



Spotlight - IVA termination

March 2019

This month's Spotlight focusses on the process of how an IVA can be terminated. Your client may be in a position of not being able to continue making payments in an IVA and wants to explore other insolvency options to clear their debts. The Spotlight also covers what your client can do if an IVA was not the appropriate debt solution from the beginning and explains what the complaints process is.

Certificate of Termination

Assuming the IVA is a [straightforward consumer IVA](#) under the IVA Protocol 2016, s9(2) states:

"9(2) Non-compliance with the arrangement

If you do not comply with your obligations after the Supervisor has given you written notice specifying how long you have to do so, then the Supervisor may end the arrangement at his/her discretion. The Supervisor must report to the creditors when issuing the annual report under Rule 5.31 of the Rules, or earlier if he/she thinks appropriate, if any of the following occurs:

(i) The Supervisor becomes aware that a bankruptcy petition has been served against you while the arrangement is in force.

(ii) You fall more than 3 months into arrears with contributions from income (subject to the exceptions in paragraph 8(8)), or fail to pay the additional sums due in respect of overtime etc.

11 (iii) You are in breach of any obligation about the realisation of assets or after-acquired property.

(iv) You fail to comply with any other of your obligations set out in the proposal."

Section 10.9 also states:

“10.9 Where the individual is unable to remedy any breach of the arrangement, the supervisor must report within 28 days to the creditors and either issue a Certificate of Termination or if the Supervisor feels it appropriate seek creditor views to do one of the following:

- vary the terms of the arrangement; or*
- issue a certificate (“Certificate of Termination”) terminating the arrangement by reason of the breach; and/or*
- present a petition for the individual’s bankruptcy.”*

Therefore, in terms of a timeline from default in payments to receiving a certificate of termination, to summarise using Annex 4 - section 9:

- Your client needs to have defaulted on payments for 3 months or longer
- The Supervisor will then send the client a ‘Notice of breach’ identifying breaches of the arrangement.
- If the client does not remedy the breach within 1 - 3 months of receiving the Notice, the Supervisor must report to the creditors within 28 days and either issue a Certificate of Termination, or if the Supervisor feels it appropriate, seek creditor views.
- The creditors will then decide whether the terms of the arrangement need varying; whether to issue the Certificate of Termination; or to present a petition for the client’s bankruptcy.

The process above is around a 7-month period, but this is a guide as to the rough timeline, and this could be shortened depending on the IVA agreement and the IP.

Your client could also request in writing for the certificate of termination to be issued, but the Supervisor may delay doing so until the Supervisor’s administration of the estate has been completed (Section 9(6) of the IVA Protocol 2016).

Alternative insolvency solutions

During the term of the IVA, the client might feel that a DRO or bankruptcy is suitable instead.

Applying for a DRO

There are certain steps that need to be taken before the client can apply for a DRO.

[The Intermediary Guidance Notes V.16](#) states the following:

‘Applicant’s IVA has been terminated

If the IVA has recently been terminated, the intermediary should email the DRO Team a copy of the Certificate of Termination and of the Receipts and Payments account.’

If you refer to the [Citizens Advice DRO Toolkit](#) (also available through the Money Advice Trust website) section on IVAs. It states:

“...whether the client has received an order of revocation from the court or certificate of termination from the IVA supervisor. Keep a copy on your client’s file.”

The DRO A – Z Guide (which should have been circulated to Approved Intermediaries (AIs) by their Competent Authority states at page 28:

“If there is any doubt that an IVA has been formally ended then the AI should contact the IVA supervisor for a documentation confirming the IVA has ended which will include:

- *Covering letter – making reference to Rule 5.34 or 8.31*
- *Certificate of Termination Rule 5.34 or 8.31 Completion/Failure*
- *Copy of the final Report to Creditors*
- *Final Receipts & Payments – if there were no Receipts & Payments this should be referred to in the covering letter*

To update the IIR the above documentation should be emailed to:*

CustomerServices.EAS@Insolvency.gsi.gov.uk

**Photos of the above documents are not accepted, scanned or original only.*

If an IVA is shown on the IIR as current and no documentary evidence has been provided to the contrary, the Official Receiver will decline the DRO application.”

Therefore, assuming that the IVA provider confirms the IVA has been terminated and the client has documentation to prove termination, then your client can proceed with a DRO.

If the credit report is still showing as a live IVA after it has been terminated / revoked, your client would need to contact Experian to check why it not showing as failed. Your client may need to get this corrected. You can put this question to [Ask James](#) on the Experian website.

Bankruptcy as an alternative

If the client wants to go bankrupt, the cost of application is £680 and therefore, considerably more than a DRO application. However, the client would not need to wait for a certificate of termination from the IP to proceed with a bankruptcy application.

Complaints

Where the IVA appears to have never been a suitable/appropriate option for a client, e.g. the IVA was mis-sold, your client may wish to complain. If the provider is/was FCA licensed [CONC 8.3.2](#) will apply as well as the FCA Principles ([PRIN](#)).

If the IP is not FCA regulated (you can find out [here](#) and/or contact the [FCA Consumer Helpline](#) on 0800 111 6768), then the IP will be bound by a [Code of Ethics](#) as laid down by the [ICAEW](#) (The Institute of Chartered Accountants in England and Wales) who have also compiled a [Statement of Insolvency Practice 3.1](#).

If a complaint is valid, you can request that the IP terminates the IVA and that all fees paid into the IVA to date are refunded to the client.

If you're not happy with how the IP has dealt with the complaint, you can complain to the [Insolvency Service's Complaints Gateway](#). They will assess your complaint and pass it onto the relevant authorising body. This will be the authorising body that your IP is registered with. The authorising body will investigate your complaint if it is about unprofessional, improper or unethical actions by your IP.

They can't:

- reverse or alter a decision of an insolvency practitioner
- intervene directly in your clients IVA.

If you are unhappy about any of these matters, your client should get independent legal advice as only a court has the power to look into them. This may be expensive.

If the complaint is upheld

If a complaint is successful, then your client will probably be refunded a lump sum of income which was paid into the IVA. These funds will be viewed as property if received during the DRO moratorium and will need to be declared to the Official Receiver (OR) and the OR will apply the property protocol (see the DRO Toolkit "*Acquiring property during the moratorium*" for further information).

Therefore, it may be in your client's interests to get the IVA complaint resolved before applying for a DRO.