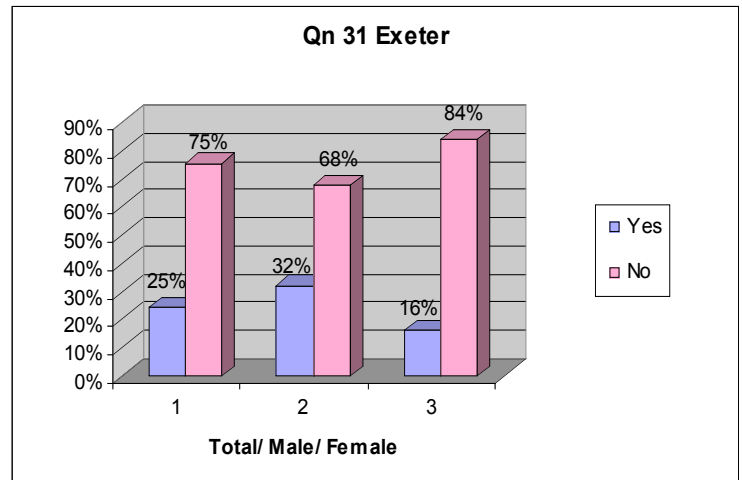
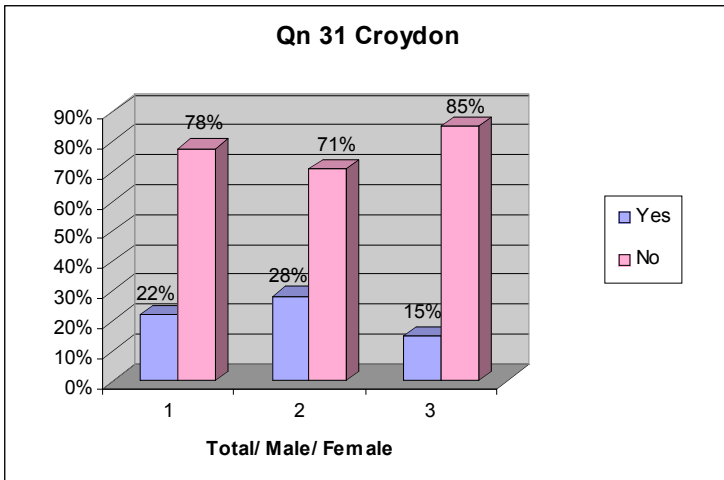
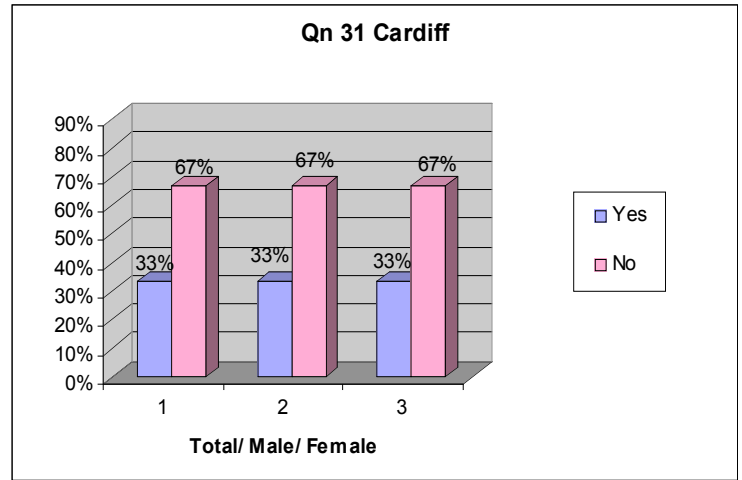
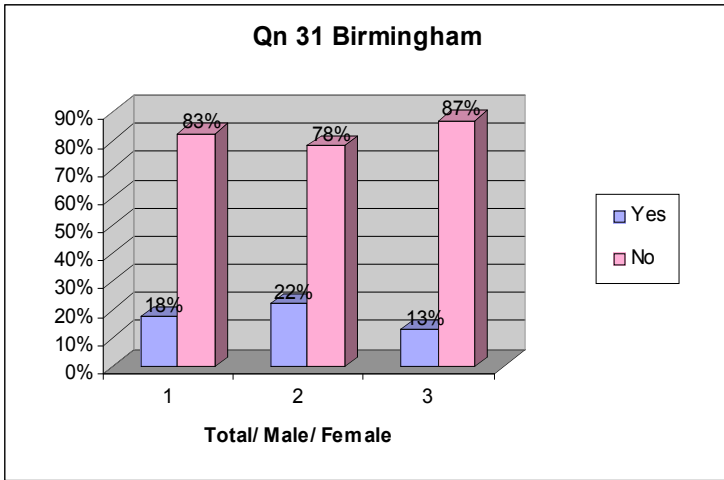
**Results overall**



<sup>451</sup> Ziegel, J. *The Philosophy and Design of Contemporary Consumer Bankruptcy Systems: A Canada-United States Comparison* (1999) 37, Osgoode Hall Law Journal, p.205.

<sup>452</sup> Justice. *Bankruptcy – a Report by Justice*. Stephens & Son, London, 1975, at page V.

**Results by individual court**



### **Summary**

Overwhelmingly it seems as if English bankrupts do not seek the advice of a solicitor before embarking on the route to bankruptcy (77%). However, a small proportion do; One Newcastle debtor opined that, “she was no help whatsoever she seemed to know less than me.”<sup>453</sup>

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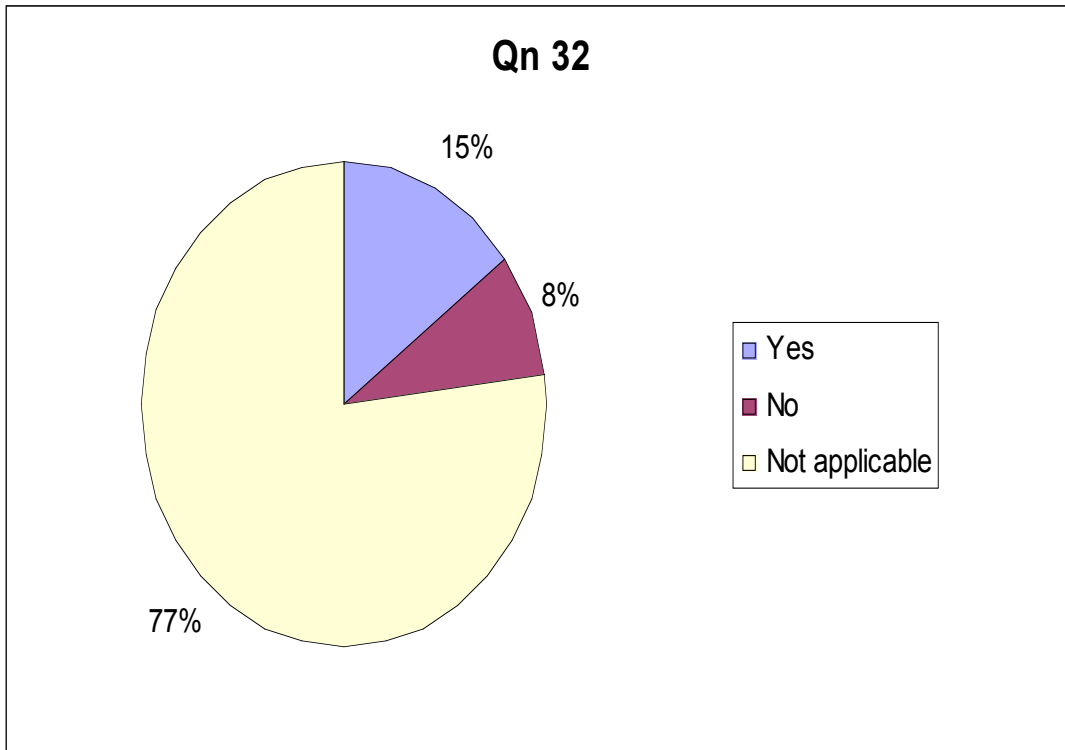
<sup>453</sup> *Newcastle ref: U.*

**32. Were your solicitor's insolvency law specialists?**

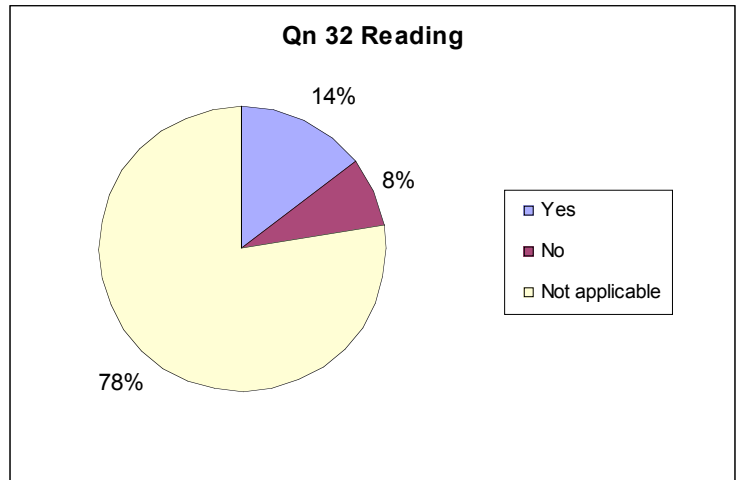
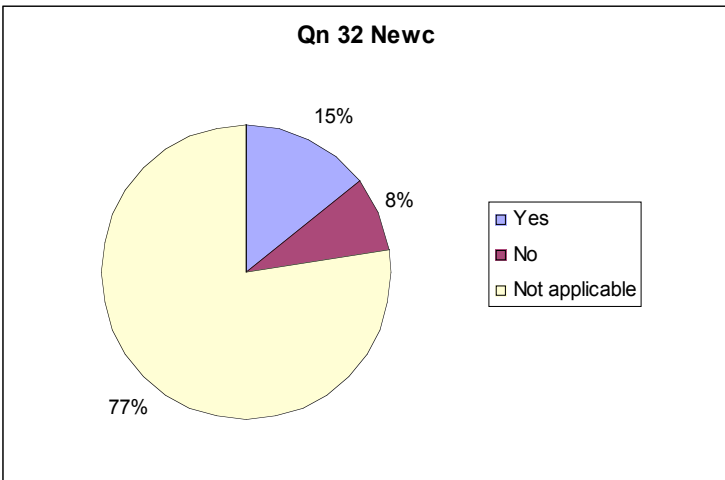
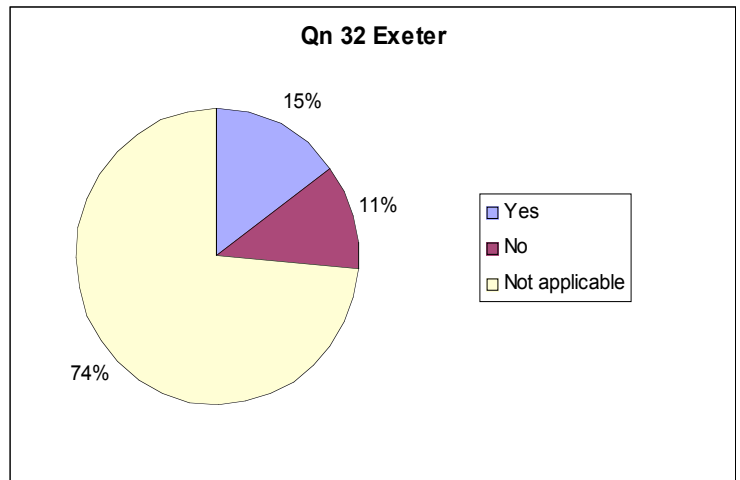
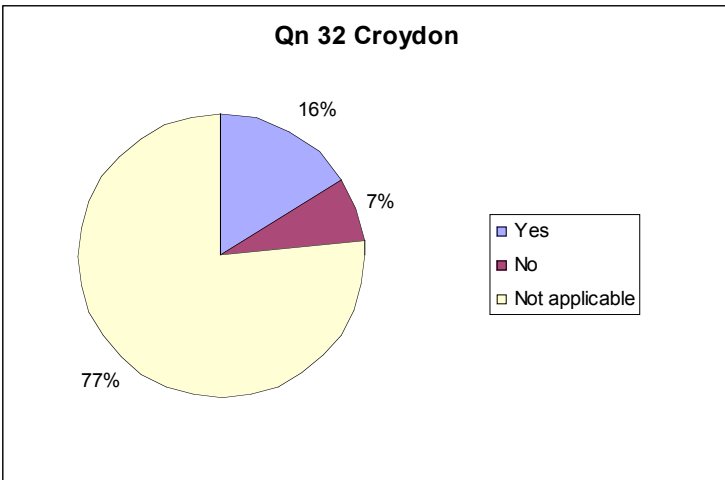
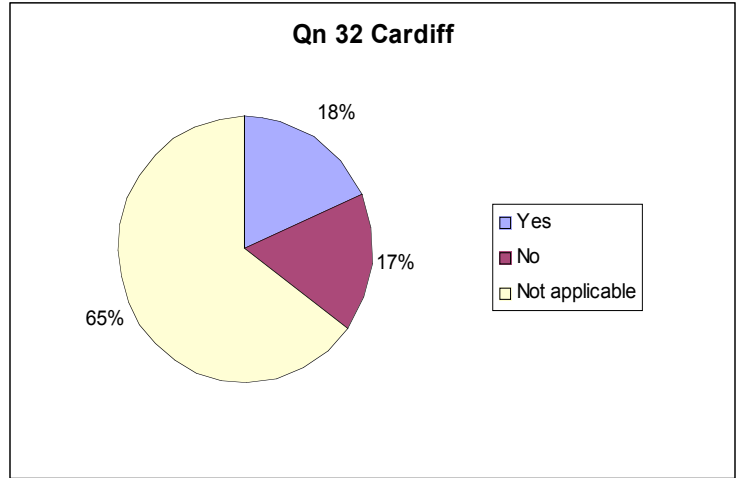
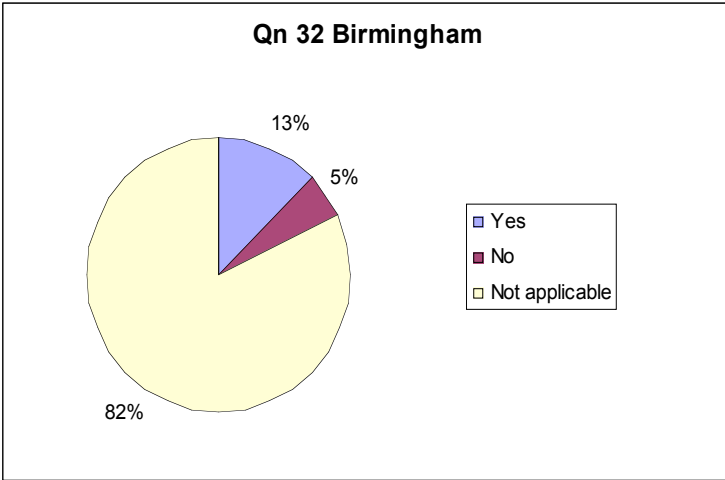
- a. Yes
- b. No
- c. Not Applicable

Related to question 30 regarding the insolvency competency of the judiciary, this question tries to elicit what influence solicitors had on the bankruptcy process, especially in terms of objective advice as to which insolvency procedure would be the most beneficial for their lay clients.

**Results overall**



**Results by individual court**



### **Summary**

As a large proportion of our sample did not consult a solicitor (77%), it is perhaps unsurprising that 15% of bankrupt respondents' solicitors were specialists, whereas 8% were not. For the other 77% of our sample this question was simply not applicable.

**33. Did you seek advice from your local Citizens Advice Bureau or any other agencies?**

- a. Yes
- b. No

The voluntary sector and fee charging debt management companies<sup>454</sup> are a substantial provider of advice to personally over-indebted individuals. The Citizen Advice Bureau,<sup>455</sup> National Debtline,<sup>456</sup> Consumer Credit Counselling Service,<sup>457</sup> the Bankruptcy Association,<sup>458</sup> the Bankruptcy Advisory Service,<sup>459</sup> and PayPlan<sup>460</sup> to name but a few in the voluntary sector, and Baines & Ernst Ltd, an example of a fee charging organisation, all provide debt advice to personally over-indebted individuals.<sup>461</sup> In *Agenda for Reform* Justice highlighted the, “emerging problem created by unlicensed advisers seeking to give assistance to unsophisticated small debtors.”<sup>462</sup> These advisors and in particular fee charging debt management companies are also of course unregulated, a point most recently highlighted by the *Insolvency Practices Council (IPC)* in its 2000,<sup>463</sup> 2001,<sup>464</sup> 2002,<sup>465</sup> and 2003<sup>466</sup> annual reports. The role of such bodies being of

<sup>454</sup> These companies have more pejoratively been referred to as ‘ambulance chasers’ (Insolvency Practices Council – Influencing the standards of the insolvency profession. *Annual Report 2000*. Market Deeping, 2000, at page 4) “dressed-up debt sharks” (Davies, at para 14.16); “the bottom feeders in the murky pond of the financial services industry” (Paul Flynn MP, Hansard, 11 June 2002, col208WH – cited in Davies, *ibid.*)

<sup>455</sup> [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

<sup>456</sup> [www.nationaldebtline.co.uk](http://www.nationaldebtline.co.uk) - Telephone number: 0808 808 4000.

