

# I'm in financial difficulty...

- I'm struggling to keep up the payments on my credit cards.
- I've received final demands for payment.
- I'm scared to open letters from my bank.
- I've received letters from debt collectors.
- I've been warned that bailiffs or sheriff officers will come around to collect my possessions.
- I've had a County Court Judgement or decree made against me.
- I've maxed out all of my credit cards and have no way to repay them.



“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 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.....

“due to new government legislation, we can help to write off all your debts”

“write off 75% of your debts with no consequences”.

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

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

## 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 you personally.

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 financial problems and your duties or responsibilities to the people you owe money to.

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 you required to do?

It is very common for people to use credit to pay for things as part of their lifestyle choices or to supplement their income as needed. Unfortunately, whilst many people are able to repay their outstanding credit, others run into financial difficulties for many different reasons when trying to repay their debts.

The law does not penalise you for using credit or for genuinely running into financial difficulties in repaying your creditors. But you do need to act responsibly when handling your finances and ensure that you don't act recklessly with your money.

Reckless or irresponsible behaviour would, for example, include taking out a new credit card and running up the bill just before entering a debt relief process; using credit to pay for a holiday when you knew that you wouldn't be able to repay the debt; gambling; or giving away some of your assets or selling them at less than their true value to avoid them being sold to repay the people you owe money to.

Having personal money troubles can be very distressing and can take its toll on your health, work and home life. It can be tempting to rely on advice which suggests that you can avoid your responsibilities and that there is no risk to you. You should be very wary of such advice which can result in the following:

- You may actually end up owing more money.
- You may be subject to bankruptcy restrictions for longer than necessary if you are deemed to have been dishonest or your behaviour is deemed 'unfit'.
- You may end up in a solution which is not appropriate for your financial circumstances, making your situation worse.
- If you are also a company director, you can be personally liable for the debts of the company which you have personally guaranteed. Personal guarantees are often secured against an asset, such as your home.



## 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're 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.

Certain insolvency procedures, such as bankruptcy, require the completion of an application form before applying to start the process. In Scotland, you must also firstly obtain advice from an Approved Money Adviser before submitting your application to the Accountant in Bankruptcy.

Some organisations may charge a fee to assist you with completion of the required forms. You should make sure that you know what assistance you are paying for and how much it will cost before you start the process.

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 information

Early information from a reputable and licensed professional can lead to positive solutions to your problems. These solutions can include coming to an agreement with your creditors which will give you the time to pay off your debts or arranging a debt relief solution suitable for your circumstances.

The people or organisations to whom you owe money can agree to informal repayment solutions or to write off debts voluntarily. However, if they won't agree to this or you have too many debts to make an informal solution workable, only a formal insolvency law process run by either (a) a regulated and licensed professional (called an 'insolvency practitioner') or, (b) where bankruptcy is appropriate, the Official Receiver (a Government official) in England, Wales and Northern Ireland, or The Accountant in Bankruptcy in Scotland, can get your debts reduced or written off. In Scotland, individuals and trading partnerships also have access to the Scottish Government's Debt Arrangement Scheme as an option.



A formal insolvency law process such as Bankruptcy, a Debt Relief Order or an Individual Voluntary Arrangement in England, Wales or Northern Ireland, or a Protected Trust Deed in Scotland, may seem scary. But in reality, it is a way of dealing with your financial problems within a structured, highly regulated process. This will enable you to deal with people who are owed money in the most appropriate way, overseen by an insolvency practitioner, the Official Receiver or the Accountant in Bankruptcy as applicable.

If you are facing a personal financial crisis, understanding the options available to you and the key facts to help you resolve your 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 faced with a personal 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 means

A person is insolvent if he or she is unable to pay their debts as they fall due.

The main purpose of any insolvency procedure is to repay as much money to creditors as possible, while taking account of the circumstances of the insolvent person. Some insolvency procedures are aimed at giving the person the space they need to rearrange their affairs and to return to financial health, paying off all of their debts in full or in part depending upon their circumstances. Other insolvency procedures are designed to write off a person's debts where they are unable to repay them.

Insolvency procedures and terminology are similar in England, Wales and Northern Ireland, but differ in Scotland. In England, Wales and Northern Ireland, an insolvent person may enter one of three formal insolvency processes, (Bankruptcy, a Debt Relief Order or an Individual Voluntary Arrangement), as well as informal solutions such as a debt management plan or loan consolidation. In Scotland, the main formal insolvency procedures are Bankruptcy and Protected Trust Deeds. Debt Arrangement Schemes are also available in Scotland in certain circumstances.

