

STATEMENT OF INSOLVENCY PRACTICE 3.1

INDIVIDUAL VOLUNTARY ARRANGEMENTS

INTRODUCTION

1. An Individual Voluntary Arrangement (IVA) is a statutory contract between a debtor and 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.

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 insolvency practitioner and the profession into disrepute.
4. An insolvency practitioner should ensure that information and explanations about all potential debt relief solutions available are provided to the debtor. This is to put the debtor in a position to make an informed judgement about whether an IVA is an appropriate solution. The insolvency practitioner should also 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 explain to the debtor, the debtor's responsibilities (including disclosure requirements), 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.
7. 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.
8. 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 is clear and useful.

KEY COMPLIANCE STANDARDS

9. 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

10. An insolvency practitioner should have procedures in place to ensure that the information and explanations provided to the debtor at each stage of the process (that is, assessing the options available, and then preparing and implementing an IVA) are comprehensible to the debtor and 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 assistance¹ which will not be provided by any supervisor appointed, including the likely cost of that additional assistance, if known;
 - d) the likely duration of the IVA and how this might be affected by any provisions concerning any family home contained in the arrangement;
 - 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;
 - f) the likely costs of implementation and how realisations will be applied to them;
 - g) what is required of the debtor, including full, accurate and proper disclosure by the debtor;
 - h) 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;
 - i) the consequences of proposing and entering an IVA, including the rights of challenge to the IVA, and the potential consequences of those challenges; and
 - j) what might happen if the IVA is not approved or not successfully completed together with an assessment of the risk of failure.

11. An insolvency practitioner should minimise generic explanations and instead provide bespoke advice tailored to the debtor's circumstances.

12. An insolvency practitioner should undertake sufficient due diligence on any referrer to identify whether they have advised the debtor and, if so, whether they are required to be authorised by the Financial Conduct Authority (FCA) for debt counselling or are able to rely on an exclusion or exemption in relation to the debt advice. The referrer's authorisation status should be evidenced, or details sufficiently documented and retained in each case. In each case where advice was given by the referrer any contractual arrangement between them and the insolvency practitioner should extend to the insolvency practitioner maintaining access to all the referrer's communications with the debtor, including call recordings or detailed written notes where calls were not recorded and transcripts of webchats or other communications where undertaken. Any shortcomings in the advice, including in relation to the referrer's authorisation, should be remedied by the insolvency practitioner giving appropriate advice themselves.

Meeting the debtor

13. A meeting should always be offered to the debtor. At each stage of the process, an assessment should be made as to whether 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 understanding and vulnerability, and the circumstances and complexity the case.² All these meeting considerations and arrangements should be evidenced, documented and retained on file.

Assessment

14. An insolvency practitioner should be satisfied, at each stage of the process, that there are procedures in place to ensure that a full assessment is made of the debtor's personal and financial

¹ For example, support for a vulnerable individual

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

circumstances. The assessment should be documented contemporaneously 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 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) 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 disclosed;
- d) whether the debtor is likely to be able to fulfil their obligations under the terms of the arrangement for its duration;
- 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;
- f) whether an IVA would have a reasonable prospect of being approved and successfully implemented; and
- g) whether a breathing space or interim order is needed or available.

Documentation

15. An 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 creditors' decision and to make a complaint via the Insolvency Complaints Gateway;
 - c) comments made by the debtor, and the debtor's preferred option;
 - 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, or a request is made by the debtor, summaries of these discussions should be sent to the debtor.

Standards of specific application

Initial advice

16. An insolvency practitioner 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, namely providing advice that strikes a fair balance between the interests of the debtor and their creditors, in the context of identifying an 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 and accurate disclosure are explained;
 - d) the insolvency practitioner is 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;
 - e) when considering possible solutions, account is taken of the impact of each solution on the debtor and their assets, including any family home, and on any third parties;
 - f) consent is obtained, where appropriate, from any third-party individuals whose income is to be shown as included in the income and expenditure statement or who have an interest in any assets included in the proposal; and
 - g) 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 a solution suited to the debtor's circumstances can be identified.

