

# **The Straightforward Consumer IVA Protocol 2016 version**

Revised 20 June 2016  
Effective from 1 October 2016

## **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 a 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 While IVAs are a product of insolvency legislation those IPs who are subject to FCA authorisation whether through their firm or as an employee of an FCA authorised firm must comply with the FCA's Consumer Credit Sourcebook (CONC). They may adopt processes and procedures that comply with CONC so long as to do so would be consistent with insolvency legislation.
- 2.3 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](http://www.bba.org.uk).
- 2.4 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.
- 2.5 The protocol does not override the regulatory framework relevant to each party (Annex 2).
- 2.6 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. Consumer means a person in debt or the debtor.
- 2.7 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 (consumer, 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.

- 2.8 The FCA describe vulnerability as follows. “A vulnerable consumer is someone who, due to their personal circumstances, is especially susceptible to detriment, particularly when a firm is not acting with appropriate levels of care.” A firm should have clear and effective policies to identify consumers in vulnerable circumstances and deal with such consumers appropriately. Financial difficulties can be a potential type of vulnerability but IVA providers and creditors also need to consider a wide range of potential vulnerabilities in order to support consumers in in vulnerable circumstances. Further information can be found at: <http://www.fca.org.uk/your-fca/documents/occasional-papers/occasional-paper-8>.
- 2.9 If the consumer is struggling with the standard processes, the IVA provider should make appropriate arrangements for the consumer to interact with the IVA in a way that is appropriate to the consumer’s needs. The IVA provider could also consider engaging family members, health professionals and charities who have no financial interest to support vulnerable consumers (not just those who are financially vulnerable).
- 2.10 Explicit consent needs to be obtained from the consumer to disclose and record vulnerabilities such as terminal illness, mental health issues, age etc. Full transparency is recommended as creditors should take these vulnerabilities into account when considering an IVA proposal.

### **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 sustainable income for example, but not limited to, 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. IVA providers should consider the suitability of an IVA with caution for an individual whose income is mainly made up of benefits.
- 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 consumer 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.
- 3.7 Consumers should be provided with a copy of the IVA protocol. This can be either through provision of a physical copy or providing an electronic link.

## **Transparency and co-operation**

### **Transparency**

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

The proposal should disclose any previous attempts to deal with the consumer's financial problems (e.g. informal payment plans, refinancing, debt management plan, previous IVA or bankruptcy) and whether they have been rejected by creditors. The consumer should disclose if there were any dealings with the nominee or businesses or associates connected with the nominee and provide an explanation of why these attempts were unsuccessful. Specific attention is drawn to Statement of Insolvency Practice 3.1 (SIP 3.1) and the nominee is reminded as to the information that is required to be disclosed either in the consumer's proposal or the nominee's report.

- 4.2 The nominee will enquire of the consumer as to whether he/she has made any payments in connection with the matters set out in clause 4.1 to any party prior to contacting the nominee's organisation. Unless separately disclosed in accordance with SIP 3.1, the nominee shall record within his/her report the amount, date and nature of any such payments made by the consumer in the last 12 months prior to proposing the IVA.
- 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. In the event that a consumer is not happy with the outcome of the complaint IPs should direct consumers or other interested parties who wish to make a complaint to the insolvency service gateway <https://www.gov.uk/complain-about-insolvency-practitioner>.

For complaints relating to Northern Ireland cases the details are <https://www.detini.gov.uk/articles/making-complaint-against-insolvency-practitioner>.

### **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 ought to observe the FCA Consumer Credit Sourcebook chapter 3 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 the FCA Consumer Credit Sourcebook chapter 3. 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. The IP has a responsibility to ensure that any lead generators that they use follow the rules and codes.

### **Advice and information**

- 6.1 When approached by an individual in financial difficulty, the IVA provider will ensure the individual receives appropriate advice or information in the light of their particular circumstances, leading to a proposed course of action to resolve their debt problem. Every individual who proposes an IVA should be given this advice or information. Full information on the advantages and disadvantages of all available debt resolution processes should be provided.
- 6.2 Non-financial considerations should be taken into account. There are a range of options that may be appropriate in individual circumstances and all advice and information given and action taken should have regards to the best interests of the consumer. Sufficient information must be provided about the available options identified as suitable for the consumer's needs. 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.
- 6.3 In addition to other regulatory requirements the IVA provider should take the following into consideration:
  - a. Fair treatment of consumers is central to the firm's culture.

- b. IVAs are offered accordingly.
- c. IVA and its service functions as the consumer is led to expect (likely to successfully complete).
- d. Advice is suitable and appropriate for the individual.
- e. There is clear information before, during and after appointment.
- f. There are no barriers created to make a complaint.

## **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 consumer 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 consumer'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 significant creditor balances, this should be identified in the Nominee's report.

### **Income and Expenditure**

- 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 consumer lives with any person aged 18 or over there is reasonable expectation that this person will pay board and lodging to the consumer.
- 7.5 The expenditure statement should be forward-looking and in line with StepChange Debt Charity guidelines, the Common Financial Statement (CFS) or Standard Financial Statement approved by the Money Advice Service (MAS). Generally, there should be no deviation from the expenditure parameters. 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. The expenditure should be at a level that is likely to be sustainable and not cause undue hardship to consumers.
- 7.6 a) If the consumer 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 consumer 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 consumer 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, consumer contributions will be restricted to 4% of the consumer's gross salary. Where the consumer is a member of multiple schemes, these limits should be applied to the aggregate amount of the consumer'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 the rent agreement or relevant bank statement entries.
- Council tax – verification by sight of council tax bill, internet confirmation, 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.

7.10 Where possible, the consumer should provide a budget which reflects the income and expenditure for the household. Where a budget is only provided for one individual in a household, there should be an explanation why further information is not available.

