



The Bar Council

## **Insolvent & Financially Distressed Clients: Frequently Asked Questions**

<b>Purpose:</b>	To provide advice to public access barristers on issues relating to client insolvency
<b>Scope of application:</b>	All barristers qualified to accept public access instructions
<b>Issued by:</b>	Direct Access Panel
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<b>Status and effect:</b>	<b>Please see the notice at the end of this document. This is not “guidance” for the purposes of the BSB Handbook I6.4.</b>

There are no rules in the BSB Handbook that expressly govern a public access barrister’s engagement by a bankrupt individual or by an insolvent corporate entity. Nor are there any rules which regulate the manner in which a barrister should approach any client who might be at risk of becoming insolvent.

Rather, these matters should be dealt with as part of ensuring that public access barristers maintain efficient and robust systems of practice management. To that extent, it would be prudent to be mindful of issues surrounding the financial stability of clients.

### **1. Is a barrister under a duty to check whether a prospective client is insolvent?**

There is no specific rule which requires a barrister to check the financial circumstances of a client before or during their engagement with a client. However it would be sensible to do so as a matter of basic credit risk management.

The following sources of information are publicly accessible:

- (i) The bankruptcy and insolvency register holds data on:

- Bankruptcies where the bankrupt is undischarged
- Debt Relief Orders
- Individual Voluntary Arrangements

<https://www.gov.uk/search-bankruptcy-insolvency-register>

- (ii) Bankruptcy applications, and petitions are registered at the Land Charges Department. A search can be performed online via the Land Registry portal <https://www.gov.uk/guidance/land-registry-portal-how-to-make-a-bankruptcy-search>. Every bankruptcy petition presented to the court is recorded by the Land Charges Department in the register of Pending Actions and given a PA(B) number. Registration is made in every case against the individual's name and regardless of the fact whether he/she owns or rents the property. This entry alerts third parties of the possibility that this person may be declared bankrupt. A search is a useful way to identify individuals in financial difficulty who may not yet have been declared bankrupt.
- (iii) Bankruptcy orders are also registered at the Land Charges Department. A search can be performed online via the Land Registry portal – <https://www.gov.uk/guidance/land-registry-portal-how-to-make-a-bankruptcy-search>. When a bankruptcy order is made, the official receiver must immediately inform the Land Charges Department (except in exceptional circumstances e.g. stay of advertisement or stay of proceedings cases) whereupon the order will be recorded in the register of Writs and Orders and given a WO(B) number.
- (iv) The Central Registry of Winding-up Petitions (the Central Registry) is a computerised register of winding-up petitions and administration applications which is maintained for all petitions or applications presented to either the Companies Court, a Chancery District Registry or the county court. A search can be performed by telephoning 0906 754 0043 and giving the company's registered name and number. This search is a way to find out whether there is a live administration application or winding up petition.
- (v) If a company has gone into a formal insolvency procedure (administration, liquidation, or receivership), this will be recorded at Companies House. However, note that an administrator (and a receiver) has 7 days to give notice of his or her appointment to the registrar, and a liquidator has 14

days do so, so be aware that recent appointments may not show on the Companies House register.

**2. Does bankruptcy/insolvency automatically terminate the contract between a client and a barrister (absent any clause in their agreement to that effect)?**

Termination would not necessarily follow. However, in the case of the administration or liquidation of a company, the directors' powers fall away and are replaced by the insolvency practitioner. Consequently, the initial client would no longer be able to give instructions unless the insolvency practitioner were to authorise the work. So an insolvency could have the practical effect of ending the barrister's assignment.

**3. If you accept fees from someone who is bankrupt or insolvent would this carry any financial risk?**

That depends on whether payment is made before or after a bankruptcy petition is presented or a bankruptcy order is made. The position in some of the most common scenarios is as follows:

- If payment is made before a bankruptcy petition is filed this could amount to a preference under section 340 of the Insolvency Act 1986 subject to the statutory conditions being fulfilled.
- If payment is made after a bankruptcy petition is lodged but before a bankruptcy order is granted then payment would automatically be voided under section 284 Insolvency Act 1986.
- If payment is made after a bankruptcy order out of funds comprised in the bankruptcy estate (e.g. payment made from a bank account balance that has vested in the trustee in bankruptcy) then the payment to the barrister would be voidable, as the bankrupt no longer owns the funds and cannot use them for his own means.
- If payment is made after the bankruptcy order is granted out of funds not comprised in the bankruptcy estate (e.g. payment is made from the bankrupt's post-bankruptcy income) then the barrister's fee is unencumbered.

**Important Notice**

This document has been prepared by the Bar Council to assist barristers on matters of professional conduct and ethics. **It is not “guidance” for the purposes of the BSB Handbook I6.4, and neither the BSB nor a disciplinary tribunal nor the Legal Ombudsman is bound by any views or advice expressed in it.** It does not comprise – and cannot be relied on as giving – legal advice. It has been prepared in good faith, but neither the Bar Council nor any of the individuals responsible for or involved in its preparation accept any responsibility or liability for anything done in reliance on it. For fuller information as to the status and effect of this document, please refer to the professional practice and ethics section of the Bar Council’s website [here](#).