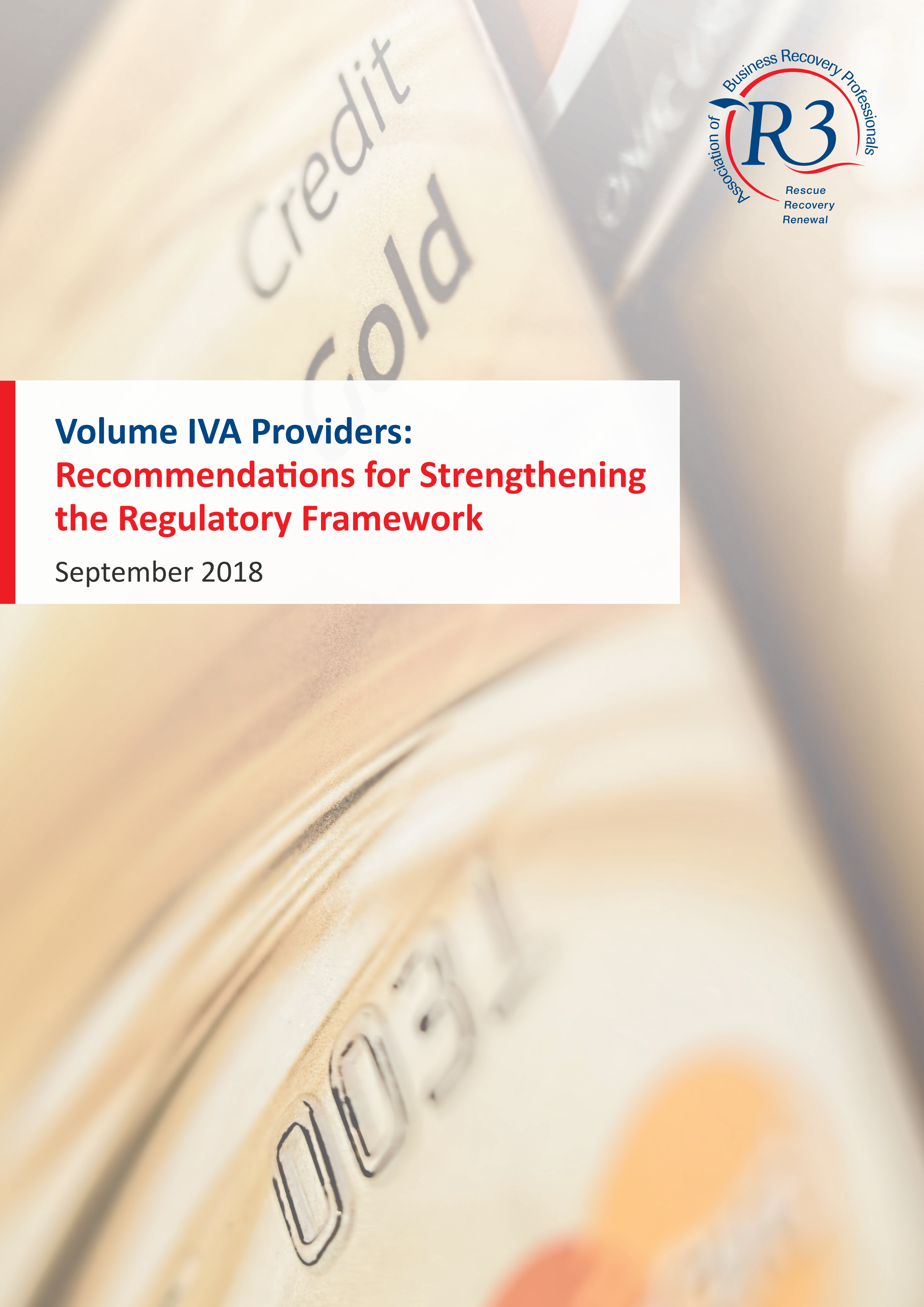

Association of Business Recovery Professionals
R3
Rescue
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Volume IVA Providers:
Recommendations for Strengthening the Regulatory Framework

September 2018

Contents

About R3

R3 is the trade association for the UK's insolvency, restructuring, advisory, and turnaround professionals. We represent insolvency practitioners, lawyers, turnaround and restructuring experts, students, and others in the profession.

The insolvency, restructuring and turnaround profession is a vital part of the UK economy. The profession rescues businesses and jobs, creates the confidence to trade and lend by returning money fairly to creditors after insolvencies, investigates and disrupts fraud, and helps indebted individuals get back on their feet.

The UK is an international centre for insolvency and restructuring work and our insolvency and restructuring framework is rated as one of the best in the world by the World Bank. R3 supports the profession in making sure that this remains the case.

R3 raises awareness of the key issues facing the UK insolvency and restructuring profession and framework among the public, government, policymakers, media, and the wider business community. This work includes highlighting both policy issues for the profession and challenges facing business and personal finances.

For any enquiries, please call 020 7566 4200 or email association@r3.org.uk.

Debt Advice: Volume IVA Providers

The sustainability of rising consumer debt is of increasing economic and political concern in the UK, with levels of certain types of consumer credit increasing by 10% from 2016 to 2017[1]. With the advent of new ways to access credit from unsecured lenders, such as payday loans, and a regulatory system which is under constant pressure to keep up with a rapidly evolving market, the personal insolvency landscape has had to adapt to assist those who end up being unable to pay their debts.

