

# **The Consumer IVA Protocol 2021 version**

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## The consumer IVA protocol

This protocol is intended to facilitate the efficient processing and administration of consumer individual voluntary arrangements (IVAs), recognising the need to balance the rights of an individual to obtain appropriate debt relief alongside the rights of creditors to seek repayment of what is owed to them.

The overall protocol has the following parts:

- A set of general principles: (This document)
- Standard terms and conditions for use in protocol compliant IVAs ([Annex 1 - Link](#))
- Legal and regulatory framework ([Annex 2 - Link](#))
- Template letter for consumers: ([Annex 3 - Link](#))
- Template proposal and table of contributions: ([Annex 4 - Link](#))
- Flowchart to explain the process for potential equity release: ([Annex 5 - Link](#))
- Table of distributions: ([Annex 6 - Link](#))
- Comparison table between bankruptcy and IVA expected outcomes: ([Annex 7 - Link](#))
- Terms of Reference: ([Annex 8 - Link](#))

## General principles

### 1. Scope of the protocol

The protocol is a voluntary agreement, which provides a standard framework for dealing with consumer IVAs and applies to insolvency practitioners and creditors. Where a protocol IVA is proposed and agreed, insolvency practitioners and creditors agree to follow the processes and agreed documentation.

The protocol does not override the legal and regulatory framework applicable to insolvency practitioners ([Annex 2](#)).

### 2. The protocol consumer IVA

A protocol consumer IVA can last any length of time, however most IVAs will be proposed for 60 or 72 months.

A person suitable for a protocol consumer IVA is likely to:

- be in receipt of a regular sustainable income; for example, but not limited to, from employment or a regular pension
- have several lines of credit or types of debt
- have uncomplicated assets

The age and debt level of the consumer should not create a barrier but may impact on the overall viability and suitability of any proposed IVA.

It is accepted that an IVA is a regulated process under statute, which requires certain work to be undertaken, and which may have a cost unconnected with the debt and/or number of creditors of the IVA.

IVAs are unlikely to be suitable for consumers with very low levels of debt. Consumers who meet the criteria for a debt relief order (DRO) may not be suitable for an IVA. Consideration should be given to the suitability of an IVA for consumers with debts below £5,000 and the reasons the consumer chooses an IVA, rather than other available debt relief or compromise options, should be clearly documented in the proposal.

A reasonably steady income stream is necessary. There is nothing to prevent this protocol being used by consumers who are self-employed or with irregular hours, but where income is uneven/unpredictable, this should be highlighted in the proposal.

Where the consumer's income is solely made up of benefits or state pension, an IVA is very unlikely to be a suitable solution for the consumer; however, if an IVA is to be proposed in these circumstances, the reasons why it is considered suitable should be clearly documented in the proposal (see clause 6.6).

The following are indicators that a person's circumstances are unsuitable for this protocol:

- Disputed debts - there should be no known material disputes in relation to the debts.
- Investment properties - those with investment properties would not be suitable for a protocol consumer IVA.
- The possibility of lump sum settlement through a gift.
- Sole trader with trade debts.

Consumers should be provided with a copy of this IVA protocol before the proposal is drafted. This can be either through provision of a physical copy or providing an electronic link. Consumers' attention should be drawn to their duties to disclose information.

Insolvency practitioners must ensure that all documents sent to the consumer are clear and that anything the consumer is expected to do is easily identifiable. Insolvency practitioners should offer multiple communication channels where possible. Consumers can select the communication channel which is most convenient for them.

### **3. Vulnerable consumers**

Insolvency practitioners should pay attention to indicators of potential vulnerability and have appropriate policies in place. Vulnerability can take many forms and insolvency practitioners should treat all consumers fairly.

A vulnerable consumer is someone who, due to their personal circumstances, is especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care. It should be noted that being in debt and requiring assistance by way of a debt solution can be a potential vulnerability.

