

# **The Consumer IVA Protocol 2021 version**

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This document has been produced by Financial Support Systems Ltd incorporating the 2021 version of the IVA Protocol and all associated document templates. Paragraph numbering and pagination have been added for ease of reference.

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# **IVA PROTOCOL 2021**

Updated 29 April 2021

## **The consumer IVA protocol**

This protocol is intended to facilitate the efficient processing and administration of consumer individual voluntary arrangements (IVAs), recognising the need to balance the rights of an individual to obtain appropriate debt relief alongside the rights of creditors to seek repayment of what is owed to them.

The overall protocol has the following parts:

- A set of general principles.
- Standard terms and conditions for use in protocol compliant IVAs (Annex 1).
- Legal and regulatory framework (Annex 2).
- Template letter for consumers (Annex 3).
- Template proposal and table of contributions (Annex 4).
- Flowchart to explain the process for potential equity release (Annex 5).
- Table of distributions (Annex 6).
- Comparison table between bankruptcy and IVA expected outcomes (Annex 7).
- Terms of Reference (Annex 8).

## **General principles**

### **1. Scope of the protocol**

- 1.1. The protocol is a voluntary agreement, which provides a standard framework for dealing with consumer IVAs and applies to insolvency practitioners and creditors. Where a protocol IVA is proposed and agreed, insolvency practitioners and creditors agree to follow the processes and agreed documentation.
- 1.2. The protocol does not override the legal and regulatory framework applicable to insolvency practitioners (Annex 2).

### **2. The protocol consumer IVA**

- 2.1. A protocol consumer IVA can last any length of time, however most IVAs will be proposed for 60 or 72 months.
- 2.2. A person suitable for a protocol consumer IVA is likely to:
  - (i) be in receipt of a regular sustainable income; for example, but not limited to, from employment or a regular pension
  - (ii) have several lines of credit or types of debt
  - (iii) have uncomplicated assets
- 2.3. The age and debt level of the consumer should not create a barrier but may impact on the overall viability and suitability of any proposed IVA.

- 2.4. It is accepted that an IVA is a regulated process under statute, which requires certain work to be undertaken, and which may have a cost unconnected with the debt and/or number of creditors of the IVA.
- 2.5. IVAs are unlikely to be suitable for consumers with very low levels of debt. Consumers who meet the criteria for a debt relief order (DRO) may not be suitable for an IVA. Consideration should be given to the suitability of an IVA for consumers with debts below £5,000 and the reasons the consumer chooses an IVA, rather than other available debt relief or compromise options, should be clearly documented in the proposal.
- 2.6. A reasonably steady income stream is necessary. There is nothing to prevent this protocol being used by consumers who are self-employed or with irregular hours, but where income is uneven/unpredictable, this should be highlighted in the proposal.
- 2.7. Where the consumer's income is solely made up of benefits or state pension, an IVA is very unlikely to be a suitable solution for the consumer; however, if an IVA is to be proposed in these circumstances, the reasons why it is considered suitable should be clearly documented in the proposal (see clause 6.6).
- 2.8. The following are indicators that a person's circumstances are unsuitable for this protocol:
- (i) Disputed debts - there should be no known material disputes in relation to the debts.
  - (ii) Investment properties - those with investment properties would not be suitable for a protocol consumer IVA.
  - (iii) The possibility of lump sum settlement through a gift.
  - (iv) Sole trader with trade debts.
- 2.9. Consumers should be provided with a copy of this IVA protocol before the proposal is drafted. This can be either through provision of a physical copy or providing an electronic link. Consumers' attention should be drawn to their duties to disclose information.
- 2.10. Insolvency practitioners must ensure that all documents sent to the consumer are clear and that anything the consumer is expected to do is easily identifiable. Insolvency practitioners should offer multiple communication channels where possible. Consumers can select the communication channel which is most convenient for them.

### **3. Vulnerable consumers**

- 3.1. Insolvency practitioners should pay attention to indicators of potential vulnerability and have appropriate policies in place. Vulnerability can take many forms and insolvency practitioners should treat all consumers fairly.
- 3.2. A vulnerable consumer is someone who, due to their personal circumstances, is especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care. It should be noted that being in debt and requiring assistance by way of a debt solution can be a potential vulnerability.

- 3.3. Vulnerability is not static and may arise at any point during the lifetime of the consumer. Insolvency practitioners should be mindful that circumstances may change throughout the IVA term.
- 3.4. Insolvency practitioners should ensure they follow the current published guidance from their regulator on dealing with vulnerable consumers. The FCA guidance is a benchmark for the those providing debt advice to consumers who may have vulnerabilities.
- 3.5. Where a consumer is vulnerable, insolvency practitioners should make appropriate arrangements to ensure that the consumer fully understands the IVA process, its effects and obligations, and makes appropriate arrangements for their needs (which may include, with their consent, liaising with third parties on their behalf).
- 3.6. Explicit consent needs to be obtained from the consumer to disclose and record vulnerabilities, including those relating to health and mental wellbeing
- 3.7. Fully understanding the consumer's circumstances can mean that creditors are able to take any vulnerabilities into account when considering an IVA proposal. Creditors should follow any published regulatory guidance or standards on dealing with vulnerable customers.

#### **4. Transparency by all parties to the IVA**

- 4.1. The consumer should disclose details of any previous dealings with the insolvency practitioner who is the proposed nominee for the IVA, or businesses or associates connected with the proposed nominee. The consumer should disclose if they have previously attempted to obtain an IVA or had an IVA approved in the past 24 months.
- 4.2. The consumer should also disclose if they have previously been in or are currently in a Debt Relief Order, Debt Management Plan or Bankruptcy or have been subject to a Bankruptcy Restriction Order or Undertaking.
- 4.3. The consumer may have been referred to the nominee by a third party. The insolvency practitioner should take steps to ensure that any third-party lead generator and/or debt packager referring IVA leads to the insolvency practitioner should be FCA authorised and, if they are not, the insolvency practitioner should direct the consumer to obtain advice from someone who is FCA authorised or the nominee should provide advice under FSMA exclusion.
- 4.4. The nominee has a responsibility under the Insolvency Code of Ethics to ensure that the lead from which they have received the referral for the consumer's case has provided appropriate and detailed advice on debt options and has not misled the consumer in their advertisements. The guidance on monitoring insolvency practitioners: Advertisements, marketing and debt advice provides further information. Where the nominee considers the consumer has not received appropriate advice on the available options, they should ensure that the consumer receives such advice and has made an informed choice as to whether an IVA is the most appropriate option given their circumstances. This should be documented on the insolvency practitioner's case file.

- 4.5. The nominee will record the identity of the source of any referral of the consumer, the relationship or connection of the referrer to the consumer and, where any payment has been made or is proposed to the referrer, the amount and reason for that payment.
- 4.6. The proposal should set out details of how the funds received by the insolvency practitioner from the consumer will be allocated towards the costs of the IVA, together with a timetable and schedule of expected payments to creditors (Annex 6). Payments made by the consumer into the IVA will be apportioned between the costs of the insolvency practitioner set to draft the proposal and set up the IVA (nominee's fee), supervision of the IVA (supervisor's fee) and dividends to creditors.
- 4.7. In the event the IVA is in breach, the supervisor should complete a review of the circumstances and document the reasons for the breach. If the breach occurred prior to the first payment to creditors, the insolvency practitioner should include in that review consideration of whether the IVA was a sustainable product for the consumer and consider if there are any lessons to be learned. If it is deemed that either the IVA was not the most suitable debt solution for the consumer or there is evidence to suggest that such a breach was likely (both based on the consumer's circumstances and all the information they provided to their nominee, any lead generator or debt packager) any payments made should be refunded and the IVA revoked. If the IVA fails before completion, the consumer should be made aware by the IP that they will be liable for all debts and interest accrued during the term of the IVA.

## **5. Advice and cooperation**

- 5.1. The nominee should carry out proportionate enquiries into, and verification of:
  - (i) income and expenditure
  - (ii) assets and liabilities
  - (iii) financial details provided by the consumer to a lead generator, debt packager, or any other third party to ensure that all the information provided is correct
- 5.2. The nominee should satisfy themselves that appropriate debt advice has been provided by an FCA regulated firm or an individual working under the relevant exclusion who is able to provide such advice and keep records to evidence this. This should include due consideration for the long-term suitability and viability of the proposed IVA.
- 5.3. When considering if the IVA is a viable debt solution for the consumer, the insolvency practitioner should consider and document:
  - (i) whether on the information provided the consumer's circumstances are likely to change within the lifetime of the IVA
  - (ii) sources of income
  - (iii) that when using the Standard Financial Statement approved by the Money and Pensions Service the consumer's financial statement is a true reflection of the consumer's monthly outgoings
  - (iv) other appropriate debt solutions and the consumer's reasons for choosing an IVA in preference to any other viable options

- 5.4. The terms and conditions explaining the information that the consumer must provide to the nominee and supervisor throughout the period of the IVA are explained at Annex 1. All parties should act openly and disclose all relevant matters ( see Annex 2).
- 5.5. In addition to other regulatory requirements, the insolvency practitioner should ensure that:
- (i) fair treatment of consumers is central to the culture of any firm that the insolvency practitioner is employed by and that debt advice, information and explanations are suitable and appropriate to the consumer's particular circumstances
  - (ii) that clear information is provided to both the consumer and creditors by the nominee when preparing the proposal, and the supervisor during the IVA
  - (iii) there are no barriers stopping consumers from making a complaint about the insolvency practitioner, any firm that employs the insolvency practitioner or anyone else connected with putting together the IVA proposal or operating the IVA. Information about the Insolvency Practitioner Complaints' Gateway must be provided to the consumer at the earliest opportunity and clearly marked on the insolvency practitioner's and/or the firm's website
- 5.6. The nominee should take steps to ensure that the true value of all realisable assets is recorded in the Statement of Affairs. If necessary, an independent valuation should be obtained and documented. The nominee should make all reasonable attempts to verify the amounts due to creditors by obtaining statements, letters or copies of agreements from each creditor dated within six weeks of the consumer's first approach to the nominee.
- 5.7. A credit report should be obtained by the nominee to check the amounts due to creditors against other documents. The nominee should update the IVA proposal, as necessary, to reflect any changes prior to the proposal being circulated. If, for whatever reason, the insolvency practitioner is unable to verify any creditor balances, this should be identified in the nominee's report to creditors.

## **6. Financial statement**

- 6.1. The nominee should work with the consumer to draft a budget which accurately reflects the income and expenditure and the rest of their household (where applicable). Where a budget is only agreed for one individual in a household, an explanation should be included in the nominee's report to creditors as to why this is the case and also the reasons why the debtor and the insolvency practitioners consider that the IVA remains a viable option.
- 6.2. The nominee should take steps to verify the accuracy of all the information provided in the IVA proposal and provide details of that evidence to creditors if requested. Where it is not possible to evidence the position, this should be drawn to the attention of the creditors and documented on the IVA file.
- 6.3. The nominee's report should include a statement that the income and expenditure have been verified by them and provide details of the means used where the individual is self-employed. The nominee is expected to describe the scope of the documents provided and retain a record. This includes, but is not limited to, copies of any P60, payslips, bank statements and any other evidence of income and expenditure.