One of the most popular, and often most appropriate, ways to manage personal insolvency as a result of consumer debt is through an Individual Voluntary Arrangement (IVA). An IVA is essentially a contract between an indebted individual and their creditors through which the indebted individual pays off their debts (or an agreed proportion thereof) over a set period of time, typically five years. IVAs can follow a standardised format when the indebted individual's financial affairs are relatively simple or can be specialised and specifically tailored contracts where an indebted individual's circumstances are more complex. On the successful completion of the IVA, any remaining debt liability is written off. Since 1990, over 250,000 people have used an IVA to deal with their debts.

The IVA sector has seen rapid innovation in recent years. The rise in consumer debt has led to a rise in the numbers of IVAs and has been linked to a new type of IVA provider entering the market: the volume IVA provider[2]. These firms specialise in and process significant numbers of IVAs, making this personal debt solution more accessible to indebted individuals and cheaper for creditors – the standardised IVAs[3] typically used by volume providers are less complex than tailored ones, which helps to keep costs down. In 2017, the three largest volume IVA providers accounted for 33,769 of a total of 59,220 new IVAs registered (or 57%)[4]. The players in this market are also constantly evolving, with the firms handling the majority of IVAs having changed since they first became a popular debt solution.

While standardised IVAs and volume IVA providers play a valuable role in the personal debt market, it's important to make sure that evolving areas of the insolvency framework don't create new risks for insolvency firms, indebted individuals or creditors. In the volume IVA market, areas which may be in need of particular attention include the safeguarding of client monies paid to volume IVA providers, the expenses being charged, and the effect of corporate (often group) structures on insolvency practitioner regulation. As with any other part of the insolvency framework, any risks must be carefully managed to avoid deterioration in trust between IVA providers, the wider insolvency profession, the Recognised Professional Bodies (RPBs) and creditor bodies.

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1. In contrast, household incomes rose only 1.5% over the same period. Bank of England, *"Debt strikes back" or "The Return of the Regulator"?,* http://www.bankofengland.co.uk/publications/Pages/speeches/2017/992.aspx

2. Volume IVA providers are defined for the purposes of this paper as those firms which undertake 500 or more IVAs in any given calendar year. The Insolvency Services defines volume providers as "any firm that controls greater than 2% of the total market (including new and existing cases), or greater than 2% of new cases over a rolling three month period".

3. Colloquially known as 'Consumer IVAs' or 'Protocol IVAs' and typically governed by The Straightforward Consumer IVA Protocol

4. The ten largest IVA firms registered 48,567 IVAs or 82% of the total number of IVAs registered in 2017. Insolvency Service, *Insolvency Statistics: January to March 2018,* https://www.gov.uk/government/statistics/insolvency-statistics-january-to-march-2018, and *IVA outcomes and providers data tables,* https://www.gov.uk/government/statistics/individual-voluntary-arrangement-outcomes-and-providers-2017.

Many of the regulatory challenges unique to volume IVA providers stem from these firms' structures and the type of debt they deal with. In a volume IVA provider, the insolvency practitioner may not be a key decision-maker, the insolvency practitioner will be the supervisor of many more cases than counterparts elsewhere in the profession, and the firm may be part of a much larger group structure. Firms looking to meet (potentially costly) best practice also face pressure from creditors to keep costs down.

Additionally, the commoditisation of debt can weaken the link between creditors and debtors when IVAs are dealt with on a 'volume' basis, particularly when debts or tranches of IVAs are sold on to new creditors or providers.

Against this backdrop, the Government's Insolvency Service has indicated that it is undertaking a review of the effectiveness of the current regulatory framework at providing the necessary safeguards for indebted individuals and creditors, particularly in the context of volume IVA providers. This review is a welcome first step, and, from R3's perspective, there are a number of proactive changes the profession could make to spread best practice across the sector and to ensure that both indebted individuals and creditors are sufficiently protected by consumer IVAs.

Potential changes include updates to the regulatory framework, new guidance for insolvency practitioners working for volume IVA providers, and the introduction of an annual audit of all accounts maintained by volume IVA providers into which funds associated with an IVA are paid.

As ever, there is a delicate balance to find. On the one hand, sufficient and robust regulation to protect the interests of creditors and indebted individuals is vitally important. On the other hand, regulation must not subject insolvency practitioners to disproportionately costly restrictions or conditions (imposed by either regulators or creditors) that would either unnecessarily restrict them from undertaking IVA work or would require this work to be undertaken for uneconomically low fees. Both of these outcomes could lead to a reduction in choice in the market, limiting the options for indebted individuals on where to go to for advice, and narrowing their chances of entering an appropriate debt solution to suit their situation.

It must also be remembered that the insolvency and restructuring profession is a diverse one: different firms have different approaches, and many firms will already have well-established and effective means of managing the risks described above.

Any reforms should be focused on improving what is a useful tool for resolving debt problems. The insolvency profession provides much needed assistance and expertise to indebted individuals and is an invaluable part of the wider UK economy. Many insolvency practitioners provide an hour of free debt advice and all are obliged to ensure that indebted individuals are in the most appropriate procedure for resolving their financial difficulties, which may be a standardised IVA[5]. Without insolvency practitioners, many indebted individuals would be left with no access to a solution for spiralling debt problems.

