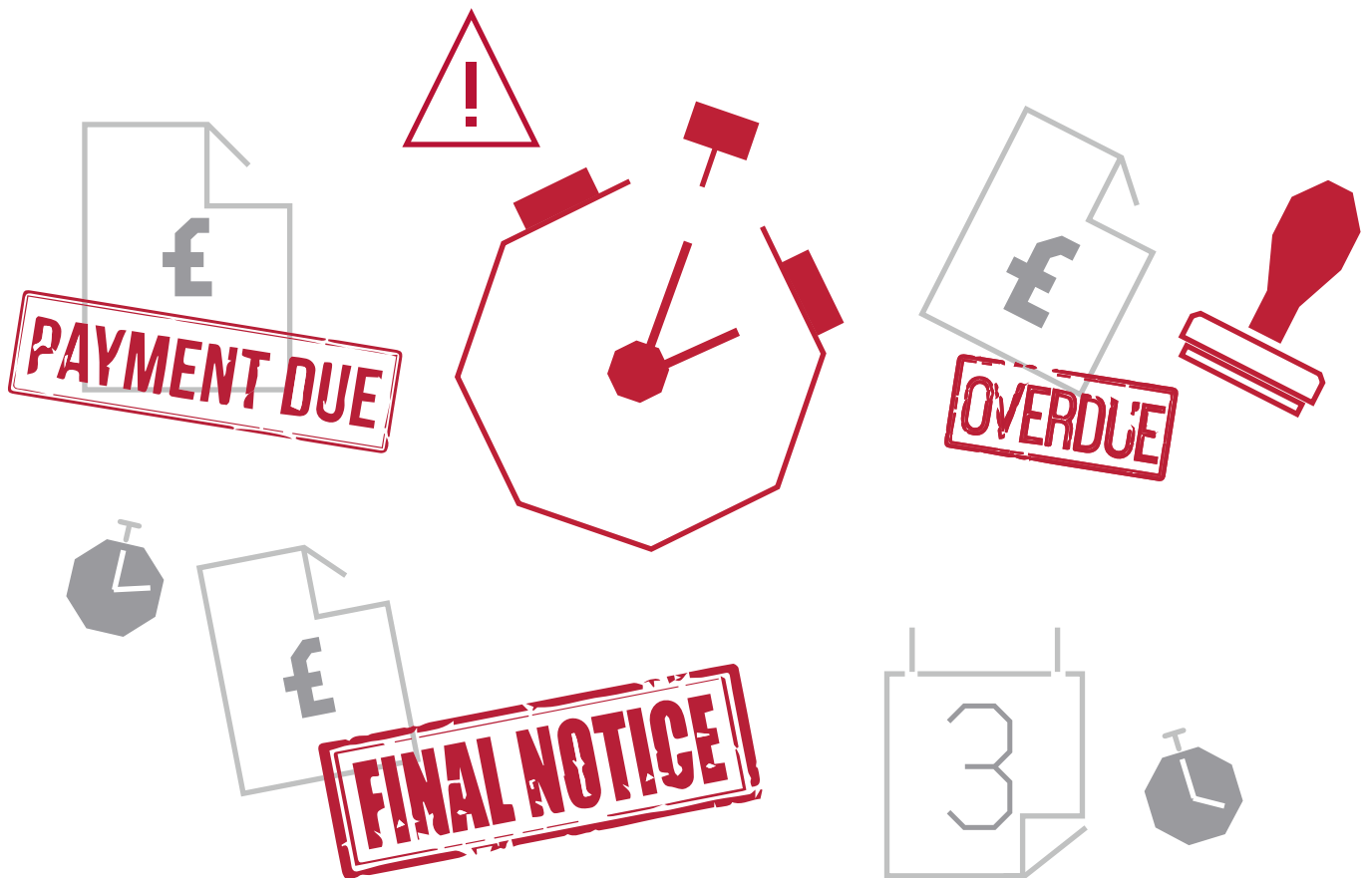


You need to pay me – now!

Our guide to successfully handling late payments and bad debtors

Make late payments and bad debtors a thing of the past with our helpful, step-by-step guide



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Let's fix it before it becomes a problem

The stitch in time that saves nine...

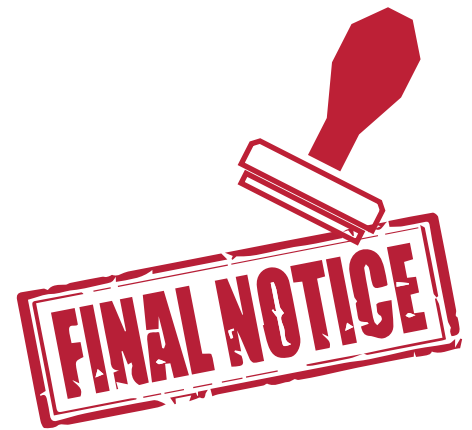
Adopting a robust business approach to how you are paid for what you've done means that you give your business the best chance of not having to deal with bad payers on a regular basis. You'll need to apply that approach consistently across your business activities.

Remember – it's not your fault

A lot of people worry about looking aggressive, unreasonable or even unsympathetic when it comes to chasing up late payments and/or including late payment penalties in their terms and conditions.

