

THE IVA PROTOCOL: UPDATE AND CHANGES

This note sets out the amendments to the Protocol agreed by the IVA Standing Committee. It also includes some clarification and guidance for IPs and creditors.

GUIDANCE FOR ALL USERS

The name

Proposals prepared under the Protocol will be referred to as Protocol Compliant IVAs. This will reduce the risk of confusion created by the myriad of terms currently in use (SCIVA, Standard IVAs, Straightforward IVAs, SIVAS etc).

Unnecessary modifications

IPs have reported that they are still receiving modifications from creditors which are unnecessary because the subject matter of the modification is already covered by the Protocol Standard Terms and Conditions.

In particular, please note the Protocol STCs covering the following:

- Duration of the arrangement – STC 5 makes it clear that this must be stated on the face of the proposal
- Death of the debtor – covered by STC 16

Unnecessary modifications take time to resolve and therefore do not help to achieve the two key objectives of the Protocol; to streamline and increase the transparency of the process. Creditors are respectfully reminded to ensure that any proposed modifications are not already covered by the Protocol STCs or the proposal.

Interaction between the Protocol STCs and the R3 Standard Conditions

The Protocol STCs are designed to be used instead of the R3 Standard Conditions in Protocol Compliant IVAs. R3 Standard conditions would cause the proposal to be non compliant. IPs are reminded of paragraph 8.3 of the Protocol regarding Protocol STCs.

Pension contributions

Paragraph 7 of the Protocol already states that payment in respect of the Debtor's pension policy should be verified by the IP. The IVA Standing Committee has asked for guidance to be provided on when such payments should be allowable as essential expenditure. That guidance, agreed by the Committee is that where the debtor is below the age of 55 *at the date of the arrangement*, only the minimum contribution allowed by the scheme should be

made. Where the debtor is 55 years or older at the date of the arrangement, an average of the last 6 months pension contributions should be allowed, subject to a contribution limit of £75 above the minimum pension contribution allowed by the scheme per month.

The Standing Committee believes this is a fair approach and balances the interests of debtors and creditors. If the debtor wishes to include any pension contributions in essential expenditure, the proposal should contain a note to the effect that the sum included is within the guidelines or, if it is not, a note explaining why another sum is justified.

Payments made to the nominee pre IVA.

Where any payments have been made by the debtor to the nominee, or any third parties, in relation to the original consultation or preparation of the proposal, any balance remaining (after deduction of the fee agreed by the debtor) should be paid into the arrangement. This would be in addition to the contribution offered by the debtor in the proposal. Where the debtor has paid such sums the proposal should clearly state how the balance has been dealt with.

Payment Protection Insurance (PPI)

PPI taken out prior to the agreement will not *usually* be allowed as essential expenditure. This is because, in most cases, the loan which was to be protected by the policy forms part of the arrangement, and the policy will either have paid out or will be cancelled by the creditor.

However, there may be circumstances when Pre IVA PPI *may* be allowable. For example, if the policy was to protect a car loan, and the debtor needs the car to travel to work, it would be in the interests of the creditors to allow the PPI payments.

Where a debtor wishes to continue to make Pre IVA PPI payments as part of essential expenditure, the proposal must clearly state why this is the case.

It is now possible to take out PPI to protect the payments under the arrangement itself ("Post IVA PPI"). It may be argued that this is a benefit to creditors as it gives the arrangement a better chance of success. However, some creditors may prefer to accept the risk of failure in return for the higher contribution which could be made by disallowing the PPI. It is really a commercial decision for creditors, and for that reason, if a debtor wishes to make PPI payments as part of essential expenditure, full details of the policy should be provided in the proposal.

Equity release

A sub group of the IVA Standing Committee has considered the issue of how to arrive at an estimated value of the property at the time the proposal is prepared. Having considered a number of options, the Group has decided

that to ensure consistency, we will adopt an assumed growth rate in property value of 4% per annum. Historically property growth has been around 7% per annum but it was felt that using this 7% figure ran the risk of seriously over estimating the possible returns to creditors. We do not want a situation where the assumption used is regularly changed, and therefore, to provide consistency, the 4% figure will be used. If market conditions are such that the use of the 4% figure will lead to a clearly misleading estimate, then reference can be made to this in the proposal, but the 4% figure should still be used.

The Group also considered the extent to which the debtor should be directed to a particular type of mortgage vehicle. It was agreed that IVA providers are not well placed to offer such advice and that the debtor should be directed to Independent Financial Advisers.

The Group has approved a draft clause on equity release which may assist those drawing up proposals. This is now available as annex 6 to the protocol.

CHANGES TO THE PROTOCOL

Health insurance

If the debtor wishes to continue to pay for health insurance, the proposal should contain a note stating why this is considered to be essential expenditure. This has been added to paragraph 7 of the Protocol document under "expenditure".

Board & lodging

If the debtor lives with any person aged 18 or over, and there is reasonable expectation that this person will pay board and lodging to the debtor, this payment must be added to the debtor's income in full. This has been added to paragraph 7 of the Protocol under "income".

Equity release

Paragraph 9 has been amended to clarify how the property should be valued for the purpose of the outcome statement. This now states that the current value should be inflated by 4% per annum to the period to when the debtor will be asked to remortgage the property.

Paragraph 9 also states that the debtor should be advised to seek independent financial advice at the point at which they are asked to release the equity in their property.

CHANGES TO THE PROTOCOL STANDARD TERMS & CONDITIONS

After due consideration, the Standing Committee has agreed to add the following to the Protocol STCs:

Obtaining credit

The debtor must not obtain any further credit greater than £500 without the prior written approval of the Supervisor, except for public utilities and to re-finance any balloon payment at the end of a vehicle Hire Purchase Agreement. Should credit greater than £500 be obtained without the prior written approval of the Supervisor, this will constitute a default of the arrangement. This clause does not apply to any re-mortgage or equity release under paragraph 9 of the Protocol.

Un-cashed dividend cheques

Paragraph 10(3) has been amended to change “unpaid” to “un-cashed”. This is simply to clarify the meaning.

CHANGES TO THE REGULATORY FRAMEWORK (Annex) 2

Addition to the first paragraph on page 2:

This allows debtors dealing with an Insolvency Practitioner or debt advice firm holding a standard licence, to bring an unresolved complaint to the Ombudsman relating to the advice they had received. Similar complaints about an Insolvency Practitioner covered by a Group licence held by their regulator could not be brought to the Ombudsman, but should be brought to the authorising body which had licensed the Insolvency Practitioner.