### **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 consumer'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 consumer 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 consumer'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 consumer's interest in the property).
- 9.2 In the event that additional contributions are paid, the term of the IVA will be automatically extended by the number of months required.
- 9.3 The amount of the net worth to be released will be based upon affordability from income and will leave the consumer with at least 15% of his/her net worth in the property. Where the net worth is released by way of a secured loan, consideration should be given to the term and interest rate applied to the loan and the principles of treating the consumer fairly. Remortgage includes other secured lending such as a secured loan. 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 consumer's State retirement age or the existing mortgage or other secured lending 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.

- 9.4 If the amount of the consumer'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.
- 9.5 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.
- 9.6 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.
- 9.7 The consumer should be provided with a clear written explanation illustrating the possible net worth to be released, taking into account:
- (i) no increase in property value as stated in the proposal;

- (ii) the current value inflated by 4% pa (simple interest) at the review date;
- (iii) the estimated outstanding mortgage at the review date.

- 9.8 At the time the consumer 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.
- 9.9 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 without a claim form, or claims submitted that do not exceed 110% of the amount stated by the consumer 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 consumer's income and expenditure once in every 12 months, using the StepChange Debt Charity guidelines, the Common Financial Statement or Standard Financial Statement approved by MAS. Where appropriate, and at the request of the supervisor, the consumer must verify increases in outgoings by providing documentary evidence. The consumer 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 consumer 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 consumer'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.
- 10.5 Failure to disclose and/or pay any such overtime, bonus, commission or similar by the consumer will be considered a breach of the IVA. Where the individual has failed to disclose and/or pay exceptional income, the term of the IVA may be extended by up to a maximum of 6 months to recover any sums due (to remedy the breach), without any variation being required.
- 10.6 A consumer 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 consumer is unable to make contributions this will be reviewed by the supervisor.

At the point new employment is obtained the supervisor will review the consumer'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 consumer's performance in this regard will be reported to creditors.

- 10.7 Failure to disclose any such entitlement to redundancy payment or pay the excess over 6 months of take home pay will be considered a breach of the IVA.
- 10.8 If a consumer is faced with an emergency item of expenditure or an unforeseen reduction in income and they are unable to pay either the full amount due or anything at all, then, subject to the discretion of the Supervisor, they may be allowed to take payment holidays or make reduced payments without a variation being required. This is subject to three conditions, all of which have to be met:
- (i) Full details of the inability to pay must be provided to the Supervisor's satisfaction;
  - (ii) In total, no more than the equivalent of 9 months payments can be agreed to be missed in this way; and
  - (iii) The duration of the IVA will be extended by no more than 12 additional months to recover the sums due, unless the consumer has otherwise made good the shortfall.

Any missed payments agreed in this way should not be counted in the arrears of contributions which would be regarded as a breach of the IVA and details of this will be included in the next report to creditors.

- 10.9 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 pay slips 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 consumers**

- 12.1 In all dealings with a consumer proposing an IVA under this protocol, creditors will continue to treat the consumer 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 to 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 consumers.

## **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 should not put forward modifications which are already included in the proposal.
- 13.6 Creditors 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 StepChange Debt Charity guidelines and

the Common Financial Statement (and any revisions in respect thereof) or any Standard Financial Statement approved by MAS.

- 14.2 Creditors will follow the guidance in the FCA Consumer Credit Sourcebook and the Lending Code (or any Code that replaces it) if they are bound by 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 Lending Code or follows the principles contained in the Lending Code and complies with the guidance in the FCA Consumer Credit Sourcebook.

18 December 2007

### **OPEN LETTER TO INSOLVENCY SERVICE**

At our jointly hosted IVA Forum on 31<sup>st</sup> May a request was made that the BBA provide a written response to the “straightforward consumer-based IVA” proposals to confirm the support of member banks for this industry-led proposition.

In my open letter of 24<sup>th</sup> May, just prior to the IVA Forum, I was able to confirm that our senior committee had agreed in principle to the proposals put forward. Since that time the Insolvency Service, together with industry participants, has continued to work hard towards implementation of the IVA protocol and related standard documentation. The protocol has now been revised in order to provide its content in a format considered to be more appropriate to industry users and to provide clarification of the obligations of creditors in relation to the IVA process. We are, however, satisfied that there have been no substantive changes in the proposals presented to the IVA Forum, which were of course based on the recommendations made by the four cross-industry working parties. On that basis I am pleased to be able to confirm the continuing support of our members as we move towards full implementation of the new standards. In practice that means that our members are expected to abide by the terms of the protocol in relation to proposals drawn up on the basis of the protocol.

It was helpful to see from your recent statement that there remains a strong commitment from all parties that you met with over the summer to the IVA Forum/ Protocol process. We would also concur with your comment that “debtors should have access to the debt management solution identified as the most appropriate to their circumstances and their ability to repay their debt in a reasonable timescale” – where the most appropriate solution is an IVA, then our hope is that an IVA is made available.

We also seek a satisfactory outcome for all stakeholders and consider this is most likely to be achieved in a timely and effective manner through conclusion of the industry process, rather than looking for a regulatory solution. The hope expressed by creditors at the time of the IVA Forum was that if trust continued to build through the cross-industry work, then creditors might feel more confident to re-examine their own practices in relation to the consideration of IVA proposals. We reiterate that statement and consider that delivery of the IVA protocol is essential to the building of that trust.

We agree to this letter being appended to the IVA protocol document which was approved at the meeting of the Standing Committee on 30<sup>th</sup> November.

Yours sincerely

A handwritten signature in black ink, consisting of a stylized 'E' followed by a long horizontal line extending to the right.