But remember that you're entitled to be paid for what you've done.

Provided that your payment terms aren't unfair or unreasonable and you've fulfilled your side of the bargain properly, you're in the right. You're not there to bankroll or prop up someone else – especially when this comes at the expense of your own cash-flow position.



It's really difficult when a client doesn't pay your invoice. No one likes talking about money, and you don't want to risk damaging your relationship with them by having an awkward conversation about what they owe you. But at the same time, if you don't you may not get paid!

Hannah Martin – Founder, Talented Ladies Club



What can you do to stop it happening in the first place? Read on to find out.

Tackling late payments

Bad payers are a big pain for any business

You happily trade with another business for years, only to find that difficulties in getting paid arise, without any warning or obvious signs in many cases.

Almost every business has come across a bad payer; you send them the invoice, they stop replying to your emails or answering your calls and at best, you get empty promises of transfers in process or even the rather archaic 'the cheque is in the post' reply.

Chasing an unpaid invoice can often trigger unexpected questions, or challenges to your invoice, months after the work has been signed off – quite often as part of a deliberate delay tactic.

Meanwhile, a good business relationship is often ruined by a breakdown in trust caused by the struggle to get paid on time. Many businesses also find late payment has a snowball effect on their cash flow and financial commitments, resulting in stress, frustration and lost opportunities.

In the pages ahead, we'll help you to equip yourself with the best strategy and techniques to make late and bad payers an avoidable experience for your business. Which means you can ensure your business isn't undermined or threatened by financial and cash-flow problems arising out of debts owed to you.

At the headline level, here are a few practical steps that we recommend:

- 

Ensure that your terms and conditions include late payment interest provisions on business to business debt
- 

Agree those payment terms upfront and ensure that they are properly accepted so that there can be no doubt whose terms govern your customer/business relationships
- 

Act on those rights where money is overdue – remember you're entitled to do so
- 

Always create detailed, clear and easy to understand invoices; it helps to print a further copy of your terms and conditions on every invoice or embed a link to them/attach a copy of them if you're sending out the invoice electronically
- 

Add VAT correctly to your invoices
- 

Invoice the correct party – you should know if the other business is a limited company, sole trader or partnership. It is important to make sure you don't invoice the individual if he/she is actually trading as a limited company
- 

Remove or reduce credit terms for persistent late payers – ensure that your terms and conditions give you the right to do this, with short notice, on failure to stick to the agreed timescales
- 

Record your time or hours on a job accurately
- 

Consider using cloud accounting software; this has some benefits that includes giving you flexibility to access your financial information 24/7, as long as you are connected to the internet
- 

Set aside time for the administration of dealing with invoices and payments so that late payments don't go unnoticed and unchased

So that's the headline 'to-do' list.

But how do you make sure you can tick all of those boxes?

Let's get down to the practical stuff so you can make it happen.

Getting those boxes ticked

1

Make fair payment part of the bargain from the start and get creative



The starting point is always to ensure that you have payment terms agreed upfront and that these terms include the rights and entitlements that you want when it comes to handling late payments.

Don't assume even after you've clarified payment terms that they will be set in stone. Actually, here's where you might want to get a bit creative and incentivise your customers to pay you on time, or even ahead of your deadlines.

For example (a) you might want to offer a discount on the invoiced amount for early payment (b) you might want to require payment upfront, or a deposit on account (c) you can set short payment terms for new customers (for example, payment within 7 or 14 days of delivery of the product/service) and then if that customer proves responsible and reliable, you could agree on a discretion for you to later extend those terms to something a little longer. You might choose to refuse cheques as a payment method and insist only on bank transfers. This usually means that you get your money quicker, you don't have to deal with the administration of having received a cheque and taking it to the bank and of course the risk that after all that, it might bounce and then you have to chase it.

2

Be clear about what the customer is buying from you and what that entails



If your agreement involves, for example, a number of hours worked or various components to be acquired and assembled or modified, ensure that this process is also clear within the terms that you agree up-front. Where relevant, make sure you record your time or hours spent on projects or production accurately and that you follow a similarly accurate approach when it comes to accounting and your procurement practices.

These commercially efficient steps, which you're probably already doing if you're running your

business effectively, help to reduce the risk of your customer responding to your invoices with protracted queries about the hours you spent on the job, the reasonableness of the components that you acquired, etc. and whether, ultimately, your invoice reflects fair value.

You may not be able to avoid that conversation entirely on every occasion, but at least if or when it does arise, you should be able to politely and easily cut it short.

2

Spell out the late payment consequences



If your customer is another business and not a private consumer (a natural person acting outside his or her trade), you should be able to add late payment interest and compensation entitlements

to your terms and conditions.

Your invoices should contain the right level of detail to be transparent about the work you've undertaken and to demonstrate that this is consistent with what was agreed between you and your customer.

What are the general recommended requirements for information on an invoice?

