

Opinion **Your Questions**

How can I get money back from a friend facing bankruptcy?

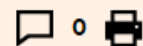
I lent £50,000 for a deposit on a property they purchased in 2016

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Lucy Warwick-Ching 3 HOURS AGO



I lent a friend £50,000 for a deposit on a property they purchased in 2016 for £500,000. About £40,000 is still owing. But I am concerned because they are in dispute with HM Revenue & Customs over alleged unpaid tax and suspected furlough fraud. I am told HMRC has threatened bankruptcy proceedings and I worry whether I'll be repaid if HMRC makes them bankrupt, especially as I understand that from December HMRC has preferential creditor status. Can I do anything to protect my position?

Jon Claypole, partner in the tax dispute resolution team at advisory firm BDO, says you are correct that from December 1, HMRC's status in an insolvency of a business changed to make it a preferential creditor. This means that HMRC could rank higher than unsecured creditors, depending on the nature and validity of a claim.

Regarding your friend's position, the threat of bankruptcy proceedings suggests that the HMRC dispute is either very advanced and authority is attempting to recover tax it believes is due, or that there is a lack of co-operation with the tax authority and it is attempting to protect its position. Either way it is probably not too late to resolve the dispute in a satisfactory manner. However, this will require timely and constructive engagement and should involve an adviser with experience of handling disputes with HMRC.

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If your friend does not have liquid funds to settle in full with HMRC, it is possible to agree a settlement payment plan, commonly known as a Time to Pay arrangement. HMRC's decision will be based on the particular facts and circumstances of this case and will require a full disclosure of their net asset position as well as their monthly incomings and outgoings. HMRC has said it is recognising the impact of Covid-19 and is willing to consider these arrangements on a case-by-case basis.



Jon Claypole, partner at advisory firm BDO © Handout

Furlough payments are a very recent issue, but HMRC has gone on record saying it is actively investigating allegations of [fraudulent claims](#). We would not expect investigations to be sufficiently advanced to determine the amount of any incorrect claim and also whether that incorrect claim arises from fraud.

HMRC announced this year it would provide a 90-day window for those with incorrect or fraudulent claims to come forward. This elapsed on October 20.

However, I would expect that a voluntary disclosure of errors and collaborative engagement with HMRC will bring the investigation to a conclusion earlier and reduce any potential penalties.

With regards to how you can protect yourself in the event that your friend is made bankrupt, this will depend on the terms of the written agreement you have in place and whether and if so to what extent you have security over any assets. However, insolvency is a complex area in law and specialist legal advice should be sought.

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Philip Henderson, director at litigation and insolvency specialists

Henderson & Jones, says your friend can and should try to settle with HMRC. The terms will depend on the circumstances, but proactively approaching HMRC to resolve matters is likely to get the best outcome and should hopefully allow them to avoid bankruptcy altogether, which would also put you in a better position. They should approach HMRC with a proposal, explaining why it is a fair outcome, based on both the money owed and their ability to pay. They should also get legal advice from a tax specialist.

HMRC's new preferential status means that if your friend is made bankrupt, HMRC would have to be paid certain taxes before any money is available for you and any other unsecured creditors. This includes VAT and any deductions made on behalf of another person due to HMRC – PAYE deductions being the prime example.

The more HMRC is owed in relation to these taxes, the worse your position will be, and that of any other creditors. However, the HMRC preference won't necessarily include all amounts relating to furlough. As a first step, you should try to find out what taxes are due to see how big the impact on you will be.



Philip Henderson, director at
Henderson & Jones © Handout

Unfortunately, there is not much you can do to protect your position at this stage, especially if your friend is complying with your agreement. But if they are not up to date on payments, and depending on the terms of your agreement, then you might be able to demand repayment in full now, or seek security, for example a charge over the property in question.

However, you should proceed with caution and ideally get advice from an insolvency specialist. That is because it will be possible for the trustee in bankruptcy to challenge transactions entered into in the period prior to the bankruptcy if they were for significantly less than true value, or in order to put you in a better position than other creditors just because you are a friend. For example, if your friend were to offer you a charge

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over their property now, you would have to justify why that was done. It can't be just to "help you out". That would be an unlawful preference.

Your best bet is to encourage your friend to reach a settlement with HMRC and next time get security over the property from the start. Unfortunately, your situation is an example of why lenders will now be more reluctant to lend money as a result of Crown preference, and why the insolvency profession has been against the change.

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