www.insolvency.gov.uk

# Improving Individual Voluntary Arrangements

## Summary of Responses and Government Reply

March 2006

Issued

Enquiries Andy.Woodhead@insolvency.gsi.gov.uk

Andy Woodhead
The Insolvency Service
21 Bloomsbury Street
London
WC1B 3QW

Telephone 0207 291 6738

# Contents


**Foreword** **4**

**Executive Summary** **5 - 6**

**Consultation Activities** **7**

**Respondents** **8**

**Responses** **9 - 44**

**Annexes**

Annex 1 List of Respondents

## Foreword

In September 2004 The Insolvency Service set up an independent Working Group of stakeholders to examine the Individual Voluntary Arrangement (IVA) regime. In July 2005 we issued "***Improving Individual Voluntary Arrangements",*** a report setting out the Working Group's findings and conclusions.

Once again, we would like to thank the members of the Working Group for their efforts in addressing their terms of reference in such a positive manner and in arriving at a consensus in a very short timescale.

The IVA plays an increasingly important role in the resolution of the financial problems suffered by the minority of borrowers who experience difficulties, having taken advantage of the credit market. It also plays a major part in their subsequent rehabilitation.

The IVA provides a flexible solution to debtors' financial problems, balancing their need for the certainty of reasonable payments over a set, planned timetable against the need to maximise returns to creditors.

The Insolvency Service is grateful to everyone who responded to the Working Group's report. The quality of those responses has been crucial in clarifying and developing our policy.

This paper is The Insolvency Service's response to the replies we received to the Working Group's report and sets out how we intend to proceed in the light of those responses and other information we have collected since the report was published.

The Insolvency Service

## Executive Summary

The Insolvency Service commissioned an independent Working Group to examine the individual voluntary arrangement (IVA) process. In July 2005 a report, *Improving Individual Voluntary Arrangements*, was issued summarising the Working Group's findings and conclusions. The report invited responses from stakeholders and the consultation exercise closed in October 2005.

The Working Group's conclusions ranged from improving the existing IVA to the adoption of new best practice, while others required a change in legislation such as a simplified (two-tier) IVA referred to as Simple Individual Voluntary Arrangement 1 (SIVA 1) and Simple Individual Voluntary Arrangement 2 (SIVA 2). In this document we continue to refer to SIVA 1 and SIVA 2 proposals but the title of the revised regime has yet to be decided and at present we think it unlikely that the revised regime will bear that name.

It was the view of the Working Group that the existing IVA process should remain in place for "complex" cases or cases with higher levels of liabilities.

The principal proposals for change, having regard to comments received, are as follows:

- **Due to the concerns raised by stakeholders over the regulatory regime and the proposed lack of creditor input into the SIVA 1 process as set out in the Working Group report, we do not propose to further develop a process that does not allow a creditor to vote on the debtor's proposal. (Proposal 1)**

- **We propose to continue to develop a simplified IVA process modelled upon the SIVA 2 suggested in the Working Group report which has no minimum debt level and on which creditors are allowed to vote for approval or rejection. (Proposal 2)**

- **The single simplified IVA that we propose to develop will have no lower limit for unsecured liabilities, and an upper-limit for undisputed debts of £75,000, which is consistent with the views of the majority of stakeholders. (Proposal 3)**

- **There is widespread support for the proposal that where a simplified IVA fails the debtor should be restricted from re-entry to the process. We propose that no re-entry should be available for six years from the date of the failure of a simplified IVA. (Proposal 4)**

- **We acknowledge the variety of views on a minimum dividend and because the debtor's circumstances may change whilst in the arrangement (which might result in its revocation) the proposals will not include a requirement for a minimum dividend. The proposals will enable creditors to vote for the approval of the proposal and it will be for the debtor (with the assistance of the Nominee) to ensure**

**that the proposal is attractive to the creditors. They are unlikely to approve a proposal that generates a smaller dividend than would be achievable in bankruptcy. (Proposal 6)**

- **One of the major strengths of the IVA regime is its flexibility and to keep the revised process as simple as possible we propose that any simplified process should, as a best practice matter, the value of the debtor's interest in his home at the proposal stage. Also the proposal should not automatically exclude a debtor's interest in a property but should refer, if appropriate, to a "de-minimis" value at the same level as used for bankruptcy. Such an approach will allow a debtor to introduce as much (or as little) of the equity as they wish to obtain a simplified IVA (Proposal 18)**

- **That where a simplified proposal is accepted, details of the debtor will be displayed on the Individual Insolvency Register maintained on the Insolvency Service web site and therefore the courts will therefore have no routine role to play. (Proposal 20)**

- **We intend to follow the view of the majority and will proceed with proposals in which creditors will not be able to propose modifications to a simple proposal. (Proposal 22)**

- **We propose that the simplified proposals will adopt voting by correspondence (a 'paper' meeting) to assess the creditors' votes for and against the debtor's proposal. (Proposal 25)**

- **We propose that the simplified proposals will adopt a simple majority (in value of those creditors that vote) when deciding whether a proposal is accepted or rejected. (Proposal 27)**

- **Given the support for the imposition of a time limit for creditors claims we propose that there should be one, and that it should be set at 90 days. We will consider further whether or not the Supervisor has discretion to accept claims after the deadline. (Proposal 32)**

- **The issue of fees and how they should be calculated both for existing and simplified IVAs has provided us with no consensus. Consequently we do not propose to prescribe set fees in legislation. However we do hope that by facilitating a dialogue between stakeholders on the issue the debate can continue. (Proposal 35)**

## Consultation Activities

*Improving Individual Voluntary Arrangements* was e-mailed to approximately 350 stakeholders comprising a wide range of individuals and organisations. The report was also made available (and remains) on the Insolvency Service's website. Some 40 stakeholders requested and were sent hard copies of the report.

To coincide with the publication of the report, the Insolvency Service hosted a discussion forum open to all interested parties.

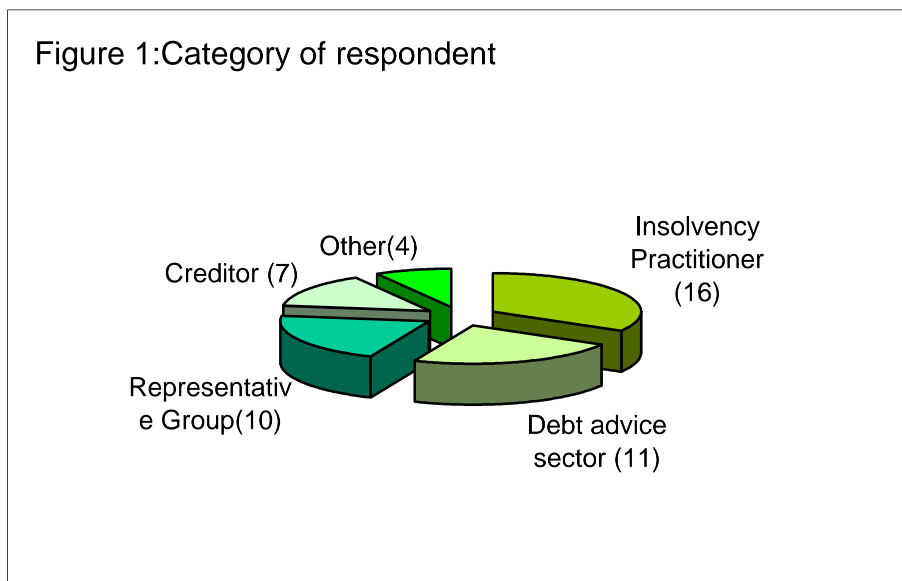
Working Group members and members of Insolvency Service staff were involved in a number of presentations including question and answer sessions with a wide variety of participants.  Meetings were also held with a number of the respondents to discuss the recommendations of the Working Group.

Since the formal consultation period ended, the Insolvency Service has continued to meet with a variety of organisations, including some of the Recognised Professional Bodies of insolvency practitioners, and there has been one further meeting of the Working Group.

## Respondents

We received 49 responses from a wide range of individuals and organisations. One respondent, a representative body, replied that its members could not obtain consensus on the issues raised in the report and so its response has been discounted.

Respondents were asked to categorise themselves into 1 of 5 categories. Figure 1 below shows those categories




Annex 1 lists everyone who responded. Some respondents have asked that their replies be kept confidential and they have been recorded in the Annex as such.

## Responses

Set out below are details of the answers received to each question in the report and also how we intend to proceed in the light of those answers and other information we have collected over the last few months.