5. Insolvency Practitioners who are not regulated by the FCA are unable to advise the debtor if the appropriate solution is not an IVA

Potential Risk	Recommendation	Recommendation
There is a risk that Category 1 expenses being charged could, in some instances, be excessive or may not be 'true' Category 1 expenses.	Redefine Category 1 expenses to differentiate between those expenses which are unavoidable and those which could be considered 'discretionary'. Where an expense is considered to be 'discretionary', this should require creditor approval in a similar manner as for Category 2 expenses.	Develop a standardised fee estimate template for IVAs to ensure that information about expenses is clear and transparent, with easily identifiable information about payments to connected parties. The template should not include any suggestions of 'appropriate' fee or expense amounts to prevent any unintended perception of fee caps that may restrict an insolvency practitioner from reclaiming necessary expenses from the estate.
There is a risk that Category 1 expenses could be claimed for payments made to companies which are not actually 'independent' of an IVA practice. This risk may be more likely to occur in instances where an insolvency practitioner is an employee of a firm, and may be unaware of the complete group structure associated with their firm.	Revise the wording in SIP 9, including the introduction of a definition for 'independent' which clarifies when group companies or related parties will be regarded as connected for the purposes of the SIP. The meaning should be relatively broad and could build upon the meanings of 'connected' and 'associated' in the Insolvency Act 1986. Introduce a requirement for greater transparency and disclosure of all fees and income that are coming into the corporate group.	Introduce requirements for insolvency practitioners to provide the RPBs and creditors with a comprehensive structure of the wider business group in which their firm sits. As it would be preferable for this obligation to rest with the firm's management, this should only involve an obligation for insolvency practitioners to undertake reasonable enquiries to determine the firm's wider corporate structure and a proportionate approach should be taken to any regulation of this requirement.
There is a risk that any inadequacies in the use of case management systems by volume IVA providers could lead to a lack of oversight over case funds.	Introduce a requirement for an independent audit of all accounts into which funds linked to an IVA are paid for any firm which undertakes more than 500 IVAs in a year, on an annual basis.	The Insolvency Service should develop further practical guidance for the RPBs on monitoring IVA providers, and other firms with extended hierarchical structures. This can be informed by the outcomes of the Service's review into insolvency practitioner regulation.
There is a risk that 'early exit' loans offered to individuals may not necessarily be in their best interests.	Referral of an insolvency practitioner to that practitioner's RPB for consideration, where there are concerns that an insolvency practitioner may be incorectly recommending an 'early exit' loan.	The RPBs to remind insolvency practitioners on the limits to the advice and recommendations insolvency practitioners can make in relation to 'early exit' loans within the bounds of their insolvency licence.

Potential Risk	**Recommendation**	**Recommendation**
The case management systems used at IVA practices must be adequate enough to flag concerns to the relevant insolvency practitioner (the Supervisor) for their input. Staff must be trained adequately to pick up issues at an early enough stage and refer them to the relevant insolvency practitioner for their consideration. Where an insolvency practitioner does not have adequate oversight and access to information about their cases, it is also unlikely that their RPB will be able to access this information which may hamper an RPB's monitoring visits.	Corporate governance in these firms should recognise the duties of insolvency practitioners and facilitate their compliance with professional standards. There should be a strong emphasis in the regulatory framework on reviewing the systems and processes in place at a firm as a whole to ensure that an insolvency practitioner has adequate oversight of their cases. Any changes to the framework should be transparent and apply consistently across the RPBs.	A change in the powers of the RPBs as well as changes to the regulatory framework, including introducing minimum standards for process controls for volume IVA providers and clear expectations for insolvency practitioners on their roles and responsibilities with regards to their cases, and the processes which support them. This should include clear guidance on the minimum steps that it is expected a provider should undertake upon buying a portfolio of IVA cases.
	Corporate governance in these firms should recognise the duties of insolvency practitioners and facilitate their compliance with professional standards. There should be a strong emphasis in the regulatory framework on reviewing the systems and processes in place at a firm as a whole to ensure that an insolvency practitioner has adequate oversight of their cases. Any changes to the framework should be transparent and apply consistently across the RPBs.	Increased communication between the RPBs about the volume IVA providers where the insolvency practitioners which they monitor work, with due respect to confidentiality. This could be monitored by the Insolvency Service, in its role as the overarching regulator of the RPBs.

Setting the scene

In England and Wales, there are currently three statutory personal insolvency processes: Debt Relief Orders, IVAs, and bankruptcy.

1. Bankruptcy

Key characteristics:

- A petition for bankruptcy can be made by the debtor themselves, or by a creditor. Where a creditor petitions for an individual to be made bankrupt, the debt owed must be at least £5,000.
- Debtor's petition £680 up-front fee (£130 Adjudicator's fee + £550 bankruptcy deposit fee).
- Creditor's petition costs of legal representation + £280 court costs + £990 bankruptcy deposit fee.
- Usually 12 months before automatic discharge, after which the indebted emerges debt free, apart from certain excluded debts such as student loans, child support payments, fines and debts incurred through fraud.
- Before discharge, individuals are subject to certain restrictions, such as being unable to act as a company director without the leave of the court and being unable to access more than £500 of credit without notifying the lender that they are subject to a bankruptcy order.
- Remains on credit history for six years from the date of the order.
- All the indebted individual's assets at the time of the bankruptcy order, with certain exclusions to enable them to live and work, form part of their 'estate' and are realised and distributed for the benefit of creditors.
- The estate is administered by the Trustee in bankruptcy: either an Insolvency Practitioner (IP) or a government official, the Official Receiver (OR).
- Before discharge, an Income Payments Order/Agreement (IPO/A) can be obtained enabling surplus income to be collected for the benefit of creditors for up to three years from the date of the order/agreement.
- Discharge from bankruptcy can only be suspended for non-cooperation with the Trustee in bankruptcy, who is responsible for administering the indebted individual's estate and making distributions to creditors.
- During the 12 months before discharge, the OR can apply for a Bankruptcy Restrictions Order/Undertaking (BRO/U) which can extend the restrictions of bankruptcy for up to 15 years. This does not extend the term of bankruptcy, meaning that assets and income acquired after the initial 12 months - unless an IPO/A is in place - cannot be claimed for the benefit of creditors.