- 6.4. The income and expenditure statement should be forward-looking (for the duration of the IVA) and in line with the Standard Financial Statement (SFS) approved by the Money and Pensions Service. Generally, there should be no deviation from the expenditure parameters in the SFS but where there are (for example, due to factors such as any health issues, caring duties or above average work-related travel costs) this should be clearly explained in the proposal, any subsequent reports to creditors and documented on the IVA file.
- 6.5. The consumer's income and expenditure must be a realistic reflection of their financial position and at levels that are considered to be reasonably likely to be sustainable over the duration of the IVA. The consumer's income, expenditure and monthly contribution to the IVA must be such that this will not cause any undue hardship to the consumer.
- 6.6. Any state benefits, including those relating to income (universal credit, child benefit and pensions, etc) and also ill-health, disability or caring responsibilities should be included as income. The insolvency practitioner should ensure that any caring related costs are also included as an expense within the relevant section of the SFS.
- 6.7. If the consumer wishes to continue to pay for items (such as their own life, health insurance, or Payment Protection Insurance) the proposal should contain a note stating why this is essential expenditure. Payment Protection Insurance should only be included in respect of any secured borrowing.
- 6.8. Insolvency practitioners acting as either the nominee or supervisor should not sell any insurance policies or products to the consumer. The insolvency practitioner, acting in any capacity in relation to the consumer, should disclose any other products provided or introduced to the consumer which are included in the consumer's budget. Those that reduce the consumer's disposable income, and are not essential, should not be offered.
- 6.9. Where the consumer will be under the age of 55 at the proposed start of the IVA, only minimum contributions to any pension scheme should be allowed. Where the consumer is aged 55 or over at the proposed start of the IVA, an average of the last 6 months' pension contributions may be allowed, subject to a contribution limit of £75 above the minimum pension contribution permitted by the pension scheme per month.
- 6.10. If no minimum contribution is stated by the pension scheme, the consumer's contributions will be limited to the prevailing rate set by the Government for auto-enrolment workplace pensions. Where the consumer is a member of multiple pension schemes, these limits should be applied to the aggregate amount of the consumer's IVA contributions.
- 6.11. The insolvency practitioner should explain to the consumer that any failure to provide accurate information about assets, debts, income and expenditure could result in criminal proceedings and document this (with evidence) on the IVA file.
- 6.12. The supervisor's annual report to creditors should include updated details of the consumer's assets, debts, income and expenditure, based on verified and documented information provided by the consumer. The consumer should be asked to explain any proposed changes to the IVA to be put to their creditors in the arrangement.

## 7. Home ownership

- 7.1. In any IVA where the consumer is a homeowner (either solely or jointly with others) there should be no circumstances where the consumer will be forced to sell their home (or their share of it) instead of potentially releasing equity into the IVA, unless the consumer's proposal provides for a sale of their home voluntarily.
- 7.2. The terms and conditions relating to potential equity release can be found at part 7 of the standard terms and conditions (Annex 1). A flowchart on calculating and dealing with any equity is included at Annex 5.
- 7.3. The purpose of the equity clause is to set out the actions by the insolvency practitioner in dealing with the consumer's home and calculating any equity, which could be made available for the benefit of creditors when drafting the proposal and included in the IVA. Subsequent references to property should be taken to mean the consumer's home (or their share of it).
- 7.4. Buy-to-let properties are excluded from this provision. If the consumer owns more than one property, a bespoke IVA should be proposed rather than under the terms of this protocol.
- 7.5. At the start of the IVA, any property that is owned solely or jointly by the consumer should be valued by the consumer and must be verified by the insolvency practitioner to determine whether any potential equity can be paid into the IVA. The valuation should be based on a reasonable assessment by the consumer; for example, having used an online source. Where the valuation is based on a range, the mid-point should be used. Where a mid-point valuation is not used, this should be disclosed to creditors together with an explanation.
- 7.6. The equity calculated and agreed between the insolvency practitioner and the consumer at the date the proposal is drafted will be taken as the available amount and will be used to determine if the consumer's equity is above the de minimis amount.
- 7.7. There are three options when dealing with the consumer's property and the calculation will determine how any equity will be proposed to be dealt with in the IVA.
- 7.8. The value of the consumer's equity will be considered de minimis if it is £5,000 or less when valued before the IVA proposal is put to creditors. The calculation should be based on 85% of the value of the property less any secured borrowings (e.g. mortgage). This means that the consumer will retain at least a 15% financial interest in the value of the property in all cases.

### **Option 1**

- 7.9. If the value of the consumer's equity is equal to or below the de minimis amount of £5,000, the IVA should be proposed based on a 60-month term with no requirement for a further review of the property value. For clarity, the amount considered to be de minimis relates to each consumer and, where an interlocking IVA with a jointly owned property is proposed, this amount is £10,000 or less.

### **Option 2**

- 7.10. Where the value of the consumer's equity is above the de minimis amount (of £5,000) and, based on the lending criteria at Annex 5 it is unlikely, to result in any equity release being viable (as the consumer is unlikely to be able to remortgage or obtain a secured loan) the IVA

will be proposed based on a 72-month term with no requirement for a further review of the property value.

### **Option 3**

- 7.11. Where the value of the consumer's equity is above the de minimis amount (of £5,000) and, based on the lending criteria at Annex 5 the consumer may be able to release equity, the IVA will be proposed based on a 72-month term that requires a review at month 54. At that time, the property will be valued again and a determination will be made on whether equity can be released by the consumer. If sufficient equity is paid into the IVA, the arrangement can end early. If any equity cannot be released, the IVA arrangement will end at 72 months.
- 7.12. The purpose of these calculations is to give the consumer a clear understanding of their requirements in respect of their home before proposing an IVA, in particular those consumers where equity release is anticipated. It should also clarify to creditors how any equity is proposed to be dealt with in the IVA. A copy of the calculations should be provided to the consumer and also to all their creditors within the scope of the IVA proposal.
- 7.13. The consumer will not be required to consider the release of equity under 7.5.4 where the value of any secured borrowings and other debts secured against the property are equal to, or exceed, 85% of the value of the property.
- 7.14. If the incremental cost of the additional secured borrowings, including the cost of any repayment vehicle, exceeds 50% of the anticipated final payment due into the arrangement, any payments in excess of that amount to reduce the term are at the consumer's discretion.
- 7.15. If the repayment term of the resulting secured borrowings would mean that repayments extend beyond either the consumer's state retirement age, or the repayment term of existing secured borrowings (if the consumer has both a mortgage and second charge) the later of the two will be used.
- 7.16. If any re-mortgage or secured borrowing repayment results in the IVA contribution falling below £50 then the IVA will be concluded.
- 7.17. **Option 1: 60-month IVA (no equity release)**  
A 60-month IVA will not include any further review of the property value or equity release/remortgage calculation. Creditors should be made aware that the proposal will not allow for any available equity to be released into the arrangement.
- 7.18. **Option 2: 72-month IVA (no attempt to release equity)**  
A 72-month IVA, where any release of equity is not proposed, will not include a further review of the property value or equity/remortgage calculation. Creditors should be made aware that the proposal will not allow for any equity to be released into the IVA
- 7.19. The consumer should be made fully aware by the insolvency practitioner that because a further review is not going to take place, the term of their IVA cannot be reduced even if their property value changes, unless a variation meeting agrees such a reduction. It will not be possible to change the terms of the proposal without obtaining creditor approval and the consumer will be required to pay for 72 months into the IVA irrespective of the equity position at a later date during which the IVA is still in place.

7.20 **Option 3: 60 month IVA and consumer is required to attempt to release equity (additional 12 months in lieu if this is not possible)**

Equity can be released by way of a re-mortgage or secured borrowing. Where the consumer is required to attempt to release equity, a further calculation review will be conducted at month 54 (the 'review date').

7.21. The consumer should co-operate with the supervisor to determine the revised equity position. This will include another valuation of the property by the consumer (verified by the insolvency practitioner) and the provision of up-to-date balances for any secured borrowings, mortgage redemption costs and any other debts secured against the property. The insolvency practitioner, with agreement from the consumer, should instruct specialist brokers to assess the amount of equity available and identify any suitable equity release providers and products available. This should be based on the consumer's mortgage affordability and the lending criteria and restrictions set out at Annex 5. Any introduction to specialist brokers made by the supervisor must adhere to the 'agencies and referrals' section of the Insolvency Code of Ethics.

7.22. If the value of the property, and therefore the available equity, has reduced significantly at the date of review of the equity and is either below the de minimis value (of £5,000) calculated on the basis of 85% of the value of the property, or an amount that would not be suitable for release of equity based on mortgage affordability, the consumer will not have to attempt to release any equity but will pay an additional 12 months into the IVA arrangement.

7.23. Where the consumer can release equity, the value (net of any refinancing or other associated costs) will be introduced into the IVA up to 85% of the value of the property and, if this is conditional on bringing the IVA to a successful conclusion, then future expected monthly payments can be ended allowing the supervisor to conclude the arrangement early.

7.24. Where the release of equity is not possible, the supervisor will provide creditors with the reasons why this has not been possible. The consumer may then:

- (i) make additional payments for 12 months at the rate of the current monthly contribution at the date the equity was calculated
- (ii) introduce a third-party contribution equivalent to the total value of 12 additional payments

7.25. If an additional 12 months payments are proposed, an annual review at the end of month 60 will be carried out as per the terms of the proposal. Payments may change depending on the result of that assessment.

7.26. **The consumer decides to sell their home**

If the consumer decides to sell their property during the term of the IVA, the proceeds of sale (net of the reasonable costs of sale and moving costs) will be payable into the IVA, restricted to the amount required to pay creditors in full together with the costs of the IVA, excluding statutory interest.

**Other obligations relating to the consumer's home**

7.27. To protect the interests of creditors, the insolvency practitioner will register a restriction against any property at HM Land Registry. To facilitate this, there will be a requirement for

all property owners, irrespective of their obligation to release equity, to provide the insolvency practitioner with a signed form RX1 within 3 months of the approval of the arrangement. If the property is jointly-owned, the insolvency practitioner should use best endeavours to secure a signed RX1 for the property and, if this is not possible, inform the creditors.

- 7.28 The supervisor should file a form RX4 within 28 days of the final payment into the IVA by the consumer, when the conditions of the arrangement in relation to equity have been satisfied.

7.29. **General comments relating to sections Annex 1**

Nothing in these sections will alter the provisions set out at Section 19 of the standard terms and conditions (see Annex 1) relating to the ability of the consumer to propose a variation of the agreed IVA, or of the insolvency practitioner's powers to call meetings of creditors to seek their consent to vary the terms of the IVA.

- 7.30. References to a 60-month term or a 60-month IVA and a 72-month term or a 72-month IVA should be read in conjunction with Part 2 of the standard terms and conditions relating to the start, effect and duration of the IVA.

**Creditors' obligations**

- 7.31. The terms and conditions relating to creditors' participation can be found at Annex 1. In all dealings with a consumer proposing an IVA under this protocol, creditors will always treat the consumer in accordance with the relevant applicable legislation and professional standards. Creditors will co-operate with the duly appointed nominee and supervisor of an IVA in relation to the efficient operation of this protocol.

- 7.32. Creditors will co-operate with the duly appointed nominee and supervisor of an IVA in relation to the efficient operation of this protocol.

- 7.33. A key aim of the protocol is to improve efficiency in the IVA process and to avoid the need for modifications of an IVA proposal, wherever possible. This does not affect the right of creditors to vote for or against an IVA proposal or modification.