<sup>457</sup> [www.cccs.co.uk](http://www.cccs.co.uk)

<sup>458</sup> See for example their various advice publications: McQueen, J. *Bankruptcy Explained – The Bankruptcy Association’s Practical Guide to UK Insolvency Laws*. 2<sup>nd</sup> Edition. The Bankruptcy Association. Lancaster, 2005; McQueen, A. *Saving the Family Home in Bankruptcy – A Bankruptcy Association Guide*. The Bankruptcy Association. Lancaster, 2005; McQueen, J. *Protecting Personal Assets in Business – A Bankruptcy Association Guide*. The Bankruptcy Association. Lancaster, 2005; McQueen, J. *Bankruptcy – The Reality*. The Bankruptcy Association. Lancaster, 2005; McQueen, J. *How to Settle Debts with Creditors – A Bankruptcy Association Guide*. The Bankruptcy Association. Lancaster, 2005; McQueen, J. *Boom to Bust – The Great 1990s Slump*. The Bankruptcy Association of Great Britain and Northern Ireland. Lancaster, 1994. See also their website at: [www.theba.org.uk](http://www.theba.org.uk)

<sup>459</sup> A Hull based organisation.

<sup>460</sup> [www.payplan.com](http://www.payplan.com)

<sup>461</sup> On the corporate side there is also: Business Debtline – 0800 197 6026.

<sup>462</sup> *Agenda for Reform*, para 6.10. See also paras 5.12 to 5.13 where governmental funding of debt advice for small debtors is discussed.

<sup>463</sup> The Insolvency Practices Council has drawn attention specifically to the unsatisfactory practice of unregulated debt advisors drafting IVA proposals which are subsequently rubber stamped by insolvency practitioners. See: Insolvency Practices Council – Influencing the standards of the insolvency profession. *Annual Report 2000*. Market Deeping, 2000, at page 4 and pages 10, 12.

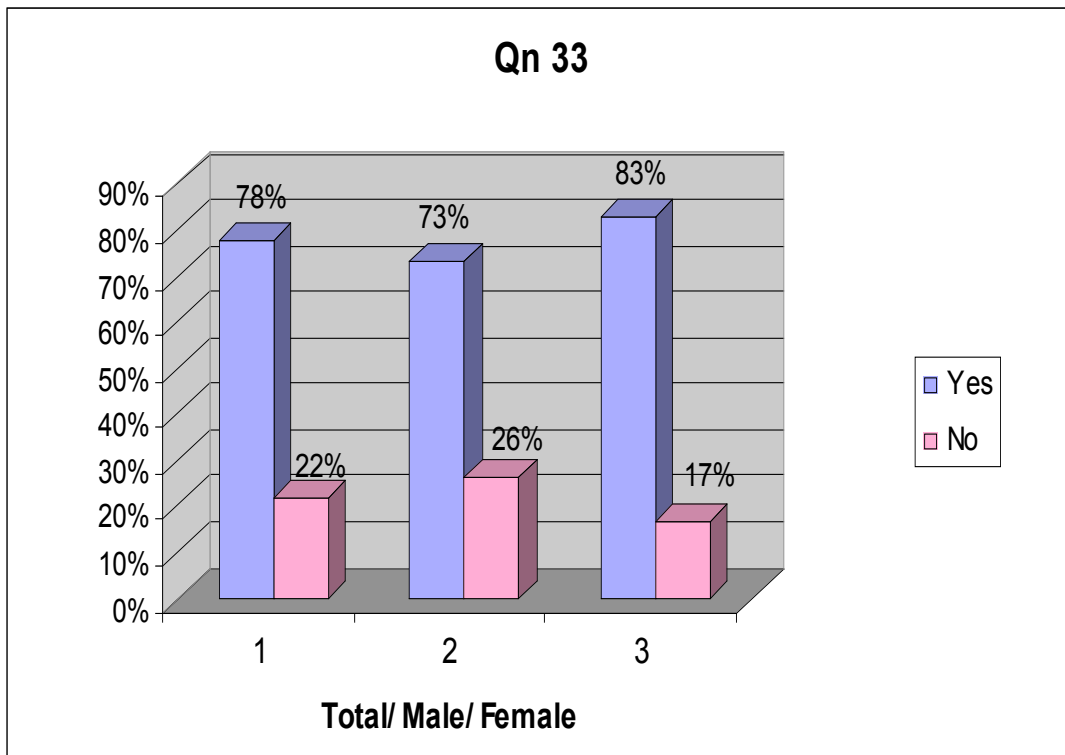
<sup>464</sup> Insolvency Practices Council – Influencing the standards of the insolvency profession. *Annual Report 2001*. Market Deeping, 2001, at pages 3 and 11.

<sup>465</sup> Insolvency Practices Council – Influencing the standards of the insolvency profession. *Annual Report 2002*. Market Deeping, 2002, at pages 7 and 9.

<sup>466</sup> Insolvency Practices Council – Influencing the standards of the insolvency profession. *Annual Report 2003*. Market Deeping, 2003, at pages 3, 12 and 13.

course technically outside the remit of the *IPC*, unless an insolvency practitioner is involved.<sup>467</sup> It is not the *BCS 2005* author's contention that these voluntary sector advice organisations and debt management companies are giving inappropriate advice, it is merely observed that with such a proliferation in this unregulated sector of personal insolvency advice that some form of licensing may be appropriate to regulate this expanding debt advice industry, especially when one considers that 78% of our bankrupt respondents sought the advice of a fee charging or voluntary sector debt advisor.

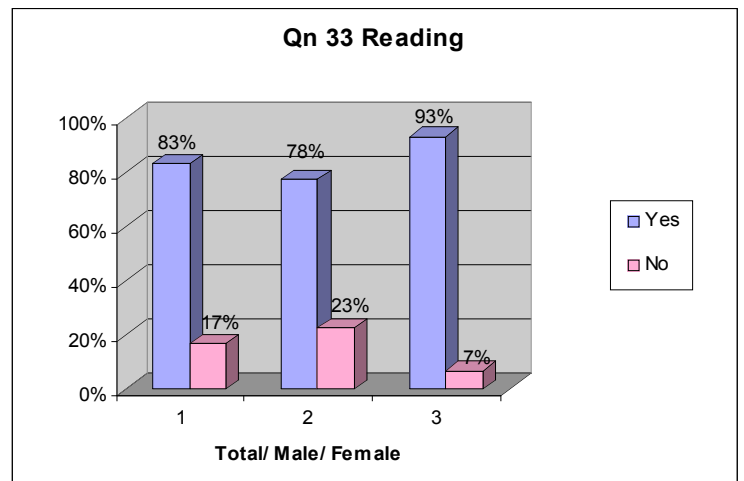
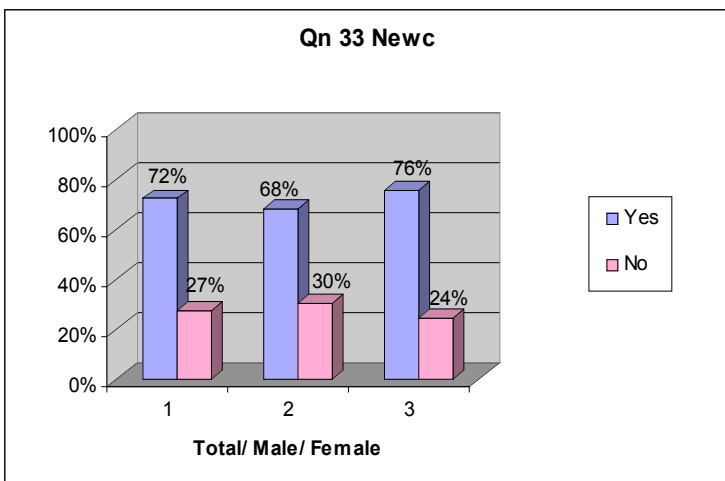
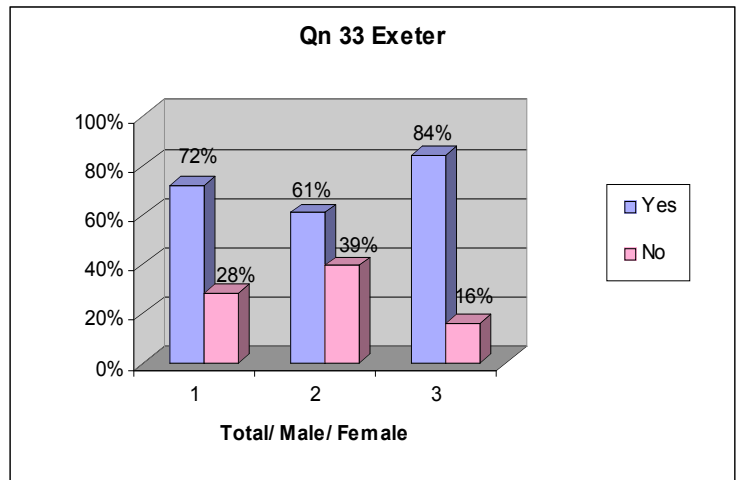
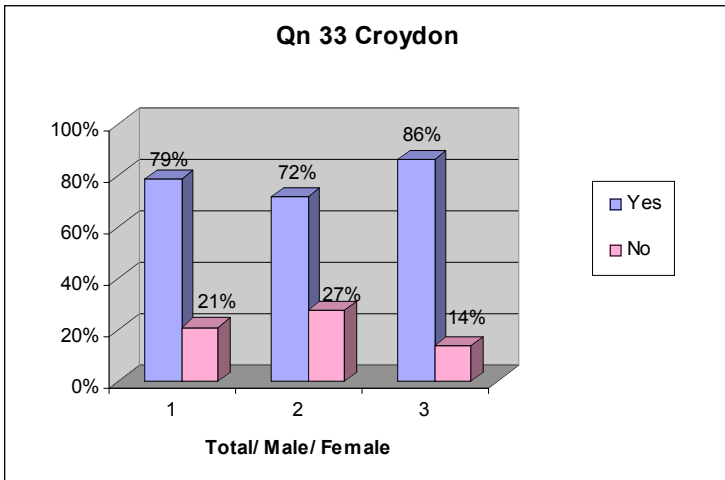
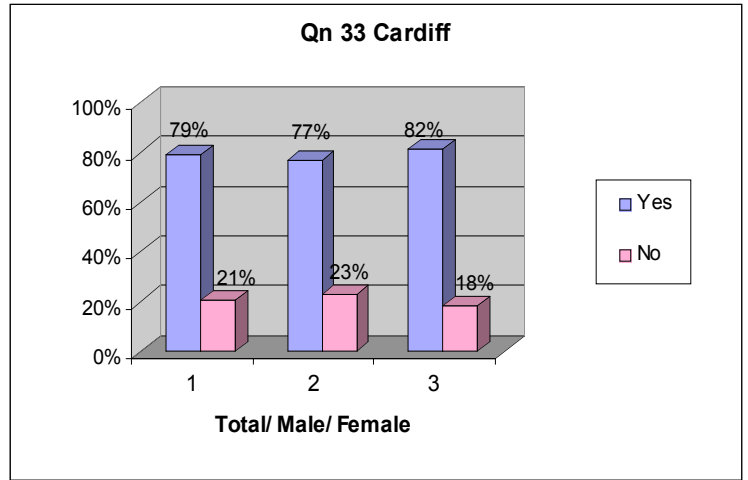
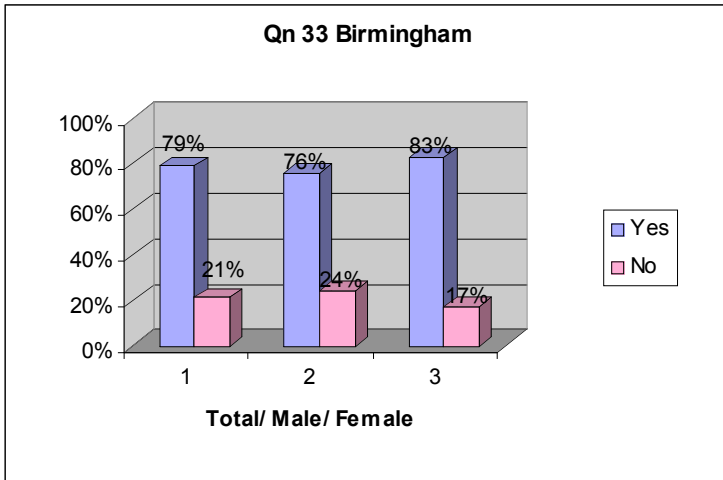
**Results overall**



<sup>467</sup> *Ibid.*



**Results by individual court**



## Summary

On the whole the comment received from respondents on the Citizens Advice Bureau (CAB) and their debt advice function is positive. For example, one Newcastle respondent noted, “Gateshead CAB were very helpful and went through the process fully with me.”<sup>468</sup> Another Newcastle respondent observed, “they we’re fantastic.”<sup>469</sup> A Croydon respondent observed, “The CAB were more than helpful.”<sup>470</sup> A Birmingham respondent noted, “they were so helpful all the way through the process.”<sup>471</sup> Another Birmingham respondent noted, “they were wonderful, + tried to help me with alternative options first.”<sup>472</sup> A Birmingham respondent observed, “the CAB are the most understanding people I have ever met I would recommend them to anyone.”<sup>473</sup>

There were some negative responses concerning the CAB. One Newcastle debtor noted, “The C.A.B aren’t that useful I managed to do everything myself and made me more aware of what the procedure was/is.”<sup>474</sup> Another observed that they were, “a waste of time.”<sup>475</sup> A Croydon respondent observed, “didn’t find them very knowledgeable; also a bit judgemental.”<sup>476</sup> Another Croydon respondent observed, “I knew more about the options and process than he did.”<sup>477</sup> A third Croydon respondent noted, “they were clueless.”<sup>478</sup> An Exeter respondent noted in relation to both the CAB and CCCS, “not sufficiently knowledgeable.”<sup>479</sup> An Exeter respondent noted, “They frightened me!”<sup>480</sup> Another Exeter respondent noted, “Useful although not entirely up to date.”<sup>481</sup> A Birmingham respondent noted, “CAB too busy to see me. National debtline were helpful by email but you could never speak to them by phone as it was always too busy.”<sup>482</sup> Another Birmingham respondent noted, “couldn’t get through – they are not accessible.”<sup>483</sup>

Other non-profit debt organisations are cited in respondents’ answers. Money Matters, which is apparently attached to Newcastle City Council is cited positively,<sup>484</sup> CCCS also received positive feedback from a debtor whose IVA it had organised; the debtor observed that CCCS were, “very

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<sup>468</sup> Newcastle ref: EU.

<sup>469</sup> Newcastle ref: EW.

<sup>470</sup> Croydon ref: HA.

<sup>471</sup> Birmingham ref: EG.

<sup>472</sup> Birmingham ref: CU.

<sup>473</sup> Birmingham ref: CT.

<sup>474</sup> Newcastle ref: F.

<sup>475</sup> Newcastle ref: BX.

<sup>476</sup> Croydon ref: FC.

<sup>477</sup> Croydon ref: GN.

<sup>478</sup> Croydon ref: GP.

<sup>479</sup> Exeter ref: W.

<sup>480</sup> Exeter ref: CN.

<sup>481</sup> Exeter ref: CQ.

<sup>482</sup> Birmingham ref: CS.

<sup>483</sup> Birmingham ref: IG.

<sup>484</sup> Newcastle ref: AY.

helpful and understanding offered good advice.”<sup>485</sup> A Croydon debtor opined, “I used CCCS and they were brilliant they put me on every track that I needed.”<sup>486</sup> Another Croydon respondent noted, “my IVA company were excellent...due to my excellent IVA company, it was a very easy and smooth running process.”<sup>487</sup> One Newcastle respondent observed, “[COMPANY X] – excellent 10 out of 10 fantastic help.”<sup>488</sup> A Cardiff respondent noted, “Solicitor from Speak Easy, Ebbw Vale...seemed to be well understanding of bankruptcy.”<sup>489</sup> Another Cardiff respondent noted, “The Speak Easy Advice Centre Arabella St. Roath Cardiff...\*\*\*\*\* solicitor of the above address dealt with me + I can’t thank her enough her time, advice + attention was excellent.”<sup>490</sup> Another Cardiff respondent noted, “Christians Against Poverty”<sup>491</sup> as his/her advising agency.