2. Debt Relief Orders (DROs)

Key characteristics:

- Designed for those with relatively low levels of debt and few or no assets:
  - Maximum debts of £20,000.
  - Maximum assets of £1000 (excluding a car which can be worth up to £1,000, approved pensions and basic domestic belongings such as clothes, bedding and furniture).
  - Maximum surplus income of £50 per month.
  - £90 entry fee.
- 12 month term after which the debtor emerges debt free, apart from certain excluded debts such as student loans, child support payments, fines and debts incurred through fraud.
- During the 12 months, individuals are subject to certain restrictions, such as being unable to act as a company director without the leave of the court and being unable to access more than £500 of credit without notifying the lender that they are subject to a DRO.
- Remains on credit history for six years from the date of the order.
- No indebted individual's estate or distribution to creditors.
- If the individual's circumstances change during the period of the DRO and they no longer meet the eligibility criteria, the OR will either cancel the DRO or, if the change occurs near to the end of the 12 month period, the OR can decide to extend the DRO period for a further three months to enable the individual to come to an arrangement with their creditors.
- If a DRO is cancelled, the effect is as if it had never existed i.e. the indebted individual is still liable for all of their original debts.
- If an individual misrepresents their circumstances in order to obtain a DRO, the OR can cancel the DRO and can take further action, including making the individual subject to a Debt Relief Restrictions Order or Undertaking (DRRO/U), which extends the restrictions of a DRO for up to 15 years.
- DRRO/Us can also be imposed on individuals where the OR determines that they have been dishonest before or during their DRO or are otherwise blameworthy for their financial position, such as incurring debts which they had no reasonable chance of repaying

3. Individual Voluntary Arrangements (IVAs)

Key characteristics:

- A formal binding agreement between an individual and their creditors, typically based on the individual making manageable payments towards their total debt in order to pay off a percentage of what they owe, without incurring further interest, in full and final settlement.
- An arrangement may also include an appropriate combination of debt rescheduling, contributions towards the outstanding debts by the indebted individual and third parties and a structured sale of assets to repay creditors.
- Can last for any period of time, but five years is the most common. On satisfactory completion the indebted individual is released from the liability and any unpaid balance is written off.
- The individual is not subject to the same restrictions as in bankruptcy or a DRO, although specific restrictions can be contained within the IVA proposal.
- Remains on credit history for six years.
- An IVA will normally include all of the individual's unsecured debts, but the rights of secured creditors cannot be affected without the consent of the creditor. The individual can seek to exclude assets or creditors from the arrangement.
- The IVA needs to be approved by 75% or more of creditors by value who vote.
- Approval of the IVA binds all creditors (but does not affect secured creditors' rights) whether or not they have voted in favour or at all.
- Once the IVA is in place it is supervised by an insolvency practitioner (the Supervisor).

IVA Protocol compliant IVAs

The IVA Protocol was introduced in 2008 in order to provide a standardised process for dealing with straightforward, consumer IVAs and to create more efficiency by removing many of the obstacles to obtaining approval of IVA proposals in simple cases. The Protocol was most recently updated by the IVA Protocol Standing Committee in June 2016.

The Protocol provides a standardised approach for the format of presenting the indebted individual's IVA proposal to his/her creditors as well as providing a common approach to calculating the indebted individual's income and expenditure and for dealing with the individual's interest in his/her home.

By accepting the content of the Protocol, creditors and IVA providers agree to follow the processes and documentation set out in the Protocol. The IVA provider will draw up a proposal based on the Protocol Standard Terms and Conditions and creditors are expected to comply with the terms of the Protocol (although they are not bound to do so) and approve those proposals.

The IVA Protocol process should only be used for straightforward consumer cases, which are likely to be those where the indebted individual receives a regular income from employment or a pension and has three or more different forms of credit with two or more creditors. Age and debt level are not factors in determining whether an indebted individual is suitable for a Protocol IVA and it is suitable for both home owners and non-home owners. Likewise, self-employed indebted individuals can obtain a Protocol IVA, provided their employment produces regular income.

The operation of the Protocol is overseen by the IVA Standing Committee, a group of representatives from the insolvency, creditor and debt advice sectors which is chaired by the Insolvency Service.

Other consumer IVAs and trading IVAs

There may be circumstances specific to a consumer indebted individual's case where the IVA provider considers that use of the Protocol would not be appropriate or where only part of the Protocol terms and conditions would be relevant.

Factors which may mean that an indebted individual is not suitable for a fully Protocol compliant IVA include disputed debts and the possibility of full and final settlement in the first year of the IVA. Alternatively the indebted individual may be self-employed and running their own business. In either set of circumstances, the case is less straightforward and requires a bespoke IVA governed by terms and conditions, such as those provided by R3.

IVA firms

IVA provider firms may specialise in and process significant numbers of consumer IVAs, which are more likely to follow the Protocol. This has enabled this personal debt solution to become more accessible to indebted individuals and cheaper for creditors. Other firms or sole practitioners that also undertake IVAs may do so as part of a wider portfolio of debt solutions. These firms (which would generally be representative of the insolvency profession more broadly) may be more likely to provide specialised or bespoke IVAs, which may cover a variety of debts and be more appropriate for individuals with more complex situations.