Sales Invoice 1

9 Jane Brown
Brownfields Consultancy
256 Arlington Drive
London EC2 7RT

6 **Date:** 12/09/2016

Invoice No: 360125

2 **Reference No:** BRFDS/001

Qty	Description 7	Unit cost	Net amount	VAT
7	Mini office bouquets – delivered 1/09/2016	£15.00	£105.00	£21.00
1	Reception premium display – delivered 5/09/2016	£50.00	£50.00	£10.00

Total Net Amount: £155.00

Total VAT Amount: £31.00

3 **Invoice Total:** **£186.00**

8 **Payment details:** Strictly 30 days
Bank transfer to: Sort Code: 423-569
Bank A/C: 23546 8978
A/C Name: JoeFlorist Limited

Registered in England No 123456789. VAT No 12345679

4 Joe the Florist

5 1 Church Street
London WC1v 7LL
T: +44 (0)20 4442 4442
www.joetheflorist.com

- 1 state that it's an invoice – the easiest way to do this is to title the document 'invoice'
- 2 add a unique reference number
- 3 total amount plus VAT if applicable
- 4 your business name:
 - if you are a sole trader your full name and trade name (if different)
 - if you trade as a limited company, the full company name
- 5 your address
- 6 the date of the invoice
- 7 a description of the goods or services with the date it was supplied
- 8 your bank details or payment details
- 9 customers/clients name or trading name and address.

5**Add VAT correctly so your customer knows what exactly they need to budget for**

Getting the VAT element right on your invoice is important and it's likely to save you the hassle of having to deal with HMRC on a potential VAT inspection.

If you're in the process of registering for VAT, we'd suggest that you increase your prices by 20% from the date of your VAT registration (as you have to pay VAT from the effective date of

registration) and tell your customers why you're doing that.

Up to the point where you obtain a VAT number, you are not allowed to charge or show VAT on your invoices.

Once you get your VAT number if you need to, it's possible to reissue those invoices showing the VAT.

6**Invoice the correct trading party**

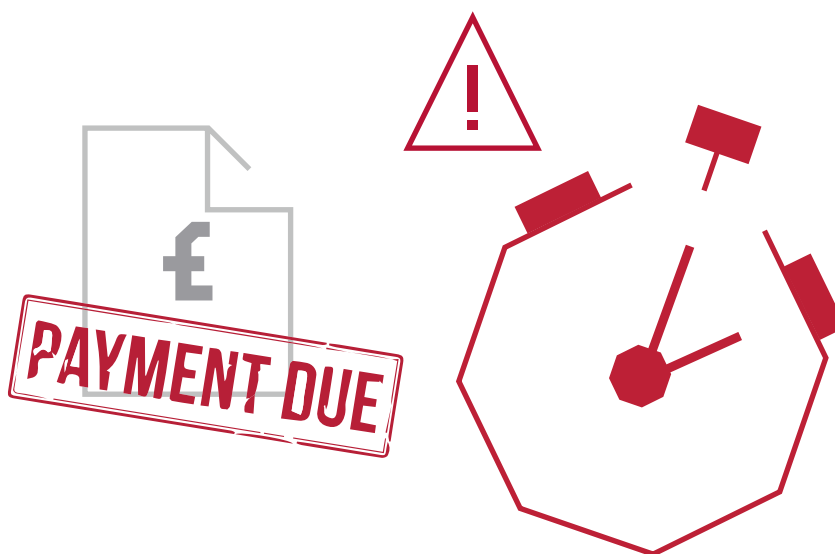
If you don't address the invoice to the right business or person, they may actually be able to wriggle out of paying it or at least delay their payment obligations to you quite considerably. It should be the same entity that signed up to your terms and conditions (unless you explicitly agreed otherwise).

It is vital to ensure you understand your customer's business model. Are they a limited company, sole trader business or a partnership? This information is necessary as it will determine who is legally responsible for your invoice, i.e. an individual or the company.

Also, make sure that you send the invoice to the correct person or department that deals with the payment of invoices. This helps to ensure efficient processing.

A sole trader, and in most cases, the members of a standard partnership, remain personally liable for the debt.

A change of shareholders in a limited company or members of an LLP does not affect the liability of the business entity. Everything continues as before.



Debts owed to you by a limited company or limited liability partnership

Assessing another business' financial position is not easy, but there are some practical steps that you can take to get a decent picture of this:

- a Companies House search (this will give you information such as the most recent filed accounts and whether there are any charges on the assets of the company)
- an insolvency search (<https://www.gov.uk/find-out-if-a-company-is-in-financial-trouble>)
- a Land Registry search if the company trades from a building to check if the company owns the property and if so, if there is a mortgage or other charge against the property
- a Google search (to find out what information flags up on the company)
- visit the debtors trade premises to determine if they are still trading and to gather information on stock availability etc
- if the distance to the debtor's trade premises makes it uneconomical to visit, try to find the contact telephone number for a business close by by using Google and ring them up to enquire what information they may have on the business that owes you money. They may or may not be willing to assist but note there is no legal duty on them to confirm if the relevant business is still there
- also, keep in mind that not all the assets that you may find at the premises necessarily belong to the company, as equipment or vehicles may be owned by a finance company under a lease or the assets may be subject to a charge by a third party (for example if the company borrowed money and the assets are contractually security for the debt).

Chasing debt from sole traders and partnerships

Remember that sole traders are personally liable for the debt of the business, unlike directors of a limited company.

