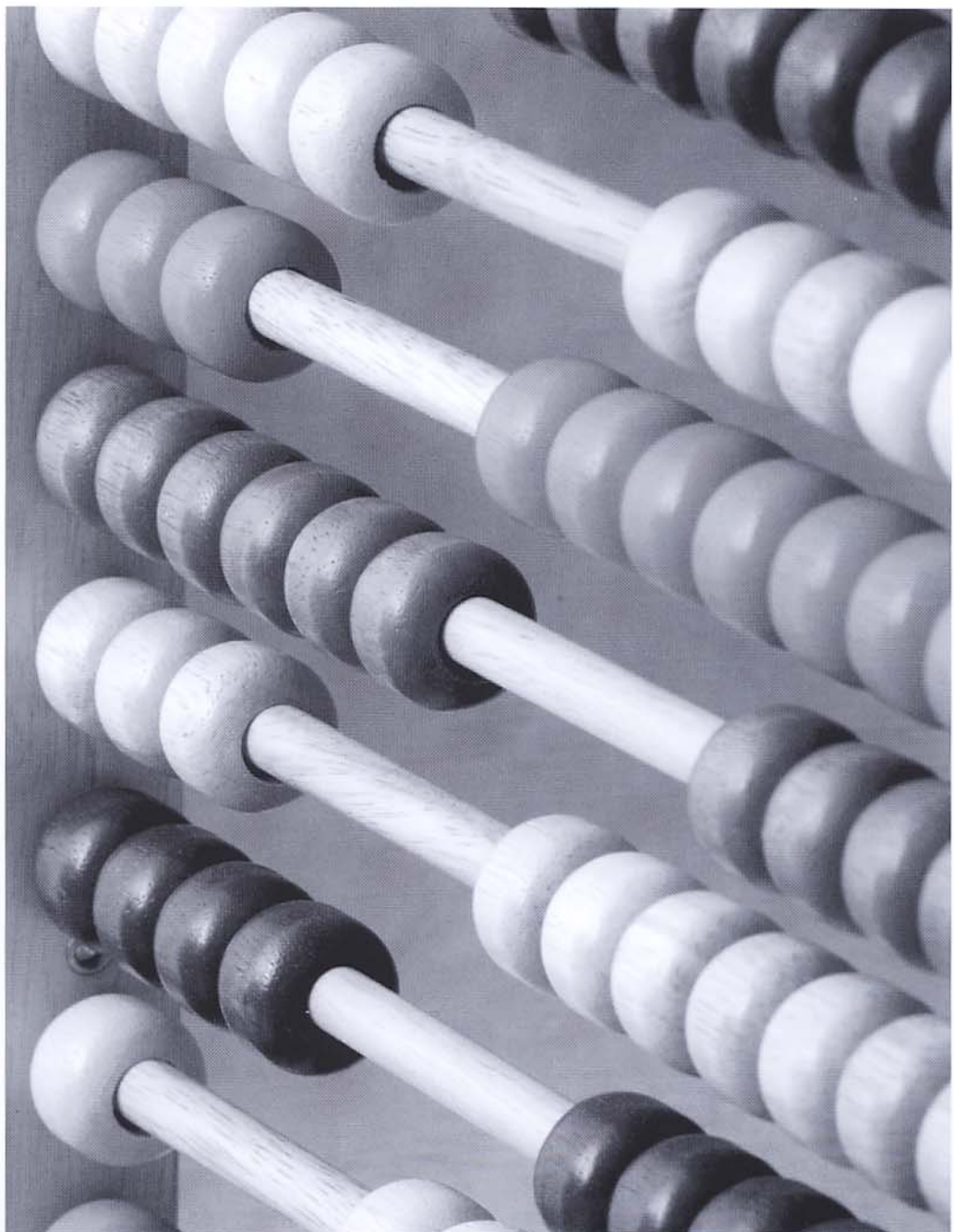


Improving Individual Voluntary Arrangements



The Purpose of this report

Following academic research into Individual Voluntary Arrangements (IVAs) the Insolvency Service facilitated a forum of interested stakeholders. That forum led to the Insolvency Service forming an independent stakeholder Working Group to examine how the IVA regime might be improved. This report summarises the Working Group's findings and conclusions.

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Enquiries: Andy Woodhead
Insolvency Service Policy Unit
5th Floor
21 Bloomsbury Street
London WC1B 3QW

Telephone 0207 291 6738 - Fax 020 7291 6746

Alternatively they can be e-mailed to;
Andy.Woodhead@insolvency.gsi.gov.uk

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IMPROVING INDIVIDUAL VOLUNTARY ARRANGEMENTS

FOREWORD

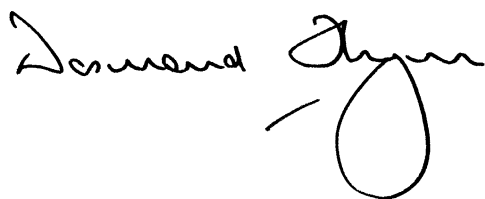
Individual Voluntary Arrangements (IVAs) were introduced by the Insolvency Act 1986 as an alternative to bankruptcy. It was envisaged that they would provide a rescue and rehabilitation process for 'business generated' personal insolvency. Since their introduction we have seen a large increase in the availability of credit and, as a consequence, increasing numbers of individuals with debt problems. Over time, non-traders have become the main users of the various debt solutions for individuals, including IVAs.

The small minority of individuals who find themselves with a debt problem, should have access to a solution which best suits their circumstances. That solution should offer the debtor a fresh start whilst ensuring that those who can pay their creditors do so over a reasonable timeframe.

Stakeholders have suggested that shortcomings with the IVA process have caused many debtors to seek to resolve their debt problems by alternative (and less appropriate) means. Against that background the Insolvency Service commissioned Michael Green of the University of Wales, to carry out research into IVAs, which was discussed at a seminar.

In September 2004 a stakeholder working group was formed to consider how the IVA regime could be improved. This report¹ summarises the findings and recommendations of the Working Group and seeks wider comment on those recommendations.

I would like to take this opportunity to thank the members of the Working Group (and their staff) for their invaluable, and unpaid work, in agreeing their findings and making their recommendations in this report.



Inspector General and Agency Chief Executive of the Insolvency Service

¹ **Disclaimer** The Report was prepared for the Working Group by Insolvency Service staff and does not necessarily reflect the policy and views of the Insolvency Service. The Insolvency Service cannot accept responsibility for any errors or omissions as a result of negligence or otherwise.

EXECUTIVE SUMMARY

1. Since their introduction in 1986, IVAs have proved a useful and effective regime for trading debtors, and for non-trading debtors whose affairs are complex, to deal with their debts. An IVA offers a debtor more control than bankruptcy, certainty in regard to repayment levels and duration, debt forgiveness and the comfort of supervision by a regulated nominee/supervisor together with recourse to the court if necessary.

2. Whilst individual indebtedness, particularly for non-traders, has increased since 1986 it has arisen during a period of economic stability. Inflation levels are low and stable; there are low unemployment levels that reflect a strong labour market. Individuals today also benefit from interest rates being at their lowest levels since the 1950s.

3. Because most individuals are able to service their debts, the current higher levels of personal indebtedness are not in themselves problematic. There is however a small proportion of individuals who do need to address and deal with their indebtedness. Those needs have been partially met through the wider availability of informal arrangements with creditors, usually achieved through a Debt Management Plan (DMP). All those who provide DMPs, whether they charge a fee or not, are required to be licensed under the Consumer Credit Act 1974 and in December 2001² the Office of Fair Trading issued guidance setting out minimum standards to be followed by those providing debt management services. Some DMP providers are members of the Debt Managers Standards Association³ (DEMSA), which is applying to the Office of Fair Trading under the Consumer Codes Approval Scheme. A DMP can and does provide a valuable service to the indebted and compared to an IVA they are simple to arrange. However DMPs do not enjoy all the benefits that are part of an IVA, for example statutory regulation of providers, debt forgiveness and recourse to the court.

4. The Working Group has concluded that the current IVA regime should remain in place for trader and more complex cases. However, to increase the accessibility of the IVA, the Working Group recommends the introduction of a streamlined, lower cost simple IVA regime (SIVA), which is more suited to the needs of those experiencing financial difficulty today.

5. The simple IVA is a two-tier system, entry being dependent on debt levels. It is aimed at those indebted individuals with debts below £75,000 who have sufficient income and assets to make payments to their creditors, but are currently unable to enter into an IVA due to, amongst other things, the level of their debts or the attitudes of their creditors.

6. For those with debts below £25,000/30,000 the Working Group recommends the introduction of a SIVA1. An individual with debts of less than £25,000/30,000 would be eligible to enter a SIVA 1 without creditors voting on the proposal, subject to there being a better return than bankruptcy and the

² <http://www.offt.gov.uk/nr/rdonlyres/75cd3c6e-a7c0-44af-96ff-308e4dcd703e/0/oft366.pdf>

³ <http://www.demsa.co.uk/mission.htm>

debtor paying the maximum affordable contribution. A non-voting structure, combined with simplifications recommended later in this report would reduce costs and therefore offer a better return to creditors than a traditional IVA.

7. The SIVA 2 is designed for individuals with debts above £25,000/30,000 but below £75,000. In these cases, creditors would be able to vote for or against the proposal (but not make modifications), acceptance being by a simple majority vote, rather than the current 75%.

8. To ensure the integrity of the scheme debtors whose conduct has been irresponsible, reckless or dishonest would be barred, and creditors would retain the right of appeal to the court.

9. The Working Group also recommends a number of other changes to working practices which would not only facilitate the introduction of the SIVA regime but also improve the efficiency of the current IVA, some of which may be adopted quite easily as they do not require a change in legislation, these include: -

- Improving the publicity and profile of the IVA process (pages 20-21)
- Clearly identifying who provides IVAs (page 22)
- Having a standard Executive Summary (page 23)
- Having standard terms and conditions (pages 24-25)
- Meeting with the debtor (page 26)
- Standardised failure and termination clauses in an IVA (page 27)
- The debtor's home (pages 28-29)
- Windfalls (page 30)
- Reducing the role of the court (page 31)
- Removing a creditor's right to modify a proposal (pages 32-33)
- Having standard guidelines on assessing a debtor's income, expenditure and sustainable contribution to an IVA/SIVA (pages 34-35)
- Removing the requirement for a physical meeting of creditors (page 36)
- Requisite majorities (pages 37-38)
- Introducing a time limit for creditors claims (page 39)
- Allowing the supervisor some discretion when varying the arrangement (page 40)
- Electronic communication and payment (page 41)
- Fees (pages 42-46)
- Keeping creditors informed (page 47)

10. Throughout this document you are asked for your views on the Working Group's recommendations. Those views will play an important part in the Insolvency Service's review of the IVA regime. Individuals who are experiencing financial difficulty, or who have faced such problems in the past may wish to concentrate on the proposed outline of the simple individual voluntary arrangement system contained in paragraphs 26 to 37. Those interested in the more detailed and technical proposals for the scheme, such as creditors, debt advice bodies and providers of debt resolution processes, may wish to read and comment on the report in full.

BACKGROUND

LEGAL FRAMEWORK

11. The origins of IVAs can be found in Compositions and Schemes of Arrangements, part of the Bankruptcy Act 1914 and in the Deeds of Arrangement Act of the same year. The Cork Report⁴ recognised the failures of such Deeds and called for the introduction of a more effective system of voluntary arrangements through debts arrangement orders. Although IVAs as introduced by the Insolvency Act 1986 did not adopt that specific Cork proposal, they do follow the general aims of the Cork Committee's recommendations.

12. IVAs have been the subject of some minor changes since 1986, principally through the Insolvency Act 2000 (the 2000 Act). The changes introduced by the 2000 Act are often considered to be technical in nature but their importance should not be overlooked. The 2000 Act introduced the facility to obtain an IVA without an Interim Order⁵, which now appears to be the most common way of obtaining an IVA. The 2000 Act also sought to widen the range of eligible nominees/supervisors of such arrangements by inserting new Section 389A into the Insolvency Act 1986. Section 389A allows the Secretary of State to recognise a body which can authorise persons to act as nominees or supervisors in company or individual voluntary arrangements. To date no such body has sought recognition.

13. The Enterprise Act 2002⁶ introduced the concept of the Fast Track Individual Voluntary Arrangement (FTVA) a post- bankruptcy arrangement supervised by the Official Receiver. The policy objective of the FTVA was to support the concept of a fresh start for bankrupts by providing an accessible alternative to bankruptcy. The FTVA is simpler than an IVA in that creditors cannot propose modifications to the debtor's proposal and there is no physical meeting of creditors i.e. creditors vote in writing to approve or reject the proposal by a given date. At the time of publication the Insolvency Service have been involved in 16 FTVA proposals.

MICHAEL GREEN'S RESEARCH

14. Michael Green's research examined IVAs, over-indebtedness and the insolvency regime. A short form version of the research is available on our Internet site⁷ and various findings and tables are included in this document. The research set out to answer a series of fundamental questions including:

⁴ Insolvency Law and Practice- Report of the Review Committee – Chairman Sir Kenneth Cork

⁵ Link to the Insolvency Act 2000-<http://www.legislation.hmso.gov.uk/acts/acts2000/00039-g.htm#sch3>

⁶ Link to the Enterprise Act 2002- <http://www.legislation.hmso.gov.uk/acts/acts2002/20040-at.htm#sch22>

⁷ Link to details of the research and forum - <http://www.insolvency.gov.uk/whatsnew/whatsnew.htm>

- Are the aims of the IVA, as originally envisaged, still valid?
- What are the characteristics, attitudes and practices of debtors, creditors and other organisations involved in the process?
- Where does the IVA process fit into the present overall regime?

