



BRIEFING PAPER

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Insolvency Service review: volume providers of Individual Voluntary Arrangements (IVAs)

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Summary

An IVA is a statutory debt management procedure. It is a legally binding agreement under which an individual, with the agreement of their creditors, repays part of what they owe to their creditors, generally over a period of five years. An IVA must be supervised by an authorised Insolvency Practitioner.

Individual Insolvency practitioners must be a member of a “Recognised Professional Body” (RPB) which also acts as their regulatory body. RPBs are responsible for ensuring that the quality of advice given by an Insolvency Practitioner is of an acceptable standard.

The [Small Business, Enterprise and Employment Act 2015](#) introduced new statutory regulatory principles and objectives with which the RPBs must comply. The Secretary of State also has the power to create a single regulator of Insolvency Practitioners. This power will expire (if not used) on **30 September 2022**.

Between November 2016 and November 2017, the Insolvency Service visited each RPB to assess how they carry out their monitoring and regulatory functions. It also undertook a themed review on how Insolvency Practitioners working at volume IVA providers are monitored and regulated.

In recent years, there have been two major developments in the use of IVAs:

- First, Insolvency Service statistics show that the number of people seeking debt relief through an IVA has significantly increased to over 59,000 in 2017 compared to 49,400 in 2016. Up until 2003 there were fewer than 10,000 annually.¹
- Secondly, the way IVAs are supervised has consolidated into a limited number of “volume providers” - ten providers accounting for over 80% of new IVAs registered in 2017.²

The corporate structure of some IVA providers means that the Insolvency Practitioner is often an employee, supervising many IVA cases. This represents a different way of working compared to traditional insolvency practice.³

On 26 September 2018, the Insolvency Service published a “[Review of the monitoring and regulation of insolvency practitioners](#)”. In this document, the Insolvency Service detailed significant concerns about the practices and regulation of Insolvency Practitioners working for volume providers of IVAs and made several recommendations.

This Commons briefing paper summarises the Insolvency Service’s findings to date and its recommendations. In the process, it also

¹ Insolvency Service, “[Review of the monitoring and regulation of insolvency practitioners](#)”, 26 September 2018, [online] (accessed 11 July 2019).

² Ibid

³ Ibid

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provides an outline of the main characteristics of IVAs as a statutory debt management procedure.

There is a separate Library briefing paper on "[Individual Voluntary Arrangements \(IVAs\)](#)" (CBP 5165), which provides more detailed information on IVAs. It looks at who is eligible to start an IVA; the IVA process; and the advantages and disadvantages of an IVA.

Both Library papers apply only to England, Wales and Northern Ireland. Scotland has its own law on personal insolvency, including the option of a Protected Trust Deed (instead of an IVA).

1. Overview

1.1 Characteristics of an IVA

An IVA is a legally binding agreement between a debtor and his/her creditors. The agreement sets out how creditors will be repaid and normally involves setting up monthly repayments over a specified period (usually 3 or 5 years). Alternatively, if an asset (such as a property) can be sold, the agreement may specify that the proceeds from the sale will be used as payment. The IVA will start if creditors holding 75% of the total debt agree to it. For an IVA to be approved, the IVA proposal must usually offer a higher return to creditors than could otherwise be expected were the debtor to be made bankrupt. Once approved, the IVA will apply to all creditors, including any who voted against it. Crucially, an IVA must be supervised by an authorised Insolvency Practitioner.

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An IVA is an alternative to bankruptcy for a debtor who is in financial difficulty. The main benefit of an IVA is its flexibility and the fact that (unlike bankruptcy) it allows the debtor to retain control of his/her assets. However, an IVA can be expensive and there are risks involved. Crucially, an IVA can be cancelled by the Insolvency Practitioner (acting as supervisor) if the debtor fails to keep up with repayments.

1.2 Who is eligible to start an IVA?

An IVA is available to all individuals, sole traders or partners (in a business partnership) who are experiencing financial difficulty. For example, depending on his circumstances, a sole trader may elect to enter in to an IVA to “ride-out the storm” and maintain his/her business as they believe it will be profitable in the future. IVAs may also be particularly useful to those who own their own property and wish to avoid the possibility of losing it in the event they are made bankrupt. For their part, creditors are often willing to accept an IVA proposal because it offers them a higher return than could otherwise be expected were the debtor to be made bankrupt.

