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## DEAR INSOLVENCY PRACTITIONER Issue 147 – June 2022

Dear Reader

Please find enclosed the latest articles from the Insolvency Service, HMRC and Companies House.

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### **37) Companies House Insolvency Filing Service survey**

Companies House would like to know what you think about the Insolvency Filing Service and have developed the following survey that will give us an understanding of how the paper and upload service are working for you:

<https://www.smartsurvey.co.uk/s/insolvfiling/>

The survey is completely anonymous and should take less than 2 minutes to complete. At the end of the survey, you will also be asked if you would be willing to take part in future surveys and research that Companies House may want to carry out in the future. This would be very helpful when Companies House is developing new digital services for Insolvency filings.

Thank you in advance for completing the survey.

*Any enquiries regarding this article should be directed towards email:*  
[Pblake@companieshouse.gov.uk](mailto:Pblake@companieshouse.gov.uk)

## **42) Please help us to help you: VAT returns (VAT100)**

As part of HMRC's work to improve the customer journey for Insolvency Practitioners, it has improved the way it processes VAT returns.

HMRC has introduced a new style VAT100 (2021) and a fully automated process which means when HMRC receives a return it is automatically scanned and captured onto its system.

If your record has been migrated to the new IT system, please ensure you are only using the new versions of the VAT100 that are issued to you. If you need another copy, please contact HMRC, see [Insolvency \(VAT Notice 700/56\)](#).

However, if your record has not been migrated to the new IT system, please continue to use the old versions which have been sent to you. If you are unsure of the status of your record, please contact HMRC, see [Insolvency \(VAT Notice 700/56\)](#).

HMRC has included images of the old and new form to help you identify the differences.

See [How to fill in and submit your VAT Return \(VAT Notice 700/12\)](#) for a list of things to consider when submitting online or paper. Please ensure the boxes are filled in correctly and there are no amendments to the return as they will not be automatically scanned to the system and could cause delays in processing.

The new VAT100 is built to read numerical values only. If you are submitting a nil return of a nil value in any of the 9 boxes, please ensure you use numerical values only 0.00 and do not write 'nil' or 'zero' for example.

If you have any questions about this article, please contact R3 or your authorising body who will take them forward with HMRC.

## **115) Advertising enforcement notice launched by Advertising Standards Authority**

Insolvency Practitioners should be aware that a market-wide enforcement action has been launched by the UK Committee of Advertising Practice (CAP) and the Advertising Standards Authority (ASA) in relation to advertising and marketing of services for Individual Voluntary Arrangements (IVAs) and/or Protected Trust Deeds (PTDs).

CAP writes the advertising rules, which are enforced by the ASA, the UK's independent advertising regulator. Information about the UK advertising regulatory system can be found on the ASA website at <https://www.asa.org.uk/about-asa-and-cap.html>.

Adverts targeted at consumers with debt who are seeking a solution have the potential to cause serious detriment if they are not accurate. Insolvency Practitioners and those who refer work to them and advertise IVA/PTD services must be careful to ensure their advertising, marketing and any other forms of promotional activity is compliant and does not mislead.

On 23 June 2022 ASA published a new [Enforcement Notice about Debt Management \(IVA/PTD\) Ads by Insolvency Practitioners and Lead Generation Companies](#). The Notice provides guidance as to advertising standards expected from Insolvency Practitioners and lead generators in relation to marketing activities promoting their services in this area.

Insolvency Practitioners should familiarise themselves with the requirements within the grace period before enforcement action commences. From 25 July 2022 CAP will be carrying out proactive monitoring and taking up enforcement cases against those who remain in breach of the Notice.

If a non-compliant advert/website or social media post is made public by any insolvency work referrer, CAP will contact both the lead and the associated Insolvency Practitioner. When contacted, advertisers would be expected to amend rapidly or remove those parts of the advert in contravention of the Notice. If adverts are not swiftly amended or withdrawn, CAP will proceed to sanctions, which will vary depending on the medium in which the advert appeared. If CAP continue to see problems by an advertiser, they will consider referral to Trading Standards, other enforcement agency, or an appropriate regulator. More information on sanctions can be found here: <https://www.asa.org.uk/codes-and-rulings/sanctions.html>.

