

# My business is in financial difficulty...

- I've received final demands for payment.
- There isn't enough money to pay the bank, HM Revenue and Customs or trade creditors.
- A County Court Judgement or Decree has been made against my business.
- I can't draw any money from my business.
- I have to use my own credit cards to pay my business's debts and I can't afford it.
- My business account is over its overdraft limit.
- I've had to increase my business's borrowings just to keep it running.

"All of these organisations are contacting me about debt and insolvency advice."

"Where do I go for advice?"

"How do I know I'm getting the most appropriate advice?"

"Who do I choose?"

"I don't think I can afford professional advice"

**If you recognise any of these signs, you need to take advice about your financial situation.**

Don't wait! Help is available to you and the sooner you take professional advice about your options, the sooner your situation can be sorted out. Most professionals will provide a free initial consultation – so don't wait!



## Choosing your adviser carefully

You have probably already been approached by a number of organisations offering you help with your business's financial situation. This can be very confusing and it is often difficult to know where to turn for the advice you need. Sadly, not all of these organisations are reputable and many are unlicensed and unregulated, even though their marketing letters and websites may make them seem to be legitimate and trustworthy. Taking advice from them may, in fact, make your situation much worse.

You therefore need to consider carefully which organisations or advisers you take advice from.

## Beware of unlicensed organisations or advisers who say.....

### If your business is already going through a formal insolvency procedure...

“you may be in the incorrect insolvency procedure for your circumstances”

“you may have been sold a service which you don't need”

“the majority of insolvency rescue procedures fail...”

### If you are a business owner or company director...

“we act for you, not your business's creditors”

“don't take advice from an insolvency practitioner, as they only act for your creditors, whereas we act solely for you”

“insolvency practitioners spend all their time shutting down companies and selling off the assets”

“we can offer you an alternative way to close down your company, leaving you free to launch a new business debt-free”

“we have a way to allow you to continue trading, keep your assets and yet benefit from writing off all your debts”

“we can help by approaching an insolvency practitioner who will take a 'friendlier' approach to your situation”

## What can happen if you rely on incorrect or misleading advice

The marketing letters, telephone calls and website marketing which unlicensed organisations use may make many promises, but you need to be very clear on what they are offering and the implications for your business.

Unlicensed advisers and organisations often claim to be able to remove all of the worry of your financial situation and to help you avoid legal duties that you may owe. If you follow their advice, there is a real risk that you may take the wrong action about how to resolve your business's financial problems. You may also receive the wrong information about the duties or responsibilities you owe to the people your business owes money to. If you are a company director or business owner, you might also receive misleading advice about the legal duties that you owe to your company or business.

Relying on such advice can be very risky and you may end up in a worse financial situation or even break the law.

## So what can go wrong? What are your duties?

If you are a company director, the law requires you to keep up-to-date with your company's financial health and to call for help if necessary.

Directors of limited companies can be personally liable for the debts of a company if it continues trading after there is no longer any reasonable possibility of avoiding the business's failure. In addition to personal liability, directors who do not take their responsibilities seriously can be disqualified from acting as directors in future or in some cases, can be criminally prosecuted.

Directors can also be personally liable for the debts of the company which they have guaranteed. Personal guarantees are often secured against a director's assets, such as their own home.

The legal duties and responsibilities which directors owe to their company apply to all directors – not just those with a stake in the business.

It is very important to be aware of these duties in the lead up to, and during, any insolvency or rescue procedure.

### CASE STUDY

A company director was advised by an unlicensed adviser to put his company into liquidation so that he could set up a new company and walk away from the debts of his old one. He subsequently found himself subject to prosecution and disqualification as a director for breaching his legal duties as a director.

