

# **Call for evidence: Review of the personal insolvency framework**

A response to the Insolvency  
Service from Citizens Advice  
October 2022



## Introduction and summary of response

At Citizens Advice, we offer free, independent, and confidential advice and information to anyone who needs it. In 2021/22 we helped a total of 293,231 people with debt problems. We gave advice to 25,979 people about Debt Relief Orders, 9,207 people about Bankruptcy and 5,325 people about Individual Voluntary Arrangements. As a DRO Competent Authority, we supported 7,589 to obtain a Debt Relief Order.

We welcome the opportunity to respond to this call for evidence. While there have been modifications over the years, the basic insolvency framework has not changed since 1986. There is a pressing need to update the framework to reflect the realities of serious problem debt in the 21st century.

Our response to this call for evidence draws on Citizens Advice's own data as well as independent commissioned research. It comprises a deep-dive into advice data - including a coding of the 320 evidence forms submitted by advisers about insolvency solutions over the last 6 months - to identify themes in challenges and poor practice, along with analysis of the income and expenditure data of 42,518 Citizens Advice clients who might realistically be expected to opt for either a Debt Relief Order or bankruptcy. It also includes insights from more than 100 of our frontline debt advisers, as well as the findings of a sector-wide survey of 565 money advisers, conducted jointly with the other largest debt-advice providers. Finally it draws on externally commissioned quantitative and qualitative research - 14 in-depth interviews conducted by Britain Thinks with people who are or have been in IVAs, and a survey conducted by Yonder Consulting of more than 400 people who are or have been in an IVA, DRO or bankruptcy. More details about each method is available in Appendix 1.

### The changing debt landscape

Consumer debt has become increasingly widespread in recent decades. The [Money and Pensions Service](#) recently concluded that around 8.5m people - 16% of the UK adult population - are in a position where they need debt advice.<sup>1</sup> Recently updated research from the [Financial Conduct Authority](#) finds that 7.8m

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<sup>1</sup> Money and Pensions Service, [Who needs debt advice in 2022](#)

people (15% of UK adults) feel heavily burdened by their domestic bills and credit commitments, and that 4.2 million people are already in financial difficulty, having missed paying bills or credit commitments in three or more of the previous six months.<sup>2</sup>

## Most common debt advice issues, 2021/22

Issue	Clients advised
Fuel debts	64,697
Council tax arrears	62,050
Credit, store & charge card debts	36,691
Water supply & sewerage debts	31,673
Debt Relief Order	25,979
Unsecured personal loan debts	20,793
Rent arrears - LAs or ALMOs	19,622
Breathing Space Moratorium	17,707
Rent arrears - private landlords	17,594
Bank & building society overdrafts	15,579

*Source: Citizens Advice internal client data*

Moreover, the nature of debt - and the types of people in debt - have changed significantly over the last decade. While unsecured credit is still a big component of consumer debt, other debt types have become increasingly prevalent over the last decade, including arrears on household bills such as energy, council tax and water, along with benefits overpayments and other debts owed to the government.<sup>3</sup> This reflects the strong links that now exist between debt and low income - a situation exacerbated first by the unequal outcomes of the pandemic, and now by the ravages of a cost of living crisis. Representing wider shifts in debt

<sup>2</sup> Financial Conduct Authority, [Financial Lives 2022 survey: insights on vulnerability and financial resilience relevant to the rising cost of living | FCA](#), October 2022

<sup>3</sup> The proportion of debt issues involving government debt has consistently outstripped credit debts over the past decade. See Citizens Advice, [Citizens Advice response to the Cabinet Office: Fairness in government debt management](#), October 2020

demographics, Citizens Advice debt clients are now more likely than ever to be in a negative budget (on average 46% and continuing to rise), while those with a surplus typically have little available to repay their debts. Alongside this, an increasing proportion of people in debt face additional disadvantages such as disability or poor mental or physical health.

### **Delivering an effective insolvency regime, fit to meet the challenges ahead**

Against this context, a well-functioning insolvency regime has never been more important. Insolvency is a serious step and is not recommended lightly, but its effects can be transformative, as advisers have repeatedly emphasised to us. We need a well-functioning insolvency framework to prevent people becoming trapped in debt, with no realistic hope of a fresh start.

Critically, the insolvency regime should support those who are often at the brink of an even deeper personal crisis - and who have taken the difficult step of seeking help - to enter the right solution, as soon as possible. With this aim in mind, we see two major flaws in the current insolvency framework.

The first is upfront administrative fees for Debt Relief Orders (DROs) and bankruptcy, which price people out of much-needed debt relief. The second is the continued failure of the Individual Voluntary Arrangement (IVA) market to deliver good outcomes for consumers - and the need for properly scrutinised, regulated advice to address this. We have focused our response mainly on these two issues.

## 1. Upfront administrative fees price people out of debt relief

Our evidence indicates that the £680 bankruptcy fee and the £90 DRO fee are insurmountable barriers for many people seeking debt relief. Fees delay access to debt relief and in many cases prevent people from pursuing the best option for their circumstances altogether. We present evidence on this issue in more detail below, in answer to questions 10 and 11.

- **88% of people who had been in a DRO or bankruptcy** said they **struggled to pay the fee, 35% cut back on essentials** like food and a **quarter fell behind on rent and bills. 71% delayed going into debt relief** because of the fee.
- Based on analysis of Citizens Advice budget data, it would take a typical DRO-eligible client **5.6 months to save the £90 DRO fee** while those saving up for **bankruptcy** would take **more than 8 months**.
- Delays leave people accumulating further interest and charges on their debts and at risk of recovery and enforcement action - including bailiffs in many instances.
- Even allowing for 60 days Breathing Space, someone saving for a DRO will still spend **more than 100 days with no protection** from creditor action while someone saving for bankruptcy faces **nearly 200 days at risk**.
- **94% of advisers** say **not being able to afford the upfront fee** is one of the **top 3 barriers to bankruptcy**. Even for **DROs**, which have the additional hurdle of tight eligibility criteria applicants have to meet, **nearly half of advisers** place fee affordability among the most common barriers.
- Upfront fees leave people with no viable alternative, or push them into options that may be less suitable. **42% of people in IVAs** who had also **considered a DRO** say they **ruled it out partly or mainly because of the upfront fee**.

Citizens Advice considers there is a clear case for ending these upfront administration costs. For DROs we'd propose fees are removed altogether - since DROs are only available to people with no assets and low surplus income.

In the case of bankruptcy, we suggest that instead of an upfront barrier fee, the money that is recovered from those who do have surplus income and assets, which is assessed retrospectively once in bankruptcy, should be pooled to fully fund the overall administration costs of all personal bankruptcies.

## 2. The IVA market is delivering poor outcomes for consumers

Many stakeholders have expressed concerns about the IVA market in recent years, with high termination rates, the activities of lead generators and misleading advertising attracting particular attention.<sup>4</sup> Although action has been taken in an effort to address these issues, unfortunately IVAs continue to be a major source of consumer harm.

- Frontline debt advisers routinely face the fallout from IVA poor practice. We received **over a hundred reports** from advisers in the six months from May to September 2022.
- The most frequent issues reported by advisers include **poor or inappropriate income assessment** (57% of cases) and **misleading advice about alternative debt solutions** (45% of cases). 1 in 5 involved someone with a **benefits-only income**, more than a third had a **serious additional vulnerability** and in nearly 30% of cases advisers reported that the client was **eligible for a DRO**.
- This mirrors findings from across the money advice sector, with **52% advisers** saying they **often speak to someone who is in a failed or unsuitable IVA**.
- **75% of people in an IVA struggle to keep up with IVA payments** according to polling of people with recent experience of being in an IVA. **More than half** said their **IVA payments didn't leave them with enough money to cover essential unexpected costs**.

In our in-depth interviews with current and former IVA users, interviewees frequently mentioned the challenges of navigating their options. People seeking

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<sup>4</sup> Notably, for example, Financial Conduct Authority, [The Woolard Review - A review of change and innovation in the unsecured credit market](#)

help with debt may have little idea what debt remedies are available and where they can go for impartial advice. Many are effectively at crisis point when they seek help, making the offer of an apparently quick and simple fix difficult to resist.

Their confusion is understandable. The IVA industry is opaque, with widespread advertising and multiple trading identities making it difficult for consumers to evaluate information and make sound decisions. Commercial incentives distort the advice provided by commercial firms operating in the IVA market, creating unacceptable levels of risk for consumers.

There are crucial weaknesses in the current system of insolvency regulation which make it very difficult to address these issues. Insolvency Practitioners (IPs) are regulated by their own trade bodies, while the volume IVA firms that dominate this hugely lucrative market are not regulated at all. Government has proposed changes to make insolvency regulation more robust, but these changes won't come quickly enough to protect consumers now at risk of falling into debt. Moreover, they won't deal with the anomaly that IPs and their employing firms are excluded from FCA regulation for debt counselling.

FCA-regulation is a highly-effective guarantee of quality in debt advice - with a strong focus on consumer benefit and stringent sanctions of those who do not meet the benchmark. In our view, consumers should always have the benefit of FCA-regulated advice before entering an IVA, bringing the process into line with debt relief orders, Breathing Space and Statutory Debt Repayment Plans - and removing the risk of confusion caused by two divergent regimes in debt advice regulation.

