

# Insolvency Newsletter

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This special issue of the ACCA Insolvency Newsletter has been prepared in order to bring two matters of pressing regulatory importance to the attention of licence holders.

## **MODIFICATIONS AND ADJOURNMENT OF MEETINGS IN IVA'S.**

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An increasingly common modification required by creditors in IVA proposals put forward by debtors who are home owners is that a share of the equity in the debtor's property should be contributed to the assets available to creditors in the fourth year (or after the fourth anniversary) of the arrangement ("the modification").

Such provisions will significantly affect the debtor's financial position through additional mortgage costs in the medium to long term and after the arrangement has ended. They will also affect the balance of interests in favour of the creditors who (depending on the performance of the property market) may end up receiving a 100p in the £ dividend in some cases.

Practitioners acting as nominees should advise homeowner debtors of the possibility that this type of modification may be put forward by creditors. This will allow the debtor time to consider the implications of the modification prior to the meeting of creditors.

Debtors should also be advised what their position in bankruptcy would be. Of particular significance in this respect are the provisions of section 283A (and section 313) of the Insolvency Act 1986 under which the trustee has a maximum of three years in which to realise the bankrupt's interest in the home. Where an IVA agreement allows for a period longer than three years before property

rights are included, this may have implications for the value of the debtor's equity in his property and therefore the amount which he will be required to make available to his creditors.

Members are reminded that the debtor's acceptance of the modifications is necessary for the approval of the arrangement. SIP 3, paragraph 7.3(c), requires the nominee to discuss with debtor any modifications suggested by creditors prior to the meeting. Paragraph 7.6 requires the nominee to invite the debtor to attend the creditors meeting in order to answer questions and to give consideration to proposed modifications. If the debtor is not available to consider modifications which are proposed, the meeting will have to be adjourned as his consent to them is required by law. The SIP is silent on whether telephone attendance is adequate. This is a potentially significant practical problem, particularly for practitioners working in volume IVA providers. ACCA will be taking the view that telephone attendance is adequate, subject to the important proviso below.

A modification relating to the debtor's home is clearly something that debtors should be allowed adequate time to consider. It is therefore considered to be good practice, where such a modification is put forward, to adjourn the meeting of creditors to allow the debtor to consider it. It is also desirable for the debtor to confirm in writing that he has been advised of the implications of the modification, that he understands it and agrees to it.

It is recommended that practitioners give debtors every opportunity to give full and careful consideration to the implications of the modification, bearing in mind the risk that debtors who agree to the modification in a telephone call on the day of the meeting of creditors (and who subsequently approve the modifications in writing) will, when the fourth anniversary of the arrangement arrives have forgotten about the modification entirely and will try to evade the consequences of the modification.

Where there are interlocking IVAs and only one of the spouses have been in attendance at the meeting of creditors (this is not acceptable practice, but does take place) there is an added risk that the spouse who is not present may not be informed of the modification at all by the spouse who was present.

It is therefore also recommended that practitioners record the advice they give to debtors and ensure that written consent to the modifications (with confirmation that the debtor understands the consequences of the modification) is obtained prior to the approval of the arrangement. This will assist in protecting the practitioner's position should the debtor later feel that he has not been adequately advised, or was not allowed sufficient time to consider the implications of the modification.

The Practice Monitoring Department is aware that this may require considerable additional work for practitioners, particularly those in volume IVA providers. This notwithstanding, the implications of the modification in question, for many thousands of debtors, are so serious that it is considered essential that they be fully advised and allowed adequate time to consider the modifications when they are put forward at the meeting of creditors.

## **CPD REQUIREMENTS FOR MEMBERS WORKING IN THE IVA OR TRUST DEED SECTOR**

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As members will know, the Joint Insolvency Examinations Board (JIEB) has, as from this year, included in the syllabus for its personal insolvency examination coverage of non-statutory insolvency procedures. The main object of this change is to ensure that practitioners are competent to provide best advice to debtors.

The Insolvency Service has stressed that it is imperative that existing practitioners, who have not been required to study non-statutory procedures as part of their theoretical training, are able to demonstrate the same level of knowledge of alternative debt solutions to bankruptcy and the IVA.

Accordingly, the Service has given notice to the RPBs that they must convey to their licence holders the importance of them making up for this shortfall in academic training by incorporating study of non-statutory procedures into their CPD plans. The RPBs will be expected by the Service to have required relevant practitioners to demonstrate knowledge of such procedures. In line with this initiative, ACCA now expects those of its insolvency licence holders who take appointments as nominee or supervisor in IVAs to incorporate into their CPD plans the study of non-statutory alternatives to formal insolvency procedures. Members will be required to comply with this requirement by 31 December 2007; compliance will be subject to verification by ACCA officials in due course.

The matters which the Insolvency Service considers to constitute knowledge of non-statutory debt solutions include the following:

- debt consolidation/re-financing
- debt management plans
- re-mortgaging
- write-offs or full and final settlements
- advantages/disadvantages of non-statutory solutions
- how priority and non-priority creditors may affect the appropriateness of a solution
- the extent to which creditors will be bound by the solution
- the consequences and risks of the solution and of the debtor failing to adhere to its terms
- consolidation options with existing lenders
- early repayment costs/interest/fees/penalties
- what creditors can realistically be expected to be paid/likely to accept
- regulatory benefits of a regulated solution (eg legislation, professional standards, monitoring, bonding, professional indemnity insurance)
- benefits/disadvantages of conversion from a non-statutory solution to a statutory one (eg conversion of a DMP to an IVA)
- ways in which solutions are financed.

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