

What is an IVA?

There is an alternative to bankruptcy called an 'individual voluntary arrangement' (IVA). An IVA is a legal agreement which can be made to assist someone with serious debt and allow them to repay their debts within an agreed timescale. With the correct IVA advice someone with crippling debt can get a fresh start financially.

The main benefits of an IVA are that it will normally allow for only a percentage of the debt to be repaid and the rest written off and for payments to be of a manageable level and for the debts to be cleared within a defined term, usually five years. A short term arrangement can be set up if you have a lump sum to put forward. Some IVAs are a mixture of both.

Is an IVA suitable for me?

An IVA may be a suitable option for you if you have money available every month to pay towards your debts and/or a lump sum or assets that could be included. You would normally need to have the following:

- At least 3 debts totalling £15,000 or more;
- Two or more creditors, and;
- To be able to afford to pay approximately £200 towards the IVA every month (you can also put in a lump sum or any assets you have).
- In some cases this can be your ability to pay back at least 20p for every £1 of the debt that you owe to them.

How much does it cost?

All Insolvency Practitioners will charge fees for setting up and supervising an IVA. Fees vary between different firms but typical fees can be £4,000 or more.

These fees are usually added to your debt and paid in with your monthly payments over the term of the IVA. Many IPs will offer an initial free meeting to look at whether an IVA is suitable in your situation. Some IPs will demand an up-front fee before putting forward the IVA proposal. This could mean that if the proposal is refused by your creditors, you will lose the money you have paid in.

How do I set-up an IVA?

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

Once an IP has agreed to make an IVA proposal for you they can apply to the county court for an 'interim order'. This stops your creditors from starting bankruptcy proceedings against you. It also stops any other enforcement action without the court's permission whilst the interim order is in force.

- The IP sends the IVA proposal to your creditors and arranges a formal meeting called a 'creditors meeting', giving the creditors at least 14 days notice.
- Check with the IP and make sure that all your creditors have been contacted. If creditors have no notice of the meeting they do not have to stick to the terms of the IVA and can pursue you for their debt separately.
- At the meeting creditors have to vote on whether to accept the IVA. Often creditors send their vote to the IP and don't actually come to the meeting.

If 75% of your creditors 'by value' who actually vote agree to the IVA then the rest are bound by the IVA even if they voted against it or did not vote at all. 'By value' means the creditors to whom you owe 75% worth of debt not the number of creditors you have. So if the creditors to whom you owe the highest amount vote against the proposal then the IVA may not go through.

Once the IVA is agreed your IP will supervise the arrangements and make sure you make the payments. If a creditor comes to light after the IVA has been agreed, they can claim the amount they would have received as if they had been included in the IVA at the start.

WARNING If the IVA does not go through then you are back to the same position as you were in before you made the application. You will have to negotiate with all your creditors separately. You also may have lost money in fees and costs for the IVA application. Phone us for advice.

What about my home?

- If you are a home owner, your IP will normally want to include a special section within your IVA proposal called an 'equity clause'. This means that during the IVA (normally in year 4) you would be expected to apply for a secured loan or re-mortgage to pay back some of the debts if you then have equity. If you cannot do this, your IP may want you to sell your home instead.
- However if your IVA follows the IVA protocol, there is some protection. The protocol says that if you are unable to get a re-mortgage or secured loan, you should keep paying installments under the IVA for an extra 12 months rather than selling your home.
- If you are able to re-mortgage or get a secured loan then the repayments should be affordable, and you should be left with at least 15% of the equity in your property.
- If you are unable to maintain the payments on your IVA there is a risk that you may be made bankrupt, which could result in you losing your home.

WARNING You need to be careful when looking at taking out a new mortgage or secured loan. It may be difficult to find a loan from a reputable lender at a good rate of interest because your credit rating may not be good enough.

Does an IVA cover all my debts?

An IVA only covers unsecured debts like credit cards and loan and tax debts such as PAYE, VAT and national insurance liabilities. Child Support arrears and Benefit Overpayments cannot be included. Secured credit such as mortgage repayments and secured loans payments must be maintained.

What if I can't pay the IVA once it is agreed?

If your circumstances change and you are unable to keep up with your payments, your IP can ask the creditors to accept lower payments and agree a 'modified' IVA. The IP may charge you a fee for doing this. If you cannot make any payments or your creditors refuse to accept lower payments, your IVA may fail. If this happens, the IP may allow you to consider other options. The IP is able to petition for your bankruptcy, but this will not happen in all cases.

If your IP decides not to make you bankrupt, then your creditors can take action against you instead. It is very important to agree payment arrangements with each of your creditors separately to stop this happening.

What are the advantages of an IVA?

- You may well be running a small business which would be difficult to keep going if you were bankrupt.
- You may be in a profession where you could lose your job if you go bankrupt such as accountancy/police or armed forces. But be careful, in some professions your employment may be affected by an IVA. Check with your professional body.
- You may have access to a large lump sum and want a formal arrangement with your creditors to accept the lump sum and write off the rest of the debts.
- You will not automatically lose your house or other assets.
- You will not have the same restrictions on you as you would if you went bankrupt.
- You may still be able to get credit on personal household goods and services, or even, if you are self-employed, for business goods and services. You may also be able to remortgage your home.
- The stigma of bankruptcy is avoided and there will be no statutory advertisement in the local press.
- Creditors who do not agree with the scheme will be bound by it if the majority vote to agree at a creditors meeting. Creditors cannot then take further action against the you if you comply with the requirements of the arrangements.

What are the disadvantages of an IVA?

- If you do not keep to the terms of the IVA then the IP or your creditors can make you bankrupt.
- If creditors do not accept the IVA proposal you are back to square one and your creditors can carry on trying to pursue you for your debts.
- If you paid an up-front fee for your IVA and it is not accepted then you will have lost the fee and be in a worse position than when you started.
- If you own your house the IP and creditors may make you agree to re-mortgage your home as part of the IVA. If you are unable to do this you may lose your home.
- There is a risk that the IVA is agreed on the basis of monthly payments that you cannot afford long term. You must be very careful that the payments are set at a realistic amount in the first place.
- You may have to pay more to creditors than you would do if you became bankrupt and for longer.
- If your circumstances change and you can no longer afford the payments your IVA may end if the IP cannot persuade the creditors to accept a new agreement.
- All IVAs are recorded in a public register which may make it difficult for the client to apply for credit in the future.

Where will details be kept about my IVA?

Public register

Records of IVAs are kept on a public register called the Individual Insolvency Register Northern Ireland. Your IVA will remain on the register until it is completed or terminated.

You can search the Individual Insolvency Register Northern Ireland by visiting www.detini.gov.uk

You can also search the register in person by visiting your local official receiver's office.

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