As a company director or business owner, you should therefore be very wary of taking advice from unregulated advisers and should be aware of a number of dangers associated with taking such advice:

- Your business or company may end up owing more money
- You may become personally liable for debts of your company or business, perhaps leading to personal financial problems for you.
- You may be disqualified from acting as a company director for a breach of the duties you owe as a director.
- You may be open to prosecution for fraudulent trading or other offences that can apply when an insolvent company continues to trade
- You may also face legal problems if, for example, you have sold any of your company's assets at less than their true value before entering an insolvency process; have entered into a transaction which makes some creditors of your company better off than others; or have sold assets in order to stop them being sold to repay some of the company's debts
- Your business or company may enter an insolvency solution which is not appropriate for its financial circumstances, making the situation worse.
- Incorrect or misleading advice can jeopardise the possibility of turning the business around. If you are a business owner, this would also risk your investment, as well as your livelihood.

### CASE STUDY

A director was advised by an unregulated adviser that he needed to shut down his company because he was the company secretary of his wife's company, which was insolvent. There was no link between the two companies and the director's company was not affected in any way by the insolvency of his wife's company. The director's company had no financial problems and was trading profitably at the time that it was placed into liquidation. There was therefore no reason for it to enter liquidation.

## Paying for advice from unlicensed or unregulated organisations – make sure you know what you are paying for!

If you are asked to pay a fee for advice about your financial situation, it is very important that you understand what you are paying for. Ask questions if you don't understand or if anything about the advice or what any fee covers is not explained to you.

It is also important to look at whether the adviser/organisation can deliver the solution that they are offering from start to finish. Many unlicensed and unregulated advisers may start the advice process and suggest a particular solution for your circumstances and what it will mean for you, but they will then need to pass your details on to third parties to deliver the practical solution or procedure.

This is often confusing, draws out the process and can turn out to be more expensive for you, as costs may be duplicated.

## How to get the most appropriate advice for you

Early advice from a reputable and licensed professional can lead to positive solutions to your problems. These solutions can include turning your company around, obtaining different financing for your business, or coming to an agreement with the people or organisations to whom your business owes money (the 'creditors') which will allow you to pay off your business's debts.

Your company's or business's creditors can agree to informal repayment solutions or to write off debts voluntarily. However, if they won't agree to this or there are too many debts to make an informal solution workable, only a formal insolvency law process run by a regulated and licensed professional (called an 'insolvency practitioner') can get the debts reduced or written off, depending on the process involved.

A formal insolvency law process may seem scary, but it is a way of dealing with your business's financial problems within a structured, highly regulated process, which will enable you to deal with people who are owed money in the most appropriate way, overseen by an insolvency practitioner.

If your business is facing a financial crisis, understanding the options available to you and your business and the key facts to help you resolve the situation is crucial, and obtaining early financial assistance is essential. The Find a Practitioner option on the R3 website ([www.r3.org.uk/get-advice/find-a-practitioner](http://www.r3.org.uk/get-advice/find-a-practitioner)) will enable you to find full contact details of an

insolvency practitioner near you. R3 members are fully qualified and regulated professionals, enabling you to obtain expert and timely information that can be vital when facing a financial crisis.

You can also find details of insolvency practitioners on the Government website at [www.gov.uk/find-an-insolvency-practitioner](http://www.gov.uk/find-an-insolvency-practitioner)

## What insolvency of a company or business means

A company or business is insolvent if it either (i) does not have enough assets to pay its debts (i.e. the value of the assets is less than the amount of the debts), or (ii) if it is unable to pay its debts as they fall due.

The main purpose of any insolvency procedure is to repay as much to creditors as possible while taking account of the circumstances of the insolvent company or business. Some insolvency procedures are aimed at giving the business the breathing space needed for its directors or owners to rearrange its affairs and to return to financial health, paying off all of the debts in full or in part, depending on the circumstances. Other insolvency procedures are designed to close down businesses that cannot continue.

An insolvent company may enter one of a number of insolvency procedures, including administration, liquidation or a company voluntary arrangement, as well as informal arrangements with creditors.<sup>1</sup>

Insolvency procedures and terminology are similar in England, Wales and Northern Ireland, but can differ in Scotland. All insolvency procedures are governed by a comprehensive set of insolvency law, principally the Insolvency Act 1986 and supporting legislation.



