

So, what is an Individual Voluntary Arrangement?

The information in this leaflet was prepared in May 2017. As with everything, information can get out of date.

We therefore recommend that you check your specific circumstances with a Licensed Insolvency Practitioner before you do anything based on this leaflet.

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Registered in England and Wales, Company number 4547436

Marc Landsman is licensed to act as an Insolvency Practitioner in the UK by the Institute of Chartered Accountants in England and Wales
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When we wrote this leaflet we realised that most people only ask a few of the questions at the beginning, but often ask a lot of the others at a later stage, sometimes too late.

Some adverts make out that offering an Individual Voluntary Arrangement or otherwise dealing with your debts is easy. We don't, as we don't think it is. We will work with you, but you have to do some of the work yourself.

The questions and answers are in no particular order. Whilst this means that it is harder for you to read them now, we can be confident that you have seen the answers to most of the questions and not just the ones you have thought about. You will therefore be in a better position to think about whether an Individual Voluntary Arrangement is right for you, not just an option that sounds easier than bankruptcy.

We would hope that you would speak to us, but appreciate that the paragraphs above may have scared you off. If so, we suggest that you look either in a phone book or on the internet for a Licensed Insolvency Practitioner. Only Licensed Insolvency Practitioners have had to take the formal exams, gain the experience and are regulated to give you insolvency advice. There are other people who will also give good advice, but there are also some rogues out there!

Even if you don't want to talk to us, you have made the effort to get this leaflet so we feel a little bit responsible to you and want to make sure you get the best advice you can.

Of course, if you like our attitude or can at least see why we take it, please call us!

Is an Individual Voluntary Arrangement right for me?

Maybe, maybe not. Read on to decide!

I'm considering an Individual Voluntary Arrangement, but my creditors are taking me to court. Can this be stopped?

Probably, but you have to tell us as quickly as possible. Depending on the type of court action the creditor may not be willing to withdraw, but often they will if they will still be unsecured creditors.

Can I enter into an Individual Voluntary Arrangement if I have already received a Statutory Demand or County Court Judgment?

Yes. This will not affect it, though if there is a charging order against the property this could make a big difference. Generally, an Individual Voluntary Arrangement is more likely to be accepted if it is offered early rather than late. This is because the creditors have not had to spend as much money chasing you, and usually there are less interest and penalties on the debts. Because of this, the same monthly repayment will lead to a higher dividend.

Can I arrange an Individual Voluntary Arrangement directly with my creditors?

No. You can arrange an informal repayment plan with them, and if you only have 1 or 2 creditors this may be the best way forward. An Individual Voluntary Arrangement is a formal offer from a debtor to creditors, dealing with quite large amounts of money, and including provisions for what will happen if things go wrong. As you can appreciate, the creditors will want someone independent that they know they can trust to enforce the terms. For this reason, only Licensed Insolvency Practitioners, who have experience and special insurance in place are allowed to act in Individual Voluntary Arrangements.

Will the Individual Voluntary Arrangement stop my unsecured creditors from chasing me?

The legal answer is yes. Unfortunately, some creditors do not always tell every department that an Individual Voluntary Arrangement is being offered or has been accepted, so mistakes can happen because of human error. We recommend that you tell anyone that phones you to call us, or forward their letters to us.

Does this mean I can stop paying my mortgage or hire purchase?

If you want them to repossess, stop paying them! A mortgage or hire purchase agreement (or similar), however, is secured on your home or whatever you borrowed the money to buy. If you do not keep up the payments they can take it back (sometimes they need to go to court to do this).

My partner/spouse and I have joint debts. Can they be considered together in the same Individual Voluntary Arrangement?

Your Individual Voluntary Arrangements will be almost identical, but as the name says, they are *Individual* Voluntary Arrangements. If a spouses or partners are offering almost identical Individual Voluntary Arrangements, there is a cost saving as they are run together.

Can I stay in business?

Yes. This is a common reason for proposing an Individual Voluntary Arrangement.

You will probably find that trade suppliers want to be paid either in advance or on delivery, and you will not be allowed an overdraft facility.

Will I have to close my bank account?

If it is in credit and you have no related creditors, no. If it is overdrawn, the bank will usually do this automatically anyway.

