The Straightforward Consumer IVA Protocol 2013 version

Effective from January 2013

IVA PROTOCOL

Straightforward consumer individual voluntary arrangement hereinafter referred to as a Protocol Compliant Individual Voluntary Arrangement (PCIVA)

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.

- 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 the first year.

3.5 A reasonably steady income stream is necessary in order to be suitable for the application of the protocol. There is nothing to prevent this protocol being applied to individuals who are self-employed, when that self-employment produces regular income. Where income is uneven/unpredictable, (e.g. people with more than 20% of their income coming from bonuses or commission), 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 debtor's financial problems (e.g. informal payment plans, refinancing, debt management plan, previous IVA or bankruptcy) together with a disclosure by the debtor if there were any dealings with the nominee or businesses

connected with the nominee and an explanation of why these attempts were unsuccessful. There should also be disclosed any payments made by the debtor in relation thereto.

Specific attention is drawn to Statement of Insolvency Practice 3 (SIP 3) and the nominee is reminded as to the information that is required to be disclosed either in the debtor's proposal or the nominee's report.

4.3 The nominee will enquire of the debtor as to whether he/she has made any payments in connection with the matters set out in clause 4.2 to any party prior to contacting the nominee's organisation. Unless separately disclosed in accordance with SIP 3, the nominee shall record within his/her report the amount, date and nature of any such payments made by the debtor in the last 12 months prior to proposing the IVA.

4.4 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

4.5 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.

4.6 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 (eg by use of the guide entitled 'In Debt? Dealing With Your Creditors' which may be made available by the provider or can be found on the Insolvency Service website at www.bis.gov.uk/insolvency/Publications/publications-by-theme/dealing-with-debt-publications). 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. The IVA provider should use their best endeavours to verify the outstanding balances 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. If for whatever reason the IVA provider is unable to verify any material creditor balances, this should be identified in the Nominee's report.

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 StepChange Debt Charity guidelines (formerly CCCS) 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 a) If the debtor wishes to continue to pay for health insurance or payment protection insurance, the proposal should contain a note stating why this is considered to be essential expenditure.

b) Where the debtor is below the age of 55 at date of entry into the IVA, only minimum contributions to the pension scheme should be allowed. Where the debtor is aged 55 or above at the date of entry into the IVA, an average of the last 6 months' pension contributions should be allowed, subject to a contribution limit of £75 above the minimum pension contribution allowed by the scheme per month. If no minimum contribution is stated by the scheme, debtor contributions will be restricted to 4% of the debtor's gross salary. Where the debtor is a member of multiple schemes, these limits should be applied to the aggregate amount of the debtor's contributions.

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.
- Pension – verification by sight of pension scheme documentation and/or wage slip/pension contribution statement.
- Other financial commitments such as endowment policies, life policies, health insurance and payment protection 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 conditions (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, and which version of the protocol or Standard Conditions is being used. There is no requirement to send out the protocol Standard Conditions to creditors, but the provider must make clear how a copy of these can be obtained. A hard copy must be made available on request without charge. Similarly, any variation from the protocol (for example special dietary requirements, see paragraph 7.5) should be clearly identified in all relevant paperwork.

During the IVA

Home equity (Net worth)

9.1 Six months prior to the expiry of the IVA (hereinafter referred to as the review date), there should be an attempt to release the debtor's net worth in the property. The review date would normally be after month 54, unless the IVA has been extended for any reason. However, subject to 9.3 below, where the debtor is unable to obtain a remortgage, the supervisor will have the discretion to consider accepting one of the following alternative proposals:

- a third party sum equivalent to 85% of the value of the debtor's interest in the property; or
- 12 additional monthly contributions (with the aggregate sum paid to the supervisor being limited to 85% of the value of the debtor's interest in the property).

9.2 The amount of the net worth to be released will be based upon affordability from income and will leave the debtor with at least 15% of his/her net worth in the property. Where it is appropriate to remortgage the property, the specific limits will be:

- Remortgages would be a maximum of 85% Loan To Value (LTV).
- The incremental cost of the remortgage, including cost of any new repayment vehicle, will not exceed 50% of the monthly contribution at the review date.
- The net worth released will not exceed 100p in the £ excluding statutory interest.
- The remortgage term does not extend beyond the later of the debtor's State retirement age or the existing mortgage term.
- The amount of money introduced into the arrangement will be the mortgage proceeds less the costs of the remortgage, including any costs to redeem any existing mortgage and/or secured loan

Examples illustrating the calculation of available net worth are in Annex 7

9.3 If the amount of the debtor's net worth net of remortgage costs in the home at the review date is under £5k, it is considered de minimis, and does not have to be released, and there would be no adjustment to the IVA term.

