



IVAs: The Insolvency Service/BBA Forum and TIX

The Insolvency Service issued a statement on Friday (24 August) on its view of the individual voluntary arrangement protocol being developed through The Insolvency Service/BBA (British Bankers Association) IVA Forum: a copy is attached in the event that you have not seen it. The IPA strongly supports what The Service has to say about the protocol.

There has been a great deal of effort and co-operation by a wide range of interests representing debtors, lenders, insolvency practitioners and regulatory and representative bodies in the Forum, and in which TIX (The Insolvency Exchange) has been involved. This has been aimed at building trust between all the parties in the IVA process so that it can continue to function as a credible, effective and efficient way for individuals to resolve their debt problems.

It is very important for debtors who are in financial difficulty to receive appropriate advice on their options. Recent research by The Insolvency Service has shown that debtors do not want to go bankrupt because of the stigma associated with it and do want to find a way to pay their debts. An IVA provides a solution for them, and a better return to creditors than bankruptcy; and it provides a legally binding agreement in respect of the debts.

Developing the protocol has not been a straightforward process and cannot be achieved instantly. We very much appreciate the care and attention that The Service has given to guiding the project forward, and the time and efforts put in by all the parties: agreement across the range of issues is now close. It is a matter of concern therefore that TIX's clients should have chosen to pre-empt matters by issuing their own requirements partly relying on the protocol but unilaterally imposing terms and conditions which make it likely that IPs will not feel able to take on the roles of nominee and supervisor in at least some cases, and thereby debtors will be denied access to a statutory procedure for the resolution of indebtedness and rehabilitation.

Specifically on the issue of fees, the IPA of course accepts that an IVA provider should conduct his/her business in an efficient manner and contain costs consistent with the proper discharge of his/her statutory responsibilities and duties to the debtor and the creditors. Creditors generally recognise that an IVA is a regulated process under statute; that it requires certain work to be undertaken; and that that work, in particular at the nominee stage of the process, has a cost unconnected with the size of the IVA.

The IPA, as one of the bodies committed to achieving a sensible, workable solution, has urged all the parties to cooperate with The Insolvency Service to achieve this aim. But it is crucial to delivery of the product of all the efforts of those involved in the Forum that the banking industry, for which the BBA has taken the lead to secure the protocol, provides a coherent and consistent response for debtors and those advising and acting for them, and for other creditor communities and stakeholders.

The other major IP regulatory body, the Institute of Chartered Accountants in England & Wales, is issuing a parallel statement in much the same terms.

IVAs: The Insolvency Service Statement – 24 August 2007

Further to the note sent out by The Insolvency Service on 9 August in relation to the “TIX proposals” on IVAs, and subsequent to a number of meetings with stakeholders, we feel it appropriate to update interested parties about our current position.

Firstly, it is worth reiterating that we recognise and understand the concerns expressed by all parties over the last few weeks. What has been abundantly clear, from **all** that we have met, is that there remains a strong commitment to the IVA Forum/Protocol process, the concept of standardisation of simple consumer IVAs and the IVA process generally including, despite some commentary suggesting to the contrary, SIVAs.

Our principal concern, as set out in our previous note, remains that debtors should have access to the debt management solution identified as the most appropriate to their circumstances and their ability to repay their debt in a reasonable timescale. If an IVA is the most appropriate solution then the Insolvency Service position is that, subject to the rights of creditors to accept it or not, debtors should not have access artificially restricted.

We are pleased to see that TIX have issued a statement to clarify matters and they assure us that there is no intention to exclude debtors, in particular those with lower levels of monthly contributions. We note that cases that do not fit the standardised IVA are still welcomed and are not expected to comply with the proposed pricing structure. The Service is still considering the likely effect of the “TIX proposals” on potential “lower-end” IVAs.

We have met with TIX and understand that their reason for calling their proposals the “TIX compliant IVA” was that the protocol had not yet been finalised. They wished to see the protocol proposals put into action on the target date of 1 September but that until the protocol received final approval they felt they had to call it something different. We would point out that the milestones on the action plan, which were suggested at and agreed by the May IVA Forum with no dissenters, have been very largely adhered to. Whilst we can understand the frustration of the relatively long process, it is The Insolvency Service’s view that it must be better to get the protocol “right” as far as possible – from the perspective of all stakeholders – than risk it falling into disuse shortly after introduction and further damaging confidence in the IVA process with the consequent effect that is likely to have on debtors’ ability to access the most appropriate debt solution. That said, we note that much of “TIX compliant IVA” conforms to the protocol and discussions in the IVA Forum.

Lastly, on the matter of IVA fees, we would reiterate that it is not appropriate to talk about the quantum of fees other than on an individual basis between creditors and practitioners. We would make the point that the proposed standard procedure, that is underpinned by the protocol, contains a degree of rigour, and that where any requirements upon the IP lead to cost (in all cases irrespective of assets, income and liabilities) the IP is entitled to be reimbursed for those costs. Clearly there will also be a responsibility on the IP to reduce those costs as far as possible by ensuring work is undertaken at an appropriate level.

We remain committed to the goal of seeking a satisfactory outcome for debtors, creditors and IPs through dialogue and debate. We will continue to meet with the key parties in parallel with moving forward the outcomes of the IVA Forum. We feel that this approach is the right one if we are to avoid unnecessary conflict and confrontation and the potential of regulatory routes to achieve public policy objectives.
