IVA PROTOCOL

Straightforward consumer individual voluntary arrangement

Purpose of the protocol

1.1 The purpose of the protocol is to facilitate the efficient handling of straightforward consumer individual voluntary arrangements (IVAs) (as described below). The protocol recognises that the IVA supports a valid public policy objective by providing debt relief for individuals in financial distress. It also recognises that at the centre of this process there is a person, who needs to understand the process and the associated paperwork and the impact that the IVA will have on their lives.

Scope of the protocol

2.1 The protocol is a voluntary agreement, which provides an agreed standard framework for dealing with straightforward consumer IVAs and applies to both IVA providers and creditors. By accepting the content of the protocol, IVA providers and creditors agree to follow the processes and agreed documentation that forms part of the protocol. IVA providers indicate their acceptance of the content of the protocol by drawing up a proposal based on the standard documentation, and which states that it follows the protocol. Creditors are expected to abide by the terms of the protocol in relation to proposals drawn up on that basis.

2.2 Creditors who are members of the British Bankers' Association have indicated their support for the protocol process in a letter attached at annex 1. A list of BBA members can be found at www.bba.org.uk

2.3 It is accepted that an IVA is a regulated process under statute, which requires certain work to be undertaken, which may have a cost unconnected with the size of the IVA.

2.4 The protocol does not override the regulatory framework relevant to each party (Annex 2).

2.5 For the avoidance of doubt, IVA provider means both insolvency practitioners and IVA provider firms employing insolvency practitioners. References to creditor in this protocol refer to both creditors and the agents who vote on their behalf and act in accordance with their instructions in relation to an IVA.

2.6 The efficient operation of the protocol will be monitored and reviewed by a standing committee. The standing committee is a representative group, its membership reflecting the participants in the IVA process (debtor, creditor, IP, regulatory bodies and government). The terms of reference of the standing committee and details of its current membership are attached at (Annex 3). The committee's role will include communication and consultation, where necessary, on future developments on the IVA protocol.

The straightforward consumer IVA

3.1 Not all cases can be classified as a straightforward consumer IVA. A person suitable for a straightforward consumer IVA is likely to be :

- In receipt of a regular income either from employment or from a regular pension.
- Have 3 or more lines of credit from 2 or more creditors.

3.2 Age is not a consideration, nor is the debt level, though both factors will impact on the overall viability of the IVA.

3.3 The protocol is suitable for both home owners and non home owners. There should be no circumstances where the individual would be forced to sell their property instead of releasing equity. The only exceptions would be where this was proactively proposed by the individual.

3.4 For individuals whose circumstances do not meet the above criteria an IVA may still be the most appropriate means of dealing with their financial problems but their case is unlikely to be suitable for the full application of the protocol procedures. The following are indicators that a person's circumstances are unsuitable for the application of the protocol. If any of these factors are present in an IVA proposal under this protocol they should be specifically highlighted in the proposal and the accompanying summary sheet:

- Uneven/unpredictable income - people with more than 20% of their income coming from bonuses or commission or who are unemployed.
- Benefit income- a debtor with more than 20-25% of their income coming from benefits. For the avoidance of doubt, tax credit is not a benefit.
- Disputed debts - there should be no known material disputes in relation to the debt.
- Investment properties - those with investment properties would not be suitable for a straightforward consumer IVA.
- Possibility of full and final settlement - where a full and final settlement is possible in year 0 (of over 65% of the total debt).
- Low surplus income - if the consumer has a very small surplus income (i.e. 5 years of dividend payments amount to less than 20% of the outstanding debt) and there is significant equity in their home.

3.5 There is nothing to prevent this protocol being applied to individuals who are self-employed, when that self-employment produces regular income. This should be highlighted in the proposal and the accompanying summary sheet.

3.6 The protocol does not require that the debtor has to follow the protocol process, even though his or her situation may fit within the definition of a straightforward consumer IVA. Where this occurs, but elements of the protocol are still used, this should be highlighted in the proposal and the accompanying summary sheet.

