Oury Clark Quick Guides:

Oury Clark

Personal Insolvency

Insolvency: A2518

There are a number of ways that individuals getting into financial difficulty may seek to resolve their financial position. Each method is restricted depending on the level of debt, the circumstances of the individual and the nature of the debts involved.

Personal Insolvency options may include Bankruptcy, Individual Voluntary Agreements or Debt Relief Orders as well as non statutory solutions. Below is a brief outline of the possible resolutions.

Non Statutory Solutions

These may include:

- Informal Agreement – non-legally binding agreement reached between the debtor and creditor.
- Debt Management Plan – agreement between a debtor and creditor addressing the terms of an outstanding debt.
- Consolidation Loan – combining all existing debts into one loan.

Administration Orders

If a creditor obtains judgment the court may pass an Administration Order whereby a debtor will make monthly payments to the court for distribution between the creditors.

Total debts must be less than £5,000. Creditors listed on the Administration Order cannot take any further action against the debtor without the court's permission.

Debt Relief Orders ("DRO")

These schemes are administered by the Insolvency Service and are suitable for those debtors who have a maximum disposable monthly income of £50, have less than £20,000 worth of unsecured creditors and have less than £1,000 worth of assets.

The DRO freezes your debt repayments and interest for 12 months, after which the debt will be written off in the event that the debtor's financial circumstances have remained the same.

Let us Introduce Ourselves

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Disclaimer: This note does not contain a full statement of the law and it does not constitute legal advice. Please contact us if you have any questions about the information set out above.

Individual Voluntary Arrangement ("IVA")

An IVA is a statutory solution for debtors to reach agreement with their creditors for repayment of the debt. They are designed to make repayments more manageable and affordable and are a formal alternative for individuals wishing to avoid bankruptcy. By and large repayment will be in part rather than full.

An IVA must be set up by a Licensed Insolvency Practitioner who would act as Supervisor of the Arrangement. Prior to the implementation of an IVA, a meeting of creditors will need to vote for the approval of an IVA. If less than 75 % of voting creditors approve the IVA the outcome for the debtor is commonly bankruptcy.

An IVA will largely let the debtor avoid the stigma and restrictions of bankruptcy. It can also provide the debtor with more control over their assets than bankruptcy but will generally only be a viable option if:

- The debtor has a disposable income; or
- Has a saleable asset or third party willing to donate funds to the IVA.

Bankruptcy

This is invariably a creditor driven process, which follows a bankruptcy order made by the court. It is a creditor's action of last resort in attempting to collect an outstanding debt. The process aims to ensure that all assets are distributed fairly amongst creditors.

From the debtor's point of view, the bankruptcy order can remove the pressure of creditors and so enable him or her to make a fresh start.

A Licensed Insolvency Practitioner would act as Trustee in Bankruptcy and has wide ranging powers and authority in order to review the conduct of the debtor. This in turn may result in recovery of funds for the benefit of creditors.