
Comparison SIP 3.1 July 2014 and the Consultation Draft July 2021

Statement of Insolvency Practice

3.1

Consultation Draft

INDIVIDUAL VOLUNTARY ARRANGEMENTS

Introduction

1. An Individual Voluntary Arrangement (IVA) is a statutory contract between a debtor and ~~his or her~~their creditors under which an insolvency practitioner will have powers and duties. An insolvency practitioner will be central to the preparation and agreement of the proposal, and the implementation of the arrangement, whether acting as adviser, nominee or supervisor. The particular nature of an insolvency practitioner's position renders transparency and fairness in all dealings of primary importance. ~~The debtor and creditors should be confident that an insolvency practitioner will act professionally and with objectivity in each role associated with the arrangement. Failure to do so may prejudice the interests of both the debtor and creditors, and is likely to bring the practitioner and the profession into disrepute.~~

Principles

2. 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 explained to the debtor and the creditors.
3. An insolvency practitioner should act professionally and with objectivity in each role associated with the IVA. Failure to do so might prejudice the interests of both the debtor and the creditors and is likely to bring the practitioner and the profession into disrepute.
- 3.4. An insolvency practitioner should ensure that the information and explanations provided to a debtor about all the options potential debt relief solutions available are such provided to the debtor, so that the debtor can make an informed judgement as to whether an IVA is an appropriate solution and should ensure that the debtor has adequate time to think about the consequences and alternatives before an IVA proposal is drawn up.

5. An insolvency practitioner should ensure that the explanation of all potential debt relief solutions is tailored to the circumstances of the debtor, detailed and documented.

6. An insolvency practitioner should be satisfied that any information provided by a lead-generator or advice provided by a debt-packager¹ leading to a referral to the insolvency practitioner is accurate and properly reflects the debtor's financial circumstances, and that the debtor has not in any way been misled by any person involved in the process.

4.7. An insolvency practitioner should explain to the debtor, the debtor's responsibilities and the consequences of an IVA (including disclosure requirements) and the insolvency practitioner's role before and during an IVA, and the process and consequences of an IVA. At all stages of the process, communications with the debtor should be in a manner that is clear and understandable to the debtor as far as reasonably practicable.

5.8. Where an IVA is to be proposed, an insolvency practitioner should be satisfied that it is achievable and that a fair balance is struck between the interests of the debtor and their creditors.

6.9. An insolvency practitioner's reports should provide sufficient information to enable creditors to make informed decisions in relation to the proposal and the IVA, and should report accurately in a manner that aims to be clear and useful.

Key compliance standards

7.10. Certain key compliance standards are of general application, but others will depend on whether the insolvency practitioner is acting as adviser, nominee, or supervisor.

Standards of general application

Advice to the debtor

8.11. The insolvency practitioner should have procedures in place to ensure that the information and explanations provided to the debtor at each stage of the process, as appropriate (that is, assessing the options available, and then preparing and implementing an IVA), are designed to set out clearly:

a) the advantages and disadvantages of each available option;

b) the key stages and the roles of the adviser, the nominee and the supervisor;

c) whether the debtor will require additional specialist assistance which will not be provided by any potential delays or complications, and supervisor appointed, including the likely cost of that additional assistance, if known;

¹ A lead-generator might or might not be FCA authorised and is an individual or firm who refers work to an insolvency practitioner but does not provide advice to the debtor about available solutions, meaning that the insolvency practitioner will need to provide that advice under the exclusion in the Financial Services and Markets Act 2000. A FCA regulated debt-packager can also refer work to an insolvency practitioner but might have provided advice and gathered relevant information for setting up an IVA.

b)d) the likely duration of the IVA and how this might be affected by any provisions concerning any family home contained in the agreement;

e) any circumstances which might affect the duration of the IVA and the potential impacts of any delays, complications or changes to the original IVA terms;

e)f) what is required of the debtor, including full, accurate and proper disclosure by the debtor;

g) explanations of any areas of concern about what the debtor has reported and of the consequences if the debtor fails to comply with their obligations;

d)h) the consequences of proposing and entering into an IVA, including the rights of challenge to the IVA, and the potential consequences of those challenges; and

e)i) what ~~may~~ might happen if the IVA is not approved or not successfully completed.

12. Insolvency practitioners should avoid generic explanations and instead provide bespoke advice tailored to the debtor's circumstances.

