

Review of the impact of the IVA protocol

Q&A relating to report published on 21 December 2009

Rationale behind IVA Protocol Review

Q. Why was the review of the IVA Protocol undertaken?

The Insolvency Service has undertaken this review on behalf of the IVA Standing Committee. The Protocol was developed during 2007 and introduced in February 2008. It was felt that this was a good time to establish the impact of the Protocol and to review how well it is working.

Q. What value will this add to the Protocol?

This review has given us an opportunity to establish what is good about the Protocol, and whether any improvements are required. The Protocol is a voluntary agreement and the review process is the most effective way of ensuring that it is fit for purpose.

Key findings from the review

Q. If you had to give one positive key message from the review, what would it be?

The Protocol is being widely, and increasingly, used. The survey information which related to cases from April 2008- March 2009 showed that over 50% of IVAs in this period were protocol compliant. Interviews with IVA providers in October 2009 suggested that this figure had since gone up to as much as 85%.

Q. What about the key negative finding?

Modifications remain disappointingly high. However, the modifications in Protocol cases are less than those in non-Protocol cases, indicating that the Protocol is succeeding in reducing modifications.

Q. What about the debtor's position?

More than half the debtors said that they had found the process easy or very easy, but there are still a substantial number who found it difficult to understand. Furthermore, whilst 71% of debtors in the survey say they were advised of other forms of debt relief before they embarked on their IVA, 29% said they were not so advised. This may raise concerns about the lack of advice, or it may be that, given the passage of time, the debtor has forgotten the advice that he was given.

Q. Have rates of returns for creditors improved following the Protocol?

It is too early to assess this fully, as the Protocol has been in place for less than 2 years. Projected rates of return averaged 37p in the £. However, it was not possible to collect data on actual rates of return as the IVAs in this sample would not have run their full term when the review took place.

Q. The Protocol is voluntary. Why doesn't the review recommend that it becomes mandatory?

The high take up of the Protocol on a voluntary basis indicates that there would be limited added value in making this mandatory. In any event, this would require legislative change, which is an expense and time-consuming process.

Q. You interviewed the 'top 10' providers; what about the smaller IVA providers?

We felt it was important to interview the 'top 10' providers as they accounted for almost 80% of the IVAs in the review. We also interviewed 3 smaller IVA providers, who offered less than 5 IVAs a month.

Q. Are you not concerned that so many IVAs are being provided by so few IVA providers?

The only concern might be if debtor was not able to access an IVA due to their inability to access a provider, but there is no evidence of this. Diversity monitoring data indicates that the profile of those obtaining an IVA is in line with that of the population as a whole. IVA providers are all insolvency practitioners, a highly regulated profession. Therefore whoever the provider, a debtor seeking an IVA should be able to get consistent quality of advice, service and support.

Q. The number of IVAs is rising; what does this say about the Protocol?

The number of IVAs has been rising, and is now over 20% higher than the same quarter last year. It is not possible to say whether the increase is due in any way to the impact of the Protocol. The Protocol offers a standardised approach to dealing with a debtor's income and expenditure and interest in property; with increasing IVA numbers it is more important than ever to ensure that the IVA process is fit for purpose. The high proportion of protocol-compliant IVAs would indicate that it has been welcomed by debtors as a viable debt solution.

Modifications

Q. Wasn't the Protocol supposed to reduce unnecessary modifications?

The headline figure of 97% of proposals requiring modifications is disappointing. However, the average number of modifications in a Protocol case is less (9) than in a non-Protocol case (15) indicating that the Protocol is having a positive impact upon modifications. We welcome the fact that modifications relating to home equity have reduced substantially due to the standard provisions contained in the Protocol.

Q. What can be done to address the number of modifications?

The Standing Committee has been working on updating the Protocol and an updated version will be issued shortly. It is hoped that these changes will help to address some of the common modifications, such as the treatment of overtime and redundancy payments. We also hope that modifications will continue to reduce as more IVA providers use the Protocol.

Q. Almost every IVA has a modifications relating to fees. If the Protocol provided guidance on fees, wouldn't this reduce the number of modifications?

