



Durkan Cahill
Business
Recovery &
Insolvency

Releasing the
pressure of debt.
Insolvency
FAQs.



FAQS index:	Page
01. When should I seek advice?	III
02. What is insolvency?	III
03. What are the signs of insolvency?	III
04. Will I be personally liable for my company's debts?	IV
05. Can an insolvency practitioner make me liable for my company's debts?	IV
06. Will the company's insolvency affect my personal credit rating?	V
07. What is wrongful trading?	V
08. Will I be able to run another business?	VI
09. Will I be disqualified?	VI
10. If I start another company can I use a similar name?	VII
11. Will I be able to use the assets of the insolvent business?	VII
12. What will happen to my employees?	VII
13. How much will I have to pay?	VIII
14. How soon can a process be commenced?	VIII
15-16. Don't you just act for the creditors? How can I be sure you will act in my best interests?	VIII

01. When should I seek advice?

Don't wait until it is too late. A comment all too often made by people we help after having gone through an insolvency process is 'I wish I'd done this sooner!'.

Fear of what might lie ahead stops people from taking action. Ironically, not taking action early actually causes problems that can be avoided.

Unfortunately there is a general lack of understanding of the role of an insolvency practitioner. This is unlikely to change as, for most people, their only interaction with an insolvency practitioner will be when they receive communication relating to the insolvency of a supplier. As a result people believe that dealing with an insolvency practitioner will only result in the end of their business or worse.

Conversely, insolvency practitioners can not only help people avoid making costly mistakes they can also be instrumental in saving businesses, jobs and even homes.

If you experience any of the signs of insolvency the best thing to do is to seek advice straight away. We offer free initial consultations that are completely confidential and with no obligation to provide us with formal instructions to act.

02. What is insolvency?

Insolvency is defined as either having less assets than debts and/or being unable to meet your current debts as and when they fall due.

03. What are the signs of insolvency?

There can be many different indicators of potential insolvency. The most straightforward being an inability to pay your debts as and when they fall due. In recent years late payment of debts has become a common issue for many businesses. This often leads to a short term cashflow issue and will not always lead to a formal insolvency. In such instances there can be a temptation to 'rob

Peter to pay Paul'. (Peter is often HMRC in respect of PAYE or VAT liabilities with Paul being the landlord, an important supplier or employees.) This can work in isolated instances to keep a business afloat but when it becomes a habit or regular occurrence then the situation really needs to be addressed.

Failing to meet payment deadlines can lead to enforcement action from creditors ranging from the removal of credit facilities; obtaining County Court Judgements (CCJ); instructing bailiffs to seize property; and the issuing of winding up or bankruptcy petitions. Once such action is commenced the options for avoiding formal insolvency procedures diminish. At this stage if advice isn't already being taken it absolutely must.

04. Will I be personally liable for my company's debts?

The only debts you are likely to be liable for will be those that you have personally guaranteed. Generally speaking you will know which debts you have provided personal guarantees for and this will usually be in respect of bank loans and overdrafts and possibly some supplier accounts. If you are in doubt as to whether you provided a guarantee you should review all of your paperwork. It is also possible that some guarantees you may have given might not be legally enforceable and you should seek legal advice as to the position if a claim is made against you.

05. Can an insolvency practitioner make me liable for my company's debts?

In certain circumstances an insolvency practitioner can take action against company directors if they have not acted properly.

When a person becomes a director of a company they automatically take on a number of duties and responsibilities as defined in the Companies Act 2006. However, I know very few people who have taken the time to read up on what those duties and responsibilities are. It comes as a shock to them following a formal insolvency event that they have done wrong. In addition to the duties and

responsibilities laid out in the Companies Act there are provisions within insolvency legislation that enable an insolvency practitioner to review matters in the period prior to the formal insolvency with a view to ensuring that all creditors have been treated equally and that any 'rogue' directors are made to compensate the company for any detriment that they have caused the company.

Such matters relate to preferences, transactions at undervalue and misfeasant behaviour.

A preference is a situation where, in the period prior to formal insolvency, the company has ensured that certain creditors are put in a better position than others. For example paying back a loan to one creditor in particular whilst not making payments to others.

A transaction at undervalue relates to giving away assets or selling them at significantly less than they are worth in the period prior to insolvency.

A failure to understand these issues can lead to directors causing themselves problems and this is why it is vital to seek advice at the earliest opportunity to avoid personal liability and potential disqualification action.