We'd argue there is a clear case for ending - or critically amending - the current regulatory exclusion afforded to IPs acting 'in reasonable contemplation' of an insolvency appointment. The rationale for this exclusion was based on a model of IVA provision that no longer exists. Given the boom in direct advertising to consumers and the market power of volume IVA providers, the exclusion is no longer appropriate or tenable. We'd propose removing the exclusion altogether, or amending it to apply only where a consumer has had prior advice from an authorised person. IPs who wish to give advice themselves would have the

option to do so, but would be required to seek FCA authorisation. Those who do not would have the option of working with FCA-authorized firms capable of providing that advice. Either way, it would remove the risk of those in an entrenched debt crisis entering into potentially life changing financial agreements without having received robust, impartial advice on their options.

Finally, in addition to the two core areas outlined above, we also highlight non-fee barriers to debt relief which need to be addressed. These include the lingering stigma surrounding bankruptcy and some aspects of the criteria and application process for debt relief orders.

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## Answers to individual questions

**Question 1:** What should be the fundamental purpose of the personal insolvency framework? Does the current framework meet that purpose?

**Question 2:** If 'fresh start' and 'can pay, will pay' are the right objectives for the personal insolvency regime, does the current framework get the balance right?

**Question 3:** Please provide any evidence to show how well the objectives of 'fresh start' and 'can pay, will pay' are being met.

The main purpose of the personal insolvency framework should be to support individuals to resolve unmanageable debt and return to financial stability. The framework should be consistent and accessible, with strong safeguards to promote consumer protection and reduce the risk of detriment.

**Insolvency offers a fresh start - but not for all.** In a recent survey, 72% of advisers felt the current insolvency framework was effective at providing a fresh start.<sup>5</sup> In the quarter of cases where it isn't effective, this is sometimes for reasons outside the gift of the current insolvency regime - specifically that people are in a precarious position (due to persistent low income or poor health) that makes it very difficult for them to keep their heads above water in the long term. In other cases it is because credit reference implications make access to credit difficult and expensive for years after an insolvency procedure.

However, there are also clear issues which could be addressed within the insolvency regime, namely people ending up in solutions that aren't suitable for them because the framework doesn't ensure they get the right advice first time. In particular, we see people in IVAs which aren't working for them and who need our help to arrange a DRO or another alternative option. We also see people

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<sup>5</sup> This survey (referred to as the Joint Adviser Survey from here on) was conducted online during July and August 2022 as a collaboration between debt advice charities. There were 565 responses of which 195 were from money advisers working in the Citizens Advice network. Further information is available in the appendix.

being denied the opportunity of a fresh start offered by insolvency because they cannot afford upfront administrative fees.

**Stronger safeguards are needed to tackle bad advice and unsuitable solutions.** A minority of advisers (35%) think the current rules and regulations provide effective safeguards against bad advice and ensure people end up on the most suitable solution, while 50% of advisers disagree. This finding likely reflects problems in the IVA market. Advisers have repeatedly told us their concerns about unsuitable IVAs, which cause serious detriment for people in vulnerable situations. We set out evidence about this issue in more detail below in answer to question 16.

**Stronger consumer protection is needed.** 73% of advisers think the Insolvency Service should have a stronger consumer protection objective. The natural benchmark for debt advisers is the Financial Conduct Authority (FCA), which puts a focus on consumer protection across all the markets it regulates. The FCA's new Consumer Duty further raises the bar, putting the onus on firms to deliver good outcomes for customers. We broadly welcomed the Insolvency Service's recent proposals for the [future of insolvency regulation](#) and we hope the outcome of that consultation will provide an opportunity to align insolvency more closely with the FCA's approach.<sup>6</sup> As we've argued, the single insolvency regulator should have an explicit statutory objective to protect consumers, and to have particular regard to the needs of consumers in vulnerable circumstances.

**Question 10: Who should bear the costs of entering and administering personal insolvency procedures?**

**Question 11: How should the costs of entering and administering personal insolvency procedures be paid and structured between the different parties?**

At the moment, a significant proportion of the costs of entering and administering DROs and bankruptcy fall on people seeking debt relief in the form of upfront fees. This is counterproductive.

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<sup>6</sup> Insolvency Service, [The future of insolvency regulation](#), December 2021

Upfront fees price many people out of debt relief altogether. Even those who can pay face lengthy delays while they save up, prolonging their exposure to creditor action and other negative effects of debt. Financial assistance is difficult to come by, so people often turn to further borrowing or make sacrifices such as going without essentials. As we set out in answer to Question 12, there are few good alternatives available to debt relief for people who simply can't afford to proceed. We expand on each of these issues below.

**Upfront fees are unaffordable.** It is widely recognised that the £680 bankruptcy fee is difficult to afford. Perhaps unsurprisingly, 94% of advisers placed it in the top 3 barriers to bankruptcy when asked as part of the recent Joint Adviser Survey. In a separate survey of Local Citizens Advice staff, 25% reported being seen or made aware of a client who was unable to apply for bankruptcy because they could not afford the fee during the previous 3 months.<sup>7</sup> Polling of people with recent personal experience of insolvency confirms this picture. 88% of people who had been in a DRO or bankruptcy reported that they struggled to afford the fee.<sup>8</sup>

**DROs are not a low-cost option for those that need them.** DROs were introduced to provide a low-cost alternative to bankruptcy, with a reduced fee of £90. This is low compared to bankruptcy, but high relative to the financial means of people seeking debt relief - as we expand on in the analysis of debt client financial data below. In our joint survey of 565 advisers, 45% identified the £90 fee as one of the 3 most common factors preventing access to a DRO, while nearly 40% of Local Citizens Advice staff reported at least one client priced out of a DRO in the previous 3 months.<sup>9</sup> To find the fee, clients are often forced to turn to charitable help. Other strategies reported by people with experience of a DRO

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<sup>7</sup> This survey (referred to as the Network Panel from here on) was conducted online between 8 and 23 August 2022 with 129 frontline Citizens Advice staff. Of the total sample, 113 responded to the question on whether they had seen clients unable to pay the fee for bankruptcy in the past 3 months. Further information is available in the appendix.

<sup>8</sup> This survey (referred to as Yonder polling from here on) was carried out by Yonder Consulting on behalf of Citizens Advice between 28 September and 12 October 2022. We polled a total of 439 people who had been in one or more of the following debt solutions: Individual Voluntary Arrangements (283); debt relief orders (150) and/or Bankruptcy (43). Further information is available in the appendix.

<sup>9</sup> Network Panel, 45 out of 115.

include borrowing to pay the fee (41%) and going without everyday essentials (33%).<sup>10</sup>

**Where saving up is possible, it requires a significant delay in protection.** It's possible for some people to save up over time, helped by the fact that the DRO fee can be paid in instalments, but this of course leads to delay. To explore fee affordability and likely delay time in more detail, we analysed budget data for 174,487 Citizens Advice debt clients helped between 1 January 2019 and 30 April 2022.<sup>11</sup> This data is collected using the Standard Financial Statement as part of the debt advice process. It includes details of each client's income, spending and debts as well as some non-budget fields such as housing tenure.

We filtered this dataset to identify 102,914 clients who might realistically be expected to consider an insolvency option (by excluding homeowners and those with enough surplus income to repay their debts within 7 years. We applied the DRO debt level and monthly surplus income criteria (taking account of the different criteria which applied prior to 29 June 2021 and from that date on) to split this sample into potential DRO clients (86,606) and potential bankruptcy clients (16,308). We removed from this any clients in a negative budget (currently 46% of our debt clients) on the basis that insolvency might not be considered a sustainable solution, although of course in reality some will end up facing insolvency as the least-bad option. This left a final sample of 31,318 potential DRO applicants and 11,200 potential bankruptcy applicants.

This methodology has some limitations, in that we were not able to take into account ownership of vehicles or other assets. Also - as inflation continues to rise rapidly, and with it many basic outgoings, it is likely to underplay the current level of expenditure and therefore surplus figures are a conservative estimate. Nonetheless it has the big advantage of being based on a large sample of real financial data from individuals with unmanageable debt.

We found that:

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<sup>10</sup> Yonder polling, 61 and 50 out of 150.

<sup>11</sup> See Appendix 1 for more detail of this dataset and the methodology used.

- **A typical client needs at least 5 and a half months to save the DRO fee.** The maximum surplus income allowed in a DRO is £75 a month. But even removing any clients in a negative budget, the typical DRO-eligible client in our sample has much less than this, with a median surplus monthly income of £16. Even if all of this could be saved (which can be very difficult to sustain over time given unexpected costs arise) it would take 5 and a half months to find the fee. For bankruptcy it would take a typical client a minimum of 8 months to save up the fee, based on a median surplus income of £82.

**How long it would take for different groups of debt clients to save up for the bankruptcy and DRO fees based on their median surplus incomes**

Group	Criteria applied	No. of clients	Median monthly surplus income	Months needed to save up fee
Debt relief order	Surplus income £0-£75 per month Debts below £30,000 Non-homeowner 7+ years required to repay total debt	31,318	£16.00	5.6
Bankruptcy	Surplus income £75+ per month Debts £30,000+ Non-homeowner 7+ years required to repay total debt	11,200	£82.00	8.3

*Source: Citizens Advice income, spending and debt data, Jan 2019 - Apr 2022.*

**Fees leave highly vulnerable people at risk and unprotected.** Survey results suggest 71% of people have to delay applying for a DRO or bankruptcy because

of fees.<sup>12</sup> Delays mean that people continue to experience the negative effects of problem debt - including contact from creditors and potential enforcement action - for as long as it takes them to save up.