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## **Protocol Annex 2**

### **Regulatory framework**

#### **Insolvency practitioners**

##### **Legislation**

Insolvency practitioners must comply with the Insolvency Act 1986, relevant secondary legislation such as the Insolvency Rules 1986 and statements of insolvency practice (SIPs). Specifically, SIP 3 deals with voluntary arrangements and SIP 9 remuneration of insolvency office holders. SIP 3 requires the IP to document the advice given and explain this to the debtor.

##### **Insolvency regulation**

Insolvency practitioners are licensed by one of five Recognised Professional Bodies (RPBs). Licenses are granted to individuals and insolvency appointments are taken in the insolvency practitioner's name, not by the firm in which he or she works. To obtain a license an applicant must have passed a series of specific insolvency examinations, have sufficient insolvency experience and have satisfied the RPB that they are a fit and proper person. Recognised Professional Bodies must comply with the regulatory objectives set out in insolvency legislation. The Small Business Enterprise and Employment Act 2015 has brought into effect a number of Regulatory objectives for the RPBs.

All insolvency practitioners are subject to monitoring by their RPB, monitoring includes visits to the insolvency practitioner to review the practitioner's compliance with the legislation, SIPs etc. and the provision of information via annual (or more frequent) reports/returns/certifications. All RPBs operate risk based selection which means that some insolvency practitioners may be visited more frequently and possibly as much as annually. All bodies operate complaints and disciplinary procedures, and have powers to impose fines/penalties, with or without costs, as well as conditions and restrictions on the insolvency practitioners license, with the ultimate sanction of removal of a license.

The authorising bodies report details of disciplinary findings and complaints to the SoS on an annual basis. The SoS undertakes inspections of the authorising bodies procedures and practices at least once every three years and preforms targeted visits where necessary.

There is a common ethical guide for all insolvency practitioners and those who are also members of other professional bodies will also be subject to the ethical code of that particular body.

#### **Creditors and their agents**

##### **Banking Code and the Banking Code Standards Board (BCSB)**

The Banking Codes are the main source of conduct of business standards for Code subscribers and cover all the major banks and building societies and the majority of

smaller providers of banking services to personal and small business customers in the UK. The Banking Code is owned by the three sponsoring bodies – the BBA, BSA and APACS. The Business Banking Code is owned by the BBA and APACS.

The BCSB has responsibility to its subscribers and sponsors for monitoring compliance with and enforcement of the Banking and Business Banking Codes, voluntary codes of practice covering conduct of business in relation to current accounts and overdrafts, personal loans, savings, payment services and credit cards.

The BCSB's monitoring role and enforcement powers derive from the legal contracts signed by all subscribers to the Codes, obliging them to comply with the Codes and Guidance and the Banking Code Rules, Compliance Policy and Disciplinary Procedure.

## **The Financial Conduct Authority**

The FCA is the UK's primary financial regulator and was established under the Financial Services Act 2012. The FCA aims to maintain and ensure the integrity of the market, regulate financial services firms so that they give consumers a fair deal, and ensure the financial services market is competitive

The FCA is answerable through HM Treasury to Parliament for the effective discharge of its functions.

The Prudential Regulation Authority (PRA) works alongside the FCA and is responsible for the prudential supervision and regulation of banks, building societies, credit unions, insurers and investment firms.

The Financial Services and Markets Act (FSMA) sets out who must be authorised and registered by the FCA. It explains that anyone who carries out a regulated activity in the UK (this includes dual-regulated firms) must be authorised or registered by FCA, unless they are exempt.

### **Financial Ombudsman Service**

FOS helps to settle individual disputes between businesses providing financial services and their customers.

The areas covered by the Financial Ombudsman include:

- banking
- insurance
- pensions
- savings and investments
- credit cards and store cards
- loans and credit (including debt collection; debt adjusting and debt counselling)
- hire purchase and pawn broking
- financial advice
- stocks, shares, unit trusts and bonds

## ANNEX 3

### IVA STANDING COMMITTEE – TERMS OF REFERENCE

#### PURPOSE

To meet regularly to discuss and provide information about the operation of the IVA Protocol, and in particular:

- How it interacts with the IVA regime generally;
- To identify problems/issues arising in the operation of the Protocol at an early stage;
- To act as a discussion forum for stakeholders and ensure that information concerning the operation of the IVA regime generally and particularly Protocol cases can be effectively shared and discussed;
- To review periodically the Protocol and its standard terms and conditions to ensure they are fit for purpose and to make any changes that are needed.

#### MEMBERSHIP

The Committee will be chaired by The Insolvency Service. Membership will be made up as follows:

<b>Representing:</b>					
<b>IPs</b>		<b>Creditors</b>		<b>Consumer</b>	
Trade Bodies	3 seats	BBA	1 seat	MAT	1 seat
IPs	4 seats	Lenders	2 seats		
RPBs	2 seats	Bulk creditors	2 seats	Citizens Advice	1 seat
		Creditor Agents	2 seats		
		HMRC	1 seat		
<b>Total</b>	<b>9 seats</b>		<b>8 seats</b>		<b>3 seats</b>

Membership, excluding the Chair and the Secretariat will not ordinarily exceed 20. Membership of Insolvency Practitioner, Bulk Creditor and Creditor agent representatives will be considered for rotation on a 2 year basis from the July 2016 meeting.

Membership will be invitation from The Insolvency Service and will be reviewed at the discretion of the Chair.

#### FREQUENCY OF MEETINGS

The Committee will aim to meet 3 times per year with further meetings called if considered necessary and/or appropriate.

## **RECORD OF MEETINGS, COMMUNICATION AND CONSULTATION**

Agenda and minutes of meetings will be recorded and will be made available on gov.uk. Further miscellaneous updates or actions will be communicated via e-mail to those on the Dear IP contact list and posted on The Insolvency Service's website.

The Insolvency Service will perform the secretariat function of the Committee.

