

INDIVIDUAL VOLUNTARY ARRANGEMENTS

FACTSHEET 1 (April 2021)

What is an individual voluntary arrangement (IVA)?

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

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

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

Is an IVA suitable for me?

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

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

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

Can I have a joint IVA?

BDS

If you and your domestic partner meet the IVA criteria by taking into account both of your circumstances you can also propose an IVA together. This is known as an "interlocking" IVA.

Contact us for further advice.

Is an IVA a realistic option for my debts?

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

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

INDIVIDUAL VOLUNTARY ARRANGEMENTS

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

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

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

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

What debts can be included in an IVA?

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

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

If you are unsure if a debt can be included in an IVA and would like clarification, **contact us for advice.**

What if I have a hire purchase agreement?

BDS

You have to be very careful if you have a hire purchase or lease agreement. You need to have or obtain a copy of the agreement you have signed to check there is not a clause which could allow the creditor to end the agreement if you enter into an IVA. If you have a hire purchase agreement and are unsure **contact us for further advice.**

Do I have to include everything in an IVA?

BDS

You have to include all creditors and assets in your IVA proposal regardless of how they are going to be treated in the IVA. This includes secured creditors such as mortgage lenders. If you do not give complete information in an IVA about your assets and debts you could be committing a criminal offence. **Contact us for further advice.**

INDIVIDUAL VOLUNTARY ARRANGEMENTS

What is the procedure for an IVA?

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

Once an IP has agreed to make an IVA proposal for you, if you wish they can apply to the High Court of Justice in Northern Ireland for an 'interim order'. An interim order stops your creditors from starting or continuing bankruptcy proceedings against you. It also stops any other enforcement action whilst the interim order is in place. If you wish to obtain an interim order you must pay the costs involved upfront and these are non-refundable even if your IVA is accepted.

Do I have to obtain an interim order?

BDS

You can put forward an IVA without applying for an interim order but your creditors can still take enforcement action against you until the IVA is agreed. You can only have one interim order in a 12 month period.
Contact us for further advice.

What is the Process for an IVA?

The IVA process is as follows:

- You provide all the necessary information and documentation to your IP to allow them to prepare the proposal on your behalf. You agree the content of the proposal with your IP and the offer proposed to your creditors and sign off the agreed document.
- The IP forwards your IVA proposal to all your creditors and arranges a formal meeting called a 'creditors meeting'.
- At the meeting your creditors have to vote on whether to accept the IVA offer proposed. Usually creditors send their vote to the IP by post / fax / email & don't actually attend the meeting.
- The IVA proposal has to be accepted by **75% 'by value'** of the creditors that submit votes for it to become legally binding on all creditors. **'By value'** means voting creditors by the total amount of debt owed to them, not by the number of creditors. This means that if the creditors to whom you owe the highest amount of debt vote against the proposal, the IVA may not be accepted. If a creditor does not submit a vote, then they will have to accept the outcome of those creditors who did submit votes.
- Creditors can approve your IVA but also submit modifications to the terms of the IVA and ask you to contribute more, pay for longer, or include assets that you have originally excluded from the IVA. However, you need to agree to accept these modifications, and the IVA is not approved until you do so.
- If the IVA is approved your IP will supervise the arrangement and make sure you fulfil the obligations you have agreed to in the IVA.
- If the IVA is rejected, you return to the same position as you were before you applied for an IVA.

What if I owe money to HMRC?

BDS

You can still apply for an IVA to clear your HMRC debts. However, HMRC have criteria that must be satisfied for them to accept an IVA.

If HMRC have a significant share of the debt owed then **contact us for further advice.**

INDIVIDUAL VOLUNTARY ARRANGEMENTS

What about my home?

If you are a home owner, your IP will normally include an 'equity clause' in your IVA proposal. This means that during your IVA (normally around month 54) if there is equity in your property you would be expected to attempt to obtain a secured loan or re-mortgage to release your share of these funds.

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

If you are unable to obtain a re-mortgage or secured loan, and there is equity in your property then you usually must make an additional 12 monthly repayments in lieu of your share of equity. There are specific guidelines at dealing with the property in which you live, in order to assess your own situation please **contact us for further advice**.

Are you named on a property other than the home you live in?

BDS

The rules described for the home you live in does not apply to buy-to-lets or other property you may have an interest in. This area can be very complicated.

Contact us for further advice.

What are my next steps if I want to propose a self-employed IVA?