It should be noted that not everyone who responded replied to every question and consequently the numbers of answers to each question does not always correspond with the total number of responses.

**Responses**

**Q1. Do you support the introduction of the SIVA 1?**

| Answer | Number |
|---|---|
| Yes | 21 |
| Yes In principle/with reservations | 25 |
| No | 2 |

We received 48 substantive replies to this question.

The British Bankers Association (BBA) said **"***Yes- we are supportive in principle but we do have concerns that the removal of the right to vote reduces creditors' rights."*

The Institute of Credit Management (ICM) said "*The Institute is not convinced that segmenting IVAs into three separate regimes is either necessary or sensible. In the Institute's view the divisions represent an additional complication rather than a simplification."*

The Insolvency Practitioners Association (IPA) said "*Furthermore, the creditors may well have relevant information about the debtor, which is not available to the IP and the creditors' vote provides an opportunity for them to comment on the accuracy of the information provided by the debtor and on hi/her suitability for a SIVA"*

**Q2. Do you agree that the proposed SIVA 1 scheme should have a maximum debt limit of £25,000/30,000?**
**AND**
**Q3. If you support the introduction of a SIVA 1 but not the proposed debt level, what figure would you suggest?**

| Answer | Number |
|---|---|
| Yes | 36 |
| No | 2 |
| Yes but different limits | 10 |

| Limits suggested | £20,000 = 1<br>£40,000 = 2<br>£50,000 = 5<br>£75,000 = 1<br>£100,000 = 1 |
|---|---|

**Q4. What are your views on the removal of a creditor's right to vote in a SIVA 1?**

| **Answer** | **Number** |
|---|---|
| Wholly agree | 14 |
| Agree with reservations | 16 |
| Disagree | 13 |

The proposal to remove a creditors right to vote on a SIVA 1 case did find some support.

"*This will greatly simplify procedures, improve accessibility, make it possible to act faster and reduce bankruptcies"* (ClearDebt Limited)

*"We strongly support this measure. In our experience many IVA proposals fail due to the complex voting procedure. It is also difficult to explain to clients who find it confusing. They also find it hard to track the progress of their IVA. We receive many puzzled calls from applicants who are unable to fathom whether their application has been successful or not.*" (National Debtline/Money Advice Trust)

"*Citizens Advice strongly supports this proposal. The voting process can overcomplicate what should be straightforward. It also allows unreasonable creditors to prevent access to a remedy that may be the best option for dealing with unmanageable debt. However, the creditor vote could act as a safeguard against IP's charging higher amounts and thus reducing returns to creditors. Citizens Advice considers that removal of voting rights would have to be accompanied by great transparency of costs and the likely returns that would be achievable from bankruptcy"'* (Citizens Advice)

Other respondents were concerned over the lack of creditor input into the SIVA 1 regime.

"*The potential for litigation against IP* [insolvency practitioner] *would be greatly increased. We are concerned about creditors not having any input and the only way for them to raise an objection would be through the courts"* (Mc Cambridge Duffy).

"*The general view is that the membership would not be happy with this proposal. It is considered that despite the suggestion that the "nominee will have sought the best deal possible for creditors", the process is open to*

*abuse. Even though the membership can see the attraction of simplifying the process by dispensing with the right of creditors to vote, there is some doubt that the underlying regulatory structure is not sufficiently robust to protect the interest of creditors if their right to vote is removed"* (Civil Court Users Association)

"*We consider that SIVA 1 is open to abuse and there must be a definite better prospect of a higher dividend with a SIVA 1 than with Bankruptcy. We would also prefer to have the ability to reject the proposal as a creditor"* (Solicitors to Royal Bank of Scotland)

Affinity Limited said, *"An IVA is an offer to creditors in composition of debts and should therefore be treated as a contract. Striking down the right to vote removes the 'V' for the voluntary element of an IVA and as a result is unfair to creditors*

*The removal of the right to vote is unconstitutional and contradicts everything that an IVA is designed to achieve, namely a fair and mutual agreement between debtors and creditors.*

*Creditors should be able to exercise an option to either agree, or decline, to be bound in contract; otherwise the situation would be no different to that of bankruptcy where creditors have no option.*

*The introduction of a simple majority vote the same as in a SIVA 2 would be sufficient to protect the rights of creditors.*"

Also some respondents had concerns about how the regulatory regime would operate for SIVA 1

"*We understand the attraction of simplifying the process by dispensing with the right of creditors to vote. We are not convinced however that the underlying regulatory structure is at present sufficiently robust to offer creditors sufficient protection should the right to vote be removed.*" (Finance and Leasing Association).

*"'We believe in order to maximise the ability of SIVA's for the over-indebted and with other controls in place, this can maximise the return both to creditors and at the same time minimise costs. Creditors loss of rights may need to be balanced by additional controls on IP's. We would propose that additional regulation is implemented specifically for IP's in the IVA market. i.e. public information on approval rates, failure rates, dividend levels etc. "* (Grant Thornton)

*Such a removal is dependent upon the controls placed on the nominee to ensure that proper enquiries have been made and the maximum obtainable dividend is proposed"* (Institute of Revenues, Rating and Valuation)

*”There will additionally be a need for detailed guidance on the extent of a nominee’s responsibility to investigate the debtor’s circumstances. It is only by issuing firm guidelines on this that Insolvency Practitioners will be encouraged to undertake the role of Nominee where the costs of this are limited”* (Association of Chartered Certified Accountants)

**Due to the concerns raised by stakeholders over the regulatory regime and the proposed lack of creditor input into the SIVA 1 process as set out in the Working Group report, we do not propose to further develop a process that does not allow a creditor to vote on the debtor’s proposal. (Proposal 1)**

**SIVA2**

**Q5. Do you support the introduction of the SIVA 2?**

| **Answer** | Number |
|---|---|
| Yes | 22 |
| Yes in principle/with reservations | 25 |
| No | 1 |

There was more widespread support for the SIVA 2 regime, which does allow creditors to vote.

*”As we have indicated above, we are in favour of SIVAs in principle, but have doubts about the desirability of having two SIVA regimes. We are concerned at the mischief which would occur at the boundary between the SIVA 1 and the SIVA 2. Paragraph 33 of the document mentions that a case could start out as a SIVA 1 but if the debts were later found to exceed the SIVA 1 limits it could be converted to a SIVA 2 without the need for a creditors’ vote. This seems to us to leave the door wide open to abuse by unscrupulous debtors, who could enter into a SIVA 1, bypassing the need for creditor approval, by understating their debts, then declare their increased indebtedness later. In fact it makes little sense to speak of converting to a SIVA 2 because the only thing that distinguishes a SIVA 2 procedurally is the need for creditor approval, and by the time of the ‘conversion’ the SIVA would be a fait accompli and the opportunity for obtaining the creditors’ approval would have passed. This might be seen as another argument for allowing creditors to vote in all cases and having a single SIVA regime without sub-division into SIVAs 1 and 2 ”.* (Association of Business Recovery Professionals)

National Debtline/Money Advice Trust commented, ”*We would prefer a simpler process consisting of the SIVA 1 up to the debt level of £75,000. However, a SIVA 2 is certainly an improvement on the current IVA process and the amended voting procedure would make the procedure more transparent for the applicant ”.*

*”We favour the introduction of a single SIVA based essentially on the SIVA 2 arrangements “* (Insolvency Practices Council)

| **We propose to continue to develop a simplified IVA process modelled upon the SIVA 2 suggested in the Working Group report which has no minimum debt level and on which creditors may vote for approval or rejection. (Proposal 2)** |
|---|

**Q6. Do you agree that the proposed SIVA 2 scheme should have debt limits of between £25,000/30,000 to £75,000?**

| **Answer** | Number |
|---|---|
| Yes | 33 |
| Yes but different limits | 15 |

**Q7. If you support the introduction of a SIVA 2 but not the proposed debt levels, what figures would you suggest?**

| Limits suggested | £50,000 = 3<br>£60,000 = 3<br>£100,000 = 4<br>£125,000 = 1<br>Not specified needs more empirical research = 4 |
|---|---|

| **The single simplified IVA that we propose to develop will have no lower limit for unsecured liabilities, and a cap set at a level of £75,000, which is consistent with the views of the majority of stakeholders. (Proposal 3)** |
|---|

