

The Consumer IVA Protocol

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This protocol facilitates the efficient processing and administration of consumer individual voluntary arrangements (protocol IVAs), recognising the need to balance the rights of an individual to obtain appropriate debt relief alongside the rights of creditors to seek repayment of what is owed to them.

The protocol has the following parts:

- (1) General principles
- (2) Guiding concepts
- (3) Vulnerable consumers
- (4) Transparency by all parties to the protocol IVA
- (5) Advice and cooperation
- (6) Financial statement
- (7) Home ownership
- (8) Creditors' obligations
- (9) Completion of the protocol IVA.

Annexes:

Annex 1 - Standard terms and conditions for use in protocol IVAs

Annex 2 - Key fact document to be sent before the consumer signs the proposal

Annex 3 - Table of contributions and distributions

Annex 4 - Estimated outcome statement compared to bankruptcy

(1) General principles

1. The protocol is a voluntary agreement, providing a standard framework for dealing with consumer IVAs. It applies to consumers, Insolvency Practitioners (known as the Nominee or Supervisor) and creditors.
2. The Nominee is the Insolvency Practitioner who assists the consumer to draft the proposal and call the creditors meeting.
3. The Supervisor is the Insolvency Practitioner who will supervise the terms of the protocol IVA, receive the contributions, and pay them to the creditors as a dividend after deduction of fees.
4. Where a protocol IVA is agreed, Insolvency Practitioners and creditors agree to follow the processes set out in this protocol.
5. Insolvency Practitioners and creditors agree that no modifications will be proposed to amend the standard terms and conditions of a protocol IVA, unless exceptional circumstances exist.
6. The protocol does not override the legal and regulatory framework applicable to Insolvency Practitioners and creditors.
7. If a protocol IVA is not suitable for the consumer, they may benefit from a bespoke IVA, a debt relief order, bankruptcy, or another debt solution. In such cases, the consumer should be directed to free, regulated debt advice.

(2) Guiding concepts

8. Protocol IVAs should be proposed for a length of 60 months, or 72 months if the consumer has a beneficial interest in a family home worth £10,000 or more. To calculate this beneficial interest, we will use 85% of the property's value and subtract any secured borrowings, like a mortgage.
9. In most cases a person suitable for a protocol IVA will:
 - be in receipt of a regular sustainable income other than State benefits or State pension
 - have multiple debts with a combined total of £7,000 or more
 - have uncomplicated assets
 - not otherwise be able to repay their debts in full within the proposed IVA period
 - not be eligible for a debt relief order.
10. The overall sustainability of the protocol IVA, including the ability of the consumer to make all the payments and to complete the terms of the arrangement successfully must be considered.
11. All Nominees must adhere to the relevant legislative and regulatory provisions for IVAs.
12. The Nominee should send a copy of the key facts document to the consumer before they sign the proposal and be available for the consumer to engage and ask any questions.
13. Nominees should explain all available options to the consumer and ensure they comply fully with SIP 3.1. Any comments by the consumer as to the reasons for choosing an IVA over another solution should be clearly and accurately documented.
14. Protocol IVAs are not suitable for consumers with very low levels of debt. Where the consumer's debts total less than £7,000, if a protocol IVA is pursued, the reasons why this is the most appropriate debt solution should be clearly explained in the proposal.
15. Protocol IVAs are not suitable for consumers with very low levels of disposable income. If a protocol IVA is pursued where the consumer has very low levels of disposable income, the reasons why this is the most suitable debt solution should be clearly explained in the proposal.
16. Consumers who meet the criteria for a debt relief order (DRO) are unlikely to be suitable for a protocol IVA. Where the consumer meets the criteria for a DRO, if a protocol IVA is pursued, the reasons why this is the most appropriate debt solution should be clearly explained in the proposal.
17. Consumers whose debts could be cleared under a debt management plan over a similar period to a protocol IVA and where the return to creditors under the debt management plan would be significantly higher, are unlikely to be suitable for a protocol IVA. For a consumer in this scenario, if a protocol IVA is pursued, the reasons why this is the most appropriate debt solution should be clearly explained in the proposal.
18. Consumers who rely on State benefits or State pensions as their primary income might not be suitable for a protocol IVA. The Nominee must explore why they receive these benefits and if they will continue to receive them throughout the IVA period. The Nominee should consider if any additional checks or due diligence is needed to make sure the consumer can afford the regular payments and that another debt solution is not better suited for their circumstances. If a protocol IVA is pursued, the reasons why this is the most appropriate debt solution should be clearly explained in the proposal.

