





The content

Debt Advice Handbook 15th edition

Description

With living costs and unemployment rising, budgets squeezed and problem debt on the increase, no adviser should be without this essential guide to the practice and process of giving money advice in England and Wales.

Who's this book for?

It is essential for debt advisers, welfare rights advisers, lawyers, local authority and housing association staff, social workers and union official.

What does it do?

The handbook provides the most comprehensive information needed by advisers on the key stages of money advice, including interviewing clients, establishing liability, prioritising debts, preparing a financial statement, negotiating with creditors and dealing with bailiffs. Fully indexed and cross-referenced to law, regulations and official guidance, and to court and tribunal decisions Includes tactical guidance and examples

What's new?

Fully updated to cover all recent changes to legislation, caselaw and court procedure and practice Emphasis is placed on taking due care of vulnerable clients and making sure that any payment arrangements agreed are appropriate. There is a focus on sustainable credit arrangements that do not affect a client's abilities to pay essential living expenses and priority debts.

Properties

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Bankruptcy and individual voluntary arrangements (IVAs) are both options available to an insolvent client, who, therefore, needs to be advised on which is the most appropriate option for them.

Bankruptcy is likely to be a suitable option for a client if they have no assets (or little or no equity in their home), low available income to pay creditors and it is unlikely that their situation will improve in the foreseeable future.

An IVA is likely to be a suitable option if a client has a particular reason for wanting to avoid bankruptcy (eg, to avoid losing the family home), and is able to make a substantial offer, but they are either unable to persuade their creditors to accept an informal arrangement or the only informal arrangement they will accept is likely to take many years to complete. However, IVAs do not end in automatic discharge, as bankruptcy does (usually after 12 months – see here). If the client fails to keep to the arrangement, they could still face bankruptcy if they are unable to reach agreement with their creditors to vary it.

You should take the following factors into account.

Risk to current assets

Some property solely owned by a client is put directly at risk in bankruptcy. In practice, many things which a person uses may be owned by someone else – eg, a partner. Jointly owned property or property in which the client has a beneficial interest, particularly the family home, is indirectly at risk because the trustee may be able to sell it in order to realise the bankrupt client's share (see here).

There is more flexibility with an IVA, as creditors are usually offered regular payments. Although most IVAs require clients who are homeowners to obtain a valuation of the family home, with a view to raising a lump sum by borrowing against the equity in the property (see here), clients are not expected to sell their homes unless they choose this as part of the arrangement. However, other assets are at risk if the creditors do not agree to exclude them from the IVA. Assets that would be disregarded in bankruptcy are excluded from an IVA.

Risk to future assets

When considering either bankruptcy or an IVA, the client should bear in mind the potential risk to any future assets, particularly if they expect to inherit property in the near future or already own assets, which may have no or little value now, but which are likely to have a realisable value within

the next few years.

IVAs usually contain 'windfall' clauses – eg, stating that any assets with a value of more than £500 the client acquires during the term of the arrangement can be claimed. It is, however, possible to make arrangements with potential donors – eg, by asking them to change their wills. (**Note:** this is not regarded as disposing of property, as a will only takes effect when the person dies rather than when they made it.)

Bankruptcy lasts for only 12 months and income payment agreements/orders for three years, whereas IVAs last for around five years.

Effect on future credit

Both bankruptcy and IVAs are a matter of public record. The Individual Insolvency Register contains details of bankruptcies, IVAs (including post-bankruptcy IVAs), bankruptcy restrictions orders and bankruptcy restrictions undertakings. Bankruptcy records remain on the register for three months after the date of the client's discharge. IVA records remain on the register for three months after the arrangement ends. Records of bankruptcy restrictions orders (which last for between two and 15 years) remain on the register until they come to an end. Credit reference agencies keep details on file for six years.

Although lenders can give credit to a bankrupt person, it is likely to be more expensive to obtain credit both before and after discharge. It is an offence for either an undischarged bankrupt, or a person who has been discharged from bankruptcy but is subject to a bankruptcy restrictions order or undertaking, to obtain credit of £500 or more (including ordering goods on credit) without disclosing their status. ¹ This declaration may make it impossible for a person to run their own business because they are unlikely to be given further credit.

Although there are no legal restrictions on a client with an IVA obtaining credit, most arrangements state that the client cannot obtain credit of more than £500 without the supervisor's permission. If they do, it is a breach of the arrangement and it might be terminated by the supervisor as a result.