IVA Statistics

2017 saw the registration of 59,220 new IVAs, an increase of 19.8% from 2016. 2016's 49,417 new IVAs were themselves an increase of 22.4% on 2015 (this increase was likely due to changes in the debt management plan market, as a result of the implementation of more robust FCA regulation in this area. These changes resulted in long-term versions of (non-statutory) debt management plans being switched to what may have been more appropriate statutory debt solutions, typically IVAs). Of the 99,196 people who became insolvent in 2016, 59.7% had entered an IVA, 25.1% entered a DRO and 15.2% entered bankruptcy.[6] There are currently approximately 250,000 people in an IVA.

Advantages of an IVA

IVAs are an important part of the UK's personal insolvency landscape and a vital solution to assist financially distressed individuals resolve their debt problems. In comparison to bankruptcy, IVAs:

- provide a greater degree of flexibility for the indebted individual;
- allow an individual to avoid the perceived stigma of bankruptcy;
- allow an indebted individual to avoid the restrictions associated with a bankruptcy, such as being prohibited from working in a particular trade or profession; and
- generally result in a higher return for creditors compared to bankruptcy.

This list is by no means exhaustive. In resolving any issues which may arise in providing IVAs on a 'volume' basis, it is vital that changes do not undermine the benefits which IVAs provide for indebted individuals, creditors, and the wider economy.

Insolvency Practitioners

Insolvency practitioners play a vital role in providing advice to those in financial difficulty and are the only professionals who are licensed to take insolvency appointments in the UK (with the exception of the Government's Official Receiver, who cannot advise on IVAs). The type of personal insolvency appointment they take depends on the insolvency solution involved, but can include appointments as Trustees in bankruptcy and Nominees and Supervisors of Voluntary Arrangements.

All insolvency practitioners in the UK must be licensed by a regulatory body. When administering formal insolvency procedures, all licensed insolvency practitioners are bound by the same statutory duties and are monitored by their regulatory body to ensure that they comply with the law, their professional regulations and ethical codes.

In 2013-14, insolvency practitioners assisted more than 60,000 individuals through an insolvency procedure, advised more than 135,000 individuals, and started work on cases that were expected to help individuals repay £5bn of debt to creditors within five years.[7] Most insolvency practitioners also offer one hour of free advice to indebted individuals to help ensure that they enter into an insolvency procedure that is most appropriate for their particular circumstances.

6. Insolvency Service, *Insolvency Statistics – April to June 2018 (Q2 2018),* https://www.gov.uk/government/statistics/insolvency-statistics-april-to-june-2018

7. R3, *Value of the Profession to the UK economy report*, (statistic from R3/Com Res member survey) (May 2015)

Risks and recommendations

Different providers within the volume IVA sector have different structures and approaches, and any risks will vary from provider to provider. The potential risks outlined below will not be shared by all providers in the sector, with many firms – and regulators – already taking their own steps to address some of the issues covered in this paper.

1. Trust

Across the insolvency and restructuring profession, there is always a risk that a lack of transparency over fees can jeopardise the trust between creditors and the insolvency profession. This is also true in the IVA context, particularly with regards to the level and type of disbursements being charged (which is discussed in more detail below), and where there may also be a perception in some quarters that insolvency practitioners should be able to undertake the work associated with an IVA for minimal cost, particularly those which follow the Straightforward Consumer IVA Protocol.

There is a balance to be struck on fees, however. The work of an insolvency practitioner is complex, particularly in cases where there are significant assets to be realised. It is important that it is recognised that, as with all professions, it is reasonable that insolvency practitioners should be remunerated for the work that they undertake, without which creditors would be unlikely to see any returns on the debts owed to them.

It may be that implementation of all or a number of the following recommendations in this paper, including those relating to the regulation of volume IVA providers and the need to ensure that the regulatory framework is adjusted to provide for the differences in their corporate structures, will go some way towards addressing any factors which could have a negative impact on the creditor-insolvency practitioner relationship. These changes would help to ensure that all insolvency practitioners are meeting their statutory duties, which may perhaps assist with protecting and enhancing the trust between creditors and insolvency practitioners.

2. Expenses

R3 is aware that some creditors and creditor bodies have raised concerns about the expenses being charged for some 'straightforward' IVAs which follow the Protocol. There is a perception that the Category 1 expenses being charged are in some instances excessive or may not be true Category 1 expenses, especially when the payee is a related party to the IVA provider.[8] Issues surrounding transparency of expenses have also been raised where creditors may not fully understand, or do not believe that they have received a sufficiently clear explanation of, what is being charged on individual cases.

Suggestions have been made by some stakeholder groups that Category 1 expenses should be limited, with the figure of £300 being raised. This figure seems too low to take into account potential third party costs associated with an IVA, particularly if legal advice needs to be sought, although this could be potentially offset by a corresponding uplift in the total fees charged.

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8. Category 1 expenses are payments to independent third parties where there is a specific expenditure directly referable to the appointment in question, such as the payment of bonding premiums and postage. These expenses are usually directly referable to an invoice from a third party which specifies a particular estate. Category 1 expenses can be drawn without prior approval from creditors. In contrast, Category 2 expenses are those which are directly referable to the insolvency appointment, but are not a payment to an independent third party, such as business mileage or photocopying. These require approval from creditors in the same manner as an office holder's remuneration.

