Is an IVA or bankruptcy the best option for me?
FAQ guide

When an individual is insolvent, the pros and cons of bankruptcy or an Individual Voluntary Arrangement, ("IVA"), will depend on their personal circumstances. Clearly there are too many variables to explore fully, however, these FAQs address some of the more commonly asked questions.

How do I get Started?

In the initial stages of an **individual voluntary arrangement**, a proposal to the creditors will be formulated. This proposal sets out how the debtor will repay some or all of what he or she owes or how the creditors can be satisfied. The proposal is sent to creditors together with a notice calling a meeting at which the creditors will either vote for the acceptance of the proposal or suggest changes. If 75% (by value) of the creditors vote for the proposal it will be legally binding on ALL unsecured creditors, whether or not they voted.

If the terms of the agreement are kept, the debts will be cleared. If the terms of the agreement are not adhered to without creditors' sanction the **IVA** fails and the Supervisor can apply for a Bankruptcy Order.

What will happen to my home?

If you are declared bankrupt, your interest in your home will vest in your Trustee in Bankruptcy. Your Trustee will then seek to sell whatever equity is in the property and if necessary can force a sale via the courts even if the house is jointly owned with another. This can also lead to a period of uncertainty as a Trustee has 3 years to realise the equity from a matrimonial home. In an **IVA** you can control precisely what, (if anything), is to happen to your house through the terms of the IVA.

I am Self-employed. Can I continue trading?

Yes. However you must be able to identify how your problems arose and what you will do to ensure the business is profitable. It is vital that the business is viable and can meet it's liabilities as they fall due and that it is profitable. Bankruptcy does not legally prevent you from being self-employed, however, the inability to take credit will, in most cases, make running a business impossible. An IVA can enable you to continue taking credit for the purposes of running your business.

What will my employer do if I am declared bankrupt?

Many employers take a dim view of bankruptcy where a member of staff is in a position of responsibility. Whilst policies can vary from employer to employer and also change over time, those working for the police, in public office or in the finance sector may be unable to continue working whilst an undischarged bankrupt.

Will I be able to continue acting as a director of my own company?

An undischarged bankrupt is unable to act as a director of a company without the prior leave of the court. There is nothing in law to prevent someone who is subject to an IVA from being a director.

I am a member of a professional body – will my membership be affected?

Members of professional bodies may be barred from membership or from acting in a professional capacity if they are declared bankrupt. The same can occur in a few professions if the member is subject to an IVA, however, this is rare. It is recommended that you review the terms of membership to determine the impact of insolvency or even phone your professional body on a "no names" basis. We have often made this phone call for individuals seeking to ensure their anonymity.

How will my credit rating be affected?

Insolvency will be detrimental to your credit rating regardless of whether it is via an IVA or bankruptcy. Once an IVA is completed it will be recorded as "satisfied" on your credit rating. The main difference from this perspective is that some credit, mortgage and insurance applications ask "have you ever been declared bankrupt?" Therefore the implications of bankruptcy on your credit rating can be felt long after you are discharged.

I would like my insolvency to remain private – who is told about it?

Bankruptcy carries a stigma that may people wish to avoid. A bankruptcy order is advertised in the London Gazette, a copy of this advert can be located following a quick internet search. An IVA is not advertised and remains a private agreement between you and your creditors. The only public records of an IVA are the copies which are filed at court and the registration on the website of the Insolvency Service. Therefore an IVA is far less public and carries less stigma.

Will I be allowed to keep my car?

A bankrupt is permitted to retain a car of "reasonable value" for the purposes of getting to and from work. Whilst the term "reasonable value" is not defined in law, a car worth £1,500 or less would normally be considered acceptable for a bankrupt to retain. So long as the value of your car is disclosed in an IVA proposal, it is likely that a more valuable or reliable car can be retained. If your car is subject to a lease or finance agreement you should phone us to discuss the likely outcome.

How much intrusion will there be into my life if I am insolvent?

