

Alternatives to Bankruptcy



CUSTOMER SERVICE EXCELLENCE



INVESTOR IN PEOPLE

Bankruptcy is a serious matter. If you are made bankrupt you will have to give up, with limited exceptions, any possessions of value and your interest in your home (the part of its value that you own). Bankruptcy will also impose certain restrictions on you and will almost certainly involve the closure of any business you run - though you can start to trade again, subject to restrictions. For more information, see our leaflet 'Guide to Bankruptcy'.

You do not have to become bankrupt just because you are in debt.

This leaflet tells you about alternatives to bankruptcy. If you have money troubles and can't pay your creditors (the people you owe money to), it may be better for you and your creditors to use one of these alternatives instead of you becoming bankrupt.

Business Link is part of the government's campaign to promote enterprise. It provides information and advice to help customers make the most of their opportunities.

Business Link has an online interactive tool that may help you decide the best approach for dealing with your debts. Although the tool is mainly for self-employed people, anyone can use it - see our website (<http://www.insolvency.gov.uk/>).

What are the alternatives to bankruptcy?

Informal arrangements, also known as 'family arrangements' or a 'debt management plan/agreement'

If you know that you cannot pay all your debts when they are due, you could consider

writing to each of your creditors to see if you can reach a compromise. Include a timetable of when you will repay them. The disadvantage with an informal arrangement is that it is not legally binding so your creditors could still ask you to pay in full at some later date. Your local Citizens Advice Bureau can advise on and help you make this kind of arrangement. You can find details of your local bureau on the website <http://www.citizensadvice.org.uk>.

Several other organisations can help you make an informal arrangement, but some will charge a fee for this work. When you contact them, always check whether they charge. Some of them are listed in our leaflet 'Guide to Bankruptcy'.

Informal arrangements are suitable if:

- you have very little money to repay your debts; or
- you are having debt problems but are likely to be able to make the normal repayments again in a few months; or
- you cannot afford the full monthly repayments but can afford a smaller regular amount each month.

The first step in an informal arrangement is to work out how much you can afford to pay your creditors each month after you have paid essential living costs. You should write to each creditor explaining the situation. Ask them to accept the lower payment until your situation improves and you can make the full repayments.

Advantages of an informal arrangement

- You, a Citizens Advice Bureau or other advice agency can set up an arrangement quickly and for free.
- It offers an effective solution if your problem is short term.
- It offers an effective solution if your creditors are prepared to accept lower payments.

Disadvantages of an informal arrangement

- Your creditors don't have to accept your offer of reduced payments.
- If they do accept, they can change their minds at any time.
- They may accept it as a short-term measure only, unless they know from the outset that your situation is unlikely to change.

Administration orders

If one or more of your creditors has obtained a county court judgment against you, the county court may make an administration order. Administration is a court-based procedure where you make regular payments to the court towards the total sum you owe your creditors.

Your total debts must not be more than £5,000 and you will need enough regular income to make weekly or monthly repayments. You do not have to pay a fee for an administration order but the court will take a small percentage towards its costs from the money you pay. If you don't pay

regularly, the court may cancel the order and your creditors will be able to take action against you separately to get back what you owe them.

If your circumstances change and you cannot pay as ordered, you can apply to the court to change the order. The court that made the order will tell you what to do. Your local county court can give you details of administration orders.

How does an administration order work?

The first step in an administration order is to apply to the court. For information on how to do this, you can contact your local Citizens Advice Bureau. Further guidance is available from the Courts Service website www.hmcourts-service.gov.uk. Look for form N270 under "forms and guidance". You will need to show that you cannot pay your debts and that you have a county court judgment against you.

The court will make an order based on what you can afford. It will state how much you are to pay each month and how long the arrangement will last. Often the court states that you must go on paying until your debts are cleared in full, although some orders ask you to repay only a percentage of your debt. The order may also state that the amount you repay each month must be reviewed from time to time.

