

## **STANDARD CONDITIONS FOR INDIVIDUAL VOLUNTARY ARRANGEMENTS**

**Produced by the  
IVA FORUM**

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## Part 1: Interpretation

### Definitions

In the arrangement, except where the context requires a different meaning:

- “the Act” means the Insolvency Act 1986 (as amended)
- “After acquired assets” means any asset, windfall or inheritance with a value of more than £500, other than excluded assets, that you acquire or receive between the date the arrangement starts and the date it ends or is completed, if this asset could have been an asset of the arrangement had it belonged to or been vested in you at the start of the arrangement
- “the Arrangement” means the IVA proposal and the terms and conditions read together
- “The consumer” or “You” means the person who makes the proposal.
- “Dividend” means a distribution to unsecured creditors included in the arrangement
- “The effective date” is the date when the arrangement is approved at a meeting of creditors to consider the arrangement
- “Excluded assets” are those assets that are excluded from an estate in bankruptcy and any other assets specifically identified in the proposal as being excluded from the arrangement
- “Family home” should be interpreted in line with Section 283A(1) of the Act.
- “Gender” or any term of gender (like ‘he’, ‘she’ or ‘it’) includes any gender.
- “The meeting of creditors” is the relevant decision-making procedure as set out in Part 15 of the Insolvency (England and Wales) Rules 2016 arranged to obtain creditor approval to the proposal
- “The Nominee” is the Insolvency Practitioner(s) instructed to act on the consumer’s behalf to make an application for an IVA
- “Property” has the meaning given to it in Section 436 of the Act
- “The proposal” is the annexed document with modifications and documents incorporated, and is a proposal under Part VIII of the Act
- “The Rules” means the Insolvency (England and Wales) Rules 2016 (as amended)
- A “secured creditor” is any creditor who holds security in accordance with Section 383 of the Act

- “The Supervisor” is the Insolvency Practitioner(s) for the time being appointed to supervise the implementation of the arrangement; the person responsible for managing the arrangement for its duration
- An “unsecured creditor” is any creditor, except a secured creditor, who is your creditor for any reason that originated or occurred on or before the time and date of approval of the arrangement
- A “variation” is any proposed change to the original IVA proposal which requires the agreement of the creditors
- A “variation meeting” is the name given to a ‘meeting of creditors’ held during the term of an IVA, convened specifically for the propose of allowing creditors to vote on a proposed variation

## **Part 2: Your IVA: The start, effect and duration of the arrangement**

The arrangement will begin when it is approved by the creditors under the Act and Rules. This is its effective date.

### **The nature and effect of the arrangement**

The arrangement is a proposal under Part VIII of the Act.

If the arrangement does not tell the Supervisor what to do in a particular situation, the Supervisor will follow the Act and Rules related to bankruptcy, making any necessary adjustments.

After the arrangement has begun, no creditor may, in respect of any debt to which the arrangement applies:

- take any action against your property or person
- start or continue any action or other legal proceeding against you.

Nothing in these terms and conditions affects the following rights in any way:

- the right of any secured creditor to enforce their security unless they agree
- the right of the Supervisor or any creditor to present a bankruptcy petition under section 264(1)(c) of the Act if you fail to comply with the arrangement
- the right of any creditor to bring or continue legal proceedings against you and to obtain a judgment against you for the full amount of their debt for the sole purpose of making a claim against your insurer under the Third Party (Rights Against Insurers) Act 1930.

### **How long the arrangement will last**

Unless extended under these terms and conditions, the arrangement will continue until the end of the period stated in the proposal or until such time as early completion might be achieved.

The Supervisor may, to fulfil the arrangement, extend the arrangement by sending a notice to you and to all creditors (“an extension notice”). The notice must include details of the period the arrangement has been extended by and confirm the revised length of the arrangement.

The Supervisor must include details of any extension notice in the next report to creditors and must state the reasons for the extension. Where the arrangement is in its final year, any extension notice must be sent at least 14 days before the arrangement is due to expire.

The extension will start on the date immediately after the day the arrangement would have expired. Payments will continue at the same amount during the extension unless stated in the notice.

