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 and seek to ensure that the debtor understands them. 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 (taking into account the debtor's individual circumstances) to consider the IVA proposal and to think about the consequences and alternatives before signing and returning the proposal.

5. An insolvency practitioner should ensure that the explanation of all potential debt relief solutions is tailored to the circumstances of the debtor and should check and document the debtor's understanding of each solution.

6. Insolvency practitioners should ensure there are procedures in place to identify vulnerable debtors and to provide appropriate assistance to allow them to fully engage with the process. This includes ensuring that consideration is given to whether any vulnerabilities affect the debtor's ability to understand the IVA process, their obligations, the consequences and alternatives, and the suitability and sustainability of an IVA.

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7. Insolvency practitioners should ensure that all decisions made at all stages of the IVA, including the reasons for those decisions, are adequately documented and a record maintained.

8. An insolvency practitioner should explain to the debtor, the debtor's responsibilities (including disclosure requirements), and the process and consequences of an IVA.

9. An insolvency practitioner should explain the roles of everyone involved in the IVA process, including before and during the IVA, who they work for and take steps to limit any confusion on the part of the debtor.

10. 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.

11. 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.

12. 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

13. 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

14. 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 or as a result of any change in circumstances during the course of an IVA set out, in a clear and understandable way:

a) the advantages and disadvantages of each available option;

b) the key stages and the roles of the adviser, the nominee(s) and the supervisor. Where a joint nominee arrangement is in place, the insolvency practitioners should make the debtor aware of the arrangement, the reasons for the arrangement and of their respective roles in the process;

DRAFT

c) whether the debtor will require additional specialist assistance which will not be provided by any supervisor appointed, including the likely cost of that additional assistance, if known. The insolvency practitioner should identify what assistance is required and how they will be accommodated;

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 and the consequences if the debtor fails to comply with their obligations;

h) the possible impact that any areas of concern about what the debtor has reported might have on the likelihood of acceptance of an IVA proposal by the creditors and its sustainability if approved;

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) the consequences of the IVA either not being approved or not successfully completed, with reference to the debtor's individual circumstances.

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

16. 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. An insolvency practitioner should:

a) evidence, or sufficiently document, the referrer's authorisation status in each case;
b) establish and document, as far as possible, each stage of the referral process, starting from the original source of the referral, and what due diligence has been carried out at each stage;
c) ensure that any contractual agreement allows access to all the referrers' communications with the debtor, in whatever form they are recorded, for the duration of the IVA;
d) ensure that any shortcomings in any advice previously given, are remedied by the insolvency practitioner giving appropriate advice themselves;

e) consider whether it is appropriate to accept a referral, or to continue any referral agreement, where the debtor's referral journey is not clear, or systemic shortcomings in the advice given are identified.

Meeting the debtor

17. 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 of the case. A meeting should always be offered to the debtor. All these meeting considerations and arrangements should be evidenced, documented and retained on file. Notes of the meeting should be recorded and retained, including digital recording - with the debtor's consent - where conferencing technology is used.

Assessment

18. 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 circumstances. The assessment should record contemporaneously the debtor's circumstances. The assessment should include the following:

a) a review and verification of the debtor's income and expenditure;

b) 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; whether it affects their suitability for an IVA;

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;

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.

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Record keeping

19. An insolvency practitioner should be able to demonstrate that proper steps have been taken at all stages of the IVA by maintaining contemporaneous records, in whatever format, of:

a) discussions with the debtor, including assessment of the debtor's personal and financial circumstances, 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;

c) the debtor being made aware of the insolvency practitioner's complaints process and how to make a complaint via the Insolvency Complaints Gateway;

d) comments made by the debtor, and the debtor's preferred option;

e) any discussions with creditors or their representatives;

f) consideration of the impact of the IVA on any third parties, including any joint creditors, guarantors or co-owners of property.;

g) all communications with the debtor during the period of the IVA;

h) decisions made as supervisor, including the outcome of annual reviews, changes to contributions, breaches and terminations, variations and outcomes;

i) where call recording software is used, full call recordings should be retained.

20. 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.

21. Where artificial intelligence (AI) is used at any stage of the IVA process, the insolvency practitioner should keep a record of, and disclose to the debtor, when and how AI is used, including what information is input into any AI model used and what information being provided to the debtor (output) has been generated by AI.

22. An insolvency practitioner's procedures and controls should be fully documented and reviewed, at least annually, by the office-holder for their effectiveness. An insolvency practitioner will be expected to demonstrate how the adequacy of their procedures and controls is tested and measured.

