



**IPA – Putting Better Regulation into Practice**

## **Dealing with Debt – A Basic Guide to Alternative Ways of Resolving Debt Problems**

If you have debt problems, there are a number of possible alternatives that can help you to manage them. This Guide explains what the alternatives are, how they work and some of the pros and cons of each of them. It can be used by individuals with either consumer or business debts, or a combination of both.

**This Guide is not a definitive explanation of the law. Nor is it a substitute for taking independent advice on which of the alternatives is appropriate for you and your circumstances from an insolvency practitioner or recognised advice organisation. You should seek advice early: the worst thing you can do when you are in financial difficulty is to do nothing and hope the problem will go away.**

### **This guide –**

- Summarises the key features of each of the main alternative ways of dealing with debt
- Provides an outline of how each of them works
- Explains the pros and cons of each alternative

### **Key differences between the alternatives**

Each of these alternatives can have different outcomes and affect you in different ways. You need to be aware of this when considering which alternative is likely to be appropriate for you.

### **The most important points to consider are:**

- Does the procedure release you (excuse you) from all or part of your debts so that your creditors will have no further claim against you?
- Is it binding on all your creditors?
- Are you protected from further recovery action and/or additional charges by your creditors during the procedure?
- How long will it last?
- Will it affect your employment?
- Will your home be at risk?
- Some of these procedures involve the payment of a fee. Where a fee is payable, it may either come out of payments you make to your creditors or it can be payable separately before or after the procedure is put in place.
- Some of these procedures may involve prioritising certain types of unsecured debt, for example utilities, rent, court fines, council tax, maintenance payments, income tax etc: it will be more difficult, if possible at all, to negotiate reduced payments or write-offs with these kinds of priority debt.
- Are you confident that you can keep up with the payments you will have to make to your creditors, for the period of time required under the alternative you are considering?

**The most appropriate alternative in each case will depend on your own and your family's present circumstances and future prospects, and on your own preferences. In all cases the key factors are the amounts you owe and how much you are able to repay from your income or your assets, after meeting your own and your family's essential needs. You should be ready to give full details about all your debts and your finances to whomever you seek advice from, and to your creditors. It is essential you give them the complete picture. In making any offer to your creditors you should be realistic about your income and reasonable about your expenditure – insolvency practitioners and advice organisations are able to provide you with guidance about levels of essential household and personal expenditure which can be used to put your case to creditors.**

## Features common to all the alternatives

It is important to understand that:

- None of these alternatives can affect the rights of secured creditors, for example a bank or building society that has a mortgage or legal charge over your home. They continue to have the right to take possession of your home if you do not keep up your payments.
- Most debts involving credit and loans, for example credit and store cards and bank overdrafts, are unsecured - that is to say failure to pay this type of debt does not automatically entitle the creditor to take something of yours, such as your home. However in some circumstances they may go to court if you fall behind with your payments and obtain a court judgment; and they may then be able to ask the court to secure the debt on your home through a charging order.
- All of these alternatives may affect your credit rating and will show up on your credit record.
- Entering into a procedure to help with your debt may, in a few cases, affect employment and may, under the terms of your employment, have to be disclosed to your employer.

**The Tables at pages 3-9 contain first the key features and then the detailed 'Pros and Cons' for each alternative.**

### Note also

- It may be possible in some circumstances to obtain help from a **charity** or **trust fund** to meet certain types of urgent or pressing debt but is unlikely to be the answer to the whole problem - charities are generally not able to help with large credit card and similar debts. You will normally have to fill in a detailed application form or find a recognised advice organisation to apply for you.
- If
  - you do not own your home or have any savings or other assets; and
  - you do not have any surplus income after meeting your and your family's essential needs; and
  - your circumstances are unlikely to improve in the foreseeable future because of for example long term ill health limiting your ability to work or how much you can earnyour creditors might be prepared to agree to **write off** the whole of what you owe them – that is, release you from having to pay them. A recognised advice organisation may be able to assist you in explaining your circumstances to your creditors and asking them to release you.