Vulnerability is not static and may arise at any point during the lifetime of the consumer. Insolvency practitioners should be mindful that circumstances may change throughout the IVA term.

Insolvency practitioners should ensure they follow the current published guidance from their regulator on dealing with vulnerable consumers. The [FCA guidance](#) is a benchmark for the those providing debt advice to consumers who may have vulnerabilities.

Where a consumer is vulnerable, insolvency practitioners should make appropriate arrangements to ensure that the consumer fully understands the IVA process, its effects and obligations, and makes appropriate arrangements for their needs (which may include, with their consent, liaising with third parties on their behalf).

Explicit consent needs to be obtained from the consumer to disclose and record vulnerabilities, including those relating to health and mental wellbeing

Fully understanding the consumer's circumstances can mean that creditors are able to take any vulnerabilities into account when considering an IVA proposal. Creditors should follow any published regulatory guidance or standards on dealing with vulnerable customers.

### **4. Transparency by all parties to the IVA**

The consumer should disclose details of any previous dealings with the insolvency practitioner who is the proposed nominee for the IVA, or businesses or associates connected with the proposed nominee. The consumer should disclose if they have previously attempted to obtain an IVA or had an IVA approved in the past 24 months.

The consumer should also disclose if they have previously been in or are currently in a Debt Relief Order, Debt Management Plan or Bankruptcy or have been subject to a Bankruptcy Restriction Order or Undertaking.

The consumer may have been referred to the nominee by a third party. The insolvency practitioner should take steps to ensure that any third-party lead generator and/or debt packager referring IVA leads to the insolvency practitioner should be FCA authorised and, if they are not, the insolvency practitioner should direct the consumer to obtain advice from someone who is FCA authorised or the nominee should provide advice under FSMA exclusion.

The nominee has a responsibility under the [Insolvency Code of Ethics](#) to ensure that the lead from which they have received the referral for the consumer's case has provided appropriate and detailed advice on debt options and has not misled the consumer in their advertisements. The [guidance on monitoring insolvency practitioners: Advertisements, marketing and debt advice](#) provides further information. Where the nominee considers the consumer has not received appropriate advice on the available options, they should ensure that the consumer receives such advice and has made an informed choice as to whether an IVA is the most appropriate option given their circumstances. This should be documented on the insolvency practitioner's case file.

The nominee will record the identity of the source of any referral of the consumer, the relationship or connection of the referrer to the consumer and, where any payment has been made or is proposed to the referrer, the amount and reason for that payment.

The proposal should set out details of how the funds received by the insolvency practitioner from the consumer will be allocated towards the costs of the IVA, together with a timetable and schedule of expected payments to creditors ([Annex 6](#)). Payments made by the consumer into the IVA will be apportioned between the costs of the insolvency practitioner set to draft the proposal and set up the IVA (nominee's fee), supervision of the IVA (supervisor's fee) and dividends to creditors.

In the event the IVA is in breach, the supervisor should complete a review of the circumstances and document the reasons for the breach. If the breach occurred prior to the first payment to creditors, the insolvency practitioner should include in that review consideration of whether the IVA was a sustainable product for the consumer and consider if there are any lessons to be learned. If it is deemed that either the IVA was not the most suitable debt solution for the consumer or there is evidence to suggest that such a breach was likely (both based on the consumer's circumstances and all the information they provided to their nominee, any lead generator or debt packager) any payments made should be refunded and the IVA terminated. If the IVA fails before completion, the consumer should be made aware by the IP that they will be liable for all debts and interest accrued during the term of the IVA.

## **5. Advice and cooperation**

The nominee should carry out proportionate enquiries into, and verification of:

- income and expenditure
- assets and liabilities

- financial details provided by the consumer to a lead generator, debt packager, or any other third party to ensure that all the information provided is correct

The nominee should satisfy themselves that appropriate debt advice has been provided by an FCA regulated firm or an individual working under the relevant exclusion who is able to provide such advice and keep records to evidence this. This should include due consideration for the long-term suitability and viability of the proposed IVA.

