

Statement of Insolvency Practice 3.1

INDIVIDUAL VOLUNTARY ARRANGEMENTS

Introduction

1. An Individual Voluntary Arrangement (IVA) is a statutory contract between a debtor and his or her 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 ensure that the information and explanations provided to a debtor about all the options available are such that the debtor can make an informed judgement as to whether an IVA is an appropriate solution.

4. An insolvency practitioner should explain to the debtor, the debtor's responsibilities and the consequences of an IVA.

5. 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 the creditors.

6. 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 report accurately in a manner that aims to be clear and useful.

Key compliance standards

7. 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. 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 (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 supervisor appointed;
- d) any potential delays or complications, and the likely duration of the IVA;
- e) what is required of the debtor;
- f) 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
- g) what may happen if the IVA is not approved or not successfully completed.

Meeting the debtor

9. 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 meeting with the debtor is required, depending on the debtor's attitude and the circumstances and complexity of the case.

Assessment

10. The insolvency practitioner needs to be satisfied, at each stage of the process, that there are procedures in place to ensure that an assessment is made of:

- a) the solutions available and their viability;
- b) whether the debtor is being sufficiently cooperative;
- c) the debtor's understanding of the process, and commitment to it;
- d) 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) whether an IVA would have a reasonable prospect of being approved and implemented; and
- f) whether an interim order is needed or available.

Documentation

11. 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) comments made by the debtor, and the debtor's preferred option;
- c) any discussions with creditors or their representatives;

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

12. An insolvency practitioner may 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 the debtor (in the debtor's interests) but in the context of needing to find a 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, 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 assets, in particular the family home, and on any third parties that may be affected.
- 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. This explanation should be confirmed to the debtor in writing.

Preparing for an IVA

13. 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. This should be confirmed in writing if the insolvency practitioner or their firm has not done so before.
- b) The obligations of the debtor to cooperate and provide full and accurate disclosure, are explained and 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 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 a nominee to prepare a report, including:
 - i. the measures taken by the debtor to avoid recurrence of their financial difficulties, if any;
 - ii. the likely expectations of any key creditors;
 - iii. the effect of the IVA on third parties where their view may have an effect on the viability of the IVA; and
- d) Proportionate investigations into, and verification of, income and expenditure and assets and liabilities are undertaken.
- e) Creditors are given adequate time to consider the proposal. Where creditors may need assistance in understanding the consequences of an IVA, the insolvency practitioner should consider signposting sources of help.

The proposal

14. 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 is considered objectively, has substance and contains the following:

- a) sufficient information for creditors to understand the debtor's financial and trading history (where appropriate), including:

SIP 3 IVA E&W and NI clean Page 4 of 5

Commented [MB1]: What is expected here? Where do you suggest IPs send them, to the R3 creditor website?? As it is only a "consider", it seems a fairly pointless addition.

Commented [MB2]: If the IP has drafted it, how can this be achieved? Are you expecting IPs to refer all debtors to an independent 3rd party?? That's one way of creating a new income stream for IVA providers (you scratch my back, I'll scratch yours)!

- 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 solve the debtor's financial difficulties, and the alternative options considered, both prior to and within formal insolvency by the debtor
- b) a comparison of the estimated outcomes of the IVA and the outcome if the IVA is not approved;
- 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) 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;
- f) an explanation of how debts are to be valued for voting purposes, in particular where the creditors include long term or contingent liabilities;
- g) disclosure of the estimated costs of the IVA including the proposed remuneration of the nominee and the supervisor and the bases for those estimates;
- h) the identity of the source of any referral of the debtor, the relationship or connection of the referrer to the debtor and, where any payment has been made or is proposed to the referrer, the amount and reason for that payment;
- i) details of the amounts and source of any 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);
- j) an explanation of how debts which it is proposed are compromised will be treated should the IVA fail; and
- k) the circumstances in which the IVA [may] will conclude or fail, including what may happen to the debtor in such circumstances.
- l)

The nominee

15. It is the responsibility of the nominee to report in relation to the proposed IVA. 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:
 - 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 creditors, and the debtor understands the impact of the modifications on the implementation of the IVA and its viability.
- d) Where a modification is adopted, the insolvency practitioner must ensure that consent is obtained from the debtor and, if appropriate, the creditors.
- e) In the absence of consent, the IVA cannot proceed in a modified form. The debtor's consent, or otherwise must be recorded.

The supervisor SIP 3 IVA E&W and NI clean Page 5 of 5

Commented [MB3]: What level of detail are you expecting here? R15.8(3)(j) requires the notice of decision procedure to state the effects of "R15.31 about the calculation of creditors' voting rights" and this is normally achieved by simply quoting the relevant bits of R15.31. Is this what you also want to see now in proposals (although I would argue that, as statute requires it in the notice, it should not be necessary to add it to the proposal, should it)? Or do you want IPs to go further, say, to explain how the landlord's claim will be calculated?? In addition, isn't the proposal too late a place for this, as it will not apply to how creditors vote on the proposal (as it will only take effect after the proposal has been approved) – ok, it will apply to any decision procedures convened during the IVA, but certainly not beforehand??

Commented [MB4]: Delete?

Commented [MB5]: As the Nominee very likely drafted the proposal, I am not persuaded that they will be able to report objectively on these matters.

16. 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) conferred on the supervisor are exercised where necessary, on a timely basis and that exercise is reported at the next available opportunity.
- f) Any variation to the terms of the IVA has been appropriately approved before it is implemented.
- g) Enquiries by the debtor and creditors are dealt with promptly.
- h) Full disclosure is made of the costs of the IVA and of any other sources of income of the insolvency practitioner, associates of the insolvency practitioner or the firm, in relation to the case, in reports.
- i) If the costs of the IVA have increased beyond previously reported estimates, this increase should be reported at the next available opportunity; and an explanation of the increase provided.

17. The IVA should be closed promptly on completion or termination. When the IVA concludes or fails, the supervisor should ensure that they act in accordance with the IVA proposal. What is to happen should be reported to creditors.

Effective date: This SIP applies to all cases where the nominee is appointed on or after

Commented [MB6]: Is this the statutory definition?