

## **Debt solutions for residents of England, Wales and Northern Ireland - information for you to retain.**

The following information is designed to help you understand the debt solutions available for residents of England, Wales and Northern Ireland:

- Individual Voluntary Arrangement (IVA)
- Debt Management
- Bankruptcy
- Debt Relief Order

### **IVA**

An IVA is a statutory procedure that enables you to avoid bankruptcy, keep your home and become debt free - usually after five years.

#### **What is an IVA?**

An IVA is for those with unaffordable unsecured debts. It is a binding statutory contract between you and your creditors whereby you offer to repay as much as you can afford, usually over 60 months, after which any remaining debt is written off.

You can only obtain an IVA by using the services of a licensed Insolvency Practitioner, who acts initially as a "Nominee" to assist you to prepare all of the necessary documentation. Once your IVA is approved he will act as the "Supervisor" during the period of your IVA.

A fee is charged by both the Nominee and the Supervisor in respect of these services, both of which are included within your contribution and the time frame.

#### **Why should I consider an IVA?**

- An IVA forgives any debt remaining after you have made all of your contributions, including that from any equity in your home or "windfalls" and other assets that may become available during the period of your IVA.
- You only repay what you can afford after taking into account your personal circumstances.
- An IVA may allow you to become debt free in five years. This is dependent upon in excess of 75% (by value of the debt) of your creditors who decide to vote on your proposed IVA agreeing it and provided you maintain the monthly contributions.
- An IVA freezes any further interest being applied to your unsecured debts.
- You will stop paying interest on your debts from the day your IVA proposal is approved and for the duration of the IVA, as long as you continue to make your contributions.
- An IVA stops unsecured creditors harassing you.
- Creditors and debt collectors can't legally pursue debt repayment once an IVA is in place, whether they agree to the IVA or not.
- An IVA avoids bankruptcy.

An IVA (once approved) means that you have reached an agreement with your creditors whereby they cannot bankrupt you if you maintain the agreed contributions. Bankruptcy means that you may lose control of certain assets, including your home.

## Advantages of an IVA

- A way to avoid bankruptcy
- Make one affordable fixed monthly contribution
- Legal action by your creditors is stopped as long as you make your IVA monthly contributions
- The interest on your debts is frozen
- Any debt you have not repaid at the end of your IVA is written off
- You could become debt free in 5 years
- There is certainty over the way in which your home will be dealt with, unlike the position if you are subject to bankruptcy proceedings and ultimately made bankrupt

## Points to consider

- **Effect on credit record**

When entering into an IVA you will be breaking the terms of credit agreements, resulting in defaults. Like all adverse information, this will remain on your credit record for 6 years. If you successfully complete your IVA, you will be free from debt but you will not have a clean credit record until about 1 year later. It will affect your ability to get credit once the IVA is completed.

- **Homeowners may be required to re-mortgage**

During the last 6 months (in the fifth year) of the IVA, if you own property in which you have equity, you will normally be expected to re-mortgage or to obtain a secured loan to raise money to pay 85% of such net equity into the IVA, if your share of the equity in the property at that time is £5,000 or more (anything less is excluded from the IVA). You must make every attempt to obtain re-finance, but if you are unable to do so you will be required to pay 12 months additional contributions in lieu of the equity.

- **You may still be made bankrupt**

If you fail to maintain the agreed monthly contribution (or fail to contribute any equity in your property or other assets that you have agreed to contribute), your creditors (and in certain circumstances, the Supervisor) may choose to start bankruptcy proceedings against you. This may leave you in a worse financial position than if you chose bankruptcy over an IVA in the first place.

- **IVA providers cannot promise a favourable outcome**

No IVA provider can promise your IVA proposal will be successful. Ultimately, it is the decision of your creditors whether or not an IVA proposal is approved.

- **If your circumstances don't change, the terms of the IVA do not change**

Entering into an IVA is essentially cutting a deal with your creditors, saying 'this is what I can pay each month now and I will pay whatever I can over the next 5 years'.