We recommend that you open a new account before you offer an Individual Voluntary Arrangement with a totally different bank to make sure that they do not apply your salary to your overdraft so that you have no money to pay for essentials. Whilst this can be corrected, it takes time and you will be without money whilst it happens. If you open a new account, please make sure that the banks are not linked (ie Royal Bank of Scotland/NatWest or Bank of Scotland/Halifax).

How will an Individual Voluntary Arrangement affect my credit rating?

If it wasn't already ruined, it will be by the Individual Voluntary Arrangement.

To be fair, though, the same would happen if you went bankrupt or dealt with your debts in a debt management plan or similar.

Does the Insolvency Practitioner represent the Creditors (who are owed money) or the Debtor who owes the money?

Legally, he starts out representing the debtor, then switches to representing the creditors. In real life, this would lead to all sorts of problems, so the fairest way is to be independent throughout making sure that the debtor knows what will be expected from him or her, and that the creditors know that their interest are being looked after.

Who is an Individual Voluntary Arrangement 'aimed at'?

Anyone who is insolvent, owes more than about £15,000 and can afford to make payments of £300 or so a month and wants to repay as much as they can to their creditors. They are usually best for people who are self employed or have assets or jobs they would lose in bankruptcy.

Bankrupts cannot be in certain professions or jobs, generally ones where they have to handle money or could be open to bribes or blackmail.

Who isn't an Individual Voluntary Arrangement 'aimed at'?

Anyone who has a job that wouldn't be affected by bankruptcy, doesn't own their own home, or doesn't have much surplus income. An Individual Voluntary Arrangement is not for someone who decides to incur debts of 4 times what they can afford since they have seen adverts to 'write off 75% of your debts'.

Why do you set a minimum level on debts and repayments?

Even though most of the costs are paid by the creditors, an Individual Voluntary Arrangement is not a cheap solution. It typically costs £1,500 - £4,000 to set up, and £1,000 - £2,000 per year to run depending on what we have to do. If your debts and available income are below the levels mentioned your contributions will mainly be used to pay our costs, which we do not think is fair. The creditors are also likely to reject the offer for this reason.

Must I tell my Partner or Spouse?

If you are offering part of the equity in your house or have debts jointly with them, you will have to. Otherwise, you do not need to. You may want to think, though, about what they will say or do if they find out from someone else or open a letter addressed to you. If you are under financial stress, you will often not 'be yourself', and they may realise there is a problem even if they do not know what it is.

Would you prefer their support or for them to wonder why you are being more careful than normal with money and acting suspiciously? We always recommend that you tell your partner or spouse!

Why would a creditor agree to write off money I owe?

If you cannot afford to repay your debts, the creditors will want to get as much as possible back from you. This is why some of them write to people in serious arrears offering them 'one-off special' deals to get something back. If you have got to the stage of offering an Individual Voluntary Arrangement the most likely alternative will be bankruptcy, where they will get less. They are therefore open to suggestions to maximise their recovery. We will only allow an Individual Voluntary Arrangement to be offered if this is better for the creditors than bankruptcy.

Will they really write off 75%/85% of my debts?

No!

Creditors know how much it costs them to keep a bad debt running, what tax relief they could get, and what effect bad debts have on their public profile both to their shareholders and other debtors, as well as a lot of other things we do not even know about. This will often give them a minimum dividend, which for a lot of creditors used to be 25p/£.

Some creditors still accept this, others are looking for anything up to at least 85p/£. Some always reject Individual Voluntary Arrangements because they

think they encourage others to go into them when they are not appropriate. Some have no minimum dividend at all.

The real picture is that if you offer less than 25p/£ it will probably be rejected (though if your debts are in the millions, a far lower dividend may be accepted since the potential losses are so much higher). The amount you need to offer, however, is always the most you can sensibly afford. Whilst the creditors can always ask for more, often they would prefer to reject as they do not take you seriously if you do not make a sensible offer. If, on the other hand, you offer more than you can afford to meet a minimum dividend, you are setting the Individual Voluntary Arrangement up to fail.

If the creditors believe that you can pay in full, they will expect this, albeit that the Individual Voluntary Arrangement will give you time to do this.

Will interest on the unsecured debts stop?

Generally yes, but if you are able to pay in full creditors may expect you to pay interest.

Can I get an Individual Voluntary Arrangement if I am bankrupt?