Insolvency Practitioners are reminded of their obligations in respect of both their own and third-party advertising, marketing and other forms of promotional activity as outlined in Dear IP 108 (<https://www.gov.uk/guidance/dear-insolvency-practitioner/13-general>).

The ASA has published advice regarding debt management and IVAs, which is available at <https://www.asa.org.uk/advice-online/debt-management-and-individual-voluntary-arrangements-ivas.html>.

CAP offers a range of services to help advertisers comply with the rules, including free bespoke Copy Advice at <https://www.cap.org.uk/Advice-Training-on-the-rules/Bespoke-Copy-Advice.aspx> and training at <https://www.cap.org.uk/Advice-Training-on-the-rules.aspx>.

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## **60) Guidance to support the IVA protocol for existing protocol compliant IVAs: 26 June 2022**

### **Introduction**

This guidance has been drafted with the agreement of the signatories of IVA Standing Committee. From 26 June 2022, the Straightforward Consumer IVA Protocol should be read in conjunction with this guidance. The guidance does not seek to amend the existing IVA proposal and is a statement of an agreed position.

The IVA Standing Committee recognises that the current pressure on individual finances may have an impact on a consumer's ability to be able to make monthly contributions into their IVA arrangement at the same level as previously agreed.

The Committee is mindful that current IVAs may have been drafted before the nominee had knowledge of the current financial climate, rising inflation, and increases to energy and other household outgoings.

The purpose of the approach set out in this guidance is to support the IVA Protocol in keeping as many consumers as possible in their arrangements and paying a contribution to their creditors, in order that they can maintain and complete their IVA. This guidance will aid an efficient process for supervisors to propose multiple variations to arrangements in order to achieve that aim.

Supervisors of IVAs not covered by the IVA Protocol may also adopt the provisions of this amendment with the consent of consumers and creditors.

### **Current position and how the Committee will track this guidance**

The IVA Standing Committee, working with RPBs, intends to track use of this guidance through monthly returns by those IVA providers who are defined as volume providers (according to the guidance initially issued to RPBs by the Insolvency Service on 9 April 2014 and updated on 2 October 2019) and tracking further changes in the wider economy.

The IVA Standing Committee, working with the RPBs, will request a specified data set from those IPs who are subject to monitoring under the volume IVA guidance. This may change periodically and will be expected monthly.

The IVA Standing Committee will review the position every three months at a minimum.

### **Process to make changes to an IVA**

If a review of income and expenditure is undertaken by the supervisor at the request of the consumer and a reduction in payment is required, this guidance should be applied.

If the consumer's annual income and expenditure review is due within three months, a further review is not necessary.

The supervisor should, where possible, make use of the deemed consent procedure to agree any reductions to the IVA contributions if they fall within the agreed parameters below.

The Recognised Professional Bodies (RPBs) will continue to review the decision procedures applied and changes proposed by supervisors as part of ongoing monitoring.

### **Consumer's obligations**

The consumer will have an obligation to provide evidence to support a change to their contributions. This could include but is not limited to providing the supervisor with:

- Payslips
- Statement of benefits
- Utility bills (energy, water, broadband etc.)
- Lease agreements
- Bank statements

A proposed change to the terms of the IVA including the monthly contribution will only be considered by a supervisor with supporting evidence.

### **Agreed parameters**

All amendments to a consumer's contributions into their IVA should be put to creditors through the deemed consent procedure, where appropriate. If supervisors wish to seek approval for fees in relation to a variation, this guidance does not preclude them from doing so. However, they will need to seek this approval from creditor/s through a decision-making procedure as set out in the legislation.

Any fees in relation to the variation process should follow the principles of SIP9.

