

## INDIVIDUAL VOLUNTARY ARRANGEMENTS

### FACT SHEET NO. 1 – NORTHERN IRELAND

#### What is an individual voluntary arrangement (IVA)?

An individual voluntary arrangement (IVA) is a legally binding agreement between you and your creditors. This agreement allows you to repay what you can afford towards your debts, with the remainder written off by your creditors when the arrangement is completed.

An IVA can be set up in a number of different ways. It can either be a monthly instalment plan based on your surplus income over a fixed term (**normally five years**), or if it is deemed you do not have a monthly surplus income to offer your creditors you can propose a short term arrangement if you have an asset that can be sold or a third party has a lump sum to offer your creditors. An IVA can also be a mixture of both instalments and a lump sum.

An IVA can be a very effective way to deal with your debts. However, there are both advantages and disadvantages of IVAs. These are discussed later in this fact sheet. If you have any queries, please **phone us for advice** before deciding whether to go ahead with an IVA.

#### Is an IVA suitable for me?

An IVA could help you to deal with your debts if you are:

- a sole trader or partnership and have business or personal creditors, or both; **or**
- if you are the director of a limited company and have personal debts that you cannot afford to pay in full.

An IVA cannot be used to deal with the debts of a limited company. **Phone us for advice** about the options available to a limited company to deal with its debts.

For an IVA to be a realistic option, you would normally need to have:

- at least **three** debts totalling **£10,000** or more; **and**
- **two** or more different creditors; **and**
- be able to pay back at least **10p** for every **£1** of debt that you owe to them.

These criteria are a guide only. You may still be able to consider an IVA even if your circumstances fall outside of these guidelines. You can also propose an IVA even if you have been made bankrupt.

If you and your domestic partner meet these criteria by taking into account both of your circumstances, you can also propose an IVA together. This is known as an 'interlocking IVA'. **Phone us for advice.**

## Is an IVA suitable if I am in a partnership?

If you are in a partnership, an IVA may still be an option but it must take into account your personal liability for debts the partnership owes. These creditors could still take action against the partnership itself or against other partners.

If you and your business partners have personal debts, as well as debts owed by the partnership, you could propose an arrangement to deal with all debts at the same time. **Phone us for advice.**

## What debts can be included in an IVA?

You can include most types of debt in your IVA proposal including priority debts such as business rates arrears, tax debts, fuel debts and trade supplier debts. However, you cannot include:

- maintenance, or arrears of maintenance, ordered by a court;
- child support agency arrears;
- magistrates' court fines;
- mortgage, secured loan or rent arrears on your current home or business premises unless your landlord agrees (which is unlikely); **and**
- student loans.

If you are unsure what debts you can include in an IVA, **phone us for advice.**



### Warning

If you do not give complete information in an IVA about your assets and debts you could be committing a criminal offence.



### Warning

Be careful if you have a hire-purchase or lease agreement. Check the agreement to see if there is a clause which allows the creditor to end the agreement if you enter into an IVA and **phone us for advice.**

## What is the procedure for an IVA?

An IVA has to be set up by an insolvency practitioner (IP). An IP is usually an accountant or solicitor who is authorised to set up IVAs.

Once an IP has agreed to make an IVA proposal for you, they can apply to the High Court of Justice in Northern Ireland for an 'interim order'. This stops your creditors from starting or continuing bankruptcy proceedings against you. It also stops any other enforcement action without the court's permission whilst an interim order is in place. If you wish to obtain an interim order you must usually pay the costs involved upfront to your IP.



### Information

You can put forward an IVA proposal without applying for an interim order but your creditors can still take enforcement action against you until the IVA is agreed.

The IVA process is as follows.

- You provide all the necessary information and documentation to your IP to allow them to prepare the proposal on your behalf. You agree the content of the proposal with your IP and the offer proposed to your creditors.
- The IP sends the IVA proposal to all your creditors and arranges a formal meeting called a 'creditors' meeting'.

- At the meeting your creditors have to vote on whether to accept the IVA. Usually creditors send their vote to the IP by post/fax/email & don't actually attend the meeting.
- The proposal has to be accepted by **75%** 'by value' of the creditors that submit votes for it to become legally binding on all your creditors.
- **'By value'** means voting creditors who hold more than **75%** of your total debt, not the number of creditors you have.
- This means that if the creditors to whom you owe the highest amount vote against the proposal, the IVA may not be accepted.