*Client began the DRO process approximately one year ago and has only just managed to pay the fee in full. The difficulty in paying the DRO fee has led to the client incurring additional debt in the form of interest and charges, not all of which could be stopped in the meantime. This has caused a great deal of stress and anxiety to the client during the last 12 months. The fee has also delayed the client's fresh start that the DRO provides, as she could have been free of the restrictions by now had the fee not been payable.*

- Citizens Advice Evidence form, August 2022

Delay means that interest and charges may continue to accrue, putting some people at risk of tipping over the £30,000 debt limit for DRO eligibility and losing their chance of a DRO altogether.

Another recent case illustrates what delayed access to a DRO can mean in practice. A client fell behind with her council tax after transferring from legacy benefits to Universal Credit. Although eligible for Council Tax Support, she was not aware that she needed to apply for it separately, and initially missed out. She contacted her local Citizens Advice after the local authority instructed bailiffs. She has been advised to consider a DRO but is unable to raise the fee. The adviser who reported this case comments:

*My client is a 54 year old single lady who is at the point of hiding in her own home due to a genuine error in her circumstances. If the fee can't be raised there is very little that we can do to support her in dealing with her accounts. She has 3 county court judgments so further bailiffs could attend her property. How long will she have to hide in her own home before she is able to resolve her debt issues?*

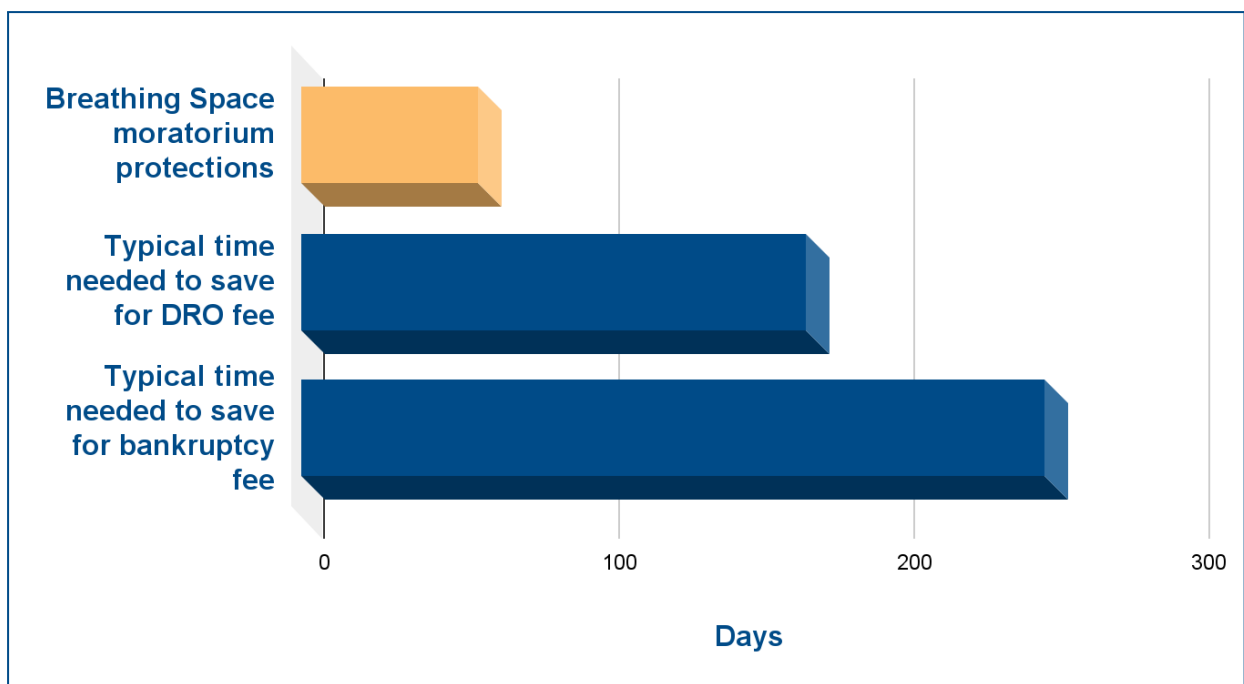
- Citizens Advice Evidence form, September 202

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<sup>12</sup> Yonder polling, 137 out of 193.

The introduction of Breathing Space has helped in this respect, but the 60-day moratorium it provides is a relatively short period of time to work on complex debt problems and can only be used once in 12 months. Once the moratorium is over, creditors are free to resume recovery and enforcement action, and where applicable to add interest and charges. Even with Breathing Space applied, DRO-eligible clients face a 'protections gap' of 111 days, while bankruptcy applicants face 192 days at risk.

### Protections gap facing people saving up insolvency fees



*Length of Breathing Space Moratorium (60 days) compared with time required to save for DRO fees (171 days) or bankruptcy fees (252 days)*

**Help with fees is difficult to obtain.** What options are available for people with too little surplus income to save up? Advisers tell us one common approach is to turn to friends and family, but this is not always possible, either for financial reasons or because of its impact on personal relationships. In a community or social context where most people are on low incomes, accepting money from friends and family merely shifts the burden to others who can ill afford to pay. Trust funds, benevolent societies and other charitable associations are sometimes able to help with insolvency fees, but such help is restricted and far from guaranteed. Even to apply, clients typically need to meet qualifying criteria,

such as being a customer of a particular utility provider or having worked in a specific industry. Advisers report that it's becoming increasingly difficult to secure help with DRO and bankruptcy fees due to the pressure on charitable funds and the demand for help with other costs such as furniture and essentials.

*A DRO is the only available option to deal with the debt but the client has zero surplus and can't afford to pay the £90 fee. Family and friends are also struggling financially due to the cost of living crisis and can't help the client. We have noticed an increase in the number of clients who can't pay their own DRO fee. We will have to apply to a charity for help with the DRO fee.*

- Citizens Advice Evidence form, May 2022

*Recently I had a client who we were able to find a grant for to cover the £680 bankruptcy fee. Prior to this, the client had about 10 years of being unable to pay this due to being on a low benefit income and being ineligible for other options. The client had been struggling with mental health as a result and felt that there were no options for him. It was only with luck that we were able to secure the grant for him.*

- LCA adviser comments, Joint Adviser Survey

**Fees influence people's choice of debt remedy.** There is evidence that upfront fees drive people to other solutions that aren't necessarily sustainable. In a recent survey, people who had been in an IVA over the previous five years were asked about their awareness of other insolvency remedies and reasons for ruling them out. 42% of those who reported being aware of or considering a DRO ruled it out partly or mainly because of the upfront fee.<sup>13</sup> The equivalent for bankruptcy was 53%.<sup>14</sup>

**Upfront fees perpetuate the social costs of problem debt.** According to the [National Audit Office](#), problem debt costs the public purse a minimum of £248 million due to the direct impact it has on a person's likelihood to experience anxiety or depression or be in state-subsidised housing. Research from 2014 commissioned by [StepChange Debt Charity](#), which looked at a more

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<sup>13</sup> Yonder polling, 74 out of 178.

<sup>14</sup> Yonder polling, 141 out of 267.



comprehensive list of costs, estimates the total social cost of problem debt to be £8.3 billion. Timely access to debt relief is not just in the interest of individuals but also benefits society by alleviating the pressures and reducing the costs associated with problem debt.

**Policy alternatives to upfront fees.** Citizens Advice recommends that there should be no upfront fee for individuals to enter either a DRO or bankruptcy. To achieve this there would need to be alternative arrangements to meet the administrative costs incurred by the Insolvency Service.

- **DRO.** DROs are only available to people independently assessed as having surplus income of £75 or less. We don't think it would be effective or proportionate to require any additional means-testing or to ask DRO applicants to make income contributions. This fee should therefore be waived altogether. Covering the costs of the 27,497 DROs approved in 2019 would have cost less than £2.5m, and the lower annual numbers registered since are closer to £2m. Funding options could include central government funding as a grant in kind from HMT to the Insolvency Service, or a small additional levy on financial services (or an increase in the existing debt advice levy collected by the FCA and administered by the Money and Pensions Service).
- **Bankruptcy.** In bankruptcy, administrative costs are already pooled to some extent, with the revenues from higher-value bankruptcies helping to subsidise the administrative costs of bankruptcies where there are no assets or surplus incomes. This same approach should be used to fund administrative costs in full: instead of a flat fee charged upfront to everyone, costs could be recouped proportionally from the assets and surplus incomes of those who can afford to pay as determined in their Income Payments Agreement or Order. This would entail increasing the level of cross-subsidy from asset-rich cases to no-asset cases, with the net effect being a small reduction in the return to creditors. An additional benefit of this approach is that it provides an built-in incentive to keep the eligibility criteria for Debt Relief Orders under regular review, in order to ensure that the majority of cases which do not provide a return for creditors and are a net cost to administer can be kept out of the bankruptcy system.