## **QUORUM/VOTING**

A quorum shall be 9 full members of the IVA Standing Committee (including nominated substitutes), with at least 4 representing IPs, 4 representing creditors and 1 representing consumers. For the avoidance of doubt the Chair is a full member of the IVA Standing Committee.

It is hoped that decisions can be arrived at via consensus.

Date: 1st June 2016

**STANDARD CONDITIONS FOR  
INDIVIDUAL VOLUNTARY ARRANGEMENTS**

**Produced by the  
IVA FORUM**

**Revised June 2016  
For use in proposals issued on or after 1 September 2016**

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## PART I

### INTERPRETATION

#### 1. Definitions

In the arrangement, except where the context requires a different meaning:

- a) “**the Act**” means the Insolvency Act 1986 as amended;
- b) “**the arrangement**” means the proposal and the conditions read together;
- c) “**you**” or “**the debtor**” means the person who makes the proposal;
- d) “**dividend**” means a distribution to creditors;
- e) “**property**” has the meaning given to it in Section 436 of the Act;
- f) “**excluded assets**” are those assets that are excluded from an estate in bankruptcy and any other assets identified in the proposal as being excluded from the arrangement; “**after acquired assets**” means any asset, windfall or inheritance with a value of more than £500, other than excluded assets that you acquire or receive between the date the arrangement starts and the date it ends or is completed, if this asset could have been an asset of the arrangement had it belonged to or been vested in you at the start of the arrangement;
- g) “**the effective date**” is the date when the arrangement is approved at a creditors meeting to consider the arrangement;
- h) “**the proposal**” is the annexed document with modifications and documents incorporated, and is a proposal under Part VIII of the Act;
- i) “**the Rules**” means the Insolvency Rules 1986 (as amended);
- j) an “**unsecured creditor**” is any creditor, except a secured creditor, who is your creditor for any reason that originated or occurred on or before the time and date of approval of the arrangement;
- k) A “**secured creditor**” is any creditor who holds security in accordance with Section 383 of the Act;

- l) “the Supervisor” is the person or persons for the time being appointed to supervise the implementation of the arrangement;
- m) any term of gender (like ‘he’, ‘she’ or ‘it’) includes any gender.

## **2. The conditions**

The conditions are an integral part of the arrangement. In the event of any ambiguity or conflict between the conditions and the proposal and any modifications to it, then the proposal (as modified) shall prevail.

## **PART II**

### **THE START, EFFECT AND DURATION OF THE ARRANGEMENT**

#### **3. When the arrangement will start**

The arrangement will begin when it is approved by the creditors under the Act and Rules. This is its effective date.

#### **4. The nature and effect of the arrangement**

- 4(1)** The arrangement is a proposal under Part VIII of the Act for a scheme to manage your affairs, or in full and final settlement of your debts.
- 4(2)** The arrangement may be interpreted as bringing about a settlement or satisfying a debt owed by someone other than you only if the debt is owed jointly by you and the proposal states that it does so, and if the creditor agrees. Otherwise, the provisions of paragraph 30 will apply.
- 4(3)** In the event that the Arrangement does not provide guidance to the Supervisor as to what action he/she should take in any given situation, the Supervisor shall apply the provisions of the Act and Rules in so far as they relate to bankruptcy with necessary modifications.
- 4(4)** After the arrangement has begun, no creditor may, in respect of any debt to which the arrangement applies:
  - (i) take any action against your property or person; or
  - (ii) start or continue any action or other legal proceeding against you.

**4(5)** Nothing in these conditions affects the following rights in any way:

- (i) the right of any secured creditor to enforce their security unless they agree;
- (ii) the right of the Supervisor or any creditor to present a bankruptcy petition under section 264(1)(c) of the Act if you fail to keep to the arrangement;
- (iii) the right of any creditor to bring or continue legal proceedings against you and to obtain a judgment against you for the full amount of their debt for the sole purpose of making a claim against your insurer under the Third Party (Rights Against Insurers) Act 1930.

**5. How long the arrangement will last**

**5(1)** Unless extended under these conditions, the arrangement will continue until the end of the period stated in the proposal.

**5(2)** The Supervisor may, if he/she thinks fit for the purposes of fulfilling the arrangement, extend the arrangement by sending a notice saying so (“an extension notice”) to you and to all creditors. The notice must include details of the period the Arrangement has been extended by and confirm the revised duration of the Arrangement.

**5(3)** The Supervisor must include details of any extension notice in the next report to creditors and must state the reasons for the extension. Where the Arrangement is in its final year any extension notice must be sent at least 7 days before the arrangement is due to expire.

**5(4)** Where an extension notice is sent, the arrangement will continue for the period stated in the notice. The extension will start on the date immediately after the day the arrangement would have expired and the monthly contributions payable will be the same amount as those payable in the last month of the arrangement before the start of the extension.

**5(5)** If the Supervisor has called a creditors meeting for a date after the arrangement would otherwise have expired, then the arrangement will be extended to the date of that meeting and of any adjournment to the meeting.

**5(6)** Where you have failed to disclose and/or pay exceptional income into the IVA, the term of the IVA may be extended by up to a maximum of 6 months to

recover any sums due (to remedy the breach), without any modification being required.

- 5(7)** Any extension for a period longer than 12 months must be approved by a variation.

## **6. Completing the arrangement**

- 6(1)** When the arrangement ends, and if you have complied with your obligations under the arrangement, the Supervisor will issue a certificate (“the completion certificate”) stating that you have fully complied with it.

- 6(2)** Except as set out in paragraph 4(5), when the Supervisor has issued a completion certificate, you will be released from all debts that are subject to the arrangement.