### Advice

If HMRC is your biggest creditor, they have criteria that must be satisfied for them to accept an IVA. If HMRC have a significant share of the debt owed, **phone us for advice**.

- Creditors can approve your IVA but also submit modifications to the terms of the IVA and ask you to agree to pay more every month, or include assets that you initially excluded from the IVA. They could also ask you to make payments for a longer period. However, you have to agree to accept these modifications, and the IVA is not approved until you do so.
- If the IVA is approved, your IP will supervise the arrangement and make sure you fulfil the obligations you have agreed to in your IVA.
- If the IVA is rejected, you are back to the same position as you were in before you made the application. You will have to negotiate with all your creditors

separately. You could still apply for another IVA if your circumstances change and you can improve the proposal you made before. **Phone us for advice.**

### Information

If you have applied for an interim order, you have to wait **12 months** before you can apply for another interim order. However, you don't need one to apply for an IVA.

## What about my home?

If you are a home owner, your IP will normally include an 'equity clause' in your IVA proposal. This means that during the IVA (normally in **year four**) if there is equity in your property you would be expected to attempt to obtain a secured loan or re-mortgage to release your share of these funds.

If you are able to re-mortgage or get a secured loan then the repayments will also have to be affordable. You should also be left with equity of at least **15%** of the value of your share of the property.

If you are unable to get a re-mortgage or secured loan, and there is equity in your property then you usually must make an additional **12 monthly repayments** in lieu of your share of equity, rather than selling your home to release this equity.

### Information

The rules described in this section do not apply to buy-to-let properties. If you own one or more buy-to-let properties and you are considering entering into an IVA, **phone us for advice**.

If you are unable to maintain the payments on your IVA and it subsequently fails, there is a risk that your creditors may request your IP to make you bankrupt, which could then result in you losing your home.

## What if I want to propose a self-employed IVA?

Business Debtline can refer you to an Insolvency Practitioner (IP) and do a lot of the initial work and advice before referring you to an IP.

Our panel of IPs have agreed the following:

- You will not be charged up-front fees and you will not be asked to make any payments until the IVA proposal has been agreed by your creditors.
- You will be able to take further independent advice from Business Debtline whenever you want to.
- Your IP should keep you fully informed about your IVA and should make sure you fully understand what the IVA will mean for you.

## Do I have to use an insolvency practitioner recommended by Business Debtline?

No, you do not have to use one of the IP's that we work with. If you prefer, we can give you advice on how to find one yourself.

## What do I do next?

If you are interested in setting up an IVA through Business Debtline, **phone us for advice**. We will be able to discuss an IVA with you, as well as advising you on what other options you may have for dealing with your debts.

## What will I be charged for an IVA?

All IPs will charge fees for setting up and supervising an IVA. The level of the fees the IP can charge will be agreed at the creditors meeting by your creditors, and these fees are taken from the funds you have proposed to pay into your IVA. Our panel of IP's will not charge you anything if your IVA is rejected.

If you use an IP from the Business Debtline panel, we may receive a referral fee from the IP. This is for the work we have carried out collecting information about your circumstances. We use any payments we receive to support our ongoing work of giving free help and advice to people with debt problems.

## What if my circumstances change after the IVA is agreed?

If your circumstances change, you must tell your IP. If you are unable to keep up with your payments, your IP can ask the creditors to accept lower payments and agree a 'modified' IVA. If you cannot make any payments, or your creditors refuse to accept lower payments, your IVA may fail.

If this happens, your IP may then have to petition for your bankruptcy, but this will not happen in all cases. Your creditors can then also take action against you and make you bankrupt, so it is very important to immediately contact and agree payment arrangements with each of your creditors separately to stop this happening.



### Information

If your circumstances change, your IP can usually allow small changes to the amounts you pay. You may also be able to get a payment break. **Phone us for advice.**



### Advice

Check the terms and conditions of your bank account to make sure that it will not be affected by an IVA in any way.

