

# **Individual Voluntary Arrangements: A Solution to Debt?**

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**A report by Derbyshire Citizens Advice Bureaux**

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DERBYSHIRE CABx  
IVA REPORT

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## EXECUTIVE SUMMARY

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The original purpose of an IVA was to provide flexibility to individuals in business who, had they been made bankrupt, would have had to cease trading. IVAs are, however, increasingly seen as a solution not just by company directors, professionals and traders, but also by consumers with household debt problems.

### **The problem:**

*The Derbyshire CABx explored two areas of concern:*

1. The representations made in advertisements used by debt-management companies to encourage consumer take-up of IVAs, and the control exercised by the Advertising Standards Authority (ASA) over such representations.
2. The accuracy of advice by IVA firms, and the appropriateness of an IVA for some individuals.

### **Advertising of IVAs**

*The report identifies three phrases commonly used in IVA advertisements:*

“FREE & IMPARTIAL ADVICE”... A client of the Derbyshire CABx provided evidence that he had contacted an IVA company purely on the strength of the representations made in their advert. Although the company did not charge him anything for the telephone call, the overall fees charged for the IVA were £10,000, of which £8,500 was paid over the first 18 months with nothing contributed to the creditors.

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A second client of the CABx believed that the IVA was free to set up and he was not informed of any fees. It was only twelve months later, when the IVA had failed, that he became aware of the charges and was disappointed to find out that he had only paid fees up to that point and nothing towards his debts.

The Advertising Standards Authority (ASA) received a complaint about 'Debt Free Direct' that the claim "it won't cost you a penny" was misleading as it implied that there were no costs associated with an IVA. The ASA concluded the claim was misleading.

The Derbyshire CABx conclude that the accuracy of the wording "impartial advice" should be further investigated, given the number of IVAs seemingly inappropriately promoted over other debt solutions.

"WRITE OFF 75% DEBT"...In 2007, the ASA upheld complaints against several companies who, it was alleged, were being misleading in stating this. The ASA found that although a small number of debtors were able to write off 75% - 80% of their debt, there was no evidence to suggest that significant proportion of consumers could do so. The advert exaggerated the benefits of an IVA and was misleading. From the primary evidence gathered, it appears that the general practice is to write off between 45-65% of the debt.

"USING LITTLE KNOWN GOVERNMENT LEGISLATION"...Quite simply, the IVA is a type of debt-management tool introduced by statute (Part VIII of the Insolvency Act 1986 as amended by the Insolvency Act 2000). Debt-management

companies, however, often cite this slogan without explanation but with, it is argued, an inference that there may be some sort of associated government funding.

### **Accuracy of advice**

The majority of clients whose cases were used for the report had failed IVAs; in most cases there were more appropriate options available to them, such as bankruptcy.

IVAs are often portrayed as a less stigmatic alternative to bankruptcy. This is, however, far from the only consideration in deciding the most appropriate debt solution for the client. Often the disadvantages of an IVA far outweigh the benefits.

An IVA will usually encroach upon the debtor for 60 months, whilst the usual practice in bankruptcy is for the debtor to be discharged after 12 months.

Notice of the IVA will be registered on the public Insolvency Registry as would notice of a bankruptcy.

Unless the creditors agree that the debtor's home should be excluded from the arrangement, it is likely that in the fourth year of the IVA the individual will have to release the equity in the property through a re-mortgage, secured loan or sale.

In many cases clients were offered an IVA when this was not the most appropriate solution for them:

Case 1: A client on a retirement pension with no property or other capital assets and debts over £40, 000 had repayments on his IVA set at £650 per month, leaving him with little spare income to meet everyday expenses.

Case 2: A couple, with one client in receipt of Incapacity Benefit and the other not in regular employment, had debt problems. The couple had no capital assets and a total disposable monthly income of £30. The IVA payments were set up at £209 per month. Their IVA company told them (incorrectly) that bankruptcy was not an option.

Case 3: A client's IVA company failed to inform him of a term of an IVA, that his property would need to be sold or re-mortgaged in the fourth year to realise the debtor's beneficial interest in it. He was also unaware that the failure of the IVA would be likely to result in bankruptcy.

### **Conclusion**

Derbyshire CABx identified a number of recurrent problems with IVA companies.

These included:

1. The lack of clarity (in advertisements) that the IVA will incur set-up and administration fees, which will be paid before the creditors receive any payment.
2. Neglecting to inform home-owners that their property would have to be sold or re-mortgaged in the fourth year to release the equity.

3. Failure to ensure clients clearly understood the disadvantages of entering into an IVA compared to other options such as bankruptcy.

**Recommendation**

Based on the evidence gathered for this report, the intended voluntary code of conduct does not, at this time, go far enough to ensure best practice. In particular, it is suggested that when individuals are not seeking independent advice in addition to the advice being given by the debt-management company, AND the company has not recommended that such advice be sought, then the company should assume a greater duty for the individual so as not to mislead or misrepresent the nature of the IVA.

In the current financial climate it is imperative that, both locally and nationally, responsible bodies undertake initiatives to ensure that consumers are being informed of the whole story before undertaking to enter into an IVA.