- **Contributions from future income and windfalls**

IVAs typically include a 'windfall' clause. Each year your IVA is reviewed. If you come into some money, e.g. an inheritance or improved salary, this is taken into account and you could be required to make increased payments. Typically your contribution will be increased by 50% of any salary increase, bonus or overtime. You may be required to contribute all of any windfall – up to the maximum you owe plus any interest due under the terms of your arrangement – but check with your Supervisor. Not disclosing available funds is an offence.

Please be aware that an IVA is intended to be an alternative process to bankruptcy. It is not a legal loophole allowing anyone to get away with non-repayment of debts.

Creditors will only accept the proposal if they believe it to be in their best interests and certain conditions are met.

## **Debt Management**

### **What is a Debt Management Plan?**

A Debt Management Plan (DMP) is an informal arrangement made with your creditors to pay a monthly amount which you can afford. Normally you will repay what you can in monthly installments until your debts have been paid in full. You can set up a DMP yourself with the help of a charity, or instruct a debt solutions provider to act on your behalf.

If you chose to set up a DMP, a monthly contribution that you can afford would be agreed before negotiating with your creditors for you. You would make your monthly contribution and your provider would deal with your creditors for you.

This should ease the stress of the process and provide peace of mind knowing that expert advisors are helping you to achieve the best result possible. A fee is taken from your monthly contribution in respect of the service provided.

### **Points to consider:**

- You make one monthly contribution and have the assurance that your creditors are being paid.
- A DMP avoids the need for any formal insolvency procedures such as an IVA or bankruptcy, although by being an informal arrangement, it does mean creditors are not obliged to accept the offer.
- Your credit rating may still be affected.
- Creditors will in many cases freeze interest payments, although this is not guaranteed.
- Your monthly debt repayments may be reduced to make them affordable but this usually means you will pay more in total over a longer period.

### **DMP fees**

With a DMP, a considerable amount of the work done for you takes place at the start of the arrangement. This includes your initial consultation, examination of your income and expenditure and liaison with your creditors to come to an agreeable and affordable contribution that you can make into your plan.

A set-up fee is charged, which is spread over the first six monthly installments starting from your first payment. From month seven onwards a monthly management fee is charged.

### **DMP fee structure**

Typically a commercial organisation will charge you a maximum DMP set-up fee of £60 from each of the first six monthly payments you make, unless your agreed monthly contribution is less than £120 per month, in which case the fee will be restricted to 50% of your monthly DMP contribution.

From the seventh installment onwards a fixed monthly management fee of £40 will be taken from every monthly contribution you make, unless your agreed monthly DMP contribution is lower than £80 per month, in which case the fee will be 50% of your contribution.

At least half of every contribution you make will be sent to your creditors each month. Should a disposable income level be minimal or even zero, there are sources of free debt advice and these can be found through the Money Advice Service at [www.moneyadviceservice.org.uk](http://www.moneyadviceservice.org.uk) or on 0300 500 5000.

If you are paid weekly or fortnightly you can choose to make weekly or fortnightly, rather than monthly payments. If you decide to do this we will take our fees (set-up and management fee) from each contribution on a pro rata basis.

## **Bankruptcy**

### **What is bankruptcy?**

Bankruptcy is the term associated with a person who has been made bankrupt because he/she is unable to pay their debts, or is insolvent. In order for you to become bankrupt a court must make a Bankruptcy Order against you following the presentation of a Bankruptcy Petition.

Anyone to whom you owe in excess of £750\* can present a Bankruptcy Petition against you (if you have not settled the debt on demand for payment). Additionally; the Supervisor of a voluntary arrangement or even you personally can do this.

Once the Bankruptcy Order has been made, you must report to the Official Receiver in your area and/or, dependent on your circumstances, the person who has been appointed your Trustee in Bankruptcy.

Once all of your available assets have been realised, the debts owed prior to the Bankruptcy Petition being presented will be settled either in full or as a percentage of what was owed.