Some responses concerning debt management companies are particularly concerning. One respondent noted, “Went with a company called [COMPANY Y] to try and pay off debt with reduced payment. They at a later date advised me to go bankrupt.”<sup>492</sup>

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<sup>485</sup> Newcastle ref: BZ.

<sup>486</sup> Croydon Ref: FJ.

<sup>487</sup> Croydon ref: FC.

<sup>488</sup> Newcastle ref: FE.

<sup>489</sup> Cardiff ref: AP.

<sup>490</sup> Cardiff ref: AU.

<sup>491</sup> Cardiff ref: AS.

<sup>492</sup> Reading, ref: CX.

**34. Is there anything else that you would like to comment on in relation to the specific bankruptcy court that your bankruptcy order was made in?**

This open question was designed to act as a clear up question to address any further issues that had not arisen during the course of the preceding 33 questions. It was hoped that bankrupts would use this section to discuss, *inter alia*, the fees payable on entry into bankruptcy. It has long been mooted that entry costs to bankruptcy, namely the court fee and the Official Receivers deposit are an unnecessary or prohibitive bar to entry.<sup>493</sup> See for example, the Cork Report where it was opined, “In our view it is unacceptable that an insolvent who genuinely needs protection from his creditors should be inhibited by cost.”<sup>494</sup> It was felt that a direct question on the issue would only result in positive affirmation that costs for entry were too prohibitive. If the matter was really an issue it would come out at this stage. Are insolvent individuals precluded from access to bankruptcy at an appropriate and perhaps earlier stage because of their financial state, i.e. they cannot afford the entry costs. As Ziegel has opined, “the importance of cheap bankruptcy facilities being placed at the disposal of insolvent consumers cannot be overestimated.”<sup>495</sup>

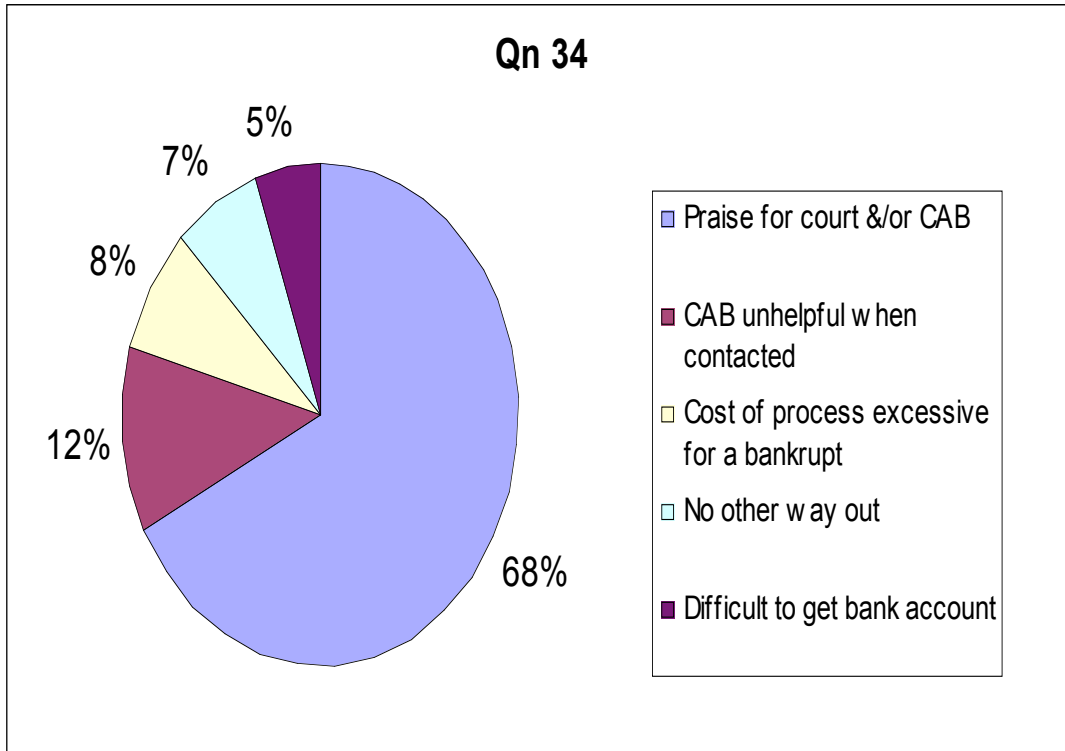
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<sup>493</sup> The high costs of entry into bankruptcy are not restricted to English shores. Zeigel has opined in relation to Canadian bankruptcy law that, “under the existing Act even a simple bankruptcy involves in my opinion, a quite unjustifiable exercise in paper shuffling, and not surprisingly, trustees in bankruptcy expect to be remunerated for it, to the tune of \$300.00 to \$400.00.” (discussing the Canadian Bankruptcy Act - Ziegel, J. *Consumer Bankruptcies* (1972) Chitty’s Law Journal, vol.20, no.10, p.325, at page 327). Hereafter referred to as *Ziegel Chitty*.

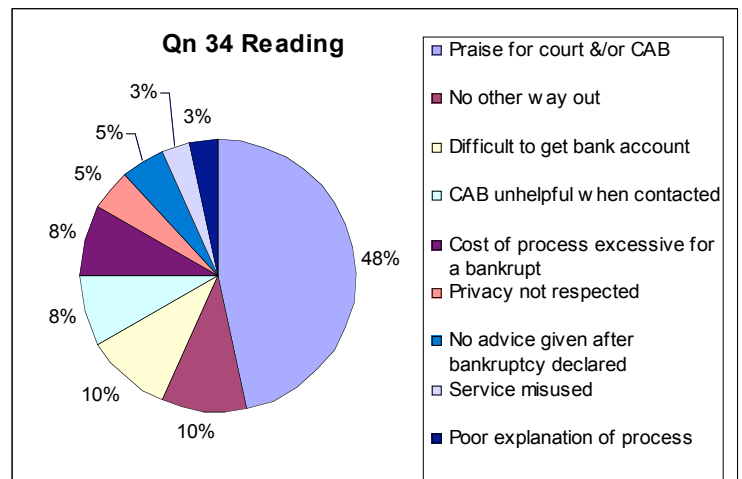
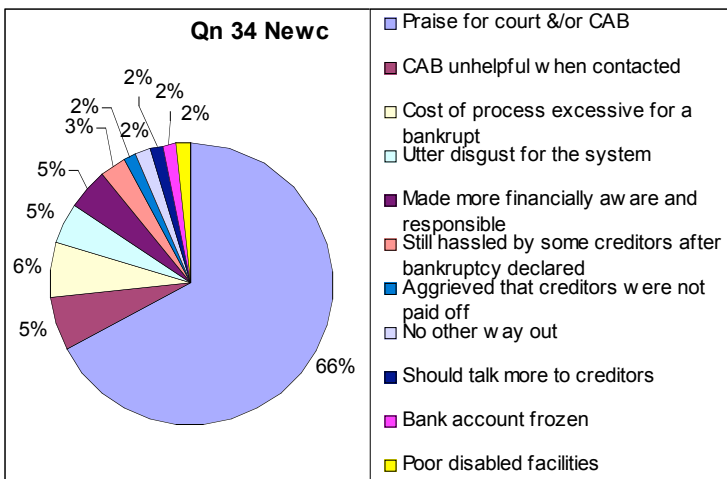
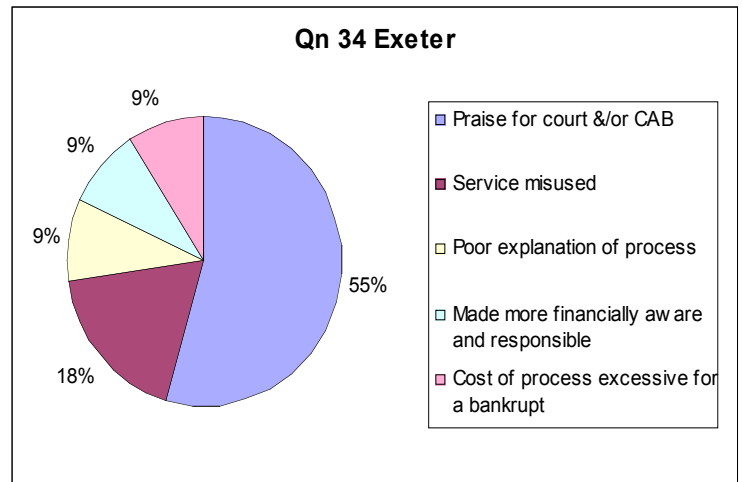
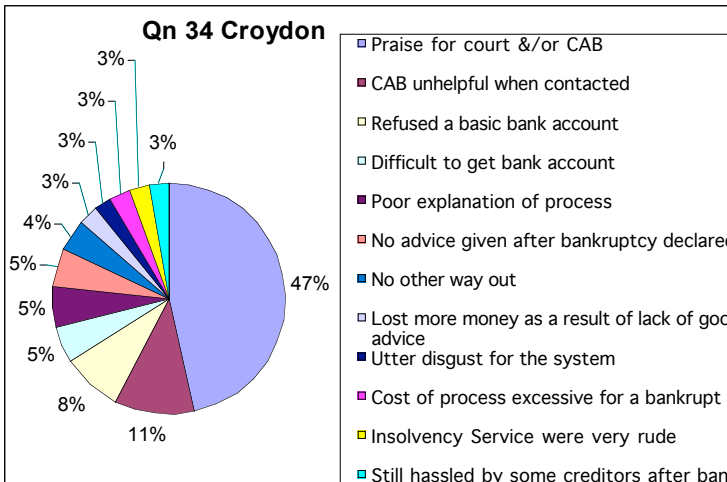
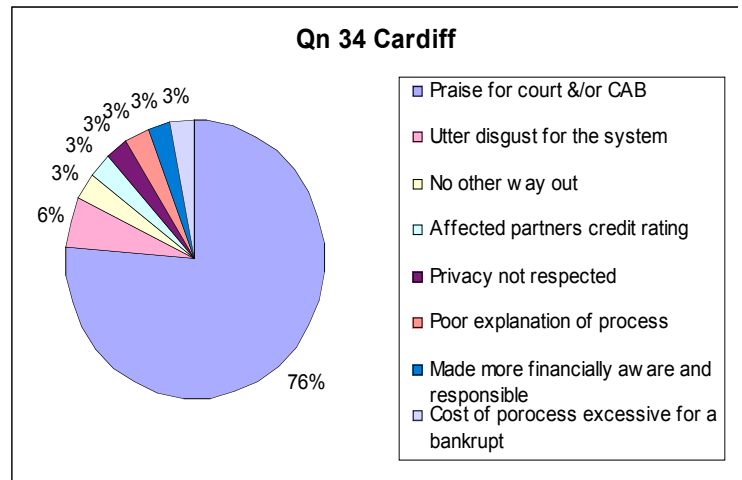
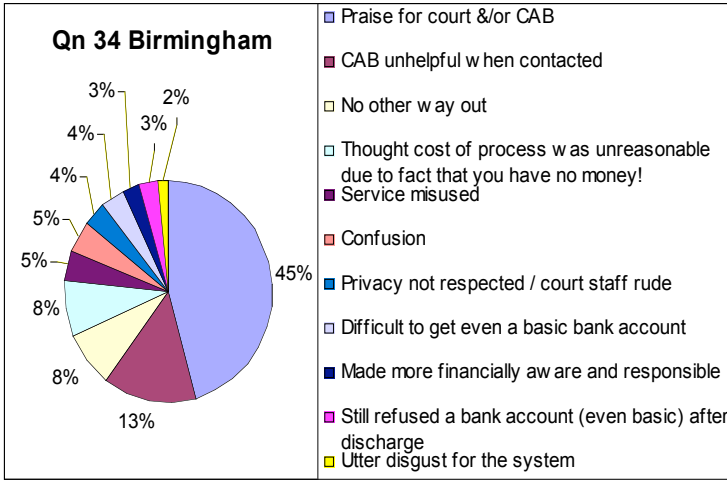
<sup>494</sup> *Cork Report* at paragraph 221.

<sup>495</sup> *Ziegel Chitty* at page 328.

**Results overall**



**Results by individual court**



## Summary

As is evident in the above court sample graphs for this question, responses were widely disparate, 68% overall praise for the Courts and CAB is however encouraging. An overwhelming feeling that one gets from reading the questionnaire responses is a feeling that the respondents found the *BCS 2005* questionnaire process somewhat cathartic, but also that the bankruptcy process itself was a relieving procedure that truly helped insolvent individuals at a deeper level than purely financial. One respondent's answer to this question is fairly typical, "I am glad there is such a thing as bankruptcy, otherwise I don't know what we would have done."<sup>496</sup> Praise for the individual courts was evident. One Newcastle debtor opined, "The staff were brilliant."<sup>497</sup> A Croydon respondent noted, "Croydon Court very friendly and efficient staff made process a lot more bearable than anticipated."<sup>498</sup> An Exeter respondent noted, "the Exeter court was so rigid in its procedure that I felt secure. Everyone was friendly and I expected to feel scared and was not even though it was serious."<sup>499</sup> A Cardiff respondent noted, "all assistants and clerks at the court were very polite and helpful and made me feel at ease."<sup>500</sup> Another Cardiff respondent noted, "My case was straightforward. The judge was pleasant and sympathetic. I was made to feel at ease. I was distressed on the day but was soon reassured that everything would be fine and it has been."<sup>501</sup> A third Cardiff respondent noted, "wonderful, sympathetic help and support – I would like to question, an unscrupulous person or one who doesn't care = what is stopping any one running up huge debts obtaining all they want and simply go bankrupt and retain all their goods? As for people like myself, it was, not only the only way out, but a wonderful help to join the human race once more."<sup>502</sup> A Birmingham respondent noted, "the court was very un-intimidating I was nervous, but found all the staff especially the judge, very kind, friendly and understanding. No-one ever gave the impression of "condemning" me for my debts."<sup>503</sup> An element of respondent bias may be evident in relation to these responses in that the debtor respondents are associating the court staff personally with the release of their indebtedness.

There were some negative qualifying answers. One Exeter respondent observed, "the staff at the court were very rude and unhelpful. I had my baby with me because my bay sitter was taken ill, I felt they treated me very badly. The judge told me to shut my baby up."<sup>504</sup> A Cardiff respondent

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<sup>496</sup> Reading, ref: CG.

<sup>497</sup> Newcastle ref: AB.

<sup>498</sup> Croydon ref: FM.

<sup>499</sup> Exeter ref: AQ.

<sup>500</sup> Cardiff ref: L.

<sup>501</sup> Cardiff ref: V.

<sup>502</sup> Cardiff ref: AJ.

<sup>503</sup> Birmingham ref: EL.

<sup>504</sup> Exeter ref: CA.

observed, “I was not made to feel that I was the exception to the rule. Nobody raised eyebrows at the level of debt and were fully aware of how easy it is to obtain credit.”<sup>505</sup>

The issue of entry costs to the procedure did arise in numerous responses. One Newcastle debtor’s response to this question is worth quoting in full, “I would only say that people who like me are to be come bankrupt that £310 to be paid should be squashed, as I had to borrow this money off a friend and I am having to pay this back at £10 a fortnight.”<sup>506</sup> Another Newcastle debtor noted, “it took a long time to fill in form’s then to find out that some of the forms were missing/and cost to much money had to borrow money to go bankruptcy”<sup>507</sup> Another observed, “finding money to pay for bankruptcy was hard.”<sup>508</sup> A Croydon respondent noted, “The only thing which I found stupid was I had to pay £300 pounds to declare bankruptcy which is hard to find when you have no money.”<sup>509</sup> Another Croydon respondent noted, “depending on their circumstances to think long and hard about all the alternatives then, if you can afford it do it (I had to borrow the money from my son.)”<sup>510</sup> An Exeter respondent noted, “what is relevant is that it cost me over £300 to officially declare I was f\*\*king skint!!!! No sense!”<sup>511</sup> A Birmingham respondent noted, “...strange to have to find a sum of money to go through the process.”<sup>512</sup> Another Birmingham respondent noted, “I had enough trouble finding the fees let alone the cost of a solicitor.”<sup>513</sup> Overall the 8% figure for respondents concerned with cost barriers does not seem to suggest that there is an overall issue regarding barriers to entry to the bankruptcy system. However, if the bankruptcy procedure is not, “cheap enough to be generally used, or at any rate used in good time”<sup>514</sup> then its efficacy may be questioned as it is amongst some respondent bankrupts. One Reading respondent did observe that the exit costs were too much when he/she noted, “Charges, particularly for discharge certificates are very high.”<sup>515</sup>

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<sup>505</sup> *Cardiff ref: G.*

<sup>506</sup> *Newcastle ref: Z.*

<sup>507</sup> *Newcastle ref: AS.*

<sup>508</sup> *Newcastle ref: DT.*

<sup>509</sup> *Croydon ref: GA.*

<sup>510</sup> *Croydon ref: HN.*

<sup>511</sup> *Exeter ref: BX.*

<sup>512</sup> *Birmingham ref: FN.*

<sup>513</sup> *Birmingham ref: DT.*

<sup>514</sup> *Cork Report at paragraph 220.*

<sup>515</sup> *Reading ref: DG.*



### **Optional Personal Answers**

The following cluster of questions (35-40) were optional in versions I, II and III of the pilot study questionnaires.