If you fail to disclose and/or pay exceptional income into the arrangement, the length of your arrangement may be extended by up to a maximum of 12 months to recover any sums due (to remedy the breach) without any variation being required.

Any extension for a period longer than 12 months must be approved by a formal variation that both you and the creditors must agree to.

### **Completing the arrangement**

When the arrangement ends, and if you have complied with your obligations under the arrangement, the Supervisor will issue a certificate ("the completion certificate") stating that you have fully complied with it. This certificate will be issued within 28 days, starting from the later of date of last payment due, or from you completing all requirements under the arrangement. When the Supervisor has issued a completion certificate, you will be released from all debts that are subject to the arrangement.

Once the Supervisor has issued the completion certificate and completed all closing actions, they will be released from office.

### **Early completion**

Where sufficient funds are paid into the arrangement to pay in full all of the amounts due to your creditors (for example, by way of increased voluntary contributions, additional income, after-acquired assets, the proceeds of any legal claims or any windfall or inheritance) and the costs and fees of the arrangement, then:

- no statutory interest will be payable in addition to those amounts due to your creditors at the effective date
- your arrangement will be deemed to have been satisfactorily concluded
- the Supervisor will be authorised to bring your arrangement to an early conclusion without the need for any further creditor approval
- your Supervisor will issue a certificate of completion.

## **Part 3: Transparency and cooperation: your duties and obligations**

### **The consumer's responsibilities**

While the arrangement is in force, you should:

- give the Supervisor such information about your assets, liabilities and other affairs as they reasonably require
- meet the Supervisor, their agents, representatives or Nominees at such times and at such places as they may reasonably require, having due regard to your own circumstances
- keep the Supervisor informed of your current residential address, telephone number(s), email address(es) and employment details
- do all such other things as the Supervisor reasonably requires to carry out their functions and duties under the arrangement.

You should give the Supervisor such details of your income and expenditure, for whatever date and period, as the Supervisor may reasonably require. This includes, but is not limited to:

- copies of form P60
- payslips.
- bank statements
- other evidence of income and expenditure.

### **If your circumstances change**

If your circumstances change or you receive any money, property or other “after-acquired assets”, or where your income increases. You must, as soon as reasonably possible, tell the Supervisor about the asset or change in income and explore if a change to your contributions will be required.

You must get the Supervisor’s written consent before you sell, charge or otherwise dispose of any interest you may have in any asset subject to the arrangement.

During the arrangement, you must not obtain any credit greater than £500 without the prior written approval of your Supervisor, except for public utilities, insurance policies or other contractual payments as provided for in your income and expenditure.

If you do obtain credit of more than £500 without the consent of your Supervisor, this will constitute a breach of your arrangement.

You must inform the Supervisor if at any time you are in receipt of any additional sources of income not already included in the arrangement. This includes any overtime, bonus, commission, or similar, where the amount exceeds 10% of your normal take home pay.

Disclosure to the Supervisor must be made within 14 days of receipt and 50% of the additional amount (over and above the 10% referred to above) shall be paid to the Supervisor within 14 days of the disclosure.

Failure to disclose and/or pay any such amounts into the IVA will be considered a breach of the arrangement.

### **Redundancy**

If you receive notice of redundancy during the term of your IVA, you must:

- inform your Supervisor within 14 days of notice of redundancy, regardless of whether you are entitled to receive any redundancy payment
- inform your Supervisor of the amount of any redundancy entitlement within 14 days
- pay the amount of any redundancy payment received in excess of six months net take home pay to your Supervisor within 14 days of receipt. No payment is required if there is no amount in excess of 6 months net take home pay
- continue to make regular payments into the IVA at the current rate
- keep the Supervisor informed of any changes in employment status. i.e. new employment.

Where you are unable to make contributions, this will be reviewed by the Supervisor.

Failure to disclose any such entitlement to redundancy payment or to pay the excess of over six months of net take home pay will constitute a breach of the arrangement.