It has been agreed that reductions will generally be accepted by creditors of up to 50% of current contributions, or £75, whichever is higher.

Any change to contributions should be considered in conjunction with whether an extension of up to, but not exceeding, 12 months. Proposals to this effect

should be set out clearly when a change is proposed to creditors and any such extension, having regard for previous forbearance measures, should not extend the IVA to more than 7 years.

If a 50% reduction represents a significant loss of contributions which are unable to be remedied through an extension, the supervisor should gather the relevant evidence to support their decision to put this to creditors.

If the supervisor is of the view that such an IVA is sustainable, an explanation should be provided to creditors and a full variation should be proposed.

The Committee would have reservations about the sustainability of any arrangement where the contribution were to fall below £50, and the supervisor should consider whether a settlement of the IVA based on funds paid to date should be proposed (see below), and if not, the supervisor should consider referring the consumer for advice from an FCA regulated debt adviser on potential alternative debt solutions.

As there are likely to be a large volume of consumers requiring an adjustment due to the current economic pressures, supervisors should work with creditors and their representatives to process deemed consent paperwork efficiently, which may involve multiple consumers' procedures being notified under one notice. It should, however, be clear what the proposed changes are to each IVA including:

- unique IVA information for the creditors to easily identify the case;
- the proposed reduction to the consumer's contribution;
- the new contribution amount;
- an increase in term, if applicable; and
- the next review date if not at the next annual review of income and expenditure.

### **The Customer Journey**

It is recognised that not all consumers will be suitable for another debt solution such as a Debt Relief Order (DRO) due to the existence of other assets, in particular motor vehicles, the fact that their financial circumstances may be temporary, or indications/evidence that the consumer's situation is likely to improve within 12 months.

However, the supervisor should be mindful that if the consumer would likely be eligible for a DRO or a bankruptcy where they have no significant assets, a settlement based on funds paid to date may make for a better customer journey (see further detail below).

### **Funds paid to date**

As is currently the position, the supervisor may decide in some cases that proposing an early settlement of the IVA based on funds paid to date is a more pragmatic approach to put to creditors.

In these circumstances the supervisor should consider:

- The consumer's ability to maintain regular payments into the arrangement and if they fall below/or are likely to fall below £75.
- The consumer's ability to resume increased payments after a period at a lower amount.
- Whether the consumer's circumstances would successfully meet the criteria for a DRO.
- Whether any assets previously disclosed to creditors would impact the decision to put forward a settlement based on funds paid to date, even if that consumer is ineligible for a DRO because of that asset.
- The reasons for the consumer being unable to continue with the payments as proposed.
- Whether the consumer owns a property and the expected equity release determined in the proposal.
- The number of contributions made and the amount remaining to complete the IVA as per the proposal agreed by creditors.
- Whether another debt solution may see a greater return to creditors i.e. bankruptcy.

Those cases where, having regard for the above, the supervisor is of the view that a funds paid to date settlement is the most appropriate approach for the consumer, this should be proposed by formal variation, and the use of this guidance should be highlighted. A detailed explanation of the supervisor's consideration of these points should be submitted to the creditors as it will assist in determining whether a final settlement of the IVA is the most appropriate course (e.g. if the consumer owns a property or other high value asset).

### **Other protocol provisions which may be affected**

Supervisors should consider carefully the use of payment breaks for individuals using the allowed allocation within the protocol. When reviewing the reason for the request for a payment break, if this is related to increased cost of living it may be more appropriate to reduce payments rather than take a break, especially if the consumer's situation is not likely to improve before that break is completed.

*Enquiries regarding this article may be sent to:*  
[IPRegulation@insolvency.gov.uk](mailto:IPRegulation@insolvency.gov.uk)

## **61) Guidance to support the IVA protocol for new protocol compliant IVAs**

This guidance has been drafted and agreed by the IVA Standing Committee. From 26 June 2022, the Straightforward Consumer IVA Protocol should be read in conjunction with this additional guidance.