- 7.34. Where a creditor (or their agent on their behalf) votes against a protocol-compliant IVA proposal, their reasons for so doing should be disclosed to the insolvency practitioner and documented on the file.

- 7.35. By voting in favour of a protocol compliant IVA, creditors accept that the supervisor has discretion and should not challenge the use of that discretion unless it is considered to be unreasonable.

- 7.36. Creditors should make reasonable endeavours to provide a proof of debt (in the form required by the insolvency practitioner) and proxy form within 14 days of receipt of an IVA proposal and, if possible, at least 7 days before the date of the meeting of creditors called to consider and vote on the proposal.

- 7.37. Creditors should not put forward unnecessary modifications, in particular those which are already addressed in the IVA proposal. The initial creditors' meeting is the appropriate forum for changes to be put forward in respect of the IVA proposal.

- 7.38. Any creditors that do not submit proofs of debt within 2 months of the approval of the IVA or by the date of the first dividend (whichever is the later) will be entitled to participate and receive their full share of dividends (subject to the requirement for the supervisor to adjudicate the authenticity and value of the proof of debt) but are not entitled to disturb a distribution made prior to the submission of their proof of debt.
- 7.39. Creditors will ensure that any agents carrying out instructions or acting on their behalf in relation to a protocol-compliant IVA do so in accordance with the protocol and in accordance with applicable FCA regulatory requirements.
- 7.40. Where a debt is sold after an IVA is approved, creditors should ensure debt purchasers are FCA regulated.

## **8. Completion of the IVA**

- 8.1. Completion of the IVA takes place when all agreed payments have been made by the consumer into the IVA and all other obligations have been complied with in full. The insolvency practitioner will issue a completion certificate to the consumer once all final actions have been concluded and inform all creditors as soon as possible after that payment is made.
- 8.2. A completion certificate should be issued as soon as practicable once the final actions have been completed by the insolvency practitioner within three months of the final payment being made and if there is a reasonable reason why this is not possible it must be issued within six months.
- 8.3. If a consumer proposes a full and final settlement variation to creditors, which is accepted, this will bring the IVA to an end.
- 8.4. The Trust created by the IVA arrangement will be extinguished on termination of the arrangement or the issuing of the completion certificate by the insolvency practitioner.

# **IVA Protocol 2021 Annex 1: Standard terms and conditions**

Updated 29 April 2021

## **Part 1: Interpretation**

### **1. Definitions**

In the arrangement, except where the context requires a different meaning:

- a) “the Act” means the Insolvency Act 1986 (as amended).
- b) “the arrangement” means the IVA proposal and the terms and conditions read together.
- c) “you” or “the consumer” means the person who makes the proposal.
- d) “dividend” means a distribution to unsecured creditors included in the arrangement.
- e) “property” has the meaning given to it in Section 436 of the Act.
- f) “excluded assets” are those assets that are excluded from an estate in bankruptcy and any other assets specifically identified in the proposal as being excluded from the arrangement.
- g) “after acquired assets” means any asset, windfall or inheritance with a value of more than £500, other than excluded assets, that you acquire or receive between the date the arrangement starts and the date it ends or is completed, if this asset could have been an asset of the arrangement had it belonged to or been vested in you at the start of the arrangement.
- h) “the meeting of creditors” is the relevant decision-making procedure as set out in Part 15 of the Insolvency (England and Wales) Rules 2016 arranged to obtain creditor approval to the proposal.
- i) “the effective date” is the date when the arrangement is approved at a meeting of creditors to consider the arrangement.
- j) “the proposal” is the annexed document with modifications and documents incorporated, and is a proposal under Part VIII of the Act.
- k) “the Rules” means the Insolvency (England and Wales) Rules 2016 (as amended).
- l) an “unsecured creditor” is any creditor, except a secured creditor, who is your creditor for any reason that originated or occurred on or before the time and date of approval of the arrangement.

- m) a “secured creditor” is any creditor who holds security in accordance with Section 383 of the Act.
- n) “the supervisor” is the insolvency practitioner(s) for the time being appointed to supervise the implementation of the arrangement; the person responsible for managing the arrangement for its duration.
- o) “the nominee” is the insolvency practitioner(s) instructed to act on the consumer’s behalf to make an application for an IVA.
- p) any term of gender (like ‘he’, ‘she’ or ‘it’) includes any gender.
- q) a “lead generator” is a person or firm that acquires the personal contact details of the consumer and passes their details to an insolvency practitioner firm in return for a fee.
- r) a “debt packager” is a person or firm that gives debt advice then refers consumers to other people or firms to provide the debt solution (e.g. an IVA).
- s) a “variation” is the name given to a ‘meeting of creditors’ held during the term of an IVA, convened specifically for the propose of proposing a change to the original IVA proposal. Creditors will be asked to vote on the amendments. Both creditors and the consumer must agree to any variation proposed.

## **2. The terms and conditions**

The terms and conditions are an integral part of the arrangement. In the event of any ambiguity or conflict between the terms and conditions, and the proposal and any modifications to it, then the proposal (as modified) shall prevail.

## **Part 2: Your IVA: The start, effect and duration of the arrangement**

### **3. When the arrangement will start**

The arrangement will begin when it is approved by the creditors under the Act and Rules. This is its effective date.

### **4. The nature and effect of the arrangement**

- 4.(1) The arrangement is a proposal under Part VIII of the Act for a scheme to manage your affairs, or in full and final settlement of your debts.
- 4.(2) The arrangement will be interpreted as bringing about a settlement or satisfying a debt owed by someone other than you only if the debt is owed jointly by you, the proposal states that it does so and the creditor agrees. Otherwise, provisions apply.
- 4.(3) If the arrangement does not provide guidance to the supervisor as to what action they should take in any given situation, the supervisor shall apply the provisions of the Act and Rules insofar as they relate to bankruptcy with necessary modifications.



4.(4) After the arrangement has begun, no creditor may, in respect of any debt to which the arrangement applies:

- (i) take any action against your property or person; or
- (ii) start or continue any action or other legal proceeding against you.

4.(5) Nothing in these terms and conditions affects the following rights in any way:

- (i) the right of any secured creditor to enforce their security unless they agree
- (ii) the right of the supervisor or any creditor to present a bankruptcy petition under section 264(1)(c) of the Act if you fail to comply with the arrangement
- (iii) the right of any creditor to bring or continue legal proceedings against you and to obtain a judgment against you for the full amount of their debt for the sole purpose of making a claim against your insurer under the Third Party (Rights Against Insurers) Act 1930

## **5. How long the arrangement will last**

5.(1) Unless extended under these terms and conditions, the arrangement will continue until the end of the period stated in the proposal or until such time as early completion might be achieved.

5.(2) The supervisor may, for the purposes of fulfilling the arrangement, extend the arrangement by sending a notice saying so to you and to all creditors ("an extension notice"). The notice must include details of the period the arrangement has been extended by and confirm the revised duration of the arrangement.

5.(3) The supervisor must include details of any extension notice in the next report to creditors and must state the reasons for the extension. Where the arrangement is in its final year, any extension notice must be sent at least 14 days before the arrangement is due to expire.

5.(4) Where an extension notice is sent, the arrangement will continue for the period stated in the notice. The extension will start on the date immediately after the day the arrangement would have expired. The monthly contributions payable will be the same amount as those payable in the last month of the arrangement, before the start of the extension, unless stated otherwise in the notice.

5.(5) If you fail to disclose and/or pay exceptional income into the arrangement, its length may be extended by up to a maximum of 6 months to recover any sums due (to remedy the breach) without any modification being required.

5.(6) Any extension for a period longer than 12 months must be approved by a formal variation that both you and the creditors must agree to.

## **6. Completing the arrangement**

- 6.(1) When the arrangement ends, and if you have complied with your obligations under the arrangement, the supervisor will issue a certificate (“the completion certificate”) stating that you have fully complied with it. This certificate will be issued within 28 days of all payments and obligations being satisfied and no later than 6 months from the date of the last payment.
- 6.(2) Except as set out, when the supervisor has issued a completion certificate, you will be released from all debts that are subject to the arrangement.
- 6.(3) Once the supervisor has issued the completion certificate and completed all closing actions they will be released from office.

## **7. Early completion**

- 7.(1) Where sufficient funds are paid into the arrangement to pay in full all of the amounts due to your creditors (for example, by way of increased voluntary contributions, additional income, after-acquired assets, the proceeds of any legal claims or any windfall or inheritance) and costs of the arrangement, then:
- (i) no statutory interest will be payable in addition to those amounts due to your creditors at the effective date
  - (ii) your arrangement will be deemed to have been satisfactorily concluded, and
  - (iii) the supervisor will be authorised to bring your arrangement to an early conclusion without the need for any further creditor approval and issue a certificate of completion.

## **Part 3: Transparency and cooperation: your duties and obligations**

### **8. Your duties in relation to the supervisor**

- 8.(1) While the arrangement is in force, you should:
- give the supervisor such information about your assets, liabilities and other affairs as they reasonably require
  - meet the supervisor, their agents, representatives or nominees at such times and at such places as they may reasonably require, having due regard to your own circumstances
  - keep the supervisor informed of your current residential address, telephone number(s), email address(es) and employment details; and
  - do all such other things as the supervisor reasonably requires to carry out their functions and duties under the arrangement
- 8.(2) You should give the supervisor such details of your income and expenditure, for whatever date and period, as the supervisor may reasonably require. This includes, but is not limited to, copies of form P60, payslips, bank statements and other evidence of income and expenditure.

- 8.(3) If at any time during the arrangement you acquire or are left with “after-acquired assets” as described, or where your income increases, you must as soon as reasonably possible tell the supervisor about the asset or increase in income.
- 8.(4) You must get the supervisor’s written consent before you sell, charge or otherwise dispose of any interest you may have in any asset subject to the arrangement.
- 8.(5) During the arrangement, you must not obtain any credit greater than £500 without the prior written approval of your supervisor, except for public utilities, insurance policies or other contractual payments as provided for in your income and expenditure. If you do obtain credit of more than £500 without the consent of your supervisor, this will constitute a breach of your arrangement. This clause does not apply to any remortgage or release of equity in your property for the purpose of the arrangement.
- 8.(6) You must inform the supervisor at any time that you are in receipt of any additional sources of income not already included in the arrangement. A review of your income and expenditure should be carried out as soon as is reasonably practicable and an appropriate payment set up. If you do not do so, you will be deemed to be in breach of the terms of your arrangement and your arrangement could be terminated (see Part 9 for further details).
- 8.(7) Where you are employed, including self-employed, you must report any overtime, bonus, commission or similar to the supervisor if this is not included in your original calculation and the amount exceeds 10% of your normal take home pay. Disclosure to the supervisor must be made within 14 days of receipt and 50% of the additional amount (over and above the 10% referred to above) shall be paid to the supervisor within 14 days of the disclosure. Failure to disclose and/or pay any such amounts into the IVA will be considered a breach of the arrangement and it could be terminated.
- 8.(8) If you receive notice of redundancy you must inform your supervisor within 14 days and continue to make payments into the arrangement. You must pay any amount due to the arrangement within 14 days of receipt of the payment.
- 8.(9) Failure to disclose any such entitlement to redundancy payment or to pay the excess of over 6 months of net take home pay will be considered a breach of the arrangement.
- 8.(10) When new employment is obtained during the arrangement, the supervisor will review your contributions and at that point there will be an expectation that any remaining redundancy funds will be paid into the arrangement. Your compliance or otherwise will be reported to creditors.
- 8.(11) If your circumstances change (for example, you are faced with an emergency item of expenditure or an unforeseen reduction in income) and you are unable to pay either the full amount due or anything at all into the arrangement, you should notify the supervisor immediately. Subject to the discretion of your supervisor, you may be allowed to take payment holidays or make reduced payments without a variation of the arrangement being required. This is subject to meeting all 3 of the following conditions:

- (i) full details of your inability to pay must be demonstrated to the supervisor's satisfaction
  - (ii) in total, over the period of your arrangement, no more than the equivalent of 9 months or 39 weeks payments can be agreed to be missed in this way, whether those payments are made monthly or on another schedule
  - (iii) the duration of your arrangement will be extended by no more than 12 additional months to recover the sums due, unless you have otherwise made good the shortfall
  - (iv) any missed payments agreed by your supervisor in this way will not be counted in the arrears of contributions
- 8.(12) You must provide the supervisor with any information that they may require to conduct a review of your income and expenditure, on or just before each anniversary of the start of your arrangement. This includes, but is not limited to, copies of form P60, payslips, bank statements and other evidence of income and expenditure.

