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# STATEMENT OF INSOLVENCY PRACTICE 3.1

## (ENGLAND AND WALES)

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### INDIVIDUAL VOLUNTARY ARRANGEMENTS

#### INTRODUCTION

- 1 An Individual Voluntary Arrangement (IVA) is a contract between a debtor and his or her creditors. An insolvency practitioner will be central to the preparation and agreement of the proposal, and the implementation of the arrangement, whether acting as adviser, nominee or supervisor. The particular nature of an insolvency practitioner's position renders transparency and fairness in all dealings of primary importance. The debtor and creditors should be confident that an insolvency practitioner acts professionally and with objectivity in each role associated with the arrangement. Failure to do so will prejudice the interests of both the debtor and creditors, and can only bring the practitioner and the profession into disrepute.

#### PRINCIPLES

- 2 An insolvency practitioner should differentiate clearly the roles that are associated with an IVA (that is, the provision of initial advice, assisting in the preparation of the proposal, the functions of the nominee, and the responsibilities of the supervisor) and ensure that they are explained to the debtor and the creditors.
- 3 An insolvency practitioner should ensure that the information and explanations provided to a debtor about all the options available are such that the debtor can make an informed judgement as to whether an IVA is the debtor's preferred option. An insolvency practitioner should explain the debtor's responsibilities and the consequences of an IVA.
- 4 If an IVA is to be proposed, an insolvency practitioner should ensure that it is fair and achievable and that a fair balance is struck between the interests of the debtor and the creditors.
- 5 An insolvency practitioner should provide clear and accurate information to enable creditors to make decisions in relation to the proposal and the IVA, and report clearly in a manner that is easy to understand and useful.

#### KEY COMPLIANCE STANDARDS

- 6 Certain key compliance standards are of general application, but others will depend on whether the insolvency practitioner is acting as adviser, nominee, or supervisor.

#### PROVISIONS OF GENERAL APPLICATION

- 7 Advice to the debtor

The insolvency practitioner should have procedures in place to ensure that the information and explanations provided to the debtor at each stage of the process (that

is, assessing the options available, and then preparing and implementing an IVA), are designed to set out clearly:

- a. The key stages and the roles of the adviser, the nominee and the supervisor; any potential delays or complications; and the likely duration of the IVA;
- b. What is required of the debtor at each stage; and
- c. The consequences of entering into an IVA, and what may happen if the IVA is not successfully completed.

#### 8. Meeting the debtor

At each stage of the process, an assessment should be made as to whether a face-to-face meeting with the debtor is required, depending on the debtor's attitude and the circumstances and complexity of the case. A meeting should always be offered to the debtor.

#### 9 Assessment

The insolvency practitioner needs to be satisfied, at each stage of the process, that there are procedures in place to ensure that an assessment is made of:

- a. Whether the debtor is being honest and open;
- b. The debtor's understanding of the process, and commitment to it;
- c. The attitude of key creditors and the general body of creditors, in particular as to the fairness and balance of the proposals; and
- d. Whether an IVA would have a reasonable prospect of being approved and implemented.

#### 10 Documentation

The insolvency practitioner should be able to demonstrate that proper steps have been taken at all stages of the IVA, by maintaining records of:

- a. Discussions with the debtor, the information and explanations provided, the options outlined, and the advantages and disadvantages of each;
- b. Comments made by the debtor, and the debtor's preferred option;
- c. Summaries of the discussions with the debtor, set out in writing and sent to the debtor;
- d. Any discussions with creditors or their representatives; and
- e. The way in which any objections to the proposed IVA have been resolved.

### **PROVISIONS OF SPECIFIC APPLICATION**

#### **Initial advice**

- 11 An insolvency practitioner may be asked to give advice on a debtor's financial difficulties, and the way in which those difficulties might be resolved. The insolvency

practitioner should have procedures in place to ensure, taking account of the personal circumstances of the debtor and the nature of the debtor's financial affairs, that:

- a. The role of adviser is explained to the debtor, at this stage advising the debtor (in the debtor's interests) but in the context of needing to find a workable solution to the debtor's financial difficulties.
- b. Sufficient information is obtained to make a preliminary assessment of the solutions available and their viability.
- c. The obligations of the debtor to cooperate and provide full disclosure are explained. The insolvency practitioner should be able to form a view of whether the debtor has a sufficient understanding of the situation and the consequences, and whether there will be full cooperation in seeking a solution.
- d. When considering possible solutions, account is taken of the impact of each solution on the debtor and the debtor's assets, in particular the family home, and on any third parties that may be affected.
- e. The debtor is provided with an explanation of all the options available, and the advantages and disadvantages of each, so that the solution best suited to the debtor's circumstances can be identified and is understood by the debtor. This explanation should be confirmed to the debtor in writing.

