



THE UK INSOLVENCY HELPLINE

HOW TO DEAL WITH BUSINESS DEBT for people who have stopped trading

F A C T S H E E T N O 4

This factsheet deals with typical business debts that a self-employed person or small unincorporated (not limited) business may have, and how to deal with these debts once trading has stopped.

If you are still trading then you may need to get more advice and information about running your business and dealing with the on-going debts your business may have. Contact Business Debtline on the freephone number at the end of this fact sheet.

INCOME TAX ARREARS

On the 18th April 2005 the two main tax authorities, the Inland Revenue and Customs & Excise have merged to form **HM Revenue & Customs (HMRC)**. This new government tax agency still has the same powers of enforcement as before.

When dealing with income tax arrears you need to consider the following.

- Having completed a tax return is the tax debt correct and if not you should contact HMRC (Revenue) to discuss correct liability

- If you have not sent in your tax return, the tax debt will be estimated. You will be sent a “determination”. You have no right of appeal against this determination and if you think the figures are wrong you must send in your tax return as soon as possible. This could result in your tax debt being reduced, based on the figures entered in your tax return.
- You must send your tax returns in even if they are late. If you do not do so, then a £100 penalty will be added to your tax debt for filing the return late.
- HMRC will add interest to your tax debt at a set rate. You may be able to stop interest being added if you make an arrangement to pay **before** the interest is due to be added.
- Have you made full use of your tax allowances to reduce your tax debt?

Collection

The collectors have various methods of trying to recover the tax owed. It is important to make an arrangement to pay as early as possible. Treat tax as a priority debt and try to make an offer, using your personal budget, to clear the arrears as quickly as you can. The collector will sometimes accept instalments to clear the tax owed, but usually over quite a short time period of around 3 to 6 months. This would depend on the circumstances of the case.

If you are unemployed, provide full details of your circumstances and ask the collector to hold action on the debt until you are back in work again. This is called a “moratorium” and HMRC (Revenue) will usually allow this for up to 3 months. This would depend on the circumstances of the case.

If you are in a paid job, arrears *only* on Schedule E tax can be paid back by adjusting your tax code.

Bailiffs

The collector has the power to use bailiffs to try to recover goods without getting a court order first. This is particularly used if you still have a trading business as you may have stock and equipment worth taking. In practice it is not possible to keep bailiffs out of trading business premises. They can also go into your home although this is less likely.

You do not have to let the bailiffs in to your home but they can come in through open doors or windows. If you refuse entry to a collector they can apply for a warrant to break in to your home but this is hardly ever done. The collector will usually list items and ask you to sign a “Walking Possession Agreement”, which allows you to keep use of the goods listed but if you do not pay then the goods can be removed. You should try to agree payment in instalments. There are some goods that cannot be taken, such as basic household goods, things owned by other people and necessary tools of the trade. If you are threatened with bailiffs ☎ **phone us for advice.**

County Court Action

If the use of bailiffs is not successful, the collector is likely to sue you in the county court for the arrears. It is very important that you fill in the reply form to the claim and make an offer to pay in instalments.

The court must take your circumstances into account when making an order so putting all the information from your personal budget on the form will help you do this. The final decision on whether your offer is reasonable is taken by the court even if the collector wants a higher amount. If you then pay the instalments ordered the collector will often take no further action.

Magistrates’ Court Proceedings

If the tax debt is less than £2,000 then HMRC (Revenue) is more than likely to recover the tax debt through the magistrates court. This process is called “**Summary Proceedings**”. The collector has 12 months to start action once the tax is due.

You will receive a magistrates’ court summons to go to a hearing. Try and make an arrangement to pay with the collector. If this is agreed, the magistrates may accept this at the hearing. You should go to the hearing. If you are unable to go for a very good reason such as illness, see if the collector will ask the court for an adjournment.

Take any evidence of recent payments with you to the hearing. You can ask the magistrates for time to pay the debt back in instalments that you can afford. Take your personal budget and proof of your income.

