

christians
against
poverty

CAP

Statement of Insolvency Practice 3.1 (Individual Voluntary Agreements)

***CAP's official response to the Joint Insolvency Committee's
(JIC) consultation***

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always hope.

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Questions

1. Do you believe that the revised version of SIP 3.1 identified all appropriate principles?

No.

CAP supports the revised principles within SIP 3.1 and agrees that the revisions update the principles to better serve the current market context and better match the expectations placed on FCA-regulated organisations serving similar functions in helping people access debt relief.

In particular, CAP welcomes the additional content placing more responsibility on Insolvency Practitioners (IPs) to proactively ensure they are satisfied with the actions of lead generators. Furthermore, providing tailored information based on the debtors' circumstances is important for ensuring they are able to make informed judgements.

2. If 'no', what additions do you believe should be made to the principles contained in the SIP?

Paragraph 4: CAP supports the replacement of 'options' with 'all potential debt relief solutions' available in paragraph four. This is important to ensure that the debtor can make an informed decision about entering an Individual Voluntary Agreement (IVA). However, the aim of this should not only be to allow for judgement of whether the IVA is 'an appropriate solution', but whether it is 'the **most** appropriate solution'.

Paragraph 7: Explanation of the consequences of the IVA is incredibly important and the revised version of paragraph seven is welcome. However, this should also include the consequences for, and obligations of, all parties if the IVA fails or is terminated, or if the client experiences further financial difficulty and incurs debt outside of the IVA as a result. This information is integral to allow the debtor to understand how the IVA interacts with their circumstances on an ongoing basis, and should be tailored to the debtor's circumstances including their asset position and timeline of how the IP fees will be levied over the course of the IVA.

The revisions made in paragraph seven could also be further strengthened by being brought in line with the expectation of FCA-regulated firms that communications should be 'fair, clear and not misleading'.

3. Do you believe that the revised version of SIP 3.1 identifies the key compliance standards?

No.

CAP broadly supports the revisions made to SIP 3.1 which significantly strengthen the protections for debtors and rightly set out clear responsibilities on the range of actors and roles within the IVA process. In particular, there are many helpful and important additions to the advice given to the debtor and information included within the proposal which CAP strongly supports. In addition to the revisions set out, a range of further changes would be welcome, especially to improve correspondence with the supervisor, the timeliness with which the certificate of termination is issued, and assessments of debtors with marginal surplus income. The specifics of these points are set out in response to question four below.

4. If 'no', what additions do you believe should be made to the key compliance standards contained in the SIP?

Additional changes proposed to the key compliance standards:

Standards of general application

Advice to the debtor

Paragraph 11: 'Assessing the options available' should be replaced with 'all potential debt relief solutions' as done in the principles to make clear that this refers not only to options offered by specific firms.

In addition, it should be a requirement to prominently advise that free and independent advice can also be sought from debt advice organisations who are not bound by a statutory obligation to balance the interests of debtors and creditors. Contact information for such organisations, or for the Money and Pensions Service, should be directly provided to debtors as part of the advice process.

There should also be explicit provision to ensure that where the advice to the debtor includes setting out a comparison of the costs of different solutions, this is clear, understandable and not misleading. This information should clearly represent and distinguish between the upfront costs to the debtor, fees paid from creditor contributions and implications of assets being realised.

Furthermore, it should be stated that the full set of advice listed in this section is provided in a 'durable medium' so that the debtor has a record and can refer back to information as needed.

Assessment

Paragraph 16: It should be clarified that the expectation is that a system is in place to record calls for monitoring purposes, and that the 'contemporaneous note' option is to be applied in exceptional circumstances where call recording has failed and should not be relied upon as a normal means of record-keeping.

Paragraph 16(d): When assessing whether the debtor is likely to fulfil their obligations for the duration of the IVA, IPs should be required to have explicit regard to lower

income debtors who have marginal surplus income. These debtors are at higher risk of small changes of circumstances affecting the viability of successfully completing the IVA. It would be prudent to consider the stability of a debtor's circumstances and stress-test the appropriateness of an IVA in light of the likelihood of changes in circumstances. The IP should deem an IVA unsuitable for individuals without sufficient resilience to suggest successful completion.

Documentation

Paragraph 16(c): At present, documented reasons for not wishing to pursue other debt relief options can be subjective and not tailored to the specifics of a debtor's circumstances. This provision could be strengthened to address this by requiring documentation to include 'comments made by the debtor, and **objective and specific reasons** why an IVA is the debtor's preferred option **in light of their circumstances**'.