15. The research provided a useful starting point for a debate about the effectiveness and relevance of IVAs. To that end on 19 July 2004 The Insolvency Service hosted a forum to discuss Michael Green's research and the future of IVAs in general.⁸

16. In the course of his research all the parties interviewed by Michael Green, without exception, supported and reaffirmed the principle of the IVA process as originally envisaged for either class of debtor (traders and non-traders). An IVA is a desirable option as it provides a breathing space for indebted individuals together with debt forgiveness in a flexible regime managed by licensed professionals and the comfort of an appeal route to the court for dispute resolution.

FORMATION OF THE WORKING GROUP

17. The consensus at the forum was that IVAs would benefit from simplification and a small Working Group of key stakeholders was proposed to examine the options for change in greater detail. Gerry Sutcliffe, The Parliamentary Under Secretary of State for Employment Relations and Consumer Affairs, agreed to the setting up of the Working Group with the following terms of reference.

“To consider the need for both legislative and non-legislative reform of the current individual voluntary arrangement process in order that it meets the needs of all individual debtors and their creditors, to make necessary recommendations for change and to report its findings.”

18. The membership of the Working Group was intended to be practical in its focus, and includes members with extensive experience of the IVA process and who work with individuals who have debt problems. The Working Group was asked to concentrate on recommendations that were both achievable and acceptable to all stakeholders in the IVA process.

⁸ Link to details of the research and forum - <http://www.insolvency.gov.uk/whatsnew/whatsnew.htm>

The Working Group met on five occasions and comprised:

Beverley Budsworth of Budsworth & Co
Charles Howson of Accuma Insolvency Practitioners Ltd
Charles Rusbasan of Max Recovery Ltd
Jan Smith of Consumer Credit Counselling Service
John Fairhurst of Payplan
Mark Allen of Grant Thornton UK LLP
Nick Pearson of Advice UK
Paul Latham of Debt Free Direct Group Plc
Pat Boyden of PriceWaterhouseCoopers LLP
Peter Hughes Holland of Numerica Group
Steve Treharne of KPMG LLP

19. During the course of the Working Group's deliberations the Insolvency Service also met with a representative group of its own staff and representatives of the regulatory bodies for nominees/supervisors.

20. As a frame of reference for their work the Working Group drew up the following guidelines and they are referred to in the principal recommendations:

Creditors needs

To have confidence in an efficient, transparent and cost effective regime in which they trust authorised practitioners to ensure the debtor pays the maximum affordable contribution.

Debtor's needs

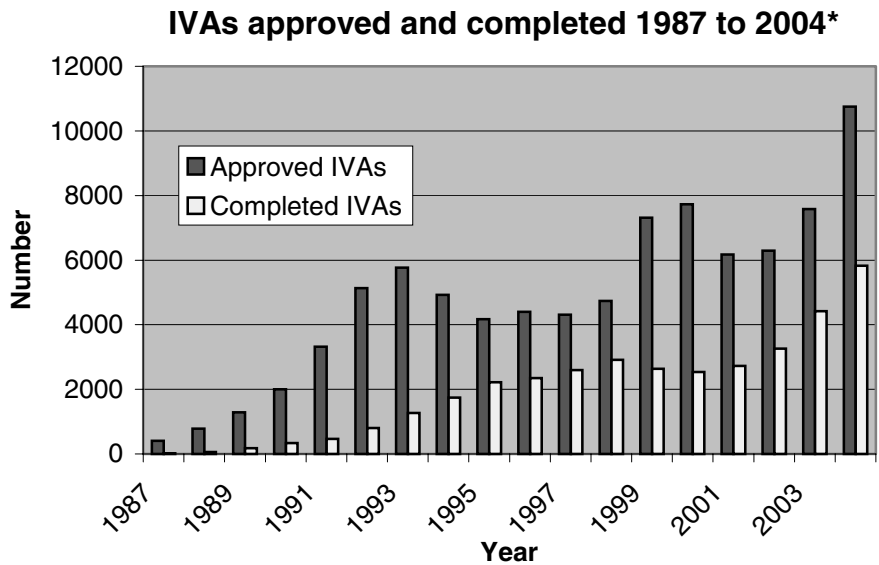
To easily access a fair and rational resolution process that is easily understood, has certainty and will endure.

THE IVA IN PRACTICE

21. The IVA should be the best product in the market for both debtors and creditors. For debtors, the IVA offers more control of the process than is available in bankruptcy. Generally an IVA provides certainty in both repayment levels and duration, together with the opportunity for debt forgiveness. An IVA also restricts individual creditors from taking debt recovery action during the arrangement as creditors are bound to the repayment terms that have been agreed/approved.

22. Creditors benefit from the certainty of a fixed repayment period, are offered a better return than they would receive from bankruptcy and know that all creditors will be treated equally. Despite the recent record upward trend in the number of approved IVAs, as set out in the table in paragraph 23, when compared to other debt resolution processes the IVA appears to be under utilised.

23. The Insolvency Service maintains a register of the number of IVAs approved, completed and failed IVAs on an annual basis. Information extracted from the Insolvency Service register shows: -

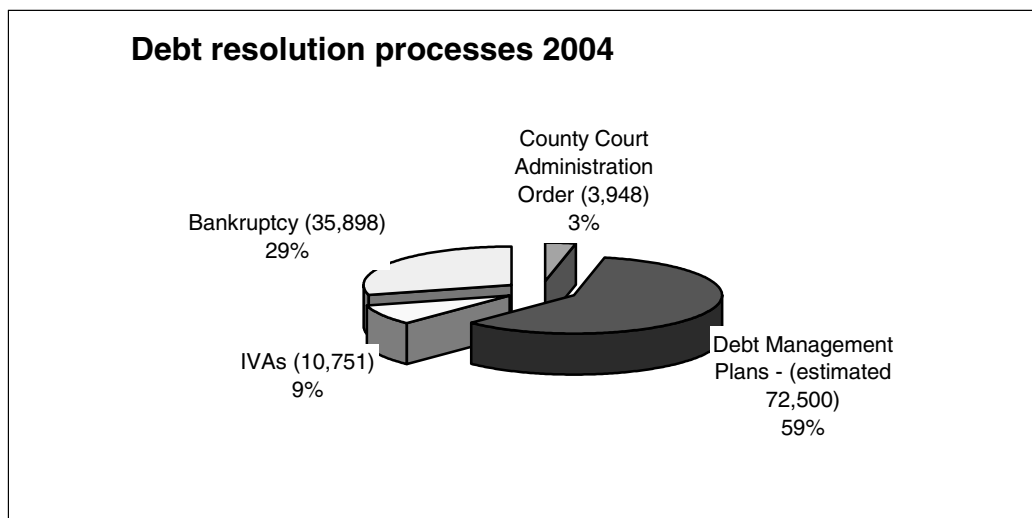


*There is no correlation between the number of IVAs approved and the number completed in any given year

DEBT MANAGEMENT PLANS (DMPs) AND COUNTY COURT ADMINISTRATION ORDERS

24. DMPs are a non statutory process, do not bind creditors, seldom include an element of debt forgiveness, and can involve a re-payment schedule lasting more than 20 years. In some DMPs, the debtor bears the costs and in others it is the creditors. Despite the apparent shortcomings of a DMP when compared with the IVA, a large number of debtors appear to choose them in preference to an IVA. It should be noted that DMPs are advertised widely in both the press and broadcast media.

The chart below sets out the main debt resolution processes (and their numbers) for the calendar year 2004.



25. County Court Administration Orders (CCAO) are provided through the Department for Constitutional Affairs (DCA) and are a judicially controlled regime. Their operation was examined in 'Managing Multiple Debts: Experience of County Court Administration Orders among debtors, creditors and advisers'⁹ published in July 2004. It reported that *'the majority of people who applied for an administration order were relatively young and lived on low incomes. They had unstable lives, with a high level of family breakdown and frequent changes in income'*. The main criteria for entry to a CCAO currently include at least one judgment debt and total liabilities of less than £5,000. The CCAO regime is currently under review following the 2004 DCA consultation 'A Choice of Paths'. In March 2005 the DCA issued its consultation Response Paper¹⁰ which identified elements of a Reformed CCAO scheme, these include increasing the debt ceiling to £15,000 and providing for a maximum duration of five years.

⁹ By Elaine Kempson and Sharon Collard, University of Bristol

¹⁰ <http://www.dca.gov.uk/consult/debt/debt.htm>

**THE
PRINCIPAL
RECOMMENDATIONS
OF
THE
WORKING
GROUP**

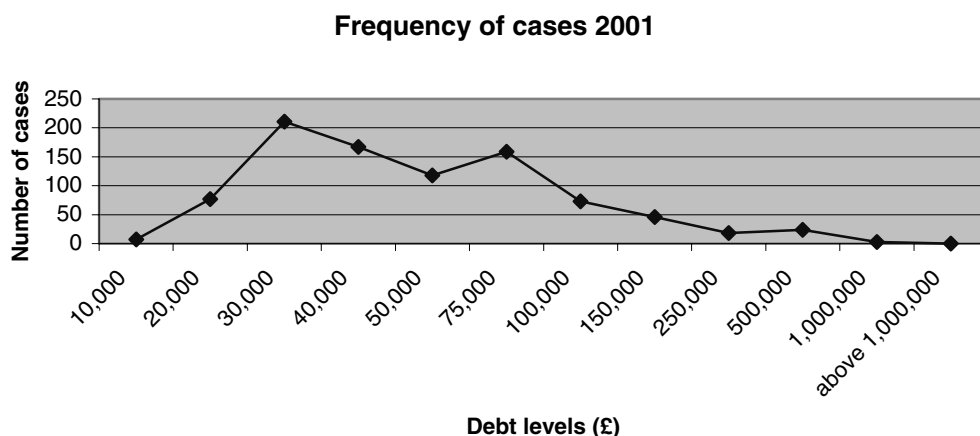
THE SIMPLE VOLUNTARY ARRANGEMENT (SIVA)

26. The Working Group concluded that the current IVA regime (with or without an Interim Order) successfully balances the needs of creditors and debtors for cases where the liabilities exceed £75,000 and for traders whose affairs will necessarily be more complex. If an individual has debts exceeding £75,000, the financial commitment and potential losses to their creditors will be significant. By facilitating a meeting of creditors' for approving a proposal and enabling a creditor to suggest modifications, creditors have sufficient safeguards and control of the process, which may go some way to mitigate their loss. The debtor retains some control over the level of payments into the proposal and is not unnecessarily forced into bankruptcy. Therefore the current IVA regime should be left in place to deal with such cases.

27. However, the majority of those entering an IVA are non-traders with straightforward financial affairs. Michael Green's research showed that the majority of IVAs are in response to excessive unsecured consumer debt and '*Business debt generated IVAs now account for probably less than 5-10% of IVAs proposed, approved or registered. This pattern has prevailed since 1994*'¹¹.

28. To meet the needs of a wider range of debtors the Working Group recommends the creation of a two tier **simple** Voluntary Arrangement (SIVA). SIVA cases would typically be used by debtors in regular employment who, after reasonable living expenses, had sufficient disposable income (or assets) to enable a dividend to be paid to creditors in excess of that which would be achieved in bankruptcy. A key element of any SIVA regime would be an undisputed unsecured debt level of not more than £75,000.

29. The threshold figures are not arbitrary and have been set in the light of the practical experience of Working Group members and after considering Michael Green's research, which exhibits the following table of debt levels in his Phase II data (IVAs started in 2001, Total cases= 903):



¹¹ Paragraph 8 of 'A summary of the principal findings and conclusions' in the Short-Form Report -<http://www.insolvency.gov.uk/whatsnew/shortformreport.doc>

SIVA 1

30. Individuals with **undisputed unsecured** debts of less than £25,000/30,000 often face difficulties in obtaining an IVA, despite being able to offer a dividend level which would produce a better return to creditors than would be achieved via bankruptcy. Typically creditors vote against proposals where there are lower debt levels and this tendency has been identified by Michael Green in his report: *'It can and does lead to IVAs being rejected that should be accepted and valid proposals being rejected at an early stage'*¹². This is because creditors see the IVA process as expensive when compared to the returns they will receive. An individual with debts of less than £25,000/30,000 is unlikely to have many creditors in number, particularly if debts have been consolidated, so each individual creditor will have a powerful voice when the vote takes place.

31. For the SIVA 1, an individual with debts of less than £25,000/30,000 would have the right to enter a SIVA 1 without creditors voting on the proposal, subject to there being a better return than bankruptcy and the debtor paying the maximum affordable contribution. A non-voting structure, combined with simplifications recommended later in this report would reduce costs and therefore offer a better return to creditors than a traditional IVA. Perhaps more importantly, access for individuals with debts less than £25,000/30,000 will be significantly increased.

32. A key aspect of the SIVA 1 is that creditors must trust the nominee to propose the best deal available. A recommendation that standardised levels for allowable expenses and contributions from income be adopted will assist here. In addition, the nominee will use his professional judgment to assess whether a debtor is a suitable candidate for a SIVA1, for example an individual may meet the debt level entry criteria but owe money to trade creditors from a business that had ceased to trade. To ensure the integrity of the scheme debtors whose conduct has been irresponsible, reckless or dishonest should be barred. This might be achieved by the nominee, after examining the circumstances of the debtor's individual case, ensuring that the debtor's conduct was free from behaviour that would form the grounds of a bankruptcy restrictions order i.e. that contained in Schedule 4A of the Insolvency Act 1986¹³. A transparent fee regime would also improve creditors' confidence in the system (see pages 38-41). However a court based appeal route is envisaged should creditors believe that there is any irregularity in the proposal.