In most cases the members of a partnership are jointly and severally liable for the debts of the partnership. That means if one of the partners can't pay, the other members can be held liable for the full debt. However, although it's very rare, there is something that is called 'limited partnerships.' Briefly, this is where one or more members are usually not active in the day to day activities of the business and only have liability for debts up to a specified amount. This type of arrangement must be registered as such with the Registrar of Companies.

If you're at the stage where you want to take a debtor to court, it's highly advisable to check if they're worth the cost and effort of doing so. We recommend the following checks are done:

- a Land Registry search to check if the individual owns the property and if so, whether it is jointly owned and if there is a mortgage or other charge against the property
- a Google search (to find out what information flags up on the individual and whether it gives any indication of (imminent) insolvency or bankruptcy)
- a visit to the debtor's trade premises to determine if they are still trading and if possible to glean information on stock availability (often a good indication of how the business is performing)
- an official registry search to check if the individual behind a sole trader business has outstanding county court judgments (<http://www.trustonline.org.uk/>)
- a credit reference check with agencies such as Credit Safe and Equifax. The report will normally list any county court judgements, financial results, registered lending and a recommended credit score
- a bankruptcy search to make sure an individual sole trader is not bankrupt (<https://www.insolvencydirect.bis.gov.uk/eiir/>)

Also, keep in mind that not all the assets that you may find at a business premises necessarily belong to that business. Equipment or vehicles may be owned by a finance company under a lease or the assets may be subject to a charge by a third party (for example if the company borrowed money and the assets are security for the debt).

There can be no absolute guarantee about the financial position of another business, but the more information you can gather, the more likely you are to make an informed decision on your options to collect the debt and your prospects of success.

7

Remove credit terms for persistent non-payers



If you have debtors who persistently pay you late, consider reducing or removing any credit limit that you otherwise agreed with them. You should include your entitlement to do this in your terms and conditions from the outset. Spending time on

credit control can be frustrating, but it's something that is really important for your business since ultimately, getting paid is one of the main objectives for being in business!

8

Include payment deadlines in your payment terms



However, there is no need in practice for you to insist on a 30 day payment window before you invoice. Generally, the sooner you invoice, the sooner you get paid. If you include your bank details on your invoices, you may be paid sooner

as you don't have to wait for cheques to be sent and then cleared; there is then also no excuse for your customer not having the right payment details to hand.

9

Consider a Cloud accounting software solution as well



These solutions largely automate the process of invoicing for you and they save you time in creating the paperwork. Increasingly, there are specialist packages available targeting small businesses and those starting out and they are designed to be cost-effective and straightforward. However, like most things, you should consider the cost and whether any particular system is right for your particular needs.

If you do decide to use accounting software, you can add a payment link to services like Paypal or Applepay to make it easier for customers to pay you and easier for you to administer.

8

Make enough time



Something else that you should consider is that it takes time for accounting administration, the invoicing, distribution and the follow ups.

This may sound obvious but do remember to schedule and send out your invoices as you won't get paid if you haven't invoiced.

So, you've done your homework and you're well-prepared with robust terms and conditions. But then in spite of all your efforts, you encounter a late payer.

The guidance ahead will talk you through some simple but essential steps on how to avoid a late payer turning into a bad payer – meaning someone who never ends up paying you and, quite possibly, putting your business at risk.

10 essential tips to avoid a bad payer

1



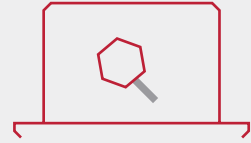
Do a free Companies House check on the Company House website

2



Consider doing a credit reference check with agencies such as Credit Safe and Equifax. The report will usually list any county court judgements, financial results, registered lending and a recommended credit score

3



Carry out research into the business background of the customer you are dealing with. For example, doing a Google or a Bing search

4



Definitely check out their website and if it's feasible and relevant, visit their offices or store. Ask yourself if it's a good 'feel'

6



Ask for references on your customer from suppliers and banks

5



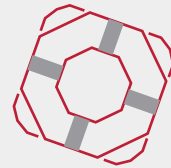
Ensure you have a signed contract with clearly defined terms and conditions and that your terms supersede any others (don't fall prey to the battle of the forms!)

7



Speak to other people who have dealt with the same customer

9



Consider getting credit insurance as credit insurers may also do a credit check on your behalf as part of the policy cover. Further information on credit insurance providers can be found [here](#)

10



For a small fee (£4 - £10) you can do a search of the official Register of County Court Judgements. Click [here](#) for more information

8



Consider asking for a deposit payment upfront, staged payments or set a lower initial credit limit when dealing with a new customer



