

## What contractors should do if their agency or client goes bust

If a client or recruitment agency goes bust, where does this leave the contractor? According to Phil Richards of accountants [Blevins Franks](#), the news is not good, as contractors tend to be fairly low down the creditor pecking order.

However, there are steps contractors can take to ensure they do receive any funds distributed by a defunct company, and Richards also outlines what is different for a [limited company contractor](#) versus an [umbrella company contractor](#).

### What does 'insolvent' mean?

"An agency or a client is insolvent if they do not have enough cash to pay their creditors," explains Richards, "or their net assets are less than their net liabilities."

In the UK, this usually means one of three things happening:

- o Appointment of an administrator
- o Appointment of a receiver
- o Appointment of a liquidator.

If an administrator is appointed, it is usually good news for the contractor as they may see a small amount of their fee. The receiver is responsible for either managing the company out of its financial difficulties or realising as much value from the assets as possible to pay creditors.

But, says Richards, in most cases if an agency or client was able to trade its way out of trouble it would have done so before the administrator was called in. "An agency may be unable to trade but have a contract with a major client to supply staff. If this contract was sold on to a trading entity, it would be worth something."

### Realising assets

Most agencies have factoring arrangements with a finance provider, which means they receive payment immediately from the factoring agent, less a commission. It is this relationship that can often determine whether an agency survives or not.

The receiver, or liquidator, would usually have the task of attempting to realise as much cash as possible from the failed agency or client to disperse amongst the creditors.

"The contractors should find out who the administrator, receiver or liquidator is, and ensure they register their debt with the right forms and proof of debt," continues Richards. "The contractor should keep in touch with the administrator, receiver or liquidator, but not hassle them as they have a statutory obligation not to favour one creditor above another except as laid down in statute."

### Umbrella companies

However, if the contractor is working through an umbrella company, they should not contact the administrator, receiver or liquidator at all, as technically it is not their problem but their umbrella company's.

"Contractors should make sure their umbrella company is aware that their agency or client has gone bust and ensure they are taking action," says Richards. "Some umbrella companies do not pay their contractors unless they get paid, but others do; therefore, contractors would be wise to ask the question when choosing which umbrella company to use."

From a practical perspective, there may also be many contractors who work for the same client and agency under one umbrella company. The umbrella company can manage the process better as a single point of contact and potentially a larger creditor.

### Who gets paid?

The order in which creditors are paid in the UK is clearly laid down by statute and [guidance from the Insolvency Service](#) shows the payments made by an insolvent agency or client in liquidation are:

- o The administrator's/receiver's/liquidator's fees and charges
- o Preferential creditors, such as government departments like HMRC, employees wages owed in the four months before the insolvency and contributions to occupational pension schemes
- o Secured creditors with a fixed charge over tangible assets, such as a bank lending money by a mortgage on land owned by the

company

- o Secured creditors with a floating charge, such as a bank that has lent money against assets such as stock and assets not included in the list of assets with a fixed charge
- o General creditors, such as suppliers, which includes contractors, and lenders who have greater rights for recovering their losses than shareholders, such as preference capital holders
- o Interest payable on any debts
- o Shareholders in the agency or client, who in practice almost always receive nothing.

Remember, contractors are not employees and are therefore counted as just general creditors, or suppliers, and as a result are almost at the bottom of the chain when it comes to payment.

### Don't let it happen

Richards advises ensuring the problem does not happen in the first place: "My advice to contractors is, if they are not paid promptly according to their terms, they should assume something is wrong.

"Contractors should expect and demand prompt payment. As freelancers it is not their place to finance an agency or client," he continues, "so keep accounts up-to-date, chase payments ruthlessly and don't be fobbed off."

And if no cash comes when the agent or client is liquidated, then contractors won't see another penny. Contractors can't get bad debt insurance because they only have one major debtor at a time, and no spread of debtors to spread the risk.

Richard's final piece of advice to contractors is basically to cut their losses: "If the worst has happened and the contractor's agent or client cannot pay, contractors should register their debt, then move on and focus on [finding a new contract](#)."

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Phil Richards, Blevins Franks

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