#### **Part 4: What happens if you do not meet your commitments under the arrangement**

##### **9.(1) Breach of the arrangement**

You will be regarded as being in breach of the arrangement if:

- (i) you are in arrears equivalent to 3 or more months of the contributions agreed in the arrangement (and no holiday or reduced payments have been agreed)
- (ii) your debts and liabilities exceed by 25% or more the total figure you have estimated for such debts and liabilities for the purposes of the proposal. In these circumstances the supervisor will ask the creditors what they wish to do
- (iii) Information that was false or misleading in any significant detail or which contains any significant omissions:
  - was contained in any statement of affairs or other document that you supplied under Part VIII of the Act to any person; or
  - was otherwise made available by you to creditors at or in connection with any meeting of creditors held, or any resolution taken, concerning the arrangement.
- (iv) you fail to do anything the supervisor may, for the purpose of the arrangement, reasonably ask of you; or
- (v) you fail to comply with any other of your obligations under the arrangement.

### **9.(2) Non-compliance with the arrangement**

If you do not comply with your obligations after the supervisor has given you written notice specifying how long you have to do so, then the supervisor may end the arrangement at their discretion. The supervisor must report to the creditors when issuing the annual report under Rule 8.28 of the Rules, or earlier if they think appropriate, if any of the following occurs:

- (i) the supervisor becomes aware that a bankruptcy petition has been served against you while the arrangement is in force
- (ii) you fall 3 or more months into arrears with contributions from income (and no holiday or reduced payments have been agreed)
- (iii) You are in breach of any obligation about the realisation of assets or after-acquired property.
- (iv) You fail to comply with any other of your obligations set out in the proposal.

### **9.(3) Notice of breach**

If, at any time, the supervisor thinks that you are in breach of the arrangement, then, unless you correct the breach immediately, the supervisor will as soon as possible send you a notice ("Notice of Breach") identifying the breach. This will require you within 1 month of receiving the notice:

- (i) to remedy the breach if it can be remedied; or propose how the breach can be remedied over a longer period
- (ii) if the supervisor thinks fit, to fully explain the breach

### **9.(4) Remedy of breach**

If, within 1 month, you:

- (i) remedy your breach of the arrangement; or propose a reasonable plan to remedy and
- (ii) if so required in the Notice of Breach, fully explain the breach, then the supervisor will take no further action against you, except to report the breach to the creditors when they next send an annual report to creditors on the progress and effectiveness of the arrangement, or on the next convenient occasion (if earlier)

### **9.(5) Failure to remedy breach**

If you have not acted within the time allowed, or are otherwise unable to remedy any breach of the arrangement, the supervisor must report within 28 days to creditors and either issue a Certificate of Termination or, if the supervisor feels it appropriate, seek creditor views (voting to be as set out in the Rules) to do one of the following:

- (i) vary the terms of the arrangement; or
- (ii) issue a certificate ("Certificate of Termination") ending the arrangement because of the breach; or
- (iii) present a petition for your bankruptcy.

#### **9.(6) Termination on your request**

The supervisor may issue a Certificate of Termination if you request this in writing but may delay doing so until the administration of the estate has been completed.

#### **9.(7) Effect of Termination**

Upon issuing a Certificate of Termination, any trust over the assets will come to an end.

### **Part 5: The supervisor's functions, powers etc**

#### **10. Supervisor's duties**

- 10.(1) The insolvency practitioner must supervise your fulfilment of your obligations under the arrangement and administer the arrangement.
- 10.(2) The supervisor must lodge all funds held for the purpose of the arrangement in a UK bank or building society account.
- 10.(3) The supervisor will have the power to do such things as are necessary or helpful to implement the proposal (without limiting the powers available to the supervisor in law).
- 10.(4) The supervisor will not be personally liable for any liabilities incurred by you or otherwise.
- 10.(5) Completion or termination (or both) of the arrangement will not affect the supervisor's power to carry out such functions and to exercise such powers as are necessary for them to fulfil their duties, obligations and responsibilities under the arrangement, Act and Rules, and to resolve any matters that arise during the arrangement.
- 10.(6) The supervisor will have no duty to perform any act or carry out any function except those specified in the arrangement, Act or Rules.
- 10.(7) The supervisor will have discretion to allow your regular contribution to reduce by no more than 15% (relative to the original proposal or last agreed variation) without referring back to creditors. If a reduction of more than 15% is required, the supervisor must convene a meeting of creditors to request a variation to the monthly contribution. A variation should only be proposed in the first 2 years of the arrangement to reduce contributions if evidence can be provided to creditors that the supervisor could not have reasonably foreseen such a change in circumstance at the start of the arrangement.
- 10.(8) If you cannot reach agreement with the supervisor in respect of your obligation to contribute additional income, then the supervisor has the discretion to issue a notice of breach.
- 10.(9) The supervisor is not required to retain any funds for the petition of your bankruptcy.
- 10.(10) The arrangement shall terminate when the supervisor issues a Certificate of Termination.

#### **11. Removing the supervisor from office**

- 11.(1) If a good reason is given, the supervisor may be removed from office by the Court or by a resolution of a meeting of creditors.
- 11.(2) A creditor who is owed at least 25% of the total agreed value of debts may serve a notice on the supervisor requiring them to convene a meeting of creditors to remove the supervisor from office. Such a notice must set out the reasons for the removal.
- 11.(3) The notice sent out by the supervisor to creditors convening such a meeting must state the reasons for the creditor seeking to remove them. It must be accompanied by a report on the supervisor's administration of the arrangement, including an up-to-date summary of receipts and payments.
- 11.(4) If the supervisor wishes to resign their position or is unable to perform their duties as set out in the legislation and this protocol then an application can be made to court for the transfer of the cases to another supervisor under Rule 12.37.

## **Part 6: Arrangement assets**

### **12. Assets and after acquired assets**

- 12.(1) Property other than excluded assets belonging to or vested in you at the date of commencement of the arrangement, which would form part of your estate in bankruptcy, and any other assets specifically identified in the proposal as being excluded, shall be subject to the arrangement.
- 12.(2) Subject to the following sub-paragraph, the supervisor may claim as an asset of the arrangement any after-acquired assets. Any such asset will be subject to and be an asset of the arrangement.
- 12.(3) After-acquired assets must only be sold or realised to the extent necessary to repay the creditors 100 pence in the pound including the costs of the arrangement.

### **13. Holding arrangement assets in trust**

Whilst the arrangement is in force:

- 13.(1) you must hold in Trust, for the purposes of the arrangement, any property in your possession, custody or control that is an asset of the arrangement until it is realised (if required) in accordance with the arrangement. Holding in Trust means that you will not sell, transfer or otherwise dispose of any of the assets that form part of your arrangement
- 13.(2) the supervisor must hold in Trust for the purposes of the arrangement any property in their possession, custody or control that is an asset of the arrangement
- 13.(3) the trust will remain in force from the commencement of the Arrangement and will be extinguished on the issuing of the completion certificate by the supervisor. In the event of a bankruptcy order being made against the you, any assets not yet realised will not be held as part of the Trust.

### **14. In the event of your death**

- 14.(1) Should you die during the term of the arrangement, property constituting an asset of the arrangement in your or the supervisor's possession, custody or control shall be held upon Trust for the purposes of the arrangement until it is realised.

**15. Excluded assets**

- 15.(1) Assets that would be excluded from your estate in a bankruptcy, as defined in Section 283(2) of the Act, will be excluded from your arrangement.
- 15.(2) You may seek to exclude other specified assets, if you can demonstrate a good reason to do so, but their exclusion or otherwise will be subject to creditor approval. Your proposal should detail any additional excluded assets.

**Part 7: Provisions relating to homeowners**

**16. Home equity (Net worth)**

- 16.(1) Prior to, or at the date of, the arrangement's commencement you should obtain a valuation of any property that you wholly or partly own.
- 16.(2) The valuation, which will be agreed by your nominee, will inform what is included in the arrangement.
- (i) If the available equity is below the de minimis amount, the arrangement will be drafted for a 60 month term with no further action to be taken.
  - (ii) If the available equity is above the de minimis amount but does not meet the current lending criteria for a potential re-mortgage as set out in annex 5 of this protocol, the arrangement will be drafted for a 72 month term with no further action.
  - (iii) If the available equity is above the de minimis amount and meets the current lending criteria for a re-mortgage the arrangement will be drafted for 72 months, and you should obtain a second valuation at month 54. If the second valuation confirms the equity position in the proposal and if a re-mortgage can be obtained, the agreement will be automatically be reduced to 60 months.
- 16.(3) The amount of the available equity to be released will be based upon affordability and your income and will leave you with at least 15% of your available equity in the property in most circumstances.
- 16.(4) Where it is appropriate to re-mortgage the property, the specific limits will be:
- (i) Re-mortgages will bring the amount secured against the property to no more than 85% of the total value of the property.
  - (ii) The incremental cost of the re-mortgage, including the cost of any new repayment vehicle, will not exceed 50% of the monthly contribution at the final review date.
  - (iii) The available equity released will not exceed 100 pence in the pound due to creditors.
  - (iv) The re-mortgage term does not extend beyond the later of your State retirement age or the existing mortgage.



- (v) The amount of money introduced into the arrangement will be the mortgage proceeds less the costs of the re-mortgage, including any costs to redeem any existing mortgage and/or secured loan. Any payments in excess of that amount to reduce the term are at the consumers discretion
- 16.(5) The monthly payments arising from the re-mortgage will be deducted from the contribution. If the increased cost of the mortgage means that monthly contributions fall below £50 per month, such monthly contributions are stopped and the IVA is concluded.
- 16.(6) At the time the consumer is asked to release the available equity in their property, the supervisor, or a suitable member of their staff, must advise him/her that they should seek advice from a specialist mortgage adviser, such advice should include the most appropriate mortgage vehicle and the length of the proposed repayment term.
- 16.(7) For the purpose of the release of available equity at month 54 of the arrangement, the consumer will obtain a valuation for the property on the open market. Any initial valuation can be done at no cost to the consumer via any means the supervisor deems appropriate i.e. online valuation.