¹² Paragraph 21 of 'A summary of the principal findings and conclusions' in the Short-Form Report - <http://www.insolvency.gov.uk/whatsnew/shortformreport.doc>

¹³ Link to Enterprise Act 2002- <http://www.legislation.hms.gov.uk/acts/acts2002/20040-ar.htm#sch20>

33. **Simplicity** is the key theme of this regime as it allows accessibility for the debtor whilst minimising the running costs of the supervisor and so maximising the return to creditors. The key elements of the scheme would be:

- There would be maximum unsecured undisputed debts of £25,000/30,000 (and no crown creditors). Borderline cases could start out as SIVA 1 but if the debts were later found to exceed the limit the supervisor could convert it to a SIVA 2 case but dispense with the need for creditors to vote for acceptance or rejection and allow creditors an appeal route to the court
- The proposal could **not** be modified.
- There would be **no** voting by creditors as the nominee will have sought the best deal possible for creditors.
- The nominee would authorise entry to the scheme, which would **generally** last five years.
- There would be no minimum dividend level, but the returns **must** be higher than those in bankruptcy.
- Fraudulent entry to a SIVA 1 would lead to it being revoked.
- The nominee fees would be constant and reviewed regularly.
- The supervisor fee would also be determined at the start of the arrangement.
- There would be reduced but focused reporting to creditors.
- A face-to-face meeting between the SIVA provider and the debtor would **not** be mandatory but the nominee would ensure that the debtor received the best advice appropriate to his situation and have to make sufficient enquiries so as to be satisfied of the debtor's identity.
- The nominee's enquiries into the debtor's conduct and affairs do not indicate matters forming the grounds for a bankruptcy restrictions order/ undertaking in the event the debtor had been an undischarged bankrupt.
- If a SIVA 1 was accepted and later failed the debtor would not be able to propose a further SIVA 1 or SIVA 2 until at least six years had elapsed since the failure date. However the debtor would be able to propose an IVA.
- Joint proposals would be allowed provided the aggregate debt did not exceed the agreed unsecured and undisputed debt level.

A draft SIVA 1 proposal is included in Annex 1 on pages 52-55.

SIVA 2

34. The SIVA2 is designed for individuals with **undisputed unsecured** debts above £25,000/30,000 but below £75,000. In such cases the Working Group feels creditors, who will have made a greater financial commitment than those of a SIVA1 creditor, should be able to exert more influence in the process through a formal approval stage. However, the Working Group believes that individual creditors should not be allowed to overly influence the outcome of the vote and therefore recommends a reduction in the voting majority to a simple majority (see pages 33-34). Again the nominee should be trusted to ensure that the debtor proposes the best deal available, (based on standardised levels for allowable expenses and contributions from income), and therefore it is recommended that no modification to the proposal be allowed, simply voting in favour or against. The removal of the power to modify would reduce costs for creditors and provide some certainty for the debtor. To ensure the integrity of the scheme debtors whose conduct has been irresponsible, reckless or dishonest should be barred. This might be achieved by the nominee, after examining the circumstances of the debtor's individual case, ensuring that the debtor's conduct was free from behaviour that would form the grounds of a bankruptcy restrictions order/undertaking i.e. that contained in Schedule 4A of the Insolvency Act 1986.

35. Again **simplicity** is a theme, the key elements being:

- There would be maximum undisputed unsecured debts of more than £25,000/30,000 but no more than £75,000 and no crown creditors.
- The proposal could **not** be modified.
- There would be no physical meeting of creditors but creditors would vote in writing on whether the proposal should be approved or rejected.
- The nominee will seek the best deal possible for creditors that will endure in the long term.
- The scheme would **generally** last five years.
- Fraudulent entry to a SIVA 2 would lead to it being revoked.
- The nominee fee would be constant and reviewed regularly.
- The supervisor fee would also be determined at the start of the arrangement.
- There would be reduced but focused reporting to creditors.
- A face to face meeting between the SIVA provider and the debtor would **not** be mandatory but the nominee would have to ensure that the debtor received the best advice appropriate to his/her situation and make sufficient enquiries so as to be satisfied of the debtor's identity.

- The nominee's enquiries into the debtor's conduct and affairs do not indicate matters forming the grounds for a bankruptcy restrictions order/ undertaking in the event the debtor had been an undischarged bankrupt.
- If a SIVA 2 was accepted and later failed the debtor would not be able to propose a further SIVA 1 or SIVA 2 until at least six years had elapsed since the failure date. However the debtor would be able to propose an IVA.
- Joint proposals would be allowed provided the aggregate debt did not exceed the agreed unsecured and undisputed debt level.

36. A draft SIVA 2 proposal is included in Annex 2 on pages 56-59. The Working Group specifically recognises and thanks Debt Free Direct Group plc and Andrew Livesey of their solicitors, Taylors of Blackburn, for preparing a draft of the proposal for SIVA1 and SIVA 2 cases.

37. The SIVA1 and SIVA 2 regime aims to meet the creditors' and debtors' needs as identified by the Working Group and set out on page 9. The Working Group accepts that the SIVA1 and SIVA 2 scheme will not necessarily be suitable for all individuals with debt problems. One of the basic principals of the SIVA is that it should offer a better return to creditors than bankruptcy. In order to produce those increased returns, a debtor is expected to offer income contributions for a longer period than would be received in bankruptcy and include the realisation of some or all of their assets (or third party funds) in their proposal. For those with low debt levels, little or no surplus income, or the inability to release equity from a property, it is unlikely that an IVA or SIVA could be provided on a commercial basis by the private sector. In the current environment, such individuals would only have access to a DMP, a County Court Administration Order or bankruptcy.

SIVA 1

Q1. Do you support the introduction of the SIVA 1?

Q2. Do you agree that the proposed SIVA1 scheme should have a maximum debt limit of £25,000/30,000?

Q3. If you support the introduction of a SIVA 1 but not the proposed debt level, what figure would you suggest?

Q4. What are your views on the removal of a creditor's right to vote in a SIVA 1?

SIVA2

Q5. Do you support the introduction of the SIVA 2?

Q6. Do you agree that the proposed SIVA 2 scheme should have debt limits of between £25,000/30,000 to £75,000?

Q7. If you support the introduction of a SIVA 2 but not the proposed debt levels, what figures would you suggest?

Q8. If a SIVA 1 or SIVA 2 has failed should the debtor be barred from proposing another SIVA 1 or SIVA 2 for a specified period and what length should that period be?

Q9. Should a SIVA 1 or SIVA 2 failure prevent a debtor from proposing an IVA?

Q10. Do you agree that there should be no prescribed minimum dividend in a SIVA 1?

Q11. If you think that there should be a minimum dividend, what level would you suggest?

Applies to all IVAs

Publicity and increased profile of the IVA process

Creditors' needs:

An efficient, transparent and cost effective regime operated by authorised practitioners.

Debtor's needs:

Ease of access.

The problem

38. There is a general concern that debt advice is fragmented and debtors are not always aware of the IVA (or other options) to resolve their problems. This contrasts unfavourably with other non-statutory forms of debt resolution such as DMPs, which are extensively advertised in the press and broadcast media.

39. In August 2004 Debt Free Direct Group plc funded independent research into the public's awareness of debt resolution processes and data was obtained from 1001 respondents¹⁴.

40. In terms of the awareness of IVAs as against alternative debt solutions, that research showed that **31%** of respondents were aware of IVAs. But that percentage is a **small minority when compared with other solutions** indicated below, where bankruptcy, the most drastic route, was the most well known: -

- **42%** were aware of informal arrangements
- **53%** were aware of consolidation loans
- **54%** were aware of debt management plans
- **83%** were aware of bankruptcy

Working Group's conclusions

41. The Working Group agrees that the existence and usefulness of the IVA needs to have a higher profile, possibly through advertising. However, both the funding of such advertising and where those responding to the advertisements would be directed are issues to be addressed, particularly as some nominees and supervisors are not members of R3 and have a variety of regulatory bodies.

¹⁴ The relatively high percentages probably arise because the research involved prompted responses, however the percentages highlight the relative lack of awareness of IVA's.

42. The Working Group considered changing the name of the IVA, as the name was perceived to be overly legalistic and unrepresentative of the process. This suggestion was ultimately rejected as it was thought it would further complicate and confuse debtors who wished to enter a resolution process. However stakeholders' views on this topic are requested (see Q 13).

Q12. What practical suggestions would you offer to increase awareness of IVAs?

Q13. Do you think the IVA should be renamed? Can you suggest an alternative?

Applies to IVAs

Branding quality IVA providers

Creditors' needs:

To have confidence in an efficient, transparent and cost effective regime.

The problem

43. As at 1 January 2005, there were 1,691 licensed insolvency practitioners of which 1,204 take appointments in insolvency cases. However not all practitioners take both corporate and individual insolvency appointments. This may not always assist a debtor in getting the specialised advice needed to resolve debt problems.

Debtor's needs:

To easily access a fair and rational resolution process that is easily understood, has certainty and will endure.

Working Group's conclusions

44. So that debtors can more easily identify those practitioners who specialise in individual insolvency work the directory of practitioners on the R3 and Insolvency Service web sites could be expanded to highlight the specialism of the various practitioners.

Q14. Do you think that identifying whether a practitioner specialises in corporate or individual cases (or both) would be beneficial?

Q15. If yes, how could this be achieved?

Applies to IVAs, SIVA 1 and SIVA 2

A standard Executive Summary for the proposal

Creditors' needs:

An efficient, transparent and cost effective regime.

Debtor's needs: *For the process to be easily understood.*

The problem

45. There are certain criteria that creditors **always** take into account when making the decision on accepting (or rejecting) the proposal. These include a comparison of outcomes between the IVA and a bankruptcy estate, the amount of assets and/or income the debtor intends to introduce, how much of the realisations will be used to pay the fees in preparing/managing the arrangement and the expected dividend level. However the relevant information might not be prominent or located in one place and so creditors have to spend time searching through the proposal to assimilate the relevant information before deciding how to vote. Some (but not all) nominees already include an executive summary in the proposal documentation.

Working Group's conclusions

46. It would significantly simplify proposals for IVA SIVA 1 and SIVA 2 cases, if this key information was clearly set out in a Best Practice Model using a one (or two) page Executive Summary of the proposal. Examples of the suggested Executive Summary have been provided by two Working Group members, Beverley Budsworth of Budsworth & Co and Charles Howson of Accuma Insolvency Practitioners Limited.

Q16. Do you agree with the introduction of a standard Executive Summary?

(a) In Annex 3, which example do you prefer? (1 or 2)?

(b) Do you wish to suggest any amendments to the drafts?

Q17. Would you welcome the introduction of a standard Executive Summary for existing IVAs?

Applies only to SIVA 1 and SIVA 2

Standard terms and conditions (STC)

Creditors' needs:

An efficient, transparent and cost effective regime.

Debtor's needs:

For the process to be easily understood.

The problem

47. Although R3 has promoted STCs¹⁵, not all nominees and supervisors are its members. Also they may prefer their own STC. In addition, individual creditors may have their own preferred clauses, which they want including in any IVA proposal before they will vote in favour of it. Because some insolvency practitioner firms' act for a number of creditors and those creditors may have their own preferred conditions, time is spent establishing which of the varying/conflicting conditions should take priority. These multiple versions of the STC over complicate IVAs and add to their expense. Indeed many STC sent to creditors along with the IVA proposal are longer than the debtor's actual proposal.

48. Currently the R3 version of the STC runs to thirty pages and some stakeholders feel they are too complex for the straightforward (undisputed and unsecured debt) IVA cases in which they are used. The current size and complexity of the STC can be daunting to many debtors and they can deter the debtor from entering an IVA, which may result in their choosing another and possibly less appropriate route.

Working Group's conclusions

49. By adopting a Best Practice Model an agreed set of STC should be devised which more closely meets the needs of debtors and their creditors. By concentrating on only debtors with relatively low levels of undisputed and unsecured debt, the length of the STC would be reduced. Creditors would also benefit in knowing there was an industry wide Best Practice Model and would not need to scrutinise the STC of every proposal they receive. By removing any irrelevant conditions it would reduce the amount of paperwork a debtor had to assimilate and they would be much easier for debtors to understand.

50. If an industry wide agreed set of STC for SIVAs could be agreed and they were available on the web at an appropriate site, this would significantly reduce the amount of paperwork sent to creditors. For FTVA's the Insolvency Service already displays a set of STC on its website as part of a standard FTVA proposal¹⁶. Hard copies of the STC in SIVAs would be available to creditors without internet access on request and

¹⁵ The STC is only available to R3 members

¹⁶ Link to the Insolvency Service web site-
<http://www.insolvency.gov.uk/forms/FTVAProposal.doc>

without cost. The debtor would of course have to receive (and confirm receipt of) a hard copy version of the STC.

In summary: -

- Standardised STCs would mean less work for creditors and for nominees. The reduction in costs will enable more of the debtor's contribution to pass to creditors as a dividend.
- By adopting an approach of STC by reference to a website version it would reduce production costs/postage etc. and in turn promote electronic communication.
- The simplification of STC's would make the process much easier for the debtor to understand.

Q18. Should there be an industry wide set of STC for SIVA 1 and SIVA 2?

Q19. For existing IVAs should there be an agreed and publicly available set of STC so that each proposal which is sent to creditors does not have to include a printed version of them?