**Q8. If a SIVA 1 or SIVA 2 has failed should the debtor be barred from proposing another SIVA 1 or SIVA 2 for a specified period and what length should that period be?**

| **Answer** | Number |
|---|---|
| Yes | 39 |
| No | 6 |
| Not Specified | 3 |

Of those who agreed with a bar to re-entry and specified a time limit

| No of years | No of respondents in favour |
|---|---|
| 10 | 3 |
| 6 | 11 |
| 3 | 6 |
| 2 | 2 |
| 1 | 3 |

**The working group recommended that there be a restriction on re-entry for a six-year period, primarily as a protective measure in SIVA1 cases where creditors would have been unable to vote against the proposal. There was however widespread support for the proposal that where a simplified IVA fails the debtor should be restricted from re-entry to the process. We propose that no re-entry should be available for six years from the date of the failure of a simplified IVA but that the debtor may propose an IVA where a greater majority of creditors must vote for its approval. (Proposal 4)**

**Q9. Should a SIVA 1 or SIVA 2 failure prevent a debtor from proposing an IVA?**

| Answer | Number |
|---|---|
| Yes | 16 |
| No | 28 |
| Not Specified | 4 |

**We propose that if a simplified IVA does fail the debtor would be able to put proposals for an IVA to creditors. (Proposal 5)**

**Q10. Do you agree that there should be no prescribed minimum dividend in a SIVA 1?**

**AND**

**Q11.If you think that there should be a minimum dividend, what level would you suggest?**

21 of the respondents (in the main creditors and insolvency practitioners) wanted a minimum dividend and 16 respondents wanted no minimum dividend.

Respondents who support having a minimum dividend include the following:

*"Should creditors have no vote, there should be a minimum dividend.*

*Otherwise this scheme could leave creditors with no rights and facing a total or near total write off. We would suggest that 25 % is a sensible minimum"'* (Confederation of British Industry)

*"We do not agree with this and believe that a prescribed minimum dividend of 10p in the £ should be applied.*" (Solicitors to Royal Bank of Scotland)

*"No, we do not agree. It is our belief that there must be a realistic minimum dividend. It is unfair and impractical to except creditors to accept unrealistically low figures in a formal process, which is what a S/IVA constitutes. We believe that the current IVA level of 25p in the pound is low enough. If the debtor's circumstances mean that this criterion is not achieved, then there are more suitable solutions available "* (Chiltern UK Limited)

Respondents who supported having no minimum dividend include the following

*"The test should be whether the minimum dividend in a SIVA 1 would be likely to be greater than in bankruptcy proceedings "* (Finance and Leasing Association)

*"We agree that there should be no prescribed minimum dividend. In practical terms, our experience is that minimum dividend requirements in IVAs cause problems out of all proportion to the benefits that the minimum dividend is intended to confer"* (Grant Thornton)

*"There should be a dividend, but there should be no minimum, as long as the dividend is greater than in bankruptcy.*" (P Nottingham)

*"I do not think there should a minimum dividend imposed. At present creditors and their representatives are pushing for 40p in the £ although some accept as low as 25p. However, this excludes many debtors who cannot afford to pay dividends this high and they are forced to see alternative debt management which may result in them paying more than can realistically afford thereby creating a discrimination against debtors with small debt levels or with the inability to pay higher dividends"'* (Janet Watson)

*"Yes, provided there is a return to creditors (i.e.the dividend must be greater than zero"'* (Association of Business Recovery Professionals)

*"The minimum dividend in a SIVA 1 must be above the likely dividend in bankruptcy. A SIVA 1 should represent a better return in preference to bankruptcy proceedings."* (Affinity Limited)

*"It would be expected that the nominee would ensure that the highest dividend is obtained after a thorough examination of the debtor's means. This dividend however might be nominal"'* (Institute of Revenues, Rating and Valuation)

*"We can see an argument for imposing a minimum dividend, set at the right level, where the SIVA is simple. In other EU states which have introduced a*

*minimum level, the uptake has tended to be low, but sometimes the reason for this is that the minimum level has been set too high. Commercially minded creditors are, after all, invariably interested in how much dividend they are going to receive and by when. On the other hand, we would not wish to engineer a situation whereby a debtor is allowed to arrange his affairs so that he delivers only the minimum dividend that he is required to do – no debtor will wish to pay more than he has to"'* (Association of Chartered Certified Accountants)

| **Dividend level** | Number* |
|---|---|
| Better than bankruptcy | 13 |
| 10 p in the £ | 4 |
| 15 p in the £ | 1 |
| 20 p in the £ | 2 |
| 25 p in the £ | 6 |

*This exceeds the total number of respondents because some expressed a combination i.e. better than bankruptcy but not less than "x pence in the £".

**We acknowledge the variety of views on a minimum dividend and because the debtor's circumstances may change whilst in the arrangement (which might result in its revocation) the proposals will not include a requirement for a minimum dividend.**

**The proposals will enable creditors to vote for the approval of the proposed IVA and it will be for the debtor (with the assistance of the Nominee) to ensure that the proposal is attractive to the creditors who are unlikely to approve a proposal that generates a dividend less than would be achievable in bankruptcy. Proposal 6)**

**Q12.What practical suggestions would you offer to increase awareness of IVAs?**

The majority of respondents thought that there is already adequate awareness among consumers of the IVA process, especially with the recent rapid rise in numbers.

**In the year ending 31 December 2005 there were 20,293 IVAs, this shows an 88.7% increase on the 2004 figures. We do not propose to take action to increase awareness of IVAs at this time. (Proposal 7)**

**Q13. Do you think the IVA should be renamed? Can you suggest an alternative?**

| Answer | Number |
|---|---|
| Yes | 10 |
| No | 37 |
| Not Specified | 1 |

**Respondents were generally against changing the name of IVAs as it was felt that it would potentially confuse debtors at a time when IVAs are gaining higher visibility, and we plan no further action on this point. (Proposal 8)**

**Q14. Do you think that identifying whether an insolvency practitioner specialises in corporate or individual cases (or both) would be beneficial?**

| Answer | Number |
|---|---|
| Yes | 30 |
| No | 10 |
| Not Specified | 8 |

Some respondents strongly supported the suggestion for example

*'It would be a good start to highlight the specialisms of the various practitioners on the R3 and Insolvency Service websites. This should include details of who regulates each individual IP as this is an area of great confusion to the public.'* **(**National Debtline/Money Advice Trust)

*'Yes, it would be beneficial to identify whether a practitioner specialises in corporate and/or individual cases. We consider that this could be achieved by a searchable identification on R3 and Insolvency Service publications/websites. Individual practitioners should clearly highlight their services in literature, websites and advertising*' (Citizens Advice)

However other respondents resisted such a move

*'No. Many IP's are competent in more than one field of insolvency especially in small and medium sized firms where often the IP does all types of insolvency. Only in the large firms does such delineation take place. The focus should be on ensuring that IP's are properly qualified and regulated irrespective of their fields of expertise and employer firm'.* (McCambridge Duffy)

*'Whilst there may be some merit for debtors and creditors to be able to identify*

*those practitioners who are working in the relevant field, we do not believe that this is entirely necessary'* (Blair Endersby)
*No, in the case of small, or sole traders, for example, it may be difficult to define the appropriate category without discussion.*

*It seems more appropriate that the needs of the debtor should be identified after an initial assessment, and then the debtor should be directed accordingly.* (Chiltern UK Limited)

*IPs will be reluctant to say that they don't deal with a particular kind of work. In any event, professional and ethical guidelines require an IP to ensure that they only accept appointments that they have the resource and experience to deal with.* (Freeman Jones)

**Q15. If yes, how could this be achieved?**

21 respondents were unable to suggest how it could be achieved. Of those who did make suggestions 9 suggested the speciality be displayed on the databases on the websites of the Insolvency Service and The Association of Business Recovery Professionals (R3).

**We propose no further action on specifying whether insolvency practitioners specialise in personal and corporate insolvency at present. However we will be discussing with the Recognised Professional Bodies and R3 whether the insolvency practitioner databases currently displayed on the Insolvency Service and R3 web sites should specify if the practitioners take appointments generally. (Proposal 9)**

**Q16. Do you agree with the introduction of a standard Executive Summary?**

| Answer | Number |
|---|---|
| Yes | 47 |
| No | 1 |

**In Annex 3, which example do you prefer? (1 or 2)?**

Of those who specifically expressed a view on this question

| Example 1 | Example 2 | Bit of both |
|---|---|---|
| 15 | 11 | 13 |

A common theme was that many proposals now contain an executive summary; the most common suggested improvement was combining the narrative in Example 1 with the schedule in Example 2.