**For Further Information:** The Insolvency Service - the government agency responsible for the administration of the insolvency system, which includes bankruptcy, in England and Wales - maintains a website with access to a comprehensive range of publications on all types of insolvency procedure. It also provides a searchable database of insolvency practitioners. The Insolvency Service cannot provide legal or financial advice on individual cases but can provide further information about the alternatives listed here and sources of further advice which can be found at:

<http://www.insolvency.gov.uk/otherinformation/supportadvice.htm>

**Helpline:** 0845 602 9848

**Opening hours:** Monday - Friday 9am to 5pm (except Bank Holidays)

**Website:** [www.insolvency.gsi.gov.uk](http://www.insolvency.gsi.gov.uk)

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**The IPA is a professional body recognised by the Secretary of State for Business, Enterprise & Regulatory Reform under the Insolvency Act 1986 for the purposes of authorising and regulation insolvency practitioners**

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### Key features of each alternative

|  | Informally Negotiated Agreement with creditors     | Credit Reorganisation/ Consolidation Loan | Debt Management Plan (DMP)  | County Court Administration Order (CCAO)           | Individual Voluntary Arrangement (IVA)  | Bankruptcy  |
|--|--|---|---|--|---|---|
| <b>Automatic debt release</b>                              | No   | No  | No  | No, unless the court makes an order to that effect | Yes, when you have completed the terms of the IVA   | Yes, when you are discharged, subject to certain exceptions as above.   |
| <b>Automatically binding on all unsecured creditors</b>    | No   | Only on creditors paid in full            | Only on creditors paid in full  | Yes  | Yes, if accepted by creditors owed more than 75% of your unsecured debts who vote on your proposal  | Yes   |
| <b>Automatic protection from unsecured creditor action</b> | No   | Only from creditors paid in full          | No  | Yes  | Yes   | Yes   |
| <b>Protection from secured creditors action</b>            | No   | No  | No  | No   | No  | No  |
| <b>Length of time</b>                                      | No fixed time                                      | No fixed time                             | No fixed time   | Until last payment made                            | Usually up to 5 years   | Usually 1 year but you may be required to make payments from your income for 3 years  |
| <b>Effect on employment</b>                                | Probably none                                      | Probably none                             | Probably none   | Probably none                                      | Possibly  | Possibly  |
| <b>Home at risk</b>  | No, but you need to keep up mortgage/rent payments | No, unless a secured loan is taken out    | No, but you need to keep up mortgage/rent payments  | No, but need to keep up mortgage/rent payments     | Can be avoided if you are able to raise an amount equal to your share of the net worth of your home, for example by re-mortgage or loan from a relative | May be avoided if it is possible for your share of the net worth of your home to be bought by your spouse/partner or a relative |
| <b>Minimum or maximum amount owed</b>                      | No   | No  | None, but it is unlikely that a DMP would be practical if your debts are less than £5,000 | Anything up to £5,000                              | None, but it is unlikely that an IVA would be practical if your debts are less than £20,000   | No minimum if your own petition (£750 if the petition is by a creditor)   |
| <b>Type of unsecured debt allowed</b>                      | Any  | Any                                       | Any   | Any  | Any, but in practice debts excluded in bankruptcy are usually excluded from IVAs  | Any with certain exceptions e.g. fines, student loans and maintenance payments  |
| <b>Credit rating affected</b>                              | Yes  | Possibly                                  | Yes   | Yes  | Yes   | Yes   |

**Comment [TS1]:** This hasn't made it into the cons for IVA but has for bankruptcy

## The main alternatives in detail

### Informally Negotiated Agreement with Creditors

#### How it works

Informally negotiated agreements may involve:

(1) Payments from your income and/or

(2) Payments from lump sums you receive for example from an inheritance or from relatives

Creditors may be prepared, at the start or later, to agree to write off part of what you owe them: any agreement to do so should be confirmed in writing.

(1) Payments from income: You need to work out how much you can afford to repay, after allowing for your essential household and personal expenditure such as mortgage/rent, heating, utilities, housekeeping etc. You should offer to share this surplus income among your creditors, based on the amounts you owe them. This means that all your creditors are offered their share of what you can afford. You also need to ask that any interest or charges are frozen. Creditors will expect you to provide them with regular updates of your income and expenditure so that they can see whether you are able to increase your payments.

(2) Payments from lump sums: You may make payments towards your debts from a lump sum which you receive and which your creditors may agree to accept in settlement of what you owe – that is, they agree to write off the balance they are owed. If however you do have surplus income, then they may expect you also to make at least some payments from that surplus income.