## **THE PURPOSE OF THE REPORT**

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1. This report has been produced by the South Derbyshire Citizen's Advice Bureaux with the assistance of county-wide CABx.
2. The general topic of individual indebtedness and debt management is of obvious importance but is too wide a topic for consideration in this report
3. Instead, this report focuses on the problems experienced by individual debtors/users<sup>1</sup>, who have been encouraged to enter Individual Voluntary Arrangements (hereafter IVAs), when an alternative debt management solution would have been more suitable.

## **THE PROBLEMS**

4. This report identifies two areas of concern. In the first instance, it discusses the manner in which IVAs have been promoted and advertised by debt management companies on television.
5. In the second, it goes on to examine and evaluate the advice given and information conveyed by such companies to the debtors.

## **METHODOLOGY**

6. The submissions made in this report are quantified by the primary evidence gathered from users of the CABx across Derbyshire throughout 2007.
7. From this information, the CABx were able to conclude 'why' users were inclined to enter an IVA instead of an alternative debt solution (advertisement), and 'how suitable' in real terms, the IVA was for the user (implementation).

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<sup>1</sup> The term 'debtor' and 'user' are used interchangeably.

8. Secondary evidence has been gathered from internet sources including ‘The Insolvency Service’ website to provide a background to the IVA and to examine the reaction and recommendation to such problems by other bodies.
9. From an examination of both sources, the CABx are able to show that this is a prevalent issue within Derbyshire.

### **SUMMARY OF REPORT**

10. In the first chapter of this report, a general introduction is given as to what an IVA is and how it works, and in the last chapter, the report concludes its findings and submits recommendations to improve this sphere.
11. In chapter two, this report discusses the advertisement of IVAs and how accurate the representations made prove to be in real terms to the debtor.
12. The report’s findings demonstrate the steps already taken by the ASA to curb the use of “misleading” terms, and what further measures are deemed as necessary by the Derbyshire CABx.
13. In the third chapter, this report shows how individual debtors are being encouraged by the companies to enter an IVA when the individual does not have a sufficient monthly income to maintain the IVA and in light of which, petitioning for bankruptcy would have been more appropriate.
14. The report then examines the reaction from other bodies, such as the British Bankers’ Association (BBA) and the implementation of voluntary regulation such as the ‘IVA Protocol’. Despite these initiatives, the report concludes that the measures do not go far enough as companies will still be at liberty to promote IVAs against what is ‘right’ for the particular debtor.

## CHAPTER 1 - THE IVA

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*“The latest figures show that the rise in the number of people entering IVAs continues at an astonishing pace”.*<sup>2</sup>

### **The Insolvency Act 1986**

15. The IVA is a type of debt-management tool introduced by statute under Part VIII of the Insolvency Act 1986, as amended by the Insolvency Act 2000.
16. The original consideration behind the implementation of the IVA was to aid entrepreneurs, traders and professionals who would otherwise have been prevented from continuing in their specific business had they been adjudged bankrupt.<sup>3</sup>
17. Given this, it can be assumed that Parliament’s intention was to resolve the debts incurred by business failings, and not to resolve the everyday debts incurred by individual consumers who have managed their finances badly and who have spent beyond their means.
18. However, although IVAs were introduced to provide flexibilities to individuals in business, “it is accepted that IVAs are no longer used by the groups envisaged... (company directors, professional and traders)” but by consumers who have simply overstretched themselves.<sup>4</sup>

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<sup>2</sup> Steve Treharne, Head of Personal Insolvency at KPMG, The Times, 3 November 2006

<sup>3</sup> Paragraph 22, The Insolvency Service report “Proposed Changes to ICAs...” May 2007

<sup>4</sup> Ibid. Para 31

**Setting up an IVA**

19. An IVA is a legally binding agreement establishing how an individual or couple, as opposed to a partnership or company, will pay back their creditors.
  
20. It is intended for those individuals with **unsecured** debts of £15,000 or more such as credit cards and store cards and does **not** include any loans secured against their property.
  
21. There is no upper limit to the proportion of debt that can be written off but it would be unlikely and contrary to sound business practice that any creditor would agree to a return of 10% against the true value of the debt. From the primary evidence gathered, it appears that the general practice is to write off between 45-65% of the debt.
  
22. The individual debtor prepares a set of proposals to clear all or part of the debts, based on their disposable monthly income and providing details of their assets versus their liabilities.
  
23. A formal proposal is then put to the creditors and will be administered by a legally qualified Insolvency Practitioner (hereafter IP) who will then inform the court of the proposal and whether in his or her opinion it is of sufficient merit to call a meeting of the creditors.
  
24. If a meeting is to be held, the date of the meeting and details of the proposals are sent to the creditors. A meeting will be held with all the person's "identified" creditors, who will then vote on whether to accept the terms of the IVA proposed.

25. If enough creditors (over 75% in value of the creditors) vote in favour, the proposals are accepted. They are then binding on all creditors who had notice, or were entitled to receive notice, of the meeting including the remaining 25% who may not have agreed.
26. The individual has a duty to disclose full particulars of their finances and importantly, if there are existing creditors who have **not** been given notice of the meeting but **should** have been given notice, then they will **not** be bound by the IVA, and will be at liberty to pursue the debt separately.
27. The IP will notify the Secretary of State of the approved IVA, which will then be recorded on the Individual Insolvency Register. This is a register held in the public domain on the Insolvency Service website and can be accessed by any individual.
28. If a debtor is at risk of imminent court action from a creditor, an interim application may be made to the court to safeguard this whilst awaiting the outcome of the creditors' meeting. However, the Insolvency Act 2000 removed the requirement for an interim order to be obtained in all cases.