17. An insolvency practitioner should avoid using generic advantages and disadvantages and should use the details provided by the debtor to provide bespoke information tailored to the debtor's circumstances. 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

18. When preparing for an IVA, an 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, and this advice is confirmed in writing if the insolvency practitioner or their firm has not done so before;
 - b) the debtor's obligations, including to cooperate and provide full and accurate disclosure throughout the initial process and the duration of the IVA, are explained alongside the consequences of not doing so;
 - c) the insolvency practitioner forms a view and records whether the debtor has a sufficient understanding of the process of an IVA, its likely duration, and the consequences, including that it will involve a lengthy professional relationship with the supervisor, and whether there will be full cooperation and commitment from the debtor;
 - d) sufficient information is obtained to make an assessment of an IVA as a solution and to enable the nominee to prepare a report, including:
 - i. the measures taken by the debtor, if any, to avoid recurrence of their financial difficulties
 - ii. the likely expectations of creditors and
 - iii. the effect of the IVA on any third parties where their view or circumstances might have an effect on the viability of the IVA.
 - e) proportionate enquiries are undertaken into the debtor's assets and liabilities and their income and expenditure and is evidenced on the file;
 - f) the debtor's and any third-party contributor's identity is checked and verified, and all evidence is kept on the file; and
 - g) where creditors might need assistance in understanding the consequences of an IVA, the insolvency practitioner signposts sources of help.

The proposal

19. Where an 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 is considered objectively, is credible and has a reasonable prospect of being implemented in the form presented.
20. In cases where the IVA Protocol³ is 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.
21. 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. the background and financial history of the debtor
 - ii. why the debtor has become insolvent
 - iii. any other attempts that have been made to address the debtor's financial difficulties, and the alternative options considered, both outside and within formal insolvency procedures, with specific reasons for not adopting them.

³ <https://www.gov.uk/government/publications/individual-voluntary-arrangement-iva-protocol>

- b) a comparison of the estimated outcome of the IVA and the estimated outcome if the IVA is not approved;
- c) where relevant, 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;
- h) disclosure of all the estimated payments of the IVA, including the proposed remuneration and expenses of the nominee and the supervisor and the bases for those estimates;
- i) the identity of the source of any referral of the debtor, whether the source undertook the regulated activity of debt counselling, and if so whether the source is FCA authorised or exempt in relation to debt counselling, and details of any prior relationship between the source and the debtor or the insolvency practitioner;
- j) where any payment has been made or is proposed to be made to a referrer, the amount and reason for that payment (including how it represents value for the work/services provided to the insolvency practitioner);
- k) details of the amounts and source of other payments made, or proposed to be made, directly or indirectly to the nominee and the supervisor or their firms in connection with the proposed IVA, and the reason(s) for the payment(s);
- l) details of any direct or indirect payments made, or to be made, to any third parties or associates in connection with the proposed IVA, together with a description of the goods or services provided and the reasons for all payments;
- m) an explanation of how debts that are proposed to be compromised 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.

The nominee

22. When acting as nominee, an 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, and that advice is confirmed in writing if the insolvency practitioner or their firm has not already done so;
- b) the nominee can report objectively whether, in the nominee's judgement:
 - 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. the IVA is manifestly unfair
 - 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; and the nominee's explanation includes the preparation of revised comparative outcome statements showing the effects of the modifications if agreement to them is a reasonable prospect and will change the outcome;
- d) where 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 nominee; and
- e) the debtor's consent to agreed modifications is recorded and in the absence of the debtor's consent the IVA cannot proceed in a modified form.

The supervisor

23. When acting as supervisor, an 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 taken promptly by the supervisor;
- e) any 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 variations to the original terms of the IVA proposal put forward by creditors;
- g) any variation to the terms of the IVA has been appropriately approved before it is implemented;
- h) enquiries by the debtor and creditors are dealt with promptly and documented;
- i) full disclosure is made in reports of the costs of the IVA, including the cost of any work carried out by third parties or associates of the supervisor or their firm; and
- 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 in any event no later than six months after the end of the IVA.

- 24. The IVA should be closed promptly on completion or termination.
- 25. Any completion certificate should be issued as soon as reasonably practicable and no later than six months after the final payment is made by the debtor, unless another requirement of the proposal makes this impossible.
- 26. 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: 1 March 2023

This SIP applies to all cases where the nominee is appointed on or after the effective date.