Recommendations

The limitation of Category 1 and Category 2 expenses should not be considered a viable option, as (when correctly used) these are representative of the actual costs of undertaking work associated with an IVA, for which insolvency practitioners should rightfully be reimbursed. Yet it is also possible that these expense categories could be used in a manner which causes creditors concern. To prevent any anomalies in how these expenses are categorised, and in the amounts charged, it would be appropriate to:

- Redefine Category 1 expenses to differentiate between those expenses which are unavoidable (such as legal fees or bonding premiums) and those which could be considered 'discretionary' (such as courier costs or payment protection insurance for the IVA). Where an expense is considered to be 'discretionary', this should require creditor approval in a similar manner as for Category 2 expenses. While there may be instances where the line between discretionary and unavoidable is blurred, particularly given that IVAs are a contractual arrangement rather than statutory, examples could be used to illustrate appropriate expenses for each category. Any expense, regardless of type, should require creditor approval where the payment is being made to a connected party.
- Introduce stronger and clearer language into SIP 9 regarding when each category of expenses can be used, as well as ensuring that the language (particularly in the terms 'expense' and 'disbursement') used in SIP 9 reflects that used in the legislation; and/or
- Introduce a requirement to ensure that (similarly to where expenses are being paid to a party which has a prior relationship with the insolvency practitioner or firm) the office holder takes particular care to ensure that the best value and service is being provided by the independent third party, and that documentation outlining this is to be provided to creditors upon request. This could then be assessed for compliance by the appropriate RPB as part of the monitoring process.

The fees estimate requirements introduced by SIP 9 in 2015 do not apply to IVAs. However, a standardised fee estimate for IVAs, which could be included as a template in the Protocol, could be beneficial in ensuring that information about fees and expenses is clear and transparent, with easily identifiable information about payments to connected parties. These should not, however, include any examples of 'appropriate' fee or expense amounts. While creditors have already started to put forward their own proposals regarding fee estimates and standardised fees, care needs to be taken that these proposals do not result in the effective barring of smaller IVA providers from the market or in unrealistic fee caps which do not enable insolvency practitioners to undertake their work effectively.[9] The introduction of standard levels of fees could potentially cause detriment to some practices and should not be encouraged, but greater and more open communication and disclosure about expense amounts between all relevant parties may assist with concerns. Any standardised fee estimates should be developed with all parties involved to ensure that all interests and legitimate concerns are taken into account.

9. Suggested changes to the timings for pay-outs to creditors under the IVA (for example, to be from month one) could have detrimental effects on firm cash-flow to an extent unsustainable by smaller providers.

3. Category 1 expenses

Some stakeholders have expressed concerns that Category 1 expenses may be being claimed for payments made to companies which are not technically 'independent' of the IVA practice.[10] SIP 9 does not provide any guidance or definition for what precisely is meant by the term 'independent' for the purposes of Category 1 expenses, and it is not always immediately clear when two companies are connected for its purposes. Given the potentially complex structures of contemporary company groups, this has created some uncertainty in the context of establishing connections between group companies and an IVA (or other) practice.

There is potential for companies within a group structure to be used, or established in order to be used, to provide services to an insolvency firm, but the payment for services rendered to be claimed by the office holder as a Category 1 expense. It may be very difficult for an insolvency practitioner, particularly those who are employees of a firm, to have access to enough information to be aware of the wider corporate group to which their firm belongs, particularly if this firm is part of a particularly complicated group structure. The RPBs and creditors accordingly may also not have access to, or are not provided with, the necessary information when undertaking monitoring visits or reviewing expenses to determine the nature of the relationship of the parties, and so may be left unaware of the interconnected nature of the companies providing the services and the volume IVA provider. This appears to be a particular concern in instances where Payment Protection Insurance (PPI) payments are being reclaimed, as volume IVA providers may have close links with firms that seek to recover PPI payments. There is a risk that the fees charged by these firms, and the category under which these are placed, may not necessarily fully disclose any such links and the ultimate beneficiary which could be the insolvency practitioner's company or group.

Recommendations
The wording in SIP 9 could be revised to include a definition for 'independent' which clarifies where group companies or related parties will be regarded as connected to the insolvency practitioner for the purposes of the SIP.

Insolvency practitioners could also be required to undertake reasonable efforts to provide the RPBs and creditors with a comprehensive structure of the wider business group in which their firm sits. This should not be onerous once in place, as the structure would only need to be updated to reflect any changes. Although office holders themselves should know whether the third party payments that are being made for services rendered are in fact connected to their firm for the purposes of the SIP, this may be more difficult in circumstances where the insolvency practitioner is not involved at all in the wider management of the firm. As such, a proportionate approach that recognises these difficulties and efforts to overcome them should be taken when making such a requirement. We understand that at least one RPB now requires its top volume IVA providers to produce such information. We welcome such moves, but would strongly encourage transparency for these, and any other such steps. R3 will also continue its engagement with the IVA Standing Committee to further these suggestions.

10. This is particularly the case in the context of large volume IVA providers which form part of a wider, potentially international, group of companies.

4. Structure of volume IVA Providers

a. Oversight and case management

Volume IVA providers will often have a small number of insolvency practitioners who are appointed as Supervisor to a large number of cases. An office holder is required to have adequate oversight of the cases to which they are appointed, but, given the extended hierarchical structure common to a volume IVA provider and the number of cases assigned to a relatively small number of insolvency practitioners, it is likely that the majority of work being undertaken is by staff other than the office holder. Concerns have been raised by some stakeholders that there are inadequacies in the use of case management systems by volume IVA providers, which may lead to a lack of oversight of cases.