13. In some instances, at least part of the initial assessment of a debtor's personal and financial circumstances or the provision of advice might be carried out by a lead-generator or debt-packager. Any insolvency practitioner who receives a lead or a potential IVA case from a lead-generator or debt-packager, and places any reliance on the lead-generator's or debt-packager's assessment, should be able to demonstrate in each case (through retained documentation, including recordings of advice calls and detailed written notes of any such calls of which no recording was made) that the lead-generator or debt-packager (or any other person or firm involved) has also acted professionally and objectively.

14. Due to the fundamental importance of the provision of full and impartial debt advice, in the case of consumer debt relief and solutions, an insolvency practitioner should ensure that appropriate due diligence is carried out on any lead-generator or debt-packager which might lead to a potential IVA appointment. The due diligence should include ascertaining whether the lead-generator or debt-packager is appropriately authorised or regulated to conduct such activities.

Meeting the debtor

9-15. A meeting should always be offered to the debtor. At each stage of the process, an assessment should be made as to whether ~~a face-to-face~~ an in-person meeting (whether a physical meeting or using conferencing technology) with the debtor is required, depending on factors such as the debtor's ~~attitude~~ understanding and vulnerability, and the circumstances and complexity of the case.² All these meeting considerations and arrangements should be evidenced, documented and retained on file.

² Vulnerability guidance issued by the Recognised Professional Bodies is a benchmark for those providing debt advice to consumers who might have vulnerabilities.

Assessment

~~40.16.~~ The insolvency practitioner ~~needs to~~should be satisfied, at each stage of the process, that there are procedures in place to ensure that ~~an~~a full assessment is made of the debtor's personal and financial circumstances. The assessment should be documented to record the debtor's circumstances and, if this is conducted by way of a telephone or video-conference call an electronic recording or, if none was made, a contemporaneous note of the call should form part of the records and be retained. The assessment should include the following:

- a) the solutions available and their viability;
- ~~b)~~ whether the debtor is being sufficiently cooperative;
- ~~e)~~b) the debtor's understanding of the process, and commitment to it;
- ~~c)~~ whether the debtor is subject to any factors that make them vulnerable and, if so, any necessary adjustments and, subject to the debtor's consent, an accurate record of the vulnerabilities;
- ~~d)~~ whether the debtor is likely to be able to fulfil their obligations under the terms of the arrangement for its duration;
- ~~d)~~e) the likely attitude of any key creditors and the general body of creditors, in particular as to the fairness and balance of the proposals;
- ~~e)~~f) whether an IVA would have a reasonable prospect of being approved and successfully implemented; and
- ~~f)~~g) whether an interim order is needed or available.

Documentation

~~41.17.~~ The insolvency practitioner should be able to demonstrate that proper steps have been taken at all stages of the IVA, by maintaining records of:

- a) discussions with the debtor, including the information and explanations provided, the options outlined, and the advantages and disadvantages of each, and an explanation of the roles of the nominee and supervisor;
- b) the debtor being made aware of their right to challenge a decision to approve an IVA and other rights of challenge;
- ~~b)~~c) comments made by the debtor, and the debtor's preferred option;
- ~~e)~~d) any discussions with creditors or their representatives; and
- e) consideration of the impact of the IVA on any third parties, including any joint creditors, guarantors or co-owners of property.

If the insolvency practitioner considers it appropriate in the circumstances, summaries of these discussions should be sent to the debtor.

Standards of specific application

Initial advice

18. Initial advice to the debtor could be provided by a lead generator or debt packager. The insolvency practitioner should have procedures in place to ensure that any advice given by the lead generator or debt packager is recorded in a complete and accurate manner (which might include recordings of telephone calls, transcripts of webchats, or written notes) and that the insolvency practitioner is able to obtain access to such records maintained by a lead generator or debt packager in relation to the debtor.

~~12.~~19. An insolvency practitioner ~~may~~could be asked to give advice on a debtor's financial difficulties, and the way in which those difficulties might be resolved. The insolvency practitioner should have procedures in place to ensure, taking account of the personal circumstances of the debtor, that:

- a) the role of adviser is explained to the debtor, ~~at this stage advising~~namely providing advice that strikes a fair balance between the debtor (in the debtor's interests) but of the debtor and their creditors, in the context of ~~needing to find a~~identifying the most appropriate and workable solution to the debtor's financial difficulties;
- b) sufficient information is obtained to make a preliminary assessment of the solutions available and their viability;
- c) the obligations of the debtor to cooperate and provide full disclosure are explained. The insolvency practitioner should be able to form a view of whether the debtor has a sufficient understanding of the situation and the consequences of an IVA, and whether there will be full cooperation in seeking a solution;
- d) when considering possible solutions, account is taken of the impact of each solution on the debtor and ~~the debtor's~~their assets, in particular ~~the~~including any family home, and on any third parties ~~that may~~Authority should be affected;obtained, where appropriate, from any third-party individuals whose income is to be shown in the income and expenditure statement or who have an interest in any assets included in the proposal; and
- e) the debtor is provided with an explanation of all the options available, the advantages and disadvantages of each, and the likely costs of each so that the solution best suited to the debtor's circumstances can be identified. Insolvency practitioners should avoid using generic advantages and disadvantages and should use the details provided by the debtor to provide relevant information tailored to the circumstances of the debtor. This explanation should be confirmed to the debtor in writing no later than the date on which an IVA proposal is issued.

Preparing for an IVA

~~13.~~20. When preparing for an IVA, the insolvency practitioner should have procedures in place to ensure, taking account of the personal circumstances of the debtor and the nature of the debtor's finances, that:

- a) the debtor has had, or receives, the appropriate advice in relation to an IVA, including other options which have been discussed and discounted. This should be confirmed in writing if the insolvency practitioner or their firm has not done so before;
- b) the debtor's obligations of the debtor, including to cooperate and provide full and accurate disclosure, throughout the initial process and the duration of the IVA, are explained and alongside the consequences of not doing so if the insolvency practitioner has not done so before. The insolvency practitioner should be able to form a view of and record whether the debtor has a sufficient understanding of the process of an IVA, its likely duration, and the consequences, and whether there will be full cooperation and commitment from the debtor;
- c) sufficient information is obtained to make an assessment of an IVA as a solution, and to enable at the nominee to prepare a report, including:
 - (i) i. the measures taken by the debtor to avoid recurrence of their financial difficulties, if any;
 - (ii) ii. the likely expectations of any key creditors; and
 - (iii) iii. the effect of the IVA on any third parties where their view may or circumstances might have an effect on the viability of the IVA; and
- d) proportionate investigations enquiries are undertaken into, and verification of, income and expenditure and the debtor's assets and liabilities, and evidenced on the file;
- e) the debtor's and any third-party contributor's identity is checked and verified, and all evidence is kept on the file; and
- f) creditors are given adequate time to consider the IVA proposal. Where creditors might need assistance in understanding the consequences of an IVA, the insolvency practitioner should signpost sources of help.

The proposal

- 14.21. Where the insolvency practitioner has been asked to assist the debtor to prepare a proposal, the insolvency practitioner should have procedures in place to ensure that the proposal contains the following: is considered objectively, is credible and has a reasonable chance of being implemented in the form presented.
22. In cases where the IVA Protocol principles, terms and conditions are used to form the basis of an IVA proposal, any deviations from the Protocol should be explained in writing to the debtor and their creditors so that they can readily identify any departures from the Protocol.
23. The proposal should contain the information listed below or provide adequate explanations if any of the following is not detailed in full:
- a) sufficient information for creditors to understand the debtor's financial and trading history (where appropriate), including:
 - (i) i. the background and financial history of the debtor;
 - (ii) ii. why the debtor has become insolvent; and
 - (iii) iii. any other attempts that have been made to solve address the debtor's financial difficulties, if there are any such difficulties and the alternative options considered, both outside and within formal insolvency procedures, with specific reasons for not adopting them;

- b) a comparison of the estimated ~~outcomes~~outcome of the IVA and the estimated outcome if the IVA is not approved, including:
- c) where relevant, sufficient information to support any profit and cash projections, subject to any commercial sensitivity;
- d) an explanation of the role and powers of the supervisor;
- e) details of any discussions which have taken place with key creditors;
- f) where it is proposed that certain creditors are to be treated differently, an explanation as to which creditors are affected, how and why, in a manner which aims to be clear and useful;
- g) an explanation of how debts are to be valued for voting purposes, in particular where the creditors include long-term or contingent liabilities;
- b)h) disclosure of all the estimated ~~costs~~payments of the IVA, including the proposed remuneration of the nominee and the supervisor and the bases for those estimates;
- i) the identity of the source of any referral of the debtor, ~~the~~ and, if they are a lead-generator or debt-packager, whether regulated activity was undertaken and whether the lead-generator or debt-packager is FCA authorised, and any prior relationship or connection of the referrer to ~~to~~ the debtor and, ~~or~~ insolvency practitioner;
- e)j) where any payment has been made or is proposed to ~~the referrer~~be made to a lead-generator or debt-packager, the amount and reason for that payment; (including how it represents value for the work/services provided to the insolvency practitioner);
- d)k) details of the amounts and source of ~~any other~~ payments made, or proposed to be made, to the nominee and the supervisor or their firms in connection, or otherwise, with the proposed IVA, directly or indirectly and the reason(s) for the payment(s); and;
- e) where relevant, sufficient information to support any profit and cash projections, subject to any commercial sensitivity.
- l) It is the responsibility of the nominee to report in relation to the proposed IVA. ~~details of any direct or indirect payments made, or to be made to any third parties or associates in connection, or otherwise, with the proposed IVA together with a description of the goods or services provided and the reasons for all payments;~~³
- m) an explanation of how debts, which it is proposed are compromised in the agreement, will be treated should the IVA fail;
- n) the circumstances in which the IVA might conclude or fail, including what might happen to the debtor in such circumstances; and
- o) any specifically identifiable risks of failure applicable to the IVA.