**Question 12: What options are available to debtors and creditors who are unable to afford the cost of bankruptcy, IVA or a DRO?**

**There is often no good alternative available to people priced out by fees.** A repayment option such as a Debt Management Plan (or Statutory Debt Repayment Plan once introduced) is rarely a realistic option due to low surplus income and the excessively long time it would take to pay off debts in full. IVAs are also typically unsuitable due to low surplus income and the difficulty of sustaining payments over a full term, of typically at least 5 years. Asked specifically about DROs, 47% of respondents to the Joint Adviser Survey said that the most likely alternative for people who currently cannot access one was that they do not go into any solution at all. This was followed by DMP/negotiated repayment (33%), bankruptcy (21%) and IVA (7%).

**Without realistic options, people disengage from advice.** People whose route out of debt is blocked by fees tend to disengage from advice and fall further into debt, with predictably poor consequences for their mental health and wellbeing.

*Most clients who don't proceed [with a DRO] just continue to stress and avoid dealing with their debts. Most of our clients do not have any surplus to make a DMP or IVA appropriate. Most of our clients cannot get hold of the bankruptcy fees. Our clients return from time to time, usually when some sort of enforcement is threatened but don't actually proceed to a debt remedy and just end up with large and unaffordable deductions from benefits for priority debts.*

- LCA adviser, Joint Adviser Surve

**Some turn to unsuitable IVAs.** While IVAs work for some, in the case of people whose preferred option is a DRO they are unlikely to be a suitable alternative. Despite this, advisers feel it is not uncommon for such clients to 'get hoodwinked by an IVA company selling them the benefits of an IVA'. One factor in this is the prevalence of online advertising by IPs and IVA firms.

*We find a lot of people will use google or other online resources to try and find out how to deal with their debts and then they end up clicking on the first thing which is an ad for a lead generator for an IVA company and they just go along with that.*

- LCA adviser, Joint Adviser Survey

The lack of appropriate alternatives for people priced out of a DRO or bankruptcy provides further support for our view that upfront administration fees should be removed from both options.

### **Question 13: What are the main consequential costs of the different insolvency procedures?**

Consequential costs need to be considered on two levels. First there are the real costs that individuals face as a result of personal insolvency. Second there are perceived costs, which act as a disincentive or barrier.

- **Credit reference implications** are a major consideration for many people, not only in relation to insolvency but dealing with debt more broadly. In a recent StepChange survey, 1 in 5 respondents said worries about their credit scores had held them back from getting advice.<sup>15</sup> Credit referencing also influences decisions about which insolvency option to choose, with many people believing that an IVA has significantly less negative impact than bankruptcy of a DRO.
- **Bankruptcy stigma** remains widespread, and was identified by 37% of respondents to the Joint Adviser Survey as one of the top three barriers to bankruptcy. There is evidence that stigma, along with the perception that bankruptcy is a 'last resort' option, plays a role in influencing people to choose IVAs. We present this evidence below in answer to Question 22.
- **Banking implications.** According to advisers, some clients are deterred from bankruptcy by the prospect of losing access to their bank account

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<sup>15</sup> StepChange Debt Charity & Amplified Global, [Mixed messages: Why communications to people in financial difficulty need to offer a clearer, better route to help](#), October 2022

(which, depending on bank policies, may happen even if no money is owed to that particular bank). For people in vulnerable situations, setting up and managing a new bank account with a different provider can prove enormously difficult and disruptive.

- **Housing implications** can be a major factor for renters. Advisers report cases of clients struggling to find accommodation following a DRO, as well as cases where a client has felt unable to make use of insolvency in order to preserve access to housing.

*A client gained a DRO in June 2022, then received a section 21 notice for her private tenancy unexpectedly. She is being screened out by all local estate agents at the very first contact due to her DRO. She can't get the chance to have her and her partners' credit scores checked and has no way forward to rent a new home . This leaves her, her partner and their 13 year old homeless.*

Citizens Advice Evidence form, August 2022

It is not obvious what policy recommendations would alleviate issues around access to housing and banking facilities, but the Insolvency Service can directly influence bankruptcy stigma and concerns about credit referencing, as we set out below.

**Question 14: How can we reduce the stigma of insolvency to both encourage early action by those in financial difficulty and to support a 'fresh start' from debt relief?**

Lots of factors influence perceptions of insolvency. We start below with three that are within the Insolvency Service's direct sphere of influence.

- **Terminology.** The language used to describe insolvency procedures and people who are subject to them has an impact. Care should be taken to avoid complex, legalistic language and any terms that imply moral judgement. The Insolvency Service has made a welcome effort to improve

its consumer-facing information along these lines, but this has not flowed through to all communications. As a particular example, the Insolvency Service continues to use the term 'debtor' in much of its written material, including 214 instances in this call for evidence. This unhelpful term is loaded with negative connotations, not least due to its association with the stock phrase 'debtors' prison', and is therefore scrupulously avoided by debt advisers. The Insolvency Service should review its use of language in general and make a specific commitment to remove the term 'debtor' from general use.

- **Perceptions of bankruptcy.** Bankruptcy is much more strongly imbued with negative connotations than other forms of insolvency for two reasons. First, it has its roots in an earlier historical period in which social attitudes and official responses towards debt were much more negative than today. It is not an exaggeration to say that the spectre of the workhouse or the debtors' prison still hangs over bankruptcy today. Second, unlike other insolvency options, bankruptcy can be used by creditors as a method of enforcement and in that context may (rightly) be perceived by people in debt as a punishment or threat. It is highly improbable that bankruptcy can ever escape these negative connotations given their deep roots. The Insolvency Service should consider formally separating debtor-petition and creditor-petition bankruptcy and reconstituting them as new procedures with revised names.
- **Creditor communications.** Looking more widely at factors outside the insolvency framework itself, the language used in creditor communications plays a role in reinforcing negative stereotypes around debt. This is particularly true of legalistic language and an emphasis on credit score implications. *Mixed messages*, a recent report by StepChange Debt Charity, provides useful evidence-based insights into how people in debt respond to creditor messages.<sup>16</sup>

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<sup>16</sup> StepChange Debt Charity, [Mixed messages](#)

**Question 15: Please provide any evidence to show whether consequential costs serve a useful purpose or whether they produce unintended consequences for different stakeholder groups.**

We do not see any useful purpose for consequential costs. We are not aware of any evidence that they promote responsible borrowing behaviour but instead simply deter people in genuine need of debt relief from seeking help or choosing the most appropriate debt remedy.

**Question 16: Do you believe the current insolvency procedures are working as intended? Please provide any evidence you have.**

There are two sets of issues we want to highlight in this section. First we set out evidence from a number of sources about poor consumer outcomes from IVAs. Later in this answer, we also note some problems with DRO criteria and processes.

**Issues in the IVA market.** IVAs are a useful remedy for some consumers, but current safeguards aren't strong enough to address risks in the market and ensure good outcomes for consumers. We have brought together evidence from advisers, Citizens Advice clients and a sample of people with personal experience of an IVA to demonstrate the extent and the impact of poor practice.

**Reform of insolvency regulation is needed urgently.** There are serious weaknesses in the current system of insolvency regulation, as the government acknowledges.<sup>17</sup> Insolvency Practitioners are regulated by their own professional membership bodies (Recognised Professional Bodies, or RPBs), which are reliant on membership fees for revenue and therefore face a conflict of interest which undermines effective regulation. The firms that employ IPs are not directly regulated at all. This model of regulation reflects an earlier period in the development of the insolvency profession, before the rise of volume IVA providers and the commodification of consumer IVAs. We broadly agree with the recent proposals to create a single government regulator in place of the RPBs, and to bring insolvency firms into direct regulation. However we don't think

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<sup>17</sup> Insolvency Service, [The future of insolvency regulation](#)

these proposals go far enough to safeguard consumers against poor and misleading advice and the detriment it causes.

**Initial advice is a crucial part of the equation.** The Insolvency Service and RPBs are aware of the risks posed to consumers by poor advice. This is reflected in industry standards such as SIP 3.1 and the Consumer IVA Protocol, and in the Insolvency Service's guidance to RPBs on [monitoring volume IVA providers](#).<sup>18</sup> The Insolvency Practitioners' Association, which is the largest RPB and represents the majority of IPs employed by Volume Providers, has introduced and developed its own [Volume Provider Regulation](#) scheme to provide closer scrutiny of this section of the market.<sup>19</sup> Alas, we see no evidence that these efforts have been successful to any significant extent. We still routinely see clients who are in an IVA despite being poorly suited for one and often much better suited to an alternative option such as a DRO; clients who have been given poor or inaccurate advice about other options; clients on low and benefits-only incomes; and clients with additional vulnerabilities such as physical illness, poor mental health or disability that have not been taken into account.

**Consumers should receive FCA-regulated advice prior to an IVA.** Ultimately we think a different approach is needed. It is very unlikely, in our view, that an insolvency regulator will ever be able to adequately address the risks posed by IVA business models and ensure that advice provided by IPs and IVA firms is consistently in the best interests of consumers. A much more suitable and workable approach would be to guarantee that consumers entering an IVA always receive prior advice from an FCA-authorized firm. This would require an amendment to the Financial Services and Markets Act 2000, either to remove the regulatory exemption granted by 72H (3) to IPs acting in reasonable contemplation of an appointment, or to amend it so that it only applies where an individual has had prior advice from an authorised person. IPs who wish to give advice themselves would have the option to do so, but would be required to seek FCA authorisation. Those who do not would have the option of working with FCA-authorized firms capable of providing that advice.