**35. Name:**

&

**36. Current age:**

Whilst the questionnaire was designed to be anonymous we did include a section for bankrupt respondents to give details of their names. This was optional. If respondents did give their names we thought that at some future stage we might contact them again for research purposes to expand and clarify on their answers to the *BCS 2005*.

Whilst question 20 of the questionnaire was designed to ascertain the demographic make up of bankrupts in terms of age, we also included this question on age to confirm this detail.

### **37. Employment Status:**

If a key element of insolvency law is the rehabilitation of the over-indebted individual then employment must be a significant factor in ensuring that they are again participating in the credit community.

Schwartz and Anderson's Canadian survey of personal insolvency "showed that there were relatively few debtors filing for bankruptcy with a sizeable discretionary income"<sup>516</sup> In this pilot study survey it has not been possible to ascertain exactly the amount of bankrupts who had a sizeable discretionary income, i.e. those to whom an Income Payments Order (IPOs) could be attached. However, it has been possible to measure the percentage of bankrupts who are employed. This is an indicator of their rehabilitation post the bankruptcy process. Particularly in light of the recent changes produced by the Enterprise Act 2002 to IPOs and Income Payments Arrangements (IPAs) the ability of an individual to repay his creditors is of particular importance. It is hoped that the removal of court interference in the setting up of an IPA will increase the use of the procedure and therefore the amount of realisations for creditors.<sup>517</sup> This desire to resolve a bankrupt's debts using their own income is of course not a new phenomena and stretches back to at least the Cork committee.<sup>518</sup> We wanted to ascertain the employment position of bankrupts to see if many individuals were going through this procedure when they might in fact have the capacity over time to pay their creditors by virtue of their employment.

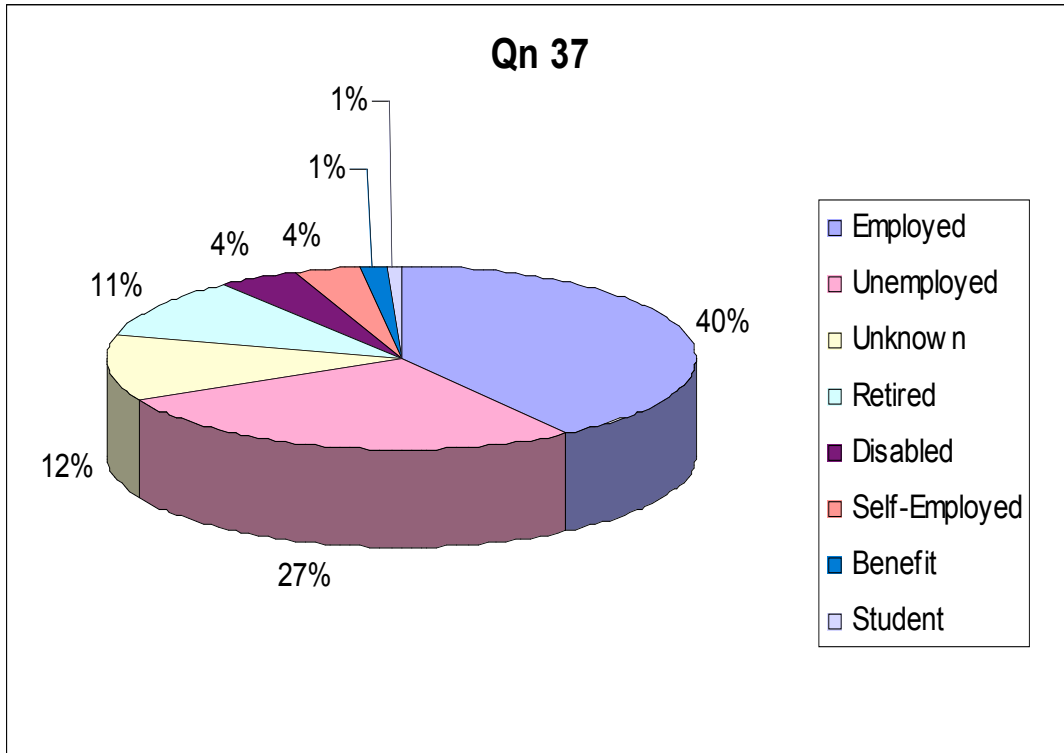
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<sup>516</sup> Ziegel at page 7.

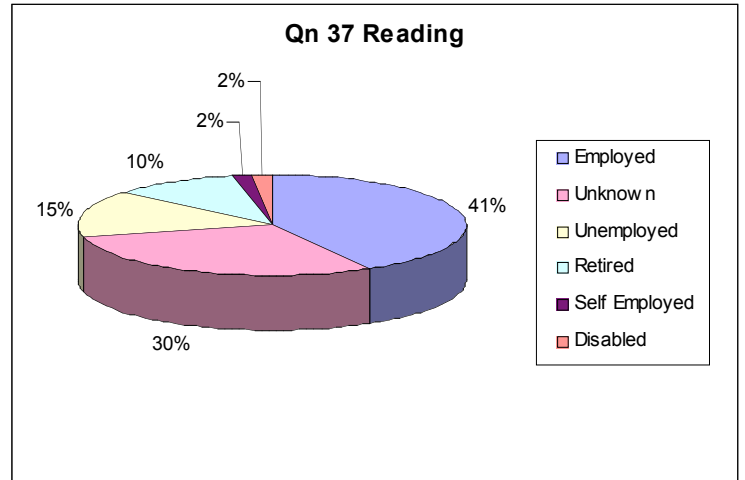
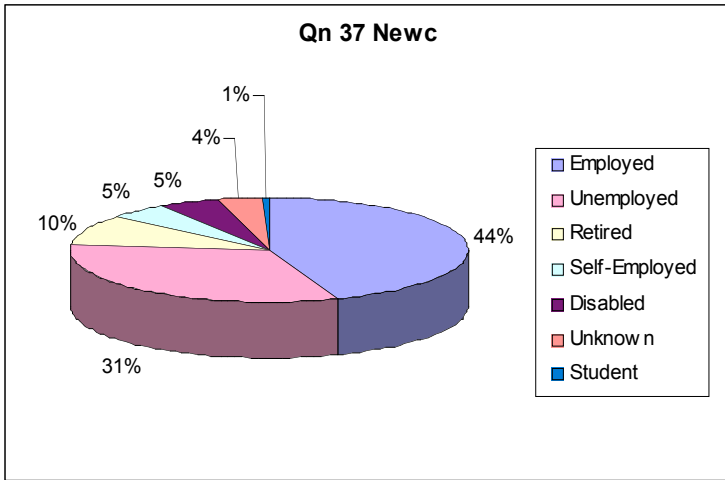
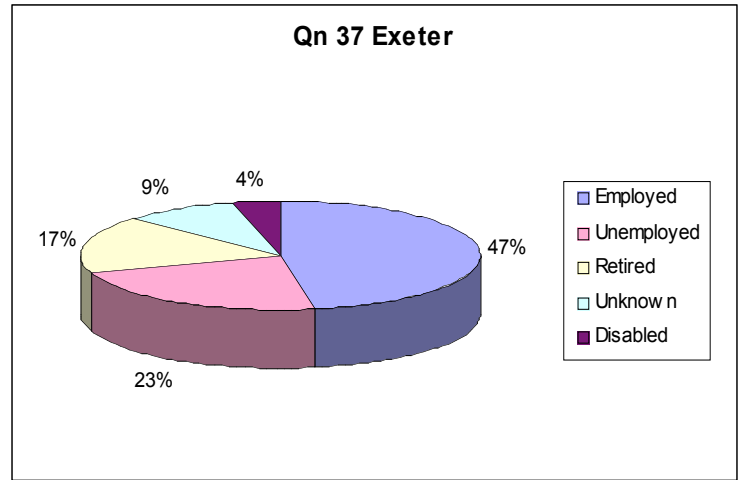
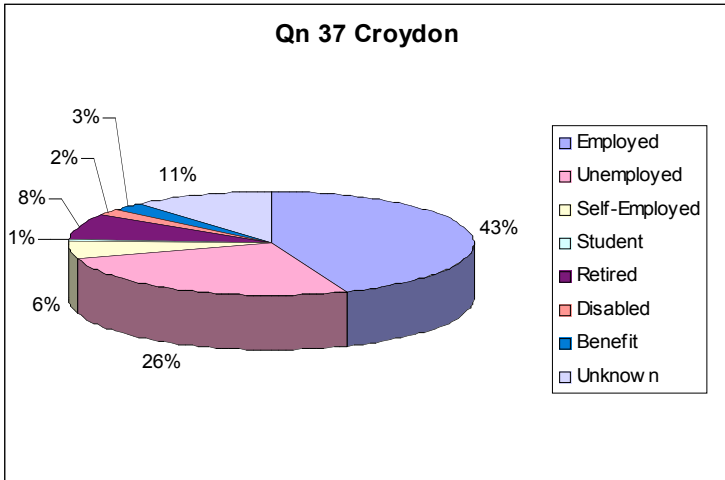
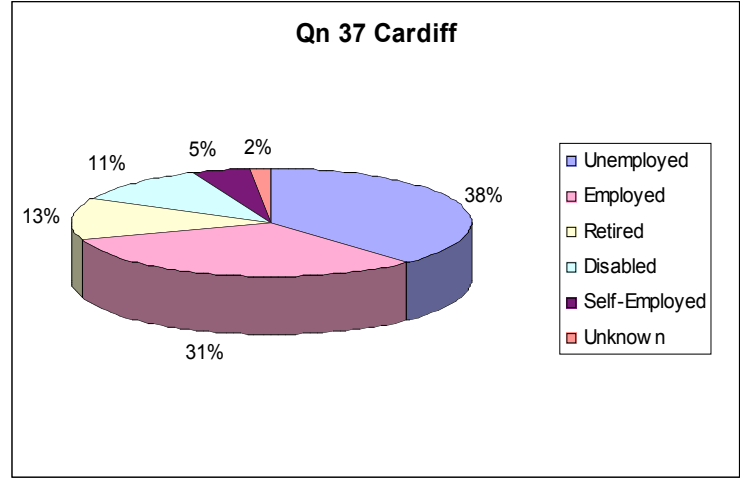
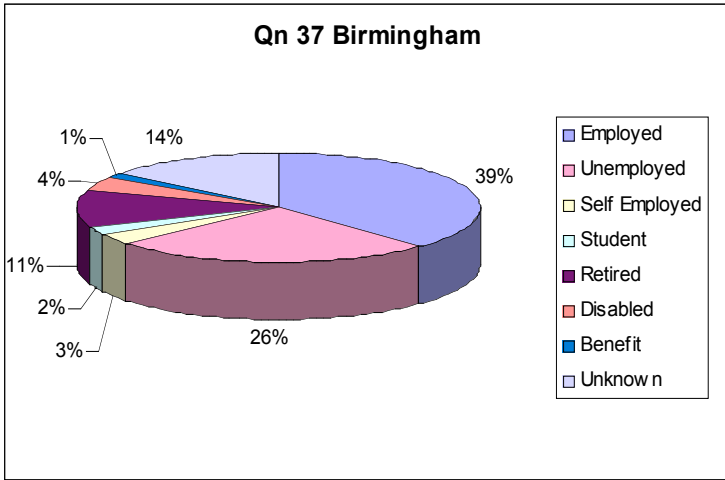
<sup>517</sup> Frieze has opined that there has been an increase in the amount of income contributions, see: Frieze, S. *Personal Insolvency – one year after the Enterprise Act came into force* (2005) *Insol.Int.*, 18(4), 57-59.

<sup>518</sup> See *Cork Report* at chapter 52.

**Results overall**



**Results by individual court**



## **Summary**

Whilst it is not the purpose of this survey to mull on the relative merits of the IVA procedure and bankruptcy, it was thought prudent to include a question on the bankrupts' employment status to see if; (1) they were being rehabilitated into the working world (indeed some have not actually left it), and, (2) to see if they had the capacity to contribute to an Income Payments Order by virtue of their remuneration.

It is therefore encouraging to note that 40% of the sampled population is employed. It is slightly more worrying to note that 12% of our sample could not or rather chose not to answer this question.

**38. Occupation:**

In *An Agenda for Reform*, the committee of Justice appointed to review insolvency law divided personal insolvents into three categories, (1) small consumer debtors, (2) company directors, and (3) self-employed businessmen and professionals.<sup>519</sup> Question 38 of the *BCS 2005* was designed to ascertain which of the three categories respondents fell into. If the contention that more consumer debtors are being made bankrupt than entrepreneur debtors is correct, then this question might support this trend. The responses were so widely divergent that no meaningful statistical analysis could be drawn from the data set.

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<sup>519</sup> *Agenda for Reform* at para 4.1.

**39. Salary prior to bankruptcy:**

&

**40. Current salary:**

In the response sample these two questions were not completed by enough respondents to enable the creation of meaningful graphs. It is presumed that the privacy of the bankrupt precluded release of this information in what was after all an optional section. There was minimal qualified comment. Worryingly one Newcastle debtor responded that they “don’t know”<sup>520</sup> their current salary. This lack of knowledge is not encouraging considering his/her past history as an individual who had to seek the redress of bankruptcy laws due to financial mismanagement. This individual does not seem to have grasped the nettle of financial responsibility. If this approach is axiomatic of the bankruptcy laws generally then it is manifestly failing in its educational objectives.

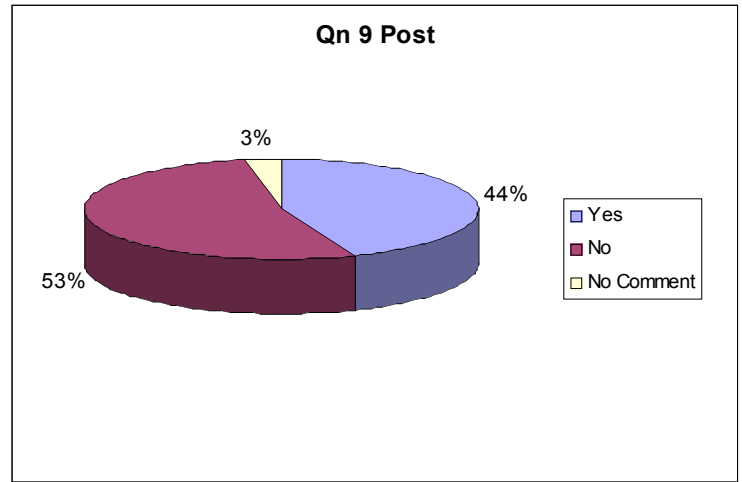
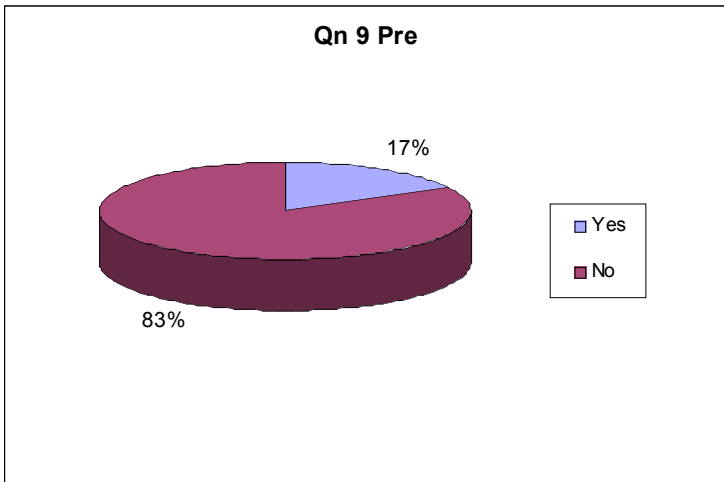
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<sup>520</sup> *Newcastle ref: W.*

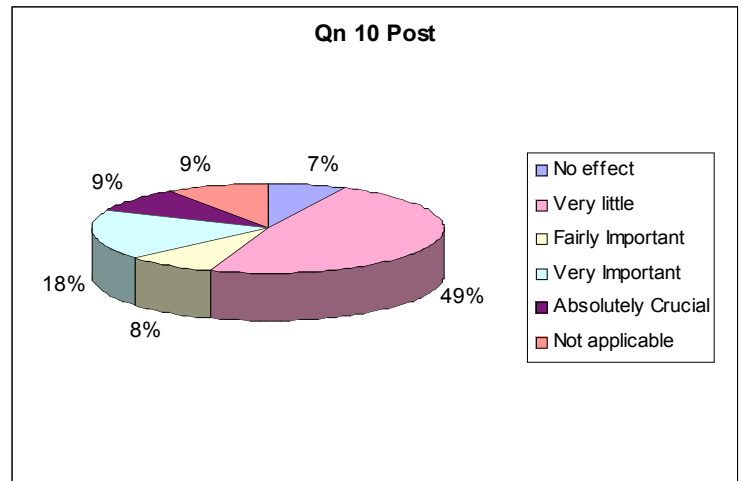
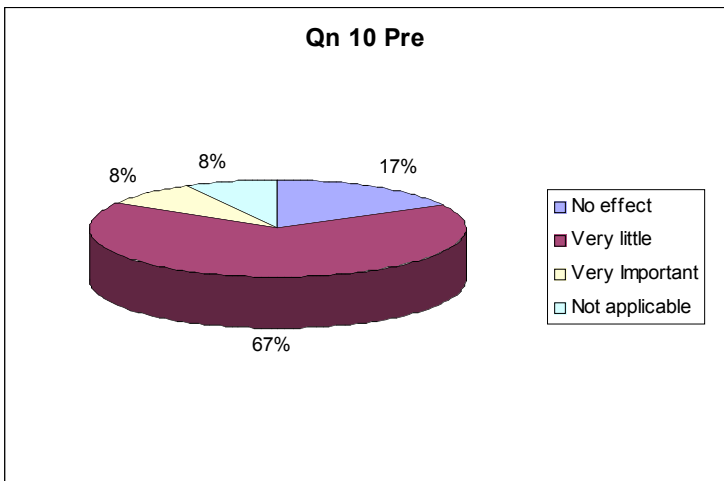
**Pre and Post Enterprise Act 2002 responses to discharge**

The following five sets of graphs detail the responses to the discharge questions posed in the BCS 2005 for responses that were received from bankrupts who were made bankrupt either pre or post the enactment of the Enterprise Act 2002.