If your inability to make payments is temporary, as a result for example of a short term illness, creditors may agree to accept no payments or only token payments of say £1 a month, but only for a limited period.

| Pros  | Cons  |
|---|---|
| <ul style="list-style-type: none"> <li>• Fair and transparent method of distributing payments widely understood by creditors.</li> <li>• You can ask if you can reduce your payments if your situation gets worse or you face unexpected essential expenditure.</li> <li>• You do not need an advice agency to negotiate these payments for you. You can either do this entirely yourself or ask for assistance in drawing up your own personal budget sheet and make offers to your creditors based on this.</li> <li>• Creditors may be prepared to write off the balance of what you owe after a period of time if you have shown that you have made every effort to pay them back as much as you can and have maintained regular payments to them.</li> </ul> | <ul style="list-style-type: none"> <li>• Creditors may refuse to agree what you propose (but it is always worthwhile asking them to reconsider) although they cannot refuse any payments which you make to them.</li> <li>• Creditors may refuse to freeze interest or charges (again it is worthwhile asking them to reconsider).</li> <li>• So, if you can only afford small payments, they may not be enough even to cover interest or charges, and your debts will increase.</li> <li>• Creditors may refuse unless your proposals are made through an advice agency which will have independently reviewed your circumstances. You can complain to the Office of Fair Trading if this happens.</li> <li>• There is no debt forgiveness, so you remain liable for the full amount of your debts, although you may be able to persuade your creditors to agree to write off part, or even all of your debt depending upon your circumstances.</li> <li>• Creditors could still take action against you, for example by obtaining a court judgment and then an order which creates a charge on your home, unless they have specifically agreed not to do so in return for the payments made under the informal arrangement.</li> <li>• You are responsible for administering all the payments yourself and keeping creditors informed of your circumstances.</li> </ul> |

## Debt Reorganisation/Consolidation Loan

### How it works

You can apply to a lender for a loan to clear your debts, which are often marketed as “consolidation loans”, by which you swap some or all of your creditors for just one creditor. If you own your home, the lender is likely to want to have a charge on it: you should seek independent advice as to whether this would be in your best interests. You should shop around for the best deal from high street and internet lenders. If you have a poor credit rating, loans on the best terms may not be available to you.

A consolidation loan will only be of help if:

- it is used to pay some or all of your existing debts
- the repayments are no more than those you are already making towards your existing debts, and you can afford to make them

Otherwise, the new loan will simply add to your debt burden and make your problems worse. You will also need to look very carefully at how long the loan will take to repay; what interest you are going to have to pay compared with what you are currently charged; and what charges or penalties there are, for example for late payments.

| Pros  | Cons   |
|---|--|
| <ul style="list-style-type: none"> <li>• You will be making one monthly payment on one loan rather than many payments to different creditors.</li> <li>• Your monthly payments may be lower, or at least should not be any higher.</li> </ul> | <ul style="list-style-type: none"> <li>• You can expect to have to pay fees in connection with the arrangement of the loan: always ask for full details in writing of what those fees will be.</li> <li>• If you have a poor credit rating you may not be able to get a loan, or you may be offered poor terms and conditions, for example at a high rate of interest.</li> <li>• If the loan is secured on your house or other asset, then it could be repossessed if you do not keep up with the payments.</li> <li>• Interest rates often change over the loan period, making it difficult to work out what the total cost of the loan will be: check if the interest is fixed or variable.</li> <li>• Consolidation loans are often offered over a longer period of time than your original loans, which means that even if the interest appears reasonable, the length of time you have to repay can increase the overall cost of the loan significantly. This means that in the end you pay more.</li> <li>• If you don't clear all your existing borrowing, then the new loan is likely to make your debt problems worse and make it more difficult for you to make all your repayments.</li> </ul> |

## Debt Management Plan (DMP)

### How it works

If you have surplus income after meeting your essential household and personal expenses, such as your mortgage/rent, lighting and heating, housekeeping, etc, and you would like someone to negotiate with your creditors and manage your payments to them, then you might consider a more formal debt management plan.

Creditors will also want details of your assets, including your home where you own it, so that they can consider whether your offer is reasonable or whether they expect any of those assets to be sold so that they will receive a larger payment towards their debt.

The individual or company you choose to manage your plan is required to be licensed and regulated under consumer credit legislation. Some will not charge you a direct fee for their services but instead receive it from your creditors, for example out of the payments made to your creditors. Others may make an initial charge for preparing, negotiating and administering your plan and then take the remainder as a proportion of your monthly payments. In either case, before you sign up, you should be provided with details of the fees it is proposed to charge for managing your plan and how they are to be paid.