<sup>1</sup> There are also other procedures available for sole traders and traditional partnerships. Please refer to R3's document 'I'm in financial difficulty' for further information or discuss with an insolvency practitioner.



## Insolvency practitioners

Licensed insolvency practitioners are the only professionals who are able to take insolvency appointments in England, Wales, Northern Ireland and Scotland. The type of appointment they take depends on the insolvency solution involved, but can include appointments as Administrators, Administrative Receivers, Liquidators, Trustees in Bankruptcy, Nominees and Supervisors of Voluntary Arrangements and, in Scotland, as Scottish Receivers, Liquidators, Administrators, Trustees in Bankruptcy and under Protected Trust Deeds.<sup>2</sup>

All insolvency practitioners in the UK must be licensed by a regulatory body.

The process of becoming a licensed insolvency practitioner is time consuming and demanding. Many licensed insolvency practitioners have qualified, and spent time practising, in various fields, typically accountancy and law, before taking another series of examinations (known as the Joint Insolvency Exams) and demonstrating that they have relevant experience in order to obtain their licence to practise as an insolvency practitioner.

When administering formal insolvency procedures, all licensed insolvency practitioners are bound by the same statutory duties and are monitored by their regulatory body to ensure that they comply with the law, their professional regulations and ethical codes.

## The role of an insolvency practitioner

An insolvency practitioner is appointed to deal with the insolvent business's assets and the people that the business owes money to (its 'creditors'). Their job is to make sure that as much money as possible is paid back to the creditors in the circumstances.

The law requires that the insolvency practitioner is primarily responsible to the creditors as a whole, not to the director or business owner with financial problems or to any particular creditor. In most insolvency procedures, their decisions about what to do about the business's situation, such as selling assets, will be based on what will get the best return to the insolvent business's estate.

For example, the insolvency practitioner may decide to allow the business to continue to trade whilst looking for a buyer (if there is money available to do so) or they may decide to sell assets owned by the business in order to raise money to pay back creditors. This will depend on what will provide returns to creditors within the limits of what can realistically be achieved with the available resources.

In addition to administering formal insolvency procedures in relation to companies, insolvency practitioners may also be asked to give advice on the financial viability of a business or may be involved in restructuring or informal 'work-outs' in order to avoid a formal insolvency process.



## Advice provided by an insolvency practitioner

Licensed insolvency practitioners are uniquely well qualified to advise businesses in financial difficulties. They are highly regulated, are bound by legal duties and professional rules when carrying out their job and have years of experience in dealing with business debt problems. You can therefore be reassured that when taking advice from an insolvency practitioner, you will receive full, objective advice about your business's financial situation and the solutions available to you.

Insolvency practitioners often provide preliminary advice free-of-charge (90% of insolvency practitioners advising on both corporate and personal insolvency say that they offer up to an hour of free advice)<sup>3</sup>, although you should check this when approaching a particular practitioner. As with any professional, an insolvency practitioner will charge fees for their work, so you may want to ask them about their fees before or during any initial meeting.

As insolvency practitioners are regulated, this means that if you later have any complaint about the way they handled your situation, you are able to take it up with their regulatory body. Insolvency practitioners are also required to hold a form of professional insurance (known as 'bonding') for all of their insolvency cases, as well as broader professional indemnity insurance, which means that any negligence, loss or damage caused by the practitioner when carrying out their job can be remedied as far as possible.

<sup>2</sup> The Official Receiver and the Accountant in Bankruptcy – Government officials in England & Wales and Scotland respectively – may also take certain insolvency appointments.

<sup>3</sup> R3 membership survey, January 2014

## Dispelling some of the myths about insolvency practitioners

Here are some of the misleading comments that you may hear about insolvency practitioners from unlicensed advisers, who are often deliberately trying to discourage you from seeking the professional advice that you need:

### “Insolvency practitioners only act for your creditors.”

When appointed under an insolvency process, insolvency practitioners do owe a duty under law to act in the best interests of all of your business’s creditors. However, this doesn’t mean that an insolvency practitioner can’t provide advice about the solutions for your business’s financial situation. On the contrary, insolvency practitioners are best placed to provide full, objective advice on your options and the pros and cons of each solution due to the breadth of their experience in assisting financially distressed businesses on a daily basis.