Yes, but you should act quickly.

Usually the largest cost in a bankruptcy is the Trustee's fees. If you have assets, the Official Receiver will normally try to appoint a Trustee quickly. His or her fees must be paid as an expense of the Individual Voluntary Arrangement, and this brings down the dividend.

You can also only propose an Individual Voluntary Arrangement from bankruptcy before you receive your discharge, which is usually after 1 year.

Do I have to meet the Insolvency Practitioner?

We can do everything over the phone, but we still recommend that you meet with either him or a member of his staff. If we meet face to face we can normally tell if you understand everything we are saying and have told us everything, which we can't do on the telephone. This is why we suggest a meeting. A lot of people are also more relaxed talking over a mug of coffee than on the phone.

What are the Disadvantages of an Individual Voluntary Arrangement?

An Individual Voluntary Arrangement is a second chance. If you do not keep to the agreement you make, you could end up in bankruptcy.

But you would only offer it if you are sure you can keep it up!

If you get a windfall (ie a lottery win or inheritance), this will probably all go towards paying your debts.

But you did originally agree to repay them in full when you took out the loan.

If your earnings go up, so will the amount you pay your creditors.

Your creditors are agreeing to write off part of the debt because you cannot afford to repay it. If you can afford higher repayments, it is only fair that you make them.

If you own your own home, your creditors will probably want part of your share of the equity.

When you bought your house you probably saw it also as an investment, paying a mortgage so that you had something when you wanted to move rather than rent where you had nothing. It is only fair that the creditors benefit from your investment when you could have been paying them and renting somewhere smaller or in a different area.

Your credit rating will be ruined for 6 years

It's probably not too good at the moment, and is only relevant if you want to get credit. Most debtors do not want to get their fingers burned again for quite some time. When the Individual Voluntary Arrangement finishes you will have an amount available every month to save or spend on little luxuries, so hopefully you will not need a loan!

You can't get credit whilst you are in an Individual Voluntary Arrangement

Whilst you are in an Individual Voluntary Arrangement you will not be able to afford to pay off new loans.

What debts can be included in an Individual Voluntary Arrangement?

Almost all of your unsecured debts, including tax.

The main exclusions are arrears of maintenance to your ex-wife or husband, student loans and fines.

You cannot include Hire Purchase or any secured debts such as mortgages.

If you are self employed, the Individual Voluntary Arrangement will include all your personal and business debts. If you are in partnership, your partner will remain liable for the partnership debts.

Will my landlord find out about my Individual Voluntary Arrangement?

Not from us unless you owe them money.

All personal insolvencies are listed on the Insolvency Service website, so if they regularly check they will find out.

If you want to move, your new landlord may ask the question.

Do I have to pay fees?

If you are able to afford to, yes you will!

In most cases, the only amount you will have to pay is either 1 or 2 months' contributions (ie the amount we think you can afford to repay every month). These will count towards your total payments if the Individual Voluntary Arrangement is accepted, and are the only amount you will have to pay if it is rejected. You will only pay this when we have told you to stop paying your creditors.

The main reason we ask for this is because people have promised us that they can afford repayments, and then did not make them when their Individual Voluntary Arrangement was accepted. Not only did we spend a long time

working to prepare the proposal, but when we sent the next proposals to the same creditors they were suspicious that the same would happen again.

We also have to make payments before an Individual Voluntary Arrangement is considered (for instance an insurance premium and the costs of sending the proposal to creditors), and this goes towards these costs.

Can my arrangement be successfully finished early?

The Individual Voluntary Arrangements we write have a way to do this. If you know that you may be able to do this, though, tell us as soon as possible.

If you know this before proposing an Individual Voluntary Arrangement, you should definitely tell us as this may change the advice we give you or how we write the proposal.

How much will I have to pay into the Individual Voluntary Arrangement?

As much as you can afford

Can I keep using my credit cards or take out a new loan during an Individual Voluntary Arrangement?

No!

Part of the agreement in an Individual Voluntary Arrangement is that you don't take any more credit and live within your means. Sometimes debtors 'forget' to tell us about a credit card, but we have to warn that if we are told by a credit card company we may have to fail the Individual Voluntary Arrangement. Given that a lot of the cards are run by different companies from the name on the card, and companies are merging, this is not a risk that we think is worth taking!