Transparency and co-operation

Transparency

4.1 All parties should act openly and disclose all relevant matters.

4.2 The proposal should disclose any previous attempts to deal with the individual's financial problems (e.g. informal payment plans, re-financing, debt management plan, previous IVA or bankruptcy) together with an explanation of why these attempts were unsuccessful. Where the IVA provider or a company or individual connected with the IVA provider was involved in these attempts this should also be disclosed. If the IVA provider or a company or individual connected with the IVA provider is providing any additional services to the individual, for example mortgage brokerage, this should also be disclosed, as should any commission earned.

4.3 All parties to this protocol must publish their processes for dealing with complaints and details of relevant regulatory authorities, in accordance with current requirements. Any complaints should be dealt with in accordance with existing processes.

Cooperation with the standing committee

4.4 Only when provided with all relevant information will the standing committee be able to monitor and review the efficient operation or otherwise of the protocol. Information required for this purpose will be determined by the standing committee. Such information, other than that which is commercially sensitive or which needs to be withheld for reasons of confidentiality, will be provided by IVA providers and creditors at the request of the standing committee.

4.5 All parties may provide information to the standing committee which will enable it to determine the effectiveness or otherwise of the protocol. Similarly, behaviour which does not comply with the terms of the protocol may be reported to the standing committee. However, the standing committee does not override existing regulatory procedures.

Obligations on insolvency practitioners

Advertising

5.1 Advertisements and other forms of marketing should be clearly distinguishable as such and have regard to the OFT Debt Management Guidance and all relevant codes of practice, in particular to the principles of legality, decency, honesty and truthfulness. Any telemarketing should comply with the codes relevant to that activity.

5.2 The IVA provider should not promote or seek to promote their services, in such a way (e.g. by 'cold calling') or to such an extent as to amount to harassment or in a way that causes fear or distress.

5.3 Where an IVA provider advertises for work via a third party, the IVA provider is responsible for ensuring that the third party observes all applicable advertising codes and OFT guidance. Similarly, where an IVA provider accepts from or makes referrals to others, they should also comply with the advertising codes. Third party advertisements should declare any links to IVA providers.

Advice

6.1 When approached by an individual in financial difficulty, the IVA provider will ensure the individual receives appropriate advice in the light of their particular circumstances, leading to a proposed course of action to resolve their debt problem. Full information on the advantages and disadvantages of all available debt resolution processes should be provided. Non-financial considerations should be taken into account.

6.2 It is accepted that for some, bankruptcy is not a preferred option as it could lead to loss of employment or membership of a professional body, which then has other financial consequences. Others may wish to avoid the perceived stigma of bankruptcy.

Verification of information contained in the proposal

Assets

7.1 As required in any IVA, steps should be taken to ensure that the value of all realisable assets is appropriately reflected in the statement of affairs. This may require independent evidence of valuation to be obtained in the case of material assets.

Liabilities

7.2 Full details should be obtained from the debtor of all known and potential creditors. These should be verified by obtaining statements, letters or copies of agreements from each creditor dated within 6 weeks of the debtor's first approach to the IVA provider, and updated as necessary to reflect any changes prior to the issue of the IVA proposal.

Income

7.3 Income should be verified by means of 3 months of pay slips, or a suitable equivalent for the self-employed, and bank statements (in the case of weekly pay slips, it is sufficient to check a selection to cover the 3 month period). In the absence of pay slips (e.g. if they have been lost), then bank statements should be checked.

7.4 If the debtor lives with any person aged 18 or over, and there is reasonable expectation that this person will pay board and lodging to the debtor, this payment must be added to the debtor's income in full.

Expenditure

7.5 The expenditure statement should be forward-looking and in line with Consumer Credit Counselling Service (CCCS) guidelines or the Common Financial Statement (CFS). Generally, there should be no deviation from the expenditure guidelines. However, where additional expenditure is necessary, for example due to special dietary requirements or increased heating bills due to caring for elderly relatives or above average work-related travel costs, this should be clearly explained.