### “You should speak to an ‘insolvency adviser’ instead, whose responsibility is to you, not your creditors.”

You need to be very careful about taking advice from people who market themselves as ‘insolvency advisers’ or who say that they will only act for you, not for your business’s creditors. Whilst some such genuine advisers may be knowledgeable and able to assist you, there are unfortunately a much larger number who are not reputable and who don’t have the experience or knowledge to be able to advise you on insolvency processes or their implications. Taking such advice can at best waste your time, if not your money, but at worst can be misleading and make your situation much worse. If in doubt, make sure that you check their credentials and background and if this gives you any cause for concern, approach a regulated professional such as an insolvency practitioner instead.

### “You don’t need an insolvency practitioner to sort out an insolvency process for you or your business.”

This is incorrect.

Licensed insolvency practitioners are the only professionals who are able to take formal insolvency appointments. Whilst unlicensed advisers may promise the world and charge you a fee for providing their advice, they are often unable to provide a solution from start to finish or, in many cases, are providing advice which is simply incorrect or potentially against the law. And of course, it is important to make sure that you involve an insolvency practitioner about any potential insolvency situation as soon as possible.

### “Insolvency practitioners will charge you huge fees to provide a solution...”

Insolvency practitioners are professionals and do charge fees for their work. They have significant skills and expertise to try and save businesses and preserve jobs wherever possible, while achieving the best available outcome in situations where insolvency is unavoidable. As with other professionals, the use of the insolvency practitioner’s expertise comes at a cost, but that cost will vary depending on the facts and complexity of each case.

Insolvency practitioners’ fees will also vary from one practitioner to another and can depend on where they are based and the kinds of firms they work for. In England and Wales, insolvency practitioners usually produce an upfront estimate of their fees and the work that they will do at the start of every administration, creditors’ voluntary liquidation or compulsory liquidation case, which must then be agreed by creditors (or some of them). If the insolvency practitioner believes that they will exceed their fees estimate during the case, they must ask creditors for their approval to increase the estimate before they can take any further fees.

In Scotland, the practitioner’s fees for a liquidation or administration case must be approved either by creditors (or some of them) or the Court.

Ultimately, in all types of cases, if enough creditors believe that the fees charged are too high, they can also apply to court for the fees to be reduced. There are, therefore, safeguards in place to ensure that creditors have a say in the fees charged by an insolvency practitioner.

It is also worth noting that the amount charged in insolvency cases will also include any third party fees, such as those of solicitors or agents who bring specialist skills where required, and therefore the full amount charged is not necessarily all the insolvency practitioner’s own costs.





Unlicensed advisers, on the other hand, will also charge fees for the advice they give, but unlike insolvency practitioners, there are no safeguards in place to ensure that you or creditors are getting value for money or the solution provided will work or will even be in accordance with the law. If their fees are excessive, there are also no complaints procedures or other safeguards to ensure that their fees can be scrutinised or reduced if appropriate. This is a real risk to you, your business and your creditors.

**“Insolvency practitioners are only interested in shutting down companies and selling everything off...”**

Whilst returning money to creditors by selling assets is the primary aim of any insolvency process, insolvency practitioners recognise the value of businesses and entrepreneurs to the wider economy, so their advice will be tailored to assisting you to avoid insolvency where possible, or to guiding you through any insolvency process where necessary.

The portrayal of insolvency practitioners as people who predominantly close companies down is misleading – whilst liquidation will almost inevitably lead to a business’s closure, this is only one formal insolvency procedure. Insolvency practitioners are also involved in other formal insolvency procedures, such as administrations or company voluntary arrangements, which are aimed at rescuing a company or the business, enabling it to continue trading and ultimately saving jobs. Generally, a better repayment to creditors can be made if the business is sold as a trading business. In 2013-14, the UK’s insolvency profession rescued 41% of insolvent businesses and saved 230,000 jobs.