## **Part 8: Dividends and claims**

### **17. Dividends and claims**

- 17.(1) The supervisor may accept, for dividend purposes, proofs of debt submitted by creditors as at the effective date. If any creditor does not submit a proof of debt in writing within 2 months after the effective date or by the date of the first dividend (whichever is the later) then that creditor may only participate in dividend payments to the extent set out.
- 17.(2) The supervisor has the discretion to admit claims of £2,000 or less without a proof of debt form, or proofs of debt submitted that do not exceed 120% of the amount stated by you in the proposal, unless this would result in a substantial additional debt being admitted, without the need for additional verification.
- 17.(3) If a creditor submits a late proof of debt, the supervisor will allow this for dividend purposes, subject to the requirement to adjudicate on its authenticity and value. The creditor will be entitled to participate and to receive their full share of dividends, including those paid to date (insofar as funds are or become available) but is not entitled to disturb a distribution made prior to the submission of the late proof of debt.
- 17.(4) The supervisor may ask for any further details or documents that they think necessary to establish the amount due to any person claiming to be a creditor.
- 17.(5) The debts of secured creditors, foreign currency debts, debts payable at a future time, and interest on debts will be dealt with in accordance with the bankruptcy Rules.

- 17.(6) Where Section 323 of the Act applies, and a creditor is obliged (for whatever reason) to make a payment to you during the period of the arrangement, then that payment shall be used first in reduction of that creditor's debt. If such application results in the creditor's claim being entirely extinguished, any surplus will be treated as an asset of the arrangement and paid to the supervisor for the benefit of the arrangement.

#### **18. Unclaimed and returned dividends**

- 18.(1) Where a final dividend remains unclaimed 4 months after that distribution has been made, the supervisor shall pay those funds to those creditors whose final dividend has been claimed. Where redistribution of these funds is cost prohibitive (for example the cost of making payment is in excess of the funds in hand) the remaining funds will be dealt with.
- 18.(2) Where an interim dividend remains unclaimed or is returned to the supervisor during the term of the arrangement, the supervisor shall take reasonable steps to allocate that payment. Where it is not possible to allocate the unclaimed or returned dividend, the supervisor may discount the proof of debt received and distribute the funds to those creditors whose dividends have been claimed. A creditor whose claim has been discounted under these provisions is entitled to resubmit a claim that will be dealt with
- 18.(3) The supervisor must pay you any funds they hold representing dividends that are still uncashed, unclaimed 6 months after redistributing funds. Once this has been paid to you, the creditors have no further claim to these funds.
- 18.(4) All amounts paid into the arrangement are intended to be used to pay dividends to unsecured creditors (after the payment of the costs of the arrangement). At the end of the arrangement, any surplus funds must be returned to the consumer.

### **Part 9: Creditors who do not have notice**

#### **19. Creditors who do not have notice**

- 19.(1) This voluntary arrangement will be binding on any creditor whose proof of debt has been omitted from it, but who would have been entitled to vote if they had been notified of the meeting of creditors called to approve it.
- 19.(2) On discovering the debt of such a creditor, the supervisor must send immediate notice requiring them to submit their proof of debt as at the effective date.
- 19.(3) Two months after sending the above notice, the supervisor may use their discretion to exclude such a creditor from dividend if the creditor has not by then submitted their proof of debt.

### **Part 10: meetings of creditors**

#### **20. Power to call or requisition meetings of creditors**

- 20.(1) The supervisor may, if they deem it to be in the best interests of all parties, call a meeting of creditors for any purpose connected with the arrangement in accordance with the Act and the Rules.
- 20.(2) With your consent, you or the supervisor may propose reasonable variations to the proposal after it has been approved and these may be considered at a meeting of creditors convened by the supervisor for this purpose.
- 20.(3) The supervisor must give at least 28 days' notice of the meeting to the creditors. Rule 15.34 of the Rules will apply to the meetings of creditors in deciding whether the necessary majority has been obtained. If the necessary majority is obtained at the meeting, then the variation(s) or modification(s) will bind every person who is subject to the arrangement. Part 15 of the Rules will also apply when dealing with quorum, conduct, voting rights and the adjournment of meetings.

## **Part 11: HMRC**

### **21. HM Revenue & Customs ("HMRC") claims**

- 21.(1) HMRC's provisional claim in the arrangement will include:
- (i) any tax credit overpayment,
  - (ii) self-assessment payments on account due for the tax year in which the arrangement is approved,
  - (iii) any PAYE/SC/NIC deductions due to the date of approval, and
  - (iv) any other earlier unpaid liabilities.
- 21.(2) HMRC's final claim in the arrangement will also include any self-assessment balancing adjustment for the tax year in which the arrangement is approved, due with the selfassessment return on 31 January of the following year.

### **22. Income beginning after approval**

- 22.(1) You will be responsible for payment of self-assessment/NIC on any source of income that begins after the date of approval of the arrangement.

### **23. Post-approval statutory returns and payments**

- 23.(1) All statutory returns and payments due to HMRC following approval must be provided on or before the date they fall due.

### **24. Overdue accounts and returns**

- 24.(1) You must send all statutory accounts and returns overdue at the date of the creditors' meeting to HMRC within 3 months of the approval date, with any other information or explanations required.

## **25. Funds to be paid to supervisor**

- 25.(1) From the date the arrangement is approved to the 5 April ending that tax year, you must pay your monthly charge for income tax/NIC, as it appears in the income and expenditure statement, to the supervisor for the benefit of the arrangement.

## **26. Restriction on payment of dividend**

- 26.(1) No non-preferential dividend will be made until:
- (i) HMRC has received a self-assessment return for the tax year in which the arrangement is approved; or
  - (ii) a VAT (or other levy or duty) return due to HMRC to the date of the meeting has been filed; or
  - (iii) a HMRC determination or assessment has been made; or
  - (iv) the tax credits renewal due following the end of the year of approval has been received and processed and the supervisor has admitted HMRC's final claim.

## **27. Set-off of repayments**

- 27.(1) Any repayment due to you from HMRC, relating to a period before the arrangement was approved, shall be applied firstly against HMRC's claim in the arrangement. Any surplus will be repaid to you and you must pay it to the supervisor for the benefit of the arrangement. Any repayment due to you from HMRC, relating to a period after the arrangement was approved, shall be applied firstly against other sums owed to HMRC for the post arrangement period. Any surplus will be repaid to you and you will pay it to the supervisor for the benefit of the arrangement.

## **28. No response from HMRC**

- 28.(1) If you were not self-employed and have not traded during the tax year in which the arrangement was agreed, and if there are no outstanding returns due to HMRC and no contact has been made by HMRC with the supervisor within 4 months after the effective date, the supervisor has the discretion to disregard the requirement of the standard conditions to not make a non-preferential dividend before the supervisor has admitted HMRC's final claim. If the supervisor commences payment of dividends, notification should be sent to HMRC and funds may be retained to pay an equivalent dividend to HMRC, based on the amount shown in the statement of affairs.

## **Part 12: Miscellaneous provisions**

### **29. Invalidity or illegality**

- 29.(1) If any part of the arrangement is found to be contrary to the Act or Rules, illegal, invalid, or contrary to public policy, this will not affect the validity of the rest of the arrangement; and the part of the arrangement in question must be interpreted accordingly.

### **30. Joint liabilities**

- 30.(1) The rights of any creditor who has a joint and individual claim against a third party will not be affected by this proposal.

## **IVA Protocol 2021 Annex 2: Regulatory framework draft**

**A summary of the legal and regulatory framework for consumers**

All insolvency practitioners are expected to follow and comply with a legal and regulatory framework, which ensures that there is an effective insolvency profession that delivers fair outcomes for the people and businesses impacted by their work.

The legal framework includes the Insolvency Act 1986 and the Insolvency Rules 2016. The regulatory framework includes the Insolvency Code of Ethics and Statements of Insolvency Practice (SIPs). Below is a summary of what these frameworks require from any insolvency practitioner that you have dealings with, from the point of first contact to the completion or termination of the arrangement.

All insolvency appointments in your IVA, whether as nominee or supervisor, are personal to the insolvency practitioner that you deal with. The insolvency practitioner is ultimately responsible for dealing with your case and for having adequate levels of control in running your IVA.

### **Insolvency Code of Ethics**

Insolvency practitioners should follow the five fundamental principles of Ethics:

- integrity – an insolvency practitioner shall be straightforward and honest in all professional relationships. An insolvency practitioner should not knowingly be associated with any document where they believe it contains false or misleading statements or leaves out required information
- objectivity – an insolvency practitioner should not allow bias, conflict of interest or the undue influence of others to affect professional decisions
- professional competence and due care – an insolvency practitioner should attain, maintain and use up-to-date professional knowledge and skills. This includes taking steps to ensure that those working under the insolvency practitioner's authority have appropriate training and supervision
- confidentiality – an insolvency practitioner should respect and maintain the confidentiality of information obtained when conducting business. Information should not be disclosed without proper and specific authority, unless there is a legal or professional duty or right to disclose
- professional behaviour – an insolvency practitioner should comply with relevant laws and regulations and avoid acting in a way which might discredit the profession. An insolvency practitioner should not engage in any business which would be incompatible with the fundamental principles of ethics and should conduct themselves with courtesy and consideration

If an insolvency practitioner identifies anything (either before agreeing to take your case, or during its lifetime ) which might cause them to breach the above principles, they should take steps to reduce the risk of such a breach. If the insolvency practitioner is unable to successfully address the issues, they should end their involvement in the case.

### **Statement of Insolvency Practice 3.1 (Individual Voluntary Arrangements)**

This SIP is an essential standard your insolvency practitioner must adhere to. The main principles are:

- an insolvency practitioner should differentiate clearly between the stages and roles that are associated with an IVA (these being, the provision of initial advice, assisting in the preparation

of the proposal, acting as the nominee, and acting as the supervisor) and ensure that they are fully explained to you

- an insolvency practitioner should ensure that they provide information and explanations to you about all the various options that are available to deal with your debt. They should also set out the advantages and disadvantages of each. These should be clear enough for you to be able to decide whether an IVA is the best solution for you and this should be confirmed in writing
- an insolvency practitioner should explain your responsibilities and the consequences of an IVA
- where an IVA is to be proposed, an insolvency practitioner should be satisfied that it is achievable, affordable for you and that you will be able to meet all your obligations. In relation to advice, an insolvency practitioner should set out clearly to you what may happen if an IVA is not approved or not successfully completed

A meeting should always be offered (either face-to-face, including by video-conference, or by telephone depending on circumstances of the case). The insolvency practitioner should be satisfied that you understand the process, the requirement to co-operate, and the consequences of not doing so.

Records of your discussions detailing the above, and comments you have made, including your preferred option to deal with your debt, should be maintained. If appropriate, summaries of these discussions should be sent to you. Your consent should be sought on any modifications to the original proposal put forward by creditors, and the insolvency practitioner should ensure that you understand the impact of these changes. Your consent must be recorded. In the absence of consent, the IVA cannot proceed.

Any enquiries you make to your insolvency practitioner or their staff should always be dealt with promptly.

## **SIP 9 Payments to Insolvency Office Holders and their Associates**

Creditors and others with a financial interest in the level of payments from your IVA should be confident that the rules relating to approval and disclosure of an insolvency practitioner's fees and expenses have been properly complied with.

Payments to your nominee and/or supervisor or their associates, and expenses incurred, should be a fair and reasonable reflection of the work undertaken, and that work should be necessary to your case. Information provided by an insolvency practitioner should be presented clearly and consistent, and be useful to your creditors.