When new employment is obtained, after redundancy, during the arrangement, the Supervisor will review your contributions and there will be an expectation that any remaining redundancy funds will be paid into the arrangement. Your compliance or otherwise may be reported to creditors.

### **Unable to pay the full regular payment**

If your circumstances change (for example, you are faced with emergency expenditure or an unforeseen reduction in income) and you are unable to pay the full contribution, you should notify the Supervisor immediately.

In these circumstances, your Supervisor has discretion to agree payment holidays, without a variation to the arrangement being required, subject to meeting all 3 of the following conditions:

- full information about your inability to pay must be sent to the Supervisor
- in total, over the period of your arrangement, no more than the equivalent of 9 months or 39 weeks payments can be agreed to be missed in this way
- the duration of your arrangement would need to be extended by no more than 12 additional months to recover the sums due, unless you have otherwise made good the shortfall.

An agreed reduction in of regular payments, excluding payment holidays, is not recoverable under the IVA and will not be counted in the arrears of contributions.

During the IVA period, the Supervisor has discretion to reduce your regular contribution by up to 20% without referring back to creditors. If your regular payments are reduced by more than 20% from the original proposal or the last variation agreed by creditors, the Supervisor must convene a meeting of creditors to request a variation of the IVA.

Any missed payments by reason of a reduction of your regular payment agreed by your Supervisor will not be counted in the arrears of contributions.

### **Annual review**

You must provide the Supervisor with any information that they may require to conduct a review of your income and expenditure, on or just before each anniversary of the start of your arrangement. This includes, but is not limited to, copies of P60s, payslips, bank statements, and other evidence of income and expenditure.

You will be required to increase your regular payment by 50% of any increase in disposable income one month following such review.

The annual review of your IVA is the primary tool for reassuring your creditors that your IVA can be sustained and remains appropriate. The annual review will confirm existing payments remain affordable and are appropriate for all bound by your IVA, or that it is appropriate to vary your IVA due to changes in your disposable income.

If the annual review determines that your IVA is no longer sustainable, it may result in the termination of the arrangement, subject to the provisions of Part 10 of these terms and conditions.

Non-engagement in the annual review will be recorded by your Supervisor and may lead to the termination of your protocol IVA.

## **Part 4: What happens if you do not meet your commitments under the arrangement.**

### **Breach of the arrangement**

You will be in breach of the arrangement if:

- you are in arrears equivalent to three or more months of payments agreed in the arrangement (and no payment holiday or reduced payments have been agreed)
- your debts exceed by 25% or more of the total figure you have estimated in your proposal
- you have provided information that was false or misleading in any material detail or which made a material omission
- you fail to do anything the Supervisor may, for the purpose of the arrangement, reasonably ask of you
- you fail to comply with any other of your obligations under the arrangement.

### Notice of breach

If, at any time, the Supervisor thinks that you are in breach of the arrangement, then, unless you correct the breach immediately, the Supervisor will as soon as possible send you a notice ("Notice of Breach") identifying the breach. This will require you within one month of receiving the notice:

- to remedy the breach if it can be remedied
- propose how the breach can be remedied over a longer period
- if the Supervisor thinks fit, to fully explain the breach.

### Remedy of breach

If, within 1 month of receipt of a "Notice of Breach", you:

- remedy your breach of the arrangement; or propose a reasonable plan to remedy
- if required in the Notice of Breach, fully explain the breach.

Then the Supervisor will take no further action against you, however the breach may be reported to creditors.

### Failure to remedy breach

If you have not acted within the time allowed, or have confirmed to your Supervisor that you are unable to remedy any breach of the arrangement, the Supervisor must issue a certificate of termination and report to creditors that the arrangement has been terminated within 28-days of the expiry of the time allowed or your confirmation.

This applies in all circumstances unless the Supervisor feels it appropriate to seek creditor views (voting to be as set out in the Rules) to do one of the following:

- vary the terms of the arrangement (including consideration of a settlement agreement/early settlement)
- present a petition for your bankruptcy.

### Termination on your request

The Supervisor may issue a certificate of termination if you request this in writing but has discretion to delay doing so until the administration of the estate has been completed.