A plan can last for 5 years or more depending on what you owe and how much you can pay each month or quarter: your debt management company should give you an estimate of how long the plan will last. Creditors will expect to be provided with regular updates of your income and expenditure so they can see whether you are able to increase your payments.

Some debt management companies may not be prepared to accept you for a plan if you owe less than £5,000 or your surplus income is less than £100 a month since it would not be economic for them to undertake the work involved.

| Pros  | Cons  |
|---|---|
| <ul style="list-style-type: none"> <li>• Fair and transparent method of distributing payments, widely understood by creditors.</li> <li>• The debt management company will assist you in preparing your plan, including agreeing the level of your household and personal expenditure based on guidelines which can then be used to put your case to the creditors.</li> <li>• The debt management company will negotiate with creditors on your behalf. This means that offers are more likely to be accepted and interest frozen than if you try to negotiate with all your creditors separately yourself.</li> <li>• You may be able to vary your payments if your circumstances change.</li> <li>• You make single payments each month or quarter to the debt management company which is responsible for administering all payments to your creditors.</li> <li>• Some debt management companies do not charge you a fee.</li> <li>• Creditors may be prepared to write off the balance of what you owe after a period of time if you have shown that you have made every effort to pay them back as much as you can and have maintained regular payments to the debt management company.</li> </ul> | <ul style="list-style-type: none"> <li>• The debt management company cannot force creditors to accept your proposal or freeze interest. A plan is not binding on creditors who refuse to take part in it but they cannot refuse to accept the payments made to them.</li> <li>• There is no debt forgiveness, so you remain liable for your debts until they are paid in full.</li> <li>• Creditors could still take enforcement action against you, for example by obtaining a county court judgment and then an order which creates a charge on your home, even if you are keeping up your payments under the plan, unless they agree not to do so.</li> <li>• You may not be able to make reduced offers if your circumstances get worse and you can no longer afford your agreed monthly payments.</li> <li>• A plan can last for a number of years. However some creditors may only be prepared to freeze interest for a shorter time. If interest and charges cannot be frozen for the full length of the plan, then the total amount that you end up paying under the plan could exceed the original amount of your debts, and extend the lifetime of the plan.</li> </ul> |

## County Court Administration Order (CCAO)

### How it works

If you owe no more than £5,000 to at least two creditors and have a court judgment entered against you by one of your creditors which you are unable to pay in full, you can ask the court to make an administration order. Under that order, you are required to make weekly, monthly or quarterly payments from your income to the court which distributes them to your creditors in the proportion to the amounts that you owe them.

The court may, if there are difficulties in obtaining payments from you, make an attachment of earnings order which is sent to your employer directing that amounts be deducted from your wages and paid to the court for distributing to your creditors.

| Pros  | Cons   |
|---|--|
| <ul style="list-style-type: none"><li>• None of the creditors listed on the administration order application can take further action against you without the court's permission.</li><li>• The court deals with the creditors and distributes the payments for you.</li><li>• Interest and other charges are stopped.</li><li>• There is no up-front fee – the court takes 10p in every £1 paid in.</li><li>• You can apply to make payments for a time-limited period such as three years using a 'composition order'.</li><li>• If your circumstances get worse, then you can apply to the court to make reduced payments.</li><li>• You may be able to continue running any business you have.</li></ul> | <ul style="list-style-type: none"><li>• Creditors can make objections to the court and ask to be left out of the order (although the court may not agree to this).</li><li>• If you do not maintain your payments the order can be revoked and the creditors can pursue you again.</li><li>• If the court makes an attachment of earnings order, your employer will become aware of your financial difficulties.</li></ul> |

## Individual Voluntary Arrangement (IVA)

### How it works

If you have surplus income after meeting your essential household and personal expenses, such as your mortgage/rent, lighting and heating, housekeeping, etc, and/or have assets which can be used to pay your creditors and/or have access to a lump sum from for example a relative, then you might consider entering into an individual voluntary arrangement which will protect you from action for recovery that might be taken by your unsecured creditors and will usually involve creditors writing off part of what you owe them. A proposal for an IVA has to be approved by creditors owed more than 75% of your debt and who vote on whether to approve it or not.

The individual you choose to supervise your IVA is required to be licensed and regulated under insolvency legislation as an insolvency practitioner.