## **7. Substantial compliance**

- 7(1)** The Supervisor may, if he/she thinks fit, issue a completion certificate even if you have not complied with all your obligations under the arrangement, provided that you have:

- (i) made all payments required of you under the arrangement;
- (ii) fully explained any breach of the arrangement, as required by the Supervisor;
- (iii) paid the Supervisor any sum that he/she has reasonably requested to compensate the creditors for any reduction in dividend caused by your breach of the arrangement.

- 7(2)** If the Supervisor issues a completion certificate under paragraph 7(1), the arrangement will be treated as fully complied with and you will be released from all your debts as provided in paragraph 6(2).

## PART III

### YOUR DUTIES AND OBLIGATIONS

#### 8. Your duties in relation to the Supervisor

- 8(1)** While the arrangement is in force, you promise as the Supervisor reasonably requires to carry out his/her functions and duties under the arrangement to:
- (i) give the Supervisor such information about your assets, liabilities and other affairs;
  - (ii) meet the Supervisor, his/her agents, representatives or nominees at such times;
  - (iii) keep the Supervisor informed of your current residential address and employment details; and
  - (iv) do all such other things as the Supervisor reasonably requires.
- 8(2)** You promise to give the Supervisor whatever type of accounts or details (or both) of your income and expenditure relating to your affairs, for whatever date and period, as the Supervisor may reasonably require.
- 8(3)** If at any time during the arrangement you acquire or are left with “after-acquired assets” as described in paragraph 14, or where your income increases and you have to make contributions out of income, you must as soon as reasonably possible tell the Supervisor about the asset or increase in income.
- 8(4)** You must get the Supervisor’s written consent before you sell, charge or otherwise dispose of any interest you may have in any asset subject to the arrangement.
- 8(5)** You must inform the Supervisor at any time that you are in receipt of additional income. You must come to a satisfactory arrangement with the Supervisor as to what increased amount should be paid into the arrangement. If you do not do so you could become liable as detailed in paragraph 10(8).
- 8(6)** You must not obtain any further credit greater than £500 without the prior written approval of your Supervisor, except for public utilities and to refinance any balloon payment at the end of a vehicle Hire Purchase Agreement. If you do obtain credit of more than £500 without the consent of your Supervisor, this will constitute a breach of your arrangement. This clause does not apply

to any remortgage or release of equity in your property for the purpose of the arrangement.

**8(7)** Where you are employed, you 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 your normal take home pay. Disclosure to the Supervisor must 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 and/or pay into the IVA any such overtime, bonus, commission or similar by you will be considered a breach of the IVA.

**8(8)** If you are faced with an emergency item of expenditure or an unforeseen reduction in income and you are unable to pay either the full amount due or anything at all, then, subject to the discretion of your Supervisor, you may be allowed to take payment holidays or make reduced payments without a variation being required. This is subject to three conditions, all of which have to be met:

- (i) Full details of your inability to pay must be demonstrated to the Supervisor's satisfaction;
- (ii) In total no more than the equivalent of 9 months payments can be agreed to be missed in this way; and
- (iii) The duration of the IVA will be extended by no more than 12 additional months to recover the sums due, unless you have otherwise made good the shortfall.

Any missed payments agreed by your Supervisor in this way should not be counted in the arrears of contributions which would be regarded as a breach of the IVA and details of this will be included in the next report to creditors.

## **PART IV**

### **BREACH OR NON-COMPLIANCE**

#### **If you breach the arrangement**

**9(1)** You will be regarded as in breach of the arrangement if:

- (i) you have at any time arrears of contributions equivalent to 3 months or more of the contributions proposed in the proposal (subject to the

exceptions in paragraph 8(8)). If you are in breach in this way but later repay all or some of the arrears, you will be in breach again if the same level of arrears recurs;

- (ii) your debts and liabilities exceed by 15% or more the figure you have estimated for such debts and liabilities for the purposes of the proposal (and if such breach occurs the Supervisor will – without affecting any other alternative available to them – ask the creditors what they wish to do in the context of the arrangement overall);
- (iii) information that was false or misleading in any significant detail or contains any significant omissions:
  - a) was contained in any statement of affairs or other document that you supplied under Part VIII of the Act to any person; or
  - b) was otherwise made available by you to creditors at or in connection with any meeting of creditors held, or any resolution taken, concerning the arrangement.
- (iv) you fail to do anything that the Supervisor may for the purposes of the arrangement reasonably ask of you; or
- (v) you fail to comply with any other of your obligations under the arrangement.

### **If you fail to comply**

#### **9(2) Non-compliance with the arrangement**

If you do not comply with your obligations after the Supervisor has given you written notice specifying how long you have to do so, then the Supervisor may end the arrangement at his/her discretion. The Supervisor must report to the creditors when issuing the annual report under Rule 5.31 of the Rules, or earlier if he/she thinks appropriate, if any of the following occurs:

- (i) The Supervisor becomes aware that a bankruptcy petition has been served against you while the arrangement is in force.
- (ii) You fall more than 3 months into arrears with contributions from income (subject to the exceptions in paragraph 8(8)), or fail to pay the additional sums due in respect of overtime etc.

- (iii) You are in breach of any obligation about the realisation of assets or after-acquired property.
- (iv) You fail to comply with any other of your obligations set out in the proposal.

### **Procedure following breach**

#### **9(3) Notice of breach**

If, at any time, the Supervisor thinks that you are in breach of the arrangement, then, unless you correct the breach immediately, the Supervisor will as soon as possible send you a notice (“Notice of Breach”) identifying the breach. This will require you within 1-3 months (at the Supervisor’s discretion) of receiving the notice:

- (i) to remedy the breach if it can be remedied; and
- (ii) if the Supervisor thinks fit, to fully explain the breach.

#### **9(4) Remedy of breach**

If, within 1 - 3 months as referred to in sub-paragraph 9(3), you:

- (i) remedy your breach of the arrangement; and
- (ii) if so required in the Notice of Breach, fully explain the breach;

then the Supervisor will take no further action against you, except to report the breach to the creditors when he/she next sends an annual report to creditors on the progress and effectiveness of the arrangement, or on the next convenient occasion, if earlier.