7.6 If the debtor wishes to continue to pay for health insurance, the proposal should contain a note stating why this is considered to be essential expenditure.

7.7 The expenditure elements that require formal verification are:

- Secured loan payments - verification by sight of relevant mortgage or bank statements.
- Rent – verification by sight of rent agreement or relevant bank statement entries.
- Council tax – verification by sight of council tax bill or relevant bank statement entries.
- Vehicle Finance – Verification by means of relevant HP/Finance agreement.
- Other financial commitments such as endowment policies, life policies, pension contributions and health insurance – verification by reference to appropriate documentation.

7.8 Where information for verification purposes, which is readily available and is not excessive, is sought from creditors, this information will be provided free of charge whether the request is made by the IVA provider or the individual.

7.9 The Nominee's report will include a statement that the income and expenditure have been verified by the nominee in accordance with the protocol and provide details of the means used where the individual is self-employed.

Use of standard documentation

8.1 The use of standard documentation will streamline the IVA process and enable creditors to quickly identify those cases which are protocol compliant and also the key information contained therein.

8.2 For protocol compliant IVAs, IPs should use the agreed standard terms (Annex 4) and the summary sheet (Annex 5). There is no standard format for the IVA proposal.

8.3 All documentation should state clearly that the IVA follows the protocol and that the agreed format IVA documentation has been used. Similarly, any variation from the protocol (for example special dietary requirements, see paragraph 7.4) should be clearly identified in all relevant paperwork.

During the IVA

Home equity

9.1 Six months prior to the expiry of the IVA there should be an attempt to release home equity (this would normally be after month 54, unless the IVA has been extended for any reason). However, where the debtor is unable to obtain a re-mortgage, the IVA should instead be extended by up to 12 months.

9.2 The amount of the equity to be released will be based upon affordability from income and will leave the debtor with at least 15% of their equity in the property. Where it is appropriate to re-mortgage the property through a repayment mortgage (as opposed to interest only), the specific limits will be:

- Re-mortgages would be to a maximum of 85% LTV.
- The incremental cost of the re-mortgage will not exceed 50% of the monthly contribution.
- There will be a cap on the total equity release to not exceed 100% of the remaining outstanding debt.

This does not prevent the IVA Provider proposing a more suitable arrangement where the circumstances warrant it.

9.3 If the amount of equity available in the home at month 54 is under £5k, it is de minimis, and does not have to be released, and there would be no adjustment to the IVA term.

9.4 The costs of re-mortgaging to release equity should be deducted from the mortgage proceeds and the monthly payments deducted from the contribution. If the increased cost of the mortgage means that dividends to creditors fall below £50 per month after fees, monthly contributions are stopped, and the IVA is concluded.

9.5 A clause detailing the above is to be included, where appropriate in the individual's proposal and the summary sheet (Annex 5) will identify that this clause is included. The proposal should include a valuation of the freehold property based on current value inflated by 4% per annum for the period to when the debtor may be asked to remortgage the property [or] for the period to month 54 of the arrangement. This estimate should be shown in the outcome statement, together with the rate of inflation used and the date to which the estimate has been made.

9.6 As in any IVA, the debtor should be provided with a clear explanation of the effects of the IVA, in particular the possible effect that it will have on his/her home.

9.7 At the time the debtor is asked to release the equity in their property, the Supervisor or a suitable member of his/her staff, must advise them that they should seek advice from an independent financial adviser, such advice to include the most appropriate mortgage vehicle and the length of the proposed repayment term.

Use of discretion, variation and failure

10.1 The supervisor has the discretion to admit claims of £1,000 or less, or claims submitted that do not exceed 110% of the amount stated by the debtor in the proposal, without the need for additional verification.