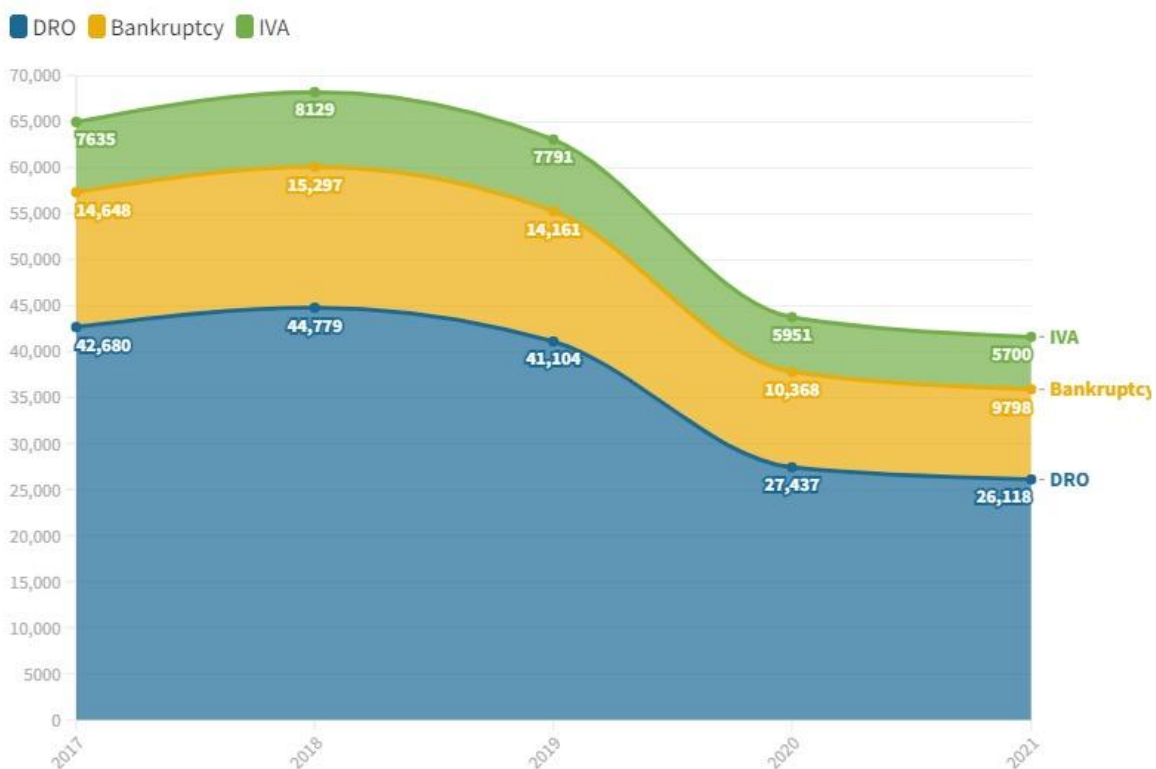
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<sup>18</sup> Insolvency Service, [Monitoring Volume Individual Voluntary Arrangement and Protected Trust Deed providers](#)

<sup>19</sup> Insolvency Practitioners' Association, [IPA Volume Provider Regulation Scheme](#)

**There are significant advantages to FCA regulation.** The FCA is the established regulator for firms engaged in the regulated activity of debt counselling. Its rulebook sets out clear, specific conduct standards for debt advice, including the requirement for all advice given and action taken by a firm to have regard to the *best interests of the customer*. The FCA has effective supervisory tools at its disposal and a track record of successfully intervening to address harms in risky markets like the commercial debt management sector. Extending the FCA’s remit to pre-appointment IVA advice would also be consistent with the Government’s wider approach to debt options, given that only FCA-regulated providers can prepare and submit applications for a DRO, Breathing Space Moratorium or the forthcoming SDRP.

### Citizens Advice insolvency advice 2017-2021



Before presenting fresh evidence on problems in the IVA market, it is worth briefly reviewing some key trends and issues that are already widely known.

**Rapid growth in IVA numbers.** IVAs have become increasingly prevalent in recent years, accounting for 74% of personal insolvencies in England and Wales



in 2021.<sup>20</sup> This is a striking contrast to the trends in the free debt advice sector, where DROs are the most widely recommended insolvency solution and IVAs relatively uncommon. Between 2017 and 2021, 75% of the insolvency advice delivered to Citizens Advice clients related to DROs, while 26% related to bankruptcy and just 14% concerned IVAs. This is a worrying discrepancy and lends support to the view that commercial incentives are primarily driving the rapid growth in IVAs.

**A high proportion of IVAs terminate early.** One of the concerning features of IVAs is the high proportion that are terminated early, which reached 30% for IVAs registered in 2016 and 2017.<sup>21</sup> A degree of non-completion is to be expected for any debt remedy involving regular payments over a number of years. It is notable, however, that the failure rates for StepChange and Payplan appear to be much lower than the industry average (7-8% for IVAs registered in 2015, based on data released in response to a Freedom of Information Act request).<sup>22</sup> Both providers are FCA-authorised, provide advice on a free-to-client basis and offer access to the full range of debt remedies. This suggests that business model and regulation play a significant role in IVA sustainability and lends further support to our view that impartial FCA-regulated advice should be a prerequisite for entering an IVA.

**Failed IVAs don't benefit consumers.** It also needs to be emphasised that consumers only derive benefit from an IVA if they are able to complete it. Debts are not written off until completion, and since payments are weighted towards fees rather than debt repayments during the first few years of an IVA, a consumer whose IVA fails early can easily find themselves further out of pocket than if they had not done the IVA at all. This makes IVAs a risky option for those who may have difficulty sustaining payments for a long period.

**Advisers frequently encounter failed or unsuitable IVAs.** IVAs are sometimes recommended by debt advisers in the free sector, albeit less frequently than other personal insolvency options. It is much more common for advisers to encounter IVAs in situations where a client has already entered an IVA prior to seeking debt advice, or where their IVA has recently failed. This type of scenario

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<sup>20</sup> Insolvency Service, [Commentary - Individual Insolvency Statistics October to December 2021](#)

<sup>21</sup> Insolvency Service, [Commentary - Individual Voluntary Arrangements Outcomes and Providers 2021](#)

<sup>22</sup> 7.3% Payplan 8.2%. Insolvency Service, [StepChange Individual Voluntary Arrangements by Provider, 2019, and Failure Rates by Provider, 2015 to 2018](#)

is very widespread. 52% of advisers say they often speak to people who have a failed IVA or were put into an IVA when it wasn't suitable for them, while 32% said they sometimes do.

**Evidence from social policy evidence forms.** To complement the Joint Adviser Survey we have carried out an analysis of the 119 adviser evidence forms submitted on the topic of IVAs in the six months from 1 April 2022 to 30 September 2022. All of these cases feature some form of poor practice, in the opinion of the adviser submitting the report. By allocating codes to distinct types of bad practice we were able to use this sample to establish the relative prevalence of particular issues and impacts.

**People in IVAs often have low or benefits-only incomes.** Almost half (51) of the 119 cases reported by our advisers involved clients on a low income, including for example people in very low-waged employment and students. More than 1 in 5 (25) cases advisers specifically stated that the client's income was solely from benefits. In the Joint Adviser Survey, 66% of advisers say they often see cases where a client had a low income or benefits-only income. An independent survey of people with recent experience of personal insolvency reveals a similar picture. 70% of respondents who had been in an IVA over the past 5 years reported having income from benefits or Universal Credit at the time they entered their IVA, with 24% saying it was their only source of income.<sup>23</sup>

*I consistently see clients who are on benefit, have no assets and are in an IVA. When I go through the clients income and expenditure they have £75 or less available income. The IVA provider has a surplus income of at least £75 per month. When I explored this with the client they told me that when interviewed in the initial stages of the IVA they were told that some expenditure was too high even though it was less than the trigger figures on the SFS.*

- LCA adviser, Joint Adviser Survey

The above evidence suggests IVAs are being widely sold to people who can ill afford them. While it may be technically possible to sustain an IVA on a low income (and some people might wish to do this) it leaves very little room for

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<sup>23</sup> Yonder polling, 193 and 68 out of 283.

manoeuvre if they experience income shocks or changes in their situation, placing them at high risk of IVA failure.