### Effect of Termination



Upon issuing a certificate of termination, any trust over the assets will come to an end. Your creditors will no longer be prevented from pursuing repayment of outstanding balances directly from you. You will be liable for interest and charges accrued during the term of the protocol IVA.

## **Part 5: The Supervisor's functions, powers etc**

### **Supervisor's duties**

The Supervisor must supervise your fulfilment of your obligations under the arrangement and administer the arrangement.

The Supervisor must lodge all funds held for the purpose of the arrangement in a UK bank or building society account and distribute in accordance with the arrangement.

The Supervisor will have the power to do such things as are necessary or helpful to implement the proposal (without limiting the powers available to the Supervisor in law).

The Supervisor will not be personally liable for any liabilities incurred by you or otherwise.

Completion or termination (or both) of the arrangement will not affect the Supervisor's power to carry out such functions and to exercise such powers as are necessary for them to fulfil their duties, obligations and responsibilities under the arrangement, Act and Rules, and to resolve any matters that arise during the arrangement.

The Supervisor will have no duty to perform any act or carry out any function except those specified in the arrangement, Act or Rules.

Once during the IVA period, the Supervisor will have discretion to allow your regular contribution to reduce by no more than 20% (cumulative, and relative to the original proposal or last agreed variation by creditors) without referring back to creditors. If a reduction of more than 20% is required, the Supervisor must convene a meeting of creditors to request a variation of the IVA.

A variation should only be proposed in the first two years of the arrangement to reduce contributions if evidence can be provided to creditors that the Supervisor could not have reasonably foreseen such a change in circumstance at the start of the arrangement. If such a reduction is necessary, the Supervisor should keep a record of the reasons and explain to the consumer that if creditors do not agree with the variation the arrangement may be terminated.

If you cannot reach agreement with the Supervisor in respect of your obligation to contribute additional income, then the Supervisor has the discretion to issue a notice of breach.

The Supervisor is not required to retain any funds for the petition of your bankruptcy.

The arrangement shall terminate when the Supervisor issues a "certificate of termination".

### **Removing the Supervisor from office**

If a good reason is given, the Supervisor may be removed from office by the Court or by a resolution of a meeting of creditors.

A creditor who is owed at least 25% of the total agreed value of debts may serve a notice on the Supervisor requiring them to convene a meeting of creditors to remove the Supervisor from office. Such a notice must set out the reasons for the removal.

The notice sent out by the Supervisor to creditors convening such a meeting must state the reasons for the creditor seeking to remove them. It must be accompanied by a report on the Supervisor's administration of the arrangement, including an up-to-date summary of receipts and payments.



If the Supervisor wishes to resign their position or is unable to perform their duties as set out in the legislation and this protocol, then an application can be made to court for the transfer of the cases to another Supervisor under Rule 12.37.

## **Part 6: Arrangement assets**

### **Assets and after acquired assets**

All assets, unless excluded, which form part of your estate at the start of the arrangement, shall be subject to it.

The Supervisor may claim as an asset of the arrangement any after-acquired assets. Once claimed, any such asset will be subject to, and be an asset of, the arrangement.

After-acquired assets must only be sold or realised to the extent necessary to repay the creditors 100 pence in the pound including the costs of the arrangement.

### **Excluded assets**

Assets that would be excluded from your estate in a bankruptcy, as defined in Section 283(2) of the Act, will be excluded from your arrangement.

You may seek to exclude other specified assets, if you can demonstrate a good reason to do so, but their exclusion or otherwise will be subject to creditor approval.

Your proposal should detail any additional excluded assets and the reasons they are being excluded.

### **Holding arrangement assets in trust**

Whilst the arrangement is in force:

- you must hold in trust, for the purposes of the arrangement, any property in your possession, custody or control that is an asset of the arrangement until it is realised (if required) in accordance with the arrangement. Holding in trust means that you will not sell, transfer or otherwise dispose of any of the assets that form part of your arrangement
- the Supervisor must hold in trust for the purposes of the arrangement any property in their possession, custody or control that is an asset of the arrangement
- the trust will remain in force from the commencement of the arrangement and will be extinguished on the issuing of the completion certificate by the Supervisor. In the event of a bankruptcy order being made against you, any assets not yet realised will not be held as part of the trust.