06. Will the company's insolvency affect my personal credit rating?

The company's insolvency will not appear on your credit file. However, the insolvency is a matter of public record and on future applications for insurance or credit you may be asked whether you have had an involvement with an insolvency such as liquidation or administration.

07. What is wrongful trading?

When a director knew, or should reasonably have known, that his company would not avoid insolvency and continued to trade resulting in losses for creditors he can be made personally liable

for the losses caused by continued trading. The process of making a director personally liable is not straightforward and as a result not as many court applications are made in respect of this as people may think.

However, if there is clear evidence of insolvency that a director should have been aware of, such as the existence of CCJs and evidence of non-compliance with HMRC submissions and payments then the prospect of an application being made increases.

Trading on in such circumstances should only happen if there is a clear plan as to how the company will be able to succeed and pay its debts, or if trading on for a short period of time will enable the company to realise the full value of contracts or products it has yet to finish. Again, if this situation applies it is vital that advice is obtained before continuing to trade.

08. Will I be able to run another business?

Insolvency legislation is primarily there to act as a safety net for when things go wrong. There are provisions within insolvency and associated legislation to punish wrongdoers but most people involved in managing a business that fails will be able to run another business again.

09. Will I be disqualified?

If you have managed your company appropriately and acted fairly then the answer will be no. In 2017 there were 17,243 company insolvencies and in the same period there were 1,133 directors subject to disqualification. The main allegations made that resulted in directors being disqualified were:

- Unfair treatment of HMRC
- Technical matters
- Accounting matters
- Criminal matters
- Preferences and Transactions at Undervalue

You can infer from the above that if you maintain appropriate accounting records, treat HMRC fairly and act in the best interests of the company and its creditors that there will be little prospect of you being disqualified.

If you are in any doubt about your situation then taking advice at the earliest opportunity could put your mind at rest.

10. If I start another company can I use a similar name?

It is possible to use a similar name to that of the insolvent company although procedures must be followed to ensure that you don't breach the legislation. Failing to follow the correct procedures could result in personal liability, fines and prosecution. We are fully versed in such matters and can provide information on how to do this correctly.

11. Will I be able to use the assets of the insolvent business?

It is often the most appropriate way for the insolvency practitioner to deal with realising the assets of the business by selling them to a company connected with the people in control of it. If there is an intention to start again and use a similar name, the only way this can happen is if the assets are sold to the new business by an insolvency practitioner. If this is something that you are considering then you must seek advice to ensure that you undertake the process appropriately. We can assist with this.

12. What will happen to my employees?

Employees that are owed money in respect of wages, holiday pay, notice and redundancy when a company enters formal insolvency can seek payment from the Government through the Redundancy Payments Service. Directors are also entitled to make claims if they are considered employees. It is important to ensure that appropriate consultation is provided where possible and in particular when there are 20 or more employees at a single location.

13. How much will I have to pay?

There is a cost involved in respect of a formal insolvency. Ordinarily the costs are recovered from asset realisations. If there are no assets to realise to cover the costs then directors will be asked to pay from personal funds. Each matter has its own specific set of circumstances and the costs will be discussed and agreed prior to any formal instructions being accepted.

14. How soon can a process be commenced?

We understand that in some circumstances there is a need to commence insolvency proceedings urgently to protect assets from enforcement action by creditors. Subject to sufficient information being available processes can be commenced within 24 hours of first contact if necessary.

15-16. Don't you just act for the creditors? How can I be sure you will act in my best interests?

The role of an insolvency practitioner is complicated. In corporate insolvency matters instructions are received from directors to act on behalf of the company to commence the insolvency process. Once formally appointed the insolvency practitioner will be acting on behalf of the company's creditors. Any directors providing instructions to Durkan Cahill will be fully advised of the processes involved and the potential for them to be at risk in respect of personal liability or disqualification.

Unfortunately there are unqualified and unregulated 'advisors' in the market place that will offer to assist you and act solely on your behalf and not the company's creditors. Often these advisors will make promises that they simply cannot keep. If something sounds too good to be true, it often is.

Insolvency practitioners are subject to high levels of oversight and regulation and understand the need to act professionally at all times. At Durkan Cahill you can be assured of getting the correct advice tailored to your circumstances.



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“

I thought I was going to lose everything, but your practical help and advice has enabled me to restructure my affairs and my life is now continuing - and probably better than before the trouble.

”

Company Number 6878603. Director: Michael Durkan
Licensed Insolvency Practitioner Authorised to act in the UK
by the Insolvency Practitioners Association (IP No. 9583)

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