### **Preparing for an IVA**

- 12 An insolvency practitioner may be asked to assist a debtor to prepare a proposal where the debtor has reached a preliminary view that an IVA may be the solution to the debtor's financial difficulties. The insolvency practitioner should have procedures in place to ensure, taking account of the personal circumstances of the debtor and the nature of the debtor's finances, that:
  - a. The role of adviser is explained to the debtor, at this stage assisting the debtor to propose a solution to the debtor's financial difficulties that will be acceptable to creditors. The roles of the nominee and supervisor should also be explained.
  - b. The debtor has had, or receives, the appropriate advice in relation to an IVA. This should be confirmed in writing if the insolvency practitioner or his firm has not done so before.
  - c. The obligations of the debtor to cooperate and provide full disclosure are explained. The insolvency practitioner should be able to form a view of whether the debtor has a sufficient understanding of the process of an IVA, its likely duration and the consequences, and whether there will be full cooperation and commitment from the debtor.
  - d. Sufficient information is obtained to make an assessment of an IVA as a solution, and its viability; measures have been taken by the debtor to avoid recurrence of the debtor's financial difficulties; there are proportionate investigations into, and verification of, income and expenditure and assets and liabilities; and that a nominee would have sufficient information to prepare a report.
  - e. Disclosure is made of the costs of the IVA in the proposal.

- f. Where relevant, sufficient information is obtained to support profit and cash projections and this is explained in the proposal.
- g. Consideration is given to the effect of the IVA on third parties.
- h. Account is taken of the likely expectations of key creditors.
- i. The proposal contains sufficient information for creditors to understand the debtor's background, financial history, why the debtor has become insolvent and any other attempts that have been made to solve the debtor's financial difficulties.
- j. The proposal contains details of the source of any referral of the debtor, and any payment made or proposed in connection with that referral, (eg for information provided by the referrer).
- k. The proposal contains details of any payments made, or proposed to be made, to the nominee and the supervisor or their firms in connection with the proposed IVA or previous advice.

### **The nominee**

- 13 It is the responsibility of the nominee to be satisfied on the advice given and the proposed IVA and therefore be able to report in relation to the proposed IVA. When acting as nominee, the insolvency practitioner should have procedures in place to ensure that:
- a. The debtor has had, or receives, the appropriate advice in relation to an IVA. This should be confirmed in writing if the insolvency practitioner or his firm has not done so before.
  - b. An assessment is made of whether an interim order is needed.
  - c. The debtor's financial position is not materially different from that contained in the proposal and the nominee's report explains the extent to which the information has been verified.
  - d. The IVA is not manifestly unfair.
  - e. The IVA has a reasonable prospect of being approved and implemented.
  - f. The debtor's agreement is obtained to any modifications to the proposal put forward by creditors, and the debtor understands the impact of the modifications on the implementation of the IVA and its viability.
  - g. Where a proposal is modified, creditors should be made aware of the final form of the accepted IVA.

### **The supervisor**

- 14 When acting as supervisor, the insolvency practitioner should have procedures in place to ensure that:
- a. The IVA is supervised in accordance with its terms as approved by creditors.
  - b. The progress of the IVA is monitored (including any trading if relevant).

- c. Any departures from the terms of the IVA are identified at an early stage and action is then taken by the supervisor.
- d. Any discretions conferred on the supervisor are exercised where necessary, on a timely basis.
- e. Enquiries by creditors are dealt with promptly.
- f. Full disclosure is made of the costs of the IVA and of any other sources of income of the insolvency practitioner in relation to the case in reports to creditors.
- g. The IVA is closed promptly on completion or termination.

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