³ The term associate is defined in the insolvency legislation. For the purposes of this statement of insolvency practice, office holders should, in addition to the definition in the insolvency legislation, consider the substance or likely perception of any association between the insolvency practitioner, their firm, or an individual within the insolvency practitioner's firm and the recipient of a payment. Where a reasonable and informed third party might consider there would be an association, payments should be treated as if they are being made to an associate, notwithstanding the nature of the association does not meet the definition in the insolvency legislation.

The nominee

~~15.~~24. When acting as nominee, the insolvency practitioner should have procedures in place to ensure that:

- a) the debtor has had, or receives, the appropriate advice in relation to an IVA. This should be confirmed in writing if the insolvency practitioner or his firm has not done so before;
- b) the nominee is able to report objectively whether or not, in the nominee's judgement:
 - ~~(i)~~i. the debtor's financial position is materially different from that contained in the proposal, explaining the extent to which the information has been verified;
 - ~~(ii)~~ii. the IVA is manifestly unfair; and
 - ~~(iii)~~iii. the IVA has a reasonable prospect of being approved and implemented;
- c) the debtor's consent is sought on any modifications to the proposal put forward by the creditors, and the debtor understands the impact of the modifications on the implementation of the IVA and its viability; This should include the preparation of revised comparative outcome statements showing the effects of the modifications if agreement to them will change the outcome;
- d) ~~where a modification is adopted~~any conflicting modifications are proposed, the prevailing adaptations, i.e. those agreed by debtor and supported by a 75% majority of creditors, are identified and recorded by the insolvency practitioner ~~must ensure that consent is obtained from the debtor and, if appropriate, the creditors;~~ and
- e) in the absence of consent, the IVA cannot proceed; in a modified form. The debtor's consent ~~must~~should be recorded.

The supervisor

~~16.~~25. When acting as supervisor, the insolvency practitioner should have procedures in place to ensure that:

- a) where a proposal is modified, creditors have been made aware of the final form of the accepted IVA;
- b) the IVA is supervised in accordance with its terms;
- c) the progress of the IVA is monitored;
- d) any departures from the terms of the IVA are identified at an early stage and appropriate action is ~~then~~ taken promptly by the supervisor;
- e) any ~~discretion(s)~~discretions conferred on the supervisor are exercised where necessary, on a timely basis, and that exercise is reported at the next available opportunity;
- f) they obtain the debtor's written consent to any modifications to the original terms of the IVA proposal put forward by creditors;
- ~~f)g)~~g) any variation to the terms of the IVA has been appropriately approved before it is implemented;
- ~~g)h)~~h) enquiries by the debtor and creditors are dealt with promptly and documented;

~~h)j)~~ full disclosure is made of the costs of the IVA and of any other sources of income, including any work carried out by third parties or associates of the insolvency practitioner or the practice, in relation to the case/firm, in reports;

~~i)j)~~ if the costs of the IVA have increased beyond previously reported estimates, this increase should be explained and reported at the next available opportunity; and and at least within six months of the end of the IVA;

~~j)26.the~~ The IVA is should be closed promptly on completion or termination and any 'completion certificate' should be issued as soon as reasonably practicable and no later than six months after the final payment is made.

27. When the IVA concludes or fails, the supervisor should ensure that they act in accordance with the terms and conditions of the proposal, and the effect of completion or failure should be reported to the debtor and their creditors.

Effective date: This SIP applies to all cases where the nominee is appointed on or after ~~1 July~~ 2014XXMMYY