*"The exact method of presentation of a proposal would appear to us to be matter for the nominee's professionalism and not for prescription by law.*

*We are already progressing this Executive Summary with other major creditor representatives in the industry, and hope to have something in place within the next three months."* (Grant Thornton)

*"Yes, most definitely. This is a perfectly logical means of presenting relevant information efficiently."*(Chiltern UK Limited)

*"Yes, we agree that this would help to crystallise the issues and be of help to creditors. Of the two alternative forms of executive summary presented in Appendix 3, we would prefer example 1, since the structure of the financial information is clearer. The narrative information, if presented concisely, may also be of help to creditors in approving a SIVA 2 or IVA"*"(Association of Certified Chartered Accountants)

*"This is a very good idea. Anything that simplifies and clarifies the process will assist the applicant who is often confused by the complexities of the IVA procedure"* **(**National Debtline/Money Advice Trust)

*"Our preference would be for a combination of the two and we would be happy to work with the Insolvency Service to achieve the desired content. Broadly, version one gives a better idea of how the debt accrued, while version two has a better layout."* (British Bankers Association)

*"Yes, it would be very helpful to creditors to receive information in a standardised format within an executive summary."* (Creditor anonymous)

**We believe the format of the executive summary of a simplified proposal is a best practice issue and not for legislation and so will not take this further in any proposals for legislative change. (Proposal 10)**

**Q17. Would you welcome the introduction of a standard Executive Summary for existing IVAs?**

| **Answer** | **Number** |
|---|---|
| Yes | 47 |
| No | 1 |

**We do not propose to legislate for a standard executive summary in existing IVAs as we feel that this is another best practice issue that can be dealt with through dialogue between insolvency practitioners and creditors. (Proposal 11)**

**Q18. Should there be an industry wide set of STC [Standard Terms and Conditions] for SIVA 1 and SIVA 2?**

| Answer | Number |
|---|---|
| Yes | 44 |
| No | 3 |

Views expressed by respondents included:

*"In principal this is a good idea. A few of our concerns which may occur in practice are as follows:-*

* *This implies a rigidity which is contrary to the successful use of IVAs as a flexible tool.*

* *This approach also works against the gradual evolution of terms in the light of changing market circumstances or court decisions.*

* Standard terms are inevitably produced and revised by committees, a recipe for excessive length and complexity." (Grant Thornton)

*"No. Whilst the case presented may appear compelling, we would be potentially concerned for creditors and debtors if STC's restricted competition and an Insolvency Practitioner's ability to optimise returns"* (Baines and Ernst)

**Although respondents generally supported an industry-wide set of Standard Terms and Conditions currently guidance in this area is not dealt with in legislation and we do not propose to change this at present. (Proposal 12)**

**Q19. For existing IVAs should there be an agreed and publicly available set of STC so that each proposal which is sent to creditors does not have to include a printed version of them?**

| Answer | Number |
|---|---|
| Yes | 42 |
| No | 6 |

**As with question 18 although respondents generally supported such sets of Standard Terms and Conditions current guidance in this area is not dealt with in legislation and we do not propose any further action. (Proposal 13)**

**Q 20. Do you agree that if SIVA 1 and SIVA 2s are introduced and provided the nominee has made adequate checks for identity, and then a face-to-face interview with the debtor should NOT be required?**

On reflection the question should have been rephrased, if it had been couched as "*Is a face to face meeting required?*" then:-

| Answer | Number |
|---|---|
| Yes | 25 |
| No | 20 |
| Mixed views | 3 |

The question produced strong views both for and against such a meeting**.**

The strongest support for not having a face-to-face meeting came from the debt advice sector where 8 out of the 10 respondents voted that way.

The strongest support for having a face-to-face meeting came from the creditor respondents where 8 out of the 12 held this view.

**Views expressed by respondents included:**

*"Provided adequate checks are made and the debtor understands his commitments then in this day and age a face to face meeting is not necessary"* (McCambridge Duffy)

*"We do not agree with the proposal that face-to-face meetings should not be required. In our members' experience face-to-face meetings are the most critical part of the process, giving an opportunity to establish the truth and properly scrutinise the debtor and his proposals.*

*It would be a false economy to dispense with such meetings, particularly as attendance does not present a great burden on debtors.*"(Finance and Leasing Association)

*"We are generally in favour of minimising red tape, but entering an insolvency process of any sort should never be a routine transaction for the debtor, to be undertaken lightly and without due thought and understanding. There is by definition an impact on third parties, so it is quite unlike other purchases of financial products.*

*For most it should be a once in a lifetime experience, so it is not unreasonable to expect the debtor, who wants the privilege of release from substantial indebtedness to be willing to appear for a meeting. On the contrary, the meeting should be seen as a positive opportunity to cement understanding before the final making of a major life-decision and should most certainly not be seen as a mere compliance burden.*

*An income based process necessarily involves a prolonged commitment and a meeting helps to establish a closer working relationship between the*

*practitioner and the debtor.*

*For the protection of the debtor and of the creditors, there should be a requirement for a meeting with the practitioner or an experienced member of staff to ensure the suitability of the candidate and the plan.*" (Grant Thornton)

*"Yes we agree. We have been operating broad scope DMC's for many thousands of debtors for almost 10 years, with excellent results, entirely by phone and post, with no need for face-to-face interviews. In fact, we are aware that when we have proposed an IVA as the best practise solution to a client, there are a number who have elected to continue with a DMP as they were unnerved by the face-to-face interview, and preferred to retain the anonymity*" (Chiltern (UK) Ltd)

**Q 21. If yes, what should be checked to establish the debtor's identity?**

Of those who did not favour a meeting the most common checks suggested were aligned to those required in the Money Laundering Regulations 2003 (SI 2003/3075) which in regulation 4 (3) (i) (Identification procedures) sets out that a person carrying on relevant business in the UK must maintain identification procedures in which the applicant "*must produce satisfactory evidence of his identity*"

**Q 22. Do you believe that a debtor can be offered best advice without the need for a face-to-face meeting?**
**AND**
**Q23. Do you believe the nominee can assess a debtor's understanding and commitment to the process without a face-to-face meeting?**

| **Answer** | **Number** |
|---|---|
| Yes | 24 |
| No | 12 |
| Not Specified | 4 |
| Possibly | 8 |

The debt advice sector provided the largest percentage of support for not having a meeting (8 out of 10) and it was primarily creditors who preferred that face-to-face meeting took place.

**We acknowledge the variety of responses in this area and that this issue is not currently dealt with in legislation but by guidance. We feel that for the simplified process the same approach should be used and we do not propose to make a face-to-face meeting compulsory in any amended process. (Proposal 14)**

**Q24. Do you consider that a supervisor should always retain funds to petition for bankruptcy?**

| Answer | Number |
|---|---|
| Yes | 17 |
| No | 23 |
| Mixed views | 5 |
| Not Specified | 1 |

The responses provided no clear consensus on this issue from any of the stakeholder groups. The most frequent reason given by respondents for retaining such funds is that it is an effective tool to keep the debtor in line.

**This is another issue where there were a variety of responses. Currently this issue is not dealt with in legislation and is covered by best practice guidance and we feel that for the simplified process the same approach should be used and we do not propose to make the retention of funds to petition for bankruptcy compulsory in any amended process. (Proposal 15)**

**Q25. Should work be undertaken to establish whether a (low-cost) insurance policy covering the costs of petitioning for bankruptcy is feasible?**

| Answer | Number |
|---|---|
| Yes | 26 |
| No | 10 |
| Mixed views | 2 |
| Not Specified | 3 |

There was some support throughout the stakeholder groups on this issue however there were some legitimate concerns that the cost of insurance should be significantly less than the cost of petitioning for bankruptcy

Because there has been no detailed research in this area a number of respondents doubted whether such a policy is actually viable

**We do not propose to undertake any further research into this aspect of the report. (Proposal 16)**

**Q26. Should the Supervisor be given the discretion not to petition for bankruptcy in cases where there has been no wilful default by the debtor?**

| Answer | Number |
|---|---|
| Yes | 37 |
| No | 5 |
| Not Specified | 2 |

Generally all stakeholder groups were comfortable with giving the supervisor discretion in this area. There were however a number of concerns about what limits could or should be applied.

**Q 27. Should a petition for bankruptcy be mandatory, regardless of funds, where there has been wilful default?**

| Answer | Number |
|---|---|
| Yes | 16 |
| No | 25 |
| Not Specified | 3 |

Again mixed views were received, some were of the opinion that the decision to petition should be put to the creditors, especially where funds for a dividend were available.