SIVA 1 and SIVA 2

Meeting with the debtor

Creditors' needs:

To have confidence in an efficient, transparent and cost effective regime.

Debtor's needs:

To easily access a fair and rational resolution process that is easily understood, has certainty and will endure.

The problem

51. Currently Statement of Insolvency Practice (SIP) 3, which is prepared by R3 and gives guidance to nominees and supervisors sets out that in respect of an IVA 'Unless there are exceptional circumstances, the member, or a suitably experienced member of his staff, should meet the debtor **personally** and should keep a written record of the meeting'.

52. Using the telephone as a way of obtaining goods and services, including those in the finance sector, has increased, and it is now relatively easy to obtain loans and consolidation loans without a face-to-face meeting with the provider. Also where a debtor wants to enter a DMP there is no requirement for a face-to-face meeting.

53. There are a number of ways of establishing identity which do not require a face-to-face meeting. These include obtaining a photocopy of a person's passport (including photograph) or checking with credit reference agencies and other data collection providers. A face-to-face meeting may however assist in ensuring that the debtor receives best advice and fully understands and is committed to the process.

Working Group's conclusions

54. The Working Group recommends that in a SIVA 1 or SIVA 2 case the nominee may choose whether or not to hold a face-to-face meeting with debtor. Such an approach should only be taken where the nominee has established to his satisfaction the debtor's identity through third party evidence and is certain that the debtor understands and is committed to the SIVA process.

Q 20. Do you agree that if SIVA1 and SIVA2s are introduced and provided the nominee has made adequate checks for identity, then a face-to-face interview with the debtor should NOT be required?

Q 21. If yes, what should be checked to establish the debtor's identity?

Q 22. Do you believe that a debtor can be offered best advice without the need for a face-to-face meeting?

Q23. Do you believe the nominee can assess a debtor's understanding and commitment to the process without a face-to-face meeting?

SIVA 1 AND SIVA 2

Standard failure /termination clauses in the STC

The problem

Creditors' needs:
To have confidence in an efficient, transparent and cost effective regime.

55.SIP 3 correctly identifies that the term 'failure of the scheme' or 'failure of the arrangement' are not expressions found in the Insolvency Act or Rules. Currently many IVA proposals require the supervisor to retain sufficient funds to fund the presentation of a bankruptcy petition should the debtor fail to keep to the terms of the proposal and it is terminated. Those funds are generally retained in the early stages of an arrangement and delay the date on which dividends/distributions to creditors are made.

Debtor's needs:
A fair and rational resolution process.

Working Group's conclusions

56.Use of a Best Practice Model in any agreed set of STC should give the supervisor the discretion as to whether to petition for bankruptcy in cases where the arrangement fails or is terminated.

57.Another approach to this issue may be for the supervisor to take out a (low cost) insurance policy to cover the costs of petitioning for bankruptcy.

58.The Working Group also recognises that even where a debtor defaults on an arrangement there could be a variety of causes, for example a serious accident where the debtor had no prospect of returning to full health. In such cases the arrangement should be considered completed and petitioning for bankruptcy not appropriate.

59.Wilful default however, should result in a bankruptcy petition being presented against the debtor.

Q24. Do you consider that a supervisor should always retain funds to petition for bankruptcy?

Q25. Should work be undertaken to establish whether a (low-cost) insurance policy covering the costs of petitioning for bankruptcy is feasible?

Q26. Should the Supervisor be given the discretion not to petition for bankruptcy in cases where there has been no wilful default by the debtor?

Q 27. Should a petition for bankruptcy be mandatory, regardless of funds, where there has been wilful default?

Applies to SIVA 1 and SIVA 2

The debtor's home

The problem

Creditors' needs:

An efficient, transparent and cost effective regime where the debtor pays the maximum affordable contribution.

Debtor's needs:

A fair and rational resolution process that has certainty and will endure.

60. There is a perception that debtors choose to enter a DMP rather than an IVA, as they fear losing their home in an IVA.

61. The amount of equity (if any) in a debtor's home is variable. Many IVA proposals are routinely modified to provide that any accruing equity should be released in say year 4 of a proposal's life. When house prices rise this can generate significant equity but often a debtor has had problems financing the full release of that equity. This could be because the debtor is older and encounters difficulty in increasing the mortgage. It may be because the debtor cannot use a prime lender and therefore would have to pay more than the going rate. The increased mortgage costs also affect the debtor's financial stability at a time when they are returning to a firmer financial footing. This type of modification often results in the convening of a creditors meeting to approve an equity release at a level that the debtor can afford.

62. The uncertainty in how a bankrupt's interest in the home is dealt with was addressed by the changes made by the Enterprise Act 2002¹⁷. This ensures that, in general terms, the interest must be dealt with within three years of the bankruptcy and includes re-vesting in the bankrupt in cases where the property has little or no equity. A de minimis level was also set where the bankrupt's interest has to exceed, £1,000¹⁸ before the trustee can deal with it.

Working Group's conclusions

63. The Working Group believes that by using a Best Practice Model the value of the debtor's interest in the property should be established at the very start of the procedure in the proposal itself and **not** re-assessed at a later date. It is important that the debtor's interest and how any equity is to be dealt with are established at the earliest opportunity, as this provides certainty for both debtors and creditors.

¹⁷ Link to Enterprise Act 2002- <http://www.legislation.hms.gov.uk/acts/acts2002/20040-r.htm#261>

¹⁸ Link to the revised Monetary Limits Order <http://www.legislation.hms.gov.uk/si/si2004/20040547.htm>

64. How the debtor's interest is dealt with could vary significantly,

- a) In cases with little or no equity the property might be excluded from the proposal by imposing a de-minimis limit similar to that which applies in bankruptcy.
- b) Small to medium amounts of equity might be dealt with by extending or increasing the monthly payment into a SIVA, rather than realising the equity through sale or a later re-mortgage.
- c) Some or all of the equity could be realised through sale or re-mortgage. Where appropriate the debtor's interest should be supported by professional valuations and current mortgage statements.
- d) Should a debtor wish to totally exclude the equity, the case is unlikely to be suitable for the SIVA process and the proposal should be put to the creditors via a traditional IVA.

Q28. Should the debtor's interest in the home be totally excluded from any SIVA proposal in any circumstances?

Q29. Should there be a de minimis level set (and at what amount) for excluding a debtor's interest in the home from SIVA 1 and SIVA 2 proposals?

Q30. Should the debtor's interest in the home be determined and dealt with at the IVA proposal stage and not revisited?

Applies only to SIVA 1 and SIVA 2

Windfalls

Creditors' needs:

An efficient, transparent and cost effective regime.

The problem

65.Lengthy windfall clauses overcomplicate an IVA proposal. From the wide range of experience of the members of the Working Group it is perceived that the issue of windfalls is more academic than practical. It is assumed that if the windfall was significant, say a lottery or pools win, it is likely the debtor will seek to discharge the amount outstanding under the IVA through a lump sum payment.

Debtor's needs

A fair and rational resolution process that is easily understood.

66.Parallels could be drawn between windfalls and after acquired property in bankruptcy. When the Enterprise Act 2002 reduced the bankruptcy discharge period the potential loss to creditors from the trustee's reduced ability to claim after acquired property was not considered a problem¹⁹.

67.However, the Working Group believe that where there is the possibility of a significant windfall, creditors should be able to derive financial benefit from it.

Working Group's conclusions

68.That by using a Best Practice Model there should be a very simple windfall clause relating to receipts of £500 or more in a lump sum or per annum.

Q31. Do you agree with a very simple windfall clause that captures £500 or more? (or suggest an amount at which it should be set)

Q32. Can you provide practical examples of where windfalls have arisen and identify any other issues for their resolution?

¹⁹ Link to draft Regulatory Impact Assessment in the White Paper 'Productivity and Enterprise-Insolvency A Second Chance-<http://www.insolvency.gov.uk/cwp/523409.htm>

Applies only to SIVA 1 and SIVA 2

Reducing the role of the court.

Creditors' needs:
To have confidence in an efficient, transparent and cost effective regime.

Debtor's needs:
To easily access a fair and rational resolution process that is easily understood.

The problem

69. The Department for Constitutional Affairs²⁰ sees one of the principal roles of the court as the resolution of disputes and consequently the court does not need to be closely involved in a debt resolution process where the debtor has actively engaged with his creditors. The Insolvency Act 2000 recognised that aspect and introduced IVAs which do not need an Interim Order from the court, and these appear to be increasing in popularity. The court's own guidance²¹ recognises that many applications in relation to IVAs may proceed without the need for a full hearing.

70. The court has an important role to play in resolving disputes, for example challenges to the result of a creditors meeting under sections 262 and 263F of the Insolvency Act 1986. However, the majority of IVAs proceed without reference ever having been made to the court, and FTVA's only involve the court where disagreement arises.

Working Group's conclusions

71. Making an application to court for approval of an IVA is not particularly onerous, but it is an unnecessary complication that can delay the process and incur expense.

72. The Working Group therefore recommends that SIVAs are obtained without any reference to the court, other than for referral of disputes or challenges. This would ensure the regime is court based rather than court driven.

Q33. In routine and non-contentious matters in SIVAs should the role of the court be removed?

Q34. Does having a court based, but not court driven, regime provide sufficient confidence in the proposed SIVA 1 and SIVA 2 regimes particularly for creditors?

²⁰ Link to DCA web site <http://www.dca.gov.uk/consult/debt/debt.htm>

²¹ Practice Direction 16 is available of the Court Services Agency web site

Applies only to SIVA 2

Creditors' needs:

To trust authorised practitioners to ensure the debtor pays the maximum affordable contribution.

Debtor's needs:

To easily access a fair and rational resolution process that is easily understood, has certainty and will endure.

Removing a creditors ability to modify a debtor's proposal

The problem

73.As with STC, creditors often have their own standard modifications that they insist on including in a proposal before they are prepared to vote in its favour. The variety of modifications, all of which have to be understood and agreed by the debtor, add to the difficulty in getting the proposal approved. This facility over complicates the current IVA process and identifying what modifications should or should not be made significantly adds to the nominee's costs at this stage. Many of the proposed modifications can be mutually exclusive and result in a debtor being denied access to an IVA. Also many modifications add little to the amount that the arrangement is expected to generate as dividends. From the debtor's point of view modifications increase the complexity of the proposal and makes an IVA harder to understand. Moreover, a debtor may be unaware of the modifications until the day of the meeting, giving him little time to consider their impact or his response.

74.Modifications may be imposed on a debtor (for example increased contributions from income), which makes it difficult for the debtor to maintain payments into the arrangement and so can affect its longevity.

75.Having a regime that includes no modifications has already been adopted in the FTVA regime introduced by the Enterprise Act. An FTVA does not include an opportunity for modifications to the proposed voluntary arrangement to be suggested or made.²² Even before the Working Group had been formed a number of interested parties had suggested this approach should be adopted for IVAs in general.

Working Group's conclusions

76.In SIVA 2 cases creditors should not be allowed to propose modifications. As a debtor's IVA proposal is generally completed with assistance from the nominee, creditors should trust the nominee to ensure that the best deal possible for both the debtor and creditors has been put forward.

²² Section 263B (4)(c) Insolvency Act 1986

77.If a nominee consistently put forward proposals that are rejected by creditors that matter is likely to be reviewed by his regulatory body.

Q35. Should a creditor's right to propose modifications to SIVA 1 and SIVA 2 proposals be omitted?

Applies to IVAs, SIVA 1 and SIVA 2

A standard approach in assessing a debtor's allowable expenses and the disposable income.

Creditors' needs:

To trust authorised practitioners to ensure the debtor pays the maximum affordable contribution.

Debtor's needs:

A fair and rational resolution process that has certainty and will endure.

The problem

78. The Working Group identified that there has been an inconsistent approach in both of these matters. IVA modifications are often proposed which suggest increases to the proportion of income paid or question the basis on which expenses are calculated.

79. These issues are more widespread than just IVAs and in March 2004 the British Bankers Association/Money Advice Trust introduced the Common Financial Statement (CFS)²³ 'to standardise the way money advisers and their creditors communicate with each other about repayment offers'. Members of the Working Group report that creditors seldom question the income and expenditure calculations on which DMPs are based.

80. However, creditors often do question the proportion of disposable income which the debtor is to pay into an IVA. Increased contributions proposed by creditors may make the repayment schedule unworkable for the debtor or leave the debtor without a buffer for emergencies such as household repairs. The Insolvency Service uses a standardised percentage when calculating a bankrupt's income available for an income payments agreement or income payments order²⁴.

Working Group's conclusions

81. By widening the use of the CFS through a Best Practice Model it could be utilised by **all** of those involved in the debt resolution process. An agreed and standard way assessing a debtor's allowable expenses and disposable income would build trust in the process and simplify and standardise the IVA/SIVA regimes. If there needs to be variation from the standard (for example special diets) these should be recorded and explained to creditors.

²³ Link to British Bankers Association web site
<http://www.bba.org.uk/bba/jsp/polopoly.jsp?d=146&a=729>

²⁴ Link to Dear IP Issue 19 <http://www.insolvency.gov.uk/information/dearip/dearipmill>

82. Further, there should be agreed repayment levels from total disposable income, similar to those currently used by the Insolvency Service. Again, variations from the standard would have to be explained.

83. Consistency in these areas will increase transparency and certainty for creditors whilst ensuring that the debtor makes realistic contributions from income.

Q36. Do you agree that there should be a standard approach in assessing a debtor's allowable expenses?

Q37. If so, is the CFS a reasonable benchmark?

Q38. Do you agree that there should be a standard approach in assessing what proportion of disposable income the debtor should pay?