However, an IVA is not right for everyone. For an IVA to be a realistic option, the debtor must meet certain criteria:

- They must be resident of England, Wales or Northern Ireland (debtors who live in Scotland should consider a Protected Trust Deed instead of an IVA).
- They must be insolvent - this is generally taken to mean that they cannot pay their debts as they fall due.
- They must have some spare income each month to pay creditors.
- Although any amount of debt can be included in an IVA, there are no minimum or maximum limits set by law, according to Citizens Advice, creditors are unlikely to agree an IVA unless the debtor's total debt is more than £10,000.

- Any number of debts can be included but normally an IVA will be suitable if the debtor has more than 3 debts and 2 or more different creditors.

In effect, an IVA will normally only be right for a debtor if they have a regular and predictable income. This is because an IVA depends on the debtor making monthly payments to his/her creditors over a period of a few years. If the debtor's income changes from month to month, an IVA may not be right for them. A debtor doesn't have to own any assets to get an IVA. However, any assets they do own might help him/her to repay their debts in the IVA. For instance, the debtor might own property, land or a car which could be re-mortgaged or sold. The debtor is expected to be honest with his/her Insolvency Practitioner and should seek their advice on what assets should be included in the IVA.

1.3 Supervision of an IVA

An IVA must be supervised by an authorised insolvency practitioner.

To be authorised, the Insolvency practitioner must be a member of a "Recognised Professional Body" (RPB) which also acts as their regulatory body. RPBs are responsible for ensuring that the quality of advice given by an Insolvency Practitioner is of an acceptable standard and are expected to make inspection visits. There are currently five RPBs, namely:

- [Insolvency Practitioners Association](#) (IPA)
- [Institute of Chartered Accountants in England and Wales](#) (ICAEW)
- [Institute of Chartered Accountants of Scotland](#) (ICAS)
- [Chartered Accountants Ireland](#) (CAI)
- [Association of Chartered Certified Accountants](#) (ACCA)

With effect from 1 January 2017, ACCA transferred all its monitoring and regulatory functions (except for the initial authorisation of Insolvency Practitioners) to the IPA. The majority of Insolvency Practitioners employed by "volume" IVA providers (88%) are regulated by the IPA.

In addition to being authorised by a RPB, Insolvency Practitioners who supervise IVAs are required to comply with [Statement of Insolvency Practice 3.1](#), the overriding principle of which is reproduced below:

An insolvency practitioner will be central to the preparation and agreement of the proposal, and the implementation of the arrangement, whether acting as adviser, nominee or supervisor. The particular nature of an insolvency practitioner's position renders transparency and fairness in all dealings of primary importance. The debtor and creditors should be confident that an insolvency practitioner will act professionally and with objectivity in each role associated with the arrangement. Failure to do so may prejudice the interests of both the debtor and creditors and is likely to bring the practitioner and the profession into disrepute.

As officers of the court, individual Insolvency Practitioners are also answerable to the court.

The authorisation of IPs by RPBs is a self-regulatory regime.

In practice, anyone wishing to make a complaint about the way an IVA supervisor has handled a case should write directly to the Insolvency Practitioner in question, setting out their grounds for complaint. If the response from the Insolvency Practitioner is inadequate, unsatisfactory or is not received, the complaint should then be directed to their RPB.

It should be noted that firms providing financial debt advice must usually be authorised and regulated by the [Financial Conduct Authority](#) (FCA) (much would depend upon their precise activities). The [Financial Services Register](#) is a public record of firms, individuals and other bodies that are, or have been, regulated by the FCA. IVA companies are also subject to the requirements of the [Information Commissioner](#) in terms of Data Protection.

1.4 IVA Protocol

Some Insolvency Practitioners follow the [IVA Protocol](#) (currently, the 2016 version). The Protocol is a voluntary agreement, which provides an agreed standard framework for dealing with straightforward consumer IVAs and applies to both IVA providers and creditors. The IVA Protocol covers several areas, including:

- what the Insolvency Practitioner should do to check the debtor's income and outgoings;
- how any equity in the debtor's home should be dealt with;
- what to do when the debtor's income and outgoings go up or down; and
- what should happen if the debtor misses any payments.