#### **9(5) Failure to remedy breach**

If you have not acted as specified in sub-paragraph 9(4) within the time allowed, the Supervisor must report within 28 days to creditors and either issue a Certificate of Termination or if the Supervisor feels it appropriate seek creditor views (voting to be as set out in the Rules) to do one of the following:

- (i) vary the terms of the arrangement; or

- (ii) issue a certificate (“Certificate of Termination”) ending the arrangement because of the breach; or
- (iii) present a petition for your bankruptcy.

**9(6) Termination on your request**

The Supervisor may issue a Certificate of Termination if you request this in writing, but may delay doing so until the Supervisor’s administration of the estate has been completed.

## **PART V**

### **THE SUPERVISOR’S FUNCTIONS, POWERS ETC**

**10. Supervisor’s duties**

- 10(1)** The Supervisor must supervise your fulfilment of your obligations under the arrangement and administer the arrangement.
- 10(2)** The Supervisor must lodge all funds held for the purpose of the arrangement in a UK bank or building society account. He/she may place on deposit any funds he/she holds that in his/her opinion are not needed for the immediate purposes of the arrangement. The Supervisor will arrange for income tax to be paid at source from any interest earned on the funds he/she holds.
- 10(3)** The Supervisor will have the power to do such things as are necessary or helpful to implement this proposal (without limiting the powers available to the Supervisor in law).
- 10(4)** The Supervisor will not be personally liable for any liabilities incurred by you or otherwise.
- 10(5)** Completion or termination (or both) of the arrangement will not affect the Supervisor’s power to carry out such functions and to exercise such powers as are necessary for him/her to fulfil his/her duties, obligations and responsibilities under the arrangement, Act and Rules and to resolve any matters that arise during the arrangement.
- 10(6)** The Supervisor will have no duty to perform any act or carry out any function except those specified in the arrangement, Act or Rules.
- 10(7)** The Supervisor will have discretion to allow your contribution to reduce by no more than 15% (relative to the original proposal or last agreed variation) of the

forecast monthly contribution. If the reduction is more than the 15% against the forecasted monthly contribution, the Supervisor must convene a meeting of creditors to request a variation in the monthly contribution.

- 10(8)** The Supervisor on failure to reach agreement with you in respect of your obligation under paragraph 8(5) will issue a notice of breach.
- 10(9)** The Supervisor is not required to retain any funds for the petition of your bankruptcy.
- 10(10)** The Supervisor is required to review your income and expenditure once in every 12 months by reference to latest form P60, pay slips and proof of increase in any expenditure. You will be required to increase your monthly contribution by 50% of any net surplus one month following such review.
- 10(11)** The arrangement shall terminate when the Supervisor issues a Certificate of Termination.

## **11. Removing the Supervisor from office**

- 11(1)** If a good reason is given, the Supervisor may be removed from office by the court or by a resolution of a creditors meeting.
- 11(2)** A notice served by a creditor who is owed at least one quarter of the value of debts on the Supervisor for the purpose of convening a creditors meeting to remove the Supervisor from office must set out the reasons for the removal.
- 11(3)** The notice sent out by the Supervisor to creditors convening such a meeting must state the reasons for seeking to remove the Supervisor. It must be accompanied by a report on the Supervisor's administration of the arrangement, including an up-to-date summary of receipts and payments.

## **12. When the Supervisor leaves office**

- 12(1)** If the creditors resolve to accept the resignation of a Supervisor or to remove a Supervisor from office, and another person will take over the office of Supervisor for the time being, then the Supervisor who is resigning or being removed must leave office immediately.
- 12(2)** If the creditors resolve to accept a Supervisor's resignation or to remove a Supervisor from office, and no other person takes over the office of Supervisor for the time being, then that resignation or removal will not take effect. In that case the Supervisor must not leave office until a creditors meeting or the court appoints a replacement Supervisor.

- 12(3)** The Supervisor must leave office immediately if he/she ceases to be currently qualified to act as Supervisor.
- 12(4)** A Supervisor who, for any reason, leaves office must, as soon as practicable, give the new Supervisor or Supervisors all books, records and papers about the arrangement and the Supervisor's administration of it, and all assets of which he/she is a trustee under the arrangement.
- 12(5)** Former Supervisors must help the new Supervisor of the arrangement from time to time in whatever way he/she may reasonably require to find out what happened while the former Supervisor held office.
- 13. Vacancy in the office of Supervisor**
- 13(1)** If, for any reason, there is a vacancy in the office of Supervisor, that vacancy may be filled by someone appointed at a meeting of creditors or by the court.
- 13(2)** If no Supervisor is in office, such a meeting of creditors may be convened by you, any creditor, any person who was in the same firm, LLP or company as the Supervisor immediately before the vacancy occurred, or by the former Supervisor's authorising body.
- 13(3)** If a meeting of creditors is called when no Supervisor is in office, the person who convened the meeting must act as chair of that meeting.

## **PART VI**

### **ARRANGEMENT ASSETS**

- 14. Assets and after acquired assets**
- 14(1)** Property other than excluded assets belonging to or vested in you at the date of commencement of the arrangement which would form part of your estate in bankruptcy shall be subject to the arrangement.
- 14(2)** Subject to the following sub-paragraph, the Supervisor may claim as an asset of the arrangement any after-acquired assets. Any such asset will be subject to and be an asset of the arrangement.
- 14(3)** After-acquired assets must only be sold or realised to the extent necessary to repay the creditors 100 pence in the pound including the costs of the arrangement.