### **The relevant costs**

29. IVA companies make their profits primarily from fees charged to debtors for drawing up the IVAs, plus management fees over the course of the IVA.<sup>5</sup>
30. No public funding or legal aid is available in these cases and the individual may be made to pay set-up fees in full and upfront

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<sup>5</sup> [www.channel4.com/money](http://www.channel4.com/money)

31. Many IPs will offer an initial free meeting to look at whether an IVA is suitable in your situation. From the primary evidence gathered for this report, such ‘meetings’ have been carried out over the phone with set questions put to the debtor.
32. Some IPs will only accept payment of their fees up-front. Other IPs will allow you to pay the fees as part of the monthly payments over the term of the IVA<sup>6</sup>, with the costs are taken out of a percentage of what it paid each month.
33. After the initial set up fee, there are continuing supervisor fees for preparing a mandatory annual report for the debtor’s creditors. This can give a total cost between £4,000 and £10, 000 for the implementation and supervision of the IVA.

### **The suitability**

34. Underpinning the success of an IVA is whether the individual has a long-term disposable monthly income to contribute to the arrangement or a lump sum to put. Clearly however, it is entirely unsuitable for individuals who do not receive a regular and sustainable disposable income.

### **The effect on the debtor**

35. IVAs are often portrayed as a less stigmatic alternative to bankruptcy for a number of reasons, including the fact that an un-discharged bankrupt will be severely restricted in their ability to deal with their finances.

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<sup>6</sup> EzineArticles.com/expert, Michael\_Sherriff

36. Furthermore, the making of a bankruptcy order against an individual will restrict that individual from continuing in certain capacities and employment posts and a notice of a bankruptcy is advertised in a local or national paper and may therefore entail the denting of the individual's reputation.
37. However, balanced against the disadvantages of bankruptcy are important considerations including the fact that an IVA will usually encroach upon the debtor for 60 months whilst the usual practice in bankruptcy is for the debtor to be discharged after 12 months. An extension may also be granted following a period of default after which the creditors agree not to petition for bankruptcy.
38. Also, the aforementioned Insolvency Service, which is held in the public domain, will contain entries of both IVAs and bankruptcies.
39. The IP is under a duty to investigate and realise the following assets, and without them, creditors will be unlikely to agree to the IVA in the first place:
40. *As a homeowner...* Unless the creditors agree that the family home should be excluded from the arrangement, it is likely that in the fourth year of the IVA, the individual will have to release the equity in the property through a re-mortgage or secured loan. It is standard for IVA agreements to include a clause that the individual will get the property valued after a set number of years with a view to giving all or most of the equity in the house to the creditors. Such a measure will **not** affect any interest held in the property by a spouse or co-owner.

41. *Other capital assets*...If the individual does not have an interest in property or there is no equity, then the IP can look to other available assets. These can include endowment policies and other insurances and even collectibles & antiques. Such assets can then be realised for the benefit of the creditors.
42. *Credit-rating*...Notice of IVAs is held on the credit reference agency files for 6 years. The IVA is marked "complete" when the IP supervising the IVA conveys this. During the IVA, the ability to obtain credit should be difficult but once a 'certificate of satisfaction/completion' is registered, the credit rating will return to zero and the individual will, in essence, have to start over.

#### **The consequences of failing an IVA**

43. Joel Lewis, spokesperson for the Consumer Credit Counselling Service (CCCS), "the consequences of failing an IVA are fairly grim. If you have squeezed your finances to get onto the IVA but can't make ends meet after a year, then you'll have spent a very unpleasant and penniless 12 months for no benefit to anyone, except the IVA company."<sup>7</sup>
44. Failure to adhere to an IVA means that the individual becomes responsible for payment of the debt in full and this could mean that creditors petition for the individual's bankruptcy. The IVA may be deemed as "failed" with as little as 2 months default. The key to minimising the risk of bankruptcy is to keep in constant communication with the IP throughout the IVA.
45. Of course, it is possible that an IVA could aggravate an individual's debt difficulties, because although it may substantially reduce the amount of your overall debt, that amount has to be cleared in full, and this can take a long time

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<sup>7</sup> [www.channel4.com/money](http://www.channel4.com/money)



## Statistics

46. The latest statistics produced by the Insolvency Service<sup>8</sup> show that there were 26,072 individual insolvencies in England and Wales in the third quarter of 2007, which was made up of 15,833 bankruptcies (an increase of 2.2% on the corresponding quarter of the previous year), and 10,239 IVAs. These figures do not include the number of administration orders made.
47. The statistics for the third quarter of 2007 do reveal a decrease in the number of IVAs by 4.3% on the previous quarter and a decrease of 14.3% on the corresponding quarter of the previous year.
48. However, R3 – The Association of Business Recovery Professionals, says that “the cause of this drop in the number of IVAs is a result of impossible hurdle rates set by creditors, rather than a decreased demand for them among debtors”.<sup>9</sup>
49. The Insolvency Practices Counsel reports that “there are at present no comprehensive statistics available covering the success or failure rates of many of these arrangements and no consistent or agreed standards of "best advice" complied with by the various types of debt advisers”.<sup>10</sup>

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<sup>8</sup> [www.insolvency.gov.uk](http://www.insolvency.gov.uk) as of 11 September 2007