When considering if the IVA is a viable debt solution for the consumer, the insolvency practitioner should consider and document:

- whether on the information provided the consumer's circumstances are likely to change within the lifetime of the IVA
- sources of income
- that when using the Standard Financial Statement approved by the Money and Pensions Service the consumer's financial statement is a true reflection of the consumer's monthly outgoings
- other appropriate debt solutions and the consumer's reasons for choosing an IVA in preference to any other viable options

The terms and conditions explaining the information that the consumer must provide to the nominee and supervisor throughout the period of the IVA are explained at [Annex 1](#). All parties should act openly and disclose all relevant matters (see [Annex 2](#)).

In addition to other regulatory requirements, the insolvency practitioner should ensure that:

- fair treatment of consumers is central to the culture of any firm that the insolvency practitioner is employed by and that debt advice, information and explanations are suitable and appropriate to the consumer's particular circumstances
- that clear information is provided to both the consumer and creditors by the nominee when preparing the proposal, and the supervisor during the IVA
- there are no barriers stopping consumers from making a complaint about the insolvency practitioner, any firm that employs the insolvency practitioner or anyone else connected with putting together the IVA proposal or operating the IVA. Information about the Insolvency Practitioner Complaints' Gateway must be provided to the consumer at the earliest opportunity and clearly marked on the insolvency practitioner's and/or the firm's website

The nominee should take steps to ensure that the true value of all realisable assets is recorded in the Statement of Affairs. If necessary, an independent valuation should be obtained and documented. The nominee should make all reasonable attempts to verify the amounts due to creditors by obtaining statements, letters or copies of agreements from each creditor dated within six weeks of the consumer's first approach to the nominee.

A credit report should be obtained by the nominee to check the amounts due to creditors against other documents. The nominee should update the IVA proposal, as necessary, to reflect any changes prior to the proposal being circulated. If, for whatever reason, the insolvency practitioner is unable to verify any creditor balances, this should be identified in the nominee's report to creditors.

## **6. Financial statement**

The nominee should work with the consumer to draft a budget which accurately reflects the income and expenditure and the rest of their household (where applicable). Where a budget is only agreed for one individual in a household, an explanation should be included in the nominee's report to creditors as to why this is the case and also the reasons why the debtor and the insolvency practitioners consider that the IVA remains a viable option.

The nominee should take steps to verify the accuracy of all the information provided in the IVA proposal and provide details of that evidence to creditors if requested. Where it is not possible to evidence the position, this should be drawn to the attention of the creditors and documented on the IVA file.

The nominee's report should include a statement that the income and expenditure have been verified by them and provide details of the means used where the individual is self-employed. The nominee is expected to describe the scope of the documents provided and retain a record. This includes, but is not limited to, copies of any P60, payslips, bank statements and any other evidence of income and expenditure.

The income and expenditure statement should be forward-looking (for the duration of the IVA) and in line with the Standard Financial Statement (SFS) approved by the Money and Pensions Service. Generally, there should be no deviation from the expenditure parameters in the SFS but where there are (for example, due to factors such as any health issues, caring duties or above average work-related travel costs) this should be clearly explained in the proposal, any subsequent reports to creditors and documented on the IVA file.

The consumer's income and expenditure must be a realistic reflection of their financial position and at levels that are considered to be reasonably likely to be sustainable over the duration of the IVA. The consumer's income, expenditure and monthly contribution to the IVA must be such that this will not cause any undue hardship to the consumer.

Any state benefits, including those relating to income (universal credit, child benefit and pensions, etc) and also ill-health, disability or caring responsibilities should be included as income. The insolvency practitioner should ensure that any caring related costs are also included as an expense within the relevant section of the SFS.

If the consumer wishes to continue to pay for items (such as their own life, health insurance, or Payment Protection Insurance) the proposal should contain a note stating why this is essential expenditure. Payment Protection Insurance should only be included in respect of any secured borrowing.