You make monthly payments to the court and the court distributes the money to your creditors.

The court charges you for this service - the fee may be up to 10% of your total debt. The court takes a percentage of the court fee every time it pays a share to the creditors.

Advantages of an administration order

- You only have to make one monthly payment to court.
- The payment you make is based on what you can afford.
- Once the order is in place, your creditors cannot take any action against you without first asking the court.

Disadvantages of an administration order

- If you miss a payment, the arrangement may fail.
- You can apply for an order only if you owe less than £5,000 and have a county court judgment against you.
- Administration orders are registered in the Register of County Court Judgments. This will make it difficult for you to get credit. When the order is paid in full you can ask the court to mark the entry in the register as 'satisfied' and give you a certificate proving you have paid. You must pay a fee for this.

Individual Voluntary Arrangements (IVAs)

An IVA is a formal version of the informal/family arrangement described above. It is generally appropriate for people who cannot make their monthly repayments in full but who do have some money to give their creditors each month. If your creditors agree to an IVA, some of your debt may be

written off. An IVA is legally binding on you and your creditors, and if you break the terms of the IVA you could be made bankrupt.

An IVA begins with a formal proposal to your creditors to pay part or all of your debts. To draft the proposal you will need the help of a licensed insolvency practitioner (IP).

How does it work?

First, you will need to find an IP who is prepared to act for you in the IVA. Your local court can give you the names of local practitioners. You can look at a list in your local official receiver's office or access it on our website. You can also find an IP online through the Association of Business Recovery Professionals (known as R3), an umbrella organisation for IPs. Their website is <http://www.r3.org.uk>.

For an IVA you will have to give the insolvency practitioner (also known as your nominee) details of your current financial situation, including assets such as any share you may own in a property. Based on the information you give, the IP calculates your essential living expenses and deducts them from your income; the rest is your disposable income. Most IVAs involve you making monthly payments to the IP out of your disposable income. However, the arrangement may draw on other assets such as the value of any share you may have in a property. You and your IP draft a proposal for your creditors, which will set out how much you intend to pay into the IVA, and what, if any, other assets are included in the funds you can draw on.

If your creditors are pressing for payment and threatening legal action, the IP can help you apply to the court for an "interim order". This prevents your creditors presenting or proceeding with a bankruptcy petition against you while the interim order is in force. It also prevents them taking other action against you during the same period without the court's permission. However, most IVAs do not require an interim order.

Once your proposal is drawn up, the IP will have to decide whether it has a reasonable chance of being approved and implemented. If it has, the IP will arrange a meeting of creditors to consider it, and will write to everyone registered as a creditor giving the date of the meeting and details of the proposals. All of your creditors are bound by an approved IVA, so it is important that you have accurate records of all your creditors names and addresses so that they can be contacted. If a creditor is missed out (an unknown creditor) he is still bound by the arrangement. At the meeting, the creditors vote on whether to accept your proposals. If creditors holding more than 75% of your total debt vote in favour, your proposal is accepted. Once approved, the agreement will bind all creditors, even those who did not receive notice of the meeting. However, once he becomes aware of the IVA an unknown creditor may apply to the court to challenge the approved IVA and the court has the power to revoke (cancel) it.

The creditors' meeting should also approve the appointment of the IP as supervisor of the IVA. The IP then supervises the arrangement and pays the creditors in accordance with the accepted proposal.

What will an IVA cost?

You should ask several IPs what they charge before you ask any of them to act for you. Most IPs are accountants or solicitors, and their fees are similar to those they would charge for other kinds of work. R3 requires an IP to give you a leaflet 'Is a voluntary arrangement right for me?' You can also get this leaflet from the R3 website (<http://www.r3.org.uk/>).

When can you make an IVA?

It is usually better and cheaper for you to set up an IVA before you become bankrupt but you can propose one afterwards.

