



# A creditor's guide to individual voluntary arrangements

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A licensed insolvency practitioner (IP) has given you this because you, or your business, may be owed money by an individual that is in an individual voluntary arrangement (IVA) or is proposing to enter into an IVA.

This guide aims to help you understand your rights as a creditor and to describe how best these rights can be exercised. It is intended to relate only to England and Wales. It is not an exhaustive statement of the relevant law or a substitute for specific professional or legal advice.

We have made every effort to ensure the guide is accurate, but R3 cannot accept responsibility for the consequences of any action you take in reliance on its contents. If, having read the guide, you remain in any doubt about your rights, you should consult an IP or solicitor.

We hope that you will read this guide carefully and consider whether taking an active role as a creditor in this case could benefit you or your business.

R3, the insolvency and restructuring trade body, can provide you with a list of members near you, through the member search function on its website. If you're looking to speak to someone about insolvency advice, or find a local IP, insolvency lawyer, or restructuring expert and they're a member of R3, they'll be on there – and many will offer a free consultation to people who are looking for help with their finances – [find a R3 Member](#).

### What is an IVA?

An IVA is a formal insolvency procedure available to an individual to deal with their debts. When an individual is facing financial difficulties, they can use this process which allows them to come to a binding agreement with the person to whom they owe money (creditors) to pay

a part of the amount owing (debt), over a defined period of time. An IVA is intended to be in full and final settlement of amounts due to the individual's creditors. IVAs are overseen by an IP.

You may hear the term IVA protocol. The protocol is a voluntary agreement which provides an agreed standard framework for dealing with straight forward consumer IVAs and is intended to facilitate the efficient processing and administration of consumer 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.

Further information is available [here](#). The IVA protocol cannot override the legal and regulatory framework of IVAs.

You can check to see if someone currently is or has been party to an IVA on the [Individual Insolvency Register](#) (register). The IVA is added to the register once the IVA is approved by creditors and is removed three months after the IVA ends. The IVA will remain on the individual's credit record for six years.

### How can an individual (the debtor) be placed into an IVA?

To propose an IVA, the debtor must approach an IP to act as a 'nominee'. The nominee is required to report on their opinion as to whether the IVA proposal has a reasonable prospect of being approved and implemented. If the nominee agrees that the IVA would meet this test, their report and proposal are put to the creditors of the debtor to consider. The person acting as the nominee will frequently assist with the drafting of the IVA proposal but in such instant as advisor, separate to their role as nominee providing a report.

Occasionally, a debtor may apply for an interim order which is a court order to prevent legal proceedings being commenced or continued (without the

court's permission) against them where they intend to propose an IVA. Although there is no requirement to obtain an interim order, it may be used for example when a bankruptcy petition has been presented or a legal process is taking place against the debtor's property. Essentially, an interim order gives the debtor time to formulate an arrangement without pressure and demands from creditors.

A debtor also has the option of obtaining a breathing space. The scheme provides a period of protection to debtors against creditor enforcement action. There are two types of breathing space: a standard breathing space which gives debtors 60 days' legal protections from their creditors, and a mental health breathing space which halts action from creditors for the duration of the debtor's crisis treatment plus a further 30 days.

The nominee will send creditors a copy of the IVA proposal and accompanying documents to enable creditors to vote whether to approve or reject the IVA proposal. The creditors are required to consider and vote on the proposal within a period of 14 days, by way of one of the following permitted decision procedures (although creditors have the right to request a physical meeting if certain conditions are met):

- Virtual Meeting.
- Correspondence.
- Electronic voting.

For the proposal to be approved, at least 75% by value of unsecured creditors who vote in the decision procedure must vote in favour of the proposal. If this 75% threshold is met, the proposal is only approved if any independent creditors (i.e. those unconnected with the debtor) who have voted against it amount to 50% or less of the total value of independent creditors admitted for voting.