Insolvency practitioners acting as either the nominee or supervisor should not sell any insurance policies or products to the consumer. The insolvency practitioner, acting in any capacity in relation to the consumer, should disclose any other products provided or introduced to the consumer which are included in the consumer's budget. Those that reduce the consumer's disposable income, and are not essential, should not be offered.

Where the consumer will be under the age of 55 at the proposed start of the IVA, only minimum contributions to any pension scheme should be allowed. Where the consumer is aged 55 or over at the proposed start of the IVA, an average of the last 6 months' pension contributions may be allowed, subject to a contribution limit of £75 above the minimum pension contribution permitted by the pension scheme per month.

If no minimum contribution is stated by the pension scheme, the consumer's contributions will be limited to the prevailing rate set by the Government for auto-enrolment workplace pensions. Where the consumer is a member of multiple pension schemes, these limits should be applied to the aggregate amount of the consumer's IVA contributions.

The insolvency practitioner should explain to the consumer that any failure to provide accurate information about assets, debts, income and expenditure could result in criminal proceedings and document this (with evidence) on the IVA file.

The supervisor's annual report to creditors should include updated details of the consumer's assets, debts, income and expenditure, based on verified and documented information provided by the consumer. The consumer should be asked to explain any proposed changes to the IVA to be put to their creditors in the arrangement.

## **7. Home ownership**

In any IVA where the consumer is a homeowner (either solely or jointly with others) there should be no circumstances where the consumer will be forced to sell their home (or their share of it) instead of potentially releasing equity into the IVA, unless the consumer's proposal provides for a sale of their home voluntarily.

The terms and conditions relating to potential equity release can be found at part 7 of the standard terms and conditions ([Annex 1](#)). A flowchart on calculating and dealing with any equity is included at [Annex 5](#).

The purpose of the equity clause is to set out the actions by the insolvency practitioner in dealing with the consumer's home and calculating any equity, which could be made available for the benefit of creditors when drafting the proposal and included in the IVA. Subsequent references to property should be taken to mean the consumer's home (or their share of it).

Buy-to-let properties are excluded from this provision. If the consumer owns more than one property, a bespoke IVA should be proposed rather than under the terms of this protocol.

At the start of the IVA, any property that is owned solely or jointly by the consumer should be valued by the consumer and must be verified by the insolvency practitioner to determine whether any potential equity can be paid into the IVA. The valuation should be based on a reasonable assessment by the consumer; for example, having used an online source. Where the valuation is based on a range, the mid-point should be used. Where a mid-point valuation is not used, this should be disclosed to creditors together with an explanation.

The equity calculated and agreed between the insolvency practitioner and the consumer at the date the proposal is drafted will be taken as the available amount and will be used to determine if the consumer's equity is above the de minimis amount.

There are three options when dealing with the consumer's property and the calculation will determine how any equity will be proposed to be dealt with in the IVA.

The value of the consumer's equity will be considered de minimis if it is £5,000 or less when valued before the IVA proposal is put to creditors. The calculation should be based on 85% of the value of the property less any secured borrowings (e.g. mortgage). This means that the consumer will retain at least a 15% financial interest in the value of the property in all cases.

### **Option 1**

If the value of the consumer's equity is equal to or below the de minimis amount of £5,000, the IVA should be proposed based on a 60-month term with no requirement for a further review of the property value. For clarity, the amount considered to be de minimis relates to each consumer and, where an interlocking IVA with a jointly owned property is proposed, this amount is £10,000 or less.

### **Option 2**

Where the value of the consumer's equity is above the de minimis amount (of £5,000) and, based on the lending criteria at [Annex 5](#) it is unlikely, to result in any equity release being viable (as the consumer is unlikely to be able to remortgage or obtain a secured loan) the IVA will be proposed based on a 72-month term with no requirement for a further review of the property value.