## What are the advantages of an IVA?

- You will not pay any upfront fees if you use an IP from the Business Debtline panel.
- You can normally continue to trade.
- You can normally keep your business assets.
- Repayments are made for an agreed period and your contributions will be based on what you can afford which is usually only a percentage of the full amount you owe.
- The remainder of your unsecured debt is written off upon the successful completion of your IVA.
- Interest and charges will be frozen.
- You can continue with secured finance agreements (subject to the agreements terms).
- You will not automatically lose your house or any other assets. See the earlier section 'What about my home?'.
- You will not have the same restrictions on you as you would if you went bankrupt. For example, you can usually still use your bank account without saying you have an IVA.

## What are the disadvantages of an IVA?

- The income you draw from your business may vary throughout the year. This can make it difficult to keep to the payments under the IVA.
- You must declare all assets and liabilities in your IVA. You cannot leave out any creditors as they must all be treated equally.
- If you do not keep to the terms of the IVA then the IP or your creditors can take further action against you if the IVA fails, for example by making you bankrupt.
- If your circumstances change and you can no longer afford the payments, your IVA may end if the IP cannot persuade the creditors to accept a variation of your IVA.
- If creditors do not accept the IVA proposal you are back to square one and your creditors can carry on trying to pursue you for your debts.
- You must stick carefully to your budget during your IVA. You must be very careful that the payments are set at a realistic amount in the first place.
- The IVA will be recorded on your credit reference file for **six years** and this can affect your ability to get further credit.



### Information

Under the rules of the **Consumer Credit Act 1974**, your creditors will usually have to keep sending you annual statements, as well as arrears and default notices in a set format. This will happen even when you are in an IVA but should stop once your IVA is completed. Don't worry. This does not mean that there is a problem with your IVA. If you receive other letters demanding payment, you should contact your Insolvency Practitioner or **phone us for advice**.

## What if I am bankrupt and want an IVA?

- The law says that you may still be able to get an IVA after you are made bankrupt. You can use an IP, or you can apply for it through the official receiver after you are made bankrupt.
- Putting a proposal to the official receiver after you are bankrupt is called a 'Fast-Track' voluntary arrangement (FTVA).
- The official receiver will agree to act as supervisor of the FTVA if they feel it will produce a better return for your creditors than they would receive through bankruptcy.
- There are set fees for this process so costs are limited.
- There is no formal creditors' meeting.
- The FTVA proposal cannot be modified.
- If the FTVA is agreed, the official receiver will annul (cancel) your bankruptcy order.

- If your FTVA fails because of circumstances beyond your control, the creditors could make you bankrupt again but the official receiver will not take any further action.

## Where will details be kept about my IVA?

### Public register

Records of IVAs and FTVAs are kept on a public register called the NI Individual Insolvency Register. You can search this for free. Go to

<http://www.detini.gov.uk/insolvency-iva-register>

Alternatively, you can search the register by visiting the Insolvency Service at Fermanagh House, Ormeau Avenue, Belfast, BT2 8NJ. Your IVA or FTVA will remain on the register until it is completed or terminated.

### Credit reference agency files

Records of IVAs are normally held on credit reference agency files for **six years** from the date the IVA began. This can make it difficult for you to continue running your business if you rely on using credit facilities. If the IVA lasts longer than **six years**, it will remain on your credit file until the date the IVA ends. The IVA is marked 'complete' by the credit reference agency when they are informed of this by the Insolvency Service. We would also recommend you send a copy of the letter from your IP to the three credit reference agencies so that your credit file is updated.

You may continue to find it difficult to get credit even after the IVA has been removed from your credit file. This is because some lenders may ask if you have ever had an IVA or been bankrupt in the past. This will depend on the lender's policy.

## What other options are there?

There may be alternative options for you to deal with your debts. For example, you may wish to consider a debt-management plan. This is an informal arrangement which involves paying your surplus income to a debt-management company. The debt-management company then negotiates reduced repayments with your creditors. Bankruptcy could also be suitable for you. Bankruptcy is a court order which ends liability for most debts. However, it involves your assets being sold to raise money to pay to your creditors and may make it difficult for you to continue being self-employed. Each option has advantages and disadvantages. It is important to consider these carefully before you make a decision about which option is best for you. **Phone us for advice.**

**Remember: You can always contact us for advice about any difficulty you have in dealing with your debts. Advice and information for businesses in NI is provided by Business Debtline working in partnership with Advice NI.**

**Freephone 0800 0838 018 Websites [www.businessdebtline.org](http://www.businessdebtline.org) [www.adviceni.net](http://www.adviceni.net)**

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