Under the Protocol, the Insolvency Practitioner is also required to make sure that the debtor has had full information on different ways to deal with his/her debts.

It is important to note that not all Insolvency Practitioners use the IVA Protocol and, because each IVA can be very different in complexity, not all IVAs can follow the Protocol.

1.5 Fees of IVA nominee and supervisor

There are no legal guidelines on what Insolvency Practitioners should charge for nominating or supervising an IVA. However, they are expected to have in mind [Statement of Insolvency Practice 9](#) (SIP 9) when explaining to the debtor and to creditors their likely fees and disbursements.

SIP 9, "[Payments to insolvency office holders and their associates](#)," sets out the standards Insolvency Practitioners must adhere to when drawing fees or disbursements. The overriding principle of SIP 9 is that Insolvency Practitioners are transparent and fair in all their dealings:

The overriding aim of the IVA Protocol is to make the IVA process quicker and simpler for all concerned.

“Creditors and other interested parties with a financial interest in the level of payments from an insolvent estate should be confident that the rules relating to approval and disclosure of fees and expenses have been properly complied with”.

Under SIP 9, Insolvency Practitioners’ fees and disbursements must be fair and reasonable.

In practice, Insolvency Practitioner fees will vary depending on the amount and complexity of the work involved. How and when the debtor pays the Insolvency Practitioner also varies; some practitioners will ask to be paid in full before setting up an IVA, others will deal with the fees as part of the IVA, deducting their fees from the monthly debt repayments.

Anyone considering an IVA are advised by Citizens Advice to contact a few Insolvency Practitioners and ask them for an estimate of how much it will cost to set up and manage their IVA. It should be noted that legal aid is not available for setting up an IVA.

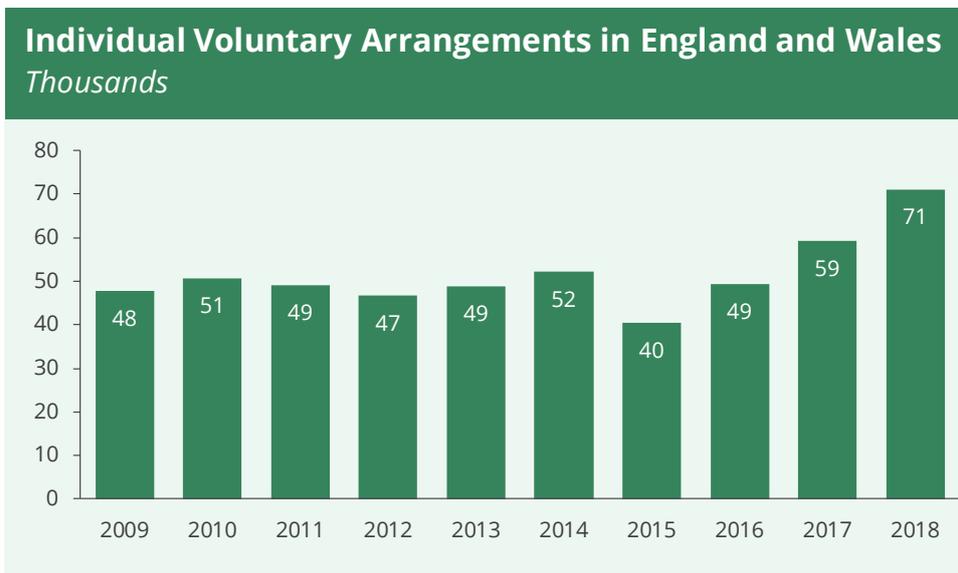
1.6 Statistics on use of IVAs

The Insolvency Service produces quarterly statistics on IVAs as part of [Individual insolvency statistics](#).⁴

The following chart shows the number of IVAs in England and Wales since 2009.

Between 2009 and 2014 the number of IVAs was steady at between 47,000 and 52,000. The number of IVAs fell in 2015 to 40,000 and has climbed in each year since then.

In each year since 2016, the number of IVA has increased by 20% or more compared to the previous year.



The data underlying the chart is presented in the table below.