Once approved, the IVA becomes binding upon the debtor and all their unsecured creditors (even those who voted against the proposal or did not vote but subject to the right to challenge an IVA (see below)). Creditors may propose modifications to the proposal. Those that are agreed by the debtor and supported by a 75% majority of creditors will modify the proposal. In the absence of the debtor's consent to these modifications, the IVA cannot proceed in a modified form and creditors who proposed modifications which the debtor does not consent to can then either vote in favour of or against the proposal without the requested modifications. It should be noted that unsecured creditors may not approve an IVA proposal or modification which affects the right of a secured creditor (e.g. a creditor who has a mortgage or charge) or those entitled to be paid in priority to the other unsecured creditors (preferential creditors), unless those creditors consent. The secured creditor may receive a dividend within the IVA for the unsecured portion of its debt without this necessarily being taken as having abandoned its security.

On approval of the IVA, the nominee is usually appointed as the supervisor of the IVA (although it is possible for creditors to vote for a different IP to be the supervisor) and is empowered to implement its terms. The supervisor then reports the result of the IVA decision to creditors.

### **What is the purpose of an IVA?**

The primary purpose of an IVA is to enable a debtor to negotiate and reach a binding agreement with their creditors, mainly those without security (i.e. unsecured creditors) to avoid the possibility of debt collection action being taken against them and possibly leading to the bankruptcy of the debtor. A proposal for an IVA may however also be made by an individual already subject to bankruptcy proceedings.

The IVA is an extremely flexible option for dealing with financial problems. The form an IVA takes will depend on the terms of the proposal agreed by the creditors. For example, an IVA may involve delayed or reduced payments of debt over a set period of time (usually between two and five years), an orderly disposal of assets or even a third party contribution.

### **What information should an IVA proposal contain?**

A proposal should provide a short explanation of why an IVA is desirable and why creditors are likely to agree to it. The proposal should set out sufficient information to enable creditors to reach an informed decision on the proposal, some of which is set out by law (Insolvency (England & Wales) Rules 2016 which is accessible [here](#)) including:

- Details of the debtor's assets and whether they are included in the IVA.
- Details of any other property that may be included in the IVA, for example a third party contribution.
- The debtor's liabilities.
- The fees for the nominee and supervisor and other costs of the IVA.
- The proposed duration of the IVA; and
- Dates and estimated amounts of the dividend payments to the creditors.

The debtor must also provide a statement of their affairs which broadly speaking is a list of the debtor's assets and liabilities.

In addition, a proposal should contain contextual information including the financial background of the debtor that is prescribed in Paragraph 21 of the

Statement of Insolvency Practice 3.1 accessible [here](#), or provide an explanation why that information is not detailed in full.

### **What are the powers and duties of a supervisor?**

The supervisor will check whether the terms of the IVA are being complied with by the debtor. The proposal will set out the functions that the supervisor will carry out. Typically, a supervisor will be responsible for:

- Monitoring the performance of the IVA.
- Identifying any departures from the terms of the IVA and taking prompt action in accordance with the terms. This may involve asking creditors to consider agreeing to a variation of the IVA's terms to enable it to complete successfully.
- Collecting contributions and supervising any disposal of assets.
- Agreeing creditors' claims.
- Arranging payments (dividends) to creditors.

### **How do creditors recover the money owed to them?**

Debts and liabilities due to creditors prior to the approval of the IVA are effectively 'frozen' and once the proposal is approved a creditor is prevented from taking steps against the debtor for the monies owing to them. The supervisor will collect funds (e.g. from the disposal of the debtor's assets and/or contributions from third parties) from the debtor and pay an amount to creditors in accordance with the terms set out in the approved IVA proposal.

### **How do I make a claim in the IVA?**

The supervisor will write to all known creditors asking them to submit their claims. You should submit your claim in writing within the specified time limit. You should also send enough supporting evidence of your claim, for example copy statements to allow the supervisor to decide whether your claim is accepted for the purposes of receiving a payment under the terms of the approved proposal. The supervisor will not necessarily acknowledge receipt of your claim

### **How will the supervisor adjudicate any claim?**

The supervisor will consider your claim and any supporting documentation. The supervisor will compare your claim to the debtor's records and any other information, and they may discuss your claim with the debtor. The supervisor may ask you for additional information or evidence if they think you have not sufficiently proved your claim.

The supervisor may agree your claim in full, or in part, or they may reject it, giving reasons for doing so.