**Currently this issue is not dealt with in legislation and is covered by guidance and we feel that for the simplified process the same approach should be used. We do not therefore propose to legislate on any discretionary or mandatory requirement for a supervisor to petition for bankruptcy in any amended process. (Proposal 17)**

**Q28. Should the debtor's interest in the home be totally excluded from any SIVA proposal in any circumstances?**

| Answer | Number |
|---|---|
| Yes | 5 |
| No | 36 |
| Only if negative equity | 5 |
| Not Specified | 2 |

**Q29. Should there be a de minimis level set (and at what amount) for excluding a debtor's interest in the home from SIVA 1 and SIVA 2 proposals?**

| Answer | Number |
|---|---|
| Yes | 37 |
| No | 6 |
| Not Specified | 5 |

There was strong support from all stakeholder groups for a de minimis level when dealing with the debtors home in a proposal.

**Of those who specified an amount**

| Amount | Number |
|---|---|
| £1,000 = same as bankruptcy | 10 |
| £2,000 to 3,000 | 4 |
| £5,000 | 11 |
| £10,000 | 2 |

**Views expressed by respondents included**
*Valuation should be taken at proposal stage and this amount used as a cap for the equity to be released during the term of the SIVA/IVA. Equity of less than £5,000 should be excluded.* (Mc Cambridge Duffy)

*Yes. Consideration should be given to fixing a de minimums level where the anticipated equity is 5% or less of the market value or £5,000 whichever is the lower figure.* (Finance and Leasing Association)

*Yes, though it may be more appropriate to consider increasing the current £1,000 figure to £2,500 or £5,000 provided creditor respondees agree.* (Baines and Ernst)

*We would prefer the interest in the home to be excluded altogether. However the £1,000 level set under bankruptcy rules seems very low. We would suggest a £10,000 level would be more realistic. Another approach would be to exclude equity in the home unless the dividend to creditors was established to be less than a set percentage in the £ at which point equity would need to be considered. This figure could be set at a reasonable level that would not penalise applicants or their creditors unduly* (National Debtline/Money Advice Trust)

**Q30. Should the debtor's interest in the home be determined and dealt with at the IVA proposal stage and not revisited?**

| Answer | Number |
|---|---|
| Yes | 35 |
| No | 11 |
| Not Specified | 2 |

Responses varied significantly on this question and most disagreement was set out in creditor responses

*No. the debtor's interest should be re-visited. Five years can be a long time in the property market and therefore the debtor's interest in the home should be re-visited up to at least the fourth year anniversary. Unless the debtor can provide a decent proposal to deal with, the debtor's interest in the home at the proposal stage which the creditor will accept.* (Solicitors to Royal Bank of Scotland)

*No - Over the economic cycle, there are periods when a five-year timeframe could deliver a substantial increase in assets that should be realised to pay debts***.** (Confidential creditor)

*Determining the Debtors interest in the home should be dealt with at the proposal stage, but for longer term arrangements, should be re-visited, say, in either the fourth or the final year of the scheme* (British Bankers Association)

Other respondents took a different view.

*The debtor's interest in the home should be assessed at the start of the SIVA procedure. It should only be assessed if the SIVA breaks down.* (Insolvency Practices Council)

*If the interest in the home is to be taken into account at all then it should definitely be resolved at the outset. We have many calls from people who are distressed to find they are being asked to remortgage their house 4 or 5 years into the IVA agreement. They are often adamant that they were not aware of the equity clause in the IVA agreement, or at best confused. It would remove the uncertainty and anxiety to a certain extent and may make SIVAs a more attractive proposition to home owners***.** (National Debtline/Money Advice Trust)

*Yes, uncertainty with respect to 4th year valuations is unsettling for debtors.* (McCambridge Duffy)

**We propose that any simplified process should determine how the debtor's interest in his home is dealt with at the proposal stage. Also the proposal should not exclude a debtor's interest in a property. We recommend that the de-minimis level used should when appropriate be consistent with that used in bankruptcy. We see this matter as a best practice issue - such an approach reflects the flexibility of the IVA and will allow a debtor to introduce as much (or as little) of the equity as they wish to obtain a simplified IVA. (Proposal 18)**

**Q31. Do you agree with a very simple windfall clause that captures £500 or more? (or suggest an amount at which it should be set)**

| Answer | Number |
|---|---|
| Yes | 45 |
| No | |
| Do not have the clause | 2 |
| Not Specified | 1 |

The proposal was widely supported although some suggested an 'after acquired property clause' as is the case in bankruptcy.

The vast majority supported the £500 limit
Other suggestions
Unlimited =1
£1,000 = 3
£2,000 = 2
£5,000 = 1

One respondent was against a windfall clause in order to keep costs down and said:

*"No there should not be a windfall clause. The IVA should be a simple one-off deal with no reviews. This will minimise costs of monitoring and increase the yield to the creditors"* (Confidential Insolvency Practitioner)

Other respondents thought the suggested figure of £500 was too low.

*It is reasonable for some windfalls to be disclosed during the SIVA period. However, Citizens Advice considers that £500 may be too low an amount, given that there will be costs to the supervising IP in distributing the money. A better minimum would be £1,000* (Citizens Advice)

*Yes, although a figure of £500 seems very low. What would be the costs to the IP etc in distributing the money? Would £1,000 be more realistic? We also feel that certain windfalls such as compensation and lump sums received for backdating of benefits/tax credits should be excluded.* (National Debtline/Money Advice Trust)

**Q32. Can you provide practical examples of where windfalls have arisen and identify any other issues for their resolution?**

Nearly half of the respondents (23 in total) did not specify any examples of windfalls. A number of respondents did mention various types of windfalls but not whether they had practical experience of them. The types were: -

- Inheritances (15)
- Redundancy package (3)
- Lottery win and tax refund (1 each)

Michael Green commented: “*Over the past four years I have asked this question on numerous occasions of providers who have historically and aggregately dealt with thousands of cases. I have not yet received details of any significant examples “*

**Although large windfalls may be rare we feel that creditors should be able to benefit on such occasions and suggest that any Standard Terms and Conditions agreed should include such a windfall clause to cover amounts of £500 or more, but that this is not a matter for legislation. (Proposal 19)**

**Q33. In routine and non-contentious matters in SIVAs should the role of the court be removed?**

| Answer | Number |
|---|---|
| Yes | 44 |
| No | 2 |
| Not Specified | 2 |

Some respondents mentioned this was like the proposed “Debt Relief Order” and were comfortable with the concept that the court would only be involved in resolving disputes

**Where a simplified proposal is accepted details of the debtor will be displayed on the Individual Insolvency Register maintained on the Insolvency Service web site and that the courts will have no routine role. (Proposal 20)**

**Q34. Does having a court based, but not court driven, regime provide sufficient confidence in the proposed SIVA 1 and SIVA 2 regimes particularly for creditors?**

| Answer | Number |
|---|---|
| Yes | 39 |
| No | 7 |
| Not Specified | 2 |

Some respondents mentioned that the role and effectiveness of the regulators was more important than involvement with the court.

**We propose that the simplified IVA incorporate an appeal route to the court for any creditor who claims unfair prejudice/material irregularity concerning the voting decision where an arrangement had been approved by the body of creditors. (Proposal 21)**

**Q35. Should a creditor's right to propose modifications to SIVA 1 and SIVA 2 proposals be omitted?**

| Answer | Number |
|---|---|
| Yes | 34 |
| No | 12 |
| Not Specified | 2 |

It is generally accepted that a simplified scheme should, like "Fast Track Voluntary Arrangements", include a provision that does not allow creditor modifications to the proposal. Creditors were most in favour of retaining their right to propose modifications (5 out of 12 creditor respondents felt this way)

Respondents who were against this proposal said:

*"No. Creditors should have a vote and a voice in the preparation of any proposal, whether SIVA 1 or 2 or IVA. The rights of creditors are the key to any voluntary insolvency process."* (Affinity Limited)

*"We would be wary of this – prima facie – denial of rights, while supporting the need to keep modifications down to a minimum through the use of STCs and feel creditors should still retain the right to challenge the proposals (arguably SIVA 2 more than SIVA 1)."* (British Bankers Association)

*"No. This is a fundamental right. Creditors are a valuable source of relevant information and must have an opportunity to make proposals for discussion/negotiation by all interested parties. Creditors should also have a total consent/veto***."** (Confidential creditor)

*"No. There should be full scope for negotiation"* (CBI)

Others were more supportive of removing a creditors right to propose modifications, for example