If you do not pay then the magistrates’ court can issue a Distress Warrant to use private bailiffs. We have a factsheet on debts in the magistrates’ court which might be useful. ☎ **Phone us for advice.**

Instead of a warrant the court can issue a “**Judgment Summons**” for you to go to court and explain why you have not paid. You can be sent to prison if the magistrate decides you have wilfully refused or neglected to pay. If you do not go to the

hearing and ignore a further summons you can be sent to prison.

Bankruptcy

This is the final option open to the collector if you owe more than £750 or more. They will **usually** take you to the county court first. They may not bother to go to county court first if they have a Tax Commissioners decision on an assessment. It is very important to let the collector know if you have no income or assets, particularly if your house is worth less than your mortgage. If you have no assets they *may* decide not to make you bankrupt. We have a factsheet on bankruptcy which might be useful. 📞 **Phone us for advice.**

Interest, Penalties & Surcharges

Interest, penalties and surcharges can be imposed on you by the HM Revenue & Customs for tax debts:

- where payment is made late;
- as a penalty for not sending in a tax return under self-assessment; or
- for making negligent or false returns.

Complaints

There is a complaints procedure under the Taxpayer's Charter which you can follow if you are unhappy with the way HM Revenue & Customs has dealt with your case. You may want to complain if you have been refused time to pay tax arrears. You should first write to the HMRC Complaints Manager for your area. If you are not happy with the response you can then lodge your complaint with the Area Director for your area. If this doesn't work then write to the Adjudicator's Office at the address at the end of the factsheet. The Adjudicator is not part of HMRC and they act as an impartial referee in unresolved complaints cases.

VAT

You should be registered to pay VAT if your annual turnover is above a certain level. The amount to pay will be the VAT on your sales minus the VAT on purchases for goods and services you buy for your business.

- Make sure all your VAT returns have been sent in. If your VAT bill has been assessed and you disagree with the amount claimed, you can ask for a review within 30 days and then appeal to a VAT Tribunal.
- If you are still trading you may be able to de-register for VAT if your turnover is below a fixed annual amount. (Check this with the HMRC (Customs) Office). They may refuse it if your returns have not been sent in for some time.
- If you are still registered for VAT they will expect payment before the next quarterly return is due.
- If you are no longer trading you should inform HMRC (Customs) immediately.
- It is usually possible to come to a short payment arrangement with HMRC (Customs) for arrears once they know that you are no longer registered for VAT. Penalties and default interest are added to the VAT bill for late payment. Because of the powers HMRC (Customs) have to recover VAT it is very important that you use your personal budget to negotiate payments as a matter of urgency and start paying what you have offered immediately.

Bailiffs

HMRC (Customs) can use bailiffs without a court order. It is a grey area as to whether the HMRC (Customs) can force entry into premises. In practice they do not break in unless they have already been in and taken a levy on goods. Any of your goods can be taken from any premises including tools of the trade. In practice basic household goods are not taken.

Bankruptcy

If you owe £750 or more in VAT and HMRC (Customs) have been unable to recover the money by using bailiffs or by negotiated instalments they will most certainly consider making you bankrupt instead of taking court action. If they are threatening to make you bankrupt, ☎ phone us for advice and ask for our bankruptcy factsheet.

NATIONAL INSURANCE

National Insurance Contributions are dealt with by **HMRC National Insurance Contributions Office (NICO)**.

Class 1 Contributions are paid by employees unless your earnings are below a certain limit.

Class 2 Contributions are paid by self-employed people as a weekly flat rate unless your earnings are below a certain limit.

Class 4 Contributions are paid by self-employed people in addition to class 2 contributions, where your earnings are above the personal tax allowance for the year. This amount changes every year.

Class 1, Class 2 and Class 4 National Insurance Contributions are collected by HMRC (NICO) together with any arrears outstanding. (See the section on tax debts).

If you are self-employed you are supposed to pay a set amount of Class 2 Contributions on a weekly basis to HMRC (NICO). **Remember to tell them if you stop being self-employed.**

Most of the time you can negotiate payment arrangements you can afford on arrears of Class 2 Contributions. If the HMRC (NICO) do not agree with your offer they can sue you in the county court. The court will look at your circumstances when making an arrangement for you to pay in instalments. You can also be made bankrupt if you owe over £750 or more.