If you are bankrupt, you could also ask the official receiver to help you prepare a fast-track voluntary arrangement (FTVA). FTVAs are only available once you are bankrupt. A separate leaflet called "Fast-track voluntary arrangements" is available from our website, www.insolvency.gov.uk or from your local official receiver's office.

Are there any restrictions when you enter an IVA?

Generally speaking no, but the court cannot make an interim order if you have applied for one in the previous 12 months. There is no maximum or minimum level of debt and no maximum or minimum level of repayments, except what is acceptable to your creditors. An IVA may particularly suit you if:

- you have friends or relatives prepared to help pay or contribute towards paying

- your debts;
- you have enough disposable income to pay regular sums to creditors.

What are the advantages of an IVA compared to going bankrupt?

Generally an IVA gives you more say in how your assets are dealt with and how payments are made to your creditors. You may be able to persuade your creditors to allow you to keep certain assets (such as your home), as long as you act responsibly and flexibly to reach agreement with them. You also avoid the restrictions that apply to a bankrupt (for details of these, see our leaflet "Guide to Bankruptcy").

Will the IVA be advertised in a local paper?

No, because an IVA is not a bankruptcy. However, details of your agreed IVA are entered on the Individual Insolvency Register, an online register maintained by the Insolvency Service. This may affect your ability to get credit.

How long will the IVA last?

How long an IVA lasts will depend on your proposal; most IVAs are based on monthly contributions from your disposable income and generally last 5 years.

The IVA will end when it is successfully concluded; that is, when all the sums set out in the proposal are paid. If you cannot keep to the terms of the arrangement the IP will end it by giving notice to all your creditors that the arrangement has failed. The IP could

then apply for a bankruptcy order against you.

Can a member of a partnership propose an IVA?

Yes. As a partner you can propose an IVA, which must take into account the claims that the creditors of the partnership have against you personally. It will not affect the rights of the partnership creditors to take action against the partnership itself or against any other partner.

Alternatively, you and your partner(s) may wish to propose an arrangement involving the partnership creditors and the personal creditors of each partner. You can do this in 2 ways:

- the partners may propose interlocking voluntary arrangements, with each partner making proposals for their own debts and the debts of the partnership; or
- the partnership may propose a partnership voluntary arrangement (usually accompanied by voluntary arrangements for each partner).

An IP must help you to make proposals to creditors. He or she will be able to advise you which procedure to follow.

Warning: If you enter an IVA but fail to give full details of your assets and debts, you could be committing a criminal offence.

For more information please see the following leaflets, which are available on The

Insolvency Service website
www.insolvency.gov.uk or from your local
official receiver's office:

- Fast Track Voluntary Arrangements
- Guide to Bankruptcy
- Individual Insolvency Register.

On the R3 website (<http://www.r3.org.uk/>)
you can find the following leaflet:

- Is a voluntary arrangement right for me?

Help to find support and advice

A list of organisations providing free advice can be found on our website. There are also many other organisations which can provide advice and set up debt management plans and IVAs, but which may charge a fee for their services. You should always check what this fee will be when you contact them. Alternatively, you may prefer to seek dependent legal advice.

You can get more copies of this booklet from The Insolvency Service website: www.insolvency.gov.uk. All our publications are also available on this website. You may also order free copies of our publications from the DTI Publications Orderline. To do this you will need the reference number (URN) of the forms required. You can find this on the back cover of the leaflets or on the website. You can order by:

- telephone: 0845 015 0010 (calls to this number are charged at national rate); or
- email: publications@berr.gsi.gov.uk; or
- fax: 0845 015 0020.

Minicom users should telephone: 0845 015 00308.

You can also contact The Insolvency Enquiry Line for general enquiries on 0845 602 9848, or email The Insolvency Enquiry Line at: Insolvency.Enquiryline@insolvency.gsi.gov.uk

You can obtain further copies of this booklet by email from publications@berr.gsi.gov.uk

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