⁴ Insolvency Service, [Individual insolvency statistics Q1 2019, Table 1A](#), April 2019

Individual voluntary arrangements in England and Wales		
	Number	% change on year
2009	47,641	-
2010	50,693	6%
2011	49,058	-3%
2012	46,674	-5%
2013	48,881	5%
2014	52,190	7%
2015	40,384	-23%
2016	49,417	22%
2017	59,220	20%
2018	71,034	20%

Source: Insolvency service, [Individual insolvency statistics](#), April 2019

2. New statutory regulatory principles and objectives

The [Small Business, Enterprise and Employment Act 2015](#) (SBEAA 2015) introduced new statutory regulatory principles and objectives with which the recognised professional bodies (RPBs) must comply ([section 391B, Insolvency Act 1986](#)). The Secretary of State also has the power to create a single regulator of Insolvency Practitioners ([section 144, SBEAA 2015](#)). This power will expire (if not used) on **30 September 2022**.

The statutory regulatory objectives are intended to provide the RPBs with a clearer and enhanced structure within which to carry out their regulatory functions when authorising Insolvency Practitioners. In discharging regulatory functions, an RPB must, so far as is reasonably practicable, act in a way which is compatible with the regulatory objectives which provide for:

- The RPB to have a system of regulating that secures fair treatment for persons affected by their acts or omissions, reflects the regulatory principles and ensures consistent outcomes.
- Encouraging an independent and competitive profession, which provides high quality services at a fair and reasonable cost, acts transparently, with integrity and considers interests of all creditors in a case.
- Promoting the maximisation of the value and promptness of returns to creditors.

Protecting and promoting the public interest. The Insolvency Service recognises that as with any self-regulatory regime, there is a risk that others may question how willing RPBs are to apply sanctions to their own members. RPBs are expected to have measures in place to implement appropriate safeguards.

Although there is no requirement for RPBs to operate in the same way and monitoring and regulatory procedures vary, guidance issued by the Insolvency Service outlines that an RPB should have a system of regulating people acting as IPs that reflects the statutory regulatory objectives.

New statutory regulatory objectives provide RPBs with a clear structure within which to carry out their regulatory functions when authorising IPs.

3. Concerns about volume providers of IVAs

3.1 Background

Since the introduction of the new “regulatory objectives” for RPBs in October 2015, the Insolvency Service has been carrying out reviews to assess the effectiveness of the self-regulatory regime.

Between November 2016 and November 2017, the Insolvency Service visited each RPB to assess how they carry out their monitoring and regulatory functions. Importantly, it also undertook a themed review on how Insolvency Practitioners working at “volume IVA providers” are monitored and regulated.

“Volume IVA providers” are defined by the Insolvency Service as follows:

Volume providers are those firms which typically oversee a large number of IVAs, with employee IPs as supervisors, and with IVAs representing the majority or sole source of business. For monitoring purposes, they are described as any firm that controls greater than 2% of the total market (including new and existing cases), or greater than 2% of new cases over a rolling three-month period.⁵

According to the Insolvency Service, in 2017, there were over 59,000 IVAs in the UK with 10 providers accounting for over 80% of new IVAs registered. The Insolvency Service is concerned about how, in recent years, IVAs have become a commoditised debt solution:

[...] in recent years, the way in which IVAs are marketed and provided has changed significantly with a move towards volume provision at firms that typically specialise in this type of debt solution to the exclusion of other formal insolvency procedures. We need to ensure that the way IPs in this environment are regulated has kept pace with these changes and have observed a number of RPB monitoring visits to volume IVA providers, looking at the outcomes from those visits.⁶

Since IVAs **must** be supervised by an authorised Insolvency Practitioner, volume IVA providers will employ Insolvency Practitioners who may each supervise large numbers of cases. The Insolvency Service highlights how this represents a different way of working:

In most instances the IP(s) at such firms are salaried employees and there is a risk that they have limited control and knowledge of the cases to which they are appointed. We have reviewed RPB processes for ensuring that IPs have the capability to deal appropriately with large numbers of cases and effectively monitor the work of their staff.⁷

⁵ Insolvency Service, “[Review of the monitoring and regulation of insolvency practitioners](#)”, 26 September 2018, [online] (accessed 11 July 2019).

⁶ Ibid

⁷ Ibid

3.2 Breaches of conduct rules

As part of its review, the Insolvency Service monitored visits by RPBs to volume IVA providers. On 26 September 2018, it published "[Review of the monitoring and regulation of insolvency practitioners](#)" in which it detailed significant concerns about the practices and regulation of Insolvency Practitioners working for "volume providers of IVAs".