9.4 The monthly payments arising from the remortgage will be deducted from the contribution. If the increased cost of the mortgage means that monthly contributions fall below £50 per month, such monthly contributions are stopped, and the IVA is concluded.

9.5 A clause detailing the above as set out in Annex 6 is to be included, where appropriate, in the individual's proposal and the summary sheet (Annex 5) will identify that this clause is included.

9.6 The debtor should be provided with a clear written explanation illustrating the possible net worth to be released, taking into account:

(a) no increase in property value as stated in the proposal;
(b) the current value inflated by 4% pa (simple interest) at the review date;
(c) the estimated outstanding mortgage at the review date.

9.7 At the time the debtor is asked to release the net worth in his/her property, the supervisor, or a suitable member of his/her staff, must advise him/her that he/she 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.

9.8 For the purpose of the release of net worth the property shall be subject to an independent professional valuation on an open market basis.

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 supervisor should ensure that he/she is 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, using the CCCS guidelines or the CFS. Where appropriate, and at the request of the supervisor, the debtor must verify increases in outgoings by providing documentary evidence. The debtor will be required to increase his/her monthly contribution by 50% of any increase in the net surplus as shown in the original proposal one month following such review.

10.3 The supervisor will be able to reduce the contribution by up to 15% in total (relative to the original proposal or last agreed variation) without referring back to creditors, to reflect changes in income and expenditure, such change to be reported in the next annual review.

10.4 Where the individual is employed, the debtor must report any overtime, bonus, commission or similar to the supervisor if not included in the original surplus calculation, where the sum exceeds 10% of the debtor's normal take home pay. Disclosure to the supervisor will be made within 14 days of receipt and 50% of the amount (over and above the 10%) shall be paid to the supervisor within 14 days of the disclosure. Failure to disclose any such overtime, bonus, commission or similar by the debtor will be considered a

breach of the IVA and the supervisor shall notify the creditors in the next annual report with proposals for how the breach is to be rectified.

10.5(a) A debtor who is subject to redundancy whilst in an IVA must:

- Inform his/her supervisor within 14 days of notice of redundancy, regardless of whether he/she has received or is to receive any redundancy payment;
- Inform his/her supervisor of the amount of any redundancy payment within 14 days;
- Pay to the supervisor within 14 days of receipt of any redundancy payment any amount in excess of 6 months net take home pay (as set out at the last annual review date). If there is no amount in excess of 6 months net take home pay no payment is required;
- Where possible, continue to make monthly contributions into the IVA as set out at the last annual review date;
- Keep the supervisor informed of any changes in employment status.

Where the debtor is unable to make contributions this will be reviewed by the supervisor.

At the point new employment is obtained the supervisor will review the debtor's IVA contributions and at that point there will be an expectation that any remaining redundancy funds will be paid into the IVA, and the debtor's performance in this regard will be reported to creditors.

10.5(b) Failure to disclose any such entitlement to redundancy payment will be considered a breach of the IVA.

10.6 A debtor will be allowed a payment break of up to 6 months once during the term of the IVA without any modification being required at the discretion of the supervisor. The term of the IVA will be extended by the length of the payment break so that the debtor will make the same number of contributions as agreed in the original proposal. An agreed payment break will not constitute a breach. Where the supervisor agrees a payment break, the creditors should be notified within 3 months from the date of agreement. At the conclusion of an agreed payment break the supervisor shall if necessary review the position and consult with creditors where appropriate.

10.7 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 (to correct the breach), without any modification being required.

10.8 Where the individual is unable to remedy any breach of the arrangement, the supervisor must report within 28 days to the creditors and either issue a Certificate of Termination or if the Supervisor feels it appropriate seek creditor views 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 contribution, 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.

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.

13.5Creditors not submitting claims within 4 months of the meeting to approve the proposal or by the date of the first dividend (whichever is the later) will be entitled to participate and receive their full share of dividends (subject to the requirement for the supervisor to adjudicate the authenticity and value of the

claim), but are not entitled to disturb a distribution made prior to the submission of their 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 (and any revisions in respect thereof).

14.2 Creditors will follow the guidance in the Banking/Lending Code (or any Code that replaces it)

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/Lending Code or follows the principles contained in the Banking/Lending Code and complies with the Office of Fair Trading (OFT) Debt Collection Guidance.