**9. Were you aware that the automatic discharge period was reduced in 2004 from 3 years to 1 year before you began your bankruptcy experience?**

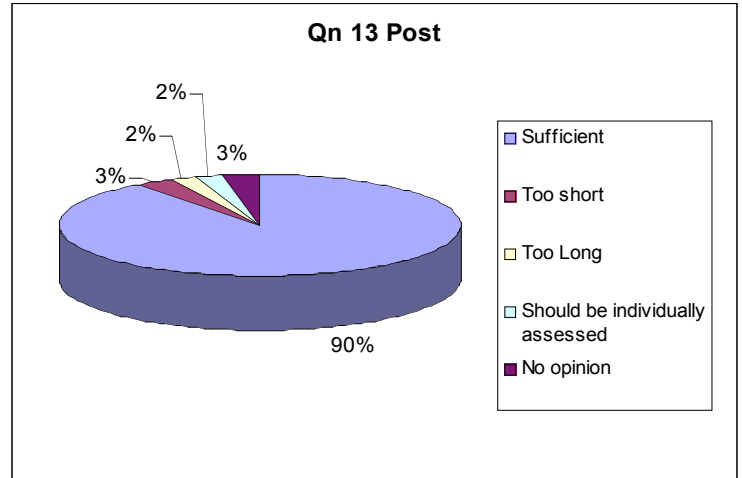
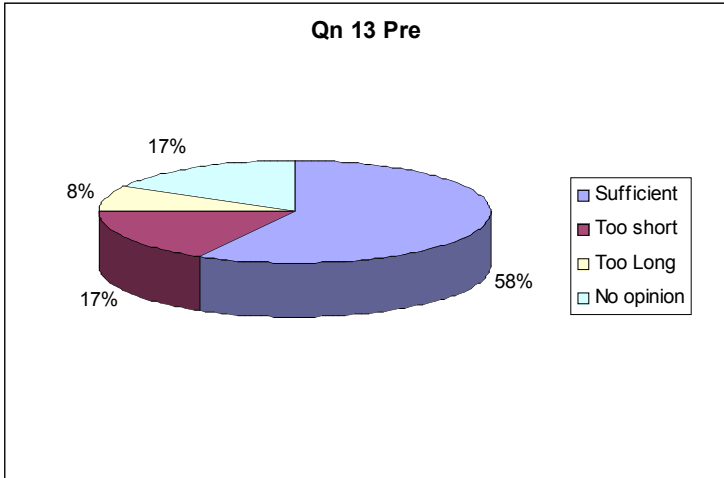


**10. How much of an influence did the reduction in the automatic discharge period from 3 years to 1 year have on your decision to go through the bankruptcy debt relief route?**

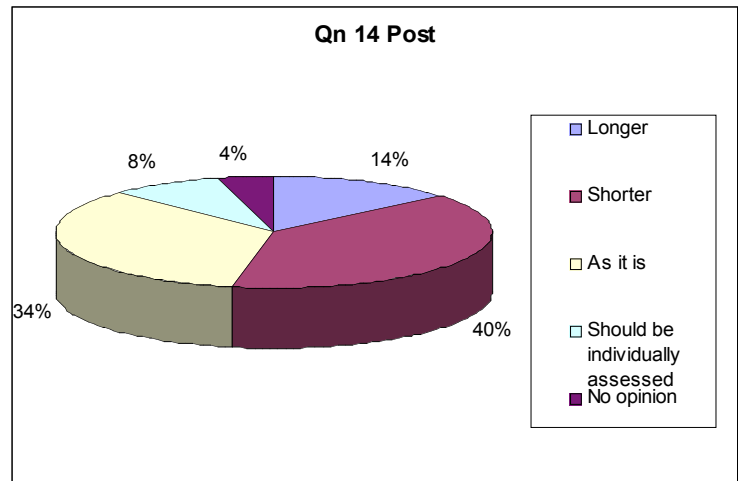
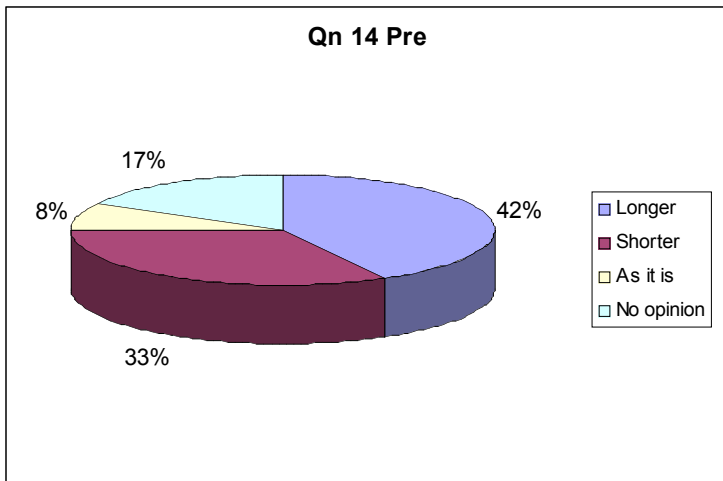




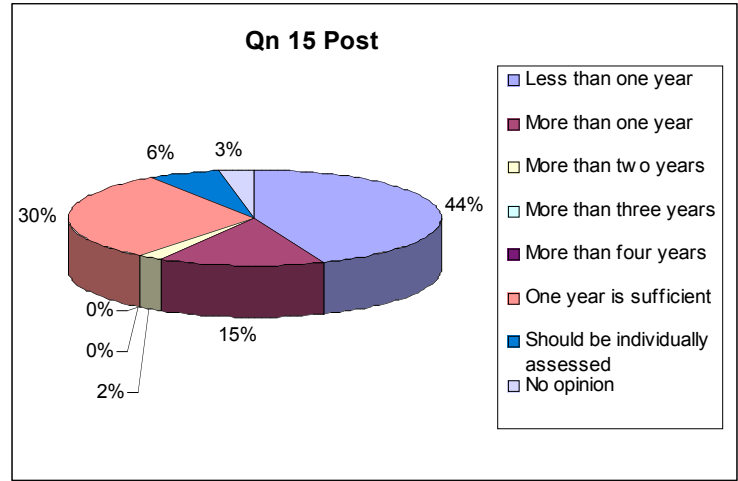
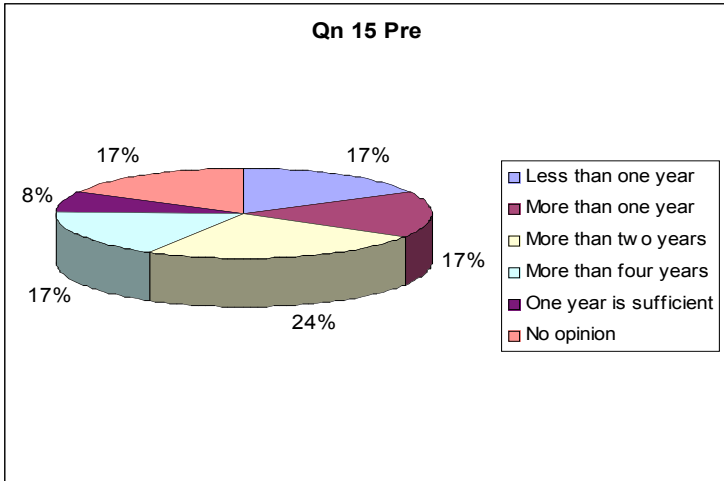
**13. Do you think one year before discharge is a sufficient time-period?**



**14. Should the automatic discharge be [longer or shorter than one year]:**



**15. What length of time do you think an individual should be adjudged bankrupt before they receive an automatic discharge?**



**Summary**

This *BCS 2005* pilot study survey was anonymous. This was primarily to ensure higher rates of response and to encourage honest answers amongst the respondents. It has been possible however to identify from the questionnaires where names were given the pre and post Enterprise Act 2002 bankrupts.<sup>521</sup> That is to say people who were declared bankrupt before the statute came into force and individuals who were declared bankrupt after the provisions regarding the reduction on automatic discharge came into force.<sup>522</sup>

To take each set of responses seriatim: Question 9: the increase in awareness of the automatic discharge period reduction in the post-Enterprise Act 2002 (EA) sample (44%) can possibly be accounted for by the fact that individuals coming to the regime post the amendments would have access to literature explaining the recent statutory amendments. It is perhaps worrying that the other 53% who responded directly were not aware of the changes. The large proportion of unawareness in the pre-EA sample is primarily due to the fact that a significant number of respondents were bankrupts who would have passed through the regime before the changes

<sup>521</sup> We have used the Cardiff and Newcastle data sets only to extrapolate this information. The data relates to the responses of 24 pre-Enterprise Act 2002 respondents and 201 post-Enterprise Act 2002 respondents. Extreme care must be taken when drawing conclusions from this data set as the figures represent a very small portion of total bankrupts in the given courts. Questionnaire anonymity has precluded a more thorough examination of this important point.

<sup>522</sup> See questions 9, 10, 13, 14, and 15 above and the citations quoted therein.

were even mooted as reform ideas. It is interesting to note however that within this sample 17% of pre-EA bankrupts were aware of the forthcoming change.

Question 10; just 8% of the pre-EA respondents noted that the changes in the discharge provisions introduced by the statute were very important as regards their decision to progress into bankruptcy. However, of the post-EA respondents a different picture emerges. The following replies were received to this question of whether the changes influenced the respondents' decision to progress into the bankruptcy regime: fairly important (8%), very important (18%) and absolutely crucial (9%), this equates to a total of 35% of respondents who were influenced fairly decisively by the new discharge regime. This is of note as we may be seeing a factual incidence of the regime becoming more attractive amongst over-indebted individuals. The recent statutory changes could be considered a success if the individual debtors were prospective debtors anyway. However, if the changes have caused an increase in irresponsible credit usage (a subject outside the boundaries of this survey) then the affects of the statute may be ultimately corrosive to the credit system. Further research on the use of credit and the use of bankruptcy in the new post Enterprise Act 2002 world would be of use to test this hypothesis when the regime has bedded in over the next couple of years. A caveat must obviously be added; most of the individuals concerned would have been subject to such high levels of personal indebtedness that bankruptcy, no matter what its qualities, was their only option.

Question 13; It is interesting to note that 58% of pre-EA respondents opined that the one year time period before discharge was sufficient, as opposed to 90% of the post-EA respondents. The post-EA respondents perhaps cannot be as objective as the pre-EA respondents who have been through the three year discharge period in answering this question. In essence it might be said that the post-EA respondents might be subject to a form of respondent bias in that because they have only experienced the one discharge period they cannot imagine or objectively assess the efficacy of a longer discharge period.

Question 14; this question asked whether the automatic discharge period should be longer or shorter than the one year time period. It is interesting to note the relatively high percentage of pre-EA respondents (42%) who opined that the period should be longer. Perhaps it is the pre-EA bankrupts who are suffering a lack of objectivity in relation to this question, i.e. if they had to undergo three years, so should more recent bankrupts. The respondents calling for a reduction in the discharge period below a year (33% pre-EA and 40% post EA) is of note as it demonstrates that an even shorter discharge period is desired amongst bankrupts. More research on bankrupts'

motivation for this answer would be useful. This could be the subject of follow up interviews in an expanded survey.

Question 15; again we see quite a marked difference between the approaches of the pre-EA and post-EA respondents' answers to the question of what length the automatic discharge should be. Unfortunately, the responses amongst pre-EA bankrupts are so widely disparate that no meaningful conclusions can be drawn. It is interesting to note however that 44% of post-EA respondents opined that less than one year would be appropriate for the paradigm discharge period.

**PART THREE**

**CONCLUSIONS AND RECOMMENDATIONS**

## CONCLUSIONS<sup>523</sup>

“...unless the insolvency laws be reformed, the vices of idleness, extravagance, and dishonesty encouraged by them, will destroy the middle classes”

*(Per: Houston Browne, J & Ogbourne, WW. The Bankrupt Law Consolidation Act 1849 [12 & 13 Vic. c.106]; with a popular explanation of the Powers, Duties, Obligations, and Responsibilities of Debtors and Creditors; the facilities for avoiding Bankruptcy, and the Provisions for punishing Fraud. London. 1849.)*

The contemporary picture of English insolvency law relating to personal insolvency is perhaps not as bleak as the mid-nineteenth century picture painted by Houston Browne and Ogbourne, but their quote serves as a useful reminder that law reform is a constant process.<sup>524</sup> It is a process that must however be informed by primary source evidence. As noted in the introduction to this report the *BCS 2005* is a survey which draws on the experiences of the bankrupt by questioning the bankrupt. This approach is markedly different to previous surveys both in the United Kingdom<sup>525</sup> and in Canada<sup>526</sup> that have instead questioned insolvency practitioners regarding the experiences of their insolvent clients. We believe that our reliance on primary source data as opposed to secondary source anecdotal evidence has provided a more accurate picture of the position of the bankrupt and their experience within the English legal system. Despite the use of several different methodologies to bolster the response rates to the questionnaires, the low rates of return from the bankrupt respondents has proved disappointing. At the risk of generalising, it was common for respondents to simply box tick as per instructions, however, without clarification and expansion regarding the question asked. There are a large number of exceptions to this cursory approach to questionnaire completion and some questionnaires exhibit lengthy qualitative answers. Whilst the response rate of 11.5% is statistically valid according to extant research literature,<sup>527</sup> some caution must be taken before robust conclusions can be drawn from this pilot study data set. Consequentially, only tentative conclusions and recommendations are made in this pilot study research report conclusion.

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<sup>523</sup> As noted above, the ideas and opinions expressed in this report and conclusion are **not** the opinions of the Insolvency Service. This is an independent academic report and the opinions, ideas and conclusions reached within are those of the author alone. The Insolvency Service cannot accept any responsibility for any errors or omissions as a result of negligence or otherwise.

<sup>524</sup> As Basil Montagu, the great 19<sup>th</sup> century insolvency law reformer opined, 'Our professional duties consist, not merely in activity and in publication upon some practical part of professional knowledge, which repay themselves; but in availing ourselves of every opportunity to visit and strengthen the route and foundation of the science itself, see: Montagu, B. *Some Observations upon the Bill for the Improvement of the Bankrupt Laws*. Butterworths, London, 1822, at page 73.

<sup>525</sup> R3 annual personal insolvency surveys, Appendix 3.

<sup>526</sup> Schwartz, S & Anderson, L. *An Empirical Study of Canadians Seeking Personal Bankruptcy Protection*. Ottawa: Industry Canada, 1998; Schwartz, S. *The Empirical Dimensions of Consumer Bankruptcy: Results From a Survey of Canadian Bankrupts* (1999) 37 Osgoode Hall L.J. 83; Ramsay, IDC. *Individual Bankruptcy: Preliminary Findings of a Socio-Legal Analysis* (1999) 37 Osgoode Hall L.J. 15.