It is not considered appropriate for the Protocol to address fees. Fees are dealt with by market forces – creditors agree to the level of fees which they consider appropriate.

Access to IVAs

Q. What is the Protocol doing to ensure as many debtors as possible can access it?

The widespread take-up of the Protocol indicates that debtors are successfully accessing it. The Protocol is aimed at those whose situation is straightforward, and inevitably some debtors' affairs are too complex to enable them to access a Protocol IVA. In those circumstances, the debtor can still access an IVA but will not be able to use the Protocol.

Q. Does a debtor need a high level of debts to access an IVA?

Some 13% of debtors in the survey had total debts of less than £20,000, indicating that those with a lower level of debt can access an IVA. However, there are other debt solutions that may be more appropriate for those with lower levels of debt, and the debtor's advisor will be best-placed to advise on the alternative debt solutions.

Q. Does a debtor need a high income to propose an IVA?

The review has identified that 45% of debtors have an income of less than £20,000, which is below the national average, showing low income is not necessarily a bar to entry into an IVA.

Q. What about the level of contributions that debtors have to pay?

Contributions are calculated based upon the debtor's income and necessary outgoings, and are assessed against agreed guidelines. Whilst it is true that some IVA providers may not be able to offer IVAs for lower-level contributions, some are willing to do so. Regardless of contribution level, the contributions must be sustainable, and an IVA provider should not put forward a proposal for a contribution level that the debtor is unlikely to maintain.

Q. If IVAs can be accepted with low levels of contributions, is it not an easy option compared to bankruptcy?

Contributions are assessed according to the debtor's income and necessary expenditure and the Protocol sets out the basis on which these calculations should be made. If the level of contribution is low, this is because their disposable income is low. Typically an IVA involves making contributions for 5 years, and maintaining regular contributions for 5 years or longer is not an easy option. Creditors can review contributions levels and suggest changes if they are unhappy with the proposals.

Q. Is there such a person as the ‘average’ debtor in IVA terms?

The report does not provide a profile as such, but the ‘average’ IVA debtor is likely to be employed and not a homeowner, with household income of less than £30,000 and total debts of less than £50,000.

Q. Are debtors able to access IVAs regardless of gender, ethnicity or disability?

We believe that debtors are able to access IVAs regardless of their gender ethnicity or disability. The diversity questionnaire shows 52% of respondents were male and that 8.9% declared a disability.

10.7% of respondents classed themselves as black or other minority background, compared with 8.7% figure in the 2001 Census.

Q. Did the review identify any link to other debt solutions?

Almost 80% of debtors had been through an alternative form of debt solution before entering into an IVA.

Q. How do IVAs fit in with debt management plans (DMPs)? After all, they are both agreements with creditors to make regular repayments.

IVAs are regulated, whilst DMPs are not. IVAs offer in many cases a degree of debt write-off, which is not available in a DMP, and this can result in DMPs extending over a longer period than IVAs. 7 of the top 10 IVA providers also offer DMPs, and where they did so they said that they provided 4-5 DMPS for every IVA.

Q. Does this mean that IVAs are better for debtors than a DMP?

The appropriate solution for an individual depends upon their particular circumstances and it is not possible to be prescriptive about this. The most important point is that appropriate advice is given to the debtor to enable them to choose the most appropriate solution.

Next steps

Q. What actions do you intend to undertake following the review?

The Insolvency Service intends to consider the findings of the review in the context of the wide range of personal insolvency solutions. We would like to engage with stakeholders to gain their views as part of this process.

Q. What about the proposals for legislation to bring in Simplified IVAs (SIVAs)?

At this stage we are not planning to re-visit SIVAs. The situation will remain under review however, and we can reconsider this at a later date, if circumstances indicated we should. At present we feel it is more appropriate to give the Protocol more time to work and we will review its operation again in the future.

Q. Can the Protocol ensure that debtors receive appropriate debt advice?

The Protocol specifies that appropriate advice must be given by the IVA providers. In addition, IVA providers are insolvency practitioners who are regulated and whose professional bodies monitor their activities to ensure that they meet appropriate standards.