If I have positive equity in my property, how does this affect my Individual Voluntary Arrangement application?

You will probably need to pay part of this into the Individual Voluntary Arrangement.

Usually this will be done at the end of the Individual Voluntary Arrangement, with you looking for a secured loan or remortgage to bring in the funds. You will not need to pay the costs of the secured loan and the Individual Voluntary Arrangement at the same time.

What if my circumstances change and I can afford to make increased payments during the Individual Voluntary Arrangement?

Your creditors will expect you to increase your payments.

The increase will normally be half of the extra amount you earn, but will be for the Supervisor and you to discuss.

What if my circumstances change and I can't afford agreed payments?

An Individual Voluntary Arrangement can be varied to allow you to make lower payments, but the obvious question is whether an Individual Voluntary Arrangement is still appropriate for you or whether you would be better off in

bankruptcy. This is a matter that we would discuss with you.

What if I fail to keep up the agreement?

Normally we would have to fail the Individual Voluntary Arrangement, often leading to your bankruptcy. This is why we want to be sure that an Individual Voluntary Arrangement is really correct for you before you offer one or it starts.

Can I do an Individual Voluntary Arrangement without affecting my home?

If you own your home, the creditors will normally want part of the equity at the end. The exceptions are if you are offering equity at the beginning, though this is quite rare, or there is only a small amount.

Can I cancel the Individual Voluntary Arrangement once it is set up?

Once your Individual Voluntary Arrangement is accepted it is a legally binding contract. If you want to cancel it, you will either have to successfully finish it early, or cause it to fail. This latter option will normally lead to bankruptcy.

Who pays the fees for setting up the Individual Voluntary Arrangement if it is rejected?

You will have paid something towards the fees, but this firm will not charge the rest, and will make a loss.

Who pays the fees for setting up the Individual Voluntary Arrangement if it is withdrawn?

You can withdraw a proposal at any time, and we may recommend that you do so in certain rare instances. If you decide to withdraw the offer and we have not recommended you to, we may ask you to pay the costs to date.

What about all the free versions I see advertised in the newspapers?

Some firms give you free advice then introduce you to someone else who will often pay them a commission. Others are run by charities, but the funding is often from the banks and credit card companies. Some are run by the government, and often send people to see a Licensed Insolvency Practitioner (who then charges) to help them.

Free advice can sometimes be expensive in the long run.

Will I be able to hold public office or be a company director?

Yes, in most cases. There are certain exceptions, usually in the constitution of the organisation. For example, even though you can usually be a company director even if you are in an Individual Voluntary Arrangement, some companies have a clause specifically saying that you cannot.

Why is the meeting held?

Creditors have to vote on the proposal, and have the chance to ask any questions they want to help them make up their mind.

Do all my creditors have to accept the Individual Voluntary Arrangement?

No. An Individual Voluntary Arrangement is accepted on behalf of all the

creditors if at least 75% by value who bother to vote agree it. This means that 1 creditor owed £7,500 can outvote 100 creditors owed £2,500 between them, or that 1 creditor voting for £1 can bind £100,000 of other creditors who didn't bother to vote.

How can the voting go?

Creditors can vote in 3 different ways

Accept

If a creditor likes your offer, they can accept it as it stands

Reject

If a creditor is not willing to accept your offer, they can reject it. This is usually if the offer is below the minimum they will accept, if you have a bad history with them (for instance HM Revenue & Customs will usually reject if you haven't submitted a lot of tax or VAT returns), or in the case of individual creditors if they just don't like you (an example, though not in an Individual Voluntary Arrangement, was when someone was very awkward at a meeting of creditors for a company liquidation, we found out later that the director had had an affair with the creditor's wife!). If you know of any of these last group, you should tell us as soon as possible.

Request modifications

Creditors will often say that they will accept an Individual Voluntary Arrangement if certain changes are made. Usually they will be to increase the dividend, though sometimes they are technical ones requiring us to do something, and sometimes just odd! On one occasion, a restaurateur had to open bookings for seasonal dinners early for his creditors since it was a respected restaurant which filled up early. If you accept the modifications, they will accept the Individual Voluntary Arrangement, otherwise they will reject it.

How many creditors need to attend the creditors meeting? Do I have to attend?