A bankrupt has to attend formal interview with a public official called the Official Receiver, ("OR"). His job is to identify and investigate any potential frauds or other misdemeanours which might have occurred. Whilst you may know that no such events have taken place, the OR's investigations to satisfy him that nothing improper has occurred might feel intrusive. A Trustee in Bankruptcy has the job of identifying and realising any assets you may have. Both of these officials have extensive powers including applying for your post to be redirected, you to be examined in court or writing to those with knowledge of your assets or affairs. An IVA is reliant on you making a full disclosure of your affairs in the initial proposal to your creditors and there is no statutory duty for an IVA Supervisor to investigate matters once an IVA had been approved.

How will insolvency affect my children?

In bankruptcy you no longer have control over your assets since they will vest in your Trustee who will determine which asset is sold for what price and when. This can feel particularly unsettling for families where a home might have to be sold and children may be settled at their local school.

Assuming you adhere to the terms of your IVA, the proposal document allows you to determine precisely what the implications are on you, your family and your assets from the outset.

What fees do I have to pay?

As 1st January 2014, the upfront cost to petition for your own bankruptcy was £700 being the sum of the £175 court fee and the £525 Official Receiver's deposit. This petitioning cost is updated from time to time and we can guide you what the current fee is.

Our fees as your Nominee will vary depending on how complex your circumstances are. Our initial consultation is FREE. After this meeting we would advise on the appropriate alternatives available to you. If you require us to act as Nominee we will give you a fixed price, for any other of our services we normally charge on an hourly basis but our charges will be discussed and agreed with you on the outset on an individual basis.

We should be able to give you a rough guide following a telephone discussion and will give you a quote following a meeting.

What payments will I have to make from my future income?

In bankruptcy, you are interviewed by the Official Receiver, ("OR"), who will review your household income and expenditure. The purpose of this review is to establish your monthly surplus household income. You are then asked to sign an Income Payments Agreement, ("IPA") to pay this surplus to the OR for the next 36 months. If you do not give this consent to the OR, he will typically go to court and obtain an Income Payments Order ("IPO") which has the same effect and duration. An IVA has no statutory requirement for monthly payments regardless of your household budget. Depending on your circumstances and assets, it may be appropriate to offer a monthly payment to your creditors and we will advise you on this. Anyone who says that all IVAs require you to make payments from your income for 5 years is incorrect.

How long does it last?

Where a bankrupt complies fully with the OR and his Trustee and no misdemeanours are identified, the bankruptcy is normally "discharged" 12 months following the initial court order. It is less well publicised that the Trustee remains in office for as long as it takes for him to realise your assets which can be decades in some instances. During this time you have a continuing legal duty to comply with your Trustee. Whilst many of the larger providers of IVAs may suggest that all IVAs last for 5 years, there is nothing in law to prescribe an IVA's duration. A good IVA will be tailored to your circumstances and can sometimes be completed within a few months.

How much will my creditors recover?

You will have probably noticed that an IVA is generally less onerous than bankruptcy. To reflect this, your creditors will expect your IVA proposal to offer them a better recovery of the monies you owe them. The term "better" need not always mean "higher" since for some creditors a faster or more certain outcome is the key. Different types of creditors such as HMRC, financial institutions and trade creditors will have different expectations from an IVA proposal. We can guide you on quite what kind of proposal will appeal to your population of creditors to help ensure it is approved.

Will I be able to keep my bank account?

If your bank account is overdrawn or if you have a loan or credit card with that bank, it is very likely your bank account will be closed in either an IVA or bankruptcy scenario. It can then be difficult to open a bank account whilst you are subject to an IVA and typically there are very few banks which offer any form of account to an undischarged bankrupt. We would therefore suggest that prior to entering into either procedure, you open a new bank account with a financial institution that you presently have no relationship with. Assuming this new account has no overdraft facility and has a credit balance of only a few pounds, it is unlikely to be closed following your insolvency.

What if I am still unsure?