### **Is the supervisor liable for sums due under contracts entered into by the debtor subsequent to approval of the IVA?**

No, the contract is with the debtor. The supervisor does not take on any personal liability. The IVA proposal should provide creditors with details regarding what credit may be taken after the approval for the IVA proposal. Where that contract is entered into by the debtor after the approval of the IVA proposal, the counterparty to the contract will not be bound by the IVA.

### **As an unsecured creditor, what information am I entitled to?**

During the IVA process, you will receive information from both the nominee and supervisor:

- A copy of the proposal and accompanying paperwork to enable you to vote whether to approve the proposal (with or without changes/modifications you may propose before you can agree to the approval of it). The proposal will contain details of the nominee's and supervisor's proposed remuneration and expenses.
- A copy of the nominee's report on the proposal and recommendation to creditors.
- Notification of whether the proposal was approved, and any modifications made to it.
- A request for details of your claim and notification regarding dividend payments.
- Annual reports.
- Final report.

This information may be uploaded to a secure website. Access details will be provided by the nominee or supervisor.

### **Can creditors form a creditors' committee?**

Yes, if the terms of the proposal or any modifications provide for one.

### **Can a creditor initiate or continue legal actions against a debtor in an IVA?**

Creditors may apply to the court to challenge an IVA if the IVA's terms are unfairly prejudicial or if there was some material

irregularity in the procedure leading up to its approval. The period of challenge is:

- Where there is an interim order, within 28 days of the report on the outcome of the creditors' decision procedure being reported to the court.
- Where no interim order was made, within 28 days of the date on which the creditors decided whether to approve the IVA proposal.
- If a creditor had not been given notice that the creditors' decision on the proposal was required, within 28 days from the day that they became aware that a decision on the IVA proposal had been made.

After this time has expired, broadly speaking, an unsecured creditor cannot initiate or continue legal actions against the debtor where the debt or liability arose prior to the date the proposal was approved. The IVA binds creditors who voted against its implementation and will even bind creditors who are unaware of the IVA. However, a deliberate failure to notify a known creditor could be grounds for a challenge as referred to above. A creditor may however bring a claim against the debtor in respect of a debt incurred after the IVA has been approved.

### **How is the nominee and supervisor's fee determined?**

R3 has produced a separate guide explaining an IP's remuneration, which is available from the IP or the R3 website. Read more [here](#).

### **How does an IVA come to an end?**

An IVA comes to an end after either:

- The terms of the IVA have been successfully complied with, i.e. all assets and liabilities have been dealt with in accordance with the terms of the proposal, or if the supervisor is satisfied that the IVA has substantially fulfilled its aims. A notice of implementation will be issued by the supervisor.

Or

- The debtor does not satisfy the terms of the IVA, for example, if they have failed to make the required payments to the IVA. In these circumstances, the IVA proposal should have provisions for how to deal with its termination. A notice of termination will be issued by the supervisor. An IVA which terminates may lead to the debtor being made bankrupt by the supervisor or creditors will have their rights to take action against the debtor restored.

In both scenarios, the final report and notice of implementation or termination has to be delivered to the debtor, the creditors bound by the IVA and, if an interim order was made, filed in court.

### **What should I do if I am dissatisfied with the supervisor's handling of the case?**

You should first contact the supervisor to try to resolve the problem. If you are still not satisfied, you can submit a complaint to the IP's regulator via the Insolvency Service complaints portal.

R3 is the UK's leading trade association for licensed insolvency practitioners and business recovery professionals.

R3 does not license or discipline its members; this is the responsibility of the practitioner's regulatory body. The regulatory bodies are:

**The Institute of Chartered Accountants in England and Wales**

Tel: 01908 248 250      [www.icaew.com](http://www.icaew.com)

**The Insolvency Practitioners Association**

Tel: 0330 122 5237      [www.insolvency-practitioners.org.uk](http://www.insolvency-practitioners.org.uk)

**The Institute of Chartered Accountants of Scotland**

Tel: 0131 347 0100      [www.icas.com](http://www.icas.com)

**Chartered Accountants Ireland (CAI)**

Tel: 00 353 1 637 7200      [www.charteredaccountants.ie](http://www.charteredaccountants.ie)

**Disclaimer**

Information in this guide is intended to provide an overview only and relates to individual voluntary arrangements in England and Wales. It is not a replacement for seeking advice specific to your circumstances.