Only 1 creditor or their representative needs to attend for the meeting (which usually takes place over the phone or internet) to take place. In the vast majority of cases, creditors ask the Chairman of the meeting to vote on their behalf (though they tell them how to vote). Since this is someone from Carmichael & Co, in reality the meeting is therefore usually held at that person's desk by just counting the votes. Any questions are usually asked and answered in advance.

If no-one else is attending, you will not need to. If there are proposed modifications, you will have to consider them in advance. You should be near a phone anyway in case there are new modifications. The meeting can be adjourned for up to 2 weeks if needed.

Do I have to accept any modifications?

No, but if you reject them they will be taken as votes against the Individual

Voluntary Arrangement.

We will look at all the modifications in terms of whether they are 'fair' and whether you need their vote for the Individual Voluntary Arrangement to be accepted. If a creditor is owed 1% of the voting debt and asks for major changes, you need not accept them as it will not cause the Individual Voluntary Arrangement to be rejected, if they are owed 26% you will have to think carefully about them. If the modifications are too strong we would advise you to reject them anyway as you could not keep to the Individual Voluntary Arrangement. For example, one creditor always asks for a 50p/£ minimum dividend. If the original offer is 49.99p/£, there is probably not much harm in accepting it, but if it is 30p/£ it could mean that the Individual Voluntary Arrangement cannot possibly succeed.

Can one individual creditor refuse to accept an Individual Voluntary Arrangement?

They can vote to reject it, and they may be able to block it. If, however, enough other creditors accept it, they are bound by it.

What if I have forgotten a creditor?

We ask you to check that you have included all your creditors. If you have missed a small one and it does not affect the dividend much we can normally include them automatically. If it would change the dividend by a lot, it may cause that Individual Voluntary Arrangement to fail. Either way, that creditor has 28 days in which to apply to the Court to overturn the Individual Voluntary Arrangement. It is a lot easier if you include all your creditors at the beginning.

How are debts with joint liability treated in the Individual Voluntary Arrangement if only one of the debtors is offering a proposal?

The creditor can claim in the Individual Voluntary Arrangement, but will usually also look for the joint debtor to pay in full. The joint debtor may be able to make a claim to get some of their money back. If you have any joint debts you should tell us early on since the joint debtor may need to do something too.

What happens at the end of the agreement?

When you successfully finish your Individual Voluntary Arrangement all the outstanding debts covered by the Individual Voluntary Arrangement will be written off. We will provide you with a certificate to show that it is finished, and you can show this if you have a problem getting credit. For the first year or so after the Individual Voluntary Arrangement finishes, though, you will still have problems whilst everything works through the system.

What if I have other questions?

The questions above are just the common ones we are asked. If you have any others, please phone us.

Our web site at www.carmichaelsinsolvency.co.uk also has a lot of information, or try the Insolvency Service (which is an executive agency, sponsored by the Department for Business, Energy & Industrial Strategy in the government) one at www.gov.uk/government/organisations/insolvency-service.

Why choose Carmichael & Co rather than another firm?

Marc Landsman, the Licensed Insolvency Practitioner at Carmichael & Co is licensed by the Institute of Chartered Accountants in England and Wales. He and his team are therefore required to provide the best advice they can. So is every other insolvency firm which is run by an Insolvency practitioner. Not all firms offering debt advice are run by an Insolvency Practitioner. Carmichael & Co also provides an 0330 number (so it is probably included in your 'free' calls, or is charged at the local charge rate) which connects to either Marc or a senior member of the team outside of usual office hours, rather than a call centre.

Are you nice people?

If people are nice to us, of course we are! We won't, however, raise your hopes or pretend that your affairs are better than they are. If we think bankruptcy is best for you, we will tell you. If you have got this far, you can see that we tell it as it is rather than putting a sugar coating on everything.

Who can I speak to if I wish to complain?

We would hope that you would not need to! If you have a complaint against any of us, the first suggestion would be to call Marc. If he cannot sort out the problem, you can write to the centralised 'Complaints Gateway' at The Insolvency Service, IP Complaints, 3rd Floor, 1 City Walk, Leeds LS11 9DA.

What do you do apart from Individual Voluntary Arrangements?

We deal with all types of insolvency (including dealing with companies), but only insolvency.

We believe that you can only offer a good service if you keep up to date with everything that is happening in that field.

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