10.2 The IVA provider should ensure that they are provided with copies of payslips (or other supporting evidence) every 12 months. The supervisor is required to review the debtor's income and expenditure once in every 12 months. The debtor will be required to increase his monthly contribution by 50% of any net surplus one month following such review. The supervisor will also be able to reduce the dividend by up to 15% in total relative to the original proposal (without referring back to creditors), to reflect changes in income and expenditure.

10.3 Where the individual has failed to disclose exceptional income, the term of the IVA may be extended by up to a maximum of 6 months to recover any sums due, without any modification being required.

10.4 Where the individual is unable to remedy any breach of the arrangement, the supervisor shall as soon as practicable report to creditors and obtain their agreement to do one of the following:

- vary the terms of the arrangement, or
- issue a certificate ("Certificate of Termination") terminating the arrangement by reason of the breach; and/or
- present a petition for the individual's bankruptcy

Reporting to creditors

11.1 The annual report to creditors prepared by the IVA provider should include details of the individual's income and expenditure, based on information obtained including payslips and P60s. The individual should also be asked to provide verified details of their expenditure and any material changes to it.

Where the supervisor has used his or her discretion to vary the dividend payment, in accordance with 10.3, that should also be recorded in the annual report.

Obligations on creditors

Treatment of customers

12.1 In all dealings with a customer proposing an IVA under this protocol, creditors will continue to treat the customer in accordance with the regulatory standards and codes of practice to which they are subject, as set out in annex 2.

12.2 Throughout the duration of a protocol compliant IVA, creditors will treat their customer as referred in 12.1. Furthermore, creditors will co-operate with the duly appointed nominee and supervisor in relation to the efficient operation of this protocol and providing their obligations are being met.

12.3 Lenders should take reasonable measures to avoid offering further credit to individuals known to have an IVA in place, unless this is in justifiable circumstances (e.g. for re-mortgage purposes). However, it should be recognised that relevant information is not always readily available to creditors and may sometimes be withheld by debtors.

Acceptance of protocol compliant IVAs

13.1 It is understood that one of the aims of the protocol is to improve efficiency in the IVA process and to this extent creditors and IVA providers will 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.

13.2 Where a creditor or their agent on their behalf votes against a protocol compliant IVA proposal, their reason for so doing should be disclosed to the IVA provider.

13.3 By voting in favour of a protocol compliant IVA, creditors accept that the supervisor has discretion as referred to in section 10 above and in the standard terms, and should not challenge the use of that discretion.

13.4 Creditors should make reasonable endeavours to provide a proof of debt (in the form required by the IVA provider) 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 called to approve the proposal.

13.5 Creditors not submitting claims within 4 months of the meeting to approve the proposal will be excluded from participating in dividend payments, unless a reasonable explanation is provided for why this delay has occurred. In cases where the supervisor accepts the explanation is reasonable, those creditors will be entitled to receive their full share of dividends, notwithstanding the fact that some distributions may have been made prior to the submission of the claim.

Income and expenditure

14.1 Creditors will normally accept income and expenditure statements drawn up on the basis of generally accepted standard financial statements and verified in accordance with this protocol, as the basis of a protocol compliant IVA proposal. For this purpose standard financial statements includes the CCCS guidelines and the CFS, once revised.

14.2 Creditors will follow the guidance in the Banking Code in relation to the use of standard financial statements and will have the right to challenge such statements as described in the guidance to use of the CFS (e.g. where the creditor is aware of a history of fraud or other information which would raise concerns about the validity of the information).

Use of agents

15.1 It will be the responsibility of creditors to ensure that any agents carrying out instructions or acting on their behalf in relation to a protocol compliant IVA, do so in accordance with this protocol and in accordance with applicable regulatory requirements.

15.2 Where a creditor requires communication regarding the debt due or the IVA proposal to be sent via its agent, the creditor should ensure that details of the appropriate contact are provided to relevant IVA providers.

Sale of debt

16.1 Where debt is sold when an IVA is proposed but before it has been approved, creditors should ensure that the debt buyer is a signatory to the Banking Code or follows the principles contained in the Banking Code and complies with OFT Debt Collection Guidance.