Business Debt Service can refer you to an IP and do a lot of the initial work and advice so you are fully aware of what to expect and the IVA process. Any IP we refer you to:

- Will not charge any fees and you will not be asked to make any monthly payments or forward any lump sum payments until the IVA proposal has been agreed by your creditors
- You will be able to still take independent advice from Business Debt Service whenever you need to
- Your IP should keep you fully informed about your IVA and make sure you fully understand any changes or modifications to your IVA and what they will mean for you.

Do I have to use an IP recommended by Business Debt Service?

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

What will I be charged for an IVA?

All IP's will charge fees for setting up and supervising an IVA. The level of the fees the IP can charge will be agreed by the creditors at the creditors meeting, and the fees will be taken from the funds you have proposed to pay into your IVA. Any IP we refer you to will never charge you any fees if your IVA is rejected. If your IVA is approved, we may receive a referral fee from the IP. This is from the work we have carried out to get the IVA approved and any payments we receive supports our ongoing work of giving free help and advice to people with debt and financial problems.

INDIVIDUAL VOLUNTARY ARRANGEMENTS

What if my circumstances change after the IVA is agreed?

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

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

Can my IP change the amount I pay into my IVA?

BDS

If your circumstances change, your IP can usually allow small changes to the amounts you pay. You may also be able to get a payment break, however ultimately your creditors decide this.

What are the advantages of an IVA?

- You will not pay any upfront fees if you use an Insolvency Practitioner from the Business Debt Service panel.
- You can normally continue to trade.
- Repayments are made for an agreed period and based on what you can afford. You usually only repay a percentage of your total debt.
- The remainder of your unsecured debt is written off upon the successful completion of your IVA.
- Interest and charges will be frozen.
- You can continue with secured finance agreements (subject to the agreements terms).
- You will not automatically lose your house or any other assets, and you must approve any modifications your creditors propose to the offer you put forward in your IVA. You will not have the same restrictions on you as you would if you went bankrupt.

What are the disadvantages of an IVA?

- The income you draw from your business may vary throughout the year. This can make it difficult to keep to the payments under the IVA.
- You must declare all assets and liabilities in your IVA. You cannot leave out any creditors as they must all be treated equally.
- If you do not keep to the terms of the IVA then the creditors can take action against you if the IVA fails.
- If you can no longer afford the payments, your IVA may end if the IP cannot persuade your creditors to accept a variation of your IVA.
- If the IVA is accepted it is recorded on your credit file for **six years or until it completes** whichever is longer.
- You are usually unable to obtain further credit while in an IVA.
- You may have to change bank accounts depending on your circumstances.


INDIVIDUAL VOLUNTARY ARRANGEMENTS

What if I am Bankrupt and want an IVA?

If you have been made bankrupt an IVA is a potential option to get your bankruptcy annulled. Usually the Official Receiver will make you aware of the IVA being an option when you attend their offices for your bankruptcy interview.

Putting an IVA proposal to the official receiver after you are made bankrupt is called a 'Fast Track' voluntary arrangement. The official receiver should agree to act as supervisor of the fast track voluntary arrangement if they feel it will produce a better return for your creditors than they would receive through bankruptcy. Unlike an IVA there is no formal creditors meeting and the fast track arrangement proposal cannot be modified. Also, there are set fees for this process.

However, it is not always possible to make a fast track voluntary arrangement proposal to annual a bankruptcy and it will be based on your personal circumstances please **contact us for further advice**.

Please see our **Bankruptcy factsheet**  for further information on fast track voluntary arrangements.

Where will details be kept about my IVA?

Public Register

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

https://www.online.economy-ni.gov.uk/IVA_Register/IVASearch.aspx

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

Credit reference agency files

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

What other options are there?

There may be alternative options for you to deal with your debts, for example a debt-management plan (DMP). This is an informal arrangement where you pay your surplus income to a debt-management company who then negotiate reduced repayments with your creditors. Bankruptcy could also be suitable, which is a court order which ends liability for most debts. However, it involves your assets being sold to raise money to pay to your creditors and may make it difficult for you to continue being self-employed. Each option has advantages and disadvantages so it is important to consider carefully before deciding which option is best for you. Please do not hesitate to **contact us for further advice**.

All information contained in this factsheet is copyright of Advice NI - April 2021. It may not be reproduced without express permission of the copyright holders. Advice NI is a registered charity in Northern Ireland number NIC100008. Whilst we endeavour to keep our factsheets up to date, Advice NI cannot be held responsible for changes in legislation or developments in case law since this edition of the factsheet was issued.