*"Yes. It is the nominee's function to put forward the best proposal to creditors therefore it should not be necessary for the creditors to propose modifications. Standard terms should also include creditors standard wish list of modifications."* (McCambridge Duffy)

*"Yes subject to appeals procedure if standard terms can be agreed the creditors should be able to rely on the practitioner only putting forward acceptable proposals.*" (Blair Endersby)

*"This risks incurring additional negative votes, but would greatly smooth the path in eliminating modifications which cut across the grain of a carefully crafted proposal, or which may work against the interests of the creditors."* (Grant Thornton)

*"Yes. It is rare to see any advantage to any party in permitting such modifications. Typically, proposed modifications address minor points of*

*expenditure that would make no more than a marginal change in pro-rata distributions."* (Chiltern UK Limited)

*"Creditors or their representatives should not have the right modify IVAs. I have reviewed IVAs which have had onerous modifications proposed by creditors or their representatives and on occasion the Insolvency Practitioner has refused to proceed with the IVA because it is unworkable, unfeasible and not fair to the debtor. In other cases the debtors have accepted the modifications because they do not have any alternative but to accept them. In other cases modifications were proposed which were already contained in the IVA proposals which meant that the IVA proposals had not been properly read. The Insolvency Practitioners have already reviewed the debtors circumstances and his information and have already decided the amount that the debtor can afford. In doing this they have to bear in mind SIP3 which requires the IVA to be fit, fair and feasible. Modifications proposed by creditors or their representatives do not always mean that the final IVA proposals are actually the ones that the Insolvency Practitioner has prepared based on the information provided by the debtor. When these IVAs fail it is not the creditors or their representatives who proposed the modifications who are then held accountable but the Insolvency Practitioner***."** (Janet Watson)

*"Yes – but only when confidence in nominees is established. Evidence may indicate in practice that the right to propose modification is needed to protect creditors interests".* (Institute of Revenues, Rating and Valuation)

*"If proposals are put forward in a standard format agreed by creditors then the right to modify could be waived."* (Egg plc)

*"Yes, in both – This keeps the system simple and Insolvency practitioners will quickly learn the modifications they need to put in place to prevent rejection by creditors." (ClearDebt Limited)*

*"Yes. Modifications have been an extremely vexatious issue for many years. Removal of the right to modify will make the whole process simpler, easier to understand, and improve the likelihood of successful completion of the SIVA. In the past modifications in the amount of monthly payments expected has often resulted in an unworkable IVA that the applicant has no hope of complying with. We strongly support this proposal."* (National Debtline/Money Advice Trust)

*"Citizens Advice agrees with this proposal. If a debtor has put forward the best deal possible, then any modifications are likely to result in a payment arrangement being made which is unsustainable. Creditors need to be assured that IP's are working under strict guidance, have given best advice and have come up with a sustainable payment offer which is the best deal available. Robust regulation and monitoring would help re-assure creditors*."

**We intend to follow the view of the majority and will proceed with proposals in which creditors will not be able to propose modifications to a simple proposal. (Proposal 22)**

**Q36. Do you agree that there should be a standard approach in assessing a debtor's allowable expenses?**

| Answer | Number |
|---|---|
| Yes | 45 |
| No | 2 |
| Not Specified | 1 |

There was significant support from all stakeholders on this issue.

Association of Certified Chartered Accountants said, *"We think this would be a good idea"*

Grant Thornton said, **"***Yes. This would safeguard the rights of both debtor and creditor and result in more clarity in proposals, however we believe it would be difficult to reach agreement with the stakeholders in practice"*

Three respondents said the model used by the Insolvency Service for income payment orders/agreements should be used and publicised more.
Janet Watson said, *"Yes. It is should be the one used by the Official Receivers/ Insolvency Service for bankruptcies. The debtors should not be worse off in an IVA than in a bankruptcy*

**Q37. If so, is the CFS (Common Financial Statement) a reasonable benchmark?**

| Answer | Number |
|---|---|
| Yes | 39 |
| No | 6 |
| Not Specified | 3 |

16 respondents commented along the lines that the Common Financial Statement (CFS) is a good starting point but that it was devised to deal with debtors who have minimal income and probably little or no disposable income.

*"No, the CFS could be used but only to support the calculation of surplus income to trigger further scrutiny where expenditure exceeds its guidance. The CFS does not realistically reflect the housekeeping allowances where multiple dependants are within the household."* (Gregory Pennington)

**A working group of industry representatives has been formed to look at how the CFS can be improved and the Insolvency Service is liaising with that group. We propose to monitor this issue and see what changes might be made to the CFS before coming to a conclusion on its potential use. (Proposal 23)**

**Q38. Do you agree that there should be a standard approach in assessing what proportion of disposable income the debtor should pay?**

| Answer | Number |
|---|---|
| Yes | 40 |
| No | 6 |
| Not Specified | 2 |

**Whilst this proposal was well received by all stakeholders we do not feel this is a matter for legislation and believe that stakeholders should work together to establish a mutually agreed proportion of disposable income that should paid by debtors. (Proposal 24)**

**Q39. Do you agree that in SIVA 2 cases there is no need to hold a physical meeting of creditors?**

| Answer | Number |
|---|---|
| Yes | 43 |
| No | 3 |
| Don't know | 1 |
| Not Specified | 1 |

Most respondents were comfortable with the concept of voting by correspondence (a paper meeting) however a few mentioned that it might be beneficial to enable the creditors to requisition a physical meeting as can be done in bankruptcy[1]

*"Yes, generally, although there should be provision to hold a meeting if the nominee or creditors feel this action is justified.*"(Institute of Revenues, Rating and Valuation)

*"We agree that a physical meeting is not always necessary, but suggest that in exceptional circumstances the creditors' should be able to require a physical meeting by a majority vote (possibly needing a two-thirds majority."* (Insolvency Practices Council)

*"Mostly yes. But where say 15% by value of creditors seek a meeting or any creditor can show that there is reason to doubt the debtor's statements or financial data the nominee should be empowered to call a meeting and creditors should have the right to challenge any decision.*" (HM Revenues and Customs)

[1] Insolvency Act 1986 section 294 – Insolvency Rules 1986 Rule 6.83.

Other respondents did not mention providing creditors with this right, for example

*"If the ability to modify is removed, there is no requirement for a meeting of creditors. If ability to modify is retained maybe creditors could be dealt with individually and only if there are sufficient creditors voting against the stated proposal to effect a rejection. If the standardized approach to creating a SIVA is adopted, modifications and physical meetings of creditors should only be required in exceptional circumstances.*"(Egg plc)

*"Yes, this will save time and money in meetings where creditors do not attend or meetings are adjourned. It will save the applicant increased levels of stress and anxiety and reduce costs."* (National Debtline/Money Advice Trust)

*"Citizens Advice agrees with this proposal. A creditors' meeting is a costly and time-consuming exercise, which will have no relevance under SIVA proposals. Under the current IVA regime modifications made at creditors meetings can cause difficulties. Often debtors have their IVA proposal changed at this meeting with very little notice. This makes it difficult to consider the affordability and impact of the modifications. We believe that this can lead to some IVA's failing. As the SIVA2 will not be subject to modifications, and will be on a 'take it or leave it' basis, we believe that creditors' views can be adequately ascertained by post."*

*"Yes – provided there was a virtual equivalent and subject to an assessment for an upper limit for a SIVA 2 (see also above)."* (British Bankers Association)

**We propose that the simplified proposals will adopt voting by correspondence (a 'paper' meeting) to assess the creditors' votes for and against the debtor's proposal. (Proposal 25)**

**Q40. Should there be a move towards a 'paper meeting' for the current IVA regime?**

| Answer | Number |
|---|---|
| Yes | 41 |
| No | 5 |
| Not Specified | 2 |

Most respondents were comfortable with the proposed change, like Q 39, some thought it was important to enable the creditors to requisition a physical meeting.

Many suggested it is already happening as few creditors/proxies tend to turn up to meetings anyway.

One even suggested removing the 'paper' and have e-mail lodging of

claims/proxies.

**The issue of meetings in existing IVAs is also being reviewed by the Insolvency Service as part of the secondary legislation consolidation exercise and we will take no further action in this regard. (Proposal 26)**

**Q41. Do you agree that a simple majority should be set as the requisite majority for approving a SIVA 2?**

| Answer | Number |
|---|---|
| Yes | 41 |
| No | 5 |
| Should be a vote against | 1 |
| Not Specified | 1 |

There was strong support in favour of this suggestion.