Specifically, the Insolvency Service observed the following breaches of conduct rules:

- Poor quality advice being given to debtors, potentially leading them to enter an IVA when other debt solutions may be appropriate. For example, there was little consideration of whether it was realistic for an IVA to last at least 5 years and whether it was affordable and little evidence of debtors being advised that bankruptcy may be more appropriate.
- Lack of clarity for certain expenses being charged. There was little evidence that the requirements of [SIP 9](#) to explain how fees and disbursements are fair and reasonable are being met. The review states:

There is limited evidence that many of the disbursements charged in volume operations are providing real value to either debtors or their creditors. In most cases it is not clear whether they are required at all. There is also limited, if any, explanation provided by IPs as to why they are fair and reasonable.⁸
- Potential mis-selling of financial products to individuals who do enter an IVA. For example, offering "early exit" loans to debtors which pay off the debtor's remaining IVA obligations and replace them with a loan at a high interest rate which lasts longer than the IVA would have. According to the Insolvency Service, such loans are sometimes provided by companies connected with the IVA provider.
- Potential instances of conflict of interests and undue influence.
- Manipulation of debtor information. For example, cases where the debtor's income, expenditure and employment status were "manipulated" to improve the chance of the IVA proposals being agreed by creditors. There was also evidence that staff and firms involved in generating IVA clients were being paid on a commission basis linked to the level of agreed monthly contributions by the debtor.
- The use of case management companies (CMCs) to pursue PPI claims, which appear to charge above-market rates with a related impact on creditor recoveries. The Insolvency Service considers that where a CMC may not be the best value route, the Insolvency Practitioner must explain and justify why it was still appropriate to employ a CMC.
- Elaborate use of group structures to obscure connected company use. Highlighting the complexity of the structures of large IVA firms, the Insolvency Service said there was evidence of directly or

⁸ Ibid

indirectly connected companies which offer various services to debtors and as a result it is difficult to pinpoint who is in overall control.

The Insolvency Service has raised concerns about the accountability and the role of the Insolvency Practitioner, who is personally appointed in each case.⁹

3.3 Insolvency Service recommendations

As part of its review, the Insolvency Service made the following recommendations:

- RPBs should focus on remedial action for the debtor where the debtor has received inappropriate advice, as well as an investigation and disciplinary or regulatory action for the Insolvency practitioner.
- RPBs should ask Insolvency Practitioners to justify in each case whether fees and disbursements were fair and reasonable, and if it is shown that they are not, RPBs should require the excess amount to be returned to the estate in the same way as overdrawn remuneration.
- RPBs should ensure that prior to employing a Claims Management Company (CMC), the Insolvency Practitioner has explored all cheaper alternatives and disclosed those in advance to creditors.
- RPBs should consider whether the practice of offering “early exit” loans represents a conflict of interest and, if so, take appropriate regulatory action.
- RPBs should examine in all cases the nature of the relationship between firms that introduce debtors to IVA providers and the steps taken by Insolvency Practitioners to satisfy themselves that correct advice has been given.
- RPBs should treat breaches of [Statement of Insolvency Practice 3.1](#) as serious misconduct and take regulatory action.
- RPBs should ensure that published sanctions against Insolvency Practitioners include the name of their firm to act as a further deterrent. (RPBs are already taking steps to implement this recommendation).

The full report can be viewed [online](#).

3.4 Current position

The Insolvency Service has made a commitment to continue its oversight activities in the coming months as it moves towards a decision on whether to introduce a single regulator of Insolvency Practitioners, as provided for in the SBEEA 2015.

The Insolvency Service is aware that some RPBs are currently exploring whether a voluntary code for IVA providers to strengthen self-regulation is feasible, although discussions are at an early stage. Commenting on this development, the Insolvency Service said:

⁹ Ibid

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Whilst we welcome any moves to strengthen RPB powers in this area, such moves fall outside our own oversight role. In our view robust action by RPBs, operating in collaboration with one another could effectively prevent some of the behaviours currently being exhibited. For example, a robust approach to “block transfer” requests (where a tranche of cases is transferred to another IP) could prevent firms assuming they can simply move cases between IPs in order that their business activities are not affected by any regulatory action taken against an IP.¹⁰

¹⁰ Ibid

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