The insolvency practitioner will charge fees for preparing, negotiating and administering your IVA: you should be provided with details of the fees it is proposed to charge and how they are to be paid – whether as a lump sum or from the payments you make into the IVA – before you are asked to sign up to an IVA.

Some insolvency practitioners may not be prepared to accept appointment to supervise your IVA if you owe less than £20,000 since it would not be economic for them to undertake the work involved.

| Pros  | Cons  |
|---|---|
| <ul style="list-style-type: none"> <li>• Creditors who vote against your proposal are still bound by it.</li> <li>• Creditors who are unsecured cannot take any further action.</li> <li>• Interest is usually frozen as long as you keep up your payments.</li> <li>• Your insolvency practitioner will assist you in preparing your proposal, including agreeing the level of your household and personal expenditure based on guidelines acceptable to creditors.</li> <li>• Many insolvency practitioners will allow their fees for preparing your proposal to be paid on a monthly basis as part of the IVA.</li> <li>• You make only a single payment each month or quarter: your insolvency practitioner is responsible for administering and distributing your payments.</li> <li>• The terms of an IVA will usually enable you or your spouse or partner or a relative to make arrangements, for example a re-mortgage or loan, to purchase your share of the net worth of your home or to make additional payments, rather than the home having to be sold.</li> <li>• On completion of the IVA, the balance of what you owe to your creditors is written off.</li> <li>• You may be able to continue running any business you have.</li> </ul> | <ul style="list-style-type: none"> <li>• Your IVA is entered on a public register.</li> <li>• The insolvency practitioner may require payment in advance for preparing your proposal and getting the agreement of your creditors.</li> <li>• If there is some equity (value) in your home after taking account of the mortgage(s) on it, you are likely to be required to pay for your share, usually in the fifth year of your IVA, by remortgaging the property: if you cannot obtain a remortgage, you may be required to continue making monthly or quarterly payments from your income for up to a further year.</li> <li>• If your circumstances change, and your supervisor cannot get creditors to accept amended terms, the IVA is likely to fail and you will still owe your creditors the full amount of what you owed them at the start less whatever has been paid to them under your IVA.</li> <li>• If your IVA fails you may be made bankrupt.</li> </ul> |

## Bankruptcy

### How it works

Bankruptcy is a formal court procedure which you can start or which can be started by one of your creditors owed not less than £750. Your assets (with certain exceptions) are sold towards paying your creditors: generally you retain your personal effects, the contents of your home and your tools of trade (which may include your car) unless they are of high value: you will be required to make payments out of your income for up to three years if you have surplus income after meeting your essential household and personal expenses, such as your mortgage/rent, lighting and heating, housekeeping, etc.

Your assets and income are dealt with by a licensed and regulated insolvency practitioner or by a government official called the official receiver.

Bankruptcy usually lasts for one year: on your discharge from your bankruptcy, you are released from your debts (with certain exceptions).

| Pros  | Cons  |
|---|---|
| <ul style="list-style-type: none"> <li>• Debts are written off, with certain exceptions explained opposite.</li> <li>• Creditors cannot take further action unless the debts are secured on your home or other property.</li> <li>• It allows you to make a fresh start after a year.</li> <li>• It may be possible to avoid the sale of your home if your spouse, partner or a relative is able to arrange to buy your share of its net worth</li> </ul> | <ul style="list-style-type: none"> <li>• Your bankruptcy is entered on a public register and is advertised.</li> <li>• If you apply to the court for your own bankruptcy you will have to find a court fee and deposit totalling £495.</li> <li>• You will remain liable for certain debts - in particular student loans, fines and some debts arising from family proceedings.</li> <li>• Any business you have will almost certainly be closed down.</li> <li>• Your employment may be affected.</li> <li>• Certain professionals are barred from practising if they are made bankrupt.</li> <li>• You cannot act as a director of a company or be involved in its management unless the court agrees.</li> <li>• You may have a 'bankruptcy restriction order' made against you for a period of 2 to 15 years if you acted irresponsibly, recklessly or dishonestly.</li> <li>• You commit an offence if you incur credit of £500 or more without disclosing that you are bankrupt.</li> </ul> |

**End Note:** This Guide provides general information only. Every effort has been made to ensure that the information is accurate, but it is not a full and authoritative statement of the law and you should not rely on it as such. The IPA cannot accept any responsibility for any errors or omissions as a result of negligence or otherwise.