## **Financial Conduct Authority (FCA) Principles for Fair Treatment of Customers**

FCA regulated firms, which your IVA provider is likely to be (but you will need to check), are responsible for ensuring you are treated fairly and there are six principles that firms should aim to achieve to ensure fair treatment of their customers:

1. you should be confident that you are dealing with firms where the fair treatment of customers is of central importance

2. the products and services offered are designed and targeted to meet your specific needs
3. you are provided with clear information and are kept informed at all times
4. where advice is provided, it is suitable and takes account of your circumstances
5. you are provided with a product that is you have been led to expect, and a service at a standard you have been led to expect.
6. you do not face unreasonable barriers imposed by the firm to make changes to the product or make a complaint

Insolvency practitioners should ensure that they follow the FCA's published guidance when dealing with customers. The FCA has also published guidance for those providing debt advice to customers with vulnerabilities. This has been further supported by the recognised professional bodies for insolvency practitioners IPA guidance and ICAEW guidance and further information.

### **Additional services that you may be offered**

Insolvency practitioners should not offer advice on, recommend or make referrals in respect of, any regulated financial products or service for which they or their firm do not hold the appropriate authorisations from the FCA. This includes, but is not limited to, life insurance, health insurance or payment protection insurance.

Insolvency practitioners providing debt advice under the exclusion under the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 must ensure that their advice does not exceed the limits of that exclusion at any time in their dealings with consumers.

Insolvency practitioners or their firms who are authorised by the FCA to provide any additional advice and/or services must ensure compliance with the provisions of the Insolvency Code of Ethics in respect of any referral fees or commissions that may be received.

### **Complaints**

If the you feel that your insolvency practitioner has failed to comply with any legal or regulatory requirements, or you are otherwise dissatisfied with the conduct of the insolvency practitioner during your IVA, you should raise this directly with them. If they are unable to resolve your concerns you can then make a complaint to that insolvency practitioner's authorising body, via the Insolvency Service's Complaints Gateway portal. Further information can be found here , or by searching "how to complain about an insolvency practitioner" on GOV.UK.

Section 263(3) Insolvency Act 1986 also provides a route for you or your creditors to challenge a decision made by the supervisor of your IVA through the Court. It is recommended that you consider seeking independent professional advice before exercising any recourse to the Court.

### **IVA Protocol 2021 Annex 3 – Example letter to consumer enclosing protocol documents and/or paragraphs for inclusion in a firm's letter with draft proposal**

[Address]  
[Address cont]  
[Address cont]



Our ref:  
Your ref:  
Date:

Dear XXXXX

[Opening introduction from the insolvency practitioner]

I have enclosed a copy of the following documents with this letter.

- 1) Your **IVA proposal** – the document which sets out the agreement between you and your creditors.
- 2) The **terms and conditions** of your IVA.
- 3) The **IVA protocol** – the industry agreed standard which sets out both what you can expect from your supervisor and creditors, and your obligations to them.
- 4) XXXX [anything else that particular insolvency practitioner sends out].

It is important that you continue to provide accurate information to your nominee when they set up your IVA. This includes full and accurate details of your income and expenditure so that your payments will be based on what you realistically can pay.

Your IVA has been prepared based on the information you have given us and should be accurate to the best of your knowledge. You must continue to give us accurate information about:

- all of your assets
- your income and expenditure

If we find that you've given incorrect or inaccurate information in your proposal, we'll have to report this to the Insolvency Service and your arrangement could fail.

Your IVA is expected to last for XX months, subject to any changes by variation after your proposal is agreed.

We have advised you that an IVA would be a suitable solution for you to manage your debts. If you are not sure about entering the agreement, we suggest you seek further independent debt advice on your options.

### **Your debt options**

We discussed with you all of your options for dealing with your debts and found that the following are available to you [delete as appropriate]:

- Individual Voluntary Arrangement
- Bankruptcy
- Debt Management Plan
- Other (to be specified)

A Debt Relief order is not available to you because [insert at least one]:

- you are a homeowner.
- your debts are more than £20,000.
- you have more than £50 of spare income every month.
- You own a car worth more than £1,000 and it's essential you keep it .

- Non-essential things that you own are worth more than £1,000.

You told us that the following options are unsuitable for you because:

- Bankruptcy [e.g. you own your home which is worth more than your mortgage and it would have to be sold to pay your creditors]
- [Insert option and reason]

### **How an IVA will affect you**

Entering into an IVA will affect your credit reference file, and this could make it more difficult for you to get credit in the future. Entries onto your credit reference file will stay there for six years. Your name and address and a public record of your IVA will appear on the Individual Insolvency Register.

### **Your payments** [delete as appropriate]

You have agreed to pay **£XX a month for xx months**.

You have agreed to pay a **lump sum of £XX**.

We will look at your income and expenditure with you each year, on the anniversary of your IVA being accepted by your creditors and your payments could go up or down depending on what you can afford to pay into your IVA.

### **Your home** [delete for non-homeowners]

You have had your home valued and we have told you that your share of its value, after your mortgage and any secured loans have been repaid (the equity) is too low to include in your IVA.

**Or**

You have had your home valued and we have told you that your share of its value, after your mortgage and any secured loans have been repaid (the equity), is enough to include in your IVA, however it is unlikely you will be eligible (based on current lending practices) to be able to release that equity via a remortgage or a secured loan. Therefore, your nominee will propose an IVA for XX months.

**Or**

You have had your home valued and we have told you that your share of its value, after your mortgage and any secured loans have been repaid (the equity), is enough to include in your IVA, further details of this will be explained by your supervisor.

This means that:

- you won't be asked to sell your home, but you might have to use its value to raise some extra money to pay into your IVA.
- you will need to have your home valued again in year four of your IVA.
- you might be asked to try to remortgage your home or take out a secured loan and pay some of the equity into your IVA. You will be able to keep at least 15% of your share of the value of the property. The equity calculation will be based on 85% of the value of the property when the property position is reconsidered in Year 4 of your IVA
- if you're not able to remortgage or take out a secured loan, you may be asked to pay into your IVA for another 12 months.

### **Other assets**

If during your IVA, you come into any extra money (like an inheritance or a compensation payment) you will be expected to pay this into the arrangement.

### **Your debts**

All of your debts [apart from those listed below] will be included in your IVA (if it is accepted by your creditors) and your creditors **must freeze interest and cannot take any action** against you as long as the IVA is in place.

The following debts have not been included and you must continue to pay these debts out of your income:

- Court fines
- Student Loans
- Child maintenance arrears
- Secured lending
- [other]

If you have any joint debts, or debts where someone has acted as a guarantor, the joint borrower or guarantor will still be liable to pay these.

You must also continue to pay your ongoing household bills like your gas, electricity, council tax and water.

### **Fees**

You have agreed to pay a fee for your IVA application and also to pay fees throughout the term of your IVA. We have included with this letter a table, which shows you how much you can expect to have paid off your debt at the end of each year of your IVA. If your IVA fails, you will be liable to pay any outstanding costs (see below).

### **If anything changes for you**

You must tell your supervisor about any changes to your finances for example, if you get a pay rise or lose your job. If you are not able to keep up with your payments, you must let me know straight away, as we might be able to agree to a payment holiday or lower monthly payments.

### **If you don't pay**

If you miss more than three monthly payments and don't contact me to try to sort this out, you will have broken your agreement and your IVA may fail.

If your IVA fails, you will probably be liable for all your debts plus the costs of the IVA. Your creditors will add all the frozen interest and charges back in again. You could therefore be in more debt than when the IVA started.

## **IVA Protocol 2021 Annex 4 – Proposal**

### **Proposal for an Individual Voluntary Arrangement (IVA) pursuant to Part 8 of the Insolvency Act 1986 (as amended)**

- 1.1 I, [A N other of 1 Any Street, Any Town AA10 1AA, previously of 2 Any Road, Down Town BB11 2BB], state that I am insolvent and unable to pay my debts as and when they fall due. I can petition for my own bankruptcy but do not intend to do so because.....[XYZ]

The eligibility criteria for, and £90 cost of, a Debt Relief Order have been explained to me and I fully understand these. I am not eligible for a Debt Relief Order

- 1.2 This is my proposal for an IVA and it is a composition in full and final settlement of my debts. Should I successfully complete my IVA, no creditor may pursue me for a debt bound by the arrangement.

[This arrangement is linked to an IVA being proposed by my spouse/civil partner, so any reference to my income or property shall include the income or property of my spouse/civil partner. In addition, the expenditure and contributions from income set out in this proposal refer to our combined expenditure and contributions. A similar clause is contained in the proposals of my [spouse/civil partner.]

- 1.3 My/This IVA is desirable having considered all my options. I expect creditors to approve my IVA as they will likely receive a greater return than in bankruptcy, as indicated in the enclosed estimated outcome statement.
- 1.4 All terms and definitions that have specific meanings in insolvency legislation have the same meaning in these proposals.

#### **Details of the insolvency practitioner acting for me**

- 2.1 The nominee under this proposal is [XXXX of XXXXXXXXX].
- 2.2 I can confirm that I have had no previous dealings with the nominee or made any prior payments in respect of work undertaken.
- 2.3 It is proposed that [XXXXXX] be appointed supervisor of my IVA if approved.
- 2.4 If appointed supervisor, [XXXXXXXXXX] will exercise the functions set out in the Insolvency Act and Insolvency Rules and as set out in this proposal. They will act as supervisor and not as trustee. No assets will vest in them, no liability will fall upon them and they will not enter into any contract or other arrangement in a position so as to incur any personal liability.
- 2.5 Any complaint relating to the conduct of the nominee and/or supervisor of my arrangement should be addressed in the first instance to the nominee or propose supervisor [XXXX]. If you are not satisfied with the response the complaint should be referred to the Insolvency Practitioner Complaints Gateway which is run by the Insolvency Service. Details of the Complaints Gateway and a copy of the complaints form to be used can be found at <http://www.gov.uk/complain-about-insolvency-practitioner>.
- 2.6 The nominee and proposed supervisor(s) have confirmed that they are authorised to act by the [regulators name] and are bound by the law and professional

standards (such as the Insolvency Code of Ethics and Statements of Insolvency Practice), and are acting as nominee or supervisor and not trustee in bankruptcy, and have no personal liability in connection with this IVA.

- 2.7 The nominee and proposed supervisor can be contacted at [XXXXX].
- 2.8 Should a vacancy arise in the office of the supervisor by death or otherwise, that vacancy may be filled by an employee of the same firm who is qualified to act as an insolvency practitioner. All creditors will be notified in the next annual, or other, report to creditors.
- 2.9 All funds held by the supervisor will be in an aggregated global combined account in a UK recognised bank and if interest is accrued, it will be paid into the IVA for the benefit of creditors. If, at the end of my IVA, there remains any unclaimed dividend that the supervisor is unable to reallocate to the remaining creditors, it will be repaid to me. The same applies to funds held after all creditor claims and the costs of my IVA have been paid in full.
- 2.10 Funds relating to unclaimed or returned dividends received during the term of the IVA will be redistributed to those creditors whose dividends have been claimed and those creditors' claim will be discounted from future dividend payments. This will not prevent a creditor from submitting a late claim that will be treated in line with 3.1 of the proposal. Any unclaimed dividends will be paid back to me after a period of [XX].
- 2.11 All funds are held on trust for the benefit of the IVA creditors and will not be mixed with [firm name] or associated entities' funds.
- Any Trust over my assets will end when the IVA is completed (or otherwise fails).
- 2.12 I have not submitted a proposal for an IVA to my creditors within the previous 2 years.
- 2.13 I have not made an application for an interim order in connection with this proposal.
- 2.14 I confirm that I have been fully advised of the options available for dealing with my debts and that I understand that advice and the consequences of entering an IVA.