<sup>9</sup> [www.r3.org.uk/news](http://www.r3.org.uk/news) - 03/08/2007

<sup>10</sup> [www.publications.parliament.uk/pa/cm200607/cmpublic/tribunals/memos/ucm902](http://www.publications.parliament.uk/pa/cm200607/cmpublic/tribunals/memos/ucm902)

## CHAPTER 2 - ADVERTISING & ACCURACY

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*“It’s incredibly misleading. All these promises about how much debt is going to be wiped out. It’s very misleading. I’m not saying advertising is wrong per se, but I think the controls need to be a lot more stringent”<sup>11</sup>*

### **The problem**

50. The alleged problems with advertising campaigns (hereafter ‘ads’) of some of the major debt management companies were highlighted through the primary evidence gathered by the Derbyshire CABx and from general observation of such ads.

51. This was namely that the companies were exaggerating the benefits of entering an IVA, through the following:

- **“free and impartial advice”,**
- **“Using little known government legislation...”**
- **“write off 75% debt”,**

52. The obvious concern is just how accurate such statements prove to be in reality, and whether an individual will be inclined to undertake an IVA on the strength of these potentially inexact representations.

53. This chapter reviews the primary evidence collated by the Derbyshire CABx and concludes that the clients in question had entered into IVAs because of the representations, which turned out to be vastly different to how the clients had interpreted the representations.

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<sup>11</sup> [www.iva.co.uk/media\\_coverage-](http://www.iva.co.uk/media_coverage-) IVA.co.uk Debt Debate on Monday 4<sup>th</sup> February. Rachel 2008, comment by Rachel Lacey, Editor of MoneyWise

54. This chapter goes on to name several debt-management companies but the report asserts that the inclusion of such companies is a direct result of the information provided on the ASA and OFT website, and from the data collated from users of the CABx who have direct experience with the named companies.

### **Regulation**

55. The advertisement of IVAs, like other ad campaigns, is regulated by the Advertising Standards Authority (ASA) and Office of Fair Trading (OFT), which maintain a reactive rather than proactive check on the companies.

56. A complaint can be made to the ASA regarding the advertisement of products in publications, posters, and radio or television campaigns. If the ASA decide to take action, they can informally resolve it or take the further step of adjudicating the matter. The results this report relies on are the “adjudications” of the ASA, which rule that certain adverts cannot continue to be broadcast in their current format.

57. In brief, The BCAP (Codes of Advertising Practice-Broadcast) advertising code states that “no advertisement may directly or by implication mislead about any material fact or characteristic of a product or service, and an advert is misleading if it is likely to deceive those who see it and as a result of that deception, is likely to affect consumers' economic behaviour”.

58. Of the 3 statements highlighted, the following conclusions can be made:

#### **“Free and impartial advice”**

#### **“Free”**

59. Adverts must not describe an offer as ‘free’ if there are costs to consumers other than actual postage or carriage, non-premium rate telephone charges or reasonable travel required to collect the offer. Advertising must make

clear the extent of the consumer's liability for any costs. No element of an offer may be described as 'free' if viewers are likely to be misled as to whether it is genuinely additional to the offer.

60. Although the telephone number is free to ring and the individual will not be charged for the advice given at that initial stage, there are significant fees involved in the setting up and supervision of an IVA, which can either be charged as an upfront fee or incorporated and paid out over the first period of the IVA.

*Primary evidence*

61. In 2007, a client of the Derbyshire CABx provided evidence that he had been induced into contacting a particular IP purely on the strength of the representations made in their advert. Although this user was not charged anything by the company for the telephone call and advice, the overall fee charged for the IVA was some £10, 000, of which £8, 500 was paid over the first 18 months with nothing contributed to the creditors.
62. A second client of the CABx, who used the same firm, believed that the IVA was free to set up & was not informed of any fees. It was only 12 months later, when the IVA had failed, that he became aware of the charges and was obviously disappointed to be told by an adviser that he had only paid fees to that point and nothing towards his debts.
63. It is anticipated that the phrase is sufficiently accurate to the extent that the telephone numbers quoted are free-phone numbers and that the advice given over the telephone at that point is not charged for.

*Recommendation*

64. It is anticipated that the phrase is sufficiently accurate to the extent that the telephone numbers quoted are free-phone numbers and that the advice given over the telephone at that point is not charged for.
65. However, although the ASA have not adjudicated on this point when it was raised in a consumer complaint, the conclusion for the Derbyshire CABx is that there remains a risk that individuals will be misled as to the full extent of fees, which will be payable if they choose to enter an IVA.
66. This report would recommend that the wording is amended to reflect clearly that beyond the initial free-phone telephone call, significant fees **will** be incurred.

***“Impartial”***

67. Through comparing the content of the radio and television ads against the actual debt solutions offered by the company websites, this report has observed that “Debt Free Direct”, “Accuma”, “YourClear” and “The Debt People”(although not “Money, Debt & Credit” or “W3 Debt Solutions”), offer advice on debt consolidation loans and bankruptcy as well as IVAs.
68. The concern is that more suitable alternatives are not being explored by firms, and in some cases, debtors are being explicitly but incorrectly told that bankruptcy would be inappropriate.