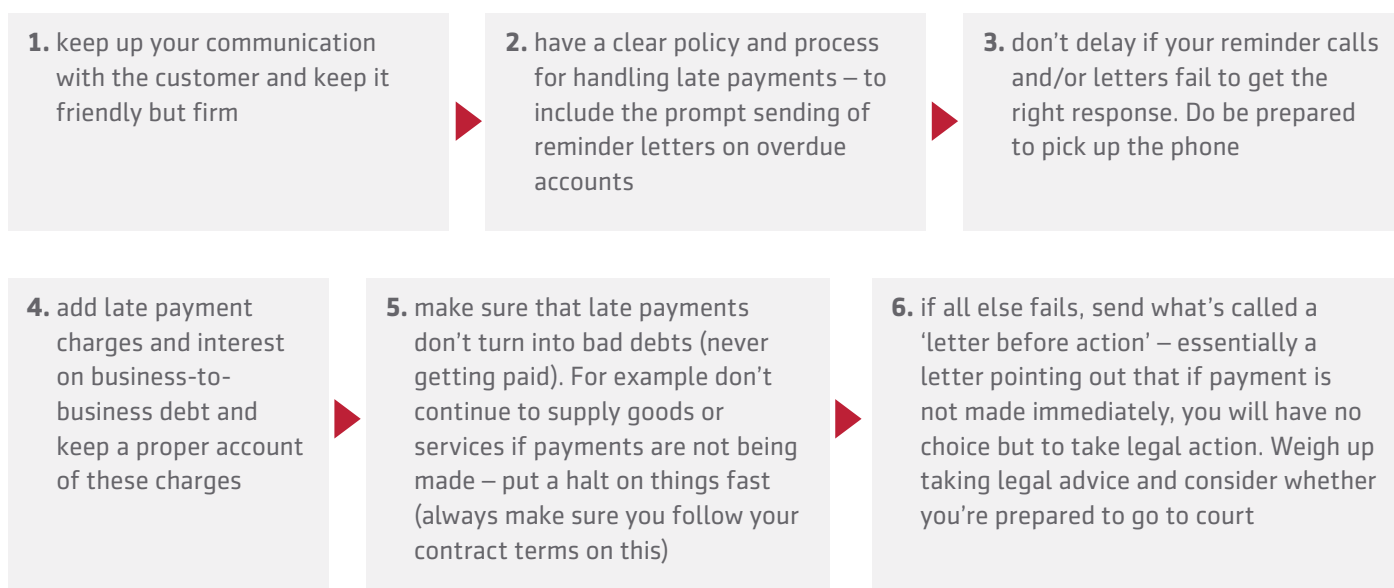
Of course, sadly, there aren't any guaranteed preventative measures. Sometimes you can do everything right to ensure that payment terms are not abused, but find that you still don't get paid on time.

Keep in mind that if your debtor is really struggling, then they probably have a number of invoices to pay, some of which may be very considerable as well. There is often a 'pecking order' when it comes to who gets paid first. Hopefully you'll be at the top of the list but you shouldn't count on it. Ahead, we explore how to optimise your chances of turning around a bad payer situation.

The first thing to keep front of mind is that a late or bad payer may often be someone with whom you don't necessarily want to lose an on-going relationship. So going all 'ninja' in your approach may not help you to get paid faster, and it probably also won't preserve important custom. In the more exceptional cases, you might end up having no choice but to threaten legal action. But this should always be your last resort.

We recommend the following approach:

6 steps to take when someone pays you late



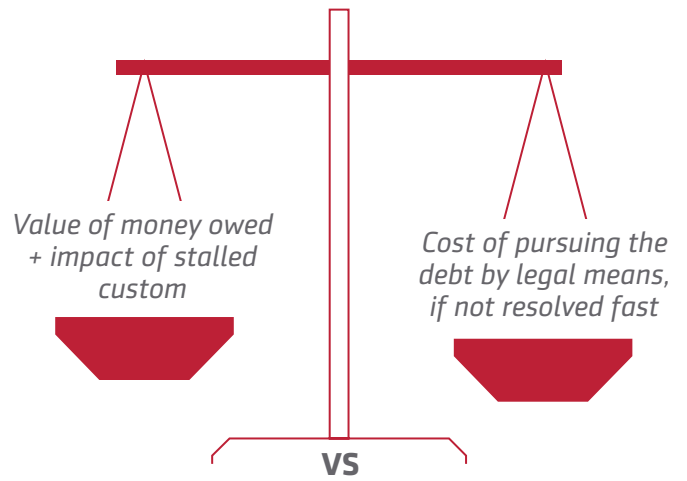
Taking legal action is the least ideal position for any business, especially where the value of the debt owed will be heavily outweighed by the costs of legal pursuit. Lawyers, court fees, and the time and focus lost to on-going business activities often unavoidably deter business from chasing down smaller debts.

It may be a very frustrating experience to walk away from a bad debt or from a customer whose business you would really like but who costs you too much in late payments to maintain the relationship. But the reality is that sometimes it is better to walk away than to take the path of legal action. Never tread this course lightly.