### **Option 3**

Where the value of the consumer's equity is above the de minimis amount (of £5,000) and, based on the lending criteria at [Annex 5](#) the consumer may be able to release equity, the IVA will be proposed based on a 72-month term with a review of the equity position at month 54. At that time, the property will be valued again and a determination will be made on whether equity can be released by the consumer. If sufficient equity is paid into the IVA, the arrangement will be concluded early. If any equity cannot be released, the IVA arrangement will end at 72 months.

The purpose of these calculations is to give the consumer a clear understanding of their requirements in respect of their home before proposing an IVA, in particular those

consumers where equity release is anticipated. It should also clarify to creditors how any equity is proposed to be dealt with in the IVA. A copy of the calculations should be provided to the consumer and also to all their creditors within the scope of the IVA proposal.

The consumer will not be required to consider the release of equity where the value of any secured borrowings and other debts secured against the property are equal to, or exceed, 85% of the value of the property.

The incremental cost of the additional secured borrowings, including the cost of any repayment vehicle, should not exceed 50% of the anticipated final payment due into the arrangement. Any payments in excess of that amount to reduce the term are at the consumer's discretion.

If the repayment term of the resulting secured borrowings would mean that repayments extend beyond either the consumer's state retirement age, or the repayment term of existing secured borrowings (if the consumer has both a mortgage and second charge) the later of the two will be used.

If any re-mortgage or secured borrowing repayment results in the IVA contribution falling below £50 then the IVA will be concluded.

#### **Option 1: 60-month IVA (no equity release)**

A 60-month IVA will not include any further review of the property value or equity release/remortgage calculation. Creditors should be made aware that the proposal will not allow for any available equity to be released into the arrangement.

#### **Option 2: 72-month IVA (no attempt to release equity)**

A 72-month IVA, where any release of equity is not proposed, will not include a further review of the property value or equity/remortgage calculation. Creditors should be made aware that the proposal will not allow for any equity to be released into the IVA

The consumer should be made fully aware by the insolvency practitioner that because a further review is not going to take place, the term of their IVA cannot be reduced even if their property value changes, unless a variation meeting agrees such a reduction. It will not be possible to change the terms of the proposal without obtaining creditor approval and the consumer will be required to pay for 72 months into the IVA irrespective of the equity position at a later date during which the IVA is still in place.

#### **Option 3: 72 month IVA and consumer is required to attempt to release equity (the IVA will conclude early if equity is released)**

Equity can be released by way of a re-mortgage or secured borrowing. Where the consumer is required to attempt to release equity, a further calculation review will be conducted at month 54 (the 'review date').

The consumer should co-operate with the supervisor to determine the revised equity position. This will include another valuation of the property by the consumer (verified by the insolvency practitioner) and the provision of up-to-date balances for any secured borrowings, mortgage redemption costs and any other debts secured against the property. The insolvency practitioner, with agreement from the consumer, should instruct specialist brokers to assess the amount of equity available and identify any suitable equity release providers and products available. This should be based on the consumer's mortgage affordability and the lending criteria and restrictions set out at [Annex 5](#). Any introduction to specialist brokers made by the supervisor must adhere to the 'agencies and referrals' section of the [Insolvency Code of Ethics](#).

If the value of the property, and therefore the available equity, has reduced significantly at the date of review of the equity and is either below the de minimis value (of £5,000) calculated on the basis of 85% of the value of the property, or an amount that would not be suitable for release of equity based on mortgage affordability, the consumer will not have to attempt to release any equity but will pay an additional 12 months into the IVA arrangement.

Where the consumer can release equity, the value (net of any refinancing or other associated costs) will be introduced into the IVA up to 85% of the value of the property and, if this is conditional on bringing the IVA to a successful conclusion, then future expected monthly payments can be ended allowing the supervisor to conclude the arrangement early.