*Primary evidence*

69. The Derbyshire CABx have collated a number of general comments from clients, who state that no alternative debt management solutions were offered or advised upon by debt management companies.
70. It was established with one client that the IP had not advised on any alternative debt solution and in fact, had advised against bankruptcy, quoting in the proposal that the return on bankruptcy would be nil.

71. This particular client had no capital assets and no means of paying the debts back at the rate proposed of £650 per month. His monthly income comprised a DLA component of £460 per month.
72. The inclusion of the DLA payment within the client's 'income' is problematic for two reasons. First of all, the impetus for any DLA payment is not as an 'income replacement' but to cover the costs of having specific disability needs, care and living requirements. This client was in receipt of the maximum allowance, therefore indicating that his needs were deemed significant enough to warrant this level of payment.
73. The report objects to the inclusion of DLA as income for disposal under an IVA and it removes the debtor's ability to provide for their particular disability and the whole intendment of DLA is then undermined. A further question raised is how qualified an IP is in deciding what proportion of DLA payment could be directed as an income.
74. The second point is that according to the general experience of the Derbyshire CABx, DLA is not considered as 'income' for the purpose of bankruptcy. Although DLA will be recorded as an income when assessing the financial status of a bankrupt, it will then be off-set against the costs incurred on a monthly basis as a result of the disability.
75. In fact, when the IVA failed for this particular client and a bankruptcy order made, the Trustee in the bankruptcy concluded that "nothing" could be paid back in the bankruptcy. This confirms that DLA should not have been considered as income for this client.

*Recommendation*

76. This report is not categorically asserting that it is never appropriate to consider DLA as an income 'in itself' but it does conclude that there needs to be parity between the treatment of DLA under bankruptcy and under an IVA.

77. The duty to disclose it obviously exists in both cases but the actuality of it as a disposable income should be examined and accurately off-set against the debtor's disability needs.

78. It is submitted that such inconsistent treatment of DLA is to be criticised as it would seem to be in contradiction to the purpose of DLA as a benefit.

*Further primary evidence*

79. Information from a second client, also in a failed IVA with the same firm, was that a debt management plan was not offered. Bankruptcy was mentioned but only to highlight that the client would be better off going for an IVA, which was probably not accurate on the facts given in this case.

80. In a third and fourth example from separate clients who had failed IVAs with a different firm, neither individual was offered an alternative debt solution.

81. A fifth client of the CABx submitted that no alternatives were explored by their IP and that she was told explicitly not to petition for bankruptcy, when the CABx concluded that it would have been the most appropriate course.

*Recommendation*

82. The report concludes that the wording "impartial" advice is simply not accurate when the majority of the companies explored do have the facilities to offer alternative solutions where suitable, but they are failing to investigate fully and promoting IVAs in unsuitable circumstances.

83. Remembering then that debt-management companies are a profit-making entities, there is a strong suggestion that IVAs have been promoted ahead of bankruptcy on the basis that higher fees can be recovered from the former.

84. From the evidence collated throughout the Derbyshire CABx, it is hoped that the ASA review the use of the word “impartial” and at the very least, that the adverts are amended to highlight that alternative debt solutions are available and will be explored.

**“Using a little known piece of government legislation”**

85. The Derbyshire CABx concern over this wording is that the consumer may be inclined to believe that the government will provide some form of fiscal relief or grant to debtors who enter an IVA ahead of petitioning for bankruptcy.

*Primary evidence*

86. Having spoken directly with 2 debt-management companies who offer IVAs, it can be submitted with confidence that this wording refers only to the fact that IVAs are statute-based and there is no financial assistance offered by the government.

*Recommendation*

87. The ASA have not adjudicated under this head but this report concludes that this wording should be removed completely from the adverts because although it refers solely to the legislative context of the IVA, it actually infers some sort of financial benefit.

**“Write up to 75 % off your debts” - Reaction from the OFT and ASA**

88. The ASA have adjudicated upon this matter, and at the beginning of the year, the OFT warned 17 businesses promoting IVAs that it considered their adverts and websites potentially misleading to consumers. This follows a compliance sweep undertaken by the OFT in November 2006 of 124



advertises in national newspapers and 57 websites promoting and marketing IVAs.<sup>12</sup>

89. This report has not identified that any further action has been taken by the OFT but should a company be found to have engaged in unfair, deceitful or oppressive practice, then the OFT can refuse or revoke the company's credit license.<sup>13</sup>

90. The ASA has however, taken specific action regarding the accuracy of the ads promoting IVAs.

*The companies complained about*

91. On 11 April 2007, the ASA upheld complaints against "Money Debt & Credit Ltd" (television), "Accuma Group plc" (radio), "W3 Debt Solutions" (radio) and on 18 April 2007 against "The Debt People" (television) and "YourClear Ltd" (television), following a catalogue of complaints in 2006 from rival company Debt Free Direct (hereafter 'DFD'), who alleged that the adverts were misleading and unethical.<sup>14</sup>

92. DFD challenged that the companies could write off the level or debt claimed and that it was unclear that fees were payable under an IVA.

93. The ASA concluded that the above advertisements were "misleading" as to the representation that they could "write off up to 75%" or more of the individual consumer's debts.