<sup>527</sup> *Op cit* n.54.

The results of the *BCS 2005* questionnaire are broadly positive. The responses have certainly not indicated any areas that require speedy legislative intervention. One nineteenth century commentator's sentiments, namely, "our commercial laws, so far as bankruptcy administration is concerned, is a national disgrace, and we are compelled to exclaim, with Hamlet, 'Reform it altogether'",<sup>528</sup> are fortunately not a truism for contemporary insolvency laws pursuant to the results of the *BCS 2005*. More recent statements that, "our law as to bankruptcy is archaic, antiquated, abstruse"<sup>529</sup> are also not borne out. Key findings of the *BCS 2005* survey are:

*Debtor associated:*

- The main cause of bankruptcy is bankrupt acknowledged credit misuse, followed by business failure.
- Males are the majority users of the bankruptcy regime.
- There is no definitive age range for the typical bankrupt.
- Debtors present the majority of bankruptcy petitions.
- The vast majority of bankrupts are not homeowners prior to bankruptcy.
- Bankruptcy does not affect employment.
- Knowledge of the Enterprise Act 2002 provisions and their effects is low amongst bankrupts.
- The majority of bankrupts feel morally at fault for their debt problems.
- A large majority of bankrupts did not know what level of indebtedness they were being released from.

*Creditor associated:*

- Bankrupts experience immense difficulties in obtaining bank accounts post discharge, which inhibits them from rehabilitation into the credit world.
- The non-monetary effects of bankruptcy are voluminous, but primarily feature dissatisfaction with lenders.

*Procedure associated:*

- Informal voluntary arrangements and individual voluntary arrangements are close second choice solutions for over-indebted individuals.
- Alternative routes to bankruptcy are explored prior to the bankruptcy route being pursued.
- Word of mouth and voluntary sector advice are the main information conduits for personal insolvency advice.

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<sup>528</sup> Editorial. *Anomalies of the Bankruptcy System*. The Bankers' Magazine and Journal of the Money Market. Vol.13, September, 1853, pp.609-615, at page 615.

<sup>529</sup> *per* Lord Denning, Hansard, HL, 15<sup>th</sup> January 1985, Vol.458, Col 900.

- Bankruptcy as an experience is overwhelmingly perceived as negative and stigmatising by bankrupts.
- Bankrupts sum up the bankruptcy process as being ultimately an efficient system.
- The one year maximum period before automatic discharge is deemed sufficient by bankrupts.

Profession/Advice associated:

- Communication and advice from Trustees in Bankruptcy is good according to bankrupts.
- Communication and advice from the Official Receiver is overwhelmingly good according to bankrupts.
- Bankruptcy jurisdiction within the County Courts is efficient and the supporting infrastructure is well maintained.
- On the whole lawyers are not involved in the bankruptcy process in terms of advice; the Citizens Advice Bureau is the main provider of personal insolvency advice.

## **Recommendations**

### A Procedure for dealing with two types of bankrupt

In the introduction to the Insolvency Service's recent *Improving Individual Voluntary Arrangements* consultation paper, Mr. Desmond Flynn, Inspector General and Agency Chief Executive of the Insolvency Service observed that, "we have seen a large increase in the availability of credit and, as a consequence, increasing numbers of individuals with debt problems. Over time, non-traders have become the main users of the various debt solutions for individuals, including IVAs."<sup>530</sup> This is an interesting observation which begs the question for whom are we designing our personal insolvency laws? Should our personal insolvency laws be framed to "encourage entrepreneurship and responsible risk taking"<sup>531</sup> or rather to assist consumer debtors?, after all, "we appear to be moving towards the models present in the United States, Canada and Australia where consumer bankruptcies form a very significant majority of cases."<sup>532</sup> If we take bankruptcy, as distinct from the other available personal insolvency procedures, i.e. IVAs, who are the bankruptcy procedures main users? If they are on the whole

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<sup>530</sup> *Improving Individual Voluntary Arrangements*. Insolvency Service, DTI publications, July 2005, at page 5.

<sup>531</sup> *Productivity and Enterprise*, at para 1.1. For the effect of the corporate insolvency proposals in this document see: Tribe, J. 'Insolvency – A Second Chance': *The end of Administrative Receivership?* (2002) 23(2) Co.Law. pp 60-61.

<sup>532</sup> *Productivity and Enterprise*, at para 1.47



consumer debtors should our bankruptcy laws be tilted towards their interests as opposed to the less common risk taking entrepreneur? Should there be separate regimes for both types of debtor? If the Insolvency Service does intend to move away from the “one-size-fits-all”<sup>533</sup> approach, how might this be achieved as between the more common consumer debtors and their less prevalent relations, the risk taking entrepreneur?<sup>534</sup> In Justice’s 1994 *Agenda for Reform* a proposal was mooted that would provide for a two-tier bankruptcy system. It is worth quoting the committee’s proposal in full:

*“the ‘serious’ tier should perhaps have a less relaxed automatic discharge regime, buttressed by positive requirements that the debtor should be seen to make some effort to rehabilitate himself, e.g. by making regular payments out of income. The ‘non-serious’ tier could have little or no investigatory function, and could perhaps benefit from automatic discharges taking place in as little as 12 months. The term ‘bankrupt’ should be reserved for serious cases, and should indeed carry a degree of stigma, but the less serious cases could benefit from a new title such as ‘enforcement restriction order.’”<sup>535</sup>*

The results of the *BCS 2005* show that the characteristics of the average debtor are that they are pre-dominantly (over 49%) over-committed consumer debtors. It could be argued therefore that Justice’s ‘two-tier’ proposal is supported by primary source factual evidence. If bankrupts are on the whole consumer debtors should our insolvency laws not be more highly focused primarily on resolving their difficulties?<sup>536</sup> This ‘two-tier’ approach is far from a new idea. The Bankruptcy Act of 1849<sup>537</sup> drew a distinction for purposes of discharge between blameworthy and non-blameworthy bankrupts. The Cork committee also saw bankruptcy as a procedure that should be maintained only for the most serious cases, leaving other regimes to deal with less culpable bankrupts.<sup>538</sup> A distinction must be made at this point between the culpability of the bankrupt and the type of bankrupt for the purpose of a multi-tier approach. The two issues are separate, namely a ‘two-tier’ approach to distinguish between consumer bankrupts and entrepreneur

<sup>533</sup> *ibid*, at paragraph 1.2.

<sup>534</sup> One learned commentator has observed that there should be no differentiation made between entrepreneurial debt and consumer debt, see: Ziegel, J. *The Philosophy and Design of Contemporary Consumer Bankruptcy Systems: A Canada-United States Comparison* (1999) 37, Osgoode Hall Law Journal, p.205. However, another learned commentator has observed, “This “one-size fits all” approach is misguided and at last there is encouraging evidence that the policymakers are moving towards a more discriminating treatment of different types of debtor.” (*per Milman* at page 26).

<sup>535</sup> *Agenda for Reform* at para 4.32.

<sup>536</sup> The *Cork Report* of course noted at paragraph 272 that, “the most urgent need of all is for the introduction of a simple, accessible and inexpensive procedure for dealing with the ordinary consumer debtor.” If anything this urgency has grown stronger. Their “Order for Liquidation of Assets” proposal was of course note adopted, see their paragraphs 585-588.

<sup>537</sup> 12 and 13 Vict, c.106.

<sup>538</sup> *Cork Report* at para 554.

bankrupts and a 'two-tier' approach to distinguish between blameworthy and non-blameworthy bankrupts. The need for a division of treatment between types of bankrupt seems to be supported by evidence as presented in this survey, namely consumer bankrupts are the majority users and by at least one international organisation.<sup>539</sup> The practical utility and cost implications of a two tiered approach may be prohibitive, but if the current bankruptcy laws are framed in such a way as to relegate the main user behind the current policy and political objectives of the political party in power, then the long term majority users will surely suffer from an incoherent framework designed for short term policy objectives, not long term coherent law reform.

The Enterprise Act 2002 was the flagship statute of the Labour Government's second term parliament.<sup>540</sup> Combining both elements of competition law and insolvency law, the statute is lengthy and far reaching. It could be argued however, that by placing the insolvency provisions, and specifically those relating to personal insolvency within this act instead of within a separate new Insolvency Act 2003, has tilted the balance of our personal insolvency laws towards the entrepreneurial over committed individual whereas in fact the majority users of the system are consumer debtors. Perhaps the clothing of the provisions, i.e. within an Enterprise Act, with all the connotations as to entrepreneurship, investment, growth, etc, which that brings, as opposed to formulating the provisions and presenting them within a new Insolvency Act are just presentational matters. However, a corollary of placing the provisions within the Enterprise Act 2002 have been to give the impression that the new discharge provisions, for example, were intended for entrepreneurs but are being abused by consumer debtors. If one takes the totality of the new personal insolvency provisions, i.e. the BRO and the BRU in addition to the reduced discharge period, one can see that the new provisions are about much more than just discharge. Unfortunately, the vehicle used to bring them onto the statute book appears to have given the public (and bankrupts) the impression that the discharge provisions, intended for entrepreneurial recovery, are open to use (and abuse) by all. If one takes these provisions in tandem with the BRO and BRU provisions one can see that this is clearly not the case. As a raft of provisions they are balanced, from a presentational perspective however their effects have been skewed. It is lamentable that apparent short-term political necessity can dictate long-term law reform activity. If a division is made between entrepreneurial bankruptcy and consumer bankruptcy perhaps the terms "entrepreneurial bankruptcy" and "consumer bankruptcy" could be used to differentiate between the two regimes. This approach must however be tempered with the considerations

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<sup>539</sup> *Insol Consumer Debt Report*, recommendation 3.

<sup>540</sup> See further: Parker, A. *The Financial Times*. "Rescue' bill could push up business failures." (04/10/02); Eaglesham, J. *The Financial Times*. "Call for tougher 'rogues charter'" (28/10/02) at page 4; Eaglesham, J. *The Financial Times* "Bill could multiply personal bankruptcies, peers warned." (21/10/02) at page 4; Eaglesham, J. *The Financial Times* "Critics raise fears over bill to help bankrupts" (02/07/02) at page 2.

outlined below, namely that bankruptcy as a term of art should be removed from the insolvency lexicon for consumer debt cases.

#### Educational initiatives – Debtor and Creditor orientated<sup>541</sup>

The idea of debtor education is not popular.<sup>542</sup> In *Bankruptcy – A Fresh Start*, financial counselling for bankrupts was mooted as a possible reform initiative.<sup>543</sup> In *Productivity and Enterprise* it was noted that this proposal (as well as a number of others), “received little support and are not being taken forward at this time.”<sup>544</sup> In order to combat the rise in consumer debt one solution could be to facilitate a programme of debtor education or compulsory financial counselling. This could be undertaken both before problems arise in terms of personal over-indebtedness and post-bankruptcy discharge to help reduce the risk of a second bankruptcy.<sup>545</sup> Ideally, credit responsibility should be taught at a much earlier stage than at the onset of insolvency or immediately after the consequences have come to fruition. Perhaps the incorporation of credit management awareness within general studies or citizenship qualifications undertaken during secondary education would provide one barrier to credit-misuse.

At the adult stage credit providers could be given a duty to supply to potential debtors a ‘Credit Responsibility Pack’ or a ‘Code of Good Financial Behaviour’ that outlined the problems of personal over-indebtedness and the possible outcomes of default. If the debtor does not read and sign the same and submit to a central register then their automatic discharge period could be

<sup>541</sup> On the American and Canadian experience of consumer debt education see: Gross, K. *Taking community interests into account in bankruptcy: an essay* (1994) 72 Wash ULQ 1031; Gross, K. *Establishing Financial Literacy Programmes for Consumer Debtors: Complex Issues on the Platter*, Chapter 17 in *Consumer Bankruptcy in Global Perspective* at 343–360 (I. Ramsay, J. Niemi-Kiesilainen & W. C. Whitford eds., Oxford: Hart, 2003); Gross, K & Bloc-Lieb, S & Wiener, RL. *Lessons from the Trenches: Debtor Education in Theory and Practice* (2002) 7 Fordham Journal of Corporate and Financial Law 503–524; Gross, K & Bloc-Lieb, S. *Debtor Education: Making Sure a Good Idea Does Not Go Awry* (2000) Norton Bankruptcy Law Adviser, January 2000, at 6–10; Gross, K. *Debtor Education Matters: Both Prospective and Current Creditors Will Be Helped by Productive, Informed Consumers in the Credit Marketplace*. (1997) 218 New York Law Journal 8; Gross, K. *Preliminary Proposal on Debtor Education Program Options* (1997) 51 Consumer Finance Law Quarterly Report 23–26; Curnock, CA. *Insolvency Counselling – Innovation based on the fourteenth century* (1999) 37 Osgoode Hall L.J. 387; Professor Karen Gross, the leading American exponent of debtor education, is President of the ‘Coalition for Consumer Bankruptcy Debtor Education’ (see the organisations website at [www.nyls.edu/pages/103.asp](http://www.nyls.edu/pages/103.asp)). This organisation provides a free three hour personal financial management course to bankrupts in the Eastern and Southern Districts of New York.

<sup>542</sup> It is also not new. The 1969 Payne Committee report (*Report of the Committee on the Enforcement of Judgment Debts*. London, Cm 6909) unsuccessfully recommended a form of debt counselling.

<sup>543</sup> *Bankruptcy - Fresh Start*, at paragraphs 7.19-7.21, noting the Canadian position where compulsory financial counselling is a condition of discharge (paragraph 4.8).

<sup>544</sup> *Productivity and Enterprise*, at paragraph 1.5.

<sup>545</sup> Bankruptcy itself is seen as a learning process by some bankrupts, for example, one Birmingham respondent noted, “I would say that it [bankruptcy process] certainly got me back on my feet, enabling me to re-build my life and it has also taught me many valuable lessons.” (*Birmingham ref: IH.*)

delayed to take into account their earlier irresponsible approach to credit usage. Bankrupt debtors upon discharge could also be given the option of attending a 'Credit Responsibility Day' at which they are given education and advice to ensure that they do not repeat past financial mistakes.

Even a brief consideration of a sample of the *BCS 2005* respondent questionnaires makes depressing reading. The verbatim comments extracted from the completed questionnaires that have been cited in this report substantiate this point. It is not necessarily depressing reading because of the stories that unfold regarding individuals debt problems, but because the level of literacy amongst the respondents is generally poor.<sup>546</sup> Based on the qualified answers given in the response questionnaires, bankrupts are on the whole poorly equipped with the most basic English written communication skills. It could be argued that these individuals urgently need help in relation to basic written communication, let alone handling large sums of money.

If general debtor education is not thought sufficiently necessary then perhaps some small-scale initiatives might aid debtors and creditors respectively. For example, as noted in the summary section of question 7 above, a large majority of bankrupts are having difficulty post their discharge in obtaining basic bank accounts for their wages. If rehabilitation is a key part of insolvency law then this position is surely untenable. Some form of educational initiative that helps bankrupts post-discharge would help them re-enter the credit market by, for example, helping them obtain the very necessary simple banking facilities. This educational initiative could focus on debtor, creditors or both parties.

### Creditor Responsibility

It could be argued that the current growth in bankruptcy levels has been caused by at worst irresponsible lending practices and at best over generous lending practices of credit providers. The bankruptcy procedure and its effect must be viewed in the wider context of the whole credit system. Consumer debt has risen demonstrably in the last few years. As Roger Oldfield observed in the *R3 9<sup>th</sup> Survey of Personal Insolvency*, the Enterprise Act 2002 reform provisions were perhaps biased towards failed entrepreneurs, whereas the greatest area for concern perhaps lies with consumer debtors. The *BCS 2005* shows that this is still a truism. Just as society is concerned that if individual debtors become insolvent their culpability for putting themselves in that position should be investigated and in some cases punished, society is also concerned at the

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<sup>546</sup> Examples include references: *Reading CI; Reading CP; Newcastle C ;Newcastle J; Newcastle M; Newcastle Z; Newcastle AH; Newcastle AS; Newcastle AW; Newcastle BA; Newcastle BQ; Reading DP; Newcastle DB; Newcastle DW; Exeter BW; Birmingham EU.*

conduct of other parties (e.g. banks) whose actions contribute to the creation of that insolvent estate. This need was of course recognised by the Cork committee when they stated that society needs to be satisfied, “whether and to what extent the responsibility for the insolvency is attributable to someone other than the insolvent.”<sup>547</sup> It is of course within the public interest to ensure that any such behaviour is identified and prohibited thus reducing the incidence of bankruptcy.