¹ s360 IA 1986

Effect on employment or office

Being an undischarged bankrupt prohibits someone from:

- engaging in business in a name other than that in which they were bankrupt without disclosing it to people with whom they have business dealings; ¹ and
- acting as a director of, or directly or indirectly promoting, forming or managing, a limited company without the court's permission; ² and
- acting as an insolvency practitioner. ³

These restrictions end on discharge, unless a bankruptcy restrictions order or undertaking is made (see here). A bankruptcy restrictions order or undertaking may also affect the client's ability to belong to a professional body. This should always be checked before proceeding with bankruptcy. If it appears there is a risk that post-bankruptcy restrictions may be imposed, a client should be advised to consider whether any of these restrictions would affect them.

The professional rules of solicitors and accountants make it virtually impossible for people who have been made bankrupt to work in these professions. Other employers may be unwilling to employ a bankrupt person, especially if they are responsible for handling money. Charity law limits the ability of people who have been made bankrupt and subject to bankruptcy restrictions orders and undertakings to serve on management committees.

The bankruptcy of a sole trader does not necessarily mean the business will close, but it may be difficult for it to continue in view of the above restrictions and the following factors.

- If there are items of business equipment used by the person's employees rather than by them personally in the business, they cannot claim exemption for them (see here) and the trustee may insist on a sale. Stock in trade is not exempt from sale by the trustee.
- The bankruptcy (and any subsequent restrictions order or undertaking) may be advertised and publicised locally, and this may damage the reputation of the business. All bankruptcy orders are advertised in the *London Gazette* (but see here).
- The person will find it extremely difficult to operate a bank account, not only because of the credit restrictions, but also because of the possibility of the trustee making a claim against any balance in the account.

These restrictions do not apply to someone with an IVA.

¹ s360 IA 1986

² s1 Company Directors Disqualification Act 1986

³ s390 IA 1986

Effect on housing

Bankruptcy may result in the loss of the family home (see here). Many tenancy agreements contain provisions allowing the landlord to end the tenancy and repossess the property in the event of a tenant's bankruptcy. If the client has rent arrears, the landlord can still apply for a possession order even though the rent arrears are a bankruptcy debt (see here).

In the case of a bankrupt homeowner, if there is sufficient equity, the trustee can usually force a sale unless the family can raise a sufficient amount to buy out the trustee's interest (see here).

In the case of an IVA, although creditors expect the value of the person's interest in the family home to be taken into account, there is little likelihood of the property having to be sold. The IVA protocol (see here) says that clients should not be required to sell their property instead of releasing equity. If the client cannot release equity, protocol-compliant IVAs are extended for a further 12 months.

Effect on reputation and stress

For some people, bankruptcy carries a social stigma. There is a possibility of a public examination of the client's conduct and financial affairs in open court, although this is very rare. There may be an advertisement in the local paper. If the client's conduct is considered blameworthy, they may be made the subject of a bankruptcy restrictions order or undertaking, with the possibility of local publicity. Bankruptcy has the potential to add to a person's stress. On the other hand, there is a certainty about bankruptcy, which can reduce stress – most creditors are forced to accept the situation and can no longer pursue the client for payment. The opportunity for a fresh start can reduce stress.

IVAs do not carry the same stigma, but can be time consuming to put in place, which could add to stress. An IVA is a long-term commitment with regular reviews and the situation is not finally resolved until the last payment is actually made. They can fail if there is an adverse change of circumstances which in turn could lead to the client's bankruptcy.

Costs

If a client wants to apply for their own bankruptcy, they must pay a deposit (currently £550) in addition to an adjudicator's fee (currently £130). Lack of resources sometimes prevents someone from obtaining a bankruptcy order, although if the client is unable to raise the adjudicator's fee/deposit, a charity or trust fund may help. See, for example, turn2us.org.uk.

There should be no need for a client to pay any fees for an IVA in advance, as a free initial

interview may be available and most insolvency practitioners collect their fees out of the ongoing payments made into the arrangement. A person will pay more for the 'privilege' of avoiding bankruptcy: the fee for arranging and supervising an IVA is likely to be in the region of £3,000 to £4,000, with a typical arrangement fee being £1,500 plus 15 per cent of realisations during the period of the IVA (plus VAT). Some IVA providers argue that the client does not actually pay the fees because they come out of the total 'pot' paid into the IVA. In practice, however, only part of the money paid into an arrangement actually goes to creditors. Creditors – particularly banks – have increasingly expressed their dissatisfaction with the level of fees, which in turn has led to downward pressure on fees, which must be voted on and agreed by the creditors. Fees are generally based on the amount paid into the IVA rather than on an hourly rate for any work done. The client will also be liable for any additional costs during the IVA, such as fees to vary the arrangement or the cost of realising assets.

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Please be aware that welfare rights law and guidance change frequently. This page was printed on Friday, October 17, 2025 and may go out of date.