Alternative dispute resolution

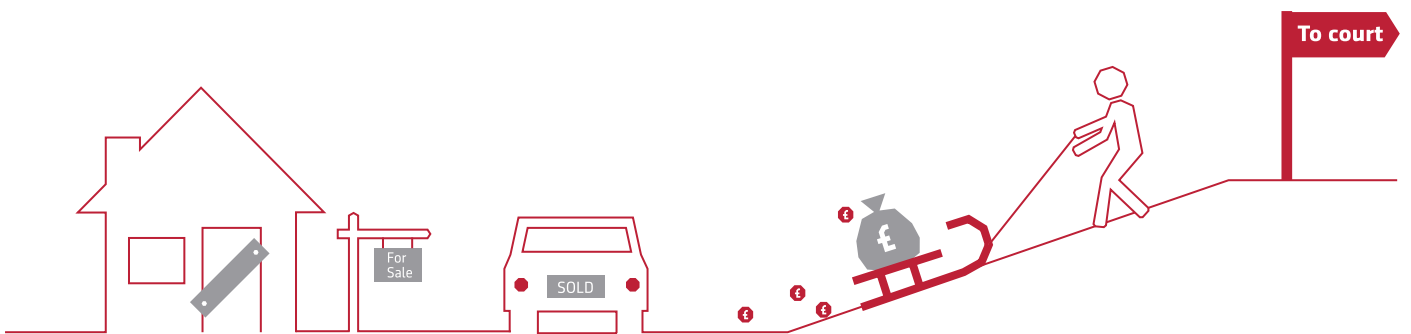
Businesses are being encouraged to resolve disputes without involving the courts. This is usually achieved through the use of alternative dispute resolution processes such as mediation/arbitration, where an independent third party gets involved in an attempt to help the parties reach an agreement. The use of these alternative methods in resolving business disputes has several advantages, the main ones being that it's a confidential process, and it's usually quicker and cheaper than going to court.

Traders that deal with consumers have a legal duty to provide certain information to customers on dispute resolution. In some sectors (like energy, telecoms and financial services) the specific regulator may require a business to use alternative dispute resolution or even a particular alternative dispute resolution provider, but in all other cases you, as the trader, will have a choice whether you use alternative dispute resolution where you cannot resolve a dispute with the consumer directly.

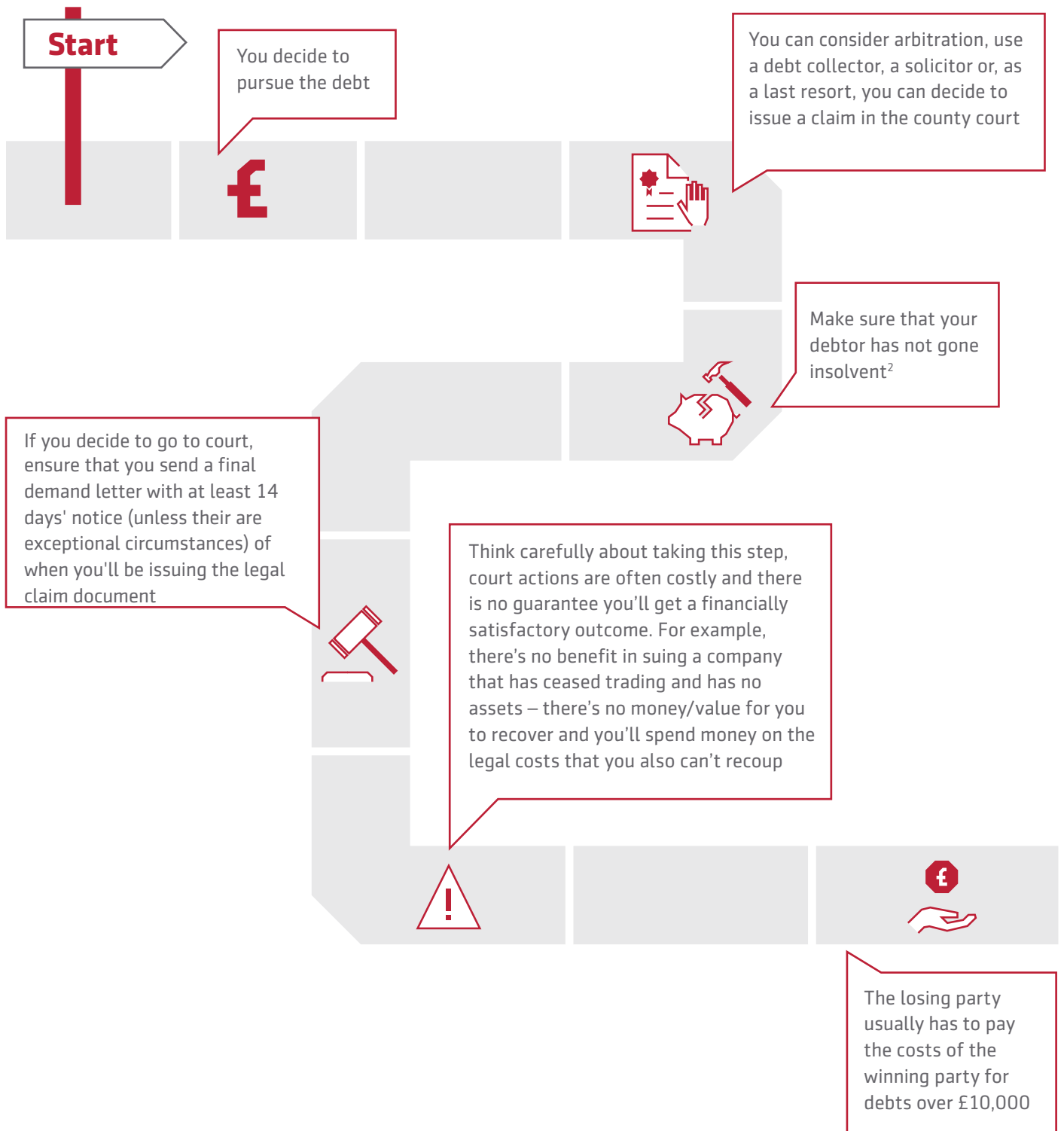


If all else fails...

