



Personal insolvency – is the evolution complete?

SOMETHING quite significant happened in Q2 this year. For the first time in England and Wales, the number of Individual Voluntary Arrangements (IVAs) exceeded the total of all the other formal personal insolvency solutions put together. The number of IVAs was up 20% year on year, at a time when insolvency numbers overall, particularly in the corporate sector, continue a downward trend.

So what is it about the IVA process that attracts ever increasing numbers of people who can't pay their debts? Let's remember that IVAs were first introduced in December 1986, in the Insolvency Act of that year. The only practical option by way of formal process prior to then was bankruptcy, but it carried a certain stigma and lasted three years. Changes made to the regime in the Enterprise Act of 2003 (introduced in 2004) embraced the government's 'fresh start' initiative and shortened the period of bankruptcy to one year in most cases, and attempted to remove some of the stigma.

Wouldn't that be expected to make the whole bankruptcy experience less onerous, and rehabilitation into the financial (credit) world much easier? And wouldn't bankruptcy therefore be the obvious choice for debtors who wanted to rid themselves of debts they couldn't repay? Surely an IVA might be seen as a much less attractive alternative, with creditors expecting contributions from income over a five year period?

The personal insolvency, and in particular the IVA, market has evolved in some unexpected ways. Some of the changes to legislation sought to engender an entrepreneurial spirit and envisaged small unincorporated businesses using the statutory debt solutions to start anew and be part of a new enterprise culture. In fact, the vast majority of those taking advantage of the new provisions turned out to be

consumers, keen to dump debts. Meeting this demand (some would say driving it to some extent) were new providers of insolvency solutions – organisations that grew into specialist IVA and debt management operators offering standard products over the phone and making ends meet through high volumes. Suddenly, entering into an IVA became relatively easy, and IVA providers were advertising on radio, TV and the web, and are now using lead generators to cold call or text your mobile.

Creditors have played their part, by becoming more organised and using agents to represent their interests. At its best, that works well to ensure consistency in approach and some certainty for debtors, and it has driven standardisation and active participation. It has also driven down the costs of the IVA process, through creditors' concerted action on voting. Banks' early obstacles to IVA approvals, for example by setting minimum level dividend returns, have been replaced by a more supportive approach.

An IVA Standing Committee, comprising government, regulators, practitioners and creditors, oversees the operation of these standard consumer cases through an IVA Protocol which includes a set of standard terms and conditions. They provide protection for debtors in Protocol IVA cases by ensuring that –

- i) the debtor's home cannot be sold by the IVA Supervisor, even if the equity value in the property increases over the five year IVA period (although they may have to introduce some of their equity);
- ii) bankruptcy can usually be avoided; and
- iii) all creditors are bound by the IVA.

These are likely to be important factors in debtors' decisions about the options open to them, and they represent

advantages over the informal alternative of a Debt Management Plan (DMP).

Notwithstanding that, DMPs have been popular, though the precise number is not known. The Financial Conduct Authority took over responsibility for regulating DMPs in April this year, and will benefit from initiatives such as a DMP Protocol and monitoring undertaken by recognised regulators (including the IPA) for those DMP providers signed up to the standards set by the industry through its two main trade bodies.

Central to all this, and in particular to consumer protection, is the delivery of quality and fair/balanced advice at the outset, and the regulators have a part to play in ensuring standards are maintained at that early stage in the process.

Arguably the evolution of this sector will not be complete until the DMP is afforded the same status as its more formal rivals, and DMPs are centrally registered. Work on common processes for determining net disposable income for contribution purposes also needs to be brought to a conclusion swiftly, so that there is a level playing field as between the alternatives open to debtors and greater transparency and uniformity of approach. Some would argue that more could be done to streamline or simplify the IVA acceptance process and the 'gateway' into insolvency, but even without those ideas, we have seen a significant shift away from bankruptcy towards the IVA. So we have within sight a regulated, stable personal insolvency market which gives necessary priority to consumer interests, should work for efficient providers of debt solutions, and provides reasonable returns for creditors.

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