

Joint and Several Liability.

Partnership responsibilities.

If you're going into business with partners, you need to know about Joint and Several Liability. This brochure highlights the main issues.

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1. Why do I need to know about it?

'Joint and Several Liability' is a legal phrase that refers to two or more people taking on responsibility for an obligation. It comes into play:

- if you have a joint account
- if you have a partnership account
- if two or more people sign a guarantee or a mortgage for a joint liability.

To keep things simple, we'll look at a partnership account run by yourself and a partner. But the same rules apply to any joint or partnership account, and any joint and several guarantee or mortgage.

2. What does 'Joint and Several Liability' mean?

Joint and Several Liability arises when two or more people agree to pay a debt (or similar obligation). It's a joint promise that, if and when the need arises, you and your partner agree to pay off the debt together.

At the same time, each person makes a separate promise to pay the whole debt on his or her own. This means each partner is liable to pay the full amount of the debt, not just his or her own share. We can't collect the same debt twice. So, if your partner pays off the debt in full, we can't collect the same debt from you. He or she might then have a claim against you, depending on what's been agreed between you in the partnership agreement.

Any credit balance is owned jointly by you both, unless you've previously agreed otherwise.

3. How do we open a partnership account?

You and your partner will be asked to sign an account authority. This is your contract with us and includes your instruction on how you want to run the account and your promise to pay any debts.

Although both partners have to provide a specimen signature, it's up to you to decide whether you both need to sign each cheque (or other instruction). An arrangement where two people have to sign everything can be inconvenient, so you may prefer to have an 'either to sign' authority.

With Joint and Several Liability, you'll personally be responsible for any overdraft even if your partner signed all the cheques. If the account is in credit, one partner could withdraw the whole balance. Each of you can borrow money individually, but you'll both be responsible for the repayment, together and individually, unless you tell us otherwise in advance.

If more than one person signs on your account authority, please be aware that for a Business Debit Card, charge card or to use Internet or Telephone Banking, you will be authorising the user to act on your behalf.

4. How does the account run?

All payment instructions need to be signed in the way you've agreed in your account authority. Usually, however, anyone can pay into your account. Statements will be sent to your business address and both of you need to check them for errors. Ask us for additional copies if you need them, although there'll be an extra cost for this – for details, see the Business Banking 'Your account charges explained' brochure available through your branch, your usual contact or on our website bankofscotlandbusiness.co.uk

5. Can I change the authority on my own?

No. Both partners have to give an instruction to change your account authority (regardless of whether 'either' or 'both' sign on the account) unless the authority says otherwise.

6. What if there's a disagreement?

Make sure you let us know about a partnership dispute as soon as possible. Then we can look at changing your 'either to sign' authority to 'both to sign', so that neither of you can authorise transactions on the account without the other's signature. Once we've made this change, you won't be able to use your Business Debit Card, charge card or use Internet or Telephone Banking, until things are sorted out.

If the dispute becomes serious, we'll have to freeze the account until it's resolved. This means that neither of you will be able to take any money out of the account (or carry out any other transactions).

We mentioned earlier that you'll both be jointly and severally liable for any overdrawn balance – this will be the case even when the account is frozen. You might be able to open new, separate accounts, but we may ask you to keep these accounts in credit at all times and to put forward proposals for repaying any debt owed to us.

7. What happens if a partner leaves?

Please tell us immediately if a partner leaves and we'll close your partnership account. The two person partnership will come to an end and your partnership will cease. If you're in credit, you'll each have a claim to the total amount. We can't intervene and decide who's entitled to the money, that's for you to agree between you.

Should you fail to agree, we might have to freeze your account. If you're overdrawn, you and the partner who's leaving will be jointly and severally liable for the overdrawn balance, and we'll need to know how you intend to repay the money. The account may have to stay frozen until we agree your proposals, although we may be able to open sole accounts to allow you to continue doing business.