**We propose that the simplified proposals will adopt a simple majority (in value of those creditors that vote) when deciding whether a proposal is accepted or rejected. (Proposal 27)**

**Q42. What are your views on the suggestion that creditors must actively vote against the proposal in order that it is rejected?**

| Answer | Number |
|---|---|
| Agree | 30 |
| Disagree | 16 |
| Not Specified | 2 |

The strongest disagreement was amongst creditor responses

Comments on this proposal included:

- It would be radically different to other insolvency procedures and could be confusing;
- It would not really be workable as creditors are swamped as it is and silence should not be taken as tacit consent; and,
- Creditors should accept that silence on their part is tacit approval

**We welcome the responses on this issue but are concerned that the proposals have little support from creditor stakeholders and we will not pursue this in the simplified proposals. (Proposal 28)**

**Q 43. Do you think that excluding the votes of the debtor's associates/relatives will cause a significant problem?**

| Answer | Number |
|---|---|
| Yes | 4 |
| No | 38 |
| Not Specified | 6 |

**Although this approach was generally well supported it is already available in existing IVAs as part of the Insolvency Rules 1986 (Rule 5.23) and we propose to have similar rules for simplified IVAs. (Proposal 29)**

**Q44. Do you agree that there should be an appeal route for creditors dissatisfied with a chairman's decision to exclude certain classes of creditors from voting?**

| Answer | Number |
|---|---|
| Yes | 42 |
| No | 3 |
| Not Specified | 2 |

**This was strongly supported by all stakeholders and we propose that in the simplified regime it will be possible to challenge the decision of the "paper" meeting in court. We therefore propose to adopt similar provisions that already exist for IVAs in section 262 of the Insolvency Act 1986. (Proposal 30)**

**Q45. Should the requisite majority for current IVAs be reduced to a simple majority?**

| Answer | Number |
|---|---|
| Yes | 33 |
| No | 10 |
| Not Specified | 5 |

**As set out at Question 40, the issue of meetings in existing IVAs is also being reviewed by the Insolvency Service as part of the secondary legislation consolidation exercise. We therefore propose that this is considered further as part of that exercise. (Proposal 31)**

**Q46. Do you agree with the imposition of a 90-day time limit for the filing of creditors claims in SIVA1 and SIVA 2 cases?**

| Answer | Number |
|---|---|
| Yes | 33 |
| No | 13 |
| Not Specified | 2 |

A significant majority were in favour of imposing such a time limit

Affinity Limited said

*"Yes. This would simplify the administrative process especially in the distribution of dividends in subsequent years. The onus should also be placed on creditors to inform the Supervisor of any change in payee details; unbanked dividends should revert to the insolvency estate for the benefit of all other creditors."*

The Association of Certified Chartered Accountants commented, *"In principle, we agree with this. Many IPs have reported significant problems in getting IVA creditors to filing their claims. Setting a time limit could, therefore, help to address this problem. But there will need to be provision for creditors to make claims where the debtor failed to make proper disclosure of his liabilities at the outset. Such provision should reinforce a general requirement for debtors to make proper disclosure."*

*In answer to this question* ClearDebt Limited said, *"Yes – This streamlines IVAs and simplifies and maximises early distributions. ClearDebt's experience is that this would be no hardship to most major creditors."*

Another respondent in favour of imposing a time limit was Citizens Advice who said "*The introduction of the time limit would encourage early engagement of creditors and prevent a situation where the debtor and other creditors have to review the situation during the SIVA. We would also urge the Insolvency Service to incorporate this proposal into the full IVA system to maintain consistency".*

Six respondents specifically mentioned that there should be some flexibility to allow 'late' claims. One such respondent was EGG plc who said *"Yes, as long as creditors have the right to submit a claim at a later date in the event of a notification going astray or a creditor being omitted from the list."*

HM Customs and Revenue did raise specific concerns on the imposition question

*"If it is intended to include HMRC tax debt on business sources a 90-day "claim it or lose it" provision in SIVAs is not compatible with Income Tax & VAT Return legislation.*

*No matter when a SIVA commences the IT return for the year of entry is always statutorily due between 6 and 22 months after entry. Entry early in a tax year e.g. May, means current and preceding IT returns/payments are not statutorily due until after the expiry of the SIVA claim deadline":*

HM Customs and Revenue go on to say

*"In reality the vast majority of insolvent debtors do not submit their returns on time so even on those few occasions where HMRC theoretically could meet a deadline it is unlikely to be able to do so.*

*If SIVAs will not apply where there is Crown debt then the 90-claim limit is not a problem for HMRC.*

*If SIVAs 2 will apply with some HMRC debt included then in the absence of a much longer claim period HMRC will have to decline support for all proposals where overdue tax returns remain outstanding prior to the creditor's vote. 75% of IVAs received by VAS are within the SIVA 2 range £25k -£75k and most have outstanding returns"*

**Q47. If not, what time period would you suggest, and why?**

| Answer | Number |
|---|---|
| 6 months | 7 |
| 1 year | 4 |
| Greater than 1 year | 1 |

**We acknowledge the concerns expressed by HM Revenue and Customs in relation to the filing of claims within a 90-day limit. However, the revised regime is not principally aimed at traders who, because of their more complex affairs, may find the current IVA regime more suitable for dealing with their indebtedness.**

**We are proposing that the revised regime should only include undisputed debts and therefore may not be wholly suitable for individuals whose debts to the Crown (or other creditors) have not been established and we will continue to keep HM Revenue and Customs involved as we further develop these proposals.**

**Given the support of stakeholders generally for the imposition of a time limit for creditors claims we propose that there should be one, and that it should be set at 90 days. We will consider further whether or not the Supervisor should have discretion to accept claims after the deadline. (Proposal 32)**

**Q48. Do you agree that the Supervisor should have the power to vary the SIVA within pre-determined parameters?**

| Answer | Number |
|---|---|
| Yes | 39 |
| No | 6 |
| Not Specified | 3 |

**Q49. If yes, at what level should those parameters be set?**

The parameters suggested were: -

| | |
|---|---|
| 5p in the £ | 2 |
| 10p in the £ | 1 |
| 5% of distributions | 1 |
| 10% of distributions | 5 |
| 15% of distributions | 2 |
| 20% of distributions | 14 |
| 25% of distributions | 3 |
| Extend by 6 months | 2 |
| To remain better dividend than bankruptcy | 1 |

**There is strong support for the Supervisor to have a limited ability to vary a proposal and we recommend that it is not a matter for legislation but that Standard Terms and Conditions should include that power. (Proposal 33)**

**Q50. What are your views on the use of electronic communication and payment?**

| Answer | Number |
|---|---|
| For | 44 |
| Against | 2 |
| Not Specified | 2 |

There was broad support for these proposals it being pointed out that it would be useful for debtors to make payments by electronic means and that it would be cheaper and more direct. However, attention needs to be paid to potential technological problems and the fact that not everyone is e-enabled.

**There was strong support for the use of electronic communication as part of the simplified process. This issue is being considered by the Insolvency Service as part of the secondary legislation consolidation exercise. (Proposal 34)**

**Q51. Do you agree that IVAs, SIVA 1 and SIVA 2 cases would benefit from a simple and transparent fee regime for nominee and supervisor work?**

| **Answer** | **Number** |
|---|---|
| Yes | 36 |
| No | 10 |
| Not Specified | 2 |

**NOMINEE**

**Q52. Do you agree that the nominee work in an IVA, SIVA 1 and SIVA 2 case should be a constant figure?**

| Answer | **Number** |
|---|---|
| Yes | 21 |
| No | 21 |
| Not Specified | 6 |

**Q53. If yes, what figure should be set for a single proposal in an**
- **(i) IVA**
- **(ii) SIVA 1**
- **(iii) SIVA 2**

Some respondent's suggestions said to add VAT and the table below reflects the responses

| **Suggested by** | **IVA £** | **SIVA 1 £** | **SIVA 2 £** |
|---|---|---|---|
| IP | 2,000 | 500 | 1,000 |
| Other | 1,500 –2,000 | 750 | 1,000 |
| IP | 1,750 | 900 | 1,200 |
| IP | 1,500-5,000 | 900 + disbursements | 1,750 + disbursements |
| Creditor | | 1,000 | 1,250 |
| Other | | 1,000 | 1,250 |
| IP | | 1,000 | 1,500 |
| IP | | 1,000 | 1,500 |
| IP | | 1,250 | 1,250 |
| Debt Advice | 2,000-3,000 | 1,500 | 2,000 |
| IP | 2,500-3,000 | 1,500 | 1,500 |
| IP | | 1,500 | 2,000 |
| IP | 2,500 | 1,750 | 2,000 |
| IP | | 1,750 | 2,000 |
| IP | 3,000 | 2,000 | 2,600 |
| IP | 4,000 | 1,000-2,000 | 2,000-3,000 |
| Debt Advice | 20% of realisations | 16% of realisations | 16% of realisations |
| Creditor | A percentage of realisations | A percentage of realisations | A percentage of realisations |