19. If the consumer is self-employed, works irregular hours, or is subject to other circumstances which may cause income to be uneven/unpredictable, this should be noted in the proposal.
20. The following are indicators that a consumer's circumstances are unsuitable for a protocol IVA:
 - disputed debts - there should be no known disagreements in relation to the enforceability or amount of any debt
 - investments - shares, bonds, invested savings
 - the possibility of receiving a lump sum settlement
 - sole trader with trade debts
 - very high equity in a property
 - holds an interest in more than one property or a buy-to-let property.
21. Consumers should be provided a copy of this protocol before they sign the proposal. Consumers' attention should be drawn to their duties to disclose accurate information about assets, debts, income and expenditure, and any other information reasonably required by the Nominee and/or Supervisor.
22. Insolvency Practitioners must ensure that all communications with and information provided to the consumer is clear and that anything the consumer is expected to do is easily identifiable.
23. Where a protocol IVA is terminated, Insolvency Practitioners should signpost the consumer to free, regulated debt advice or satisfy themselves that the consumer is aware of the suitable debt solutions and debt advice services available.

(3) Vulnerable consumers

24. Nominees, Supervisors and creditors should ensure they follow the current published guidance from their regulator on dealing with vulnerable consumers. FCA guidance is a benchmark for those providing debt advice to consumers who may have vulnerabilities.
25. The Nominee should make the creditors aware of any relevant vulnerabilities which the consumer has disclosed and has explicitly consented to being explained to creditors.
26. Where a consumer is vulnerable, Insolvency Practitioners should make appropriate arrangements to ensure that the consumer understands the protocol IVA process, its effects, the consumer's obligations, and makes appropriate arrangements for their needs (which may include, with their consent, liaising with third parties on their behalf). Insolvency Practitioners should document any provisions put in place to support that understanding.

(4) Transparency by all parties to the protocol IVA

27. All protocol IVA terms relevant to the creditors shall be drafted in simple terms at the start of the proposal.
28. The consumer will be asked by the Nominee to disclose:
 - details of any previous dealings with the proposed Nominee for the IVA, or businesses or associates connected with the proposed Nominee
 - if they have previously tried to obtain an IVA or had an IVA approved in the past 24 months
 - if they have been subject to a Breathing Space registration (debt respite scheme) within the last 24 months

- if they have been subject to, or tried to obtain, a debt management plan in the last 24 months
 - if they have at any time been subject to a Debt Relief Order or Bankruptcy or have been subject to a Debt Relief Restriction Order or Undertaking, Bankruptcy Restriction Order or Undertaking, or similar.
29. The Nominee will record the identity of the source of any referrals of the consumer and the relationship or connection of the referrer to the consumer, and to creditors, in the proposal.
30. The Nominee must:
- always apply the Code of Ethics and Statement of Insolvency Practice 3.1
 - ensure any third-party referrers/introducers are FCA authorised for debt counselling and, if they are not, direct the consumer to obtain advice from someone who is FCA authorised
 - alternatively, the Nominee may provide advice under the FSMA exclusion if they themselves intend on being appointed as Nominee. However, they must be mindful of the limitations of this approach.
31. The proposal should set out for the consumer and creditors how payments made by the consumer into the protocol IVA will be split between the costs of the Insolvency Practitioner acting as Nominee and Supervisor (fees) and payments to creditors (dividends), together with a schedule of when those payments are expected to be made (Annex 3).
32. If the protocol IVA is in breach i.e. the consumer has missed payments or has failed to fulfil an obligation, the Supervisor should complete a review of the circumstances and find out the reasons for the breach, which should be documented and may be shared with creditors.
33. If the breach occurred prior to the first payment to creditors, a statement should be placed on file as to whether the protocol IVA was the right solution by the Supervisor, having reviewed the case in full.
- If it is deemed that the protocol IVA was not the most suitable debt solution for the consumer or there is evidence to suggest that such a breach was likely, any payments made by the consumer should be refunded and the protocol IVA terminated.
34. The consumer should be made aware by the Supervisor of the impact of failure of their protocol IVA and particularly that creditors will no longer be prevented from pursuing repayment of outstanding balances directly, and the consumer will be liable for interest and charges accrued during the term of the protocol IVA.
35. Where a breach is likely to lead to termination, the Supervisor should consider whether it is appropriate to propose a settlement agreement/early settlement to creditors, under which the protocol IVA is satisfied, but no further payment(s) are made by the consumer. The length of time for which the protocol IVA has been in place, the cooperation of the consumer throughout the period, and a realistic assessment of the consumer's ability to repay their outstanding debts in the future, should be considered for this purpose.
- Any such proposition should set out the reasons why a settlement agreement/early settlement is appropriate.
36. The information that the consumer must provide to the Nominee throughout the protocol IVA is explained at Annex 1.

