Guidance

Coronavirus (COVID-19) Guidance for the Straightforward Consumer IVA Protocol

Updated 7 September 2020

Contents

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1. Introduction

This guidance has been drafted with the agreement of the IVA Standing Committee. From 20 April 2020, the Straightforward Consumer IVA Protocol should be read in conjunction with this guidance.

The IVA Standing Committee recognises that the COVID-19 pandemic may have a direct impact on a consumer's circumstances and that it may not be possible for some people to meet their obligations under the existing terms of their IVA. In addition, the pandemic may affect the sustainability of any new arrangements.

This guidance allows for flexibility to be applied to IVAs which are already being supervised and were drafted in accordance with the current protocol or previous versions by the IVA Standing Committee and new IVAs that are drafted from 20 April 2020.

Where IPs are faced with an individual case that falls outside this guidance the existing terms of the IVA apply.

The period for which this guidance applies will commence on 20 April 2020 and continue until 20 October 2020, the guidance will be regularly reviewed by the IVA Standing Committee during this period and may be extended past the date above or be removed before that date.

Update: Reviewed and published on 7 September 2020: The IVA Standing Committee have agreed that this guidance should be amended. All amendments have been inserted under the relevant paragraph. It has also been agreed that this guidance will now be extended until 20 April 2021.

The intention of this guidance is to support consumers to enable them to continue with their IVA throughout the COVID-19 pandemic with a sustainable payment plan. Supervisors must be mindful of the impact any payment break and/or payment reduction will have on the funds owed into the arrangement and ensure they make the consumer aware of how, if granted, the shortfall will be paid. Where possible a reduction in payments may be more favourable than a payment break to reduce this burden.

2. New IVAs

1.1 If an IVA is being proposed due to financial distress because of the COVID-19 pandemic, this and the sustainability of the arrangement should be explained in the proposal.

1.2 Insolvency practitioners should be particularly mindful of the source of introduction of any new consumer and any advertisements responded to by the consumer. Insolvency practitioners should ensure that any referral of work is from a source that has provided appropriate advice taking into account the consumers particular circumstances, prior to putting forward a proposal for agreement with their creditors.

1.3 Income from Government backed financial support schemes during the COVID-19 pandemic can be included in the proposal as income. The proposal should explain how the IVA will remain a sustainable option for the consumer when this income is no longer available.

1.3a Dear IP 105 contains further guidance on how Government backed financial support schemes should be treated.

1.4 Where creditors reject a proposal, which sets out that an IVA is required due to circumstances relating directly to the COVID-19 pandemic and the creditors believe another solution is more suitable in the short term, they should inform the nominee who should direct the consumer to alternative advice and options.

3. Existing IVAs

1.5 The purpose of this guidance is to try and ensure that mass variations of IVAs should not be required. Variations may be necessary on individual cases in some circumstances where the changes do not fall within the provisions set out in this guidance and will be subject to SIP9 provisions.

1.6 The supervisor should ensure that information about any changes to the terms of the IVA, once the pandemic has ended, are clearly communicated in writing to the consumer.

1.7 If a consumer is faced with an emergency item of expenditure or an unforeseen reduction in income because of the COVID-19 pandemic and they are unable to pay either the full amount due under the terms of the IVA or anything at all then, subject to the discretion of the supervisor, they may be allowed to reduce payments by up to 25% and to take payment holidays for up to 3 months without a variation being required and in addition to any pre-existing terms already contained in the protocol.

1.7(a) From 7 September 2020, and subject to the discretion of the supervisor, the consumer may be allowed to reduce payments by up to 50% and to take payment holidays for up to 6 months.

1.7 (b) Any payment reduction or holiday should be granted initially for a maximum of 3 months followed by a review by the supervisor. A further 3 months may then be granted. The review should consider whether a return to payments at a reduced rate (as per 1.7(a)) is possible prior to agreeing an additional payment break. The supervisor should document the reasons for the continuation of the payment reduction or break and the supervisor’s assessment of the longer-term sustainability of the IVA.

1.8 This is subject to the following conditions, all of which must be met:

(i) Details of the inability to pay should be provided to the supervisor.

(ii) In total, no more than the equivalent of 3 months payments can be agreed to be missed in this way unless agreed with creditors on an individual case basis at the discretion of the supervisor.

(iii) Any proposed reduction in payment must be sustainable for the consumer and the consumer must be made fully aware that the shortfall will be included in future payments.

(iv) That the duration of the IVA will not need to be extended by more than 12 additional months as a result of the use of this COVID-19 Guidance, in total. An extension will not be required where the consumer has otherwise made good the shortfall.

(v) Creditors should be informed of the payment reduction or break as soon as practicable once it has been agreed with the consumer.

1.8(a) paragraph 17(a) amends 1.8(ii) replacing 3 months with 6 months.

1.9 Any payment holiday as a result of the COVID-19 pandemic is in addition to any payment breaks already allowed under the terms of the IVA and will not affect the ability of an individual to request further payment breaks in accordance with the terms of the IVA (paragraph 10.8 of the protocol). A consumer who has already exhausted their 9-month payment holidays as part of their protocol IVA terms should also be afforded the opportunity to have an additional 3 months if appropriate.

1.9 (a) 3 months is amended to 6 months.

1.9(b) If a consumer has previously been in arrears or had a break from payments the supervisor must explain to that consumer that any additional payment reductions or breaks will need to be affordable as part of their arrangement. The supervisor should document their reasons for agreeing the payment reduction or break and the plan for repayment of the shortfall.

1.10 Where the consumer is unable to remedy a breach of the arrangement, and that breach can be shown to be as a direct result of the COVID-19 pandemic (for example, the loss or reduction of income) the supervisor may use their discretion to suspend the issue of a breach notice as set out in 10.9 of the protocol. The supervisor should report this suspension to creditors within 28 days, citing the reason as the COVID-19 pandemic. The supervisor should work with the consumer to decide the best course of action.

1.11 Paragraph 10.4 of the protocol should not apply to critical workers' overtime during the COVID-19 pandemic. A critical worker is defined by the list published (https://www.gov.uk/government/publications/coronavirus-covid-19-maintaining-educational-provision/guidance-for-schools-colleges-and-local-authorities-on-maintaining-educational-provision) by the Government and determined by the employer. Additional proof of critical worker status may be required by the supervisor.

1.12 No attempt should be made to realise a consumer's home equity under paragraph 9 of the protocol during the pandemic unless the consumer agrees to proceed. The supervisor will retain the discretion to extend the IVA for up to 12 months in order to allow the consumer to complete their IVA. Voluntary release of equity can continue to be included in new proposals.

1.12 (a) If the impact of the pandemic means that the consumer is unable to release equity which they may otherwise have been able to (this may be due to the consumer taking a break from their mortgage payments) then consideration should be given by the supervisor to use their discretion to add an additional 12 months of payments to the arrangements. The supervisor must also factor in any missed/reduced payments under this guidance and provide a breakdown to the consumer on the number of additional months and the level of payment to ensure it is affordable.

1.13 The supervisor has discretion, in relation to whether any redundancy payments in excess of six months net take home pay are required to be brought into the arrangement as set out in clause 10.6 during the duration of the pandemic.

1.14 The consumer should be explicitly told that they may have to include an amount that has been paid by way of redundancy into the arrangement in future, if the supervisor decides to use that discretion.