Applies to SIVA 2 only

Removing the requirement for holding a physical meeting of creditors

Creditors' needs:

An efficient, transparent and cost effective regime in which they trust authorised practitioners to ensure the debtor pays the maximum affordable contribution.

Debtor's needs:

To easily access a fair and rational resolution process that is easily understood.

The problem

84. Holding an IVA meeting is expensive and in many cases the creditors do not attend. Proxy voting decides many meetings and Michael Green's research shows that over 90% (in value)²⁵ of creditors appoint nominees who are usually insolvency practitioners.

85. In addition, meetings may be adjourned to allow for delayed proxy voting and this adds further expense and delays to the process.

86. If the SIVA 2 is to be accessible to the debtor it needs to be kept as simple as possible in order to reduce the nominee's costs of administering a proposal. Because the nominee's costs would be reduced more of the money generated by the proposal should then be distributed to creditors.

Working Group's conclusions

87. If creditors cannot propose modifications to a proposal there no longer remains any compelling reason to hold a physical meeting of creditors. It would significantly simplify matters if the proposal was sent out the creditors and they had a specified time period of say 28 days to vote on whether they accept or reject the proposal. Removing the requirement to hold a meeting would also reduce a nominee's costs.

88. This approach has already been adopted for FTVA's where Rule 5.29(2) allows for voting on a date which is not less than 14 but not more than 28 days from the notification to creditors of the FTVA proposal.

Q39. Do you agree that in SIVA 2 cases there is no need to hold a physical meeting of creditors?

Q40. Should there be a move towards a 'paper meeting' for the current IVA regime?

²⁵ Link to Insolvency Service web site
<http://www.insolvency.gov.uk/whatsnew/shortformreport.doc>

Applies to SIVA 2

The requisite majority for approval of a SIVA 2

Creditors' needs:

To have confidence in an efficient, transparent and cost effective regime.

Debtor's needs:

To easily access a fair and rational resolution process.

The problem

89. Currently the requisite majority for the approval of an IVA has to be '*in excess of three-quarters in value of creditors present in person or by proxy and voting on the resolution*'. This is higher than the simple majority that is used in other insolvency situations. This can cause problems where a creditor chooses not to support the IVA process or where they have unrealistic dividend expectations and their vote could sway the meeting. Potentially viable IVAs often do not proceed due to this type of voting behavior.

Working Group's conclusions

90. The Working Group recommends that the voting majority for approval of a SIVA 2 be set at a simple majority. The reduction would reduce the influence of those creditors who have unrealistic expectations of the IVA or have chosen to opt out of the process.

91. It could be argued that by reducing the voting percentage to a simple majority might allow friends, associates or relatives of the debtor to unduly influence the approval of the proposal. That issue is already covered in the IVA rules as the meeting's chairman has the power to admit or reject a claim or mark the claim objected to and there is an appeal route to the court for aggrieved parties. The Working Group has been unable to establish how often the chairman exercises those powers, and it is unlikely to be a problem for SIVA 2s as it is expected that the majority of creditors will be financial institutions rather than associates of the debtor.

92. If the chairman of the meeting does exclude votes of relatives and/or associates we would expect the court to be involved in resolving any dispute that may arise. Alternatively associates of the debtor might be restricted from voting leaving a simple majority of non-associated creditors to decide whether the SIVA 2 should be approved or rejected.

93. An alternative proposition would be for creditors to have to vote against the proposal by simple majority, that is that the SIVA would be deemed to be accepted unless a majority of creditors voted against it.

Q41. Do you agree that a simple majority should be set as the requisite majority for approving a SIVA2?

Q42. What are your views on the suggestion that creditors must actively vote against the proposal in order that it is rejected?

Q 43. Do you think that excluding the votes of the debtor's associates/relatives will cause a significant problem?

Q44. Do you agree that there should be an appeal route for creditors dissatisfied with a chairman's decision to exclude certain classes of creditors from voting?

Q45. Should the requisite majority for current IVAs be reduced to a simple majority?

Applies to SIVA 1 and SIVA 2

Imposing a time limit for the filing of creditors' claims

Creditors' needs

An efficient, transparent and cost effective regime.

Debtor's needs

A fair and rational resolution process.

The problem

94. Currently a creditor can file a claim at any time and this causes many supervisors significant problems and expense in case administration. The problem is exacerbated when claims are received some years after the approval of an arrangement and the appropriate dividend had been calculated with reference to those creditors whose claims had already been filed. This in effect penalises creditors who had submitted their proof in a timely manner.

Working Group's conclusions

95. The Working Group feels that imposing a time limit for the claims of known creditors would simplify the SIVA regime and suggests a ninety day limit, starting from the date on which the creditors are notified, or, for SIVA 2 cases the date of the proposed '*paper meeting*'.

96. Ninety days should be sufficient time for any creditor who has been notified of a proposal to respond and identify the quantum of their claim.

97. As a safety mechanism, supervisors might be given discretion to admit the claim if no dividend had yet been paid.

98. Such a change might need an appeal route to the court if there were exceptional circumstances regarding how and why the delay in filing the proof had occurred.

Q46. Do you agree with the imposition of a 90-day time limit for the filing of creditors claims in SIVA1 and SIVA 2 cases?

Q47. If not, what time period would you suggest, and why?

Applies to SIVA 1 and SIVA 2

Allowing the supervisor to vary a SIVA without reference to the creditors

Creditors’

needs:

An efficient, and cost effective regime.

Debtor’s needs:

A fair and rational resolution process that will endure.

The problem

99. Currently there are a number of circumstances where the supervisor has to consider whether a debtor’s IVA proposal warrants varying. These include cases such as ‘debtor fatigue’ where the debtor offers up a lump sum in lieu of outstanding payments and that lump sum may be less than the total of those payments. Another scenario is where the debtor may suffer some short-term illness and find himself unable to make all the required monthly payments. In such cases the supervisor will generally either fix a meeting of creditors or notify them of the situation, both of which will add to his expenses (and affect the dividend paid).

100. The STC in an FTVA already enable the official receiver as supervisor to vary the terms of a proposal without reference to the creditors provided it is not anticipated to affect the total estimated distributions to creditors by more than 20%²⁶.

Working Group’s conclusions

101. To assist in simplifying and reducing the supervisor’s costs in this type of situation and by utilising a Best Practice Model the Working Group recommends giving the Supervisor a discretionary power to vary the terms of the proposal (probably in the STC) subject to appeal to the court by a creditor. The variation would be subject to some limits and it might relate to a fixed amount or to a specific percentage of the expected total realisations. The Supervisor should notify creditors of his decision as soon as reasonably practicable.

Q48. Do you agree that the Supervisor should have the power to vary the SIVA within pre-determined parameters?

Q49. If yes, at what level should those parameters be set?

²⁶ Link to Insolvency Service web site <http://www.insolvency.gov.uk/forms/FTVAProposal.doc>

IVAs, SIVA 1 and SIVA 2

Electronic communication and payment

Creditors' needs:

An efficient, transparent and cost effective regime.

Debtor's needs:

To easily access a fair and rational resolution process.

The problem

102. Increasingly sophisticated IT systems are enabling some DMP and IVA providers to keep down the costs of preparing plans/proposals and issuing distributions to creditors. E-mail is now an accepted form of communication and the majority of commercial organisations and many individuals are contactable using it.

Working Group's conclusions

103. The reliance on paper based communication and payment in many IVAs incurs costs and can cause delays.

104. The Working Group recognises that electronic payment and communication can reduce a nominee's/supervisor's case administration costs. If such systems could become more widely used then they could generate both monetary and time savings and so reduce the overall cost of the process.

105. If electronic communication were to become the default method of communication, there would of course need to be alternative methods available for those who could not receive them.

Q50. What are your views on the use of electronic communication and payment?

SIVA 1 and SIVA 2

Fees

Creditors' needs:

To have confidence in an efficient, transparent and cost effective regime in which they trust authorised practitioners to ensure the debtor pays the maximum affordable contribution.

The problem

106. The Working Group agreed that one of the most important issues for all stakeholders is the fees charged in an IVA. Historically the level of a nominee/supervisor fees has generated much dissatisfaction for some creditors and debtors, especially where those fees appear to be disproportionate to what the debtor actually paid into the IVA and what was distributed to creditors. Although the issue arises in a minority of cases it does highlight fees as a controversial and sensitive issue.

107. The Working Group concluded that using time and rate fees does not meet the debtors and creditors needs identified as the frame of reference for the examination of the current IVA regime. Whilst most time and rate fees are capped by modifications proposed by creditors there are a number of creditors who do not have confidence that there is a transparent and cost effective regime.

108. Creditors accept that when a debtor pays money into an IVA, the nominee needs to cover the actual costs of preparation of the proposal and the supervision of an approved arrangement. However some creditors are concerned that if an IVA does not run its full term the supervisor makes it a priority that his fees are paid before the creditors receive a dividend and ensures he has a smaller financial risk than the creditors. Consequently the Working Group felt the proposed SIVA 1 and SIVA 2 regimes need a more equitable balance of practitioner and creditor needs and risks, whilst ensuring that a debtor's entry to the regime is not restricted.

Debtor's needs:

To easily access a fair and rational resolution process that is easily understood, has certainty and will endure.

109. Debtors need a regime that is easy to access and enables them to make an affordable (in the long term) contribution from their disposable income. Debtors also need a fee system that is easy to understand, where it is clear that the moneys they pay in are allocated in an equitable manner between a dividend to creditors and the supervisor's reasonable costs for administering the arrangement.

110. If an IVA shows that a practitioner is expected to receive say £6,000 for their work, that sum can appear high when compared with monthly charges/deductions made by a DMP. Also the nominee fee, though not always charged upfront to the debtor is perceived as expensive. However over time when the accumulated costs of supervising a DMP are taken

into account it may be that a DMP is more costly to operate. It may also be the case that many debtors do not understand that the supervisor's costs and in many instances those of the nominee, are effectively borne by the creditors.

Nominee work

111. Whilst preparing a proposal the nominee may have to spend a significant amount of time and resources because he needs to gain the debtor's trust, creditors may need to confirm their debts, and a property may need independently valuing and its outstanding mortgage and charges may also need verification all of which costs money. There is also the cost of court applications for Interim Order IVAs and for filing papers at court and making arrangements for the meeting of creditors.

Supervisor work

112. It is accepted that there is a base level of costs for such work. However when the debtor makes larger monthly contributions the percentage of the supervisory cost correspondingly diminishes. This is clearly demonstrated in Table 4.7(a) in Michael Green's research part of which is reproduced below.

Debt level £	Median receipts £	Median costs £
10,000 to 19,999	11,153	4,125
20,000 to 29,999	15,355	5,688
30,000 to 39,999	19,500	6,475
40,000 to 49,999	22,800	6,475
50,000 to 74,999	29,313	6,475
75,000 to 99,999	37,825	6,475
100,000 to 149,999	43,803	6,475

The Working Group concluded that to meet the creditors' and debtors' needs there should be a simple and transparent fee regime for both nominee and supervisor work.

Working Group's conclusions

113. Because the current IVA regime is complex it is costly to administer. The relative simplicity of a SIVA 1 or SIVA 2, unlike an IVA there would be little or no dealings with the Crown or the need to monitor trading, together with the further refinements identified elsewhere in this report, should ensure they are cheaper to administer.

Nominee fees SIVA 1 and SIVA 2

114. The Working Group recommends that the payment for work as a nominee should be a constant figure. It is expected that a SIVA 1 and SIVA 2 case will be cheaper to administer than an 'ordinary' IVA because the nominee will not have to resolve conflicting modifications, nor will he have to hold a physical meeting of creditors and there will be no prospect of having to adjourn a paper meeting. For SIVA 1 work that figure should be slightly less than the figure used for SIVA 2 because there would be no meeting of creditors. It is recognised that having a constant figure only works for an average case and that sometimes more or less work may have been expended. However the Working Group is firmly of the opinion that determining a simple and rational fee structure for the SIVA 1 and SIVA 2 regime is one of the most crucial aspects of improving and widening access to a regulatory debt resolution process.

Supervisor fees IVAs, SIVA 1 and SIVA 2

115. As an alternative to time and rate for a Supervisor's work the Working Group identified two alternatives that would meet the requirement for a simple and transparent fee regime.

Alternative 1 – A monthly administration charge (MAC)

116. A MAC has the advantage that at the start of the process debtors, creditors and supervisors have agreed and signed up to a defined deal which is simple and transparent and which meets their needs. Using a monthly charge encourages supervisors to ensure any proposal they put forward would endure and ensure that the creditors and the practitioner were recompensed equitably.

117. The level of the MAC would be of crucial importance because if it is set too high it might preclude access to some debtors whose monthly contribution would thereby be reduced below the level needed to provide an equitable distribution to creditors. If the MAC was set too low then although more money would be generated for creditors it might be uneconomic for supervisors to administer a SIVA 1 or SIVA 2.

Alternative 2 – A set percentage of realisations (SPR).

118. Using SPR the Supervisor would be paid a proportion of the moneys realised on a monthly basis and the creditors and practitioners equally share the risk of non-payment by the debtor. This approach is similar to that which is successfully used in many DMPs. The Working Group agreed that any SPR should use a gradually reducing sliding scale wherein the first block of realisation attracted the

highest rate so as to ensure the supervisor was adequately compensated for his work. A decreasing percentage rate would also ensure that where the debtor paid a larger monthly amount and the supervisor's costs were relatively static then the creditors would receive a better dividend.