If you've weighed up the costs and consequences to your business and you decide that taking formal debt recovery action, with the help of a court, is the right course for you, what lies ahead?



Starting down the formal debt recovery path



²If the debtor company goes into a formal process of liquidation (meaning the court has made an order that the company cannot pay its debts and can no longer trade as a result) – you become a creditor, with the other preferred creditors like the staff ahead of you in the queue for whatever money is available. By contrast to a corporate creditor, there is often little chance of a freelancer receiving substantial payment. But if you're a freelancer, you can optimise your prospects of recovering some of what's owed to you by making sure the liquidator or administrator has your details as well as comprehensive details of your claim. Make sure the liquidator acknowledges your claim as a valid one.

³This letter should state the details of the invoice and all amounts you intend to include in your claim.

Who is liable and for what?

Directors and shareholders

When is a director personally liable for his/her company's debt?

A director of a limited company is **usually not liable for the debts of the company**.

There are exceptions to this general rule and we'll explore the most four common examples below:

the director has signed a personal guarantee

the director has traded wrongfully

the director has traded

actions by the company against the director

There are other less frequent examples of where a director may be held personally liable for company debts and this includes:

- where a director signed a contract claiming to be on behalf of the company but before its incorporation as a company (unless any other specific arrangements are made)
- where a director disposes of company assets at no value or undervalue
- payments of dividends to shareholders illegally
- acting as a director whilst being subject to a court order for director disqualification
- entering into contracts in a personal capacity – failure to make it clear that he/she is contracting as an agent of the company
- damages where a director commits an act or omission that constitutes negligence (for example negligent misrepresentation in the course of negotiating contracts).

Personal guarantees

If you're a statutory director of a limited company (i.e. you are one of the named directors on the Companies House records), it's quite possible that the bank and/or the landlord on any rented commercial premises will ask for a personal guarantee from you, to provide them with security in the event that your business gets into debt. This may also happen if/when the company applies for an overdraft facility or for a trade account. So if you hold a statutory

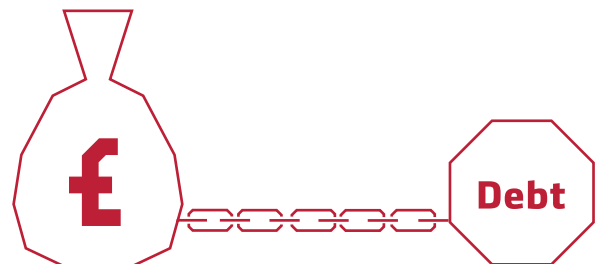
directorship position, you should always read through any personal guarantee documentation very carefully – the details matter an awful lot when it comes to signing personal guarantees; your home and any other financial assets or interests that you hold could be at risk if that guarantee is ever called in because the business runs into financial trouble.

Things to look out for:

- is the guarantee limited to a specific amount, for example, a fixed amount of £5,000 or does the small print allow for an unlimited amount?
- what type of interest and cost can be added to the guaranteed amount for which you could be liable?
- does the guarantee last for a fixed period only or for the duration of having the account?
- is the guarantee secured against your personal assets, such as your family home?

It's important to remember that if you resign as a director of a limited company, you are not automatically discharged from your obligations under personal guarantees. You'll have to look at the paperwork and you may need to approach the holder of the guarantee in writing to request a release from the guarantee. Note that they are usually not under an obligation to do that unless the guarantee contains conditions which have been met.

Of course if you're chasing down debts as a creditor of a business where a payment is overdue, you should check your records for any personal guarantee that may have been signed by a director of the company that owes you money. If no guarantee is available, you're unlikely be able to recover the debt from a director of a limited company, unless they have broken the law and committed wrongful trading or fraudulent trading. We discuss this in the next section.



Wrongful trading

'Wrongful trading' is a technical legal term that means where a director of a company that has gone into insolvent liquidation:

- knew or should have known that there was no reasonable prospect of avoiding his/her company going bust
- but he/she did not, at that stage, take every reasonable step to minimise the potential loss to the company's creditors.

Who is a director?

Directors are responsible for the day-to-day running of the company and should always act in the best interest of the company.

Individuals involved in the day-to-day running of the business may not always be a director on paper or may not necessarily be registered as a director with Companies House. These individuals are usually referred to as 'shadow directors' or 'de facto' directors. They often issue instructions to the company or employees and act as if they are directors. These types of directors are also included when we refer to a 'director' for the purpose of acting wrongfully.

Sometimes a company may run into financial difficulty and then the directors must decide if the company can continue to trade or not. If the directors decide to continue trading, and they keep incurring debt in circumstances where you would not expect a reasonable director to do that, then the directors may be acting wrongfully. This will always be dependent on the facts, but if a director can argue that he/she believed, in good faith, that the company was about to improve, that may be enough to convince a liquidator, or a court, that they took every reasonable step to minimise the potential loss.