All insolvency procedures are governed by a comprehensive set of insolvency law, principally the Insolvency Act 1986 and supporting legislation in England, Wales and Northern Ireland. Personal insolvency in Scotland is devolved to the Scottish Parliament and there is therefore separate legislation, principally the Bankruptcy (Scotland) Act 1985, the Bankruptcy and Debt Advice (Scotland) Act 2014 and supporting legislation.



## Insolvency practitioners

Licensed insolvency practitioners are the only professionals who are able to take insolvency appointments in England, Wales and Northern Ireland 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>1</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 or 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 person's assets and the people they owe money to (their 'creditors'). Their job is to make sure that as much money as possible is paid back to the creditors in the circumstances.

The insolvency practitioner is primarily responsible to the creditors as a whole, not to the insolvent person or to any particular creditor. Their decisions about what to do, such as selling assets, will be based on what will get the best return for the estate.

In addition to administering formal personal insolvency procedures in relation to individuals, insolvency practitioners may also be asked to give information to individuals about how to resolve their financial problems.

## Seeking information from an insolvency practitioner

Licensed insolvency practitioners are uniquely well qualified to help people 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 personal debt problems. You can therefore be reassured that you will receive full, objective advice about your financial situation and the solutions available to you from an insolvency practitioner.

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>2</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>1</sup> The Official Receiver and the Accountant in Bankruptcy – Government officials in England & Wales and Scotland respectively – may also take certain insolvency appointments.

<sup>2</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 creditors. However, this doesn't mean that an insolvency practitioner can't provide information about the solutions available to resolve your financial situation. On the contrary, insolvency practitioners are best placed to provide full, objective information on your options and the pros and cons of each solution due to the breadth of their experience in assisting financially distressed people 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 creditors. Whilst some such genuine advisers may be knowledgeable and able to assist you, there are unfortunately a 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.”

This is incorrect.

Licensed insolvency practitioners are the only professionals who can 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 some 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 assist financially distressed individuals and to achieve 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 bankruptcy case, which must then be agreed by creditors. If the insolvency practitioner believes that they will exceed their fees estimate during the bankruptcy case, they must ask creditors for their approval to increase their fees estimate before they can take any further fees. In Individual Voluntary Arrangements, the practitioners’ fees are initially agreed with the individual and must then be agreed by creditors.

In Scotland, depending on the procedure, the insolvency practitioners’ fees must be approved by either the creditors, those creditors acting as Commissioners or the Accountant in Bankruptcy. In Protected Trust Deeds, fees are based on a fixed fee plus a percentage of the value of the assets realised in the case and the practitioner must provide an estimate of their fees at the start of the case. Any increase in their fees estimate must be approved by the Accountant in Bankruptcy.

Ultimately, in all types of cases, if enough creditors believe that the fees charged are too high, they have the ability to appeal. In England and Wales, this would be direct to the Court, and in Scotland, creditors can appeal to either the Accountant in Bankruptcy or the Court. If the fees charged by the insolvency practitioner are deemed to be disproportionate or too high, they can 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 proceedings 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 and your creditors.



## “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 you and you may end up in a far worse situation, usually involving increased costs and delay.

Insolvency practitioners are required to provide you with information 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 don’t 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 135,000 people about their finances and helped individuals repay £5bn of personal debt to creditors within five years - [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 faced with a personal 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).



### Other sources of debt advice

You can also find out more information about personal debt advice and help with your finances via the following websites:

The Insolvency Service (England and Wales) – [www.gov.uk/government/organisations/insolvency-service](http://www.gov.uk/government/organisations/insolvency-service)

The Insolvency Service (Northern Ireland) - [www.detini.gov.uk/topics/insolvency-service](http://www.detini.gov.uk/topics/insolvency-service)

The Accountant in Bankruptcy (Scotland) - [www.aib.gov.uk](http://www.aib.gov.uk)

Government website – [www.gov.uk](http://www.gov.uk)

The Money Advice Service – [www.moneyadviceservice.org.uk/en](http://www.moneyadviceservice.org.uk/en)

Money Advice Service Scotland - [www.moneyadvicescotland.org.uk](http://www.moneyadvicescotland.org.uk)

Citizens Advice - [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

Citizens Advice Scotland - [www.cas.org.uk](http://www.cas.org.uk)

StepChange Debt Charity - [www.stepchange.org](http://www.stepchange.org)

The Money Advice Trust - [www.moneyadvicetrust.org](http://www.moneyadvicetrust.org)  
Advice UK - [www.adviceuk.org.uk](http://www.adviceuk.org.uk)

National Debtline - [www.nationaldebtline.co.uk](http://www.nationaldebtline.co.uk)

Christians Against Poverty - [www.capuk.org](http://www.capuk.org)

The Insolvency Service also produces a number of useful guides about personal insolvency procedures and dealing with your debts 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.