119. The Working Group wants to allay any concerns that a nominee/supervisor might suggest a debtor increases his contributions so that the supervisor might receive more money. DMP providers who have been paid on this basis for many years do not find that this is an issue. In any event if there is a standardisation of what constitutes a debtor's allowable expenditure and what proportion of disposable income should be paid into a SIVA then any concerns should diminish.

120. For SIVA 1 and SIVA 2 cases the total nominee/supervisor costs and the dividends to creditors should be relatively simple to calculate, as there are less variables to consider. The costs will also be transparent if a standard Executive Summary is adopted.

121. For either MAC or SPR the Working Group recommends that the fee should only be charged when the debtor is making payments into the arrangement and practitioners should not receive a fee if the creditors are not accruing a dividend.

122. The Working Group recommends that all fees charged in a SIVA1 and SIVA2 should be reviewed regularly, at least annually, by an independent panel to ensure it is providing a cost effective regime for ALL stakeholders.

SUMMARY

123. The Working Group is firmly of the opinion that using time and rate fees for IVAs does not meet the guidelines for their consideration of the current IVA regime.

124. The Working Group recommends that there should be a constant set figure for nominee work in a SIVA 1 or SIVA 2 and that the cost of Supervisory work should also be simple and transparent and this can be achieved through using either a MAC or SPR approach.

Q51. Do you agree that IVAs, SIVA 1 and SIVA 2 cases would benefit from a simple and transparent fee regime for nominee and supervisor work?

NOMINEE

Q52. Do you agree that the nominee work in an IVA, SIVA 1 and SIVA 2 case should be a constant figure?

Q53. If yes, what figure should be set for a single proposal in an

- (i) IVA**
- (ii) SIVA 1**
- (iii) SIVA 2**

Q54. What figure should be set for a joint proposal in an

- (i) IVA**
- (ii) SIVA 1**
- (iii) SIVA 2**

SUPERVISOR

Q55. Do you prefer a Monthly Administration Charge or Set Percentage of realisations approach?

Q56. What is the reason for your preferred approach?

Q57. At what amount would you set the Monthly Administration Charge?

Q58. At what levels would you set the Set Percentage of Realisations?

IVAs

Q59. Do you think that consideration should be given to adopting a set nominee fee for all IVAs?

Q60. Do you think that consideration should be given to adopting a Monthly Administration Charge or Set Percentage of Realisations for Supervisory work in all IVAs?

Applies only to SIVA 1 and SIVA 2

Keeping creditors informed

Creditors' needs:

To trust authorised practitioners to ensure the debtor pays the maximum affordable contribution.

The Problem

125. For IVAs, Insolvency Rule 5.31(2) sets out that *'The supervisor shall, not less than once in every 12 months beginning with the date of his appointment, prepare an abstract of such receipts and payments, and send copies accompanied by his comments on the progress and efficacy of the arrangement'* to the court, the debtor and the creditors i.e. the supervisor's report

126. There are inherent costs for a supervisor in completing this duty; also creditors receiving the report incur costs in reviewing and filing the supervisor's report. Creditors are generally disinterested in the supervisor's report if the arrangement is producing dividends at the expected level.

Debtor's needs:

To easily access a fair and rational resolution process.

127. It is noted that regulatory bodies can and do use the supervisor's reports when they are assessing conduct and compliance issues.

Working Group's conclusions

128. For SIVA 1 and SIVA 2 cases consideration should be given to reduced but more focused reporting to the creditors. This might involve only reporting exceptions such as when and why an arrangement has failed. Such an approach would reduce the supervisory costs and so is expected to generate increased dividends to creditors.

Q61. Are you in favour of reduced but more focused supervisor's reports?

Q62. What should be included in (or excluded from) a supervisor's report

Q63. Should consideration be given to reduced but more focused supervisor's reports in the current IVA regime?

ANNEX 1

DRAFT SIVA 1 PROPOSAL

IN THE [] COUNTY COURT

SIMPLE INDIVIDUAL VOLUNTARY ARRANGEMENT (“SIVA”)

UNDER THE [INSOLVENCY ACT 1986]

This document comprises the terms of a SIVA in respect of:

Debtor Name:

Debtor Address:

It is certified that the Debtor meets the qualification criteria for a simple individual voluntary arrangement under [details of legislation] on the basis that:

- (a) the aggregate value of the Debtor’s unsecured liabilities do not appear to exceed [£25,000 - £30,000]; and
- (b) in the reasonable opinion of the Supervisor there are no matters of complexity with regard to the Debtor’s affairs which might materially affect the implementation of this arrangement.

The arrangement has been approved by [name of IP] (who is now constituted as Supervisor of the arrangement) on the basis that it represents the best contribution reasonably affordable by the Debtor.

The arrangement is effective from the date hereof.

Terms

Save as specifically amended by the following terms the arrangement includes [the standard SIVA conditions to be found at []].

1. The SIVA commences on [date] and the funds available to creditors in the SIVA will compromise Payments (paragraph []), Equity Release (paragraph []), Windfall (paragraph []).
2. The SIVA will come to an end on the latest of:
 - (a) Payment by the Debtor to the arrangement fund of 60 instalment payments at the prevailing rate from time to time being not less than the commencement rate specified herein; or
 - (b) payment of an amount equivalent to the Equity Release under paragraph [] where applicable; or
 - (c) [] months from the date hereof;

unless the Supervisor shall in the interim issue a default notice or a completion notice in accordance with paragraph 9(c).

3. (a) Payment = £[] per month for the duration of the SIVA unless varied by the Supervisor
 - (b) In order to facilitate the payment the Debtor's main income will for the duration if the SIVA be paid into a blocked account with [] [to be considered further].
4. Equity Release – the Debtor owns or has an interest in the following property:

Property	Value	Equity	Equity Release
	£	£	£

At month [] of the SIVA the Debtor will pay an additional contribution equal to []% of the amount of the equity release indicated above. The Debtor may pay such amount either as a lump sum by way of re-mortgage or if re-mortgage is not practicable by additional instalments at an appropriate rate during the remainder of the SIVA.

5. The financial status of the Debtor will be subject to ongoing review by the Supervisor during the SIVA and the Debtor will provide the Supervisor with such information as the Supervisor reasonably requires to undertake such review. The Supervisor in his discretion can review the amount of the Debtor's contribution to the SIVA fund.
6. In addition the Debtor will:-
 - (a) notify the Supervisor as soon as reasonably practicable of any material change in his financial circumstances; and
 - (b) notify the Supervisor as soon as practicable of any Windfall (which shall mean a benefit in money or moneys worth to which the Debtor becomes entitled which is not taken into account in calculating monthly contribution), in excess of £[] which shall form part of the funds available to creditors and which shall be paid over to the Supervisor net of any tax applicable thereto.
7. The Supervisor will distribute any SIVA funds by way of:
 - (a) an interim quarterly dividend; and

- (b) a final dividend on completion of the SIVA, in each case to those creditors whose claims are admitted in the SIVA.
8. Establishment of creditor claims and payment of dividends shall be in accordance with for example the provisions of the Insolvency Rules 1986 as amended. A creditor who does not submit its claim in the form required within 90 days from notification by the Supervisor of the implementation of the SIVA shall be excluded from any dividend but shall nonetheless be bound by the terms hereof.
9. The SIVA will terminate if:
- (a) the Debtor pays claims of all creditors in full; or
 - (b) completion of the duration of the SIVA on its terms; or
 - (c) the Supervisor is reasonably of the opinion having made such enquiry as the Supervisor shall in his sole reasonable discretion consider appropriate that for reasons beyond the Debtor's control which do not constitute a wilful breach of the terms of the SIVA on the part of the Debtor the Debtor is unlikely to be able to comply with the terms of the SIVA for the remaining term thereof and the Supervisor issues a notice of completion to that effect.
 - (d) default by the Debtor resulting in the issue of a Default Notice by the Supervisor meaning:
 - (i) any failure to pay monthly contributions in circumstances where the Supervisor does not agree to defer payment [and extend the SIVA]; or
 - (ii) material non disclosure by the Debtor either prior to commencement of the SIVA or on any annual review or where the Debtor becomes under an obligation to disclose a change in circumstances;
 - (iii) failure to observe the terms of the SIVA with regard to any Equity Release;
 - (iv) failure to pay any Windfall to the Supervisor;
 - (v) a Bankruptcy Order against the Debtor during the period of the SIVA.
10. In this case it is [not] proposed that the Supervisor will retain under his control reasonable provision against the cost of a bankruptcy petition. In the event of the issue of a Default Notice the Supervisor will, sufficient funds permitting, issue [a Bankruptcy Petition].

11. In the event of termination other than the issue of a Default Notice the Supervisor will issue a Certificate of Completion [and will give notice thereof to the proscribed parties in accordance with the Rules].

12. Fees – the Supervisor will be paid in accordance with the Schedule hereto [and shall deduct such fees from SIVA funds available from time to time].

Signed

Licensed Insolvency Practitioner

Tel:

Fax:

Email:

Acknowledgment and Agreement

I hereby acknowledge and agree that:

- (i) I have made full disclosure of my income, assets, liabilities and current expenditure to the Supervisor;
- (ii) I will abide by the terms of this SIVA;
- (iii) Should I default on the terms of this SIVA a Bankruptcy Order is likely to be made against me.

Signed

Debtor

ANNEX 2

DRAFT SIVA 2 PROPOSAL

IN THE [] COUNTY COURT

SIMPLE INDIVIDUAL VOLUNTARY ARRANGEMENT (“SIVA”)

UNDER THE [INSOLVENCY ACT 1986]

This document comprises the terms of a SIVA in respect of:

Debtor Name:

Debtor Address:

It is certified that the Debtor meets the qualification criteria for a simple individual voluntary arrangement under [details of legislation] on the basis that:

- (c) Unsecured liabilities appear to exceed [£25,000 - £30,000] but do not exceed [£50,000 - £70,000];
- (d) in the reasonable opinion of the proposed Supervisor [name] there are no matters of complexity with regard to the Debtor’s affairs which might materially affect the implementation of this arrangement.

The terms hereof represent the terms of the Debtor’s proposal for an individual voluntary arrangement which are subject to the approval of a simple majority of the Debtor’s creditors at a meeting of creditors to be convened for the purposes of considering the proposal. The proposal is not capable of modification pursuant to [set out regulations].

Terms

Save as specifically amended by the following terms the arrangement includes [the standard SIVA conditions to be found at []].

- 13. The SIVA commences on [date] and the funds available to creditors in the SIVA will comprise Payments (paragraph []), Equity Release (paragraph []), Windfall (paragraph []).
- 14. The SIVA will come to an end on the latest of:
 - (a) Payment by the Debtor to the arrangement fund of 60 instalment payments at the prevailing rate from time to time being not less than the commencement rate specified herein; or
 - (b) payment of an amount equivalent to the Equity Release under paragraph [] where applicable; or
 - (c) [] months from the date hereof;

unless the Supervisor shall in the interim issue a default notice or a completion notice in accordance with paragraph 9(c).

15. (a) Payment = £[] per month for the duration of the SIVA unless varied by the Supervisor

(b) In order to facilitate the payment the Debtor's main income will for the duration if the SIVA be paid into a blocked account with [] [to be considered further].

16. Equity Release – the Debtor owns or has an interest in the following property:

Property	Value	Equity	Equity Release
	£	£	£

At month [] of the SIVA the Debtor will pay an additional contribution equal to []% of the amount of the equity release indicated above. The Debtor may pay such amount either as a lump sum by way of re-mortgage or if re-mortgage is not practicable by additional instalments at an appropriate rate during the remainder of the SIVA.

17. The financial status of the Debtor will be subject to ongoing review by the Supervisor during the SIVA and the Debtor will provide the Supervisor with such information as the Supervisor reasonably requires to undertake such review. The Supervisor in his discretion can review the amount of the Debtor's contribution to the SIVA fund.

18. In addition the Debtor will:-

(a) notify the Supervisor as soon as reasonably practicable of any material change in his financial circumstances; and

(b) notify the Supervisor as soon as practicable of any Windfall (which shall mean a benefit in money or moneys worth to which the Debtor becomes entitled which is not taken into account in calculating monthly contribution), in excess of £[] which shall form part of the funds available to creditors and which shall be paid over to the Supervisor net of any tax applicable thereto]

19. The Supervisor will distribute any SIVA funds by way of:

(a) an interim quarterly dividend; and

- (b) a final dividend on completion of the SIVA, in each case to those creditors whose claims are admitted in the SIVA.

20. Establishment of creditor claims and payment of dividends shall be in accordance with [*for example the provisions of the Insolvency Rules 1986 as amended*]. A creditor who does not submit its claim in the form required within 90 days from notification by the Supervisor of the implementation of the SIVA shall be excluded from any dividend but shall nonetheless be bound by the terms hereof.

21. The SIVA will terminate if:

- (a) the Debtor pays claims of all creditors in full; or
- (b) completion of the duration of the SIVA on its terms; or
- (c) the Supervisor is reasonably of the opinion having made such enquiry as the Supervisor shall in his sole reasonable discretion consider appropriate that for reasons beyond the Debtor's control which do not constitute a wilful breach of the terms of the SIVA on the part of the Debtor the Debtor is unlikely to be able to comply with the terms of the SIVA for the remaining term thereof and the Supervisor issues a notice of completion to that effect.
- (d) default by the Debtor resulting in the issue of a Default Notice by the Supervisor meaning:
 - (j) any failure to pay monthly contributions in circumstances where the Supervisor does not agree to defer payment [and extend the SIVA]; or
 - (vi) material non disclosure by the Debtor either prior to commencement of the SIVA or on any annual review or where the Debtor becomes under an obligation to disclose a change in circumstances;
 - (vii) failure to observe the terms of the SIVA with regard to any Equity Release;
 - (viii) failure to pay any Windfall to the Supervisor;
 - (ix) a Bankruptcy Order against the Debtor during the period of the SIVA.