The question of wrongful trading is assessed by the liquidator or administrator appointed by the court to deal with the affairs of the insolvent company. If the liquidator or administrator believes that one or more of the directors may have acted wrongfully, he/she must decide whether to take court action to try to prove this and to try to recover a contribution to the monies owed from any wrongfully behaved director.

This is not a straightforward decision. The liquidator or administrator will have to weigh up the evidence and consider the cost of funding the litigation from what is left of the company's value. He/she will also have to consider whether the directors are worth suing. The liquidator or administrator can decide to assign the right to bring a claim to a third party who is in a position to fund a claim.

If all else fails, the liquidator can take the case to court, where the judge will take a view on the conduct of the director to decide if he or she took 'every reasonable step' to minimise the loss.

The court has to consider 2 issues:

- what would a reasonable director with the same general knowledge, skill and experience have done in that position?
- what was the actual knowledge, skills and experience of the director in question? For example a director with specialist skills or experience is expected to apply them, and is therefore subject to a higher standard of expectation and reasonableness than a director without those skills or experience.

If the court concludes that the director traded wrongfully, the director can be held personally liable for company debts up to an amount that is within the court's discretion (unlimited) and/or face a ban from acting as a director of any UK company for up to 15 years.

Fraudulent trading

By contrast to wrongful trading, fraudulent trading happens where the management of a company, its directors or anyone who is knowingly a party, carries on a business with the intention of defrauding creditors, or for any other fraudulent purpose. A company can be accused of fraudulent trading whether it is still trading, has ceased trading or is in the process of being wound up.

An example of fraudulent trading would be where the directors/others involved in the running of the business deliberately avoid paying the company's liabilities.

If fraudulent trading is declared by a court it can lead to a prison sentence of up to 7 years, financial penalties (unlimited) or disqualification as a director of a UK company of up to 15 years. This can also include a confiscation order being made against the director/individual, meaning that payment of any benefit gained from the fraudulent activity must be personally repaid by that director.



A benefit in this context could be where the directors or individuals; knowingly continue to take deposits from customers knowing their orders will not be fulfilled; knowingly moving company assets out of the company; or knowingly issuing inflated invoices.

Of course if you're chasing down debts as a creditor of a business where a payment is overdue, and you suspect that the company or its directors have acted wrongfully or fraudulently, get in touch with us and/or the Insolvency Service (Investigations and Enforcement Services Team) or the Serious Fraud Office. If the company that owes you money has gone into a process of insolvency, you can contact the official receiver or the insolvency practitioner that the court appointed to deal with the affairs of the insolvent company, and report your concerns and what's owed to you. You can find details of the official receiver by ringing the insolvency service and giving them the company information. Details can be found [here](#).

Actions by the company against directors

In general, a company can bring a claim against a director where the director is felt to be in breach of his/her duty to act in the best interest of the company.

If a director (including a shadow director or de facto director) or a company secretary, is found guilty of any breach of duty relating to a company that's going through insolvency proceedings, the liquidator can bring a claim in court, for the court to consider the conduct of the director. The court can make an order to compensate the company or to repay the money or any part of it, as the court sees fit.

Examples of a breach of duty include:

- where the director fails to disclose an interest in property purchased by the company
- where the director receives money from the company (other than normal wages) which caused a loss to the company
- using company funds for non-company activity
- improper investing or payment of company funds
- failure to use a proper accountancy system in the company.

Every case will be considered on its own facts.

Can a shareholder be personally liable for a company's debts?

A shareholder is usually **not** liable for the debts of the company.

A shareholder can be an individual, another company, a partnership or sometimes even a group of people. The role of the shareholder differs from that of the directors. The shareholders are the 'beneficial owners' of a company which mean the company is intended to make money that they benefit from and share amongst them. They are not involved in the day to day management of the business, as that is the director's responsibility.

Any liability that a shareholder might have is limited to the value of the shares they own but haven't paid for.



Good news on the horizon



The Small Business Commissioner (SBC) complaints scheme launched in December 2017.

The SBC covers the whole of the UK - England, Wales, Scotland and Northern Ireland.

The aim of the scheme is to provide small businesses with an additional means of holding larger businesses to account on outstanding debts. In addition, the Small Business Commissioner will also offer advice and information in relation to payment matters to small businesses. The details of the scheme can found in the Small Business Commissioner (Scope and Scheme) Regulations 2017.

For more information contact the SBC - here's the link: <https://www.smallbusinesscommissioner.gov.uk/contact-us/>

Shoe on the other foot

It's never a pleasant prospect or experience when you face money worries. If you're worried that your business may not be able to make all your payments as and when they fall due, don't delay; get advice sooner, rather than later. You may be advised to consider a restructure in your business or to consider staff redundancies, but getting advice empowers you with vital information that may save your business and reduce the stress for you later on, if you allow the problem to fester.

Keep a good record of the information that you source and receive. This record may prove very helpful to you as evidence of the reasonableness and integrity of your actions and intentions, if your position as a director or business owner is ever questioned by a creditor or a court in legal proceedings brought against you.

Useful links:

Latest information on the Small Business Commissioner:

<http://www.smallbusinesscommissioner.gov.uk/>

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