Standards of specific application

Initial advice

23. 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 throughout the initial process and the duration of the IVA, are explained alongside the consequences of not doing so;

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) where income from third-party individuals is to be included in the income and expenditure statement, the insolvency practitioner is able to form a view of the accuracy and reliability of the figures used, especially where the consent of the third-party has not been obtained;

g) the debtor is provided with an explanation of all the options available, the advantages and disadvantages, and the likely costs of each, so that a solution suited to the debtor's circumstances can be identified. The insolvency practitioner should seek to satisfy themselves that the debtor understands the explanations given and should correct any misunderstandings or misconceptions.

24. 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 each debtor's circumstances in all cases, including where interlocking IVAs are being considered. This explanation should be confirmed to the debtor in writing no later than the date on which an IVA proposal is issued.

The nominee

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25. When acting as nominee and preparing for an IVA, an insolvency practitioner should have procedures in place to ensure that:

a) the insolvency practitioner (both insolvency practitioners if there is a joint nominee agreement in place) is satisfied that the debtor has had, the appropriate advice in relation to an IVA, including other options which have been discussed and discounted, and that this advice has been confirmed in writing), the debtor's and any third-party contributor's identity is checked and verified, and all evidence is kept on the file;

c) the insolvency practitioner has formed a view and has recorded 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 has been obtained to make an assessment of the suitability 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;

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; and

iv) anything relevant to the decision of the creditors.

e) proportionate enquiries have been undertaken into the debtor's assets and liabilities and their income and expenditure and is evidenced on the file;

f) the debtor has obtained consent from any third-party individual whose income has been included on the income and expenditure statement, or, where this is not possible (in the case of income and expenditure), a statement is provided by the debtor that the figures used are accurate to the best of their knowledge;

g) the debtor has obtained consent from any third-party individual who has an interest in any assets to be included in the proposal; and

h) 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.

The proposal

26. Where an insolvency practitioner drafts a proposal on behalf of the debtor, 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.

27. In cases where the IVA Protocol 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.

28. 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.

b) a comparison of the estimated outcome of the IVA and the estimated outcome of the next most likely solution 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 (relative to each nominee where there is a joint nominee agreement in place) 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

DRAFT

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 any non-FCA authorised referrer by the insolvency practitioner or their firm, the amount and reason for that payment (including how it represents value for the work/services provided to the insolvency practitioner). Where there is a joint nominee agreement in place, this includes any payment to both the referring nominee and to any referrer used by the referring joint nominee;

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) subject to the consent of the debtor, any vulnerabilities disclosed and how they might impact on the suitability of an IVA;

o) the circumstances in which the IVA might conclude or fail, including what might happen to the debtor in such circumstances;

p) any specifically identifiable risks of failure applicable to the IVA; and

q) signposting sources of help for any creditors who might need assistance in understanding the consequences of an IVA.

29. The insolvency practitioner should be satisfied that the debtor has had sufficient time to review the proposal, and seek advice if required, before it is signed and returned. As a minimum the insolvency practitioner should provide the debtor at least one calendar day to sign and return the proposal.

Decision procedures

30. The insolvency practitioner should endeavour to ensure that the intention of any proposed modification and associated proxy vote which could be open to interpretation is clarified with the relevant creditor prior to the meeting of creditors.

31. Following the meeting of creditors to approve an IVA proposal, the insolvency practitioner should ensure that:

DRAFT

a) 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;

b) 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

c) 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.

32. Where variations to the IVA are to be proposed during the IVA term, the insolvency practitioner should:

a) where the variation is for a change to contributions and/or the length of the IVA term, satisfy themselves that the IVA remains viable and sustainable for the remainder of its term;

b) provide the creditors with sufficient information regarding the reasons for the variation, and the potential consequences of not accepting the variation, to allow them to make an informed decision whether to accept or reject the variation;

c) ensure that both the debtor and the creditors are informed of any fees to be charged in relation to the variation, and how this will affect both the amount paid by the debtor and the estimated outcome for the creditors;

d) explain to the debtor the potential consequences of creditors not approving the variation proposal.

The supervisor

33. 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, and the reasons for it, is documented and 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 either creditors or the supervisor;

h) any variation to the terms of the IVA has been appropriately approved before it is implemented;

i) enquiries by the debtor and creditors are dealt with promptly and documented;

j) 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

k) 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.

34. The IVA should be closed promptly on completion or termination.

35. Any completion certificate should be issued as soon as reasonably practicable and no later than three months after the final payment is made by the debtor, unless another requirement of the proposal makes this impossible.

36. 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.

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