22. In this case it is [not] proposed that the Supervisor will retain under his control reasonable provision against the cost of a bankruptcy petition. In the event of the issue of a Default Notice the Supervisor will, sufficient funds permitting, issue [a Bankruptcy Petition].

23. In the event of termination other than the issue of a Default Notice the Supervisor will issue a Certificate of Completion [and will give notice thereof to the proscribed parties in accordance with the Rules].

24. Fees – the Supervisor will be paid in accordance with the Schedule hereto [and shall deduct such fees from SIVA funds available from time to time].

Signed

Licensed Insolvency Practitioner

Tel:

Fax:

Email:

Acknowledgment and Agreement

I hereby acknowledge and agree that:

- (i) I have made full disclosure of my income, assets, liabilities and current expenditure to the Supervisor;
- (ii) I will abide by the terms of this SIVA;
- (iii) Should I default on the terms of this SIVA a Bankruptcy Order is likely to be made against me.

Signed

Debtor

ANNEX 3

EXAMPLE 1

IN THE [RELEVANT] COUNTY COURT
AND IN THE MATTER OF THE INSOLVENCY ACT 1986 (“the Act”)
RE: A DEBTOR

Outline Proposal		
Monthly Contributions: 60 @ £409		<u>24,540</u>
Total Monies Available for Creditors:		24,540
Less		
Nominee’s Fee:	3,000	
Supervisor’s Fee:	5,000	
Nominee’s Costs:	306	
Supervisor’s Costs:	320	
Irrecoverable VAT:	<u>1,477</u>	
Total Costs:	<u>10,103</u>	
Net Funds Available:		<u>14,437</u>
Total Unsecured Creditors:		38,348
Estimated Dividend to Unsecured Creditors:		37p
Dividend in Bankruptcy:		Nil

Events leading to financial difficulties

- 1 I, A Debtor of _____ am unable to pay my debts as they fall due and am thus insolvent within the meaning of S123 of the Insolvency Act 1986. I am 35 years old and living with my wife and two year old son in rented accommodation. My wife, B Debtor is also offering a proposal to her creditors which should be read in conjunction with my proposal. My liabilities exceed my assets. I am a Driver forDelivery. My present position has arisen as a result of the following factors:-
- (a) My wife and I have always had the use of credit cards and loans but we have always been able to maintain the payments for many years. We have never had any problems repaying our creditors each month and have always had a good credit history.
- (b) At the beginning of 2003, I was given the opportunity to run a on a self-employed basis. I didn’t hesitate to take the job as I thought it would be a great career move and a positive step to provide for my family for the coming years. Several months after running the club, I found that I was not making any money through the business and I began to use my personal credit to keep the business afloat.

- (c) In January 2004, I went away on holiday and when I returned, I had been replaced at the club and I was left with large debts. Although my wife had a part-time job, we did not have enough to pay the household bills as well as paying for our creditors. I found it very difficult to find a job so we were forced to use our credit cards to provide the essentials for our family.
- (d) In March 2004, my vehicle which was on HP was repossessed as we could not afford to keep up the repayments. I managed to secure a job with my current employer in April 2004, but we still could not keep up with the repayments to our creditors. We were also still using our credit cards which made our financial situation worse.

EXAMPLE 2

EXECUTIVE SUMMARY	
Nominee	IP Name, Address, Tel No
Proposed Supervisor	As above

INCOME & EXPENDITURE SUMMARY

Net Income	£
Debtor	
Spouse	
Total Net Income	
Total Expenditure	
Net Surplus	

SUMMARY OF ASSET REALISATIONS	£	NARRATIVE
--------------------------------------	---	------------------

Contributions		
Property		
Other		
Total		

BASIS OF FEES		Basis of calculation
Nominee's Fee		As the case has no unusual factors regarding duration and number of creditors it is proposed that the Nominee's fee be fixed at £ []
Supervisor's Fees		As the case has 100 creditors, will last for 5 years and has

		expected total realisations of £15,000, it is subject to increased Supervisory costs and so the Supervisor's fee has been set at [25/30/35/40]%
		or
		As the case has 4 creditors, will last for a maximum of 6 months and the realisations comprise a one off third party payment of £15,000 the case is subject to reduced Supervisory costs the Supervisory fee has been set at [10/15/20/25]%
		As the case is has no unusual factors regarding duration and number of creditors the Supervisory fee has been set at [////////]%
% of Total Realisations		

DIVIDEND PROSPECTS	
IVA	p in £
Bankruptcy	p in £

Annex 4

Partial Regulatory Impact Assessment
Annex 1

1. Title of proposal

Improving Individual Voluntary Arrangements (IVAs).

2. Purpose and intended effect of measure

(i) The objective

The proposal is to improve the existing legislation and practice in the area of IVAs, a statutory regime (set out in the Insolvency Act 1986). IVAs provide indebted individuals with a legally binding agreement with their creditors for the repayment of their debts in part or in full. The proposal will affect the three principal stakeholders in IVAs, the debtor, the creditor and the provider (insolvency practitioner). Debtors can expect to benefit from easy access to a transparent regime that balances the risks/needs of debtors, creditors and providers. Creditors can expect to benefit from increased dividends as the providers' costs are reduced and consequently more of the debtor's contribution will be available for distribution. Providers can expect a rise in case numbers as the simple and transparent regime should increase the number of debtors who want to access it.

Devolution:

The individual insolvency provisions of the Insolvency Act 1986 only apply to England and Wales.

(ii) The background

IVAs were introduced by the Insolvency Act 1986 as an alternative to bankruptcy. They were envisaged as a rescue and rehabilitation process for 'business generated' personal insolvency. Over time, the main users of IVAs have become non-traders. Academic research indicates that '*Business debt generated IVAs now account for probably less than 5-10% of IVAs proposed, approved or registered. This pattern has prevailed since 1994*'. Similarly in bankruptcies the number of traders has fallen to less than 35% of the total number of bankruptcy cases.

Despite the changed profile of the typical IVA user, various stakeholders have suggested that shortcomings with the IVA process has lead to many consumer debtors seeking to resolve their debt problems by alternative (and possibly less appropriate) means.

Against that background the Insolvency Service commissioned Michael Green, a Research Fellow of the University of Wales to carry out research into IVAs, over-indebtedness and the insolvency regime²⁷. Michael Green's research in paragraph 123 concluded

'From a practical and mechanistic standpoint it is suggested that the

²⁷ Link to details of the research and forum - <http://www.insolvency.gov.uk/whatsnew/whatsnew.htm>

way forward will be best served by creating a framework for a régime which deliberately and purposely sets out to deal with the present deficiencies as a whole - process, market, regulatory, behaviour et al. It should simultaneously address those philosophical issues..... which are presently outstanding and are a barrier to any effective progress.'

That research led to the Insolvency Service hosting a forum for interested stakeholders on 19 July 2004. The notes²⁸ from that forum concluded that: -

- *IVAs can and do work for traders but they could be modified so that they more closely meet the needs of non traders (so called consumer debtors).*
- *The content of an IVA proposal should be simplified, as their current complexity deterred some potential users who would benefit from entering such an arrangement.*
- *To simplify an IVA, consideration should be given to removing a creditor's ability to propose modifications to a debtor's proposal.*
- *As the IVA is a regulated process this provides creditors with confidence in the professional standards of the supervisor.*
- *The cost of an IVA, including the supervisor's fees can act as a barrier to entry.*

The research also identified that once a providers costs reach a certain level they remain relatively static, for example a provider's median costs for cases with debts of between £30,000 to £149,99 averaged £6,475. The forum led to the creation an IVA stakeholder Working Group to examine how they might be improved. The findings and recommendations of the Working Group are detailed earlier in this report.

(iii) Risk assessment

When IVAs were introduced in 1986 they were aimed at providing a rescue mechanism for over indebted businessmen/entrepreneurs. Since their introduction the availability of credit has significantly increased. This has taken place during a period of low inflation, low interest rates, low unemployment and increasing household wealth. Credit is an important factor for the overall economy and used sensibly it stimulates growth.

However some who obtain credit might not always be able to fully service their debt. Inevitably there will be always be a minority who suffer "life accidents" which affect their ability to repay. The Insolvency Service Consultation 'Relief for the Indebted- An alternative to Bankruptcy' includes a table of reasons for arrears on household bills and credit commitments (Source Kempson 2002)²⁹ which identified the following reasons for arrears on household bills and credit commitments.

²⁸ <http://www.insolvency.gov.uk/whatsnew/forumnotes.doc>

²⁹ http://www.insolvency.gov.uk/information/con_doc_register/registerindex.htm

Reason	Percentage
Redundancy	18
Relationship breakdown	6
Sickness or disability	6
Other loss of income	12
Low income	15
Over commitment	9
Increased/unexpected expenses	11
Overlooked or withheld payment	12
Third party error	6
Debts left by a former partner	2
Other	3

The Financial Services Authority in its Financial Risk Outlook for 2005³⁰ indicates that: -

“A further third (of all households) say they were keeping up with all of their commitments, but struggled from time to time. Around one in eight families with an unsecured debt find it a constant struggle or are falling behind with their borrowing commitments. These results are broadly comparable with the Department of Trade and Industry’s 2002 survey of over-indebtedness”.
It goes on to set out that:

“Citizens Advice Bureaux have seen a 44% increase in new consumer debt enquiries in the last six years and now deal with over 700,000 new consumer debt enquiries annually. Calls to the Consumer Credit Counselling Service help lines rose by more than a third to 90,000 in the first six months of 2004, and there was a significant increase in calls over the Christmas period compared to 2003.”

The Bank of England Quarterly Bulletin (Winter 2004) refers to a survey into unsecured and mortgage borrowing that it commissioned. The survey identified that *“around 25% of those remortgaging in the past year”³¹ have done so to consolidate their debts.”*

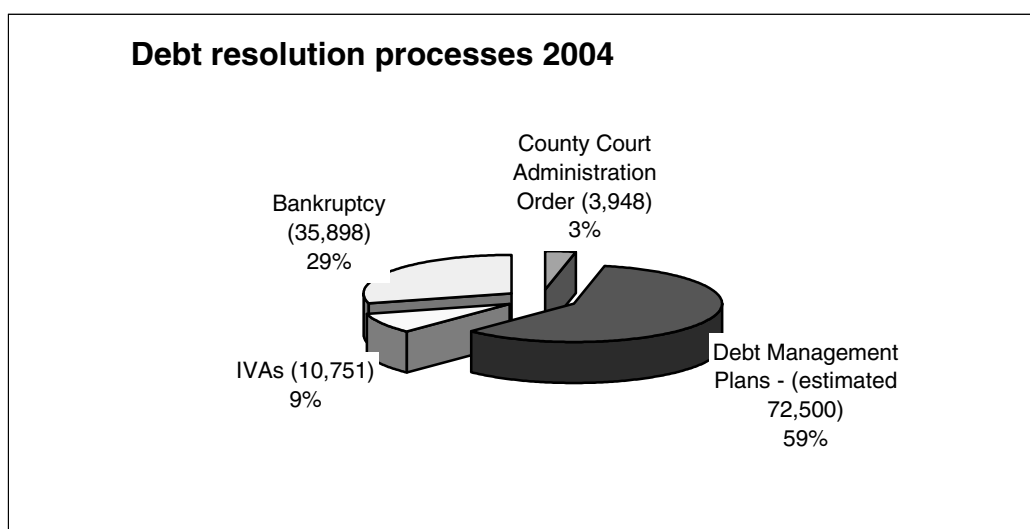
Consequently there are a number of individuals who need access to a debt resolution process that is clear, accessible and affordable. Although the IVA regime is a useful debt resolution process it needs to be updated to promote, clarity accessibility and affordability.

³⁰ [www.fsa.gov.uk/pubs/plan/financial risk outlook 2005](http://www.fsa.gov.uk/pubs/plan/financial_risk_outlook_2005)

³¹ <http://www.bankofengland.co.uk/qb/qb0404.pdf>

IVAs were originally intended to deal mainly with business-generated debt, for other users they can be seen as over complicated and relatively difficult to access especially for those with debts of less than £25,000. To meet the need of non-business credit users a non-statutory process of debt resolution has arisen i.e. Debt Management Plans (DMP). Although DMPs provide a very useful tool they are not based in statute and providers are not statutorily subject to external regulation. However some DMP providers belong to the Debt Managers Standards Association (DEMSEA)³², which is applying to the Office of Fair Trading under the Consumer Codes Approval Scheme. DEMSEA members are also required to comply with the OFT Debt Management Guidance Notes published in 2001. As there is no debt forgiveness in a DMP some last for more than twenty years. This is in contrast to an IVA where the creditor can vote whether or not to agree to some debt forgiveness. As repayments under a DMP can continue for a lengthy period they can deny a debtor full access to credit for a significant period of time and may not help his rehabilitation.

The chart below sets out the main debt resolution processes (and their numbers) for the calendar year 2004.



We believe that if a simple IVA (SIVA) regime was introduced a number of those who currently opt for a DMP would instead choose a SIVA. The SIVA regime would rectify one of the concerns raised by Michael Green in his research i.e. that the current IVA regime *'can and does lead to IVAs being rejected that should be accepted and valid proposals being rejected at an early stage'*

The introduction of a SIVA regime would go some way to alleviating that concern and provide access to a beneficial regime to debtors who owe less than £25,000.