## Types and prevalence of IVA poor practice

Issue	Instances	% of clients/ cases
Poor or inappropriate income assessment	68	57.14%
Poor selling or advertising practises	59	49.58%
Misleading or missing information about other options (DROs, bankruptcy)	54	45.38%
Low income (students, UC in work etc)	51	42.86%
Vulnerability	43	36.13%
DRO eligible	34	28.57%
Incomplete/ inadequate assessment (non-income)	31	26.05%
Benefits only income (specified by advisor)	25	21.01%
Monthly IVA payments under £100	24	20.17%
Problem ending IVA	22	18.49%
Inflexible to changes in circumstances	16	13.45%
Poor advice on emergencies or priority debts	11	9.24%
Low value IVA (initial debts under £10,000)	10	8.40%
Fees as a barrier to other options (DRO, Bankruptcy)	3	2.52%
IVA fees high relative to debt (initial debt under £5,000)	3	2.52%
TOTAL	119	100.00%

*Analysis of adviser evidence forms submitted about IVAs between March - September 2022 (119 submitted in total). Note: More than one issue may be reported for each individual client/case.*

**Many IVA clients have additional vulnerabilities.** Worryingly, our sample of adviser evidence reports points to very high levels of vulnerability (noted in 43 out of 119 cases) among clients with a problem IVA. Similarly, 57% of advisers asked in the Joint Adviser Survey said they often saw IVA cases where a client was in a vulnerable situation which wasn't taken into account. 28% of people in IVAs consider themselves to be disabled and 47% have experienced mental health problems in the past year.<sup>24</sup> It might be argued that this simply reflects the profile of people seeking debt help and the close association between debt and vulnerability, but this itself underlines the need for robust, consumer-focused regulation of advice.

*Anouska contacted her local Citizens Advice after falling behind with her council tax. She is a lone parent and her income is solely from benefits. When we began helping Anouska, she explained that she was paying £100 a month towards an IVA set up the previous year, which she could no longer afford. On investigation we discovered that Anouska's IVA had been set up to include Disability Living Allowance she received for her son, who has now passed away due to a terminal illness. Despite requests from Anouska herself, the IVA provider only stopped taking payments and agreed to terminate the IVA after one of our advisers intervened on her behalf.*

Case study based on adviser evidence, September 2022

**IVA clients may have missed out on cheaper, quicker and less risky options.**

The quality of advice given to people going into an IVA is a major concern for us and for other stakeholders across the advice sector. In the Joint Adviser Survey, 72% of advisers said they often saw cases where a client wasn't given advice about alternative debt options. Meanwhile, in our sample of 119 cases there were 54 reported instances of clients not being given accurate advice about all the options available to them. In 34 cases, advisers specifically noted that they believed the client would have been eligible for a DRO, a quicker and cheaper way of dealing with their debts, at the time of entering their IVA.

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<sup>24</sup> Yonder polling, 81 and 134 out of 283.

*Leanne lives with her retired husband in local authority housing. She is unable to work due to ill health, and receives sickness and disability benefits. She had been in an IVA for 7 months when she contacted her local Citizens Advice in April, asking for help to apply for a DRO. Leanne told us that she had wanted a DRO right from the start, but ended up with an IVA after getting in contact with a lead generator. She admitted that she did not quite understand what she was signing up for when she took on the IVA. It took 4 months to secure a termination certificate from the IVA provider.*

- Case study based on adviser evidence, June 2022

Recent research carried out by Britain Thinks on behalf of Citizens Advice explored people's experiences of being in an IVA. In several cases, participants reported the view that a DRO is significantly more intrusive than an IVA. The similarity in these statements suggests that information provided by an IVA provider or intermediary played a role in shaping these views.

*"I couldn't afford to go bankrupt. The DRO was going to be my favourite option until they said how much they look into your bank statements. If you went to Tesco's twice in a week, they'd ask why. It felt intrusive."*

*"The DRO sounded like the better option compared to the IVA, but it sounded stricter. It was like if you had a certain amount of money left at the end of the month – if you have more than a certain amount of disposable income – they would take that away, and they do a review of you every single month. If I can't prove that I need to be on it, am I back to square one?"*

- Participant comments, Britain Thinks

The concern comes through strongly in feedback from advisers submitted as part of the Joint Adviser Survey.

*Clients often report having received information about all options, but this is extremely weighted towards IVA, or misleading, for example, a client was told her nursing registration could be at risk in bankruptcy.*

- LCA adviser, Joint Adviser Survey

**Poor assessment and advice.** Our sample of 119 evidence forms includes 68 reports of poor or inadequate income assessment. Within this category we see examples where a person's surplus income seems to have been significantly overstated - either it appears implausibly high relative to their income, or an assessment carried out by one of our advisers leads to a much lower result. Clients also report being advised by an IVA provider to include income from disability benefits or from other members of their household. This chimes with evidence from the Joint Adviser Survey in which 64% said they often saw cases where a client's income & expenditure exaggerated their real surplus income.

*Hussein is single and lives in a housing association property. He is unable to work due to a long-term disability, and receives sickness and disability benefits. He set up an IVA in November 2021, paying £90 a month. When Hussein phoned Citizens Advice six months later, an adviser completed an income and expenditure statement with him. This showed that he had a deficit budget before making any payments towards his debts.*

- Case study based on adviser evidence, May 2022

**Poor practice leads to detriment.** The impacts of poor IVA practice can be very serious and negative for clients. The most common negative impacts reported by advisers in the Joint Adviser Survey include stress / anxiety (83%) and worsening mental health (79%), along with difficulty affording essentials due to IVA payments (74%), delay in accessing a more suitable solution such as a DRO (74%) and the loss of money paid in fees following IVA failure (74%).

**People often struggle to keep up with IVA payments.** IVA termination is an obvious indicator that an IVA hasn't worked well for a consumer. Other indicators that IVAs aren't working well are less immediately obvious but no less significant. People may succeed in making payments, but only through levels of struggle and sacrifice that are unsustainable in the long term. In a survey of people with experience of an IVA, 75% said they struggled to make repayments, with 55% reporting that their IVA payments did not leave them with enough money for unexpected essential costs (such as a car breaking down or needing

to purchase new school shoes).<sup>25</sup> There is further evidence of affordability problems in independent research carried out for Citizens Advice by Britain Thinks, consisting of interviews with people who had previous experience of an IVA.

*"I just had to cut back on everything, including food and clothes. It was a struggle to pay the utilities... It makes you prioritise between things that are essential. You have to decide if things are 'essential essentials' or 'optional essentials'. The situation that lots of people are facing now in terms of having the heating on or eating, that sort of thing."*

*"I have nothing but regrets. I thought it was the less intense option, but I feel like I'm under constant observation, having my spending monitored. I put so much pressure on myself to meet the payments, and I only have 30 pounds leftover [per month]..."*

**IVA providers do not always provide appropriate help and support when customers' situations change.** Worryingly, evidence suggests IPs and IVA providers are often poor at responding to customers whose situations change within an IVA and or who reach out for help. Asked about this in the Joint Adviser Survey, (74%) of advisers said the typical response from IPs and IVA providers to change of circumstances was poor. This included: providers being difficult to contact, not responding to contact, refusing to offer any support – such as reduced payments - and delays in issuing termination certificates when IVAs failed. Just 14% of advisers said they typically saw good practice in responding to changes of circumstances, such as providers offering reduced payments or payment holidays. Even here, some advisers flagged that these were not always helpful for individuals as they simply extended the term of the IVA, or were offered when it was clear the IVA was not sustainable longer-term.

Advisers report that it is particularly difficult to get an IVA terminated when it is no longer a suitable option. This has a very serious knock on effect in that clients are not able to enter an alternative debt option (such as a DRO) until they have obtained a failure certificate.

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<sup>25</sup> Yonder polling, 212 and 156 out of 283.

*Keyla contacted her local Citizens Advice in June, seeking food support. She is severely disabled and receives sickness and disability benefits, along with Child Benefit for her young child. Her husband is her full-time carer. Keyla explained that she was in an IVA which she could no longer afford. After assessing her situation, an adviser recommended a DRO. Before approaching Citizens Advice, Keyla had already asked to cancel her IVA, but the provider instead suggested varying payments to £68 a month. In early August, the IVA provider acknowledged a written request to terminate, but has continued to send arrears reminder notices. At the time of writing Keyla has still not received a certificate of IVA termination and is unable to progress with her chosen debt solution.*

- Case study based on adviser evidence

*Client took out an IVA several years ago, she has repaid £18 per week for approximately 1 year and then had to stop payments because they were unaffordable. These payments have been assigned to fees only, so creditors have not received any repayment. The client will be eligible for DRO when IVA terminates and this is a significantly better option for her. However, IVA provider has only called to discuss payments, when client has asked to cancel the IVA provider has refused to do so until the client has had advice from them, despite them stating on their website that they only offer limited advice.*

- Citizens Advice Evidence form, September 202

Despite these poor experiences, advisers and clients are often reluctant to raise complaints. One adviser comments - 'due to the self regulation of IVAs there is not much point and client does not want the additional stress.' This may help explain the relatively low level of complaints made against IPs and IVA firms.