94. Upon investigation, the ASA found that although some debtors were not charged upfront fees for an IVA, such fees were incorporated into the agreement and therefore, although a small number of debtors were able to write off 75% - 80% of their debt, there was no evidence to suggest that

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<sup>12</sup> [www.offt.gov.uk/news/press/2007/8-07](http://www.offt.gov.uk/news/press/2007/8-07)

<sup>13</sup> [www.offt.gov.uk/news/press/2007/8-07](http://www.offt.gov.uk/news/press/2007/8-07)

<sup>14</sup> [www.icc-credit.co.uk](http://www.icc-credit.co.uk)

significant proportion of consumers could do so. The advert exaggerated the benefits of an IVA and was misleading”.<sup>15</sup>

95. As a result, the companies agreed to remove the claim from future adverts and to ensure that future similar claims were based on an amount of debt that a significant proportion of consumers could expect to write off, taking into account the impact of fees.

96. This report notes that on 16 May 2007 however, the ASA upheld an assessment that Debt Free Direct had themselves breached the advertising code.

97. The complainant challenged whether the claim "it won't cost you a penny" was misleading and could not be substantiated. The ASA concluded however that the claim "it won't cost you a penny" implied there were no costs associated with an IVA and as the ASA understood that was not the case, they concluded the claim was misleading.<sup>16</sup>

98. DFD were told that the advert could not be broadcast again in its current form.

99. DFD had applied for judicial review in the High Court of the ASA's adjudication and sought an injunction against the publication of such a review until the hearing was disposed of but in the High Court on 15 May 2007, Mr Justice Sullivan ruled that it was in the public interest to publish the adjudication.

100. According to a posting blog on moneysavingexpert.com, the above complainant originally complained not only of the above point but also DFD's claim to "write off up to 75% debt" and "set you debt free in 60 months".

101. The latter two complaints were **not** pursued by the ASA.

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<sup>15</sup> [www.asa.org.uk/asa/adjudications/Public/TF\\_ADJ\\_42458](http://www.asa.org.uk/asa/adjudications/Public/TF_ADJ_42458)

<sup>16</sup> [www.asa.org.uk/asa/adjudications/Public/TF\\_ADJ\\_42567](http://www.asa.org.uk/asa/adjudications/Public/TF_ADJ_42567)

102. The above adverts have not been broadcast in this previous format. The substitute wording now used is “write off what you can’t afford to pay”, which seems to be satisfactory to the ASA.
103. Guidance provided by the Committee of Advertising Practice (hereafter ‘CAP’) states the following: “To avoid problems with IVA claims, marketers should ensure that claims about how much consumers might expect to write off if accepted for an IVA are based on the last 12 months for which they hold available data.
104. The lead percentage amount of debt quoted as written off in the claim should have been achieved by at least 10% of clients over that 12 month period.
105. Marketers should not base claims solely on the dividend agreed by creditors but should calculate what amount of the initial total debt remains after the monthly repayments made by debtors”<sup>17</sup>

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<sup>17</sup> [www.cap.org.uk/cap/news\\_events/news/2007](http://www.cap.org.uk/cap/news_events/news/2007)

### CHAPTER 3 - ADVICE & ACCURACY

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*"We have seen evidence of people being poorly advised and persuaded that an IVA is right for them in circumstances where it clearly isn't" says Peter Tutton, national debt policy adviser for Citizens Advice.*

106. In chapter 2, the report highlighted that there is a major discrepancy between the way in which IVAs are being presented to consumers and the reality behind such phrases as "free and impartial advice".
107. In this chapter, the report moves on to question the methods used by these companies.

#### **The problem**

108. This report discusses the following:
- a. Suitability- IVAs are set up in circumstances when bankruptcy would be a more suitable alternative, and it is apparent that bankruptcy would be more suitable, and
  - b. Disclosure - Debt-management companies are not disclosing important information regarding IVAs and the implications thereof.
109. Stuart Hopewell, the Chairman of the Institute of Credit Management, has stated that "companies that are profit-driven can't possibly be expected to give the best advice"<sup>18</sup>

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<sup>18</sup>[www.iva.co.uk/media\\_coverage](http://www.iva.co.uk/media_coverage) - IVA.co.uk Debt Debate on Monday 4<sup>th</sup> February.

### **Suitability**

110. To reiterate in brief: An IVA is only suitable for individuals who are in receipt of a guaranteed disposable income each month. If the individual has any equity in the property, it is likely that it will be sold in the fourth year along with any other capital assets. Failure of an IVA is likely to result in bankruptcy with similar or greater debts than had the individual petitioned for bankruptcy in the first place.

### *The findings*

111. Although IVAs can be implemented and administered successfully, the evidence collated by the Derbyshire CABx demonstrates that every client who provided evidence for the purpose of this report *should* have petitioned for bankruptcy and therefore, this report alleges that the practices used are unreasonable.

112. This report repeats the primary evidence quoted in chapter 2, that despite a client being retired with no property or other capital assets and debts over £40, 000, the IP set the repayments at £650 per month.

113. As such, this report must conclude that IVA should never have been implemented. The CAB actually assisted the debtor in petitioning for bankruptcy, and he was given an early discharge after 6 months.

114. A second case highlighted was a joint IVA. One of the clients was not in regular employment and the other was in receipt of Incapacity Benefit only. The couple had no capital assets and a total disposal monthly income of £30. The IVA payments were set up at £209 per month. The IP explicitly told the clients that bankruptcy was not an option

115. Having reviewed all the primary sources, this report can confirm that no other debt solutions were suggested or explored by the debt-management companies despite, it would be submitted, bankruptcy being the most appropriate solution in most of the cases.
116. On these findings, the debt-management companies above are setting up IVAs at considerable costs, when the clients do not have sufficient income to maintain them.
117. The suggestion is therefore that the companies are engaging in conduct which is exacerbating the inequality of bargaining power which is already prevalent in this area.