Insolvency Practitioners should be aware of the current financial climate, and that further increases in consumers' outgoings are anticipated in the coming months, particularly in relation to energy cost as the energy price cap rose from 1 April 2022 and is expected to rise again on 1 October 2022. The potential impact this increased expenditure may have on the consumer's ability to maintain the monthly contribution as set out in the IVA proposal should therefore be borne in mind.

The IVA Protocol and SIP 3.1 set an expectation that a consumer's income and expenditure statement should be forward looking, ensuring that the proposal is sustainable for the duration of the IVA. The IVA Protocol and SIP 3.1 also provide that the nominee should carry out proportionate enquiries into, and verification of, the consumer's income and expenditure.

The IVA Standing Committee recognises the importance, particularly in the current climate, for Insolvency Practitioners to ensure that they obtain sufficient evidence, as far as is possible, of the consumer's current and known/likely future utility costs and other expected increases in household bills. Checking current payments made from a bank account would be unlikely to be sufficient in these circumstances. Additional checks that may be appropriate include, but are not limited to:

- Requesting up-to-date meter readings to ensure that the projected usage is not based upon estimated bills.
- Check whether any smart meter installed is correctly sending automatic meter readings to suppliers.
- Obtaining a recent utility bill and any correspondence from suppliers regarding changes to tariff and monthly payments.
- Requesting details of any specific tariff (fixed price or standard variable) the consumer is currently on and when the tariff is due to end.
- As prepayment customers are not able to spread payments evenly across the year, ensure that the increase in payments over the winter months are taken into account.
- Considering the potential impact of the anticipated further energy price cap increase in October 2022, and any further anticipated increases thereafter.

The Insolvency Practitioner should ensure that a record of such requests, and details of any difficulties in the provision of this information by the consumer, is made.

It is acknowledged that the spending guidelines in the Standard Financial Statement (SFS) have recently been reviewed and updated to reflect the current rise in inflation. It is recognised, however, that any further rises may result in consumers' essential expenditure exceeding the SFS spending guidelines. Insolvency Practitioners should therefore continue to ensure that any expenditure which may appear excessive is thoroughly explained in the proposal and supported by evidence.

In relation to each and every arrangement Insolvency Practitioners are reminded to consider the following in respect of the nominee function:

- Is the IVA achievable?
- Does it strike a fair balance between the interests of the debtor and their creditors? And,
- Is it an acceptable alternative to other insolvency solutions?

Insolvency Practitioners are also reminded of the need to document clearly within the proposal the reasons for the consumer choosing an IVA in circumstances where other solutions may be suitable, particularly where a consumer may be eligible for a DRO. In the event that a consumer's disposable income is lower than £75 the Insolvency Practitioner should satisfy themselves that the IVA will remain a sustainable solution in the event of any further anticipated inflationary price increases, and this should be recorded in the proposal.

This guidance does not prevent the supervisor from utilising the existing provisions in the protocol in relation to payment breaks and reductions where required once the IVA has commenced. RPBs will review the utilisation of such provisions to satisfy themselves that the IVA as originally proposed was sustainable.

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### **13) Diversity and Inclusion Steering Group**

The Insolvency Service and R3-led Diversity and Inclusion Steering Group is looking for enthusiastic insolvency professionals to become [Diversity and Inclusion Champions](#) as part of a network supporting the Steering Group's action plan, [published in December](#) following a [survey of R3 members](#).

The Steering Group was [established in 2021](#) to bring together professionals within and connected to the insolvency sector to discuss, understand, and take action to address barriers to diversity and inclusion within the sector.

Anyone working within, or connected to, the insolvency profession can find more about the role, or the work of the group via the articles linked above, or by emailing the inbox, [Insolvency.Diversity@insolvency.gov.uk](mailto:Insolvency.Diversity@insolvency.gov.uk). Social media support via retweeting or sharing posts via Insolvency Service and R3 accounts on Twitter and LinkedIn are also welcomed.

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