## Experiences of an IVA: A case study from research carried out by Britain Thinks on behalf of Citizens Advice

**Nigel is a self-employed teacher living in North Wales. He entered an IVA in 2020 but this only lasted 8 months before it was terminated.**

**He had built up £12,000 of debt over many years and whilst he “buried his head in the sand” for a while, he eventually sought help when bailiffs started visiting him.**

**He first spoke to Citizens Advice about his debt, and they talked through the options of a DRO or bankruptcy. However, after receiving this advice Nigel concluded that these options felt too “extreme” for his level of debt – he was put off by the “black mark” and “stigma” he felt bankruptcy in particular would give. At this point, he felt highly stressed and anxious.**

**Nigel found out about IVAs on his own through an online search, and saw what he thinks was a targeted “pop up” ad that included testimonials and a promise along the lines of “neatening one’s finances”. He eventually spoke to his provider ‘UK Debt Service’ and was attracted by the chance to consolidate his debts into a single monthly payment and also “take responsibility”.**

**Nigel felt the IVA assessment was “sped through” and he wasn’t given enough information to make an informed decision: “It was fairly brief and didn’t seem to be that thorough, it was just a formality... Citizens Advice get you to do a big budget and they get you down to the penny, make sure that what they offer to the creditors is what you can afford, whereas the IVA people definitely didn’t take that into consideration. Otherwise, I wouldn’t have cancelled it.”**

**As a result of the assessment not being comprehensive, Nigel felt he ended up with a payment amount he could not make and that therefore was not sustainable.**

**During the 8 months, Nigel had very little per month left for food and other essentials after his bills and IVA payment were made (less than £200). He had to make decisions between “essential essentials” (utilities, bills) and “optional essentials” (food, clothes), and could not cope with any unexpected expenses. He asked the provider to defer his payments at one point, but they refused.**

**He eventually told the IVA provider he could not afford repayments at all; they then “became like any other creditor” in hassling him for money: “When you start obviously defaulting they become incredibly urgent, whereas before when they’re selling you the product then the customary sort of persuasion is in evidence.”**

**After the IVA was terminated, he thinks he was in slightly more debt than when it started. He strongly regrets taking out his IVA as “it just didn’t do what it claimed”.**

**Citizens Advice now help Nigel to budget with individual creditors, which he finds more manageable: “I was worried about having spent 8 months and not really solved the problem in any way, there’s a certain amount of stress involved in the sense that there wasn’t any solution to the problem until I went back to Citizens Advice.”**

**People should receive impartial advice prior to entering an IVA.** Consumers entering an IVA should get impartial, holistic advice about all the options available to them. The recommendation of an IVA should be based on a robust and accurate assessment of the consumer's circumstances, and the IVA should be in the consumer's best interest. Evidence suggests that these conditions aren't being met and that consumers are experiencing poor outcomes as a result. The Insolvency Service needs to bring forward its recent proposals for a single government regulator and regulation of IVA firms as quickly as possible. However this in itself will not guarantee the quality and impartiality of advice, or provide consistency with other debt options such as DROs, Breathing Space and SDRPs. To achieve those aims, initial advice should be brought within the remit of the FCA.

## **DRO eligibility and process issues**

Debt relief orders have come to play a very important part in resolving problem debt since they were introduced in 2009. Last year's changes to eligibility criteria, increasing the surplus income, debt level and asset value limit, were a positive step. While we are very supportive of DROs overall, several features present real problems and should be reconsidered.

**Vehicle value is the single biggest barrier.** 59% of advisers in the Joint Adviser Survey identified vehicle asset value as one of the top three barriers to a DRO, ahead of fluctuating income and fee affordability. Advisers have told us that the £2,000 asset limit doesn't reflect recent increases in the price of used cars during the pandemic and the difficulty of finding a reliable vehicle under £2,000.<sup>26</sup> Because of these increases, some clients have found their eligibility hanging in the balance, dependent on very small movements in the list prices quoted by Parkers, the standard industry reference. The issue is exacerbated for clients who cannot reasonably rely on public transport due to the nature of their employment, where they live, ill health, disability or caring responsibilities.

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<sup>26</sup><https://www.nationalworld.com/lifestyle/cars/drivers-being-priced-off-the-road-as-affordable-used-cars-vanish-3538971>

*We advised the client back in November 2021 that a suitable option for her to deal with her debts was obtaining a DRO, taking into consideration her car valuation on Parkers as being £1680. By January 2022 however the value had risen on Parkers to £2020 ... The value dropped to £2005 by 25th April but by this time the client had disengaged and we eventually closed her file. We work in a rural area with limited public transport to some villages so most clients do have cars. We feel there should be more flexibility with car valuations.*

- Citizens Advice Evidence form, June 2022

**Obtaining full information about debts is often challenging.** Despite the diligence of debt advisers and clients, it is not always possible to produce an exhaustive list of existing debts a client owes at the time of the application. This is a problem in DROs since unlisted debts are not included and there is no facility to add debts retrospectively. Advisers tell us that people with mental health problems or limited capability find this part of the process especially daunting and in some cases disengage as a result. It is particularly difficult to get up-to-date information from government departments such as HMRC. Often a pre-existing debt will appear only after the DRO application has been submitted, meaning a debt that would be eligible for inclusion is excluded and people are unable to fully benefit from a DRO. Advisers tell us that in some instances clients have even decided to opt for bankruptcy over a DRO because it provides more certainty.

*[People] are not aware of what their debts are - they may have long and complex histories of many types of debt, from numerous addresses, all often going back vastly more than 6 years, so the effort involved in trying to ensure a complete list is time-consuming and very off-putting.*

- LCA adviser, Joint Adviser Survey

To help people see the full benefits of a DRO, the regulation should be amended to allow pre-existing debts to be retrospectively added to a DRO application. Alongside this, the Insolvency Service should develop a policy for cases where the additional pre-existing debt would bring the client over the debt limit. This should include detail on the circumstances in which eligibility for a DRO would and wouldn't be revoked and when discretion will be used.

**The 12-month moratorium period can be problematic.** During this period clients are required to report any windfall payments or increase in income. Often the improvements to a client's assets or income are insufficient for them to clear their debts, yet they result in individuals having their DRO revoked. This can disincentivise individuals with a DRO from seeking more or better paid work for fear of having it revoked. In the longer term this does not help them to improve their financial situation. Furthermore, those who are worried about losing their job may also be disincentivised from applying for a DRO because of fears that a modest redundancy payout would lead to their DRO being revoked. Based on this we would strongly advocate a reduction to 6 months as a way to drive better consumer outcomes.

**Question 17: How well do those in financial distress navigate the current regime and could this be improved? Please provide evidence to support your answer.**

Many of the people we help find it difficult to navigate the current regime. Advisers highlight high levels of mental health problems and capability issues that make it more difficult for people to interact with official agencies and carry out complex tasks, which insolvency often requires. Digital exclusion is also a factor, since many processes including the process of applying for bankruptcy have moved online.

Part of the role of money advisers is to help people navigate complex processes such as insolvency, which includes representing clients and acting on their behalf where necessary. Properly-funded debt advice services - particularly community-based ones - play a vital role here and need to be preserved.

We're concerned that people in distress are unable to reliably find the right remedy for their needs. In answer to Question 22 we set out evidence that people seeking debt support often have little idea what sources of advice and information they can turn to, and limited awareness of the available debt options. As previously noted, we are particularly concerned about the IVA market. High IVA failure levels, evidence of poor advice and assessment by IVA providers, and frequency with which we see people moving from an IVA to a DRO after getting our help, are all indicators of this. Allowing commercial

providers to give advice outside of FCA regulation is too big a risk and needs to be resolved by removing the exclusion granted to IPs in the Financial Services and Markets Act 2000.

**Question 18: Are the current personal insolvency procedures the right products to service the needs of both debtors and creditors today or are new procedure(s) needed to serve debtors and creditors better?**

There is a case for introducing new insolvency remedies in the future to better suit the needs of groups such as homeowners (particularly those who are asset-rich but cash-poor) and people who have fluctuating incomes due to flexible work patterns, zero hours contracts, variable UC payments etc. We are open to proposals on this, but we think the immediate priority should be to tackle problems with the three existing insolvency remedies

**Question 22: What are the main factors which influence an individual's decision to enter a particular procedure?**

**Question 23: How could an individual's decision to enter a particular procedure could be better informed?**

Independent research carried out for Citizens Advice by Britain Thinks looked at the experiences of people who had been in an IVA at some point during the previous eight years. All quotations reproduced in this answer are taken from participants in this research. Part of the research looked to understand what people were seeking to achieve when they first sought advice or approached an IVA provider, as well as their awareness and perception of options for dealing with debt. Many participants emphasised that their main concern was simply to regain control of their situation - with several explicitly linking this to alleviating levels of stress.

*'Get it under control, an agreement where I could manage it, get on track. I couldn't afford it, getting stressed and the phone rang all day long. '*

*'I just wanted to make things easier for myself because I was really stressed with it to the point where I was limiting things I needed for myself because I had so many outgoings'*

*'I suffer with anxiety so that was something I needed to stop, it was really bad so that was the main thing, to stop the stress.'*

Other common goals were to establish a clear timeframe for debt relief and reduce the number of payments being paid out.

*'I just wanted to have some kind of date in the future where I could be debt-free. At least with the loan, it's so many payments... But interest, you're paying more each time. My credit card I would have been paying for 26 years.'*

*'I just wanted to see an end goal, a finish line. When it's going to end – by consolidating them all. When you've got so many payments.'*

Under pressure, and with immediate problems to resolve, people may take a narrow view of what's required from a debt remedy. At the point of seeking help, people often have little awareness of the options available for dealing with debt or sources of help and advice.

*'There's not much exposure on the kind of help you can get. Usually you only hear about that until it gets serious, until someone is losing their house and assets, I hadn't heard or sought any ways to seek help.'*

*'I didn't know who to speak to, just [searched for] 'debt advice.'*

Bankruptcy is the best-known option but is often considered 'the final straw' and widely believed to have more negative implications than any other option.