Be careful: It is a criminal offence not to have paid Class 2 contributions on time and the HMRC (NICO) can ask the magistrates' court to fine you for non-payment. This is very unlikely in practice. If they are threatening to do this ☎ Phone us for advice.

BUSINESS RENT ARREARS

You may have a lease for business premises. When you cease trading you may still be liable for ongoing rent and/or rent arrears even if you have given up the lease and returned the keys to the landlord.

- **Monthly tenancy:** If your tenancy runs from month to month, then you must give the proper period of notice before leaving, but your liability ends with the tenancy. (Check the terms of your tenancy.)
- **Long-term lease:** If your lease is over a period of years then you may be liable for the rent until the lease expires or a new tenant is found either by you or the landlord. (Check the terms of your lease).

- If your landlord evicts you from the business premises the lease will end and you will not be liable for ongoing rent and rates.
- If you are liable for the ongoing rent, you may be able to sublet or “assign” the premises, check your agreement. The landlord cannot “unreasonably refuse” to let you do this even if it is not stated in the agreement that you can.
- Ask your landlord to let you surrender the lease. If the landlord accepts surrender of the lease they will be liable for business rates whilst the property is empty. So they are unlikely to agree unless they can easily find another tenant.

If you are liable for the ongoing rent you may be able to sublet the premises. (Check your lease agreement).

A landlord for a business tenancy can send bailiffs to recover rent arrears **without** a court order. But they can **only** call at your business premises to remove your stock and equipment so if your premises are empty bailiffs cannot come to your home and remove personal belongings. If your landlord is threatening to use bailiffs for rent arrears ☎ **phone us for advice.** Once you have stopped trading you can treat the rent as a secondary debt and negotiate payments you can afford with the landlord.

EQUIPMENT LEASES

You may have an agreement with a company to lease equipment for your business. Check the agreement to see whether you have the right to keep the equipment at the end of the lease. You may have to pay for the equipment until the lease runs out whether you return the equipment or not.

Check with the leasing company if the debt will be reduced if you return the equipment. If you no longer need the equipment because you have ceased trading you can treat this as a secondary debt and negotiate payments you can afford with the company.

Remember: it is a criminal offence to sell leased equipment without the consent of the company.

If you want to keep the equipment you have leased but cannot afford the repayments ☎ phone us for advice.

BUSINESS RATES

The amount of business rates charged is based on a valuation carried out by the District Valuer. You can appeal against the rateable value within 6 months of occupying the premises or if changes are made to the building. If you want to appeal you may need expert professional advice from a Chartered Surveyor. Contact the Royal Institution of Chartered Surveyors on 0870 333 1600 on their website: www.rics.org for a local firm who will give you a free half hour interview on rating valuation. **You are still liable for the full rates until the appeal is decided.**

If you have stopped trading you should tell the council immediately. You may still be responsible for paying business rates if you are still leasing premises even if they are empty. There are no rates charged on empty factories, workshops and warehouses. *Empty shops and offices do not have to pay for 3 months and 50% of the charge is payable after that.*

Remitting Business Rates

The council has the power to remit or “write off” all or part of your business rates arrears. They have to agree you would suffer hardship otherwise and that it is reasonable for them to write the debt off after taking into account the interest of other council tax payers.

You need to write to the council asking for your business rates to be remitted under **Section 49, Local Government Finance Act 1988**. You also have to prove:

- how you would suffer hardship;
- what steps have been taken to make the business work;
- full details of your personal budget and any assets you have.

It is very unlikely for the council to agree to write off business rates arrears if you are still trading and liable for ongoing bills.

Business Rates Reliefs

There are a range of discounts or “reliefs” available to you to minimise your business rates. You will only get one relief even if you qualify for more than one type. This may apply in the following cases:

- Small Business Rate Relief for businesses that are classified as being “small”. This came into force on 1st April 2005;
- where the property is empty and unused;
- where the business is a charity;
- where the business is not a charity but another type of not-for-profit organisation;

- the business trades in a rural village with a population under 3000;
- the business is a new non-agricultural business on agricultural land or buildings;
- where part of your property is not being used and is completely unoccupied for a short time;
- where you are suffering from severe hardship and cannot pay your bill.