In relation to imprisonment for debt Johnson observed that: “those who have made the laws, have apparently supposed, that every deficiency of payment is the crime of the debtor. But the truth is that the creditor always shares the act, and often more than not shares the guilt of improper trust. It seldom happens that any man imprisons another but for debts which he suffered to be contracted in hope of advantage to himself, and for bargains in which he proportioned his profit to his own opinion of the hazard; and there is no reason why one should punish the other for a contract in which both concurred.”<sup>548</sup> This point was again taken up in 1972 when Ziegel observed; “the consumer bankrupt is not the sole author of his own misfortune. As often as not his creditors have substantially contributed to his difficulties by creating an environment in which the buy now, pay later syndrome has created the dominant characteristic of our consumer age.”<sup>549</sup> This is an extremely important point. Are irresponsible lending practices partly responsible for the position of consumer insolvents?<sup>550</sup> Should creditors be educated? It is an axiom of modern society that we have markets in both consumer and commercial credit.<sup>551</sup> As noted above, the market in consumer credit has grown manifestly, but this has not been matched by similar growth in the growth of regulation or temperance of lending practices.<sup>552</sup> The respondents qualifying statements to questions 7 and 18 both strongly suggest that individuals are being extended credit which they are financially in no position to repay.

### Terminological Difficulties

<sup>547</sup> *Cork Report* at paragraph 1735 (d).

<sup>548</sup> Montagu, B. *Enquiries respecting the insolvent debtors bill, with opinions of Dr. Paley, Mr. Burke and Dr. Johnson*. London, 1815, at page 520-521.

<sup>549</sup> Ziegel, J. *Consumer Bankruptcies* (1972) *Chitty's Law Journal*, vol.20, no.10, p.325, at page 330.

<sup>550</sup> See further: Hosking, P & Morgan, J. *The Times*. “*Report accuses Lloyds TSB over lending practices.*” (10/05/05), where it is reported that, “an audit report written by the bank’s own officials accuses many branch staff of being motivated mainly to maximise their bonuses by giving loans, and of paying little attention to their customers’ circumstances.”

<sup>551</sup> *Milman* at xxxiii.

<sup>552</sup> See *Cork Report*, Chapter One.

The term ‘bankruptcy’<sup>553</sup> is a multi-faceted one which requires a brief exposition. The epistemological derivation of bankruptcy is, as Blackstone opines, derived from “the word *bancus* or *banque*, which signifies the table or counter of a tradesman<sup>554</sup> and *ruptus*, broken; denoting thereby one whose shop or place of trade is broken and gone; though others rather choose to adopt the word “route”, which in French signifies a trace or track, and tell us that a bankrupt is “one who hath removed his banque, leaving but a trace behind.”<sup>555</sup> Bankruptcy as understood in English legal parlance can be defined as a legal position or state and it exclusively applies to individuals.<sup>556</sup> In a number of historical statutes, there have been defined ‘acts of bankruptcy’ and bankruptcy has been consequentially judicially defined as relating to the commission of such an act. For example, keeping house, fleeing the realm, and not paying one’s creditors, have all been characterised as acts of bankruptcy.<sup>557</sup> If an individual is bankrupt, they are in a legal state or position, a normal characteristic of which is a complete inability to pay their debts. A number of consequences arise upon an incidence of bankruptcy,<sup>558</sup> but what is important to this study is the effect the word has on people who become bankrupt. Responses to this survey, particularly replies to questions 7, 17, 18, and 19 denote that the term still attracts stigma in England and Wales. Indeed, there is also strong judicial comment to this effect, e.g. “it is not as if bankruptcy leads to the debtor’s incarceration as it might have done 150 years ago. That is not to underplay the unpleasantness, seriousness and stigma of bankruptcy.”<sup>559</sup> Perhaps in cases of consumer insolvency it might be appropriate to reappraise the use of the word bankruptcy if we are to truly relieve and rehabilitate individuals. A renaming of the procedure under which these species of

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<sup>553</sup> Radin has noted that, ‘the word bankrupt is a good English word deliberately Latinized from the French’ and that the earliest instance in law of the term bankruptcy being used was in 1539 in a State Paper of that year (see: Radin, M. *The Nature of Bankruptcy* [1940] vol.89, no. 1, pages 1 to 38, at page 1). It is also noted that More’s *Apology*, c.XXI, 1533 contains a reference to the term. Bankrupt is defined in the OED as, ‘declared in law unable to pay their debts’ from; *The New Oxford Dictionary of English*. Oxford University Press, Oxford, 1998, at page 136. ‘Bankruptcy probably means the commission of an act of bankruptcy followed by an adjudication’ from; James, J. *Stroud’s Judicial Dictionary of Words and Phrases*. 5<sup>th</sup> Edition. Sweet & Maxwell Ltd, London. 1986, at page 241.

<sup>554</sup> Dufresne 1. 969.

<sup>555</sup> *Blackstone’s Commentaries*, vol.II, 1829. See also; *Cokes Institutes*, 4 Inst 277. Honsberger opines that the word is derived from, “the Italian “banca rotta” which is literally “bank broken” or “bench broken”. The allusion is said to be to the custom of breaking the table or counter of a defaulting tradesman. This became the symbol of a trader’s failure” (see: Honsberger, J. *The Nature of Bankruptcy and Insolvency in a Constitutional Perspective* [1972] Osgoode Hall Law Journal, vol.10, no.1, 199-207, at page 203).

<sup>556</sup> See *Fletcher* at paragraph 1-009.

<sup>557</sup> See for example; *ex. p. Attwater*, 5 Ch.D. 30.

<sup>558</sup> For example, formal notice is given of the bankruptcy order in the *London Gazette* (Insolvency Rules 1986 6.34 and 6.46), the bankrupt’s property (as defined by s.283 and s.436 IA 86) vests in the Trustee in Bankruptcy; the Trustee in Bankruptcy will distribute the proceeds derived from those assets to creditors in the defined manner (see ss.328, 233, 348, 176A, 386 and Schedule 6 of the IA 86); creditors lose the right to take individual action.

<sup>559</sup> *per* Neuberger, J in *West Bromwich Building Society v Crammer* [2002] EWHC 2618 (Ch), [2003] BPIR 783, at paragraph 48. See also, *Coppard v Commissioners of Customs and Excise* (Transcript) 23 January 2001, at paragraph 30, where Judge Seymour QC notes, “there is, no doubt, a stigma attached to having been made bankrupt.”

insolvent pass might be considered desirable. Perhaps a term such as, *Personal Financial Protection Order (PFPO)* might be considered. This *PFPO* regime would be roughly analogous to the recently proposed *Debt Relief Order* in that it would provide for a scheme in the alternative to bankruptcy for consumer debtors,<sup>560</sup> however the *PFPO* regime would ostensibly be exactly the same as current bankruptcy regulations for debts under £100,000 for non-culpable bankrupts. This name change might reduce the attendant issues of stigma that bankruptcy as a term still manifests in English Society. The term bankruptcy is exhausted in the English language.<sup>561</sup> It has through five centuries of use become burdened with negative preconceptions and terminological confusion and it unfortunately still retains connotations that are not conducive to current notions of relief and rehabilitation. One bankrupt respondent to this survey in replying to whether the bankruptcy system has met her expectations observed, “Yes, it’s a dirty word and I feel very dirty so yes it has met my expectations.”<sup>562</sup> As long as views such as this and those noted above in answers to questions 7, 18, and 19 are maintained then it is unlikely that we can move to a position where attitudes to the term and procedure are likely to change. Whilst this suggestion simply involves the employment of a euphemism<sup>563</sup> it does move us away from the historical connotations attendant with the term bankruptcy. Is the continued use of the term bankruptcy with its historical antecedents, in an environment where we are trying to make the attitude to and results of the bankruptcy system not anachronistic? As well as modernising procedures, should we not also modify the procedure’s name? If we are to retain bankruptcy as a term of art it should be used as the Cork committee intended<sup>564</sup> and as history has used it, namely for the more serious cases of personal over-indebtedness where some form of miscreant behaviour is extant. The following division of use is therefore promulgated; retain bankruptcy in its current Enterprise Act 2002 state and as a term of art for serious cases of personal over-indebtedness (e.g. where BRO and BRU orders apply) on the one hand, and use the *PFPO* procedure for small consumer debt cases which are in effect now subject to the bankruptcy procedure.

## **The Future**

### **Pilot Study Expanded - questions we did not ask**

<sup>560</sup> See: *Relief for the indebted – an alternative to bankruptcy – Summary of Responses and Government Reply*. Insolvency Service, November 2005.

<sup>561</sup> I am grateful to Professor David Graham QC for this point.

<sup>562</sup> *Birmingham ref: DO*.

<sup>563</sup> Just as Receiving Orders became synonymous over time with bankruptcy the *PFPO* might also suffer the same fate.

<sup>564</sup> See *Cork Report* at paragraph 554.

As noted in the introduction to this *BCS 2005* report, the treatment contained herein was never intended to be exhaustive, which is mainly due to the nature of the small sample of bankruptcy courts investigated. The pilot study survey has thrown up more questions than it has answered. Unanswered questions do however need addressing. In *Productivity and Enterprise*, it is noted that,

*“In the last fifteen years the availability of personal credit has grown substantially. This in turn has led to a fundamental change in society’s view of both personal debt and personal insolvency. The likelihood is that such changes will accelerate in the future and so it is only right that the Government should keep under review the machinery that is in place to deal with all individual over-indebtedness.”*<sup>565</sup>

The CILP research team would like to expand its *BCS 2005* pilot study of six bankruptcy courts to 30 of the 136 bankruptcy courts in England and Wales, thereby continuing the process of review of the bankruptcy court system. A continuation of the general survey of the bankruptcy courts that has been undertaken in the pilot study stage is envisaged. Additionally, we would now like to address the following thesis more specifically; *“statistically have the recent reforms introduced by the Enterprise Act 2002 made bankruptcy more effective as a fresh start mechanism for insolvents or is the reduced discharge period encouraging the abuse of the system by reckless users of credit?”* A portion of the questionnaire would focus on the routes into insolvency mechanisms, whether court led or privately initiated.<sup>566</sup> This would include an investigation into whether current routes into bankruptcy (as a statutory procedure), e.g. payment of court fees for entry into the procedure, are proving barriers to accessing the bankruptcy courts for insolvents. Is this fee barrier insurmountable for some insolvents? We would like to address some issues and pose some questions that we did not address in the pilot study stage.<sup>567</sup> Questions that we would like to investigate in any future study might include, *inter alia*:

- What levels of surplus income do bankrupts’ have available from current salary that could be used to satisfy debts?
- What proportion of IVAs fail and result in a subsequent bankruptcy?

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<sup>565</sup> *Productivity and Enterprise*, at para 1.45.

<sup>566</sup> e.g. bankruptcy, individual voluntary arrangement (both regimes pursuant to the Insolvency Act 1986), informal arrangement, debt management schemes (we are particularly interested in ascertaining whether or not these schemes are burdensome in terms of administration fees for insolvents), County Court administration order.

<sup>567</sup> It would also be desirable to divide an extended questionnaire into sections: (1) Personal Information; (2) Your Bankruptcy; (3) Relationship with the Official Receiver/Trustee in Bankruptcy; (4) Relationship with the Court and System; (5) Bankruptcy in General; (6) Your Say.



- What services, if any, could the CAB offer the bankrupt? What services did the bankrupt request and when (e.g. before/after bankruptcy procedures began)? Did the bankrupt follow the advice given and how does he now rate that advice?
- How much of a factor did lack of home ownership play in the debtor's decision to progress down the bankruptcy route?

As originally envisaged, and proposed to the Insolvency Service, this survey was intended to progress as a pilot study which was very much in the nature of a 'fishing expedition', that is to say, we wanted to ascertain opinions of the bankruptcy system in England and Wales from the perspective of the primary users, namely, the bankrupts. Questions were designed so as to glean as much information as possible which could then be used to formulate further questions for a full study phase of a larger sample of courts across England and Wales. It is hoped that the *BCS 2005* has thrown up some interesting responses and avenues for further enquiry. Funding bids have been submitted to a number funding bodies to expand the study.

### Interdisciplinary Work

In order to fully ascertain what a bankrupt is it is necessary to view them not only from a legal and financial perspective, but also from wider sociological perspectives. It is hoped that with the expansion of this pilot study into a wider examination of bankruptcy court users, that some interdisciplinary analysis with, for example, a sociologist,<sup>568</sup> might help give a wider more valuable picture of bankrupts, thus helping to formulate a more informed set of legal rules drafted to satisfy their complete over-indebtedness needs. Approaches such as "event history analysis" as employed by Brighton<sup>569</sup> might help identify pre-bankruptcy behaviour, i.e. common lending trends or behavioural trends, that if identified and 'treated' would reduce the amount of bankruptcy. The bankrupt's attitude to the history of their own impecunity is of fundamental importance and if a step in debt behaviour is exhibited certain types of action could be taken, i.e. debt counselling. Debtor behavioural patterns can be used to inform policy and interdisciplinary work can highlight this behaviour in the most effective manner.

### Sub-Groups

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<sup>568</sup> The seminal work *As We Forgive our Debtors* (see *op cit* n.16) was of course co-authored by Professor Teresa A Sullivan, a sociology professor at the University of Texas at Austin.

<sup>569</sup> See further: Brighton, W. *Reactions to Recent Canadian Empirical Studies on Consumer Bankruptcies* (1999) 37 Osgoode Hall L.J. 137, at page 141.

It is also envisaged that a closer analysis of sub-groups within a larger sample will be undertaken if this pilot study is expanded. Such sub-groups might include; self-employed/employed individuals;<sup>570</sup> women; the young; retired individuals; class,<sup>571</sup> etc. Has the behaviour or actions of a particular sub-group caused a rise in the number of bankruptcies? Are we thinking of bankruptcy as a panacea that cures a 'type' of bankrupt when in fact the many types of personal over-indebtedness could be treated more carefully? Are different sub-groups now affected by personal over-indebtedness and bankruptcy than those discussed by the Cork committee and the legislature? These and further questions could be explored in an expanded survey. The *BCS 2005* final report introductory section opened with the following citation:

*"We do not know what are the effects of bankruptcy on individuals who, given the need for that relief, utilize this singular legal remedy. Personal bankruptcy may stigmatize or it may liberate, and these consequences may be different for different persons"*<sup>572</sup>

It is hoped that this small pilot study has gone some way to addressing some of the issues raised by Shuchman within the context of English bankruptcy law, and in particular in relation to the experience of the English bankrupt. It is further hoped that the fissure in English insolvency law scholarship as identified by Ziegel<sup>573</sup> and more recently in terms of the causes of bankruptcy by Milman<sup>574</sup> has also been partially plugged by this survey. The introductory section of the *BCS 2005* final report also cited the following citation:

*"In a nation of shopkeepers, as Bonaparte called us, it might be expected that, if there was any one branch of our jurisprudence more efficacious and satisfactory than another, it would be that by which the affairs of bankrupts are administered. Yet this is the foulest blot in our whole judicial system"*<sup>575</sup>

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<sup>570</sup> Is there a rise in self-employed individuals and if there is has this given rise to a greater number of bankruptcies? – as occurred with Schwartz & Anderson study in Canada, see further: Schwartz, S & Anderson, L. *An Empirical Study of Canadians Seeking Personal Bankruptcy Protection*. Industry Canada, Ottawa, 1998.

<sup>571</sup> Is bankruptcy a social class related problem as was found in Canada? (See Brighton, *op cit* n.253) Is the process restricted to the lower social classes? Ramsay has promulgated that bankruptcy is a rising lower middle class phenomenon (see Ramsay, IDC. *Individual Bankruptcy: Preliminary Findings of a Socio-Legal Analysis* (1999) 37 Osgoode Hall L.J. 15). Has this changed over time in the English insolvency law context?

<sup>572</sup> Shuchman, P. *An Attempt at a "Philosophy of Bankruptcy"* [1973] 21 UCLA Law Rev. 403, at page 438.

<sup>573</sup> *Op cit* n.13.

<sup>574</sup> Milman at page 17.

<sup>575</sup> Editorial. *Anomalies of the Bankruptcy System*. The Bankers' Magazine and Journal of the Money Market. Vol.13, September, 1853, pp.609-615, at page 609.