As noted in the Insolvency Guidance Paper: Control of Cases, insolvency practitioners are obliged to ensure that their cases are properly controlled and administered at all times, including having regard to the ways in which compliance and case progression are monitored. Given their structure, it becomes more important in volume IVA practices that the case management systems, controls and processes in place are effective and integrated to ensure that the office holder does have sufficient oversight to control the successful administration of their cases and to ensure the protection of client monies.[11] While it is reasonable that a risk-based approach is taken to monitoring the effectiveness of these systems, it is essential that this approach is robust enough to pick up on issues or weaknesses in the systems when they do occur.

As well as being at risk of becoming disconnected from their cases, office holders may also be at risk of becoming disconnected from the wider financial and business decisions of their firm. In large or volume firms, insolvency practitioners may not be owners or equity partners, while the Board and management structure of the firm may consist of individuals who are not the appointment takers. This may lead to decisions being made without the appointment taker's knowledge or approval, which in certain instances may be contrary to insolvency regulation. Such practices could result in adverse consequences for the cases and the indebted individuals involved, including potentially leaving the cases more susceptible to fraud or dishonest behaviour.

Recommendations

An independent audit of all accounts into which monies are paid for volume IVA providers on an annual basis would address the practical implications of this concern, without needing to alter established firm structures, and would also support the monitoring systems already in place at firms. While this could apply to all firms, it is only really relevant where a firm undertakes a particularly high number of IVAs. This would provide an extra safeguard for the insolvency practitioner themselves, as well as creditors and indebted individuals, to ensure that the client monies are being protected and are being used for the purpose for which they have been designated by the IVA.

11. Effective case management systems and processes are also an important tool for assisting the RPBs to adequately monitor whether an office holder is meeting their regulated obligations. If a case management system is inadequate, or not in place at all, it is likely that an insolvency practitioner will be failing to meet their regulatory obligations. This will then naturally require more detailed investigation into the insolvency practitioner and their cases by the relevant RPB.

b. Regulation

There is a risk that the extended hierarchical corporate structures of larger IVA providers may present insolvency regulators with some challenges. Where an insolvency practitioner does not have adequate oversight and access to information about their cases, this may affect the ability of the RPBs to access this information. The RPBs are often reliant on the information provided to them by the insolvency practitioner they are monitoring, and if the insolvency practitioner is not able to provide them with the information that they require (due to not having access as a result of the way in which the insolvency practitioner's firm is structured, the extent of the powers which the RPB has to look at the wider firm processes, or simply they are unaware of activities elsewhere in the firm), it is unlikely that the RPBs' monitoring will be able to be as effective as it otherwise could be. We understand that some RPBs are establishing new arrangements with volume IVA providers, which may go some way towards ameliorating these risks.

To some extent, this has been recognised by the Insolvency Service which, in 2014, released guidance to the RPBs on the monitoring of IVA providers (this was updated again in 2017) and how they may differ from the monitoring of the more traditional insolvency firms. A wider review of the regulatory regime was announced in 2016. Further practical guidance for the RPBs on monitoring IVA providers, and other firms with extended hierarchical structures would likely prove useful, particularly if informed by the outcomes of the Service's review.

5. Market forces

The insolvency market has changed considerably since the original introduction of IVAs via the 1986 Insolvency Act. The majority of consumer IVAs follow the standardised format outlined in the Straightforward Consumer IVA Protocol. The Protocol has standardised what are considered to be straightforward consumer IVAs and undoubtedly contributed to making this form of insolvency process more accessible for both indebted individuals and creditors. However, with increasing ease of access to IVAs, there is a risk that, where a firm's processes fall short, indebted individuals could enter into IVAs in situations where it is not the most appropriate insolvency process for their particular circumstances or where the IVA is not sufficiently tailored to an individual's personal circumstances. Either or both of these scenarios may lead to the IVA failing. Great care should be given to ensuring that IVAs are only recommended as a debt solution to individuals whose personal circumstances suit this particular insolvency process and the Straightforward Consumer IVA should only be used for indebted individuals whose circumstances fit those outlined within the Protocol as being suitable. Within the volume IVA market, it is key then that the monitoring visits by the RPBs pay particular attention to the advice provided to consumers prior to entry into an IVA.

The nature of the debt market has also changed. It is now increasingly common for debt to be 'sold on' to a debt buyer, who takes the risk that the IVA will be completed and that they will receive a return on their investment. However, this may have had a knock-on effect in terms of creditor engagement – both in terms of engagement with the terms and conditions of the original IVA and any subsequent modifications or variations which need to be made. It may be that a second or third generation creditor will not have read the original IVA proposal and be unaware of the indebted individual's personal circumstances. A lack of engagement in the process by creditors may remove the extra layer of protection which creditor engagement provides, as creditors to some extent act as an extra informal set of scrutiny in terms of fees being charged and the performance of insolvency practitioners.

Where blocks of IVAs are sold and transferred between IVA providers, there is also a risk that the indebted individual will become increasingly disconnected from the original insolvency practitioner and the agreement itself, which may make them less committed to the success of the IVA and to maintaining payments through to completion.