³² <http://www.demsa.co.uk/mission.htm>

3. Options

Option 1: Do nothing

This would continue to deny a number of debtors, access to a regime that provides rehabilitation, clarity, accessibility and affordability. If SIVAs are not introduced debtors may have to use less appropriate routes (for example debt consolidation, re-mortgage, DMP or bankruptcy) to deal with their financial problems.

Option 2: Improve access to IVAs through a code of best (industry wide) practice.

The report that precedes this RIA sets out a number of ways improvements to the IVA regime could be achieved without a change in legislation. These suggestions were the result of a stakeholder group and are expected to benefit all stakeholders. Best practice alone is not expected to provide better access to an IVA for debtors' with low-level debts, as it appears that much of current complexity and associated cost comes from the way the regime is currently framed and how the industry deals with those legislative requirements. Consequently there is no certainty that best practice alone would achieve the objective. The Working Group set up to review the IVA regime many of whom have practical experience believe that legislative change is required.

Option 3: Leave the current IVA regime in place for the use of traders and those with complex affairs. Implement option 2 and additionally introduce a simple version of the IVA regime that is aimed at providing access for those with lower level of debts and whose affairs are relatively simple.

This would allow debtors, particularly those with relatively low levels of debts, access to an affordable (lower cost) debt resolution process that provides financial rehabilitation. Other benefits include the provision of licensed/regulator supervised supervisor who creditors can rely on to obtain the best repayment deal possible.

4. Benefits Option 1:Do nothing

There would be no economic and social benefits to those debtors who require access to a debt resolution scheme that is clear, accessible and affordable and provides debt forgiveness.

Option 2: Improve access to IVAs through a code of best (industry wide) practice.

This could improve access and provide some economic and social benefits for debtors but would not reflect the recommendations contained in Michael Green's academic research in this area i.e.

“From a practical and mechanistic standpoint it is suggested that the way forward will be best served by creating a framework for a régime which deliberately and purposely sets out to deal with the present deficiencies as a whole.”

Nor would it reflect the views of the majority of stakeholders as set out in the forum notes: -

- *IVAs can and do work for traders but they could be modified so that they more closely meet the needs of non-traders (so called consumer debtors).*
- *The content of an IVA proposal should be simplified, as their current complexity deterred some potential users who would benefit from entering such an arrangement.*

Introducing a code of code of practice would not necessarily ensure that all providers followed it and there would be no compulsion for providers to adhere to it. Consequently debtors and creditors would feel that it would not achieve as many benefits as option3.

Option 3: Leave the current IVA regime in place for the use of traders and those with complex affairs. Implement option 2 and introduce a simple version of the IVA (SIVA) regime that is aimed at providing access for those with lower level of debts and whose affairs are relatively simple.

Economic benefits would include increased dividends to creditors, as the providers’ costs would be reduced in a simpler IVA regime enabling more of the debtor’s contributions to be paid as dividends to creditors. Creditors should also be able to reduce their own costs, as there would be less work to do on examining and voting on each IVA proposal.

There would be social benefits for vulnerable debtors as they would be more able to access the revised IVA regime, which affords protection from creditor actions, and a finite debt resolution process, which provides financial rehabilitation.

This also reflects the conclusions of both academic research and the wide variety of stakeholders represented in the Working Group. It would also meet the needs identified in the main body of their report and are reproduced below.

Creditors needs

To have confidence in an efficient, transparent and cost effective regime in which they trust authorised practitioners to ensure the debtor pays the maximum affordable contribution.

Debtor’s needs

To easily access a fair and rational resolution process that is easily understood, has certainty and will endure.

The Working Group's report contains fuller details of the proposals. If responses to that report are supportive of the Working Group's recommendations further work can begin to refine and define those improvements and how they might be delivered.

Business sectors affected

We believe that a revised and improved IVA regime is extremely unlikely to have an adverse affect on the credit and lending sector. Even in the current market, many banks are reporting improving profits, which reflect the view that the vast majority do use credit sensibly.

In November 2004 personal debt level reached £1 trillion for the first time however a households total interest payments amounted to 7.6% of disposable income. According to figures from the Bank of England, in 2003 UK resident banks wrote off credit card lending to individuals of £1570 million³³, some of which is owed by people who would potentially use the proposed scheme.

The banking and credit card sector is estimated to spend £3.4 billion every year chasing, recovering and writing off debts³⁴. There could in fact be savings to the credit industry in terms of decreased recovery costs and increased returns from debtors.

The banking and credit card sector will also be able to reduce their costs as they would have less work to carry out in looking at IVA proposals and proposing or dealing with modifications.

The improved IVA regime would continue to use licensed insolvency practitioners who are regulated professional persons. As at 1 January 2005 there were 1,691 licensed practitioners The Working Group recognises that the new SIVA and existing IVA regime will not suit the requirements of all types of debtors and there will still be a number of debtors who will want to arrange a DMP or use another alternative.

Issues of equity and fairness

It could be argued that people who get into debt should repay their debts in full and the creditors should not provide any debt forgiveness. However, IVAs already provide some debt forgiveness and the revised regime is aimed at people who are in financial difficulty generally as a result of what for many is a distressing life accident (set earlier in this out in this Partial RIA). Generally IVA debtors would be required to repay a proportion of their debts out of their disposable income for a minimum of five years and so would have endured some financial restraint for a significant period.

Although creditors will not be repaid in full, by allowing the debtor access to a debt resolution scheme the creditor can expect a quicker dividend and it is expected that the debtor will thereafter use credit more responsibly and

³³ www.bankofengland.co.uk/Links/setframe.html

³⁴ Action on Debt- Social Exclusion Unit Office of the Deputy Prime Minister – Business and Debt. Taken from Evaluation of Money Advice Debtline pilot (Deloitte and Touche 2003) p44

reduce the financial risk to finance providers.

5. Costs

(i) Compliance costs for businesses Charities and Voluntary Organisations

Option 1: Will cost businesses charities and voluntary organisations nothing to comply.

Options 2 and 3.

Is also likely to entail no increased costs for businesses, charities and voluntary organisations. Such organisations are already familiar with the IVA regime and the proposed new SIVA regime is similar in nature. As these organisations regularly budget for staff training and development it is unlikely to increase their costs in this area as the changes could be incorporated into existing budgets without any additional cost. Initially there may however be some small cost involved for “finance” creditors in relation to the agreement of a Best Practice Model. They would need to be aware of where to access any agreed Standard Terms and Conditions and become familiar with the industry wide Executive Summary when it is adopted. However these changes could be incorporated into their existing training and development budgets.

Consultation with small business: the Small Firms' Impact Test

At present the Insolvency Service has not formally consulted with small businesses or completed the Small Firms' Impact Test. However we have spoken with the Small Business Service for advice on how to do this and if the proposals are taken forward these steps will be undertaken. We do not believe that these proposals will have any adverse effects on small businesses and would welcome views from interested parties over whether this would be the case

7. Competition Assessment

The market affected by the suggestions in this Report mainly relates to licensed insolvency practitioners and existing providers of DMPs (some of which are insolvency practitioners). As at 1 January 2005, there were 1,691 licensed insolvency practitioners of whom 1,204 actually took appointments in insolvency cases. Insolvency practitioners are regulated by one of eight groups, seven are regulated through Recognised Professional Bodies and the Secretary of State regulates the eighth group.

As IVAs and the proposed SIVA regime will be provided through licensed insolvency practitioners and because there is already competition between such practitioners it is our view that the introduction of this proposal will not have an adverse effect on the existing practitioner market.

The proposed changes to the IVA and introduction of the SIVA regime will affect lenders equally although there may be some who lend

disproportionately to those who are close to financial exclusion, but we do not have any percentages.

The Insolvency Service has internally applied the Competition Filter Test, which indicates that a simple competition assessment will be required as appears that the proposals are likely to have little or no effect on competition. Consequently the Insolvency Service believes the proposals will have no adverse effects. However if the proposals are taken forward the Insolvency Service undertake to fully apply the Competition Filter Test in a substantive Regulatory Impact Assessment.

8. Enforcement and sanctions

Currently the IVA regime has an effective enforcement and sanction regime. Section 262A of the Insolvency Act 1986 sets out the offence of 'False representation etc' which specify that for the purpose of obtaining the approval of his creditors to his proposal, the debtor commits an offence if he makes any fraudulent representation or fraudulent does, or omits to anything in that regard. If it appears to a licensed insolvency practitioner that the debtor is guilty of any such offence the practitioner is required to report the matter to the Secretary of State (section 262B.) Licensed insolvency practitioners are currently regulated through a number of professional bodies³⁵. If a SIVA regime is introduced it would use similar enforcement and sanction provisions.

9. Monitoring and review

In common with the rest of Government, The Insolvency Service is committed to evaluating its proposals. It has sought specific training on evaluation from recognised sources for the relevant staff and has previous experience from the evaluation of the insolvency provisions of the Insolvency Act 2000 and the Enterprise Act 2002.

The introduction of a SIVA regime will be evaluated over a three-year period and a summary to be made available to the public. The principal aim of the evaluation will be to provide a comprehensive assessment of whether, to what extent and how the recommendations of the working group insofar as they are accepted by consultees meet policy objectives. The evaluation will also provide information and data that can be used to inform future policy decisions.

10. Consultation

(i) Within government

- The proposals are still at an early developmental stage with no definite course of action yet decided upon. However, the report of the Working Group and this partial RIA will be circulated to interested Whitehall departments .

³⁵ More information on licensing bodies can be accessed on <http://www.insolvency.gov.uk/information/iparea/iparea.htm>

(ii) Public consultation

- The Working Group operated under a frame of reference provided by Gerry Sutcliffe, Minister for Employment Relations and Consumer Affairs,

‘To consider the need for both legislative and non-legislative reform of the current individual voluntary arrangement process in order that it meets the needs of all individual debtors and their creditors, to make necessary recommendations for change and to report its findings’

The Working Group met on five occasions and full details of their Report are included earlier in the document. The role of the Working Group has been referred to in a number of seminars and conferences at which the Insolvency Service has participated.

11. Summary and recommendation

Option	Monetary costs	Benefits	Disadvantages
1- Do nothing	None	No need to legislate	Limits access to IVAs and this does not reflect the suggestions of both independent academic research and stakeholders

2 Introduce best practice models	None for most businesses, Charities and Voluntary Organisations However for “finance” creditors there will be some cost involved in agreeing what should be contained in the best practice model. Thereafter IT and training costs can be absorbed into normal budgets on these areas.	No need to legislate	Continues to limit access to IVAs and this does not reflect the suggestions of both independent academic research and stakeholders
3. Best practice model AND introduce a SIVA regime	None for most businesses, Charities and Voluntary Organisations However for “finance” creditors there will be some cost involved in agreeing what should be contained in the best practice model Thereafter IT and training costs can be absorbed into normal budgets on these areas.	Reflects the views of both academic research and stakeholders. Reflects the conclusions of the stakeholder Working Group specifically set up to examine IVAs and how they can be improved. Increases access for debtors (including those who do not owe significant amounts) to a regime that is clear, accessible and affordable	

We think that to achieve the aim and recommendations of both academic research and stakeholders’ views it will be necessary to legislate. That legislation might be achieved through a Regulatory Reform Order and

associated changes to existing secondary legislation (primarily the Insolvency Rules 1986). A Regulatory Reform Order will only be laid before the relevant Parliamentary Committees after full consultation with stakeholders has clearly defined and settled all policy issues.

12. Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed (This remains blank until the legislation is to be sent to Parliament. It then becomes a final RIA)

Date

Minister's name, title, department

Contact point

Insert name, address and phone number of an official who can answer any queries on the assessment or proposed legislation.

Q. 64. Do you have any information or comments on this Partial Regulatory Impact Assessment?

ANNEX 5

GLOSSARY

Annulment

Cancellation.

Assets

Anything that belongs to a bankrupt that may be used to pay bankruptcy debts.

Bankruptcy order

A court order making a person bankrupt.

Bankruptcy petition

A request made either by the debtor or by a creditor, to the court for a person to be made bankrupt and giving the reasons why.

Charging order

An order made by the court which gives the trustee a legal charge on a bankrupt's interest in his/her home. This continues even after a person is discharged from bankruptcy.

Creditor

Someone to whom a debtor owes money.

Debts

Money owed by a debtor.

Discharge

Freed from bankruptcy

Estate

A bankrupt's assets or property which a trustee can deal with to pay (or partly pay) off the bankruptcy creditors.

Income payments agreement

A bankrupt may enter into a written agreement with the trustee to pay him/her part of wages, salary or other income for an agreed period.

Income payments order

The court may order a bankrupt to pay the trustee part of his/her wages, salary or other income for a specified period.

Insolvency practitioner

An authorised person who specialises in insolvency, usually an accountant or solicitor. They are authorised either by the Secretary of State or by one of a number of recognised professional bodies.

Interest

A right to, or share in, a property.

Legal charge

A form of security (e.g. a mortgage) to ensure payment of a debt.

Petition

See "Bankruptcy petition".

Preferential creditor

A creditor in bankruptcy proceedings who is entitled to receive certain payments in priority to other unsecured creditors. These creditors include occupational pension schemes and employees.

Proxy

Instead of attending a meeting, a person can appoint someone to go and vote in their place - a 'proxy'.

Trustee

The trustee in bankruptcy is either the Official Receiver or an insolvency practitioner who takes control of your assets. The trustee's main duties are to sell these assets and share the money out among the creditors.

Unsecured creditor

A creditor who does not hold security (such as a mortgage) for money owed. Some unsecured creditors may also be preferential creditors.