(5) Financial statement

37. A credit history search should be conducted by the Nominee and any returned credit report/history appropriately reviewed.
38. The Nominee should carry out proportionate enquiries into, and verification of:
 - income and expenditure
 - assets and liabilities.
39. The Nominee should work with the consumer to draft a budget which reflects the income and expenditure of the whole household (where appropriate), using the Standard Financial Statement.
40. Where a budget is only agreed for one individual in a household, an explanation should be included in the proposal, including why a protocol IVA remains appropriate.
41. The consumer's regular payment into the arrangement should be sustainable throughout the protocol IVA term and should not cause hardship to the consumer.
42. If the consumer wishes to continue to pay for items such as their own life insurance, health insurance, or payment protection insurance linked to secured lending, the proposal should explain why this expenditure is essential.
43. Insolvency Practitioners acting as either the Nominee or Supervisor should not sell any insurance policies or products to the consumer. The Insolvency Practitioner, acting in any capacity in relation to the consumer, should disclose, within the proposal, any products provided or introduced to the consumer which are included in the consumer's budget. Those that reduce the consumer's disposable income, and are not essential, should not be offered.
44. The Nominee should look forward and consider any likely events which may impact the consumer's payments during the term of the protocol IVA, for example:
 - changes to rent, mortgage, utilities, hire purchase agreements insurances, or other contracted regular payments for ongoing services
 - benefits which could end, for example, child benefit when a minor becomes 18.
45. The Supervisor has discretion to allow payment holidays of no more than the equivalent of 9 months or 39 weeks payments in total, over the period of the arrangement, without convening a meeting of creditors to request a variation. The duration of the arrangement will be extended by no more than 12 additional months to recover the sums due for payment holidays taken, unless the consumer has otherwise made good the shortfall.
46. The Supervisor has discretion to reduce the consumer's regular contribution by no more than 20% (cumulative, and relative to the original proposal or last agreed variation by creditors), without convening a meeting of creditors to request a variation.

Benefits and pensions

47. Any State benefits, including those relating to income (universal credit, child benefit and pensions, etc) and ill-health, disability or caring responsibilities should be included as income.
48. Where disability or caring related State benefits are included as income, the Nominee should ensure that all costs relating to the disability or caring requirements are also included as an expense.

49. Payments into a pension deducted at source from earnings or made to a private pension scheme can continue if they are reasonable and do not represent additional voluntary contributions.
50. If no minimum contribution is stated by the pension scheme, assessment of a 'reasonable' contribution may consider the prevailing rate set by the Government for auto-enrolment workplace pensions.
51. Where the consumer is a member of multiple pension schemes, these limits should be applied to the aggregate amount of the consumer's protocol IVA contributions.
52. The Nominee should explain to the consumer that any failure to provide accurate information about assets, debts, and income and expenditure could result in criminal proceedings as well as the termination of the protocol IVA, and document this (with evidence) on the IVA file.