Current English bankruptcy laws, it seems from the *BCS 2005* survey, are not so much a blot on our judicial system according to bankrupts, but a user-friendly, relieving, rehabilitative set of rules. The *BCS 2005* does give rise to several issues for debate regarding bankruptcy as a procedure and as a term of art and this report contains a number of tentative conclusions and suggested recommendations that might serve as a start point for further discussion of this most important social and legal procedure. The main recommendations of the *BCS 2005* are:

- Consider the division of bankruptcy into a two tier system differentiating between entrepreneurially derived debt and consumer derived debt, perhaps under the headings of “business bankruptcy” and “personal bankruptcy”.
- Formulate and enact a system of debtor and creditor education.
- In light of the recent dramatic growth in consumer debt levels reappraise the conduct of consumer debtors, but in particular lending institutions focusing on the creditor’s responsibility and conduct regarding the consumer debtors’ personal over-indebtedness.
- Whilst considering the division of the bankruptcy procedure between “business bankruptcy” and “personal bankruptcy” also consider eradicating the term ‘bankruptcy’ for non-culpable consumer debt cases.
- It is further recommended that the *BCS 2005* pilot study be expanded from its 6 court sample to a full study that encompasses 30 of the 136 bankruptcy courts in England and Wales to give a better impression of the treatment and experience of the bankruptcy court user.

**THE CILP RESEARCH TEAM WOULD BE EXTREMELY GRATEFUL FOR ANY FEEDBACK ON THIS PILOT STUDY REPORT. ALL RESPONSES WILL BE TREATED IN STRICT CONFIDENCE. AS NOTED ABOVE AN EXPANDED VERSION OF THE STUDY IS PLANNED AND FEEDBACK TO HELP PERFECT AND IMPROVE THE EXPANDED STUDY WOULD BE GREATLY APPRECIATED. PLEASE SEND YOUR FEEDBACK TO THE ADDRESS BELOW.**

**A PAPER COPY OF THIS REPORT IS AVAILABLE FROM CILP FOR A PRINTING AND ADMINISTRATION FEE OF £50.00.**

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## **APPENDIX**

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**Figure One – Initial Questionnaire – Exeter only.**



We are currently undertaking a survey of Bankruptcy Court users around the UK on behalf of *The Insolvency Service*. Your help will be invaluable in gaining a true picture of bankrupts' experiences, which will hopefully improve the service received in the Bankruptcy Courts

We would be grateful if you would consider completing the survey below and indicate whether you would be prepared to take part in further research. Please return the survey in the freepost envelope provided.

- Q1. Please indicate the Court in which your case was heard: \_\_\_\_\_
- Q2. Please indicate your age: (a) now \_\_\_\_\_; (b) at the time of your Bankruptcy \_\_\_\_\_
- Q3. Please give a brief reason for your bankruptcy: \_\_\_\_\_
- Q4. Do you feel that you were morally at fault? Yes / No (Please circle)
- Q5. Please indicate the level of debt owed at the time of bankruptcy: £ \_\_\_\_\_
- Q6. Was your bankruptcy instigated by a: creditors petition? / by your own petition? (please circle)
- Q7. Did you consider any other routes to relieve your indebtedness? If yes, which routes? \_\_\_\_\_
- Q8. How did the bankruptcy procedure effect your: (a) family life? \_\_\_\_\_  
(b) job? \_\_\_\_\_  
(c) borrowing habits? \_\_\_\_\_
- Q9. Did you contact the Citizens Advice Bureau or a similar agency for advice? Yes / No (please circle)
- Q10. Was the advice useful? Yes / No (Please circle)
- Q11. Did you seek the advice of a specialist solicitor? Yes / No (please circle)
- Q12. If faced with a similar situation would you go through the bankruptcy process again? Yes / No
- Q13. Would your summing up of the bankruptcy process be: positive / negative / indifferent (please circle)
- Q14. How would you describe the facilities of the court in which your case was heard? \_\_\_\_\_
- Q15. Did the recent reduction in the automatic discharge period from 3 years to 1 year impact on your bankruptcy decision Yes / No (please circle)

Thank you for taking the time to complete this questionnaire. We hope to publish the results of this study in November 2005 on the CILP website: [www.kingston.ac.uk/cilp](http://www.kingston.ac.uk/cilp). Please provide your details if you would like to receive the full questionnaire and allow us to compile a more comprehensive report that will hopefully improve the service received in the Bankruptcy Courts. The survey results will be completely anonymous and participant anonymity is guaranteed.

Title: \_\_\_\_\_ Surname: \_\_\_\_\_ Forenames: \_\_\_\_\_

Address: \_\_\_\_\_ Postcode: \_\_\_\_\_

**Figure Two – The Bankruptcy Courts Survey 2005 – Questionnaire version III**



**&**

**CILP**

**Centre for Insolvency Law and Policy**

**Bankruptcy Courts Survey: 2005**

**Bankrupts Questionnaire, v.III**

**Questionnaire Completion Guidance**

- PLEASE PUT AN **[X]** IN THE BOX NEXT TO THE RELEVANT OPTION.
- WE WOULD BE VERY GRATEFUL IF YOU WOULD EXPAND ON YOUR ANSWERS AS YOU THINK APPROPRIATE IN THE COMMENTS AREA.
- SOME QUESTIONS ARE PERTINENT TO DISCHARGED BANKRUPTS, WHILST OTHERS ARE PERTINENT TO INDIVIDUALS WHO ARE CURRENTLY BANKRUPT.
- PLEASE ANSWER AS FULLY AS POSSIBLE ALL APPROPRIATE QUESTIONS.

Options	Additional Comments
<b>1. What was the cause of your bankruptcy?</b>	
Credit misuse <input type="checkbox"/> Failed business <input type="checkbox"/> Other, please comment <input type="checkbox"/>	
<b>2. What other routes did you consider to relieve your indebtedness?</b>	
An Individual Voluntary Arrangement <input type="checkbox"/> A County Court Administration Order <input type="checkbox"/> Debt management schemes <input type="checkbox"/> An informal arrangement with your creditors <input type="checkbox"/> Doing nothing <input type="checkbox"/> Other, please comment <input type="checkbox"/>	
<b>2a. How did you hear about these alternative solutions to bankruptcy?</b>	
TV <input type="checkbox"/> Word of mouth <input type="checkbox"/> Radio <input type="checkbox"/> Other, please specify <input type="checkbox"/> Newspapers <input type="checkbox"/>	
<b>3. Do you own your own home?</b>	
Positive <input type="checkbox"/> Yes prior to bankruptcy <input type="checkbox"/> Negative <input type="checkbox"/>	
<b>4. What has been the effect of the bankruptcy on your job?</b>	
Positive <input type="checkbox"/> No effect <input type="checkbox"/> Negative <input type="checkbox"/>	
<b>5. What has been the effect of the bankruptcy on your family life?</b>	
Positive <input type="checkbox"/> No effect <input type="checkbox"/> Negative <input type="checkbox"/>	



<b>6. What has been the effect of the bankruptcy on your present and or future borrowing habits?</b>	
Positive <input type="checkbox"/>	No effect <input type="checkbox"/>
Negative <input type="checkbox"/>	
<b>7. Before you became a bankrupt, did you think that you would be treated differently as a bankrupt, if so how have expectations been met?</b>	
<b>8. Who was your bankruptcy instigated by?</b>	
Creditor <input type="checkbox"/>	You <input type="checkbox"/>
<b>9. Were you aware that the automatic discharge period was reduced in 2004 from 3 years to 1 year before you began your bankruptcy experience?</b>	
Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>10. How much of an influence did the reduction in the automatic discharge period from 3 years to 1 year have on your decision to go through the bankruptcy debt relief route?</b>	
Very little <input type="checkbox"/>	Crucial <input type="checkbox"/>
Fairly important <input type="checkbox"/>	Other <input type="checkbox"/>
Very Important <input type="checkbox"/>	
<b>11. How were/are your relations with the Trustee (private sector) in relation to communication.</b>	
Good <input type="checkbox"/>	Infrequent <input type="checkbox"/>
Indifferent <input type="checkbox"/>	Other <input type="checkbox"/>
Frequent <input type="checkbox"/>	
<b>12. How were/are your relations with the Trustee (private sector) in relation to advice.</b>	
Good <input type="checkbox"/>	Timely <input type="checkbox"/>
Indifferent <input type="checkbox"/>	Other <input type="checkbox"/>
Objective <input type="checkbox"/>	
<b>12a. How were/are your relations with the Official Receiver in relation to communication.</b>	
Good <input type="checkbox"/>	Infrequent <input type="checkbox"/>
Indifferent <input type="checkbox"/>	Other <input type="checkbox"/>
Frequent <input type="checkbox"/>	

<b>12b. How were/are your relations with the Official Receiver in relation to advice.</b>			
Good <input type="checkbox"/>	Timely <input type="checkbox"/>		
Indifferent <input type="checkbox"/>	Other <input type="checkbox"/>		
Objective <input type="checkbox"/>			
<b>13. Do you think one year before discharge is a sufficient time-period?</b>			
Yes <input type="checkbox"/>	No <input type="checkbox"/>		
<b>14. Should the automatic discharge be:</b>			
Longer <input type="checkbox"/>	Shorter <input type="checkbox"/>		
<b>15. What length of time do you think an individual should be adjudged bankrupt before they receive an automatic discharge?</b>			
Less than 1 year <input type="checkbox"/>	More than 3 years <input type="checkbox"/>		
More than 1 year <input type="checkbox"/>	More than 4 years <input type="checkbox"/>		
More than 2 years <input type="checkbox"/>			
<b>16. What in your opinion, are the non-monetary affects of bankruptcy?</b>			
<b>17. Did you feel that you would be stigmatised by going through the bankruptcy process?</b>			
Yes <input type="checkbox"/>	No <input type="checkbox"/>		
<b>18. What did you think the consequences of bankruptcy would be?</b>			
<b>19. Did you feel that by going into bankruptcy you were morally at fault?</b>			
<b>20. How old were you at the date of your bankruptcy order?</b>			
16-25 <input type="checkbox"/>	36-45 <input type="checkbox"/>	56-65 <input type="checkbox"/>	76-85 <input type="checkbox"/>
26-35 <input type="checkbox"/>	46-55 <input type="checkbox"/>	66-75 <input type="checkbox"/>	86-95 <input type="checkbox"/>

<b>21. Are you:</b>	
Male <input type="checkbox"/>	Female <input type="checkbox"/>
<b>22. What level of debt has your bankruptcy order relieved you from?</b>	
<b>23. What was your impression of the bankruptcy court where your petition was heard, was it:</b>	
Efficient <input type="checkbox"/>	Inefficient <input type="checkbox"/>
<b>24. What was your impression of the bankruptcy court where your petition was heard, was it:</b>	
Clean <input type="checkbox"/>	Unkempt <input type="checkbox"/>
<b>25. If you were faced with a situation of personal over indebtedness again would you again go through bankruptcy or would you instead try and undertake a different route, such as:</b>	
An Individual Voluntary Arrangement <input type="checkbox"/>	
Debt management schemes <input type="checkbox"/>	
An informal arrangement <input type="checkbox"/>	
Go through the bankruptcy process again <input type="checkbox"/>	
<b>26. Have you had any experiences post your discharge that you can only ascribe to your past status as a bankrupt</b>	
No <input type="checkbox"/>	Yes, please comment <input type="checkbox"/>
<b>27. Do you think any possible lack of knowledge on your behalf in relation to insolvency procedures led to you going into bankruptcy as opposed to another regime</b>	
No <input type="checkbox"/>	Yes, please comment <input type="checkbox"/>
<b>28. Before you went through the bankruptcy process, did the fear of any possible consequences pray on your mind?</b>	
No <input type="checkbox"/>	Yes, please comment <input type="checkbox"/>
<b>29. How would you sum up the bankruptcy process that you have been through to a friend or colleague?</b>	
<b>30. Did you think the judge that heard your case was fully conversant with insolvency law?</b>	

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	
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**31. Did you seek the advice of a solicitor before you commenced the bankruptcy process?**

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	
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**32. Were your solicitor's insolvency law specialists?**

Yes	<input type="checkbox"/>	Not Applicable	<input type="checkbox"/>	
No	<input type="checkbox"/>			

**33. Did you seek advice from your local Citizens Advice Bureau or any other agencies?**

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	
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**34. Is there anything else that you would like to comment on in relation to the specific bankruptcy court that your bankruptcy order was made in?**

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<b>35. Name:</b>	
<b>36. Current age:</b>	
<b>37. Employment Status:</b>	
<b>38. Occupation:</b>	
<b>39. Salary prior to bankruptcy:</b>	
<b>40. Current salary:</b>	

**THANK YOU FOR COMPLETING THIS QUESTIONNAIRE. THE RESEARCH TEAM IS EXTREMELY GRATEFUL FOR YOUR TIME AND INPUT. THE RESULTS OF THE RESEARCH STUDY WILL BE PUBLISHED ON THE CILP WEBSITE ([www.kingston.ac.uk/cilp](http://www.kingston.ac.uk/cilp)) IN NOVEMBER 2005**

**Figure Three – SPI/R3 Annual Personal Insolvency Survey Statistics**

Response Figures to the SPI/R3 annual surveys\*:

	<b>Practitioner Respondents</b>	<b>Personal Insolvency Cases surveyed (IVA and bankruptcy)</b>
<i>Society of Practitioners of Insolvency (SPI) - 1<sup>st</sup> Annual Survey: October 1991 – March 1992*</i>	<b>392 (195 detailed responses to all questions)</b>	<b>2217</b>
<i>SPI 2<sup>nd</sup> Annual Survey: March – October 1992*</i>	<b>168</b>	<b>1105</b>
<i>SPI 3<sup>rd</sup> Annual Survey: January – June 1993.</i>	<b>120</b>	<b>1217</b>
<i>SPI 4<sup>th</sup> Annual Survey: January – December 1994.</i>	<b>120</b>	<b>1275</b>
<i>SPI 5<sup>th</sup> Annual Survey: January – December 1995.</i>	<b>362</b>	<b>2088</b>
<i>SPI 6<sup>th</sup> Annual Survey: January – December 1996</i>	<b>140</b>	<b>1826</b>
<i>7<sup>th</sup> Annual Survey: January 1<sup>st</sup> 1997 – 31<sup>st</sup> December 1997.</i>	<b>137</b>	<b>1225</b>
<i>8<sup>th</sup> Annual Survey: January 1<sup>st</sup> 1998 – December 31<sup>st</sup> 1998.</i>	<b>109</b>	<b>1142</b>

\* The Surveys - Society of Practitioners of Insolvency - Smith, A & Grundon, T. *Recession Changes the Face of Insolvency – Survey Results*. Page 26- 29. 1992; Society of Practitioners of Insolvency – Smith, A & Grundon, T. *A Challenging Time for the Insolvency Profession – Survey Results*. Page 16 – 21. 1992; Society of Practitioners of Insolvency – *Personal Insolvency in the United Kingdom – Report of the Third SPI Survey of Members Activities*. London, 1994; Society of Practitioners of Insolvency – *Personal Insolvency in the United Kingdom – Report of the Fourth SPI Survey of Members Activities*. London, 1995; Society of Practitioners of Insolvency – *Personal Insolvency in the United Kingdom – Report of the Fifth SPI Survey of Members Activities*. London, 1996; Society of Practitioners of Insolvency – *Personal Insolvency in the United Kingdom. Sixth Survey*. London, 1996; Society of Practitioners of Insolvency – *Personal*

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\*\* The figures given for the first and second annual survey include responses to questions on both corporate and personal insolvency, as opposed to purely responses regarding personal insolvency. The first and second surveys were also for periods of six months. All subsequent surveys are over a period of one year. From the 3<sup>rd</sup> survey onwards the figures in column one relate solely to personal insolvency.

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##### Cardiff

Questionnaire References: *C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, V, X, AD, AF, AH, AI, AJ.*

##### Croydon

Questionnaire References: *FA, FC, FE, FH, FJ, FL, FM, FP, FQ, FV, FY, GA, GU, GV, GW, GX, GY, GZ, HA, HB, HD, HG, HM, HN, HO, HP, HQ, HR, HW, HZ.*

##### Exeter

Questionnaire References: *C, F, H, K, M, N, R, S, W, X, AD, AE, AH, AJ, AM, AL, AN, AP, AQ, AS, AW, AZ, BC, BK, BO, BU, BW, BX, CA, CN, CQ, CS.*

##### Newcastle

Questionnaire References: *C, F, G, H, K, L, N, P, Q, U, W, Z, AA, AB, AH, BC, AL, AN, AS, AW, AY, BA, BD, BH, BP, BQ, BX, BY, BZ, CA, CB, CH, CI, CC, CU, CX, DB, DC, DD, DE, DM, DO, DT, EI, EM, EU, EW, EZ, FA, FC, FD, FE.*

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Centre for Insolvency Law and Policy - [www.kingston.ac.uk/cilp](http://www.kingston.ac.uk/cilp)

Coalition for Consumer Bankruptcy Debtor Education - [www.nyls.edu/pages/103.asp](http://www.nyls.edu/pages/103.asp)

Consumer Credit Counselling Service - [www.cccs.co.uk](http://www.cccs.co.uk)

Insolvency Service – [www.insolvency.gov.uk](http://www.insolvency.gov.uk)

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The Citizens Advice Bureau - [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)