For more information check the Government website: www.mybusinessrates.gov.uk.

Collections Procedure

The council has a range of powers to recover arrears so business rates must be treated as a priority debt. They should send you a reminder notice. The council can then ask the magistrates’ court to make a liability order which allows the council to try various ways of collecting the debt from you. Unlike council tax, you cannot have money taken out of your income support or jobseeker’s allowance directly for business rates.

Bailiffs

The council can send bailiffs to business premises or your home. The procedure is almost exactly the same as for council tax. They cannot take protected goods such as basic household goods or anything on hire purchase. The only difference is that they can take tools of the trade.

Bailiffs cannot force their way in unless you have let them in “peaceably” before or they get in through an open window. In practice it is very difficult to keep them out of a trading business. **Do not let them in to your home.**

Contact the bailiffs and the council and try to negotiate an offer of payment that you can afford. Start paying immediately. We have a factsheet on “Council tax and bailiffs” which may be helpful. ☎ Phone us for advice.

Imprisonment

If the council has tried to use bailiffs and you are still in arrears they can ask for a hearing in the magistrates’ court called a “Means Enquiry”. The court is unlikely to send you to prison unless they can show:

- you deliberately refused to pay. This is called “*wilful refusal*”;
- you could afford to pay but chose not to. This is called “*culpable neglect*”.

You must go to the hearing and explain why you have not been able to pay. Take your personal budget.

The court can order all or part of your business rates to be written off in exceptional circumstances, but are more likely to tell you to pay the arrears off in weekly instalments.

If you do not pay the amount ordered you will have to go to court again and may be sent to prison. It is very important to get advice before the hearing. There may be a local advice agency or solicitor who can help you or ☎ **phone us for advice**. If you have not been able to get help before the hearing you can ask to speak to the Duty Solicitor in the court on the day.

ACCOUNTANTS BILLS

If you have an accountant who usually deals with your tax returns you may have a problem if you are not up-to-date with their bill. Sometimes accountants refuse to complete tax returns or give you back your books if they have not been paid.

This can cause problems with HM Revenue & Customs (HMRC) if they have sent you an estimated tax bill that is too high.

- If you cannot get your books back try to give the HMRC a summary of your trading figures from any papers you have.
- Tell HMRC why you have no books. Ask them to accept your estimate even if you have no papers to prove your figures.
- Try to negotiate with your accountant to give your books back. They may agree if they can see you are in no position to make any sort of payment to them or you may be able to make an agreement for a part payment instead.

GAS AND ELECTRICITY ARREARS

If you have debts from your business premises for gas and electricity there are the same powers of recovery for each.

A debt from business premises can be transferred to your home account.

You can be disconnected at home for arrears from other properties so you must treat electricity and gas as a priority debt and make an offer of payment to clear the arrears as well as paying your current bill.

WATER RATES

Home

You can no longer be disconnected at home for water rates arrears. This applies to your ongoing water rates bill and also a water debt for any previous property you lived in. They can go to county court for a money judgment so it is a good idea to build in your ongoing water rates into your budget.

Make an offer of payment you can afford on the arrears on the same basis as your credit debts.

Business

Your water company can cut you off at your business premises. If you are still trading from premises you will need to contact the water company and start paying your present bill and offer an amount off the arrears that you can afford.

CONTACTS FOR FURTHER ADVICE

If you are still trading and need advice about your business, contact Business Debtline.

Business Debtline

Phone: 0800 197 6026

Website: www.bdl.org.uk

They are open:

Monday - Friday 9.00 am - 5.00 pm.

Taxaid

If you need specialist advice on tax, you can ring Taxaid.

Phone: 0845 120 3779.

Website: www.taxaid.org.uk

They are open:

Monday-Thursday 10.00 am -12.00 noon.

The Adjudicator's Office

To complain about HM Revenue & Customs, contact:

The Adjudicator's Office
6th Floor, Haymarket House
28 Haymarket

London SW1Y 4SP

Phone: 020 7930 2292

Website: www.adjudicatorsoffice.gov.uk

REMEMBER: You can always contact us for advice about any difficulty you have in dealing with your debts.

Freephone: 0800 074 6918

Website: www.insolvencyhelpline.org

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