**Non-disclosure of important information**

118. This is an important point because it goes to the question of whether debt-management companies are exercising themselves in ethical and reasonable practices.
119. The primary findings demonstrate that such companies are releasing information which is potentially misleading.

*The findings*

120. Information from joint clients, who entered an IVA, when they co-owned their property and had a sufficient disposal income, highlighted that the term of £360 per month was feasible.
121. However, with the Insolvency Practitioner's (IP) knowledge, they sold the property and used the £25, 000 equity to reduce the new mortgage. The IP then unilaterally increased the monthly instalments to £560 and when the

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client requested that the figure be reduced, the IP charged £500 as a fee for the reduction.

122. The concern raised here is not that the monthly payments were increased per se, as it is anticipated that such a measure would be necessary when the equity that could have been used in the fourth year of the IVA has been directed elsewhere.
123. The conclusion is that the IP's failure to notify the clients of this increase if they used the equity, and the fees involved to reduce them marginally, is unfair and unreasonable practice.
124. A second client claims that his IP at no time informed him that fees would be charged for setting up the IVA, and upon its failure after the first year, the client was obviously disappointed to be informed that 12 months of payments had gone to satisfy the company's fees and not to reduce the overall debt to creditors.
125. On this point, it is suggested that the company behaved entirely unfairly and contrary to reasonable business standards by failing to specify that the IVA would have cost implications.
126. A third client informed the CABx that their IP had failed to inform the debtor that the failure of the IVA would be likely to result in bankruptcy, and that a term of the IVA would be that his property would need to be sold or re-mortgaged in the fourth year to realise the debtor's beneficial interest in it.
127. This report surmises that the inclusion of the option to sell the property to realise the debts needs to be brought clearly to the client's attention prior to entering the IVA, which it was not in this case.

128. Examining all the primary sources, all the clients spoken to were unaware that the IVA would be listed on a public register for public consumption. This was not brought to their attention at the implementation of the IVAs and, it is suggested, would have influenced the overall decision to enter an IVA.
129. This report reasons that there is a reluctance to petition for bankruptcy because of the ‘stigma’ involved, and that some debt-management companies are inadvertently relying on the idea of “stigmatism” to encourage people to enter IVAs.

### **Reaction from other bodies**

130. In November 2006, the British Bankers’ Association announced that it was calling for “a halt to irresponsible selling of debt relief products”.<sup>19</sup> The former chief executive of the British Bankers’ Association (BBA) Ian Mullen extended an invitation to debt management companies to discuss how the financial services industry as a whole can help people resolve their debt difficulties. He stated that “individual voluntary arrangements can be appropriate in some cases, but we are concerned that young, inexperienced and vulnerable people are being targeted by adverts”.

#### *The Debt Resolution Forum (hereafter ‘DRF’)*

131. In-line with this in November 2006, the Insolvency Practitioners Association (IPA) announced that it was to launch an industry body for debt resolution companies named the Debt Resolution Forum (DRF).<sup>20</sup>
132. Launched in November 2007, this is a consortium of 28 companies, which currently comprises 40 debt management firms including “Accuma” and “W3 Debt Solutions”. The DRF aims, with the support of the IPA, to establish a self-regulation system based on common professional and ethical

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<sup>19</sup> [www.bba.org.uk](http://www.bba.org.uk)

<sup>20</sup> [www.insolvencypractices.org.uk/reports/2006](http://www.insolvencypractices.org.uk/reports/2006)



standards.<sup>21</sup> This forum is **not** endorsed by the Department of Trade and Industry.<sup>22</sup>

133. On 14 January 2008, announced that it had secured substantial funding to commence an independent accreditation, monitoring and regulation scheme provided by the IPA (Insolvency Practitioners Association), and implement the first stages of a Certificate in Debt Resolution,<sup>23</sup> which it is envisaged will be a three module examination course.
134. The aim of the DRF is to provide a system of regulation and accreditation for consumers to use when deciding what is the most suitable solution for them.
135. Importantly however, the DRF does not have the power to force IVA providers to join or to obey their decisions.<sup>24</sup>

*The Simple IVA (SIVA)*

136. In May 2007, the Insolvency Service released its proposals to changing the law on IVAs.
137. A working group in July 2005 proposed as the introduction of SIVAs – Simple Insolvency Voluntary Arrangements, the crux of which is to reduce the administrative burden involved.
138. Such measures would be available to debtors with less than £75, 000 owing with an approval of motion by implied majority with a ‘paper meeting’ to assess proposals and creditors being unable to suggest modifications to proposals.

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<sup>21</sup> [www.insolvencypractices.org.uk/reports/2006](http://www.insolvencypractices.org.uk/reports/2006)

<sup>22</sup> [www.insolvencyhelpline.co.uk](http://www.insolvencyhelpline.co.uk)

<sup>23</sup> [www.bobsguide.com/guide/news/2008/Jan/14](http://www.bobsguide.com/guide/news/2008/Jan/14)

<sup>24</sup> [www.insolvencyhelpline.co.uk](http://www.insolvencyhelpline.co.uk)

139. The reduction in the requirement of paper-filing at court will in turn reduce the costs involved and the savings can be offset against the debts rather than the fees. At the moment, the IP is required by law to prepare any reports on the IVA to distribute to creditors when such reports are deemed pointless if the IVA is running smoothly.