**Q54.What figure should be set for a joint proposal in an**
**(i)IVA**
**(ii)SIVA 1**
**(iii)SIVA 2**

| Suggested by | IVA £ | SIVA 1 £ | SIVA 2 £ |
|---|---|---|---|
| IP | 2,500 | 600 | 1,250 |
| Other | 1,800-3,000 | 1,000 | 1,250 |
| Other | | 1,100 | 1,350 |
| Creditor | | 1,100 | 1,350 |
| IP | | 1.200 plus disbursements | 2,400 plus disbursements |
| IP | | 1,250 | 1,750 |
| IP | 2,700 | 1,350 | 1,800 |
| IP | | 1,500 | 2,250 |
| IP | | 1,500 | 1,500 |
| Debt Advice | 2,250 –3,250 | 1,750 | 2,250 |
| IP | 3,000 | 2,000 | 2,500 |
| IP | 3,000 | 2,000 | 2,600 |
| IP | 3,500 | 2,000 | 2,000 |
| IP | | 2,000 | 3,000 |
| IP | | 2,250 | 2,500 |
| IP | 6,000 | 2,000-3,000 | 3,000-4,000 |
| Debt Advice | 20% of realisations | 16% of realisations | 16% of realisations |
| Creditor | A percentage of realisations | A percentage of realisations | A percentage of realisations |

**SUPERVISOR**
**Q55. Do you prefer a Monthly Administration Charge (MAC) or Set Percentage of Realisations (SPR) approach?**

| Answer | Number |
|---|---|
| SPR | 12 |
| MAC | 16 |
| Bit of both | 8 |
| Not Specified | 11 |

**Q56. What is the reason for your preferred approach?**

Those who favoured the Monthly Administration Charge (MAC) mainly did so because they saw it as fairer for all stakeholders and reflected the actual work done by the Supervisor.

Those who favoured the Set Percentage Realisations (SPR) tended to do so because they felt it gave the insolvency practitioner a bigger incentive to

maximise the debtor's payments into the arrangement.

**Monthly Administration Charge**

| Answer | Number |
|---|---|
| Fairer for all | 7 |
| Increases debtor access | 1 |
| Reflects actual work | 7 |
| Used successfully in DMPs | 2 |

**Set Percentage of Realisations**

| Answer | Number |
|---|---|
| Incentive for IP | 6 |
| Fairer for all | 1 |

**Bit of both**

| Answer | Number |
|---|---|
| Fairer for all | 1 |

**Q57. At what amount would you set the Monthly Administration Charge?**

Those who preferred this approach suggested the following: -

| Suggested by | £ Per calendar month |
|---|---|
| IP | 50 |
| IP | 50-75 |
| IP | 70 |
| IP | 75 |
| IP | 75 |
| IP | *85* |
| IP | 90 |
| IP | 100 |
| Debt Advice | 110 |
| Debt Advice | 10% of realisations |
| Debt Advice | 10% of realisations |
| IP | Market forces |
| Other | Divide unpaid IP fees/expenses (plus VAT) by the number of months in the arrangement |

**Q58. At what levels would you set the Set Percentage of Realisations?**

Those who expressed an opinion suggested: -

| Respondent | |
|---|---|
| Other | Gradually reducing sliding scale |
| IP | Gradually reducing sliding scale |
| Creditor | Gradually reducing sliding scale |
| Debt Advice | Gradually reducing sliding scale |
| IP | Sliding scale |
| Creditor | 10-15% |
| Creditor | 11.75% |
| Other | 15-20% of realisations |
| IP | 15% |
| Debt Advice | 16% |
| IP | 25% |
| Debt Advice | 25% |
| Debt Advice | 25% plus VAT |
| IP | *28%* |
| IP | 40% |
| IP | 0-£15k @ 20%<br>15-25k @ 15%<br>20-50k @ 10%<br>50k + @ 5% |
| IP | By market forces |

**Q59. Do you think that consideration should be given to adopting a set nominee fee for all IVAs?**

| Answer | Number |
|---|---|
| Yes | 18 |
| No | 23 |
| Not Specified | 8 |

**Q60. Do you think that consideration should be given to adopting a Monthly Administration Charge or Set Percentage of Realisations for Supervisory work in all IVAs?**

| Answer | Number |
|---|---|
| Yes | 21 |
| No | 18 |
| Not Specified | 8 |

**The issue of fees and how they should be calculated both for existing and simplified IVAs has provided us with no consensus. Consequently we do not propose to prescribe set fees in legislation. However we do hope that by facilitating a dialogue between stakeholders on the issue the debate can continue. (Proposal 35)**

**Q61. Are you in favour of reduced but more focused supervisor's reports?**

| Answer | Number |
|---|---|
| Yes | 41 |
| No | 2 |
| Not Specified | 4 |

This received very strong support from all types of stakeholders.

**We propose that the simplified proposals should include a more focused Supervisor's report. (Proposal 36)**

**Q62. What should be included in (or excluded from) a supervisor's report?**

**AND**

**Q63. Should consideration be given to reduced but more focused supervisor's reports in the current IVA regime?**

Baines and Ernst commented, *"Report could move to become more 'exceptions' based."*

Chiltern UK Ltd said *"Any material changes in the debtor's circumstances resulting in a change of dividend. All extraneous information should be excluded"*

Egg plc said, *"If the supervisor is to produce a report, all that is required is a statement of incomings and fees deducted and confirmation the debtors circumstances have not changed. If the debtor is in a position to increase or has a need to decrease the monthly contribution"*

A creditor who did not wish his details to be published suggested, " *Report by exception, (to include a NIL exception report.)"*

The Solicitors to Royal Bank of Scotland commented, *"Supervisor's reports should only be sent if there is new information. For example, if the debtor is not paying regularly and the reasons for that default. Also any changes to the debtor's circumstances, e.g. moved job, moved house, serious illness, bereavement or if there are changes that may affect the debtor's ability to pay the expected amounts in the future."*

**As most respondents wished to move to reporting by exception for the simplified process we propose to adopt that approach. Reporting requirements for IVAs generally will be considered as part of the secondary legislation consolidation exercise. (Proposal 37)**

**Q64. Do you have any information or comments on this Partial Regulatory Impact Assessment*?***

There were a number of favourable responses to the Partial Regulatory Impact Assessment and they included: -

*"As DMP's have evolved after the original IVA rules were established, many of the operations and principles that apply to DMP's are similar to SIVA proposals. In fact the major difference is cost. We foresee an intermeshing of the procedures, to the benefit of debtors and creditors alike."* (Chiltern UK Limited)

*"I say it is a timely and worthwhile, well researched assessment of the IVA regime. They (IVAs) have been regarded with scepticism yet they offer the fairest balance between the debtor's and creditors' interests. We need to bring IVAs into the mainstream, in fact to the fore*."
(Mazars**)**

**ANNEX 1**

# LIST OF RESPONDENTS

| | |
|---|---|
| ACCA | Grant Thornton |
| Action Today Group Limited | Michael Green |
| Affinity Limited | Gregory Pennington |
| Baines and Ernst | HMRC |
| Mark Bassford | HWCA |
| BBA | ICAEW |
| Blair Endersby | ICA Ireland |
| CBI | ICM |
| Chiltern UK Ltd | Institute of Revenues, Ratings and Valuation |
| Christians Against Poverty | IPA |
| Citizens Advice | IPC |
| Civil Court Users Association | J Knight |
| ClearDebt Limited | H Martin |
| Confidential (creditor) | Mazars |
| Confidential (creditor) | McCambridge Duffy |
| Confidential (Debt Advice) | National Debtline/MAT |
| Confidential (IP) | Northern Ireland Insolvency Service |
| CML | P Nottingham |
| Consumer Credit Association | R3 |
| Creditor (Anonymous) | RSM Robson Rhodes |
| Debt Free Direct Group plc | Salford City Council Debt Advice Centre |
| Egg plc | Solicitors to RBOS |
| FLA | D Uzzaman |
| Freeman Jones | J Watson |