## **FEES, EXPENSES AND THE ROLE OF THE NOMINEE IN PREPARING MY PROPOSAL**

- 3.1 The combined nominee's and supervisor's fee, including all costs and disbursements, will be £A. The first £B will be drawn at the rate of C% of realisations with the remaining fee spread evenly over the remaining term of

my IVA. Some of the work of the nominee and supervisor is required by the law, while others are required to help prepare my IVA proposal or to supervise it for the benefit of creditors.

- 3.2 If any equity is released by re-mortgage or sale, or if any one-off lump sum payments (including windfalls) are realised, the supervisor may take an additional fee of 5% on the value of these items. For clarity, there will be no additional fees in respect of increases in monthly contributions above those proposed or any contributions in respect of overtime, bonus or commission payments made by me.
- 3.3 The nominee has met and spoken to me and collected information about my income, expenditure, assets and liabilities. The nominee has advised me about all of the available options to deal with my debts and my circumstances and has assisted in drafting these proposals. The nominee will seek the decision of creditors to consider approving these proposals and supervise the decision procedure.
- 3.4 The supervisor will not be entitled to propose/draw a fee for any subsequent variation meeting.

### **Personal information**

- 4.1 My date of birth is [XXX] and [I am married/in a civil partnership/living with a partner]. I have x dependant children aged A B and C].
- 4.2 I am employed as [XXX] or am self-employed as a [YYYY] and my net salary is disclosed in the enclosed income and expenditure account.
- 4.3 I am putting forward this IVA proposal because.....
- 4.4 I have previously had an IVA/DMP/DRO/ or been bankrupt – [further information added]
- 4.5 I do not wish to settle my debts through bankruptcy because [ XXXXXX] and a debt management plan would take XX years based on my level of debt and current surplus. I am not eligible for a DRO, which I understand costs £90 to write-off my debts.

### **Proposal**

- 5.1 I propose that the duration of my IVA will be 60 months/72 months, during which time I will make monthly payments of my surplus income estimated at £X to settle my debts. The IVA will finish when the agreed level of payments have been made or I have paid creditors together with the costs of the IVA in full and with statutory interest. After this period, the arrangement will remain in force for a maximum of XX days to allow my Supervisor to make the final distribution and complete their administration.

- 5.2 My circumstances and surplus income will be subject to a review each year or when there has been a significant change in my circumstances, with the surplus established by the supervisor being my ongoing monthly IVA contribution from the date of the review.
- 5.3 In this arrangement, termination/breach/failure and all similar terms will be used to refer to any event that may lead to the early failure of the arrangement. Should I miss the equivalent of three months contributions, not necessarily consecutively, the supervisor will issue a notice of breach. I will have one month to agree with the supervisor how to correct that breach, failing which the Supervisor may take the decision to fail my arrangement. My Supervisor is able to reschedule my payments into my IVA to recover any missed or reduced payments, to give creditors a dividend similar to that anticipated in the outcome statement enclosed.
- 5.4 Should I be in the position of not being able to make ongoing monthly payments, the supervisor may use their discretion to report to my creditors explaining the status of my IVA and they will seek their views on my IVA ending early as successfully completed in full and final settlement of my debts. The supervisor will use a simple majority of responses based on the amount of my debts.
- 5.5 If I am made redundant, I will inform my supervisor within 14 days and confirm the amount of any redundancy pay I expect to receive. My supervisor will allow me to keep up to the equivalent of six months' net pay (based on my most recent income review) and any remaining funds will be paid into my IVA. I know that I am expected to maintain my payments into the IVA and to keep my supervisor informed as to my employment status. If I am able to find employment within six months, I will complete a review of my income and expenditure with the supervisor, and any remaining redundancy funds will be paid into my IVA. I understand that this is a requirement of my IVA.
- 5.6 I understand that while the IVA is in place, I will comply with all of the specific obligations detailed in my proposal to enable the successful completion of my IVA.
- 5.7 If my IVA fails, creditors will be able to pursue me including interest charges on my debts. I will also be liable to pay the costs of the IVA. I know that this may mean I am worse off than before the IVA started.

## **My home**

- 6.1 I have an interest in my home, I have had my property valued and, at the date of this proposal, it is estimated to be worth £XX. The current mortgage is £XX



and therefore I have £XX equity [add any information about the properties apportioned equity if it is jointly owned].

- 6.2 This amount falls below that described as de-minimis by the IVA protocol and therefore I will not make arrangements for a revaluation. The IVA will last five years and will not be extended to pay in extra money

Or [delete as applicable]

- 6.3 This amount is more than the amount described as de-minimis by the IVA protocol. However, based on current lending criteria as set out at Annex 5 of the protocol I am unlikely to be able to re-mortgage the property and I will therefore pay an additional 12 months in lieu of that equity.

Or [delete as applicable]

- 6.4 This amount is more than the amount described as de-minimis by the IVA protocol and based on the lending criteria at Annex 5 I am likely to be able to remortgage, therefore my IVA has been drafted for 72 months. At month 48 of my IVA, I will have my property valued again for the purposes of calculating the available equity in comparison to that available at the start of the IVA.

- 6.5 I will make all reasonable endeavours to introduce this sum into the arrangement by way of a re-mortgage, up to the maximum of my debts and the costs of my IVA, for the benefit of creditors. For this re-mortgage the maximum increase in my monthly repayment to the mortgage lender will be 50% of my surplus and the term will not extend past the state retirement age or my current mortgage term whichever is the shorter.

- 6.6 Should I be unable to re-mortgage, I will continue to pay my IVA for the full 72 months, if I am successfully and introduce equity my IVA will complete at month 60.

- 6.7 In the event I voluntarily sell my home during the term of the arrangement all funds, net of sales costs, will be introduced into the arrangement to the extent that they are required to pay creditors and the costs of the IVA in full. In the

event funds are introduced and these are insufficient to pay the creditors and costs of the IVA in full, the additional remaining payments will no longer be payable into my IVA.

- 6.8 To protect the interests of my creditors I will provide my Supervisor with a signed RX1 to allow a restriction to be registered against my property at HM Land Registry. On completion of my IVA, or in the event the arrangement fails, this restriction will be removed promptly by my Supervisor and at within at least 3 months.

## **Assets**

- 7.1 My assets, together with any sums charged against them, are shown in the enclosed statement of affairs. No assets belonging to other people are included. Any values shown are mine unless stated otherwise. For clarity, any household items not specifically listed, together with pension schemes and any settlements from insurance policies are excluded from the arrangement.
- 7.2 With the exception of any assets detailed at [add correct para reference], any other assets identified after approval of my IVA which I had an interest in at time of the approval of my IVA but are not detailed on the statement of affairs, will be realised for the benefit of creditors by my supervisor.
- 7.3 Whilst the arrangement is in force and there is a trust in favour of the supervisor, and where the arrangement is terminated and the Supervisor is not mandated to petition for my bankruptcy, the trust in favour of the Supervisor will be terminated by him/her at the time the notice of termination is filed with the Secretary of State.
- 7.4 If during my IVA, I receive any windfall or inheritance in excess of £500, or any other property that could be considered an asset in bankruptcy, I will notify my supervisor within 14 days. Any property of over £500 will be paid into my arrangement for the benefit of creditors up to an amount that would repay all creditor claims plus all the costs of my IVA. I will assist my supervisor in realising these assets were required.
- 7.5 I do not propose to obtain any credit over £500, other than utilities, insurance policies or other contractual payments, as provided for in my income and expenditure, during the course of this arrangement. If credit is required, this must be authorised by my Supervisor before I take it if it is above £500.
- 7.6 Details of my debts are shown in the enclosed statement of affairs. The list of creditors is provided by me or obtained/verified where possible through a recent credit report, supplied to the Nominee.
- 7.7 None of my liabilities, unless stated, have been guaranteed or are to be guaranteed by a third, or associated, party.
- 7.8 Any secured creditors may rely on their security but, if during the term of the IVA, a shortfall occurs, they will rank as an unsecured creditor in my IVA for the amount of the shortfall. For clarity, nothing in this IVA will affect the rights of secured creditors to enforce their security.
- 7.9 I am not aware that I have any preferential creditors but if any claims are received, they will be paid as such. Associated creditors will not receive a dividend, unless stated elsewhere, until unsecured creditors are paid in full excluding statutory interest.

- 7.10 All unsecured creditors will rank for dividend equally and will provide details of their claims that will be agreed as if in a bankruptcy, but without any of the requirements relating to declaration and distributions. Statutory interest will not apply to claims.
- 7.11 Any creditor who could have received notice of my proposal and could have voted upon it, is bound by the terms of this arrangement and is entitled to receive a dividend, if funds allow. Creditors who submit claims after dividend payments have commenced will not be entitled to disturb dividends already paid but will be entitled to participate in future dividends to the extent that funds permit.
- 7.12 I am not aware of any claims any trustee in bankruptcy could have in relation to transactions at an undervalue, preference or extortionate credit transactions.

The contents of my proposal are, to the best of my knowledge, information and belief true. I understand that I am liable to criminal prosecution if I fail to make a full disclosure to my nominee or supervisor, or if I provide any false or misleading information in connection with the approval of this proposal.