### **In the event of your death**

Should you die during the term of the arrangement, property constituting an asset of the arrangement in your or the Supervisor's possession, custody or control shall be held upon trust for the purposes of the arrangement until it is realised.

### **Home**

Prior to, or at the date of, the arrangement's commencement you/your nominee should obtain a valuation of any property in which you have a financial (beneficial) interest.

You must provide the Nominee and Supervisor with any information that they may require to verify the equity in your property and your financial (beneficial) interest. This includes, but is not limited to,

copies of valuations, mortgage statements, account statements for other secured lending, court orders relating to ownership of the property or charges.

Where you hold an interest in a family home, the available equity will be calculated using 85% of the property's value and subtracting any secured borrowings, like a mortgage.

The valuation, which will be agreed by your Nominee, will inform the length of the proposed arrangement:

- if your financial (beneficial) interest is less than £10,000, the arrangement will be for a 60-month term
- if your financial (beneficial) interest is £10,000 or more, the arrangement will be for a 72-month term.

If your financial (beneficial) interest is £10,000 or more, you must provide the Nominee with any information that they may reasonably require to explain why the exclusion of the home from the IVA is reasonable, including but not limited to, your ability to access secured lending, the age of household occupants, and household financial sustainability if you were to try to sell your home/relocate. This information may be disclosed in the proposal.

You should be aware that if you voluntarily sell your interest in a family home (or your beneficial interest is otherwise realised) while the protocol IVA is in force, and your IVA subsequently fails, your creditors may investigate how the sale proceeds were used and might take action to recover funds.

## **Part 7: Dividends and claims**

The Supervisor may accept, for dividend purposes, proofs of debt submitted by creditors as at the effective date. If any creditor does not submit a proof of debt in writing within 2 months after the effective date or by the date of the first dividend (whichever is the later) then that creditor may only participate in dividend payments to the extent set out.

The Supervisor has the discretion to admit claims of £2,000 or less without a proof of debt form, or proofs of debt submitted that do not exceed 120% of the amount stated by you in the proposal, without the need for additional verification.

If a creditor submits a late proof of debt, the Supervisor will allow this for dividend purposes, subject to the requirement to adjudicate on its authenticity and value. The creditor will be entitled to participate and to receive their full share of dividends, including those paid to date (insofar as funds are or become available) but is not entitled to disturb a distribution made prior to the submission of the late proof of debt.

The Supervisor may ask for any further details or documents that they think necessary to establish the amount due to any person claiming to be a creditor.

The debts of secured creditors, foreign currency debts, debts payable at a future time, and interest on debts will be dealt with in accordance with the bankruptcy Rules.

Where Section 323 of the Act applies (Mutual credit and set-off), and a creditor is obliged (for whatever reason) to make a payment to you during the period of the arrangement, then that payment shall be used first in reduction of that creditor's debt. If such application results in the creditor's claim being entirely extinguished, any surplus will be treated as an asset of the arrangement and paid to the Supervisor for the benefit of the arrangement.

## **Unclaimed and returned dividends**



Where a final dividend remains unclaimed 4 months after that distribution has been made, the Supervisor shall pay those funds to those creditors whose final dividend has been claimed.

Where an interim dividend remains unclaimed or is returned to the Supervisor during the term of the arrangement, the Supervisor shall take reasonable steps to allocate that payment. Where it is not possible to allocate the unclaimed or returned dividend, the Supervisor may discount the proof of debt received and distribute the funds to those creditors whose dividends have been claimed. A creditor whose claim has been discounted under these provisions is entitled to resubmit a claim.

All amounts paid into the arrangement are intended to be used to pay dividends to unsecured creditors (after the payment of the costs of the arrangement). At the end of the arrangement, any surplus funds must be returned to you.