## **15. Holding arrangement assets in trust**

Whilst the arrangement is in force:

- 15(1)** You must hold in trust for the purposes of the arrangement any property in your possession, custody or control that is an asset of the arrangement, until it is realised (if required) in accordance with the arrangement.
- 15(2)** The Supervisor must hold in trust for the purposes of the arrangement any property in his/her possession, custody or control that is an asset of the arrangement.

## **16. In the event of your death**

- 16(1)** Should you die during the term of the arrangement property constituting an asset of the arrangement in your or the Supervisor's possession, custody or control shall be held upon trust for the purposes of the arrangement until it is realised.

# **PART VII**

## **DIVIDENDS AND CLAIMS**

### **Dividends and claims**

- 17(1)** The Supervisor may accept for dividend purposes claims submitted by creditors as at the effective date. If any creditor does not make any claim in writing within 4 months after the effective date or by the date of the first dividend (whichever is the later), then that creditor may only participate in dividend payments to the extent set out in paragraph 17.3 below.
- 17(2)** The Supervisor has the discretion to admit claims of £1,000 or less without a claim form, or claims submitted that do not exceed 110% of the amount stated by you in the proposal, without the need for additional verification.
- 17(3)** If a creditor makes a late claim, the Supervisor will allow this for dividend purposes, subject to the requirement to adjudicate the authenticity and value of the claim. The creditor will be entitled to participate and to receive their full share of dividends including those paid to date (insofar as funds are or become available), but is not entitled to disturb a distribution made prior to the submission of the late claim.

- 17(4)** The Supervisor may ask for any further details or documents he/she think necessary to establish the amount due to any person claiming to be a creditor.
- 17(5)** The claims of secured creditors, foreign currency debts, debts payable at a future time, and interest on debts will be dealt with in accordance with the Bankruptcy Rules.
- 17(6)** Where Section 323 of the Act applies and a creditor is obliged, for whatever reason, to make a payment to you during the continuance of the arrangement, then that payment shall be used first in reduction of that creditor's claim. If such application results in the creditor's claim being entirely extinguished any surplus will be treated as an asset of the arrangement and paid to the Supervisor for the benefit of the arrangement.

#### **Unclaimed and returned dividends**

- 17(7)** Where a final dividend remains unclaimed 6 months after that distribution has been made the Supervisor shall pay those funds to those creditors whose final dividend has been claimed. Where redistribution of these funds is cost prohibitive (for example the cost of making payment is in excess of the funds in hand) the remaining funds will be dealt with in accordance with 17(9).
- 17(8)** Where an interim dividend remains unclaimed or is returned to the Supervisor during the term of the Arrangement the Supervisor shall take reasonable steps to allocate that payment (reasonable steps will not extend beyond providing the creditor with details of your name or previous known name, address and any known previous address, date of birth, details of the account reference held and or a copy of the proof of debt submitted in respect of that claim). Where it is not possible to allocate the unclaimed or returned dividend then the Supervisor may discount the proof of debt received and distribute the funds to those creditors whose dividends have been claimed. A creditor whose claim has been discounted under these provisions is entitled to resubmit a claim that will be dealt with in accordance with 17(3).
- 17(9)** The Supervisor must pay you any funds he/she holds representing dividends that are still un-cashed/unclaimed/returned 6 months after redistributing funds in accordance with 17(7). Once this has been paid to you the creditors have no further claim to these funds.

- 17(10)** All amounts paid into the arrangement are intended to be used to pay dividends to unsecured creditors (after payment of the costs of the arrangement). However, if at the end of the arrangement up to £200 remains in the scheme, the Supervisor may choose to return this to you as a surplus. In the event this remains unclaimed 6 months after the payment is issued or is returned, the Supervisor can utilise the funds to locate and make payment to you or can make a donation to a registered charity of the Supervisor's choice.

## **PART VIII**

### **CREDITORS WHO DO NOT HAVE NOTICE**

#### **Creditors who do not have notice**

- 18.** This voluntary arrangement will be binding on any creditor whose claim has been omitted from it, but who would have been entitled to vote if they had been notified of the creditors meeting called to approve it.

On discovering the claim of such a creditor, the Supervisor must send immediate notice requiring them to give details of their claim as at the effective date.

Four months after sending the above notice, the Supervisor may use his/her discretion to exclude such a creditor from dividend if the creditor has not by then made the claim in writing.

## **PART IX**

### **MEETINGS OF CREDITORS**

#### **19. Power to call or requisition meetings of creditors**

- 19(1)** The Supervisor may, if he or she wishes, summon and conduct meetings of creditors for any purpose connected with the arrangement in accordance with the Act and the Rules.
- 19(2)** With your consent, you or the Supervisor may propose variations to the proposal after it has been approved and these may be considered at a creditors meeting convened by the Supervisor for this purpose in accordance with paragraph 19.4.

- 19(3)** The Supervisor is entitled to make a reasonable charge in connection with any submitted variation.
- 19(4)** The Supervisor must give at least 28 days' notice of the meeting to the creditors. Rule 5.23(1) of the Rules will apply to the creditors meeting in deciding whether the necessary majority has been obtained. If the necessary majority is obtained at the meeting, then the variation(s) or modification(s) will bind every person who is subject to the arrangement. Rule 12A.21 of the Rules will apply (quorum at meetings). Rules 5.18 to 5.22 and 5.24 will also apply (conduct of meeting, voting rights and adjournment).

## **PART X**

### **CONDITIONS WHERE TAX AUTHORITIES ARE CREDITORS**

#### **20. HM Revenue & Customs ("HMRC") claims**

- 20(1)** The HMRC provisional claim in the arrangement will include (i) any tax credit overpayment; (ii) self-assessment payments on account due for the tax year in which the arrangement is approved; (iii) PAYE/SC/NIC deductions due to the date of approval; plus (iv) any other earlier unpaid liabilities.
- 20(2)** The HMRC final claim in the arrangement will also include the self-assessment balancing adjustment for the tax year in which the arrangement is approved, due with the self-assessment return on 31 January of the following year.

