

Checklist: personal insolvency

What is personal insolvency?

A person is insolvent if they have insufficient assets to pay their debts and financial liabilities.

What are the options for an insolvent individual?

Bankruptcy

- Bankruptcy is a process, started by a court order, to realise and distribute an insolvent individual's assets among their creditors.
- An insolvent individual can petition the court for their own bankruptcy. Alternatively, a creditor can issue a bankruptcy petition against an insolvent individual.
- After an individual is made bankrupt, a trustee in bankruptcy (either the Official Receiver or an insolvency practitioner) is appointed. The trustee in bankruptcy takes control of all the insolvent individual's assets. Their main duties are to sell these assets and share the money out among the creditors. The ability of a bankrupt individual to trade and take credit will be restricted during this period.
- An individual's bankruptcy usually lasts for one year, although it may take the trustee in bankruptcy longer to sell the assets and share the money among the creditors.

Individual voluntary arrangement

- An individual voluntary arrangement (IVA) is an agreement between an insolvent individual and their creditors that either compromises their debts, or creates a framework to settle them.
- Any insolvent individual can propose an IVA to their creditors. If necessary, they can seek a court order to prevent their creditors taking action to recover the debts owed to them until they have voted on the IVA proposal.
- Creditors vote on the IVA proposal at a creditors' meeting. Each creditor receives one vote for each pound the debtor owes to it. If more than 75% of the votes cast at the meeting approve the IVA, it will come into effect.
- When an IVA comes into effect, it binds all unsecured creditors of the insolvent individual to its terms. An IVA binds creditors that did not attend or vote at the creditor's meeting and even creditors that voted against the proposal.
- A number of firms exist to advise debtors on the options available to them to manage or compromise their debts. These firms can undertake most of the work of drafting an IVA proposal. The supervisor named in an IVA proposal will typically be employed by the firm that has advised on the IVA. An insolvency practitioner can charge for their work as a supervisor of an IVA.

What is the Straightforward Consumer IVA Protocol?

- The Straightforward Consumer IVA Protocol contains standard terms for a typical IVA for consumer debts. It also gives guidance on:
 - how a debtor should present their IVA;
 - what constitutes an appropriate level of return to creditors; and
 - how insolvency practitioners should calculate their fees in relation to such IVAs.

IVA proposals that follow the Protocol guidelines are referred to as “Protocol-compliant”.

- The Protocol has the support of the British Bankers’ Association and the professional bodies that regulate the conduct of insolvency practitioners.
- However, a recent High Court decision has held that the Protocol does not create any binding obligations and does not restrict a creditor’s right to vote against an IVA proposal, even if the IVA proposal is fully compliant with the terms of the Protocol. This may lead to creditors seeking more modifications to proposals as the “price” of supporting an IVA.

Other debt management procedures

Debt relief order

A debt relief order (DRO) will prevent creditors from enforcing their debts against an insolvent individual for a year, after which they will be discharged from liability for those debts.

Debt management plan

A debt management plan (DMP) is an informal, unregulated agreement between an individual and some or all of their creditors, under which they agree to repay what they owe (or an agreed lesser sum) over time.

More information

If you have any questions about the content of this checklist, please contact David Lee davidl@n-v.co.uk .