*'I knew you could go bankrupt. I didn't want to do that. That had a negative effect. As bad as you feel at the time, the bankruptcy would have had a longer effect. There are certain things you can't do afterwards. It would have had a more negative effect.'*

*'I knew about debt consolidation loans, but they weren't right for me. I also knew about IVAs and DROs as some friends had had them in the past. I knew about bankruptcy too, but wanted to avoid that where possible because it felt so severe.'*

Debt advice plays a crucial role in helping people understand the advantages and the implications of the various debt remedies, so should always be promoted to people seeking to resolve problem debt. Government policy has recognised this by making FCA-authorized advice mandatory for access to a DRO, Breathing Space or the forthcoming SDRP. We do not necessarily feel that advice should be mandatory prior to bankruptcy since it could lead to unintended consequences. Some people entering bankruptcy have relatively high income and assets, and may also have access to professional advisers such as accountants or solicitors, so may not need or benefit from debt advice. In the case of IVAs, however, given the large commercial incentives, we do think that FCA-authorized advice should always be made available to consumers prior to entry.

**Question 24: What evidence do you have of the impact that a public register has on an individual's decision to choose a particular insolvency route?**

Advisers tell us that attitudes towards the public register vary. Many people are unconcerned about their names and addresses appearing on it. On the other hand, people who have experienced violence or harassment, e.g. from a former partner, find it extremely distressing and a risk to their safety. There is a process in place to obtain a person at risk of violence order (PARV) so that a person's address can be withheld, but this involves a court application and may involve paying an additional fee. This creates a serious obstacle for people already in extremely vulnerable situations. We do not think that the public register any longer serves a useful purpose and should be replaced by a private register, as is the case for Breathing Space and as is proposed for SDRPs.

**Question 25: What impact does professional debt advice have on debtors when choosing a personal insolvency solution? Please provide evidence to support your answer.**

We help people with a wide range of debt problems, many of which do not involve or directly relate to insolvency - for example problems negotiating with individual creditors or dealing with court claims and enforcement. We measure the impact of debt advice at this broad level rather than specifically in relation to insolvency options. Drawing on our [debt impact report 2020/21](#):

- 9 in 10 clients would recommend our services to a friend
- 86% of debt clients said we helped them find a way forward
- 46% of clients said that they had seen an improvement in their mental health, being either less depressed, stressed or anxious.<sup>27</sup>

In 2020, debt clients owed a total of £643 million. We helped over 14,000 clients to write off a total of £181 million of debt, an average per client of £13,000. We also helped 10,000 clients to reschedule their debt repayments and gained £840m of extra income for 135,000 clients.

Research carried out by Britain Thinks with people who had been in an IVA found widespread support for the principle that rules should be strengthened to make sure people get full advice about all their options before going into an IVA, and that organisations should only be allowed to set up an IVA for someone if they can demonstrate that it is the best option for them or that they have a good reason for choosing an IVA over other available options. Several participants had sought help from Citizens Advice after their IVA terminated and explicitly commented on the benefits that involved.

*“Citizens Advice get you to do a big budget and everything, and they get you down to the penny. They make very sure that what they offer to the creditors is what you can afford, whereas the IVA people didn't seem to be – well, they definitely didn't take that into consideration properly. Otherwise, I wouldn't have had to cancel it.”*

*“I got Citizens Advice to negotiate on my behalf, so Citizens Advice are able to get around the sort of customer service void [from IVA providers and creditors]. [Creditors] don't try and use various tactics in order to get things out of [Citizens Advice] because they know they're an official agency. So, it gets*

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<sup>27</sup> Citizens Advice, [Debt impact report 2020/21](#)



*around this excessive urgency-type tactic that creditors use. It makes it easier to deal with because they're a third party which are unbiased that are dealing with it. The creditors are more amenable to negotiation at that point."*

**Question 26:** Please explain any other barriers to entry to personal insolvency which are not included in this call for evidence, highlighting any particular groups that are affected.

### 1. Negative budgets

The proportion of debt clients who have been in a negative budget has increased significantly since 2019, making it increasingly difficult for insolvency to give people the fresh start they need:

*...we can assist with DROs and the like but this won't provide the fresh start they need as they will be back in debt again within a month. Clients in this position are increasingly common.*

- LCA adviser, Joint Adviser Survey

As we recently explored this in our [In the Red Index](#), certain demographics are disproportionately impacted by this.

#### For example:

- **People of colour are more likely to be in a negative budget:** 49.5% of black clients and 54.5% of Asian clients are in a negative budget, compared to 45.1% of white British clients.
- **Those with long term health conditions:** 47.8% of people with long-term health conditions and 44.6% of people with a disability have a negative budget, compared to 43.6% of those without.
- **Private tenants** have consistently been the tenure type most impacted by negative budgets - up from 41.4% in 2019 to 51% in 2022, compared to 47.6% of owner occupiers and 43.6% of social housing tenants.

In addition, advisers have highlighted the specific challenges facing people with **mental health conditions** dealing with debt.

*For some customers, there appear to be barriers, e.g. in identifying all of their debts, and they may be struggling with mental health, so may select the option not to do anything at all, as it seems too big of a hill to climb.*

*The term bankruptcy is very scary especially for someone with an existing mental health condition and who struggles with their finances. No matter how much reassurance I provide they still do not want to pursue it as the process is far more complicated and uncertain than a DRO.*

- LCA adviser, Joint Adviser Survey

The application processes can also pose a barrier for **older clients** and **those for whom English is not their first language**.

*Older applicants who are not confident with internet and computer use cannot navigate to the application portal or use it - or have confidence that the information they enter is secure due to lack of knowledge.*

*...Clients for whom English is not a native language...have to translate every aspect of the application and often other related items such as business accounts which must be translated to their native tongue then back to English for the application.*

- LCA adviser, Joint Adviser Survey

# Appendix 1. Methods used

## 1. Citizens Advice Evidence Forms

Analysis of 119 evidence forms on the topic of Individual Voluntary Arrangements submitted by local Citizens Advice advisers in the six months from 1 April 2022 to 30 September 2022. We also reviewed 148 evidence forms on Debt Relief Orders and 53 on bankruptcy, which were submitted by advisers between March and September 2022.

## 2. Yonder polling

A survey, conducted by Yonder Consulting, of 439 people who had been in one or more of the following debt solutions: Individual Voluntary Arrangements (283); Bankruptcy (43); and debt relief orders (150). The fieldwork was completed between 28 September 2022 and 12 October 2022. The survey was conducted online and data was weighted by age, gender and region to be representative of people in personal insolvency solutions based on demographic data from the [Insolvency Service](#).

## 3. Joint Adviser Survey

A survey of 565 money advisers conducted jointly by Citizens Advice, Money Advice Trust, Stepchange Debt Charity, Christians Against Poverty, Institute for Money Advisers, AdviceUK and Community Money Advice. The survey was conducted online between 11 July 2022 and 31 August 2022. Of the 565 responses, 195 were from advisers working within the Citizens Advice network.

## 4. Citizens Advice income and expenditure data

Analysis of income, spending and debt data recorded by Citizens Advice advisers supporting debt clients between 1 January 2019 to 30 April 2022. This dataset includes income and expenditure, surplus/deficit monthly income, debts owed by type and amount owing, and total amount of debt owned. It also includes non-budget information such as housing tenure. Starting with a full dataset of 174,487 clients, we filtered the data to remove owner occupiers, who do not qualify for DROs and risk losing their homes in bankruptcy. We also removed clients capable of repaying their debts over a reasonable period of time (for the purposes of this analysis we took this to be 7 years or less, aligning with the proposed criteria for the Statutory Debt Repayment Plan). This left a group of

102,914 clients who might realistically be expected to opt for an insolvency option. We filtered this dataset further to distinguish between clients who fit the debt and surplus income criteria for a DRO (taking into account the changes to eligibility criteria pre- and post- 29 June 2021). This left 86,606 clients presumed to be DRO candidates and 16,308 clients presumed to be suitable for bankruptcy. For the final analysis we removed clients whose surplus income was a negative amount, on the basis that insolvency would not be a sustainable long-term solution for them and unlikely to be recommended in practice. This left a final sample of 31,318 potential DRO applicants and 11,200 potential bankruptcy applicants. We were unable to factor in the value of assets other than the home for this analysis, or to adjust for clients' preferences regarding particular options.

## **5. Britain Thinks interviews**

Analysis of 14 in-depth qualitative interviews carried out by Research agency Britain Thinks. The interviews were conducted between 14 September 2022 and 12 October 2022 with people who were currently in an Individual Voluntary Arrangement (IVA), or had been in one in the last 8 years. The interviews were conducted online and over the phone, and included a 'pre-task' where participants were asked to map out their IVA journey in advance of the interview, referring to any relevant paperwork or other documentation. Quotas were used to ensure a good spread of participants by age, gender, ethnicity, and IVA status (ongoing or terminated), and to ensure people with disabilities and/or health conditions and with different housing situations (homeowners, social tenants and private tenants) were represented. All participants were living in England or Wales and all had struggled with their IVA repayments.

## **6. Network Panel survey**

A survey of 129 Citizens Advice frontline staff conducted between 8 and 23 September 2022. The Network Panel survey is run monthly by Citizens Advice to ask frontline staff about the issues they are seeing clients experiencing. This edition included questions on the impact of fees on clients' ability to apply for debt relief orders and/or bankruptcy.