Standards of specific application

Initial advice

Paragraph 19(a): When explaining the role of the advisor, debtors should be made aware that they can also seek free independent debt advice before progressing any further with an IVA proposal. The debtor should be provided with contact details to FCA-authorized debt advice organisations or a link to the 'Where to get free debt advice' page on the Money Helper website. This should be accompanied by a clear explanation of the difference between independent advice from an FCA-authorized advisor and the impartial advice provided by an IP without this authorisation.

Paragraph 19(e): The 'date on which an IVA proposal is issued' is ambiguous and does not make clear whether this is a proposal for the debtor to consider or if this refers to the date the proposal is issued to creditors. The requirement should be to provide the specified explanations to the debtor **before** the date the IVA proposal is issued to creditors, giving sufficient time for the debtor to take this into account and make an informed decision about entering into an IVA.

Preparing for an IVA

Paragraph 20: In addition to the procedures set out, there should be an expectation that when preparing for an IVA, the IP has procedures in place to create a financial statement that is 'accurate and realistic and must present a sufficiently clear and complete account of the customer's income and expenditure, debts and the availability of surplus income; and state any fees or charges being made by the firm.' The Standard Financial Statement (SFS) should form the basis for this assessment.

Paragraph 20(c): The information obtained and presented in the nominee report should take a holistic view of the role of the debtor, creditors and the IVA in allowing the debtor to avoid the recurrence of their financial difficulties. This should take a holistic view of the circumstances that resulted in the initial financial difficulty arising, especially where this was outside of the debtor's control or as a result of vulnerable circumstances, and

how the IVA will support the debtor in continuing to maintain and improve their financial wellbeing.

The proposal

Paragraph 23(d): In addition to the role and powers of the supervisor, it would be extremely beneficial to set out the details of how the debtor is to correspond with the supervisor and in what circumstances they should get in touch. This is crucial because of the central role the supervisor plays once the IVA is in place, which is often little understood by the debtor.

The supervisor

Paragraph 25(d): The compliance standards should give further guidance about what constitutes appropriate actions that should be taken by the supervisor where there is a departure from the IVA terms. Supervisors can be slow to act when payments are missed and do not proactively engage with the debtor to get the IVA back on track or reviewed.

Furthermore, there should be provision made to require supervisors to liaise directly with third parties such as debt charities where a debtor has requested a third party to give them guidance under the terms of the Protocols. This would assist debtors who need to consider if an IVA remains the most appropriate solution where their circumstances have changed or the IVA agreement is no longer sustainable to them, and the pressure of financial difficulty or their vulnerability makes it difficult for them to engage directly with the supervisor. This could be limited to providing information to assist the third party in advising the debtor, so as not to circumvent the obligations of the supervisor.

Paragraph 25(j): There should be a much shorter time frame after the completion of the IVA in which the supervisor must issue the completion certificate, for example 21 days. This should also apply to Certificates of Termination which can be difficult to secure from supervisors and needed with greater expedience where a debtor needs to access an alternative debt solution.

Where a debtor may need to access another form of debt solution soon after the completion or failure of an IVA, this is unreasonably delayed if the completion certificate is not issued in a timely manner and six months is too long to leave people without appropriate solutions to address potential financial difficulties. If all parties agree that the IVA has failed, the Certificate of Termination should be required to be issued within 21 days.

5. Do you believe that the revised version of SIP 3.1 sets out adequately the key compliance standards required in relation to an IVA where there is involvement of the services of introducers, and in particular lead generators and debt-packagers?

No.

CAP strongly supports revisions being made to SIP 3.1 to address the role of lead generators and debt-packagers in the current IVA market context and that there will be a clearer audit record of the source of referral. In addition to IPs keeping record of the advice provided by a lead generator, they should also have a responsibility to satisfy themselves with the advice given by lead generators and debt-packagers.

6. If 'no', what additions do you believe should be made to the key compliance standards contained in the SIP?

Paragraph 18: In addition to the provisions added under paragraph 18, IPs should have a clear responsibility for due diligence to ensure that they are satisfied that the actions of the lead generator would meet the expectations set out in SIP 3.1 for conducting advice and assessments, and the information that must be given to the debtor. Where lead generators are performing part of the IVA process as detailed in SIP 3.1 for the IP, it is reasonable that in delegating this responsibility, the IP ensures that the lead generator acting on their behalf meets at least the minimum expectations that would be undertaken by the IP themselves if this aspect had been done in-house.

About Christians Against Poverty (CAP)

Christians Against Poverty (CAP) is a Christian charity tackling poverty in communities across the UK through free debt help and local community groups. CAP provides award-winning free debt help through local churches. Each church's CAP Debt Centre offers emotional and practical support, while our head office team in Bradford provides bespoke debt advice and a plan to help people get out of debt.

CAP also offers community groups dedicated to tackling poverty at the root. These are run through local churches, and cover topics such as interview skills, applying for a job and writing a CV, how to budget, making money go further and key life skills.

Requests for further information

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