But insolvency practitioners don’t just advise people where a formal insolvency solution is required – they also provide a wide range of advice and solutions to help businesses avoid insolvency altogether, including coming to arrangements with creditors, restructuring of businesses and informal turnaround advice. It is therefore simply untrue to suggest that insolvency practitioners are only involved in insolvency solutions or that their only aim is to shut a business down.

**“An insolvency practitioner has probably sold you an insolvency solution that you don’t need.”**

This is a very serious allegation and is often used by unlicensed advisers to suggest that you should stop your current insolvency solution and instead enter a different process organised by that adviser. Relying on this advice is likely to be very harmful to your business and you may end up in a far worse situation, usually involving increased costs and delay.

Insolvency practitioners are required to provide you with advice about all possible solutions that are appropriate for your circumstances when first suggesting an insolvency process, in order to comply with their legal and professional duties. If, however, you do have any concerns about the insolvency process which you are currently involved in, you should first discuss them with the insolvency practitioner appointed in your case.

If direct discussions with the insolvency practitioner do not remedy your concerns, you are able to make a complaint about the practitioner via the Insolvency Complaints Gateway hosted by the Insolvency Service.

The Insolvency Complaints Gateway was set up to provide a common, independent method for complainants to access the complaints system. If the complaint falls within the scope of the complaints system, the Insolvency Service will then pass it to the insolvency practitioner’s regulatory body for further enquiries.

You can access the complaints form from the Insolvency Service website at [www.gov.uk/government/organisations/insolvency-service](http://www.gov.uk/government/organisations/insolvency-service)



## Don't be misled by advice from an unlicensed adviser

By reading this guidance, you are unlikely to be one of many people who are misled into taking incorrect or misleading advice from unlicensed advisers. When dealing with an unregulated or unlicensed adviser, you will have no guarantee of that person's or organisation's knowledge, skill or even whether you may be able to obtain redress in the event of a complaint or challenge to their advice.

Whilst there is nothing to stop you from taking informal advice in order to deal with your situation and not all unlicensed organisations will be disreputable, for your peace of mind it is advisable to make sure that you deal with a regulated professional, such as an insolvency practitioner, whose code of ethics and high level of regulation will ensure that they deal with your interests and those of your creditors in a fair, consistent and structured manner.

To find your nearest insolvency practitioner, visit this website:  
[www.r3.org.uk/get-advice/find-a-practitioner](http://www.r3.org.uk/get-advice/find-a-practitioner)



This booklet has been produced by R3, the Association of Business Recovery Professionals, which is the leading professional association representing insolvency practitioners and professionals within the insolvency, business recovery and turnaround profession in the UK.

In 2013-14, the UK's insolvency profession advised 70,000 businesses about their finances; rescued 41% of insolvent businesses and saved 230,000 jobs - [www.r3.org.uk/what-we-do/about-us/the-insolvency-profession](http://www.r3.org.uk/what-we-do/about-us/the-insolvency-profession)

Visit the R3 website at [www.r3.org.uk/get-advice/find-a-practitioner](http://www.r3.org.uk/get-advice/find-a-practitioner) to find full details of an insolvency practitioner near you. R3 members are fully qualified and regulated professionals, enabling you to obtain expert and timely information that can be vital when facing a financial crisis. You can also find details of insolvency practitioners on the Insolvency Service website at [www.gov.uk/find-an-insolvency-practitioner](http://www.gov.uk/find-an-insolvency-practitioner)

If you would like to find out more about the work of R3 or its members, please visit the R3 website at [www.r3.org.uk](http://www.r3.org.uk).

The Insolvency Service also produces a number of useful guides about corporate insolvency procedures and directors' duties which can be accessed at [www.gov.uk/government/collections/insolvency-service-guidance-publications](http://www.gov.uk/government/collections/insolvency-service-guidance-publications)

This leaflet is not intended to be a statement of law or a substitute for specific professional or legal advice. We have made every effort to ensure that the guide is accurate but R3 cannot accept any responsibility for the consequences of any action taken in reliance on its contents.