## **Part 8: Creditors who do not receive notice**

This voluntary arrangement will be binding on any creditor who was not notified of the IVA, but who would have been entitled to vote if they had been notified of the meeting of creditors called to approve it.

On discovering the debt of such a creditor, the Supervisor must send immediate notice requiring them to submit their proof of debt as at the effective date.

Two months after sending the above notice, the Supervisor may use their discretion to exclude such a creditor from dividend if the creditor has not by then submitted their proof of debt.

## **Part 9: meetings of creditors**

### **Power to call or requisition meetings of creditors**

The Supervisor may, if they deem it to be in the best interests of all parties, call a meeting of creditors for any purpose connected with the arrangement in accordance with the Act and the Rules.

With your consent, you or the Supervisor may propose reasonable variations to the proposal after it has been approved and these may be considered at a meeting of creditors convened by the Supervisor for this purpose.

If you are very ill or cannot be reached, and where it can be demonstrated to be in the consumer's best interest, the Supervisor may propose reasonable variations in relation to early settlement or payment holidays without your consent. However, you must be given 28-days' notice about the meeting and the proposed variations.

## **Part 10: HM Revenue & Customs (HMRC)**

### **HMRC claims**

HMRC's provisional claim in the arrangement will include:

- any tax credit overpayment
- self-assessment payments on account due for the tax year in which the arrangement is approved
- any PAYE/SC/NIC deductions due to the date of approval
- any other earlier unpaid liabilities.

HMRC's final claim in the arrangement will also include any self-assessment balancing adjustment for the tax year in which the arrangement is approved, due with the self-assessment return on 31 January of the following year.

### **Income beginning after approval**

You will be responsible for payment of self-assessment/NIC on any source of income that begins after the date of approval of the arrangement.

### **Post-approval statutory returns and payments**

All statutory returns and payments due to HMRC following approval must be provided on or before the date they fall due.

### **Overdue accounts and returns**

You must send all statutory accounts and returns overdue at the date of the creditors' meeting to HMRC within 3 months of the approval date, with any other information or explanations required.

### **Funds to be paid to Supervisor**

From the date the arrangement is approved to the 5 April ending that tax year, you must pay your monthly charge for income tax/NIC, as it appears in the income and expenditure statement, to the Supervisor for the benefit of the arrangement.

### **Restriction on payment of dividend**

No non-preferential dividend will be made until one of the following occurs:

- HMRC has received a self-assessment return for the tax year in which the arrangement is approved
- a VAT (or other levy or duty) return due to HMRC to the date of the meeting has been filed
- a HMRC determination or assessment has been made
- the tax credits renewal due following the end of the year of approval has been received and processed and the Supervisor has admitted HMRC's final claim.

### **Set-off of repayments**

Any repayment due to you from HMRC, relating to a period before the arrangement was approved, shall be applied firstly against HMRC's claim in the arrangement. Any surplus will be repaid to you, and you must pay it to the Supervisor for the benefit of the arrangement. Any repayment due to you from HMRC, relating to a period after the arrangement was approved, shall be applied firstly against other sums owed to HMRC for the post arrangement period. Any surplus will be repaid to you, and you will pay it to the Supervisor for the benefit of the arrangement.

### **No response from HMRC**

If you were not self-employed and have not traded during the tax year in which the arrangement was agreed, and if there are no outstanding returns due to HMRC and no contact has been made by HMRC with the Supervisor within 4 months after the effective date, the Supervisor has the discretion to disregard the requirement of the standard protocol IVA conditions to not make a non-preferential dividend before the Supervisor has admitted HMRC's final claim. If the Supervisor commences payment of dividends, notification should be sent to HMRC and funds may be retained to pay an equivalent dividend to HMRC, based on the amount shown in the statement of affairs.

## **Part 11: Miscellaneous provisions**

### **Invalidity or illegality**

If any part of the arrangement is found to be contrary to the Act or Rules, illegal, invalid, or contrary to public policy, this will not affect the validity of the rest of the arrangement; and the part of the arrangement in question must be interpreted accordingly.

### **Joint liabilities**

The rights of any creditor who has a joint and individual claim against a third party will not be affected by this proposal.