



The Bar Council

Insolvent & Financially Distressed Clients: Frequently Asked Questions

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

There are no rules in the BSB Handbook that expressly govern public access barristers’ 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.

Barrister for the purposes of this guidance includes an authorised BSB entity.

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. You might wish to do so as a matter of basic credit risk management. Rule C24 of the BSB Handbook requires a barrister to decide if they will accept instructions and as part of determining if instructions are to be accepted, it would be sensible to do so as a matter of basic credit risk management to assess whether the client is solvent and not bankrupt.

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> or by way of completing Form K16 under the Land Charges Act 1972.¹ In order to access the Portal, a login will need to be created before any searches can take place and there is a small fee to pay.
- (iii) 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.
- (iv) Bankruptcy orders are also registered at the Land Charges Department (LCD). 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>. This is whether or not it is known that the debtor owned property and whether or not they own any registered property or registered charges. A search can be performed online via the Land Registry portal².
- (v) After a bankruptcy order is made, the official receiver must send notice of the bankruptcy order to the Chief Land Registrar at the LCD within 24 hours of notification of the bankruptcy order unless the court orders that the notice should not be sent or that advertisement or the proceedings should be stayed (see [paragraph 50.40](#))³. The LCD will enter the details in the register of writs and orders under the name of the bankrupt whether or

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/812116/K16_2019-07-01.pdf

² <https://www.gov.uk/guidance/land-registry-portal-how-to-make-a-bankruptcy-search>

³ https://www.insolvencydirect.bis.gov.uk/freedomofinformationtechnical/technicalmanual/ch49-60/chapter%2050/part3/part_3.htm

not the bankrupt is known to own any land. This entry alerts third parties to the fact that a person of that name has been made bankrupt.⁴

- (vi) After the bankruptcy order is made a trustee in bankruptcy is appointed. The trustee will be either an authorised insolvency practitioner (sections 388-398 of the Insolvency Act 1986) or the Official Receiver.
- (vii) An insolvency search can be performed via the Individual Insolvency Register by searching the name⁵. A search is a useful way to identify individuals in financial difficulty who may not yet have been declared bankrupt. It should be noted that a person is entitled to apply for a Debt Relief Order (DRO) by way of agreement from the Official Receiver. A DRO will appear on the Individual Insolvency Register <https://www.insolvencydirect.bis.gov.uk/eiir/>
- (viii) Searches against companies can be made via The Central Registry of Winding-up Petitions (the Central Registry) which 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 (<https://www.gov.uk/courts-tribunals/companies-list>), 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.
- (ix) 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.

Barristers are encouraged to make the necessary enquiries at the point of accepting instructions to ensure that they do not find themselves in the position of having to withdraw from a case. It should be noted that those persons who encounter financial hardship may be viewed as being vulnerable, they may meet the protected characteristics listed within the Equality Act 2010 when considering gender.⁶ The BSB's Public Access

⁴ https://www.insolvencydirect.bis.gov.uk/freedomofinformationtechnical/technicalmanual/Ch49-60/Chapter%2050/part2/part_2.htm

⁵ <https://www.insolvencydirect.bis.gov.uk/eiir/IIRRegisterNameInput.asp?option=NAME&court=ALL>

⁶ See paragraph 25 of the [BSB's Public Access Guidance for Barristers](#)

Guidance for Barristers deems that the term vulnerable should be interpreted widely⁷ [para 10 and 27] and withdrawing at a later date could cause further hardships to such a group of persons.

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

A barrister may only return instructions where rules rC21 and/or rC26 are engaged, bankruptcy or insolvency does not mean that termination would necessarily follow. In the case of the administration or liquidation of a company, the director's 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. In terms of a person who has become bankrupt, under rC26.5 you may seek payment under the terms of your agreement. If a barrister has agreed staged payments with their client and the client stops paying due to going insolvent, then the Barrister can withdraw relying on rC26.5. A barrister may also terminate his contract by way of rC26.8 if it can be shown that "*there is some other substantial reason for doing so*". Whilst reliance may be placed upon rC26.8, it should be used with caution and regard should be had to rC27 and rC28 as there is no specific provision which allows a barrister to withdraw part way through a case where it may seem like the client may no longer be able to pay. In addition, there does not appear to be any guidance or relevant precedents which relate to rC26.8.

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

This 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:

- (i) 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.
- (ii) 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 and the monies will be treated as being held on trust for the bankrupt's estate.

⁷ See paragraphs 10 and 27 of the [BSB's Public Access Guidance for Barristers](#)

- (iii) 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 not use them for his own means.
- (iv) If the bankrupt has incurred a debt post the commencement of the bankruptcy proceedings and payment is made, then the payment maybe regarded as '*equity's darling*'⁸ provided the barrister had no knowledge of the position of the client at the point of the payment being made.
- (v) 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](#).

⁸ Bona fide purchaser of a legal estate for value, without notice