In the case of a larger partnership, the other partners might wish to continue. But we may want to stop the existing account and open a new one for the continuing partners. Then we'll know precisely how much was in the account at the time the other partner left and he or she will be jointly and severally liable with the continuing partners for any debt at the time they left the partnership.

8. What happens if a partner dies?

If there are only two partners, the partnership ends immediately. If there are three or more, it can continue if the partnership agreement provides for it to continue. The account authority might have to be updated.

If the account is in credit, the personal representatives of the deceased will have the same claim to the money as the ex-partner had while alive – equally, they're jointly and severally responsible for any debts. If the remaining partners cannot agree with the personal representatives on how to deal with the account, it may have to be frozen.

9. Can another person sign for me?

You can arrange for someone to sign on your behalf (your bookkeeper, for instance). Bear in mind, if they don't own any of the money in the account, they're not liable for any debt on it. You and your partners are still responsible for any transactions created by your 'authorised signatory.' Remember, it should be someone you know and trust and it's sensible to limit the amount that he or she can sign for.

10. **What if my partner gets into financial difficulties?**

Even if the business partnership is successful, your partner may have personal financial difficulties that could affect you and the partnership. If your partner becomes bankrupt, we'll have to freeze the account immediately.

In a bankruptcy, a receiver (usually the Official Receiver or a Trustee in Bankruptcy in England and Wales or a Trustee in Sequestration in Scotland) may seek control of your partner's assets, including the money in your business account. If there's a credit balance on the account due to joint ownership, some or all of it may belong to the bankrupt. Until you've reached an agreement with the receiver, we can't allow you access to any credit balance. Meanwhile, we'll try to help by opening a new account for you. If the old account is overdrawn, we may want to claim the whole balance from you.

Bankruptcy can be a complicated subject and you should take advice from a solicitor or professional advisor in the event of your partner becoming bankrupt. If your own business is in financial difficulty, tell us as soon as possible and we'll see what we can do to help.

11. **Can my partner's credit rating affect me?**

Yes, it can. If you open a joint account, you could be linked together by credit reference agencies. So if he or she has a poor credit record, becomes bankrupt, or enters into an Individual Voluntary Arrangement (or similar arrangement in Scotland), it might affect your chances of getting a loan or other credit, both as a partner and as an individual. However, if you contact the credit reference agency, they may agree to break the link for you.

12. **What if a new partner joins?**

Your new partner may not want to become jointly and severally liable for any loans or overdrafts outstanding on the existing account. In that case, we can open a new account but we'll need to agree with you and your current partners about paying off any outstanding debts or sharing out any credit balance on the old account.

On the other hand, if old and new partners agree to use the same account regardless, your new partner will have to sign a new authority form to ensure you're all jointly and severally liable.

13. **What happens if the account is closed?**

If you decide to close the account and it's in credit, you'll need to tell us where to send the money and how to deal with any regular payments in or out of the account. All partners will have to make proposals for repaying any debts.

If, on the other hand, we need to close the account, you'll normally get two months' notice – although this may not apply where a partner has left, died, or is in dispute with the others.

14. **How does confidentiality work?**

With a joint account, we assume that all information about the account and the business in general can be discussed with any partner or authorised signatory. Unless you tell us otherwise, each partner has the power to make an agreement with us that binds the rest of the partners. Of course, personal accounts remain separate and confidential.

15. **What about mortgages and guarantees?**

If you take out a mortgage or sign a guarantee with other partners, joint and several liability will apply to the agreements. We'd strongly advise you to take legal advice before signing any such guarantee or mortgage.

Disclaimer

The contents of this leaflet are general in nature and cannot cover every situation which may arise. We hope that it will draw attention to issues which you may need to consider with your business partners and legal or financial advisors. You may want to consider obtaining your own legal advice on partnerships and Joint and Several Liability.

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Please contact us if you'd like this information in an alternative format such as Braille, large print or audio.

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