#### **21. Income beginning after approval**

You will be responsible for payment of self-assessment/NIC on any source of income that begins after the date of approval of the arrangement.

#### **22. Post-approval statutory returns and payments**

All statutory returns and payments due to HMRC following approval must be provided on or before the date they fall due.

#### **23. Overdue accounts and returns**

You must send all statutory accounts and returns overdue at the date of the creditors' meeting to HMRC within 3 months of the approval date, with any other information or explanations required.

**24. Funds to be paid to Supervisor**

From the date the arrangement is approved to the 5 April ending that tax year, you must pay your monthly charge for income tax/NIC, as it appears in the income and expenditure statement, to the Supervisor for the benefit of the arrangement.

**25. Restriction on payment of dividend**

No non-preferential dividend will be made until (i) HMRC has received a self-assessment return for the tax year in which the arrangement is approved; or (ii) a VAT or other levy or duty return due to HMRC to the date of the meeting has been filed; or (iii) an HMRC determination or assessment has been made and the Supervisor has admitted HMRC's final claims.

**26. Set-off of repayments**

Any repayment due to you from HMRC relating to a period before the arrangement was approved shall be applied firstly against the HMRC claim in the arrangement. Any surplus will be repaid to you and you must pay it to the Supervisor for the benefit of the arrangement.

Any repayment due to you from HMRC relating to a period after the arrangement was approved shall be applied firstly against other sums owed to HMRC for the post arrangement period. Any surplus will be repaid to you and you will pay it to the Supervisor for the benefit of the arrangement.

**27. No response from HMRC**

If you were not self-employed and have not traded during the tax year in which the IVA was agreed and if there are no outstanding returns due to HM Revenue and Customs (HMRC) and no contact has been made by HMRC with the Supervisor within 4 months after the effective date, the Supervisor has the discretion to disregard the requirement in paragraph 25 of the standard conditions to not make a non-preferential dividend before the Supervisor has admitted the HMRC final claim. If the Supervisor commences payment of dividends, notification should be sent to HMRC and funds may be retained to pay an equivalent dividend to HMRC based on the amount shown in the statement of affairs.

## **PART XI**

### **MISCELLANEOUS PROVISIONS**

**28. Tax liabilities arising on realisations**

If you have taxation liabilities arising on the sale or other realisation of any asset subject to the arrangement, you must meet them out of the proceeds of that sale, as far as those proceeds are sufficient.

**29. Invalidity or illegality**

If any part of the arrangement is found to be contrary to the Act or Rules, illegal, invalid, or contrary to public policy, this will not affect the validity of the rest of the arrangement; and the part of the arrangement in question must be interpreted accordingly.

**30. Joint liabilities**

The rights of any creditor who has a joint and individual claim against a third party will not be affected by this proposal.

## **ANNEX 5 – Standard Report Sheets**

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/530279/Annex 5 - standard report sheets.xlsx](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/530279/Annex_5_-_standard_report_sheets.xlsx)

## ANNEX 6

### **CLAUSE DEALING WITH HOME EQUITY ( NET WORTH)**

*Items in yellow to amend for particular circumstances*

As can be seen in Appendix A the property at - ADDRESS is jointly owned with my husband/wife/partner/other individual[describe]. I estimate the current value of this property to be £xxxxxx which is based on a valuation indicated by a local estate agent/the asking price of similar properties for sale in the area. The mortgage is held by xxxxxxxx in the sum of £xxxxx. There is a secured loan attached to the property with xxxxx for £xxxx.

For the purposes of my proposal, I have included an amount representing 85% of my current interest in the property.

In month X of my arrangement, (normally 6 months from the end of the arrangement) an open market valuation will be carried out on the property by an independent professional valuer.

If that valuation shows that 85% of my interest in the property (after deducting my share of the mortgage and/or secured loans referred to above) is less than £5,000 (net of all costs to take out a new mortgage) then I need contribute no more to the arrangement in respect of the property.

If that valuation shows that 85% of my interest in the value of the property (after deducting my share of the mortgage and/or secured loans referred to above) is £5,000 or more (net of all costs to take out a new mortgage loan), then I will seek to remortgage my interest in the property and introduce this money into the arrangement. Remortgage includes other secured lending such as a secured loan. However, the amount that I have to borrow and pay into the arrangement is subject to the following limits:

- The remortgage amount will be a maximum of 85% of my 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 my State retirement age or the existing mortgage term.
- The amount of the 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.
- The increased amount that I have to pay because of the remortgage will be deducted from the remaining monthly contributions in the arrangement.
- If the increased amount that I have to pay at any time following the remortgage means that the required contribution to the arrangement falls below £50 per month, monthly contributions are stopped, and the IVA is concluded.

I will provide a broker or prospective lender with my written consent authorising them to keep my Supervisor fully informed of progress throughout the re-mortgage process.

If I am unable to obtain a new mortgage, this will not be viewed as a failure to comply with the terms of the IVA and my Supervisor will have the discretion to consider accepting one of the following alternative proposals:

- A third party sum equivalent to 85% of my interest in the property, or
- 12 additional monthly contributions (with the aggregate sum paid to the supervisor being limited to 85% of my interest in the property).
- In the event that additional contributions are paid, the term of the IVA will be automatically extended by the number of months required.

### **Protecting creditors interests**

To protect the interests of creditors my Supervisor will register a restriction against the property at HM Land Registry. To facilitate this, I will provide the Supervisor with signed form RX1 within 3 months of the approval of the IVA. Failure to do so following one month's written notice to me from the Supervisor requiring me to remedy the default will constitute a breach. *(Also add extra clauses for joint etc).*