No more payments will be due from you and no further claims can be made against you for your pre-bankruptcy debts. A number of fees are applicable in presenting a Bankruptcy Petition and during the course of the bankruptcy.

Once the Bankruptcy Order has been made, no further legal action can be taken against you, creditors cannot pursue you for your debts and you will usually obtain an automatic discharge within 12 months.

*\* From October 2015 this will be increased to £5,000*

### **Advantages of bankruptcy**

- You will become debt free once discharged from bankruptcy
- All unsecured debts will be written off
- You will receive no further contact from your creditors

### **Points to consider**

- Details of your bankruptcy will be publicly available on the Insolvency Register
- It may impact on your employment, such as not being able to act as a company director
- Bankruptcy will remain on your credit file for six years, making it harder to obtain credit
- Assets like a house or car may be included in your bankruptcy

### **Is bankruptcy right for me?**

If your debts are overwhelming and cannot be addressed with another debt solution then bankruptcy can be the most appropriate solution to allow you to make a fresh financial start. It may also be the most appropriate solution if you rent your home and are not in rent arrears.

## **Debt Relief Order**

Debt Relief Orders (DROs) are available if you have assets of less than £300 (excluding a vehicle which must be worth no more than £1,000) and if you owe creditors less than £15,000. You must also have a disposable income (DI) of less than £50 per month.

An application must be made to the Official Receiver's office through an authorised intermediary. The Official Receiver's fee is £90. Intermediaries are not allowed to charge you a fee for submitting your DRO application to the Insolvency Service.

## **Advantages of a Debt Relief Order**

- DROs are a low cost alternative to bankruptcy
- All of your qualifying debts are included in your DRO
- Your debts will be written off in full at the end of the DRO

## **Points to consider**

- Only available for people who owe less than £15,000 in unsecured debts, with assets worth less than £300 (and vehicles worth no more than £1,000) and who have a DI of less than £50 per month.
- If you have a change in circumstance during the 12 month period, such as an increase in DI or you acquire any assets worth more than £300 (such as for a successful Payment Protection Insurance mis-selling claim), your DRO will be revoked and all your debts, plus accruing interest, will become recoverable again.
- Homeowners are excluded from applying for a DRO, even if there is negative equity in the property.
- A one-off fee of £90 has to be paid to the Official Receiver.
- A DRO remains on public records for 15 months and will stay on your credit record for 6 years.

## **Debt Relief Order criteria**

To be able to apply for a Debt Relief Order you must satisfy all the criteria listed below:

- You must be unable to afford current repayments and charges.
- You must owe less than £15,000 in unsecured debts.
- You must include ALL your debts. You can't selectively write off a proportion of a larger total by a DRO.
- You must have assets totaling less than £300.
- Only non-essential items that can easily be sold are taken into account.
- You must have a disposable income of no more than £50 per month.
- You must not be currently involved in another formal insolvency procedure.
- You cannot be a homeowner.
- Your vehicle must be worth no more than £1,000 (unless it is a registered disability vehicle).

In October 2015 the qualifying criteria for a Debt Relief Order is due to change significantly. Each aspect is listed below: (any item in the list above that is not mentioned below will remain the same)

- You must owe less than £20,000 in unsecured debts.
- You must have assets totaling less than £1000.

## **Restrictions of a Debt Relief Order**

You will be subject to the following restrictions:

- You may not obtain credit of £500 or more, either alone or jointly with someone else, without telling the lender you are subject to a DRO.
- You may not trade (directly or indirectly) in a name that is different from the name under which you were granted a DRO, without telling all those with whom you do business, the name under which you were granted a DRO.
- You may not be involved (directly or indirectly) with the promotion, management or formation of a limited company, or act as a company director, without the court's permission.
- You will only be able to obtain a DRO once every six years.
- You may also be subject to a Debt Relief Restrictions Order, similar to a bankruptcy restriction order. This can extend the period of restriction for up to 15 years for debtors who are deemed dishonest or culpable to the extent of their financial difficulties. An example of this is hiding assets or continuing to borrow knowing you have no chance of making repayments.