This FAQ guide is not intended to be an exhaustive comparison of all of the factors and there will also be considerations within each factor which have not explored or elaborated on. Nobody likes to be pigeon holed and we would expect most of those considering their options to fall into one or more grey areas. Before you make your final decision telephone 0800 195 5858 and ask for Lynn Gibson or Robert Hewitt who will be able to advise you on your precise circumstances.

When should I seek Advice?

You must seek advice at the earliest opportunity from a Licensed Insolvency Practitioner. This should be when you think you may be unable to pay your debts as they fall due. The sooner you seek advice the more the available options.

What are the benefits of a lengthy IVA if a bankruptcy only lasts one year? Even though you are a bankrupt in most cases for a maximum of one year the effects of the bankruptcy order lasts longer. All assets owned at the date of bankruptcy remain the property of the Trustee even if they are unsold: also the Court can make Income Payment Orders which last for 3 years despite you having obtained your discharge.

Other advantages include:

- the costs and fees are often less than those of bankruptcy
- you retain ownership of assets
- if you are trading you can continue to do so
- an IVA is not advertised, whereas a bankruptcy is
- you can act as a director and retain your professional qualification eg solicitor, accountant
- you can be employed as a policeman, fireman, etc
- there are no restrictions placed on your actions

What if I am Already Bankrupt?

If you have assets and or are able to make monthly contributions to the fund for your creditors we may be able to help you get an annulment of your bankruptcy and put an IVA in its place. Whilst it

is not always possible to do this we consider individual circumstances on their merits and advise you accordingly.

If legal action has already been or is about to be taken against me? We can help you apply for an Interim Order which prevents any creditor taking any action against you whilst you put your proposal to your creditors. This action can even prevent possession proceedings of your house. Once the proposal is accepted all unsecured creditors are prevented from taking action against you.

Useful links for further reading

Further information on IVAs:
http://www.gibsonhewitt.co.uk/insolvency-recovery/personal/voluntary-arrangements

A copy of the R3 booklet "Is an IVA right for me?":
http://www.gibsonhewitt.co.uk/sites/www.gibsonhewitt.co.uk/files/Is%20a%20VA%20right%20for%20me.pdf

What are the Benefits of an IVA?

There are many benefits to choosing an IVA.

- The costs and fees are often less than those of bankruptcy.
- An IVA is not advertised, whereas a bankruptcy is.
- Debtors are given a chance to rebuild their lives by retaining control of their assets.
- Debtors have the opportunity to stay in business and continue trading under an **IVA**, either as a sole trader or in a partnership or as a director of a limited liability. The restrictions that apply to bankruptcy are avoided.
- In most instances debtors are allowed to keep their homes. Most important of all, once the agreement is made, interest ceases to accrue - this does not happen with a debt consolidation arrangement. Life can begin again!
- Creditors may expect to get a greater payment out of an **IVA** than with they would in the event of the debtor becoming bankrupt, as the debtor is being helpful and costs are reduced.

If you're interested in learning more about how individual voluntary arrangements can benefit you, call us today for a chat about how we can help improve your financial circumstances. Our experienced and considerate advisors will be happy to take your call and talk you through the process of applying for an **IVA**.

Could put the following on???

What happens on the making or a Divorce settlement?

Matrimonial claims are not provable in a personal bankruptcy proceeding and accordingly difficulties do arise when there is an intervening divorce settlement.

Although the law is evolving in this area, where there is a conflict between Insolvency and matrimonial law, the Insolvency law generally takes precedence.

Why can’t I simply write to creditors seeking an informal scheme?

Whilst this is possible, there are four main disadvantages from the debtor's point of view:

- There is no legal timetable for the creditors to reply to your request
- An IVA binds in creditors who do not chose to accept the proposal - provided the IVA is passed by the requisite majority of votes
- The IVA process provides a formal legal framework for the creditors to accept a lesser sum than you owe in full and final settlement.
- Interest charges continue to accrue.
- legal action can be commenced taken against you