*The IVA Protocol*

140. At the IVA Standing Committee meeting on 30 November 2007, a voluntary protocol was agreed and came into effect on 1 February 2008.
141. The protocol, which has been welcomed by the DRF,<sup>25</sup> provides for a standard framework from which debt-management companies will work and be monitored by a standing committee comprising amongst other members; debtors, creditors and IPs.
142. It provides for a voluntary framework for dealing with straightforward consumer based IVAs to” increase trust and confidence between the participants in an IVA and also improve the efficiency of the IVA process”.<sup>26</sup>
143. An obligation imposed by the protocol is for the companies to exercise their advertising in pursuit of “in particular, the principles of legality, decency, honesty and truthfulness”<sup>27</sup>.
144. Furthermore, the companies are to ensure that the advice dispensed is “appropriate...in light of...particular circumstances”<sup>28</sup>.
145. However, the protocol is not application to all IVAs.

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<sup>25</sup> [www.debtresolutionforum.org.uk](http://www.debtresolutionforum.org.uk)

<sup>26</sup> [www.icaew.com](http://www.icaew.com)-The Institute of Chartered Accountants in England and Wales (ICAEW)

<sup>27</sup> [www.insolvency.gov.uk](http://www.insolvency.gov.uk)

<sup>28</sup> [www.insolvency.gov.uk](http://www.insolvency.gov.uk)

**The IVA Council**

146. Currently, a body known as the 'IVA Council' appear to have been encouraging people to deliberately renege upon the IVA and petition for their own bankruptcy to save costs. The *Insolvency Service*, a government body, issued a statement clarifying that they are not associated with the *IVA Council* in any way or form and that they "[do] not condone any implication that people in IVAs should stop paying and enter bankruptcy... If [the debtor has] had any communication from the IVA Council or other third parties suggesting that [they] should stop making payments under your IVA [they] should discuss this with the supervisor of the IVA and seek advice from professional, qualified advisers before taking any action"<sup>29</sup>.

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<sup>29</sup> [www.insolvency.gov.uk/index](http://www.insolvency.gov.uk/index) November 2007

## CONCLUSION AND RECOMMENDATION

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### **Conclusion**

147. This report has demonstrated from direct informing gathered by users of the Derbyshire CABx, that there have been significant failings in the way in which such users have been advised and induced into entering an IVA when bankruptcy would have been a more suitable solution.
148. The problems with the advertisement and advice given include amongst other points: a failure to state that the IVA will incur set-up and administrative fees, which will be paid before the creditors receive any payment, neglecting to inform home-owners that their property would have to be sold or re-mortgaged in the fourth year to realise the equity, and failing to establish clear the detrimental points to entering an IVA ahead of bankruptcy or an alternative debt solution.

### *Advertising*

149. The Derbyshire CABx can also demonstrate that important factors, such as the publication of the IVA and the inclusion of the individual's property, have not been brought to the client's attention. It can be assumed that such factors would have strongly influenced the decision to enter the IVA in the first place and as such, this report questions why they have not been brought to the individual's attention.

*Suitability*

150. As a fact, this report shows that clients within the Derbyshire CABx area have entered into an IVA when they had insufficient income to fulfil the obligations under it and when bankruptcy would have been a more suitable alternative.
151. The evidence also shows that clients have either not been informed or have been ill-informed as to the costs of setting up and administering an IVA. Of important note is that some clients were unaware that if the IVA should fail within the first 12 to 18 months, then most if not all of the payments made would have been directed towards the fees of the IVA and not towards the general debt.
152. With the support of primary evidence, this report can challenge the reasonableness of the practice methods used by the debt-management companies to encourage debtors to enter an IVA.

**Recommendations**

153. The report seeks to raise awareness for individual debtors so that they are given an opportunity to consider all the options before entering an IVA.
154. The report supports and welcomes the establishment of the Debt Resolution Forum (DRF) and the implementation of the IVA Protocol. Such measures are intended to bring transparency and fairness to the system through a voluntary code of conduct, a standard set of values, accreditation schemes and continual monitoring.

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155. However, from the primary evidence gathered, it is asserted that the voluntary code of conduct does not, at this time, go far enough to ensure best practice. In particular, it is felt that when individuals are not seeking independent advice in addition the advice being given by the debt-management company, AND the company has not recommended that such advice be sought, then the company should assume a greater duty for the individual so as not to mislead or misrepresent the nature of the measure.
  
156. It is submitted that further transparency is needed within the financial sector and that local measures need to be taken to bring the true nature and implications of IVAs to the fore.
  
157. Local initiatives could be undertaken to bring this issue into the community through an advertised 'open session' in the CABx.
  
158. If possible, a measure to be encouraged would be local media coverage of the key findings of this report in written form through a newsletter or newspapers article, and perhaps with a discussion on local radio.
  
159. Given the high volume of repossession and debt cases currently in the courts, it may be prudent to produce a poster or similar visual aid to promote awareness of the advantages and disadvantages of IVAs. These could then be posted in the court waiting areas and other public forums such as libraries.