6. 'Early Exit' IVA loans

'Early Exit' IVA loans have recently emerged in the IVA market. These loan arrangements provide an indebted individual with funds, potentially enabling early completion of the IVA (provided the full and final settlement offer is accepted by the relevant creditors). If this is the case, then the insolvency practitioner will close the IVA following the final payment and the indebted individual will begin to make loan repayments to the new lender. It is generally accepted practice that the indebted individual would not be required to pay more for these loans than they would for completing the IVA (meaning a correspondingly reduced, but earlier, return to creditors).It should be noted that the indebted individual is replacing a structured IVA with an unsecured loan for that final amount.

One potential area of concern, raised by some stakeholders, is whether a connection exists between an insolvency practitioner supervising an IVA and the loan provider: an IVA firm may be part of the same group of companies as a loan provider, for example. To avoid any potential for a conflict of interest, any recommendations to take out an 'Early Exit' loan should come from a different debt advice provider, who is FCA-authorised, and the indebted individual's decision to undertake the loan or not should not be influenced by the insolvency practitioner supervising the IVA.

Recommendations
Where there are concerns about an insolvency practitioner recommending an 'Early Exit' loan for an IVA, this would be a matter for referral to that practitioner's RPB for consideration. Guidance from the Insolvency Service and/or the RPBs reminding insolvency practitioners of the limits to the advice with which they can give in relation to 'Early Exit loans' may be appropriate. The FCA may also wish to consider issuing guidance about when these loans are appropriate, including any concerns in relation to conflicts of interest and the needs of potentially vulnerable individuals.

Regulation

Monitoring

As noted earlier, there may be particular difficulties associated with the regulation of volume IVA providers, mostly based on the different firm/hierarchical structures used which may not easily fit within the current insolvency regulatory framework. While the Insolvency Service has released guidance to RPBs specifically relating to the regulation of IVA providers, this appears to be an area where consideration could be given as to how the regulatory system can be further adapted to ensure that volume IVA providers are being adequately monitored. It is worth noting that there are differences in the powers which the RPBs possess in terms of what they are able to examine during a monitoring visit. Some RPBs are restricted to solely looking at the relevant insolvency practitioner, whereas other RPBs have wider powers to review the case administration and wider business processes, such as those relating to financial accounts, of the firm as a whole. The current regulatory focus on the insolvency practitioner rather than the firm they work for could also make regulating insolvency practitioners in volume IVA providers particularly challenging.

Recommendations
The reliance of the RPBs and their monitors on the individual insolvency practitioner providing them with the information to be assessed is a potential risk in the context of volume IVA providers, where the insolvency practitioner may not have access to this information themselves due to the corporate and/or management structure of the provider. There are a variety of ways in which this could be addressed, including through a greater emphasis in the regulatory framework on reviewing the wider case administration and business practices in place at a firm as a whole to ensure that an insolvency practitioner has adequate oversight of their cases. We understand that certain RPBs are taking steps in this direction, and would strongly encourage

greater transparency around any changes which are being made. Progress would need to be supported by a change to powers of the RPBs as well as the regulatory framework itself, including introducing minimum standards for process control for volume providers and clear expectations for insolvency practitioners on their roles and responsibilities with regards to their cases, and the processes which support them. This should include clear guidance on the minimum steps that it is expected a provider should undertake upon buying a portfolio of IVA cases, particularly regarding requirements to review the cases and the length of time it is expected that this (along with completion) should take. Further guidance, both for insolvency practitioners and the RPBs' monitors, should be provided in identifying the key risks and areas which require particular attention when dealing with a high volume of IVA cases through a new SIP.

Communication
The nature of insolvency practitioner licensing (by insolvency practitioner, rather than firm) also means that it is possible that insolvency practitioners at the same firm will be monitored by different RPBs. This may increase the exposure of any inconsistencies between the RPBs in how they monitor insolvency practitioners against compliance standards.

Recommendations
To combat this, and to ensure more effective regulation overall, the RPBs may wish to consider increased communication between themselves about the volume IVA providers where their insolvency practitioners work, with due respect to any relevant confidentiality requirements. This could help with increasing access to information about the processes in place at a particular provider about which one RPB may have managed to gain more information than another.

The RPBs will always face challenges in keeping pace with any rapidly changing sector. While the high level role of the RPBs to ensure that insolvency practitioners are complying with the regulatory and legislative framework remains relevant, it may be that the processes of the RPBs (as noted above) may need to adapt. This could include a more inquisitorial approach with greater access to a firm's systems and staff, which would rely less on an individual insolvency practitioner being responsible for providing the RPB with all the information that is required for an effective assessment of the insolvency practitioner's regulatory compliance.

Conclusion

The potential risks related to volume IVA providers, and the underlying causes of these risks, are complex but manageable. Indeed, many firms within the 'volume' sector already have effective risk management procedures in place. The recommendations contained within this paper have been made with the intention of ensuring that risks are managed across the sector.

As outlined in this paper, changes to the regulatory framework, new guidance for insolvency practitioners working for volume IVA providers, and the introduction of an annual audit of relevant bank accounts for volume IVA providers would all help manage risks in the volume IVA sector. It is essential that all interested parties, including creditor bodies, the RPBs, insolvency practitioners, and trade bodies such as R3, are involved in determining and establishing workable solutions. R3 welcomes recent developments by RPBs and other stakeholders to engage in initiatives to mitigate some of the identified risks in this specialised area of the profession

While the root causes of some of the risks, such as the extended hierarchical structures of volume IVA firms, may not be able to be changed, it is essential that the regulatory and legislative systems surrounding IVAs are adapted so that any risks are mitigated. While this paper has set out potential options for doing so, this can only be effectively achieved by collaborative engagement by all parties as to the way forward.