Signed – A N other and dated

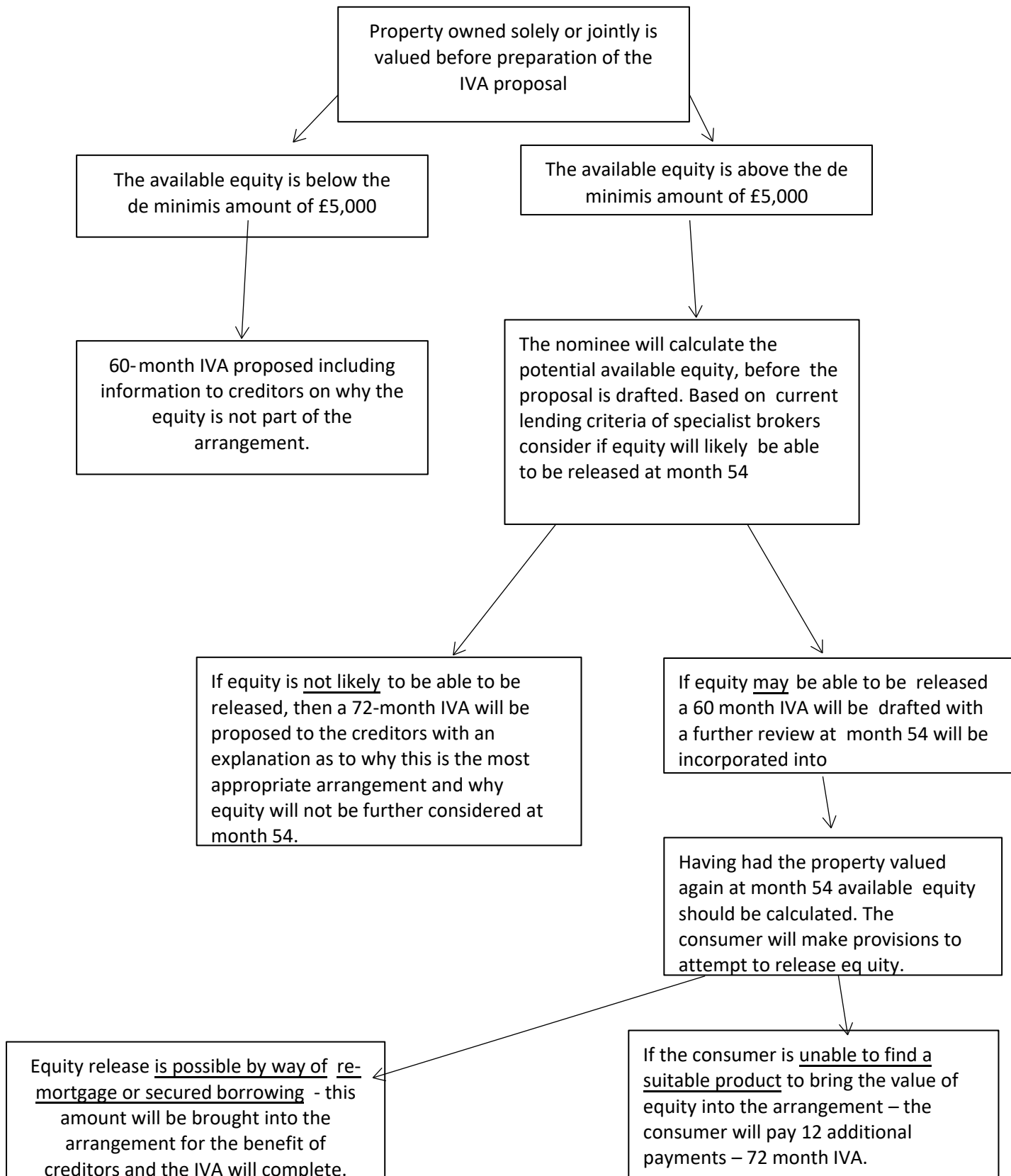
Creditors list

Combined outcome and Statement of Affairs

Financial Statement

## **IVA Protocol 2021 Annex 5 - Equity Flow Chart (all homeowner cases)**

**This annex assists in determining the calculation of potential equity and forms part of the terms and conditions**



**Standard calculation to assess the potential value of any equity in the family home to be released into the IVA**

To achieve a consistent approach in the calculation and presentation of any potential equity to be released into the arrangement, supervisors should produce a detailed record of how equity has been calculated and provide this to both creditors and consumers. Certain elements of the calculations, identified below, will be subject to review by the IVA Standing Committee on an annual basis and arrangements should be presented based on the prevailing calculations.

The **current value** of the property should be based on an open market valuation and the source of the valuation disclosed. This should be carried out before the IVA proposal is drafted.

**Total equity** is to be calculated based on **85% of the current value** of the property less the value of any secured borrowings against the property (including any early redemption penalties or charges). The **consumer's share of equity** is to be calculated based on **total available equity** apportioned in line with the ownership ratio of the property.

The **de minimis value** of equity is £5,000 or less.

### Option 3

The **anticipated equity** position at the review date (likely to be month 54) is to be projected using the current property value inflated using the simple interest formula at the date of the review.

- Secured borrowing will be estimated at month 54 based on the amount of borrowings at the proposed commencement date of the IVA and the terms of the mortgage or secured lending. Total secured borrowings payments will not be greater than 45% of the total household **earned income**. Earned income will be calculated as earnings from salary, self-employment and pensions and will not include any form of benefit income
- Where the total household income does not exceed £100 surplus per month when the proposal is drafted it will be assumed that it will not be possible to release equity.
- Where the consumer is aged above 60 at the commencement of the IVA it will be assumed that it will not be possible to release equity.
- The surplus funds available to finance any equity release will be no more than 50% of the estimated final monthly contribution payments anticipated when preparing the IVA proposal.

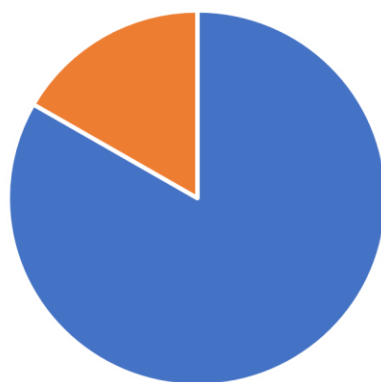
The comparison of outcomes between how the consumers home would be dealt with in an IVA and a Bankruptcy should be based on the standard calculation set out at Annex 7.

## IVA Protocol 2021 Annex 6 – Costs and Debt Repayment Breakdown

**How it is estimated your IVA payments will be divided between costs and debt repayment** [insolvency practitioners can show the data in whatever visual way they think is most useful to consumers i.e. bar chart, pie diagram.

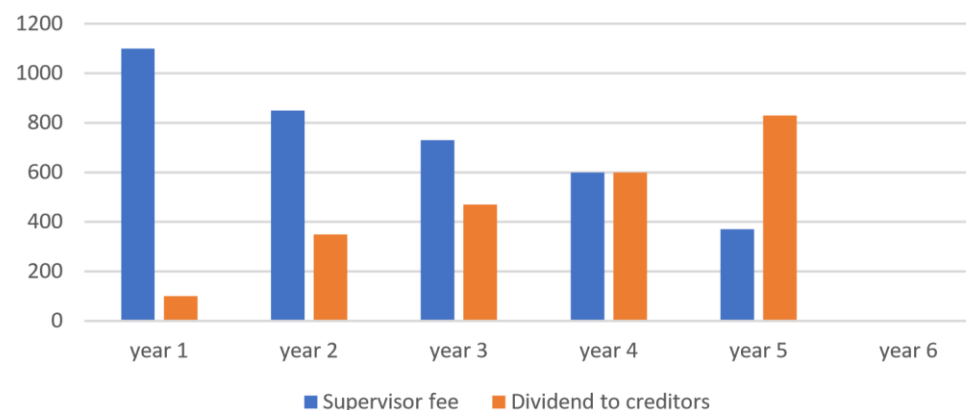
Month	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6 (72 month IVA due to Equity)	Total
Your contribution (£)							
Estimated fee for supervision of your IVA (£)							
Estimated amount paid your creditors (£)							

Year 1 contributions



■ fee for supervision of your IVA  
■ How much you pay to your creditors

How it is estimated your IVA payments will be divided between costs and debt repayment



## IVA Protocol 2021 Annex 7: Estimated Outcome Statement

Estimated Outcome Statement						
Template: Insert values below for your specific circumstances - calculations below will be made automatically						
	£					
Property Value	160,000.00					
85% of property value	136,000.00					
Secured Borrowing	120,000.00					
Voluntary Contribution (as proposed)	150.00					
		Bankruptcy	Note	Voluntary	Note	
				Arrangement		
		£		£		
Estimated Realisations						
Re-Mortgage of Freehold Property		0.00		1,800.00	1	
Sale of Freehold Property (realisable equity)		16,000.00	a	0.00		
Income Contributions - in a bankruptcy (minus costs)		5,140.80		0.00		
Income Contributions - in an IVA (60 x 150)		0.00		9,000.00		
Sale of car/vehicle		0.00		0.00		
Other assets		0.00		0.00		
Total Estimated Realisable		21,140.80		10,800.00		
Estimated Administration Expenses						
Debtor Petition Costs		990.00	b	0.00		
Official Receiver's Administration Fee		2,775.00	c	0.00		



Official Receiver's General Fee		6,000.00	c	0.00		
Trustee's Fee (15% of Realisations)		771.12	c	0.00		
Income Payments Order Set Up Fee		150.00	c	0.00		
Solicitor's and Agent's Fees		8,580.00	d	0.00		
Nominee's Fee		0.00		1,850.00	2	
Supervisor's Fee		0.00		1,800.00	2	
<b>Totals</b>		<b>15,501.12</b>		<b>3,650.00</b>		
<b>Potential distributions</b>						
Amount Available For Creditors		5,639.68		7,150.00		
Preferential Creditors		0.00		0.00		
Available for Ordinary Unsecured Creditors		5,639.68		7,150.00		
Secured Creditor Shortfall (if applicable)		0.00		0.00		
Preferred Creditors		0.00		0.00		
Associated Creditors		0.00		0.00		
Contingent Creditors		0.00		0.00		
Unsecured Creditors		15,000.00		15,000.00		
<b>Totals</b>		<b>15,000.00</b>		<b>15,000.00</b>		
Estimated Surplus/(Shortfall)		-9,360.32		-7,850.00		
<b>Estimated Dividend To Unsecured Creditors</b>						
<b>Total</b>		<b>0.38</b>		<b>0.48</b>		

With Equity				0.48		
Without Equity				0.37		

<b>Draft Assumptions for Calculations</b>						
Note a: The property valuation (for equity valuation) should be based on no less than 85% of open market value and the basis of the valuation should be disclosed.						
Note b: The costs are based on a debtor petition and assume a forced sale with no co-operation from the consumer, which may not be the case.						
Note c: The Trustee's fees are not to exceed those detailed in Schedule 1 of the current Insolvency Proceedings (Fees) Order.						
Note d: Indicative average solicitor's costs given here to obtain and complete an order for sale - as follows:						
Solicitor sale costs - £1,500						
Agent's costs at 3% of sale value						
Order for sale costs - £3,000						
Note 1: For standard protocol IVAs, the equity included for calculating the dividend in the IVA should not exceed 12 additional voluntary contributions.						
Note 2: For illustrative purposes - fees may vary						

## IVA Protocol 2021 Annex 8: Terms of Reference

Updated 29 April 2021

Purpose: To meet regularly to discuss, redraft and provide information about the operation of the IVA Protocol, and in particular:

- how it interacts with the IVA regime generally
- to and address any issues arising in the operation of the Protocol at an early stage
- to act as a discussion forum for stakeholders and ensure that information concerning the operation of the IVA regime generally and particularly Protocol cases can be effectively shared and discussed
- to periodically review the Protocol, including the standard terms and conditions, to ensure it is fit for purpose and to make any necessary changes

### Membership

The Committee will be chaired by The Insolvency Service. Membership will be made up as follows:

#### Representing

IPs	Number
Trade bodies	1
Insolvency practitioners	5
Recognised Professional Bodies	2
Total	8

Creditors	Number
UK Finance	1
Bulk creditors	2
Creditor agents	3
HMRC	1
Total	7

Consumers	Number
Money Advice Trust	1
Citizens Advice	1
StepChange Debt Charity	1
Advice UK	1
Total	4

Insolvency Practitioner, bulk creditor and creditor agent and consumer representatives will be considered for rotation on a 2-year basis.

Membership will be by invitation from The Insolvency Service and will be reviewed at the discretion of the Chair.

### **Frequency of meetings**

The Committee will aim to meet 3 times per year with further meetings called if considered necessary.

The agenda for, and minutes of all meetings will be recorded. Further miscellaneous updates or actions will be communicated via e-mail to those on the 'Dear IP' circulation list and posted on Gov.uk. The Insolvency Service will perform the secretariat function of the Committee.

### **Quorum/voting**

A quorum shall be 9 full members of the IVA Standing Committee (including nominated substitutes), with at least 4 representing IPs, 3 representing creditors and 2 representing consumers. For the avoidance of doubt the Chair is a full member of the IVA Standing Committee. It is hoped that decisions can be arrived at via consensus.