(6) Home ownership

53. A protocol IVA will not include any proposal requiring the consumer to realise their interest in a family home for the purpose of contributing to an IVA.
54. In proposing a protocol IVA, the Nominee should be satisfied that the consumer either does not hold a beneficial interest in a family home, or that it is appropriate to exclude the property interest, based on either value or the consumer's circumstances. The Nominee should explain the reasons for the exclusion in the proposal.
55. Any property that is owned solely or jointly by the consumer should be valued by the consumer and the valuation should be verified by the Insolvency Practitioner. The valuation should be based on a reasonable assessment by the consumer; for example, having used an online source. Where the valuation is based on a range, the mid-point should be used. An explanation of how and when the valuation has been determined should be included in the proposal.
56. There is no requirement for a further review of the equity value once the protocol IVA is in force.
57. Where the consumer holds 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.
58. If the consumer's individual beneficial interest is less than £10,000, the proposal will detail the value of the equity, the tools and method for calculating the equity, the value of the consumer's beneficial interest, and that the family home is excluded from the protocol IVA.
59. For clarity, where an interlocking protocol IVA with a jointly owned property is proposed, each consumer's share of the family home is considered separately and the £10,000 applies to each individual consumer's beneficial interest. Consequently, the £10,000 limit is assessed separately for each consumer.
60. Where the consumer holds an interest in a family home and the consumer's individual beneficial interest is £10,000 or more, the following is applicable:
 - the proposed term of the protocol IVA will be extended to 72 months, in lieu of the consumer's equity interest
 - the proposal will detail the value of the equity, the tools and method for calculating the equity, the value of the consumer's beneficial interest, and that the consumer's interest in the family home is excluded from the protocol IVA

- the proposal will outline why the exclusion of the family home from the protocol IVA is reasonable, having regard to the consumer's individual circumstances. This may include, but is not limited to, ability to access secured lending, the consumer's age, and the financial sustainability of the consumer's household if required to sell their home/relocate.
61. If the consumer's family home has very high equity, then a protocol IVA is unlikely to be appropriate, and a bespoke IVA should be considered alongside other available debt solutions.
 62. Nominees may consider 'very high equity' in the context of material impact to the overall return to creditors.
 63. If the consumer has an interest in more than one property or a buy-to-let property, a protocol IVA is unlikely to be appropriate, and a bespoke IVA should be considered alongside other available debt relief options.
 64. The consumer should be aware that if they voluntarily sell their property (or their beneficial interest is otherwise realised) while the protocol IVA is in force, and the IVA subsequently fails, creditors may investigate how the sale proceeds were used and might take action to recover funds.

(7) Creditors' obligations

65. In all dealings with a consumer proposing a protocol IVA, creditors will always treat the consumer in accordance with the relevant applicable legislation and professional standards, including the FCA consumer duty, <https://www.fca.org.uk/firms/consumer-duty>.
66. The FCA consumer duty should be a benchmark for all creditors in all dealings with a protocol IVA.
67. Creditors will co-operate with the Nominee and Supervisor in relation to the efficient operation of this protocol.
68. A key aim of the protocol is to improve efficiency in the protocol IVA process and to avoid the need for modifications to a proposal, wherever possible. Creditors should avoid putting forward modifications unless in exceptional circumstances. This does not affect the right of creditors to vote for or against an IVA proposal.
69. Where a creditor (or their agent on their behalf) votes against a protocol-compliant proposal, their reasons for so doing should be disclosed to the Nominee and documented on the file.
70. All creditors should make reasonable endeavours to provide a proof of debt (in the form required by the Nominee) and proxy form within 14 days of receipt of a proposal and, if possible, at least seven days before the date of the meeting of creditors called to consider and vote on the proposal.
71. Any creditors that do not submit proofs of debt within two months of the approval of the protocol IVA or by the date of the first dividend (whichever is the later) will be entitled to participate and receive their full share of dividends (subject to the requirement for the Supervisor to adjudicate the authenticity and value of the proof of debt) but are not entitled to disturb a distribution made prior to the submission of their proof of debt.

(8) Completion of the IVA

- 72. Completion of the protocol IVA takes place when all agreed payments have been made by the consumer and all other obligations have been complied with in full.
- 73. A completion certificate will be issued to the consumer, and all creditors informed of the completion of the protocol IVA, as soon as possible after all final actions have been concluded under the protocol IVA.
- 74. If a consumer proposes a full and final settlement variation to creditors, which is accepted, the protocol IVA will be completed when all payments have been made under the variation and all other obligations have been complied with in full.
- 75. The trust created by the IVA arrangement will be extinguished on termination of the arrangement or the issuing of the completion certificate by the Supervisor.