Where the release of equity is not possible, the supervisor will provide creditors with the reasons why this has not been possible. The consumer may then:

- make additional payments for 12 months at the rate of the current monthly contribution at the date the equity was calculated
- introduce a third-party contribution equivalent to the total value of 12 additional payments

If an additional 12 months payments are proposed, an annual review at the end of month 60 will be carried out as per the terms of the proposal. Payments may change depending on the result of that assessment.

### **The consumer decides to sell their home**

If the consumer decides to sell their property during the term of the IVA, the proceeds of sale (net of the reasonable costs of sale and moving costs) will be payable into the IVA, restricted to the amount required to pay creditors in full together with the costs of the IVA, excluding statutory interest.

## **Other obligations relating to the consumer's home**

To protect the interests of creditors, the insolvency practitioner will register a restriction against any property at HM Land Registry. To facilitate this, there will be a requirement for all property owners, irrespective of their obligation to release equity, to provide the insolvency practitioner with a signed form RX1 within 3 months of the approval of the arrangement. If the property is jointly-owned, the insolvency practitioner should use best endeavours to secure a signed RX1 for the property and, if this is not possible, inform the creditors.

The supervisor should file a form RX4 within 28 days of the final payment into the IVA by the consumer, when the conditions of the arrangement in relation to equity have been satisfied.

## **General comments relating to Annex 1**

Nothing in these sections alters the provisions in the Standard terms and conditions (see [Annex 1](#)) relating to the ability of the consumer to propose a variation of the agreed IVA, or of the insolvency practitioner's powers to call meetings of creditors to seek their consent to vary the terms of the IVA.

References to a 60-month term or a 60-month IVA and a 72-month term or a 72-month IVA should be read in conjunction with Part 2 of the standard terms and conditions relating to the start, effect and duration of the IVA.

## **Creditors' obligations**

The terms and conditions relating to creditors' participation can be found at [Annex 1](#). In all dealings with a consumer proposing an IVA under this protocol, creditors will always treat the consumer in accordance with the relevant applicable legislation and professional standards.

Creditors will co-operate with the duly appointed nominee and supervisor of an IVA in relation to the efficient operation of this protocol.

A key aim of the protocol is to improve efficiency in the IVA process and to 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 or modification.

Where a creditor (or their agent on their behalf) votes against a protocol-compliant IVA proposal, their reasons for so doing should be disclosed to the insolvency practitioner and documented on the file.

By voting in favour of a protocol compliant IVA, creditors accept that the supervisor has discretion and should not challenge the use of that discretion unless it is considered to be unreasonable.

Creditors should make reasonable endeavours to provide a proof of debt (in the form required by the insolvency practitioner) 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 of creditors called to consider and vote on the proposal.

Creditors should not put forward unnecessary modifications, in particular those which are already addressed in the IVA proposal. The initial creditors' meeting is the appropriate forum for changes to be put forward in respect of the IVA proposal.

Any creditors that do not submit proofs of debt within 2 months of the approval of the IVA 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 proof of debt) but are not entitled to disturb a distribution made prior to the submission of their proof of debt.

Creditors will ensure that any agents carrying out instructions or acting on their behalf in relation to a protocol-compliant IVA do so in accordance with the protocol and in accordance with applicable FCA regulatory requirements.

Where a debt is sold after an IVA is approved, creditors should ensure debt purchasers are FCA regulated.

## **8. Completion of the IVA**

Completion of the IVA takes place when all agreed payments have been made by the consumer into the IVA and all other obligations have been complied with in full. The insolvency practitioner will issue a completion certificate to the consumer once all final actions have been concluded and inform all creditors as soon as possible after that payment is made.

A completion certificate should be issued as soon as practicable once the final actions have been completed by the insolvency practitioner within three months of the final payment being made and if there is a reasonable reason why this is not possible it must be issued within six months.

If a consumer proposes a full and final settlement variation to creditors, which is accepted, this will bring the IVA to an end.

The Trust created by the IVA arrangement will be extinguished on termination of the arrangement or the issuing of the completion certificate by the insolvency practitioner.